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federal register

Wednesday
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federal register

Wednesday
June 20, 1984

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Trade Practices
Federal Trade Commission

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 5210 of June 18, 1984

National Child Passenger Safety Awareness Day, 1984

By the President of the United States of America

A Proclamation

Now that school sessions have come to a close and many families are preparing for summer vacations, it is especially appropriate to remind all Americans of the importance of child passenger safety. Children who are not buckled into child safety seats or safety belts are subject to great risks of serious injury in motor vehicle accidents because their less developed bodies afford them little protection.

It is a tragic fact that motor vehicle collisions are the primary cause of death and crippling injuries for children in the United States. From 1978 through 1982, nearly 3,400 children under five years old were killed in motor vehicle collisions, and more than 230,000 others were seriously injured. All Americans must do their best to reduce these senseless tragedies.

Fortunately, in the last few months, much has been done to protect young children travelling by car. We know that the proper use of child safety seats reduces the risk of death by up to 90 percent and can prevent up to 67 percent of all injuries. Through the voluntary efforts of many individuals and citizens groups, 47 States and the District of Columbia have recently enacted mandatory child restraint laws. Unfortunately, surveys show that only 40 percent of children under five years old are being protected by child safety seats and that 70 percent of the seats are not being used properly. In order to emphasize the importance of correct installation and use of child safety seats, many private and public organizations alike are initiating educational programs to achieve that end. For example, the National Automobile Dealers Association, the National Child Passenger Safety Association, and the American Academy of Pediatrics are currently sponsoring child safety clinics throughout the Nation to check on and demonstrate the correct use and installation of child restraint systems.

It is particularly vital for parents to understand the special risk which their children face as motor vehicle passengers and to educate their children about the importance of child safety seats each time they ride in the car. As adults, we all should remember that our own use of safety belts in our car can be a particularly good lesson for our children.

To emphasize the combined efforts of government and private sector organizations to promote child passenger safety throughout our Nation, the Congress, by Senate Joint Resolution 289, has authorized and requested the President to issue a proclamation designating June 18, 1984, as "National Child Passenger Safety Awareness Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 18, 1984, as National Child Passenger Safety Awareness Day. I encourage all Americans to observe this occasion by participating in appropriate programs, ceremonies and activities to educate motor vehicle drivers about the tragic consequences of neglecting the safety of our children when they travel by automobile.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of June, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-16623
Filed 6-18-84; 4:23 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5211 of June 18, 1984

Federal Credit Union Week, 1984

By the President of the United States of America

A Proclamation

This year marks the fiftieth anniversary of the passage of the Federal Credit Union Act of 1934 which enabled credit unions to be organized throughout the United States under charters approved by the Federal government.

Credit unions are uniquely democratic economic organizations, founded on the principle that persons of good character and modest means, joining together in cooperative spirit and action, can promote thrift, create a source of credit for productive purposes, and build a better standard of living for themselves. Because credit unions exemplify the traditional American values of thrift, self-help and voluntarism, they have carved a special place for themselves among the Nation's financial institutions.

Today, Federal credit unions are at their strongest point in history. They enter this, their 50th anniversary year, as the Nation's fastest-growing financial institutions. As member-owned cooperatives, credit unions operate with the credo, "Not for profit, not for charity—but for service." Credit unions have maintained allegiance to this ideal and as a result have consistently reflected the philosophical tradition and the cooperative spirit of people helping people that prompted passage of the Federal Credit Union Act.

The Congress, by House Joint Resolution 139, has designated the week beginning June 24, 1984 as "Federal Credit Union Week" and has authorized and requested the President to issue a proclamation calling for the observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning June 24, 1984, as Federal Credit Union Week. I call upon the people of the United States to celebrate this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of June, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-16624
Filed 6-18-84; 4:24 pm]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

Office of Management and Budget Information Collection Control Numbers Assigned to Voluntary Egg and Poultry Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises 7 CFR 56.9 and 70.6. These sections identify the information collection requirements each part contains and the respective control numbers assigned by the Office of Management and Budget (OMB). In accordance with 5 CFR Part 1320, these changes are made in order to make the information more convenient to locate.

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: D. M. Holbrook, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3944, South Building, Washington, D.C. 20250, (202–447–3506).

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this amendment is merely administrative, involving only the identification of information collection requirements and display of OMB control numbers pursuant to 5 CFR Part 1320 and is not subject to requirements of Executive Order 12291.

Administrative Procedure Act

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest because these amendments are nonsubstantive, impose no new requirements, and merely provide a convenient listing of information collection requirements and OMB control numbers. Thus, good cause also is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register**.

Regulatory Flexibility Act

Since this rulemaking is exempt from the notice and comment provisions of the Administrative Procedure Act, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Paperwork Reduction Act

This rulemaking does not require an additional collection of information from the public under the Paperwork Reduction Act of 1980.

Background

The Paperwork Reduction Act of 1980 was designed both "to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons" and "to maximize the usefulness of information collected by the Federal government." On March 31, 1983, OMB issued a final rule, 5 CFR Part 1320, implementing the provisions of the Paperwork Reduction Act of 1980. Among other provisions, the rule requires the display of OMB control numbers on collection of information requirements contained in agency rules adopted after public notice and comment. The control numbers provide a simple and effective way for the public to tell whether a paperwork burden an agency seeks to impose has been cleared as the Act requires. The Director of OMB, as the accountable individual in the Government, has assured that the information is needed, is not duplicative of information already collected, and is collected efficiently.

Each information collection requirement in the regulations is reviewed and evaluated periodically. In addition, every three years the Agency submits a clearance docket to OMB, based on the criteria in 5 CFR Part 1320, for review and extension of approval of existing information collection requirements.

OMB approval of collection of information under 7 CFR Part 56 would have expired in June 1984. But prior to that the Agency submitted to OMB a revised clearance docket which also included sections of the regulation not previously listed. These revisions reflected interagency administrative procedures and imposed no new or additional information burden on the public or changed the existing collection of information under 7 CFR Part 56. A notice of the OMB review was published April 4, 1984 (49 FR 13383), and subsequently the clearance docket for 7 CFR Part 56 was approved by OMB.

Therefore, § 56.9 of 7 CFR Part 56 is updated by adding sections not previously displayed to the list of sections with information collection requirements. In addition, § 70.6 of 7 CFR Part 70 is revised by deleting one section number inadvertently displayed as containing an information collection requirement. These sections identify and update information collection requirements contained in each part and the respective control numbers assigned by OMB. The Agency has determined that this amendment is not substantive. It merely provides a convenient and current listing of the information collection requirements and OMB control numbers in accordance with 5 CFR Part 1320.

List of Subjects

7 CFR Part 56

Shell eggs, Voluntary grading service.

7 CFR Part 70

Poultry, Poultry products, Rabbit products, Voluntary grading service.

Accordingly, under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), the U.S. Department of Agriculture hereby amends the Regulations Governing the Grading of Shell Eggs and United States Standards, Grades, and Weight Classes for Shell Eggs (7 CFR Part 56) and the Regulations Governing the Voluntary Grading of Poultry Products and Rabbit Products and United States Classes, Standards, and Grades (7 CFR Part 70) as follows:

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

1. In Part 56, § 56.9 is amended by revising paragraph (b) to read as follows:

§ 56.9 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

7 CFR section where identified and described	Current OMB control No.
56.3	0581-0126
56.4	0581-0126
56.4 (a)	0581-0126
56.5	0581-0126
56.10(a)	0581-0126
56.11	0581-0126
56.12	0581-0126
56.13	0581-0126
56.14	0581-0126
56.17(b)	0581-0126
56.18	0581-0126
56.21(a)	0581-0126
56.21(b)	0581-0126
56.23	0581-0126
56.24	0581-0126
56.25	0581-0126
56.26	0581-0126
56.30	0581-0126
56.31(a)	0581-0126
56.35(b)	0581-0126
56.35(c)	0581-0126
56.37	0581-0126
56.52(a)(1)	0581-0126
56.52(a)(4)	0581-0126
56.52(b)	0581-0126
56.52(b)(1)	0581-0126
56.52(b)(3)(ii)	0581-0126
56.54(b)	0581-0126
56.54(b)(1)	0581-0126
56.54(b)(3)(ii)	0581-0126
56.56	0581-0126
56.56(a)	0581-0126
56.57	0581-0126
56.58	0581-0126
56.60	0581-0126
56.62	0581-0126
56.76(a)(5)	0581-0126
56.76(c)	0581-0126

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

2. In Part 70, § 70.6 is amended by revising paragraph (b) to read as follows:

§ 70.6 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

7 CFR section where identified and described	Current OMB control No.
70.10	0581-0127
70.18	0581-0127
70.20(a)	0581-0127
70.21	0581-0127
70.22	0581-0127
70.31(a)	0581-0127
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70.33	0581-0127
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70.38(c)	0581-0127
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70.77(b)(1)	0581-0127
70.77(b)(3)(ii)	0581-0127
70.91(a)	0581-0127
70.91(c)	0581-0127
70.92	0581-0127
70.100	0581-0127
70.102	0581-0127
70.210(e)	0581-0127
70.310(e)	0581-0127

(Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627)

Done at Washington, D.C., on June 15, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-16479 Filed 6-19-84; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 84-318]

Noxious Weeds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the noxious weed regulations by adding seventeen types of weeds to the list of noxious weeds. The effect of this action is to prohibit the importation into or through the United States of the weeds added to the list, unless imported pursuant to a written permit. The regulations provide for the issuance of a written permit only upon a determination that such importation would not involve a danger of dissemination of the weeds into the United States. The amendment is necessary to help prevent the artificial spread of the weeds into noninfested areas of the United States.

EFFECTIVE DATE: July 20, 1984.

FOR FURTHER INFORMATION CONTACT: James Lackey, Staff Specialist, Biological Assessment Support Staff, Plant Protection and Quarantine, APHIS, U.S. Department of Agriculture, Room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6805.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on December 23, 1983 (48 FR 56763–56764), proposed to amend the noxious weed regulations in 7 CFR Part 360 (referred to below as the regulations) by adding seventeen types of weeds to the list of noxious weeds. These included one type of aquatic weed, two types of parasitic weeds, and 14 types of terrestrial weeds. Based on the reasons set forth in this document and in the proposal, the seventeen types of weeds are added to the list of noxious weeds as proposed.

Section 3(c) of the Federal Noxious Weed Act of 1974 (7 U.S.C. 2802(c)) defines a noxious weed "* * * as any living stage (including, but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish or wildlife resources of the United States or the public health."

Under the regulations a listed noxious weed may be moved into or through the United States only pursuant to a written permit. The regulations provide for the issuance of a written permit only upon a determination that the movement of the noxious weed would not involve a danger of dissemination of the noxious weed in the United States.

The document of December 23, 1983, provided that a public hearing would be held if a request were received on or before January 23, 1984. No request for a hearing was received, and a public hearing was not held. In addition, the document of December 23 provided that written comments would be accepted until February 21, 1984. In response, three comments were received: One from a university professor and two from representatives of State departments of agriculture.

Comments

One commenter expressed general support for the proposal. The two other commenters did not express support for or opposition to the proposal but questioned the accuracy of information set forth in the proposal concerning the existence in the United States of two of the weeds which the Department proposed to add to the list of noxious weeds, *Lycium ferocissimum* (African boxthorn) and *Mimosa pigra* Linnaeus var. *pigra* (catclaw mimosa).

The proposal indicated that *Lycium ferocissimum* is not known to exist in the United States. A commenter asserted that *Lycium ferocissimum* has been identified in California but further asserted that this noxious weed is not widely prevalent in California. Based on observations made by officials of the California Department of Food and Agriculture, the Department has confirmed the existence of this noxious

weed in California. The Department has further determined that *Lycium ferocissimum* is not known to be widely prevalent in the United States since it is not known to exist in the United States other than in two small areas in California.

Further, it is necessary to include *Lycium ferocissium* in the list of noxious weeds. It hampers grazing in pastures and produces berries that are poisonous to animals and humans, and otherwise meets the criteria set forth above for a noxious weed.

The proposal also indicated that *Mimosa pigra* Linnaeus var. *pigra* (catclaw mimosa) is not know to exist in the United States. A commenter asserted that the variety of *Mimosa pigra* which occurs in Florida and in Texas might be of the same variety of *Mimosa pigra* that was proposed to be added to the list of noxious weeds. Based on observations made by university weed researchers, the Department has determined that *Mimosa pigra* Linnaeus var. *pigra* exists in Florida. However, the Department has not been able to find any evidence of *Mimosa pigra* Linnaeus var. *pigra* in Texas. Based on observations, it appears that the only variety of *Mimosa pigra* found in Texas is *Mimosa pigra* var. *berlandieri*. Even though *Mimosa pigra* Linnaeus var. *pigra* has been found to exist within Florida, it is not known to be widely prevalent in the United States since it is not known to exist in the United States other than in Florida.

Further, it is necessary to list *Mimosa pigra* Linnaeus var. *pigra* as a noxious weed since it forms impenetrable thickets along lakes and waterways, and otherwise meets the criteria set forth above for a noxious weed.

Executive Order 12291 and Regulatory Flexibility Act

This final rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this final rule would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It appears that the dissemination of any of the noxious weeds that are being added to the list could cause significant damage to interests of agriculture and that it is necessary to list them as noxious weeds to prevent them from being disseminated in the United States. Further, it appears that there is no feasible alternative to consider concerning the requirement that agencies choose the alternative that maximizes net benefits to society at the lowest net cost.

Based on information compiled by the Department, it has been determined that there is almost no movement of these weeds as such, and that these weeds are rarely carried by other articles offered for importation into the United States.

Under these circumstances, Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 7 CFR Part 360

Imports, Plants (agriculture), Quarantine, Transportation, Weeds.

PART 360—NOXIOUS WEEDS REGULATIONS

§ 360.200 [Amended]

Under the circumstances referred to above, § 360.200 of the noxious weed regulations (7 CFR 360.200) is amended as follows:

1. Paragraph (a) listing aquatic weeds is amended by adding the following in alphabetical order:

Lagarosiphon major (Ridley) Moss

2. Paragraph (b) listing parasitic weeds is amended by adding the following in alphabetical order:

Aeginetia spp.
Alectra spp.

3. Paragraph (c) listing terrestrial weeds is amended by adding the following in alphabetical order:

Asphodelus fistulosus Linnaeus (onionweed)
Emex australis Steinheil (three-cornered jack)
Emex spinosa (Linnaeus) Campdera (devil's thorn)
Lycium ferocissimum Miers (African boxthorn)
Melastoma malabathricum Linnaeus
Mimosa pigra Linneaus var. *pigra* (catclaw mimosa)
Nassella trichotoma (Nees) Hackel ex Arechavaleta (serrated tussock)
Opuntia aurantiaca Lindley (jointed prickly pear)
Paspalum scrobiculatum Linnaeus (Kodo-millet)
Pennisetum macrourum Trinius (African feathergrass)
Rubus fruticosus Linnaeus (complex) (wild blackberry)
Rubus moluccanus Linnaeus (wild raspberry)
Setaria pallide-fusca (Schumacher) Stapf & Hubbard (cattail grass)
Urochloa panicoides Beauvois (liverseed grass)

Authority: Secs. 4, 10; 88 Stat. 2149, 2151 (7 U.S.C. 2803, 2809); 7 CFR 2.17, 2.51, 371.2(c).

Done at Washington, D.C., this 15th day of June 1984.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-16365 Filed 6-19-84; 8:45 am]
BILLING CODE 3410-34-M

Commodity Credit Corporation

7 CFR Part 1427

[Amdt 4]

CCC Cotton Loan Program Regulations Governing 1980 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Commodity Credit Corporation (CCC) Cotton Loan Program Regulations Governing the 1980 and Subsequent Crops concerning the packaging of cotton which is pledged to CCC as collateral for price support loans. The specifications for bale packaging materials used in wrapping cotton for 1984 that were approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) are acceptable to CCC. Therefore, CCC is incorporating these specifications by reference and will require that 1984-crop cotton pledged to CCC as collateral for price support loan be wrapped to comply with these specifications.

DATES: Effective June 19, 1984. The Director of the Federal Register approved the incorporation by reference of the 1984 specifications effective on June 19, 1984.

ADDRESS: Grant Buntrock, Cotton, Grain, and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Carolyn E. Cozart, Cotton, Grain, and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–7987. The Final Impact Statement describing the options

considered in developing the rule that eliminated the publishing in the Federal Register of packaging specifications and the impact of implementing each option is available upon request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this rule applies to are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

A final rule was published in the **Federal Register** on July 1, 1982, that amended the cotton loan program regulations to provide that CCC would no longer publish in the **Federal Register** the packaging specifications acceptable to CCC for packaging cotton pledged to CCC for price support loans. Instead, CCC incorporated by reference, in accordance with 1 CFR Part 51, the specifications that were approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) for 1982-crop cotton as acceptable to CCC for packaging cotton pledged to CCC for 1982 price support loans.

The purpose of this final rule is to amend the cotton loan program regulations to incorporate by reference the specifications approved and published by the JCIBPC for 1984-crop cotton as acceptable to CCC for packaging cotton pledged to CCC for 1984 price support loans. Therefore, CCC is incorporating these packaging specifications by reference in accordance with 1 CFR Part 51.

Copies of the specifications published by the JCIBPC will be made available to the public upon request by that Committee and by county ASCS offices.

List of Subjects in 14 CFR Part 1427

Cotton, Loan programs—Agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouse.

PART 1427—[AMENDED]

Final Rule

Accordingly, the regulations at 7 CFR 1427.5(l) are amended to read as follows:

§ 1427.5 Eligible cotton.

* * * * *

(l) Each bale must be packaged in materials which meet the specifications adopted and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties or must be packaged in material and/or bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging material. Heads of bales must be completely covered. Copies of the 1984 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available to the public upon request at the county ASCS office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Information with respect to experimental packaging material may be obtained from JCIBPC.

* * * * *

Authority: Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421); Sec. 602, 91 Stat. 934 (7 U.S.C. 1444).

Signed at Washington, D.C., June 15, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84–16386 Filed 6–19–84; 8:45 am]

BILLING CODE 3410–15–M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0521]

Delegation of Authority Regarding Allocated Transfer Risk Reserves

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending 12 CFR Part 265, its Rule Regarding Delegation of Authority, to delegate to the Director of the Division of Banking Supervision and Regulation the authority to determine the need for establishment and the amount of any allocated transfer risk reserves against certain international assets, pursuant to the International Lending Supervision Act of 1983 and the Board's Regulation K (12 CFR 211.43(b)), and to notify banking institutions of such determination.

EFFECTIVE DATE: June 14, 1984.

FOR FURTHER INFORMATION CONTACT: Michael G. Martinson, Projects Manager, International Activities, Division of Banking Supervision and Regulation (202/452–3621) or Kathleen M. O'Day, Senior Counsel, Legal Division (202/452–3786), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: In February 1984, the Board, together with the other Federal banking agencies, adopted uniform rules to implement section 905(a) of the International Lending Supervision Act of 1983 (12 U.S.C. 3904(a)) which requires that banking institutions maintain special reserves against certain international assets subject to transfer risk. The uniform rules provide that the agencies will jointly determine which international assets are subject to risk such that establishment of an "allocated transfer risk reserve" ("ATRR") is warranted. The determination would be based on whether the quality of the asset is impaired due to the protracted inability of public or private obligors in a foreign country to make orderly payments on external indebtedness or where no definite prospects exist for orderly restoration of debt service (12 CFR 211.43). The Board's regulation also provides that the Board will notify each banking institution holding assets subject to an ATRR of the amount of the ATRR to be established and whether an ATRR may be reduced.

The Board has determined to delegate authority to the Director of the Board's Division of Banking Supervision and Regulation to make the determination of the need for establishment and the amount of an ATRR against certain international assets. The determination will be based on regular review of country credits made in accordance with examination procedures established jointly by the agencies, and will be made after consultation with appropriate personnel at the other federal banking agencies.

The provisions of 5 U.S.C. 553 relating to notice, public participation and deferred effective date are not followed in connection with the adoption of these amendments because the changes involved are procedural in nature and do not constitute substantive rules subject to the requirement of that section.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, Banking, Federal Reserve System.

PART 265—[AMENDED]

Pursuant to its authority under the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*), the Federal Reserve Act (12 U.S.C. 221 *et seq.*), and the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*), the Board of Governors amends its Rules Regarding Delegation of Authority (12 CFR Part 265) by adding a new section, § 265.2(c)(32) to read as follows:

§ 265.2 Specific functions delegated to Board Employees and to Federal Reserve Banks.

(c) * * *

(32) Under the provisions of Subpart D of the Board's Regulation K (12 CFR Part 211), to determine the need for establishment and the amount of any allocated transfer risk reserve against certain international assets and to notify banking institutions of the determination and the amount of such reserve and whether such reserve may be reduced.

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16388 Filed 6-19-84; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 291

[Economic Reg. Amdt., No. 16 to Part 291; Docket 41797; Reg. ER-1380]

Domestic Cargo Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB exempts air carriers providing interstate cargo transportation within Alaska and within Hawaii from the statutory prohibition against unjust discrimination in air service. These are the only direct carriers still subject to the prohibition in domestic transportation. This action would make the treatment of all carriers consistent.

DATES: Effective: July 20, 1984. Adopted: May 31, 1984.

FOR FURTHER INFORMATION CONTACT: Lawrence Myers, Pricing and Entry Division, 202-673-5205; or David Schaffer, Office of General Counsel, Rules and Legislation, Civil Aeronautics Board, 1825 Connecticut Ave. NW., Washington, D.C., 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: In notice of proposed rulemaking EDR-469 (48 FR 54647, December 6, 1983), the Board proposed to exempt carriers providing interstate cargo transportation within the States of Hawaii or Alaska from section 404(b) of the Act, which prohibits unjust discrimination in air transportation. It also proposed exempting U.S. and foreign indirect cargo carriers from section 404(b) for their U.S. operations. DHL Cargo filed the only comment in response to the EDR-469, supporting the proposal to exempt intra-Hawaii and intra-Alaska services. No other comments were filed.

Under section 1601 of the Federal Aviation Act domestic passenger service, including that in Hawaii and Alaska, is no longer subject to section 404(b). The Board has by rule exempted domestic direct cargo air carriers (except in those States) from section 404(b). As with other domestic cargo transportation, there is no longer any reason to distinguish between cargo and passenger service in Hawaii and Alaska in this regard.

There is now intense competition among both cargo carriers and forwarders. This gives them an incentive to provide good service at fair rates to all shippers. Discrimination that would be prohibited by the Act is therefore unlikely to be a problem.

In addition, since other carriers in domestic transportation are exempt from section 404(b), carriers and shippers might be faced with controversies as to whether the statutory prohibition applies. It is anomalous and potentially confusing for shippers in one or two States to be able to file a complaint with the Board, while other shippers are unable to do so. Further, on flights within Alaska or Hawaii, much of the traffic will later be moving through other states and thus subject to different common law and statutory proscriptions on treatment of customers and the marketing and sale of their services. Apart from early transition problems, there has not been any evidence of substantial problems for shippers because of an exemption from section 404(b).

The Board is also exempting indirect cargo air carriers from section 404(b). These carriers, such as forwarders, accept a shipment and then transport it on a direct carrier. Since the direct carrier is exempt from section 404(b) for domestic transportation, shippers could thus be subject to differing procedures and standards. The reasons set forth above pertaining to the exemption for carriers in Hawaii and Alaska also justify exempting indirect cargo carriers from section 404(b) for domestic transportation.

The Board authorizes foreign indirect air carriers, under Part 297, to operate in domestic air transportation if their home country grants equivalent rights to U.S. indirect air carriers. In general, the Board's policy has been to allow both classes to compete on the same terms, once the authorization is granted. The Board is therefore exempting foreign forwarders from section 404(b) as well.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Board certifies that these changes will not have a significant economic impact on a substantial number of small entities. Small air carriers, such as air taxi operators, are already exempt from this provision. The effect on small shippers should also not be significant since the type of discrimination that the Board would consider to be in violation of section 404(b) is unlikely to frequently occur. PS-93, 45 FR 36059, May 20, 1980.

List of Subjects in 14 CFR Part 291

Air carriers, Antitrust, Freight, Insurance, Reporting requirements.

PART 291—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 291, *Domestic Cargo transportation*, as follows:

1. The authority for Part 291 is:

Authority: Secs. 101, 102, 204, 401, 407, 408, 416, 418, Pub. L. 85–726, as amended, 72 Stat. 740, 743, 766, 767; 49 U.S.C. 1301, 1302, 1324, 1371, 1377, 1378, 1386, 1388.

2. Paragraph (a)(2) of § 291.31 is revised to read:

§ 291.31 Exemptions from the Act for direct air carriers.

(a) * * *

(2) Section 404, except for the requirement to provide safe and adequate service, equipment, and facilities in connection with domestic cargo air transportation.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–16487 Filed 6–19–84; 8:45 am]

BILLING CODE 6320–01–M

14 CFR Part 296

[Economic Reg. Amdt. No. 2 to Part 296; Docket 41797; Reg. ER–1381]

Indirect Air Transportation of Property

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB exempts indirect cargo air carriers from the statutory prohibition against unjust discrimination in their domestic cargo operations. These are the only carriers still subject to the prohibition in domestic transportation. This rule makes the treatment of all carriers and shippers consistent.

DATES: Effective: July 20, 1984. Adopted: May 31, 1984.

FOR FURTHER INFORMATION CONTACT: Lawrence Myers, Pricing and Entry Division, 202–673–5205; or David Schaffer, Office of General Counsel, Rules and Legislation Division, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673–5442.

SUPPLEMENTARY INFORMATION: For the reasons stated in ER–1380, issued contemporaneously, the Board is exempting indirect cargo air carriers from the statutory prohibition against unjust discrimination in their domestic operations.

List of Subjects in 14 CFR Part 296

Air carriers, Antitrust, Freight, Freight forwarders, Insurance, Reporting requirements.

PART 296—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 296, *Indirect Air Transportation of Property*, as follows:

1. The authority for Part 296 is:

Authority: Secs. 101, 102, 204, 408, 409, 416, Pub. L. 85–726, as amended, 72 Stat. 737, 740, 743,767, 768, 771, 49 U.S.C. 1301, 1302, 1324,1378, 1379, 1386.

2. Paragraph (a)(3) of § 296.10 is revised to read:

§ 296.10 Exemption from the Act.

(a) * * *

(3) Subsection 404(b) (nondiscrimination) with respect to foreign air transportation.

* * * * *

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–16488 Filed 6–19–84; 8:45 am]

BILLING CODE 6320–01–M

14 CFR Part 297

[Economic Reg. Amdt. No. 7 to Part 297, Docket 41797; Reg. ER–1382]

Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB exempts foreign indirect cargo air carriers from the statutory prohibition against unjust discrimination in their domestic U.S. service. All U.S. cargo carriers are exempt from this provision. This action makes the treatment of all cargo services within the United States the same in this respect, removing the potential for conflicting rules for carriers and confusion for shippers.

DATES: Effective: July 20, 1984. Adopted: May 31, 1984.

FOR FURTHER INFORMATION CONTACT: Lawrence Myers, Pricing and Entry Division, 202–673–5205; or David Schaffer, Office of General Counsel, Rules and Legislation Division, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673–5442.

SUPPLEMENTARY INFORMATION: For the reasons stated in ER–1380, issued contemporaneously, the Board is exempting indirect foreign cargo air carriers from the statutory prohibition against unjust discrimination in their domestic operations.

List of Subjects in 14 CFR Part 297

Air carriers, Air transportation—foreign, Freight, Freight forwarders, Insurance, Reporting requirements.

PART 297—[Amended]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 297, *Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations*, as follows:

1. The authority for Part 297 is:

Authority: Secs. 204, 416, Pub. L. 85–726, as amended, 72 Stat. 743, 92 Stat. 1731, 1732; 49 U.S.C. 1324, 1386.

2. A new § 297.10(a)(6) is added, to read:

§297.10 Exemption from the Act.

(a) * * *

(6) Subsection 404(b) (nondiscrimination) with respect to interstate and overseas air transportation.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–16489 Filed 6–19–84; 8:45 am]

BILLING CODE 6320–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8918]

American Home Products Corporation: Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued on September 9, 1981 (98 F.T.C. 136), modified April 8, 1983 (101 F.T.C. 698) so that its basic provisions are in parity with the Commission's order in *Bristol-Myers Company*, Docket 8917 and *Sterling Drug, Inc.*, Docket 8919. Under the modified order, the company must have a reasonable basis consisting of reliable scientific evidence for all therapeutic performance or safety claims. The previous order covered such claims only if they compared one product to another.

DATES: Final order issued September 9, 1981; modified April 8, 1983; modified June 7, 1984.

FOR FURTHER INFORMATION CONTACT: FTC/H 407, Robert Cheek, Washington, D.C. 20580, (202) 376–8720.

SUPPLEMENTARY INFORMATION: In the Matter of American Home Products Corporation, a corporation. Codification appearing at 48 FR 19369, remains unchanged.

List of Subjects in 16 CFR Part 13

Analgesics, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: James C. Miller III, Chairman, Michael Pertschuk, Patricia P. Bailey, George W. Douglas, Terry Calvani.

In the matter of American Home Products Corporation, a corporation; Docket No. 8918; order reopening the proceeding and modifying cease and desist order.

Respondent American Home Products Corporation in a "renewed request" filed on January 27, 1984, petitioned to reopen these proceedings and modify the Order. This request was placed on the public record for comment, with no comments filed.

On April 5, 1984, pursuant to discussion with Commission staff, respondent filed a proposed Order which was agreed to by staff. This proposed Order suggests changes in the Modified Order to Cease and Desist of April 8, 1983, as modified by Order of February 7, 1984. The proposed Order adds a new paragraph 1(A)(4) and substitutes new language for paragraphs 1(B), III, and IV. With these modifications the basic provisions of this Order will be in general parity with the Commission's Orders in *Bristol-Myers Company*, Docket No. 8917 and *Sterling Drug, Inc.*, Docket No. 8919.

The Commission being of the opinion that the public interest would be served by such reopening of the proceedings;

Now, therefore, it is ordered, that the proceedings in Docket No. 8918 be, and they hereby are, reopened; and

It is further ordered, that the Order in Docket No. 8918 be substituted as to respondent American Home Products Corporation by a modified Order as follows:

Order

I

It is ordered that respondent American Home Products Corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Anacin," "Arthritis Pain Formula," or any other non-prescription internal analgesic product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, that a claim concerning the superior effectiveness or superior freedom from side effects of such product has been established or proven unless such representation has been established by two or more adequate and well-controlled clinical investigations, conducted by independent experts qualified by training and experience to evaluate the comparative effectiveness or comparative freedom from side effects of the drugs involved, on the basis of which it could fairly and responsibly be concluded by such experts (1) that the drug will have the comparative effectiveness or freedom from side effects that it is represented to have, and (2) that such comparative effectiveness or freedom from side effects is demonstrated by methods of statistical analysis, and with levels of confidence, that are generally recognized by such experts. The investigations shall be conducted in accordance with the procedures set forth below:

At least one of the adequate and well-controlled clinical investigations to evaluate the comparative effectiveness of the drug shall be conducted on any disease or condition referred to, directly or by implication; or, if no specific disease or condition is referred to, then the adequate and well-controlled clinical investigations shall be conducted on at least two conditions or diseases for which the drug is effective. The clinical investigation shall be conducted as follows:

1. The subjects must be selected by a method that:

a. Provides adequate assurance that they are suitable for the purposes of the investigation, and diagnostic criteria of the condition to be treated (if any);

b. Assigns the subjects to the test groups in such a way as to minimize bias; and

c. Assures comparability in test and control groups of pertinent variables, such as age, sex, severity or duration of disease or condition (if any), and use of drugs other than the test drugs.

2. The investigations must be conducted double-blind, and methods of double-blinding must be documented. In addition, the investigations shall contain a placebo control to permit comparison of the results of use of the test drugs with an inactive preparation designed to resemble the test drugs as far as possible.

3. The plan or protocol for the investigations and the report of the results include the following:

a. A clear statement of the objective of the investigation;

b. An explanation of the methods of observation and recording of results, including the variables measured, quantitation, assessment of any subject's response and steps taken to minimize bias on the part of subject and observer;

c. A comparison of the results of treatments or diagnosis with a control in such a fashion as to permit quantitative evaluation. The precise nature of the control must be stated and an explanation given of the methods used to minimize bias on the part of the observers and the analysts of the data.

d. A summary of the methods of analysis and an evaluation of data derived from the study, including any appropriate statistical methods.

4. A test of investigation which is not conducted in accordance with these procedures may be used to establish a claim only if respondent can show that, notwithstanding the failure to satisfy these procedures, the test or investigation would still be generally accepted by the relevant scientific community as sufficient to establish the truth of the claim.

B. Making any therapeutic performance or freedom from side effects claim for such product unless respondent possesses a reasonable basis for making that claim. A reasonable basis for such a claim shall consist of competent and reliable scientific evidence supporting that claim. Well-controlled clinical tests conducted in accordance with the criteria set forth in Order Paragraph IA shall be deemed to constitute a reasonable basis for a claim.

II

It is further ordered that respondent American Home Products Corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Anacin," "Arthritis Pain Formula," or any other non-prescription drug product, in or affecting commerce, as "commerce" and "drug" are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, that such product contains any unusual or special ingredient when such, ingredient is commonly used in other non-prescription drug products intended for the same use or uses as the product advertised by respondent.

B. Making any false representation that such product has more of an active ingredient than any class of competing products.

C. Misrepresenting in any manner any test, study or survey or any of the results thereof, concerning the comparative effectiveness or freedom from side effects of such product.

III

It is further ordered that respondent American Home Products Corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of "Anacin," or "Arthritis Pain Formula," or any other nonprescription internal analgesic in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from falsely representing that the analgesic ingredient in an aspirin-containing product is different from aspirin or otherwise misrepresenting the identity of any analgesic ingredient. It shall be a violation of this paragraph to contrast the analgesic ingredient of a product which contains aspirin with the analgesic ingredient of another product if that product also contains aspirin, unless respondent discloses clearly and conspicuously that the analgesic ingredient in its product is aspirin. This provision shall not become effective until Orders in Dockets 8917 and 8919 have become final.

IV

If the Commission makes any changes in the Orders entered in Dockets 8917 and 8919, respondent American Home Products Corporation may petition the Commission to make similar changes in the corresponding provisions, if any, of this Order. This paragraph shall not be deemed to limit respondent's right to petition for modification pursuant to any applicable statute or regulation.

V

It is further ordered that respondent American Home Products Corporation, shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations under this Order.

It is further ordered that the respondent herein shall within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

Issued: June 7, 1984.

By the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-16451 Filed 6-19-84; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Dkt. C-3134]

National Association of School Music Dealers, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methds of competition, this consent order requires a trade association comprised of dealers specializing in the sale and servicing of school band instruments, to cease taking any action or encouraging its members to take any action which would interfere with how, or to whom a manufacturer distributes its products.

DATE: Complaint and Order issued May 31, 1984.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS-3, Thomas Keary, Washington, D.C. 20580, (202) 724-1278.

SUPPLEMENTARY INFORMATION: On Tuesday, March 20, 1984, there was published in the **Federal Register**, 49 FR 10271, a proposed consent agreement with analysis In the Matter of National Association of School Music Dealers, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been filed, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Combining or Conspiring: § 13.385 To boycott seller-suppliers; §13.388 To control allocations and solicitation of customers; § 13.395 To control marketing practices and conditions; § 13.410 To eliminate competition in conspirators' goods; § 13.475 To restrict competition in buying. Subpart—Controlling, Unfairly, Seller-Suppliers: § 13.530 Controlling, unfairly, seller-suppliers. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records.

List of Subjects in 16 CFR Part 13

Musical instruments, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 84-16450 Filed 6-19-84; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 229

[Release Nos. 33-6538; 34-21050; 35-23329; File No. S7-991]

Electric and Gas Utility Industry Guides

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of Amendments to Industry Guides.

SUMMARY: The Securities and Exchange Commission today authorized the adoption of an amendment to the Industry Guides relating to electric and gas utilities. The amendment will require electric and gas utilities who issue common stock at a price below underlying book value to disclose, where material, the extent of dilution, its causes and its effects on their business. Such disclosure will enhance understanding of their financial condition.

EFFECTIVE DATE: July 20, 1984.

FOR FURTHER INFORMATION CONTACT: Prior to effective date Elliot Pinta, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. After the effective date, Cecilia Blye, (202) 272-2573, Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today authorized the adoption of amendments to Industry Guide 1 under the Securities Act of 1933 (the "Securities Act")[1] and the Securities

[1] 15 U.S.C. 77a et seq.

Exchange Act of 1934 ("Exchange Act") (the "Industry Guides").[2] Both Industry Guides pertain to registration statements and reports filed by electric or gas utilities.[3] The Guides are amended to instruct registrants to disclose, in a format of their choosing, the extent of dilution resulting from the issuance of equity securities at a price below underlying book value per share, the reasons for the dilutive issuance and its effect on the registrant's business including its financing plans, pending construction and rate base. The Commission has determined not to adopt the proposed tabular reconciliations or to amend the Instructions to the "Management's discussion and analysis of financial condition and results of operations."

I. Background

On September 28, 1983,[4] the Commission published for comment a proposal to require both periodic and transactional disclosure of the effects on book value per share and earnings per share where electric and gas utilities issue equity securities at a price below underlying book value per share. The proposal was in response to a rulemaking petition filed by the California Association of Utility Shareholders ("CAUS"). The Commission proposed to amend the Industry Guides to require inclusion in registration statements under the Securities Act and periodic filings under the Exchange Act of a tabular reconciliation of pre- and post-issuance book value per share and earnings per share adjusted for dilution where equity securities are, or during the reporting period were, issued at a price below underlying book value. The Commission also proposed to include in the Industry Guides a precatory note instructing registrants that any material impact of dilutive issuances may necessitate a discussion in the "Management's discussion and analysis of financial condition and results of operations".[5]

CAUS premised its proposal on the belief that book value disclosure was particularly relevant to shareholders of registrants subject to rate regulatory proceedings where the allowed rate of return is based on capitalization. In their view, a shareholder's real income is measured by the dividends received plus the change in book value per share. Where sales of shares below book value have taken place, equity is transferred from existing shareholders to new shareholders and real income, CAUS stated, can be significantly lower than reported earnings per share. Therefore, CAUS argued, adoption of the proposals was necessary to fully inform existing shareholders and to alert rate regulators to the impact of dilution on shareholders' equity.

At the same time, the proposing release noted that many doubts exist regarding the informational value of book value per share data to unsophisticated investors, as well as the validity of the asserted relationship between book value per share and a rate regulated entity's earnings per share. The Commission solicited responses to a series of questions addressing these uncertainties.[6] While not discounting the effects of dilution, the release stated that the question appears not to be one of disclosure versus non-disclosure but rather one of emphasis.[7]

II. Discussion

The majority of the commentators opposed adoption of the proposal. In particular, they questioned that aspect requiring inclusion of the proposed book value per share and earnings per share reconciliations in periodic or transactional filings.[8]

The proposals' supportes argued, as did CAUS, that the tabular disclosures were necessary to fully inform shareholders and rate regulatory bodies of the effects of dilutive equity issuances on earnings. In their view, periodic earnings are overstated unless they take into account the effects of dilution.

The commentators opposing adoption asserted that the information to be disclosed was of questionable value in investment decisionmaking to all but the most sophisticated investors and that the reconciliations were potentially misleading and inaccurate. In addition, these commentators questioned the validity of the asserted relationship between book value per share and periodic income as well as the ability of the proposed tables to accurately reflect the causes and consequences of dilution and dilutive stock issuances. At the same time, many of the same commentators noted that they already voluntarily provide some book value data to shareholders and discuss the causes and effects of dilutive issuances where those effects are material.

In light of the above, the Commission has determined to amend the Industry Guides to require that registrants subject to those Guides discuss, where material, the extent, causes and consequences of dilution resulting from equity issuances. At the same time, the Commission has determined not to require inclusion of the proposed tabular reconciliations for book value per share and adjusted periodic earnings per share.

A. Amendment to Guides

Many registrant commentators, most of whom opposed adoption of the proposal, agreed with CAUS that utilities periodically have been required to issue equity securities at a price below book value and that, as a result, their existing shareholders' equity investment has been diluted. While questioning the need for mandatory disclosure of book value per share data, these commentators agreed that disclosure should be made of the material effects of dilutive issuances. The Commission agrees and has determined that disclosure, where material, of the extent, causes and effects of equity issuances at a price below book value will enhance a reader's understanding of the registrant's financial condition.

The Commission has determined that the appropriate implementation of this disclosure requirement is through amendment to Industry Guide 1. The Commission has concluded that, as a consequence of the rate regulatory process, electric and gas utility book values bear a closer relationship to the economics of doing business than do the book values of nonregulated enterprises. As a consequence, a utility's dilutive issuances may assume greater significance. While dilutive equity issuances are not unique to the utility industry, nor universal even among utility registrants, utilities are subject to certain operating conditions—rate regulation; limitations on diversification;

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[2] 15 U.S.C. 78a et seq.

[3] The Industry Guides do not constitute Commission rules; they represent practices followed by the Division of Corporation Finance in administering the disclosure requirements of the Federal Securities laws.

[4] Release No. 33–6482 (September 28, 1983) [48 FR 44224].

[5] Item 303 of Regulation S–K, 17 CFR 229.303. The Commission proposal differed in some respects from CAUS's petition. A discussion of that petition, as well as an explanation of the differences between the petition and the Commission's proposal, can be found in the proposing release.

[6] The questions concerned: (1) The value of book value data to investment decision-making; (2) the need for additional disclosure of book value data, if any; and (3) the scope and format of such additional disclosure, if any.

[7] The proposing release noted that should any investor be interested in ascertaining book value, and comparing it to either issue price or book value in a prior period, it can easily be obtained by simple arithmetic computation from figures already disclosed in prospectuses and annual reports.

[8] The Commission received fifty-three comment letters in response to the proposal. The comment letters and a summary of the comments prepared by the staff are available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C., 20549. (*See* File No. S7–991)

long-term construction commitments; singular emphasis on rate increases as a source of improved earnings—which do not pertain to registrants generally. Therefore, the Commission has decided to implement this disclosure requirement through amendment to Industry Guide 1. At the same time, the Commission notes that, with respect to other registrants, facts and circumstances may warrant similar disclosure.

Registrants may use a narrative, tabular or other format or combination of formats to present this information. The amendments require that the disclosure be provided in Securities Act and Exchange Act registration statements and in Exchange Act reports. The disclosure may be provided within those documents wherever the registrant deems most appropriate, either separately or in conjunction with other required information.

B. Reconciliations

The Commission has determined not to require inclusion of the proposed book value per share and periodic earnings per share reconciliations and is withdrawing that aspect of the proposal, because it: (1) Is potentially misleading; (2) is premised on a direct relationship between periodic earnings and book value per share that is of questionable validity; and (3) confers undue prominence on the book value per share figure.

The Commission also has determined not to adopt the proposed adjusted earnings per share reconciliation. The Commission believes that the reconciliation is misleading in that it: (1) Adjusts an income statement disclosure requirement, earnings per share, for changes in a balance sheet derived amount, book value per share, to produce a hybrid figure with no accepted accounting analogue; and (2) uses the term "dilution", in the context of earnings per share, in a manner inconsistent with that prescribed by Accounting Principles Board Opinion No. 15, Earnings Per Share.

III. Regulatory Flexibility Act

The Chairman of the Commission has certified in connection with the proposed amendments to the Industry Guides that, if adopted, they would not have a significant economic impact on a substantial number of small entities.

IV. Statutory Basis

The Commission hereby authorizes adoption of the amendments to the Industry Guides pursuant to its statutory authority under sections 7, 10 and 19(a) of the Securities Act of 1933 and sections 12, 13, 15(d) and 23(a) of the Securities Exchange Act of 1934.

As required by section 23(a) of the Exchange Act, the Commission has considered the impact that these rulemaking actions would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchage Act.

List of Subjects in 17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, the Securities Act Industry Guides and the Exchange Act Industry Guides are amended as follows:

Securities Act Industry Guides

Disclosure by Electric and Gas Utilities

Guide 1. 1. Disclosure of Principal Sources of Electric and Gas Revenues—[Text unchanged from existing Guide 1].

2. In registration statements under the Securities Act registering equity securities for issuance at a price below underlying book value per share, describe, where material, the extent, causes and effects, if any, on the registrant's business including its future financing plans or capabilities and pending construction projects, resulting from such issuance.

Exchange Act Industry Guides

Disclosure by Electric and Gas Utilities

Guide 1. 1. Disclosure of Principal Sources of Electric and Gas Revenues—[Text unchanged from existing Guide 1].

2. In registration statements filed on Form 10, reports on Form 10–K or annual reports to security holders pursuant to Rule 14a–3 where, during the reporting period, equity securities have been issued and sold at a price below underlying book value per share, describe, where material, the extent, causes and effects, if any, on the registrant's business including its future financing plans or capabilities, and pending construction projects, resulting from such issuance(s).

(Secs. 7, 10 and 19(a) of the Securities Act of 1933 and secs. 12, 13, 15(d) and 23(a) of the Securities Exchange Act of 1934)

By the Commission.

George A. Fitzsimmons,

Secretary.

June 15, 1984.

Securities and Exchange Commission Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to the Industry Guides set forth in Securities Act Release No. 6538, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments only affect the Securities Act of 1933 and Securities Exchange Act of 1934 filings of gas and electric utilities which, for economic reasons, are always of such size that they do not constitute "small entities" as defined in Securities Act of 1933 Rule 157 (17 CFR 230.157) and Securities Exchange Act of 1934 Rule 0–10 (17 CFR 240.0–10).

Dated: June 14, 1984.

John S.R. Shad,

Chairman.

[FR Doc. 84–16474 Filed 6–19–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 300

[Docket No. RM80–40–000; Order No. 382]

Filing Requirements and Procedures for Approving the Rates of Federal Power Marketing Administrations

Issued June 12, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting procedures and filing requirements for the final approval of rates submitted by power marketing administrations (PMA's). These power marketing administrations include the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration. The Commission is adopting substantially the same filing and procedural requirements for the other PMA's that were adopted for the Bonneville Power Administration (BPA) in 1983, with minor modifications as appropriate. Both BPA's and the PMA's requirements are integrated into Part 300 of the Commission's regulations.

EFFECTIVE DATE: July 20, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Malloy, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street,

NE., Washington, D.C. 20426, (202) 357–8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is establishing procedures and filing requirements for approving rates submitted to the Commission by the Alaska Power Administration (APA), the Southeastern Power Administration (SEPA), the Southwestern Power Administration (SWPA), and the Western Area Power Administration (WAPA) (collectively referred to as PMAs.) [1] These filing requirements are substantially the same as those adopted by the Commission for the Bonneville Power Administration (BPA). The rate filings of BPA and the PMAs are governed by various statutes and there are therefore several different procedural requirements for PMAs. The similarities in the operations and rates of BPA and the PMAs nevertheless justify integrating both the PMA filing and procedural requirements into Part 300 of the Commission's regulations, the part currently containing only BPA requirements.

II. Background

Prior to the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7101–7552 (1982), the Federal Power Commission (FPC) reviewed and approved the rates of the APA, BPA, SEPA, and SWPA (but not WAPA). The FPC never issued rules governing the procedures or filing requirements for the review of the rates of these PMAs.

Under the DOE Act, the primary responsibility for reviewing the rates of all PMAs, including WAPA, resides in the Department of Energy (DOE).[2] 42 U.S.C. 302(a) (1982). The Secretary of DOE has delegated rate review responsibilities to this Commission.[3] The Commission's primary task in reviewing rates is to assure that the rates adequately meet the PMA's repaying obligation to the Federal Treasury.

This Commission has never issued rules governing the filing requirements or procedures for rates of PMAs. The lack of uniform filing requirements has led to deficiencies in the content of some filings. The Commission must frequently await additional data before it can reach a decision, thereby creating delays and uncertainties. Even if filings are adequate, however, disparities among the PMA filings makes Commission review difficult, and parties have been confused about which procedures will be followed.

The Commission issued a proposed rule on October 21, 1983, to rectify these problems. It proposed standard procedures and filing requirements for the submittal, review, and approval of rates submitted by all PMAs.[4] The Commission proposed the same filing requirements and similar procedural requirements for PMAs that it adopted for BPA.[5] The Commission emphasized that, if provisions were applicable only to BPA, the PMA rule would be modified. In particular, the Commission anticipated that BPA's special interim approval procedures, special hearing requirements for rates of non-regional customers, and interest rate for refunds provision would not be applied to other PMA.[6]

The Commission received 26 comments on its proposed rule—three from trade associations representing electric utilities, three from PMAs, including BPA, two from state agencies, twelve from PMA customers, four from federal government agencies, including DOE, and two miscellaneous comments.

III. Discussion

A. The Final Rule

The Commission is adopting as a final rule most aspects of its proposed rule—in major part, the filing requirements adopted for BPA and, with appropriate modifications, the procedures proposed for final approval of PMA rates. Subpart A of the rule establishes the applicability of the Part and various definitions used in the Part. Subpart B contains the filing requirements. These filing requirements include an explanation of the rate development process, the administrative record, various financial statements, and an analysis of the filed data. Subpart C establishes the procedures for final approval of a PMA's rate filing, including public participation requirements, the standards of review, and the range of action open to the Commission when reviewing the rate. The requirements that are being adopted for PMAs are being integrated into Part 300 of the rules that are already codified in the Code of Federal Regulations for BPA.

There are four differences between the procedural rules that will apply to BPA and those that will apply to other PMAs. The first difference relates to interim approval of rates. Under the Northwest Power Act, the Commission may grant interim approval to BPA's rates. The Commission has no similar authority as to other PMAs under the Secretary's Delegation Order; rather that authority is delegated to the Deputy Secretary of DOE. Thus, § 300.20 has been amended to make it clear that this Commission's grant of interim approval will be available only to BPA.

The second change relates to a special hearing requirement under section 7(k) of the Northwest Power Act for BPA's nonregional rates. No such special hearing requirements are mandated by the organic statutes applicable to the other PMAs, and §§ 300.20 and 300.21 have been amended to reflect this.

The third change relates to when a rate must be filed with this Commission. The Commission required that BPA file its rate and its request for interim approval 60 days prior to the proposed effective date. The timing for PMA filings is different since PMAs do not

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[1] For purposes of this final rule, the Bonneville Power Administration (BPA) will not be included as part of the term "PMA".

[2] Under the DOE Act, authority over the rates of BPA resided in the Secretary of DOE. In 1980, the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839–839g (1982), transferred authority over BPA rates to this Commission. 16 U.S.C. 839e(a)(1982).

[3] Delegation Order No. 0204–33, To the Assistant Secretary for Resource Applications and the Federal Energy Regulatory Commission, 43 FR 60636 (1978); Delegation Order No. 0204–108, To the Deputy Secretary, the Administrators of the Alaska, Southeastern, Southwestern, and Western Area Power Administrations and the Federal Energy Regulatory Commission, 48 FR 55664 (December 14, 1983).

[4] Procedures and Filing Requirements for Rates of Power Marketing Agencies, 48 FR 49301 (October 25, 1983) (Notice of Proposed Rulemaking). The comment period for this proposed rule was due to close on December 20, 1983, but was extended to February 6, 1984. Extension of Time for Comments, Procedures and Filing Requirements for Rates of Power Marketing Agencies, 48 FR 56777 (December 21, 1983).

[5] Confirmation and Approval of the Rates of Bonneville Power Administration, 48 FR 37006 (August 16, 1983) (Final Rule).

[6] In addition to proposing filing requirements and procedures for rates of PMAs, the Commission also discussed four substantive issues relating not only to the four PMAs, but to BPA as well. In particular, the Commission discussed the adequacy of using power repayment studies to insure that the Federal investment in power projects is paid in a timely and fair manner, repaying high interest investments before paying off low interest investments, amortizing missed payments to the Federal Treasury over the remaining repayment period, and the applicability of the *ex parte* rule to PMA proceedings. The Commission stated that it was not making proposals on these issues, but rather hoped to elicit comment that might be helpful in formulating a proposal in the future. Accordingly, the Commission is not taking any action on these issues in this rule, but will take the comments it received on these issues under advisement for future consideration.

request interim approval from this Commission, but rather from the Deputy Secretary of DOE. This Commission does not need to receive a PMA's filing until the Deputy Secretary grants interim approval. The Commission believes it is reasonable that a PMA file its rate for final approval not later than five days after interim approval is granted by DOE. If no interim approval is requested, the filing must be made 180 days prior to the proposed effective date.

The last change deals with the interest rate on refunds made by PMAs. For reasons discussed below, the Commission is adopting a methodology used by DOE which calculates an imputed interest rate based on the Federal government's cost of borrowing.

B. Comment Analysis

1. *Application of Part 300 Procedures and Requirements.* Commenters generally believed that it was beneficial for the Commission to develop uniform filing requirements, since it would make the Commission's procedures for approving the rate filings of PMAs more uniform and efficient, and would allow parties to these proceedings to participate in a more effective manner.

Several commenters, however, argued that it was inappropriate for the Commission to require that other PMAs follow BPA's filing requirements because of the different organic statutes that are applicable to these agencies. DOE argued that the regulations that apply to other PMAs should reflect the fact that some PMAs are considerably smaller than BPA and several PMAs file rates for individual projects, rather than on a system-wide basis.

BPA is regulated by a statutory scheme different from the other PMAs—the Pacific Northwest Electric Power Planning & Conservation Act, 16 U.S.C. 839–839g (1982). Many of the PMAs and specific projects administered by them have different statutory provisions that apply specifically to them.[7] While commenters pointed out that PMAs are subject to different statutes, they did not discern any provision in those statutes which would alter the Commission's review procedures and thus necessitate different filing requirements.

The Commission believes that the similarities in the review procedures warrant similar filing requirements, procedures, and policies applicable to all PMAs, including BPA. The Commission's twofold task in reviewing all PMA rate filings, including BPA's, is essentially the same: The Commission must make sure that the rates are high enough to pay back the investment made by the Federal Treasury in various PMA projects. The Commission must also review the rate for compliance with whatever legal standards (statutory or delegated) are applicable to the particular PMA or project. Although the PMAs are created and governed by different statutes that vest them with ratemaking authority, the Commission needs substantially the same type of financial, economic, and procedural information in each case.

There is another reason why the Commission believes it should standardize, whenever possible, the filing and procedural requirements that apply to all PMA rate cases. Standardized requirements make it easier and more efficient for the many people, including numerous Commission personnel, who must work with filings from different PMAs. Thus, whenever it is legally possible, the Commission believes it is good policy to develop standardized procedures and filing requirements for rates filed for all PMAs, including BPA.

Most PMA rates are developed to repay the cost of a federal investment and these new filing requirements are appropriate for all such rates. However, the Commission recognizes that, on rare occasions, *e.g.*, a special contract rate or unit sale rate, it may be appropriate for a PMA to file its rates using support data different from that required by this rule. The Commission does not, however, believe it should establish a different set of filing requirements for these rates because of the difficulty of anticipating the precise nature of these rate filings. The Commission prefers to address the appropriateness of these filing requirements when these rates are filed. The Administrator may apply for a waiver (§ 300.13) in those situations when the uniform requirements are inappropriate and a more flexible approach is warranted. PMAs intending to use this waiver provision are encouraged to use the opportunity offered by § 300.2 to meet with the Commission's staff before they file such rates to discuss the necessity for a change in the filed information required by this final rule.

2. *Effect of Delegation Order.* Several commenters argued that the Commission should not proceed directly to a final rule in this docket, but rather should allow an additional opportunity for comment on the Commission's proposals, arguing that the Commission should withdraw its notice of proposed rulemaking in light of the Secretary of Energy's Delegation Order issued on December 13, 1983. These commenters generally believed that the Delegation Order so radically changed the Commission's authority over PMAs that the Commission should reconsider its entire proposal in light of the Delegation Order.

The Commission does not agree that any changed circumstances warrant an additional opportunity for comment. The Commission does not believe that the issuance of the Delegation Order changes the situation contemplated by the Commission's proposal so substantially that a new proposal should be made. The purpose of the proposal was only to establish uniform filing requirements and procedures; for PMA rate filings. Consistent with this objective, the Delegation Order states that the "Commission may require the Administrator to provide any information relevant to the Commission's confirmation and review function." 48 FR at 55665. Although the Delegation Order affects this Commission by delineating the standards of review to be followed when reviewing PMA rates, the Commission believes that its fundamental obligation to review PMA rates is unchanged and that it will require the same kind of information to discharge even its revised review and approval duties. For example, under the Delegation Order, the Commission must review to determine:

> (a) Whether the rates are the lowest possible to customers consistent with sound business principles; (b) whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment, and (c) the assumptions and projections used in developing the rate components that are subject to Commission review.

48 FR at 55665. These standards are similar to the Commission's traditional review standards under the relevant statutes. The Commission, therefore, does not believe that the Delegation Order necessitates withdrawal of its proposal and a new comment process.

3. *Adequate Opportunity for Comment.* Several commenters argued that the Commission's notice of proposed rulemaking was inadequate for either of two reasons. First, several commenters argued that the notice was

[7] The statutes generally applicable to PMAs are the Flood Control Act of 1944, 16 U.S.C. 825s (1982) and the Reclamation Project Act of 1939, 43 U.S.C. 485–485k (1982). In addition to these statutes, there are numerous other statutory provisions governing specific projects or appropriations for projects. *See, e.g.*, Colorado River Storage Project Act, 43 U.S.C. 620–620o (1982).

inadequate because it contained no regulatory text, but rather cross-referred to the regulatory text established for the BPA final rule. Second, other commenters argued that the Commission's proposal was too imprecise and vague to provide them an adequate opportunity to comment.

The Commission finds that the proposal was sufficiently specific to permit the public to discern and discuss the meaning and effect of the proposed rule. Section 553 of the Administrative Procedure Act requires that a notice of proposed rulemaking contain "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(3) (1982). The DOE Act states that "notice of any proposed rule * * * shall be given by publication of such proposed rule * * * in the **Federal Register.**" 42 U.S.C. 7191(b)(1) (1982).[8]

The Commission believes that it has complied with these requirements of the Administrative Procedure Act and the DOE Act and that it was not unfair to commenters to incorporate by reference the substance of the BPA final rule. The Commission's objective is to enable the public to evaluate the appropriateness of new requirements that would be applied to the four other PMAs. Because the BPA final rule was published in the **Federal Register**, the Commission believes that no procedural flaw exists as a result of the availability of the BPA filing and procedural requirements or their intended application to other PMAs.

The changes being made to the principal filing requirements and procedures in Part 300, other than those discussed above, are editorial and do not go to the substance of the filing requirements or procedures that will be imposed on PMAs. The Commission does not believe, therefore, that interested parties were denied a fair opportunity to comment on the Commission's proposal. Accordingly the Commission believes it has complied with the relevant legal requirements in its proposed rule.

4. *Interest Rate on Refunds.* The Commission proposed a uniform interest rate on refunds for PMAs, different than that adopted for BPA. The Commission nevertheless proposed using the same general approach for determining the interest rate to PMAs for refunds for overcollections that it adopted for BPA, that is, the cost of each PMA's borrowed money. The interest rate adopted by the Commission for BPA is the interest rate charged to BPA by the U.S. Treasury during the period of overcollection. Other PMAs do not borrow directly from the U.S. Treasury, but rather finance projects through Congressional appropriations.

In developing the interest rate for refunds by PMAs, the Commission proposed adopting a methodology used by DOE which calculates an imputed interest rate based on the federal government's cost of borrowing. This methodology limited the annual increases in the interest rate to ½ percent. Since the Commission's proposal was issued, DOE has revised its methodology so that it no longer contains the ½ percent restriction. *See* Interest Rate Formula for PMAs, 48 FR 45827 (Oct. 7, 1983).

Several commenters agreed that the Commission should follow the DOE methodology which would adopt the government's rate of borrowing as the interest rate for refunds, especially since DOE had eliminated the ½ percent restriction. Other commenters argued, however, that this rate was too low in that it did not take into consideration the customers' cost of borrowing, which it typically higher than the government's cost of borrowing, when calculating interest rates. Those commenters argued that the Commission should adopt the same interest rate charged to public utilities, that is, a rolling average prime rate found in 18 CFR 35.19a (1983).

The Commission is adopting the PMAs' cost of borrowing as the appropriate interest rate. First, the Commission believes this issue is somewhat academic since, to the extent that PMAs err, they typically file rates that are generally lower than necessary to pay back the Federal investment. To date, refunds have not been ordered in any PMA rate case. Secondly, since the proposal was issued, DOE has changed the method of calculating the imputed rates to eliminate the ½ percent restriction that may have kept the interest rate on refunds unreasonably low. The revision now allows the imposition of an interest charge which more nearly reflects market rates and produces a result more similar to that applied to BPA. Thirdly, as the Commission noted when it adopted BPA's cost for borrowing as the appropriate interest rate on refunds made by BPA, the Commission continues to believe that PMAs' positions relative to the nation's financial markets are dissimilar to that of public utilities regulated under the Federal Power Act (FPA). The investments assigned to be repaid from PMA revenues were made through the Congressional appropriation process, rather than from traditional capital markets. The interest rate adopted for refunds under the FPA, which reflects the cost of capital for private borrowing, would therefore be inappropriate for refunds by PMAs. Accordingly, the final rule uses the interest rate that would be charged to PMAs under the DOE methodology during the period of overcollection. The Commission notes, however, that under certain circumstances other rates may be more appropriate, and therefore the final rule, as it did for BPA, also allows the Commission to establish another interest rate, when deemed appropriate.

IV. Summary of the Final Rule

A. Subpart A—General Provisions

1. *Section 300.1—Applicability and Definitions.* Subpart A contains the general provisions of the rule. § 300.1(a) establishes the applicability of Part 300 to rate schedules of the PMAs, including BPA. This section also establishes that the Commission's rules of practice and procedure apply to PMA proceedings before the Commission. A reference to Part 385, which contains the rules of practice, makes clear that this reference relates to procedural regulations, rather than the general filing requirements under the FPA.[9]

Section 300.1(b) contains definitions.

2. *Section 300.2—Informal Conference.* Section 300.2 allows PMAs to meet with Commission staff prior to submitting an application for approval of a rate schedule. The Commission is amending the title of this section from "Staff Guidance" to "Informal Conference," to make it clear that the discussions are bilateral.

B. Subpart B—Filing Requirements

Subpart B of the final rule lists the documents required to be filed by the Administrator in any application for approval of rates.

1. *Section 300.10—Application for Confirmation and Approval.* Section 300.10 contains the general filing requirements. Paragraph (a)(1) delineates the contents of a filing. Paragraph (a)(2) allows the incorporation by reference of information that has previously been submitted to the Commission in substantially the same form. Paragraph

[8] When the Commission is issuing rules under authority delegated by the Secretary of DOE, it must also comply with the procedural requirements that would apply to DOE under section 501 of the DOE Act, 42 U.S.C. 7191 (1982).

[9] The Commission has not yet resolved the issue of whether the Commission's *ex parte* rule (Rule 2201) should apply to PMA rate proceedings. The Commission will consider this issue when it considers revision of its general rules on *ex parte* communications and separation of functions for all Commission proceedings.

(a)(3) covers the time period for filing rates. This section requires the Administrator of a PMA to tender a request for approval of a rate not later than five days after interim approval of a rate not later than five days after interim approval is granted by DOE or 180 days prior to the proposed effective date if interim approval is not requested.

Paragraph (b) governs a PMA's letter requesting rate approval. This letter must specify the period for which approval is requested. This paragraph also requires that the letter include a brief description of the filed rates, estimates of annual sales and revenue, and a description of how the new rate differs from the existing rate.

Paragraph (c) establishes the contents of the notice that PMAs are required to file. This notice must be suitable for publication in the **Federal Register** and must contain summarized information relating to the filing.

Paragraph (d) establishes the contents of the rate schedules.

Paragraph (e) requires that PMAs file a statement of cost, if available, and revenue data for each class of service.

Paragraph (f) requires that either an explanation of the rate development process or an Administrator's Record of Decision be filed. The rule requires that these documents contain a calendar history of the filing, a discussion of issues raised, a discussion of all applicable statutory and regulatory requirements, and a description of the methodology used for determining revenue requirements. The final rule also requires that PMAs file the entire administrative record used in establishing the proposed rate.

Paragraph (g) requires that the PMA certify that the rates are consistent with applicable laws and are the lowest consistent with sound business principles.

Paragraph (h) of the final rule requires the Administrator to file with the Commission any other materials not specified in Subpart B which are otherwise relied upon in developing the rates filed by the Administrator or requested by the Office of Electric Power Regulation.

2. *Sections 300.11 and 300.12—Technical Support for the Rate Schedule.* Sections 300.11 and 300.12 establish the technical support filed by the Administrator in support of a request for approval. The supporting information is divided into data statements (§ 300.11) and analysis of that data (§ 300.12).

Section 300.11 specifies the content of six statements which provide the basic information that is necessary to develop a study to demonstrate that the proposed rates are sufficient to assure repayment of the Federal investment and other costs over a reasonable period of years. The data statements are identified as: Statement A—Sales and Revenues; Statement B—Power Resources; Statement C—Capitalized Investments of Costs; Statement D—Interest Expenses and Repayment of Investments and Debt Capital; Statement E—Operation, Maintenance and Other Annual Expenses; and Statement F—Cost Allocations.

Section 300.12 requires the Administrator to provide an analysis of the information submitted in Statements A through F. The rule requires a revenue recovery study to demonstrate that the filed rates will assure repayment of the federal investment and other costs over a reasonable period of years. This section gives detailed instructions on the contents of a Power Repayment Study (PRS), if one is used. The final rule also requires that PMAs file a cost of service study if one is available.

3. *Section 300.13—Waiver of Filing Requirements.* Section 300.13 requires PMAs to file a statement requesting that the Commission waive any non-compliance in the filing or divergence from the Commission's filing requirements. The statement must also give the PMA's reasons for such a non-compliance or divergence.

C. Subpart C—Commission Rate Review and Approval

Subpart C establishes procedures that relate to the approval of rates. Section 300.20 covers interim approval for BPA. Section 300.21 covers final confirmation and approval for both BPA and the other four PMA's.

In addition to covering interim approval for BPA, § 300.20 also covered refunds (paragraph (c)(2)) and the interest rate on refunds (paragraph (c)(3)). The Commission is taking the paragraphs dealing with refunds and interest out of section 300.20 and inserting them into § 300.21, since these provisions do not relate to interim approval and these paragraphs will be amended to cover all PMAs. Section 300.20 now covers only interim approval for BPA.

Section 300.21 sets forth the procedures for final confirmation and approval of rates filed by all PMAs, including BPA. Paragraph (a) sets forth the Commission's procedures relating to public participation in final approval of a PMA's rates.

Paragraph (c) sets forth the standards of review for BPA's rates. Paragraph (d) sets forth the standards of review for other PMAs. The Commission has not delineated the specific standards of review for other PMAs, but rather has stated more generally that it will review the rates "in accordance with the terms of any delegation made by the Secretary of Energy."

Paragraph (e) sets forth the range of actions the Commission may take on final approval of rates filed by PMAs.

Paragraph (f) sets forth the procedures to be followed if the Commission disapproves the filed rates. The Administrator will have 120 days to file substitute rates. The interim rate will remain in effect, subject to refund, pending approval of the substitute rates.

Paragraph (g) covers refunds and the interest rate on refunds.

Paragraph (h) states that the Commission will publish in the **Federal Register** its decision to approve or disapprove PMA's rates and will mail its decision to those persons on the Commission's service list.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [10] requires certain statements, descriptions, and analyses of rules that will have "a significant economic impact on a substantial number of small entities." [11] The Commission is not required to make an RFA analysis if it certifies that a rule will not have such an impact.[12]

This final rule imposes requirements only on PMAs, which are not "small entities" under the appropriate RFA definition.[13] The primary purpose of this rule is to establish procedures and filing requirements for the approval of PMA rates for compliance with statutory standards. These requirements are designed to avoid delays which in the past have accompanied the filing of PMA rates.

Since this rule applies only to PMAs and is procedural in nature, it will have little, if any, impact on small entities. Accordingly, the Commission certifies that this rule will not have "a significant economic impact on a substantial number of small entities."

VI. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982) requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) (for

[10] 5 U.S.C. 601–612 (1982).

[11] *Id.* at § 605(a).

[12] *Id.* at § 605(b).

[13] *Id.* at section 601(3), *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

requests imposed on the public) or the General Services Administration (GSA) (for requests imposed on other agencies). *See* OMB's final rule, *Controlling Paperwork Burdens on the Public*, 48 FR 13666, 13696 (1983) (to be codified at 5 CFR 1320.16). The Commission has consulted with both OMB and GSA and has been informed that prior approval is not necessary, since the PMAs and FERC are both part of the Department of Energy.

VII. Effective Date

The amendments made by this final rule will be effective on July 20, 1984.

List of Subjects in 18 CFR Part 300

Electric power rates.

In consideration of the foregoing, the Commission amends Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. The heading for Subchapter L is revised to read as follows:

SUBCHAPTER L—REGULATIONS FOR FEDERAL POWER MARKETING ADMINISTRATIONS

2. Part 300 is revised to read as follows:

PART 300—CONFIRMATION AND APPROVAL OF THE RATES OF FEDERAL POWER MARKETING ADMINISTRATIONS

Subpart A—General Provisions

Sec.

300.1 Applicability and definitions.
300.2 Informal conference.

Subpart B—Filing Requirements

300.10 Application for confirmation and approval.
300.11 Technical support for the rate schedule.
300.12 Analysis of supporting data.
300.13 Waiver of filing requirements.

Subpart C—Commission Rate Review and Approval

300.20 Interim acceptance and review of Bonneville Power Administration rates.
300.21 Final confirmation and approval.

Authority: Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839–839h; Bonneville Power Project Act, 16 U.S.C. 832–832i; Flood Control Act of 1944, 16 U.S.C. 825s; Federal Columbia River Transmission System Act, 16 U.S.C. 838–838k; Reclamation Project Act of 1939, 43 U.S.C. 485–485k; Department of Energy Organization Act, 42 U.S.C. 7101–7352; Executive Order 12009, 3 CFR Part 142 (1978); Delegation Order No. 0204–108, 48 FR 55664 (December 14, 1983); Delegation Order No. 0204–33, 43 FR 60636 (1978).

Subpart A—General Provisions

§ 300.1 Applicability and definitions.

(a) *Applicability.* This part sets forth procedures governing the filing, review, and disposition of the rate schedules for the sale or transmission of power and energy established by the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations. Except as otherwise provided by rule or order, the Commission's General Rules of Practice and Procedure (Part 385 of this chapter), other than Rule 2201 (Ex Parte Communications), will apply to any filings, hearings, or other procedures under this Part, as applicable. Rule 2201 of Part 385 will apply only as the Commission determines is appropriate under law.

(b) *Definitions.* For purposes of this Part, the following definitions apply:

(1) *Administrator* means the administrator of a power marketing administration.

(2) *Electric service* means any transmission or sale of electric power and energy, including capacity sales, energy sales, firm power sales, transmission services, or any combination of these services, and the utilization, by means of ownership, contractual arrangements, leasing, or other arrangements, of any facility to provide such sales or services.

(3) *Historic period* means the period commencing with the date of first commercial operation of a powerplant or transmission facility and ending on the last day of the latest year for which actual cost data are available, provided that the period does not end more than 18 months before the date on which the Administrator tenders the rate schedule for filing with the Commission, or such longer period requested by the Deputy Secretary of Energy or Administrator and granted by the Commission.

(4) *Initial capital investment* means the cost of acquisition or construction of a power facility or non-power facility which has been assigned to be repaid from the power revenues, including but not limited to any cost of planning, design, land acquisition, construction, interest during construction, and testing incurred before the date on which the facility becomes operational or revenue-producing.

(5) *Power repayment study or PRS* means a study of the annual repayment of production and transmission investments and other costs through the application of revenues during the repayment period.

(6) *Proposed rate approval period* means the period for which confirmation and approval of the rate schedules is requested. This period must not exceed five years.

(7) *Rate schedule* means a statement describing:

(i) Type of service to which the rate is to be applied;

(ii) Rates and charges for, or in connection with, electric service; and

(iii) Classifications and other provisions which directly affect such rates and charges.

(8) *Rate test or cost evaluation period* means a period, commencing with the end of the historic period, as defined in paragraph (b)(3) of this section, and continuing through the proposed rate approval period as defined in paragraph (b)(6) of this section, during which future estimates of costs and revenues should be modified by the Administrator to reflect changing conditions.

(9) *Replacement* means any substitution of a unit of property with another unit of like character.

§ 300.2 Informal conference.

The Administrator or a designee may confer with Commission staff prior to submitting an application under Subpart B, with respect to the appropriate form and content of such application.

Subpart B—Filing Requirements

§ 300.10 Application for confirmation and approval.

(a) *General Provisions*—(1) *Contents of filing.* Any application under this subpart for confirmation and approval or rate schedules must include, as described in this section a letter of request for rate approval, a notice of filing suitable for publication in the **Federal Register**, the rate schedule, a statement of revenue and related costs, the order, if any, placing the rates into effect on an interim basis, the Administrator's Record of Decision or explanation of the rate development process, supporting documents, a certification, and technical supporting information and analysis.

(2) *Incorporation of information by reference.* Any information required under this subpart that has previously been submitted to the Commission in substantially the same form as specified in this section may be incorporated by reference only.

(3) *Time of Filing.* (i) Rate schedules put into effect on an interim basis by the Secretary of the Department of Energy, or a designee, and filed for final Commission approval must be filed not later than five days after interim approval is granted.

(ii) Rate schedules of the Bonneville Power Administration for which interim

approval by the Commission is requested must be filed not later than 60 days in advance of the proposed effective date.

(iii) Rate schedules for which interim approval is not requested must be filed not later than 180 days in advance of the proposed effective date.

(b) *Letter of request for rate approval.* A letter of request for rate approval must contain the following information:

(1) A description of the period for which Commission approval is requested, delineated by an effective date and an expiration date, and, for the Bonneville Power Administration, a request, if any, for interim approval of the rates;

(2) A brief description of the proposed rates and charges under existing and proposed rate schedules and the expected changes, if any, in annual revenues; and

(3) A description of how the filed rate differs in rate level or rate structure from the rate schedule currently effective.

(C) *Notice of filing.* The notice of filing, suitable for publication in the **Federal Register**, must contain the following information:

(1) The identification number or description of the rate schedule or contract;

(2) If the rate schedule includes changes in rates, the dollar amount and percent increase or decrease in rates;

(3) If the rate schedule includes changes other than rates, a brief description of the changes;

(4) A brief explanation of the reasons for any proposed change in the rate schedule;

(5) A statement whether interim approval of Bonneville Power Administration rates is requested;

(6) The proposed effective date of the rate schedule; and

(7) The proposed rate approval period.

(d) *Rate schedules.* A filed rate schedule, as defined in § 300.1(b)(7), must describe the following, as appropriate:

(1) The class of service to which each rate schedule will apply and service areas or zones which will be affected by the filed rate;

(2) The character and conditions of service;

(3) The rate to be applied to capacity and energy services or other services;

(4) The method of computing or a definition of the billing demand;

(5) Special provisions, such as discounts, penalties, power factor adjustments, service interruptions, unauthorized overruns and other similar provisions which may affect the rate and charges; and

(6) The period during which the rates will be effective.

(e) *Statement of Revenue and Related Costs.* Each filing shall include a statement which includes cost (if available) and revenue data for each class of service as specified in each rate schedule for the proposed period.

(f) *Explanation of rate development process and supporting documents.* (1) The Administrator must file the entire record on which the final decision establishing a rate scheduled is based.

(2) The Administrator must file a Record of Decision, if one is made, or an explanation of the rate development process, if a Record of Decision is not made. The Record of Decision or the explanation of the rate development process must include:

(i) A chronological discussion of the procedural history of the filing, including meetings held with the general public;

(ii) A discussion of issues raised by customers or the public and how such issues were resolved;

(iii) A discussion of all statutory, regulatory, or other requirements which governed the Administrator's decision;

(iv) A description of any methodology used for determining revenue requirements and for developing appropriate rate structures;

(v) A list identifying all documents submitted for Commission consideration; and

(vi) The names and addresses of any customer and other persons who have requested to be informed of the Commission's decision.

(g) *Certification.* The Administrator must file a statement certifying that the rate is consistent with applicable laws and that it is the lowest possible rate consistent with sound business principles.

(h) *Additional filing requirements.* (1) The Administrator must file with the Commission any other information relevant ot the Commission's ratemaking decision.

(2) The Administrator must file any other information requested by the Office of Electric Power Regulation as needed for Commission analysis of the rate filing.

§ 300.11 Technical support for the rate schedule.

(a) *Filing requirement.* The Administrator must submit, in conjunction with any application under § 300.10, the technical support data described under paragraph (b) of this section and the analysis of data described under § 300.12 of this subpart.

(b) *Data*—(1) *Statement A—Sales and Revenues.* Statement A must include:

(i) Sales and revenues for each rate schedule for the last five years of the historic period, as defined in section 300.1(b)(3);

(ii) For the rate test period, the estimated annual sales and revenues for the existing and each proposed rate schedule, including a separate aggregation of any revenues from sources not covered by the rate schedule according to general classifications of such revenues; and

(iii) Brief explanations of how sales and revenue estimates are prepared and explanations of any changes in sales or revenues during the last five years of the historic period.

(2) *Statement B—Power Resources.* Statement B must contain a list of the capacity and energy resources for the last five years of the historic period and for the rate test period, used to support the sales and revenues figures contained in Statement A. The statement should identify resources according to the powerplant and any purchase or exchange agreement.

(3) *Statement C—Capitalized Investments or Costs.*

(i) Statement C must account for all capitalized investments to be repaid from power revenues.

(ii) The statement shall include a listing, by year, of the following:

(A) All initial investments and additions to plant, including interest during construction, that produced revenue during the historic period or are expected to produce revenue during the rate test period;

(B) Capitalized deferred expenses; and

(C) Replacements made during the historic period and replacements projected to be made during the balance of the repayment period.

(iii) For each such investment, the statement shall specify:

(A) Whether the investment is an initial investment, an addition, a replacement, or a capitalized deferred annual expense;

(B) The date the investment was made;

(C) The year in which repayment is due to be completed;

(D) Whether the investment was financed through the issuance of revenue bonds, the appropriate interest rate, and the terms and conditions for such bonds; and

(E) The authority or administrative procedure used for the adoption of such interest rate.

(iv) If available, the amount repaid on each investment to date must be stated, except that if repayment on individual investments is not recorded, the amount

repaid to date on each group of investments having common interest rates should be stated.

(v) For each year, the sum of unpaid individual investments or the unpaid portion of interest groups shown above must equal the unamortized investment shown in the power repayment study for that year.

(vi) The statement must describe the methods used to forecast replacements and the price level used to estimate replacement costs.

(4) *Statement D—Interest Expenses; Repayment of Investments and Debt Capital.* (i) For each capitalized investment and cost listed in Statement C, Statement D must describe, by interest group:

(A) The total unpaid balance outstanding at the end of the historic period;

(B) Payments made on principal and interest during each of the last five years of the historic period; and

(C) Annual payments expected to be made through the cost evaluation period.

(ii) The statement must describe how the interest expense was determined for each type of investment and include examples of such computations.

(5) *Statement E—Operation, Maintenance and Other Annual Expenses.* Statement E must contain, for the last five years of the historic period and for the rate test period, as appropriate, a tabulation of actual and projected operation and maintenance, administrative and general, purchased power, wheeling, and any other expenses, other than interest. Statement E must:

(i) List expenses for each individual source, if purchased power and other similar expenses are derived from more than one source;

(ii) Explain any significant deviations from trends in expenses or any extraordinary expenses; and

(iii) Explain the price level used for estimating expenses.

(6) *Statement F—Cost Allocations.* (i) Statement F must contain, for each multiple-purpose reservoir project, unit, division, or system, a table or other summary showing total investment costs, the total annual operation and maintenance costs, and the allocation of all such costs among the various authorized purposes.

(ii) The statement must show the amount of power costs suballocated to irrigation functions, any changes from previous allocations, and the procedure used in allocating such costs. Currently valid allocations previously submitted to the Commission need not be furnished, if referenced.

§ 300.12 Analysis of supporting data.

(a) An analysis of the data provided under section 300.11 must be supported by an appropriate methodology developed by the Administrator.

(b) *Revenue Recovery Study.* (1) A study must be provided which supports the filed rate and charges, including a narrative statement that explains how the rates and charges meet the objective of recovering the revenue necessary to repay the Federal investment and other costs in a reasonable period of time.

(2) Any Power Repayment Study (PRS) submitted for this purpose must be developed using currently approved rates for estimating future revenues. If the filed rates differ from the current rates, the Administrator must provide a PRS which uses the level of revenues produced by the proposed rates. Unless otherwise required by statute, a PRS must contain only those investments in plant which will be in commercial operation during the proposed rate approval period, except replacements. Forecasts of costs beyond the rate test period must be based on conditions prevailing during the period, unless unusual circumstances warrant otherwise.

(3) A PRS must include, but need not be limited to, those items listed below:

(i) Operating revenues;

(ii) Operating expenses;

(iii) Interest expense;

(iv) Investment placed in service (using totals if the supporting statement annually shows a breakdown into the appropriate subcategories under each major heading), including the initial project, additions, replacements, and the total investment;

(v) Investment amortized;

(vi) Remaining unamortized investment;

(vii) Allowable unamortized investment (using totals if the supporting statement annually shows a breakdown into the appropriate subcategories under each major heading), including initial project, additions, replacements, and total investment;

(viii) Irrigation investment assigned to be repaid from power revenues (using totals if the supporting statement annually shows a breakdown into the appropriate subcategories under each major heading), including irrigation investment assigned to power, investment repaid, remaining unpaid investment, and allowable unpaid investment; and

(ix) Cumulative status of repayment.

(c) *Cost of Service Study.* For any project or system which provides more than one class of service for which differing rates are proposed, a cost of service study, if available, must be provided which shows how the costs of providing each service have been determined. If rates and charges have not been formulated on a cost related basis, the basis for each rate or charge should be explained.

§ 300.13 Waiver of filing requirements.

The Administrator must request waiver of any requirement of this subpart if an application that does not fully comply with that requirement is not to be considered deficient. The request must state the Administrator's reasons for such noncompliance and show good cause for any waiver.

Subpart C—Commission Rate Review and Approval

§ 300.20 Interim acceptance and review of Bonneville Power Administration rates.

(a) *Opportunity to Comment.* The Commission will publish in the **Federal Register**. notice of any filing made under this part, for which interim approval is requested. This notice will give interested persons an opportunity to submit written comments on whether interim approval should be granted.

(b) *Action on request for interim rate acceptance*—(1) *Deficient Applications.* Upon receipt of an application that does not comply with the requirements of this part, the Commission may:

(i) Accept the application and order the rate schedule into effect on an interim basis, effective on the date requested by the Administrator or at such time as the Commission may otherwise order, on the condition that any deficiencies in the filing are corrected by the Administrator to the satisfaction of and within such time specified by the Director of the Office of Electric Power Regulation; or

(ii) Deny the Administrator's interim rate request and reject the application, if the Commission determines that the Administrator's application:

(A) Is patently deficient with respect to the filing requirements of this part; or

(B) Fails to comply with the applicable provisions of the Northwest Power Act or such other Acts as may be applicable.

(2) *Applications that are in compliance.* Upon receipt of an application that complies with the requirements of this Part, the Commission may:

(i) Order the rate schedule into effect on an interim basis, effective on the date requested by the Administrator or at such time as the Commission may otherwise order; or

(ii) Deny the Administrator's interim rate request and review the application for final confirmation and approval of

the rate schedule pursuant to the provisions of this Part.

(c) *Condition of acceptance.* Any rate schedule the Commission allows to become effective on an interim basis under paragraph (b) of this section is subject to refund with interest.

(d) *Notice of action on interim approval.* The Commission will publish in the **Federal Register** a notice of any action taken under paragraph (b) of this section and will mail notice to any person on the Commission's service list.

§ 300.21 Final confirmation and approval.

(a) *Opportunity to comment and intervene.* (1) The Commission will publish notice in the **Federal Register** giving interested persons an opportunity:

(i) To submit initial and reply comments on any filing made under Subport B; and

(ii) To intervene in any proceeding held on such filing.

(2) With respect to the Bonneville Power Administration:

(i) Such notice will also give interested persons an opportunity to comment on whether it is necessary to hold a hearing on non-regional rates under section 7(k) of the Northwest Power Act and the issues to be resolved at such hearing.

(ii) This notice may be part of any Commission order granting interim approval under section 300.20 of this Part.

(b) *Proceedings under section 7(k).* For the Bonneville Power Administration, the Commission will publish a separate order if it determines that a hearing is necessary under section 7(k) of the Northwest Power Act. This order will, if appropriate, delineate the issues to be resolved at such hearing. Such hearing will be held in accordance with the procedures established for ratemaking by the Commission pursuant to the Federal Power Act.

(c) *Standards of Review for the Bonneville Power Adminstration*—(1) *Rates under section 7(a).* The Commission will review any rate established by the Administrator under section 7(a) of the Northwest Power Act for compliance with the following standards:

(i) The rates must be sufficient to ensure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs.

(ii) The rates must be based upon the Administrator's total system costs.

(iii) With respect to transmission rates, the rates must equitably allocate the costs of the Federal transmission system between Federal and non-federal power utilizing such system.

(2) *Rates under section 7(k).* The Commission will review any rate established by the Administrator under section 7(k) of the Northwest Power Act for compliance with the requirements of the Bonneville Project Act, the Flood Control Act of 1944, the Federal Columbia River Transmission System Act, and the standards set forth in paragraph (c)(1) of this section.

(d) *Standards of Review for Other Power Marketing Administrations.* The Commission will review the rates of the Alaska, Southeastern, Southwestern, and Western Area Power Marketing Administrations in accordance with the terms of any delegation made by the Secretary of Energy.

(e) *Action on request for final confirmation and approval of rates.* Filed rates will be considered for final confirmation and approval if the relevant filing complies with the filing requirements of Subpart B of these regulations. The Commission may take any of the following actions:

(1) Confirm and approve the rate schedules for the period beginning with the date such rates where placed in effect on an interim basis or the effective date requested in the application to the expiration date requested in the application but not to exceed a five-year period, or for such lesser period, as the Commission deems appropriate;

(2) Remand the filing for further development of the record to support the filed rate schedules;

(3) Order an evidentiary hearing if there are questions of fact which can not be resolved from the record or through staff evaluation;

(4) Disapprove the filed rates; or

(5) Take such other action that the Commission considers appropriate.

(f) *Procedures upon disapproval.* If the Commission disapproves the rates, the Administrator will be provided a 120-day period, or other period as the Commission may deem appropriate, to prepare substitute rates that resolve the Commission's concerns. If the filed rates have been approved on an interim basis, the rates will continue in effect on an interim basis until the Commission takes final action.

(g) *Refund and interest*—(1) *Refund.* If a rate collected by any power marketing administration on an interim basis exceeds the rate which is confirmed and approved by the Commission as a final rate, the Administrator, pursuant to any conditions established by the Commission, must refund with interest any portion of the rate increase collected during the interim period which exceeds the final rate. The Administrator may make refunds by means of a net energy billing which reflects the value of any overcharge or other appropriate methods.

(2) *Interest.* Except as otherwise provided by the Commission, the Administrator must compute any amount of interest based on the revenues collected subject to refund and required to be refunded under this paragraph by using:

(i) With respect to the rates of the Bonneville Power Adminstration, the rate of interest or a weighted average of all rates of interest charged to the Bonneville Power Administration by the U.S. Treasury during the period for which the computation is made;

(ii) With respect to the rates of other Power Marketing Administrations, the rates of interest computed in accordance with the formula contained in DOE Order No. RA 6120.2, available from the Department of Energy (Office of Power Marketing Coordination) and the Power Marketing Administrations.

(h) *Notice of action on final approval.* The Commission's Secretary will publish in the **Federal Register** a notice of any action taken under paragraph (e) of this section and will mail the notice to the persons on the Commission's service list.

[FR Doc. 84-15896 Filed 6-19-84; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31, 49, and 601

[T.D. 7953]

Federal Tax Deposit System

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the **Federal Register** publication beginning at 49 FR 19643 of the final regulations which were the subject of Treasury decision 7953, relating to the Federal Tax Deposit System.

EFFECTIVE DATE: The regulations that are the subject of these corrections are effective for Federal tax deposits remitted on or after January 1, 1984. The corrections are effective the same date.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service,

Washington D.C. 20224, telephone 202–566–3935 (not a toll-free number).

Background

On May 9, 1984, the **Federal Register** published final regulations (49 FR 19643) relating to the Federal Tax Deposit System. Changes to the applicable tax law were issued under the authority contained in section 7805 of the Internal revenue Code (68A Stat. 917; 26 U.S.C. 7805).

Need for a Correction

The first correction is required in the left-hand column on page 19646. In the fifth line from the top of that column the language "the Federal Tax Deposit form by" should immediately follow the language "stamped on" and precede the language "the Federal Reserve bank or".

The second correction is required on page 19647 in the left-hand column. Under the provisions titled "PART 49—REGULATIONS ON FACILITIES AND SERVICE EXCISE TAXES" and subtitled "§ 49.6151–1", Par. 21 includes a reference to "§ 49.6303(c)–1(a)" in the eleventh line of that paragraph that should read "§ 49.6302(c)–1(a)".

The final correction is required on page 19648, left-hand column, in the twelfth line from the bottom of that column, The language "in the case of Agricultural Employer and" should read "in the case of Agricultural Employers and".

Correction of Publication

Accordingly, the publication of Treasury decision 7953 which was the subject of FR Doc. 84–12373, is corrected as follows:

Paragraph 1. In § 31.6302(c)–3(b)(2), on page 19646, in the left-hand column in the fifth line from the top of the column the language "the Federal Tax Deposit form by" is added immediately following the language "stamped on" and preceding the language "the Federal Reserve bank or".

Paragraph 2. In the amendment to § 49.6302(c)–1(a)(1)(ii), on page 19647, in the left-hand column in the eleventh line of "Par. 21,", the language "§ 49.6303(c)–1(a)" is removed and the language "§ 49.6302(c)–1(a)" is added in its place.

Paragraph 3. In the amendment to § 601.401(a)(5)(iv), on page 19648, in the left-hand column in the twelfth line from the bottom of the column the language "in the case of Agricultural Employer and" is removed and the language "in the case of Agricultural Employers and" is added in its place.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84–16348 Filed 6–19–84; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 3E2909/R630; PH–FRL 2479–7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Ethephon

Correction

In FR Doc. 83–31940, beginning on page 54008 in the issue of Wednesday, November 30, 1983, the effective date appearing in the second column of page 54008 should have read "November 30, 1983".

BILLING CODE 1505–01–M

40 CFR Part 761

[OPTS–62041; TSH FRL 2611–5]

Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Editorial Amendment of Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Editorial amendment.

SUMMARY: This rule alphabetizes the existing definitions in § 761.3 and removes their paragraph designations. This action is taken for the convenience of the user and to allow for orderly additions to the definitions in the future. It also changes the cross references in 40 CFR Subchapter R to conform to the new organization.

DATE: This final rule is effective June 20, 1984.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Federal Register Unit, Office of Pesticides and Toxic Substances, Rm. E–125, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202–382–3826).

SUPPLEMENTARY INFORMATION: In the interest of making the Code of Federal Regulations easier for the users to use and reference, the definitions under 40 CFR 761.3 are being put into alphabetical order and their lettered paragraph designations are being removed. Also, the cross references in Subchapter R are being changed to conform to the new organization.

This regulation is a nonsubstantive editorial amendment and as such no opportunity for comment or public participation is required.

(15 U.S.C. 2605)

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: June 11, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, Chapter I of Title 40, Subchapter R, is amended by amending Part 761 as follows:

§ 761.1 [Amended]

1. In § 761.1(b), the reference to § 761.3(s) is revised to read "the definition of 'PCB' and 'PCBs' under § 761.3."

2. In § 761.1(f), the references to § 761.3 (jj) and (kk) are revised to read "the definitions of 'Closed manufacturing process' and 'Controlled waste manufacturing process' under § 761.3."

3. Section 761.3 is revised to read as follows:

§ 761.3 Definitions.

For the purpose of this part:

"Administrator" means the Administrator of the Environmental Protection Agency, or any employee of the Agency to whom the Administrator may either herein or by order delegate his authority to carry out his functions, or any person who shall by operation of law be authorized to carry out such functions.

"Agency" means the United States Environmental Protection Agency.

"Byproduct" means a chemical substance produced without separate commercial intent during the manufacturing or processing of another chemical substance(s) or mixture(s).

"Capacitor" means a device for accumulating and holding a charge of electricity and consisting of conducting surfaces separated by a dielectric. Types of capacitors as follows:

(1) "Small capacitor" means a capacitor which contains less than 1.36 kg (3 lbs.) of dielectric fluid. The following assumptions may be used if the actual weight of the dielectric fluid is unknown. A capacitor whose total volume is less than 1,639 cubic centimeters (100 cubic inches) may be

considered to contain less than 1.36 kgs (3 lbs.) of dielectric fluid and a capacitor whose total volume is more than 3,278 cubic centimeters (200 cubic inches) must be considered to contain more than 1.36 kg (3 lbs.) of dielectric fluid. A capacitor whose volume is between 1,639 and 3,278 cubic centimeters may be considered to contain less then 1.36 kg (3 lbs.) of dielectric fluid if the total weight of the capacitor is less than 4.08 kg (9 lbs.).

(2) "Large high voltage capacitor" means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectric fluid and which operates at 2,000 volts (a.c. or d.c.) or above.

(3) "Large low voltage capacitor" means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectric fluid and which operates at 2,000 volts (a.c. or d.c.).

"Chemical substance", (1) except as provided in paragraph (2) of this definition, means any organic or inorganic substance of a particular molecular identity, including: any combination of such substances occurring in whole or part as a result of a chemical reaction or occurring in nature, and any element or uncombined radical.

(2) Such term does not include: any mixture; any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as a pesticide; tobacco or any tobacco product; any source material, special nuclear material, or byproduct material (as such terms are defined in the Atomic Energy Act of 1954 and regulations issued under such Act); any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or section 4221 or any provisions of such Code); and any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

"Chemical waste landfill" means a landfill at which protection against risk of injury to health or the environment from migration of PCBs to land, water, or the atmosphere is provided from PCBs and PCB Items deposited therein by locating, engineering, and operating the landfill as specified in § 761.75.

"Closed manufacturing process" means a manufacturing process in which PCBs are generated but from which less than 10 micrograms per cubic meter from any resolvable gas chromatographic peak are contained in any release to air; less than 100 micrograms per liter from any resolvable gas chromatographic peak are contained in any release to water; and less than 2 micrograms per gram from any resolvable gas chromatographic peak are contained in any product, or any process waste.

"Commerce" means trade, traffic, transportation, or other commerce:

(1) Between a place in a State and any place outside of such State, or

(2) Which affects trade, traffic, transportation, or commerce described in paragraph (1) of this definition.

"Controlled waste manufacturing process" means a manufacturing process in which PCBs are generated but from which less than 10 micrograms per cubic meter from any resolvable gas chromatographic peak are contained in any release to air; less than 100 micrograms per liter from any resolvable gas chromatographic peak are contained in any release to water; less than 2 micrograms per gram from any resolvable gas chromatographic peak are contained in any product, and the remainder of PCBs generated are incinerated in a qualified incinerator, land filled in a landfill approved under the provisions of § 761.75, or stored for such incineration or landfilling in accordance with the requirements of § 761.65(b)(1).

"Disposal" means intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items.

"Distribute in commerce" and "Distribution in Commerce" when used to describe an action taken with respect to a chemical substance, mixture, or article containing a substance or mixture means to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of the substance, mixture, or article; or to hold or the holding of, the substance, mixture, or article after its introduction into commerce.

"Fluorescent light ballast" means a device that electrically controls fluorescent light fixtures and that includes a capacitor containing 0.1 kg or less of dielectric.

"Impurity" means a chemical substance which is unintentionally present with another chemical substance.

"Incinerator" means an engineered device using controlled flame combustion to thermally degrade PCBs and PCB Items. Examples of devices used for incineration include rotary kilns, liquid injection incinerators, cement kilns, and high temperature boilers.

"Leak" or "leaking" means any instance in which a PCB Article, PCB Container, or PCB Equipment has any PCBs on any portion of its external surface.

"Manufacture" means to produce, manufacture, or import into the customs territory of the United States.

"Manufacturing process" means all of a series of unit operations operating at a site, resulting in the production of a product.

"Mark" means the descriptive name, instructions, cautions, or other information applied to PCBs and PCB Items, or other objects subject to these regulations.

"Marked" means the marking of PCB Items and PCB storage areas and transport vehicles by means of applying a legible mark by painting, fixation of an adhesive label, or by any other method that meets the requirements of these regulations.

"Mixture" means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

"Municipal solid wastes" means garbage, refuse, sludges, wastes, and other discarded materials resulting from residential and non-industrial operations and activities, such as household activities, office functions, and commercial housekeeping wastes.

"PCB" and "PCBs" mean any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. (See § 761.1(b) Applicability for applicable concentrations of PCBs). PCB and PCBs as contained in PCB Items are defined in this section.

"PCB Article" means any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes capacitors, transformers, electric motors, pumps, pipes and any other manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the PCB Article.

"PCB Article Container" means any package, can, bottle, bag, barrel, drum, tank, or other device used to contain PCB Articles or PCB Equipment, and whose surface(s) has not been in direct contact with PCBs.

"PCB Container" means any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.

"PCB Equipment" means any manufactured item, other than a PCB Container or a PCB Article Container, which contains a PCB Article or other PCB Equipment, and includes microwave ovens, electronic equipment, and fluorescent light ballasts and fixtures.

"PCB Item" is defined as any PCB Article, PCB Article Container, PCB Container, or PCB Equipment, that deliberately or unintentionally contains or has as a part of it any PCB or PCBs at a concentration of 50 ppm or greater.

"PCB Transformer" means any transformer that contains 500 ppm PCB or greater.

"PCB-Contaminated Electrical Equipment" means any electrical equipment, including but not limited to transformers (including those used in railway locomotives and self-propelled cars), capacitors, circuit breakers, reclosers, voltage regulators, switches (including sectionalizers and motor starters), electromagnets, and cable, that contain 50 ppm or greater PCB, but less than 500 ppm PCB. Oil-filled electrical equipment other than circuit breakers, reclosers, and cable whose PCB concentration is unknown must be assumed to be PCB-Contaminated Electrical Equipment. (See §761.30 (a) and (h) for provisions permitting reclassification of electrical equipment containing 500 ppm or greater PCBs to PCB-Contaminated Electrical Equipment).

"Person" means any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

"Posing an exposure risk to food or feed" means being in any location where human food or animal feed products could be exposed to PCBs released from a PCB Item. A PCB Item poses an exposure risk to food or feed if PCBs released in any way from the PCB Item have a potential pathway to human food or animal feed. EPA considers human food or animal feed to include items regulated by the U.S. Department of Agriculture or the Food and Drug Administration as human food or animal feed; this includes direct additives. Food or feed is excluded from this definition if it is used or stored in private homes.

"Process" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce:

(1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(2) As part of an article containing the chemical substance or mixture.

"Qualified incinerator" means one of the following:

(1) An incinerator approved under the provisions of §761.70. Any concentration of PCBs can be destroyed in an incinerator approved under §761.70.

(2) A high efficiency boiler approved under the provisions of § 761.60(a)(3). Only PCBs in concentrations below 500 ppm can be destroyed in a high-efficiency boiler approved under §761.60(a)(3).

(3) An incinerator approved under section 3005(c) of the Resource Conservation and Recovery Act (42 U.S.C. 6925(c)) (RCRA). Only PCBs in concentrations below 50 ppm can be destroyed in a RCRA-approved incinerator. The manufacturer seeking to qualify a process as a controlled waste process by disposing of wastes in a RCRA-approved incinerator must make a determination that the incinerator is capable of destroying less readily burned compounds than the PCB homologs to be destroyed. The manufacturer may use the same guidance used by EPA in making such a determination when issuing an approval under section 3005(c) of RCRA. The manufacturer is also responsible for obtaining a reasonable assurance that the incinerator, when burning PCB wastes, will be operated under conditions which have been shown to enable the incinerator to destroy the less readily burned compounds.

"Sale for purposes other than resale" means sale of PCBs for purposes of disposal and for purposes of use, except where use involves sale for distribution in commerce. PCB Equipment which is first leased for purposes of use any time before July 1, 1979, will be considered sold for purposes other than resale.

"Significant exposure" means any exposure of human beings or the environment to PCBs as measured or detected by any scientifically acceptable analytical method.

"Small quantities for research and development" means any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs, but not for research or analysis for the development of a PCB product.

"Storage for disposal" means temporary storage of PCBs that have been designated for disposal.

"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (e.g., trailer, railroad freight car) is a separate transport vehicle.

"Totally enclosed manner" means any manner that will ensure that any exposure of human beings or the environment to any concentration of PCBs will be insignificant; that is, not measurable or detectable by any scientifically acceptable analytical method.

"Waste Oil" means used products primarily derived from petroleum, which include, but are not limited to, fuel oils, motor oils, gear oils, cutting oils transmission fluids, hydraulic fluids, and dielectric fluids.

§ 761.20 [Amended]

4. In the introductory text of §761.20 the reference to §761.3(dd) is revised to read "as defined in the definition of 'Significant exposure' under § 761.3." The reference to § 761.3(hh) is revised to read "The definition of 'Totally enclosed manner' under § 761.3."

§ 761.30 [Amended]

5. In § 761.30, the references to § 761.3(y) in paragraphs (a)(1)(ii) and (a)(2)(ii) are revised to read ("as defined in the definition of 'PCB Transformer' under § 761.3)."

6. In § 761.30, the references to § 761.3 (z) in paragraphs (a)(2)(i) and (h)(2)(i) are revised to read ("as defined in the definition of 'PCB-Contaminated Electrical Equipment' under § 761.3)."

7. In § 761.30(j), the reference to § 761.3(ee) is revised to read "as defined in the definition of 'Small quantities for research and development' under § 761.3."

§ 761.185 [Amended]

8. In § 761.185(a)(2), the reference to § 761.3(nn) is revised to read "under the definition of 'Qualified incinerator' under § 761.3."

9. In § 761.185(b)(4)(ii), the reference to § 761.3(nn) is revised to read "(see the definition of 'Qualified incinerator' under § 761.3)."

[FR Doc. 84-16399 Filed 6-19-84; 8:45 am]
BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 49, No. 120
Wednesday, June 20, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Processing of Cases

AGENCY: Federal Labor Relations Authority.

ACTION: Request for comments.

SUMMARY: In connection with its review of case processing procedures, the Federal Labor Relations Authority requests written proposals concerning possible modifications to its case processing procedures. All submissions will be reviewed and a determination made as to which matters will be further considered at one or more open meetings. The meetings will be announced and interested parties will be given an opportunity to appear and present their views. The results of this review of the Authority's case processing procedures could be, among other things, amendments to the Authority's rules and regulations.

DATE: Written comments must be received by the Authority on or before July 21, 1984.

ADDRESS: Comments should be submitted to Harold D. Kessler, Director, Office of Case Management, Federal Labor Relations Authority, 500 C Street, SW., Washington, D.C. 20424.

FOR FURTHER INFORMATION CONTACT: Harold D. Kessler, Director, Office of Case Management, Federal Labor Relations Authority, 500 C Street, SW., Washington, D.C. 20424, (202) 382–0711.

SUPPLEMENTARY INFORMATION: The Authority has been reviewing its case processing procedures. The Authority has received from the Department of Defense recommendations that the Authority modify certain of these procedures. In a recent letter to the Authority, the presidents of the American Federation of Government Employees, the National Association of Government Employees, the National Federation of Federal Employees and the National Treasury Employees Union also proposed revisions to certain of the Authority's case processing procedures and requested a meeting with the Authority. Upon review of these submissions, the Authority has decided to grant agencies, unions and interested individuals an opportunity to comment on the Authority's case processing procedures in an effort to identify modifications that would improve case processing.

The first step in the review process is this notice in which all interested parties are requested to submit written comments to the Authority no later than the comment date listed above. Thereafter, the Authority will review all submissions and make a determination as to which matters will be considered at open meetings. Then, agencies, unions and interested persons will be invited through a public announcement to request from the Authority an opportunity to address such matters at the open meeting called for their consideration. Fixed times will be granted to those wishing to participate in these open meetings. Finally, the Authority will take appropriate action which could include amendments to the Authority's rules and regulations or other appropriate action.

List of Subjects in 5 CFR Ch. XIV

Administrative practice and procedure, Government employees, Labor-management relations.

Dated: June 15, 1984.

Federal Labor Relations Authority.

Barbara J. Mahone,

Chairman.

Ronald W. Haughton,

Henry B. Frazier III,

Members.

[FR Doc. 84–16403 Filed 6–19–84; 8:45 am]
BILLING CODE 6720–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Lime Reg. 43, Proposed Amdt. 2]

Limes Grown in Florida

AGENCY: Agricultural Marketing service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposal would suspend the lowering of minimum diameter requirements for shipments of fresh limes grown in Florida, and for limes imported into the United States from 1⅛ inches to 1¾ inches during a specified period during July–September of each year. The minimum diameter requirement for such limes would remain at 1⅞ inches. Such action is necessary to assure the shipment of limes of acceptable size and quality in the interest of producers and consumers.

DATES: Written comments must be received not later than June 29, 1984. Proposed effective date: July 9, 1984.

ADDRESS: Send two copies of comments to the Hearing Clerk, United States Departgment of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone, (202) 447–5975.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this proposed action will not have a significant economic impact on a substantial number of small entities.

The proposed Florida lime regulation is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The proposed regulation applicable to limes grown in Florida is based upon recommendations and information submitted by the Florida Lime Administrative Committee, established under the marketing agreement and order, and upon other information. Shipments of Florida limes are regulated by grade and size under Florida Lime Regulation 43 (46 FR 35910, 47 FR 29646). This regulation, which is effective on a continuing basis, requires seedless limes for fresh shipment to: (1) Grade at least U.S. Combination mixed

color; (2) meet a minimum juice content of 42% by volume, and (3) have a minimum diameter of 1⅞ inches. Currently, there is a relaxation in the minimum size requirement for seedless limes from 1⅞ inches in diameter to 1¾ inches in diameter each year during the period begining on the first Monday after July 4 and continuing through the Sunday before the third Monday in September of the same year. This proposed action would suspend that relaxation so that limes at all times would have to meet the minimum diameter requirement of 1⅞ inches. This proposed action was unanimously recommended by the Florida Lime Administrative Committee at a public meeting on April 11, 1984. There are more than adequate supplies of limes which would meet the 1⅞ inch minimum diameter requirement to meet consumer demand. In addition, consumer acceptance of the smaller diameter limes has been very poor.

Under section 8e of the Act, whenever specified commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Thus, size requirements for imported limes would also change to conform to the size requirements for domestic shipments of Florida limes. It is hereby found that this proposed regulation will tend to effectuate the declared policy of the Act.

This proposed rule provides a comment period of less than thirty days. A longer comment period would be contrary to the public interest, as any comments on the effect of the proposed rule must be received by June 29, 1984, so that a final rule, if issued, can be made effective by July 9, 1984, to ensure the orderly marketing of Florida limes. All comments received will be considered prior to issuance of any final rule.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Florida, Limes.

PART 911—[AMENDED]

The proposed rule would amend section 911.344 Lime Regulation 43 (46 FR 35910, 47 FR 29646) by revising paragraph (a)(3), to read as follows:

§ 911.344 Florida Lime Regulation 43.

(a) * * *

(3) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varities) shall be at least 1⅞ inches in diameter; *Provided,* That not more than 10 percent, by count, of the limes in any lot of containers may fail to meet these minimum size requirements; *Provided further,* That not more than 15 percent, by count, in any individual container containing more than four pounds of limes may fail to meet these minimum size requirements.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674)

Dated: June 15, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-16378 Filed 6-19-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 24105; Notice 84-6]

Slot Transfer Methods

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Postponement of public hearing.

SUMMARY: The public hearing on Slot Transfer Methods (NRPM 84–6, published in the **Federal Register** on June 7, 1984 (49 FR 23788)) scheduled for June 21, 1984, in the Federal Aviation Administration (FAA) Building at 800 Independence Avenue, S.W., Washington, D.C., is postponed. The rescheduling of the hearing has not been completed at this time. The time and date will be announced shortly. The FAA is considering the requests for extension of the comment period (closes on July 9, 1984) on the NPRM submitted by a number of organizations.

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, (202) 426–3773.

Issued in Washington, D.C., on June 18, 1984.

Edward P. Faberman,

Acting Chief Counsel.

[FR Doc. 84-16529 Filed 6-18-84; 2:49 pm]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21049; File No. S7-23-84]

Short Tendering Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment.

SUMMARY: The Commission is proposing for public comment certain amendments to Rule 10b–4 under the Securities Exchange Act of 1934, the short tendering rule. These amendments would require those persons that tender shares by guarantee to deliver all guaranteed shares to the bidder and would, in most circumstances, require persons to exclude from their "net long position" those shares on which they have written exchange-traded call options. The amendments are intended to make the prohibition of short and hedged tendering more effective and complete.

DATE: Comments must be received on or before August 31, 1984.

ADDRESSES: Interested persons should submit three copies of their comments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 6184, 450 Fifth Street, N.W., Washington, D.C. 20549 and should refer to File No. S7–23–84. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 1024, 450 Fifth Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: M. Blair Corkran, Jr. (202–272–2853) or Stuart D. Fishman (202–272–7376), Office of Legal Policy and Trading practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment amendments to Rule 10b–4 [17 CFR 240.10b–4] under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. 78j (b). Rule 10b–4 (the "Rule") was adopted by the Commission in 1968 [1] for the purpose of prohibiting "short tendering", *i.e.,* tendering more shares than a person owns in order to avoid or reduce the risk of *pro rata* acceptance in tender offers for less than all the outstanding securities of a class or series. Recently, the Rule was

[1] Securities Exchange Act Release No. 8321 (May 28, 1968), 33 FR 8269 (June 4, 1968).

amended to prohibit hedged tendering, *i.e.*, tendering and then selling a portion of the tendered shares in the market, a practice that was closely analogous to short tendering.[2] The amendments that are being proposed today are intended to make the prohibition of short and hedged tendering more effective and complete and are generally consistent with recommendations made by the Advisory Committee on Tender Offers ("Advisory Committee").

I. Background

In making a tender offer for securities of a target corporation the bidder usually offers as consideration either cash, its own securities, or a combination of both. Offers for less than all of the outstanding shares of the target involves a risk to the target securityholder that not all of the securities that the securityholder tendered will be accepted.[3] Prior to the adoption of Rule 10b–4, market professionals were able to achieve acceptance of a disproportionately larger number of securities owned and tendered by them than could be secured by other persons who tendered only securities that they owned.[4] Accordingly, the Commission adopted Rule 10b–4 for the specific purpose of prohibiting short tendering.[5]

Recently, the Commission adopted amendments to Rule 10b–4[6] to prohibit hedged tendering, a practice that had the same purpose and effect as short tendering. Before the amendments, market professionals were able to tender shares that they owned and then sell the number of shares that they estimated would not be accepted by the bidder. Those shares were generally bought by arbitrageurs at prices reflecting the tender offer price. The arbitrageurs in turn tendered them and thus diluted the percentage of shares accepted from those who tendered without hedging.[7]

The recent amendments were in accord with the recommendations of the Advisory Committee.[8] The Advisory Committee also recommended two additional changes relating to Rule 10b–4 that the Commission is addressing today. The two recommendations concern guarantees of delivery and the status under the Rule of certain short positions in exchange-traded call options.

II. Discussion

A. Guarantees of Delivery

In a tender offer, a shareholder may tender his securities without actually delivering them at the time of tendering if that shareholder or someone else on his or her behalf, generally a broker-dealer or a bank, guarantees the delivery of those securities. In this way, shareholders who are unable to physically deposit their certificates before the termination of the tender offer, either because the shares have been purchased but not yet received or because it may not be covenient, can still participate in the tender offer. Rule 10b–4 provides that a guarantor can guarantee a tender for the account of another if the guarantor has possession of the subject security or has reasonable belief upon information furnished by the person on whose behalf the tender is made, that the latter person owns the security and will promptly deliver the security to the offeror.[9]

The Advisory Committee recommended that Rule 10b–4 be amended to require that all shares tendered pursuant to a guarantee be delivered to the offeror.[10] The Advisory Committee reasoned that it would make short and hedged tendering less attractive if the securityholder, on whose behalf securities are tendered by guarantee, is required to deliver all securities so tendered rather than only the certificates for those shares actually to be purchased by the offeror. The Commission believes that this requirement would make short tendering somewhat more difficult to accomplish, and accordingly is proposing to amend Rule 10b–4 by adding paragraph (b)(4) in the manner recommended by the Advisory Committee.

As a practical matter, many bidders already require as a condition of their offer that all shares tendered by guarantee be delivered.[11] The Commission solicits comments on the need for new paragraph (b)(4), as well as on whether the receipt of all tendered shares and the return of unaccepted shares would impose any significant costs on those bidders who would otherwise not choose to require delivery of all shares tendered by guarantee.

B. Hedged Tendering by Means of Exchange-Traded Call Options

The recently adopted amendments to Rule 10b–4 were designed to prevent hedged tendering, a practice by which market professionals were able to minimize the risk of proration by selling some of the shares they had tendered. In those tender offers involving common stocks that underlie exchange-traded options, this same result can be accomplished through writing exchange-traded call options. For instance, a market professional who owns 200 shares and who estimates a 50% proration factor is able to hedge his tender by writing an in-the-money[12] call option. The premium received for writing the call option plus the exercise price received when the option is exercised[13] will normally approximate

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[2] Securities Exchange Act Release No. 20799 (March 29, 1984), 49 FR 13867 (April 9, 1984).

[3] When tendered securities are accepted on a *pro rata* basis, the offeror accepts only a percentage of the securities tendered by each securityholder. The percentage is calculated from a fraction whose numerator represents the total number of securities accepted and whose denominator represents the total number of securities tendered.

[4] For example, assume there is a tender offer for less than all the outstanding securities of the target and that A and B each owns 200 shares of the subject security and expects that the offeror will accept on a *pro rata* basis 50% of the securities tendered. If A tenders 400 shares he will (assuming the 50% expectation proves correct) have 200 shares, or 100% of his securities accepted by the offeror. In contrast, if B simply tenders his 200 shares, he will have only 100 of his shares accepted and 100 shares will be returned to him.

[5] Securities Exchange Act Release No. 8321 (May 28, 1968), 33 FR 8269 (June 4, 1968). The background and reasons for the adoption of Rule 10b–4 are more fully set forth in Securities Exchange Act Release No. 18050 (August 21, 1981), 46 FR 43459 (August 28, 1981).

[6] *See* note 2, *supra*.

[7] For example, two shareholders, A and B, each owns 200 shares and expect that the offeror will accept 50% of the securities tendered. If A tenders his 200 shares and then sells 100 shares he will (assuming the 50% expectation proves correct) have 100 shares accepted by the offeror, or 100% of the securities that he owns at the time the proration period ends. In contrast, if B simply tenders his 200 shares and does not engage in any hedging (possibly because he cannot borrow the subject security), he will have only 100 of his shares accepted and 100 shares will be returned unaccepted to him.

[8] *See* Report of Recommendations of the Advisory Committee on Tender Offers ("Advisory Committee Report") at 47. The amendments embodied Recommendations 44 and 46.

[9] Rule 10b–4(b)(2).

[10] Advisory Committee Report, Recommendation No. 45, at 48. The Advisory Committee referred to requiring "physical" delivery, but also urged, in Recommendation 46, that the Commission adopt proposed Rule 17Ad–14 under the Exchange Act. The Commission subsequently adopted Rule 17Ad–14 effective March 1, 1984. *See* Securities Exchange Act Release No. 20581 (January 19, 1984), 49 FR 3064 (January 25, 1984). Rule 17Ad–14 provides for delivery of securities to the tender agent by book-entry through a qualified securities depository, as that term is defined in Rule 17Ad–14. Thus, delivery of securities to the tender agent may be accomplished, for purposes of Rule 10b–4, either directly to the tender agent or to the tender agent's account by book-entry movement.

[11] By requiring full delivery, rather than only requesting delivery of the percentage to be accepted, the offeror is assured that it will obtain the exact number of shares it desires if the offer is oversubscribed since it can then adjust the proration precentage to compensate for any shares that are not delivered.

[12] An in-the-money option is one whose exercise price is lower than the market price of the underlying security.

[13] An in-the-money option will normally be exercised before the end of a tender offer for less than all of the target's securities, because the holder of the option will otherwise experience a loss in the option's value when the tender offer expires.

the amount that could be realized if 100 of the tendered shares were sold in the market. Market professionals who can borrow shares to deliver when the option is exercised can as effectively hedge their tenders by writing call options as they can by selling the stock.

Further more, the result of market professionals hedging their tenders in this fashion could be that more share will be tendered to the offeror than are actually outstanding ("over-tenders") because the same shares may be tendered by the owner of the underlying shares and by the person who exercises the option because that person is an owner of the underlying stock under the Rule. The options will often be exercised just before the expiration of the tender offer, and exercise notices will not be allocated to the writers until after the right to withdraw shares from the offer has expired.[14]

The Advisory Committee recognized that "the option market makes over-tenders more likely because there is no theoretical limit on the number of call option contracts" that can be written.[15] The Advisory Committee suggested that the way to deal with the possibility of over-tendering was to exclude, in certain circumstances, shares underlying a call option from the "net long position" of the option writer so that the option writer would not own those shares.[16] Rule 10b–4 requires that a tendering person have a net long position of at least the number of shares tendered.[17] Specifically, the Advisory committee recommended that

> The Commission should revise its interpretation of Rule 10b–4 so that for the purposes of determining whether a person has a "net long position" in a security subject to the tender offer, call options on such security which a person has sold and which a person should know are highly likely to be exercised prior to expiration of the offer shall be deemed to constitute sales of the security underlying such options and therefore netted against such person's position in that security.[18]

The Commission believes that the subjective test proposed by the Advisory Committee would be difficult to administer and to enforce. The test might impose a different standard for every person who tenders and writes exchange-traded call options on those securities because every person would have a different level of market sophistication and would have varying judgments as to whether the call options are "highly likely" to be exercised. The Commission solicits comment, however, on the Advisory Committee's formulation.

The Commission is proposing for comment an alternative approach that would employ an objective standard. Proposed paragraph (a)(5) would require a shareholder to deduct from his net long position the number of shares deliverable upon exercise of any exchange-traded[19] call option contracts he has written with an exercise price which is less than the tender offer price or the stated value of the consideration offered.[20] Because all tendering shareholders must be net long the amount of securities tendered at the moment of tender and at the end of the proration period, or on the last day securities may be tendered in order to be accepted by lot where that method of acceptance is used, a shareholder will be prohibited from tendering those securities on which he or she has written an exchange-traded call option with an exercise price below the stated value of the offered consideration.

The Commission recognizes that the application of the objective standard proposed will occasionally result in the deduction of shares from a net long position in circumstances where the call option is unlikely to be exercised. This could occur if there are options on the target securities with an exercise price less than the tender offer price but above the market price of the target securities, if the actual value of the consideration is substantially below its stated value,[21] or if the tender offer premium is small in relation to the value of the option due to its remaining life. In most cases, of course, call options written on a target security will be deep-in-the-money because of the tender offer premium.

Paragraph (a)(5) also provides that a tender made in accordance with the Rule will not become a short tender solely because the status of options that were written prior to tendering has been changed by an increase in the consideration offered by the bidder.[22]

Commentators are invited to address the particulars of the proposed amendments and to suggest alternative approaches. The Commission also solicits comments on the general economic effect of the proposed amendments, and specifically, the effect of the proposals on the market price of target securities.

III. Regulatory Flexibility Act Status

Pursuant to 5 U.S.C. 605(b), the Commission has certified that the proposed amendments to Rule 10b–4 would not, if adopted, have a significant impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to the Release.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

IV. Text and Statutory Basis of Rule Amendments

On the basis of the above discusion, the Commission is proposing to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE, ACT OF 1934

By adding new paragraphs (a)(5) and (b)(4) to § 240.10b–4 to read as follows:

§ 240.10b–4 Short tendering of securities.

(a) * * *

(5) A person's net long position, as that term is used in paragraph (a)(1) of this rule, shall not include the number of shares of subject securities deliverable

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[14] The by-laws of the Options Clearing Corporation, ("OCC") provide for cash settlements of call option exercises if it determines that the supply of deliverable stock is inadequate. *See* Section 17 of Article VI of the OCC by-laws.

[15] Advisory Committee Report at 49.

[16] The Commission notes that the possibility of over-tendering would remain because many options are written on an uncovered basis. This approach, however, in combination with the recent prohibition on hedging tenders through subsequent sales of the target security, would make over-tenders highly unlikely.

[17] Currently, unexercised long or short option positions relating to a target security have no effect upon a tendering person's ownership of, or net long position in, the underlying securities.

[18] Advisory Committee Report, Recommendation No. 47 at 50.

[19] In the event that the National Association of Securities Dealers becomes authorized to trade standardized options contracts, the Commission envisions amending the Rule to include those options within the provisions of paragraph (a)(5).

[20] If the market price of the target securities, rather than the tender offer price, were the benchmark for determining whether an option is in-the-money, there could be minute-to-minute changes in a person's net long position as the market price fluctuates. This would require tendering persons who have written call options, to ascertain the current market price when they tender and at the end of the proration period.

[21] For example, a bidder may offer, for each share of a target, debt securities with a stated value or principal amount of $50. These securities may be valued in the market at $40. A call option on the target's securities with an exercise price of $45 would thus be "in-the-money" under the proposed standard even though it would not be likely to be exercised.

[22] An increase in consideration could otherwise have the effect of requiring a deduction from a net long position if an increase in consideration between the time of tender and the end of the proration period caused an option with an exercise price above the original consideration (*i.e.*, an out-of-the-money option, which has no effect on the tenderor's net long position) to become one with an excercise price below the revised consideration, *i.e.*, in-the-money.

upon exercise of any exchange-traded call options that the person has written with an exercise price that is lower than the tender offer price or stated amount of the consideration offered. *Provided, however,* that no tender made in accordance with this rule shall become invalid solely because the status under this paragraph of options that were written prior to tendering has been changed by an increase in the consideration offered.

(b) * * *

(4) By guarantee of delivery unless all securities tendered pursuant to that guarantee are delivered to the offeror or the offeror's agent.

* * * * *

Statutory Authority

The proposed amendments to Rule 10b–4 would be promulgated under the Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 3(b), 10(a), 10(b), 14(e), 15(b) and 23(a) of the Act [15 U.S.C. 78c(b), 78j(a), 78j(b), 78n(e), 78o(b) and 78w(a)].

By the Commission.

George A. Fitzsimmons,

Secretary.

June 15, 1984.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Rule 10b–4 set forth in Securities Exchange Act Release No. 34–21049, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that the proposed amendments, if adopted, would not impose or remove any reporting, data collection or recordkeeping requirements. In addition, no substantial number of small entities are engaged in the conduct to be prohibited.

Dated: June 15, 1984.

John S.R. Shad,

Chairman.

[FR Doc. 84–16461 Filed 6–19–84; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 80N–0373]

Cheeses and Related Cheese Products; General Standard of Identity for "Certain Other Cheeses;" Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on its proposal to establish a general standard of identity for "certain other cheeses." FDA received three requests for an extension of the comment period and it is granting an additional 90 days. Elsewhere in this issue of the **Federal Register**, FDA is extending the period for submitting comments on its proposal to repeal the class standards of identity for hard cheeses, soft ripened cheeses, semisoft cheeses, and semisoft part-skim cheeses.

DATE: Comments by September 20, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Center for Food Safety and Applied Nutrition (HFF–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0116.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 23, 1984 (49 FR 17018), FDA issued a proposal that would establish a general standard of identity for "certain other cheeses." Elsewhere in that same issue of the **Federal Register** (49 FR 17017), FDA proposed to repeal the class standards of identity for hard cheeses, soft ripened cheeses, semisoft cheeses, and semisoft part-skim cheeses. FDA asked for comments by June 22, 1984.

Two manufacturers, one importer, and one trade association submitted requests for an extension of time on these proposals. The range of time requested by them was from 60 to 120 days. The requests stated that the documents require careful consideration by various interested persons within the cheese industry, including specialty cheese importers whose products would be particularly affected.

After carefully evaluating the requests, FDA has concluded that an extension of 90 days is appropriate to provide adequate time to prepare responses to the proposed regulations. FDA recognizes the significance of the issues involved in this matter and wishes to ensure that all interested persons have a fair amount of time for comment. Therefore, FDA has concluded that the comment period should be extended until September 20, 1984.

Interested persons may, on or before September 20, 1984, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 14, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–16367 Filed 6–15–84; 10:48 am]
BILLING CODE 4160–01–M

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21 CFR Part 133

[Docket No. 80N–0372]

Cheese and Related Cheese Products; Repeal of Four Class Standards of Identity; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on its proposal to repeal the class standards of identity for hard cheeses, soft ripened cheese, semisoft cheeses, and semisoft part-skim cheeses. FDA received three requests for an extension of the comment period and it is granting an additional 90 days. Elsewhere in this issue of the **Federal Register**, FDA is extending the period for submitting comments on its proposal to establish a new class standard of identity for "certain other cheeses."

DATE: Comments by September 20, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eugene T. McGarrahan, Center for Food Safety and Applied Nutrition (HFF–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0116.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 23, 1984 (49 FR 17017), FDA issued a proposal that would repeal the class standards of identity for hard cheeses, soft ripened cheeses, semisoft cheeses, and semisoft part-skim cheeses. Elsewhere in that same issue of the **Federal Register** (49 FR 17018), FDA proposed to establish a new class standard of identity for "certain other cheeses." FDA requested

comments on these proposals by June 22, 1984.

Two manufacturers, one importer, and one trade association submitted requests for an extension of time on these proposals. The range of time requested by them was from 60 to 120 days. The requests stated that the documents require careful consideration by the various interested persons within the cheese industry, including specialty cheese importers whose products would be particularly affected.

After carefully evaluating the requests, FDA has concluded that an extension of 90 days is appropriate to provide adequate time to prepare responses to the proposed regulations. FDA recognizes the significance of the issues involved in this matter and wishes to ensure that all interested persons have a fair amount of time for comment. Therefore, FDA has concluded that the comment period should be extended until September 20, 1984.

Interested persons may, on or before September 20, 1984, submit to the Docket Management Branch (**ADDRESS** above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 14, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-16368 Filed 6-15-84; 10:48 am]

BILLING CODE 4160-01-M

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21 CFR Parts 182 and 184

[Docket No. 80N-0148]

Hydrochloric Acid; Proposed Affirmation of GRAS Status as a Direct Human Food Ingredient; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on its proposal to affirm that hydrochloric acid is generally recognized as safe (GRAS) as a direct human food ingredient. FDA received two requests for an extension of the comment period, and it is granting an additional 90 days.

DATE: Comments by September 24, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 26, 1984 (49 FR 17966), FDA issued a proposal to affirm that hydrochloric acid is GRAS for use a direct human ingredient. FDA asked for comments by June 25, 1984.

A chemical manufacturer and national trade association asked FDA to extend the comment period for 90 days. Both requests stated that they would have to obtain additional data or information about hydrochloric acid before they could provide the necessary response to the proposed rule, and that they would not be able to meet the June 25, 1984 date.

After carefully evaluating the requests, FDA has concluded that an extension is appropriate to provide adequate time to prepare responses to the proposed regulation. FDA recognizes the significance of the issues involved in this matter and wishes to ensure that all interested persons have a fair amount of time for comment. Therefore, FDA has concluded that the comment period should be extended an additional 90 days.

Interested persons may, on or before September 24, 1984, submit to the Dockets Management Branch (**ADDRESS** above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 14, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-16366 Filed 6-15-84; 10:50 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-409]

Crane or Derrick Suspended Personnel Platforms

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of written comment period; notice of informal public hearing.

SUMMARY: This notice reopens the comment period for written responses to OSHA's notice of proposed rulemaking on Crane or Derrick Suspended Personnel Platforms (49 FR 6280, February 17, 1984) until August 10, 1984 in order to assure the fullest participation of interested parties.

In addition, OSHA is scheduling an informal public hearing concerning the proposed rule covering Crane or Derrick Suspended Personnel Platforms.

DATES: Notices of intention to appear at the informal public hearing must be postmarked by July 27, 1984. Written comments must be postmarked by August 10, 1984. In addition, testimony and all evidence which will be introduced into the hearing record must also be postmarked by August 10, 1984. The hearing will begin at 9:30 a.m. on September 11, 1984, in Washington, D.C. and may continue for more than one day based on the number of notices of intention to appear which are received.

ADDRESSES: Four copies of the written comments must be submitted to the Docket Officer, Docket S-409, Room S6212, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-7894.

Four copies of the notice of intention to appear, and testimony and documentary evidence which will be introduced into the hearing record, must be submitted to Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3662, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-8024.

The hearing will be held in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Hearing: Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room

N3662, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523–8024.

Proposal: Mr. James Foster, Occupational Safety and Health Administration, Office of Information, Room N3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: OSHA published a Notice of Proposed Rulemaking on February 17, 1984 (49 FR 6280), which proposed to revise § 1926.550, Crane and Derricks, of the Construction Industry Standards, by adding a new paragraph (g). Interested persons were given until April 17, 1984 to submit comments pertaining to the proposal. The notice of proposed rulemaking also informed the public of the oppportunity to request an informal public rulemaking hearing on the proposal.

OSHA received 58 written comments in response to the proposal, including a request for an informal hearing.

Extension of Comment Period

To ensure the fullest participation of interested parties, OSHA is extending the period in which written comments may be submitted on the proposed rule until August 10, 1984. All written comments will become part of the record upon which the final rule will be based. Commenters are requested to provide substantive data and documentary evidence in support of their views and arguments on the proposal.

Public Hearing

OSHA has scheduled an informal public hearing to begin on September 11, 1984 to examine specific issues raised in the comments. The issues on which comments and testimony are specifically invited are listed below.

1. OSHA seeks comments on whether the use of cranes or derricks to hoist personnel platforms should be limited to specific circumstances, and if so, how should those circumstances be specified in the rule.

OSHA proposed, in paragraph 550(g)(2), to permit cranes or derricks to hoist personnel platforms only when their use is as safe as the erection, use, or dismantling of conventional means of reaching the worksite, or when those means are either more hazardous or are not possible because of structural design or worksite conditions. This limitation was specifically highlighted at 49 FR 6281 as an issue for comment.

Some commenters endorsed the proposed language, or recommended revising it while still retaining a limit on such usage. Others argued that the hoisting of personnel platforms is inherently dangerous, can never be done safely, and therefore should be prohibited. Still others argued that an operation performed in accordance with the proposed rules is safe, and therefore should not be limited at all.

OSHA relied, in particular, on drafts of ANSI B30.5–1982, paragraph 3.2.2, and ANSI A10.28–1983 (which have since been finalized and published), in proposing permissible and proper uses for crane or derrick suspended personnel platforms. In addition, several large construction firms have developed related work practices which limit such uses. Furthermore, a leading hydraulic crane manufacturer has limited the circumstances under which it would consent to the lifting of personnel with one of its cranes. OSHA determined, during the development of the proposed rule, that the available evidence provided a sound basis for limiting the use of cranes or derricks to hoist personnel.

Several commenters objected to the terminology used to limit the use of cranes or derricks to hoist personnel. The terms "as safe as" or "more hazardous than" were criticized as vague and unenforceable.

One of the strongest objections to this language was submitted by the Manufacturers of Telescoping and Articulating Cranes Council (MOTACC). MOTACC stated that for heights less than 100 feet, and for excavations, an alternative means is always available that is both feasible and safer than the use of crane or derrick suspended personnel platforms; even a boom-attached personnel bucket is always safer than a platform suspended on the rope. MOTACC also stated that the shifting to the employer of the burden to decide whether the use of a crane or derrick suspended personnel platform is "as safe as" some other means of transporting personnel falsely presumes that the average construction contractor will always have the requisite knowledge and judgement to make a correct determination in this regard.

OSHA acknowledges that the phrases "as safe as" or "more hazardous than" will require a subjective determination, in the absence of specific criteria. That same criticism can also be applied to terms such as "the most practical (or feasible) means." Although subjective, terms such as these are found in practically every current code or work practice.

OSHA solicits additional information, particularly any quantitative risk analysis or definitive study which would assist in resolving the issues which have been raised. OSHA would, in particular, appreciate comment and testimony on these questions:

- Should the practice of hoisting personnel be limited or not? Why?
- If a limitation is justified, what wording should be used to ensure that the limitation is clear, concise, protective, and enforceable? What criteria could be used to determine compliance with such limiting language? Recommendations should be accompanied by supporting data and information.

2. Two commenters have disputed OSHA's determination that derating a crane's capacity by 50 percent would double the wire rope safety factors. Although OSHA did not propose to require the safety factors for the boom ropes and pendants to be doubled, it stated in the Preamble (49 FR 6282) that the 50 percent derating would result in a doubling of those safety factors. The comments indicated that under two circumstances, a 50 percent derating may increase a crane's margin of stability without proportionately increasing rope factors of safety.

One commenter stated that the number of parts of fall lines must remain the same for the 50 percent derating to have a resultant doubling of the load line safety factor. OSHA seeks comment on this issue.

Comments also indicated that the 50 percent derating does not double the safety factors of the boom running and pendant ropes at low angles to the horizontal plane. Those comments indicated that at these low angles, the tension in these ropes is determined more by the weight of the boom than by the weight of the lifted load.

OSHA solicits comment on whether employees in a crane suspended personnel platform would be exposed to a significant risk if the safety factors for the boom hoist ropes and pendants were not doubled. Commenters are requested to provide substantiation of the risk and to submit recommendations for the language of the rule.

If the data supports an increase in the safety factors for the boom hoist ropes and pendants, then it appears that the boom angle or the hook load will need to be limited. At least two approaches to this problem have been suggested.

One recommended solution is for the employer to consult the manufacturer for the appropriate boom angle and/or hook load in each specific situation. OSHA solicits comment on the practicality of such a rule.

Another possibility would be for OSHA to state a limit on the boom angle that would be appropriate for all

situations. If that is a practical solution, what should be the maximum angle, and what is the justification for it?

OSHA also received a comment that the load rating chart should be derated by 75 percent instead of 50 percent. That would result in some increase of the safety factors for the wire ropes and pendants, but that increase would vary with the boom angle. OSHA solicits comment on the feasibility and practicality of a 75 percent derating, and requests information on whether such a derating is necessary to assure employee safety.

3. Several commenters have suggested that OSHA should provide for a delayed effective date when publishing the final rule. This delay would provide manufacturers and users time to retrofit cranes and otherwise comply with the standard. OSHA solicits comment on whether such a delayed effective date would be necessary and, if so, how long it would take to come into compliance. OSHA solicits specific data on the number of cranes involved, the equipment that would necessitate such a delay, and any other additional information to justfy such a grace period.

4. Several commenters, including crane manufacturers, responding to Issue Seven in the proposal, have endorsed the concept of automatic (deadman) brakes. One commenter specifically mentioned that such breaks have been proven both feasible and effective on clutch driven cranes. OSHA solicits further comment on the desirability and feasibility of automatic brakes that will stop and hold the load upon release of the controls by the operator.

5. OSHA has received many comments on the proposed requirement that anti-two-blocking protection be installed on cranes and derricks used to hoist personnel. The comments ranged from assertions by users that anti-two-blocking equipment is undependable and infeasible, to statements by crane manufacturers, who have been selling anti-two-blocking equipment on hydraulic cranes, that such equipment is dependable and very effective. The manufacturers also stated that they require their systems to incorporate "control level lockout" or "stop and hold" features. Such features allow the machine to work only in a way that would keep the machine out of the two-blocking situtation. OSHA solicits additional comment on this issue, and also refers readers to Issue Four(c) in the proposal, at 49 FR 6283.

6. OSHA seeks comment regarding a recommendation to exclude the types of derricks covered by ANSI B30.6. One commenter stated that since such derricks are generally assembled, and in some cases designed, on the job site, the likelihood of an accident is higher than when using a crane. Further information is requested as to the current use of derricks to hoist personnel and the types of derricks used.

7. OSHA seeks comment on whether the scope of the standard should be broadened to cover all cranes, as was recommended by several commenters. If OSHA decides to broaden the rule's scope, would it have to change or add to the proposed rule's technical provisions? What would the required changes or additions be?

8. OSHA seeks comment on whether the combined requirements of proposed paragraph (g), and existing § 1926.550(f), *Floating Cranes and Derricks*, would provide sufficent protection for employees hoisted by floating equipment. If not, commenters are requested to provide background and justification for any recommendations for additional provisions.

9. It has been recommended that cranes used for pile driving and demolition be exempted from the power controlled load lowering requirements. OSHA realizes that free fall is necessary for such operation. However, OSHA solicits comments on whether such cranes without power controlled load lowering features should ever be allowed to hoist personnel. OSHA also solicits comment on the feasibility and associated costs of requiring that cranes used in such operations also be equipped with a drum that has the power controlled load lowering feature to use when hoisting personnel platforms.

10. In response to the proposed rule, several commenters recommended that additional requirements be included in paragraph 550(g). OSHA solicits comment on the related hazards and merits of the suggested additions, and welcomes suggestions for the wording of the rules. The commenters' recommendations are not expressed in precise regulatory language at this time, and are included to provide an opportunity for public comment. The recommendations are as follows:

A. The hoisting of any additional loads while hoisting personnel should be prohibited. (This refers to hoisting loads on the whip line while employees are in a platform on the main load line.)

B. Drum rotation indicators should be required.

C. Chain slings should be allowed for rigging the personnel platform.

D. Hand spliced slings should be prohibited for platform rigging.

E. Personnel platform lifts should be a single crane operation.

F. The hoist drum should have at least three wraps remaining on the drum at all times when using a personnel platform.

11. OSHA continues to seek information on the economic impact of the proposed regulation of crane or derrick suspended personnel platforms. Interested persons are encouraged to submit relevant economic information to OSHA to facilitate a complete determination of the anticipated regulatory impact of the standard.

Comments are invited on the above issues, as well as other relevant issues raised by the proposal.

Public Participation

Written comments on the proposal or on the issues listed in this notice must be postmarked by August 10, 1984. Four copies of these comments should be submitted to the Docket Office, Docket No. S–409, Room S–6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523–7894. All materials submitted will be available for inspection and copying at this address. In addition, under section 6(b)(3) of the Occupational Safety and Health Act, and 29 CFR Part 1911, an opportunity to testify orally concerning the issues raised in this notice will be provided at an informal public hearing.

Notice of Intention To Appear

Persons desiring to participate at the hearing, including those who previously requested that a public hearing be held, must file four copies of a notice of intention to appear with Mr. Tom Hall (address previously listed). This notice must be postmarked by July 27, 1984.

The notice of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center-Docket Office (address previously listed), must contain the following information:

1. The name, address and telephone number of each person to appear;

2. The capacity in which the person will appear;

3. The approximate amount of time required for the presentation;

4. The specific issue(s) that will be addressed;

5. A detailed statement of the position that will be taken with respect to each issue addressed; and

6. Whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence.

Filing of Testimony and Evidence Before the Hearing

Any person or organization requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide Mr. Tom Hall with four copies of the complete text of the testimony, including all documentary evidence. This material will be available for inspection and copying at the Technical Data Center-Docket Office. This material must be postmarked by August 10, 1984. Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with the above requirement may be limited to a 10 minute presentation, and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

Conduct of the Hearing

The hearing will commence at 9:30 a.m. on September 11, 1984, in the Auditorium of the Frances Perkins Department of Labor Building, with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. Proposed § 1926.550(g) will be reviewed in light of all testimony and written submissions received as part of the record, and a standard will be issued, or a determination will be made not to issue a rule, based on the entire record of the proceeding, including the earlier written comments and evidence received through the public hearing.

Authority

This document was prepared under the direction of Patrick R. Tyson, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

It is issued pursuant to Sec. 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655); Sec. 107 of the Construction Safety Act (83 Stat. 96, 40 U.S.C. 333); Secretary of Labor's Order No. 9–83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, D.C., this 12th day of June 1984.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

[FR Doc. 84–16274 Filed 6–19–84; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAR–FRL 2611–2; Docket No. AWO46MD]

Proposed Approval of a Revision to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On July 12, 1983 the State of Maryland submitted a revision to the State Implementation Plan (SIP) in the form of a Plan for Compliance (PFC) for the J.L. Clark Manufacturing Company (the Company) in Havre De Grace, Maryland. The proposed PFC ensures that the Company will come into compliance with Maryland's volatile organic compound (VOC) and visible emission (VE) regulations (COMAR 10.18.21.13B and 10.18.06.02B). Compliance is to be achieved by replacing coatings which now have a higher than allowable VOC content with compliance coatings. If replacement coatings cannot be developed by May 30, 1985, the Company will submit an alternative compliance plan. This plan, if accepted by the State, will be based on the alternative method for accessing compliance provided by COMAR 10.18.21.02C and will ensure compliance by October 1, 1985. If this plan is unacceptable, the Company must submit by July 1, 1985 a plan for the installation of control equipment, which will ensure compliance by March 1, 1986.

EFFECTIVE DATE: Comments must be submitted on or before July 20, 1984.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, (3AM10) Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106; ATTN: Ms. Pat Gaughan

Maryland Air Management Administration, Maryland Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201

All comments on the proposed revision submitted within 30 days of publication of this Notice will be considered and should be directed to Mr. James E. Sydnor at the EPA Region III address stated above. Please reference the EPA Docket number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Mr. James Topsale, P.E. or Mr. Paul Racette at the Region III address stated above or telephone 215/597–4553 or 215/597–2746.

SUPPLEMENTARY INFORMATION: The J.L. Clark Manufacturing Company, located in Havre De Grace, Maryland is a manufacturer of decorated metal containers and sheets. The coating operations at the Company are subject to the provisions of Sections 10.18.21.13B and 10.18.06.02B of the State of Maryland's Code of Maryland Regulations (COMAR). These regulations govern miscellaneous coating operations and visible emissions. The subject of this revision is a Plan for Compliance (PFC) in the form of a Secretarial Order between the Company and the Maryland Department of Health and Mental Hygiene (DHMH).

The program in the PFC will ensure that the Company comes into compliance with COMAR 10.18.21.13B and COMAR 10.18.06.02B as expeditiously as possible, but no later than March 1, 1986.

The Company's primary control strategy is to develop compliance coatings. The Company currently has 12 coating materials that must be replaced. The PFC provides a schedule which details the implementation of low solvent coatings use into the Company's production lines. In a June 15, 1983 letter to the Maryland Air Management

Administration (MAMA), the Company provided a schedule for each coating line which designates specific dates for product screening, limited commercial runs of screened material, full scale production runs, and the complete replacement of old inventories with the new coatings. By May 30, 1985, the Company is to meet the requirements of the VOC and VE standards for every coating used in production. Reasonable emission reductions are expected to occur each year before the compliance date. This plan includes any coatings added to the Company's production schedule after the signing (February 15, 1983) of the subject PFC. Coatings introduced after May 30, 1985 will be in compliance at the time of their introduction.

After May 30, 1985, all coating will be in in compliance with the regulations or the Company will submit an alternative compliance plan. The Company will first submit a plan to bubble their emissions into compliance. This must assure full compliance by October 1, 1985, and it involves the development of an "alternative method of assessing compliance" as provided by COMAR 10.18.21.02C.[1] If this plan is not found acceptable by the State, the Company will submit by July 1, 1985 a plan to achieve compliance through the installation of control equipment. This plan will assure full compliance by March 1, 1986.

The control equipment strategy includes a schedule indicating dates for submitting a permit to construct application, issuing purchase orders, initiating construction, and completing the installation and de-bugging of the control equipment.

EPA Evaluation

Based on our review of the PFC, EPA is today proposing to approve it as a SIP revision. The State of Maryland has certified that after adequate public notice, a public hearing was held with respect to the proposed SIP revision. The public notice was published on March 31, 1983 and on April 1, 1983, and the public hearing was held in Baltimore, Maryland on May 3, 1983.

EPA's proposed approval of this PFC is based in part on the State's demonstration that the Reasonable Further Progress curve will not be significantly affected by the plan, and on evidence that the plan will achieve compliance as expeditiously as possible. MAMA has submitted emission estimates that demonstrate reasonable reductions in VOC emissions on a year by year basis, starting in 1979 and ending in 1986. Emissions are reduced from 93.9 tons/year in 1979 to 41.0 tons/year in 1986, when full compliance will be achieved. The plan represents a schedule that achieves compliance as expeditiously as practicable. This conclusion is based upon MAMA's opinion, detailed information submitted by the Company and less detailed information on other companies who utilize similar coatings.

Conclusion

The Regional Administrator's decision to propose approval of the revised plan for compliance is based on a determination that the SIP revision meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for preparation, adoption and submittal of State Implementation Plans (SIP). The public is invited to submit to the EPA address stated above comments on whether the proposed revision to the State of Maryland's SIP should be approved.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. Pursuant to the provisions of 5 U.S.C. 605(b), the Administration has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1982).

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(42 U.S.C. 7401–7642)

Dated: April 26, 1984.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 84–16299 Filed 6–19–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[OAR–FRL 2611–7; EPA Docket No. 107–PA–15]

Air Programs; Commonwealth of Pennsylvania; Attainment Status Designations

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the Commonwealth of Pennsylvania to revise the attainment status designation of 20 areas in Pennsylvania with respect to TSP. EPA is also proposing to approve a request from the Commonwealth to revise the attainment status designations, at 40 CFR 81.339, of (20) counties in Pennsylvania from "Does Not Meet Primary Standards" (nonattainment) to "Cannot be Classified or Better Than National Standards" (attainment/unclassifiable) relative to the ozone National Ambient Air Quality Standards (NAAQS).

Additionally, EPA is proposing to disapprove the Commonwealth's request to redesignate (22) counties with respect to the ozone NAAQS. The intent of this notice is to discuss the results of EPA's review of the Commonwealth's redesignation request and to solicit public comments on the revisions and EPA's proposed action.

DATE: Comments must be submitted on or before July 20, 1984.

ADDRESSES: Copies of the proposed redesignation request and accompanying support material are available for public inspection during normal business hours at the following locations.

U.S. Environmental Protection Agency, Region III, Air Management Division, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, PA. 19106. ATTN: Donna Abrams

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA. 17120

FOR FURTHER INFORMATION CONTACT: Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597–9134.

All comments on the proposed revisions submitted within 30 days of publication of this notice will be considered and should be directed to Mr. Glenn Hanson, Chief of the PA/WVA Section at the EPA, Region III, Curtis Building, 6th and Walnut Streets, Philadephia, PA 19106, EPA Docket No. 107–PA–15.

SUPPLEMENTARY INFORMATION:

I. Background

TSP

The Pennsylvania Department of Environmental Resources has submitted to the U.S. Environmental Protection Agency (EPA), on July 5, 1983, a request to have the following areas redesignated with respect to TSP:

Conshohocken Boro, Troop Borough, City of Wilkes-Barre, Laureldale Borough, Temple Borough, Muhlenberg Township, and

[1] This regulation was proposed for approval by EPA in a separate **Federal Register** Notice issued at 49 FR 10129, March 19, 1984, under EPA Docket No. AW048MD.

Brownsville Borough redesignated from "Does Not Meet Secondary Standards" to "Better Than National Standards."

City of York, Carroll Township and Donora Borough redesignated from "Does Not Meet Primary Standards" to "Better Than National Standards."

City of Palmerton and the City of New Kensington redesignated from "Cannot be Classified to "Better Than National Standards."

City of Lancaster, Manheim Township, West York Borough, West Manchester Township, City of Johnstown, Dale Borough, Upper Beaver Valley (except Elwood City Borough and the City of New Castle) and Lower Beaver Valley (except Aliquippa Borough, Baden Borough, and Midland Borough) redesignated from "Does Not Meet Primary Standards" to "Does Not Meet Secondary Standards."

Eight (8) quarters of data were used to justify these proposed redesignations.

Redesignation Criteria for TSP

As stated in 40 CFR Part 50, the National Primary Ambient Air Quality Standards for particulate matter are as follows:

a. 75 micrograms per cubic meter-annual geometric mean.

b. 260 micrograms per cubic meter-maximum 24-hour concentration not to be exceeded more than once per year.

The National Secondary Ambient Air Quality Standards for particulate matter are:

a. 60 micrograms per cubic meter-annual geometric mean as a guide to be used in assessing implementation plans to achieve the 24-hour standard.

b. 150 micrograms per cubic meter-maximum 24 hour concentration not to be exceeded more than once per year.

Ozone

Under section 107(d) of the Clean Air Act (Act) the Administrator of EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for all areas within each State (see, FR 8962 (March 3, 1978)). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

On July 5, 1983, the Pennsylvania Department of Environmental Resources (PA DER) submitted a request to EPA to revise the § 107 attainment status designations for 42 counties based on the following two criteria:

1. Areas which currently are not required to have ozone monitors, are considered rural, are covered by statewide RACT regulations for VOC, and are not associated with any transportation control area, or

2. Areas which have air quality data justifying attainment redesignation.

In reviewing DER's redesignation request, EPA analyzed the monitoring data submitted by the Commonwealth, along with supplemental monitoring data from areas adjoining the counties requested for redesignation. EPA also analyzed the locations of the counties under consideration in relation to the proximity of other nonattainment areas.

Redesignation Criteria for Ozone

When considering a redesignation request for ozone, a number of criteria must be considered. The most important is the ozone NAAQS, which is specified in 40 CFR Part 50. The NAAQS for ozone is defined to be violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), 1-hour average) is greater than one (1.0). A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 ppm ("Guideline for the Interpretation of Ozone Air Quality Standard," EPA–450/4–79–003). The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (invalid or incomplete) have the same fraction of daily exceedances as observed on monitored days (EPA–540/4–79–003).

Specific criteria for ozone redesignation reviews are given in an April 21, 1983, policy memorandum from Sheldon Meyers, Director of U.S. EPA's Office of Air Quality Planning and Standards. This memorandum summarizes and clarifies existing policy for reviewing designations and provides new guidance on processing these actions.

For a non-monitored area, EPA considers its proximity to major precursor source areas (generally major urban area) and wind directions. Data from areawide ozone-precursor studies in the vicinities of major urban area, such as St. Louis and Philadelphia, as well as data from rural monitoring sites in Region III, indicate that ozone transport at significant levels can occur over considerable distances downwind from urban areas. Based on these studies and data, and in the absence of any monitoring data, counties immediately downwind from major urban areas are generally assumed to be nonattainment.

Given the regional nature of ozone concentrations, as confirmed in the St. Louis and Philadelphia studies, it is reasonable to assume that non-monitored counties adjoining monitored nonattainment areas are themselves probable nonattainment areas. The probability of nonattainment is particularly high in those counties which are both immediately downwind of major urban areas and adjoining geographically similar monitored rural nonattainment areas.

The results of EPA's review are presented below. The presentation is divided into two sections: proposed disapproval and proposed approval.

Proposed Disapproval

EPA finds that a redesignation of several Counties is not approvable at this time. Included below is a table which contains a brief explanation of the basis for each proposed disapproval:

Counties Requested by DER to be Redesignated Attainment Per Criteria (1) and EPA Comment

Adams
Adjacent to York Co. which has monitored nonattainment.

Bedford
Same monitor as Cambria Co. which has monitored nonattainment.

Carbon
Adjacent to and downwind of Lehigh, Northampton and Berks Counties which have measured nonattainment.

Centre
Adjacent to or within transport distance of Cambria and Perry Cos. which have measured nonattainment.

Clearfield
Adjacent to Cambria Co. which has measured nonattainment.

Crawford
Adjacent to Erie Co. and Ohio which have measured nonattainment.

Fayette
Adjacent to Washington Co. with measured nonattainment.

Franklin
Adjacent to Perry Co. with measured nonattainment.

Greene
Adjacent to Washington Co. with measured nonattainment. Also, part of the S.W. PA AQCR (Pittsburgh).

Indiana
Adjacent to Cambria Co. with measured nonattainment. Also, part of the S.W. PA AQCR (Pittsburgh).

Juniata
Adjacent to Perry Co. with measured nonattainment.

Lebanon
Adjacent to York and Lancaster Cos. which have measured nonattainment.

Monroe
In N.E. Corridor adjacent to Northampton Co. with measured nonattainment.

Northumberland
Adjacent to Perry Co. with measured nonattainment.

Pike
N.E. Corridor near Lackawanna Co. with measured nonattainment. Transport from S.E. PA. (Phila., ABE areas).

Schuylkill
Adjacent to Berks and Lehigh Cos. with measured nonattainment.

Snyder
Adjacent to Perry Co. with measured nonattainment.

Somerset
Adjacent to Cambria Co. with measured nonattainment.
Susquehanna
Adjacent to Lackawanna Co. with measured nonattainment.
Warren
Adjacent to Erie Co. with measured nonattainment.
Wayne
Adjacent to Lackawanna Co. with measured nonattainment.
Wyoming
Adjacent to Lackawanna Co. with measured nonattainment.

Proposed Approval

EPA finds that a redesignation of several counties in Pennsylvania is approvable at this time. Based on EPA's analysis of the proximity of these counties to major urban areas and on EPA's review of available ambient ozone monitoring data in nearby counties, EPA believes that 20 counties in Pennsylvania's redesignation request have attained the ozone NAAQS. Included below is a table which contains a brief explanation of the basis for each proposed approval with respect to criteria (1).

Counties Requested by DER to be Redesignated Attainment Per Criteria (1) and EPA Comment

Bradford
Rural area with no monitoring data adjacent to and downwind of Lycoming Co. which has measured attainment.
Cameron
Rural area with no monitoring data.
Clairon
Rural area with no monitoring data adjacent to or within impact area of Butler, Lawrence and Mercer Cos. which have measured attainment.
Clinton
Rural area with no monitoring data.
Columbia
Rural area with no monitoring data—adjacent to Luzerne Co. with measured attainment.
Elk
Rural area with no monitoring data.
Forest
Rural area—nearest monitors (Butler, Lawrence and Mercer Cos.) show attainment.
Fulton
Rural area with no monitoring data.
Huntingdon
Rural area with no monitoring data—adjacent to Blair Co. with measured attainment.
Jefferson
Rural area with no monitoring data.
McKean
Rural area with no monitoring data.
Mifflin
Rural area with no monitoring data.
Montour
Rural area with no monitoring data.
Potter
Rural area with no monitoring data.
Sullivan
Rural area—closest monitors are in Lycoming and Luzerne Cos. which show attainment.
Tioga
Rural area—downwind of Lycoming Co. with measured attainment.
Union
Rural area with no monitoring data.
Venango
Rural area with no monitoring data—downwind of Mercer, Lawrence and Butler Cos. which have measured attainment.

In addition to the preceding (18) counties proposed for approval per Criteria (1), there are two counties, Mercer and Lycoming, proposed for approval per Criteria (2).

Interested parties are invited to submit comments on this action. EPA will consider comments received within 30 days of publication of this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: May 8, 1984.

Stanley L. Laskowski,

Regional Administrator.

[FR Doc. 84-16398 Filed 6-19-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-111; RM-4557]

TV Market in Orlando-Daytona Beach, Melbourne, and Cocoa, Florida; Order Extending Time for Filing Comments and Replies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Extention of comment/reply comment period.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding to amend the Table of Major Television Markets by including Melbourne and Cocoa, Florida, in the Orlando-Daytona Beach, Florida, hyphenated market in response to petitions for rule making filed by Southern Broadcasting Corporation and by Good Life Broadcasting, Inc., respectively.

DATES: Comments must be filed on or before July 23, 1984, and reply comments must be filed on or before August 7, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Order Extending Time for Filing Comments and Reply Comments

In the matter of amendment of § 76.51, major television markets (Orlando-Daytona Beach, Melbourne, and Cocoa,[1] Florida; MM Docket No. 84-111, RM-4557.

Adopted: June 6, 1984.
Released: June 14, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making* (49 FR 7414, published February 29, 1984) issued in response to a Petition for Rule Making filed by Southern Broadcasting Corporation ("Southern") proposing to amend the list of the top 100 television markets set forth in § 76.51 of the Commission's cable television rules. Southern requested that Melbourne, Florida be added to the existing Orlando-Daytona Beach, Florida (#55) designation to create an Orlando-Daytona Beach-Melbourne, Florida hyphenated market designation. The comment and reply comment deadlines set forth in the *Notice* were April 16 and May 1, 1984, respectively.

2. On April 26, 1984, Good Life Broadcasting, Inc. ("Good Life") filed comments supporting the proposal and requesting that Cocoa, Florida be added to the existing designation to create an Orlando-Daytona Beach-Melbourne-Cocoa, Florida hyphenated market designation. Good Life, licensee of television Station WTGL-TV, Cocoa, Florida asserts that the case for expanding the hyphenated market to include Melbourne is also applicable to Cocoa, Florida, which is similarly situated in the market. Good Life urges acceptance of its late-filed comments, since they were hand-served on the other parties, no new facts are raised, and the deadline for reply comments was sufficient to accommodate responses to its comments.

[1] Cocoa has been added to the caption.

3. It appears that the determination of whether to grant Good Life's proposal to add Cocoa involves similar issues to that of Southern's proposal to add Melbourne to the existing hyphenated market designation. Thus, we believe it is appropriate and expeditious to decide those issues in the same proceeding. In order to allow other interested parties sufficient opportunity to comment on the proposal, we are extending the comment and reply comment periods in order to develop a sound and comprehensive record on which to base a decision on Good Life's proposal.

4. Accordingly, it is ordered, That the time for filing comments and reply comments in the captioned proceeding is extended to and including July 23, 1984, and August 7, 1984, respectively.

5. This action is taken pursuant to authority contained in sections 4(i), 5(d)(1) 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-16435 Filed 6-19-84; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 84-414; FCC 84-171]

Policies and Provisions for Interconnection of Private Land Mobile Radio Systems With the Public Switched Telephone Network Below 800 MHz

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making amending Part 90 of the Commission's Rules by proposing to eliminate geographic and other restrictions imposed on the interconnection of private land mobile stations with the public switched telephone network below 800 MHz. This would conform to the rules for interconnection above 800 MHz adopted by the Commission's Memorandum Opinion and Order, Docket No. 20846, 48 FR 29,512 (June 27, 1982).

DATES: Comments are due by July 19, 1984 and replies by August 3, 1984.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nia Chirigos Cresham, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Proposed Rulemaking

In the matter of amendment of part 90 of the Commission's Rules to Prescribe Policies and Regulations to Govern the Interconnection of Private Land Mobile Radio Systems with the Public Switched Telephone Network Below 800 MHz; PR Docket No. 84-414.

Adopted: April 26, 1984.
Released: June 12, 1984.

By the Commission.

Background

1. In 1978, the Commission issued a *First Report and Order* establishing rules to govern the interconnection of private land mobile radio systems with the public switched telephone network (PSTN) in the bands below 800 MHz.[1] Interim rules were applied to the bands above 800 MHz. The rules for interconnection below 800 MHz included: (1) Geographic limitations on all interconnected systems within 75 miles of 25 of the nation's largest urban areas in the Automobile Emergency, Business, Special Emergency, Special Industrial and Taxicab Radio Services; [2] (2) special provisions covering the use of internal systems of communication in conjunction with the operation of private land mobile stations; (3) special provisions governing the use of dial-up telephone circuits to control land mobile radio stations; and (4) special requirements pertaining to the operation of interconnected radio stations, such as channel monitoring by the control operator, and time limitations on the length interconnected communications. A limitation was also placed on the length of initial access transmissions to land mobile stations from the PSTN. Three seconds were allowed to alert a mobile station operator at which time the transmitter would shut down. The mobile operator then had to reinitiate the communication. In simplex operations, transmissions were limited to 30 seconds prior to shut down. Timers were required to be installed at all base station transmitters which would limit intercommunications to three minutes, prior to system shut down. We also issued separate regulations for paging and two-way voice and data communications.[3] Finally, we permitted licensees of existing interconnected systems to continue using them until January 1, 1984. On or prior to this date, however, all of these systems were to be brought into compliance with the rules we adopted in the *First Report and Order.*[4]

2. In 1982, we released our *Second Report and Order* adopting final rules to govern the interconnection of 800 MHz stations. After reviewing the entire history of this proceeding and re-affirming that interconnection in the private land mobile services was in the public interest,[5] we adopted rules which were much less restrictive than those adopted in the *First Report and Order.*[6] We concluded that eligibles in the private services should have "freedom to use state-of-the-art equipment and systems design" and that their use of their radio systems in an interconnected mode should not be "fettered unnecessarily by artificial limitations and restrictions." [7] We decided not to adopt any geographical, radio service or time limit restrictions for the bands above 800 MHz.[8] We also removed the interim restrictions at 800 MHz which required interconnection to take place at a licensee's premises and which prohibited interconnection at a common point by a group of licensees.[9] In so doing, we concluded the effect of this rule was "unnecessarily inefficient" and denied private radio licensees and users alternatives such as non-profit sharing of telephone service and interconnection equipment which "may be economically more desirable." Interconnection was permitted in a manual or automatic mode and there were no time limits

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[1] *First Report and Order*, Docket No. 20846, 69 FCC 2d 1831 (1978), 43 FR 38,396 (August 2, 1978).

[2] *Id.* at paragraph 4.

[3] *Id.* at paragraph 5; *See, Memorandum Opinion and Order*, Docket No 20846, FCC, for more detailed analysis of these rules.

[4] *Id.* Appendix B, § 90.951(f).

[5] "Modern society could not function as it does without telephone communications, and information transmitted over private radio facilities often originates from a telephone and *vice versa.* Without interconnection, transfer of such information between radio and telephone facilities can only be accomplished orally through a third party, with the possibility of error. For this reason we concluded in *Carterfone*, 13 FCC 2d 420 (1968), that interconnection of private radio and telephone facilities is in the public interest, and it increases the utility both of radio facilities and the telephone facilities involved. Even parties opposing permissive interconnection herein do not deny this. Their main concern, rather, relates to the way in which interconnection of private systems to telephone facilities should be accomplished * * *. In sum the need for interconnection at 800 MHz is clear." *Second Report and Order*, Docket No. 20846, 89 FCC 2d 741 (1982) at paragraph 42.

[6] *Second Report and Order, supra*, at paragraph 37.

[7] *Id.*

[8] *Id.*, at paragraph 50.

[9] *Id.*, at paragraph 49.

imposed on the length of communications. Finally, there were no requirements placed on licensees to employ specially designed channel monitoring equipment.[10] However, Specialized Mobile Radio System (SMRS) base station licensees were prohibited from making arrangements for the telephone service. These changes in the regulatory structure were made to promote an increase in the utility of private land mobile systems by facilitating information flow [11] and maximizing the consumer choices of radio users, thereby serving the public interest as a whole.[12]

3. Petitions were received to reconsider various aspects of the *Second Report and Order*. On reconsideration, the *Second Report and Order* was modified by a *Memorandum Opinion and Order* which also addressed the effect of the "The Communications Amendments Act of 1982" on the rules governing the interconnection of private land mobile radio transmitters licensed to operate at 800 MHz.[13] The *Memorandum Opinion and Order* further amended the rules to allow more flexibility for licensees of shared stations to obtain telephone service individually, jointly, or through third parties (including SMRS base station licensees) in recognition that this could facilitate the process to the betterment of the general public, as long as this telephone service was provided on a non-profit, non-resale basis. In addition, we rejected arguments that the interconnection device or "patch" is part of the telephone service and should be provided by an authorized carrier. We determined that the patch is simply an unlicensed piece of electronic gear broadly manufactured and available from many sources and there was no public interest reason for regulating the manner in which it was obtained.[14] We therefore allowed licensees to secure the device in the open market under whatever terms they wished. This *Second Report and Order* did not, however, alter the restrictions enumerated in the *First Report and Order* on systems operating below 800 MHz.

4. As already pointed out, in the *First Report and Order* we permitted licensees of existing interconnected systems operating below 800 MHz to continue to use them under the rules which applied prior to 1978 until January 1, 1984. By January 1, 1984, all of these systems were to be brought into compliance with the rules adopted in 1978. However, in view of the decisions reached in our *Second Report and Order*, and our action noted here proposing new rules to govern interconnection in below 800 MHz, we released an *Order* on December 30, 1983, suspending the January 1, 1984 compliance date for the existing interconnected systems operating below 800 MHz.[15] We are now reviewing all of our below 800 MHz interconnection rules and policies.

Proposal

5. In view of the new legislation addressing the use of interconnection by private land mobile licensees, and recent technological developments facilitating the use of interconnection, we are initiating this proceeding in order to liberalize our rules governing interconnection below 800 MHz as we have done above 800 MHz.[16] By reducing the restrictions imposed on interconnected systems below 800 MHz, we intend to encourage businesses to more effectively and efficiently utilize their private land mobile communications systems, thus promoting the public interest as a whole in better, more cost effective and efficient private communications systems.

6. For example, in our *First Report and Order*, we placed geographic limitations on the use of interconnected systems below 800 MHz in the Special Emergency, Business, Automobile Emergency, Special Industrial and Taxicab Radio Services. Interconnection is only permitted in these services if the base station site of the interconnected facility is located at least 75 miles from the centers of 25 urbanized areas identified in the rules.[17]

7. By way of contrast no geographic limitations were imposed on interconnection in the bands above 800 MHz.[18] Instead interconnection was made secondary to dispatch operations. This approach sought to avoid the limitations inherent in absolute preclusion of interconnection while at the same time seeking a method of assuring the primacy of dispatching. This approach has thus far worked at 800 MHz and we now propose to apply it below 800 MHz, although we recognized that channel sharing is much more prevalent below 800 MHz and thus may pose some additional complications. Commentors are therefore urged to consider carefully our proposal to eliminate geographic limitations in the bands below 800 MHz.

8. The restrictions on transmission time for interconnected systems were also not imposed in the bands above 800 MHz.[19] While timers were required to be installed at the base station transmitters below 800 MHz in order to facilitate disconnection, this rule was eliminated above 800 MHz by our *Second Report and Order* as being an unnecessary encumberance on the utility of the system to the licensee.[20] We now propose to eliminate these requirements below 800 MHz. This would include the three second limit on initial access tones and the three minute limitation on interconnected communications. While we are aware that there is a risk of increased channel occupancy due to longer transmission times we believe that this problem is controllable through mutual cooperation and coordination among licensees and that the increase in flexibility for interconnected systems will benefit private licensees and the public as a whole. Our rules give us broad discretion to impose solutions, should cooperation not work. See 47 CFR 90.173.

9. Additionally we propose to eliminate the equipment limitations imposed on transmissions made from the PSTN frequencies below 800 MHz. This would include the requirement that automatic monitoring equipment be installed at the base station to prevent activation of the transmitter when signals of co-channel stations are present. All of these actions we believe

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[10] *Id.*, at paragraph 50.

[11] *Id.*, at paragraph 39.

[12] *Id.*, at paragraph 43.

[13] *Memorandum Opinion and Order*, Docket No. 20846, released May 27, 1983, 48 FR 29,512 (June 27, 1983). The *Memorandum Opinion and Order* addressed Petitions for Reconsideration of the *Second Report and Order* by Telocator Network of America and the National Association of Regulatory Commissioners. The *Memorandum Opinion and Order* has been appealed by *Telocator Network of America* v. *FCC & USA*, No. 83–1905, and *People of the State of California and the Public Utilities Commission of the State of California, et. al.* v. *FCC & USA*, No. 83–1791. *See*, "The Communications Amendments Act of 1982", Pub. L. 97–259, 96 Stat 1087, September 13, 1982; see Section 120 (Section 331 of the Communications Act of 1934, as amended, is codified at 47 U.S.C. 332).

[14] *Memorandum Opinion and Order*, *supra*, at paragraph 16.

[15] *Order*, Docket No. 20846, 49 FR 1728 (January 13, 1984).

[16] *Second Report and Order*, *supra*; *Memorandum Opinion and Order*, *supra*.

[17] *First Report and Order*, *supra*, Appendix B, 47 CFR 89.951(c). This section is now contained in 47 CFR 90.477(d)(3). This section has been amended to 47 CFR 90.477(d)(1). *Order*, Docket No. released. This limitation did not apply to medical emergency systems licensed in the Special Emergency Radio Service in 450–470 MHz bands.

[18] *Second Report and Order*, *supra* at pps. 10 and 15.

[19] *First Report and Order*, *supra*, Appendix B, 47 CFR 89.954. This section is now contained in 47 CFR 90.483.

[20] *Second Report and Order*, *supra*, Appendix B, 47 CFR 90.483.

would further the objectives of both Congress and the Commission in removing unnecessary impediments to the use of private interconnected systems, and would encourage the use of new state-of-the-art technologies and equipment. It is also consistent with the Commission's mandate to promote rapid and efficient communications and to encourage the larger and more efficient use of radio.[21]

10. When we amended the rules, in our *Second Report and Order,* to provide more flexibility for interconnection in the bands above 800 MHz, we concluded that the effect of the rules restricting common point interconnection was unnecessarily inefficient and denied private radio licensees and users alternatives which may be economically more desirable. We therefore eliminated the restriction confining 800 MHz interconnection to the licensees' premises, and allowed it at common locations.[22] On reconsideration of the *Second Report and Order,* we amended our rules to conform to "The Communications Amendments Act of 1982," and allowed private licensees to obtain telephone service from any duly authorized carrier either individually or jointly on a non-profit cooperative basis. We also permitted third parties to act as ordering agents in obtaining telephone service for licensees and users if the service was obtained on a non-profit, non-resale basis.[23] We now propose to eliminate the restrictions on common point interconnection by private licensees below 800 MHz, as long as the telephone service is provided on a non-profit, cost-shared basis.

11. In addition, we are proposing an amendment to 47 CFR 90.476 to clarify that stations operating on 12.5 kHz offset frequencies in the 450–470 MHz band or on the frequencies set forth in § 90.75 with the limitations (c)(4) and (c)(36) attached, are exempt from the interconnect provisions of § 90.477 and § 90.483. We are also proposing to revise our definition of interconnection in 47 CFR 90.7, in order to conform to the language contained in the new legislation.

12. In summary, we propose to make the following amendments to our rules: (1) eliminate the geographic restrictions imposed below 800 MHz; (2) eliminate the time, signal and equipment limitations below 800 MHz; (3) eliminate the restrictions on common point interconnection below 800 MHz, as long as the telephone service is provided on a non-profit, cost-shared basis; (4) amend and clarify 47 CFR 90.476; and (5) revise the definition of interconnection in 47 CFR 90.7.

[21] 47 U.S.C. 151 303, 332(a).

[22] *Second Report and Order, supra,* at paragraph 49.

[23] *Memorandum Opinion and Order, supra,* at paragraph 15.

Initial Regulatory Flexibility Analysis

13. The Commission believes that its rules governing the interconnection of private land mobile radio systems with the PSTN below 800 MHz should be revised to be consistent with the rules governing interconnection above 800 MHz and the intent of "The Communications Amendments Act of 1982."

14. The Commission seeks to pursue its objective to promote rapid and efficient communications and encourage larger and more effective use of radio by enhancing the ability of small and large businesses to employ interconnection in their private communications systems in furtherance of the public interest.

15. The action proposed is in furtherance of Sections 4(i), 303(g), 332(a) and 403 of "The Communications Act of 1934, as amended".

16. This action may impact both small and large businesses, licensees, and users since it will allow for more liberal use of interconnection between private land mobile radio stations licensed to operate below 800 MHz with the PSTN. Since private radio communications which are interconnected with the PSTN may be longer than typical dispatch communications, the channels may be more congested than they would be in the absence of interconnection. The possibility of increased channel congestion must be balanced against the increased flexibility private licensees will have in meeting their communications needs. Therefore, we may anticipate both favorable and unfavorable impacts due to the relaxation of the restrictions on interconnection of private land mobile radio systems below 800 MHz. On balance, we believe the favorable impacts greatly outweight those that may be unfavorable. However, we invite comments from interested parties which specifically address this initial regulatory flexibility analysis.

17. There are no federal rules which overlap, duplicate or conflict with these rules.

18. There are no significant alternatives minimizing the impact on small entities and consistent with the stated objective. The *status quo* would constitute a continuing burden.

Procedural Matters

19. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding, must prepare a written summary of that presentation. On the day of that oral presentation, a written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

20. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to the procedures set out in § 1.415 of the Commission's Rules, 47 CFR 1.415, interested persons may file comments on or before July 19, 1984, and reply comments on or before August 3, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

21. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials.

Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M Street NW., Washington, D.C.

22. For further information concerning this rule making contact Nia Chirigos Cresham of the Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 634–2443.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

PART 90—[AMENDED]

Part 90 of Chapter I of Title 47 of the Code of Federal Regulation is Proposed to be amended as follows:

1. Part 90—Private Land Mobile Radio Services § 90.7 is amended by revising the definition of *Interconnection* to read as follows:

§ 90.7 Definitions.

* * * * *

Interconnection. Connection through automatic or manual means, of private land mobile radio stations with the facilities of the public switched telephone network to permit the transmission of messages or signals between points in the wire line or radio network of a public telephone company and person served by private land mobile radio stations. Wire line or radio circuits or links furnished by common carriers used by licensees or other authorized persons for transmitter control (including dial-up transmitter control circuits) or used as an integral part of an authorized, private internal system of communication or as an integral part of dispatch point circuits in a private land mobile radio station are not interconnected for purposes of this Rule Part.

2. Section 90.476 is revised to read as follows:

§ 90.476 Interconnection of fixed stations and certain mobile stations.

(a) Fixed stations and mobile stations used to provide the functions of fixed stations pursuant to the provisions of paragraphs (c)(4) and (c)(36) of § 90.75 and § 90.267 are not subject to the interconnection provisions of § 90.477 and § 90.483 and may be interconnected with the facilities of common carriers, subject to applicable tariffs.

(b) Mobile stations used to provide the functions of base and mobile relay stations pursuant to the provisions of paragraphs (c)(4) and (c)(36) of § 90.75 and § 90.267 are not subject to the provisions of paragraph (d)(3) of § 90.477 and may be interconnected with the facilities of common carriers, subject to applicable tariffs and subject to the provisions of paragraphs (d)(1), (d)(2) and (e) of § 90.477 and § 90.483.

3. In § 90.477, paragraph (b) is amended, paragraph (d) is removed, and paragraph (e) is redesignated paragraph (d).

§ 90.477 Interconnected systems.

* * * * *

(b) Interconnection with the public switched telephone network is authorized under the following conditions:

* * * * *

§ 90.483 [Removed]

4. Section 90.483 is removed in its entirety.

[FR Doc. 84–16434 Filed 6–19–84; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 669

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold public hearings and requests public comments on the Draft Environmental Impact Statement/Draft Fishery Management Plan (DEIS/FMP) for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands.

DATES: Written comments on the plan must be received by July 23, 1984. Individuals or organizations wishing to comment on the DEIS/FMP may do so at the public hearings. Hearings will be tape recorded and tapes will be filed as an official transcript of the proceedings. A written summary will be prepared. See **"SUPPLEMENTARY INFORMATION"** for dates, time, and locations of hearings.

Send comments to Mr. Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT: Mr. Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00198, 809–753–6910.

SUPPLEMENTARY INFORMATION: The hearings will deal with a proposal to implement an FMP for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands which establishes a management regime for the reef-associated finfish ranging from the shoreline to the 40-fathom contour within the Caribbean fishery conservation zone. This area of authority under the Caribbean Fishery Management Council extends throughout the Caribbean Sea and the Atlantic Ocean, adjacent to Puerto Rico and the U.S. Virgin Islands, seaward to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured, except where it has been modified to accommodate international boundaries.

Problems: (1) Declining catch-per-unit of effort (CPUE) and other evidence of overfishing have been documented; and (2) data needed for long-range management is insufficient.

Issue: (1) Conflicts among harvesters of the resource (i.e., trap poaching, etc.); (2) stocks of many, if not most, of the species in the unit range across state and international boundaries; and (3) ciguatera is a public health, utilizaiton, and marketing problem.

The objectives of the plan are: (1) To obtain the necessary data for management and monitoring; (2) to stop the declining trend in the resource: (a) To maintain adult stocks at levels that ensure adequate spawning and recruitment to replenish the populations, and (b) to prevent the harvest of species (i.e., snappers, groupers, and others) which are less than the optimum size; (3) reduce the opportunity for conflicts among harvesters of the resource; (4) promote compatible management, if not uniform, of the Caribbean species in the unit; and (5) help to solve "the ciguatera problem."

Optimum yield is all of the fishes in the management unit that can be harvested by U.S. fishermen under the provisions of the FMP, i.e., gear and size restrictions as well as closed seasons for certain species.

The Council proposes the following management measures for domestic fishermen: (1) Establish 1¼ inches (in the smallest dimension) as the minimum mesh size for fish traps; (2) require a self-destruct panel (not smaller than the funnel of the trap) and/or self-destruct door fastening in fish traps; (3) require owner identification and marking of traps, buoys, and boats (minimum marking requirements should be at least that of fishermen's license or boat registration number); (4) prohibit the hauling or tampering of another person's traps without owner's written premission, except by authorized enforcement officers; (5) prohibit the use of poisons, drugs, other chemicals, and explosives for fishing in the management area; (6) return to the sea immediately with a minimum amount of injury and in such a manner as to ensure maximum probability of survival of all yellowtail snapper, taken by any fishing method, that are less than twelve (12) inches in total length; (7) return to the sea with a minimum amount of injury and in such a manner as to ensure maximum probability of survival during the first year of management all Nassau grouper less than twelve (12) inches total length taken by any fishing method (the minimum size will be increased one inch per year until it is stabilized at 24 inches; (8) landings for Nassau grouper will be prohibited from January 1 to March 31 of each calendar year (fish of this species caught during this period must be returned to the sea immediately with a minimum amount of injury in such a manner as to ensure maximum probability of survival); and (9) gather catch/effort, length/frequency, as well as any necessary biological information, through the improvement of the existion State-Federal agreements formulated by NMFS, Puerto Rico, the U.S. Virgin Islands, and/or the Council's own data gathering program.

The hearings are scheduled as follows:

1. July 2, 1984, 7:00 p.m.—Conference Room of the Legislative Building, St. Croix, USVI
2. July 5, 1984, 7:00 p.m.—Conference Room of the Legislative Building, St. Thomas, USVI
3. July 9, 1984, 7:00 p.m.—Salon de Actos Alcaldia, Municipio de Culedra (Conference Room, Culebra Municipal Buillding), Puerto Rico
4. July 11, 1984, 2:00 p.m.—Community Center, Punta Santiago, Humacao, Puerto Rico
5. July 12, 1984, 2:00 p.m.—Lion's Club, Bo. Bajuras, Cabo Rojo, Puerto Rico
6. July 16, 1984, 2:00 p.m.—Cerromar Restaurant, Bo. Puerto Real, Vieques, Puerto Rico
7. July 18, 1984, 2:00 p.m.—EL Greco Terrace, Bo. Playita, Salinas, Puerto Rico
8. July 19, 1984, 2:00 p.m.—Arecibo's Yacht Club, Arecibo, Puerto Rico

Dated: June 14, 1984, 1984.

Roland Finch.

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-16307 Filed 6-19-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 120
Wednesday, June 20, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 15, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 108–W Admin. Bldg., Washington, D.C. 20250, (202) 447–4414.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

• Agricultural Cooperative Service
Alternative Ways for Small Farmers to Raise Equity Capital to Invest in New and Existing Cooperatives
Non-recurring
Individuals, Businesses: 290 responses; 300 hours; not applicable under 3504(h)
William R. Seymour (202) 447–8396.

Revised

• Economic Research Service
Cotton Ginning Charges and Related Information Annually
Businesses: 1620 responses; 270 hours; not applicable under 3504(h) Edward H. Glade, Jr. (202) 447–8776.

Extension (Burden Change)

• Agricultural Marketing Service
Application for Practical Classing Examination and Certificate Application for License (Cottonseed Chemist or Sampler)
CN–247, 248
Annually
Individuals, Businesses: 200 responses; 34 hours; not applicable under 3504(h)
Freddie S. Mullins (202) 447–2147.

Jane Benoit,

Acting Department Clearance Officer.

[FR Doc. 84–16483 Filed 6–19–84; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Blackfeet Reservation Indian Tribes in Montana

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

The termination date for the Notice published in the **Federal Register** (49 FR 1920) on January 16, 1984, shall be extended through July 31, 1984, because of continued drought conditions, shortage of livestock grazing and hay production.

Signed at Washington, D.C., June 14, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84–16384 Filed 6–19–84; 8:45 am]
BILLING CODE 3410–05–M

Feed Grain Donations for the Fort Peck Reservation Indian Tribes in Montana

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

The termination date for the Notice published in the **Federal Register** (49 FR 10320) on March 20, 1984, shall be extended through July 31, 1984, because of continued drought conditions, shortage of livestock grazing and hay production.

Signed at Washington, D.C., June 14, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84–16383 Filed 6–19–84; 8:45 am]
BILLING CODE 3410–05–M

Commodity Credit Corporation

Notice; Proposed Determinations With Regard to the 1985 Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1985 crop of extra long staple (ELS) cotton: (a) The loan level; (b) the established (target) price; (c) the national program acreage; (d) whether a voluntary reduction percentage should be proclaimed and, if so, the amount of such percentage reduction; (e) whether an acreage reduction program (ARP) should be established and, if so, the percentage of reduction to be made in accordance with such program; (f) whether to permit haying and grazing of Acreage Conservation Reserve acreage; (g) whether binding contracts should be required for producers desiring to participate in any acreage reduction program; (h) whether a land diversion program should be established and, if so, the percentage of diversion and the payment rate; (i) whether offsetting compliance should be required of producers as a condition of eligibility for loans and deficiency payments; and (j) the loan level for seed cotton. These determinations are required to be made

pursuant to the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act"), and the Commodity Credit Corporation (CCC) Charter Act.

DATE: Comments must be received on or before August 6, 1984 in order to be assured of consideration.

ADDRESS: Dr. Howard C. Williams, Director, Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Carol Skelly, Agricultural Economist, Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–6696. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major" since the proposed determinations are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of these proposed determinations.

The titles and numbers of the federal assistance programs that this notice applies to are: Title—Cotton Production Stabilization, Number 10.052 and Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It is necessary that the determinations for the 1985 crop of ELS cotton be made in sufficient time to permit ELS cotton producers to make plans for the production of their crop. Therefore, comments with regard to the followng proposed determinations must be received by August 6, 1984 in order to allow the Secretary an adequate period to consider the comments before making the program decisions.

Proposed Determinations

A. Loan Level for ELS Cotton

Section 103(h)(2) of the 1949 Act provides that the Secretary shall determine and announce the loan level for the 1985 crop of ELS cotton by November 1, 1984. The loan level must be established at not less than 50 per centum in excess of the loan level established for the 1985 crop of Strict Low Middling one-and-one-sixteenth-inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States. The final determination of the loan level for upland cotton is contingent upon data accumulated through October 15, 1984; however, the statutory minimum upland cotton loan rate is 55.0 cents per pound. Therefore, the minimum loan level for the 1985 crop of ELS cotton would be 82.5 cents per pound.

Comments on the appropriate level of the ELS cotton loan level, along with supporting data, are requested from interested persons.

B. The Established (Target) Price.

Section 103(h)(3)(B) of the 1949 Act provides that the established price for the 1985 crop of ELS cotton shall be 120 per centum of the 1985-Crop loan level. If the established (target) price was based upon the minimum loan level of 82.5 cents per pound, the established (target) price would be 99.0 cents per pound for the 1985 crop.

Comments are requested on the level of established (target) price for the 1985 crop of ELS cotton.

C. National Program Acreage.

Section 103(h)(4) of the 1949 Act provides that the Secretary shall proclaim a national program acreage (NPA) for the 1985 crop of ELS cotton by November 1, 1984. Such NPA may, however, be revised for the purpose of determining the allocation factor if the Secretary determines it necessary based upon the latest information. Any revision in the NPA shall be announced as soon as it has been made. The 1985 NPA shall be the number of harvested acres the Secretary determines will be necessary, based on the estimated weighted national average of the farm program payment yields for the 1985 crop, to produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the 1985–86 marketing year.

The NPA shall be subject to such adjustment as the Secretary determines necessary, taking into consideration the estimated carryover supply and the stocks not accounted for by official domestic consumption and export data, so as to provide an adequate but not excessive supply of ELS cotton for the 1985–86 marketing year. In no event shall the national program acreage be less than 60,000 acres. If an acreage reduction program is established for the 1985 crop of ELS cotton, the NPA determination will not be applicable.

A carryover of 50,000 bales is considered to provide an adequate, but not excessive, supply. If required, the likely national program acreage for the 1985 crop of ELS cotton is estimated to be:

(a) Estimated domestic consumption, 1985–86 (480 lb. net wt. bales), 59,000.

(b) Plus estimated exports, 1985–86 (480) lb. net wt. bales), 31,000.

(c) Minus estimated imports, 1985–86 (480 lb. net wt. bales), 3,000.

(d) Minus adjustment to bring stocks to desired level (480 lb. net wt. bales) [1] 42,000.

(e) Plus adjustment for stocks estimated not accounted for by official domestic consumption and export data (480 lb. net wt. bales), 10,000.

(f) Times 480 lbs. per bale, 28,400,000.

(g) Divided by estimated national average of farm program yields (lbs./acre), 675.

(h) Equal 1985 calculated National Program Acreage (acres), 39,111.

(i) Statutory minimum National Program Acreage (acres), 60,000.

In the event an NPA would be applicable for the 1985 crop, the NPA would be the statutory minimum of 60,000 acres.

Comments from interested persons on the NPA and the appropriate stock adjustment for the 1985 crop of ELS cotton, along with appropriate supporting data, are requested.

D. *Voluntary Reduction Percentage.* Section 103(h)(6) of the 1949 Act provides that the 1985 individual farm program acreages of ELS cotton eligible for payments shall not be further reduced by application of an allocation factor if the producer reduces the acreage of ELS cotton planted for harvest on the farm from the 1985-crop ELS cotton acreage base established for the farm by at least the percentage recommended by the Secretary in the proclamation of the national program acreage for the 1985 crop. If an acreage reduction program is implemented for the 1985 crop of ELS cotton, the

[1] The 1985 beginning stock level is estimated to be 92,000 bales. Therefore, the stock adjustment is 92,000 bales minus 50,000 bales equal 42,000 bales.

voluntary reduction percentage shall not be applicable to such crop. If required, the recommended national reduction percentage for the 1985-crop of ELS cotton would be:

(a) 1985 estimated ELS cotton acreage base, 68,000.

(b) Minus 1985 NPA, 60,000.

(c) Equals reduction needed from acreage base, 8,000.

(d) Divided by 1985 ELS cotton acreage base, 68,000.

(e) Equals 1985 crop reduction percentage, 12 percent.

Comments from interested persons with respect to the voluntary reduction percentage, if any, are requested.

E. *Whether an Acreage Reduction Program (ARP) Should be Established and, if so, the Percentage of Such Reduction.* Section 103(h)(8)(A) of the 1949 Act provides that the Secretary may establish a limitation on the acreage planted to ELS cotton if the Secretary determines that the total supply of ELS cotton will, in the absence of such limitation, be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable prices and to meet a national emergency. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each ELS-cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted ELS cotton acreage shall be ineligible for ELS cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of an acreage limitation shall be the average acreage planted on the farm to ELS cotton for harvest in the three crop years immediately preceding the year prior to the year for which the determination is made. For the purpose of determining the acreage base, the acreage planted to ELS cotton for harvest shall include any acreage which producers were prevented from planting to ELS cotton or other nonconserving crops in lieu of ELS cotton because of drought, flood, or other natural disaster or other condition beyond the control of the producers. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines necessary to establish a fair and equitable base.

A number of acres on the farm determined by dividing (a) the product obtained by multiplying the number of acres required to be withdrawn from the production of ELS cotton times the number of acres actually planted to ELS cotton, by (b) the number of acres authorized to be planted to ELS cotton in accordance with the acreage limitation established by the Secretary, shall be devoted to approved conservation uses in accordance with regulations issued by the Secretary. If an acreage limitation program is in effect for the 1985 crop of ELS cotton, the national program acreage, program allocation factor, and voluntary reduction provisions of section 103(h) of the 1949 Act will not be applicable to such crop. The individual farm program acreage shall be the acreage planted on the farm to ELS cotton for harvest within the permitted ELS cotton acreage established for the farm under the acreage limitation program.

Section 103(h)(8)(A) establishes for the 1984, 1985, and 1986 crops of ELS cotton an acreage base reserve equal to 5 percent of the total of the farm acreage bases established for the crop. Such reserve shall be in addition to the total of the farm acreage bases and shall be used by the county committees, in accordance with regulations of the Secretary, for making adjustments of farm acreage bases to correct inequities and prevent hardship, and for establishing bases for farms on which no ELS cotton was planted during the preceding four years.

The need for an acreage limitation program for the 1985 crop of ELS cotton will depend the projected level of ending stocks for the 1984–85 marketing year and the likely demand for ELS cotton in 1985–86. Estimates as of mid-May 1984 indicate that production may about equal utilization in 1984–85, resulting in ending stocks of an estimated 92,000 bales, well above the desirable level of 50,000 bales. No significant increases in demand are projected for the 1985–86 season; therefore, some reduction in production is likely to be needed to reduce stocks. Options under consideration at this time include no ARP, a 10-percent ARP, a 20-percent ARP, and a 25-percent ARP. However, future developments in weather conditions, market trends, and projections of supply and use could affect the suitability of various production adjustment programs. Options considered at the final determination stage may vary depending upon conditions in existence and information available at that time.

Interested persons are encouraged to comment on the need for an acreage limitation program for the 1985 crop of ELS cotton, and the appropriate percentage of any such reduction.

F. *Whether to Allow Haying and Grazing of Acreage Conservation Reserve (ACR) Acreage.* Section 103(h)(8)(A) of the 1949 Act provides that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion. The Secretary may authorize haying and grazing of land devoted to acreage conservation reserve (ACR).

Interested persons are invited to comment on the provisions concerning the grazing and haying of ACR acreage.

G. *Whether Contracts Signed by the Producer Should Be Binding at the End of the Enrollment Period for the 1985 ELS Cotton Program.* For the 1984 ELS Cotton Program, contracts signed by program participants are considered to be binding contracts. The contracts also provide for liquidated damages in the event the producer does not fulfill the terms and conditions of the contract. This type of contract is also under consideration for the 1985 ELS Cotton Program.

Interested persons are requested to comment on the use of binding contracts for the 1985 ELS Cotton Program.

H. *Whether a Land Diversion Program Should Be Established and, if so, the Extent of Such Diversion and the Level of Payments.* Section 104(h)(8)(B) of the 1949 Act provides that the Secretary may make land diversion payments to producers of ELS cotton, whether or not an acreage limitation for ELS cotton is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage to desirable goals. Such land diversion payments shall be made to producers who devote to conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers or in such manner as the Secretary determines appropriate. In the past, land diversion payments have been made based upon an offer rate system (i.e., specific rate per pound times the farm program payment yield).

Interested persons are encouraged to address the need for a land diversion program and the appropriate terms and conditions of such a program.

I. *Whether to Require Offsetting Compliance if An Acreage Reduction Program is Established.* Section 103(h)(13) of the 1949 Act provides that the Secretary may issue such regulations as the Secretary determines to be necessary to carry out the ELS cotton

program. In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms would have to ensure that all of the farms in which they had an interest were either in compliance with the program requirements or that the acreages of ELS cotton planted for harvet on each of such farms did not exceed the ELS cotton acreage bases which were established for such farms. Offsetting compliance was not in effect for the 1984 crop.

Interested persons are encouraged to comment on the need for offsetting compliance for the 1985-crop of ELS cotton is an acreage reduction program if established.

J. *Loan Level for ELS Seed Cotton.* Section 103(h)(17) of the 1949 Act provides that in order to assist producers in the orderly ginning and marketing of their ELS cotton production, the Secretary shall make recourse loans available to such producers on seed cotton in accordance with authority vested in the Secretary under the Commodity Credit Corporation Charter Act. Consideration is being given to the level at which loans should be made available for seed cotton under the 1985 program. The loan level presently being considered for seed cotton is 100 percent of the loan level which is applicable for that location for lint cotton adjusted to a lint basis.

Comments from interested persons are requested on the appropriate loan level for seed cotton and the method of adjustment to a lint basis for the purpose of determining loan value.

Consideration will be given to any data, views and recommendations that may be received relating to the above items.

(Sec. 103(h), Pub. L. 98–88, approved August 26, 1983)

Signed at Washington, D.C. on June 15, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84–16382 Filed 6–19–84; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Routt National Forest Grazing Advisory Board; Meeting

The Routt National Forest Grazing Advisory Board will meet July 24, 1984 at the Routt National Forest Supervisor's Office, 29587 West Highway 40, Steamboat Springs, Colorado. The Board will leave at 9:00 a.m. to review cattle allotments on the Yampa Ranger District, south of Steamboat Springs.

Other business will include: (1) A short business meeting, (2) recommendations on the use of range betterment funds, (3) recommendations concerning the development of allotment management plans.

The meeting will be open to the public. Persons who wish to attend and participate should notify Jim Webb, Routt National Forest (303–879–1722) prior to the meeting. Public members may participate in discussions during the meeting at any time or may file a written statement following the meeting.

Jack Weissling,

Forest Supervisor.

[FR Doc. 84–16407 Filed 6–19–84; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Environmental Statements; Availability; North Side Big Nestucca Agricultural Related Pollution Control RC&D Project Plan, Oregon

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); and Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the North Side Big Nestucca Agricultural Related Pollution Control RC&D Project Plan, Tillamook County, Oregon.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1220 SW Third Ave., 16th Floor, Portland, Oregon 97204, telephone 503–221–2751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jack P. Kanalz, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan to reduce agricultural-related pollution in the Drainage District ditch and the Nestucca Bay estuary. The planned works of improvement include the installation of animal waste systems on seven dairy operations. The systems involve collection, storage, distribution, and utilization of animal waste in accordance with local, state, and Federal regulations.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jack P. Kanalz.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: May 30, 1984.

(Calalog of Federal Domestic Assistance Program No. 10.901. Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dean F. Fisher,

Deputy State Conservationist.

[FR Doc. 84–16387 Filed 6–19–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Order 84–6–34]

Application of Armstrong Air Service, Inc., for Certificate Authority; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (Order 84–6–34).

SUMMARY: The Board is proposing to find Armstrong Air Service, Inc., fit, willing, and able and to issue it a certificate of public convenience and necessity authorizing it to provide schedule interstate and overseas air transportation of persons, property, and mail between all points in the United States and its territories and possessions, and scheduled all-cargo authority between Dillingham and New Stuyahok, Alaska. The complete text of this order is available as noted below.

Responses: All interested persons having objections to the Board issuing the proposed certificate shall file their objections in Docket 41732. Objections should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the parties listed in

Attachment A to the order. Objections shall be filed no later than July 6, 1984.

FOR FURTHER INFORMATION CONTACT: Phyllis Solomon, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–6–34 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–6–34 to that address.

By the Civil Aeronautics Board: June 14, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–16485 Filed 6–19–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84–6–30]

Application of 40-Mile Air, Ltd., for Certificate Authority; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (Order 84–6–30).

SUMMARY: The Board is proposing to find 40-mile Air, Ltd. (1) fit, willing, and able and issue it a certificate of public convenience and necessity authorizing it to provide scheduled interstate and overseas air transportation of persons, property and mail; and (2) reliable to provide essential air service at Chicken and Eagle, Alaska.

Responses: All interested persons having objections to the Board's issuance of the proposed certificate shall file, their objections in Docket 41972. Objections should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served on all persons listed in Attachment A to the order no later than July 16, 1984.

FOR FURTHER INFORMATION CONTACT: Phyllis Solomon, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202) 673–5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–6–30 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–6–30 to that address.

By the Civil Aeronautics Board: June 14, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–16484 Filed 6–19–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84–6–29]

Proposed Revocation of Air Carrier Certificates; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause, Order 84–6–29.

SUMMARY: The Board is proposing to revoke the air carrier certificates of Amerford Airways, Inc.; Cochise Airlines, Inc.; Gem Investors, Inc. d/b/a Golden Gate Airlines; Modern Airways, Inc.; Petroleum Air Transport, Inc. d/b/a Pat Air; and Pinehurst Airlines, Inc. for noncompliance with the insurance, reporting, and continuing fitness requirements for certificated air carriers.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings, shall file their objections with the Board and serve them upon the carrier or carriers involved, no later than July 16, 1984.

ADDRESSES: Objections should be filed in Docket 42284, and sent to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Collins, Regulatory Analysis Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5116.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–6–29 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 84–6–29 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 14, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–16486 Filed 6–19–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–469–054]

Ampicillin Trihydrate and its Salts From Spain; Final Result of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of Administrative Review of Countervailing Duty Order.

SUMMARY: On March 30, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ampicillin trihydrate and its salts from Spain. The review covers the period January 1, 1982 through December 31, 1982.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 12731) the preliminary results of its administrative review of the countervailing duty order on ampicillin trihydrate and its salts from Spain (44 FR 17484, March 22, 1979). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Spanish ampicillin trihydrate and its salts ("ampicillin"), an antibiotic which is a semi-synthetic penicillin. Such merchandise is currently classifiable under item 411.6000 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1982 through December 31, 1982 and four programs: (1) A rebate of indirect taxes upon exportation under the Desgravacion Fiscal a la Exportacion ("the DFE"); (2) an operating capital loans program; (3) a

short-term export credit program; and (4) research and development incentives.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine the potential aggregate net subsidy to be 1.67 percent *ad valorem* for the period January 1, 1982 through December 31, 1982. There were no known unliquidated entries of this merchandise during the period of review.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, of 1.67 percent of the entered value of any shipment of Spanish ampicillin entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: June 14, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-16401 Filed 6-19-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-055]

Acrylic Sheet From Japan; Clarification of a Scope of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Clarification of Scope of Antidumping Finding.

SUMMARY: As a result of a remand from the Court of International Trade the Department of Commerce excludes Kyowaglas-XA, a lead-impregnated acrylic sheet, from the scope of the antidumping finding on acrylic sheet from Japan.

EFFECTIVE DATE: June 10, 1984.

FOR FURTHER INFORMATION CONTACT: Shelia Forbes or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1976, the Treasury Department published in the **Federal Register** (41 FR 36497) an antidumping finding on acrylic sheet from Japan. On July 29, 1983, the Department of Commerce published in the **Federal Register** (48 FR 34490) a determination that Kyowaglas-XA, a lead-impregnated acrylic sheet, was within the scope of the finding. Kyowa Gas Chemical Industry Co., Ltd., the manufacturer of this merchandise, challenged our decision in the Court of International Trade. On May 18, 1984, in compliance with the Court's remand order, we redetermined that Kyowaglas-XA is not within the scope of the finding. On May 31, 1984, the Court approved our May 18, 1984 redetermination. We will instruct the Customs Service to proceed with the liquidation of entries of Kyowaglas-XA without regard to antidumping proceedings.

This notice is in accordance with the remand order of the United States Court of International Trade, *Kyowa Gas Chemical Industry Company, Ltd.* v. *United States,* Slip Op. 83-8-01226, May 31, 1984.

Dated: June 15, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-16404 Filed 6-19-84; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; Lahey Clinic Foundation, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-69R. Applicant: Lahey Clinic Foundation, Burlington, MA 01805. Instrument: Electron Microscope, Model EM-410LS. Manufacturer: N. V. Philips, The Netherlands. Intended use: See notice at 49 FR 21094. Instrument ordered: October 24, 1983.

Docket No. 84-157. Applicant: University of California, Los Angeles, Los Angeles, CA 90024. Instrument: Electron Microscope, Model EM 10CAS with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 49 FR 19562. Instrument ordered: March 2, 1984.

Docket No. 84-159. Applicant: New York Institute of Basic Research, Staten Island, NY 10314. Instrument: Electron Microscope, Model EM 420T with STEM System and Accessories. Manufacturer: Philips Gloeilampenfabrieken, The Netherlands. Intended use: See notice at 49 FR 19562. Instrument ordered: February 7, 1984.

Docket No. 84-160. Applicant: NASA, Hampton, VA 23665. Instrument: Electron Microscope, Model EM 420T with STEM System and Accessories. Manufacturer: N. V. Philips, The Netherlands. Intended use: See notice at 49 FR 19562. Instrument ordered: December 16, 1984.

Docket No. 84-161. Applicant: North Carolina State University, Raleigh, NC 27606. Instrument: Electron Microscope, Model EM 410LS with Eucentric Goniometer Stage and Accessories. Manufacturer: Philips Electronic Instruments, NVD, The Netherlands. Intended use: See notice at 49 FR 19563. Instrument ordered: February 3, 1984.

Docket No. 84-165. Applicant: Research Foundation of SUNY at Stony Brook, Stony Brook, NY 11794. Instrument: Electron Microscope, Model JEM-1200EX with Assessories. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 49 FR 19563. Instrument ordered: March 22, 1984.

Docket No. 84-166. Applicant: University of Rhode Island, Kingston, RI 02881. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 49 FR 19564. Instrument ordered: March 1, 1984.

Docket No. 84-169. Applicant: State University of New York/Upstate Medical Center, Syracuse, NY 13210. Instrument: Two (2) Electron Microscopes, Model JEM-100CX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 49 FR 19564. Instrument ordered: March 18, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron

microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-16491 Filed 6-19-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Miami

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-39. Applicant: University of Miami, Miami, FL 33149. Instrument: Combined Resonant Column & Torsional Triaxial Apparatus. Manufacturer: Sieken, Inc., Japan. Intended use: See notice at 49 FR 3236.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can simultaneously determine the dynamic shear modulus (G) and the Coulomb specific loss (delta, δ) OVER A WIDE RANGE OF STRAIN AMPLITUDE (1.0×10^{-4} to 5.0×10^{-1}) using the same (triaxial) specimen. The National Bureau of Standards advises in its memorandum dated June 7, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument of apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-16490 Filed 6-19-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-013]

Certain Steel Valves and Certain Parts Thereof From Japan; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain steel valves and parts thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or threatened with material injury, by imports of this merchandise. For two of the three firms investigated, we have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have determined that one producer should be excluded from this determination. Those firms that are subject to suspension of liquidation and the firm excluded from this action are indicated in the "Suspension of Liquidation" section.

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-4087.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that certain steel valves and certain parts thereof (valves) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). We have found *de minimis* margins for sales of valves produced by one firm investigated. The firms concerned are identified in the "Suspension of Liquidation" section of this notice.

We have found that the foreign market value of valves exceeded the United States price on 14.8 percent of the sales we compared. These margins ranged from 0.15 percent to 72.8 percent. The overall weighted-average margin on all valve sales compared is 2.5 percent. The weighted-average margins for individual companies investigated are presented in the "Suspension of Liquidation" section.

Case History

On September 22, 1983, we received a petition filed by counsel for Condec Flow Control Group of the Lunkenheimer Company; Cooper Valve Company; Crane Company; Mark Controls Corporation; the Wm. Powell Company; Rockewell International Corporation, Flow Control Division; Smith Valve Corporation; Stockham Valves & Fittings, Inc; Velan Valve Corporation; Henry Vogt Machine Company; and Walworth Company as individual petitioners and collectively as the Valve Manufacturers Association Fair Trade Council. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petitioners alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports materially injure, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on October 11, 1983 (48 FR 46267). The ITC found, on November 7, 1983, that there is a reasonable indication that imports of valves materially injure, or threaten material injury to, a United States industry.

The petitioners alleged that at least 13 Japanese companies produce the subject valves for export to the United States. However, we identified 3 producers and exporters which account for approximately 85 percent of the subject valves sold for export to the United States. We presented questionnaires in Japan to these producers and exporters on October 28, 1983.

On November 10 and 21, 1983, we received letters from counsel for the

Japanese valve producers and exporters requesting additional time in which to respond because of the complicated nature of the products involved. Extensions were granted and we received responses on December 16 and 19, 1983. We received responses from the following companies: Hitachi Metals, Ltd. (Hitachi), Kitz Corporation (Kitz) and Takamisawa Koki Mfg., Ltd. (TKM). On February 9, 1984, at the request of the petitioners, we postponed the preliminary determination for 30 days (49 FR 7843).

On March 30, 1984, we preliminarily determined that valves from Japan were being sold in the United States at less than fair value (49 F.R. 13563). At the request of the petitioners, we held a hearing on May 15, 1984, to allow the parties an opportunity to address the issues arising in this investigation.

Scope of Investigation

The merchandise covered by this investigation consists of "wedge gate," "swing check," and "globe" valves, and certain parts of the foregoing, of steel, currently provided for under item number 680.17 of the Tariff Schedules of the United States. "Certain parts" include machined valve bodies and partially completed valves consisting of machined valve bodies imported with one or more of the following parts: bonnet, stem wedge, handle or seat rings. Pursuant to a letter from counsel for the petitioners, dated October 25, 1983, the product description as stated in the Notice of Initiation was amended to exclude bellows seal valves and non-machined valve bodies.

Because Hitachi, Kitz and TKM produced and sold approximately 85 percent of the valves exported from Japan to the United States during the period of investigation (April 1 to September 30, 1983), we limited our investigation to them.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United State Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for the majority of sales by the Japanese products, because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the packed price to unrelated purchasers in the United States under the following terms: (1) f.o.b. foreign port, (2) f.o.b. delivered to various customer designated locations, or (3) ex-dock. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, discounts for prompt payment, foreign brokerage and handling charges, ocean freight, marine insurance, U.S. brokerage and handling charges, U.S. customs duties, and U.S. inland freight. We used exporter's sales price to represent the United States price of a portion of the merchandise sold by Hitachi because the merchandise was sold to unrelated purchasers after importation into the United States. For these sales, we made additional deductions, where appropriate, for credit costs and other selling expenses incurred in the United States.

Foreign Market Value

In accordance with section 773(a) of the Act, with the exception of some sales by TKM and Kitz, we calculated foreign market value based on home market sales. For purposes of determining similar merchandise under section 771(16) of the Act, we made comparisons between valves of the same type (e.g., wedge gate, globe or swing check), body materials (e.g., carbon, alloy, or stainless steel), pressure classification, size and based on whether they were forged or cast. In the cases of TKM and Kitz, there were no sales in the home market to use as a basis for foreign market value for some categories of valves. Accordingly, as required in section 773(a)(1)(B) of the Act, we selected sales for export to a country other than the United States (a "third country") as the basis for foreign market value or, if there were no third country sales for those categories, we determined foreign market value on the basis of constructed value in accordance with section 773(a)(2) of the Act.

Where we used home market prices as the basis for foreign market value, we calculated the home market prices for each type of valve on the basis of delivered packed prices to unrelated purchasers. For these prices, we deducted, where appropriate, rebates, foreign inland freight and foreign inland insurance. We made adjustments, where appropriate, for differences in circumstances of sale, including credit expenses, advertising expenses, inspection and documentation expenses, and warranty and servicing expenses in accordance with § 353.15 of our regulations. When there were commissions on sales in the home market and none on sales to the United States, we made adjustments for the differences between commissions in the home market and indirect selling expenses on sales to the United States, used as an offset to the home market commissions, in accordance with § 353.15(c) of our regulations. We also made adjustments for the cost of materials, labor and direct factory overhead associated with differences in the physical characteristics of the merchandise in accordance with § 353.16 of our regulations. We also deducted home market packing costs, where appropriate, and added packing costs incurred on sales to the United States.

We disallowed several claims for adjustments in calculating foreign market value. We denied Kitz's requested adjustments for technical consulting service expenses because we determined at verification that these expenses are not directly attributable to sales of the subject merchandise.

We also denied Kitz's request for a deduction of indirect selling expenses in the home market to offset U.S. commissions because Kitz provided no information relating to the amount of its U.S. commissions against which such an offset could be made. In addition, Kitz also claims an adjustment for commissions on sales in the home market. If the amount of the U.S. commission were known, an adjustment for differences in the commissions in the two markets could be made in accordance with §§ 353.15 (a) and (b) rather than allowing an offset under § 353.15(c).

We used sales to third countries as the basis for foreign market value for a portion of TKM's sales. We calculated the third country prices on the basis of the ex-works or f.o.b. Japanese port, unpacked price to unrelated purchasers in four separate countries. We did this because there were no sales to a single country that provided an adequate sample for determining the foreign market value for all categories of valves not sold in the home market. We made deductions, where appropriate, for Japanese brokerage and handling charges and inland freight. We made adjustments, where appropriate, for credit expenses in accordance with § 353.15 of our regulations. Since there were no commissions on sales to the United States, we made adjustments, where appropriate, for the difference between commissions in the third country sales and indirect selling expenses on sales in the United States, as an offset to the third country commissions, in accordance with § 353.15(c) of our regulations. We also made adjustments for the cost of materials, labor and direct factory

overhead associated with differences in the physical characteristics of the merchandise in accordance with § 353.16 of our regulations. We added the packing cost incurred on sales to the United States.

For the remainder of TKM's sales and for a portion of Kitz's sales, we used constructed value as the basis for foreign market value in accordance with section 773(e) of the Act. We calculated the cost of materials, fabrication, general expenses, profit, and the cost of packing. The amounts added for general expenses were the same as those expressed in the companies' financial statements. These amounts were higher than the statutory minimum of 10 percent of the sum of material and fabrication costs. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses.

Where we used exporter's sales price, we deducted home market indirect selling expenses to offset U.S. selling expenses.

Verification

In accordance with section 776(a) of the Act, we verified all data used in reaching this determination by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and selected documents containing relevant information.

Petitioners' Comments

Comment 1

The petitioners state that two of three respondents have understated their prices in the home market. They cite a consultant's report that was submitted with the petition as proof of this fact. Additionally, they state that the respondents' reported prices of stainless steel valves were "unnaturally" low compared with the prices of carbon steel valves in light of the higher material costs of stainless steel valves. They urge us to disregard the responses.

DOC Position

At verification, the verifiers interviewed the consultant who provided the market research data that served as the basis for the petition. They found that the consultant interviewed 10 Japanese home market customers but obtained price data from only three of them. The consultant obtained no documentation from any of these customers. He based list prices on a publicly available standard price list from Kitz and on a catalogue showing prices for cast iron valves. Such valves are not subject to the investigation. The verifiers established from various company records, including Kitz's internal price list, that the prices shown in the responses of all three respondents represent their actual transaction prices.

The petitioners submitted a second consultant's report which showed much lower Japanese home market prices than did the first report. Petitioners state that, "It is quite possible tht the actual home market prices of Kitz Corporation and of Hitachi Metals, Ltd., fell somewhere between the first and second reports' prices." Such "evidence" cannot be taken as proof that the respondents' data are erroneous in light of the significant evidence to the contrary which the verifiers obtained from the companies' records.

Further, the ratio of the cost of materials for stainless steel valves to that of carbon steel valves is not dispositive of the ratio of the prices for these valves, nor, if the ratios do not match, is this proof that the prices are erroneous. Many factors influence the pricing of valves. We found during verification that actual physical differences existed between valves with the same nominal descriptions. The valves in the Kitz response, however, did have a category code which alluded to such differences. The petitioners, in making comparisons of stainless steel valves to carbon steel valves, generally disregarded such differences. Further, the stainless steel valves used in the petitioners' comparison submitted in their April 4, 1984, letter to the Department were not "such or similar" to valves sold to the U.S. market and thus were not a proper basis for comparison.

Comment 2

If the response prices of Kitz and Hitachi are accurate, then sales in the home market are below cost. The Department should have self-initiated a cost of production investigation no later than the verification in April or should conduct a cost inquiry on an expedited basis before the final determination.

DOC Position

The petitioners made their sales below the cost of production allegation with 33 days remaining in the investigation. We have dismissed the allegation on the basis of timeliness. We estimate that the Department would require approximately 105 days to conduct a cost of production investigation. The petitioners have had the company responses since February 7, 1984, enough time to analyze the price data and make any cost allegations in a timely manner.

As to whether the Department should have initated a cost inquiry on its own, we do not agree with the petitioners' assertion. We developed some cost of production data for Kitz and Hitachi because, for some valves, neither company had sales of "such or similar" merchandise either in the home market or to third countries and we were forced to use constructed value to determine foreign market value. There were, of course, no home market or third country sales to which these costs could be compared, and therefore, there was no evidence of sales below cost of production. Other cost data which we obtained pertained only to the incremental costs for physical differences in merchandise. As stated in the response to Comment 1, after verification of the respondents' actual transaction prices, the Department had no reason to believe that the prices were either erroneous or unnaturally low; thus the Department had no bases upon which to self-initiate a cost of production investigation.

Comment 3

The respondents have underreported their sales to the U.S. Imports during the second and third quarters were $9.6 million while the respondents initially reported only $1.7 million or 40 percent of their sales. Even when the respondents allegedly reported 100 percent of their sales, there is a gap of $5.4 million between the respondents' reported values and the value of valves for the period as reported in official government statistics. There is a corresponding gap in the volume of sales. The Department should reconcile these differences or disregard the responses.

DOC Position

The exporters reported 100 percent of their sales in their initial response, valued at approximately $4 million. (They reported 100 percent of the sales initially agreed to be supplied to the Department. Hitachi has requested that it be required to report only 85 percent of its exporter's sales price data. The Department agreed, but later requested the remainder of Hitachi's sales which were provided). However, only 40 percent of sales were shipped as of the date of the response. Therefore, certain shipping and credit expenses were not known at the time of the response. The petitioners acknowledged this fact in their Feburary 24, 1984, letter and requested that the Department not include data on unshipped sales in its preliminary determination.

The petitoners' official statistics are for importations of valves into the United States, whereas the respondents' values are for sales during the period. The Department need not reconcile import data with sales data in order to make a determination concerning sales at less than fair value. The Department's task is to verify total sales for the period of investigation, not to reconcile sales with imports. We have verified the total value and volume of sales by all the respondents during the period of investigation.

Comment 4

The respondents have provided inadequate public summaries of their information and have been untimely in submitting their recent, revised submissions. In addition, the supporting documents obtained at verification will not be available to the petitioners.

DOC Position

The Department's practice has been to accept brief non-confidential summaries when respondents agree to release the confidential information under administrative protective order (APO). The respondents have satisfied this requirement.

The Department required the respondents to prepare supplemental sales information in time to allow verification of the data. They fulfilled this requirement, and, as the result of verification, the Department required the respondents to modify certain data. The revised responses were presented to the Department within a reasonable period after verification. Two weeks ofter the conclusion of the verification the petitioners were briefed by Department officials on the significant findings of the verification. At the briefing, the petitioners were told that even with the changes that resulted from the significant findings, the sales data base remained essentially as reported initially by the respondents. Thus the petitioners have had access to virtually all of the respondents' U.S. sales data since February 7, 1984. The revised responses were released under APO as soon as they were processed.

The Department does not release confidential verification documents under APO. Non-confidential documents obtained during verification have been inserted into the public record of this investigation.

Comment 5

Kitz provided inadequate data concerning "customized" valves in its initial submission and failed to adequately describe its valves in its new product coding system. Kitz has not made it clear how it wants the Department to treat these valves. The Department should therefore reject Kitz's submission and rely on data contained in the petition.

DOC Position

A review of the initial Kitz response showed certain deficiencies in the product designations used by Kitz, although those designations were generally the actual product codes used by the company. In response to a January 22, 1984, request by the Department, Kitz developed a new coding system and submitted a supplemental response containing the new codes on February 6, 1984. The new codes are described in a non-confidential letter submitted with the supplemental response. The new codes are much more descriptive than the original codes and allow identification of the Kitz valves in accordance with the "such or similar" merchandise criteria described in the "Foreign Market Value" section of this notice. The codes also identify certain other characteristics of the valves which denote differences between valves within the "such or similar" categories. However, the codes developed by Kitz, as well as the codes developed for the same purpose by the other respondents, do not fully describe each valve according to the hundreds of variations in features possible for each valve. It should be added that the actual product descriptions or "product figures" used by the companies are not always fully descriptive of the products either. While all company codes allowed differentiation among "such or similar" valves, the reporting of other characteristics differed from company to company. In addition, because, as a practical matter, all characteristics could not be reported, there were some instances for each company in which there were significant price variations among valves with the same nominal description.

Kitz assigned the letters A–D to its valves in order to distinguish, among the other things, whether a valve was "standard" or "custom". Custom valves have special specifications not identified in the basic code number. Kitz stated that "standard" valves were sold in the U.S. and that these valves should be compared to standard valves sold in the home market. Thus, Kitz reported sales of some valves with the same nominal description which differed as to whether they were "standard" product or "custom". Where non-identical "such or similar" valves were compared (i.e. valves with differing characteristics denoted by the codes), Kitz provided cost differentials based upon the incremental cost of the physical differences in the merchandise. Where no "such or similar" comparisons could be made, Kitz reported costs of production for use in the determination of foreign market vales. The Department sought to resolve questions concerning valve comparisons and apparent price discrepancies for values with the same nominal descriptions during verification.

The Department notified Kitz of its intent to review the differences in standard and custom valves in its verification outline, dated April 4, 1984. A draft of this outline was reviewed by the petitioners. A significant portion of the verification (and the report thereof) was devoted to an analysis of these differences. As noted in the report, certain sales were pre-selected (*i.e.*, denoted in the verification outline prior to verification) for viewing based upon this consideration. At the verification other sales were selected at random to analyze the internal specification sheets with regard to standard/customs features. The standard valves selected (both in the home market and those sold to the U.S.) either had no additional specifications or the specifications indicated features which are considered standard by the company. All "custom" valves contained features which substantially increased the incremental material and/or labor costs. Kitz used the same criteria for determination of standard valves in the U.S. as were used to determine standard valves sold in the home market. The approach utilized by Kitz, and verified by the Department, appears to be reasonable, given the large volume of sales in the home market of standard and non-standard valves. We have therefore used Kitz's response data in making the final determination.

Respondents' Comments

In addition to comments addressed in the analysis section, respondents submitted the following comments:

Comment 1

Counsel for Hitachi maintains that the Department should disregard an imputed inventory carrying cost on exporter's sales price transactions since actual costs are known. They maintain that the cost deducted in the preliminary determination was based on corporate borrowings which were not designated for inventory financing and therefore have no connection to such financing. Further, they claim that because actual warehousing and credit costs were also deducted, the Department is acting against an established practice of not

deducting imputed costs where actual costs are known. In addition, they state that the deduction of both actual and imputed costs involves double (and triple) counting. They argue alternately that if we use the imputed cost, we should not deduct the actual expenses.

DOC Position

We agree with Hitachi and the petitioners that the use of corporate interests expenses is not a good measure of inventory carrying costs. We further agree with the petitioners that the credit costs in this situation consists of two parts, the actual credit costs incurred by Hitachi during approximately one third of the inventory period, and the implicit credit costs of holding the inventory for the remainder of the inventory period. Such imputed credit costs for the latter period do not replace the actual credit expenses incurred by Hitachi, but are in addition to those expenses. Together they represent the expense of holding the inventory for the entire period, for only a part of which actual expenses are known.

We also agree with the petitioner that warehousing costs incurred by Hitachi are independent of credit costs and that to deduct both does not result in double counting.

For this determination, we reduced the deduction for indirect selling expenses by the amount of the imputed carrying cost used in the preliminary determination. We calculated the credit cost for the entire inventory period at the same rate of interest used in the period in which actual credit costs were incurred.

Comment 2

Counsel for Hitachi stated that Hitachi should be excluded from the proceeding on the basis of its preliminary margin of 0.99 percent because this margin is virtually *de minimis* and not a function of international dumping or neglect, but rather arose from technicalities in the law and significantly different economic circumstances present in the sales periods compared.

DOC Position

We see no reason to disregard our *de minimis* rule, under which we consider a weighted average margin of 0.50 percent or more to be significant.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on valves from Japan entered, or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we directed the United States Customs Service to suspend liquidation of all entries of the subject valves from Japan with the exception of valves produced by Takamisawa Koki Mfg., Ltd. which are entered, or withdrawn from warehouse, for consumption, on or after April 5, 1984. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price for entries of merchandise from Kitz Corporation and Hitachi Metals, Ltd. Where sales by trading companies cannot be identified by manufacturer, the Customs Service shall require a cash deposit or the posting of a bond equal to the highest estimated weighted-average margin of 13.09 percent. This suspension of liquidation will remain in effect until further notice. The weighted-average margins as of the publication of this notice in the **Federal Register** are as follows:

Manufacturer	Weighted-average margin percentage
Kitz Corporation	13.09
Hitachi Metals, Ltd	1.07
Takamisawa Koki Mfg., Ltd	0.16
All other companies	8.50

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: June 13, 1984.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-16473 Filed 6-19-84; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Center for Marine Studies; Marine Mammal Permits: Receipt of Modification

Notice is hereby given that the Center for Marine Studies, University of California at Santa Cruz has requested a modification to Permit No. 463 issued to the Center under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) on April 13, 1984 (49 FR 17559).

The Center for Marine Studies requests additional authority to import the tissue samples authorized to be taken from Canada where the research will be conducted in 1984.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicants and do not necessarily reflect the views of the National Marine Fisheries Service.

Documentation pertaining to the above modification request is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whithaven Street NW., Washington, D.C., and

Regional Director, National Marine Fisheries Service, Southwest Region,

300 South Ferry Street, Terminal Island, California 90731.

Dated: June 14, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-16463 Filed 6-19-84; 8:45 am]

BILLING CODE 3510-22-M

Incidental Taking of Marine Mammals; Issuance of a Letter of Exemption to National Fish Meal and Oil Association

Notice is hereby given that pursuant to Section 101(a)(4) of the Marine Mammal Protection Act (16 U.S.C. 1361-1407), a Letter of Exemption was issued on June 14, 1984, to the National Fish Meal and Oil Association, to incidentally take up to 10 Atlantic bottlenose dolphins (*Tursiops truncatus*), 5 harbor porpoise (*Phocoena phocoena*), 7 pygmy sperm whales (*Kogia breviceps*), 7 dwarf sperm whales (*K. simus*), and 4 minke whales (*Balaenoptera acutorostrata*) annually during menhaden purse seine operations in the North Atlantic Ocean and Gulf of Mexico. This Letter of Exemption is valid until December 31, 1988, subject to annual review by the Assistant Administrator for Fisheries.

The Letter of Exemption is available for review in the following offices:

Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Office of the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930-3799; and

Office of the Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: June 15, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-16462 Filed 6-19-84; 8:45 am]

BILLING CODE 3510-22-M

North Wind Undersea Institute; Issuance of Permit To Import Endangered Marine Mammals

On March 30, 1984, Notice was published in the **Federal Register** (49 FR 12734), that an application had been filed with the National Marine Fisheries Service by the North Wind Undersea Institute, 610 City Island Avenue, City Island, Bronx, New York 10464, for a Scientific Research and Scientific Purposes Permit to import one gray whale skeleton for scientific research.

Notice is hereby given that on June 14, 1984, the National Marine Fisheries Service issued a Scientific Research and Scientific Purposes Permit as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), to the North Wind Undersea Institute subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with, and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930-3799;

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: June 14, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-16464 Filed 6-19-84; 8:45 am]

BILLING CODE 3510-22-M

Taking of Marine Mammals; Issuance of Permit to Tampereen Sarkanniemi Oy

On April 25, 1984, Notice was published in the **Federal Register** (49 FR 17795) that an application had been filed with the National Marine Fisheries Service by Tampereen Sarkanniemi Oy, Sarkanniemi, SF-33230 Tampere 23, Finland, for a Permit to take five (5) Atlantic bottlenose dolphin (*Tursiops truncatus)* for public display.

Notice is hereby given that on June 14, 1984, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking to Tampereen Sarkanniemi Oy, subject to certain condition set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida.

Dated: June 14, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-16465 Filed 6-19-84; 8:45 am]

BILLING CODE 3510-22-M

Taking of Marine Mammals; Issuance of Permit to Kamogawa Sea World

On April 11, 1984, Notice was published in the **Federal Register** (49 FR 14416) that an application had been filed with the National Marine Fisheries Service by Kamogawa Sea World, 1468-18 Higashicho, Kamogawa, Chiba Prefecture, 296, Japan, for a Permit to take four (4) rehabilitated beached/stranded California sea lions (*Zalophus californianus*) and four (4) rehabilitated beached/stranded northern elephant seals (*Mirounga angustirostris*) for the purpose of public display.

Notice is hereby given that on June 13, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking to Kamogawa Sea World subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: June 13, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-16468 Filed 6-19-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee has been scheduled as follows:

Wednesday, 11 July 1984, USCENTCOM, MacDill AFB, Florida. The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the United States Code and therefore will be closed to the public. Subject matter will be used in a special study on Special Actions.

Dated: June 15, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-16381 Filed 6-19-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board 1984 Summer Panel on Urban Warfare; Change of Advisory Committee Meeting

The meeting of the Defense Science Board 1984 Summer Study Panel on Urban Warfare scheduled for 10-11 July 1984 in the Pentagon, Arlington, Virginia as published in the **Federal Register** (Vol. 49, No. 112, Friday, June 8, 1984, FR Doc. 84-15410) has been changed to 11-12 July 1984. In all other respects the notice remain unchanged.

Dated: June 15, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-16380 Filed 6-19-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Data Network; Advisory Committee Meeting

The Defense Science Board Task Force on Defense Data network will meet in closed session on 10-11 July 1984 in the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 10-11 July 1984, the Task Force will review the progress in implementing the Defense Data Network Program.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1976)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly this meeting will be closed to the public.

Dated: June 15, 1984.

M.S. Healy

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-16379 Filed 6-19-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Endowment Grant Program—Extension of Closing Date for Designation as an Eligible Institution

The Secretary extends to July 20, 1984, the closing date by which an institution that wishes to apply for a grant under the Endowment Grant Program must submit a request for designation as an eligible institution. The previous closing date of May 7, 1984 was published in the **Federal Register** of April 4, 1984 (49 FR 13402-13412). The Endowment Grant Program is authorized under Section 333 of Title III of the Higher Education Act of 1965, as amended.

The Secretary also publishes new conversion tables and eligibility thresholds on which, in part, the determination of an eligible institution is based.

The Secretary is extending the closing date and re-issuing the conversion tables because the conversion tables originally published in the **Federal Register** of April 4, 1984 in conjunction with the May 7, 1984 closing date are inaccurate.

The Secretary will designate an institution as an eligible institution for the purpose of receiving an endowment grant on the basis of the re-issued conversion tables. *An institution that applied for designation as an eligible institution by the May 7, 1984 closing date and qualifies as an eligible institution under the re-issued conversion tables need not submit a new application.* Those institutions that did not submit an eligibility application by May 7, 1984, and those institutions that need to amend their application to request a waiver in order to qualify as an eligible institution may do so by July 20, 1984.

The Secretary revokes the conversion tables and thresholds published in the **Federal Register** of April 4, 1984 (49 FR 13403-13412).

Closing date for transmittal of requests: A "Request for Designation as an Eligible Institution" form must be mailed or hand-delivered by [30 days from publication].

Requests delivered by mail: A request sent by mail must be addressed to the Evaluation Section, Division of Institutional Development, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20026.

Proof of mailing must consist of one of the following:

1. A legibly dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice, or receipt from a commercial carrier.

4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If a request is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its request for designation as an eligible institution will not be considered for the FY 1984 funding cycle.

Requests delivered by hand: A request that is hand-delivered must be taken to the Evaluation Section, Division of Institutional Development, Room 3045, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. Hand-delivered requests must be received by the staff of the Evaluation Section.

The staff of the Evaluation Section will accept and receipt hand-delivered requests between 9:00 a.m. and 4:30 p.m. (Eastern Time) daily, except Saturdays, Sundays and Federal holidays.

A request that is hand-delivered will not be accepted after 4:30 p.m. on July 20, 1984.

Request forms: Eligibility request forms (ED form 1049–6; OMB Approved 1840–0103) were mailed to all institutions of postsecondary education in early April 1984. Any institution that did not receive a form and wishes to obtain a form should write to the Evaluation Section, Division of Institutional Development, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20036, or call (202) 245–2338. Institutions that received the form in April 1984 may use the same form to apply under this amended notice.

Program information: Any institution must first be designated as an eligible institution for the Endowment Grant Program. Current recipients of Institutional Aid Program grants who apply for a grant under the Endowment Grant Program in Fiscal Year 1984 must still establish eligibility using a base year of 1981–1982.

An institution is eligible to receive a grant under the Endowment Grant Program if it, in effect, qualifies as an eligible institution under the Challenge Grant Program. An institution, in turn, qualifies as an eligible institution under the Challenge Grant Program if it qualifies (1) as an eligible institution under 34 CFR 627.2 (b) or (d) of the Challenge Grant Program regulations, (2) as an eligible institution for the Strengthening Program under 34 CFR 625.2 and 625.3 of the Strengthening Program regulations, or (3) as an eligible institution for the Special Needs Program, under 34 CFR 626.2 and 626.3 of the Special Needs Program regulations.

Under each of the above program regulations, the Secretary determines an institution's eligibility based in part upon an institution's education and general (E&G) expenditures and the amount of Title IV HEA student financial assistance individuals attending that institution receive for a particular award year.

The Secretary will use award year 1981–1982 (July 1, 1981–June 30, 1982) as the base year for calculating an institution's eligibility under 34 CFR 625.2(a) (2), (3), and (4) of the Strengthening Program, 34 CFR 626.2(a) (2) and (4) of the Special Needs Program, and under 34 CFR 627.2(d)(2) of the Challenge Grant Program.

Institutions must submit E&G expenditure data for the same 12-month period covered in the "Higher Education General Information Survey (HEGIS XVII) Financial Statistics of Institutions of Higher Education for Fiscal Year Ending 1982."

Applicable regulations: Regulations applicable to the eligibility process include 34 CFR 624.2, 624.3, and 624.20 of the Institutional Aid Programs General Provisions Regulations; 34 CFR 625.2 and 625.3 of the Strengthening Program Regulations; 34 CFR 626.2 and 626.3 of the Special Needs Program Regulations; 34 CFR 627.2 of the Challenge Grant Program Regulations; and the regulations as proposed in 34 CFR 628 for the Endowment Grant Program. The proposed regulations for the Endowment Grant Program were published in the **Federal Register** of March 5, 1984, (49 FR 8184–8190).

Further information: For the further information, contact the Evaluation Section, Division of Institutional Development, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20026. Telephone (202) 245–2338. (20 U.S.C. 1051–1069c).

(Catalog of Federal Domestic Assistance Number: 84.031 Institutional Aid Programs)

Dated: June 13, 1984.

T. H. Bell,

U.S. Secretary of Education.

FISCAL YEAR 1984 COMPETITION ENDOWMENT GRANT PROGRAM AMENDED—NATIONAL STANDARDS FOR DETERMINING INSTITUTIONAL ELIGIBILITY FOR THE TITLE III INSTITUTIONAL AID PROGRAMS

[Threshold Chart]

Categories of potentially eligible institutions	Minimum Thresholds			
	Strengthening program		Special Needs program	
	Overall threshold	Waiver threshold	Overall threshold	Waiver threshold
Two-year public institutions	146	[illegible]	89	59
Two-year non-profit private institutions	137	91	[illegible]	[illegible]
Four-year public institutions	[illegible]	123	[illegible]	73
Four-year non-profit private institutions	[illegible]	131	125	83
Graduate public institutions [1]				26
Graduate non-public private institutions [1]				[illegible]

[1] Institutions that do not award bachelor's degrees but do award graduate, postgraduate or professional degrees may request designation for the Endowment Grant Program under the eligibility criteria for the Special Needs Program.

BILLING CODE 4000-01-M

POINT TABLES

The Secretary of Education uses the following tables to determine Title III Institutional Eligibility for the Endowment Grant Program for FY 1984 (based on 1981-82 data):

PART-A : STRENGTHENING

2 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.0615	0.01 - 368.04	12826.90+
2	0.0616 - 0.0829	368.05 - 400.42	12826.89 - 9957.15
3	0.0830 - 0.0991	400.43 - 415.11	9957.14 - 8861.19
4	0.0992 - 0.1090	415.12 - 427.86	8861.18 - 7606.61
5	0.1091 - 0.1127	427.87 - 440.05	7606.60 - 7321.91
6	0.1128 - 0.1163	440.06 - 446.50	7321.89 - 7153.44
7	0.1164 - 0.1225	446.51 - 449.29	7153.43 - 6755.29
8	0.1226 - 0.1299	449.30 - 459.75	6755.28 - 6382.41
9	0.1300 - 0.1366	459.76 - 463.89	6382.39 - 6238.02
10	0.1367 - 0.1419	463.90 - 467.86	6238.01 - 6060.24
11	0.1420 - 0.1454	467.87 - 471.12	6060.23 - 5839.29
12	0.1455 - 0.1501	471.13 - 476.21	5839.28 - 5776.19
13	0.1502 - 0.1566	476.22 - 481.97	5776.18 - 5619.09
14	0.1567 - 0.1626	481.98 - 484.64	5619.08 - 5523.21
15	0.1627 - 0.1697	484.65 - 490.02	5523.20 - 5364.95
16	0.1698 - 0.1768	490.03 - 493.56	5364.94 - 5260.52
17	0.1769 - 0.1833	493.57 - 495.94	5260.51 - 5219.23
18	0.1834 - 0.1875	495.95 - 499.77	5219.21 - 5056.63
19	0.1876 - 0.1963	499.78 - 503.11	5056.62 - 4989.19
20	0.1964 - 0.1984	503.12 - 509.36	4989.18 - 4931.50
21	0.1985 - 0.2072	509.37 - 515.35	4931.49 - 4898.99
22	0.2073 - 0.2120	515.36 - 517.45	4898.98 - 4832.35
23	0.2121 - 0.2173	517.46 - 520.73	4832.34 - 4766.30
24	0.2174 - 0.2235	520.74 - 524.29	4766.29 - 4689.61
25	0.2236 - 0.2295	524.30 - 529.44	4689.60 - 4615.10
26	0.2296 - 0.2358	529.45 - 532.38	4615.09 - 4576.72
27	0.2359 - 0.2424	532.39 - 535.16	4576.71 - 4534.21
28	0.2425 - 0.2481	535.17 - 537.99	4534.20 - 4496.61
29	0.2482 - 0.2565	538.00 - 543.39	4496.60 - 4446.84
30	0.2566 - 0.2617	543.40 - 545.79	4446.83 - 4426.86
31	0.2618 - 0.2660	545.80 - 551.14	4426.85 - 4366.07
32	0.2661 - 0.2687	551.15 - 554.83	4366.05 - 4321.45
33	0.2688 - 0.2735	554.84 - 559.27	4321.44 - 4278.71
34	0.2736 - 0.2778	559.28 - 561.82	4278.70 - 4209.76
35	0.2779 - 0.2813	561.83 - 565.14	4209.75 - 4160.49
36	0.2814 - 0.2839	565.15 - 568.64	4160.48 - 4136.48
37	0.2840 - 0.2875	568.65 - 571.56	4136.46 - 4078.06
38	0.2876 - 0.2912	571.57 - 573.89	4078.05 - 4023.56
39	0.2913 - 0.2940	573.90 - 576.92	4023.55 - 3973.27
40	0.2941 - 0.2985	576.93 - 578.42	3973.26 - 3949.22
41	0.2986 - 0.3011	578.43 - 580.69	3949.21 - 3907.57
42	0.3012 - 0.3053	580.70 - 583.52	3907.56 - 3860.54
43	0.3054 - 0.3076	583.53 - 584.59	3860.53 - 3824.30
44	0.3077 - 0.3106	584.60 - 588.53	3824.29 - 3799.70
45	0.3107 - 0.3170	588.54 - 589.91	3799.69 - 3769.37
46	0.3171 - 0.3207	589.92 - 594.64	3769.36 - 3759.32
47	0.3208 - 0.3289	594.65 - 596.53	3759.31 - 3732.35
48	0.3290 - 0.3338	596.54 - 598.74	3732.34 - 3708.53
49	0.3339 - 0.3367	598.75 - 599.98	3708.52 - 3687.74
50	0.3368 - 0.3407	599.99 - 602.48	3687.73 - 3631.23

PART-A : CONTINUE

2 YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3408 - 0.3439	602.49 - 604.96	3631.22 - 3590.61
52	0.3440 - 0.3485	604.97 - 606.19	3590.60 - 3570.10
53	0.3486 - 0.3554	606.20 - 608.77	3570.09 - 3538.79
54	0.3555 - 0.3601	608.78 - 611.75	3538.78 - 3509.44
55	0.3602 - 0.3650	611.76 - 614.07	3509.43 - 3476.22
56	0.3651 - 0.3679	614.08 - 616.03	3476.21 - 3447.80
57	0.3680 - 0.3740	616.04 - 618.57	3447.79 - 3409.89
58	0.3741 - 0.3788	618.58 - 619.29	3409.88 - 3400.70
59	0.3789 - 0.3832	619.30 - 620.18	3400.69 - 3371.08
60	0.3833 - 0.3877	620.19 - 623.20	3371.07 - 3333.41
61	0.3878 - 0.3916	623.21 - 626.75	3333.40 - 3289.25
62	0.3917 - 0.3953	626.76 - 634.02	3289.24 - 3264.32
63	0.3954 - 0.3987	634.03 - 638.60	3264.31 - 3233.12
64	0.3988 - 0.4018	638.61 - 640.70	3233.11 - 3212.84
65	0.4019 - 0.4052	640.71 - 643.10	3212.83 - 3185.09
66	0.4053 - 0.4117	643.11 - 647.54	3185.08 - 3149.68
67	0.4118 - 0.4174	647.55 - 651.65	3149.67 - 3138.24
68	0.4175 - 0.4246	651.66 - 653.06	3138.23 - 3116.24
69	0.4247 - 0.4291	653.07 - 654.20	3116.23 - 3097.86
70	0.4292 - 0.4357	654.21 - 657.42	3097.85 - 3059.72
71	0.4358 - 0.4404	657.43 - 660.25	3059.71 - 3018.07
72	0.4405 - 0.4462	660.26 - 664.09	3018.06 - 3003.71
73	0.4463 - 0.4530	664.10 - 665.87	3003.70 - 2991.19
74	0.4531 - 0.4595	665.88 - 671.16	2991.18 - 2942.65
75	0.4596 - 0.4636	671.17 - 673.55	2942.64 - 2902.00
76	0.4637 - 0.4746	673.56 - 675.78	2901.99 - 2878.91
77	0.4747 - 0.4836	675.79 - 677.89	2878.90 - 2864.57
78	0.4837 - 0.4962	677.90 - 682.52	2864.56 - 2813.61
79	0.4963 - 0.5021	682.53 - 685.72	2813.60 - 2787.36
80	0.5022 - 0.5112	685.73 - 690.28	2787.35 - 2754.49
81	0.5113 - 0.5168	690.29 - 693.46	2754.48 - 2737.91
82	0.5169 - 0.5289	693.47 - 698.17	2737.90 - 2722.29
83	0.5290 - 0.5340	698.18 - 702.56	2722.28 - 2683.10
84	0.5341 - 0.5480	702.57 - 707.54	2683.09 - 2662.00
85	0.5481 - 0.5598	707.55 - 713.14	2661.99 - 2640.26
86	0.5599 - 0.5713	713.15 - 720.59	2640.25 - 2625.91
87	0.5714 - 0.5874	720.60 - 725.53	2625.90 - 2576.94
88	0.5875 - 0.6030	725.54 - 729.37	2576.93 - 2547.06
89	0.6031 - 0.6260	729.38 - 733.48	2547.05 - 2523.46
90	0.6261 - 0.6425	733.49 - 740.97	2523.45 - 2499.34
91	0.6426 - 0.6693	740.98 - 748.39	2499.33 - 2432.26
92	0.6694 - 0.6884	748.40 - 756.74	2432.25 - 2390.07
93	0.6885 - 0.7302	756.75 - 764.67	2390.06 - 2345.09
94	0.7303 - 0.7520	764.68 - 774.90	2345.08 - 2292.83
95	0.7521 - 0.8106	774.91 - 787.19	2292.82 - 2271.01
96	0.8107 - 0.8809	787.20 - 794.80	2271.00 - 2224.39
97	0.8810 - 0.9526	794.81 - 808.93	2224.38 - 2098.02
98	0.9527 - 1.0530	808.94 - 840.65	2098.01 - 2041.67
99	1.0531 - 1.4319	840.66 - 887.99	2041.66 - 1900.13
100	.4320+	888.00+	1900.12 - 1.00

PART-B : SPECIAL NEEDS

PART-B : SPECIAL NEEDS

2 YR PUBLIC

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0576	0.01 - 418.19	9957.15+
2	0.0577 - 0.0683	418.20 - 457.27	9957.14 - 7606.61
3	0.0684 - 0.0740	457.28 - 478.80	7606.60 - 7153.44
4	0.0741 - 0.0816	478.81 - 490.90	7153.43 - 6382.41
5	0.0817 - 0.0868	490.91 - 506.58	6382.39 - 6060.24
6	0.0869 - 0.0944	506.59 - 520.84	6060.23 - 5776.19
7	0.0945 - 0.0993	520.85 - 530.67	5776.18 - 5523.21
8	0.0994 - 0.1124	530.68 - 541.02	5523.20 - 5260.52
9	0.1125 - 0.1223	541.03 - 548.25	5260.51 - 5056.63
10	0.1224 - 0.1281	548.26 - 553.12	5056.62 - 4931.50
11	0.1282 - 0.1364	553.13 - 560.21	4931.49 - 4832.35
12	0.1365 - 0.1440	560.22 - 565.83	4832.34 - 4689.61
13	0.1441 - 0.1535	565.84 - 574.49	4689.60 - 4576.72
14	0.1536 - 0.1567	574.50 - 583.94	4576.71 - 4496.61
15	0.1568 - 0.1613	583.95 - 590.08	4496.60 - 4426.86
16	0.1614 - 0.1652	590.09 - 593.26	4426.85 - 4321.45
17	0.1653 - 0.1725	593.27 - 598.99	4321.44 - 4209.76
18	0.1726 - 0.1766	599.00 - 603.83	4209.75 - 4136.48
19	0.1767 - 0.1808	603.84 - 609.98	4136.46 - 4023.56
20	0.1809 - 0.1863	609.99 - 616.83	4023.55 - 3949.22
21	0.1864 - 0.1925	616.84 - 623.02	3949.21 - 3860.54
22	0.1926 - 0.1972	623.03 - 630.45	3860.53 - 3799.70
23	0.1973 - 0.2027	630.46 - 635.29	3799.69 - 3759.32
24	0.2028 - 0.2059	635.30 - 643.16	3759.31 - 3708.53
25	0.2060 - 0.2133	643.17 - 648.40	3708.52 - 3631.23
26	0.2134 - 0.2172	648.41 - 652.36	3631.22 - 3570.10
27	0.2173 - 0.2235	652.37 - 657.14	3570.09 - 3509.44
28	0.2236 - 0.2276	657.15 - 662.09	3509.43 - 3447.80
29	0.2277 - 0.2328	662.10 - 667.62	3447.79 - 3400.70
30	0.2329 - 0.2395	667.63 - 675.70	3400.69 - 3333.41
31	0.2396 - 0.2472	675.71 - 679.36	3333.40 - 3264.32
32	0.2473 - 0.2548	679.37 - 684.97	3264.31 - 3212.84
33	0.2549 - 0.2641	684.98 - 687.63	3212.83 - 3149.68
34	0.2642 - 0.2723	687.64 - 692.47	3149.67 - 3116.24
35	0.2724 - 0.2820	692.48 - 701.34	3116.23 - 3059.72
36	0.2821 - 0.2890	701.35 - 708.64	3059.71 - 3003.71
37	0.2891 - 0.2996	708.65 - 714.00	3003.70 - 2942.65
38	0.2997 - 0.3102	714.01 - 724.49	2942.64 - 2878.91
39	0.3103 - 0.3236	724.50 - 730.73	2878.90 - 2813.61
40	0.3237 - 0.3341	730.74 - 737.97	2813.60 - 2754.49
41	0.3342 - 0.3482	737.98 - 746.75	2754.48 - 2722.29
42	0.3483 - 0.3583	746.76 - 752.19	2722.28 - 2662.00
43	0.3584 - 0.3735	752.20 - 762.81	2661.99 - 2625.91
44	0.3736 - 0.3906	762.82 - 772.20	2625.90 - 2547.06
45	0.3907 - 0.4207	772.21 - 787.30	2547.05 - 2499.34
46	0.4208 - 0.4642	787.31 - 806.21	2499.33 - 2390.07
47	0.4643 - 0.5051	806.22 - 835.07	2390.06 - 2292.83
48	0.5052 - 0.5606	835.08 - 885.98	2292.82 - 2224.39
49	0.5607 - 0.7103	885.99 - 941.43	2224.38 - 2041.67
50	0.7104+	941.44+	2041.66 - 1.00

PART-A : STRENGTHENING

2 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.1145	0.01 - 603.47	17341.83+
2	0.1146 - 0.1160	603.48 - 625.34	17341.82 -14175.57
3	0.1161 - 0.1697	625.35 - 648.14	14175.55 -11153.14
4	0.1698 - 0.1791	648.15 - 696.77	11153.13 - 9234.77
5	0.1792 - 0.1890	696.78 - 715.20	9234.76 - 8704.02
6	0.1891 - 0.2047	715.21 - 723.53	8704.01 - 8335.66
7	0.2048 - 0.2221	723.54 - 750.53	8335.64 - 8097.48
8	0.2222 - 0.2307	750.54 - 759.69	8097.46 - 7923.25
9	0.2308 - 0.2358	759.70 - 764.35	7923.24 - 7567.53
10	0.2359 - 0.2443	764.36 - 769.29	7567.52 - 7183.89
11	0.2444 - 0.2536	769.30 - 785.17	7183.88 - 6907.50
12	0.2537 - 0.2646	785.18 - 793.02	6907.49 - 6481.62
13	0.2647 - 0.2723	793.03 - 795.74	6481.61 - 6403.98
14	0.2724 - 0.2780	795.75 - 798.05	6403.96 - 6208.09
15	0.2781 - 0.2856	798.06 - 806.15	6208.08 - 5993.69
16	0.2857 - 0.2891	806.16 - 808.47	5993.68 - 5913.12
17	0.2892 - 0.3011	808.48 - 810.46	5913.11 - 5785.20
18	0.3012 - 0.3050	810.47 - 818.67	5785.19 - 5652.44
19	0.3051 - 0.3084	818.68 - 822.05	5652.43 - 5539.07
20	0.3085 - 0.3164	822.06 - 828.25	5539.05 - 5225.32
21	0.3165 - 0.3219	828.26 - 830.97	5225.30 - 5193.42
22	0.3220 - 0.3260	830.98 - 838.93	5193.41 - 5111.98
23	0.3261 - 0.3290	838.94 - 849.11	5111.96 - 5074.24
24	0.3291 - 0.3332	849.12 - 857.74	5074.23 - 5046.27
25	0.3333 - 0.3385	857.75 - 864.26	5046.26 - 4972.50
26	0.3386 - 0.3444	864.27 - 866.03	4972.49 - 4941.55
27	0.3445 - 0.3541	866.04 - 871.10	4941.54 - 4865.97
28	0.3542 - 0.3703	871.11 - 874.25	4865.96 - 4775.70
29	0.3704 - 0.3760	874.26 - 875.33	4775.69 - 4659.55
30	0.3761 - 0.3792	875.34 - 876.95	4659.54 - 4653.02
31	0.3793 - 0.3849	876.96 - 880.34	4653.01 - 4641.16
32	0.3850 - 0.3922	880.35 - 882.07	4641.14 - 4411.79
33	0.3923 - 0.3945	882.08 - 883.41	4411.78 - 4383.00
34	0.3946 - 0.4012	883.42 - 886.50	4383.99 - 4348.14
35	0.4013 - 0.4076	886.51 - 888.90	4348.13 - 4324.23
36	0.4077 - 0.4143	888.91 - 891.87	4324.21 - 4286.21
37	0.4144 - 0.4166	891.88 - 892.91	4286.20 - 4267.52
38	0.4167 - 0.4187	892.92 - 895.66	4267.51 - 4226.27
39	0.4188 - 0.4206	895.67 - 898.12	4226.26 - 4177.36
40	0.4207 - 0.4309	898.13 - 901.40	4177.35 - 4146.02
41	0.4310 - 0.4453	901.41 - 903.88	4146.01 - 4094.33
42	0.4454 - 0.4612	903.89 - 909.34	4094.32 - 4049.68
43	0.4613 - 0.4680	909.35 - 913.50	4049.67 - 3988.36
44	0.4681 - 0.4731	913.51 - 914.99	3988.35 - 3953.84
45	0.4732 - 0.4761	915.00 - 920.66	3953.83 - 3849.56
46	0.4762 - 0.4800	920.67 - 923.15	3849.55 - 3767.77
47	0.4801 - 0.4859	923.16 - 927.50	3767.76 - 3710.23
48	0.4860 - 0.4892	927.51 - 929.75	3710.22 - 3685.69
49	0.4893 - 0.4960	929.76 - 930.80	3685.68 - 3535.52
50	0.4961 - 0.5020	930.81 - 934.16	3535.51 - 3456.81

PART-A : CONTINUE

2 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.5021 - 0.5058	934.17 - 936.60	3456.80 - 3397.16
52	0.5059 - 0.5124	936.61 - 939.02	3397.15 - 3322.68
53	0.5125 - 0.5271	939.03 - 944.37	3322.67 - 3306.27
54	0.5272 - 0.5344	944.38 - 948.43	3306.26 - 3289.45
55	0.5345 - 0.5483	948.44 - 951.75	3289.44 - 3252.96
56	0.5484 - 0.5612	951.76 - 955.73	3252.95 - 3239.81
57	0.5613 - 0.5637	955.74 - 961.99	3239.80 - 3228.12
58	0.5638 - 0.5753	962.00 - 969.31	3228.11 - 3167.07
59	0.5754 - 0.5829	969.32 - 970.93	3167.06 - 3112.96
60	0.5830 - 0.5901	970.94 - 973.89	3112.95 - 3015.97
61	0.5902 - 0.5931	973.90 - 975.93	3015.96 - 3007.76
62	0.5932 - 0.5999	975.94 - 978.67	3007.75 - 2917.90
63	0.6000 - 0.6213	978.68 - 982.63	2917.89 - 2877.93
64	0.6214 - 0.6377	982.64 - 984.62	2877.92 - 2824.46
65	0.6378 - 0.6421	984.63 - 986.59	2824.45 - 2800.12
66	0.6422 - 0.6643	986.60 - 990.45	2800.11 - 2776.17
67	0.6644 - 0.6877	990.46 - 994.82	2776.16 - 2750.58
68	0.6878 - 0.6919	994.83 - 995.29	2750.57 - 2709.42
69	0.6920 - 0.6942	995.30 - 999.02	2709.41 - 2643.99
70	0.6943 - 0.7254	999.03 -1002.65	2643.98 - 2628.94
71	0.7255 - 0.7316	1002.66 -1006.10	2628.93 - 2567.53
72	0.7317 - 0.7515	1006.11 -1010.08	2567.52 - 2532.26
73	0.7516 - 0.7766	1010.09 -1011.22	2532.25 - 2459.68
74	0.7767 - 0.7934	1011.23 -1014.29	2459.67 - 2428.28
75	0.7935 - 0.8020	1014.30 -1018.73	2428.27 - 2424.44
76	0.8021 - 0.8175	1018.74 -1024.46	2424.43 - 2342.15
77	0.8176 - 0.8325	1024.47 -1025.37	2342.14 - 2320.02
78	0.8326 - 0.8489	1025.38 -1029.16	2320.01 - 2282.39
79	0.8490 - 0.8570	1029.17 -1043.82	2282.38 - 2218.12
80	0.8571 - 0.8696	1043.83 -1049.36	2218.11 - 2136.58
81	0.8697 - 0.8921	1049.37 -1054.28	2136.57 - 2105.07
82	0.8922 - 0.9108	1054.29 -1057.85	2105.06 - 2068.95
83	0.9109 - 0.9350	1057.86 -1061.48	2068.94 - 2034.49
84	0.9351 - 0.9947	1061.49 -1062.16	2034.48 - 2014.33
85	0.9948 - 1.0045	1062.17 -1064.89	2014.32 - 1987.21
86	1.0046 - 1.0507	1064.90 -1073.48	1987.20 - 1938.79
87	1.0508 - 1.0778	1073.49 -1081.49	1938.78 - 1910.38
88	1.0779 - 1.0896	1081.50 -1083.86	1910.37 - 1889.79
89	1.0897 - 1.1285	1083.87 -1093.10	1889.78 - 1791.28
90	1.1286 - 1.1621	1093.11 -1099.05	1791.27 - 1733.02
91	1.1622 - 1.2013	1099.06 -1107.98	1733.01 - 1664.15
92	1.2014 - 1.2479	1107.99 -1113.53	1664.14 - 1629.05
93	1.2480 - 1.3749	1113.54 -1125.46	1629.04 - 1505.72
94	1.3750 - 1.4670	1125.47 -1138.10	1505.71 - 1361.07
95	1.4671 - 1.5129	1138.11 -1148.27	1361.06 - 1169.11
96	1.5130 - 1.6181	1148.28 -1175.35	1169.10 - 1133.29
97	1.6182 - 1.6499	1175.36 -1212.43	1133.28 - 1046.43
98	1.6500 - 1.6500	1212.44 -1240.05	1046.42 - 940.53
99	1.6500 - 1.6500	1240.06 -1275.35	940.52 - 799.16
100	1.6500+	1275.36+	799.15 - 1.00

PART-B : SPECIAL NEEDS

2 YR PRIVATE

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0786	0.01 - 549.93	14175.57+
2	0.0787 - 0.1245	549.94 - 622.78	14175.55 - 9234.77
3	0.1246 - 0.1414	622.79 - 660.02	9234.76 - 8335.66
4	0.1415 - 0.1629	660.03 - 692.77	8335.64 - 7923.25
5	0.1630 - 0.1738	692.78 - 707.91	7923.24 - 7183.89
6	0.1739 - 0.1871	707.92 - 715.95	7183.88 - 6481.62
7	0.1872 - 0.1971	715.96 - 723.51	6481.61 - 6208.09
8	0.1972 - 0.2053	723.52 - 738.32	6208.08 - 5913.12
9	0.2054 - 0.2142	738.33 - 749.49	5913.11 - 5652.44
10	0.2143 - 0.2275	749.50 - 758.97	5652.43 - 5225.32
11	0.2276 - 0.2380	758.98 - 773.14	5225.30 - 5111.98
12	0.2381 - 0.2456	773.15 - 785.61	5111.96 - 5046.27
13	0.2457 - 0.2486	785.62 - 789.41	5046.26 - 4941.55
14	0.2487 - 0.2529	789.42 - 798.73	4941.54 - 4775.70
15	0.2530 - 0.2741	798.74 - 806.18	4775.69 - 4653.02
16	0.2742 - 0.2800	806.19 - 815.61	4653.01 - 4411.79
17	0.2801 - 0.2875	815.62 - 825.82	4411.78 - 4348.14
18	0.2876 - 0.2943	825.83 - 840.22	4348.13 - 4286.21
19	0.2944 - 0.2987	840.23 - 846.47	4286.20 - 4226.27
20	0.2988 - 0.3121	846.48 - 850.61	4226.26 - 4146.02
21	0.3122 - 0.3188	850.62 - 860.87	4146.01 - 4049.68
22	0.3189 - 0.3282	860.88 - 866.03	4049.67 - 3953.84
23	0.3283 - 0.3405	866.04 - 880.79	3953.83 - 3767.77
24	0.3406 - 0.3499	880.80 - 888.67	3767.76 - 3685.69
25	0.3500 - 0.3570	888.68 - 891.48	3685.68 - 3456.81
26	0.3571 - 0.3787	891.49 - 901.59	3456.80 - 3322.68
27	0.3788 - 0.3837	901.60 - 906.68	3322.67 - 3289.45
28	0.3838 - 0.4020	906.69 - 914.03	3289.44 - 3239.81
29	0.4021 - 0.4081	914.04 - 918.71	3239.80 - 3167.07
30	0.4082 - 0.4281	918.72 - 925.13	3167.06 - 3015.97
31	0.4282 - 0.4354	925.14 - 930.31	3015.96 - 2917.90
32	0.4355 - 0.4524	930.32 - 937.40	2917.89 - 2824.46
33	0.4525 - 0.4684	937.41 - 942.26	2824.45 - 2776.17
34	0.4685 - 0.4841	942.27 - 945.19	2776.16 - 2709.42
35	0.4842 - 0.5096	945.20 - 961.89	2709.41 - 2628.94
36	0.5097 - 0.5358	961.90 - 976.42	2628.93 - 2532.26
37	0.5359 - 0.5545	976.43 - 994.98	2532.25 - 2428.28
38	0.5546 - 0.5935	994.99 -1005.11	2428.27 - 2342.15
39	0.5936 - 0.6072	1005.12 -1016.67	2342.14 - 2282.39
40	0.6073 - 0.6465	1016.68 -1030.45	2282.38 - 2136.58
41	0.6466 - 0.6677	1030.46 -1040.55	2136.57 - 2068.95
42	0.6678 - 0.7123	1040.56 -1060.72	2068.94 - 2014.33
43	0.7124 - 0.7474	1060.73 -1081.48	2014.32 - 1938.79
44	0.7475 - 0.8181	1081.49 -1104.23	1938.78 - 1889.79
45	0.8182 - 0.8723	1104.24 -1137.32	1889.78 - 1733.02
46	0.8724 - 0.9725	1137.33 -1164.38	1733.01 - 1629.05
47	0.9726 - 1.1174	1164.39 -1191.24	1629.04 - 1361.07
48	1.1175 - 1.3231	1191.25 -1264.32	1361.06 - 1133.29
49	1.3232 - 1.6499	1264.33 -1471.51	1133.28 - 940.53
50	1.6500+	1471.52+	940.52 - 1.00

PART-A : STRENGTHENING

YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.0939	0401 - 538.24	26103.34+
2	0.0940 - 0.1260	538.25 - 607.09	26103.33 -20855.06
3	0.1261 - 0.1345	607.10 - 620.21	20855.05 -17768.36
4	0.1346 - 0.1432	620.22 - 629.21	17768.35 -13151.79
5	0.1433 - 0.1528	629.22 - 646.97	13151.78 -11143.16
6	0.1529 - 0.1632	646.98 - 660.26	11143.14 -10509.04
7	0.1633 - 0.1684	660.27 - 666.76	10509.03 -10326.05
8	0.1685 - 0.1744	666.77 - 674.54	10326.04 - 8674.21
9	0.1745 - 0.1774	674.55 - 681.46	8674.20 - 8464.98
10	0.1775 - 0.1803	681.47 - 688.18	8464.96 - 8325.39
11	0.1804 - 0.1867	688.19 - 692.86	8325.38 - 8074.47
12	0.1868 - 0.1925	692.87 - 698.95	8074.46 - 7710.76
13	0.1926 - 0.1932	698.96 - 701.26	7710.75 - 7411.33
14	0.1933 - 0.1985	701.27 - 703.39	7411.32 - 7141.99
15	0.1986 - 0.2008	703.40 - 710.34	7141.98 - 7039.90
16	0.2009 - 0.2051	710.35 - 713.87	7039.89 - 6835.25
17	0.2052 - 0.2091	713.88 - 722.62	6835.24 - 6747.85
18	0.2092 - 0.2155	722.63 - 726.04	6747.84 - 6594.07
19	0.2156 - 0.2201	726.05 - 730.95	6594.05 - 6500.36
20	0.2202 - 0.2226	730.96 - 737.42	6500.35 - 6349.40
21	0.2227 - 0.2258	737.43 - 742.67	6349.39 - 6273.22
22	0.2259 - 0.2277	742.68 - 745.49	6273.21 - 6174.54
23	0.2278 - 0.2324	745.50 - 754.87	6174.53 - 6025.75
24	0.2325 - 0.2355	754.88 - 757.34	6025.74 - 5910.54
25	0.2356 - 0.2375	757.35 - 764.06	5910.53 - 5841.65
26	0.2376 - 0.2396	764.07 - 768.99	5841.64 - 5619.45
27	0.2397 - 0.2410	769.00 - 772.78	5619.44 - 5580.54
28	0.2411 - 0.2477	772.79 - 775.95	5580.53 - 5475.40
29	0.2478 - 0.2513	775.96 - 778.46	5475.39 - 5382.95
30	0.2514 - 0.2527	778.47 - 784.29	5382.94 - 5350.45
31	0.2528 - 0.2561	784.30 - 787.11	5350.44 - 5307.20
32	0.2562 - 0.2592	787.12 - 789.91	5307.19 - 5272.98
33	0.2593 - 0.2612	789.92 - 790.56	5272.96 - 5143.76
34	0.2613 - 0.2668	790.57 - 794.49	5143.75 - 5052.06
35	0.2669 - 0.2710	794.50 - 797.99	5052.05 - 4984.24
36	0.2711 - 0.2733	798.00 - 798.90	4984.23 - 4970.58
37	0.2734 - 0.2785	798.91 - 801.23	4970.57 - 4907.09
38	0.2786 - 0.2802	801.24 - 803.19	4907.08 - 4828.87
39	0.2803 - 0.2831	803.20 - 803.97	4828.86 - 4800.98
40	0.2832 - 0.2854	803.98 - 805.46	4800.96 - 4759.69
41	0.2855 - 0.2879	805.47 - 808.97	4759.68 - 4673.50
42	0.2880 - 0.2899	808.98 - 810.95	4673.49 - 4652.00
43	0.2900 - 0.2921	810.96 - 813.99	4651.99 - 4612.53
44	0.2922 - 0.2953	814.00 - 814.62	4612.52 - 4561.15
45	0.2954 - 0.2988	814.63 - 816.44	4561.14 - 4520.18
46	0.2989 - 0.3005	816.45 - 821.94	4520.17 - 4490.61
47	0.3006 - 0.3039	821.95 - 825.11	4490.60 - 4453.80
48	0.3040 - 0.3059	825.12 - 827.09	4453.79 - 4403.72
49	0.3060 - 0.3079	827.10 - 827.66	4403.71 - 4383.87
50	0.3080 - 0.3100	827.67 - 830.65	4383.86 - 4338.86

PART-A : CONTINUE

YR PUBLIC

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3101 - 0.3133	830.66 - 831.68	4334.85 - 4317.64
52	0.3134 - 0.3140	831.69 - 833.65	4317.63 - 4304.37
53	0.3141 - 0.3164	833.66 - 835.65	4304.36 - 4273.67
54	0.3165 - 0.3179	835.66 - 836.87	4273.66 - 4241.81
55	0.3180 - 0.3193	836.88 - 840.35	4241.80 - 4202.61
56	0.3194 - 0.3205	840.36 - 841.09	4202.60 - 4164.99
57	0.3206 - 0.3279	841.10 - 844.16	4164.96 - 4022.91
58	0.3280 - 0.3297	844.17 - 846.37	4022.90 - 3985.47
59	0.3298 - 0.3304	846.38 - 847.87	3985.46 - 3969.92
60	0.3305 - 0.3325	847.88 - 852.09	3969.91 - 3930.62
61	0.3326 - 0.3345	852.10 - 852.63	3930.61 - 3875.61
62	0.3346 - 0.3375	852.64 - 855.02	3875.60 - 3838.91
63	0.3376 - 0.3438	855.03 - 859.02	3838.90 - 3808.48
64	0.3439 - 0.3461	859.03 - 862.33	3808.47 - 3775.92
65	0.3462 - 0.3479	862.34 - 864.68	3775.91 - 3756.35
66	0.3480 - 0.3523	864.69 - 866.07	3756.34 - 3738.02
67	0.3524 - 0.3601	866.08 - 867.68	3738.01 - 3726.95
68	0.3602 - 0.3664	867.69 - 868.16	3726.94 - 3714.73
69	0.3665 - 0.3743	868.17 - 874.39	3714.72 - 3679.20
70	0.3744 - 0.3800	874.40 - 877.36	3679.19 - 3649.10
71	0.3801 - 0.3880	877.37 - 879.42	3649.09 - 3618.91
72	0.3881 - 0.3967	879.43 - 883.52	3618.90 - 3601.65
73	0.3968 - 0.4012	883.53 - 886.91	3601.64 - 3577.04
74	0.4013 - 0.4083	886.92 - 888.20	3577.03 - 3526.79
75	0.4084 - 0.4125	888.21 - 891.51	3526.78 - 3472.81
76	0.4126 - 0.4204	891.52 - 894.22	3472.80 - 3411.82
77	0.4205 - 0.4282	894.23 - 896.23	3411.81 - 3394.44
78	0.4283 - 0.4367	896.24 - 900.57	3394.43 - 3378.48
79	0.4368 - 0.4419	900.58 - 902.76	3378.47 - 3340.15
80	0.4420 - 0.4511	902.77 - 908.31	3340.14 - 3296.89
81	0.4512 - 0.4641	908.32 - 913.56	3296.88 - 3254.01
82	0.4642 - 0.4806	913.57 - 917.25	3254.00 - 3209.33
83	0.4807 - 0.4905	917.26 - 921.77	3209.32 - 3179.35
84	0.4906 - 0.4982	921.78 - 926.81	3179.34 - 3094.70
85	0.4983 - 0.5081	926.82 - 931.72	3094.69 - 3013.87
86	0.5082 - 0.5261	931.73 - 933.55	3013.86 - 2975.51
87	0.5262 - 0.5537	933.56 - 944.88	2975.50 - 2901.89
88	0.5538 - 0.5601	944.89 - 952.59	2901.88 - 2850.12
89	0.5602 - 0.5988	952.60 - 957.96	2850.11 - 2829.72
90	0.5989 - 0.6265	957.97 - 968.08	2829.71 - 2742.87
91	0.6266 - 0.6700	968.09 - 976.60	2742.86 - 2709.33
92	0.6701 - 0.6903	976.61 - 986.27	2709.32 - 2668.29
93	0.6904 - 0.7403	986.28 - 992.93	2668.28 - 2625.96
94	0.7404 - 0.7557	992.94 -1006.21	2625.95 - 2573.02
95	0.7558 - 0.7716	1006.22 -1024.05	2573.01 - 2557.19
96	0.7717 - 0.8065	1024.06 -1045.97	2557.18 - 2500.10
97	0.8066 - 0.8439	1045.98 -1062.99	2500.09 - 2444.41
98	0.8440 - 0.9079	1063.00 -1074.30	2444.40 - 2377.48
99	0.9080 - 1.0112	1074.31 -1126.64	2377.47 - 2135.41
100	1.0113+	1126.65+	2135.40 - 1.00

PART-B : SPECIAL NEEDS

PART-B : SPECIAL NEEDS

4 YR PUBLIC

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0885	0.01 - 672.41	20855.06+
2	0.0886 - 0.1106	672.42 - 697.35	20855.05 -13151.79
3	0.1107 - 0.1199	697.36 - 726.89	13151.78 -10509.04
4	0.1200 - 0.1230	726.90 - 734.53	10509.03 - 8674.21
5	0.1231 - 0.1265	734.54 - 750.26	8674.20 - 8325.39
6	0.1266 - 0.1330	750.27 - 766.84	8325.38 - 7710.76
7	0.1331 - 0.1450	766.85 - 776.04	7710.75 - 7141.99
8	0.1451 - 0.1518	776.05 - 781.96	7141.98 - 6835.25
9	0.1519 - 0.1607	781.97 - 787.35	6835.24 - 6594.07
10	0.1608 - 0.1672	787.36 - 794.40	6594.05 - 6349.40
11	0.1673 - 0.1736	794.41 - 798.13	6349.39 - 6174.54
12	0.1737 - 0.1774	798.14 - 805.95	6174.53 - 5910.54
13	0.1775 - 0.1816	805.96 - 813.62	5910.53 - 5619.45
14	0.1817 - 0.1834	813.63 - 819.71	5619.44 - 5475.40
15	0.1835 - 0.1863	819.72 - 823.31	5475.39 - 5350.45
16	0.1864 - 0.1909	823.32 - 833.17	5350.44 - 5272.98
17	0.1910 - 0.1944	833.18 - 842.22	5272.96 - 5052.06
18	0.1945 - 0.1980	842.23 - 847.87	5052.05 - 4970.58
19	0.1981 - 0.2016	847.88 - 854.33	4970.57 - 4828.87
20	0.2017 - 0.2073	854.34 - 857.99	4828.86 - 4759.69
21	0.2074 - 0.2104	858.00 - 864.74	4759.68 - 4652.00
22	0.2105 - 0.2134	864.75 - 871.44	4651.99 - 4561.15
23	0.2135 - 0.2182	871.45 - 876.94	4561.14 - 4490.61
24	0.2183 - 0.2239	876.95 - 882.44	4490.60 - 4403.72
25	0.2240 - 0.2307	882.45 - 888.24	4403.71 - 4338.86
26	0.2308 - 0.2341	888.25 - 893.05	4338.85 - 4304.37
27	0.2342 - 0.2402	893.06 - 898.87	4304.36 - 4241.81
28	0.2403 - 0.2429	898.88 - 902.98	4241.80 - 4164.98
29	0.2430 - 0.2463	902.99 - 915.95	4164.96 - 3985.47
30	0.2464 - 0.2504	915.96 - 926.10	3985.46 - 3930.62
31	0.2505 - 0.2577	926.11 - 929.93	3930.61 - 3838.91
32	0.2578 - 0.2672	929.94 - 937.10	3838.90 - 3775.92
33	0.2673 - 0.2747	937.11 - 947.77	3775.91 - 3738.02
34	0.2748 - 0.2808	947.78 - 955.95	3738.01 - 3714.73
35	0.2809 - 0.2956	955.96 - 971.61	3714.72 - 3643.10
36	0.2957 - 0.3026	971.62 - 981.36	3649.09 - 3601.65
37	0.3027 - 0.3113	981.37 - 984.46	3601.64 - 3526.79
38	0.3114 - 0.3305	984.47 - 994.26	3526.78 - 3411.82
39	0.3306 - 0.3396	994.27 -1005.43	3411.81 - 3378.48
40	0.3397 - 0.3554	1005.44 -1016.53	3378.47 - 3296.89
41	0.3555 - 0.3736	1016.54 -1034.23	3296.88 - 3209.33
42	0.3737 - 0.3969	1034.24 -1044.54	3209.32 - 3094.70
43	0.3970 - 0.4305	1044.55 -1056.84	3094.69 - 2975.51
44	0.4306 - 0.4525	1056.85 -1065.52	2975.50 - 2850.12
45	0.4526 - 0.4880	1065.53 -1075.80	2850.11 - 2742.87
46	0.4881 - 0.5544	1075.81 -1105.73	2742.86 - 2668.29
47	0.5545 - 0.6263	1105.74 -1132.80	2668.28 - 2573.02
48	0.6264 - 0.6699	1132.81 -1156.43	2573.01 - 2500.10
49	0.6700 - 0.7792	1156.44 -1229.61	2500.09 - 2377.48
50	0.7793+	1229.62+	2377.47 - 1.00

PART-A : CONTINUE

4 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
51	0.3493 - 0.3543	975.30 - 976.93	5235.42 - 5185.90
52	0.3544 - 0.3595	976.94 - 979.86	5185.89 - 5137.48
53	0.3596 - 0.3640	979.87 - 981.94	5137.46 - 5093.57
54	0.3641 - 0.3666	981.95 - 984.17	5093.55 - 5043.03
55	0.3667 - 0.3706	984.18 - 987.55	5043.02 - 4998.78
56	0.3707 - 0.3764	987.56 - 991.16	4998.77 - 4948.31
57	0.3765 - 0.3830	991.17 - 993.87	4948.30 - 4895.10
58	0.3831 - 0.3850	993.88 - 997.60	4895.09 - 4867.81
59	0.3851 - 0.3900	997.61 -1000.18	4867.80 - 4835.55
60	0.3900 - 0.3946	1000.19 -1003.24	4835.54 - 4798.70
61	0.3947 - 0.3999	1003.25 -1005.35	4798.69 - 4735.62
62	0.4000 - 0.4046	1005.36 -1008.00	4735.61 - 4684.24
63	0.4047 - 0.4097	1008.01 -1010.55	4684.23 - 4616.48
64	0.4098 - 0.4131	1010.56 -1013.55	4616.46 - 4574.07
65	0.4132 - 0.4172	1013.56 -1015.55	4579.05 - 4532.66
66	0.4173 - 0.4209	1015.56 -1019.23	4532.64 - 4495.82
67	0.4210 - 0.4301	1019.24 -1025.77	4495.80 - 4421.48
68	0.4302 - 0.4351	1025.78 -1029.31	4421.46 - 4354.18
69	0.4352 - 0.4420	1029.32 -1033.93	4354.17 - 4298.42
70	0.4421 - 0.4508	1033.94 -1038.28	4298.41 - 4230.77
71	0.4509 - 0.4569	1038.29 -1042.70	4230.76 - 4180.80
72	0.4570 - 0.4604	1042.71 -1045.19	4180.79 - 4137.60
73	0.4605 - 0.4669	1045.20 -1049.92	4137.59 - 4091.83
74	0.4670 - 0.4721	1049.93 -1052.92	4091.82 - 4041.84
75	0.4722 - 0.4775	1052.93 -1057.60	4041.83 - 3998.01
76	0.4776 - 0.4870	1057.61 -1063.49	3998.00 - 3941.60
77	0.4871 - 0.4924	1063.50 -1068.15	3941.59 - 3900.75
78	0.4925 - 0.5022	1068.16 -1074.88	3900.74 - 3824.10
79	0.5023 - 0.5092	1074.89 -1080.07	3824.09 - 3775.62
80	0.5093 - 0.5262	1080.08 -1083.18	3775.61 - 3708.14
81	0.5263 - 0.5347	1083.19 -1087.87	3708.13 - 3633.77
82	0.5348 - 0.5462	1087.88 -1095.59	3633.76 - 3593.12
83	0.5463 - 0.5555	1095.60 -1100.45	3593.11 - 3523.54
84	0.5556 - 0.5690	1100.46 -1110.48	3523.53 - 3471.47
85	0.5691 - 0.5832	1110.49 -1119.17	3471.46 - 3401.47
86	0.5833 - 0.6058	1119.18 -1129.29	3401.46 - 3331.50
87	0.6059 - 0.6249	1129.30 -1138.17	3331.49 - 3229.58
88	0.6250 - 0.6474	1138.18 -1152.37	3228.57 - 3165.26
89	0.6475 - 0.6737	1152.38 -1171.10	3165.25 - 3088.15
90	0.6739 - 0.6957	1171.11 -1188.30	3088.14 - 3010.37
91	0.6958 - 0.7185	1188.31 -1208.41	3010.36 - 2890.30
92	0.7186 - 0.7537	1208.42 -1221.25	2890.29 - 2770.60
93	0.7538 - 0.8025	1221.26 -1241.51	2770.59 - 2655.30
94	0.8026 - 0.8497	1241.52 -1262.74	2655.29 - 2499.82
95	0.8498 - 0.9006	1262.75 -1288.81	2499.81 - 2362.56
96	0.9007 - 0.9382	1288.82 -1313.17	2362.55 - 2103.40
97	0.9390 - 0.9882	1313.18 -1354.31	2103.39 - 1902.16
98	0.9883 - 1.0562	1354.32 -1419.30	1902.15 - 1669.07
99	1.0663 - 1.2827	1419.31 -1525.66	1659.05 - 1435.75
100	1.2828+	1525.67+	1435.74 - 1.00

PART-A : STRENGTHENING

4 YR PRIVATE

POINT	PELL PERCENT	PELL DOLLAR	E AND G
1	0.0001 - 0.0569	0.01 - 698.17	21317.37+
2	0.0570 - 0.0897	698.18 - 760.33	21317.36 -15038.00
3	0.0898 - 0.1051	760.34 - 784.50	15038.07 -13594.30
4	0.1052 - 0.1250	784.51 - 810.64	13594.29 -12102.52
5	0.1251 - 0.1363	810.65 - 818.63	12102.51 -11115.52
6	0.1364 - 0.1431	818.64 - 827.63	11115.51 -10642.75
7	0.1432 - 0.1474	827.64 - 836.09	10642.74 -10276.52
8	0.1475 - 0.1526	836.10 - 841.98	10276.51 -10186.97
9	0.1527 - 0.1601	841.99 - 847.80	10186.96 - 9681.36
10	0.1602 - 0.1659	847.81 - 852.54	9681.35 - 9418.54
11	0.1660 - 0.1711	852.55 - 856.43	9418.53 - 9160.14
12	0.1712 - 0.1782	856.44 - 860.69	9160.13 - 8833.39
13	0.1783 - 0.1821	860.70 - 863.70	8833.38 - 8703.32
14	0.1822 - 0.1901	863.71 - 868.72	8703.30 - 8294.02
15	0.1902 - 0.1937	868.73 - 871.57	8294.01 - 8160.92
16	0.1938 - 0.1991	871.58 - 876.43	8160.91 - 8074.15
17	0.1992 - 0.2033	876.44 - 879.19	8074.14 - 7952.78
18	0.2034 - 0.2077	879.20 - 884.02	7952.77 - 7766.44
19	0.2078 - 0.2131	884.03 - 886.77	7766.43 - 7636.25
20	0.2132 - 0.2175	886.78 - 891.40	7636.24 - 7522.10
21	0.2176 - 0.2231	891.41 - 894.66	7522.09 - 7389.64
22	0.2232 - 0.2270	894.67 - 898.74	7389.63 - 7289.51
23	0.2271 - 0.2297	898.75 - 902.26	7289.50 - 7160.73
24	0.2298 - 0.2336	902.27 - 906.02	7160.71 - 7070.71
25	0.2337 - 0.2390	906.03 - 908.33	7070.70 - 6998.64
26	0.2391 - 0.2427	908.34 - 911.16	6998.63 - 6897.70
27	0.2428 - 0.2487	911.17 - 913.49	6897.69 - 6791.72
28	0.2488 - 0.2528	913.50 - 917.12	6791.71 - 6705.99
29	0.2529 - 0.2571	917.13 - 919.46	6705.98 - 6602.59
30	0.2572 - 0.2617	919.47 - 922.29	6602.58 - 6500.73
31	0.2618 - 0.2656	922.30 - 925.58	6500.71 - 6421.55
32	0.2657 - 0.2684	925.59 - 928.18	6421.54 - 6367.62
33	0.2685 - 0.2741	928.19 - 932.11	6367.61 - 6292.60
34	0.2742 - 0.2803	932.12 - 935.72	6292.59 - 6224.40
35	0.2804 - 0.2860	935.73 - 938.24	6224.39 - 6162.72
36	0.2861 - 0.2894	938.25 - 941.17	6162.71 - 6108.21
37	0.2895 - 0.2938	941.18 - 943.96	6108.20 - 6019.20
38	0.2939 - 0.2979	943.97 - 946.36	6019.19 - 5934.93
39	0.2980 - 0.3026	946.37 - 947.55	5934.92 - 5879.34
40	0.3027 - 0.3058	947.56 - 949.27	5879.33 - 5815.29
41	0.3059 - 0.3095	949.28 - 951.95	5815.28 - 5757.80
42	0.3096 - 0.3136	951.96 - 954.30	5757.79 - 5707.27
43	0.3137 - 0.3179	954.31 - 957.19	5707.26 - 5635.34
44	0.3180 - 0.3220	957.20 - 960.58	5635.33 - 5587.76
45	0.3221 - 0.3256	960.59 - 962.46	5587.75 - 5509.07
46	0.3257 - 0.3288	962.47 - 964.54	5509.05 - 5435.68
47	0.3289 - 0.3354	964.55 - 966.56	5435.67 - 5367.75
48	0.3355 - 0.3403	966.57 - 968.76	5367.74 - 5322.77
49	0.3404 - 0.3454	968.77 - 972.50	5322.76 - 5288.41
50	0.3455 - 0.3492	972.51 - 975.29	5288.39 - 5235.43

PART-B : SPECIAL NEEDS

PART-B : SPECIAL NEEDS

4 YR PRIVATE

POINT	NEED PERCENT	NEED DOLLAR	E AND G
1	0.0001 - 0.0787	0.01 - 710.86	15038.08+
2	0.0788 - 0.1102	710.87 - 747.49	15038.07 -12102.52
3	0.1103 - 0.1285	747.50 - 781.80	12102.51 -10642.75
4	0.1286 - 0.1434	781.81 - 811.30	10642.74 -10186.97
5	0.1435 - 0.1513	811.31 - 836.72	10186.96 - 9418.54
6	0.1514 - 0.1729	836.73 - 858.86	9418.53 - 8833.39
7	0.1730 - 0.1849	858.87 - 872.75	8833.38 - 8294.02
8	0.1850 - 0.1932	872.76 - 893.98	8294.01 - 8074.15
9	0.1933 - 0.2048	893.99 - 906.57	8074.14 - 7766.44
10	0.2049 - 0.2117	906.58 - 918.81	7766.43 - 7522.10
11	0.2118 - 0.2202	918.82 - 926.81	7522.09 - 7289.51
12	0.2203 - 0.2282	926.82 - 942.52	7289.50 - 7070.71
13	0.2283 - 0.2340	942.53 - 952.46	7070.70 - 6897.70
14	0.2341 - 0.2402	952.47 - 958.18	6897.69 - 6705.99
15	0.2403 - 0.2471	958.19 - 965.37	6705.98 - 6500.73
16	0.2472 - 0.2537	965.38 - 977.71	6500.71 - 6367.62
17	0.2538 - 0.2611	977.72 - 986.23	6367.61 - 6224.40
18	0.2612 - 0.2653	986.24 - 996.71	6224.39 - 6108.21
19	0.2654 - 0.2713	996.72 -1008.41	6108.20 - 5934.93
20	0.2714 - 0.2787	1008.42 -1017.71	5934.92 - 5815.29
21	0.2788 - 0.2864	1017.72 -1027.85	5815.28 - 5707.27
22	0.2865 - 0.2963	1027.86 -1035.14	5707.26 - 5587.76
23	0.2964 - 0.3049	1035.15 -1043.20	5587.75 - 5435.68
24	0.3050 - 0.3124	1043.21 -1054.51	5435.67 - 5322.77
25	0.3125 - 0.3207	1054.52 -1065.47	5322.76 - 5235.43
26	0.3208 - 0.3293	1065.48 -1075.85	5235.42 - 5137.48
27	0.3294 - 0.3373	1075.86 -1084.42	5137.46 - 5043.03
28	0.3374 - 0.3469	1084.43 -1094.79	5043.02 - 4948.31
29	0.3470 - 0.3549	1094.80 -1109.66	4948.30 - 4867.81
30	0.3550 - 0.3649	1109.67 -1120.25	4867.80 - 4798.70
31	0.3650 - 0.3713	1120.26 -1134.01	4798.69 - 4684.24
32	0.3714 - 0.3806	1134.02 -1144.11	4684.23 - 4578.07
33	0.3807 - 0.3895	1144.12 -1154.23	4578.05 - 4495.82
34	0.3896 - 0.4004	1154.24 -1164.77	4495.80 - 4354.18
35	0.4005 - 0.4070	1164.78 -1182.91	4354.17 - 4230.77
36	0.4071 - 0.4193	1182.92 -1195.00	4230.76 - 4137.60
37	0.4194 - 0.4297	1195.01 -1212.65	4137.59 - 4041.84
38	0.4298 - 0.4400	1212.66 -1228.48	4041.83 - 3941.60
39	0.4401 - 0.4541	1228.49 -1246.34	3941.59 - 3824.10
40	0.4542 - 0.4621	1246.35 -1262.22	3824.09 - 3708.14
41	0.4622 - 0.4753	1262.23 -1296.73	3708.13 - 3593.12
42	0.4754 - 0.4950	1296.74 -1317.78	3593.11 - 3471.47
43	0.4951 - 0.5140	1317.79 -1343.19	3471.46 - 3331.50
44	0.5141 - 0.5445	1343.20 -1374.29	3331.49 - 3165.26
45	0.5446 - 0.5793	1374.30 -1410.88	3165.25 - 3010.37
46	0.5794 - 0.6127	1410.89 -1446.60	3010.36 - 2770.60
47	0.6128 - 0.7043	1446.61 -1517.31	2770.59 - 2499.82
48	0.7044 - 0.8032	1517.32 -1603.72	2499.81 - 2103.40
49	0.8033 - 0.9521	1603.73 -1763.08	2103.39 - 1669.07
50	0.9522+	1763.09+	1669.06 - 1.00

PART B: SPECIAL NEEDS

GRADUATE PUBLIC

POINTS	NEED PERCENT	NEED DOLLARS
1	0.0001 - 0.0942	0.01 - 545.59
7	0.0943 - 0.1869	545.60 - 1380.94
19	0.1870 - 0.3619	1380.95 - 1408.23
32	0.3620 - 0.3785	1408.24 - 1675.49
50	0.3786+	1675.50+

PART B: SPECIAL NEEDS

GRADUATE PRIVATE

POINT	NEED PERCENT	NEED DOLLAR
1	0.0001 - 0.0176	0.01 - 449.61
2	0.0177 - 0.0248	449.62 - 577.11
3	0.0249 - 0.0315	577.12 - 595.20
4	0.0316 - 0.0401	595.21 - 618.31
5	0.0402 - 0.0567	618.32 - 669.46
6	0.0568 - 0.0618	669.47 - 728.18
7	0.0619 - 0.0635	728.19 - 783.84
8	0.0636 - 0.0650	783.85 - 813.56
9	0.0651 - 0.0863	813.57 - 848.67
10	0.0864 - 0.0994	848.68 - 873.85
11	0.0995 - 0.1018	873.86 - 881.80
12	0.1019 - 0.1028	881.81 - 897.93
13	0.1029 - 0.1113	897.94 - 949.89
14	0.1114 - 0.1170	949.90 - 968.59
15	0.1171 - 0.1299	968.60 - 969.71
16	0.1300 - 0.1419	969.72 -1011.31
17	0.1420 - 0.1461	1011.32 -1018.04
18	0.1462 - 0.1478	1018.05 -1024.48
19	0.1479 - 0.1605	1024.49 -1030.75
20	0.1606 - 0.1629	1030.76 -1071.02
21	0.1630 - 0.1737	1071.03 -1100.22
22	0.1738 - 0.1777	1100.23 -1112.27
23	0.1778 - 0.1785	1112.28 -1127.49
24	0.1786 - 0.1816	1127.50 -1301.17
25	0.1817 - 0.1855	1301.18 -1360.01
26	0.1856 - 0.1913	1360.02 -1369.27
27	0.1914 - 0.1977	1369.28 -1415.09
28	0.1978 - 0.2021	1415.10 -1444.43
29	0.2022 - 0.2044	1444.44 -1448.95
30	0.2045 - 0.2062	1448.96 -1512.23
31	0.2063 - 0.2098	1512.24 -1517.85
32	0.2099 - 0.2130	1517.86 -1543.44
33	0.2131 - 0.2307	1543.45 -1584.03
34	0.2308 - 0.2367	1584.04 -1589.99
35	0.2368 - 0.2400	1590.00 -1604.72
36	0.2401 - 0.2618	1604.73 -1635.81
37	0.2619 - 0.2625	1635.82 -1643.40
38	0.2626 - 0.2736	1643.41 -1664.07
39	0.2737 - 0.2833	1664.08 -1766.45
40	0.2834 - 0.2858	1766.46 -1802.77
41	0.2859 - 0.2954	1802.78 -1945.64
42	0.2955 - 0.3064	1945.65 -1955.76
43	0.3065 - 0.3174	1955.77 -2028.77
44	0.3175 - 0.3203	2028.78 -2258.91
45	0.3204 - 0.3520	2258.92 -2275.66
46	0.3521 - 0.3717	2275.67 -2580.90
47	0.3718 - 0.4614	2580.91 -2772.57
48	0.4615 - 0.5237	2772.58 -3400.06
49	0.5238 - 0.6939	3400.07 -3563.35
50	0.6940+	3563.36+

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DEPARTMENT OF ENERGY

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (P.L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective July 1, 1984. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, 2000 Independence Avenue, SW., Room BE-034, Washington, D.C. 10585, Telephone: (202) 252–6077.

Section I

As required by FERC Orderd No. 50, computed prices are shown for the 48 continguous States. The Distirct of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for state regions. Under the revised Methodology, the applicable alternative fuel price celing published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in section III.

State	Dollars per million Btu's
Alabama	4.36
Arizona [1]	4.15
Arkansas [1]	4.10
California	4.07
Colorado [2]	4.13
Connecticut [1]	4.59
Delaware [1]	4.54
Florida	4.18
Georgia [1]	4.41
Idaho [2]	4.13
Illinois	4.25
Indiana	4.16
Iowa [1]	4.16
Kansas [1]	4.16
Kentucky [1]	4.33
Louisiana [1]	4.10
Maine	4.55
Maryland [1]	4.54
Massachusetts	4.51
Michigan [1]	4.33
Minnesota	4.02
Mississippi [1]	4.41
Missouri	4.16
Montana [2]	4.13
Nebraska [1]	4.16
Nevada [1]	4.15
New Hampshire [1]	4.52
New Jersey [1]	4.54
New Mexico	3.89
New York	4.54
North Carolina [1]	4.41
North Dakota [1]	4.19
Ohio	4.20
Oklahoma [1]	4.10
Oregon [1]	4.15
Pennsylvania	4.49
Rhode Island [1]	4.56
South Carolina [1]	4.41
South Dakota [1]	4.16
Tennessee [1]	4.41
Texas	3.91
Utah [2]	4.13
Vermont [1]	4.59
Virginia [1]	4.41
Washington [1]	4.15
West Virginia [1]	4.33
Wisconsin [1]	4.18
Wyoming [2]	4.13

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM–79–21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during April 1984 was $35.39 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as indentified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective July 1, 1984, is $7.93 per million BTU's.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of February 1984, March 1984, and April 1984.[1] All reports of volume sold and price were indentified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective July 1, 1984 (shown in section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, February 1984, March 1984 , and April 1984. Reported prices for sales in February 1984 were adjusted by the percent change in the nationwide volume-weighted average price from February 1984 to April 1984. Prices for March 1984 were similarly adjusted by the percent change in the nationwide volume-weighted average price from March 1984 to April 1984. The volume-weighted 3-month average of the adjusted February 1984 and March 1984, and the reported April 1984 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or local), and the military are excluded.

month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of February 1984, March 1984, and April 1984. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending June 14, 1984, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of April 1984. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

Region B

Delaware
Maryland
New Jersey
New York
Pennsylvania

Region C

Alabama
Florida
Georgia
Mississippi
North Carolina
South Carolina
Tennessee
Virginia

Region D

Illinois
Indiana
Kentucky
Michigan
Ohio
West Virginia
Wisconsin

Region E

Iowa
Kansas
Missouri
Minnesota
Nebraska
North Dakota
South Dakota

Region F

Arkansas
Louisiana
New Mexico
Oklahoma
Texas

Region G

Colorado
Idaho
Montana
Utah
Wyoming

Region H

Arizona
California
Nevada
Oregon
Washington

Issued in Washington, D.C., June 18, 1984.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 84-16524 Filed 6-19-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP84-435-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Application

June 15, 1984.

Take notice that on May 22, 1984, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP84-435-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Arkla to sell natural gas to Southern Natural Gas Company (Southern) at a point near Southern's Perryville Compressor Station in northeast Louisiana, and to construct and operate the necessary pipeline and compression facilities necessary to implement said sale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Arkla requests authority to sell a maximum daily quantity (MDQ) of 100,000 Mcf of natural gas from November 1, 1985 to October 31, 1986, 200,000 Mcf from November 1, 1986 to October 31, 1987, and 300,000 Mcf from November 1, 1987 for the remaining fifteen years of their agreement. It is stated that the agreement further provides that if Arkla desires to sell to Southern volumes in excess of the MDQ, Southern may purchase such overrun volumes as Arkla makes available. Arkla also requests authorization for the initial inclusion of Southern's requirements under Arkla's curtailment plan. The contract provides for a minimum monthly purhcase obligation equal to 50.0 percent of the MDQ times the number of days in each month and a minimum annual purchase obligation equal to 60.0 percent of the MDQ times the number of days in the year. In the event Southern pays for volumes not received, it would be able to make up those volumes within 48 months of the period from which the deficiency was incurred. Arkla states that deliveries to Southern would, in the event of curtailment, be governed by the priorities of service in Arkla's then effective curtailment plan as applied by Arkla to Southern's requirements. The contract provides for an initial rate determined in accordance with the *Atlantic Seaboard* (11 FPC 43 (1952)) method of cost classification and allocation, consisting of a monthly demand charge not exceeding $4.65 per Mcf and a commodity charge not exceeding $3.2567 per Mcf, except as

may be necessary to reflect changes in Arkla's cost of purchased gas between the date of the agreement and the date service commences.

In order to effect the above sale, Arkla requests authorization to construct and operate pipeline, compression and other appurtenant facilities (see Appendix) at an estimated cost of $231,568,000. It is stated that the cost of the proposed facilities would be financed on an interim basis from cash on hand and short-term loans or commercial paper which would, in due course, be incorporated into Arkla's permanent financing program in the form of long-term securities.

Arkla states that the proposed sale to Southern is part of its efforts to replace its lost markets indicating that its annual sales volume declined from 450,000,000 Mcf in 1970 to 265,000,000 Mcf in 1983. Such load losses are attributed to conversion to the use of coal and nuclear energy, conservation and, more recently, economic recession. Arkla further states that because its average sales price of gas is one of the lowest in the industry that virtually none of the market loss has been attributable to fuel oil price competition and that absent the development of new markets, the load loss cannot be restored. Arkla indicates that it would provide the volumes necessary to serve Southern from its existing reserves and from additional reserves to be acquired. Arkla states that its ratio of reserves to withdrawals as of December 31, 1983, was 17.1 years and that it has an annual supply avaialble of approximately 70,000,000 Mcf in excess of its current requirements.

Arkla states that is customers would benefit from the proposed sale because these increased volumes would spread system costs more broadly and that Southern's customers would benefit because Southern would receive a long-term reliable supply of gas at a price which would lower Southern's average cost of gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Appendix—Proposed Facilities and Construction Schedule

(A) To be completed by November 1, 1985:

(1) 112 miles of 30-inch pipeline extending from Arkla's Beirne compressor station in Clark County, Arkansas to the point of delivery to Southern near Southern's Perryville compressor station in Ouachita Parish, Louisiana, and related metering and regulating facilities;

(2) 23.76 miles of 30-inch loop line between Arkla's Dunn compressor station in Logan County, Arkansas and its Chambers compressor station in Yell County, Arkansas;

(3) A compressor station having approximately 6,750 horsepower (tentatively designated as the "Clark County Compressor Station") at Arkla's Beirne compressor station site in Clark County, Arkansas.

(B) To be completed by November 1, 1986:

(1) 16.32 miles of 30-inch loop line between Arkla's Chambers compressor station in Yell County, Arkansas and Arkla's Perla regulator station in Hot Spring County, Arkansas;

(2) An additional compressor unit of approximately 4,000 horsepower at Arkla's Dunn compressor station in Logan County, Arkansas;

(3) An additional compressor unit of approximately 3,850 horsepower at Akrla's Chambers compressor station in Yell County, Arkansas;

(4) Two additional compressor units totalling approximately 8,500 horsepower at Arkla's Ada storage facility in Pontotoc County, Oklahoma;

(5) Modification of Arkla's Perla regulator station in Hot Spring County, Arkansas and the metering facilities at its Dunn compressor station in Logan County, Arkansas.

(C) To be completed by November 1, 1987:

(1) 48.22 miles of 36-inch loop line between Arkla's Chandler compressor station in Latimer County, Oklahoma and its Dunn compressor station in Logan County, Arkansas;

(2) 34.36 miles of 30-inch loop line between Arkla's Perla regulator station in Hot Spring County, Arkansas and its Beirne compressor station in Clark County, Arkansas;

(3) 10.0 miles of 24-inch loop line between Arkla's Taylor compressor station and its Hamilton Products Extraction Plant in Columbia County, Arkansas;

(4) A compressor station having approximately 9,000 horsepower on Arkla's Line AD (tentatively designated as the Ada compressor station) in Pontotoc County, Oklahoma.

[FR Doc. 84-16439 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-482-000]

Arkansas Power & Light Co.; Filing

June 15, 1984.

The filing Company submits the following:

Take notice that on June 7, 1984, Arkansas Power & Light Company (AP&L) tendered for filing a Letter Agreement dated May 23, 1984 between AP&L and the City of Ruston, Louisiana (Ruston) for transmission service through the system of AP&L. The Agreement will permit a sale by Arkansas Electric Cooperative Corporation to Ruston of twenty-seven MW of contract capacity and accompanying energy. AP&L presently provides transmission service to Ruston under a similar agreement.

AP&L request an effective date of July 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 2, 1984. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16437 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-327-000

California Energy Co., Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 15, 1984.

On My 16, 1984, California Energy Company, Inc., (Applicant) of 3333 Mendocino Avenue, Suite 100, Santa Rosa, California 95401, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the Naval Weapons Center of the United States Navy at China Lake, near Ridgecrest, California within the CosoeKnown Geothermal Resource Area. The primary energy source will be geothermal fluids. The electric power production capacity will be 75 megawatts. The facility will not use any natural gas, oil or coal.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

FR Doc. 84-16438 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-432-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

June 15, 1984.

Take notice that on May 21, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-432-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Webster Brick Company, Inc. (Webster Brick), under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 1,225 million Btu of natural gas per day, less retainage, for Webster Brick for a one-year term effective the date deliveries of gas commence hereunder. Columbia states that the gas to be transported hereunder would be purchased from R. Gene Brasel by Webster Brick and would be used as process gas in Webster Brick's plant in Somerset, Virginia. Columbia indicates that the gas to be purchased by Webster Brick involves gas supplies released by Columbia and that such supplies are subject to the ceiling price provisions of sections 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is further stated that Columbia would receive the gas at existing delivery points in various counties in Ohio and redeliver such gas to Commonwealth Gas Pipe Line Corporation in Green County, Virginia, which would in turn redeliver the gas to Commonwealth Gas Services Corporation (Commonwealth Services) near Somerset. Commonwealth Services is the distribution company serving Webster Brick.

Columbia states that it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent, exclusive of company-use and unaccounted-for gas, or (2) its average system-wide storage, transmission, and gathering charge, currently 44.93 cents per dt equivalent, exclusive of company-use and unaccounted-for gas, depending on whether Columbia's gathering facilities are involved. It is further stated that Columbia would retain for company-use and unaccounted-for gas a percentage of the gas delivered hereunder as reflected in Columbia's rate filings; this percentage is currently 2.85 percent.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary

[FR Doc. 84-16439 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-439-000]

Columbia Gas Transmission Corp.; Application

June 15, 1984.

Take notice that on May 23, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-439-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing decreased winter contract demand under a revised service agreement with Cincinnati Gas and Electric (CG&E), an existing wholesale customer of Columbia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to enter into a revised service agreement with CG&E, effectuating a decrease in its winter contract quantity under Rate Schedule WS of 924,000 dt equivalent of natural gas from 6,852,000 dt to 5,928,000 dt in Zone 3, and an increase in its winter contract quantity under Rate Schedule WS of 770,000 dt from 1,300,000 dt to 2,070,000 dt in Zone 4, effective November 1, 1983; resulting in a reduction of total winter contract

quantity of 154,000 dt from 8,152,000 dt to 7,998,000 dt.

It is stated that the proposed service level changes would have virtually no impact on Columbia's gas supply or operation. The proposed service level changes would not affect CG&E's total daily entitlement. It is stated that this reduction provides CG&E with a minimum of 50 days of winter service maximum daily quantity in Zone 4 and 60 days in Zone 3.

It is indicated that the customer's requests for service changes were made pursuant to the provisions of Columbia's FERC Gas Tariff Original Volume No. 1.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16440 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-455-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

June 15, 1984.

Take notice that on June 1, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314 filed in Docket No. CP84-455-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Globe Refractories, Inc. (Globe) under the authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 2.1 billion Btu of natural gas per day for Globe for a term of one year. It is stated that the gas to be transported would be purchased from Atlas Energy Group, Inc. (Atlas) and J. D. Drilling Company (J. D. Drilling) and would be used as process gas in Globe's Newell, West Virginia plant.

The gas purchase agreements between Atlas and Globe and between J. D. Drilling and Globe indicate that Columbia has released certain gas supplies of Atlas and J. D. Drilling. It is stated that these supplies are subject to the ceiling provisions of sections 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is indicated that Globe has purchased this released gas from Atlas and J. D. Drilling. It is further indicated that Columbia would receive the gas at existing points in Ohio and would deliver the gas to Columbia Gas of West Virginia, Inc., the distributor serving Globe, near Newell, West Virginia.

It is stated that depending upon whether its gathering facilities are involved, Columbia would charge either (1) 40.11 cents per dt equivalent for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dt equivalent for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16441 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-481-000]

Florida Public Utilities Co.; Filing

June 15, 1984.

The filing Company submits the following:

Take notice that on June 7, 1984, Florida Public Utilities Company (FPUC) tendered for filing a notice of cancellation of Rate Schedule No. 1, which provides for the sale of electric power by FPUC to the City of Blountstown, Florida (Blountstown) for its own use and for resale in Blountstown and the surrounding area.

FPUC states that Blountstown no longer pruchases electric power from FPUC, and that rate schedule is obsolete. FPUC proposes that the cancellation be made effective June 1, 1984.

According to FPUC a copy of the notice of cancellation has been served upon Blountstown and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16442 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-188-000]

Merck, Sharp, and Dohme Quimica De Puerto Rico, Inc.; Termination of Docket

June 15, 1984.

On February 24, 1984, Merck, Sharp, and Dohme Quimica De Puerto Rico, Inc. (Merck) filed, pursuant to § 292.207(a)(2) of the Commission's regulations, a notice with the Commission that its facility located in Barceloneta, Puerto Rico is a qualifying cogeneration facility. On March 9, 1984, notice of the filing was published in the **Federal Register**,[1] and on April 10, 1984, the Puerto Rico Electric Power Authority (PREPA) filed a notice of or motion for intervention. In response to a request from the Commission's Office of Electric Power Regulation, Merck filed additional information on April 16, 1984.

Under the Commission's rules, a cogeneration facility may either file a notice that the facility is a qualifying cogeneration facility, pursuant to §292.207(a)(2), or an application for certification as a qualifying cogeneration facility, pursuant to § 292.207(b). Merck's notice was inadvertently treated as an application. Since Merck has included the required information in its notice, it has complied with § 292.207(a)(2) of the Commission's regulations and interventions do not lie under our rules. Therefore, PREPA's motion to intervene is hereby dismissed, and Docket No. QF84-188-000 is hereby terminated.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16443 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-434-000]

Natural Gas Pipeline Company of America; Application

June 15, 1984.

Take notice that on May 22, 1984, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP84-434-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation and delivery of summer season volumes of natural gas rescheduled for winter season delivery for Iowa-Illinois Gas and Electric Company, (Iowa-Illinois) all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that pursuant to a gas transportation and rescheduling agreement, dated April 21, 1976, among Applicant, Iowa-Illinois and Northern Natural Gas Company, Division of Inter-North, Inc. (Northern), it transports up to 5,000 Mcf per day of natural gas during the summer season (not to exceed 100,000 Mcf per summer season) to Iowa-Illinois' liquefied natural gas facility at Rock Island County, Illinois. It is stated that Applicant receives said volumes from Northern at Northern's existing Glenwood Exchange Point in Mills County, Iowa. It is also stated that during the winter season, Applicant transports and redelivers up to the volumes stored during the summer to Northern for redelivery to Iowa-Illinois at its Fort Dodge district as required. it is further stated that the agreement was terminated on April 13, 1984, by Applicant, Northern and Iowa-Illinois.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16444 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-337-000]

S&S Ltd. Partnership; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 15, 1984.

On May 1, 1984, S&S Ltd. Partnership, (Applicant) of 1742 Targhee, Twin Falls, Idaho 83301, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 500 kW hydroelectric facility (P. 4769) is located on the Mud Creek near Buhl, Idaho.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding

[1] 49 FR 9006.

siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16445 Filed 6-19-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-2110-000]

Ralph F. Schlenker; Application

June 15, 1984.

Take notice that on June 7, 1984, Ralph F. Schlenker filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President—Iowa Power and Light Company
Director—Iowa Gas Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 2, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16446 Filed 6-19-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-436-000]

Southern Natural Gas Co.; Application

June 15, 1984.

Take notice that on May 22, 1984, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP84-436-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas pipeline and compression facilities to enable Southern to receive and transport gas purchased from Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), for system supplies, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it has entered into an agreement with Arkla, dated July 29, 1983 (Agreement), pursuant to which Arkla has agreed to sell on a firm basis to Southern certain quantities of gas for a term of fifteen years commencing on November 1, 1985. The terms of the Agreement provide for an initial maximum daily quantity (MDQ) of 100,000 Mcf commencing on November 1, 1985, increasing for one year to an MDQ of 200,000 Mcf commencing on November 1, 1986, and increasing for the remainder of the term of the Agreement on November 1, 1987, to an MDQ of 300,000 Mcf per day. Southern states it would also be entitled to purchase from Arkla during the term of the Agreement daily overrun quantities of gas above the MDQ in effect to the extent such overrun quantities are made available by Arkla.

It is indicated that the initial rate would be a two-part rate designed in accordance with the methodology established in *Atlantic Seaboard Corporation, et al.*, 11 FPC 43 (1952), and would consist of a demand charge not in excess of $4.65 per Mcf and a commodity charge not in excess of $3.2567 per Mcf, which commodity charge would be adjusted, however, to reflect adjustments from Arkla's currently effective cost of purchased gas of $2.6854 per Mcf.

Southern further states that in designing the proposed facilities, it has taken into consideration the fact that its two gas purchase agreements with United Gas Pipe Line Company (United) expire by their own terms on October 31, 1984, and that Southern and United have reached a new agreement extending the current level of service to Southern until October 31, 1985, after which United would sell and deliver to Southern a reduced contract quantity of 175,000 Mcf per day.

It is indicated that the quantities of gas to be purchased by Southern under the Agreement would be delivered by Arkla at a proposed point of delivery on Southern's existing north main pipeline system near its Perryville compressor station site in Ouachita Parish, Louisiana. In order to receive and transport quantities of gas to be delivered by Arkla, Southern proposes to construct and operate a pipeline receiving station and appurtenant facilities at its Perryville compressor station site, approximately 47 miles of 24-inch pipeline to loop portions of its existing north main pipeline system at various locations in northern Louisiana and central Mississippi, and 5,200 horsepower of additional compression at its Pickens compressor station site in Yazoo County, Mississippi. The estimated cost of constructing the above-described facilities is stated to be $55,877,000 and is expected to be financed initially by short-term financing and/or cash from current operations and ultimately from permanent financing.

Southern submits that the present and future public convenience and necessity require the construction and operation of the facilities described in the application to enable it to receive and transport quantities of gas available from Arkla. Southern states that despite aggressive gas acquisition efforts during the period of 1979 through 1981 following termination of liquefied natural gas deliveries from Algeria and notwithstanding its present excess deliverability, Southern's reserve life position remains relatively short; and it projects a sizeable and drastic deficiency in deliverability in the near term future from its existing sources of supplies necessary to meet its gas requirements. The Agreement, according to Southern, also represents a major source of low cost supply for Southern which would greatly aid Southern's ability to maintain and improve reliable service to its customers. In addition, Southern states that the vast majority of its supplies are produced in traditional supply areas of southern Louisiana, Texas and offshore Louisiana in the Gulf of Mexico. It is maintained that the gas supplies available from Arkla would, therefore, represent a major diversification of gas supply for Southern, reducing its dependence on traditional supply areas.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice

and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16447 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-427-000]

Tampa Electric Co.; Revised Filing

June 15, 1984.

The filing Company submits the following:

Take notice that Tampa Electric Company (Tampa) tendered for filing on May 8, 1984, and supplemented on May 30, 1984, revised cost support schedules showing a change in daily capacity charge for its scheduled interchange service provided under interchange service agreements with Florida Power Corporation, Florida Power & Light Company, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Sebring Utilities Commission, Seminole Electric Cooperative, and the Cities of Gainesville, Kissimmee, Lakeland, St. Cloud, Tallahassee, and Vero Beach, Florida. Tampa states that the revised daily capacity charge is based on 1983 Form No. 1 data, and is dervied by the same method that is shown in the cost support schedules submitted with the interchange agreements.

Tampa requests an effective date of May 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon each of the above-named parties to interchange agreements with Tampa, as well as the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 29, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16448 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-431-000]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Application

June 15, 1984.

Take notice that on May 21, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-431-000 an application, as supplemented May 31, 1984, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a transportation service for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant would accept, receive, transport and deliver a transportation quantity of up to 60,000 Mcf of natural gas per day for Northern from a point of receipt at an existing point of interconnection between Northern and Applicant on Applicant's West Cameron Block 192 platform, offshore Louisiana. Applicant would return such gas for the account of Northern at the primary point(s) of delivery which would be (1) the point of interconnection of United Gas Pipe Line Company's (United) 18-inch line and Applicant's compressor station 47 near West Monroe, Ouachita Parish, Louisiana (West Monroe delivery point), or (2) Applicant's metering facilities near Chauncey, Hancock County, Mississippi (Kiln delivery point). The alternative points(s) of delivery by Applicant for the account of Northern would be (1) the point of interconnection between Applicant's 16-inch line and United's 20-inch line in Calcasieu Parish, Louisiana (Iowa delivery point), or (2) the point of interconnection of Applicant's Muskrat line and United's 30-inch line near Bayou Sale, St. Mary Parish, Louisiana (Centerville delivery point), or (3) the point of interconnection of Applicant's facilities and the facilities of Houston Pipe Line Company on Applicant's line in Newton County, Texas (Sabine delivery point), or (4) the point of interconnection on Applicant's 30-inch Kinder-Sabine pipeline near Beckwith Creek, Calcasieu Parish, Louisiana (Beckwith Creek delivery point), or (5) the point of interconnection between the pipeline facilities of Applicant and ANR Pipeline Company on Applicant's pipeline in Cameron Parish, Louisiana (Chalkley delivery point), or (6) the point of interconnection between the facilities of Applicant and Trunkline Gas Company in Jefferson Davis Parish, Louisiana (Kinder delivery point).

It is further stated that Applicant would transport the transportation quantity for Northern to either the West Monroe delivery point or the Kiln delivery point from each November 1 to March 31 and to the Kiln delivery point from each April 1 to October 31, or, at Applicant's option, to the alternative delivery points(s) during either time period.

It is additionally stated that, Applicant would accept the associated liquid hydrocarbons (exclusive of oil) produced with such transportation quantity and would transport and deliver such liquid hydrocarbons for the account of Northern's producers to onshore liquid separation facilities, provided Northern's producers would have made the necessary arrangements for separation, handling, storage of liquid hydrocarbons, gas dehydration and payment for such services with the owners of such onshore facilities. Pursuant to the transportation agreement, processing if any, would be at the Grand Chenier Plant, onshore Louisiana.

It is stated that Northern would pay Applicant a volume charge equal to the product of 17.26 cents [1] multiplied by the total volume in Mcf of gas received by Applicant from Northern during the month, less volumes retained by Applicant or fuel and use as follows: (1) 3.03 percent for the West Monroe delivery point, (2) 3.25 percent for the Kiln delivery point, and (3) 1.2 percent for the alternative point(s) of delivery. The minimum monthly bill would consist of the volume charge of 17.26 cents multiplied by the number of days in said month multiplied by 66⅔ percent

[1] As permitted by the transportation agreement, rates have been revised from the rates stated in the agreement to reflect Applicant's current costs, it is indicated.

of the transportation quantity less the volume, if any, tendered by Northern and not taken by Tennessee, it is explained.

Additionally, Northern would pay Applicant a liquids transportation charge of 47.82 cents per barrel [2] for the transportation of liquids.

Applicant states that the proposed service would be beneficial to Northern in that it would provide Northern with a means of receiving an additional supply of natural gas without having to construct and operate additional facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdicition conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for lease to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise adivsed, it will be unnecessary for Applicant to appear or be represented at the hearing.

[2] As permitted by the transportation agreement, this rate would be adjusted annually to be effective April 1 of each year by use of the GNP Implicit Price Deflator (or suitable replacement should such deflator be discontinued), it is indicated.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16449 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-441-001]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Amendment to Application

June 15, 1984.

Take notice that on June 6, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, file in Docket No. CP84-441-001 an amendment to its pending application filed in Docket No. CP84-441-000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act to correct in the pending application an error made in developing the proposed monthly demand rates for the proposed firm storage transportation service, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In its application, Applicant proposed for the new firm FSST-E and T-24 storage transportation services a proposed monthly demand charge equal the product of the monthly demand rate of $20.17 multiplied by the maximum daily volume (MDV) transported, and for the new firm FSST-NE storage transportation service a proposed monthly demand charge equal to the product of the monthly demand rate of $22.29 multiplied by the MDV transported. Applicant proposes herein to change the calculation of the aforementioned proposed monthly demand charges by correcting the monthly demand rate for the proposed FSST-E and T-24 services from $20.17 to $24.50 and for the proposed FSST-NE service from $22.29 to $26.63. Accordingly, Applicant proposes to revise Exhibit P of its original aplication to reflect these corrected rates. Applicant states that the corrected rates necessitate changing only Pages 1, 2 and 4, and the *pro forma* copies of the proposed Rate Schedules FSST-E and FSST-NE which are included in Exhibit P.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before July 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16450 Filed 6-19-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-445-000]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Application

June 15, 1984.

Take notice that on May 25, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-445-000 an application, as supplemented June 11, 1984, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a new delivery point for its existing customer, Orange and Rockland Utilities, Inc. (O&R), all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to O&R's request, it has agreed to establish under Applicant's gas sale contract with O&R and its CD-5 Rate Schedule, a new delivery point at Applicant's existing Mahwah sales meter station in Mahwah, New Jersey, which is an existing point of interconnection with Algonquin Gas Transmission Company. Applicant further states that the new delivery point would be restricted for use only with respect to interruptible deliveries of gas under its Rate Schedule R and that daily deliveries would be limited to 50,000 Mcf. No increase or decrease in total daily and/or annual volumes delivered to O&R is proposed by Applicant.

It is stated that the Mahwah delivery point would provide additional flexibility to O&R in the receipt of interruptible gas from Applicant. Applicant avers that at this time it is

unable to state the extent of increased sales to O&R, if any, which would result from the establishment of the proposed delivery point. Applicant further avers that the proposed Mahwah delivery point is not prohibited by Applicant's currently effective CD–5 or R Rate Schedules and that it has sufficient capacity to accomplish the deliveries as proposed without detriment or disadvantage to any of Applicant's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–16453 Filed 6–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–340–000]

Town of Clintwood, Virginia; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 15, 1984.

On May 21, 1984, Town of Clintwood, Virginia (Applicant) Bernard Rakes, Mayor, P.O. Box 456, Clintwood, Virginia 24228 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 7 megawatt hydroelectric facility (P. 3475) will be built at the existing Flannagan Dam on the Pound River in Dickinson County, Virginia.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemptions from licensing. Comments on such applications are requested by separate public noitice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–16452 Filed 6–19–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–335–000]

WindMaster Partners 1984–1; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 15, 1984.

On May 21, 1984, WindMaster Partners 1984–1, (Applicant) of 660 J. Street, Suite 350, Sacramento, California 95814, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 10 megawatt windfarm will be located at Altamont Pass in Contra Costa County, California. It will consist of up to 50 units at 200 kilowatts each.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 84–16454 Filed 6–19–84; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–379; OPTS–FRL 2611–3]

Pesticide Tolerance Petitions; Certain Companies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment and withdrawal of tolerances for certain pesticides chemicals in or on certain raw agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF–379] and the petition

number, attention Product Manager (PM) named in each petition, at the following address: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS–757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS–767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

PM–12—Jay Ellenberger, Rm. 202, CM#2 (703–557–2386), EPA, 1921 Jefferson Davis, Hwy, Arlington, VA 22202.

PM–16—William Miller, Rm. 211, CM#2 (703–557–2600), EPA, 1921 Jefferson Davis, Hwy, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and food additive (FAP) petitions relating to the establishment and withdrawal of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

I. Initial Filing

PP 4F3081. Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803. Proposes to amend 40 CFR 180.287 by establishing tolerances for the combined residues of the insecticide amitraz (*N*'(2,4-dimethylphenyl)-*N*-[[(2-4-dimethylphenyl)imino]methyl]-*N*-methylmethanimidamide) and its metabolites containing the 2,4-dimethylaniline moiety (calculated as the parent compound) in or on the following commodities:

Commodities	Parts per million (ppm)
Hogs, fat, meat and meat byproducts (mbyp)	0.05
Hogs, kidney, and liver	0.1

The proposed analytical method for determining residues is gas chromatography. (PM–12).

II. Petition Withdrawal

PP 4F2989, FAP 4H5417. EPA issued notices published in the **Federal Register** of February 8, 1984 (49 FR 4839), which announced that Mobay Chemical Corp., Agricultural Chemicals Div., P.O. Box 4913, Kansas City, MO 64120, had submitted pesticide petitions proposing to amend 40 CFR 180.387 (PP 4F2989) and 21 CFR Part 193 (FAP 4H5417) by establishing tolerances and/or regulation for the combined residues of the insecticide 1-methylethyl 2-[[ethosy[(1-methylethyl)amino]phosphinothioyl]oxy] benzoate and its cholinesterase inhibiting metabolites 1-methylenthyl 2-((ethoxy((1-methylethyl)amino)phosphinoyl)oxy) benzoate, 1-methylenthyl 2-((ethoxy((1-amino)phosphinoyl)oxy)benzoate, and 1-methylethyl 2-((ethoxy((1-amino)phospthinoyl)oxy)benzoate in or on the following commodities:

Petition ID	CFR affected	Commodities	Parts per million (ppm)
PP 4F2989	40 CFR 180.387	Potatoes	1.5
FAP 4H5417	21 CFR Part 193	Potatoes, chips, dried, and granules	5.0

Mobay Chemical Corp. has withdrawn these petitions without prejudice to future filing. (PM–16).

(Sec. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2))

Dated: June 18, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–16290 Filed 6–19–84; 8:45 am]

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[OPP–240046; PH–FRL 2607–3]

Pesticides; Special Local Need Registrations; Voluntary Cancellations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice lists names of registrants requesting voluntary cancellation of section 24(c) registrations of their pesticide products in compliance with section 6(a)(1) of the Federal Insectide, Fungicide, and Rodenticide Act (FIFRA) as amended. The State registration for each of these products has already been cancelled by the issuing State. Distribution or sale of these products by the registrant, using the section 24(c) label, after the effective date of cancellation will be considered a violation of the FIFRA.

EFFECTIVE DATE: July 20, 1984.

ADDRESS: By mail submit comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked "confidential" may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Lela Sykes, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telphone number: Rm 718C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2126).

SUPPLEMENTARY INFORMATION: The following registrants have requested that EPA voluntarily cancel section 24(c) registrations:

1. American Hoechst Corp., Agricultural Division, Route 202–206 North, Somerville, NJ 08876.

2. E. I. Du Pont De Nemours & Co., Agricultural Chemicals Dept., Wilmington, DE 19898.

3. General Control, Inc., 3334 East Pennsylvania St., Tuscon, AZ 85714.

4. Gowan Co., P.O. Box 5696, Yuma, AZ 85364.

5. Gustafson, Inc., P.O. Box 660065, Dallas, TX.

6. Merck Sharp & Dohme Research Laboratories, P.O. Box 2000, Rahway, NJ 07065.

7. Mississippi Department of Agriculture and Commerce, P.O. Box 1609, Jackson, MS 39205.

8. Monsanto Co., 1101 17th St. NW., Washington, D.C. 20036.

9. Nutralite Products, Inc., 5600 Beach Boulevard, P.O. Box 5940, Buena Park, CA 90622.

10. Ortho Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804.

11. Phillips Roxane, Inc., 2621 North Belt Highway, St. Joseph, MO 64502.

12. Rhone-Poulenc, Inc., Agrochemical Division, P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852.

13. Riverside/Terra, P.O. Box 171376, Memphis, TN 38117.

14. Shell Chemical Co., One Shell Plaza, P.O. Box 4320, Houston, TX 77210.

15. Swingle Tree Co., 620 South Dahlia St., Denver, CO 80222.

16. Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709.

The following section 24(c) registrations have been voluntarily cancelled:

Special local [illegible] registration No.	Product name	Registrant	Date registered
	Alabama		
AL 77 0008	DuPont Lannate® Insecticide	E.I. DuPont de Nemours & Co	7-19-77
AL 77 0009	DuPont Lannate® L Insecticide	E.I. DuPont de Nemours & Co	7-19-77
AL 78 0005	Roundup	Monsanto Co®	4-10-78
AL 78 0011	DuPont Vydate® L Insecticide/Nematicide	E.I. Dupont de Nemours & Co	10-02-78
AL 79 0011	Nudrin® 90 Methomyl Insecticide Water Soluble Powder	Shell Chemical	5-28-79
AL 79 0012	Nudrin® 1.8 Insecticide Solution	Shell Chemical	5-28-79
AL 79 0014	Bladex 4L Herbicide	Shell Chemical	7-05-79
AL 80 0006	Vitavax-EVS Concentrate	Gustafson, Inc.	3-25-80
AL 80 0017	Gustafson 42-S Thiram Fungicide and Repellent	Gustafson, Inc.	3-25-80
AL 80 0035	Gustafson Botran-20C	Gustafson, Inc.	3-25-80
AL 81 0012	DuPont Manzate® 200 Insecticide	E.I. DuPont de Nemours & Co	4-15-81
AL 81 0019	Nudrin® 90 Methomyl Insecticide Water Soluble Powder	Shell Chemical	5-04-81
AL 81 0020	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	5-04-81
	Arizona		
AZ 77 0011	DuPont Lannate® Insecticide	E.I. DuPont de Nemours & Co	5-12-77
AZ 77 0012	DuPont Lannate® L Insecticide	E.I. DuPont de Nemours & Co	5-12-77
AZ 77 0013	DuPont Lannate® Insecticide	E.I. DuPont de Nemours & Co	5-12-77
AZ 77 0014	DuPont Lannate® L Insecticide	E.I. DuPont de Nemours & Co	5-12-77
AZ 77 0016	Shell Nudrin 90 Methomyl Insecticide	Shell Chemical	5-06-77
AZ 77 0019	Orthene 75 S Soluble Powder	Ortho Chevron	7-06-77
AZ 77 0021	Prokil Kelthane 4 Dust	Gowan Co	8-19-77
AZ 77 0025	Orthene 75 S Soluble Powder	Ortho Chevron	8-17-77
AZ 77 0026	Nudrin 1.8 Insecticide Solution	Shell Chemical	10-17-77
AZ 77 0029	Nudrin 90 Methomyl Insecticide	Shell Chemical	10-17-77
AZ 78 0019	Ortho Paraquat CL	Ortho Chevron	7-10-78
AZ 78 0021	DuPont Lannate® L Insecticide	E.I. DuPont de Nemours & Co	7-10-78
AZ 78 0022	DuPont Lannate® Insecticide	E.I. DuPont de Nemours & Co	7-10-78
AZ 78 0025	Orthene Forest Spray	Ortho Chevron	7-10-78
AZ 79 0002	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	2-26-79
AZ 79 0003	Nudrin® 90 Methomyl Insecticide Water Soluble Power	Shell Chemical	2-26-79
AZ 79 0014	Bladex® 80W Herbicide	Shell Chemical	6-13-79
AZ 79 0019	Nudrin® 90 Methomyl Insecticide Water Soluble Power	Shell Chemical	6-13-79
AZ 79 0023	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	6-13-79
AZ 80 0004	Control Doomsday II	General Control Co	1-12-78
AZ 80 0005	Control Doomsday II	General Control Co	1-12-78
AZ 80 0007	Pydrin® Insecticide 2.4 Emulsible	Shell Chemical	5-27-80
	Arkansas		
AR 76 0004	Orthene 75 S Soluble Powder	Ortho Chevron	6-4-76
AR 77 0009	Shell Bladex® 80 Wettable Power Herbicide	Shell Chemical	6-1-77
AR 77 0010	Shell Bladex® 4 Water Dispersible Suspension Herbicide	Shell Chemical	6-1-77
AR 77 0012	Roundup®	Monsanto Co	6-27-77
AR 78 0003	Nudrin® 90 Methomyl Insecticide	Shell Chemical	3-7-78
AR 78 0016	Dupont Velpar® Weed Killer	E.I. Dupont de Nemours & Co	3-23-78
AR 78 0022	Nudrin® 90 Methomyl Insecticide	Shell Chemical	7-18-78
AR 78 0023	Nudrin® 1.8 Insecticide Solution	Shell Chemical	7-18-78
AR 79 0001	Rabon® Insecticide Cattle Ear Tag	Shell Chemical	2-2-79
AR 79 0013	Bladex® 4L Herbicide	Shell Chemical	4-26-79
AR 81 0018	Bladex® 4L Herbicide	Shell Chemical	4-6-81
AR 81 0019	Bladex® 80W Herbicide	Shell Chemical	4-6-81
AR 81 0039	Pydrin® Insecticide 2.4 Emulsible Concentrate	Shell Chemical	6-15-81
	California		
CA 76 0002	Vendex® Miticide	Shell Chemical	1-8-76
CA 76 0007	Butoxone Amine	Rhone-Poulenc, Inc.	1-21-76
CA 76 0021	Dupont Benlate® Fungicide Plus Captan Fungicide 50-W	E.I. DuPont de Nemours & Co	2-17-77
CA 77 0298	Orthene 75 S Soluble Power	Ortho Chevron	7-11-77
CA 77 0421	Biotrol XK Wettable Power	Nutralite Products, Inc	9-1-77
CA 77 0534	Nudrin® 90 Methomyl Insecticide Water Soluble Power	Shell Chemical	11-30-77
CA 77 0536	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	12-7-77
CA 78 0152	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	7-11-78
CA 78 0153	Nudrin® 90 Methomyl Insecticide Water Soluble Powder	Shell Chemical	7-11-78
CA 78 0170	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	7-28-78

Special local need registraion No.	Product name	Registrant	Date registered
CA 79 0050	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	4-12-79
CA 79 0051	Nudrin® 90 Methomyl Insecticide Water Soluble Solution	Shell Chemical	4-12-79
CA 79 0141	DuPont® Vydate® L Insecticide/Nematicide	E.I. DuPont de Nemours & Co.	6-14-79
CA 79 0147	Bladex® 80W Herbicide	Shell Chemical	6-21-79
CA 79 0230	Orthene® 75 S Soluble Powder	Ortho Chevron	10-18-79
CA 79 0236	Orthocide Botran 10-5 Dust	Ortho Chevron	10-25-79
CA 80 0120	Ortho Plictran Wettable Powder	Ortho Chevron	5-07-80
CA 80 0139	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	9-30-80
CA 80 0140	Nudrin® 90 Methomyl Insecticide Water Soluble Powder	Shell Chemical	9-30-80
CA 80 0141	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	9-30-80
CA 80 0142	Nudrin® 90 Methomyl Insecticide Water Soluble Powder	Shell Chemical	9-30-80
CA 82 0032	Pydrin® Insecticide 2.4 Emulsible Concentrate	Shell Chemical	5-17-82
CA 83 0039	Pydrin® Insecticide 2.4 Emulsible Concentrate	Shell Chemical	5-27-83
	Colorado		
CO 78 0001	Orthene Tree and Ornamental Spray	Swingle Tree Co.	1-25-78
CO 78 0027	Bladex® 80W Herbicide	Shell Chemical	10-19-78
CO 79 0010	Orthene Tree and Ornamental Spray	Ortho Chevron	4-20-79
CO 80 0004	Roundup®	Monsanto Co.	3-04-80
	Connecticut		
CT 82 0002	Bladex® 80W Herbicide	Shell Chemical	3-12-82
CT 82 0003	Bladex® 4L Herbicide	Shell Chemical	3-12-82
	Delaware		
DE 77 0005	Lasso® EC	Monsanto Co.	6-14-77
DE 78 0004	Modown 80% Wettable Powder	Rhone-Poulenc, Inc.	4-05-78
DE 78 0005	Roundup®	Monsanto Co.	4-25-78
DE 78 0007	Lasso® EC Herbicide	Monsanto Co.	5-01-78
DE 78 0008	Mocap Nematicide-Insecticide 10% Granular	Rhone-Poulenc, Inc.	5-02-78
DE 78 0009	Nudrin® 90 Methomyl Insecticide Water Soluble Powder	Shell Chemical	5-3-78
DE 78 0022	DuPont Vydate® L Insecticide/Nematicide	E. I. DuPont de Nemours & Co.	7-20-78
DE 81 0004	Bladex® 80W Herbicide	Shell Chemical	1-30-81
DE 81 0005	Bladex® 4L Herbicide	Shell Chemical	1-29-81
	Florida		
FL 77 0009	Mocap PCNB	Rhone-Poulenc, Inc.	3-21-77
FL 77 0010	Amiben Chloramben Herbicide	Union Carbide	3-31-77
FL 77 0031	Nudrin® 90 Methomyl Insecticide Water Soluble Powder	Shell Chemical	8-27-77
FL 78 0040	Atrazine 4L Herbicide	Shell Chemical	9-7-78
FL 79 0005	Rabon® Insecticide Cattle Ear Tag	Shell Chemical	2-27-79
FL 80 0045	Vendex® 4L Miticide	Shell Chemical	12-10-80
	Georgia		
GA 76 0004	Amiben Chloramben Herbicide	Union Carbide	5-21-76
GA 77 0003	Bladex® 80 W.P. Herbicide	Shell Chemical	4-26-77
GA 77 0009	Modown 80% W.P.	Rhone-Poulenc, Inc.	5-25-77
GA 77 0010	Modown E.C.	Rhone-Poulenc, Inc.	5-25-77
GA 78 0007	Nudrin® 90 Methomyl Insecticide	Shell Chemical	2-1-78
GA 78 0016	Mocap Nematicide-Insecticide 10% Granular	Rhone-Poulenc, Inc.	4-17-78
GA 78 0021	Nudrin® 1.8 Insecticide Solution	Shell Chemical	5-23-78
GA 78 0022	Nudrin® 90 Methomyl Insecticide W.S.	Shell Chemical	5-23-78
GA 78 0026	Nudrin® 1.8 Insecticide Solution	Shell Chemical	5-25-78
GA 78 0029	Nudrin® 90 WSP	Shell Chemical	5-25-78
GA 79 0005	Rabon® Ear Tag	Shell Chemical	2-9-79
GA 79 0006	DuPont Velpar® Brush Killer	E. I. DuPont de Nemours & Co.	2-20-79
GA 79 0010	Amiben Chloramben Herbicide	Union Carbide	5-22-79
GA 80 0003	Botran 30F	Gustafson	1-17-80
GA 81 0034	Pydrin®	Shell Chemical	8-07-81
GA 82 0006	Orthene Tobacco Insect Spray	Ortho Chevron	3-02-82
GA 82 0018	Hoelon 3 EC Herbicide	American Hoechst Corp	8-10-82
	Hawaii		
HI 78 0009	Nudrin® 90 Methomyl Insecticide Water Soluble Powder	Shell Chemical	10-05-78
HI 79 0010	Atrazine 80W Herbicide	Shell Chemical	10-11-79
HI 80 0002	Nudrin® 90 Methomyl Insecticide Water Soluble Powder	Shell Chemical	5-21-80
HI 80 0003	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	5-21-80
	Idaho		
ID 77 0018	Asulux	Rhone-Poulenc, Inc.	5-25-77
ID 78 0004	Ortho Paraquat CL	Ortho Chevron	3-21-78
ID 79 0022	Bladex® 80W Herbicide	Shell Chemical	8-31-79
ID 80 0002	Crop King Colloidal Lindane 40%	Gustafson, Inc.	1-24-80
ID 80 0057	Orthene 75 S Soluble Powder	Ortho Chevron	12-13-80
ID 81 0018	Orthene 75 S Soluble Powder	Ortho Chevron	4-23-81
	Illinois		
IL 77 0001	Amiben Chloramben Herbicide	Union Carbide	4-12-77
IL 77 0002	DuPont Lannate®	E.I. DuPont de Nemours & Co.	5-31-77
IL 77 0003	L Insecticide	E.I. DuPont de Nemours & Co.	5-31-77
IL 77 0008	Roundup®	Monsanto Co.	11-17-77
IL 78 0006	Lasso®	Monsanto Co.	4-27-78

Special local registration No.	Product name	Registrant	Date registered
IL 79 0002	Ortho Methoxychlor 2 Emulsive	Ortho Chevron	3-14-79
IL 80 0005	Orthene 75 S Soluble Powder	Ortho Chevron	6-01-80
IL 81 0001	Bladex® 4L Herbicide	Shell Chemical	12-26-80
IL 81 0002	Bladex® 80W Herbicide	Shell Chemical	12-26-80
IL 82 0006	Bladex® 80W Herbicide	Shell Chemical	5-25-82
IL 82 0007	Bladex® 4L Herbicide	Shell Chemical	5-25-82
IL 83 0007	Bladex® 4L Herbicide	Shell Chemical	3-22-83
IL 83 0008	Bladex® 80W Herbicide	Shell Chemical	5-25-83
	Indiana		
IN 78 0002	Roundup®	Monsanto Co	1-23-78
ID 79 0006	Bladex® 4L Herbicide	Shell Chemical	4-25-79
IN 79 0007	Bladex® 80W Herbicide	Shell Chemical	4-25-79
ID 79 0008	Ortho Methoxychlor 2 Emulsive	Ortho Chevron	6-27-79
ID 80 0013	Lasso® & Atrazine & Bladex Tank Mixture	Monsanto Co	9-15-80
	Iowa		
IA 77 0005	Roundup®	Monsanto Co	12-1-77
IA 79 0001	Rabon® Insecticide Cattle Ear Tag	Shell Chemical	2-14-79
IA 79 0002	Bladex® 4L Herbicide	Shell Chemical	4-24-79
IA 79 0006	Bladex® 80W Herbicide	Shell Chemical	4-26-79
IA 80 0001	DuPont Vydate® Insecticide-Nematicide	E.I. DuPont de Nemours & Co	3-31-80
IA 83 0003	Bladex® 80W Herbicide	Shell Chemical	2-25-83
IA 83 0004	Bladex® 4L Herbicide	Shell Chemical	2-25-83
	Kansas		
KS 77 0008	Roundup®	Monsanto Co	11-8-77
KS 78 0022	Bladex® 80 Herbicide	Shell Chemical	10-2-78
KS 79 0004	Modown 4F	Rhone-Poulenc, Inc	3-26-79
KS 80 0006	Roundup®	Monsanto Co	2-25-80
KS 81 0014	Bladex® 80W Herbicide	Shell Chemical	3-16-81
KS 81 0034	Bladex® 4L Herbicide	Shell Chemical	12-18-81
KS 81 0035	Bladex® 80W Herbicide	Shell Chemical	12-18-81
KS 82 0009	Hoelon 3EC Herbicide	American Hoechst Corp	5-24-82
	Kentucky		
KY 78 0011	Modown EC and 80% WP	Rhone-Poulence, Inc	3-29-78
KY 78 0014	DuPont Krenite® Brush Control Agent	E.I. DuPont de Nemours & Co	6-22-78
KY 79 0003	Bladex® 80 Herbicide	Shell Chemical	4-18-79
KY 79 0004	Bladex® 4L Herbicide	Shell Chemical	4-18-79
KY 81 0007	Bladex® 80W Herbicide	Shell Chemical	10-7-81
KY 81 0009	Bladex® 4L Herbicide	Shell Chemical	10-7-81
	Louisiana		
LA 76 0002	Fenac Plus	Union Carbide	6-28-76
LA 77 0008	Roundup®	Monsanto Co	6-20-77
LA 78 0010	Ronstar	Rhone-Poulenc, Inc	3-21-78
LA 78 0018	Nurdin® 90 Methomyl Insecticide	Shell Chemical	7-7-78
LA 78 0019	DuPont Lannate® L Insecticide	E. I. DuPont de Nemours & Co	7-7-78
LA 78 0020	Nudrin® 1.8 Insecticide	Shell Chemical	7-1-78
LA 78 0021	DuPont Lannate® Insecticide	E. I. DuPont de Nemours & Co	7-19-78
LA 78 0022	Nurdin® 90	Shell Chemical	7-24-78
LA 78 0023	Sodium Chlorate	Riverside/Terra	8-1-78
LA 78 0028	Modown EC	Rhone-Poulenc, Inc	10-19-78
LA 78 0030	Modown 4 FL	Rhone-Poulenc, Inc	12-20-78
LA 79 0006	DuPont Velpar® Gridball® Brush Killer	E. I. DuPont de Nemours & Co	3-13-79
LA 79 0015	Ortho Difolathan 4 Flowable	Ortho Chevron	5-29-79
LA 80 0001	DuPont Lannate® Insecticide	E. I. DuPont de Nemours & Co	1-29-80
LA 80 0006	DuPont Velpar® Gridball® Brush Killer	E. I. DuPont de Nemours & Co	3-17-80
LA 80 0024	Vendex® 50 WP Miticide	Shell Chemical	7-23-80
LA 80 0030	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	12-24-80
LA 80 0031	Nudrin® 90 Methomyl Insecticide	Shell Chemical	12-24-80
LA 81 0004	Modown 4L	Phone-Poulenc, Inc	3-10-81
LA 81 0027	Pydrin® 2.4 Emulsifiable	Shell Chemical	6-30-81
LA 82 0030	Roundup®	Monsanto Co	7-28-82
LA 82 0033	Hoelon 3EC Herbicide	American Hoechst Corp	9-10-82
	Massachusetts		
MA 80 0002	Vydate® L Insecticide/Nematicide	E. I. DuPont de Nemours & Co	2-22-80
	Maryland		
MD 77 0004	Lasso® EC Herbicide	Monsanto Co	6-9-77
MD 78 0002	Mocap 10G	Rhone-Poulenc, Inc	5-22-78
MD 78 0003	Mocap 10G	Rhone-Poulenc, Inc	5-22-78
MD 78 0005	Roundup®	Monsanto Co	6-6-78
MD 78 0012	Modown Herbicide 80 WP	Rhone-Poulenc, Inc	5-30-78
MD 81 0001	Bladex® 4L Herbicide	Shell Chemical	1-19-81
MD 81 0002	Bladex® 80W Herbicide	Shell Chemical	9-14-81
MD 81 0029	Ortho Paraquat	Orthro Chevron	9-8-81
	Michigan		
MI 76 0005	Lasso® EC	Monsanto Co	2-01-77
MI 76 0006	Lasso® EC	Monsanto Co	2-01-77
MI 77 0005	DuPont Lannate® L Insecticide	E.I. DuPont de Nemours & Co	3-10-77
MI 77 0006	DuPont Lannate® L Insecticide	E.I. DuPont de Nemours & Co	3-10-77

Special local need registration No.	Product name	Registrant	Date registered
MI 77 0021	Roundup®	Monsanto Co	12-21-77
MI 78 0006	DuPont Lannate® Insecticide	E.I. DuPont de Nemours & Co	5-18-78
MI 79 0005	DuPont Vydate® L Insecticide-Nematicide	E.I. DuPont de Nemours & Co	2-14-79
MI 79 0023	Lasso® Herbicide	Monsanto Co	6-19-79
MI 79 0024	Orthene 75 S Soluble Powder	Ortho Chevron	7-20-79
MI 79 0027	Ortho Paraquat CL	Ortho Chevron	9-21-79
MI 79 0030	Bladex® 4L Herbicide	Shell Chemical	12-11-79
MI 79 0031	Bladex® 80W Herbicide	Shell Chemical	12-11-79
MI 80 0002	Orthocide Plus	Ortho Chevron	3-05-80
MI 80 0020	DuPont Lannate® Insecticide	E.I. DuPont de Nemours & Co	6-05-80
MI 80 0022	Vendex® HL	Shell Chemical	11-13-80
MI 80 0024	DuPont Velpar® Gridball® Brush Killer	E.I. DuPont de Nemours & Co	5-13-80
MI 81 0013	DuPont Vydate® L Insecticide/Nematicide	E.I. DuPont de Nemours & Co	4-30-81
MI 83 0013	Pydrin® Insecticide 2.4 Emulsible Concentrate	Shell Chemical	7-15-83
	Minnesota		
MN 77 0012	Roundup®	Monsanto Co	12-02-77
MN 79 0002	Amiben Chloramben Herbicide	Union Carbide	4-19-79
MN 79 0017	Ortho Methoxychlor 2 Emulsive	Ortho Chevron	10-05-79
MN 80 0002	Ramrod® Flowable	Monsanto Co	1-17-80
MN 80 0003	Far-Go®	Monsanto Co	2-21-80
MN 80 0011	DuPont Vydate® L Insecticide/Nematicide	E.I. DuPont de Nemours & Co	5-05-80
MN 80 0012	ME-147 Fungicide	Merck Sharp & Dohme	5-29-80
MN 81 0011	Buctril	Rhone-Poulenc, Inc	4-17-81
MN 81 0012	DuPont Benlate Fungicide	E.I. DuPont de Nemours & Co	4-17-81
MN 81 0020	Granular Far-Go®	Monsanto	12-09-81
	Mississippi		
MS 76 0001	Bladex® 80 WP	Shell Chemical	5-19-76
MS 76 0002	Orthene 75 S Soluble Powder	Ortho Chevron	5-24-76
MS 77 0005	Bladex® 4 Water Dispersible Suspension Herbicide	Shell Chemical	5-13-77
MS 77 0006	Bladex® 80 WP	Shell Chemical	5-13-77
MS 77 0008	Roundup®	Monsanto Co	6-22-77
MS 77 0017	Nudrin® 90 Methomyl Insecticide	Shell Chemical	9-06-77
MS 78 0015	Nudrin® 1.8 Insecticide	Shell Chemical	5-31-78
MS 78 0016	Nudrin 90® Methomyl Insecticide	Shell Chemical	5-31-78
MS 78 0034	Modown Herbicide 4FL	Rhone-Poulenc, Inc	1-22-79
MS 79 0001	Modown Herbicide 4FL	Rhone-Poulenc, Inc	1-22-79
MS 79 0010	Bladex® 4 Water Dispersible Suspension Herbicide	Shell Chemical	5-2-79
MS 79 0022	Orthene 75 S Soluble Powder	Ortho Chevron	7-23-79
MS 80 0005	Amdro Fire Ant Insecticide	Mississippi Dept. of Agriculture & Commerce, Miss. Authority for Control of Fire Ants.	10-14-80
MS 80 0043	Pydrin® Insecticide 2.4 EC	Shell Chemical	7-1-80
MS 80 0056	Nudrin® 90 Methomyl Insecticide Water Soluble Powder	Shell Chemical	11-18-80
MS 80 0057	Nudrin® 1.8 Methomyl Insecticide Solution	Shell Chemical	11-18-80
MS 81 0003	Bladex® 80W Herbicide	Shell Chemical	1-29-81
MS 81 0004	Bladex® 4L Herbicide	Shell Chemical	1-29-81
MS 81 0040	Pydrin® Insecticide 2.4 EC	Shell Chemical	5-26-81
MS 81 0048	Dow Lorsban 50-FL Wettable Powder	Gustafson, Inc	7-1-83
	Missouri		
MO 78 0004	Roundup®	Monsanto Co	1-9-78
MO 78 0017	Flowable Ramrod & Atrazine	Monsanto Co	9-27-78
MO 78 0018	Methoxychlor 50 Seed Protectant	Gustafon	10-2-78
MO 79 0001	Rabon Insecticide Cattle Ear Tat	Shell Chemical	1-16-79
MO 79 0006	Ramrod® & Atrazine Flowable	Monsanto Co	10-31-79
MO 79 0010	Ramrod® Flowable	Monsanto Co	10-31-79
MO 80 0001	Bladex® 80 WP	Shell Chemical	1-4-80
MO 80 0002	Bladex® 4 Water Dispersible	Shell Chemical	1-4-80
MO 80 0015	Dupont Lannate® Insecticide	E.I. DuPont de Nemours & Co	5-5-80
MO 80 0016	DuPont Lannate® L Insecticide	E.I. DuPont de Nemours & Co	5-5-80
MO 80 0019	Anchor Permectrin 10% EC	Phillips Roxane, Inc	5-29-80
MO 81 0002	Bio-Ceutic Overtime	Phillips Roxane, Inc	3-25-81
MO 81 0016	Lasso®	Monsanto Co	3-30-81
MO 81 0025	DuPont VelPar® Gridball® 1CC Brush Killer	E.I. DuPont de Nemours & Co	5-22-81
MO 81 0026	Insectaban 10	Phillips Roxane, Inc	7-15-81
MO 82 0003	Golden Sun Fly-Ban	Phillips Roxane, Inc	2-1-82
MO 82 0016	Anchor Permectrin 25% WP	Phillips Roxane, Inc	5-2-82
MO 82 0018	Bio-Ceutic Overtime 25% WP	Phillips Roxane, Inc	5-3-82

Cancellation of these section 24(c) registrations shall be effective July 20, 1984. Any sale or distribution by the registrant of the product bearing the section 24(c) label after this date will violate FIFRA section 12(a)(2)(K). EPA will not consider it a violation of FIFRA for distributors other than the registrant to sell or distribute existing stocks of any of these cancelled products bearing the section 24(c) label. It should be noted, however, that such sale or distribution may not be permitted by applicable State law.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP 240046]" and the specific section 24(c) registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236, CM #2, at the above address from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA, as amended, 86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136))

Dated: June 1, 1984.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 84-15954 Filed 6-19-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240049; PH-FRL 2607-4]

Pesticides; Special Local Need Registrations; Voluntary Cancellations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice lists names of registrants requesting voluntary cancellation of section 24(c) registrations of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. The State registration for each of these products has already been cancelled by the issuing State. Distribution or sale of these products by the registrant, using the section 24(c) label, after the effective date of cancellation will be considered a violation of the FIFRA.

EFFECTIVE DATE: July 20, 1984.

ADDRESS: By mail submit comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked "confidential" may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Lela Sykes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 718C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2126).

SUPPLEMENTARY INFORMATION: The following registrants have requested that EPA voluntarily cancel section 24(c) registrations:

1. Davis County Mosquito Abatement District, 85 No. 600 W., Kaysville, UT 84037.

2. FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103.

3. J.R. Simplot Co., 16777 South Howland Ave., P.O. Box 198, Lathrop, CA 95330.

4. Siemer & Associates, Inc., 4672 W. Jennifer, Suite 103, Fresno, CA 93711.

5. Tennessee Chemical Co., 3475 Lenox Rd., NE., Suite 670, Altanta, GA 30326.

6. Texize Division, Morton Thiokol, Inc., P.O. Box 368, Greeneville, South Carolina 29602.

7. Tobacco States Chemical Co., Inc., Regulatory Affairs, P.O. Box 12530, Lexington, KY.

8. Thompson-Hayward Chemical Co., Registration Coordinator, P.O. Box 2383, Kansas City, KS 66110.

9. Uniroyal Chemical, Registration Section, Research and Development, 74 Amity Rd., Bethany, CT 06525.

10. Union Carbide Argicultural Products Co., Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709.

11. USS Agri-Chemicals, 233 Peachtree St., NE., P.O. Box 1685, Atlanta, GA 30301.

12. Velsicol Chemical Corp., World Headquarters, 341 East Ohio St., Chicago IL 60611.

13. VRE Registrar, P.O. Box 1086, Walla Walla, WA 99362.

14. Virginia Dept. of Health, Bedding and Upholstered Furniture Inspection, 5001 Building, 3rd Floor, 5001 W. Broad St., Richmond, VA 23230.

15. Wilbur Ellis Co., Agricultural Services, Regulatory Affairs, 191 West Shaw Ave., Suite 107, Fresno, CA 93704-2876.

The following section 24(c) registrations have been voluntarily cancelled:

Special local [illegible] registration No.		Product name	Registrant	Date registered
		Alabama		
AL 77 0005		Amiben Chloramben Herbicide	Union Carbide	3-30-77
AL 78 0009		PCO Lindane E-1 Insecticide	Thompson-Hayward Chem. Co	3-11-78
AL 79 0010		Amiben Chloramben Herbicide	Union Carbide	4-25-79
AL 81 0034		Pounce 3.2 EC	FMC	12-28-81
		Arizona		
AZ 77 0001		Citicop 4E Emulsifiable Liquid Copper Fungicide	Tennessee Chem. Co	1-14-77
AZ 77 0002		Ortho Paraquat CL	Wilbur-Ellis Co	1-14-77
AZ 77 0003		Furadan 4 Flowable	FMC Corp	4-27-77
AZ 77 0009		Furadan 4 Flowable	FMC Corp	4-27-77
AZ 77 0015		Snow Crystal Copper Sulfate	Tennessee Chem. Co	5-12-77
AZ 77 0022		Sevin 5 GR	FMC Corp	8-25-77
AZ 78 0002		Cocs 50V	FMC Corp	2-06-78
AZ 78 0004		Dimethoate 267	FMC Corp	3-06-78
AZ 79 0018		Temik 15 G	Union Carbide	6-21-79
AZ 80 0033		Malathion 4 Dust	Wilbur-Ellis Co	10-03-80
		Arkansas		
AR 77 0002		Citicop 4E Emulsifiable Liquid Copper Fungicide	Tennessee Chem. Co	2-14-77
AR 77 0014		Oxy Leafex 3	J.R. Simplot Co	7-12-77
AR 77 0015		Oxy Leafex 3	J.R. Simplot Co	7-12-77
AR 78 0006		Vitavax-200 Flowable Fungicide	Uniroyal	3-07-78
AR 81 0056		Freestyle Calcium Hypochlorite Granular 65 percent	Thompson-Hayward Chem. Co	11-12-81
		California		
CA 76 0011		Dipel 1 Dust	FMC Corp	2-02-76
CA 76 0012		Sevin 10 Dust	FMC Corp	2-02-76
CA 76 0015		Diazinon 5 Granular	FMC Corp	2-11-76
CA 76 0018		Moyer Vegephos 4	Seimer & Assoc.	6-24-76
CA 77 0018		Pyrenone Crop Spray	FMC Corp	2-10-77
CA 77 0019		Pyrenone Crop Spray	FMC Corp	2-22-77

Special local need registration No.	Product name	Registrant	Date registered
CA 77 0064	Black Leaf 40 [5887-7] Volck Supreme Oil Spray [239-2039] Tank Mix	FMC Corp	4-15-77
CA 77 0318	Sevimol 4	Union Carbide	6-04-77
CA 78 0038	Temik 15G	Union Carbide	3-04-78
CA 78 0124	Vitavax-200 Flowable Fungicide	Uniroyal	6-07-78
	Colorado		
CO 77 0006	Citicop 4E Emulsifiable Liquid Copper Sulfate	Tennessee Chem. Co	7-06-77
CO 78 0009	Vitavax-25DB Fungicide	Uniroyal	2-02-78
CO 80 0006	Vitavax-200 Flowable	Uniroyal	5-05-80
	Delaware		
DE 78 0002	Vitavax-200 Flowable Fungicide	Uniroyal	4-20-78
DE 78 0013	Furadan 10 G	FMC Corp	5-10-78
	Georgia		
GA 78 0005	Vitavax-200 Flowable Fungicide	Uniroyal	1-25-78
GA 78 0025	PCO Lindane E-1	Thompson-Hayward Chem. Co	6-01-78
GA 79 0017	Meta Systox-R Spray Conc.	FMC Corp	5-05-79
GA 81 0032	Pounce 3.2 EC	FMC Corp	8-06-81
	Florida		
FL 77 0040	Alar 85A Plant Growth Regulator	Uniroyal	10-17-77
FL 78 0015	Temik 15G	Union Carbide	3-23-78
	Idaho		
ID 77 0006	Sevimol 4	Union Carbide	4-05-77
ID 78 0003	Sivimol 4	Union Carbide	2-01-78
	Illinois		
IL 77 0006	Sevin 80S	Union Carbide	9-21-77
IL 77 0007	Sevimol 4	Union Carbide	9-21-77
IL 77 0008	Sevin 80 S	Union Carbide	9-09-77
IL 77 0009	Vitavax-200 Flowable Fungicide	Uniroyal	11-23-77
IL 78 0008	Citicop-4E	Tennessee Chem. Co	5-05-78
IL 78 0011	Vitavax 25 DB	Uniroyal	8-31-78
IL 82 0002	Furadan 4 Flowable	FMC Corp	1-34-82
IL 82 0012	Furadan 4 Flowable	FMC Corp	7-12-82
	Indiana		
IN 77 0004	Vitavax-200 Flowable Fungicide	Uniroyal	5-02-77
IN 77 0009	Sevimol 4	Union Carbide	8-01-77
IN 77 0010	Sevin 80 S	Union Carbide	8-01-77
In 78 0004	Vitavax-25 D13	Uniroyal	1-23-78
IN 78 0011	Furadan 10 G	FMC Corp	6-14-78
IN 80 0005	Furadan 4 Flowable	FMC Corp	4-30-80
IN 81 0021	Banvel Herbicide/BCS	Velsicol Chem. Corp	5-28-81
IN 82 0006	PCO Lindane E-1	Thompson-Hayward Chem. Co	3-17-82
	Iowa		
IA 80 0002	Amiben Chloramben Herbicide	Union Carbide	5-01-80
	Kansas		
KS 77 0006	Comite-Cygon Tank Mix	Uniroyal	6-02-77
KS 77 0007	Sevin 80S	Union Carbide	7-27-77
KS 77 0010	Vitavax-25 DB Fungicide	Uniroyal	12-09-77
	Kentucky		
KY 77 0003	Tobacco States Brand 20% Lindane Transplantor Solution	Tobacco States Chem. Co	12-02-77
KY 78 0001	Vitavax-25 D3 Fungicide	Uniroyal	2-08-78
KY 78 0006	Furadan 4 Flowable	FMC Corp	3-06-78
KY 78 0016	Furadan 4 Flowable	FMC Corp	6-23-78
	Louisiana		
LA 76 0003	Weedmaster Herbicide	Velsicol Chem. Corp	6-06-76
LA 77 0009	Oxy Leafex 3	J.R. Simplot Co	7-22-77
LA 77 0011	Oxy Leafex 3	J.R. Simplot Co	8-25-77
LA 78 0002	Vitavax-200 Flowable Fungicide	Uniroyal	12-20-78
LA 78 0017	Atanap-3	Uniroyal	6-14-78
LA 78 0026	PCO Lindane G-1	Thompson-Hayward Chem. Co	10-12-78
LA 79 0010	Vegatrol A-4D	Velsicol Chem. Corp	4-30-79
LA 81 0028	Pounce 3.2 EC	FMC Corp	5-30-81
LA 81 0035	Banvel 720	Velsicol Chem. Corp	7-14-81
LA 82 0012	Furadan 4 Flowable	FMC Corp	5-05-82
LA 82 0021	Freestyle Calcium Hypochlorite 65 percent	Thompson-Hayward Chem. Co	5-16-82
LA 82 0026	Pounce 3.2 EC	FMC Corp	5-30-82
LA 82 0027	CPF	VRE Registrar	7-12-82

Special local need registration No.		Product name	Registrant	Date registered
		Maryland		
MD 78 0001	Vitavax-200 Flowable		Uniroyal	5-22-78
		Michigan		
MI 77 0001	Vitavax-200 FL		Uniroyal	2-17-77
MI 77 0009	Sevin 80S		Union Carbide	5-25-77
MI 79 0006	Amiben Chloramben Herbicide		Union Carbide	3-09-79
MI 79 0019	Temik 15G		Union Carbide	5-02-79
MI 80 0001	Vitavax-200 FL		Uniroyal	1-02-80
MI 80 0011	Clicop 6E		Tennessee Chem. Co	5-15-80
MI 80 0012	Clicop 4E		Tennessee Chem Co.	5-15-80
		Minnesota		
MN 77 0007	Sevin 80 S		Union Carbide	7-07-77
MN 77 0008	Sevimol 4		Union Carbide	7-07-77
MN 77 0010	Oxy Leafex 3		J.R. Simplot	10-07-77
MN 81 0014	Brominal		Union Carbide	5-07-81
MN 82 0012	Amiben Chloramben Herbicide		Union Carbide	8-18-82
		Mississippi		
MS 77 0009	Oxy Leafex 3		J.R. Simplot Co	7-18-77
MS 77 0010	Oxy Leafex 3		J.R. Simplot Co	7-18-77
MS 78 0023	Lindane E-1		Thompson-Hayward Chem. Co	8-07-78
MS 78 0030	Oxy Leafex 3		J.R. Simplot Co	8-18-78
MS 79 0018	Dyanap		Uniroyal	8-20-79
MS 80 0027	Titchem EPN		Velsicol Chem. Corp	5-05-80
MS 80 0044	Weedone 2,4-DP		Union Carbide	7-09-80
MS 82 0001	Furadan 4 Flowable		FMC Corp	2-10-82
MS 82 0002	Furadan 10G		FMC Corp	2-10-82
MS 82 0018	Freestyle Calcium Hypochlorite Granular 65 percent		Thompson-Hayward Chem. Co	5-14-82
MS 82 0044	Furadan 15G		FMC Corp	11-02-82
		Missouri		
MO 77 0004	Vitavax-200 Flowable With Thiram		Uniroyal	6-14-77
MO 77 0009	Vitavax-25 DB		Uniroyal	12-09-77
MO 78 0011	Sevin 80 S		Union Carbide	7-07-78
MO 78 0012	Sevimol 4		Union Carbide	7-07-78
MO 78 0013	Alanap-3		Uniroyal	7-14-78
MO 80 0012	Amiben Chloramben Herbicide		Union Carbide	7-07-80
MO 81 0016	Pounce 3.2 EC		FMC Corp	4-03-81
MO 82 0026	Furadan 4 Flowable		FMC Corp	5-02-82
		Montana		
MT 77 0002	Sevimol 4		Union Carbide	5-16-77
MT 78 0006	Banvel D		Velsicol Chem. Corp	4-19-78
MT 79 0006	Vitavax 25 DB Fungicide		Uniroyal	3-16-79
MT 79 0019	Sevimol 4		Union Carbide	5-15-79
MT 79 0020	Sevin 80 S		Union Carbide	5-15-79
MT 79 0021	Sevin 4 Oil		Union Carbice	5-15-79
MT 81 0004	Sevin 4 Oil		Union Carbide	3-16-81
MT 81 0005	Sevin XLR		Union Carbide	3-19-81
MT 81 0006	Sevin 80 S		Union Carbide	3-19-81
MT 81 0007	Sevimol 4		Union Carbide	3-16-81
MT 81 0011	Brominal		Union Carbide	11-09-81
MT 82 0002	Brominal		Union Carbide	3-09-82
		Nebraska		
NE 77 0002	Sevin 80 S		Union Carbide	7-28-77
NE 77 0003	Sevimol 4		Union Carbide	7-28-77
NE 78 0006	Vitavax 24 DB Fungicide		Uniroyal	3-31-78
NE 78 0013	Velsicol Gnonn		Velsicol Chem. Corp	7-17-78
NE 78 0016	Furadan 4 Flowable		FMC Corp	3-03-78
NE 79 0013	Sevin 4 Oil 41		Union Carbide	6-26-79
		New Hampshire		
NH 79 0002	Sevin 80 S		Union Carbide	6-15-79
NH 79 0003	Sevimol 4		Union Carbide	6-15-79
		New Jersey		
NJ 82 0002	Furadan 4 Flowable		FMC Corp	3-09-82
NJ 82 0014	No-Pest® Strip Insecticide II		Texize Div., Morton Thiokol, Inc	7-29-82*
		New Mexico		
NM 78 0008	Sevimol 4		Union Carbide	2-16-78
NM 78 0009	Sevin 4 Oil		Union Carbide	4-17-78
NM 78 0018	Sevin SL		Union Carbide	6-07-78
NM 78 0019	Sevimol; 4		Union Carbide	6-29-78
		New York		
NY 77 0002	Tre-hold Sprout Inhibitor		Union Carbide	4-25-77
NY 78 0015	Temik 15 G		Union Carbide	6-15-78

Special local need registration No.	Product name	Registrant	Date registered
NY 81 0010	Pounce 3.2 EC	FMC Corp	1-26-81
NY 82 0009	Furadan 4 Flowable	FMC Corp	5-07-82
North Caroline			
NC 77 0003	Vitavax 10 G	Uniroyal	2-15-77
NC 78 0031	Lindane	Thompson-Hayward Chem. Co	9-05-78
NC 79 0029	Sevin 80 S	Union Carbide	9-07-79
NC 80 0017	Furadan 10 G	FMC Corp	5-20-80
NC 82 0009	Royal MN-80	Uniroyal	4-23-82
North Dakota			
ND 79 0020	Toxaphene 6 EC	USS Agri-Chemicals	6-18-79
ND 81 0009	Banvel Herbicide/BCS	Velsicol Chem. Corp	4-23-81
Ohio			
OH 77 0011	Vitavax-200 Flowable Fungicide	Uniroyal	11-22-77
OH 78 0003	Vitavax 25 DB Fungicide	Uniroyal	3-23-78
OH 80 0015	Furadan 4 Flowable	FMC Corp	6-18-80
OH 81 0032	Banvel Herbicide/BCS	Velsicol Chem. Corp	7-06-81
OH 82 0018	Furadan 4 Flowable	FMC Corp	6-27-82
Oklahoma			
OK 78 0019	Velsicol Endrin	Velsicol Chem. Corp	9-07-78
OK 78 0022	Vitavax 25 DB Fungicide	Uniroyal	9-05-78
OK 79 0006	Lindane E-1	Thompson-Hayward Chem. Co	9-22-79
OK 79 0007	Dyanap	Uniroyal	9-27-79
OK 80 0008	Comite	Uniroyal	5-05-80
Oregon			
OR 77 0053	Pyrenone Crop Spray	FMC Corp	7-19-77
OR 78 0001	Sevimol 4	Union Carbide	1-06-78
OR 78 0034	Sevin 80 S	Union Carbide	7-06-78
OR 81 0017	Brominal	Union Carbide	2-04-81
OR 81 0024	Brominal	Union Carbide	3-10-81
OR 81 0030	Brominal	Union Carbide	4-06-81
OR 81 0065	Red Top Contact Weed Killer	Wilbur-Ellis Co	8-24-81
OR 82 0013	Brominal	Union Carbide	3-23-82
Pennsylvania			
PA 82 0010	Furadan 4 Flowable	FMC Corp	3-26-82
South Caroline			
SC 77 0005	Vitavax 10-G	Uniroyal	4-29-77
SC 78 0029	Lindane E-1	Thompson-Hayward Chem. Co	9-21-78
SC 80 0003	Vitavax-200 Flowable Fungicide	Uniroyal	4-29-77
SC 81 0007	Pounce 3.2 EC	FMC Corp	3-24-81
South Dakota			
SD 79 0005	Sevin 4 Oil 41	Union Carbide	5-30-79
SD 79 0009	Furadan 4-Flowable	FMC Corp	6-26-79
Tennessee			
TN 78 0001	Vitavax-200 Flowable Fungicide	Uniroyal	1-06-78
TN 78 0010	Alanap-3	Uniroyal	4-24-78
TN 78 0011	Woodmaster Herbicide	Velsicol Chem. Corp	5-04-78
TN 78 0014	Furadan 4 Flowable	FMC Corp	6-15-78
TN 78 0015	Lindane E-1	Thompson-Hayward Chem. Co	7-14-78
TN 78 0020	Oxy Leafex 3	J. R. Simplot Co	9-14-78
TN 79 0006	Tobacco States Brand Plant Bed Saver	Tobacco States Chem. Co	3-14-79
TN 79 0010	Vitavax 25 DB Fungicide	Uniroyal	4-17-79
Texas			
TX 77 0020	Oxy Leafex 3	J.R. Simplot	10-07-77
TX 78 0002	Temik 15 G	Union Carbide	2-03-78
TX 78 0005	Vitavax-200 Flowable	Uniroyal	2-17-78
TX 82 0043	PCO Lindane E-1 Insecticide	Thompson-Hayward Chem. Co	7-26-82
TX 82 0061	Pounce 3.2 EC	FMC Corp	12-15-82
Utah			
UT 77 0003	Furadan 4 Flowable	FMC Corp	3-07-77
UT 77 0005	Niagara Aqua 8 Parathion Code 701	Davis County Mosquito Abatement District	5-09-77
UT 78 0004	Sevimol 4	Union Carbide	2-02-78
UT 78 0009	Vitavax 25 DB	Uniroyal	3-30-78
UT 80 0002	Copper Sulfate (Snow Crystals)	Tennessee Chem. Co	1-29-80
UT 80 0005	Copper Sulfate (Snow Crystals)	Tennessee Chem. Co	1-29-80
UT 81 0012	Banvel Herbicide	Velsicol Chem. Corp	5-11-81
UT 81 0027	Brominal	Union Carbide	10-29-81

Special local need registration No.		Product name	Registrant	Date registered
		Virginia		
VA 76 0011	Omite 30 W		Uniroyal	7-22-76
VA 76 0018	Niagra Furadan 10G		FMC Corp	
VA 77 0016	Vineland Formalogen		Virginia Dept. of Health	11-16-77
VA 82 0010	Furadan 4 Flowable		FMC Corp	3-08-82
		Washington		
WA 79 0070	De-Fend E-267 Dimethoate		Wilbur-Ellis Co	8-28-79
		Wyoming		
WY 82 0003	Brominal		Union Carbide	2-12-82
WY 82 0004	Ramik Green		Velsicol Chem. Corp	4-25-83

Cancellation of these section 24(c) registrations shall be effective July 20, 1984. Any sale or distribution by the registrant of the product bearing the section 24(c) label after this date will violate FIFRA section 12(a)(2)(K). EPA will not consider it a violation of FIFRA for distributors other than the registrant to sell or distribute existing stocks of any of these cancelled products bearing the section 24(c) label. It should be noted, however, that such sale or distribution may not be permitted by applicable State law.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP 240049]" and the specific section 24(c) registration number. Any comments filed regarding this notice wil be available for public inspection in Rm. 236, CM #2, at the above address from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA, as amended, 86 Stat. 973, 89 Stat. 751 (7 U.S.C. 136))

Dated: June 1, 1984.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 84-15955 Filed 6-19-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240043; PH-FRL 2607-5]

Pesticides; Special Local Need Registrations; Voluntary Cancellations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice lists names of registrants requesting voluntary cancellation of section 24(c) registrations of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. The State registration for each of these products has already been cancelled by the issuing State. Distribution of sale of these products by the registrant, using the section 24(c) label, after the effective date of cancellation will be considered a violation of the FIFRA.

EFFECTIVE DATE: July 20, 1984.

ADDRESS: By mail submit comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked "confidential" may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Lela Sykes, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 718C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2126).

SUPPLEMENTARY INFORMATION: The following registrants have requested that EPA voluntarily cancel section 24(c) registrations:

Registrants

1. Agricultural Commissioner, Alameda County, 224 West Winton Ave., Hayward CA 94544.

2. Agricultural Commissioner, Glenn County, 720 N. Colusa St., P.O. Box 351, Willows, CA 95988.

3. Agricultural Commissioner, Kings County, P.O. Box C, 280 Campus Drive, Hanford, CA 93230.

4. Agricultural Commissioner, Monterey County, 120. Wilgart Way, Salinas CA 93901.

5. Agricultural Commissioner, San Diego County, Building 3, 5555 Overland Ave., San Diego, CA 92123.

6. Agricultural Commissioner, San Joaquin County, P.O. Box 1809, Stockton, CA 95201.

7. Agricultural Commissioner, San Mateo County, 728 Heller St., Redwood City, CA 94064.

8. Agricultural Commissioner, Santa Clara County, 1555 Berger Drive, San Jose, CA 95112.

9. Agricultural Commissioner, Sutter County, 142 Garden Way, Yuba City, CA 95991.

10. Agricultural Commissioner, Tulare County, Agricultural Bldg., County Civic Center, Visalia, CA 93291.

11. Arizona Agrochemical Co., P.O. Box 21537, Phoenix, AZ 85036.

12. BFC Chemicals, Inc., 4311 Lancaster Pike, P.O. Box 2867, Wilmington, DE 19805.

13. B & W Quality Growers, Inc., 159 Whooping Loop, Altamonte Springs, FL 32701.

14. Bell Laboratories, Inc., 3699 Kinsman Blvd., Madison, WI 53704.

15. Bruce Church, Inc., of Arizona, Route 1, Box 56B, Parker, AZ 85344.

16. CIBA-Geigy Corp., Agricultural Division, P.O. Box 1830D, Greensboro, NC 27419.

17. Cleveland, Chemical Corp., Agricultural Chemicals, P.O. Box 520, Cleveland, MS 38732.

18. Cotton States Chemical Co., Chemicals For Agriculture, 116 Wassan St., P.O. Drawer 157, West Monroe, LA 71291.

19. Degesch America, Inc., P.O. Box 116, 275 Triangle Dr., Weyers Cave, VA 24486.

20. Dettelbach Pesticide Corp., P.O. Box 647, Atlanta GA 30301.

21. Dow Chemical U.S.A., Agricultural Products Dept., P.O. Box 1706, Midland MI 48640.

22. Forest Supervisor, Angeles National Forest, 150 South Los Robles Ave., Suite 300, Pasadena, CA 91101.

23. Pesticide Registration and Agricultural Productivity, Department of Food and Agriculture, 1220 N St., Sacramento CA 95814.

24. SDS Biotech Corp., Agricultural Chemicals Business, 7528 Auburn Rd., P.O. Box 348, Painesville, OH 44077.

The following section 24(c) registrations have been voluntarily cancelled:

Special local need registration No.	Product name	Registrant	Date registered
	Alabama		
AL 77 0002	Premerge Dinitro Weed Killer	Dow Chemical USA	1-25-77
AL 78 0004	Bravo 500	Biotech/Diamond Shamrock Corp	3-31-78
AL 79 0007	Bravo 500 Spray Tank Combination With Copper	Biotech/Diamond Shamrock Corp	9-18-79
AL 79 0013	Rabon Insecticide Cattle Ear Tag	Biotech/Diamond Shamrock Corp	7-05-79
AL 81 0015	Amine 4D	Biotech/Diamond Shamrock Corp	4-27-81
AL 81 0018	Amine 6D Weed Killer	Biotech/Diamond Shamrock Corp	4-27-81
	Arizona		
AZ 76 0004	Ansar 8100 Herbicide DSMA Powder	Biotech/Diamond Shamrock Corp	7-07-76
AZ 77 0020	Supracide 2E Insecticide/Miticide	Ciba-Geigy Corp	7-06-77
AZ 77 0026	Supercide 2E Insecticide/Miticide	Ciba-Geigy Corp	8-17-77
AZ 77 0035	Dowcil a-40 Antimicrobial	Dow Chemical USA	1-27-78
AZ 78 0020	Lorsban 4E	Dow Chemical USA	7-05-78
AZ 79 0006	Folpet (Phaltan) 7.5 Dust	Arizona Agro-chemical Co	5-25-79
AZ 81 0026	Sim-Trol 4L Simazine Flowable Herbicide	Arizona Agro-chemical Co	11-04-81
	Arkansas		
AR 77 0005	Geigy Atrex 80W	Ciba-Geigy Corp	4-04-77
AR 77 0005	Princep 80W	Ciba-Geigy Corp	4-04-77
AR 77 0013	Princep 4L Herbicide	Ciba-Geigy Corp	3-17-78
AR 77 0013	Atrex 4L Brand Atrazine Season-Long Weed Control in Corn	Ciba-Geigy Corp	3-17-78
AR 78 0007	Lorsban 4E	Dow Chemical USA	6-01-77
AR 78 0011	Dow Dursban 4E Emulsifiable Insecticide	Dow Chemical USA	3-07-78
AR 78 0014	N-Serve 24E and Nitrogen Stabilizer	Dow Chemical USA	3-17-78
	California		
CA 76 0021	Torak G (Dialifor)	BFC Chemicals, Inc. (formerly Hercules and Boots Hercules)	2-24-76
CA 76 0041	Guthion 50% WP	State of Calif., Dept. of Food and Agriculture/Kern Co	3-17-76
CA 76 0050	Degesch Calcium Cyanide A-Dust	State of Calif., Dept. of Food and Agriculture	3-24-76
CA 76 0072	Rodent Bait Sodium Fluoroacetate Treated Grain (0.05%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0073	Ground Squirrel Bait Sodium Fluoroacetate Treated Grain	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0074	Meadow Mouse Bait Sodium Fluoroacetate Treated Grain	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0075	Rodent Bait Sodium Fluoroacetate Treated Grain (0-11%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0076	Oregon Ground Squirrel Bait Sodium Fluoroacetate Treated Grain	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0077	Oregon Ground Squirrel Bait Sodium Fluoroacetate Treated Grain	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0078	Meadow Mouse Bait Sodium Fluoroacetate Treated Grain	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0079	Meadow Mouse Bait Sodium Fluoroacetate Treated Grain	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0080	Ground Squirrel Bait Sodium Fluoroacetate Chop	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0081	Ground Squirrel Bait Sodium Fluoroacetate Treated Grain	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0084	Gopher Bait Strychnine Treated Grain (0.29%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0085	Gopher Bait Strychnine Treated Grain (1.3%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0086	Gopher Bait Strychnine Treated Grain (1.8%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0088	Gopher Bait Strychnine Treated Grain (0.9%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0089	House Mouse Bait Strychnine Treated Grain (0.5%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0090	Ground Squirrel Bait Strychnine Treated Grain (0.29%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0091	Jackrabbit Bait Strychnine Treated Grain (0.3%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0092	Kangaroo Rat Bait Strychnine Treated Grain (0.17%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0093	Strychnine Rodent Paste (4.77%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0094	Sparrow Bait Strychnine Treated Grain (0.6%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0095	Blackbird and Cowbird Bait Strychnine Treated Grain (0.35%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0096	Horned Lark Bait Strychnine Treated Grain (0.65%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0097	Hsouse Finch (Linnet) Bait Strychnine Treated Grain (0.43%)	State of Calif., Dept. of Food and Agriculture	3-29-76
CA 76 0100	Prowl Herbicide	State of Calif., Dept. of Food and Agriculture, Kings Co	4-07-76
CA 76 0105	Pinmor 50WP	State of Calif., Dept. of Food and Agriculture, San Mateo Co	4-12-76
CA 76 0125	Vendex Miticide	State of Calif., Dept. of Food and Agriculture, Alameda Co	5-06-76
CA 76 0131	Cygon 267	State of Calif., Dept. of Food and Agriculture, Santa Barbara Co	5-12-76
CA 76 0134	Bravo 6F	Biotech/Diamond Shamrock Corp., Sutter Co	5-14-76
CA 76 0150	Vendex on Ornamentals	State of Calif., Dept. of Food and Agriculture, San Diego Co	6-01-76
CA 76 0171	A.I. Sodium Cyanide	State of Calif., Dept. of Food and Agriculture, Tulare Co	7-20-76
CA 76 0175	Dupont Lannate L Methomyl Insecticide	State of Calif., Dept. of Food and Agriculture, Kern Co	7-26-76
CA 76 0185	Botran Sulfur 6-25 Dust	State of Calif., Dept. of Food and Agriculture, Santa Barbara Co	8-27-76
CA 76 0191	Ethrel Plant Regulator	State of Calif., Dept. of Food and Agriculture	9-20-76
CA 76 0196	Cyanide A Dust for Skunks	State of Calif., Dept. of Food and Agriculture, San Diego Co	9-28-76
CA 76 0222	Ortho Paraquat CL	State of Calif., Dept. of Food and Agriculture, Shasta Co	12-20-76
CA 77 0001	Daconil 2787 Flowable Fungicide	Biotech/Diamond Shamrock Corp./San Diego Dept. of Agriculture	1-03-77
CA 77 0007	Agri-Mycin 17	State of Calif., Dept. of Food and Agriculture, San Mateo Co	1-21-77
CA 77 0007	Agri-Strep 500	State of Calif., Dept. of Food and Agriculture, San Mateo Co	1-21-77
CA 77 0009	DuPont Karmex	State of Calif., Dept. of Food and Agriculture	1-26-77
CA 77 0028	Bravo 500 Agricultural Fungicide	Biotech/Diamond Shamrock Corp	2-24-77
CA 77 0049	Geigy Chlorobenzilate 4E	State of Calif., Dept. of Food and Agriculture	3-23-77
CA 77 0063	Furadan 4L	State of Calif., Dept. of Food and Agriculture, Monterey Co	4-05-77
CA 77 0064	Orthene Tree Ornamental Spray	State of Calif., Dept. of Food and Agriculture, San Mateo Co	4-08-77

Special local need registration No.	Product name	Registrant	Date registered
CA 77 0067	Red-Top Lindane 1.7 Spray	State of Calif., Dept. of Food and Agriculture	4-11-77
CA 77 0067	Lacco Lin O Mulsion 1.7	State of Calif., Dept. of Food and Agriculture	4-11-77
CA 77 0076	Geigy Chlorobenzilate 4E	State of Calif., Dept. of Food and Agriculture	4-14-77
CA 77 0099	DeFend E-267 Dimethoate Systemic Insecticide	State of Calif., Dept. of Food and Agriculture, Tulare Co	5-10-77
CA 77 0133	Rebelate Systemic Insecticide	State of Calif., Dept. of Food and Agriculture, Tulare Co	5-18-77
CA 77 0133	Cygon 267 Systemic Insecticide	State of Calif., Dept. of Food and Agriculture, Tulare Co	5-18-77
CA 77 0236	Chlordane 10G	State of Calif., Dept. of Food and Agriculture	6-20-77
CA 77 0249	Bravo 6F	Biotech/Diamond Shamrock Corp., U.S.D.A. Forest Service	6-24-77
CA 77 0261	Rodent Bait Warfarin-P	State of Calif., Dept. of Food and Agriculture, Cruz Co	6-29-77
CA 77 0305	Omite/Grapes to control mites	State of Calif., Dept. of Food and Agriculture	7-19-77
CA 77 0319	Ortho Sevin Bait (Pelleted)	State of Calif., Dept. of Food and Agriculture, Glenn Co	8-05-77
CA 77 0324	Puregro Pick-Quick	State of Calif., Dept. of Food and Agriculture	8-08-77
CA 77 0372	2% Rodent Bait Zinc Phosphide Treated Grain	State of Calif., Dept. of Food and Agriculture, Glenn Co	8-23-77
CA 77 0423	Starling and Blackbird Bait Starlicide Treated Grain	State of Calif., Dept. of Food and Agriculture, Tulare Co	9-02-77
CA 77 0424	Rodent Bait Block Fumarin Treated Grain/Paraffin	State of Calif., Dept. of Food and Agriculture, Tulare Co	9-01-77
CA 77 0428	Rodent Bait Fumarin Treated Grain	State of Calif., Dept. of Food and Agriculture, Tulare Co	9-01-77
CA 77 0476	Carbon Bisulfide Rodent Fumigant	State of Calif., Dept. of Food and Agriculture, Tulare Co	10-05-77
CA 77 0477	Methyl Bromide Rodent Fumigant	State of Calif., Dept. of Food and Agriculture	10-05-77
CA 78 0029	Mosquito Fogging Conc	Dow Chemical USA	2-07-78
CA 78 0052	Kerb 50-W Selective Herbicide	State of Calif., Dept. of Food and Agriculture, Monterey Co	3-15-78
CA 78 0065	Esteron Brush Killer	Dow Chemical USA	4-07-78
[illegible]	Esteron 245	Dow Chemical USA	4-07-78
CA 78 0069	Best Snail and Slug Bait-M	State of Calif., Dept. of Food and Agriculture, San Mateo Co	3-11-78
CA 78 0086	DZN Diaznon 50W	State of Calif., Dept. of Food and Agriculture	5-01-78
CA 78 0138	Bravo 500	Biotech/Diamond Shamrock Corp	6-30-78
CA 79 0015	MCPA Amine 4	Biotech/Diamond Shamrock Corp	2-02-79
CA 79 0046	Premerge	State of Calif., Dept. of Food and Agriculture	3-06-79
CA 79 0048	Sevin Carbide	State of Calif., Dept. of Food and Agriculture	3-08-79
CA 79 0144	Dacthal W-75 Herbicide	Biotech/Diamond Shamrock Corp	6-18-79
CA 80 0084	Ansar 529 H.C. Herbicide	Biotech/Diamond Shamrock Corp., Monterey Co. Dept. of Agr	5-12-80
CA 81 0006	Bravo W-75	Biotech/Diamond Shamrock Corp., Monterey Co. Dept. of Agr	3-03-81
CA 81 0008	Dacthal W-75	Biotech/Diamond Shamrock Corp., Monterey Co. Dept. of Agr	3-03-81
[illegible]	Degesch Phostoxin	Degesch America, Inc	2-01-82
CA 82 0018	Tenoran 50 WP Herbicide	State of Calif., Dept. of Food and Agriculture	4-09-82
	Colorado		
CO 78 0011	Bravo 500	Biotech/Diamond Shamrock Corp	3-12-78
CO 78 0030	Aatrex 4L Brand Atrazine Season-Long Weed Control in Corn	Ciba-Geigy Corp	11-16-78
CO 80 0007	Bravo 500	Biotech/Diamond Shamrock Corp	5-05-80
	Connecticut		
CT 78 0001	Bravo 500	Biotech/Diamond Shamrock Corp	6-27-78
	Delaware		
DE 78 0003	Bravo 6-F	Biotech/Diamond Shamrock Corp	4-25-78
DE 78 0016	Bravo 6-F	Biotech/Diamond Shamrock Corp	5-12-78
DE 79 0005	Bravo 500	Biotech/Diamond Shamrock Corp	4-3-79
DE 79 0017	Bravo 500	Biotech/Diamond Shamrock Corp	4-17-79
	Florida		
FL 78 0004	Bravo 500	Biotech/Diamond Shamrock Corp	2-21-78
FL 78 0039	Bravo 500	Biotech/Diamond Shamrock Corp	8-7-78
FL 81 0021	Amine 6D Weed Killer	Biotech/Diamond Shamrock Corp	5-26-81
FL 81 0022	Amine 4D	Biotech/Diamond Shamrock Corp	5-26-81
	Georgia		
GA 76 0002	Premerge Dinitro Weed Killer	Dow Chemical USA	5-5-76
GA 76 0003	Premerge 3 Dinitro Amine Herbicide	Dow Chemical USA	5-5-76
GA 78 0032	Torak P (Dalifor)	BFC Chemicals, Inc. (formerly Hercules and Boots Hercules)	9-5-78
GA 80 0027	Lorsban 4E	Dow Chemical USA	12-18-80
	Hawaii		
HI 77 0031	Bravo 6F	Biotech/Diamond Shamrock Corp	12-29-77
HI 78 0016	Bravo 500	Biotech/Diamond Shamrock Corp	11-28-78
	Idaho		
ID 76 0011	Dursban M	Dow Chemical USA	8-26-76
ID 77 0003	Bravo 6F	Biotech/Diamond Shamrock Corp	3-2-77
ID 77 0023	Bow General Weed Killer	Dow Chemical USA	9-12-77
ID [illegible]	Tolban 4E Herbicide	Ciba-Geigy Corp	4-4-78
ID 81 0040	Rabon 7.76 Oral	Biotech/Diamond Shamrock Corp	6-24-81
	Illinois		
IL 76 0001	Premerge 3 Dinitro Amine Herbicide	Dow Chemical USA	1-16-76
IL 76 0002	Lorsban 4E	Dow Chemical USA	2-07-76
IL 76 0004	Dow General Weed Killer	Dow Chemical USA	4-17-76
	Indiana		
IN 77 0001	Aquazine Algicide	Ciba-Geigy Corp	1-25-77
IN 78 0005	Lorsban 4E Insecticide	Dow Chemical USA	2-20-78
IN 78 0007	Aatrex 80W Herbicide	Ciba-Geigy Corp	3-15-78

Special local need registration No.	Product name	Registrant	Date registered
IN 78 0006	Aatrex 4L Herbicide	Ciba-Geigy Corp	3-15-78
IN 78 0012	Bravo 500	Biotech/Diamond Shamrock Corp	7-31-78
IN 79 0010	Bravo 500	Biotech/Diamond Shamrock Corp	7-25-79
Iowa			
IA 78 0002	Lorsban 4E	Dow Chemical USA	3-22-78
IA 81 0012	Lorsban 15G Granular	Dow Chemical USA	6-02-81
Kansas			
KS 77 0002	Igran 80 W	Ciba-Geigy Corp	5-05-77
KS 78 0001	Lorsban 4E	Dow Chemical USA	3-15-78
KS 78 0021	Lorsban 4E	Dow Chemical USA	9-26-78
KS 81 0029	Lorsban 15G	Dow Chemical USA	7-14-81
Louisiana			
LA 78 0004	Dursban 4E	Dow Chemical USA	3-29-78
LA 78 0016	Lorsban 4E	Dow Chemical USA	5-17-78
LA 81 0009	Amine 4-D	Biotech/Diamond Shamrock Corp	3-23-81
LA 81 0013	Amine 6-D Weed Killer	Biotech/Diamond Shamrock Corp	3-23-81
LA 81 0034	Lorsban 4E	Dow Chemical USA	7-10-81
LA 82 0001	Dowfume W-100	Dow Chemical USA	2-02-82
LA 82 0002	Dowfume W-90	Dow Chemical USA	2-02-82
LA 83 0003	Dowfume W-95	Dow Chemical USA	2-02-82
Massacusetts			
MA 78 0004	Geigy Diazinon 14G	Ciba-Geigy Corp	6-27-78
MA 79 0003	Bravo 500	Biotech/Diamond Shamrock Corp	4-24-79
Maryland			
MD 77 0005	Bravo 6-F	Biotech/Diamond Shamrock Corp	9-14-77
MD 78 0008	Bravo 500	Biotech/Diamond Shamrock Corp	9-15-78
Michigan			
MI 77 0013	Bravo 6-F	Biotech/Shamrock Corp	6-17-77
MI 77 0015	Bravo 6-F	Biotech/Shamrock Corp	6-12-77
MI 78 0003	Bravo 500	Biotech/Shamrock Corp	5-11-78
MI 78 0010	Bravo 500	Biotech/Shamrock Corp	8-29-78
MI 79 0004	Bravo 500	Biotech/Shamrock Corp	2-14-79
MI 80 0014	Lorsban 15G	Dow Chemical USA	5-20-80
MI 80 0015	Lorsban 4E	Dow Chemical USA	5-20-80
MI 82 0008	Lorsban 15G	Dow Chemical USA	4-21-82
MI 81 0009	Lorsban 4E	Dow Chemical USA	4-21-82
Minnesota			
MN 77 0003	Tolban 4E Herbicide	Ciba-Geigy Corp	4-20-77
MN 78 0001	Tolban 4E Herbicide	Ciba-Geigy Corp	4-25-78
MN 78 0003	Lorsban 4E	Dow Chemical USA	4-28-78
MN 78 0004	Supracide 2E Herbicide-Miticide	Ciba-Geigy Corp	5-5-78
MN 79 0003	Lorsban 15G	Dow Chemical USA	4-19-79
MN 79 0004	Lorsban 4E	Dow Chemical USA	4-19-79
MN 79 0015	Dursban 4E	Dow Chemical USA	8-04-79
MN 81 0004	Aatrex 80W	Ciba-Geigy Corp	3-10-81
MN 81 0005	Aatrex None-O	Ciba-Geigy Corp	3-10-81
MN 81 0006	Aatrex 4L	Ciba-Geigy Corp	3-10-81
MN 81 0007	Aatrex 4LC	Ciba-Geigy Corp	3-10-81
Mississippi			
MS 77 0001	Lorsban 4E	Dow Chemical USA	1-03-77
MS 77 0007	Lorsban 4E	Dow Chemical USA	5-23-77
MS 78 0005	Dursban 4G	Dow Chemical USA	1-27-78
MS 79 0012	Rabon Insecticide Cattle Ear Worm	Biotech/Diamond Shamrock Corp	5-22-79
MS 79 0017	N-Serve 24 Nitrogen Stabilizer	Dow Chemical USA	7-03-79
MS 80 0009	N-Serve 24E Nitrogen Stabilizer	Dow Chemical USA	3-25-80
MS 80 0022	DSMA Liquid Plus	Cleveland Chemical Corp	8-15-80
MS 81 0033	N-Serve 24E Nitrogen Stabilizer	Dow Chemical USA	4-13-81
MS 81 0053	Dowfume W-90	Dow Chemical USA	7-22-81
MS 82 0007	N-Serve 24E Nitrogen Stabilizer	Dow Chemical USA	4-05-82
MS 82 0008	N-Serve 24 Nitrogen Stabilizer	Dow Chemical USA	4-05-82
Missouri			
MO 77 0008	Premerge Dinitro Weed Killer	Dow Chemical USA	9-20-77
MO 77 0008	Premerge 3 Dinitro Amine Herbicide	Dow Chemical USA	9-20-77
MO 78 0006	Lorsban 4E	Dow Chemical USA	2-06-78
MO 78 0007	Dursban 4E Emulsifiable	Dow Chemical USA	4-14-78
MO 82 0004	Ethylene Dibromide	Dow Chemical USA	2-10-82
MO 82 0005	Dowfume W-85	Dow Chemical USA	2-10-82
MO 82 0006	Dowfume W-85	Dow Chemical USA	2-10-82
MS 82 0015	Wil-Kil Rat and Mouse Bait	Bell Labs., Inc	5-12-82

Special local need registration No.		Product name	Registrant	Date registered
		Montana		
MT 77 0007	Aatrex 4L Brand Atrazine		Ciba-Geigy Corp	8-24-77
MT 79 0025	Aatrex 4L Brand Atrazine		Ciba-Geigy Corp	7-24-79
		Nebraska		
NE 77 0001	Tordon 22K Weed		Dow Chemical USA	5-13-77
NE 78 0007	Lorsban 4E		Dow Chemical USA	5-09-78
NE 78 0006	Atrex 4L Brand Atrazine		Ciba-Geigy Corp	5-09-78
NE 78 0017	Lorsban 4E		Dow Chemical USA	8-03-79
NE 79 0011	Rabon Cattle Ear Tag		Biotech/Diamond Shamrock Corp	6-14-79
NE 80 0017	Bravo 500		Biotech/Diamond Shamrock Corp	6-03-80
NE 80 0016	Lorsban 4E		Dow Chemical USA	5-09-80
		Nevada		
NV 77 0005	Bravo 6-F		Biotech/Diamond Shamrock Corp., Nev. Dept. of Agr	5-2-77
NV 77 0009	Lorsban 4E		Dow Chemical USA	5-25-77
NV 77 0011	Dow Selective Weed Killer		Dow Chemical USA	6-14-77
NV 77 0015	Dow Selective Weed Killer		Dow Chemical USA	12-23-77
NV 81 0008	Dacthal W-75 for Turf		Biotech/Diamond Shamrock Corp., Nev. Dept. of Agr	8-21-81
		New Jersey		
NJ 77 0012	Bravo 6-F		Biotech/Diamond Shamrock Corp	9-7-77
NJ 77 0022	Bravo 500		Biotech/Diamond Shamrock Corp	9-7-77
NJ 78 0010	Bravo 6-F		Biotech/Diamond Shamrock Corp	6-9-78
NJ 78 0017	Bravo 500		Biotech/Diamond Shamrock Corp	11-13-78
NJ 79 0021	Bravo 500		Biotech/Diamond Shamrock Corp	7-26-79
NJ 82 0004	Lorsban 4-E		Dow Chemical USA	4-3-80
NJ 82 0005	Lorsban 15G		Dow Chemical USA	4-3-80
NJ 82 0006	Lorsban 4E		Dow Chemical USA	4-16-82
NJ 82 0007	Lorsban 15G		Dow Chemical USA	4-16-82
		New Mexico		
NM 77 0001	Tordon 225E Mixture Herbicide		Dow Chemical USA	5-3-77
NM 79 0002	Bravo 500		Biotech/Diamond Shamrock Corp	1-25-79
		New York		
NY 77 0008	Bravo 6-F		Biotech/Diamond Shamrock Corp	7-15-77
NY 78 0026	Dow General Weed Killer		Dow Chemical USA	9-7-78
NY 78 0029	Bravo 500		Biotech/Diamond Shamrock Corp	12-21-78
NY 82 0006	Lorsban 4E		Dow Chemical USA	4-16-82
NY 82 0007	Lorsban 15G		Dow Chemical USA	4-16-82
		North Carolina		
NC 76 0001	Premerge Dinitro Weed Killer		Dow Chemical USA	6-9-76
NC 76 0002	Premerge 3 Dinitro Amine Weed Killer		Dow Chemical USA	6-9-76
NC 79 0014	Lorsban 4E		Dow Chemical USA	4-5-79
NC 79 0015	Lorsban 15G		Dow Chemical USA	4-5-79
NC 79 0027	Premerge 3		Dow Chemical USA	7-30-79
NC 81 0002	Lorsban 4E		Dow Chemical USA	1-28-81
NC 81 0003	Lorsban 15G		Dow Chemical USA	1-28-81
		North Dakota		
ND 76 0005	Supracide 2E Insecticide-Miticide		Ciba-Geigy Corp	5-6-76
ND 76 0006	Bravo 500		Biotech/Diamond Shamrock Corp	5-11-76
		Ohio		
OH 78 0004	Bravo 6-F		Biotech/Diamond Shamrock Corp	7-31-78
OH 78 0007	Daconil 2787 Flowable Fungicide		Biotech/Diamond	9-8-78
OH 78 0008	Bravo 500		Biotech/Diamond Shamrock Corp	11-22-78
OH 79 0009	Bravo 500		Biotech/Diamond Shamrock Corp	5-25-79
		Oklahoma		
OK 76 0001	Bravo 6-F		Biotech/Diamond Shamrock Corp	7-12/76
OK 77 0003	Bravo 500		Biotech/Diamond Shamrock Corp	2-14-77
OK 77 0010	Bravo 6-F		Biotech/Diamond Shamrock Corp	6-3-77
OK 78 0004	Aatrex 4L Brand Atrazine		Ciba-Geigy Corp.	3-17-78
OK 78 0004	Princep 4L Herbicide		Ciba-Geigy Corp	3-17-78
OK 78 0005	Geigy Atrex		Ciba-Geigy Corp	4-21-78
OK 78 0006	Princep 80 W		Ciba-Geigy Corp	4-20-78
OK 81 0001	Lorsban 4E		Dow Chemical USA	1-16-81
OK 81 0002	Lorsban 15G		Dow Chemical USA	1-16-81
		Oregon		
OR 76 0031	Dow Tordon 155 Mixture Brush Killer		Dow Chemical USA	6-19-76
OR 77 0016	Bravo 6-F		Biotech/Diamond Shamrock Corp	3-23-77
OR 77 0024	Aatrex 4L Brand Atrazine		Ciba-Geigy Corp	4-13-77
OR 77 0028	Daconil 2787 Flowable Fungicide		Biotech/Diamond Shamrock Corp	6-7-77
OR 77 0056	Dow General Weed Killer		Dow Chemical USA	9-9-77

Special local need registration No.	Product name	Registrant	Date registered
OR 78 0019	Bravo 500	Biotech/Diamond Shamrock Corp	4-7-78
OR 78 0022	Lorsban 4E	Dow Chemical USA	5-25-78
OR 78 0026	Princep 80W	Ciba-Geigy Corp	7-21-78
OR 78 0040	Princep 4L Herbicide	Ciba-Geigy Corp	7-21-78
OR 80 0032	Lorsban 4E	Dow Chemical USA	4-4-80
OR 80 0033	Lorsban 15G	Dow Chemical USA	4-4-80
OR 80 0046	Astrex 4LC	Ciba-Geigy Corp	12-30-80
Pennsylvania			
PA 78 0002	Bravo 500	Biotech/Diamond Shamrock Corp	5-4-78
PA 78 0010	Bravo 500	Biotech/Diamond Shamrock Corp	6-6-78
South Carolina			
SC 79 0015	Lorsban 15G Granular	Dow Chemical USA	4-25-79
SC 79 0016	Lorsban 4E	Dow Chemical USA	4-24-79
SC 81 0003	Lorsban 4E	Dow Chemical USA	3-23-81
Texas			
TX 76 0007	Bravo 6F	Biotech/Diamond Shamrock Corp.	5-19-76
TX 77 0013	Bravo 6F	Biotech/Diamond Shamrock Corp.	5-17-77
TX 79 0021	Bravo 500	Biotech/Diamond Shamrock Corp.	5-23-79
TX 80 0022	Bravo 500	Biotech/Diamond Shamrock Corp.	7-25-80
Tennessee			
TN 77 0003	DSMA Liquid	Biotech/Diamond Shamrock Corp.	5-05-77
TN 77 0004	Diamond Bueno 6	Biotech/Diamond Shamrock Corp.	5-05-77
TN 78 0003	Dursban 4E	Dow Chemical USA	1-31-78
TN 81 0001	Amine 4-D	Biotech/Diamond Shamrock Corp.	1-08-81
TN 81 0002	Amine 6-D Weed Killer	Biotech/Diamond Shamrock Corp.	1-08-81
Utah			
UT 78 0004	Tordon 22 K Weed Killer	Dow Chemical USA	5-15-78
UT 78 0007	Bravo 500	Biotech/Diamond Shamrock Corp.	11-27-78
UT 79 0005	Dursban 44	Dow Chemical USA	2-05-79
UT 81 0013	Rabon Vral Larvacide 7.76 Premix	Biotech/Diamond Shamrock Corp.	5-12-81
Virginia			
VA 76 0009	Premerge Dinitro Weed Killer	Dow Chemical USA	5-27-76
VA 76 0010	Premerge 3 Dinitro Amine Herbicide	Dow Chemical USA	5-26-76
VA 78 0017	Bravo 500	Biotech/Diamond Shamrock Corp.	8-07-78
Washington			
WA 76 0011	Lorsban 4E	Dow Chemical USA	5-07-76
WA 76 0016	Tordon 22K Weed Killer	Dow Chemical USA	5-21-76
WA 76 0029	Dursban M	Dow Chemical USA	10-04-76
WA 77 0032	Bravo 500 Agricultural Fungicide	Biotech/Diamond Shamrock Corp.	5-30-77
WA 77 0038	Bravo 500	Biotech/Diamond Shamrock Corp.	7-05-77
WA 77 0039	AAtrex 4L Brand Atrazine	Ciba-Geigy Corp	8-05-77
WA 77 0051	Dow General Weed Killer	Dow Chemical USA	9-13-77
WA 78 0024	Princep 80W	Ciba-Geigy Corp	4-17-77
WA 78 0024	Princep 4L Herbicide	Ciba-Geigy Corp	4-17-77
West Virginia			
WV 82 0005	Wil-Kil Rat and Mouse Bait	Bell Labs., Inc	5-12-82
Wisconsin			
WI 78 0001	Tolban 4E	Ciba-Geigy Corp	5-25-78
Wyoming			
WY 80 0002	Cowoll A-40 Antimicrobial	Dow Chemical USA	3-27-78

Cancellation of these section 24(c) registrations shall be effective July 20, 1984. Any sale or distribution by the registrant of the product bearing the section 24(c) label after this date will violate FIFRA section 12(a)(2)(K). EPA will not consider it a violation of FIFRA for distributors other than the registrant to sell or distribute existing stocks of any of these cancelled products bearing the section 24(c) label. It should be noted, however, that such sale or distribution may not be permitted by applicable State law.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP 240043]" and the specific section 24(c) registration number. Any comments filed regarding this notice will be available for public inspection in Rm. 236 CM# 2, at the above address from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA, as amended, 86 Stat. 973, 89 Stat. 751)

Dated: June 1, 1984.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 84-15956 Filed 6-19-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

FMC Applicants (Contd.)

Avandero (USA), Inc., 260 West Broadway, Unit 2B, New York, NY 10013, Officer: Edward S. Simioni, President

Eugene Kim (Old Name: Yoo-Jin-Kim), 14811 Donegal Drive, Garden Grove, CA 92644

By the Federal Maritime Commission.

Dated: June 14, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-16402 Filed 6-19-84; 8:45 am]

BILLING CODE 6730-01-M

Approval of Agreement

Agreement No.: 3868.

Title: The United States Atlantic and Gulf Panama Freight Conference.

Parties: Sea-Land Service, Inc.

Synopsis: The Commission has been notified of the effective resignation of Lykes Bros. Steamship Co., Inc. from Agreement No. 3868. Inasmuch as this reduces the active membership of the agreement to a single party, the Commission gives notice that it will terminate its prior approval of Agreement No. 3868, effective June 30, 1984, the effective date of Lykes Bros. Steamship co., Inc.'s resignation.

Filing Party: Mr. R. J. Finnan, Lykes Bros. Steamship Co., Inc. 300 Poydras Street, New Orleans, Louisiana 70130.

By Order of the Federal Maritime Commission.

Dated: June 15, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-16403 Filed 6-19-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First West Chester Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 142(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 12, 1984.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First West Chester Corporation,* West Chester, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of West Chester, West Chester, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Barnett Banks of Florida, Inc.,* Jacksonville, Florida; to acquire 100 percent of the voting shares of Barnett Banks of Citrus County, N.A., Inverness, Florida.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Elmore City Bancshares, Inc.,* Elmore City, Oklahoma; to become a bank holding company by acquiring at least 80 percent of the voting shares of First State Bank, Elmore City, Oklahoma.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Consolidated Bancorp, Inc.,* Waco, Texas; to acquire 100 percent of the voting shares of First Consolidated Bank-Pleasant Run Road, N.A., Lancaster, Texas, a *de novo* bank.

2. *Hopkins County First Financial Services Corporation,* Sulphur Springs, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Sulphur Springs, Sulphur Springs, Texas.

3. *Pan American Bancorp, Inc.,* Dallas, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Pan American National Bank of Dallas, Dallas, Texas.

Board of Governors of the Federal Reserve System, June 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16389 Filed 6-19-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84F-0194]

American Cyanamid Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that American Cyanamid Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of glyoxal-urea-formaldehyde condensate as a component of paper and paperboard intended for use in contact with dry food.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-334), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3802) has been filed by American Cyanamid Co., Wayne, NJ 07470, proposing that the food additive regulations be amended to provide for the safe use of glyoxal-urea-formaldehyde condensate as a component of paper and paperboard intended for use in contact with dry food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: June 11, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-16369 Filed 6-19-84; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BDM-068-N]

Medicare Program; Economic Index for Physicians' Services for the Period July 1, 1984 Through June 30, 1985

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the economic index used in the calculation of prevailing charges for physicians' services under Part B of Medicare (title XVIII of the Social Security Act). The Medicare statute and regulations require that the calculation of these charges be subject to a limit based on appropriate indicators of economic change. The economic index used for this purpose is 2.132 for the period July 1, 1984 through June 30, 1985. This is an increase of 3.34 percent over the economic index of 2.063 that was used for the previous 12 months.

EFFECTIVE DATE: July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Kunkel, (301) 594–1023.

SUPPLEMENTARY INFORMATION:

Background

Payment under Medicare Part B for a physician's service is based on a reasonable charge which may not exceed the lowest of (1) the physician's actual charge for the service, (2) his or her customary charge for that service, or (3) the prevailing charges of physicians for similar services in the locality. The prevailing charge for a service, before adjustment for the economic index, is calculated at the 75th percentile of physician customary charges. Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)) and HCFA regulations at 42 CFR 405.504 require further that the prevailing charge for a service in a locality not exceed the level in effect for that service in the locality on June 30, 1973, except to the extent justified on the basis of appropriate indicators of economic change.

42 CFR 405.504 establishes an economic index for this purpose, consisting of two components: One measuring increases in general earnings level (attributable to factors other than increases in productivity) and the other measuring increases in expenses of the kind incurred by physicians.

Calculating the Economic Index

The Senate Finance Committee Report on the Social Security Amendments of 1972 (Pub. L. 92–603) explained that the economic index is intended to reflect inflationary trends accurately. See, generally, Senate Report No. 92–1230, 92nd Cong. 2nd Session (1972), pages 190–194. The economic index is based on changes in expenses of office practice incurred by physicians and general earnings levels.

To obtain information on income and expenses, HCFA contracted for a national survey of physicians. The survey was based on a national probability sample of physicians, and the results are representative of the distribution of physicians in the United States. After HCFA verified the contractor's analysis of the data, we determined that the expenses of medical practice for physicians account for approximately 40 percent of the gross income of practice, and net income accounts for approximately 60 percent.

The analysis of the data also included the calculation of weights for each type of practice expense by determining the ratio of the expense of each element to total practice expenses. (For example, the cost of office space is 23 percent of all practice expenses.) The physician practice expense portion is currently composed of six components: (1) Salaries and wages; (2) office space; (3) drugs and supplies; (4) automobile expense; (5) malpractice insurance premiums; and (6) other expenses.

Various indices are used to estimate price changes for those components (see Table A). The salaries and wages component is based on the Bureau of Labor Statistics (BLS) index of hourly earnings of nonsupervisory workers in finance, insurance, and real estate. The office space component is based on the housing component of the Consumer Price Index (CPI). The drugs and supplies component is based on the drugs and pharmaceutical component of the Producer Price Index (PPI). Automobile expense is based on the private transportation component of the CPI. The other expenses component is based on the entire CPI, and covers costs for items such as insurance other than malpractice, depreciation on medical equipment, attorneys' fees, accountants' fees, entertainment, travel, food and lodging while away from home, office furniture and decorations, and other incidental expenses.

When the economic index was originally promlugated, malpractice premium expenses were not included as a separate component of the physician practice expense portion of the economic index. (The original economic index had included malpractice as part of the Other Expenses category tied to the CPI). However, in 1975, as a result of increases in premium rates, malpractice insurance premiums began to constitute a significantly greater share of physicians' office practice costs. As a result, we decided to include malpractice premiums as a separate component of the economic index. Data used in calculating the initial malpractice component was acquired from a survey of the major malpractice insurers. Comparable surveys have been conducted annually to update the malpractice insurance premium component.

Increases in general earnings levels have been addressed through the inclusion of the BLS index of average weekly earnings of nonagricultural production and nonsupervisory workers. This index is modified by excluding increases in workers' productivity. This modification precludes duplicative changes in earnings resulting from increases in productivity.

Items 1 through 6 in Table B are the elements used in computing the increase in the physicians' expenses component of the economic index. Item 9, the net income component, is derived form information contained in items 7 and 8 and reflects increases in general earnings levels exclusive of productivity increases.

The principal source of the increase values used for each component is the data on labor statistics for calendar year 1983 as set forth in the Current Labor Statistics section of the April 1984 issue of *The Monthly Labor Review*, published by the U.S. Department of Labor. The increase for each element and component from 1982 to 1983 was calculated on the basis of these data and their weighted values were summed. This yielded an increase factor of 1.0347 (see Table C). That factor, multiplied by the economic index for the period ending June 30, 1984 (see 48 FR 30459–30461, July 1, 1983) adjusted as explained below (2.0601), resulted in the new economic index of 2,132. This

means that the prevailing charges for physicians' services to be used during the 12-month period beginning July 1, 1984, may not exceed the prevailing charges in effect on June 30, 1973 by more than 113.2 percent.

Because the Bureau of Labor Statistics has periodically retroactively revised some of the statistics and data on which earlier economic indexes were based, it was necessary for us to recompute some of the values and ratios for earlier years in order to obtain an accurate index for the current year. As a result, the economic index for July 1, 1983 through June 30, 1984, was adjusted from 2.063 to 2.0601. Table C sets forth the revised values for that year and the preceding years.

It should be noted that, although we have recalculated prior years indexes, this does not change the applicability of the earlier indexes as published. Rather, prior year figures were recalculated only to reflect newly available data in order to prepare an accurate index for the period beginning July 1, 1984. Thus the effective increase in the economic index is 3.34 percent above the index used for the previous 12-month period.

Regulatory Impact Statement

As noted above, the economic index for physicians' services for the period July 1, 1984 through June 30, 1985 is 3.34 percent higher than the index of 2.063 that was used for the previous 12 months. We estimate that this will result in a $225 million increase in payments over what would have been paid without this update.

This notice of the economic index announces an increase required by section 1842(b)(3) of the Act, and does not alter any regulations or policy. Therefore, no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Administrator so certifies.

TABLE A.—COMPONENT VALUES OF THE ECONOMIC INDEX [1]

	1971 base value	1974 value	1975 value	1976 value	1977 value	1978 value	1979 value	1980 value	1981 value	1982 value	1983 value
1. Hourly earnings of nonsupervisory workers in finance, insurance, and real estate	3.22	3.77	4.08	4.27	4.54	4.89	5.27	5.79	6.31	6.78	7.30
2. Housing component of the Consumer Price Index	123.4	148.8	164.5	174.6	186.5	202.6	227.5	263.2	293.2	314.7	322.0
3. Private transportation component of the Consumer Price Index	116.6	136.6	149.8	164.8	176.6	185.3	212.9	250.1	279.4	290.1	296.5
4. Drugs and pharmaceutical component of the Producer Price Index	102.4	112.7	126.6	134.0	140.5	148.1	159.4	174.5	193.5	210.1	228.2
5. All other, miscellaneous, expenses (tied to the entire Consumer Price Index)	121.3	147.7	161.2	170.5	181.5	195.3	217.7	247.0	272.3	288.6	297.4
6. Premiums for malpractice insurance											
7. Average weekly earnings of production and nonsupervisory workers	127.31	154.76	163.53	175.45	189.00	203.70	219.91	235.10	255.20	266.92	280.38
8. Index of output per man hour of employed nonfarm workers [2]	89.7	92.9	94.7	97.8	100.0	100.6	99.1	98.4	100.3	100.2	103.4

[1] All component values of the economic index except line 6 are from the Monthly Labor Review published by the U.S. Department of Labor, Bureau of Labor Statistics.
[2] BLS revised the values of this line since the time of the previous announcement of the economic index.

TABLE B.—INCREASE VALUES OF THE COMPONENTS OF THE ECONOMIC INDEX

	Ratio [1] of 1974 values to 1971 values	Ratio [2] of 1975 values to 1974 values	Ratio [3] of 1976 values to 1975 values	Ratio [3] of 1977 values to 1976 values	Ratio [3] of 1978 values to 1977 values	Ratio [4] of 1979 values to 1978 values	Ratio [5] of 1980 values to 1979 values	Ratio [6] of 1981 values to 1980 values	Ratio [6] of 1982 values to 1981 values	Ratio [6] of 1983 values to 1982 values
1. Hourly earnings of non-supervisory workers in finance, insurance, & real estate	1.1708	1.0769	1.0517	1.0632	1.0771	1.0777	1.0987	1.0698	1.0745	1.0767
2. Housing component of the consumer price index	1.2058	1.1055	1.0614	1.0582	1.0883	1.1229	1.1569	1.1140	1.0733	1.0232
3. Private transportation component of the consumer price index	1.1715	1.0966	1.1000	1.0729	1.0493	1.1489	1.1747	1.1172	1.0383	1.0224
4. Drugs & pharmaceutical component of the producer price index	1.1006	1.1233	1.0585	1.0485	1.0541	1.0763	1.0947	1.1089	1.0656	1.0766
5. All other, miscellaneous, expenses (tied to the entire consumer price index)	1.2176	1.0914	1.0577	1.0645	1.0760	1.1147	1.1346	1.1024	1.0599	1.0305
6 Premiums for malpractice insurance [7]		1.84	1.417	1.103	1.0065	.9210	1.0526	1.2357	1.1481	1.0858
7. Average weekly earnings of production & nonsupervisory workers	1.2156	1.0567	1.0729	1.0772	1.0778	1.0796	1.0691	1.0655	1.0459	1.0503
8. Index of output per man hour of employed nonfarm workers	1.0357	1.0194	1.0327	1.0225	1.0060	.9951	.9929	1.0193	.9990	1.0319
9. Change in average weekly earnings net of change in output per man hour	1.1737	1.0366	1.0389	1.0535	1.0714	1.0959	1.0767	1.0649	1.0469	1.0178

[1] The weights, excluding the malpractice component, were derived from *Medical Economics* (November 20, 1972) and *Profile of Medical Practice* (1974 edition). The values are 0.37, 0.14, 0.06, 0.09, and 0.34 for components one through five, respectively. In addition to the above weights, a 40–60% breakdown of gross income between office practice costs and physician's earnings was used.
[2] The weights, including the malpractice component, were derived from *Medical Economics* (December 8, 1975) and *Profile of Medical Practice* (1974 edition). The values are 0.37, 0.15, 0.07, 0.09, 0.28 and 0.04 for components one through six, respectively. In addition to the above weights, a 40–60% breakdown of gross income between office practice costs and physician's earnings was used.
[3] The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1977. The values are 0.43, 0.10, 0.05, 0.08, 0.27, and 0.07 for components one through six, respectively. In addition to the above weights, a 40–60% breakdown of gross income between office practice costs and physician's earnings was used.
[4] The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1980. The values are 0.44, 0.22, 0.06, 0.11, 0.04, and 0.13 for components one through six, respectively. In addition to the above weights, a 40–60% breakdown of gross income between office practice costs and physician's earnings was used.
[5] The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1981. The values are 0.43, 0.25, 0.07, 0.10, 0.04, and 0.11 for components one through six, respectively. In addition to the above weights, a 40–60% breakdown of gross income between office practice costs and physician's earnings was used.
[6] The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1982. The values are 0.47, 0.23, 0.07, 0.09, 0.04, 0.10. for components one through six, respectively. In addition to the above weights, a 40–60% breakdown of gross income between office practice costs and physician's earnings was used.
[7] Derived from a survey of several major insurers.

TABLE C.—DETERMINATION OF THE ECONOMIC INDEX FOR THE PERIOD JULY 1984 THROUGH JUNE 1985

12-mo period ending June 30	Increase factor of the economic index for the period	Economic index for the period adjusted for revision in BLS statistics
1976		1.1784
1977	1.0705	1.2615
1978	1.0564	1.3326
1979	1.0586	1.4107
1980	1.0707	1.5104
1981	1.0667	1.6414
1982	1.0918	1.7921
1983	1.0646	1.9437
1984	1.0299	2.0601
1985	1.0347	2.1316

(Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: June 8, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 84-16394 Filed 6-19-84; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Principal Creek Indian Nation East of the Mississippi.

June 12, 1984.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f), notice is hereby given that the Assistant Secretary proposes to decline to acknowledge that the Principal Creek Indian Nation East of the Mississippi, c/o Mr. Arthur Turner, P.O. Box 201, Florala, Alabama 36442, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group does not meet three of the criteria set forth in 25 CFR 83.7 and therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

The Principal Creek Indian Nation East of the Mississippi is an organization of Creek descendants formed in 1969 at Florala, Alabama. The membership does not now and has not historically formed a community distinct from surrounding populations. It is not a formalization of a previously existing community and has no historical link, other than the descendancy of its members, with the historical Creek Nation. It has only been identified as an Indian entity since its formation in 1969 and no identifications were found of predecessor communities. Membership has varied significantly during the organization's existence, being currently much narrower than when it was originally formed. Significant political authority or other political processes have not operated within the group since its formation and no antecedent leaders or community within which political processes might have operated were found to have existed.

The petitioner did submit copies of the group's governing documents which include a statement explaining how membership is being determined. The organization's membership is composed principally of descendants of one early Creek ancestor, Catherine McIntosh. Eighty-one percent of the group's membership has demonstrated or is expected to be able to demonstrate Creek Indian ancestry based on information now available. Other members may also be able to trace their ancestry; however, the petitioner did not submit sufficient information to verify their ancestry. Fewer than one percent of the membership are enrolled members of any other North American Indian tribe or group. The Principal Creek Indian Nation has not been the subject of congressional legislation which has expressly terminated or forbidden a relationship with the United States.

Based on this preliminary factual determination, we conclude that the group meets criteria d, e, f, and g and does not meet criteria a, b, and c of § 83.7 of the Acknowledgment regulations.

Section 83.9(g) of the regulations provides that any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 120 days of the publication of this notice. Comments and requests for a copy of the proposed finding should be addressed to the Office of the Assistant Secretary—Indian Affairs, Department of the Interior, 18th & C Streets NW., Washington, DC 20245, Attention: Branch of Federal Acknowledgment.

After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after the expiration of the response period, the Assistant Secretary will publish his determination regarding the petitioner's status in the **Federal Register** as provided in § 83.9(h).

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-16411 Filed 6-19-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[F-14929-A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to Askinuk Corporation for approximately 1,246 acres. The lands involved are within T. 20 N., R. 90 W., Seward Meridian, Alaska.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in THE TUNDRA DRUMS. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (961), 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by the decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy

of the decision by regular mail which is not certified, return receipt requested, shall have until July 20, 1984 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Askinuk Corporation, Scammon Bay, Alaska 99662
Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-16373 Filed 6-19-84; 8:45 am]
BILLING CODE 4310-JA-M

Rawlins District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Rawlins District Office, Rawlins, Wyoming, Interior.

ACTION: Meeting of the Rawlings District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-463 and 94-579 that a meeting of the Rawlins District Grazing Advisory Board will be held. This meeting will consist of a field trip to the Muddy Creek and adjacent areas of the Rawlins District.

DATE: July 26, 1984.

ADDRESS: Rawlins District Office, 1300 3rd Street, Rawlins, Wyoming.

FOR FURTHER INFORMATION CONTACT: David J. Walter, District Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The purpose of the field trip is to review the Muddy Creek watershed improvement project and to review access problems in adjacent checkerboard land pattern areas. Other items to be discussed during this meeting include:

(1) Status update of the Grieve Stewardship project.

(2) Election of officers.

(3) Review of the proposed FY85 range improvement program.

(4) Stock driveway withdrawals.

This meeting/field trip is open to the public; however, interested persons must furnish their own 4-wheel drive transportation and lunch. Anyone interested in attending this meeting must notify the District Manager by July 18, 1984. Written statements may also be filed before the meeting for the Board's consideration.

David J. Walter,

District Manager.

[FR Doc. 84-16365 Filed 6-19-84; 8:45 am]
BILLING CODE 4310-22-M

Realty Action Non-competitive Sale of Public Lands in Power County, Idaho

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: Based on public support land use plans, the following lands have been examined and identified for disposal under Sec. 203(a) of the Federal Land Policy and Management Act of 1976, for no less than appraised fair market value (FMV).

Parcel	Legal description	Acres
I-19729	T. 6 S., R. 29 E., Boise Meridian, sec. 5, SW¼NE¼	40
I-20056	T. 6 S., R. 29 E., Boise Meridian, Sec. 6, SE¼NW¼	40

The appraisals will be available at the Idaho Falls District Office after August 1, 1984.

These lands will be offered by direct sale to Clair Rudeen based on historic use and ownership of all lands bordering this parcel. Failure of Clair Rudeen to submit the required amount by September 4, 1984, will result in cancellation of the sale to him. Should the land not be sold by September 4, 1984, the land will then be offered using competitive bidding procedures. Sealed bids only will be accepted until October 15, 1984, and opened on October 16, at 10:00 a.m. at the Idaho Falls District BLM Office, 940 Lincoln Road, Idaho Falls, Idaho. If no sealed bids are received at that time, this sale will be cancelled.

Upon publication of this Notice in the **Federal Register**, the land described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, but excepting the mineral leasing laws, for a period of two years, or until the lands are sold.

These parcels will be sold as described by the Government Land Office Survey of May 15, 1912.

The lands will be subject to the following reservations when patented:

1. Right-of-Way reservation to the United States for ditches and canals (43 U.S.C. 945).
2. All leasable minerals.
3. All valid existing rights and reservations of record.

Bids received will also constitute an application for non-leasable minerals of no known mineral value. The declared high bidder will be required to deposit a $50 non-refundable filing fee in addition to the bid in order to process the conveyance. Failure to do so will result in disqualification as the high bidder.

This Notice of Realty Action will allow for a 45-day comment period for the planning document addressing the sale of the above described parcels. This document is entitled "Big Desert MFP Amendment." This amendment is currently being reviewed by the Governor's Office for consistency with State and local planning by the Governor's Office for consistency with State and local planning. It is available for review in the District Office. The subject lands will not be offered for sale until such time that the Governor's review is complete and any comments or protests are resolved.

Additional information concerning these parcels, terms and conditions of the sale, and bidding instructions should be obtained by contacting Barbara Klingenberg, realty specialist, or Diane Roberts, legal clerk at the District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401 or by calling (208) 529-1020 during office hours.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at the above address.

Dated: June 12, 1984.

O'dell A. Frandsen,

District Manager.

[FR Doc. 84-16301 Filed 6-19-84; 8:45 am]
BILLING CODE 4310-GG-M

[INT DEIS 84-26]

Availability of Draft John Day Resource Management Plan and Environmental Impact Statement and Public Meetings, Burns District, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability and Public Meetings for Draft John Day

Resource Management Plan and Draft Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 202(a) of the Federal Land Policy and Management Act of 1976, the Department of the Interior has prepared a Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) for 182,120 acres of BLM-administered lands within the John Day Planning Area encompassing Grant and the northern portion of Harney Counties in Oregon.

Notice is hereby given that the Draft John Day Resource Management Plan and Environmental Impact Statement is available for public review and comment.

The Department of the Interior invites written comments on the adequacy of the draft plan and statement. Notice is also given that two public meetings will be held to answer questions on the draft plan and statement.

SUPPLEMENTARY INFORMATION: The major issues addressed in the RMP are: (1) Forest Management; (2) Forage Use; and (3) Land Ownership Adjustment.

The proposed Action (Preferred Alternative) concerns multiple-use management on 182,120 acres of BLM-administered lands in the John Day Planning Area. The three major issues would be addressed as follows:

1. *Forest Management*—The intensity of management on forestlands would be altered to provide consideration of critical wildlife forage and cover areas, streams supporting fish and important visual resource areas.

2. *Forage Use*—Forage use by livestock would continue at the current level, 25,323 Animal Unit Months (AUMs). Forage available to wildlife would continue at the current level. The wild horse population and their total forage use would remain unchanged but the percentage of the total herd area on BLM lands would be reduced from 24% to 11%. Livestock grazing use in riparian zones would be coordinated to facilitate improvement of riparian vegetation condition along 28.5 stream miles in Improvement (I) category allotments. Forage conditions would be improved through vegetative manipulation (prescribed burning and/or seeding) on approximately 6,295 acres in I category allotments.

3. *Land Ownership Adjustments*—Several hundred parcels ranging in size from 1 to 640 acres each, amounting to 5,240 acres would be offered for sale. An additional 16,000 acres may be available for disposal depending on a case-by-case analysis of significant big game habitat and forestry considerations. Public land holdings would be consolidated through exchange.

Three alternatives are considered in addition to the Proposed Action. They are: Production of Commodities, Enhancement of Natural Resources and No Action (continuation of the existing situation). A discussion of the affected environment is briefly summarized and the environmental consequences occurring from the Proposed Action and each alternative are documented in the EIS.

FOR FURTHER INFORMATION CONTACT: Larry Morgan, Team Leader, Burns District Office, 74 South Alvord, Burns, Oregon 97720.

Copies of the DRMP/EIS are available for review at the following public libraries or obtainable at the following Bureau of Land Management offices:

Bureau of Land Management, Burns District Office, 74 South Alvord, Burns, OR 97720 (503) 573–5241

Bureau of Land Management, Oregon State Office (912), 825 NE. Multnomah Street, Portland, OR 97208 (503) 231–6274

Harney County Library, 80 West "D" Street, Burns, OR 97720 (503) 573–6670

Grant County Library, 507 S. Canyon Boulevard, John Day, OR 97845 (503) 575–1992

DATES: Written comments concerning issues pertinent to the John Day Draft RMP/EIS will be accepted during a 90-day public comment period ending September 13, 1984. All written comments should be sent to the Burns District Office, Oregon (see address above).

During this time, two public meetings have been scheduled:

July 25, 1984—7:00 P.M.—Harney County Courthouse, 450 N. Buena Vista, Burns, Oregon.

July 26, 1984—7:00 P.M.—Grant County Courthouse, Canyon City, Oregon.

Dated: June 5, 1984.

Joshua L. Warburton,

District Manager.

[FR Doc. 84-16396 Filed 6-19-84; 8:45 am]

BILLING CODE 4310-33-M

Bakersfield District, California; Designation of Area of Critical Environmental Concern, and Availability of Draft Management Plan and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public comment period and availability of draft management plan and environmental assessment.

SUMMARY: Pursuant to the decision reached during the process of developing the Benton-Owens Valley Management Framework Plan (June 28, 1982), public lands in and around Fish Slough are being considered for designation as an Area of Critical Environmental Concern (ACEC). A draft management plan and environmental assessment for the ACEC have been prepared and are available for public review and comment.

SUPPLEMENTARY INFORMATION: Fish Slough is located in Inyo and Mono counties, in the Owens Valley, approxomately seven miles north of Bishop, California. The proposed ACEC designation recognizes a number of significant resources values of the area, including endangered wildlife, sensitive plant species and populations, unique desert wetlands, significant cultural values, scenic quality, and the opportunity for primitive types of recreation.

The guidelines offered in the draft management plan are to minimize conflicts between the user public and the protection of all sensitive natural resources. Proposed use restriction include (1) limiting vehicle use to designated and/or existing roads and trails; (2) constructing a 200-acre livestock exclosure for wildlife habitat protection; and (3) limiting construction activities so as not to detract from the natual landscape characterstics. A cooperative livestock grazing program is proposed as well as establishing a monitoring program.

The Environmental Assessment of the designation of the public lands in and around Fish Slough as an ACEC analyzes the effects of the Proposed Action and three alternatives on public land resources in the area.

The alternatives considered are as follows:

Proposed Action—Designate the Fish Slough Valley, the entire surface watershed (western aquifer), and a portion of the northern aquifer as an ACEC. Designation of this 35,926-acre hydrologic basin would provide the most protection. Significant natural resources wthin Fish Slough would be protected, as would the aquifer which supports it.

Alternative 1—Designate only the Fish Slough Valley and surface watershed (western aquifer) as an ACEC. By not including a portion of the northern aquifer in the ACEC, significant natural resources within Fish

Slough may be negatively affected by groundwater drawdown.

Alternative 2—Designate only the Fish Slough Valley as an ACEC. Impacts would be similar to, and perhaps more extensive, than Alternative 1 since almost none of the groundwater aquifer which supports Fish Slough would be included in the ACEC.

Alternative 3—No Action—Current management practices would continue with no formal efforts to coordinate activities among responsible resource management agencies. The preservation and enhancement of the natural integrity of Fish Slough and its natural resources would be jeopardized.

For additional background, a summary of the special management provisions, and a descrition of the public lands within the proposed Action and Alternatives 1 and 2, refer to the draft management plan. Single copies of the draft management plan and environmental assessment may be obtained from the Bishop Resource Area, 873 North Main Street, Suite 201, Bishop, California 93514. These documents are also available for review at the following Bureau of Land Management offices:

Bakersfield District Office, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301
Bishop Resource Area Office, 873 North Main Street, Suite 201, Bishop, California 93514
California State Office, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

DATES: Comments must be received by July 20, 1984.

ADDRESS: Written comments on the ACEC designation, draft management plan, or the environmental assessment should be sent to Area Manager, Bishop Resource Area, Bureau of Land Manager, 873 North Main Street, Suite 201,Bishop, CA 93514.

FOR FURTHER INFORMATION CONTACT: Michael Aceituno, Fishery Biologist, California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, (916) 484–4701; or Jim Morrison, Area Management, Bishop Resource Area, Bureau of Land Management, 873 North Main Street, Suite 201, Bishop, California 93514, (619) 872–4881.

Dated: June 8, 1984.

Robert D. Rheiner, Jr.,
District Manager.

[FR Doc. 84–16041 Filed 6–19–84; 8:45 am]
BILLING CODE 4310–40–M

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet July 19–21, 1984. The meeting will be held at the MGM Grand Hotel, 2500 East Second Street, Reno, Nevada. Meeting hours on Thursday, July 19, will be from 8:00 to 9:30 a.m., followed by a Council field tour of BLM's Palomino Valley wild horse and burro adoption center; the meeting will resume at the MGM Grand from 1:30 to 5:00 p.m. On Friday, July 20, the meeting hours will be 8:00 a.m. to 5:00 p.m., and on Saturday, July 21, the meeting hours will be 8:00 a.m. to 2:30 p.m. The proposed agenda for the 3-day meeting is:

Thursday, July 19: Morning: Address by Interior Secretary's Special Assistant; Update on Interior Department programs and initiatives by Assistant Secretary for Land and Minerals Management; Field tour of Palomino Valley Corrals. Afternoon: Presentation on Projects BOLD; Meetings of Council subcommittees (Energy and Minerals, Renewable Resources, Lands, and Administrative/Legislative).

Friday, July 20: Morning: Panel discussion on wild horse and burro program; Panel discussion on Experimental Stewardship Program and Cooperative Management Agreements; Report on grazing fees.

Afternoon: Address by Under Secretary of the Interior; Public statement period; Report on previous Council resolutions and setting of dates and locations for future Council sessions; Meetings of Council subcommittees.

Saturday, July 21: Morning: Presentation on cadastral survey program; Discussion of subcommittee recommendations and consideration of Council resolutions.

Afternoon: Continued discussion and action on Council resolutions.

All meetings of the Council will be open to the public. Opportunity will be provided for members of the public to make oral statements to the Council, beginning at 1:30 p.m., Friday, July 20. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written testimony prior to oral delivery. Please send written comments by July 13 to BLM's Nevada State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: July 19, 20, and 21—Council Meeting. July 20—Public Statements.

ADDRESS: Copies of public statements should be mailed by July 13 to: Director, Nevada State Office (910), Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Washington, D.C. Office, BLM, Telephone (202) 343–2054; or Bob Stewart, Public Affairs Chief, Nevada State Office, BLM, Telephone (702) 784–5311.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of the national scope related to public lands and resources under the jurisdiction of the Bureau.

June 15, 1984.

Robert F. Burford,
Director.

[FR Doc. 84–16412 Filed 6–19–84; 8:45 am].
BILLING CODE 4310–84–M

[W–415, W–71805, W–71806, W–71809, W–71810]

Wyoming; Proposed Continuation of Withdrawal, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration proposes that 320 acres withdrawn for air navigation sites be continued for an additional 20 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received by Sept. 18, 1984.

ADDRESS: Comments should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, 307–772–2089.

The Federal Aviation Administration proposes that the existing land withdrawn by the Secretarial Orders of December 27, 1937, August 22, 1947, and May 26, 1948, Bureau of Land Management Order of March 10, 1952, and PLO 4177 of March 9, 1967, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of

1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Sixth Principal Meridian, Wyoming

T. 36 N., R. 79 W.,
Sec. 13, W½NW¼;
Sec. 14, E½NE¼, NE¼SE¼.
T. 21 N., R. 86 W.,
Sec. 10, S½NE¼SW¼, N½SE¼SW¼.
T. 21 N., R. 90 W.,
Sec. 28, SW¼SW¼.
T. 16 N., R. 115 W.,
Sec. 7, S½NE¼SW¼, N½SE¼SW¼.

The area described contains 320 acres in Natrona, Carbon, Sweetwater, and Uinta Counties, Wyoming.

The purpose of these withdrawals is to protect the air navigation facilities at the sites. The withdrawals segregate the lands from the operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawals may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: June 8, 1984.

P.D. Leonard,

Associate State Director, Wyoming.

[FR Doc. 84-16406 Filed 6-19-84; 8:45 am]

BILLING CODE 4310-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Intent To Prepare a Comprehensive Environmental Impact Statement on Decisions on Permit Applications for Surface Coal Mining in Tennessee and To Hold Public Scoping Meetings

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare a comprehensive environmental impact statement and to hold public scoping meetings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has determined that decisions individually and collectively on the approval or disapproval of permit applications under the proposed Federal program for the State of Tennessee constitute a major Federal action significantly affecting the quality of the human environment as defined by the National Environmental Policy Act of 1969 (NEPA) and accordingly is preparing a comprehensive environmental impact statement (EIS).

The purpose of this comprehensive EIS is to provide NEPA compliance coverage for all decisions taken individually and collectively on permit applications for existing and pending operations in Tennessee. In addition, the EIS will form the basis for NEPA compliance for as many future operations as can be reasonably projected.

The major alternatives thus far identified for consideration in the draft EIS are described in the supplementary information section of this notice. During the scoping period for this EIS, OSM is asking the public to identify additional alternatives and any significant issues related to the proposed action which should be analyzed in depth in the EIS.

DATES: *Written comments:* Must be received no later than 4 p.m., E.d.t., on July 27, 1984, at the address below. *Public scoping meeting:* July 9, 1984, at 7:30 p.m.

ADDRESSES: *Written comments:* Send to Dr. Mark Boster, Acting Chief, Division of Permit and Environmental Analysis, Office of Surface Mining, 1951 Constitution Avenue NW., Room 134, Washington, DC 20240. *Public scoping meeting:* Rockwood Public Library, 117 N. Front St., Rockwood, Tennessee.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Boster, Acting Chief, Division of Permit and Environmental Analysis, at the above Washington, D.C., address (telephone: 202-343-5854).

SUPPLEMENTARY INFORMATION:

Background

OSM will propose to promulgate, sometime in the near future, a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of Tennessee. Upon promulgation of a Federal regulatory program, the Secretary of the Interior becomes the regulatory authority. For further information see 49 FR 15496 (April 18, 1984).

Public Scoping Meetings

The public scoping meeting to identify the relevant issues to be addressed by the EIS will be held at the time and place indicated under **DATES** and **ADDRESSES,** respectively.

The participation of the public and all interested government agencies is invited. Individual comments at the meetings will be limited to 15 minutes. A stenographer will be present to record all comments. Filing of a written statement at the time of giving oral comments would be helpful to OSM. Submission of written statements in advance of the meeting date, whenever possible, would greatly assist OSM officials who will attend the meeting. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked to clarify or elicit more specific information from the person commenting. The meetings will continue until all commentors have been heard.

Environmental Analysis

This EIS will cover decisions by OSM on permit applications for existing surface coal mining operations in the State of Tennessee as well as future operations to the extent that they can be projected.

The following alternatives will be evaluated in this EIS:

1. Approval of permit application packages with necessary conditions (stipulations) to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and the approved Federal program for the State of Tennessee.

2. Disapproval of permit application packages.

3. No action.

Additional alternatives may be added to the EIS analysis as a result of public comments during the scoping period and the impact analyses.

Dated: June 15, 1984.

Mark Boster,

Acting Assistant Director, Technical Services and Research.

[FR Doc. 84-16482 Filed 6-19-84; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[332-185]

Assessment of the Effects of Barter and Countertrade Transactions on U.S. Industries

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) for the purpose of assessing the effects of barter and countertrade transactions on U.S. industries, and the scheduling of a hearing in connection therewith.

EFFECTIVE DATE: June 11, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald DeMarines, Machinery and Equipment Division, Office of Industries, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0259.

Background and Scope of Investigation

The Commission instituted the investigation on its own motion. Barter and countertrade transactions involving U.S. companies are rapidly expanding, particularly in North-South trade. Many Latin American, African, and Asian developing countries have or are in the process of instituting government mandated barter and counter-trade programs. Significant developments are occurring in the United States to assist U.S. companies facilitate countertrade commitments. Export trading companies, spurred in part by passage of the Export Trading Company Act, in-house countertrading organizations of multinationals, and special legal units of law firms specializing in international law are part of the evolving barter/countertrade service industry.

This study will assess the effects of the growing involvement of U.S. companies in international barter and countertrade transactions, examine the effects of such involvement on U.S. industries, provide data on the level of imports and exports and their sources and destinations, and examine the economic conditions that have created the tremendous demand for countertrade on the part of developing countries.

The Commission expects to complete its study by January 1985.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m., on November 14, 1984, to be continued on November 15, if required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, November 7, 1984.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on November 9, 1984. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: June 11, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-16430 Filed 6-19-84; 8:45 am]

BILLING CODE 7020-02-M

[332-178]

U.S. Imports of Goods Manufactured by Convict, Forced, or Indentured Labor

AGENCY: United States International Trade Commission.

ACTION: Cancellation of hearing.

EFFECTIVE DATE: June 13, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Reuben Schwartz or Mr. Joseph Williams, Textiles, Leather Products, and Apparel Division, Office of Industries, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202-523-0114 or 202-523-5702, respectively.

Background

The Commission instituted the investigation, No. 332-178, following receipt on December 29, 1983, of a request therefore from the Senate Committee on Finance. A public hearing was scheduled to be held in Washington, D.C. beginning July 10, 1984, in connection with the investigation. Because of the limited number of witnesses requesting an opportunity to testify, the Commission, on its own motion, has cancelled the hearing.

Written Submissions

In lieu of or in addition to appearance at the public hearing, interested persons were invited to submit written statements concerning the investigation no later than June 28, 1984. Because of the cancellation of the hearing, written submissions concerning the investigation will be received until August 1, 1984.

Notices of the institution of the investigation and of the July 10 hearing date were published in the **Federal Register** of February 6, 1984 (49 FR 4855).

Issued: June 14, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-16428 Filed 6-19-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-189 (Preliminary)]

Calcium Hypochlorite From Japan

Determination

On the basis of the record [1] developed in investigation No. 731-TA-189 (Preliminary), the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] by reason of imports from Japan of calcium hypochlorite, provided for in item 418.22 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 25, 1984, Olin Corp, of Stamford, Conn., the principal producer of the subject product in the United States, filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States is being materially injured or threatened with material injury by reason of LTFV

[1] The "record" is defined in 207.2(i) of the Commission's Rules of Practice and Procedure (19) CFR 207.2(i)).

[2] Commissioner Stern also finds reasonable indication of threat of material injury.

imports of calcium hypochlorite from Japan. Accordingly, effective April 25, 1984, the Commission instituted antidumping investigation No. 731–TA–189 (Preliminary) under section 733(a) of the Act. Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on May 9, 1984, FR 19745). A public conference was held in Washington, D.C., on May 18, 1984, and all persons who requested the opportunity were premitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on June 11, 1984. A public version of the Commission's report, *Calcium Hypochlorite from Japan* (investigation No. 731–TA–189 (Preliminary), USITC Publication 1540, 1984), contains the views of the Commission and information developed during the investigation.

Issued: June 11, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–16419 Filed 6–19–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–157 and 160 (Final)]

Carbon Steel Wire Rod From Argentina and Spain

AGENCY: United States International Trade Commission.

ACTION: In conformance with the determination of the International Trade Administration of the Department of Commerce to amend its schedule for the conduct of the referenced investigations (49 FR 22121, May 25, 1984 (Argentina); 49 FR 23208, June 5, 1984 (Spain)), the Commission hereby revises its schedule as follows: The prehearing conference will be held on September 19, 1984; the hearing will be held on September 25, 1984; and the Commission's final determination shall be issued on or before November 5, 1984.

EFFECTIVE DATE: June 11, 1983.

SUPPLEMENTARY INFORMATION: The Commission instituted final antidumping investigations with respect to Argentina, Poland (Inv. No. 731–TA–159), and Spain effective May 8, 1984, and scheduled as hearing to be held in connection with these investigations for July 31, 1984 (49 FR 22722, May 31, 1984). On May 25, 1984 (49 FR 22121) and June 5, 1984 (49 FR 23208), the Department of Commerce extended the investigations for Argentina and Spain, respectively, in response to requests from exporters in these countries. The effect of the extensions was to change the scheduled date for Commerce to make its final determinations from July 16, 1984, to September 20, 1984. Accordingly, the Commission is revising its schedule for Argentina and Spain to conform with Commerce's new schedule. the Commission's schedule for Poland remains unchanged.

The Commission's hearing for the rescheduled investigations, which was to have been held on July 31, 1984, has been rescheduled to begin at 10:00 a.m. on September 25, 1984, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on September 11, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on September 19, 1984, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is September 20, 1984. A public version of the prehearing staff report containing preliminary findings of fact in these investigations will be placed in the public record on September 5, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–523–0296), Office of Investigations, U.S. International Trade Commission, Washington, D.C. 20436.

Issued June 11, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–16421 Filed 6–19–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–165]

Certain Alkaline Batteries; Commission Decision Not To Review Initial Determination Terminating Respondents on the Basis of Settlement Agreements

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) to terminate Masel Supply Co. Corporation (Masel), Merchants Buying Syndicate (Merchants), and Web International Ltd. (Web), as respondents in the above-captioned investigation on the basis of settlement agreements.

Authority: 19 U.S.C. 1337; 19 CFR 210.53(c) and (h)

SUPPLEMENTARY INFORMATION: On March 16, 1984, complainant Duracell, Inc. filed a motion (Motion No. 165–22) to terminate Masel, Merchants, and Web as respondents in the investigation on the basis of three settlement agreements.

On May 11, 1984, the presiding officer issued an ID (Order No. 23) granting the motion. The Commission received neither a petition for review of the ID nor comments from other Government agencies or the public.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, telephone 202–523–0499

Issued: June 12, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–16418 Filed 6–19–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–143]

Certain Amorphous Metal Alloys and Amorphous Metal Articles; Extension of Time for Commission Decision on Whether To Order Review of Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the date by which the Commission must decide whether to review the initial determination (ID) on the violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation has been changed from June 14, 1984, to July 6, 1984.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–210.57 of the Commission's Rules of Practice and Procedure (19 CFR 210.53-210.57 as amended by 48 FR 20226, 21115).

SUPPLEMENTARY INFORMATION: The presiding officer's ID on the violation of section 337 alleged in this investigation was filed on May 14, 1984. Under § 210.53(h) of the Commission's rules, the ID becomes the determination of the Commission within 30 days after the date of filing of the ID unless the Commission orders a review or extends the deadline for deciding whether to

review. The 30-day deadline prescribed by the rules would have been June 14, 1984. The Commission has determined to change the deadline to July 6, 1984, because of the complexity of the case and the number of petition for review filed by the parties.

Copies of the nonconfidential version of the initial determination, the petitions for review, the responses thereto, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0350.

Issued: June 12, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–16417 Filed 6–19–84; 8:45 am]

Billing Code 7020–02–M

Certain Apparatus for Installing Electrical Lines and Components Therefor; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 14, 1984, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Scoggins Manufacturing, Inc., 1086 Gant Road, Graham North Carolina 27253. The complaint alleges unfair methods of competition and unfair acts in the importation of certain apparatus for installing electrical lines and components therefor into the United States, or in their sale, by reason of alleged (a) direct, contributory and induced infringement of the claims of U.S. Letters Patent 3,697,188; (b) contributory and induced infringment of the claims of U.S. Letters Patent 3,611,549; (c) infringement of complainant's common law trademark; (d) false advertising; and (e) unfair competition. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy of substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and/or permanent cease and desist orders.

Authority: the authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.12).

Scope of Investigation.

Having considered the complaint, the U.S. International Trade Commission, on June 12, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain apparatus for installing electrical lines and components therefor into the United States, or in their sale, by reason of alleged (a) direct, contributory and induced infringment of the claims of U.S. Letters Patent 3,697,188; (b) contributory and induced infringement of the claims of U.S. Letters Patent 3,611, 549; (c) infringment of complainant's common law trademark; (d) false advertising; and (e) passing off, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice, of investigation shall be served:

(a) The complainant is—Scoggins Manufacturing, Inc. 1986 Gant Road Graham North Carolina 27253.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Canadian Flexi Drill 83 Harrington Cresent, Willowdale, Ontario, Canada M2M 2Y7.

Emergency Products Corps., 25 Eastmans Road, Parsippany, New Jersey 07054.

Alarm Supply Co., Inc., 12551 Globe Road, Livona, Michigan 48150.

(c) Juan Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

[Investigations Nos. 701–TA–205 through 207 (Final)]

Certain Carbon Steel Products From Brazil

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b), that an industry in the United States is materially injured by reason of imports from Brazil of the following products, which have been found to be subsidized by the Government of Brazil: Carbon steel plate in coils (inv No. 701–TA–205 (Final)),[2] hot-rolled carbon steel sheet (inv No. 701–TA–206 (Final)),[3] and cold-rolled carbon steel sheet (inv No. 701–TA–207 (Final)).[4][5][6] In addition, pursuant to section 705(b)(4)(A) of the act (19 U.S.C. 1671d(b)(4)(A)), the Commission also determines that there is no material injury, which will be difficult to repair, by reason of massive imports of the subject products over a relatively short period of time.[7]

Background

The Commission instituted these investigations effective February 10, 1984, following preliminary determinations by the Department of Commerce that there was a reasonable basis to believe or suspect that subsidies were being provided to manufacturers, producers, or exporters in Brazil of the subject carbon steel products.

Notice of the institution of the Commission's investigations and of a hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary,

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For purposes of this investigation, carbon steel plate in coils is provided for in item 607.6610 of the Tariff Schedules of the United States Annotated (TSUSA).

[3] For purposes of this investigation, hot-rolled carbon steel sheet is provided for in items 607.6710, 607.6720, 607.6730, 607.6740, 607.8320, or 607.8342 of the TSUSA.

[4] For purposes of this investigation, cold-rolled carbon steel sheet is provided for in items 607.8320, 607.8350, 607.8355, or 607.8360 of the TSUSA.

[5] Commissioner Stern determines that an industry in the United States is materially injured or threatened with material injury by reason of imports of subsidized cold-rolled carbon steel sheet from Brazil.

[6] Commissioner Liebeler did not participate.

[7] The effect of this determination is that countervailing duties will be imposed on imports entered on or after February 10, 1984. Had the determination been affirmative, countervailing duties would have been imposed on imports entered 90 days prior to that date (see 19 U.S.C. 1671b(e)).

U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on March 14, 1984 (49 FR 9626). The hearing was held in Washington, D.C., on April 27, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on these investigations to the Secretary of Commerce on June 11, 1984. A public version of the Commission's report, Certain Carbon Steel Products From Brazil, (investigations Nos. 701-TA-205-207 (Final), USITC Publication 1538, June 1984) contains the views of the Commission and information developed during the investigations.

Issued: June 11, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-16420 Filed 6-19-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-195]

Certain Cloisonne Jewelry; Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge John J. Mathias as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: June 7, 1984.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 84-16422 Filed 6-19-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-187]

Certain Glass Construction Blocks

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on October 2, 1984, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th & Constitution Avenue NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: June 13, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 84-16424 Filed 6-19-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-183]

Certain Indomethacin

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on September 4, 1984, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th & Constitution Avenue NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: June 13, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 84-16426 Filed 6-19-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-173]

Certain Valves

Notice is hereby given that the prehearing conference in this proceeding scheduled for June 18, 1984, and the hearing scheduled to commence immediately thereafter (49 FR 19747) are cancelled.

The prehearing conference is rescheduled to commence at 9:00 a.m. on June 25, 1984, in room 6311 at the Interstate Commerce Commission Building at 12th & Constitution Avenue NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this Notice in the **Federal Register.**

Issued: June 12, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 84-16427 Filed 6-19-84; 8:45 am]

BILLING CODE 7020-02-M

Frozen Concentrated Orange Juice From Brazil; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

AGENCY: U.S. International Trade Commission. .

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 701-TA-184 (Final), Frozen Concentrated Orange Juice from Brazil.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist which warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determination in investigation No. 701-TA-184 (Final) regarding frozen concentrated orange juice from Brazil. The purpose of the proposed section 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, would be threatened with material injury, or the establishment of an industry would be materially retarded, by reason of imports of frozen concentrated orange juice from Brazil if the countervailing duty order is modified or revoked with respect to such merchandise, provided for in item 165.35 of the Tariff Schedules of the United States.

SUPPLEMENTARY INFORMATION: On July 14, 1983, the Commission determined, pursuant to section 705(b)(1) of the Tariff Act of 1930, that an industry in the United States is threatened with material injury by reason of imports of frozen concentrated orange juice which have been found by the Department of Commerce to be subsidized by the Government of Brazil.

On May 31, 1984, the Commission received a request to review its affirmative determination in investigation No. 701-TA-184 (Final). The request was filed pursuant to section 751(b) of the Tariff Act of 1930 by Wald, Harkrader & Ross on behalf of Sucocoitrico Cutrale S/A, Citrosuco Paulista S/A, and Cargill Industrial Ltda., Brazilian producers and exporters of frozen concentrated orange juice.

Written Comments Requested

Pursuant to § 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests public comments concerning whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation: (1) The severe freeze in Florida over the Christmas 1983 weekend has sharply reduced U.S. producers' shipments of frozen concentrated orange juice; and (2) production in Brazil is too low to constitute a threat of material injury.

Additional Information

Under § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), the signed original and 14 true copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in

confidence must request business confidential treatment under § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Such request should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other public documents in this matter are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Abigail Eltzroth, Office of Investigations, U.S. International Trade Commission (202–523–0289).

Issued: June 11, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–16425 Filed 6–19–84; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 8)]

Intrastate Rail Rate Authority—Indiana

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision.

SUMMARY: The Commission has extended the provisional certification of the Indiana Public Service Commission under 49 U.S.C. 11501(b) to regulate Indiana intrastate rail transportation. This extension will permit Indiana to modify its standards and procedures as required by the full decision.

DATES: Indiana's provisional certification will expire on August 20, 1984, unless prior to that date Indiana files the required revised standards and procedures.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision, write T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC metropolitan area) or toll free (800) 424–5403.

Decided: May 7, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Andre. Chairman Taylor commented with a separate expression. Commissioner Gradison dissented in part with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 84–16467 Filed 6–19–84; 8:45 am]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Co. (Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2); Exemption

I

The Baltimore Gas and Electric Company (the licensee) is the holder of Facility Operation License Nos. DPR–53 and DPR–69 which authorize operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises two pressurized water reactors at the licensee's site located in Calvert County, Maryland.

II

On February 22, 1983, the environmental qualification rule for electrical equipment important to safety for nuclear power plants, 10 CFR 50.49, became effective. Subsection (g) of 50.49 requires that each holder of an operating license issued prior to February 22, 1983, shall by May 20, 1983, identify the electrical equipment important to safety within the scope of the rule already qualified and submit a schedule for either the qualification or the replacement of remaining electrical equipment subject to the rule. This schedule must establish a goal of final environmental qualification of the electrical equipment by the end of the second refueling outage after March 21, 1982, or by March 31, 1985, whichever is earlier. The rule also provides that the Director of the Office of Nuclear Reactor Regulation may grant extensions of this deadline to a date no later than November 30, 1985, for specific pieces of equipment if requests are filed on a timely basis and demonstrate good cause for such an extension, such as procurement lead time, task complications, and installation problems.

III

By letters dated May 14, 1984 and June 8, 1984, the licensee requested an extension of the dates specified in 10 CFR 50.49(g). Calvert Cliffs Unit 2 began the second refueling outage on April 21, 1984, which will end on June 23, 1984. In addition, the second refueling outage for Calvert Cliffs Unit 1 will begin after March 31, 1985; it is currently scheduled to begin during April 1985.

The equipment for which the licensee has requested extensions for the completion of environmental qualifications is described in the licensee's letters of May 14, 1984 and June 8, 1984. These items, identified following the beginning of the second refueling outage for Calvert Cliffs Unit 2, require no equipment modifications; the requested extension is for the purpose of completing the requisite documentation. The licensee's May 14, 1984 letter contains justifications for continued operation for this equipment. The letter concludes that there is a high degree of confidence that this equipment is environmentally qualified and that the requested extension is needed to complete the required documentation. We have reviewed the licensee's submittal and find that the licensee's reasons are appropriate. Therefore, good cause for a schedular extension of the rule exists based upon the lead time necessary to complete certain environmental qualification records for Units 1 and 2.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption:

Exemption is granted from the schedular requirement of § 50.49(g) to extend the required date of final environmental qualification of electrical equipment identified in the licensee letter of May 14, 1984 and June 8, 1984, to the dates given below:

SCHEDULE FOR COMPLETION OF ENVIRONMENTAL QUALIFICATION

Equipment	Applicability	Completion date
1. Hydrogen purge control valve motor.	Unit 2	July 31, 1984.
2. Motor control center	Units 1 and 2	Apr. 30, 1985.

SCHEDULE FOR COMPLETION OF ENVIRONMENTAL QUALIFICATION—Continued

Equipment	Applicability	Completion date
3. Hydrogen recombiner power supply panel.	Units 1 and 2.....	Doc.

The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

This Exemption is effective upon issuance.

Dated at Bethesda, Md., this 14th day of June 1984.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 84-16457 Filed 6-19-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co. (Zion Station, Unit Nos. 1 and 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Commonwealth Edison Company (CECo and/or the licensee) is the holder of Facility Operating License Nos. DPR-39 and DPR-48 which authorizes the operation of the Zion Station, Unit Nos. 1 and 2 (the facilities) at power levels not in excess of 3250 megawatts thermal. The facilities are pressurized water reactors (PWRs) located at the licensee's site in Zion, Illinois.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

CECo responded to Generic Letter 32-33 by letter dated April 14, 1983. By letters dated July 20, 1983 and July 28, 1983, CECo modified several dates as a result of negotiations with the NRC staff. In these submittals, CECo made commitments to complete the basic requirements. The following Table summarizing CECo's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by CECo.

CECo's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed CECo's April 14, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee modified certain dates by letters dated July 20 and July 28, 1983. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of CECo's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in the Attachment to this ORDER in the manner described in CECo's submittals noted in Section III herein no later than the dates of the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The license may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Md., this 12th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC	Complete.
	1b. SPDS fully operational and operators trained	[illegible]
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	do.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation	May 1, 1986.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Aug. 1, 1986.
	3b. Implement (installation or upgrade) requirements	Schedule will be provided by Feb. 1, 1987
4. Upgrade Emergency Operating Procedures (EOP's)	4a. Submit a Procedures Generation Package to the NRC	Dec. 31, 1984.
	4b. Implement the upgraded EOP's	Dec. 31, 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Complete.[1]
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	Complete.[1]

[1] The modifications and construction of the structures are complete, however, the Technical Support Center and Emergency Operations Facility are not considered fully functional until the change resulting from the R.G. 1.97 and human factors reviews are implemented and all testing and training are completed.

[FR Doc. 84–16458 Filed 6–19–84; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–315 and 50–316]

Indiana and Michigan Electric Co. (Donald C. Cook Nuclear Plant Unit Nos. 1 and 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Indiana and Michigan Electric Company (IMEC) (the licensee) is the holder of Facility Operating Licenses No. DPR–58 and DPR–74 which authorizes the operation of the Donald C. Cook Nuclear Plant Unit Nos. 1 and 2 (the facilities). The facilities are pressurized water reactors (PWRs) located in Berrien County, Michigan.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

IMEC responded to Generic Letter 82–33 by letter dated April 15, 1983. By letters dated August 2, 1983, January 30, 1984, and February 10, 1984, IMEC provided additional information and dates as a result of negotiations with the NRC staff. In these submittals, IMEC made commitments to complete the basic requirements by providing either a completion date for the item or an intermediate date for providing a commitment to a completion date. The intermediate dates (status dates) are based on IMEC target completion dates for the item. The following Table summarizing IMEC schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by IMEC.

IMEC commitments include (1) dates for providing required submittal to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed IMEC's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these negotiations, the licensee provided additional information and dates by letters dated August 2, 1983, January 30, 1984, and February 10, 1984. The NRC staff finds that the target dates are reasonable, achievable dates for meeting the Commission requirements and that the intermediate dates (status dates) which are based on the schedules for the target dates are, therefore, also acceptable. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of IMEC's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in the Attachment to this Order in the manner described in IMEC's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of

publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Md., this 12th day of June 1984.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC	Complete.
	1b. SPDS fully operational and operators trained	Provide completion date by April 1985.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Provide completion date by September 1984.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	February 1985.
	3b. Implement (installation or upgrade) requirements	Provide completion date by February 1985.
4. Upgrade Emergency Operating Procedures (EOP's)	4a. Submit a Procedures Generation Package to the NRC	September 1984.
	4b. Implement the upgraded EOP's	December 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Provide completion date by April 1985.
	5b. Operational Support Center fully functional	Do.
	5c. Emergency Operations Facility fully functional	Do.

[FR Doc. 84-16459 Filed 6-19-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-387]

Pennsylvania Power & Light Co. and Allegheny Electric Coop., Inc. (Susquehanna Steam Electric Station, Unit 1); Order Confirming Licensee Commitments on Emergency Response Capability

I

Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (the licensees) are the holders of Operating License No. NPF-14 which authorizes the operation of the Susquehanna Steam Electric Station, Unit 1 (the facility) at steady-state reactor power levels not in excess of 3293 megawatts thermal. The facility consists of a boiling water reactor (BWR) located in Luzerne County, Pennsylvania.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-09737. In this letter operating reactor licensees and holders of construction permits were requried to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

Pennsylvania Power & Light Company (PP&L) responded to Generic Letter 82-33 by letter dated April 15, 1983. By letters dated July 22, 1983, August 3, 1983, November 23, 1983, February 1, 1984, February 28, 1984, March 8, 1984, and March 14, 1984, PP&L modified several dates as a result of negotiations with the NRC staff. In these submittals, PP&L made commitments to complete the basic requirements. The following Table summarizing PP&L's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by PP&L.

PP&L's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed PP&L's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee modified certain dates by letters dated July 22, 1983, August 3, 1983, and November 23, 1983, February 1, 1984, February 29, 1984, March 8, 1984, and March 14, 1984. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of

PP&L's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in the Attachment to this Order in the manner described in PP&L's submittal noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensees may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensees should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Md., this 14th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Officer of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC	Completed Sept. 30, 1983.
	1b. SPDS fully operational and operators trained	July 1, 1984.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Completed June 3, 1982.
	2b. Submit a supplemental summary report to the NRC including a proposed schedule for implementation.	Mar. 1, 1985.
3. Regulatory Guide 1.97	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	May 31, 1984.
	3b. Implement (installation or upgrade) requirements	September 1985.
4. Upgrade Emergency Operating Procedures (EOP's)	4a. Submit a Procedures Generation Package to the NRC	June 1985.
	4b. Implement the upgraded EOP's	December 1985.
5. Emergency response Facilities	5a. Technical Support Center fully functional	June 1987.
	5b. Operational Support Center fully functional	Do.
	5c. Emergency Operations Facility fully functional	Do

[FR Doc. 84-16460 Filed 6-19-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corporation. Kewaunee Nuclear Power Plant; Order Confirming Licensee Commitments on Emergency Response Capability

I

Wisconsin Public Service Corporation (the licensee) is the holder of Facility Operating License No. DPR-43 which authorizes the operation of the Kewaunee Nuclear Power Plant (the facility) at steady-state power levels not in excess of 1650 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Kewaunee County, Wisconsin.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82-33 by letter dated April 15, 1983. By letters dated April 21, and August 4, 1983 and February 3, 1984 the licensee amended the original submittal to submit errata and as a result of negotiations with the NRC staff. In these submittals, the licensee made commitments to complete the basic requirements. The following Table summarizing the licensee's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by the licensee.

The licensee's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other

requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed the licensee's April 15, 1983 letter, as supplemented April 21, 1983, and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these negotiations the licensee amended the submittal to clarify certain dates by letter dated August 4, 1983. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV.

According, pursuant to sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in the Attachment to this ORDER in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order withing 20 days of the dte of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Md., this 12th day of June 1984.

For the Nuclear Regulatory Commission.

Darrel G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC	Sept. 2, 1983 (completed).
	1b. SPDS fully operational and operators trained	1985 refueling outage (approximately May).
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Apr. 15, 1983 (completed).
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	November 1984.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Do.
	3b. Implement (installation or upgrade) requirements	Per schedule in November 1984 report.
4. Upgrade Emergency Operating Procedures (EOP's)	4a. Submit a Procedures Generation Package to the NRC	Jan. 1, 1984 (complete).
	4b. Implement the upgraded EOP's	1985 refueling outage (approximately May).
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Apr. 15, 1983 (completed).
	5b. Operational Support Center fully functional	Do.
	5c. Emergency Operations Facility fully functional	Do.

[FR Doc. 84–16481 Filed 6–19–84; 8:45 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form, but find that you are unable to do so within the foregoing period, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent to comment as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 405, 1129 Twentieth Street, N.W., Washington, D.C. 20527; Telephone (202) 653–2818.

OMB Reviewer

Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395–7231.

Summary of Form Under Review

Type of Request: Extension
Title: Application for Political Risk Investment Insurance
Form No. OPIC–52
Frequency of Use: Other—once per investor per project
Type of Respondent: Business or other institutions (except farms)
Standard Industrial Classification Codes: All
Description of Affected Public: U.S. investors
Number of Responses: 275
Reporting Hours: 500 hours
Federal Cost: $10,000

Authority for Information Collection: Section 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): Pursuant to OPIC's statute, OPIC must screen each applicant for investment insurance in order to determine the eligibility of the investor, assess the political risks of the project, and calculate the economic and development effects of the project in the host country and in the U.S. The OPIC 52 enables the collection of this information in order to carry out Congress's mandate to manage the program prudently and to assure that no project is supported which has a significant adverse effect on U.S. employment.

Dated: June 13, 1984.

Leo H. Phillips, Jr.

Office of the General Counsel.

[FR Doc. 84-16409 Filed 6-19-84; 8:45 am]

BILLING CODE 3210-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program and Northwest Conservation and Electric Power Plan; Proposed Amendments, Hearings, and Public Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of proposed amendments, hearings, and opportunity to comment.

SUMMARY: On November 15, 1982, the Pacific Northwest Electric Power and Conservation Planning Council (the Council) adopted a final Columbia River Basin Fish and Wildlife Program (Fish and Wildlife Program). The Council is now proposing to revise and amend that program. On April 27, 1983, the Council adopted a final Northweast Conservation and Electric Power Plan (Power Plan). The Power Plan incorporated the Fish and Wildlife Program and included a schedule for program amendment. The Council is now proposing to amend a portion of that plan regarding the schedule for revision of its Fish and Wildlife Program. The proposed amendments of the Program and Plan are being released for public review and comments, and public hearings will be held. This notice describes the proposed amendments, provides information on how to obtain additional information, and outlines the process for submitting written comments and participating in the hearings.

DATES AND ADDRESSES: The public comment period regarding the proposed amendments closes at 5 p.m., August 10, 1984. Public hearings on the proposed amendments will be held in:

- Boise, Idaho, July 16, 1984 at the Red Lion Downtowner Motel, 1800 Fairview Avenue.
- Spokane, Washington, July 19, 1984 at Cavanaugh's River Inn, N. 700 Division.
- Missoula, Montana, July 24, 1984 at the University Center, University of Montana.
- Portland, Oregon, July 26, 1984 at the Portland Hilton, 921 SW. 6th.

All hearings will begin at 9 a.m.

Instructions for Oral Comment at Hearings

1. Requests for time slots must be made at least five days prior to the hearings to Ruth Curtis, Information Cooridinator, at the Council's central office, 700 SW. Taylor, Suite 200, Portland, Oregon 97205 or (503) 222-5161 (toll free 1-800-222-3355 out of state or 1-800-452-2324 in Oregon).

2. Those who do not sign up for time slots will be permitted to testify as time permits.

3. Hearings should be used to summarize written comments. Comments should not be read. Comments should be limited to the draft amendment document and the related proposed Power Plan amendment.

4. Ten copies of hearing testimony should be submitted to the Council recorder at the hearings. This person will be sitting at a table near the Council members. (See instructions for written comment.)

5. Those persons officially representing an organization will have 15 minutes to summarize their written testimony. (Organizations may have only one official representative.) All other individuals will be limited to five minutes. These time limits will be observed strictly in order to allow parties to testify.

6. The Council may ask questions for clarification. If so, this will be over and above the time limit imposed above.

7. A written record of each hearing will be made. Appearance at more than one hearing is unnecessary. Scheduling preference will be given to individuals and groups which have not testified at other hearings.

Instructions for Written Comment

1. Comments should be limited to the draft amendment document and related proposed Power Plan amendment and must be received in the Council's central office, 700 SW. Taylor Street, Suite 200, Portland, Oregon 97205 by 5 p.m. on August 10, 1984. Comments received after that time will not be considered.

2. Written comments should be marked "Fish and Wildlife Program Comments."

3. Comments should be specific and concise. They should refer to amendments by their code numbers. Alternative language should be submitted if a change is being proposed.

4. If possible, submit a "marked up" copy of the draft amendment document indicating suggestions or revisions. Suggested deletions should be lined out and placed in parentheses. Suggested new language should be underlined.

5. All comments should be typed and double spaced. It would also be helpful if a separate page were prepared for comments on each proposed amendment or rejection. Provide ten copies of all comments.

One copy each of the draft Fish and Wildlife Program draft amendment document and of the related proposed amendment of Chapter 11 of the Power Plan may be obtained free of charge by contracting Ruth Curtis at the above address and telephone. The Council expects that copies will be available by June 29.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Director of Public Information and Involvement, 700 SW. Taylor, Suite 200, Portland, Oregon 97205 (Toll-free 1-800-222-3355 in Montana, Idaho, and Washington; toll-free 1-800-452-2324 in Oregon; or 503-222-5161).

SUPPLEMENTARY INFORMATION: As required by the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), the Council adopted a Fish and Wildlife Program and a Power Plan. The Act allows the Council to amend its Plan or Program from time to time, and requires the Council to review those documents at least once every five years. At its meeting in Portland, Oregon on June 6, 1984, the Council voted to formally release draft Fish and Wildlife Program amendments. These proposed amendments are the result of a process that began August 15, 1983, when the Council (as required by the Act) published amendment application forms and called for recommendations. More than 140 amendment applications were received by the November 15, 1983 deadline. A summary of the amendment proposals and their complete text were made available to all interested parties.

Beginning with its February 22–23, 1984 meeting and for five consecutive meetings, the Council reviewed each amendment application and staff proposal and solicited public comments. Informal consultations also were held with the major groups submitting amendments or affected by them.

Proposed amendments were received from 28 individuals and organizations. Many were new contributors who had not submitted proposals for the original program. The greatest number of proposals was submitted by the Columbia Basin Fish and Wildlife Council, an association of federal and state fish and wildlife agencies, and by the U.S. Forest Service. Other major contributors included the Oregon Department of Fish and Wildlife, Army Corps of Engineers, and the Nez Perce Indian Tribe. Other applicants included the U.S. Bureau of Land Management, Crown Zellerbach, Oregon Division of State Lands, fish and wildlife agencies and organizations, utilities, Indian tribes, and individuals. Some amendments were proposed by the Council on its own motion or on the recommendations of its staff.

The draft amendment document only contains proposed amendments to the Fish and Wildlife Program and applications the Council proposes to reject. The Council welcomes comments on both the proposed amendments and the proposed rejections.

The draft amendments fall into the following general categories:

- funding.
- ocean survival/harvest controls.
- anadromous fish research.
- demonstration research projects.
- capital construction.
- offsite enhancement.
- resident fish.
- wildlife.
- program scheduling.
- technical corrections.

In Chapter 11 of the Power Plan, the Council established a schedule for coordinating amendment of its Plan and Program. The Council now believes that amending both the Fish and Wildlife Program and the Power Plan simultaneously is not desirable. Revising both documents at the same time may strain the limited resources not only of the Council and its staff but also of interested parties in the region. To address this problem, the Council at its May 16–17, 1984 meeting proposed to change the amendment schedule in Chapter 11 of the Power Plan to cancel the December 15, 1984 fish and wildlife recommendation process and to revise the Fish and Wildlife Program during even-numbered years, with the Power Plan continuing to be revised during odd-numbered years. In conjunction with its Fish and Wildlife Program amendment process, the Council solicits public comment regarding this related Power Plan amendment as well.

The schedule currently set out in the Power Plan indicates that the Council would receive fish and wildlife recommendations by December 15, 1984. That schedule also provides for another revision of the Fish and Wildlife Program to take place simultaneously with the formal revision of the Power Plan scheduled for 1985. The Council's proposed amendment would delete not only the 1985 revision of the Fish and Wildlife Program but also the associated recommendation process. Some parties in the region may have refrained from participating in the current fish and wildlife recommendation process (which began in August 1983) in favor of submitting fish and wildlife recommendations by December 15, 1984. The Council recognizes this potential problem and is especially interested in any comments from such parties regarding this issue.

After considering all public comments received, the Council plans to adopt final Fish and Wildlife Program amendments at its October 10–11, 1984 meeting. The Council may adopt final amendments of Chapter 11 of the Power Plan at an earlier meeting.

(Sec. 4, Pub. L. 96–501, 16 U.S.C. 839b)

Edward Sheets,

Executive Director.

[FR Doc. 84–16371 Filed 6–19–84; 8:45 am]

BILLING CODE 0000–00–M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan; G. Heileman Brewing Company, Inc. (Blitz-Weinhard Company)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted G. Heileman Brewing Company, Inc., an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974 with respect to its purchase of assets from Blitz-Weinhard Company. A notice of the request for exemption was published in the **Federal Register** on March 9, 1984 (49 FR 9040). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254–4860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), a sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser furnish a bond or escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for an exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of an exemption request in the **Federal Register**, and to give interested parties an opportunity to comment on the proposed exemption.

Decision

On March 9, 1984 (49 FR 9040), the PBGC published a notice of the pendency of a request from G. Heileman Brewing Company, Inc. ("Heileman"), for an exemption from the bond/escrow

requirement of ERISA section 4204(a)(1)(B), in connnection with the purchase by Heileman of the assets of the Blitz-Weinhard Company ("Blitz"), a wholly-owned subsidiary of Pabst Brewing Company. The sale of assets was effective on March 19, 1983. No comments were received in response to the notice.

In connection with the sale, Heileman assumed Blitz's obligation, under a collective bargaining agreement with the General Teamsters Local 162, to contribute to the Western Conference of Teamsters Pension Trust Fund (the "Fund"). The estimated amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) is $416,448 (Blitz's average annual contributions to the Fund for the three plan years preceding the sale).

When the notice of pendency of Heileman's exemption request was published, Blitz's potential withdrawal liability to the Fund was estimated at $569,912. The estimate was revised after the notice was published, and Blitz is now estimated to have no potential withdrawal liability to the Fund was estimated at $569,912. The estimate was revised after the notice was published, and Blitz is now estimated to have no potential withdrawal liability. (The absence of potential withdrawal liability is not necessarily inconsistent with the applicability of ERISA section 4204. See, for example, PBGC opinion letter 83–10 (May 12, 1983).) Heileman's estimated withdrawal liability to the Fund (excluding the liability attributable to the operations purchased from Blitz) is $1,083,781.

According to its audited consolidated financial statements, Heileman had total net assets for its fiscal year ended December 31, 1982, of approximately $194 million. Heileman's average annual net income after taxes for its three fiscal years preceding the sale was $40.2 million.

Based on the facts of this case and the representations and statements made in connection with the exemption request, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants Heileman's request for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of assets from Blitz. The granting of such an exemption does not constitute a determination by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). That determination is made by the plan sponsor.

Issued at Washington, D.C., on this 13th day of June, 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84–16374 Filed 6–19–84; 8:45 am]
BILLING CODE 7708–01–M

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan; G. Heileman Brewing Company, Inc. (Lone Star Brewing Company)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted G. Heileman Brewing Company, Inc., an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974 with respect to its purchase of assets from Lone Star Brewing Company. A notice of the request for exemption was published in the **Federal Register** on March 27, 1984 (49 FR 11739). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW, Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW, Washington, D.C. 20006; (202) 254–4860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), a sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser furnish a bond or escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for an exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of an exemption request in the **Federal Register**, and to give interested parties an opportunity to comment on the proposed exemption.

Decision

On March 27, 1984 (49 FR 11739), the PBGC published a notice of the pendency of a request from G. Heileman Brewing Company, Inc. ("Heileman"), for an exemption from the bond/escrow requirement of ERISA section 4204(a)(1)(B), in connection with the purchase by Heileman of the assets of the Lone Star Brewing Company ("Lone Star"), a wholly-owned subsidiary of Pabst Brewing Company. The sale of assets was effective on March 19, 1983. No comments were received in response to the notice.

In connection with the sale, Heileman assumed Lone Star's obligation, under a collective bargaining agreement with the International Association of Machinists and Aerospace Workers, Local 36, to contribute to the I.A.M. National Pension Fund, Benefit Plan A (the "Fund").

Lone Star's potential withdrawal liability to the Fund is estimated at $529,562. The estimated amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) is $209,238 (Lone Star's average annual contributions to the Fund for the three plan years preceding the sale).

According to its audited consolidated financial statements, Heileman had total net assets for its fiscal year ended December 31, 1982, of approximately $194 million. Heileman's average annual net income after taxes for its three fiscal years preceding the sale was $40.2 million.

Based on the facts of this case and the representations and statements made in

connection with the exemption request, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants Heileman's request for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of assets from Lone Star. The granting of such an exemption does not constitute a determination by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). That determination is made by the plan sponsor.

Issued at Washington, D.C., on this 13th day of June, 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-16375 Filed 6-19-84; 8:45 am]

BILLING CODE 7708-01-M

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan; National By-Products, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted National By-Products, Inc., an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974. A notice of the request of exemption from this requirement was published on March 9, 1984 (49 FR 9041). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption, the comment received, and the PBGC's response to the request and the comment are avaialble for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1394, provides that the sale of assets of an employer that contributes to a mult-employer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five years after the sale.

ERISA section 4202(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

Decision

On March 9, 1984 (49 FR 9041), the PBGC published a notice of the pendency of a request from National By-Products, Inc. ("National By-Products") for an exemption from the bond/escrow requirement of ERISA 4204(a)(1)(B), in connection with the purchase by National By-Products of certain assets of Nick Beucher & Sons Co. ("Beucher & Sons"). The sale of assets became effective on July 2, 1983.

National By-Products has assumed the obligations of Beucher & Sons, pursuant to collective bargaining agreements with three unions, to contribute to three pension plans, viz.:

Union	Plan
Local 710, International Brotherhood of Teamsters.	International Brotherhood of Teamsters Local No. 710 Pension Fund ("Local 710 Fund").
Local 325, International Brotherhood of Teamsters.	Central States, Southeast and Southwest Area Pension Fund ("Central States Fund").
Beef Boners and Sausage Makers Union Local 100, United Food and Commercial Workers International Union.	Beef Boners & Sausage Makers, Locals 100 & 495 Pension Fund ("Beef Boners Fund").

The total bond/escrow amount required of National By-Products under section 4204(a)(1)(B) is $81,726, and the estimated total amount of the withdrawal liability that Beucher & Sons would otherwise incur as a result of the sale if section 4204 did not apply to the sale is $153,967, broken down as follows:

Plan	Bond	Withdrawal liability
Local 710 Fund	$56,084	$139,407
Central States Fund	2,852	14,560
Beef Boners Fund	23,010	None

National By-Products contributed to the Central States Fund (but not to the other two plans) before the transaction. Based on an annulization of its contributions for January 1984 and on information from Central States Fund's 1981 Form 5500, National By-Products estamates its potential withdrawal liability to the Central States Fund as $900,337.

National By-Products had net tangible assets for its fiscal year ended May 28, 1983, of $35,234,837. National By-Products had an average net income for the period of three fiscal years ended May 28, 1983, of $2,980,136.

The Local 710 Fund, by counsel, submitted the only comment in response to the notice of pendency of National By-Products' request. The comment raised two objections to the granting of the requested exemption and, in the alternative, proposed three conditions to which the exemption, if granted, should be subject.

The first objection centered on the observation that there is "no way of knowing what [National By-Products' financial] condition will be one year from now or five years from now." In the commenter's view, it was such uncertainty that motivated Congress to require a bond from all purchasers, rather than excusing financially sound purchasers from the bonding requirement. The commenter further observed that the bond reduces the plan's risk of loss if the purchaser defaults. A parenthetical note called

attention to the fact that National By-Products' financial statements disclosed that it incurred $11.5 million in debt after the close of its 1982–83 fiscal year.

The PBGC agrees that no business's financial future can be infallibly predicted; this is true of sellers as well as buyers. It is also true that a bond reduces a plan's risk of loss, although (as in this case) the amount of the bond is typically only a small fraction of the purchaser's potential withdrawal liability. However, the PBGC does not agree that Congress intended to require a bond or escrow for the full five-year period specified in section 4204(a)(1)(B) in every case, regardless of the purchaser's financial strength. On the contrary, the PBGC believes that the primary purpose of the bond/escrow requirement is to demonstrate the purchaser's financial strength at the time when it assumes the seller's contribution obligation, and that Congress, in section 4204(c), explicitly authorized waivers of the requirement in appropriate circumstances. This interpretation underlies § 2643.3(a), where the PBGC's standard for waiving the purchaser's bond or escrow is set forth. Under that standard, a waiver will be approved only if it "[w]ould not significantly increase the risk of financial loss to the plan." As the PBGC has stated in other cases, the test is whether "the purchaser is capable of meeting its obligations to the plan or plans at the time of the sale." *Kohlberg, Kravis, Roberts and Co.*, 47 FR 40261, 40262 (September 13, 1982); *James River-Dixie/Northern Inc.*, 48 FR 35057, 35058 (August 2, 1983). Accordingly, the PBGC does not regard the inability to predict National By-Product's future financial fortunes as an impediment to a waiver of the bond/escrow requirement if the waiver is otherwise justified.

National By-Products did, as the comment noted, incur $11.5 million in debt after the end of its 1982–83 fiscal year. This debt was incurred in connection with the purchase of business assets. Thus (as is generally the case when debt is created), the liability representing the debt would almost certainly be offset by the assets purchased. Of course, part of those assets might be intangible. However, even if National By-Products received no consideration whatsoever for its $11.5 million in notes, its net assets would only be reduced to about $23.7 million, which is still many times greater than its potential withdrawal liability to the plans involved. The PBGC therefore does not regard the commenter's point regarding this debt as sufficiently material to prevent the granting of a waiver.

The second objection raised in the comment was that the standards for waiving the purchaser's bond should be "similar to" the standards for waiving the seller's bond under Multiemployer Bulletin No. 2, issued by the PBGC on July 1, 1981. Specifically, the commenter remarks that this case is not one where a sale of assets by a bankrupt employer to a solvent employer will be frustrated unless a waiver is granted. As the PBGC has previously determined, however, "this standard is inappropriate in the case of the purchaser's bond (escrow) since the two bonds are required in very different circumstances and serve very different purposes." *Southland Corporation*, 47 FR 711, 712 (January 6, 1982). PBGC believes that the standard set forth in § 2643(a), rather than that in Multiemployer Bulletin No. 2, is the proper one to be applied in this and other cases involving the purchaser's bond/escrow.

In addition to raising the two objections discussed above, the comment suggests that the waiver of the purchaser's bond/escrow, if granted, be subject to three conditions:

(1) National By-Products' auditor would be required to certify annually that a seller's bond was not required; and if Beucher & Sons failed to furnish a seller's bond when necessary, National By-Products would be required to do so.

(2) National By-Products would be required each year to give the Local 710 Fund its financial statements and an auditor's statement of no adverse change in the company's financial condition.

(3) Any controlled group of which National By-Products is a member would have to agree to be liable for any withdrawal liability National By-Products might incur to the Local 710 Fund.

The first two conditions are essentially similar to the two conditions proposed by the Local 710 Fund in *Manley Truck Line, Inc.*, 49 FR 14226 (April 10, 1984). As stated in the *Manley* case:

". . . [Regarding the first conditions, t]he plan does not have to rely on the purchaser in order to obtain financial information on the seller. Under ERISA section 4219(a), the seller would be obligated . . . to provide such information . . . [Furthermore, s]ection 4204 establishes two distinct bonding requirements . . . To compel the purchaser to post the seller's bond would impose an additional obligation on the purchaser beyond that contained in the statute. . . .

". . . [The second] condition suggests that the plan will determine . . . whether the purchaser's financial condition is such to warrant a continued variance . . . This is inappropriate[,] however, since section 4204(c) gives the PBGC, not the plan, the authority to grant variances or exemptions . . . ." *Manley Truck Lines, Inc.*, supra, 49 FR at 14227.

The third condition proposed in the comment is in effect a restatement of the provisions of section 4001(b)(1) of ERISA, which states that "all employees of trades or business . . . which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer." Thus the members of a controlled group are jointly and severally liable for withdrawal liability arising from any one member's cessation of contributions under a pension plan. See, e.g., *PBGC* v. *Ouimet Corp.*, 711 F.2d 1085 (1st Cir., 1983). The principle is the same for multiemployer and non-multiemployer plans. See PBGC Opinion Letter 82–13 (April 12, 1982).

For the foregoing reasons, the PBGC does not consider any of the three conditions suggested in the comment to be appropriate.

Based on the facts of this case and the representations and statements made in connection with the request for exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plans involved. Therefore, the PBGC hereby grants the request of National By-Products for an exemption from the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is made by the plan sponsors.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84–16378 Filed 6–19–84; 8:45 am]

BILLING CODE 7708–01–M

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan; the Witco Chemical Corporation et al.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted The Witco Chemical Corporation an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974. A notice of the request for exemption was published in the **Federal Register** on March 14, 1984 (49 FR 9662). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW, Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW, Washington, D.C. 20006; (202) 254–4860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), a sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser furnish a bond or escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for an exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of an exemption request in the **Federal Register**, and to give interested parties an opportunity to comment on the proposed exemption.

Decision

On March 14, 1984 (49 FR 9662), the PBGC published a notice of the pendency of a request from The Witco Chemical Corporation ("Witco") and Millmaster Onyx Group, Inc. ("Millmaster"), for an exemption from the bond/escrow requirement of ERISA section 4204(a)(1)(B), in connection with the purchase by Witco of substantially all of the assets of the A. Gross & Company Division of Millmaster. The sale of assets was effective on June 30, 1983. No comments were received in response to the notice.

In connection with the sale, Witco assumed Millmaster's obligation, under a collective bargaining agreement with Local Number 8–131 of the Oil, Chemical and Atomic Workers International Union, AFL–CIO, to contribute to the O.C.A.W. Union-Industry Pension Fund (the "Fund").

Millmaster's potential withdrawal liability to the Fund was calculated by the Fund to be $371,400. The estimated amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) is $69,534 (Millmaster's average annual contributions to the Fund for the three plan years preceding the sale).

According to its audited consolidated financial statement, Witco and its subsidiaries had total net assets for its fiscal year ended December 31, 1982, of approximately $299 million, and an average annual net income for its fiscal years 1980–1982 of about $36 million.

Based on the facts of this case and the representations and statements made in connection with the exemption request, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants Witco's and Millmaster's request for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to Witco's purchase of assets from Millmaster. The granting of such an exemption does not constitute a determination by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). That determination is made by the plan sponsor.

Issued at Washington, D.C. on this 13th day of June 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84–16377 Filed 6–19–84; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21045; File No. SR–OCC–84–10]

Self-Regulator Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of Options Clearing Corp.

June 14, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1984, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change amends OCC's rules relating to applications to OCC by U.S. and non-U.S. institutions for approval to issue letters of credit on behalf of OCC members for OCC margin purposes.[1] Specifically, the proposed rule change amends Interpretation and Policy .05 to OCC Rule 604 to require each applying institution to provide OCC with its most recent quarterly financial statements in the event the institution's most recent annual report is as of a date more than 90 days prior to the date of the institution's application for approval. The Interpretation and Policy previously required applying institutions to provide OCC with quarterly financial statements that are published.

OCC states in its filing that the proposal is needed because non-U.S. institutions do not always publish quarterly financial statements. OCC believes that the proposal will enable OCC to make better informed decisions regarding qualifications of non-U.S. applicant institutions.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the

[1] *See generally* Chapter VI of OCC's Rules.

Commission may summarily abrogate such rule change it it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–OCC–84–10.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–16393 Filed 6–19–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21047; SR–MSRB–84–5]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

June 14, 1984.

The Municipal Securities Rulemaking Board ("MSRB"), 1150 Connecticut Avenue, NW., Washington, D.C. 20036, on March 19, 1984, submittted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend rules G–35 and A–16 relating to arbitration.

The proposed rule change would amend the MSRB's arbitration code, contained the rule G–35, and its arbitration fees and deposits, contained in rule A–16, to conform to recent amendments to the uniform arbitration code developed by the Securities Industry Conference on Arbitration. This uniform code is followed by the various self-regulatory organizations.

The proposed rule change would: (1) Extend the time limitations on arbitration of claims to allow arbitration of claims over six years old if a court with jurisdiction over the claim has directed that the claim be resolved by arbitration; (2) increase the dollar limit on customer small claims arbitration from $2,500 to $5,000; (3) restructure the fees and deposits for arbitration, lowering the fee and deposits for claims under $2,500 while generally raising fees for claims over $10,000; (4) allow arbitrators discretion to bar the presentation by a respondent of facts or defenses that were not disclosed to the claimant prior to the hearing; (5) allow arbitrators to consolidate arbitrations where there are multiple claimants; (6) specify the rights of parties to peremptorily challenge appointments of arbitrators to the panel and provide unlimited challenges for cause; and (7) allow arbitrators to assess costs in a dispute that was settled or withdrawn subsequent to the first hearing.

Notice of the proposed rule change was given in Securities Act Release No. 20856, published in the **Federal Register** (49 FR 20398, May 14, 1984). No comments on the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved, to be effective on September 1, 1984, concurrent with the effectiveness of similar arbitration rule changes by the National Association of Securities Dealers, Inc.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–16391 Filed 6–19–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21041; File No. SR–NSCC–84–11]

Self-Regulatory Organizations Filing and Immediate Effectiveness of proposed Rule Change of National Securities Clearing Corp.

June 14, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 21, 1984, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Committion is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change amends NSCC's trade input and comparison procedure [1] for regular-way transactions in listed equity securities executed on the American Staock Exchange ("Amex") and, if round lots, the New York Stock Exchange ("NYSE"). The new procedure, termed "Partial Suggested Name Match" ("PSNM"), provides that with respect to trade data where at least one of the two parties submitting that data names as the *contraT1 party an omnibus account, as specified by NSCC,*[2] and the parties have submitted identical trade data except for the number of shares traded and the name of the *contra* party, the transaction will be deemed by NSCC to be compared to the extent of the lesser number of shares as submitted by one of the parties. Trades that are compared and matched by PSNM, like trades compared through NSCC's "suggested name" procedure,[3] will be specifically

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[1] *See* Section II.B.1. of NSCC's Procedures.

[2] NSCC states in its filing that PSNM at this time will be used only for uncompated trades in three omnibus accounts: NYSE IT–736, AMEX ATS–737, NYSE and AMEX NON–797. The "ITS" and "ATS" accounts relate to the Intermarket Trading System. The "NON" account is used where the *contra* party to the trade is unknown by either party to the trade.

[3] Under NSCC's regular "suggested name" procedure, if a purchaser and seller submit identical trade data, except for the name of the *contra* party, and the *contra* party submitted by one of them is the other party that submitted identical data, the transaction is deemed compared. For example, if A submits trade data showing the purchase of 100 shares of XYZ at $10 per share from B and B submits data showing a sale of 100 shares of XYZ at $10 to C, the procedure will ignore C in B's trade submission and will suggest a compared trade with A. Suggested trades are identified specially on the T+1 Contract List. The parties to the trade are responsible for verifying that the "suggestion" is correct and may delete incorrect suggested matches on T+2. Unlike PSNM, NSCC's suggest name procedure results in compared trades for the full share amount.

identified on NSCC's contract lists, which are issued to members on the first day after trade date ("T+1"). If neither party to the trade believes that the suggested partial match is incorrect, the party may unilaterally delete that trade on T+2.[4]

NSCC states in its filing that the proposal will enhance NSCC's suggested name match procedure and will reduce the number of uncompared trades in NYSE and Amex securities. NSCC further states that although the proposal changes an existing service, it will not adversely affect the safeguarding of securities or funds in NSCC's control or for which it is responsible, nor will it adversely affect the rights or obligations of persons using the services.[5]

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–NSCC–84–11.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written commissions relating proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5. U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

[4] *See* section II.B.2.(c) of NSCC's Procedures.

[5] *See* Rule 19b-4(e)(1)(4) of the Act.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons.

Secretary.

[FR Doc. 84–16382 Filed 6–19–84; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 14, 1984.

The Pacific Stock Exchange ("PSE") had filed an application with the Securities and Exchange Commission pursuant to section 12 (f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

The Hallwood Group, Inc.
Common Stock, No Par Value (File No. 7–7486)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 6. 1984 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such applications is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary

[FR Doc. 84–16468 Filed 6–19–84; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 14, 1984.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1, thereunder, for unlisted trading privileges in the common stock of:

Homestake Mining Company
Common Stock, $1 Par Value (File No 7–7525)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 16, 1984 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–16469 Filed 6–19–84; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License Application No. 30/03–0174]

American Security Capital Corp., Inc.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)), under the name of American Security Capital Corporation, Inc., 730 Fifteenth Street, NW., Washington, D.C. 20013, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and sole shareholder of the Applicant are as follows:

Names, Address, Title, and Relationships

W. Jarvis Moody, 1314 35th Street NW., Washington, D.C. 20007; Chairman of the Board, Director

Jeffrey T. Griffin, 6017 Woodacres Drive, Bethesda, MD 20816; President, General Manager, Director
Edward J. Stark, 14925 Lampec Street, Centreville, VA 22020; Secretary
Frank B. Holloway, 3125 North Nelson Street, Arlington, VA 22207; Treasurer, Director
F. William Burke, 6101 Cromwell Drive, Bethesda, MD 20816; Assistant Secretary
James I. Lundy III, 13521 Brightfield Lane, Herndon, VA 22071; Assistant Treasurer
Daniel J. Callahan, 4631 Westover Place, Washington, D.C. 20016; Director
Douglas T. Ledwith, 4005 Glenridge Street, Kensington, MD 20795; Director
James F. Rogers, 4244 North Vacation Lane, Arlington, VA 22207; Director
William H. Ryland, 7806 Meadow Lane, Chevy Chase, MD 20815; Director
American Security Corporation, 730 15th Street, NW., Washington, D.C. 20013; sole shareholder

American Security Corporation has approximately 3,175 shareholders, none of whom own as much as 10 percent of its shares. All of the officers and directors of the Applicant are affiliates of the parent company.

American Security Capital Corporation, Inc. (Applicant), a Delaware corporation, will begin operations with $2,500,000 of private capital, derived from the sale of 12,500 shares of its Class A common stock, the only class of stock authorized.

The Applicant will conduct its operations principally in the Washington, D.C. metropolitan area and in the mid-Atlantic region.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Deputy Associate Administrator for investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Washington, D.C.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: June 14, 1984.

[FR Doc. 84-16475 Filed 6-19-84; 8:45 am]
BILLING CODE 8025-01-M

[License No. 02/02-5475]

Interstate Venture Capital Corp.; Application for a License to Operate as a Small Business Investment Company (SBIC)

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended, (15 U.S.C. 661 *et seq.*), has been filed by Interstate Venture Capital Corporation, 15 West 45th Street, New York, New York 10036 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1984).

The officers and directors of the Applicant are as follows:

Shmuel Heber, 568 Montgomery Street, Brooklyn, New York 11225; Chairman of the Board, 100%
Rachel Heber, 568 Montgomery Street, Brooklyn, New York 11225; Treasurer
Steve R. Kurtz, 700 Victory Blvd., Staten Island, New York 10301; Manager
Mordeai L. Kalmanson, 640 Empire Blvd., Brooklyn, New York 11213; Director

As an SBIC under section 301(d) of the Act, the Applicant had been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hambered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit to SBA written comments on the proposed Applicant. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in the New York City area.

(Catolog of Federal Domestic Assistance Program No. 59.011. Small Business Investment Companies)

Dated: June 14, 1984.

Robert G. Lineberry,
Deputy Associate Administrator for Investment

[FR Doc. 84-16476 Filed 6-19-84; 8:45 am]
BILLING CODE 8025-01-M

Mid America Venture Capital Corp.; Application for a License as a Small Business Investment Company

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[Application No. 04/04-0234]

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 197.102 (1984)) by Mid America Venture Capital Corporation, 500 West Broadway, Louisville, Kentucky 40202 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors and sole shareholder are:

Name, Address, Title, Relationship, and Percent of Ownership

Samuel H. Klein, 6005 Orion Road, Louisville, Kentucky 40222; Chairman of the Board and Director
Bertram W. Klein, 6403 Shrader Lane, La Grange, Kentucky 40031; Vice Chairman of the Board, Chief Executive Officer, and Director
Stanley L. Atlas, 1710 Devondale Drive, Louisville, Kentucky 40222; President and Investment Adviser
William L. Givens, Jr., 320 Hawthorne Drive, Jeffersonville, Indiana 47130; Vice President
Orson Oliver, 8515 Paddington Drive, Louisville, Kentucky 40222; Secretary and Director
Stephen R. Veth, 2300 Rutherford Wynd, Louisville, Kentucky 40205; Assistant Secretary
Jack C. Rusch, 10712 Sun Ridge, Goshen, Kentucky 40026; Treasurer
Mid America Bancorp, 500 West Broadway, Louisville, Kentucky 40202; Parent Company, 100

Mid America Bancorp's shareholders of 10 percent or more are as follows:

Name and Percentage

Bertram W. Klein and Elaine B. Klein; 18.7%.
Samuel H. Klein and Hattie B. Klein; 12.1%.

Mid America Bancorp is the holding company for Mid America Bank of Louisville, The Loan Store, Inc., as well as the Applicant, Mid America Venture Capital Corporation.

The Applicant will begin operations with a capitalization of $1,995,000 and will be a source of equity capital and long term loan funds for qualified small business concerns whose needs might not be met by traditional funding sources.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Louisville, Kentucky.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 14, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-16477 Filed 6-19-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Public Hearing

Correction

In FR Doc. 84-15540, appearing on page 24098 in the issue of Monday, June 11, 1984, make the following correction: In column two, the hearing date in the second line of the last complete paragraph should read "July 25, 1984".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[No. 160-1]

Delegation of Authority To Make Determinations of Liability for Losses Resulting From Payments of United States Savings Bonds and Notes

Connection

In FR Doc. 84-16029, appearing on page 24843, in the issue of Friday, June 15, 1984, in the first column, in the third paragraph, first line, "day" should read "any".

BILLION CODE 1505-01-M

[Dept. Circ., Public Debt Series—No. 17-84]

Treasury Notes of June 30, 1986; Series V-1986

Washington, June 14, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,500,000,000 of United States securities, designated Treasury Notes of June 30, 1986, Series V-1986 (CUSIP No. 912827 QX 3). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent to the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated July 2, 1984, and will bear interest from that date, payable on a semiannual basis on December 31, 1984, and each subsequent 6 months on June 30 and December 31 until the principal becomes payable. They will mature June 30, 1986, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $5,000 $10,000 $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, June 20, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, June 19, 1984, and received no later than Monday, July 2, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting

demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commerical bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Monday, July 2, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, June 28, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, July 2, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt,. Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public

announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-16413 Filed 6-19-84; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and the Delegation of Authority from the Director, USIA (47 FR 57600, December 27, 1982), I hereby determine that the objects in the exhibit, "The Ancient Olympic Games", (included in the list[1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the National History Museum of Los Angeles County and a foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National History Museum of Los Angeles County, beginning on or about June 2, 1984, to on or about September 17, 1984, is in the national interest. Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: June 18, 1984.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 84-16701 Filed 6-19-84; 1:48 pm]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Veterans Administration National Cemetery, Biloxi, Mississippi, Proposed Expansion Development; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the ten acre expansion development and has determined that potential environmental impacts will be minimal.

Development will take place in acreage acquired in 1982 from the adjacent VA Medical Center, as well as within the existing cemetery property.

The project will involve clearing and grading for new burial areas, a new entry road, surface and storm drainage systems, irrigation, and landscaping. With completion of this project, the cemetery will gain 5,500 gravesites. As an alternative to the scope of work as described above, the "No Action" alternative was considered in the project development process. This action would result in depletion of available gravesites by April 1985. The VA does not favor this alternative.

The proposed project will affect the environment to a minimal degree during construction. Earthwork operations will expose soil to wind and water erosion. Other construction activities will temporarily affect noise levels, air quality, water quality, and solid waste disposal. There are no significant long-term adverse environmental impacts associated with this project.

Mitigation of impacts will be accomplished in accordance with the VA Environmental Protection Section, which will be included in the contract documents.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

Findings conclude the proposed action will not cause a significant effect on the environment and therefore preparation of an Environmental Impact Statement is not required. A determination of no effect is pending from the State of Mississippi Historic Preservation Officer pursuant to Advisory Council on Historic Preservation Regulations, Title 36 CFR Part 800.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

An Environmental Assessment has been prepared in accordance with the requirements of the National Environmental Policy Act Regulations, sections 1501.3 and 1508.9. A Finding of No Significant Impact has been reached based upon the information in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: June 14, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 84-16405 Filed 6-19-84; 8:45 am]

BILLING CODE 8320-01-M

Veterans; Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 1010 of the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, July 24, 1984, at 9:30 a.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator as the Committee determines appropriate.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202-389-2886) prior to July 12, 1984.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 2:30 p.m. on July 24, 1984.

Dated: June 14, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-16406 Filed 6-19-84; 8:45 am]

BILLING CODE 8320-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 49, No. 120
Wednesday, June 20, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, June 25, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Applications for Federal deposit insurance:

Realty Finance, Inc., an operating noninsured industrial bank located at 72 Kekuanaoa Street, Hilo, Hawaii.

Paradise Finance, Inc., an operating noninsured industrial bank located at 197 South Hotel Street, Honolulu, Hawaii.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: June 18, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-16574 Filed 6-18-84; 3:29 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, June 25, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to establish a branch:

Johnstown Savings Bank, Johnstown, Pennsylvania, for consent to establish a branch at 1059 Franklin Street, Johnstown, Pennsylvania.

Application for consent to establish three remote service facilities:

Johnstown Savings Bank, Johnstown, Pennsylvania, for consent to establish remote service facilities at Scalp Avenue and Luther Road, Johnstown, Pennsylvania, 346 North Sheridan Street, Johnstown, Pennsylvania, and Westwood Plaza, Lower Yoder Township, Pennsylvania.

Application for consent to merge and establish two branches:

The Campbell & Fetter Bank, Kendallville, Indiana, an insured State nonmember bank, for consent to merge, under its charter and title, with The Albion National Bank, Albion, Indiana, and to establish the two offices of The Albion National Bank as branches of the resultant bank.

Application for consent to merge with two banks and establish eight branches:

Bank of Cumming, Cumming, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with Bank South, Cobb, Marietta, Georgia, and Bank South, Gwinnett, Duluth, Georgia, and for consent to establish the four offices of Bank South, Cobb, and the four offices of Bank South, Gwinnett, as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,068-L—American City Bank, Los Angeles, California

Case No. 46,069-L—The Commercial Bank of California, Los Angeles (West Hollywood), California

Reports of committees and officers:

Minutes of actions approved by the standings committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and Resolution re: Cooperative Examination Program with the Federal Home Loan Bank Board concerning FDIC-insured Federal savings banks.

Memorandum and Resolution re: Statement of Policy Regarding the Availability and Use of Financial and Other Information by

Depositors and Other Creditors of Banks and Thrifts which (1) notifies depositors and creditors of insured banks and thrifts of information that is publicly available and encourages the public to use that information when making decisions regrading the placement of their funds, and (2) sets forth certain types of information which the FDIC believes would be relevant to these customers in their evaluation of bank or thrift condition and performance.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: June 18, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–16575 Filed 6–18–84; 3:29 pm]

BILLING CODE 6714–01–M

3

LEGAL SERVICES CORPORATION

OPERATIONS AND REGULATIONS COMMITTEE MEETING

TIME AND DATE: The meeting will commence at 9:30 a.m. and continue until all official business is completed. Thursday, June 28, 1984.

PLACE: Office of Personnel Management, Auditorium, 1900 "E" Street, NW., Washington, D.C.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —May 11, 1984
3. Report from the Office of General Counsel
   —Proposed Regulations
   1622 Sunshine Act
   1629 Recipient Bonding
4. Report from the Office of Government Relations

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272–4040.

DATE ISSUED: June 18, 1984.

LeaAnne Bernstein,

Secretary of the Corporation.

[FR Doc. 84–16587 Filed 6–18–84; 3:53 pm]

BILLING CODE 6820–35–M

4

NUCLEAR REGULATORY COMMISSION

DATE: Week of June 18, 1984 (Revised) and Week of June 25, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Week of June 18

Thursday, June 21

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (Tentative) (As Announced)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (New Item) a. Final Rule Change to 10 CFR Part 50, Appendix E, Frequency of Emergency Preparedness Exercises

Friday, June 22

10:00 a.m.
Discussion/Possible Vote on Commission Concurrence on DOE Siting Guidelines (Public Meeting) (As Announced)

2:00 p.m.
NUMARC Briefing on Readiness to Operate (Public Meeting) (As Announced)

Week of June 25

Tuesday, June 26

10:00 a.m.
Discussion of Role of the Staff/Ex Parte (Public Meeting) (Postponed from June 20)

2:00 p.m.
Briefing on Proposed Rulemaking on Operator Licensing and Qualification of Plant Personnel; Staff Reaction to Industry Proposals (Section 306 NWPA) (Public Meeting)

Wednesday, June 27

10:00 a.m.
DOE Briefing on Draft Mission Plan (Public Meeting)

ADDITIONAL INFORMATION: Discussion of Indian Point Adjudicatory Proceeding scheduled for June 20, *postponed.* Briefing by Executive Branch (CLOSED—Ex. 1) was held on June 14. Briefing on USI A–44 (Station Blackout) and A–45 (Shutdown Decay Heat Removal Requirements) scheduled for June 15, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

Walter Magee,

Office of Secretary.

[FR Doc. 84–16603 Filed 6–18–84; 3:58 pm]

BILLING CODE 7590–01–M

5

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. An executive session to discuss pending litigation will follow the meeting on June 28. This session will be closed to the public.

TIME AND DATE: June 27, 1984; 1:30 p.m. and June 28, 1984: 9:00 a.m.

PLACE: Elkhorn Inn, Elkhorn Road, Sun Valley, Idaho.

MATTERS TO BE CONSIDERED:

Staff presentation on an issue paper on the process that should be used to acquire options on resources.
Council action on staff proposal to not comment on the scope of BPA studies on the future of Washington Public Power Supply System plants 1 and 3.
Council action on the Council's Fiscal Year 1986 and Revised Fiscal year 1985 Budget.
Council Business.
Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84–16527 Filed 6–18–84; 12:06 pm]

BILLING CODE 0000–01–M

6

U.S. PAROLE COMMISSION, NATIONAL COMMISSIONERS (THE COMMISSIONERS PRESENTLY MAINTAINING OFFICES AT CHEVY CHASE, MARYLAND, HEADQUARTERS.)

TIME AND DATE: 2:00 p.m., Wednesday, June 20, 1984.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 4 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated: June 15, 1984.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 84–16523 Filed 6–18–84; 11:08 am]

BILLING CODE 4410–01–M

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federal register

Wednesday
June 20, 1984

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal to Reclassify the Legal Status of the American Alligator in Florida to Similarity of Appearance; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal to Reclassify the Legal Status of the American Alligator in Florida to Threatened Due to Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to reclassify the American alligator (*Alligator mississippiensis*) in Florida, where the species is presently classified as threatened, to similarity of appearance under provisions of the Endangered Species Act of 1973, as amended. This proposed change is based on evidence that the species is not biologically threatened, a legal status defined for species believed to be likely to become endangered within the foreseeable future. Productive alligator populations are well distributed throughout the State wherever suitable habitat occurs, with over 6,700,000 acres of wetland habitat currently occupied by the species. Reclassification of Florida alligators would reduce restrictions on the State for future management and research. Any harvests planned in Florida would have to be within constraints established by the Service's special rule on American alligators (50 CFR 17.42(a)) and existing State statutes and regulations. The Service seeks data and comments from the public on this proposal. The Service is requesting information on environmental impacts that would result from the proposed reclassification of the alligator in Florida.

DATES: Comments from all interested parties must be received by September 18, 1984. Public hearing requests must be received by August 6, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Jackson Endangered Species Field Station, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Missisippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wendell Neal (see **ADDRESSES** above) (601/960–4900), or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The American alligator (*Alligator mississippiensis*) occurs in varying denisities in wetland habitats throughout the Southeast including all or parts of the following States: Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, Oklahoma, North Carolina, South Carolina, and Texas. The alligator is a large wetland inhabitant of significant scientific and commercial value. Crocodilians such as the American alligator are the only extant representatives of the order Archosauria, and this species represents one of only two extant species of the genus *Alligator*. The crocodilians evolved as a group some 180–200 million years ago and show many advanced characteristics, such as a four-chambered heart, rudimentary diaphragm, and elaborate material care and behavior.

The alligator was first classified as endangered throuthout its range in 1967 due to a concern over poorly or unregulated harvests. Subsequently, in response to Federal and State protection, the alligator recovered rapidly in many parts of its range, enabling the Service to undertake the following reclassification actions: (1) Reclassification to threatened by similarity of appearance in three coastal parishes of Louisiana, reflecting complete recovery (September 26, 1975—40 FR 44412); (2) Reclassification to threatened reflecting partial recovery, in all of Florida and certain coastal areas of South Carolina, Georgia, Lousiana, and Texas (January 10, 1977—42 FR 2071); (3) Reclassification to threatened by similarity of appearance, again reflecting complete recovery, in nine additional parishes of Louisiana (June 25, 1979—44 FR 37130); (4) Reclassification to threatened by similarity of appearance in 52 parishes in Louisiana, reflecting complete recovery (August 10, 1981—46 FR 40664); (5) Reclassification to threatened by similarity of appearance in Texas, reflecting complete recovery (October 12, 1983—48 FR 46332).

In June 1982, the Service began an additional status assessment of the alligator. This effort was begun in the State of Florida by a review of data and materials held by the Gainesville Wildlife Research Laboratory of the Florida Game and Fresh Water Fish Commission. The data with the most significant bearing on status of Florida alligators are found in results of night count surveys which have been conducted since 1971 in all major habitat types. These data are stored on computer at the Wildlife Research Laboratory. Dr. C. L. Abercrombie, a biologist stationed at the laboratory, provided summaries and analyses of these unpublished data based on computer printouts of about 3,000 miles of survey lines. The Wildlife Research Laboratory also holds large quantities of data on population parameters for specific research areas, including Orange Lake, Lake Griffin, Newnans Lake, and Lochloosa Lake. In addition, in order to more fully understand Florida alligator data, a number of references were consulted, including Goodwin and Marion (1979; 1980), Hines (1979), Dietz and Hines (1980) and Wood and Humphrey (1983). The most important of these are listed in the Reference section of this proposed rule.

The evaluation of past, current, and likely future alligator habitat status is based primarily on data obtained from the Fish and Wildlife Service's National Wetlands Inventory Station, St. Petersburg, Florida. These data are the best available and provide estimates of past and present acreage in various wetland habitat types.

The Service believes these data indicate that the American alligator in Florida is not likely to become endangered within the foreseeable future, and thus its current designation as a threatened species should be changed. However, because of the alligator's similarily of appearance to other endangered crocodilians and the fact that hides or other parts may occur in the same trade, it is necessary to maintain restrictions on commercial activities involving alligators taken in the State to insure the conservation of other alligator populations, as well as other crocodilians, that are threatened or endangered. This will be accomplished through restrictions in the Service's special rule on American alligators (50 CFR 17.42(a)). Section 4(e) of the Endangered Species Act authorizes the treatment of a species (or subspecies or group of wildlife in common spatial arrangement) as an endangered or threatened species even though is its not otherwise listed as endangered or threatened, if it is found. (a) That the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between listed and unlisted species; (b) that the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

The Service already treats American alligators found in Louisiana and Texas as threatened because of their similarity of appearance to other American alligators, as well as other crocodilians, that are listed as threatened or endangered. Certain restrictions are imposed on commercial activities involving specimens taken in Louisiana and Texas to insure the conservation of other endangered or threatened alligators and other crocodilians. The Service now proposes to treat American alligators found in Florida as threatened due to similarity of appearance, and to impose similar restrictions on commercial activities involving specimens taken in Florida.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) set forth five factors to be used in determining whether to add, reclassify, or remove a species from the list of endangered and threatened species. These factors and their application to the American alligator (*Alligator mississippiensis*) in Florida are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* American alligator populations, in terms of both density and total numbers, are limited by the productivity and amount of available habitat. Florida has more alligator habitat than any other State within the alligator's range. The best available data on wetland habitat in Florida comes from the National Wetlands Inventory group of the Service, which is located in St. Petersburg, Florida. Although there are many publications on Florida wetlands, they lack the specificity found in these draft data. Table 1, below, depicts these estimates by habitat type according to Circular 39 (Shaw and Fredine, 1956), a Service publication which classifies wetland types.

TABLE 1.—DRAFT DATA ON WETLAND INVENTORY IN FLORIDA—FROM NATIONAL WETLAND INVENTORY, U.S. FISH AND WILDLIFE SERVICE, ST. PETERSBURG, FLORIDA, EXCEPT AS OTHERWISE NOTED

Habitat type	1950 inventory (acres)	Late 1970's inventory (acres)	Change (acres)	Estimated occupancy by alligators (percent and acres)
Palustrine Forested:				
Cir. 39 types 1, 7, 8; bottomland hardwood forests: seasonally flooded basins or flats; cypress-gum swamps, bayheads, bogs, pocosins.	4,820,196 ±387,306	4,743,409 ±357,606	−76,787 ±76,538	15 712,000
Palustrine Scrub-Shrub:				
Cir. 39 type 6; buttonbush type	1,093,603 ±196,261	889,699 ±144,546	−203,904 ±155,686	50 445,000
Palustrine Emergent:				
Cir 39, types 2, 3, 4; inland fresh, shallow marshes	4,891,257 ±459,299	3,635,037 ±397,494	−1,256,220 ±253,794	100 3,500,000
Estuarine Intertidal:				
Cir. 39 type 20; mangrove swamps	442,689 ±68,072	427,149 ±69,921	−15,539 ±16,030	5 21,000
Palustrine Open water:				
Cir. 39 type 5; water adjacent to marshes, cypress domes, small water bodies less than 20 acres.	75,102 ±11,343	116,052 ±13,376	+40,950 ±9,662	100 116,000
Lacustrine:				
Lakes larger than 20 acres in size	1,785,027 ±381,517	1,835,780 ±383,605	+50,753 ±54,556	85 1,560,000
Estuarine Intertidal Emergent:				
Cir. 39 types 16, 17, 18; coastal saltmeadows; saltmarsh—regularly and irregularly flooded.	283,202 ±57,808	244,507 ±53,484	−38,695 ±17,300	10 24,000
Palustrine (other):				
Cir. 39 type 5 and to some degree 4; all aquatic beds (lily pads, hydrilla).	8,026 ±2,438	34,983 ±25,056	+26,957 ±24,926	100 35,000
Rivers and Streams:				
Stream body only; taken from data provided by Division of Water Resources and Conservation; Florida Board of Conservation, Tallahassee, FL.	200,000			100 200,000
Totals	13,599,103 ±1,544,044	11,810,680 ±1,455,090		6,713,000

Trends are depicted as comparisons between the 1950 inventory and the late 1970's inventory. Because the data are derived through a sampling scheme, all figures are estimates with each carrying a confidence interval. The table also shows an estimated occupancy rate by alligators. These estimates were made by Tommy Hines and Allen Woodward, biolgists employed by the Florida Game and Fresh Water Fish Commission. The estimates were based upon night count survey data (Abercrombie, 1982), nuisance complaint records, and personal observation and knowledge by these biologists of the distribution and abundance of alligators in Florida.

Table 1 indicates that more than 6,700,000 acres of Florida wetland are occupied by alligators; this probably represents more than one-third of the total habitat occupied by the species throughout its range. A general summary of occupied habitats in Florida is as follows: fresh marsh—approximately 3,600,000 acres; wooded permanent water areas—1,200,000 acres; lakes—estimated to number 30,000 and comprising 1,700,000 acres; and rivers and streams—200,000 acres.

One habitat type, the palustrine emergent, which includes the Everglades and other freshwater marshes, has undergone loss of approximately 25 percent in the last 30 years due to drainage and conversion to agricultural use. Also, this habitat type has been rendered less productive as alligator habitat due to the construction of levee systems for flood control. However, the total amount of fresh marsh habitat still substantially exceeds 3 million acres and is likely to remain an abundant habitat type for the foreseeable future. The data also show losses occurring in saltmarsh and brackish areas, but these have never been important components of alligator habitat.

Florida's lake habitats, although smaller in total size than the fresh marshes, are highly productive, often having alligator densities well in excess of the marsh areas. In terms of available habitat, lakes are not being lost to man's activities, although residental buildup on some lakes cause an increase in potential human/alligator conflicts and some marshes associated with lakes are being drained. The streams of northern Florida contribute the least to the total Florida alligator population, due to the relative scarcity of suitable habitat.

Overall, Table 1 indicates that Florida currently has large amounts of alligator habitat, and this is likely to continue for the foreseeable future. Furthermore, State and Federal land holdings currently total 2,949,947 acres, much of which is occupied alligator habitat (Hines, 1979). Additional State acquisition of key wetland areas in south Florida has been authorized and new Federal acquisition is being considered. In summary, it is concluded that habitat loss does not pose a threat to the overall status of the Amercan alligator in Florida within the foreseeable future.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The commercial demand for alligator products was responsible for overharvests which caused population declines in accessible habitats during the 1950's and 1960's. This problem was reversed primarily through a more effective protective mechanism brought about by the Lacey Act Amendment of 1969 which prohibited interstate commerce in illegally taken reptiles and their parts and products. This law provided Federal authority for dealing effectively with illegal activities in the market system. The Endangered Species Act of 1973 added heavy penalties which further enhanced the control of illegal taking. Vigorous enforcement by State and Federal authorities has been effective in controlling illegal activity.

The State of Florida contemplates expansion of existing alligator programs, which at this time are nuisance control and limited experimental harvests, to some form of sustained yield harvesting. Since uncontrolled harvesting was the reason for past over-exploitation in some areas, and sustainable yields from harvested populations are biologically limited, Florida is committed to harvests only to the extent permitted by available data. Such harvests will be strictly limited to insure against excessive harvests, as indicated by the State's approved Alligator Management Plan (Florida Game and Fresh Water Fish Commission, 1981). The only exception to this policy would be in extremely localized areas where potentially serious human/alligator conflicts exist; intentional over-harvests might occasionally be authorized for such situations to remove the threat to human safety and promote overall public tolerance of the species.

In developing these policies, the Florida Game and Fresh Water Fish Commission has conducted population surveys and instituted population modeling research aimed at testing the sustained yield concept and the changes in population dynamics which may result from harvests. Data from this research are intended to fashion any future harvest to meet the Alligator Management Plan goal.

The results of the night counts conducted by the State in all major habitat types since the late 1960's illustrate the success of control of overharvest. These counts, along with personal observations by many biologists and State nuisance complaints records, confirm that alligator populations are abundant and productive on a State-wide basis. For example, Orange Lake near Gainesville is considered by Florida alligator biologists to contain a healthy population of alligators. The lake serves as an alligator research area for the State. Alligators on this lake have been monitored for several years through repeated night counts and nest counts. Using the size-class frequency model developed by Taylor and Neal (1983), the average 90–100 nest count on Orange Lake can be shown to be associated with an after-hatching alligator density of approximately one alligator per acre, or 8,000–10,000 total animals. Similar densities in many of Florida's lakes are not uncommon, according to State alligator biologists.

Table 2 depicts amounts of effort expended (miles/year) on night count surveys in seven Florida habitat types for the period 1974–81. The data base which contains the results of these surveys is on computer at the State Wildlife Research Laboratory in Gainesville. These survey routes are widely distributed throughout the State and represent the major habitat types occupied by alligators.

TABLE 2.—NUMBER OF MILES RUN PER YEAR FOR SEVEN HABITAT TYPES

Habitat type	Year							
	1974	1975	1976	1977	1978	1979	1980	1981
1. Open Lake	46.5	55.2	59.3	190.8	79.4	111.3	144.8	97.0
2. Riverine	27.4	59.8	106.0	128.2	129.7	134.9	134.5	58.5
3. Marsh	0	36.5	11.0	37.2	11.0	39.0	40.0	6.0
4. Canal, rural	15.8	42.9	62.2	77.7	107.0	121.0	121.0	48.3
5. Canal, urban	20.0	20.0	20.0	40.0	20.0	0	20.0	10.0
6. Phosphate pit	0	14.5	14.5	0	6.5	14.5	13.5	0
7. River marsh	0	0	10.5	0	50.3	50.3	60.3	70.4

Based on these counts, Abercrombie (1982) compared selected past and present densities (alligators/mile) of three size groups—small, medium, and large alligators—using 1977 as a break point for the comparisons.

TABLE 3.—A COMPARISON OF SMALL (2 TO 4 FT.) ALLIGATORS/MILE, BEFORE 1977 AND 1977–1981, BY HABITAT TYPES LISTED IN TABLE 2

Period	Average density by habitat type						
	1	2	3	4	5	6	7
Before 1977	2.80	0.48	3.78	0.99	0.10	0.14	1.33
1977–81	5.00	0.85	4.10	1.41	0.10	0.51	2.10
Percent change	+78	+77	+8	+42	0	+260	+58

TABLE 4.—A COMPARISON OF MEDIUM (4 TO 7 FT.) ALLIGATORS/MILE, BEFORE 1977 AND 1977–81, BY HABITAT TYPE

Period	Average density by habitat type						
	1	2	3	4	5	6	7
Before 1977	1.70	0.48	2.90	0.68	0.12	0.32	0.19
1977–81	2.10	0.60	3.30	1.36	0.19	0.63	1.14
Percent change	+24	+26	+14	+55	+58	+97	+500

TABLE 5.—A COMPARISON OF LARGE (7 FT.+) ALLIGATORS/MILE, BEFORE 1977 AND 1977–81, BY HABITAT TYPE

Period	Average density by habitat type						
	1	2	3	4	5	6	7
Before 1977	0.41	0.21	0.45	0.13	0.02	0.11	0.19
1977–81	0.88	0.19	1.06	0.34	0.07	0.21	0.41
Percent change	+114	−.02	+126	+161	+250	+91	+116

These comparisons show increasing counts for virtually all size classes and habitat types. Table 6 compares pre- and post-1977 size composition found in these counts for 6 habitat types.

TABLE 6.—A COMPARISON OF ALLIGATOR SIZE COMPOSITION FROM NIGHT COUNTS MADE BEFORE 1977 AND 1977–81, BY HABITAT TYPE

Habitat		Small (2' to 4') (percent)	Medium (4' to 7')(percent)	Large (7'+) (percent)
1	Pre-'1977	51.1	34.1	8.6
	1977–81	63.0	25.9	11.1
2	Pre-'1977	40.8	41.2	18.0
	197781	48.6	38.9	12.5
3	Pre-'1977	53.2	40.4	6.3
	1977.81	45.3	43.7	11.3
4	Pre-'1977	49.7	43.9	6.3
	1977–81	45.3	43.7	11.0
5	Pre-'1977	41.7	50.0	8.3
	1977–81	28.1	53.1	18.8
6	Pre-'1977	24.3	56.8	18.9
	1977–81	37.9	46.7	15.4

Although certain differences are noted in size composition, none are major and no trends are apparent.

Average counts of alligators/mile from Florida lakes and marshes can be compared to counts made in the same habitat types in Louisiana. These averages include data from Tables 3, 4, and 5 as well as alligators that could not be estimated as to size-class which are omitted from the Tables. Florida lakes averaged 11.9 alligators/mile prior to 1977 and 13.8/mile from 1977–81. Florida marshes averaged 11.3/mile prior to 1977 and 13.3/mile from 1977–81. In comparision, Louisiana lakes averaged 1.4/mile during 1971–78 and marshes averaged 5.09/mile in 1977 and 1978. These comparisons of average counts are influenced by a variety of factors and are open to various interpretations. Thus, these numbers do not necessarily indicate that Florida alligator densities are much greater than Louisiana densities. However, they do indicate that Florida night counts show extremely high densities of alligators.

Abercrombie (1982) provides some evidence of an increase in larger alligators, which might suggest recovery. Discussions with State biologists indicate that an actual recovery in numbers is likely limited to those accessible areas which were at one time subject to heavy poaching. This is the result of successful control of all but insignificant levels of illegal activity in Florida. The resilience of alligators which are protected following a period of overexploitation is referred to by Craighead (1969), who studied alligators in the Everglades, and by McIlhenny (1935), in describing three newly established wildlife refuges in south Louisiana that had been previously subjected to excessive harvests.

Based on the preceding data, some generalizations may be made: (a) Density (alligators counted/mile) shows increases when the pre–1977 and post–1977 periods are compared; (b) small, medium, and large size classes are all well represented, indicating that the populations being surveyed are successfully reproducing and that survivorship is adequate; (c) the survey routes confirm that the species is well distributed throughout Florida's major habitat types; and (d) there are no significant trends or major shifts in composition of the population by size class, which could otherwise indicate the effects of illegal exploitation (Cott, 1961).

C. *Disease or predation.* Alligators suffer various types of disease and predation, as do most wildlife species, but these factors are a natural part of the alligator's existence and do not threaten the continued welfare of the species.

D. *The inadequacy of existing regulatory mechanisms.* The adequacy of existing Federal and State regulations for protection and management of the alligator is reflected by the healthy status of the alligator in Florida as described above. The following laws and regulations are germane: (1) The 1969 Amendment to the Lacey Act, which extended Federal law enforcement authority to interstate movement of reptiles and their products; (2) The Endangered Species Act of 1973, which provided mandatory protections for alligators in Florida while they were listed as endangered from 1973–78, and which authorizes the current special rules for threatened (including similarity of appearance) alligators, governing taking and commerce in alligator products; (3) The annual findings of the Scientific and Management Authorities of the Service, which govern the export of species, including the American alligator, listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); (4) State of Florida statutes which govern taking and commerce in alligators; (5) Regulations of the Florida Game and Fresh Water Fish Commission establishing and governing nuisance control programs, alligator farms, and harvests; and (6) The Florida Alligator Management Plan. Florida statutes and regulations provide for complete adherence to the Service's special rule on American alligators.

As discussed above, the State has adopted an Alligator Management Plan and is conducting an extensive research program designed to insure against overharvest of the species. Harvest rates or quotas which would result from the sustained yield program would be based on preharvest surveys and tag allotments, or drawings for public areas designed to achieve harvests within estimated sustainable yields. The research program cited above should insure that management programs are effected using the best scientific data and techniques available. Also, the State fills the role of recordkeeper, dealer, and marketer for hides taken during nuisance control and experimental harvest programs. The State will continue this role as seasons are expanded. The only self-marketing done by hunters at this time is the sale of meat and other products such as teeth and skulls. Florida statutes and regulations and the Service's special rule on American alligators regulate commerce in meat through a permitting system designed to preclude unmanaged and therefore illegal marketing of alligator meat.

E. *Other natural or manmade factors affecting its continued existence.* Although factors such as nest flooding or drought may affect alligators, none of these are known to have limited populations on a State-wide basis nor are they expected to become threatening to State-wide populations in the future.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to reclassify the American alligator to threatened due to similarity of appearance. Criteria for removing species from the list of endangered or threatened species are found at 50 CFR 424.11(d). They include extinction, recovery of the species, and original data for classification in error. This proposal is based upon evidence that the species is not biologically threatened in Florida. Past reclassification actions of the American alligator have been based upon partial or complete recovery. This proposal recognizes that some populations have shown increases (Wood and Humphrey, 1983). However, it also recognizes that on a State-wide basis little direct evidence of abundance exists which conclusively demonstrates an *overall* increase in alligator populations. The original listing of the American alligator as an endangered species occurred in 1967. The best available data with a bearing on status at that time were limited and highly subjective, providing little information on actual distribution and abundance.

Current data on the alligator in Florida, though still somewhat subjective, provide sufficient evidence that the species does not warrant retention on the Federal list as biologically threatened, a classification intended for species which are believed likely to become endangered within the foreseeable future.

Night count data on Florida alligators reveal high densities compared to similar Louisiana data from populations which are considered recovered. Also, available night count data confirm that the species is well distributed, has good reproduction, and shows no evidence of trends in size-class ratios which could indicate that populations were experiencing major changes.

Florida alligators occupy an estimated 6.7 million acres of habitat; although some habitat loss is occurring, particularly in south Florida, given the extensive amounts of habitat in Florida, this loss will not threaten the species' existence within the foreseeable future. The Service believes that sufficient regulatory controls and mechanisms are in place to ensure against substantial losses of Florida alligators to illegal activity. Further, it is believed that the comprehensive commitment of the Florida Game and Fresh Water Fish Commission to research and management involving this species will ensure continued healthy alligator populations in the State.

Similarity of Appearance

Section 4(e) of the Endangered Species Act authorizes the treatment of a species as an endangered or threatened species even though it is not otherwise listed as endangered or threatened, if it is found: (a) that the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between listed and unlisted species; (b) that the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

With regard to the American alligator in Florida, the Service finds that each of these factors apply. There is little morphological geographic differentiation within the American alligator, which results in Florida specimens being virtually indistinguishable from live animals, or parts or products of alligators, in other parts of the range where the species is listed as endangered or threatened. In addition, while live alligators are readily distinguished from other crocodilians that are listed under the Act, at least by specialists, untrained enforcement personnel could have considerable difficulty in making correct species identification which could hamper enforcement efforts. In addition, small parts and products of processed crocodilian leather are nearly impossible to distinguish when made into goods, thus hampering the identification of legal alligator products from those of endangered or threatened crocodilians. Such identification difficulties could result in allowing illegal trade in endangered crocodilian products to enter markets and thus further jeopardize these species.

By listing the American alligator under the similarity of appearance provisions of the Act, coupled with the special rules for American alligators as specified in § 17.42, the Service believes that enforcement problems can be minimized while at the same time ensuring the conservation of listed populations of the American alligator and other crocodilians. The similarity of appearance provisions of the Act have proven effective in the State of Louisiana where various populations of the species have been listed as threatened by similarity of appearance since 1975.

Critical Habitat

Critical habitat for the American alligator was not designated at the time of listing and has not been since designated. Therefore, this proposed rule, if finalized, will have no effect on critical habitat for this species.

Effects of Rule

This proposal, if made final, would change the alligator in Florida from its currrent status of threatened to a status of threatened due to similarity of appearance. It would be a formal recognition by the Service of a biologically secure status of the American alligator in a part of its range. A final rule would result in removal of Federal agency responsibilities under Section 7 of the Endangered Species Act. No significant adverse effects of the status of the species are expected to occur from this removal.

A final rule from this proposal would make available to the State of Florida the option of expanding harvest of alligators to additional areas. If the State elects to expand its harvest, these harvests could be expected to increase at a level commensurate with development and implementation of the State research and management program. All taking and commerce in alligators and their parts and products would be regulated by the Service's special rule on American alligators (50 CFR 17.42(a)), as well as other applicable controls such as the Lacey Act (16 U.S.C. 3371 *et seq.*), which prohibits interstate commerce in illegally taken wildlife or their products.

Increased harvest of alligators is expected to result in an increased volume of alligator exports, although the magnitude of this increase cannot be predicted at this time. The Service has previously expressed its concern about the effects of increased exports on other endangered crocodilians found in international trade. International trade in alligator products is presently subject to the restrictions of CITES, the Service's implementing regulations (50 CFR Part 23) and general wildlife exportation requirements (50 CFR Part 14). Previous determinations by the Service's Scientific and Management Authorities have concluded that export of alligators taken in Louisiana and Florida would not be detrimental to the survival of the alligator or other endangered crocodilians. The Service will continue to review this possible impact and will take appropriate action if evidence indicates that restrictions are warranted. This proposed action, if completed, would not be an irreversible commitment on the part of the Service. The action is reversible and relisting is possible if the status of the species changes or if the State materially changes its plans or actions in a way that may threaten the species. The Service will continue to monitor and review the State's management program.

Public Comments Solicited

The Service intends that any final rule adopted be as accurate and effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments are sought particularly concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the American alligator in Florida; and

(2) Additional information concerning the range and distribution of this species.

Final promulgation of regulations on the American alligator in Florida will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of

a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Service's Jackson Endangered Species Field Station (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 CFR 49244).

Literature Cited

The following documents were used in the preparation of this proposed rule. These and other documents supplying background information including all unpublished data are on file at the Service's Jackson Endangered Species Field Station (see **ADDRESSES** section).

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Abercrombie, C.L. 1982. Survivorship curves and computer model designed to read out effects of various harvest strategies. Unpublished data from Wildlife Research Lab., Florida Game and Fresh Water Fish Commission, Gainesville.

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U.S. Fish and Wildlife Service. 1982. Draft Trend Analysis Data from National Wetlands Inventory, St. Petersburg, FL.

Wood, J.M. and S.R. Humphrey. 1983. Analysis of Florida alligator transect data. Coop. Fish and Wildlife Reserarch Unit, University of Florida, Gainesville. Tech. Report No. 5, 49 pp.

Woodward., A.R. and W.B. Marion. 1978. An evaluation of factors affecting nightlight counts of alligators. Proc. Ann. Conf. S.E. Assoc. Fish and Wildlife Agencies 32:291–303.

Author

The primary author of this proposed rule is Mr. Wendell Neal of the Service's Jackson Endangered Species Field Station (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened Wildlife, Fish, Marine mammals, and Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by revising listing of the American alligator under "Reptiles" in the List of Endangered and Threatened Wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Reptiles:							
Alligator, American	*Alligator mississippiensis*	Southeastern U.S.A..	Wherever found in wild except those areas where listed as threatened, as set forth below.	E	1, 11, 51, 60, 113.	NA	NA
Alligator, American	do	do	U.S.A. (Certain areas of GA, SC, and as set forth in sec. 17.42(a)(1)..	T	20, 47, 51, 60	NA	17.42(a)
Alligator, American	do	do	U.S.A. (LA, TX, FL)	T(S/A)	11, 47, 51, 60, 113, 134.	NA	17.42(a).
Alligator, American	do	do	In captivity wherever found.	T(S/A)	11, 47, 51	NA	17.42(a).

* * * * * * * *

3. Paragraph (a)(1) of § 17.42 is revised to read as follows:

§17.42 [Amended]

(a) American alligator (*Alligator mississippiensis*).

(1) Definitions. For purpose of this paragraph (a): "American alligator" shall mean any member of the species *Alligator mississippiensis*, whether alive or dead, and any part, product, egg, or offspring thereof occurring: (i) In captivity wherever found; (ii) in the wild wherever the species is listed under § 17.11 as Threatened by Similarity of Appearance (T[S/A]); or (iii) in the wild in the coastal areas of Georgia and South Carolina, contained within the following boundaries: From Winyah Bay near Georgetown, South Carolina, west on U.S. Highway 17 to Georgetown; thence west and south on U.S. Alternate Highway 17 to junction with South Carolina State Highway 63 south of Walterboro, South Carolina; thence west on State Highway 63 to junction with U.S. Interstate Highway 95; thence south on U.S. Interstate Highway 95 (including incomplete portions) across the South Carolina-Georgia border to junction with U.S. Highway 82 in Liberty County, Georgia; thence southwest on U.S. Highway 82 to junction with U.S. Highway 84 at Waycross, Georgia; thence west on U.S. Highway 84 to the Alabama-Georgia border; thence south along this border to the Florida border and following the Georgia-Florida border eastward to the Atlantic Ocean.

"Buyer" shall mean a person engaged in buying a raw, green, salted, crusted or otherwise untanned hide of an American alligator.

"Tanner" shall mean a person engaged in processing a raw, green, salted, or crusted hide of an American alligator into leather.

Dated: June 7, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-16290 Filed 6-19-84; 8:45 am]

BILLING CODE 4310-55-M

federal register

Wednesday
June 20, 1984

Part III

Nuclear Regulatory Commission

Monthly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Notice

NUCLEAR REGULATORY COMMISSION

Monthly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing its regular monthly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This monthly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last monthly notice which was published on May 28, 1984 (49 FR 21824) through June 11, 1984.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By July 20, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so

inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendments request: April 10, 1984.

Description of amendments request: The amendments would modify the Technical Specifications to define the reactor coolant system pressure isolation valves (PIV's) allowable leakage criteria per Commission guidance contained in License Amendment No. 25 for Farley Unit 2, dated September 8, 1982. The licensee's proposal supersedes earlier change proposals dated August 10, and December 23, 1982. The change would also standardize the Technical Specifications for Farley Unit Nos. 1 and 2 in accordance with additional Commission guidance relating to the number and identification of PIV's to be tested.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). The license stated that the proposed amendment is similar to Commission example "(iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met."

We agree that the proposals are similar to Commission example "(iv)" since the changes would assure that the PIV leakage criteria meets the NRC staff criteria and the criteria would be consistent between Units 1 and 2. The criteria has been reviewed and found acceptable previously in Commission safety evaluation for Amendments No. 20, dated November 24, 1982, and No. 25 dated September 8, 1983. The number and identification of PIV's which the Commission requires to be tested was previously approved by NRC letter to the licensee dated January 26, 1984. Therefore, based on these considerations the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: George F. Trowbridge, Esquire, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Alabama Power Company, Docket No. 50–348, Joseph M. Farley Nuclear Plant, Unit No. 1, Houston County, Alabama

Date of amendment request: April 20, 1984.

Description of amendment request: The amendment would modify the Technical Specifications to change Table 4.4–5 and Figures 3.4–2 and 3.4–3 based on the results of analysis of Capsule U Reactor Vessel Material Radiation Surveillance Program and is in accordance with 10 CFR Part 50 Appendix H (48 FR 24008 dated May 31, 1983). Analysis results are detailed in WCAP–10474 provided to the Commission by licensee letter dated March 1, 1984.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). The example which the changes to Figures 3.4–2 and 3.4–3 of the proposed amendment fits is: "(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The licensee states that correcting errors due to instrument errors previously shown in the Figures are administrative. We agree that these changes are administrative in nature.

The example which the remainder of the changes proposed by the licensee fits is: "(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method." The licensee states that the changes to Table 4.4–5 fit this example. We agree that the changes are a refinement of previously used calculational methods based on the analytical evaluations of the data of Section 6 and 7 of WCAP–10474, "Analysis of Capsule U from the Alabama Power Company Joseph M. Farley Unit 1 Reactor Vessel Radiation Surveillance Program," which was provided by letter from the licensee dated March 1, 1984. Current Technical Specifications, based on requirements of 10 CFR Part 50 Appendix H, require the licensee to perform certain reactor vessel material surveillances. The licensee has performed the evaluation based on retrieval and analysis of Capsule U following 3.02 Effective Full Power Years of operation on Unit 1. The evaluation results in needed changes in Table 4.4–5. These changes would not increase the probability or consequences of previously analyzed accidents or reduce any safety margin, and are clearly within all acceptable criteria with respect to the reactor vessel. Therefore, for these reasons the Commission proposes that the changes proposed in the amendment would not be considered a significant hazards consideration.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: George F. Trowbridge, Esquire, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendments request: May 14, 1984.

Description of amendments request: The amendments would modify the Technical Specifications in Section 6, Administrative Controls, to reflect changes in title of the Vice President Nuclear Generation to be Senior Vice President and to eliminate the former management position.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). The example which the licensee proposed that the amendments fit is: "(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." We agree with the licensee's analysis since the changes simply revise the title of the senior nuclear manager in the Administrative Controls section of the Technical Specifications.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: George F. Trowbridge, Esquire, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Arkansas Power and Light Company, Docket No. 50-368, Arkansas Nuclear One Unit No. 2, Pope County, Arkansas

Date of amendment request: March 28, 1984.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) pertaining to the Surveillance Requirements for diesel generator testing. Specifically, the TS Surveillance Requirement 4.8.1.1.2.C.7 which reads, "Verifying that on a simulated loss of the diesel generator (with offsite power not available), the loads are shed from the emergency buses and that subsequent loading of the diesel generator is in accordance with design requirement." This proposed change is submitted in response to the NRC Generic Letter No. 83-30 dated July 21, 1983. In the letter, the NRC staff stated that the above Surveillance Requirement is not consistent with the provisions of General Design Criterion (GDC) 17, Regulatory Guide 1.108 and the NRC Standard Review Plans in that the above Surveillance Requirement goes beyond the single failure criterion, since it deals with operation of the diesel generator after a single failure (a loss of the diesel generator with offsite power not available) has occurred. In accordance with the provisions of GDC 17 and the NRC Standard Review Plans, redundant diesel generators are provided to meet the single failure criterion with loss of offsite power. The NRC staff recommended in the Generic Letter that the licensee propose an amendment to the TS to delete the above Surveillance Requirement in order to rectify in the inconsistency.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan.

The proposed change represents a relaxation in Surveillance Requirements for diesel generator testing. However, even with the proposed deletion of the above Surveillance Requirement, the remaining Surveillance Requirements would provide sufficient information to assess the status of the diesel generator with regard to degradation and its ability to serve as a standby (onsite) power supply. These requirements for periodic diesel generator testing include starting test, design load test (capacity), load rejection test, auto-start test, load acceptance test and functional test. Therefore, the results of this change, while relaxing the Surveillance Requirements for diesel generator testing, are clearly within the acceptance criteria.

Based on the foregoing, the NRC staff proposes to determine that the proposed change involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., c/o Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: October 24, 1983.

Description of amendment request: The proposed amendment would change the Unit 1 and Unit 2 Physical Security, Training and Qualification, and Safeguards Contingency Plans.

Basis for proposed no significant hazards consideration determination: The proposed change would delete from the physical security, training and qualification, and safeguards contingency plans commitments to utilize two types of shoulder-fired weapons. Title 10 CFR 73.55 requires that armed guards be immediately available to fulfill response requirements and to use force sufficient to counter the force directed at them including the use of deadly force. Appendix B of 10 CFR 73.55 requires each guard to be qualified in the use of assigned weapons. The licensee has complied with these requirements. Currently, Calvert Cliffs response guards are trained in and have immediately available two types of shoulder-fired weapons. The licensee is now requesting that the commitment in the physical security, training and qualification, and safeguards contingency plans be changed to eliminate one of the two weapons available to the guard force during a security event.

NRC physical security regulations do not explicitly require that shoulder-fired weapons be available onsite for response purposes. However, the staff has consistently maintained that either shotguns or semi-automatic rifles (but not both) were necessary to satisfy the response requirements of § 73.55(h), particularly in regard to neutralization of the threat as set froth in subparagraph (4)(iii) of this Section. This position is stated in paragraph 3.6 of NUREG-0908. The licensee's justification for deleting one type of response weapon from the site armament is based on site specific considerations. The staff has reviewed the licensee's proposal in this regard and concluded that the compensating features identified (size and configuration of the defended area, and the proximity of offsite response forces) do reduce the need to maintain both types of defense weaponry.

It is the NRC's judgment that the amended Security Plans for Calvert Cliffs continue to satisfy the requirements of 10 CFR 73.55 (b) through

(h), and Appendices B and C to Part 73 and thus the Commission proposes to determine that the request for the amendments involves no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M. Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendment: April 9, 1984.

Description of amendment request: the proposed amendments would change the Unit 1 and Unit 2 Technical Specifications (TS) to reflect: (1) Proposed changes to the administrative requirements of TS 6.2, "Organization", associated with corporate organizational changes, (2) installation of additional fire protection instrumentation and (3) a proposed change in the administrative control of access to high radiation areas. These changes to the TS are in partial response to the application dated April 9, 1984. The remaining issues addressed in the April 9, 1984 application will be addressed in future correspondence.

Basis for proposed no significant hazards consideration determination: The licensee has proposed two changes to the organizational requirements of IS 6.2, "Organization". The first modification would change the title of the "Senior Control Room Operator" (SCRO) to "Control Room Supervisor" in TS Figure 6.2.2. This change is necessary to distinguish to SCRO who is on duty in the control room, who will be referred to as the Control Room Supervisor, from other SCROs who may be assigned to other duties at the facility.

The second proposed modification would change the corporate responsibility for the BG&E Fire Prevention Unit as shown in TS Figure 6.2–1. The Fire Prevention Unit, which originally reported to the General Supervisor-Finance, now reports to the Manager-Real Estate and Office Services. Because of this organization responsibility shift, the corporate responsibility for the Fire Protection Program is now assigned to the Vice President-General Services.

In both the proposed changes to TS 6.2, the safety function of the individual or organizational units involved have not been changed and therefore the proposed changes are only administrative in nature. The Commission has provided guidance concerning the application of standards concerning "no significant hazards considerations" by providing certain examples (48 FR 14870). Purely administrative change to Technical Specifications are explicity considered not likely to involve significant hazards considerations. Accordingly, the Commission proposes to determine that the proposed changes to TS 6.2 involve no significant hazards considerations.

The second change to the TS results from the installation of additional fire protection instrumentation. This instrumentation, described in proposed changes to TS Table 3.3–11, "Fire Detection Instrument", includes local heat, flame and/or smoke detectors, and an alarm system. The annunciators in the control room provide an audio-visual alarm which indicates the location of the affected area. Since the fire detection instruments listed in TS Table 3.3–11 are subject to Limiting Conditions for Operation, TS 3.3.3.7, "Fire Detection Instrumentation", the inclusion of the new instruments in TS Table 3.3–11 represents and additional limitation.

One example given in 48 FR 14870 for an amendment that is not likely to involve a significant hazards consideration is, "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications * * *" Since the proposed change to TS Table 3.3–11 represents an additional limitation via TS 3.3.3.7, the Commission proposes to determine that this proposed change to the TS involves no significant hazards considerations.

Finally, the licensee has requested a change to TS 6.12, "High Radiation Areas", concerning the control of keys to high radiation areas where the dose rate is greater than 1000 mrem/hr. At the present time TS 6.12.1.b requires that these keys be maintained under the administrative control of the shift supervisor on duty. The licensee has requested that these keys be maintained," * * * by the Supervisor-Radiation Control and the Operations Shift Supervisor on duty under their separate administrative control.

Expanding the authority to control accesss to locked high radiation areas will not increase the probability or consequences of an accident previously evaluated. Typically, the few changes that affect dose rates (e.g., mode changes, fuel movement, ion exchanger line-ups, etc.) are internally communicated to the Radiation Control Unit. Similarly, the Radiation Control Unit informs Operations of non-routine entries into locked high radiation areas. A new or different kind of accident from any accident previously evaluated is no possible since the locks and radiation sources have not been altered. The margin of safety will not be reduced, since the Radiation Control Supervisor also can administer the keys to the locked high radiation areas and ensure control over unnecessary exposure. Accordingly, the Commission proposes to determine that this change to the TS involves no significant hazards considerations

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: March 20, 1984.

Description of amendment request: The amendment would change the Technical Specifications by (1) extending the Power/Flow Map to include the region bounded by the following (power, flow) points: (100%/100%); (100%/107.5%); (80%/112.5%); (50%/112.5%); and (50%/100%); (2) imposing an additional restriction requiring the rod block monitor maximum trip level to be set at 107% power for core flow of 100% rated or greater; and (3) correcting a typographical error on page 55 (from "REM" to "RBM"). These changes would not permit continuous operation at power levels greater than 100% of the present rating, but increased core flow would result in greater energy output than is otherwise possible during reduced power operations, such as end-of-life coastdown.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for application of its criteria by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). These examples include:

(i) "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." (ii) "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement."

(vi) "A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously use calculational model or design method."

Item (1) of the proposed change would permit operation of the reactor with increased core flows (up to 112.5% of rated). The licensee has evaluated the effect of this change using methods previously approved by the staff and has concluded that it will not result in an increase in the probability or consequences of previously-analyzed accidents. The analyses provided by the licensee also show that a rod withdrawal error becomes the limiting transient during power operation at core flows greater than 100% rated. However, the effects of such a transient would be mitigated by a constant 107% power rod block trip. The licensee, therefore, proposes in item (2) to add this trip requirement to the technical specifications. With incorporation of the additional rod block monitor restriction, the licensee has concluded that the technical specifications are adequate to preclude violation of any safety limits during operation of Pilgrim within the proposed extension of the power/flow map.

The staff has considered the changes proposed in items (1) and (2) and finds that they are encompassed by examples (ii) and (vi) of the Commission's guidance. The staff also finds that the typographical correction proposed in item (3) is encompassed by example (i).

Based on the evaluation performed by the licensee and the fact that the proposed amendment is encompassed by examples of changes which are not likely to pose a significant hazards consideration, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Unit Nos. 1 and 2, Brunswick County, North Carolina

Date of application for amendment: April 13, 1984.

Description of amendment request: This submittal is a revision to the Carolina Power and Light Company's (licensee's) request for the Brunswick Steam Electric Plant Units 1 and 2 (BSEP) Technical Specification Amendments dated September 7, 1982 and noticed in the **Federal Register** on October 26, 1983, 49 FR 49576. Attachments 1 through 6 of the September 7, 1982 submittal were issued as Amendments 66 and 92 on March 6, 1984. Attachments 7 and 8 of the September 7, 1982 submittal were not included in the notice because the description was not complete. This notice is for attachments 7 and 8 of the September 7, 1982 submittal as revised by the April 13, 1984 submittal.

The proposed amendments would (a) revise the Surveillance Requirement and associated footnote relative to the 31-day interval primary containment demonstration such that verification would not be required for penetrations which are locked or secured inside primary containment or for penetration verified as closed during the previous 92 days and (b) revise the applicable operation condition footnote for item 1.e, Condenser Vacuum—Low, to allow the isolation function logic to be bypassed if all turbine stop values are closed.

(a) Primary Containment Demonstration.

The existing Technical Specification (TS) 4.5.1.1. requires that primary containment integrity be demonstrated on a 31-day basis by the verification of (1) containment penetrations being closed and (2) equipment hatches being sealed. Such verification is not required for penetrations which are locked or secured inside primary containment or for penetrations verified as closed during the previous 92 days. The current Standard Technical Specifications (STS) for the General Electric/Boiling Water Reactor–4 (GE/BWR–4), as endorsed by Chapter 16 of the Standard Review Plan, design now specify surveillance requirements for penetrations rather than providing separate surveillance requirements for containment equipment hatches. Therefore, the deletion of TS 4.6.1.1.a.2 is consistent with this GE/STS guidance. The proposed change concerning high radiation areas provides an exception to the verification requirements of TS 4.6.1.1 for containment penetrations which are inaccessible due to high radiation. The proposed change concerning "COLD SHUTDOWNS greater than 48 hours" in the footnote TS 4.6.1.1 is being provided to establish a criteria for allowing sufficient time for plant personnel to perform the specified surveillance.

The proposed change, allowing certain valves and blind flanges in high radiation areas to be verified closed during each COLD SHUTDOWN of greater than 48 hours, was made with As Low As Reasonable Achievable (ALARA) considerations in mind. Requiring this surveillance to be performed once every 31 days unnecessarily exposes personnel to high radiation fields. Administrative controls are already in place which ensure that proper alignment is maintained.

(b) Condenser Vacuum Isolation.

The proposed TS change reflects actual plant logic which allows the low condenser vacuum isolation function to be bypassed if the turbine stop valves are closed. The current Brunswick TS required the low condenser vacuum isolation of the main steam isolation valves to be operable in both the Run and Startup Condition if vessel pressure is greater than or equal to 500 psig.

The purpose of the vacuum bypass switch is to allow reactor heatup prior to obtaining condenser vacuum. Operating the bypass switch will override the low vacuum Main Steam Isolation Valve (MSIV) (Group 1) isolation signal only when the turbine stop valves are closed and the reactor mode switch is not in the RUN position. In all other conditions, operating the bypass switch has been demonstrated as not required. Once this limit has been removed from the TS and operating manual, no additional procedures will need to be established to control its use because existing control logic will prevent inadvertent use when the condenser is vulnerable to accidental pressurization.

Inadvertent use of the low vacuum bypass switches is prevented by interlocking with Reactor Protection System indications of plant mode and turbine stop valve positions. Accidental pressurization of the condenser via the turbine bypass cannot occur because the turbine control logic will lock the bypass valves shut on low condenser vacuum signal sensed and actuated at the same setpoint as the TS instrument B21–PT–NO56 (Condenser Vacuum—Low Pressure Transmitter). Operator action or decision does not enter into the condenser protection scheme. The operator only decides whether to pressurize beyond the MSIVs to the turbine stop valves. In either situation the condenser is protected from

accidental pressurization and the resulting release of radioactive materials by automatic action of the reactor and turbine control functions. The main steam lines from the MSIVs to the turbine stop valves are protected from overpressurization by the safety relief valves. Relief valve settings are maintained below the design pressure rating of these steam lines.

This request is based upon documented test results indicating that instability problems encountered at older General Electric BWRs were not encountered during the Startup Condition of the BWR/4 design (refer to General Electric Service Information Letter No. 107 dated October 31, 1974). This change is also based on guidance as setforth in the current GE/BWR-4 Standard technical specification.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples involving no significant hazards consideration include (vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plant: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The staff finds that the proposed amendment is similar to example vi since both changes are less restrictive; however, they are clearly within the criteria for such technical Specifications as stated in the Standard Review Plan and the Standard Technical Specifications. In addition, the staff previously accepted changes such as those proposed. On this basis the staff proposed that the amendment does not involve significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power and Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington, South Carolina

Date of amendment request: October 31, 1983, supplemented by April 26, 1984.

Description of amendment request: The original amendment request was initially noticed on January 26, 1984 (49 Fr 3347). The original request changed the Technical Specifications requirements to incorporate reorganizational changes to add the existing security group and to meet the requirements of 10 CFR 50.54(m)(2). This supplemental request incorporates additional reorganizational changes to provide for all on-site reporting with the exception of Quality Assurance and Nuclear Safety.

Basis for proposed no significant hazards consideration determination: The proposed organizational changes are administrative in nature, i.e., changes to achieve consistency throughout the Technical Specifications and title changes and reference corrections. The amendment request is similar to example (i) of the examples of amendments that are considered not likely to involve a significant hazards consideration (see example (i) in 48 FR 14870, April 6, 1983).

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Commonwealth Edison Company, Docket No. 50-373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of amendment request: January 13, 1984, as modified by letters of March 22, 1984 and April 5, 1984.

Brief description of amendment request: Amendment No. —— to Operating License NPF-11 is to revise the La Salle Unit 1 Technical Specifications to reflect changes incorporated into the La Salle Unit 2 Technical Specifications. The following is a list of proposed changes to the Unit 1 Technical Specifications based on the Unit 2 Technical Specification:

1. Page XIX through XXIII—add list of Table and Figures.

2. Page 1-9, * * * footnote would be modified to state "moved" instead of "coupled" so as to allow control rod testing required by the Technical Specifications in addition to coupling.

3. Single recirculation loop operation previously approved for Unit 1 would be moved into the body of the Tech Specs, pages 2-1, 2-4, 3/4 2-1, 3/4 2-3, 3/4 2-4, 3/4 3-53, 3/4 4-1, 3/4 4-1a, 3/4 4-2, and 3/4 4-3.

4. Page 3/4 1-1—Tech Spec. 4.1.1.c would be revised to allow 12 hours instead of 1 hour for the performance of specified surveillance.

5. Page 3/4 1-3—add word "withdrawn" to action statement b.1.a)1) to clarify that, if an inoperable control rod is not "withdrawn" its safety function is met and need not be considered in determining separation from withdrawn operable control rods.

6. Page 3/4 1-5—add footnote to allow reactor startup to perform test if necessary.

7. Pages 3/4 1-6, 3/4 1-8, 3/4 1-9 and, 3/4 1-14—control rods specifications 3.1.3.2, 3.1.3.4, 3.1.3.5., and 3.1.3.7 would add "3.0.4 not applicable" thus permitting reactor startup with various control rod parameters not met as long as Tech. Spec action statements are followed.

8. Pages 3/4 3-4, 3/4 3-5, 3/4 3-41—would delete startup test setpoint verification footnote since the startup tests are completed.

9. Pages 3/4 3-11, 3/4 3-14—added footnote (i) to allow bypass of MSIV delta T detection trip channels for up to 4 hours.

10. Pages 3/4 3-15—revise reactor water cleanup ambient and differential temperature setpoints.

11. Pages 3/4 3-15, 3/4 3-16, 3/4 3-17—would delete startup test setpoint verification footnote since the startup tests are completed.

12. Pages 3/4 3-18, 3/4 3-19—add greater than or equal to 5 second time delay reference based on the requirements in license condition 2.C.(30).(b) that time delay relays be used.

13. Pages 3/4 3-39, 3/4 2-4, 3/4 2-5—add change to allow operation if EOC-RPT inoperable in accordance with the provisions of the Standard Technical Specifications for GE boiling Water Reactors.

14. Page 3/4 3-54—revise APRM calibration frequency to semi-annually in accordance with the provisions of the Standard Technical Specifications for GE Boiling Water Reactors.

15. Pages 3/4 3-60, 3/4 3-63—add footnote to clarify that the seismic and meteorological monitoring systems are common systems shared by Units 1 and 2.

16. Pages 3/4 3-72 and 3/4 9-4—add footnote to require a signal-to-noise ratio greater than 2 for source range count rates between 0.7 counts per second and 3 counts per second.

17. Pages 3/4 3–81, 3/4 11–13, 3/4 11–14—revise radioactive effluent reporting requirements.

18. Page 3/4 3–90—would specify that isolation of the off gas system is required only during channel calibration.

19. Page 3/4 4–2—modify the surveillance and operability requirements for the jet pumps to reflect the fact that there is no requirement for immediate scram upon loss of both recirculation pumps.

20. Page 3/4 4–5—revise tolerance on safety relief valve settings from +1% to + or −1%.

21. Page 3/4 4–7—revise tolerance on reactor coolant system (RCS) pressure at which leak rate limits for RCS isolation valves are applied from + or −10 psig to + or −50 psig.

22. Page 3/4 4–19—revise withdrawal times for reactor vessel material specimens to conform to regulations.

23. Pages 3/4 5–3, 3/4 5–4, 3/4 5–5—water tight doors specifications for ECCS corner rooms would be added.

24. Page 3/4 5–5—revised High Pressure Core Spray delta P setpoint.

25. Page 3/4 5–9—delete footnote for startup test setpoint verification since startup tests are completed.

26. Pages 3/4 6–2, 3/4 6–3—revise calculation method of Main Steam Isolation Valve leakage rate limit in accordance with the Standard Technical Specification for GE Boiling Water Reactors.

27. Pages 3/4 6–8, 3/4 6–9—revise action statements and surveillance requirements and make table clarifications for containment tendons.

28. Pages 3/4 6–15 and 3/4 11–19—add limitation on using standby gas treatment system for purging the primary containment.

29. Pages 3/4 3–70, 3/4 6–16, 3/4 5–17, 3/4 6–18—delete Safety Relief Valve test footnote since tests have been completed.

30. Table 3.6.3–1. (Pages 3/4 6–24, 3/4 6–25, 3/4 6–26, 3/4 6–27, 3/4 6–28, 3/4 6–32, 3/4 6–34)

a. (Primary Containment Isolation System valves) add # (3.0.4 not applicable) to various valves to reflect that the valves, when closed, maintain containment integrity and need not be operable.

b. Revise butterfly valve closure times after first refuel outage. (Also some VQ valve closure times would be changed immediately.)

c. Valves ICM023B and 2CM024A would be deleted from the list of containment isolation valves since these are, in fact, not containment valves.

d. Valve 1E12–F099B would be added to the list of required containment isolation valves to correct an inadvertant omission.

31. Page 3/4 7–6—delete footnote allowing crosstie of 250 volt batteries as it is inconsistent with other requirements in the Tech. Specs.

32. Page 3/4 7–12—revise fire pump paramenters and fire suppression water system pressure.

33. Page 3/4 7–25—Table 3.7.7–1) revise the temperature range limits for various areas of Unit 1 to conform to the provisions of the Standard Technical Specifications for GE Boiling Water Reactors and to comply with requirements for certain equipment operability.

34. Pages 3/4 7–27 through 3/4 7–45—the entire technical specification for inspection, testing and monitoring of safety-related snubbers would be revised.

35. Page 3/4 7–46:

a. Delete calibration requirement for Main Turbine Bypass System and delete valve positioning requirement to conform to the Standard Tech. Spec. for GE Boiling Water Reactor.

b. Correct the definition of the conditions under which the Main Turbine Bypass System must be operable to conform to the standard Tech. Spec. for GE Boiling Water Reactor.

c. Delete startup test footnote since the startup tests have been completed.

36. Diesels:

a. Page 3/4 8–2—add explanation to diesel generator 2A inoperable action f. to prevent excessive testing of diesel generator 1A when system inoperable.

b. Page 3/4 8–4—delete surveillance item 6 which currently requires a verification of diesel generator loading in accord with design requirements.

c. Page 3/4 8–6—delete the requirement for diesel generator surveillance starts on stored air.

37. Page 3/4 8–8—change "and/or" to "or" to clarify that only 1 of the Division 1 or Division 2 diesel generators need be available during reactor shutdown.

38. Page 3/4 8–10—revise equipment needed for Unit 2 Division 1 AC electrical system.

39. Page 3/4 8–12—change "and/or" to "or" to clarify that only 1 of the Division 1 or Division 2 diesel generators need be available during reactor shutdown.

40. Pages 3/4 8–14, 3/4 8–15, 3/4 8–17—delete Unit 2 Division 1 DC sources and delete ability to crosstie as it is inconsistent with other requirements in the Tech. Specs.

41. Page 3/4 8–19—change "and/or" to "or" to clarify that Division 3 and only 1 of Division 1 or Division 2 DC sources need be available during reactor shutdown.

42. Page 3/4 8–21—add drywell hoists and cranes to drywell circuits to be deenergized and delete them from page 3/4 8–24.

43. Page 3/4 8–26—add "3.0.4 not applicable" to thermal overload bypass specification to indicate that reactor startup need not be restricted when administrative controls in accordance with the action statement are taken for an inoperable thermal overload bypass circuit.

44. Page 3/4 8–27—delete valve 1VQ041 from thermal overload table since the valve was inadvertently included in the table.

45. Page 3/4 8–31—revise requirements to functionally test the Reactor Protection System Electric. Power Assemblies only during cold shutdowns greater than 24 hours.

46. Page 3/4 11–3—delete P–32 from the list of isotopes for which liquid waste sampling is required in Table 4.11.1–1.

47. Page 3/4 11–12—reverse sampling requirement when Dose Equivalent I–131 concentration in primary coolant and noble gas monitors activity meets certain limits.

48. Page 3/4 12–3—revise number of sample locations (Table 3.12.1–1) to reflect actual installed sample locations defined in the Offsite Dose Calculation Manual.

49. Page 5–1—correct drywell free volume in design features portion of the Tech. Spec.

50. Page 6–11—revise corporate management Figure 6.1–1 to reflect current approved management configuration.

51. Pages 6–13, 6–14—new shift manning Table for two units.

52. Pages 6–28, 6–29—add footnote to clarify that the Process Control Program and the Offsite Dose Calculation Manual are common to both Unit 1 and Unit 2.

53. Pages with minor changes of a nonsubstantive nature (e.g. adding comma, parenthesis wording change for clarification, etc.):

a. Page II, VIII, XV.

b. Pages 3/4 1–4, 3/4 1/11, 3/4 1–19.

c. Pages 3/4 3–1, 3/4 3–58, 3/4 3–82, 3/4 3–83, 3/4 3–84.

d. Pages 3/4 4–13, 3/4 4–14, 3/4 4–17, 3/4 4–23, 3/4 4–24.

e. Pages 3/4 5–6.

f. Pages 3/4 6–5, 3/4 6–11, 3/4 6–19, 3/4 6–20, 3/4 6–21, 3/4 6–33, 3/4 6–35, 3/4 6–36, 3/4 6–37, 3/4 6–38, 3/4 6–40, 3/4 6–41.

g. Pages 3/4 7–14, 3/4 7–17, 3/4 7–18, 3/4 7–22, 3/4 7–24.

h. Pages 3/4 8–1, 3/4 8–5, 3/4 8–7, 3/4 8–9, 3/4 8–16.

i. Pages 3/4 9–16, 3/4 9–17.

j. Page 3/4 11–9.
k. Pages 3/4 12–1, 3/4 12–4.
l. Pages 6–3, 6–20

At the La Salle site, reactor operation and control is accomplished in a dual type control room where controls and rector operators for each unit are located. The plant design for both units is generally identical with some very minor differences as described in the Final Safety Analysis Report for La Salle. Consequently, consistency and uniformity between Unit 1 and Unit 2 Technical Specifications will minimize the potential for confusion and Technical Specification violation, and allow a consistent basis for operating, maintenance and surveillance procedures for both units.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). The example of actions involving no significant hazards consideration include:

(i) A purely administrative change to the Technical Specifications, corrections of errors or clarification; (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; and (vi) a change which either may result in some increase in the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review.

The changes proposed in the application for amendment are encompassed by these examples in the following ways:

(1) Changes requested by the licensee in the following pages are administrative in nature and are encompassed by the Commission's example (i) of actions not likely to involve significant hazards considerations:

(a) The following proposed changes in the Technical Specifications are for typing errors, correcting punctuations, updating the index (Table of Contents), minor changes to add clarity, updating to reflect two unit operation, updating to current corporate organizational chart which was found acceptable when the Unit 2 license was issued, deleting footnotes which apply to an already satisfactory complete startup test setpoint verification, and deletion and addition for inadvertent error: (items are enumerated as above) Items 1, 5, 8, 11, 15, 17, 20, 21, 25, 29, 30 c & d, 31, 35c, 37, 39, 40, 41, 44, 48, 49, 50, 52, and 53 a, b, c, d, e, f, g, h, i, j, k, l.

(b) The following proposed changes are conforming changes to incorporate into the Technical Specifications the substance of the previously authorized Amendment 11 to the license for single loop operation. To be consistent with the Unit 2 Techical Specifications, the licensee requested these requirements be incorporated in the Unit 1 Technical Specifications similarly as in Unit 2: Items 3 and 19.

(c) The following proposed change in the Technical Specifications clarifies that duplicate sampling to measure possible iodine spiking is not required. This measurement is performed by Tech. Spec. 4.4.5. Therefore there is no relaxation of requirement but only deletes duplication of Tech. Specs: Item 47.

(d) The following proposed change in the Technical Specification incorporates the option allowed by Generic Letter 84–13 dated May 3, 1984 to totally eliminate the table and snubber listing. As noted in Generic Letter 84–13, the change does not alter snubber surveillance requirements or operability requirements. It only allows removal of snubber listing in the Tech. Spec: Item 34.

(2) The following proposed changes in the Technical Specifications are requirements more conservative than the present Unit 1 requirements and are encompassed by the Commission's example (ii) of actions not likely to involve significant hazards considerations: Items 10, 12, 16, 22, 23, 24, 26, 28, 30b, 32, 33, 42 and 45.

(3) The following proposed changes in the Technical Specifications may result in some increase to the probability of consequences of a previously analyzed accident or may reduce in some way a safety margin, but the results of changes are within acceptable criteria so that these changes fall within the Commissions example (vi) of action not likely to involve significant hazards considerations: Items 2, 4, 6, 7, 9, 13, 14, 18, 27, 30a, 35 a & b, 36, 38, 46, 51.

Therefore, since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1 Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue NW., Washington, D.C. 20036.

NCR Branch Chief: A. Schwencer.

Commonwealth Edison Company, Docket No. 50–374, La Salle County Station, Unit 2, La Salle County, Illinois

Date of amendment request: May 24, 1984.

Description of amendment request: The proposed amendment to Operating License NPF–18 is to revise the La Salle Unit 2 Technical Specifications to reflect a reactor scram on low control rod drive pump discharge pressure modification as required for completion of construction by License Condition 2.C.(7). This modification was performed to address a concern when the reactor vessel is at less than operating pressure (less than 950 psig) that the control rod drive accumulators do not maintain adequate pressure to accomplish a scram function (startup and refueling modes). Since the modification requred by License Condition 2.C.(7) has been completed, it is now necessary to amend the Technical Specifications to reflect the modification

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations include (v) "Upon satisfactory completion of construction in connection with an operating facility, a relief granted for an operating restriction that was imposed because the construction was not yet completed satisfactorily." The amendment request would incorporate a modification made upon construction completion to comply with License Condition 2.C.(7) which will assure that a scram will occur even if the reactor vessel is at less than the operating pressure.

Therefore since the application for amendment involves proposed changes that are related to a construction completion requirement and are similar to the example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1 Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue NW., Washington, D.C. 20036.

NCR Branch Chief: A. Schwencer.

Commonwealth Edison Company, Docket No. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of amendment request: May 8, 1984.

Description of amendment request: This amendment would change the calibration and functional test frequencies for certain specific instruments that are being modified into analog trip systems. These modifications are being made to achieve full compliance with the requirements of 10 CFR 50.49 (Environmental Qualification of Electrical Equipment).

Basis for proposed no significant hazards consideration determination: The licensee has evaluated the proposed Technical Specification change and has determined that the change does not represent a significant hazards consideration. The licensee's proposed determination is based on the following considerations.

The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). The examples of actions likely to involve no significant hazards considerations include: "(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The licensee's proposed amendment would change the calibration and functional test frequencies for certain specific instruments that are being modified into analog trip systems. The use of analog trip units, and the acceptable intervals for their calibration and testing, has been reviewed and accepted by the NRC in their review and acceptance of General Electric Topical Report NEDO–21617–A, "Analog Transmitter/Trip Units Systems for Engineered Safeguard Sensor Trip Inputs," dated December 1978. The analog sensor transmitter channel calibration interval is less stringent than the current requirements on the existing equipment, but the proposed calibration interval falls within the interval specified in the approved Topical Report for this equipment, and is consistent with the Standard Technical Specifications as endorsed by Chapter 16, of the Standard Review Plan. Since the requested amendment is encompassed by the example (vi) of the guidance, for which no significant hazards consideration is likely to exist, the licensee has made a proposed determination that the proposed amendment involves no significant hazards consideration.

The staff has reviewed the licensee's not significant hazards consideration determination and, based on this review, the staff has made a proposed determination that the proposed application for amendment involves no significant hazards consideration.

Local Public Document Room location: Moline Public Library, 504—17th Street, Illinois 61265.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Branch Chief: Domenic B. Vassallo.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: January 19 and January 23, 1984, which modifies a previous application dated June 8, 1983.

Description of amendment request: By letters dated January 19 and 23, 1984, the licensee made certain modifications to a license amendment request previously submitted on June 8, 1983, which was noticed in the **Federal Register** on August 23, 1983 (48 FR 38400). The proposed changes affect the liquid effluents, gaseous effluents, and the administrative controls sections of the proposed technical specifications.

Changes to the liquid effluents sections would (1) modify the definitions of dose equivalent I–131 to reference dose conversion factors, (2) include under the liquid effluent monitor limiting condition for operations the alarm setpoints and methods used to calculate them, (3) require a liquid effluent monitor source check prior to each release of liquid effluents, (4) require that liquid effluent concentration be monitored at the Effluent Release Boundary, (not the Unrestricted Area Boundary) and (5) require that the Offsite Dose Calculation Manual Methods be used to calculate concentrations.

Changes to the gaseous effluents sections would (1) add condenser air ejector monitor action statments and surveillance requirements, (2) modify the bases statement for the instantaneous dose specification to reflect the child inhalation pathway and (3) add the requirement for plant shutdown if instantaneous dose exceeds established limits for more than 12 hours.

Changes to the Administrative controls section would add the requirement to maintain an Offsite Dose Calculation Manual and a Process Control Program and to submit an Annual Radiological Environmental Monitoring Report.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for making these determinations by providing certain (April 6, 1983, 48 FR 14870). One of the examples (ii) of actions involving no significant hazards consideration relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The license changes proposed here fall within this example. The staff proposes to determine that the applications do not involve a significant hazards consideration since all changes constitute additional restrictions and controls that are not currently included in the Technical Specifications in order to meet the Commission's requirements.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for licensee: O.S. Heistand, Jr., Esquire, Morgan, Lewis & Bockius, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: Dennis M. Crutchfield.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: March 20, 1984, as revised on April 24, 1984.

Description of amendment request: The proposed technical specification (TS) changes are of three general types: (1) Changes to existing technical specifications to make them consistent with the new reporting requirements of 10 CFR Part 50, §§ 50.72 and 50.73, which became effective on January 1, 1984; (2) a wording modification to clarify "operability" of the Emergency Service Water Supply System; (3) a change in the required on-line functional testing frequency of the reactor protective system from monthly to quarterly to reduce the number of inadvertent trips due to testing.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for making these determinations by providing certain examples (April 6,

1983, 48 FR 14870). One of the examples (ii) of actions involving no significant hazards consideration relates to a change made to make the license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The license changes proposed in Item (1) above fall within this example. On this basis, the staff proposes to conclude that the requested action would involve a no significant hazards determination.

The proposed changed described in Item 2 above involves a change in wording to clarify a possible ambiguity regarding the "operability" of the Emergency Service Water Supply System. Example (i) of the Commission's guidance (April 6, 1983 48 FR 14870) states that a purely administrative change to technical specifications, for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature would likely be found to involve no significant hazards considerations. The proposed license changes described in Item 2 above fit this example. On this basis the staff proposes to conclude that the requested action would involve a no significant hazards consideration determination.

The proposed TS changes described in Item 3 above would reduce the frequency of online testing of the reactor protective system from monthly to quarterly. These changes were submitted in response to NRC Generic Letter 83–28, dated July 8, 1983. Section 4.5.3 of this letter requested licensees to review existing intervals for on-line functional testing to determine intervals that are consistent with achieving high reactor trip system availability when accounting for considerations such as:

1. Uncertainties in component failure rates,
2. Uncertainty in common mode failure rates,
3. Reduced redundancy during testing,
4. Operator errors during testing, and
5. Component "wear-out" caused by the testing.

The license stated that reducing the test frequency from monthly to quarterly would reduce the number of unnecessary scrams gnereated due to testing by a factor of three (a reduction of one scram every two years). Reduction of unnecessary scrams reduces thermal, mechanical, and hydraulic shock to plant components and is beneficial to plant safety. The licensee calculated that the reduced testing would cause an increase in the deviation rate from 2.5×10^{-3} deviations per set point checked to 7.2×10^{-3} deviations per set point checked, but concluded that the change would have a negligible effect on the overall reliability of the Reactor Protective System. On this basis, the staff proposes to determine that the reduced testing frequency would not involve a significant increase in the probability or consequency of an accident previously evaluated; would not create the possibility of a new or different kind of accident from any previously analyzed; and would not involve a significant reduction in a margin of safety. Thus, the staff proposes to determine that the proposed changed described in Item 3 above would not involve a significant hazards consideration.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for licensee: O.S. Heistand, Jr., Esquire, Morgan, Lewis & Bockius, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: Dennis M. Crutchfield.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: April 26, 1984.

Description of amendment request: The proposed change revises Figure 6.2–1 of the Technical Specifications (Appendix A of Operating License DPR–66) to reflect the new Offsite Organization. This new organization consolidates the nuclear portion of the company under a single management position. The changes are all administrative in nature and have no safety significance, do not physically affect plant safety related systems, and do not reduce any safety margin.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of these, Examples (i), involving no significant hazards consideration is "A purely administrative change to technical specifications." The requested amendment matches the example and the staff, therefore, proposes to characterize it as invovling no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of applications for amendment: May 15, 1984.

Description of amendment request: The proposed amendment would make changes in the technical specifications of St. Lucie Plant, Unit No. 1 to be consistent with the technical specification of Unit No. 2. It would also update the on-site and off-site organization charts and Reportable Event definition changes to reflect the requirements of Generic Letter 83–43.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples of actions involving no significant hazards consideration (i) relates to amendments of a purely administrative change to technical specifications, correction of an error, or a change in nomenclature, or a change to achieve consistency throughout the technical specifications. The changes to the St. Lucie Plant, Unit No. 1 technical specifications proposed by this application for amendment are designed to update organizational changes and to make them consistent with the technical specifications of St. Lucie Plant, Unit No. 2, which are essentially standard technical specifications. Based on this the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esq., Newman and Holtzinger, P.C., 1025 Connecticut Avenue NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of amendments request: August 6, 1982 as modified on September 1, 1982, January 3, 1983, April 25, 1983, January 31, 1984 and April 23, 1984.

Brief description of amendments: The request for amendments was initially

noticed August 23, 1983 (48 FR 38403). This notice includes requested changes subsequent to the August 6, 1982 submittal. These proposed amendments involve changes to the Technical Specifications which will incorporate setpoints, surveillance requirements and limiting conditions of operation for the undervoltage protection systems for safety-related equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve no significant hazards considerations by providing certain examples (48 FR 14870). One of these examples (ii) relates to a change that constitutes an additional limitation, restriction or control not presently included in the plant Technical Specifications: for example a more stringent surveillance requirement. These amendments fall directly within that example in that the additional restriction imposed by the amendments are for modifications and new equipment installed to meet the current NRC criteria and requirements pertaining to degraded grid voltage protection. Since the proposed changes add requirements to ensure compliance with the regulations in accordance with staff positions, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue NW., Suite 1224, Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of request for amendments: April 4, 1984, as supplemented May 25, 1984.

Description of amendments request: The proposed amendments would revise Section 5.2 of the Technical Specifications, to delete the present enrichment restriction of 3.5 weight per cent. The fuel storage specifications, Section 5.4, would be revised to allow storage of fuel with increased enrichment in the existing new fuel storge racks, spent fuel storage racks and increase the K_{eff} (neutron multiplication factor) for the existing new fuel storage racks. The proposed increase for the existing new fuel storage racks is 57.7 grams (4.5 weight per cent) of U-235 and 52.4 grams (4.1 weight per cent) for the existing spent fuel storage racks. The K_{eff} is proposed to be increased from 0.95 to 0.98 for the existing new fuel storage racks.

These changes would allow storage of fuel with increased enrichment for use in future operating cycles. The proposed amendment includes a criticality analysis for storing the fuel with increased enrichment in the existing new fuel and spent fuel storage racks and increasing the K_{eff} in the existing new fuel racks. The use of fuel with increased enrichment in future reloads would be based on the supporting safety evaluation for the specific reload. A safety evaluation of each reload is required to assure that the operating limits in the Technical Specifications, including dynamic parameters, rod worths and peaking factors, will be complied with and result in safe operation of the reactor core.

Basis for proposed no significant hazards consideration determination: The standards used to arrive at a proposed determination that a request for amendments involve no significant hazards consideration are included in the Commission's regulations, 10 CFR 50.92, which state that the operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The fuel enrichment is not a direct input to the reactor safety analysis. Fuel enrichment is used in conjunction with a number of parameters and consideration in determining safe operation of the reactor core. The fuel enrichment, number of fuel assemblies, exposure (burnup) of existing fuel, burnable poisons and fule management schemes are used to derive measurable reactor core parameters important to safe operation. These dynamic parameters, rod worths and peaking factors are currently included in the plant's Technical Specifications. The specification of the fuel enrichment in the core design section alone does not uniquely determine nor limit the values of the reactor core parameters which are important for safe operation. The existing safety limits and limiting conditions of operation in the plant Technical Specifications will have to be addressed and evaluated for each specific future reload and will take into account the fuel enrichment but would not be changed by the proposed amendment. Therefore, the deletion of the reload fuel enrichment from the reactor core design, Section 5.2 of the Technical Specification, does not result in a significant relaxation of the criteria used to establish safety limits. In turn, this portion of the amendment does not affect the probability or consequences of a previously analyzed accident or any safety margin. In addition, the possibility of a new accident not previously evaluted is not created by this portion of the amendment. Accordingly, the staff proposes to determine that this portion of the amendment request does not involve a singificant hazards consideration since it does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Fuel enrichment is in itself an important parameter in the assessment of the adequacy of the fuel storage pool and there should be a Technical Specification limit for fuel storage. A criticality analysis of the existing storage racks allowing storage of fuel with the increased enrichment is provided in the licensee's submittal. The following evaluation references the criticality analysis provided and demonstrates that the storage of fuel with the increased enrichment identified in the proposed amendment does not involve any of the three criteria for signficant hazards considerations as follows:

The possibility of a significant increase in the probability or consequences of an accident previously evaluated.

In the course of the analysis. FPL has identified the following potential accident scenarios:

1. A fuel assembly drop in the spent fuel pool.
2. Loss of spent fuel pool cooling system flow.
3. A spent fuel cask drop.

The consequences of item 1, "A fuel assembly drop in the spent fuel pool," for the criticality acceptance criterion are not changed as explained in Section 3.0 of the criticality analysis. The radiological consequences of this type of accident in the spent fuel pool are bounded by the cask drop accident. Thus the consequences of this type accident will not be significantly increased from previously evaluated fuel assembly drops.

The consequences of item 2, "Loss of spent fuel cooling system flow," will

not be affected. As previously stated, the existing safety limits and limiting conditions of operations in the plant Technical Specifications will have to be addressed and evaluated for each specific future reload and will take into account fuel enrichment and burnup. The effect of the decay heat characteristics due to the burnup of fuel with the proposed increased enrichment is bounded by the existing loss of spent fuel pool cooling system flow evaluation. The proposed amendment to increase the fuel storage U-235 linear loading specification will not result in an increase in the probability or consequences of an accident previously evaluated for loss of spent fuel cooling system flow.

The consequences of item 3, "A spent fuel cask drop," as previously evaluated will not be affected by an increase in fuel assembly U-235 linear loading. As previously stated, the existing safety limits and limiting conditions of operations in the plant Technical Specifications will have to be addressed and evaluated for each specific future reload and will take into account fuel enrichment and burnup. The fission product inventory due to the burnup of fuel with the proposed enrichment is bounded by the existing evaluation of the spent fuel cask drop and the proposed amendment does not alter the configuration of the storage racks. Therefore, the proposed amendment to increase the fuel storage U-235 linear loading will not result in an increase in the probability or consequences of an accident previously evaluated for a spent fuel cask drop.

Thus, it is concluded that the proposed amendment to increase the fuel storage U-235 linear loading will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) *The possibility of a new or different kind of accident from any accident previously evaluated.*

The proposed technical specification changes have been evaluated in accordance with the guidance of the NRC position paper entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," appropriate NRC Regulatory Guides, appropriate NRC Standard Review Plans, and appropriate Industry Codes and Standards as listed in Section 2.1 of the attached Safety Analysis Report. Neither the licensee nor the NRC Staff could identify any aspects of the proposed amendments which would create the possibility of a new or different kind of accident from any accident previously evaluated for the Turkey Point Fuel Storage Facilities.

(3) *Involve a significant reduction in a margin of safety.*

The NRC Staff Safety Evaluation review process has established that the issue of margin of safety, when applied to modification, will need to address the area of nuclear criticality considerations.

The established acceptance criteria for criticality is that the neutron multiplication factor, including all uncertainties, under all conditions:

(a) Shall be less than or equal to 0.98 for optimum moderation conditions in the new fuel storage facility; and

(b) Shall be less than or equal to 0.95 for fully flooded conditions in both the new fuel storage facility and the spent fuel pool.

This margin of safety has been adhered to in the criticality analysis methods for the existing spent fuel and new fuel storage, as discussed in Section 3.0 and 4.0 of the criticality analysis.

The methods to be used in the criticality analysis conform with applicable codes, standards, or pertinent sections thereof, as referenced in Section 2.1 of the criticality analysis.

In meeting the acceptance criteria for criticality in the Turkey Point Unit 3 and Unit 4 fuel storage facilities it has been established that:

(a) K_{eff} is always less than 0.98, including uncertainties at a 95/95 probability confidence level for optimum moderation conditions in the new fuel facility.

(b) K_{eff} is always less than 0.95, including all uncertainties at a 95/95 probability confidence level for fully flooded conditions in both the new fuel storage facility and in the spent fuel pool.

Increasing the limiting K_{eff} in the existing new fuel storage facility to 0.98 for optimum moderation conditions is consistent with the value established in USNRC Standard Review Plan, NUREG-0800, Section 9.1.1.

The proposed amendment to increase the fuel storage U-235 linear loading and to increase the limiting K_{eff} in the new fuel storage area will not involve a significant reduction in the margin of safety for nuclear criticality.

The Commission proposes that the operation of Turkey Point Plant, Units 3 and 4, in accordance with the proposed amendments do not involve a significant hazards consideration based on the licensee's submittal and the above discussion which demonstrate that the standards specified in 10 CFR 50.92 are met and the proposed amendments do not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, N.W., Suite 1224, Washington, D.C. 20036.

NRC Branch Chief: Steven A. Varga.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: February 6, 1984, as supplemented April 16, 1984.

Description of amendment request: The amendment would modify the Technical Specification Limiting Conditions for Operation to relax the requirement that the High Pressure Core Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems be operable when the reactor vessel pressure is greater than 113 psig and to require instead that they be operable when the reactor vessel pressure is greater than 150 psig. This change will make the Unit 1 Technical consistent with the Unit 2 Technical Specification with respect to this requirement.

Associated changes would also be made in the description of the bases for this requirement to make it consistent with these changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant harards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences or an accident previously evaluated; or (2) create the possibility of a new different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensees, in determining that the change dose not involve a significant hazards consideration, evaluated the change against the standards as follows:

"Reviews performed in accordance with NRC approved methodology show that these changes would have no effect on the FSAR analyses of peak fuel cladding temperature changes during analyzed accidents and transients. The probability of occurrence or the consequences of an accident or malfunction of safety-related equipment would not be increased above those analyzed in the FSAR because the Hatch Unit 1 FSAR accident/transient analyses and performance specifications for HPCI and RCIC do not take credit for operation of HPCI or RCIC below a reactor pressure of 150 psig. The possibility of an accident or malfunction different from those analyzed in the FSAR would not result from these changes since these systems would not be operated in a manner new or different from that described in the FSAR. The margin of safety as analyzed in Technical Specifications would not be reduced because the Plant Hatch Unit 1 Technical Specifications do not require surveillance testing of HPCI or RCIC below a reactor pressure of 150 psig."

On the basis of our review of the licensees' evaluation, as discussed above, the Commission's staff concludes that the proposed change is consistent with the three standards as discussed above.

Accordingly, the staff proposes to make a preliminary determination that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts, and Trowbridge, 1800 M. Street, NW., Washington, D.C. 20036.

NRC Branch Chief: George W. Rivenbark, Acting.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: March 28, 1984, as revised May 11, 1984.

Description of amendment request: This proposed amendment to the Technical Specifications (TSs) would revise the definition of OPERABLE or OPERABILITY to assure that the single failure criterion for safety systems is preserved. The proposed TSs would extend existing requirements to include multiple outages of redundant components and to include the effects of outages of support systems—such as electrical power or cooling water—that are relied upon to maintain operability of the particular system. Limiting Conditions for Operation and ACTION statements that cover these extended requirements are included in the proposed TSs.

Basis for proposed no significant hazards consideration determination: The proposed amendment is in the same category as item (ii), 48 FR 14870, of the list of actions that are not likely to involve significant hazards considerations, i.e., is a change that constitutes an additional limitation, restriction or control not presently included in the TSs. This change would impose additional limiting conditions for operation based on operability requirements that are not currently specified in the TSs. Thus, the Commission's staff proposes to determine that the amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts, and Trowbridge, 1800 M. Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 12, 1984.

Description of amendment request: The proposed amendment requests modification to the Technical Specifications to reflect changes in the reporting requirements as outlined in the Commission's regulations 10 CFR 50.72 and 10 CFR 50.73 and in accordance with the guidance provided in the Commission's generic letter 83–43. Of the following Technical Specification changes, items (3), (4), (5), (6) and (7) are in response to 10 CFR 50.72, 10 CFR 50.73, and Generic Letter 83–43, and items (1), (2), (8), (9), and (10) are administrative change requests.

1. Table of Contents updated to reflect changes of terminology.

2. Definition of Reportable Event added to Section 1.0.

3. Section 3.6.D, note regarding prompt notification requirement deleted. Prompt notification requirements are covered by 10 CFR 50.72.

4. Section 3.8.B.4 is deleted. This section referred to reporting auxiliary electrical equipment out of service. This reporting is adequately addressed by requirements of 10 CFR 50.72 and 10 CFR 50.73.

5. Sections 6.5.1.6.f and 6.5.2.7.g revised to incorporate new terminology.

6. Section 6.6.1 revised to be consistent with model Technical Specifications and Duane Arnold Energy Center (DAEC) organizational structure.

7. Section 6.10 revised to indicate that all "Licensee Event Reports" shall be retained.

8. Section 6.11.1.c is revised to delete a reference to an inappropriate NRC office and to simplify the section.

9. The heading and introductory paragraph for section 6.11.3 is added. This paragraph was inadvertently deleted by a previous amendment.

10. Section 6.11.3.e is deleted to remove the reference to deleted section 3.8.B. 4.

Additionally, several blank pages have been deleted and the information moved to allow for this deletion.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples relates to: "(i) a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. Another example (vii) relates to a change to make a license conform to changes in the regulations, when the license change results in very minor changes to facility operations clearly in keeping with the regulations.

Technical Specification changes requested in items (1), (2), (8), (9), (10) and deletion of several blank pages from the Technical Specifications constitute changes which achieve consistency throughout the Technical Specifications, or correction of an error in the Technical Specifications. These changes are similar to the Commission's example (i) and do not involve a significant hazards consideration.

The remaining Technical Specification changes requested in items (3), (4), (5), (6), and (7) are in response to the Commission's regulation 10 CFR 50.73 and revision to the existing regulation 10 CFR 50.72 related to notification requirements for operating nuclear power reactors. Since the requested changes in the Technical Specifications conform to changes in the regulations, where the change results in minor changes to facility operations clearly in keeping with the regulations, the requested changes are encompassed by the Commission's example (vii) and are not expected to involve a significant hazards consideration.

Since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no signficant hazards consideration.

Local Public Documents Room location: Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Wiscasset, Maine

Date of amendment request: April 3, 1981 as supplemented April 10, 1984.

Description of amendment request: The amendment would revise the testing requirements for hydrualic shock suppressors (snubbers) and add requirements for mechanical snubber operability and testing. The proposed changes were made in response to an NRC request to upgrade the testing requirements for all safety-related snubber to ensure a higher degree of operability. The changes involve: clarifying the frequency for visual inspections, stating the requirements for functional testing of snubbers which visually appear inoperable, the inclusion of a formula for the selection of representative sample sizes, the clarifying of the testing acceptance criteria, and revising the method of snubber listing to incorporate more information.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions involving significant hazards considerations include changes that constitute additional limitations or restrictions in the Technical Specifications. The proposed changes revise sections of the Technical Specifications related the hydraulic snubbers to clarify requirements and include additional testing and incorporate both operability and testing requirements for mechanical snubbers. Since the requested changes upgrade the requirements for hydraulic snubbers and add requirements for mechanical snubbers, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J. A. Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: James R. Miller.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Wiscasset, Maine

Date of amendment request: April 11, 1984.

Description of amendment request: This proposed amendment supplements a change originally requested by the licensee on March 1, 1976 and notice in the FR on July 20, 1983 (48 FR 33082). The supplemental request deletes the exception requested to Type C testing of certain containment isolation valves which would have permitted use of water in lieu of air in certain tests and provides air lock lead rate test pressure and acceptance criteria. Changes were also made to the parameters used for the integrated leak rate test.

Basis for proposed no significant hazards consideration determination: Appendix J was developed by the Commission to provide a uniform basis for containment leak testing. It provides a more restrictive set of testing conditions that are found currently in this license. Hence, the change represents an additional restriction, limitation, or condition being incorporated into the Technical Specifications. This matches example (ii) of 48 FR 14870 of the examples of amendments not likely to involve significant hazards considerations. In addition, the proposed change will make the license conform to changes in the regulations. This matches example (vii) of 48 FR 14870 of the examples of amendments not likely to involve significant hazards considerations. Thus, the Commission proposes to determine for this amendment that it involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J. A. Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: James R. Miller.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Wiscasset, Maine

Date of amendment request: April 13, 1984.

Description of amendment request: This proposed amendment would change the Maine Yankee Technical Specifications (TS) to reflect certain aspects of NUREG–0737. Specifically, the TS would be modified to define operability and surveillance for new noble gas effluent monitors, high range radiation monitors and water level monitors in the containment. A surveillance requirement for area and process monitors would also be clarified.

Basis for proposed no significant hazards consideration determination: This proposed amendment falls into two categories for which the Commission (48 FR 14870) has provided examples of amendments not likely to involve significant hazards considerations. The new operability and surveillance requirements constitute additional limitations, not currently in the TS (Example (ii)). The clarification of requirements for area and process monitors is a purely administrative change (Example (i)). Hence, the Commission intends to propose that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J. A. Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: James R. Miller.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Wiscasset, Maine

Date of amendment request: April 25, 1984.

Description of amendment request: This proposed amendment would reflect plant modifications to improve low temperature over protection (LTOP). LTOP is required to compensate for the gradual loss of reactor vessel ductility due to neutron irradiation. The LTOP Technical Specifications assure that the reactor vessel pressure is limited when the vessel temperature is below certain precalculated limits. This amendment would provide for a variable set point system for the power operated relief valves and the use of a flow restrictor in the High Pressure Safety Injection System in the LTOP System. Use of the variable setpoint and the flow restrictor provide increased assurance that the LTOP criteria are met while meeting practical operational considerations.

Basis for proposed no significant hazards consideration determination: This proposed change does not involve a significant change in criteria used to establish safety limits, limiting safety system settings, or limiting conditions for operation. Heatup and cooldown

limit curves remain unchanged. Reactor vessel material properties remain tested in accordance with Appendix G of 10 CFR Part 50. Operational limitations are retained on the reactor coolant pumps, power operated relief valves, and high pressure safety injection pumps to assure system operation meets the LTOP criteria. It also does not involve a significant unreviewed safety question. Hence, the Commission proposes a determination of no significant hazards consideration, based on a comparison with the examples given in 48 FR 14870.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J. A. Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Branch Chief: James R. Miller.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 7, 1984.

Description of amendment request: The proposed amendment would modify the Technical Specifications pertaining to the following items: (1) Delete the requirement to establish and maintain a drywell-to-wetwell differential pressure during reactor operation and change the maximum specification chamber water volume; and (2) delete the requirement that the containment be continuously monitored to detect gross leakage.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). An example involving no significant hazards consideration is (vi) "A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the change are clearly within all acceptable criteria with respect to the system or component specified in Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method." Item 1 of the proposed Technical Specification change would delete the requirement to establish and maintain a drywell-to-wetwall differential pressure during reactor operation and increase the maximum supression chamber water volume from 91,000 cubic feet to 91,100 cubic feet.

The licensee has completed modifications under NRC orders to restore the originally intended safety margin to the Cooper Nuclear Station Mark I containment which includes the supression chamber. A plant unique analysis report (PUAR) was submitted by the licensee on April 29, 1982 which provided the results of the analyses associated with these modifications.

The PUAR analyses were performed assuming no drywell-to-wetwall differential pressure and a maximum supression chamber water volume of 91,100 cubic feet. Although this mode of operation results in higher containment hydrodynamic loads under LOCA conditions the PUAR confirmed that the containment components have sufficient design margins so the resulting structural stresses remain below design allowables.

The staff and its consultants reviewed the licensees PUAR submittal for compliance with the acceptance criteria contained in NUREG–0661 "Safety Evaluation report—Mark I Containment Long Term Program." The staff issued a Safety Evaluation (SE) on January 20, 1984 which concluded the licensees PUAR verified that the containment modifications made were acceptable. No conditions were contained in the SE that would prevent the licensee from requesting the proposed Technical Specification changes.

Since the changes to the Technical Specifications proposed by the licensee result in a reduction in a safety margin but the results of the change are clearly within all acceptable criteria it is similar to example (vi) of the guidance provided by the Commission as not likely to involve a significant hazards consideration.

Item 2 of the proposed Technical Specification change would delete the requirement that the containment be continuously monitored to detect gross leakage when inerted. The proposed change conforms to NUREG–0123, Revision 3, Standard Technical Specification 4.6 which does not require continuous monitoring for gross leakage of the primary containment while it is inerted. Containment intergrated and local leak rate testing in accordance with Appendix J of 10 CFR Part 50 is currently addressed in the Technical Specifications.

Since the change proposed by the licensee results in a reduction in safety margin but the results of the change are clearly within all acceptable criteria it is similar to example (vi) of the guidance provided by the Commission as not likely to involve a significant hazards consideration.

Since the changes to the Technical Specifications requested in these two items are similar to the examples in the guidance provided by the Commission of actions not likely to involve significant hazards considerations the staff proposes to determine that this amendment request does not involve a sigificant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 449, Columbus, Nebraska 68601.

NRC Branch Chief: Domenic B. Vassallo.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: March 21, 1984.

Description of amendment request: The proposed amendment changes the section of the Technical Specifications regarding incorporation of the solenoid actuated pressure relief valve setpoints into the surveillance requirements. The relief valve setpoints are currently in the basis section of the Technical Specifications. The setpoints were added into the surveillance requirement section of the Technical Specifications. The remaining changes were made to achieve consistency and clarity in the two separate specifications regarding overpressurization and Automatic Depressurization System function. This included adding the acoustic monitors as the primary means of determining if a valve had opened and removing the word "low" as it referenced reactor pressure for the valve surveillance tests. The word "low" was removed because the valves are normally tested when the reactor is at atmosphere pressure to fulfill one surveillance requirement and at operating pressure to fulfill another requirement.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning determination of significant hazards by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards consideration. Two of the examples, relate to changes which are (i) a purely administrative change, for example to achieve consistency, correct a typographical error or a change in nomenclature and (ii) an additional limitation, restriction, or control not presently included in the Technical Specifications. The first proposed

change, including the relief valve setpoints into the surveillance section of the Technical Specifications from the bases, constitutes a more stringent control. Therefore, this change is similar to example (ii) described above. The remaining proposed changes are editorial, in nature, because they either clarity language or rearrange items in the Technical Specifications for clarify rather than affecting the specifications in a technical manner. Therefore, since those changes are administrative, they are similar to example (i).

Therefore, since the application for amendment involves changes similar to examples for which a no significant hazards consideration exists, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 2006.

NRC Branch Chief: Domenic B. Vassallo.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: April 13, 1984.

Description of amendment request: The proposed amendment would change the section of the Technical Specification pertaining to instrumentation that initiates the diesel generators. Niagara Mohawk proposes to modify the existing logic for automatic initiation of the diesel generators during the 1984 refueling outage. The new logic will monitor phase-to-neutral voltage on all three voltage phases. A two-out-of-three logic will be used. Threre are two sets of relays for loss-of-voltage detection and two sets of relays for detecting a degraded grid condition. One set for loss-of-voltage and one set for a degraded grid is on each bus (Powerboards 102 and 103). The proposed Technical Specification takes into account the new logic.

Basis for proposed no significant hazards consideration determination: The licensee has presented its determination of significant hazards considerations as follows:

The Commission has provided guidance concerning the determination of significant hazards by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards consideration. One of the examples (ii), relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement. The proposed Technical Specification amendment imposes more stringent controls on the diesel generator initiation logic. This is accomplished by increased surveillance and operational requirements. This proposed determination is similar to example (ii) in that the changes constitute an additional control not presently included in the Technical Specifications.

The staff has reviewed the licensee's significant hazards considerations determinations and based upon this review, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Branch Chief: Domenic B. Vassallo.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: January 18, 1984.

Description of amendment request: The amendment would revise the testing requirements for hydraulic shock suppressors (snubbers) and add requirements for mechanical snubber operability and testing. The proposed changes were made in response to an NRC request to upgrade the testing requirements for all safety-related snubbers to ensure a higher degree of operability. The changes involve: clarifying the frequency for visual inspections; stating the requirements for functional testing of snubbers which visually appear inoperable; the inclusion of a formula for the selection of representative sample sizes; the clarifying of the testing acceptance criteria; and revising the method of snubber listing to incorporate more information.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards considerations include changes that constitute additional limitations or restrictions in the Technical Specifications. The proposed changes revise sections of the Technical Specifications related to hydraulic snubbers to clarify requirements and include additional testing, and incorporate both operability and testing requirements for mechanical snubbers. Since the requested changes upgrade the requirements for hydraulic snubbers and add requirements for mechanical snubbers, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Branch Chief: James R. Miller.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: September 24, 1982 and February 15, 1983.

Description of amendment request: The proposed amendment would modify the Technical Specifications as follows:

1. In the September 24, 1982 application, the proposed changes (a) would revise the surveillance requirements for snubbers to read "at least once per operating cycle" rather than "at least once per 18 months ±25%," and (b) would add additional snubbers to the list of safety-related hydraulic snubbers. Proposed change (a) would allow testing once per cycle and at testing intervals at less than the value of (18 months—25%). Change (b) adds snubbers to the surveillance program that were installed as part of the Mark I containment modifications program.

2. In the September 24, 1982 application, the proposed changes would revise the Table listing those valves needed for isolating primary containment. The proposed changes must revise the Table by (a) showing the correct normal position (open) of the recirculation loop sample valves, and (b) clarifying the specified normal position of the drywell and torus vent valves (certain valves are open to permit operation of the drywell-to-torus d/p system).

3. Lastly, in the September 24, 1982 application, the proposed changes would revise the limiting conditions for

operation to permit vacuum breaker cycling (i.e., opening, holding open for up to one minute, and closing) one vacuum breaker at a time during containment inerting and deinerting. The proposed change will allow cycling of the drywell-wetwell vacuum breakers during inerting and deinerting operations to aid in changing the gas mixture in the drywell-torus vent pipes and vent header. This represents a substantial fraction of the total containment free volume. Without vacuum breaker cycling, oxygen remains in this volume following inerting operations and additional purging is required following return to service. Following shutdown, vacuum breaker cycling can help clear this area of nitrogen and eliminate potential pockets of inert gas.

4. In the February 15, 1983 application, the proposed changes would add eight snubbers to the Table listing safety-related hydraulic snubbers and delete two of them. The licensee has proposed these changes because installation of the combustible gas control system modifications to the safety/relief valve discharge lines, and modifications to the torus-attached piping necessitates the addition of the eight snubbers to the Table. Two snubbers are being deleted from the Table because they have been replaced by restraints.

5. In the February 15, 1983 application, the proposed changes would correct a typographical error associated with the control rod withdrawal bases. The changes would correct the error from "10%" to "10^6."

6. And finally, in the February 15, 1983 application, the proposed changes would change "screen wash pump" to "screen wash fire pump" to indicate its use as a fire pump.

Other changes requested in September 24, 1982 and February 15, 1983 submittals have been noticed separately.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of 10 CFR 50.92 by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). These examples include:

"(i) A purely administrative change to the Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature;"

"(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement;" and

"(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan * * *"

Change No. 1 above would clarify and allow testing to be performed once per cycle and would also add snubbers which were installed as part of the Mark I containment modifications program to the list of safety-related hydraulic snubbers. This change would modify the frequency of snubber testing slightly and therefore could cause a small increase to the probability of a previously analyzed accident. However, the results of the change are clearly within all acceptable criteria with respect to the system or components with respect to Section 5.2.1.1, "Compliance with the Codes and Standards Rule, 10 CFR 50.55a" which is the applicable section of the Standard Review Plan. Therefore, the Commission proposes to determine that this change does not involve a significant hazards consideration since it is encompassed by example (vi) above.

Change No. 2 would revise the Table on Primary Containment Isolation (a) to show the correct normal position (open) of the recirculation loop sample valves and (b) to clarify the specified normal position of the drywell and torus vent valves. Present Technical Specifications permit certain of these valves to be open to maintain drywell-torus differential pressure. These valves will be normally closed following completion of the Mark I containment long-term modifications program as required by the revision. The revision constitutes an additional restriction and thus is encompassed by example (ii) above.

Change No. 3 would allow cycling of the drywell-wetwell vacuum breakers during inerting and deinerting operations to aid in changing the gas mixture in drywell-torus vent pipes and vent header. Cycling of drywell-torus breakers would be accomplished one at a time with an operator present at the test push-button. This operation is not much different than the monthly valve exercise test. If a vacuum breaker would stick open, the plant would be placed in cold shutdown as required by the existing Technical Specifications. Inerting and deinerting operations rarely occur more than one to three times per year. The ability to purge the vent header and vent pipes in a more thorough manner may be significantly improved if vacuum breakers are cycled. The proposed change may result in some increase to the probability of a previously-analyzed accident but the results of the change are still within all acceptable criteria with respect to the system or components with respect to Section 6.2.1.1.C, "Pressure Suppression Type BWR Containments," which is the applicable section of the Standard Review Plan. Therefore, the Commission proposes to determine that this change does not involve a significant hazards consideration since it is encompassed by example (vi) above.

Change No. 4 would add eight surveillance requirements for snubbers to the Table listing safety-related hydraulic snubbers and delete snubbers which will be removed because they are no longer required due to piping modifications. The proposed change deleting snubbers which are no longer required is purely administrative in nature and similar to example (i) for which no significant hazards consideration exists. The addition of snubbers to the Table constitutes an additional requirement and matches example (ii).

Change No. 5 would correct a typographical error associated with the control rod withdrawal bases. There is no change in design and the modification to the Technical Specifications does not change or allow any plant condition or operation which is not permitted under the current Technical Specifications. The change is encompassed by example (i) of the guidance provided by the Commission.

Change No. 6 would change "screen wash pump" to "screen wash fire pump" to indicate its use as a fire pump. This is purely an administrative change and is encompassed by example (i) of the guidance provided by the Commission.

Therefore, since all of the changes are encompassed by examples of changes which the Commission has determined are not likely to pose a significant hazards consideration, the staff proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendment: April 10, 1984.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) in the following areas:

1. An additional restriction would be included in the TS to reflect the installed post accident sampling system in response to NRC requirements imposed by NUREG Items II.B.3 and II.F.1.2 (TS 6.5–B4).

2. An additional restriction would be included in the TS to reflect the installed toxic gas detection system for detecting low concentrations of ammonia, formaldehyde and hydrochloric acid to protect the habitability of the Control Room. This addition to the TS is in response to the NRC requirement of NUREG–0737 Item III.D.3.4 (TS 3.13–F and Table TS 4.1–1).

3. Amendment Nos. 59 and 53 issued by letter dated October 21, 1982 contained an error regarding the maximum Low Level of Detection (LLD) requirements for the radioanalysis of Cesium 134 and 137 in food products. This change would lower the LLD requirements from 80 pCi/Kg wet to 60 pCi/Kg wet for Cs 134 and Cs 137 which is more restrictive and is consistent with the existing radioanalysis procedure used by the licensee.

4. An administrative error is proposed to be corrected in the TS related to Amendment Nos. 59 and 53 issued by our letter dated October 21, 1982. This administrative error deals with the fact that Figures TS 4.10–1 and TS 4.10–2 were intended to be deleted as part of Amendment Nos. 59 and 53 but were inadvertently omitted from the amendment. Figures TS 4.10–1 and TS 4.10–2 show the location of the radiation environmental monitors in the surrounding area of the plant site. The locations of these radiation environmental monitors are identified in Table 4.10–1 and therefore Figures TS 4.10–1 and TS 4.10–2 are no longer needed and serve no purpose in the TS.

5. The title of the head of the Nuclear Engineering Department appearing in Figure TS 6.1–2 would be changed so the title appearing in the figure would reflect the existing plant organization. This change appears to be administrative in nature and has no effect on the management function, the authority, or the responsibility of this position.

6. An administrative change would clarify and eliminate potential confusion when an action must be taken by the operator in the event a number of operable instrumentation channels related to the containment ventilation isolation system is less than that required by the TS. The proposed change involves the clarification of the purge valve position during fuel handling while the plant is shutdown and has no effect when the plant is above cold shutdown.

7. The licensee also requested numerous changes that correct misspelling of words and typographical errors based on the licensee's review of the TS and have absolutely no effect on the TS requirements nor do these corrections change the intent of the TS. These corrections have been reviewed by the staff and found acceptable.

Basis for proposed no significant hazards consideration determination: The Commission has given examples (48 FR 14870) of types of amendments not likely to involve a significant hazards consideration. One exmaple of this type (ii) is a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications. The proposed changes (items 1, 2 and 3 above) fall into this category in that they expand the scope of limited conditions for plant operation and expand the maintenance surveillance of plant equipment that was added due to NRC imposing additional requirements. Another example of this type (i) is a change that is purely an administrative change to technical specifications.

The proposed changes (items 4 through 7 above) fall into this category in that all of these changes either eliminate areas of confusion or errors or clarifies information appearing in the TS. Therefore, the Commission proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Mineapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Pennsylvania Power & Light Company, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: April 10, 1984.

Description of amendment request: The proposed amendment would change Technical Specification 4.7.1.3 to modify the requirements for determining the spray pond operable. The modification would change the average water temperature of the spray pond to "less than or equal to 88°F" from the current requirement of "less than or equal to 81°F."

Basis for proposed no significant hazards consideration determination: The licensee in his letter of April 10, 1984, stated that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The major changes to the licensee's analysis involve input changes to the model described in the Final Safety Analysis Report (FSAR) with the model itself remaining unchanged. The input changes represent more representative meteorological data and a revised basis for decay heat output. Both of these inputs meet established regulatory requirements. The licensee stated that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the current model in the FSAR has not changed and no hardware modifications are involved in this change. Therefore, the scenarios bounded by the previous evaluation are still appropriate. The licensee also stated that the proposed change does not involve a significant reduction in a margin of safety because the revised inputs provide analysis results using the most realistic available information. The staff agrees with the licensee's evaluation in this regard, and accordingly, the NRC staff proposes to find that the amendment request involves on significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M. Street N.W., Washington, D.C. 20036.

NRC Branch Chief: B. J. Youngblood.

Pennsylvania Power & Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: April 10, 1984.

Description of amendment request: The proposed amendment would change Technical Specification 4.7.1.3 to modify the requirements for determining the spray pond operable. The modification would change the average water

temperature of the spray pond to "less than or equal to 88°F" from the current requirement of "less than or equal to 81°F." The proposed amendment would also change Technical Specification 3.7.1.3 by modifying a portion of action statement a. to read "* * * greater than or equal to 663' Mean Sea Level (MSL), prepare and submit * * *" from the current statement of "* * * greater than or equal to 663' MSL, in lieu of any other report required by Specification 6.9.1, prepare and submit * * *"

Basis for proposed no significant hazards consideration determination: The licensee in their letter of April 10, 1984, stated that the proposed change to Technical Specification 4.7.1.3 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The major changes to the licensee's analysis involve input changes to the model described in the Final Safety Analysis Report (FSAR) with the model itself remaining unchanged. The input changes represent more representative meteorological data and a revised basis for decay heat output. Both of these inputs meet established regulatory requirements. The licensee stated that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the current model in the FSAR has not changed and no hardware modifications are involved in this change. Therefore, the scenarios bounded by the previous evaluation are still appropriate. The licensee also stated that the proposed change does not involve a significant reduction in a margin of safety because the revised inputs provide analysis results using the most realistic available information. The staff agrees with the licensee's evaluation in this regard, and accordingly, the NRC staff propose to find that the amendment request to Technical Specification 4.7.1.3 involves no significant hazards consideration. The proposed change to Technical Specification 3.7.1.3 is in response to new reporting requirements of 10 CFR Part 50, Sections 50.72 and 50.73. Section 50.72 revises the immediate notification requirements for operating nuclear power reactors. The new Section 50.73 provides for a revised Licensee Event Report systems. In addition, Section 50.73 paragraph (g) specifically states that "the requirements contained in this section replace all existing requirements for licensees to report 'Reportable Occurrences' as defined in individual plant Technical Specifications." The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards considerations by providing certain examples published in the **Federal Register** on April 6, 1983 (48 FR 14864). One of the examples of an amendment which will likely be found to involve no significant hazards consideration is a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The proposed change to Technical Specification 3.7.1.3 falls within the Commission's example (vii) of a change not likely to involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street N.W., Washington, D.C. 20036.

NCR Branch Chief: A. Schwencer.

Pennsylvania Power & Light Company, No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: May 4, 1984.

Description of amendment request: The purpose of the proposed amendment request is to change Technical Specifications 3.6.1.2 and 4.6.1.2 to account for bypass leakage through the feedwater system as a source of known bypass leakage. The changes revise leakage and testing requirements to include the bypass leakage through the feedwater system as a source of known bypass leakage. The change also provides a new Table 3.6.3–2 which more clearly defines the bypass pathways and leakage criteria. The proposed change also includes changes of an administrative nature by correcting a typographical error in ACTION statement e. of Technical Specification 3.6.1.2 and providing clarification to Technical Specification 4.6.1.2. i by identifying the specific technical specifications for which Specification 4.0.2 is not applicable instead of the "* * * 24 month or 40±10 month surveillance intervals."

Basis for proposed no significant hazards consideration determination: The licensee in their letter of May 4, 1984, states that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes are enveloped by the existing Final Safety Analysis Report, Chapter 15 analysis of the radiological consequences of a large break LOCA. The licensee stated that the proposed changes do not create the possibility of a new or different kind of accident than previously evaluated because the previous analysis did not distinguish bypass leakage by specific systems, but as a total bypass leakage rate. The maximum total bypass leakage rate allowable remains unchanged. The licensee also stated that the proposed changes do not involve a significant reduction in the margin of safety because the change is consistent with the assumptions in the governing safety analysis and the margin of safety set by that analysis is unaffected. The staff agrees with the licensee's evaluation in this regard, and accordingly, the NRC staff proposes to find that the changes concerning bypass leakage involve no significant hazards consideration.

The Commission has provided guidance concerning the application of the no significant hazards consideration standards by providing certain examples (48 FR 14870). One of the examples of actions not likely to involve a significant hazards considerations, example (i), relates to a purely administrative change to technical specifications to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The NRC staff proposes to find the change to ACTION e. of Technical Specification 3.6.1.2 and the change to Technical Specification 4.6.1.2.i are purely administrative changes, and therefore, do not involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street N.W., Washington, D.C. 20036.

NRC Branch Chief: A. Schwencer.

Pennsylvania Power & Light Company, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of Amendment request: May 4, 1984.

Description of amendment request: The purpose of the proposed amendment request is to change Technical Specifications 3.6.1.2 and 4.6.1.2 to account for bypass leakage through the feedwater system as source of known bypass leakage. The proposed amendment is in response to the requirements of License Condition 2.a of Attachment 1 to Operating License No.

NPF–22. The changes revise leakage and testing requirements to include the bypass leakage through the feedwater system as a source of known bypass leakage. The change also provides a new Table 3.6.3–2 which more clearly defines the bypass pathways and leakage criteria.

Basis for proposed no significant hazards consideration determination: The licensee in his letter of May 4, 1984, stated that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes are enveloped by the existing Final Safety Analysis Report, Chapter 15 analysis of the radiological consequences of a large break LOCA. The licensee stated that the proposed changes do not create the possibility of a new or different kind of accident than previously evaluated because the previous analysis did not distinguish bypass leakage by specific systems, but as a total bypass leakage rate. The maximum total bypass leakage rate allowable remains unchanged. The licensee also stated that the proposed changes do not involve a significant reduction in the margin of safety because the change is consistent with the assumptions in the governing safety analysis and the margin of safety set by that analysis is unaffected. The staff agrees with the licensee's evaluation in this regard, and accordingly, the NRC staff proposes to find the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: B. J. Youngblood.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: August 6, 1981, as supplemented April 2, 1984.

Description of amendment request: The amendment application requests that the Technical Specifications (TSs) be revised to correct a typographical error, change an Appendix B (Environmental) administrative reporting requirement from "10 days" to "10 working days" to achieve consistency with Appendix A administrative requirements and, finally, to permit an alternative method of verifying drywell to suppression chamber vacuum breaker closure not currently specified in the TSs. This last proposed change would permit the use of a verification test in the event that the vacuum breaker valve position lights do not confirm a vacuum breaker to be in the fully closed position.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether license amendments involve significant hazards considerations by providing certain examples which were published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples (i) of an action involving no significant hazards considerations is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or change in nomenclature.

The proposed amendment requests correcting a typographical error (i.e., a misspelled word) and changing an Appendix B environmental reporting requirement to achieve consistency with the companion Appendix A administrative reporting requirement match the above example. In addition, the Appendix B change would not affect any current safety limitations related to the operation of the facility, because no safety operational limits are being changed. Based upon the above, the staff proposes to determine that these two proposed changes do not involve a significant hazards consideration.

The requested change involving the use of a drywell to suppression chamber bypass area test to verify the fully closed condition of all vacuum breakers is a proposed alternative TS approach in the event the vacuum breaker indicator lights do not confirm a fully closed position. Occasionally, the licensees indicate that both open and close position lights will illuminate while the plant is at power indicating that the vacuum breaker may not be in the fully closed position. The licensees propose that in such an event that the TSs permit the use of a leak test to verify that all drywell to suppression chamber vacuum breakers are fully closed. The proposed change appears to provide a valid backup method of verifying the conditions imposed by the current TSs in Section 3.7.1.4.b and does not change the action statements specified in Section 3.7.A.4.d. Therefore, the proposed change appears not to:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

For this reason, the Commission proposes to determine that this amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, D.C. 20006.

NRC Branch Chief: George W. Rivenbark. Acting Chief.

Portland General Electric Company et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 24, 1984.

Description of amendment request: The amendment request was submitted in response to NRC Generic Letter 83–37 which was sent to all licensees of pressurized water reactors to incorporate technical specifications for equipment added or modified as a result of post-TMI safety improvements approved by the Commission in NUREG–0737. Specifically, the amendment request provides new technical specifications for the reactor vessel head vent and the containment pressure wide range monitor. The new technical specifications would require this new equipment to be operable and to be periodically tested.

The balance of the request involves revised technical specifications for the containment hydrogen analyzer and the control room chlorine detection system. The specification for the hydrogen analyzer would be changed to add an action statement for the case where both hydrogen analyzer are inoperable. The technical specification for the control room chlorine detection system would also add an action statement for the case of both detectors inoperable, and allow operation for 7 days with one detector inoperable before requiring the ventilation system to be placed in the recirculation mode for operation. The revision would allow reactor mode changes to occur with inoperable chlorine detectors. Both changes for the hydrogen and chlorine monitors are consistent with NRC's requested changes in Generic Letter 83–37.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples of an action not likely to involve a significant hazards consideration is "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example a more stringent surveillance requirement." The proposed technical specifications for the reactor vessel head vent and the containment pressure monitor represent additional controls not presently contained in the technical specifications. The proposed technical specification for the hydrogen analyzer (adding the action to be taken when both are inoperable) represents a minor change to existing requirements that is consistent with the NRC request.

Another of the examples of an action likely to involve a significant hazards consideration is "(vi) A change which may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method." The changes for the chlorine monitor are similar to this example since they appear to involve a minor reduction in a safety margin, and the changes are consistent with the changes requested by NRC in Generic Letter 83–37. These changes will be incorporated into the next regular revision of the NRC's Standard Technical Specifications, which is similar to the Standard Review Plan for technical specifications.

Based on the foregoing, the Commission proposes to determine that the application for amendment does not involve significant hazards considerations.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: James R. Miller.

Portland General Electric Company et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 26, 1984.

Description of amendment request: The amendment would make a minor change to the minimum required load for testing of the emergency diesel generators (EDGs) to correct an error. Specifically, the minimum required load for the 50% load test would be changed from 1682 kilowatts (kW) to 1690 kW; the 100% load test value would be changed from 3364 kW to 3380 kW.

The amendment would also delete one of the surveillance tests for the EDGs. Currently, the technical specifications require that at least once per 18 months, with the plant shutdown, it be verified that on a simulated loss of the EDG, with off-site power not available, the loads are shed from the emergency busses and that subsequent loading of the EDG is in accordance with design requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for determining whether a requested amendment involves or does not involve a significant hazards consideration by providing examples which were published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples of an amendment not likely to involve a significant hazards consideration is a purely administrative change to the technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The revised load test values described above clearly match this example.

Another of the examples of an amendment not likely to involve a significant hazards consideration is a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed change to delete the surveillance test is very similar to this example because it may involve a minor relaxation in requirements but the proposed amendment was submitted in response to NRC Generic Letter 83–30. The NRC letter explained that this particular test was not consistent with the Standard Review Plan and that this test would be removed from the next revision of the Standard Technical Specifications.

Since both of the proposed changes are similar to examples of amendments which have been deemed not likely to involve a significant hazards consideration, the NRC staff proposed to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: James R. Miller.

Portland General Electric Company et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 26, 1984.

Description of amendment request: The amendment would revise the surveillance requirements for verifying reactor shutdown margin when (1) one or more control rods are immovable or untrippable and (2) when starting up the reactor.

With respect to (1) above, present technical specifications require that the required shutdown margin be increased by an amount at least equal to the withdrawn worth of the immovable or untrippable control rods. The proposed change would require that the necessary shutdown margin be verified acceptable with an increased allowance for the withdrawn worth of the immovable or untrippable control rods.

With respect to the second change, present technical specifications require that shutdown margin be verified at least once during control rod withdrawal and once per hour thereafter until the reactor is critical. This would be revised to require verifying shutdown margin within 4 hours prior to achieving reactor criticality by verifying that the predicted critical rod position will be within the rod bank insertion limit curve.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for determining whether a requested amendment involves or does not involve a significant hazards consideration by providing examples which were published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples of an amendment not likely to involve a significant hazards consideration is a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but

where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed amendment is very similar to this example because it may involve a minor relaxation in requirements but the proposed amendment is entirely consistent with NUREG–0452, Revision 4, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors," which is equivalent to the Standard Review Plan for technical specifications. Based on the foregoing, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: James R. Miller.

Portland General Electric Company, Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 27, 1984.

Description of amendment request: The amendment would make miscellaneous changes to the technical specifications involving fire protection and administrative controls. Specifically, one smoke detector should be deleted from Table 3.3–10 since it was listed twice; the fire pump diesel starting battery surveillance would be changed to require monthly verification of charging current rather than monthly verification of cell specific gravity; operability requirements for the sprinkler systems for the service water booster pump and component cooling water pump areas would be added; the operability requirement for the cable spreading room sprinkler system would be clarified to indicate that either manual or automatic initiation meets the operability requirement (not currently specified); the functional test requirement would be reworded to require performing "system functional tests" rather than the present "perform system functional tests which includes simulated automatic actuation;" the audit requirement would be modified to clarify that audits do not encompass, in a single audit, all areas, and therefore the words "all" and "entire" would be deleted; finally, a special report on penetration fire barriers would be added to the listing of special reports.

Basis for proposed no significant hazards consideration determination: The change to delete one smoke detector from Table 3.3–10 is administrative, since it is listed twice.

Monthly verification of the fire pump diesel starting battery by charging current reading vs. specific gravity is more appropriate for the new nickel cadmium batteries, according to the licensee, which states that monitoring cell specific gravity would not provide as meaningful information as to battery condition. In any event, this does not raise a significant safety question considering that this is but one of many tests the battery must pass periodically.

Operability requirements for the service water booster pump and component cooling water pump sprinkler areas are being added because these fire protection features were recently added. These are the same requirements as for other sprinkler systems.

The cable spreading room sprinkler system change clarifies that the system can function automatically or manually and meet its operability requirement, since Appendix R requires a "fixed fire suppression system" and does not require that it be automatically initiated.

The rewording regarding system functional tests (see above) is an editorial clarification and does not involve any change in testing requirements. The term "simulated automatic actuation" was causing some confusion.

The change to delete the words "all" and "entire" from audits is editorial because it was not intended that a single audit encompass *all* areas. It was intended to indicate that all areas should be subject to possible audit. Deleting these words would help restore the intent.

Finally, adding the special report to the list is administrative since the requirement already exists—it was merely missing from the list.

Based on the foregoing, for each of the changes, it appears that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident, or (3) involve a significant reduction in a margin of safety. Therefore, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: James R. Miller.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 27, 1984.

Description of amendment request: The current technical specifications require sealed sources (except those which are stored and not in use) to be tested for leakage and/or contamination at intervals not to exceed six months. Under the proposed amendment, sealed sources *installed in fixed plant equipment* would be tested upon receipt, prior to conducting maintenance on the associated equipment, at least once per refueling outage (about annually under present refueling schedules), and prior to transfer to another licensee.

Basis for proposed no significant hazards consideration determination: Sources to be subjected to annual testing instead of the current 6-month interval would be all be contained within fixed plant equipment. Since such sources would be tested prior to maintenance (opening the fixed plant equipment) as well as annually, it appears that the proposed amendment would continue to provide a high degree of assurance that such sources are either leak-free or will not spread contamination beyond the inside of the equipment should they not be leak-free.

Therefore it appears that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated or (2) create the possibility of a new or different kind of accident, or (3) involve a significant reduction in a margin of safety. Based on the foregoing, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: James R. Miller.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: April 3, 1984.

Description of amendment request: By NRC Generic Letter 83–43 to all licensees model Technical

Specifications were forwarded which showed the revisions of reporting requirements as necessitated by § 50.72 and 50.73 of Title 10 of the Code of Federal Regulations. Section 50.72 revises the immediate notification requirements for operating nuclear power plants. Section 50.73 provides for a revised Licensee Event Report System.

By letter dated April 3, 1984 the Power Authority of the State of New York submitted a proposed license amendment for NRC review and approval which reflects changes to reporting requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change to make the license conform to changes in the regulations where the change results in very minor changes to facility operations clearly in keeping with the regulations. The NRC initial review of the licensee's submittal indicates that this is the case. Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Steven A. Varga.

Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: May 10, 1984.

Brief description of amendment: The proposed change to the Technical Specifications would modify the secondary coolant activity analysis requirements. The change would: (1) Eliminate the need for daily sampling if the activity increases by 25% over an equilibrium value, and (2) require daily sampling and analysis if the activity increases to 10 percent instead and weekly sampling at all other times during reactor operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions that are considered not likely to involve significant hazards consideratons include changes that consitute an additional limitation, restriction or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement.

Because the proposed changes will impose a more stringent sampling and analysis frequency, we propose to determine that this action involves on significant hazards considerations.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201.

NRC Branch Chief: Eric H. Johnson.

Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: May 10, 1984.

Brief description of amendment: The proposed change to the Technical Specifications would increase the primary helium circulator overspeed trip setting from 115 percent to 123 percent of rated speed.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). The examples of actions that are considered not likely to involve significant hazards considerations include changes which either may result in some increase to the probability or consequences of a previosuly analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: For example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

Since the proposed change will allow the circulators to operate at a higher speed prior to an automatic trip, there may be a small reduction in the safety margin for circulator protection. However, the anaylsis indicates that significant safety margin continues to exist; therefore, the staff proposes to determine that this action does not involve a significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201.

NRC Branch Chief: Eric H. Johnson.

Rochester Gas and Electric Corporation, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: January 19, 1984.

Description of amendment request: The proposed amendment would change; (1) the lower limit on the pressurizer level from 12% to 10.6% and (2) the P–10 permissive from 10% power to 8% power.

Basis for proposed no significant hazards consideration determination: The current Ginna specification on pressurizer water level states that the pressurizer level shall be maintained between 12 and 87%. The upper limit is based on a high level trip set point with sufficient margin to account for reference leg heatup. There is no comparable basis for the 12% lower limit.

Neither the Standard Review Plan (NUREG–0800), Chapter 16 nor the Westinghouse Standard Technical Specifications (NUREG–0452, Revision 4) requires a minimum value of the pressurizer water level. The inclusion of a lower limit at Ginna and the monitoring thereof provides additional information to the operators. Considering the a lower limit will be included in the Ginna Technical Specifications, setting the limit at 10.6% is appropriate because both isolation of the reactor coolant system (RCS) letdown and de-energizing of the pressurizer heaters occur at 10.6%. The heaters would not be uncovered unless the level would reach 5% so there is no concern regarding heater burnout. Changing the lower pressurizer level limit from 12 to 10.6%, consistent with the low pressurizer heater de-energization point and isolation of the RCS letdown does not create the possibility of a new or different kind of accident, or involve a significant increase in the probability or consequences of an accident previously evaluated. Further, the change does not involve a significant reduction in a margin of safety.

The P–10 permissive allows manual blocking of the intermediate range rod stop, the intermediate range high flux trip, and low set point of the power range high flux trip above 10% power. These trips are used to mitigate the consequences of a rod withdrawal transient from subcritical.

The proposed Technical Specification change for the P–10 permissive would allow the above trips to be bypassed

(blocked) at 8% power. This change is necessary because P–7 comes from the same power range bistable that supplies P–10, P–10 must be actuated at 8% power to satisfy the requirements for P–7. P–7 automatically unblocks the following reactor trips: 2 loop low flow, reactor coolant pump bus undervoltage, reactor coolant pump bus underfrequency, pressurizer low pressure, and turbine trip with P–9. These trips are associated with the 130 MW which is the upper limit of heat removal while on natural circulation.

The only transient analysis which uses this trip is a slow rod withdrawal. (Boron dilution is bounded by the slow rod withdrawal.) The only effect of reducing P–10 to 8% would be that a rod withdrawal accident (RWA) starting from 8% would be terminated by high flux and overtemperature delta T versus the intermediate and reduced high power trips. An evaluation performed on the RWA starting from 8% and 10% for various reactivity insertion rates shows approximately the same (DNBR) when the RWA is initiated from 8% versus 10% power. Further, there is substantial margin between the DNBR for a RWA from 10% and the limiting RWA from 100% power. The DNBR for a RWA starting from 8% will also be greater than the DNBR for the limiting RWA started from 100% power. Therefore, reducing P–10 to 8% has negligible effect on the Ginna Safety Analysis and the minimum DNBR for call RWAs is unchanged.

Changing the P–10 set point from 10% to 8% does not create the possiblity of a new or different kind of accident from any accident previously evaluated. The accident of concern, a rod withrawal accident (RWA), has been previously considered. The effect of the proposed change in P–10 on a RWA would be that the accident would be terminated by high flux and overtemperature delta T versus the intermediate and high power trips. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated and does not involve a significant reduction in a margin of safety. Therefore, the staff proposes to determine that the requests involve no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14604.

Attorney for licensee: Harry H. Voigt, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, N.W., Suite 1100, Washington, D.C. 20036.

NRC Branch Chief: Dennis M. Crutchfield.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: July 22, 1983.

Description of amendment request: The amendment corrects an error in Technical Specifications involving incorrect time constants in the overpower delta T and overtemperature delta T equations. The amendment also deletes unnecessary portions of those two equations involving multiplication by a factor of one and the addition of zero. Finally, the remaining variables will be renumbered for administrative purposes.

Basis for proposed no significant hazards consideration determination: Time constants Tau 1 and Tau 2 are incorrectly identified as 8 and 3 respectively in the overpower delta T and overtemperature delta T equations in Technical Specifications. The correct value from the safety analyses is zero for both of these time constants. Also, in each of these two equations, there are portions of the equations which involve multiplication by a factor of one or the addition of zero. Since multiplying by one or adding zero has no effect on the equations, those portions are being deleted. The variables left following deletion of the unnecessary variables will be renumbered for administrative purposes. The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples relates to a purely administrative change to Technical Specifications such as correction of an error. The amendment involved here is similar in that is corrects errors in Technical Specifications, deletes unmeaningful portions of equations, and renumbers the remaining equation variables. Accordingly, the Commission proposes to determine that this change does not include a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, P.O. Box 764, Columbia, South Carolina 29180.

NRC Branch Chief: Elinor G. Adensam.

Southern California Edison Company, Docket No. 50206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: August 29, 1977, supplemented October 20, 1978 and revised May 8, 1984.

Description of amendment request: The proposed amendment would modify the Technical Specifications to add limiting conditions for operation and surveillance requirements for the overpressure mitigation system (OMS). The May 8, 1984 submittal is a revision to the request for amendment dated August 29, 1977 and October 20, 1978 which was noticed in the **Federal Register** on July 20, 1983 (48 FR 33088). This submittal adds two additional technical specifications which (1) add the requirement for a channel test for the low pressure setpoint within 31 days prior to placing the OMS into operation on cooldown and (2) revise the reactor collant pump start criteria when the reactor coolant system is water solid to specifically indicate that the temperature differential between the primary and secondary systems should not exceed 50°F. These changes were made in response to an NRC letter dated October 28, 1982 which transmitted the NRC's safety evaluation report on the OMS. In addition, the setpoint for initiation of the OMS is being lowered from 522 psig to 500 psig. A lower setpoint would result in initiation of the OMS sooner in the event of a system pressure increase and thus does not decrease the margin of safety.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards of no significant hazards consideration determination by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (ii) of actions likely to involve no significant hazards considerations relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

The licensee's proposed amendment would add limiting conditions for operation and surveillance requirements not presently included in the Technical Specifications. The proposed amendment, therefore, falls within the category of the cited example and the staff proposes to determine that it would not involve a significant hazards consideration in that it (1) does not involve a significant increase in the probability or consequences of an

accident previously evaluated; (2) does not create the possibility of a new or different kind of accident from any accident previously evaluated; and (3) does not involve a significant reduction in a margin of safety.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, James Belotto, Esquire, Southern California Edison Company, Post Office Box 800, Rosemead, California 91770.

NRC Branch Chief: Dennis M. Crutchfield.

Southern California Edison Company, Docket No. 50206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: April 12, 1984.

Description of amendment request: This submittal is a revision to the request for amendment dated September 9, 1983 which was noticed in the Monthly **Federal Register** Notice on November 22, 1983 (48 FR 52827). The amendment would incorporate the containment leak testing requirements of 10 CFR Part 50, Appendix J into the Technical Specifications. The above submittal modifies the initial amendment request to (1) clarify that airlock testing is done at 49.4 psig at six month intervals and at 10 psig within 72 hours following each opening, except when the air lock is being used for multiple entries, then at least once per 72 hours; and (2) provide acceptance criteria for the airlock leakage tests at 49.4 psig and at 10 psig. In addition, as part of the response to Multi-Plant Action B24, Containment Purging/ Venting During Normal Operations, Technical Specification changes are proposed to require seal tests on passive containment ventilation isolation valves every six months and on active containment ventilation isolation valves every three months. The September 9, 1983 letter proposed a six-month frequency for both passive and active containment ventilation isolation valves. The change to 3 months was requested by the staff in a letter dated February 17, 1984.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a requested action involves a significant hazard consideration by providing certain examples (48 FR 14870, April 6, 1983). One of the examples, of actions likely to involve no significant hazards considerations, related to (vii) a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The licensee's submittal of September 9, 1983 included a discussion of the proposed action with respect to the no significant hazards consideration. This discussion is also applicable to the modifications in the April 12, 1984 letter. This discussion has been reviewed and the Commission finds it acceptable. The licensee stated, "the proposed change discussed above is deemed not to constitute a significant hazards consideration based on the fact that the proposed change constitutes additional restrictions and controls not presently included in the technical specifications." Further, the proposed changes are to make the Technical Specifications conform to the requirements of appendix J to 10 CFR Part 50. Therefore, the proposed amendment falls within the category of the example cited above and the Commission proposes to determine that the application does not involve a significant hazards consideration in that it (1) does not involve a significant increase in the probability or consequences of a previously evaluated accident; (2) does not create the possibility of a new or different kind of accident from an accident previously evaluated, and (3) does not involve a significant reduction in a margin of safety.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, Post Office Box 800, Rosemead, California 91770.

NRC Branch Chief: Dennis M. Crutchfield.

Southern California Edison Company, Docket No. 50206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of Amendment request: May 1, 1984.

Description of amendment request: This amendment would modify the Administrative Controls sections of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards of no significant hazard consideration by providing certain examples (April 6, 1983, 48 FR 14870). One set of the proposed changes is to bring the specifications into compliance with new § 50.73 of Title 10 of the Code of Federal Regulations in response to Generic Letter 8343. The new rule provides for a revised Licensee Event Report system; staff recommended changes in reporting requirements as a result of the rule are given in Generic Letter 8343. These changes, therefore, fall in category (vii), changes to make the license conform to changes in the regulations where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

In response to Generic Letter 8216, the requirements for the monthly operating report have been revised to include documentation of all challenges to pressurizer safety and relief valves (part of TMI Action Item II.K.3.3). This change falls within category (ii), an additional limitation, restriction or control not presently included in the technical specifications.

The administrative controls specifications are being revised to be more consistent with the Westinghouse Standard Technical Specifications and the San Onofre Units 2/3 Specifications. These changes include formatting, renumbering of sections, and wording changes which do not alter the intent of the specifications but make them conform more closely with the Standard Technical Specifications. Sections of Chapter 6 of the TS relating to another proposed change (PC 83, Radiological Effluent TS) now under staff review are renumbered as a result of the above changes. These changes, therefore, fall within category (i), purely administrative changes.

The last set of changes is proposed to recognize new position titles as a result of utility organization changes and to clarify the responsibilities of persons within the utility's nuclear organization. A specification has been added to clarify who may assume the control room command function and to recognize the positions of shift superintendent and control room supervisor as part of the minimum shift crew composition; words have been added further describing the function of the Shift Technical Advisor; and training requirements are revised to include post-TMI required training.

Management positions have been added to the offsite organization with responsibility for operations and maintenance support; and materials and administrative services. In addition, these positions are under the vice president responsible for nuclear generation services (operations). Responsibility for nuclear engineering,

safety and licensing has been transferred to another vice president. Previously, all of these areas were under one vice president. These changes are intended to provide increased executive level attention and oversight over all nuclear activities. These changes, therefore, are considered not to decrease the effectiveness of the licensee's administrative controls. On this basis, the staff proposes to determine that the requested action would involve a no significant hazards consideration determination in that it (1) does not involve a significant increase in the probability or consequences of an accident previously evaluated, (2) does not create the possibility of a new or different kind of accident from any accident previously evaluated and (3) does not involve a significant reduction in a margin of safety.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles H. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, Post Office Box 800, Rosemead, California 91770.

NRC Branch Chief: Dennis M. Crutchfield.

Southern California Edison Company, et al. Docket Nos. 50–361, and 50–362 San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Data of amendment request: July 23, 1982, August 16, 1982, December 17, 1982, January 28, 1983, January 25, 1984, and April 13, 1984 (reference PCN–004).

Description of amendment request: The amendments would revise Table 4.3–2 of Technical Specification 3/4.3.2, Engineered Safety Features Actuation System (ESFAS) instrumentation. Technical Specification 3/4.3.2 requires that the ESFAS instrumentation channels be operable, and defines a number of functional tests and response time tests that must be periodically conducted in order to assure such operability. Table 4.3–2 defines the frequency and operational modes for which surveillance must be conducted to verify operability of each of several types of ESFAS Instrumentation. Specifically, Table 4.3–2 requires semi-annual testing of 102 ESFAS subgroup relays associated with the actuation logic for the Safety Injection Actuation System (SIAS), Containment Spray Actuation System (CSAS), Containment Isolation Actuation System (CIAS), Main Steam Isolation System (MSIS), Recirculation Actuation System (RAS), Containment Cooling Actuation System (CCAS) and Emergency Feedwater Actuation System (EFAS). Note (4) of Table 4.3–2 requires that this semi-annual testing include energization/deenergization of each subgroup relay. Energization/deenergization of a subgroup relay necessarily results in actuation of the equipment controlled by the relay. Actuation during power operation of equipment associated with 23 of the 102 ESFAS subgroup relays will result in a plant trip or place the plant in an unsafe configuration. As a result, testing of these relays in accordance with note (4) of the existing Technical Specification requires a plant shutdown.

The proposed change would revise note (4) of Table 4.3–2 to exempt from testing during plant operation the 23 subgroup relays associated with equipment which cannot be safely actuated during plant operation or would trip the plant. The proposed change would require testing of each of these 23 relays during each cold shutdown of duration exceeding 24 hours unless the relay was tested during the previous six months. Since the maximum operating time between refuelings is 18 months, the maximum interval between testing of subgroup relays exempted from testing during power operation by the proposed change is 18 months, although it maybe less. Therefore, the proposed change will result in a change in the maximum surveillance interval of the 23 affected relays from 6 months to 18 months.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (vi) relates to a change which either may result in some increase in the probability or consequences of a previously-analyzed accident or may in some way reduce a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP). Section 7.3 of the Standard Review Plan references Regulatory Guide 1.22, "Periodic Testing of Protection System Actuation Functions," which recommends that provisions be made to accommodate periodic testing of ESFAS subgroup relays at power. However, where the subgroup relay actuates equipment which will trip the plant or which cannot be safely operated at power, Regulatory Guide 1.22 provides for exceptions to this requirement where it can be demonstrated that relay assignments have been made in a manner which minimizes the number which cannot be tested at power. In this case, the relay assignments have been made such that only 23 out of 102 relays cannot be tested at power. The SRP acceptance criteria are satisfied by the proposed change in that the number of relays which cannot be tested at power is minimized and that periodic tesing (with a maximum interval between tests of 18 months) is still required. Thus, the proposed change is similar to example (vi) of 48 FR 14870. Therefore, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocker, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliff, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: April 30, 1982 as supplemented June 10, 1982.

Description of amendment request: The proposed amendments would modify the Technical Specifications to:

1. Delete a statement in the definition of Limiting Conditions for Operations (LCO), which specifies that the reactor is to be placed in at least Hot Standby within six hours, and Cold Shutdown within the following 30 hours if required equipment has inoperable power sources or inoperable redundant components. (Units 1, 2 and 3)

2. Expand the definition of Rated Power to acknowledge that operation at rated power may involve brief periods of operation in excess of rated power provided the eight-hour average power level does not exceed the licensed level. Exclusions would be limited to 100.5% for one hour, 101% for ½ hour, or 102% for 15 minute, not to exceed 102%. (Units 1, 2 and 3)

3. Expand the requirements for minimum number of operable instrument channels for reactor water cleanup (RWCU) system floor drain high temperature isolation. Two channels per

"trip system" are presently specified. A note would be added to indicate that two operable channels are required for each floor drain location. (Units 1, 2 and 3)

4. Provide correct indication for which Residual Heat Removal Service Water (RHRSW) system pump timers are required to be operable for automatic initiation of emergency cooling. (Units 1, 2 and 3)

5. Change the pressure suppression chamber water level setpoint for high pressure coolant injection suction switchover from seven inches above normal suppression chamber water level to seven inches above instrument zero. (Units 1, 2 and 3)

6. Correct a typographical error. Note 9 in Table 3.2.B references Specification "3.5.1." The correct reference is "3.5.H." (Units 1, 2 and 3)

7. Eliminate surveillance requirements for remote temperature detectors serving the RWCU system space. (Units 1, 2 and 3)

8. Add the diesel generators to the LCO which specifies equipment required to be operable to support RHR containment cooling mode operation. (Units 1, 2 and 3)

9. Revise surveillance requirements such that additional surveillance testing of an operable RHRSW pump and its associated diesel generator, heat exchanger, and control valves, is not required unless three RHRSW pumps supplying standby cooling water are inoperable. Additional surveillance testing, at 15-day intervals, is presently required when only one pump is inoperable. (Unit 2)

10. Revise the referenced rate of change of suppression pressure which corresponds to the amount of allowable leakage. The presently referenced rate is 0.25 inches H_2O per minute. The correct value for Browns Ferry suppression chambers is 0.38 inches of water per minute. (Units 1, 2 and 3)

11. Eliminate a requirement that when performing control rod drive (CRD) maintenance with fuel remaining in the control cell (adjacent fuel assemblies), all remaining CRDs shall have their directional control valves disarmed. Also, eliminate the requirement for a shutdown margin demonstration with the strongest rod out, when CRD maintenance is performed during refueling. (Units 1, 2 and 3)

12. Delete two environmental sampling points for raw milk. (Units 1, 2 and 3)

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of their criteria for a proposed no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). These examples include:

"(i) A purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature";

"(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirements";

"(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan * * *" and

"(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations."

The general action statement contained in Section 1.0.C.2 of the Definitions is unnecessary and a source of confusion. Specific action statements for equipment and power source inoperability are provided in the Limiting Conditions for Operation, and circumstances in excess of those are covered by Section 1.0.C.1 of the Definitions. Change 1 will provide consistency between Section 1.0, "Definitions," and Section 3.0, "Limiting Conditions for Operation" and is therefore encompassed by example (i).

Change 2 would provide a definition of "steady state reactor core power," a term used in the license but presently undefined. The two percent excursions permitted by the definition are of short duration and are within allowances provided for in transient and accident analyses. Change 2 may result in some increase to the probability or consequences of an accident or may reduce the safety margin in some way, but the results are clearly within acceptance criteria for events analyzed under Standard Reveiw Plan Section 15 and therefore, is encompassed by example (vi).

Table 3.2.A of the Technical Specifications requires that primary containment isolation instrumentation have a minimum of two operable channels per trip system. Change 3 would add an additional requirement for two independent channels at each (RWCU floor drain) location. This change constitutes an additional limitation and is therefore encompassed by example (ii).

The Technical Specifications presently specify operability requirements for RHRSW pumps A3, B1, C3 and D1. However, of the 12 idenitical RHRSW pumps, A1, B3, C1 and D3 are actually used to provide the required emergency cooling service. This change corrects an error and is therefore encompassed by example (i).

Change 5 would change the high pressure coolant injection (HPCI) switchover reference ievel from an arbitrary datum to a fixed datum. The physical setting of the instrumentation would not change as a result of Change 5. This change is therefore encompassed by example (i).

Change 6 corrects an editorial error and is therefore encompassed by example (i).

The Technical Specifications presently require surveillance testing of the resistance temperature devices (RTD) and temperature switch instrumentation channels serving the RWCU space. However, the required instrumentation is served by the temperature switches only. The licensee proposes to eliminate the references to both the RTDs and the temperature switches and simply specify surveillance requirements for the RWCU space high temperature channels (without reference to the type of sensors), similar to the specifications for other instrument channels. This would have the effect of eliminating operatibility requirements for the non-safety RTD channels which are not required for automatic isolation of the RWCU space. Because the RTD information channels may in some way be useful in the event of an accident, this change may in some way reduce a safety margin but the results of the change are clearly within the Standard Review Plan Section 7 acceptance criteria. This change is therefore encompassed by example (vi).

Change 8 constitutes an additional Limiting Condition for Operation not presently included in the technical specifications. This change is therefore encompassed by example (ii).

Units 1 and 3 are each served by two RHRSW pumps; increased surveillance testing of the operable pump required if one pump is inoperable. Unit 2 is served by four pumps, with increased surveillance testing required if one is inoperable. Changing the Unit 2 specifications such that increased surveillance is not required unless three pumps are inoperable would provide

Unit 2 with a margin of safety comparable to Units 1 and 3. This change may in some way increase the probability or consequences of an accident but the change is clearly within the acceptance criteria for General Design Criterion 44. This change is therefore encompassed by example (vi).

Change 10 would correct an error in the bases of a technical specification. The rate of change of pressure which corresponds to 0.14 lb/sec leakage is 0.38 inches of water per minute for the Browns Ferry suppression chambers. This change corrects an error and is therefore encompassed by example (i).

During CRD maintenance with fuel in the control cell, sufficient requirements exist which prevent additional CRD withdrawal, making it unnecessary to (1) account for the effect of an additional (strongest) rod on the shutdown margin, and (2) to disarm the directional control valves of the remaining CRDs. The change may result in some increase in probability or consequences of an accident but the results are clearly within the acceptance criteria of Section 15.4 of the Standard Review Plan. This change is therefore encompassed by example (vi).

Two of the five raw milk sampling points would be deleted because milk-producing animals are not at those locations. The number of samples taken (from remaining locations) would not be changed. This change would correct an incompatibility between the Environmental Specifications and the physical environment and is therefore encompassed by example (i).

Therefore, since the application for amendment involves proposed changes that are similar to the examples for which no significant hazards are likely to exist, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H. S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Branch Chief: Domenic B. Vassallo.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant; Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: April 9, 1984.

Description of amendment request: The proposed amendments would modify the Technical Specifications to:

1. Permit surveillance test intervals to be extended 25% with the limitation that no three consecutive intervals exceed 3.25 times the specified interval. (Units 1, 2 and 3)
2. Redesignate Specification 4.1.C as part of 4.1.A to correct an editorial error resulting from a previous amendment. (Unit 1)
3. Clarify that Reactor Low Water Level does not initiate complete primary containment isolation but only selected groups of isolation devices. (Units 1, 2 and 3)
4. Specify that the allowable main stream tunnel radiation trip setting is 2.4 to 3.6 times normal full power background level, and the alarm setting is 1.2 to 1.8 times normal full power background level. The existing Specification specifies nominal settings without tolerance limits. (Units 1, 2 and 3)
5. Specify that Group 8 isolation logic, for isolation of the Transverse Incore Probe (TIP) system, is initiated by either high drywell pressure or low reactor water level in lieu of high drywell pressure only. (Units 1, 2 and 3)
6. Clarify the initiation logic description for certain isolation valves associated with the high pressure coolant injection system and reactor core isolation cooling system. Group 7 isolation logic is keyed to turbine steam valve position rather than reactor water level. (Units 1, 2 and 3)
7. Specify that residual heat removal service water (RHRSW) pumps A1, B3, C1 and D3 are designated for automatic startup upon start of a core spray pump or loss-of-collant accident (LOCA) signal. Pumps A3, B1, C3 and D1 are presently incorrectly indicated (Units 1, 2 and 3)
8. Indicate that the reactor pressure indicator range is 0–1500 psig instead of 0–12—psig. (Units 1, 2 and 3)
9. Remove the containment air monitoring system penetration from the lists of testable electrical penetrations. (Units 1, 2 and 3)
10. Add suppression chamber vacuum breaker "X–219" to the list of testable electrical penetrations. (Units 1, 2 and 3)
11. Delete the June 30, 1982 deadline for equipment qualification and delete the December 1, 1980 deadline for records availability. (Units 1, 2 and 3)
12. Revise the personnel air lock door periodic testing requirements to reflect door modifications. (Unit 2)
13. Provide correct indications of the number and location of Hydrogen-Oxygen system isolation valves. (Unit 2)

Basis for proposed no significant hazards consideration determination: The Commission has provided examples of license changes which are likely to involve no significant hazards consideration (48 FR 14870). These examples include:

(i) A purely administrative change to the Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

(ii) A change that constitutes and additional limitation, restriction, or control not presently included in the Technical Specifications: For example, a more stringent surveillance requirement.

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan . . .

(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

Change 1 is encompassed by example (vi). The bases of recently issued Technical Specifications for similar facilities state that the provisions of this Specification provide allowable tolerances for performing surveillance activities beyond those specified in the nominal surveillance interval. These tolerances are necessary to provide operational flexibility because of scheduling and performance considerations. The tolerance values, taken either individually or consecutively over three test intervals, are sufficiently restrictive to ensure that the reliability associated with the surveillance activity is not significantly degraded beyond that obtained from the nominal specified interval.

Change 2 is encompassed by example (i). It is an editorial modification which combines related specifications into a single paragraph.

Change 3 is encompassed by example (i). It will correct Table 3.2.A to be consistent with Table 3.7.A.

Change 4 is encompassed by example (vi). While the addition of tolerances to the trip setting may slightly reduce a margin of safety, the tolerances are sufficiently restrictive that trip function is not degraded and will be performed in accordance with acceptable criteria.

Change 5 is encompassed by example (ii). It adds a requirement for an additional isolation function.

Change 6 to a clarification and is thus emcompassed by example (i). It provides additional understanding of the Group 7 isolation logic associated with

startup of the high pressure coolant injection (HPCI) and reactor core isolating cooling (RCIC) pumps.

Change 7 is encompassed by example (i). There are twelve RHRSW pumps, four of which have an automatic start feature to serve emergency equipment cooling. This change corrects and error, providing a correct description of an approved design feature and is therefore encompassed by example (i).

Change 8 is encompassed by example (i). It corrects an error and provides a correct description of indicator range. The actual indicator range is consistent with Regulatory Guide 1.105 criteria.

Change 9 is encompassed by example (i). It removes from a list of testable penetrations, a penetration which cannot be tested and is not intended to be tested.

Change 10 is encompassed by example (i). It adds to the list a testable penetration which was inadvertently omitted and which is presently included in the testing program.

Change 11 is encompassed by example (vii). Deletion of the Specification is consistent with the new 10 CFR 50.49(g) regulation which supersedes it.

Change 12 is encompassed by example (ii). Air lock doors have been modified to permit more stringent testing in accordance with 10 CFR Part 50 Appendix J.

Change 13 is encompassed by example (i). The revision will indicate the installed configuration of two outboard isolation valves in each line. This configuration is consistent with General Design Criterion 56.

Since all of the changes to the Technical Specifications given in the thirteen areas above are encompassed by an example in the guidance provided by the Commission of actions not likely to involve a significant hazards consideration, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H. S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Branch Chief: Domenic B. Vassallo.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendments requests: March 16, June 28, August 3 and August 9, 1982, and June 30, October 27, 1983, and March 22, 1984.

Brief description of amendments: The request for amendments was initially noticed on July 20, 1983 (48 FR 33092). This notice includes requested changes in subsequent submittals dated June 30, and October 27, 1983, and March 22, 1984. These submittals would amend the operating license and the Technical Specifications to reflect changes in the organizational structure of the licensee.

This reorganization deletes the position of Manager, Nuclear Operations and Maintenance and renames the Manager, Nuclear Technical Services to the Manager, Nuclear Operations Support. The Manager, Nuclear Operations Support will carry out his old responsibilities plus assume the responsibilities of the Manager, Nuclear Operations and Maintenance. The new responsibilities that transfer to the Manager, Nuclear Operations Support are Emergency Planning, Training and Operations and Maintenance Support. In addition, the Nuclear Fuel Operations group is a new responsibility that is added to the Manager, Nuclear Operations Support. Technical Analysis and Control has been deleted from the responsibilities of the Manager, Nuclear Operations Support. The Director, Administrative Services will report directly to the Vice President-Nuclear Operations. This reorganization maintains the direct communications between the Vice President-Nuclear Operations and the Nuclear Power Station Managers. Also the title of the Executive Vice President has been changed to the Executive Vice President and Chief Operating Officer.

A Technical Specifications change also reflects the recent reorganization of the Security Department. The proposed change has the Station Security Supervisor reporting to the Director, Nuclear Security at the corporate office. The Station Security Supervisor will continue to have communications with the Supervisor Services at the station.

A Technical Specifications change also adds the Executive Manager-Quality Assurance to Specification 6.1.C.3.c to receive Quality Assurance Department audit reports.

The reorganization within the Nuclear Operations Department and the Maintenance and Performance Services Department will aid in the quality of training activities at the power stations. The Director Training within the Nuclear Operations Department will now be the Director Nuclear Training in the Maintenance and Performance Services Department. The Director Nuclear Training will report to the Manager Power Training Services who will report to the Manager Maintenance and Performance Services who will ultimately report to the Senior Vice President Power Operations. The Director Nuclear Training will have the Superintendent Nuclear Training (who is located at the power station) reporting directly to him. The Superintendent Nuclear Training will have communications with the Station Manager.

This proposed Technical Specification change reflects the administrative change in title of the Fire Marshall to Loss Prevention Supervisor and deletion of the NDE Supervisor position. Trends within the utility Loss Prevention/Fire Protection field have been indicative of a continuing upgrading of the importance placed on property protection and the roles of the individuals charged with this function. The title of Loss Prevention Supervisor connotes a more appropriate business/professional role than Fire Marshall. For these reasons, the Station Fire Marshall title is changed to Loss Prevention Supervisor to more appropriately reflect their responsibilities and rank.

The NDE Supervisor position has been deleted from the station organization. It was determined that the functions performed by the NDE group are more in line with the Quality Assurance function than with Engineering. Therefore, the NDE Supervisor position has been shifted to Corporate under the QA group.

Basis for proposed no significant hazards consideration determination: The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. Therefore, operation in accordance with the proposed amendment clearly involves no significant hazards consideration, because the changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a signifcant reduction in a margin of safety. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: April 5, 1984.

Description of amendment requests: This proposed change revises Specifications 3.6.B.1 and 3.6.D. The existing Technical Specifications require that an auxiliary feedwater pump on the opposite unit be operable at all times a unit is above 350°F and 450 psi. Both Unit 1 and 2 Specifications are identical. In the event of a fire on one unit which would render that unit's auxiliary feedwater pumps inoperable, residual heat removal would continue to be assured by the availability of either the steam driven auxiliary feedwater pump or one of the motor driven auxiliary feedwater pumps from the opposite unit. This proposed change revises the status of the opposite unit's auxiliary feedwater pump from "operable" to "available". Available is defined as "(1) operable except for automatic initiation instrumentation, (2) offsite or emergency power may be inoperable in cold shutdown, and (3) it is capable of being used with the opening of the cross-connect." This proposed change defines the condition where the opposite unit's auxiliary feedwater pump is available and capable of performing its intended function but not required to meet the strict definition of operable as defined in the Technical Specifications.

This proposed change also adds a specification not currently in the Technical Specifications which allows the opposite unit auxiliary feedwater pump down time for maintenance and repairs. The specific action provided is to be in hot shutdown within the next 6 hours and in cold shutdown within the next 30 hours in the event that the opposite unit auxiliary feedwater pumps and associated piping, valves and controls are unavailable for a period of more than seven days.

This change also corrects typographical and minor editorial errors.

Basis for proposed no significant hazards consideration determination: The change from "operable" to "available" does not degrade the use of the system because the condition of the opposite unit's auxiliary feedwater pump is essentially unchanged. The component is still required to perform its function. The change avoids the possibility of violating a definition of the Technical Specification when the opposite unit is in cold shutdown. We propose a determination of no significant hazards because the change does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Commission has also provided guidance concerning the application of standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870, April 6, 1983). The change involving maintenance and repair falls into the category of example (ii) of changes not likely to involve significant hazards considerations, a change that constitutes an addition, restriction or control not presently included in the Technical Specifications.

The editorial changes in this proposed change are encompassed by Example (i) of changes not likely to involve significant hazards considerations; a purely administrative change to technical specifications, for correction of errors, in this instance, typographical and minor editorial errors.

On the grounds, the staff proposes to determine that the proposed changes described above involve a no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Washington Public Power Supply System, Docket No. 50–397, WNP–2 Richland, Washington

Date of amendment request: March 9, 1984, April 25, 1984 and May 4, 1984

Description of amendment request: This amendment will modify the Technical Specification (TS) to provide a clarification of certain TS requirements, provide editorial and/or administrative corrections of certain TS requirements, and provide TS changes to reflect consistency with the actual plant design.

The revisions are described as follows:

(1) Technical Specification 3.3.7.9, Fire Detection Instrumentation: In table 3.3.7.9–1, under Reactor Building Elev. 606'–10.5", align the number 6/0 under column UD, move instruments in Control Room (PGCC) from column SD to TD and add two thermal detectors. Also in Technical Specifications 3.7.6.2.a., add item 4 to indicate where the preaction and deluge spray and sprinkler system will also be operable.

(2) Technical Specification 3/4.5.1., Emergency Core Cool System—Operating: For surveillance requirements for Automatic Depressurization System, change initiations setpoints in item 3(c) to greater than or equal to 140 psig from 140±3 psig on decreasing pressure and alarm setpoint to greater than or equal to 135 psig from 135 ± psig on decreasing pressure.

(3) Technical specification 3/4.6.6, Primary Containment Atmosphere Control—Drywell and Suppression chamber Hydrogen Recombiner System: In paragraph 4.6.6.1 item a., line 2, add the word "heater" after "minimum recombiner."

(4) Technical Specification 3/4.8.4, Electrical Equipment Protective Devices—A.C. Circuits Inside Primary Containment: In paragraph 3.8.4.1, item a., change breaker 2BR to 8AR. Add item d. stating that "Circuits supplied by breakers in cubicles 2BL, ID, and 2CR of MC–3DA." Revise Table 3.8.4.2–1 to include the new fuse sizes on some of the primary circuits and delete entries for MT–HOI–18 and MT–HOI–19c from the table.

(5) Technical Specification 3.8.4.3, Motor-Operated Valves Thermal Overload Protection: From Table 3.8.4.3–1, delete valves RCIC-V12, RC1C-V-64, RHR-V-11A, RHR–V–11B, RHR–V–12A, RHR–V–12B, RHR–V–26A, RHR–V–26B, RHR–V–52A, RHR–V–52B, RHR–V–87A, RHR–V–87B, RHR–V–124A, RHR–V–124B, RHR–V–124A, RHR–V–125B, RRC–V–67A, and RRC–V–67B.

(6) Technical Specification 6.0, Administrative Controls: In Figure 6.2.1–1, Change "Power Generation Director to Assistant Managing Director for Operations, Technical Director to Engineering Director and move Support Service Director Functions under Assistant Managing Director for Operations." In Figure 6.2.2-1a, change 'Technical Training Manager to Technical Coordinator," Under Assistant Plant Manager, add Planning and Scheduling Supervisor, and under Technical Manager, add Plant Engineering Supervisor I & II. Also change Health Physics to Health Physics/Chemistry Support Supervisor, and under Maintenance Manager, delete, Spare Parts Material Supervisor and add Procument Manager.

On page 6–6, line 3, change wording "Training Manager to Technical Training Coordinator." Also in paragraph 6.5.1.2, change "Plant QA/QC Manager to Plant QA Manager." On page 6–9, items e & k, change designation "Director of Power Generation to Assistant Managing

Director for Operations." In item i, delete the last word "and" in item 1c, add word "and" at the end. On page 6–10, at the end of paragraph b., add "as defined in 10CR50.59." In paragraph c. and section 6.5.1.8, change the title "Director of Power Generations to Assistant Managing Director for Operations." On page 6–11, Section 6.5.2.2, change lines 3 to 6 to read as, "Supply System. He shall designate from members, a Chairman, an alternate Chairman, and an Executive Secretary. The plant organization of the Directorate of Engineering Support Services, and Licensing and Assurance shall be represented. The qualification of all members shall meet the". In sections 6.6.1, Item a. and Section 6.7.1, Items a. and c. change "Director of Power Generation to Assistant Managing Director for Operations". Also in a. & c. delete words "within 24 hours" and "within 14 days of the violation" respectively. Change the first sentence of paragraph 2 of Section 6.8.2 to read "In addition, the review and approval of the implementing procedures supporting item k in Specification 6.8.1 will be coordinated by the Director Support Services who will provide review and approval control." On page 6–16, delete the note at the bottom of the page.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazard consideration include: (i) A purely administrative change to the Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature; and, (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement.

Examples (i) and (ii) above applies to item (1) since the changes in Table 3.3.7.9–1 corrects typographical errors and the changes on pages 3–81 and 7–21 provides additional thermal detectors in the control room and preaction and deluge spray system in another area of the Radwaste Building. The change requested in item (2) makes the requirement more conservative, since the minimum initiation and the alarm setpoints have been changed from 137 psig to 140 psig and 132 psig to 135 psig respectively on decreasing pressure. Example (ii) also applies to this item.

Example (i) applies to item (3) as this change corrects an error in the technical specifications as presently written. The heated gas temperature must be at least 500°F to prevent degradation of the catalyst bed for halogens that are present in the feed gas. In item (4), changes in the technical specification has lowered the setpoint of overcurrent protection for the electrical penetration assemblies. In addition, the entries for MT-HOI-18 and MT-HOI-19C have been deleted as this equipment is not needed during operating conditions 1, 2, and 3 to which this technical specification applies. Example (ii) above applies to this item.

The technical specification changes to Table 3.8.4.3–1 in item (5) reflect the deletion of RHR steam condensing mode of operation and deletion of the associated valves. The licensee requested deletion of this mode of operation in their letters dated June 22, 1983 and September 15, 1983. The request was reviewed and found acceptable. The NRC staff evaluation was reported in Supplement No. 4 to the WNP–2 Safety Evaluation Report issued in December 1983. However the licensee inadvertently submitted, and the NRC staff has inadvertently approved, technical specifications requiring the RHR steam condensing mode. The deletions of valves RRC-V-67A and 67B is also acceptable, since these are non-IE valves and were listed in error. Example (i) above applies to this item.

Item 6 describes changes in titles (i.e. Power Generation Director to Assistant Managing Director for Operations, Technology Director to Engineering Director, Health Physicist to Health Physics/Chemistry Support Supervisor and Training Manager to Technical Training Coordinator). In addition these changes also describes addition of certain positions and administrative reporting requirements of certain groups. None of these changes involve any deletion of support to WNP-2 facility. Example (i) applies to this item and this does not involve a significant hazards consideration.

Therefore since the application for amendment involves proposed changes that are similar to examples for which no significant hazards considerations exist, the Commission has made a proposed determination the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington.

Attorney for licensee: Nicholas Reynolds, Esquire, Bishop, Cook, Liberman, Purcell and Reynolds, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: A. Schwencer.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of amendment request: March 13, 1984 and May 4, 1984.

Description of amendment request: This amendment would modify the Technical Specification (TS) to provide clarification of the surveillance requirements and reflect consistency with the actual plant design. The revision is a described as follows:

(1) Paragraph 4.8.2.1.d.2 is changed to read as follows: The battery capacity is adequate to supply D.C. power to the Class IE load as required for safe shutdown while maintaining the battery terminal voltage greater than or equal to 21 volts for the +24-volt battery, 105 volts for the 125-volt battery, and 210 volts for the 250-volt battery.

(2) The time during which the battery is capable of supplying and maintaining the actual emergency loads in operable status is changed from 8 hours to 2 hours. Paragraph 4.8.2.1.d.1 is changed to read as follows: "The battery capacity is adequate to supply and maintain in OPERABLE status all of the actual emergency loads for 2 hours for Divisions 1, 2 and 3 when the battery is subjected to a battery service test, or,"

(3) Note (a) in Table 4.8.2.1–1 is changed to clarify the level correction as follows: "Corrected for electrolyte temperature. Level correction will be used when electrolyte level is outside the normal range."

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazard consideration include: (i) A purely administrative change to the Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature; and, (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement. Example (ii) applies to item (1) since the minimum D.C. system design voltage has been increased to 21 volts for the +24-volt battery, 105 volts for the 125-volt battery and 210 volts for the 250-

volt battery. This will assure that the battery capacity is adequate for the emergency load cycle as shown in the table. The change requested in item (2) is acceptable since the staff evaluated the design change in early 1982 and reported its evaluation in the staff's Safety Evaluation Report (NUREG–0892) issued in March 1982. Example (i) applies to this item since the change corrects an unintentional error in the technical specification. Further, example (i) also applies to item (3), since the change clarifies the technical specification as issued. Therefore, since the application for amendment involves proposed changes that are similar to example for which no significant hazards considerations exist, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room Location: Richland City Library, Swift and Northgate Streets, Richland, Washington.

Attorney for licensee: Nicholas Reynolds, Esquire, Bishop, Cook, Liberman, Purcell, and Reynolds, 1200 Seventeenth Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: A. Schwencer.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units No. 1 and No. 2, Town of Creeks, Manitowoc County Wisconsin

Date of amendment request: February 29, 1984.

Description of amendment request: The proposed amendments would provide limiting conditions for operation and surveillance requirements for new systems required as a result of NUREG–0737, TMI Action Plan. These systems include reactor coolant system vents, post-accident sampling system, noble gas effluent monitoring, containment post-accident monitoring systems for pressure, water level, hydrogen and radiation and instrumentation for detection of inadequate core cooling.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations is example (ii), a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications. New equipment has been installed in response to NUREG/0737. These technical specifications provide new limiting conditions for operation and new surveillance requirements for this equipment not currently contained in the technical specifications. The licensee's submittal was made after receiving staff guidance in the form of Standard Technical Specifications for Westinghouse PWRs. The licensee's submittal generally follows this guidance. Therefore, the staff proposes to find that the proposed amendments do not involve a significant hazard consideration.

Local Public Document Room Location: Joseph P. Mann Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street N.W., Washington, D.C. 20036.

NRC Branch: James R. Miller.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant Units No. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: March 16, 1984.

Description of amendment request: The proposed amendments would revise the Technical Specifications to limit movement of heavy loads (greater than 1,750 pounds) over spent fuel stored in the spent fuel pool. Several additions and two deletions would be made to the list of safety related snubbers. Several position title changes would be made in the Administrative Control section. New minimum shift staffing requirements per 10 CFR 50.4m have been proposed. Fire protection organization charts would be updated. Manager's supervisory staff industrial safety review requirements would be deleted from the Technical Specifications. Requirements for Emergency Plan drills would be deleted from the Technical Specifications and are now contained in the Emergency Plan.

Specifications governing the qualification and training requirements for the Superintendent-Chemistry and Health Physics or the Health Physicist would be modified such that these requirements now apply to the Health Physicist or a designated alternate. The specific requirements remain the same. Revisions to clarify and simplify the specifications for temporary procedure changes would be made. In addition, various administrative corrections involving typographical errors, incorrect terminology, etc. would be made.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidelines concerning the application of the standards by providing certain examples (48 FR 14870). One of the examples of actions involving no significant hazards considerations is example (ii), a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications. The changes related to movement of heavy loads over the spent fuel pool imposes the additional restriction of limiting loads to 1,750 vice 2,000 pounds, and restricting fuel movement when any fuel assemblies are in that half of the pool whereas previously fuel assemblies stored longer than one year need not have restricted heavy load movement.

Another example of actions involving no significant hazards considerations is example (vi), a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clarly within all acceptable criteria with respect to the system or component specified. The changes to the table listing safety-related snubbers meet this example. The licensee has performed safety evaluations regarding the additions and deletions of the snubbers in question. The NRC staff has evaluated the licensee's piping modifications, including addition of snubbers, hangers and supports, and has determined that these changes were acceptable. The addition of snubbers to the safety related list of snubbers is allowed by existing Technical Specifications without prior NRC review and approval. The deletion of two snubbers from the list is supported by the fact that, as a result of the additional snubbers, piping support and hangers, these snubbers are no longer subjected to load and, therefore, are no longer needed to provide support and restraint and thus may be removed.

Another example of actions involving no significant hazards considerations is example (i) purely administrative changes to the technical specifications, for example a change to achieve consistency throughout the specifications, correction of an error, or a change in nomenclature. With the exception of changes to the shift staffing requirement, the remainder of the proposed changes meet this example. The fire protection organization charts have been updated to reflect changes in title, additions of new personnel and removal of contract security personnel which are no longer required to meet minimum fire brigade manning requirements. The requirement for conducting annual Emergency Plan exercises has been deleted as this requirement now exists in the

Emergency Plan which is audited per the technical specifications to ensure that this and other requirements are met. The requirements for training and qualification if the Radiation Protection Manager remain the same but are proposed to apply to different individuals than previously. The administrative section governing temporary procedure changes has been clarified and condensed. The requirements remain essentially the same. The remainder of the changes considered purely administrative address correction of typographical errors and terminology.

Another example of actions involving no significant hazards considerations is example (vii), a change to make license conform to the regulations. The proposed changes for shift staffing are intended to meet the new staffing rule 10 CFR 50.54m and therefore meet this example.

Based on the above, the staff proposes to determine that the proposed amendments involve no significant hazards considerations.

Local Public Document Room location: Joseph P. Mann Public Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street N.W., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant Units Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 18, 1984.

Description of amendment request: The application revises previous submittals dated October 25, 1983 and February 7, 1984 relating to proposed Technical Specifications for conduct of Type "A" containment integrated leak rate testing. Specifically, (1) minor clerical revisions are made to the original submittal and (2) modeling conditions for conduct of the test have been revised in keeping with the final version of the Topical Report provided as technical supporting justification for the proposed Technical Specification change.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning application of these standards by providing certain examples (48 FR 14870). Examples of actions involving no significant hazards considerations include example (i), a purely administrative change to the technical specifications and example (ii) a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications. The staff provided notice of consideration of proposed issuance of amendments concerning the licensee's original October 25, 1983 application (49 FR 3344). The staff proposed to determine that the amendments did not involve a significant hazards consideration. Those proposed determinations are still valid. With regard to the differences between the licensee's revised application of April 18, 1984 and the original application, these differences consist of correction of typographical errors and terminology and of additional modeling conditions for conduct of the containment Type "A" leak rate testing as described in the final version of the Topical Report submitted as technical justification for the proposed change. These additional modeling conditions constitute additional limitations over the original version of the proposed technical specification changes and, therefore, the April 18, 1984 modification of the licensee's October 25, 1983 submittal meets the Commission's examples (i) and (ii) of actions involving no significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Public Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant Units Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 2, 1984.

Description of amendment request: The requested amendment would revise the Technical Specifications (T.S.) for surveillance of the containment prestressed tendons. The proposed revisions would require periodic surveillance on randomly selected tendons of each of the three tendon groups, e.g., loop, vertical and dome rather than of the same tendons as in the existing T.S. Further, the number of tendons surveilled would be increased from nine to eleven. Visual and physical inspections of the selected tendons would be conducted alternately at five year intervals by the proposed T.S.

The physical inspection under the proposed revisions would include additional requirements over the existing T.S. in that adjacent tendons are also inspected if the prestressing force of the tendon is greater than 90% of the predicted lower limit but less than the predicted lower limit.

The proposed T.S. would impose additional tensile testing requirements on a removed wire and also elongation vs. jacking force measurement criteria not required by current T.S. New reporting requirements would also be imposed in the event that an engineering evaluation of any abnormal conditions indicates that a significant degradation of the containment integrity may exist.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). Examples of actions involving no significant hazards considerations include example (ii), a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications, and example (vi), a change which may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component. Most of the changes in the proposed technical specifications are of the first type, that is, they impose additional restrictions in the way of reporting requirements, physical testing criteria, numbers of tendons tested, etc. One of the changes is of the second type, that is, the frequency of physical testing of the surveillance tendons for a unit occurs at a 10 year vice 5 year frequency as is currently required by the T.S. While this appears as an apparent relaxation, the physical testing criteria have been upgraded and in all other respects this change is in conformance with the latest revision of Regulatory Guide 1.35 "Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containments." Therefore, because of the considerations discussed above, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Public Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts &

Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

NRC Branch Chief: James R. Miller.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this regular monthly notice. They are repeated here because the monthly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: January 23, 1984, as supplemented April 3, 1984.

Brief description of amendment: The amendment would modify the Hatch Unit 2 Technical Specifications to reflect the use of the new Analog Transmitter Trip System (ATTS) that is currently being installed at Hatch Unit 2. The ATTS related changes include new instrument trip setpoints/allowable values and surveillance intervals which take credit for the advantages that the new devices have over those currently installed at the plant, in terms of setpoint drift and instrument accuracy. In addition to these types of revisions, this amendment would make a number of other types of Technical Specification changes including the following:

Changes to plant-specific equipment identification (MPL) numbers as the result of new numbering which has been assigned to ATTS components.

Changes which account for modifications to instrument loops or trip logic resulting from the new ATTS design.

Changes which correct minor typographical or description errors found in the Hatch 2 Technical Specifications during the safety review process for ATTS. The errors found do not necessarily affect sections covering requirements for ATTS components.

Changes to the Technical Specification Bases Sections to correct existing errors and to update them with respect to the other proposed ATTS changes.

The modifications are as follows:

1. Change the surveillance requirements for the ATTS instrumentation to once per shift for channel checks, once per month for channel functional tests, and once per operating cycle for channel calibrations. Additional changes to the nomenclature used in the Technical Specifications are included for clarification and consistency with this proposed change.

ATTS replaces the pressure, level, and temperature switches in the reactor protection system and emergency core cooling system (ECCS) with analog sensor/trip unit combinations. The system is designed to improve sensor intelligence and reliability, while still providing continued monitoring of critical parameters and performing the intended basic logic function. The licensees have stated that since the ATTS instrumentation is superior in design to the mechanical switches currently used at Hatch, certain surveillance intervals may be extended without any significant effect on the expected magnitude of sensor drift or frequency of instrument malfunction.

2. Lower the Level 2 trip setpoint/allowable value from −38 inches to −55 inches. This will decrease the number of plant transients by decreasing the number of HPCI/RCIC (High Pressure Coolant Injection/Reactor Core Isolation Cooling) actuations due to normal operational perturbations in water level.

3. Delete the high drywell pressure isolation trip for residual heat removal (RHR) (shutdown cooling mode), reactor pressure vessel head spray valves, and reactor water cleanup (RWCU). The purpose of this change is to stop small steam leaks in the drywell from preventing operation of the RHR and RWCU systems during the shutdown cooling mode, thereby prohibiting an acceptable normal shutdown procedure.

4. Lower the water level trip setpoint for isolation of RWCU and secondary containment, and startup of the standby gas treatment system (SGTS) from Level 3 to Level 2. A reactor scram from normal power (less than 50-percent rated) usually results in a reactor vessel water level transient due to a void collapse that causes RWCU isolation at Level 3. This usually results in the dropping of the cleanup filter cake and added radwaste processing. These problems may be avoided by lowering RWCU isolation to Level 2. Lowering the SGTS actuation and secondary containment isolation from Level 3 to Level 2 reduces the potential for spurious isolations.

5. Designate the hot leg sensor of the RWCU area ventilation high temperature differential instrument as the RWCU area high temperature sensor, eliminating the current RWCU area high temperature sensor. Use of the hot leg of the differential temperature sensor for the high ambient temperature trip rather than using an independent trip element trip device may cause slight changes in the sensitivity of the RCWU area leak detection system, depending upon the heating, ventilation, and air-conditioning (HVAC) design, but it will not defeat the intended function of the system. In general, this new arrangement will create more reliable detection since the HVAC system will be drawing air across the resistance temperature detectors (RTDs). Therefore, there is no possibility of the sensors being located in a dead air space relative to certain break locations in the room.

6. Delete high drywell sensors E11–N011A, B, C, D that are currently assigned a trip function for the Core Spray, RHR and HPCI and replace them with sensors E11–N010A, B, C, D that are also currently assigned a trip function for the automatic depressurization system (ADS). (There is an editorial error in the current Technical Specification Table 3.3.3–1, Item 4a. The ADS high drywell pressure trip sensors should have been listed as E11–N010A, B, C, D.)

Since these sensors (E11–N010A, B, C, D) are being incorporated into the new ATTS modification, their numbers are being changed to E11–N694A, B, C, D.

7. Replace the trip setpoints listed in the Technical Specifications with newly generated allowable values. The purpose of this change is to update the Technical Specification trip setpoints for instruments being replaced by the ATTS. Since the time that the original setpoints were determined, a better calculational method has been developed. This proposed change uses Regulatory Guide 1.105 methodology in updating the setpoints for the instruments being replaced with the new ATTS units and takes credit for the improved error and drift characteristics of the new system.

8. Delete the reactor steam dome pressure permissive which prevents the group 1 isolation valves from being bypassed on a low condenser vacuum isolation at reactor pressure above the scram setpoint. With the permissive deleted, the operator may open the valves from a hot pressurized condition before clearing a scram. Currently, the

operator must clear the scram signal prior to opening the main stream isolation valves (MSIVs) when in this condition.

9. Lower the reactor vessel water level-high (Level 8) trip setpoint from 58 inches to 56.5 inches. The licensees stated that they used the criteria of Regulatory Guide 1.105 in determining this revised setpoint.

Date of publication of individual notice in **Federal Register:** May 15, 1984, 49 FR 20580.

Expiration date of individual notice: June 14, 1984.

Local Public Document Room location: Applying County Public Library, 301 City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: April 3, 1984.

Brief description of amendment: The amendment would modify the Hatch Unit 2 Technical Specifications as follows:

1. Add a figure to define the Average Planar Linear Heat Generation Rate limit (MAPLHGR) for fuel type P8DRB284H. The licensees informed us that this change is requested in connection with the core reloading of Hatch Unit 2 to allow for introduction of a new fuel type. This fuel type has not been previously used in Hatch Unit 2 but has been used in Hatch Unit 1.

2. Increase the operating limit Minimum Critical Power Ratio (OLMCPR) for 8x8R and P8x8R fuel. This change is requested in conjunction with the core reloading of Hatch Unit 2. The licensees have stated that the intent of this change is to allow for licensing the fourth Hatch Unit 2 reload under 10 CFR 50.59 when final design and licensing work are completed.

3. Change the description of the control rod assemblies in Section 5.3.2 (Design Features) of the Hatch Unit 2 Technical Specifications to delete references to the specific materials and details of construction of the control blades. The licensees have stated that this change is intended to support the use in Hatch Unit 2 of an arbitrary number (up to 137) Type I General Electric Hybrid I Control Rod (HICR) assemblies containing some hafnium as absorber material in place of the boron carbide control rods presently in use. The HICR form, fit and function are identical to that of the blade it replaces. The HICR is designed to increase control rod assembly life and to eliminate cracking of absorber tubes containing boron carbide (B_4C). The essential differences between the HICR and the BWR Z–4 D-lattice control rod assemblies currently in use are:

(a) Improved B_4C absorber rod tube material to eliminate cracking during the lifetime of the control rod assembly, and

(b) Some B_4C absorber rods are replaced with solid hafnium absorber rods to increase blade life.

4. Increase the number of fuel assemblies that can be loaded around a source range monitor (SRM) in order to assure that 3 counts per second (cps) can be achieved without the use of additional sources or dunking chambers. The current Hatch Unit 2 Technical Specifications require that the fuel assemblies be loaded into their *previous* core position next to each of the four SRMs. The loading of the bundles around the SRMs before attaining the 3 cps is permissible because these bundles were in subcritical configuration when they were removed and therefore will remain subcritical when placed back in the previous position. This request is very similar to an earlier request for Hatch Unit 2 which was granted as Amendment No. 26 for loading two bundles next to the SRMs. Because Hatch Unit 2 has been in an extended outage, more than two bundles may be required to establish the requisite 3 cps on the SRMs so that fuel loading may proceed.

Date of publication of individual notice in **Federal Register:** May 15, 1984, 49 FR 20584.

Expiration date of individual notice: June 14, 1984.

Local Public Document Room location: Applying County Public Library, 301 City Hall Drive, Baxley, Georgia.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: January 26, 1984.

Brief description of amendment: The proposed amendment would remove the present limits on receipt, possession, and use of byproduct, source, or special nuclear material for sample anlaysis and instrument calibration, and would permit receipt, possession, and use of such material in amounts as required for such purposes and for testing and uses associated with radioative apparatus.

Date of publication of individual notice in **Federal Register:** May 11, 1984, 49 FR 20089.

Expiration date of individual notice: June 11, 1984.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harriburg, Pennsylvania 17126.

Indiana and Michigan Electric Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of amendment request: May 21, 1984.

Description of amendment request: The proposed amendment involves changes to the Technical Specifications on nuclear enthalpy rise hot channel factor ($F^N_{\Delta H}$) and power level as a result of emergency core cooling system/loss of coolant accident analysis with up to 5% of the steam generator tubes plugged. The proposed change will include an $F^N_{\Delta H}$ which is flow dependent at various power levels and is limited by both loss of coolant accident (LOCA) and departure from nucleate boiling (DNB) considerations.

Date of publication of individual notice in **Federal Register:** May 24, 1984, 49 FR 22008.

Expiration date of individual notice: June 7, 1984.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: April 17, 1984.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to: (1) Change the capacity of the pressurizer code safety valves, reflecting the installation of new safety valves; (2) delete four snubbers from the TS that were removed as a result of the safety valve replacement; (3) incorporate operability, surveillance and trip setpoint requirements for the recently installed degraded voltage protection system; (4) update the containment isolation value listings to reflect removal of the low pressure surge tank (LPST) from the containment boundary, installation of hydrogen recombiner taps and relocation of the outside Main Coolant System Leakage Air Particulate Monitor (MCSLAPM) to inside containment; and (5) incorporate operability and surveillance requirements for the previously installed reactor coolant systems (RCS) vents.

Date of publication of individual notice in **Federal Register:** May 14, 1984 (FR 49 20391).

Expiration date of individual notice: June 13, 1984.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the 30-day period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless indicated otherwise, the Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments. If the Commission has prepared an Environmental Impact Appraisal related to these actions, it is so indicated. If indicated, this notice constitutes a negative declaration and indicates that the Commission has concluded that an environmental impact statement is not warranted because there will be no significant effect on the quality of the human environment.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Impact Appraisals as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Docket No. 50–364, Joseph M. Farley Nuclear Plant, Unit No. 2, Houston County, Alabama

Date of application for amendment: November 24, 1982, supplemented March 23, 1984.

Brief description of amendment: The amendment would add requirements to the Technical Specifications which the Commission required to be added after the first refueling outage. These additions include: (1) A tabulation of containment penetration overcurrent protection devices added per license condition 2.C.(19)(b), (2) changes to the containment ventilation system to reflect the newly installed 8-inch vent valves added per license condition 2.C.(17), and (3) a listing of safety-related mechanical snubbers added per Technical Specification Table 3.7–4b notation. Additionally for item (2) above, other non-substantive administrative changes were made to comply with long standing Commission guidance on the use of the containment ventilation system.

Date of issuance: May 17, 1984.

Effective date: May 17, 1984.

Amendment No.: 34.

Facility Operating License No. NPF–8: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 23, 1983 (48 FR 38384) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1984.

Significant hazards consideration comments received: No.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama.

Date of application for amendments: February 17, 1984, supplemented May 3, 1984.

Brief description of amendments: Modify Technical Specifications for the movable control rods to allow up to 36 hours for diagnosing and correcting electrical problems with more than one rod inoperable. All rods would be trippable.

Date of issuance: June 6, 1984.

Effective date: June 6, 1984.

Amendments Nos.: 44 and 35.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17851) The Commission's related evaluation of the amendment is contained in a Safty Evaluation dated June 6, 1084.

Significant hazards consideration comments received: No.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2. Houston County, Alabama.

Date of application for amendments: December 30, 1982, supplemented March 2 and 27, 1984.

Brief description of amendments: Revise the two related parts of the Technical Specifiations; one deletes the river water system specifications and the other modifies diesel generator testing. The NRC staff made minor non-substantive changes to the diesel tests which the licensee has agreed to as being acceptable non-substantive changes.

Date of issuance: June 7, 1984.

Effective date: June 7, 1984.

Amendments Nos.: 45 and 36.

Facilities Operating License Nos. NPF–2 and NPF–8: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (43 FR 38384) The Commission's related evaluation of the amendment is contained in a Safty Evaluation dated June 7, 1984.

Significant hazards consideration comments received: No.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Baltimore Gas & Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of applications for amendments: January 27, 1984 and March 26, 1984.

Brief description of amendments: The amendments changed the Technical Specifications to (1) provide revised Limiting Conditions for Operation and Surveillance Requirements for the Hydrogen Purge Outlet Valves (MOV–6900 and MOV–8901) (Unit 2 only), (2) describe a revised range and location of the Wide Range Flux monitor for remote shutdown, (Unit 2 only), and (3) provide for revised reporting requirements (Units 1 and 2).

Date of issuance: June 6, 1984.
Effective date: June 6, 1984.
Amendment Nos.: 94 & 75.
Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.
Date of initial notices in **Federal Register:** April 25, 1984, 49 FR 17850 at 17854 (2 notices).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1984.
No significant hazards consideration comments received: No.
Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: January 26, 1983.
Brief description of amendment: The amendment modifies the Technical Specifications to apply to new analog (continuous measuring) instrumentation that has been installed in Unit 2. The analog instrumentation replaces certain pressure switches and will provide improved performance of trip functions for reactor protection system actuation containment isolation, reactor core isolation cooling system isolation and emergency core cooling system actuation. In addition, miscellaneous typographical errors are corrected.
Date of issuance: May 22, 1984.
Effective date: May 22, 1984.
Amendment No.: 97.
Facility Operating License Nos. DPR–62. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 23, 1983 48 FR 38392 The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1984.
No significant hazards consideration comments received: No.
Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Stream Electric Plant, Unit Nos. 1 and 2, Brunswick County, North Carolina

Date of application for amendment: July 28, 1981, December 10, 1982 and December 29, 1983.
Brief description of amendment: The amendments consist of changes to the licenses and Technical Specifications regarding the CP&L's management organization structure and reporting requirements.
Date of issuance: May 25, 1984.
Effective date: May 25, 1984.
Amendment Nos. 70 and 98.
Facility Operating License Nos.: DPR–71 and DPR–62 Amendment revised the license and Technical Specifications.
Date of initial notice in **Federal Register:** October 26, 1983, 48 FR 49575 and April 25, 1984, 49 FR 17856.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1984.
No significant hazards consideration comments received: No.
Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power & Light Company, Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: January 31, 1984, as supplemented February 29, 1984.
Brief description of amendment: The amendment corrects the fuel enrichment number in the description of the fuel assemblies in the Design Features section of the Technical Specifications and revises Section 5.3.1 of the Technical Specifications to conform to the Standard Technical Specifications.
Date of issuance: June 5, 1984.
Effective date: June 5, 1984.
Amendment No.: 71.
Facility Operating License Nos. DPR–62. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17856).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1984.
No significant hazards consideration comments received: No.
Local Public Document Room location: Southpork, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2

Date of application for amendment: October 25, 1983, as supplemented March 5, 1984.
Brief description of amendment: The amendment revises Section 3.F Physical Security of Operating License, DPR–23 by temporarily relaxing security measures. A related exemption from the requirements of 10 CFR 50.54(f) has also been granted by the NRC on May 17, 1984.
Date of issuance: May 15, 1984.
Effective date: May 15, 1984.
Amendment No.: 80.
Facility Operating License No. DPR–23: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 6, 1984 (49 FR 13775).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1984.
Significant hazards consideration comments received: No.
Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment: April 25, 1983.
Brief description of amendment: The amendments incorporate Technical Specification provisions which specify the time-delay settings for high steam flow for the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) systems for these units, and are designed to prevent inadvertent isolation of these systems.
Date of issuance: June 6, 1984.
Effective date: June 6, 1984.
Amendment Nos.: 88 and 83.
Facility Operating License Nos. DPR–29 and DPR–30: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 21, 1983 (48 FR 56500).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1984.
No significant hazards consideration comments received: No.
Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of Amendment request: March 30, 1984, supplemented May 4, 1984.
Brief description of amendment: The amendment would reduce the allowable peak linear heat generation rate and narrow the current axial offset tent during the planned coastdown at the end of the Haddam Neck Cycle 12 full-power core life.
Date of issuance: May 18, 1984.
Effective date: May 18, 1984.
Amendment No.: 58.

Facility Operating License No. DPR–61: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1984 (49 FR 15170).

The Commission's related evaluation of the amendment is contained in its letter of transmittal dated May 18, 1984. No public State or comments were received with respect to the Commission's proposed determination that the amendment would not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 119 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket Nos. 50–3 and 50–247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of application for amendments: February 1, 1983.

Brief description of amendments: These amendments change the Radiological Effluent Technical Specifications to assure compliance with Appendix I of 10 CFR Part 50. They provide new Technical Specification sections defining limiting conditions of Operation and Surveillance requirements for radioactive liquid and gaseous effluent monitoring: concentration, dose and treatment of liquid, gaseous and solid wastes; total dose, radiological environmental monitoring and an interlaboratory comparison program.

Date of issuance: June 6, 1984.

Effective date: On issuance, to be implemented by July 1, 1984.

Amendment Nos.: 32 and 90.

Facility Operating License Nos. DPR–5 and DPR–26: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38396) for Unit 2 and February 3, 1984 (49 FR 4443) for Unit No. 1.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix, Michigan

Date of application for amendment: December 20, 1982, as revised May 10, 1984.

Brief description of amendment: The amendment approves Technical Specification changes which replace the core operating limits based on Minimum Critical Heat Flux Ratio (MCHFR) with limits based on Minimum Critical Power Ratio (MCPR).

Date of issuance: May 18, 1984.

Effective date: May 18, 1984.

Amendment No.: 69

Facility Operating License No. DPR–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 6, 1983 (48 FR 31122) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1984. No public or State comments were received with respect to the Commission's proposed determination that the amendment would not involve a significant hazards consideration.

Local Public Document Room location: Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Consumers Power Company Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 30, 1982 as supplemented November 5, 1982.

Brief description of amendment: The amendment approves Technical Specification changes which modify the operability and testing requirements for the control room and fuel building ventilation filters and replaces the requirement for containment purge filters with a requirement for hydrogen recombiners.

Date of issuance: May 22, 1984.

Effective date: May 22, 1984.

Amendment No.: 81

Provisional Operating License No. DPR–20: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 22, 1983 (48 FR 52810). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1984. No comments were received with respect to the Commission's proposed determination that the amendment would not involve a significant hazards consideration.

Local Public Document Room location: Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

Duke Power Company, Dockets Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of application for amendment: February 13, 1984.

Brief description of amendment: These amendments revise the Oconee Nuclear Station Technical Specifications (TSs) to support the operation of Oconee Unit 3 at full rated power during Cycle 8. These amendments also included figure and page renumbering changes.

Date of issuance: May 15, 1984.

Effective date: May 15, 1984.

Amendment Nos.: 129, 129, 128.

Facility Operating Licenses Nos. DPR–38, DPR–47 and DPR–55.

Date of initial notice in **Federal Register:** March 22, 1984, (49 FR 10733).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: January 10, 1984.

Brief description of amendment: The amendment changes the Technical Specifications to delete the radiological technical specifications in Appendix B (Appendix B, Part 1).

Date of issuance: May 17, 1984.

Effective date: May 17, 1984.

Amendment No.: 67.

Facility Operating License No. DPR–67. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 22, 1984 (49 FR 10 730 at 10735).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: January 30, 1984, as supplemented on March 20, 1984.

Brief description of amendment: This change raised the Technical Specification upper limit on steam generator secondary water level during modes 1, 2 and 3 of operation from 360 inches to approximately 380 inches.

Date of issuance: May 25, 1984.

Effective date: May 25, 1984.

Amendment No.: 68.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984, 49 FR 17859 The Commission's related evaluation is contained in a Safety Evaluation dated May 25, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: April 21, 1982.

Brief description of amendment: This amendment changes Section 4.4.1.2 of the Technical Specifications regarding local leakage rate testing of containment isolation valves and resilient seals in penetrations. The amendment adds several valves to the Type C. testing program and deletes other valves. The amendment also includes editorial changes.

Date of issuance: May 18, 1984.

Effective date: May 18, 1984.

Amendment No.: 93.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 22, 1983, 48 FR 52816

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1984.

No significant hazards consideration comments received; No.

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: March 9, 1983.

Brief description of amendment: This amendment revises Technical Specification Table 3.16.1 by adding four new snubbers that were installed in the plant as a result of either restart piping modifications or system upgrading in response to NRC IE Bulletin 79–14. Also, three snubbers that are no longer required have been removed from the Table.

Date of issuance: May 22, 1984.

Effective date: Within 30 days after its date of issuance.

Amendment No.: 94.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1983, 48 FR 33380.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: April 24, 1981.

Brief description of amendment: This amendment makes four changes in the Technical Specifications, all of an administrative nature:

1. Specification 4.11, "Site Environmental Radioactivity Survey" was deleted. This specification referred to Section 6.4 of Appendix B which no longer exists.

2. An erroneous time in Technical Specification 4.8.2 was corrected to less than 120 seconds.

3. A footnote was added to Table 4.1.3 to allow relied from boron concentration sampling of the Boric Acid Mix Tank or the Reclaimed Boric Acid Tanks when the tanks are empty.

4. Specification 4.4.2.1.1, "Containment Tendons" was rewritten to reflect that the five-year tendon surveillance also was performed per Regulatory Guide 1.35, Rev. 1.

Date of issuance: May 25, 1984.

Effective date: May 25, 1984.

Amendment No.: 95.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 22, 1983, 48 FR 52815.

The Commission's related evaluation of the amendment is contained in a letter to GPU Nuclear Corporation dated May 25, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: March 5, 1984.

Brief description of amendment: This amendment revises the Technical Specifications to incorporate additional Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) operating limits beyond the planar average fuel exposure of 30,000 Megawatt days per ton (MWD/T).

Date of issuance: May 14, 1984.

Effective date: May 14, 1984.

Amendment No.: 98.

Facility Operating License No. DPR–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 12, 1984, 49 FR 14604.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 14, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa.

Date of application for amendment: January 27, 1984.

Brief description of amendment: This amendment revises the Technical Specifications to incorporate the minimum staffing requirements pursuant to the requirements of 10 CFR 50.54(m)(2). Other Technical Specification changes requested in the January 27, 1984 submittal are being handled as separate actions.

Date of issuance: May 22, 1984.

Effective date: May 22, 1984.

Amendment No.: 99.

Facility Operating License No. DPR–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 22, 1984, 49 FR 107365.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa.

Date of application for amendment: June 10, 1984.

Brief description of amendment: This amendment revise the Technical Specifications to limit the containment purging (or venting) to a minimum and enhance the containment leakage integrity.

Date of issuance: May 22, 1984.

Effective date: May 22, 1984.

Amendment No.: 100.

Facility Operating License No. DPR–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 26, 1984, 49 FR 3349.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa.

Date of application for amendment: January 26, 1984.

Brief description of amendment: The amendment revises the Technical Specification to incorporate the change in testing frequency of Scram Discharge Volume (SDV) vent and drain valves as a result of completion of the long-term SDV modifications.

Date of issuance: June 1, 1984.

Effective date: June 1, 1984.

Amendment No.: 101.

Facility Operating License No. DPR–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984, 49 FR 17864.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: January 27, 1984.

Brief description of amendment: This amendment modified the Maine Yankee Technical Specifications to reflect changes made to the auxiliary feedwater isolation system.

Date of issuance: May 23, 1984.

Effective date: May 23, 1984.

Amendment No.: 76.

Facility Operating License No. DPR–36: amendment revised the Technical Specifications.

Date of initial notice in **Federal Register: March 22, 1984 (49 FR 10737.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: April 8, 1983.

Brief description of amendment: This amendment modified the Maine Yankee Technical Specifications concerning administrative controls. It also added a new specification regarding safety limits to Section 2.0.

Date of issuance: May 30, 1984.

Effective date: May 30, 1984.

Amendment No.: 77.

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983, 48 FR 38382 at 38407.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of application for amendment: February 14, 1984.

Brief Description of amendment: The amendment revises the Technical Specifications to incorporate administrative changes to ensure compliance with new regulations related to licensee event reporting requirements contained in § 50.73 of Table 10 of the Code of Federal Regulations.

Date of issuance: June 1, 1984.

Effective date: June 1, 1984.

Amendments No.: 86.

Facility Operating License Nos. DPR–62: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984, 49 FR 17865.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 1984.

No significant hazards consideration comments received.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Branch Chief: Domenic B. Vassallo.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: January 13, 1984.

Brief Description of amendment: The revision to the Technical Specifications adds Limiting Conditions for Operation, surveillance requirements and changes to the bases for the Reactor Protection System at the facility.

Date of issuance: May 24, 1984.

Effective date: May 24, 1984.

Amendment No.: 62.

Facility Operating License No. DPR–63: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** March 22, 1984, 49 FR 10738.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: January 29, 1981 as supplemented by November 1, 1983, and January 30, 1984. Note that the January 30, 1984 supplement does not change substantially the earlier submittals.

Brief description of amendment: The amendment approves changes to the provisions of the Appendix A Technical Specifications pertaining to the definition of "OPERABLE", and requirements for operable emergency core spray systems and reactor coolant system leakage monitors.

Date of Issuance: May 23, 1984.

Effective date: May 23, 1984.

Amendment No.: 97

Provisional Operating License No. DPR21: The amendment revised the Technical Specifications.

Dates of initial notices in **Federal Register:** October 26, 1983 (48 FR 49589) and January 26, 1984 (49 FR 3349).

The Commission's related evaluation of this action is contained in its Safety Evaluation dated May 23, 1984. No public or State comments were received with respect to the Commission's proposed determination that the requested action would involve a no significant hazards consideration determination.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06358.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: October 22, 1982.

Brief description of amendment: This amendment modified the Technical Specifications as follows: (1) Allows operation with one inoperable position indicator per control element assembly group; (2) Expands the allowable volume band for the safety injection tanks; and (3) Revises and modifies certain portions of the requirements for containment integrity.

Date of Issuance: May 16, 1984.

Effective date: May 16, 1984.

Amendment No.: 95

Provisional Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38382 at 38411).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: November 18, 1983.

Brief description of amendment: The amendment incorporated administrative changes which achieve agreement between the Fort Calhoun Station Technical Specifications and new regulations which became effective on January 1, 1984. Specifically, 10 CFR 50.54 (m)(2) and (m)(3) became effective and paragraph (m) of 10 CFR 50.54 was redesignated paragraph (m)(1) on January 1, 1984. These paragraphs address licensed operator staffing at nuclear power units. This rule change affects the current technical specifications in the area of shift manning. The amendment also changed to whom the Quality Control (QC) personnel report. The change permits the QC personnel to report to the Technical Supervisor.

Date of Issuance: May 16, 1984.

Effective date: May 16, 1984.

Amendment No.: 78.

Provisional Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 26, 1984 (49 FR 3344 at 3350).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: October 3, 1983.

Brief description of amendment: The amendment provided an up-to-date identification of the accessibility of safety-related system hydraulic snubbers (Table 2–6(a)).

Date of Issuance: May 23, 1984.

Effective date: May 23, 1984.

Amendment No.: 79.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 22, 1983 (48 FR 52819).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Pennsylvania Power and Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of applications for amendment: June 27, 1983 and December 9, 1983.

Brief description of amendment: This amendment incorporates Changes N, O, and P to the Physical Security Plan and Changes A and B to the Security Training and Qualification Plan into License Condition 2.D. This amendment also deletes License Condition 2.C.(28)(b), Special Low Power Testing and Training.

Date of issuance: May 14, 1984.

Effective date: May 14, 1984.

Amendment No.: 22.

Facility Operating License No. 14: Amendment revised License Conditions.

Date of initial notice in **Federal Register:** August 22, 1983 (38122–38123) and February 24, 1984 (7039–7040) respectively.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power & Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of applications for amendment: October 11, 1983; October 24, 1983; and November 4, 1983.

Brief description of amendment: This amendment changes the requirements of Technical Specification 4.7.4.a regarding inservice visual inspection of snubbers, changes Technical Specification 4.7.1.3 to modify the requirements for determining the spray pond OPERABLE, and changes Technical Specification Tables 3.3.2–1 and 3.6.3–1 to correct errors of an administrative nature.

Date of issuance: May 23, 1984.

Effective date: May 23, 1984.

Amendment No.: 23.

Facility Operating License No. 14. Amendment revised Technical Specifications.

Date of initial notice in the **Federal Register:** December 21, 1983 (56508); January 26, 1984 (3351); and November 29, 1983 (53770–53771) respectively.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1984.

No significant hazards consideration comments received: None.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: October 28, 1982.

Brief description of amendment: The amendment revises the Technical

Specifications to clarify and provide consistent wording to the surveillance requirements and permits non-sequential testing of the fire pumps consistent with the plant design basis.

Date of issuance: May 22, 1984.

Effective date: May 22, 1984.

Amendment No.: 80.

Facility Operating License No. DPR-59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 20, 1983, 48 FR 33085.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 6, 1984.

Brief description of amendment: Modifies license to reflect revised security plan.

Date of issuance: May 25, 1984.

Effective date: May 25, 1984.

Amendment No.: 49.

Facilities Operating License No. DPR-64: Amendment revised the license.

Date of initial notice in **Federal Register:** March 22, 1984 (49 FR 10743).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1984.

Significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of application for amendment: March 6, 1984.

Brief description of amendment: The amendment revises the Administrative Controls Technical Specifications reporting requirements to be consistent with recently revised regulations (10 CFR 50.72 and 73).

Date of issuance: June 4, 1984.

Effective date: June 4, 1984.

Amendment No.: 42.

Facility Operating License No. DPR-34: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17870).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of application for amendment: March 14, 1984.

Brief description of amendment: The amendment revises the Technical Specifications to: (1) Clarify the actions to be taken when various instruments are inoperable; (2) correct typographical and reference errors; (3) allow flexibility in the required moisture monitoring instrumentation at low levels; and (4) allow the use of previously approved compensatory procedures during maintenance on the moisture monitors.

Date of issuance: June 5, 1984.

Effective date: June 5, 1984.

Amendment No.: 43.

Facility Operating License No. DPR-34: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17871).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: September 9, 1983.

Brief description of amendment: The amendment approves Technical Specification changes which modify containment leakage testing provisions for Type A tests (Integrated Leak Rate Tests).

Date of issuance: June 4, 1984.

Effective date: June 4, 1984.

Amendment No.: 75.

Provisional Operating License No. DPR-13: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 22, 1983 (48 FR 52827).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Southern California Edison Company, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: December 5, 1983.

Brief description of amendment: The amendment approves changes to Appendix B (Environmental) Technical Specifications which incorporate corrections to Sections 1.0 and 5.0 These changes delete nonradiological water quality items for consistency with Amendment No. 67 issued on March 11, 1983 and correct editorial errors.

Date of issuance: June 4, 1984.

Effective date: June 4, 1984.

Amendment No.: 76.

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17873).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Southern California Edison Company, et al. Docket No. 50-362, San Onofre Nuclear Generating Station, Unit 3, San Diego County, California

Date of application for amendment: January 25, July 14 and September 23, 1983.

Brief description of amendments: Modifies Technical Specification to (1) delete a description of the specific methodology used to calculate the minimum Departure from Nucleate Boiling Ratio (DNBR) trip setpoint from the safety system settings and (2) add a description of the specific methodology used to calculate the minimum DNBR trip setpoint from the safety system settings.

Date of issuance: May 18, 1984.

Effective date: May 18, 1984.

Amendment No.: 11.

Facility Operating License No. NPF-15: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 21, 1983 (48 Fr 56460).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1984.

No significant hazards consideration comments received.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Unit Nos. 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: June 20, 1983 and November 28, 1983, as superseded March 22, 1984.

Brief description of amendment: These amendments change Section 6.0 of the Technical Specifications to modify the reporting requirements to incorporate the new 10 CFR 50.73 and TMI Item II.K.3.3.

Date of issuance: May 30, 1984.

Effective date: May 30, 1984.

Amendment Nos.: 99, 93 and 66.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 22, 1983, 48 FR 52835 and February 24, 1984, 49 FR 7045.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Unit Nos. 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: December 17, 1982.

Brief description of amendment: The amendments change the Technical Specifications to (1) Clarify the definition of "channel" to indicate that a channel may have more than one sensor; (2) Clarify requirements for rod block instrumentation operability; (3) Designate main steam line drain header instrument isolation valves as "normally open"; (4) Add new "suppression chamber access hatch, X–233" to the table of "Testable Penetrations with Double O-Ring Seals", and (5) Revise the Site Radiological Emergency Plan audit frequency for consistency with 10 CFR 50.54(t).

Date of issuance: June 11, 1984.

Effective date: June 11, 1984.

Amendment Nos.: 100, 94 and 67.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 21, 1983, 48 FR 56511.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 11, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: February 22, 1983 (Item 2), as revised by letter dated October 11, 1983.

Brief Description of amendment: The amendment modifies Technical Specifications paragraphs 4.1.2.1 and 4.1.2.2 to eliminate surveillance requirements on heat traced sections of piping in the boric acid addition piping when transferring solutions with boric acid concentration less than 5000 ppmB. The amendment also modifies Technical Specification paragraphs 3.1.2.8 and 3.1.2.9 to delete a redundant requirement for heating tracing operability.

Date of issuance: May 22, 1984.

Effective date: May 22, 1984.

Amendment No.: 67.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 21, 1983, 48 FR 56513.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

The Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: November 21, 1983 (Item 2).

Brief description of amendment: The amendment modifies Technical Specification Table 3.3–10, "Post Accident Monitoring Instrumentation," to specify that the minimum channels of Auxiliary Feedwater Flow Rate required to be operable is two per steam generator.

Date of issuance: May 30, 1984.

Effective date: May 30, 1984.

Amendment No.: 68.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984, 49 FR 17875.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: September 16, 1983.

Brief description of amendments: The amendments revise the NA–1&2 TS 3/4.7.4, 3/4.7.12 and 3/4.7.13. TS 3/4.7.4 has been revised to terminate the requirement to measure the turbidity and suspended solids in the outflow from the drain system under the service water pumphouse. TS 3/4.7.12 has been revised to decrease the frequency of settlement monitoring to once per 6 months at the service water pumphouse. TS 3/4.7.13 has been revised to decrease the frequency of monitoring of the piezometers and provide a consistent uniform six month monitoring frequency for all groundwater levels and flow measurements. The changes also remove the action item requiring a five year summary report.

Date of issuance: May 23, 1984.

Effective date: Within 30 days after the date of issuance.

Amendment Nos.: 57 & 39.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 11, 1983 (48 FR 52804 at 52839).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 23, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 15, 1984.

Brief description of amendments: The amendments revised the NA–1&2 TS 3.4.10.2.a, 3.4.10.2.b and 3.4.10.2.c for Limiting Conditions of Operation; TS 4.4.10.2.1 and 4.4.10.2.2 for Surveillance Requirements; and TS Bases 3.4.10.2. These revisions deleted the requirements for minimum and maximum temperature limits for A36 and A572 beams in the steam generator supports and delete verification requirements for determination of beam temperatures. The inservice inspection requirements for beam inspection on a 40 month basis will continue to provide a reasonable degree of assurance for the integrity of the support structure.

Date of issuance: June 7, 1984.

Effective date: June 7, 1984.

Amendment Nos.: 58 and 40.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17850 at 17877).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1984.

No significant hazards consideration comments received: No.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: February 21, 1984 as supplemented May 9, and May 17, 1984.

Brief description of amendment: The proposed Technical Specification (TS) changes would revise cycle dependent parameters in support of Core XVII operations following refueling. The proposed change revises requirements for shutdown margin, automatic reactor trip, and peak linear heat rate. The proposed change would also increase the allowable enrichment of the fuel from 3.5 to 3.7 weight percent U–235.

Date of issuance: June 5, 1984.

Effective date: June 5, 1984.

Amendment No.: 82.

Facility Operating License No. DPR–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17879).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1984. No comments were received.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

During the 30-day period since publication of the last monthly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this monthly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: May 9, 1983.

Brief Description of amendment: The amendment revises the Technical Specifications to permit the steam generators to be declared operable for pre-critical hot functional testing using pump heat (non-nuclear), thereby permitting such testing.

Date of issuance: April 9, 1984.

Effective date: April 9, 1984.

Amendment No.: 91.

Facility Operating License No. DPR–50.

Date of initial notice in **Federal Register:** April 24, 1984, 49 FR 17628.

Dated at Bethesda, Maryland this 12th day of June 1984.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactor Branch No. 3, Division of Licensing.

[FR Doc. 84–16343 Filed 6–19–84; 8:45 am]

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federal register

Wednesday
June 20, 1984

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Housing Development Grant Program; List of Designated Eligible Areas; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-84-1401; FR-2006]

Housing Development Grant Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Invitation for applications.

SUMMARY: This Notice invites cities, urban counties and States acting on behalf of units of general local government to submit applications for grants under HUD's new Housing Development Grant Program. The Grant funds awarded under the program will be used to support the construction or substantial rehabilitation of residential rental, cooperative or mutual housing in which at least 20 percent of the units will be occupied by lower income families.

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Frank D. Brown, Acting Director, Development Grants Division, Room 6110, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 755-6142 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The statutory authority for the Housing Development Grant Program is provided by Section 17 of the U.S. Housing Act of 1937. Section 17 was added to the U.S. Housing Act of 1937 by Section 301 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181) which was enacted on November 30, 1983. On June 14, 1984, HUD published interim implementing regulations for the new program (see 49 FR 24634). The interim regulations will be effective on August 7, 1984. This Invitation for Applications (IFA) is being issued in advance of the effective date of the regulations in order to allow sufficient time for applicants to prepare Housing Development Grant applications.

Program Funds

HUD has been authorized to provide $200 million in Housing Development Grant funds during Fiscal Year 1984, and an additional $115 million during Fiscal Year 1985. HUD estimates that the $200 million in Fiscal Year 1984 grant authority will be adequate to fund applications for between 8,000 and 10,000 units of rental, cooperative or mutual housing. HUD may base Fiscal Year 1985 funding decisions on applications submitted pursuant to this IFA.

Nature of and Limits on Program Assistance

Under the Housing Development Grant Program, HUD provides grants to cities, urban counties and States acting on behalf of units of general local government. These grantees, in turn, use the grant funds to provide grants, loans, interest reduction payments, rental assistance payments, or other forms of assistance to promote the construction or substantial rehabilitation of residential rental, cooperative or mutual housing.

The maximum grant that may be approved for a project is limited to an amount sufficient to produce decent rental housing of modest design that is affordable by families and individuals without other reasonable and affordable housing alternatives in the private market. Grant assistance may not exceed 50 percent of the total costs associated with the rehabilitation or construction of the project, normally *excluding* the cost of acquisition, debt service and operating deficit reserves, working capital, sponsor profit and risk allowance, and relocation costs in excess of an amount that HUD determines to be reasonable. Under certain limited circumstances, HUD may permit the cost of acquisition to be included in the base amount to which the 50 percent limitation is applied. The program regulations and the application packet to be distributed to prospective applicants provide guidance on the circumstances under which the inclusion of acquisition cost may be permitted.

Eligible Applicants/Grantees

Only cities, urban counties, and States acting on behalf of, and with the concurrence of, units of general local government are eligible to apply for and receive grant assistance under the Housing Development Grant Program. For purposes of qualifying as an eligible applicant under this program, "city" means a unit of general local government that is classified as a "city" for purposes of the Community Development Block Grant (CDBG) Program (see Section 102(a)(5) of the Housing and Community Development Act of 1974 and 24 CFR 570.3(e)). Similarly, a county that qualifies as an "urban county" under the CDBG Program (see Section 102(a)(6) of the Housing and Community Development Act of 1974, as amended by Section 102(b) of the Housing and Urban-Rural Recovery Act of 1983), will be an eligible applicant under this program. Entities which qualify as "States" under this program are: any State of the United States; the Commonwealth of Puerto Rico; the territories and possessions of the United States; the Trust Territory of the Pacific Islands; and Indian tribes, bands, groups and nations of the United States, including Alaska Indians, Aleuts and Eskimos. "Unit of general local government" means any city, county, town, township, parish, village or other general purpose political subdivision of a State.

It should be noted that although the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes, bands, groups and nations qualify as States under the Housing Development Grant Program, they still must establish that they are acting on behalf of, and with the concurrence of, a unit of general local government to be eligible to apply for grant assistance. This requirement, which stems directly from Section 17(e)(3) of the U.S. Housing Act of 1937, may effectively bar most of these entities from participating in the Housing Development Grant Program.

Eligible Types of Applications

There are basically three types of applications eligible for submission under this program:

(1) *Eligible Area Application*—This is an application for a project located in an area determined by HUD, on the basis of statutorily prescribed factors, to be experiencing a severe shortage of ecent rental housing opportunities for families and individuals without other reasonable and affordable alternatives in the private market. HUD's list of designated eligible areas (i.e., cities, urban counties and other units of local government) is published elsewhere in today's issue of the **Federal Register.**

(2) *Special Need Application*—This is an application for a project that is not located in a designated eligible area, but is intended to meet a special housing need that cannot be met through the moderate rehabilitation of housing stock located in the project neighborhood. A special need application must address either a special renter group need (e.g., need for housing to accommodate large families), or a special need resulting from a rapid change or other dislocation in the housing market that has occurred since the taking of the 1980 Census (e.g., need resulting from rapid population growth).

(3) *Neighborhood Preservation Purpose Application*—This is an application for a project that is not located in a designated eligible area, but is intended to advanced through moderate rehabilitation of housing stock

located in the project neighborhood. The proposed project must be located in a neighborhood preservation area in which concentrated housing, physical development, and public service activities are being carried out in a coordinated manner pursuant to a locally developed strategy for neighborhood improvement, conservation, or preservation.

Project Eligiblity

To be eligible for assistance under the Housing Development Grant Program, a project must involve new construction or substantial rehabilitation. For pruposes of this program, "substantial rehabilitation" is defined as repairs, replacements and improvements, (a) the cost of which exceeds the greater of 15 percent of the property's value after rehabilitation or $6,500 per dwelling unit (adjusted by an appropriate HUD mortgage insurance high cost factor), or (b) which entail the replacement of more than one major building component (e.g., roof structure; ceiling, wall or floor structures; plumbing system; or electrical system).

Projects must be designed primarily for non-transient, residential rental use. Generally, not more than 10 percent of the gross floor area of a project may be utilized for commercial purposes. (HUD may approve commercial space of up to 20 percent of the gross floor area if special conditions warrant exceeding the 10 percent limit.) Cooperative and mutual housing projects are eligible under this program, but must be controlled to assure the continued availability and affordability of at least 20 percent of the units to lower income households.

The units comprising a project must be similarly constructed; i.e., units must be of similar type and quality of construction, but need not contain the same number of rooms or floor space.

The estimated value of a project after construction or substantial rehabilitation may not exceed the amount of mortgage that could be insured for the project under Section 207 of the National Housing Act based on the sum of the statutory per-unit limits (adjusted by the appropriate supportable local high-cost factor) and an allowance determined by HUD for costs not attributable to dwelling use (including costs for commercial space).

Projects currently assisted (or for which assistance is anticipated) under any other Federal housing assistance program or which were formerly owned by HUD, are ineligible for assistance under this program.

Minimum and Maximum Project Size Limitations

Applications may not be submitted in response to this IFA for projects containing fewer than *20* or more than *300* dwelling units.

Applicability of Gauntreaux Consent Decree

Applications for projects to be developed within the Chicago, Illinois SMSA must comply with all applicable requirements of the Gautreaux Consent Decree. For further information on such requrements, prospective applicants should contact the HUD Chicago Regional Office (Attention: Ms. Mary Anderson) by calling (312) 353–6816. (This is not a toll-free number.)

Other Program Requirements

The following are additional requirements of the Housing Development Grant Program which are not mentioned elsewhere in this Notice:

(1) *Lower Income Units.* At least 20 percent of the units in any project assisted under the Housing Development Grant Program must be occupied, or available for occupacy, by lower income households (i.e., families or individuals whose incomes do not exceed 80 percent of the area median income, with adjustments, determined by HUD) during the period beginning when the project is initially available for occupacy and ending 20 years from the date on which 50 percent of the project units are first occupied. Owners must reexamine the income of each household occupying a lower income unit at least once a year.

(2) *Lower Income Unit Rents.* Rents (including utilities) charged for the units designated for lower income occupancy may not exceed 30 percent of the adjusted income for a family whose income equals 50 percent of the area median income, as determined, by HUD, with adjustrments for smaller and larger families. HUD will provide the median income data and standard income adjustments to be used by owners in establishing the maximum rents for lower income units.

(3) *Restriction on Conversions.* During the 20-year period starting when the project is initially available for occupancy, owners may not convert units to condominium ownership or any form of cooperative ownership which would be ineligible for assistance under the Housing Development Grant Program.

(4) *Marketing and Tenant Selection.* In renting units, owners may not discriminate against prospective tenants due to their eligibility for, or receipt of, housing assistance under any Federal, State or local housing assistance program, or because they have children (unless the units are in a project designated for occupancy only by the elderly). An owner must have a HUD-approved Affirmative Fair Housing Marketing Plan and must carry out all marketing activities in accordance with HUD's Affirmative Fair Housing Marketing Regulations at 24 CFR part 200.

(5) *Displacement/Relocation.* A project may not be assisted under the Housing Development Grant Program if its development will cause the involuntary displacement of very low-income households from the project site by households which are not very low-income. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD's implementing regulations (24 CFR Part 42) apply to any displacement resulting from acquisition by a State agency, as defined in 24 CFR 42.85. In any case where there will be project-related displacement or relocation and the Uniform Act is *not* applicable, the following requirements apply:

(a) The applicant (grantee) must have a written tenant assistance policy;

(b) No tenant may be required to move permanently unless provided adequate advance written notice and appropriate advisory services;

(c) Lower income tenants required to move permanently must receive adequate advance notice, appropriate advisory services, and financial assistance sufficient to obtain decent, safe, sanitary, and affordable replacement housing;

(d) Lower income tenants required to move temporarily must be provided with: Decent, safe and sanitary temporary housing; financial assistance to cover reasonable moving expenses and any increase in monthly housing costs during the temporary relocation period; and an opportunity to occupy a unit in the newly constructed or substantially rehabilitated project at an affordable rent.

(6) *Construction and Design Standards.* The HUD Multifamily Minimum Property Standards will *not* apply to projects under the Housing Development Grant Program unless they are HUD-insured. All projects must, however, meet applicable State and local building codes.

(7) *Environmental Standards.* Projects are subject to Section 104(f) of the Housing and Community Development Act of 1974, the National Enviornmental Policy Act of 1969, and will be subject to HUD's implementing regulations at 24

CFR Part 58 which will become effective July 31. Under this program, the applicant/grantee, *not* HUD, is responsible for performing an environmental assessment of the proposed project in accordance with the requirements of 24 CFR Part 58. Certifications of compliance may not be submitted prior to the effective date of the regulation but must be submitted prior to the deadline for submission of applications.

(8) *Labor Standards.* Projects consisting of 12 or more units are subject to the prevailing wage requirements of the Davis-Bacon Act and the provisions of the Contract Work Hours and Safety Standards Act.

(9) *HAP Consistency.* A proposed project must be consistent with any applicable local Housing Assistance Plan approved by HUD.

(10) *OMB Circulars.* The policies, guidelines and requirements of OMB Circular Numbers A–102 Revised (Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments) and A–122 (Cost Principles for Non-profit Organizations) apply to this program.

(11) *Intergovernmental Review.* The provisions of Executive Order 12372 and HUD's implementing regulations at 24 CFR Part 52 apply to this program. Applicants are required to submit applications directly to the review body.

(12) *Debarred, Suspended or Ineligible Contractors.* HUD's regulations at 24 CFR Part 24 relating to the use of debarred, suspended or ineligible contractors or subcontractors apply to this program. Grantees will be responsible for assuring that such contractors or subcontractors are not used for projects assisted under this program during any period of debarment, suspension or placement in ineligibility status.

(13) *Flood Insurance.* No site proposed for a project to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program, or less than a year has passed since FEMA notification regarding such hazards, and the applicant (grantee) will assure that flood insurance on the structure is obtained in compliance with Section 102(a) of the Flood Disaster Protection Act of 1973.

(14) *Nondiscrimination and Equal Opportunity.* Grantees and owners must comply with the requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 (Pub. L. 90–284) and implementing regulations, Executive Order 11063 and implementing regulations at 24 CFR Part 107, and Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) and implementing regulations at 24 CFR Part 1. Under Title VI and 24 CFR Part 1, no determination regarding the selection of a site or location of a Federally assisted project may be made with the purpose of or effect of excluding individuals from, or denying them the benefits of, or subjecting them to discrimination on the basis of race, color, or national origin or the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI or 24 CFR Part 1. Grantees and owners must also comply with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR Chapter 60; and the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.

(15) *Minority and Women's Business Enterprise Opportunity.* The grantee and owner must prepare, implement and maintain a minority and women-owned business development plan which shall contain specific and measurable goals and an affirmative strategy to promote awareness and participation by such businesses in the contracting and procurement activities generated by the project.

(16) *Administrative Costs.* Grant funds may not be used for administrative costs incurred by an applicant/grantee in carrying out its responsibilities under the Housing Development Grant Program. Such administrative costs include, but are not limited to, staff and consultant salaries and operating expenses of the applicant/grantee.

(17) *Construction Start Deadline.* Project construction or rehabilitation must commence within 24 months of HUD's notice of application selection.

(18) *Grantee-Owner Agreement.* The grantee and owner must enter into an agreement requiring the owner to comply with certain statutory and regulatory restrictions (e.g., items (1), (2), and (3) above). The grantee will be responsible for assuring that the owner complies with the agreement. Any Housing Development Grant assistance provided to the owner will constitute a debt payable in the event of failure to comply with the agreement. In the event of an uncorrected violation, the owner will be required to pay the grantee an amount equal to the total amount of the grant assistance (plus interest thereon at a rate determined by HUD based on the Federal Government's borrowing rate), less 10 percent for each year in excess of 10 years from the effective date of the agreement. The owner's contingent debt must be secured by a security instrument (e.g., a lien against the property).

Application Submission Requirements

The application submission requirements are described in general terms in § 850.33 of the program regulations. The application packet that HUD will make available to prospective applicants will describe in much greater detail the required contents of an application. The application packet will also contain detailed guidance to assist applicants in preparing acceptable applications.

HUD Review and Selection of Applications

Applications will be reviewed both by HUD Headquarters and by HUD Field Offices. Field Offices will be responsible for making review comments and recommendations, but all selections will be made by Headquarters.

To be considered eligible for ranking and possible selection, an application must meet certain threshold requirements. These threshold requirements are specified in the program regulations at 24 CFR 850.37.

HUD will rate and rank applications on the basis of the following factors (maximum number of points to be awarded for each factor is shown in parentheses).

(1) *Shortage of decent affordable housing (25 points).* HUD will consider two separate elements under this factor. More favorable consideration will be given to those projects that are located in areas with the lower rental vacancy rates in the jurisdiction as a whole, and in all lower income census tracts in the jurisdiction (or where requested in the application and approved by HUD, in the market area).

(2) *Leveraging ratios (15 points).* HUD will consider two separate elements under this factor. More favorable consideration will be given to projects with higher project leveraging ratios (i.e., total private and non-Federal public financial resources committed to the project divided by the requested grant amount) and higher private project leveraging ratios (i.e., total private financial resources committed to the project divided by the requested grant amount).

(3) *Neighborhood development and mitigation of displacement (5 pointsO.* HUD will consider two separate elements under this factor. More favorable consideration will be give to those projects that have more favorable effect on neighborhood development and that cause little or no displacement or that provide effective mitigation of displacement.

(4) *Demonstrated performance and capacity (5 points).* HUD will consider the applicant's record of performance in meeting its assisted housing needs and the applicant's capacity to commence and carry out the project in a timely manner. More favorable consideration will be given to those with the better record of performance in meeting annual and three-year Housing Assistance Plan goals and administering programs of federally assisted housing.

(5) *Efficient use of grant funds (10 points).* HUD will consider the extent to which the housing development grant requested will provide the maximum number of units for the least cost to the Federal government. More favorable consideration will be given to projects with the better performance in achieving this result. HUD will develop these ratios to account for the repayment of grant amounts to the grantee and for differences in unit size (number of bedrooms), types of tenants being served, financing alternatives, construction costs, and project type.

(6) *Rent affordability (5 points).* HUD will consider two elements under this factor. More favorable consideration will be given to projects that provide a more effective mechanism for assuring that rents for lower income units meet the rent requirements of § 850.151(e) of the program regulations, and that provide the greater amount of assistance, if any, to assure that rents are affordable for very low-income households.

(7) *Financial feasibility (10 points*). More favorable consideration will be given to those projects that provide the better documentation of project feasibility, considering the relative strength of firm project commitments, the depth and adequacy of underwriting evidenced, and the long-term viability of the project, taking into account the requirements of the program regulations.

(8) *Family housing (15 points*). More favorable consideration will be given to projects that provide the greater number of units for families and for large families with children.

(9) *Minority and women's business enterprise (5 points*). More favorable consideration will be given to projects with the higher percentage of minority or women representation in the ownership of the project. In the case of a partnership owner, in the case of a general partner in a limited partnership, or in the case of a corporate owner, more favorable consideration will be given to those projects where control of the partnership, the general partner, or corporate owner, as applicable, is vested in, and exercised by, minority persons and/or women.

(10) *Promoting nondiscrimination and equal opportunity (5 points).* HUD will take into account the present pattern of assisted housing location and occupancy. More favorable consideration will be given to projects that are located (a) outside areas of minority concentration where the current pattern shows most assisted projects in minority areas, or (b) in areas where there is no other assisted housing, or (c) in areas undergoing revitalization through public or private investment and in which rental opportunities for lower income households are declining.

In making selections, HUD will give priority (up to 20 bonus points) to projects located in areas where waiting lists for housing assistance are relatively long and where Section 8 certificate-holders require an excessive length of time to find housing, *and* in which more than 20 percent of the units will be made available for occupancy by lower-income families.

More specific information on how HUD will rate applications on the selection criteria and apply the two-part selection priority will be provided to prospective applicants in the application packet.

Where To Obtain Application Packets

Beginning on June 25, 1984, application packets containing all required application forms and exhibits, detailed application instructions, and pertinent program guidance may be obtained from the HUD Field Offices listed in Appendix A of this Notice. Each prospective applicant should obtain and carefully review an application packet before attempting to prepare an application for submission to HUD.

Deadline for Submission of Applications

Applications must be received by HUD by the close of business on August 14, 1984. Further information concerning the deadline and where to submit applications will be provided in the application packet.

Authority: Sec. 17(d), United States Housing Act of 1937 (42 U.S.C. 1434o(d); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))).

Dated: June 15, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—HUD Field Offices

REGION I

Boston Regional Office

Bulfinch Building, 15 New Chardon Street, Boston, Massachusetts 02114

Hartford Office

One Hartford Square West, P.O. Box 2943 Hartford, Connecticut 06104

Manchester Office

Norris Cotton Federal Building, 275 Chesnut Street, Manchester, New Hampshire 03103

Providence Office

330 John O. Pastore Federal Building and U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903

REGION II

New York Regional Office

26 Federal Plaza, New York, New York 10278

Buffalo Office

Mezzanine, Statler Building, 107 Delaware Avenue, Buffalo, New York 14202

Caribbean Office

Federico Degetau Federal Building, U.S. Courthouse, Room 428, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918

Newark Office

Military Park Building, 60 Park Place, Newark, New Jersey 07102

REGION III

Philadelphia Regional Office

Curtis Building, 6th & Walnut Streets, Philadelphia, Pensylvania 19106

Baltimore Office

The Equitable Building, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202

Charleston Office

Kanawha Valley Building, Capitol and Lee Streets, Charleston, West Virginia 25301

Pittsburgh Office

Fort Pitt Commons, 445 Fort Pitt Boulevard, Pittsburgh, Pennsylvania 15219

Richmond Office

701 East Franklin Street, Richmond, Virginia 23219

Washington, D.C. Office

Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009

REGION IV

Atlanta Regional Office

Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303

Birmingham Office

Daniel Building, 15 South 20th Street, Birmingham, Alabama 25233

Columbia Office

Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, South Carolina 29201

Greensboro Office

415 North Edgeworth Street, Greensboro, North Carolina 27401

Jackson Office

Federal Building, Suite 1016, 100 West Capital Street, Jackson, Mississippi 39269

Jacksonville Office

325 West Admans Street, Jacksonville, Florida 32202

Knoxville Office

One Northshore Building, 1111 Northshore Drive, Knoxville, Tennessee 37919

Lousville Office

539 Fourth Avenue, P.O. Box 1044, Louisville, Kentucky 40201

Nashville Office

One Commerce Place—Suite 1600, Nashville, Tennessee 37239

REGION V

Chicago Regional Office

547 West Jackson Boulevard, Chicago, Illinois 60606

Cincinnati Office

Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202

Cleveland Office

777 Rockwell Avenue, Second Floor, Cleveland, Ohio 44114

Columbus Office

200 North High Street, Columbus, Ohio 43215

Detroit Office

Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michgan 48226

Grand Rapids Office

2922 Fuller Avenue N.E., Grand Rapids, Michigan 49505

Indianapolis Office

151 North Delaware Street, Indianapolis, Indiana 46204

Milwaukee Office

Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203

Minneaplis-St. Paul Office

220 Second Street, South, Minneapolis, Minnesota 55401

REGION VI

Fort Worth Regional Office

221 W. Lancaster, P.O. Box 2905, Fort Worth, Texas 76113

Houston Office

Two Greenway Plaza East, Suit 200, Houston, Texas 77046

Little Rock Office

Savers Building, 320 West Capitol, Little Rock, Arkansas 72201

New Orleans Office

1661 Canal Street, P.O. Box 70288, New Orleans, Louisiana 70172

Oklahoma City Office

Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Olkahama 73102

San Antonio Office

Washington Square, 800 Dolorosa, P.O. Box 9163, San Antonio, Texas 78285

REGION VII

Kansas City Regional Office

Professonal Building, 1103 Grand Avenue, Kansas City, Missouri 64104

Des Moines Office

Federal Building, 210 Walnut Street, Room 259, Des Moines, Iowa 50309

Omaha Office

Braiker/Brandeis Building, 210 South 16th Street, Omaha, Nebraska 68102

St. Louis Office

210 North Tucker Boulevard, St. Louis, Missouri 63101

REGION VIII

Denver Regional Office

Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202

REGION IX

San Francisco Regional Office

Federal Building, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, California 94102

Honolulu Office

300 Ala Moana Boulevard, Room 3318, Honolulu, Hawaii 96813

Los Angeles Office

2500 Wilshire Boulevard, Los Angeles, California 90057

Phoenix Office

Arizona Bank Building, 101 North First Avenue, Suite 1800, Post Office Box 13468, Phoenix, Arizona 85002

Sacramento Office

SOL "J" Street, 2nd Floor, Post Office Box 1978, Sacramento, California 95809

REGION X

Seattle Regional Office

Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98010

Anchorage Office

701 C Street, Box 64, Anchorage, Alaska 99513

Portland Office

520 Southwest Sixth Avenue, Portland, Oregon 97204

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[Docket No. N-84-1400; FR-1925]

Housing Development Grant Program; List of Designated Eligible Areas

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with 24 CFR 850.13, this Notice lists those entities that the Secretary has determined meet the minimum standards for designated eligible areas under the Housing and Development Grant Program.

FOR FURTHER INFORMATION CONTACT: Frank D. Brown, Acting Director, Housing Development Grants Division, Room 6128, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 755–5720. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 301 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, approved November 30, 1983) added a

new section 17 to the United States Housing Act of 1937 (the 1937 Act) (14 U.S.C. 1437o) which, among other things, established the Housing Development Grant Program.

Under the Program, HUD is authorized to make grants to cities, urban counties and States acting on behalf of units of general local government to be used to support the new construction or substantial rehabilitation of primarily residential rental projects. An application must meet one of three thresholds to receive consideration for funding: it must be for a project located in a designated eligible area; meet a special housing need; or advance a particular neighborhood preservation purpose. This Notice concerns designated eligible areas, which section 17(d)(2) of the 1937 Act defines as areas determined by HUD to be experiencing a severe shortage of decent rental housing as opportunities for families and individuals without other reasonable and affordable housing alternatives in the private market.

Section 17(d)(2) of the 1937 Act requires HUD to establish minimum standards for determining designated eligible areas, taking into account certain statutory conditions and other objectively measurable conditions specified by the Secretary. These conditions are set out in 24 CFR 850.13(b). Section 850.13(a) provides that from time to time HUD will publish a Notice in the **Federal Register** listing those areas that have been so determined. This Notice is published in accordance with this requirement.

Areas that are not designated eligible areas may still be considered for housing development grants for projects that meet special housing needs or advance neighborhood preservation purposes. As with designated eligible area projects, cities and urban counties may submit such applications on their own behalf. States may submit such application on behalf, and with the concurrence, of units of general local government (see 24 CFR 850.15).

The following is a list of those entities that have been determined by HUD to be designated eligible areas.

Cities, Urban Counties and Large Puerto Rican Municipios

Alabama

Abbeville
Aliceville
Andalusia
Anniston
Atmore
Auburn
Bay Minette
Bessemer
Birmingham
Brent
Bridgeport
Brighton
Brundidge
Centreville
Childersburg
Citronelle
Clanton
Columbiana
Cordova
Dadeville
Daleville
Daphne
Demopolis
Eufaula
Evergreen
Fairfield
Gadsden
Graysville
Greensboro
Greenville
Hartford
Headland
Hokes Bluff
Lafayette
Linden
Lipscomb
Livingston
Luverne
Marion
Monroeville
Montgomery
Opelika
Phenix City
Piedmont
Pleasant Grove
Prichard
Red Bay
Roanoke
Roosevelt City
Russellville
Selma
Sheffield
Stevenson
Sumiton
Sylacauga
Talladgeg
Thomasville
Troy
Tuskegee
Union Springs
Wetumpka
York

Alaska

Bethel

Arizona

Avondale
Bisbee
Buckeye
Casa Grande
Chandler
Chino Valley
Coolidge
Douglas
Edgar
El Mirage
Eloy
Florence
Guadalupe
Holbrook
Miami
Nogales
Parker
Somerton
South Tucson
St. Johns
Superior
Surprise
Thatcher
Tolleson
Winslow

Arkansas

Augusta
Blytheville
Booneville
Brinkley
Camden
Carlisle
Clarksville
Corning
Dewitt
Demott
Dumas
Earle
El Dorado
England
Eudora
Forrest City
Hamburg
Helena
Hot Springs
Hoxie
Lake Village
Magnolia
Malvern
Manila
Marianna
Marked Tree
McGehee
Mena
Monticello
Newport
Osceola
Paragould
Pine Bluff
Prescott
Stamps
Waldron
Walnut Ridge
Warren
West Helena
West Memphis
Wynne

California

Arcata
Artesia
Arvin
Avenal
Azusa
Baldwin Park
Banning
Barstow
Bell
Bell Gardens
Berkeley
Blythe
Brawley
Brentwood
Calexico
Cloverdale
Coachella
Colton
Commerce
Compton
Corcoran
Cotati
Cudahy
Daly
Delano
Dinuba
Dos Palos
Durate
El Centro
El Monte
Exeter
Farmersville
Fillmore
Firebaugh
Fresno County
Galt
Garden Grove
Gardena
Gilroy
Gonzales
Greenfield
Gridley
Guadalupe
Hawiian Gardens
Hollister
Hughson
Huntington Park
Huron
Imperial Beach
Indio
Ingleswood
King City
La Puente
Lake Elsinore
Lawndale
Lindsay
Live Oak
Livingston
Los Angeles
Los Banos
Lynwood
Madera
Marina
Maywood
McFarland
Mendota
Merced
Montebello
National City
Newark
Newman
Norwalk
Oakland
Orange Cove
Oroville
Oxnard
Paramount
Parlier
Pasadena
Patterson
Perris
Pittsburg
Placentia
Pomona
Porterville
Redwood City
Reedley
Richmond
Riverbank
Rosemead
Ross
Salinas
San Bernadino
San Fernando
San Francisco
San Gabriel
San Jacinto
San Jose
San Pablo
Sanger
Santa Ana
Santa Cruz
Santa Fe Springs
Sana Paula
Seaside
Selma
Soledad
South El Monte
South Gate
Stockton
Tulare
Union City
Wasco
Winters
Woodlake

Colorado

Alamosa
Delta
Fort Lupton
La Junta
Lamar
Las Animas
Monte Vista
Rocky Ford
Trindad
Walsenburg

Connecticut

Bridgeport
Danielson
Hartford
Jewett City
New Haven
New London
Norwich
Stafford Springs

Delaware

Laurel
Milford
New Castle
Smyrna
Wilmington

District

Washington

Florida

Alachua
Apalachicola
Apopka
Arcadia
Avon Park
Bartow
Belle Glade
Blountstown
Bonifay
Brooksville
Chipley
Clewiston
Cocoa
Dade County
De Funiak Spring
De Land
Florida City
Fort Meade
Fort Pierce
Graceville
Green Cove Spring
Haines City
Havana
Hialeah
Homestead
Key West
Lake City
Live Oak
MacClenny
Madison
Marianna
Miami
Miami Beach
Monticello
Mount Dora
Mulberry
Ocala
Opalocka
Pahokee
Palatka

Palmetto
Pensacola
Perry
Plant City
Quincy
Riviera Beach
Sanford
South Bay
South Miami
Springfield
St. Augustine
Starke
Sweetwater
Tampa
West Miami
West Palm Beach
Wildwood
Winter Gard

Georgia

Adel
Albany
Alma
Americus
Ashburn
Athens
Atlanta
Augusta
Bainbridge
Barnesville
Baxley
Blackshear
Blakely
Brunswick
Cairo
Camilla
Canton
Cedarton
Claxton
Cochran
Cordele
Covington
Cuthbert
Dawson
Donalsonville
Douglas
Dublin
East Dublin
Eastman
Eatonton
Elberton
Fitzgerald
Forsyth
Fort Valley
Glennville
Gordon
Greensboro
Griffin
Hartwell
Hawkinsville
Hazlehurst
Hogansville
Homerville
Jackson
Jesup
La Grange
Lakeland
Lithonia
Louisville
Lyons
Macon
Madison
McDonough
Metter
Milledgeville
Millen
Monroe
Montezuma
Moultrie
Newman
Ocilla
Pelham
Perry
Quitman
Rockmart
Rome
Sandersville
Savannah
Social Circle
Soperton
Stateboro
Summerville
Swainsboro
Sylvania
Sylvester
Thomaston
Thomasville
Thomson
Tifton
Valdosta
Vidalia
Vienna
Villa Rica
Washington
Waycross
Waynesboro
West Point
Winder
Wrightsville

Idaho

Blackfoot
Emmett
Fruitland
Heyburn
Montpelier
Payette
Sandpoint
St. Anthony
Weiser

Illinois

Aledo
Benton
Cairo
Carrollton
Centreville
Chicago
Chicago Heights
Columbia
Danville
East Chicago Heights
East St. Louis
Eldorado
Fairfield
Green Rock
Halvey
Havana
Johnston City
Madison
Markham
Maywood
McLeansboro
Metropolis
Naperville
Phoenix
Robbins
Round Lake Beach
Sandwich
South Holland
Stone Park
Summit
Venice
Washington Park
Waterloo
White Hall

Indiana

Austin
Bicknell
Bloomington
East Chicago
Edinburg
Gary
Hanover
Knox
Lawrenceburg
Linton
Mount Vernon
Munice
New Castle
North Vernon
Richmond
St. John
Vincennes
West Lafayette
West Terre Haute

Iowa

Centerville
Manchester
Sioux Center

Kansas

Abilene
Baxter Springs
Coffeyville
Columbus
Marysville
Neodesha
Pittsburg

Kentucky

Bardstown
Bowling Green
Catlettsburg
Central
Columbia
Covington
Cumberland
Cynthiana
Dawson Springs
Dayton
Flemingsburg
Franklin
Fulton
Georgetown
Grayson
Harlan
Harrodsburg
Hartford
Hickman
Hodgenville
Irvine
Jackson
Lancaster
Lebanon
Louisville
Ludlow
Mayfield
Maysville
Middlesborough
Monticello
Mount Sterling
Newport
Olive Hill
Paduacah
Paris
Pikeville
Pineville
Providence
Richmond
Scottsville
Shelbyville
Somerset
Springfield
Stanford
Tompkinsville
Vine Grove
Williamsburg
Winchester

Louisiana

Abbeville
Alexandria
Amite City
Arcadia
Baldwin
Basile
Bastrop
Bogalusa
Breaux Bridge
Broussard
Bunkie
Carencro
Church Point
Covington
Crowley
Delhi
Donaldsonville
Eunice
Farmerville
Ferriday
Franklin
Franklinton
Gramercy
Gretna
Hammond
Haynesville
Homer
Houma
Jeanerette
Jennings
Jonesville
Kaplan
Kentwood
Kinder
Lake Arthur
Lake Providence
Leesville
Lutcher
Mamou
Mansfield
Many
Marksville
Minden
Monroe
Morgan City
Natchitoches
New Iberia
New Orleans
New Roads
Oakdale
Opelousas
Plaquemine
Ponchatoula
Port Allen
Port Barre
Rayne
Rayville
Shreveport
St. Martinville
Talluiah
Thibodaux
Ville Platte
Welsh
Westwego
Winnfield
Winnsboro
Zwolle

Maine

Bath
Belfast
Calais
Caribou
Portland
Rockland
Waterville

Maryland

Baltimore
Cambridge
Capitol Heights
Chestertown
Crisfield
Cumberland
Fruitland
Pocomoke City
Seat Pleasant

Massachusetts

Boston
Brockton
Cambridge
Chelsea
Fall River
Holyoke
Lawrence
Lynn
New Bedford
North Adams
Northampton
Springfield

Michigan

Alma
Battle Creek
Bay City
Benton Harbor
Big Rapids
Boyne City
Caro
Chedar Springs
Cheboygan
Detroit
Dundee
East Grand Rapid
Ecorse
Essexville
Flint
Franklin
Grand Rapids
Grosse Pointe FA
Hamtramck
Highland Park
Houghton
Ironwood
Jackson
Kalamazoo
Laurium
Monroe
Mount Morris
Muskegon
Muskegon Heights
Nile
Pontiac
Port Huron
River Rouge
Saginaw
Sault Sainte Mar
Sparta
St Johns
St Louis
Ypsilanti
Zeeland

Minnesota

Bemidji
Brainerd
Dayton
Deephaven
Fairmont
Minnetrista
Park Rapids
Sauk Centre
Staples

Mississippi

Aberdeen
Amory
Batesville
Belzoni
Brookhaven
Canton
Carthage
Charleston
Clarksdale
Cleveland
Columbia
Columbus
Crystal Springs
Drew
Durant
Forest
Greenville
Greenwood
Grenada
Hattiesburg
Hazlehurst
Hernando
Hollandale
Holly Springs
Horn Lake
Houston
Indianola
Itta Bena
Jackson
Kosciusko
Laurel
Leland
Lexington
Louisville
Magee
McComb
Mendenhall
Meridian
Morton
Moss Point
Mound Bayou
Natchez
Newton
Okolona
Pass Christian
Poplarville
Quitman
Rolling Fork
Rosedale
Ruleville
Senatobia
Shelby
Vicksburg
Water Valley
Waynesboro
West Point
Wiggins
Winona
Yazoo City

Missouri

Aurora
Ava
Bethany
Butler
Caruthersville
Charleston
Desloge
East Prairie
Flat River
Fredericktown
Hayti
Kennett
Kinloch
Lexington
Malden
Mountain Grove
New Madrid
Pagedale
Pine Lawn
Poplar Bluff
Portageville
Potosi
Sedalia
St. Clair
St. Louis
Valley Park
Wellston

Nevada

North Las Vegas

New Hampshire

Keene

New Jersey

Asbury Park
Atlantic City
Beachwood
Beverly
Bradley Beach
Bridgeton
Buena
Camden
Closter
Dover
East Orange
Elizabeth
Gloucester City
Haledon
Harrington Park
Harrison
Hoboken
Hudson County
Irvington
Jersey City
Keyport
Kinnelon
Lakehurst
Moonachie
New Brunswick
Newark
Northfield
Passaic
Paterson
Paulsboro
Pennis Grove
Perth Amboy
Pitman
Plumfield
Prospect Park
Rockaway
Salem
South Amboy
South Toms River
Trenton
Union Beach
Union City
Washington
West New York
Wildwood
Woodbine
Woodstown

New Mexico

Bayard
Bernalillo
Bloomfield
Clayton
Deming
Espanola
Gallup
Jal
Las Vegas
Lordsburg
Los Lunas
Lovington
Portales
Raton
Silver City
Socorro
Taos
Truth of Consequences
Tucumcari
Tularosa

New York

Albany
Alfred
Babylon
Bath
Binghamton
Brockport
Buffalo
Canastota
Canton
Carthage
Chittenango
Cornwall on Hudson
Cortland
Croton-on-Hudson
Dansville
Dunkirk
East Aurora
Ellenville
Elmira
Elmsford
Fort Edward
Fredonia
Freeport
Fulton
Geneseo
Gloversville
Gouverneur
Granville
Hamburg
Hamilton
Haverstraw
Hempstead
Herkimer
Hilton
Homer
Hornell
Hudson
Ilion
Ithaca
Kings Point
Kingston
Larchmont
Liberty
Malone
Malverne
Massena
Middletown
Mohawk
Mount Vernon
New Rochelle
New York
Newburgh
Niagara Falls
North Tarrytown
Nyack
Ogdensburg
Oneonta
Pelham
Penn Yan
Plattsburgh
Port Chester
Port Jervis
Potsdam
Poughkeepsie
Rensselaer
Rochester
Schenectady
Silver Creek
Skaneateles
Sloatsburg
Springville
Syracuse
Ticonderoga
Troy
Utica
Walden
Watertown
Whitesboro

North Carolina

Ahoskie
Belmont
Benson
Bessemer City
Canton
Clayton
Clinton
Dallas
Dunn
Edenton
Elizabeth City
Elizabethtown
Enfield
Fairmont
Farmville
Granite Falls
Havelock
Henderson
Hendersonville
Hillsborough
Kingston
Louisburg
Lowell
Madison
Maxton
Monroe
Mount Airy
Mount Olive
Murfreesboro
Nashville
New Bern
Oxford
Pembroke
Plymouth
Red Springs
Reidsville
Rocky Mount
Roxboro
Rutherfordton
Scotland Neck
Selma
Shelby
Smithfield
Spindale
Spring Lake
Tabor City
Troy
Wadesboro
Wake Forest
Warsaw
Washington
Waynesville
Williamston
Wilmington
Wilson

Ohio

Athens
Barnesville
Bellaire
Bridgeport
Cedarville
Cincinnati
Cleveland
Cleveland Height
Coal Grove
Crooksville
Dayton
Dennison
East Cleveland
East Liverpool
East Palestine
Elmwood Place
Fremont
Gallipolis
Georgetown
Girard
Greenfield
Hamilton City
Highland Heights
Itonton
Jackson
Jefferson
Lima
Lincoln Heights
Logan
Millersburg
Nelsonville
New Boston
New Lexington
New Miami
New Richmond
Pomeroy
Portsmouth
Sabina
Shadyside
South Lebanon
Springfield
St. Clarisville
Steubenville
Toledo
Uhrichsville
Washington
Wellston
Wellsville
West Union
Windham
Woodlawn
Yellow Springs
Youngstown
Zanesville

Oklahoma

Ada
Anadarko
Antlers
Ardmore
Atoka
Bristow
Broken Bow
Chandler
Checotah
Chickasha
Clinton
Commerce
Coweta
Drumright
Durant
Eufaula
Glenpool
Guthrie
Heavener
Henryetta
Hobart
Holdenville
Hollis
Idabel
Medill
Mangum
Marlow
Muskogee
Okemah
Okmulgee
Pauls Valley
Pawhuska
Poteau
Purcell
Sayre
Seminole
Shawnee
Stigler
Sulphur
Tahlequah
Tishomingo
Vinita
Wagoner
Walters
Wewoka

Oregon

Monlalla
Nyssa

Pennsylvania

Akron
Ashland
Avoca
Beaver Falls
Bentleyville
Boyertown
Braddock
Bradford
Bristol
Brownsville
Centreville
Chester
Clairton
Coatesville
Colwyn
Connelsville
Darby
Donora
Duquesne
Easton
Eddystone
Erie
Farrell
Fountain Hill
Gettsyburg
Greencastle
Harrisburg
Homestead
Indiana
Johnstown
Lancaster
Lehighton
Lewistown
Lititz
Lock Haven
Mansfield
Marcus Hook
Masontown
McKees Rocks
McKeesport
Mercer
Meyersdale
Midland
Mount Penn
New Castle
New Kensington
Oakmont
Parkesburg
Philadelphia
Philipsburg
Pittsburgh
Pittston
Plymouth
Port Allegany
Portage
Pottsville
Rankin
Reading
Sayre
Shamokin
Shenandoah
Shillington
State College
Summit Hill
Sunbury
Tarentum
Throop
Titusville
Towanda
Union City
Uniontown
Upland
Washington
Williamsport
York

Rhode Island

Central Falls
Newport
Providence
Woonsocket

South Carolina

Abbeville
Allendale
Anderson
Andrews
Bamberg
Barnwell
Batesburg
Bennettsville
Bishopville
Blackville
Charleston
Cheraw
Chester
Clover
Darlington
Denmark
Dillon
Edgefield
Florence
Fort Mill
Gaffney
Georgetown
Great Falls
Greenwood
Greer
Hartsville
Johnston
Kingstree
Lake City
Lancaster
Laurens
Liberty
Manning
Marion
McCall
Mullins

Orangeburg
Pageland
Saluda
Spartanburg
Sumter
Walterboro
Williamston
Winnsboro
Woodruff
York

South Dakota

Mobridge
Sisseton
Spearfish
Vermillion
Winner

Tennessee

Alamo
Bolivar
Brownsville
Collierville
Columbia
Covington
Elizabethton
Etowah
Fayetteville
Henderson
Humboldt
Jellico
Lawrenceburg
Lexington
Loudon
McKenzie
Memphis
Milan
Monterey
Mount Pleasant
Oliver Springs
Oneida
Pulaski
Ripley
Savannah
Sevierville
Smithville
South Fulton
Sparta
Springfield
Trenton
Winchester

Texas

Alamo
Alice
Alpine
Alton
Alvarado
Andrews
Anthony
Arkansas Pass
Athens
Ballinger
Bastrop
Bay City
Beeville
Belton
Big Lake
Big Spring
Bishop
Brady
Brazoria
Brownfield
Brownsville
Cameron
Carrizo Springs
Center
Childress
Clarksville
Cleveland
Clute City
Cockrell Hill
Coleman
Colorado City
Comanche
Corpus Christi
Corsicana
Cotulla
Crockett
Crystal City
Cuero
Del Rio
Devine
Diboll
Dilley
Dimmitt
Donna
Eagle Lake
Eagle Pass
Edcouch
Edinburg
El Campo
El Paso
Elgin
Elsa
Ennis
Falfurrias
Floresville
Floydada
Fort Stockton
Fredericksburg
Freer
Friona
Gatesville
George West
Giddings
Gonzales
Gregory
Groesbeck
Hamlin
Harlingen
Haskell
Hearne
Hempstead
Hereford
Hondo
Hutchins
Jacksonville
Jasper
Jefferson
Jourdanton
Junction
Karnes City
Kaufman
Kenedy
Killeen
Kingsville
Kountze
La Freria
La Grange
Lamesa
Lampasas
Laredo
Levelland
Littlefield
Llano
Lockhart
Lufkin
Luling
Madisonville
Marble Falls
Marlin
Marshall
Mathis
McAllen
McGregor
McKinney
Memphis
Mercedes
Mexia
Mission
Monahans
Morton
Muleshoe
Navasota
Palestine
Paris
Pearsall
Pecos
Pharr
Plainview
Pleasanton
Port Arthur
Port Isabel
Port Lavaca
Post
Poteet
Premont
Raymondville
Refugio
Richmond
Robstown
Rockport
Roma
San Antonio
San Augustine
San Benito
San Diego
San Juan
San Marcos
San Saba
Seagraves
Sealy
Seguin
Seminole
Sinton
Slaton
Smithville
Sonora
South Houston
Stamford
Sweetwater
Taft
Tahoka
Taylor
Teague
Terrell
Trinity
Tulia
Uvalde
Van Horn
Vernon
Victoria
Waxahachie
Wellington
Weslaco
Wharton
Winnesboro
Winters
Yoakum

Utah

Clinton
Ephraim
Payson
Provo
South Jordan
Washington

Vermont

Barre
Bellows Falls
Newport
St. Albans
Swanton
Winooski

Virginia

Blackstone
Chase City
Coeburn
Culpepper
Orange
Petersburg
Portsmouth
Richmond
Roanoke
South Hill
Warrenton
Wytheville

Washington

Clarkston
Grandview
Othello
Pasco
Pullman
Sunnyside
Toppenish
Wapato

West Virginia

Buckhannon
Charles Town
Fairmont
Grafton
Hinton
Keyser
Lewisburg
Martinsburg
Mullens
Philippi
Ripley
Salem
Weston
Williamson

Wisconsin

Antigo
Beaver Dam
Berlin
Bloomer
Combined Locks
Jefferson
Kiel
Ladysmith
Medford
Menomonie
Neillsville
Platteville
River Falls
Waupun
Whitewater

Puerto Rico

Arecibo
Bayamon Municipio
Caguas Municipio
Carolina Municipio
Guaynabo Municipio
Mayaguez Municipio
Ponce Municipio
San Juan Municipio
Toa Baja Municipio
Trujillo Alto Municipio

Towns and Townships

Connecticut

Brooklyn Town—Windham County
Durham Town—Middlesex County
Granby Town—Hartford County
Kent Town—Litchfield County
New Fairfield—Fairfield County
North Stonington Town—New London County
North Canaan Town—Litchfield County
Portland Town—Middlesex County
Salisbury Town—Litchfield County
Woodstock Town—Windham County

Maine

Brunswick Town—Cumberland County
Falmouth Town—Cumberland County
Fort Fairfield Town—Aroostook County
Fort Kent Town—Aroostook County
Houlton Town—Aroostock County
Livermore Town—Androscoggin County
New Glouchester Town—Cumberland County
Poland Town—Androscoggin County
Sabattos Town—Androscoggin County
VanBuren Town—Aroostock County

Massachusetts

Amherst Town—Hampshire County
Avon Town—Norfold County
Burlington Town—Middlesex County
Dedham Town—Norfold County
Dighton Town—Bristol County
East Bridgewater Town—Plymouth County
Essex Town—Essex County
Greenfield Town—Franklin County
Hadley Town—Hampshire County
Hanover Town—Plymouth County
Kington Town—Plymouth County
Lenox Town—Berkshire County
Marion Town—Plymouth County
Mattaroisett Town—Plymouth County
Millbury Town—Worcester County
Paxton Town—Worcester County
Province Town—Barnstable County
Salisbury Town—Essex County
South Hadley—Hampshire County
Sunderland—Franklin County
Swansea Town—Bristol County
West Newbury Town—Essex County
Westminister Town—Worcester County
Whitman Town—Plymouth County
Wrentham Town—Norfolk County

Michigan

Albee Township—Saginaw County
Arbela Township—Tuscola County
Atlas Township—Genesee County
Attica Township—Lapeer County
Aurelius Township—Ingham County
Bainbridge Township—Berrien County
Bennington Township—Shiawassee County
Benton Township—Berrien County
Buchanan Township—Berrien County
Burns Township—Shiawassee County
Chesaning Township—Saginaw County
Cooper Township—Kalamazoo County
Courtland Township—Kent County
Covert Township—Van Buren County
Deerfield Township—Livingston County
Geneva Township—Van Buren County
Green Lake Township—Grand Traverse County
Hagar Township—Berrien County
Hartford Township—Van Buren County

Hayes Township—Clare County
Henrietta Township—Jackson County
Howard Township—Cass County
Ida Township—Monroe County
Jefferson Township—Hillsdale County
Keeler Township—Van Buren County
La Salle Township—Monroe County
Manistee Township—Manistee County
Maplegrove Township—Saginaw County
Marathon Township—Lapeer County
Millington Township—Tuscola County
Mills Township—Ogeman County
Oronoko Township—Berrien County
Otsego Township—Allegan County
Peninsula Township—Grand Traverse County
Plainfield Township Iosco County
Portage Township—Houghton County
Praireville Township—Barry County
Raisin Township—Lenawee County
Ray Township—Macomb County
Richland Township—Saginaw County
Robinson Township—Ottawa County
Roscommon Township—Roscommon County
Rose Township—Oakland County
Royal Oak Township—Oakland County
Unadilla Township—Livingston County
Vassar Township—Tuscola County
Venice Township—Shiawassee County
Vernon Township—Isabella County
Watertown Township—Clinton County
Zeeland Township—Ottawa County

New Hampshire

Allentown Town—Grafton County
Candia Town—Rockingham County
Durham Town—Strafford County
Gorham Town—Coos County
Hanover Town—Grafton County
Lancaster Town—Coos County
North Hampton Town—Rockingham County
Northfield Town—Merrimack County
Winchester Town—Cheshire County

New Jersey

Bedminster Township—Somerset County
Buena Vista Township—Atlantic County
Commercial Township—Cumberland County
Delanco Township—Burlington County
East Greenwich Township—Gloucester County
Fairfield Township—Cumberland County
Greenwich Township—Cumberland County
Harding Township—Morris County
Hardyston Township—Sussex County
Holland Township—Hunterdon County
Hopewell Township—Cumberland County
Logan Township—Gloucester County
Mendham Township—Morris County
Millstone Township—Monmouth County
Mount Holly Township—Burlington County
Mullica Township—Atlantic County
New Hanover Township—Burlington County
North Berge Township—Hudson County
Pilesgrove Township—Salem County
Pittsgrove Township—Salem County
Quinton Township—Salem County
Shamong Township—Burlington County
Southampton Township—Burlington County
Springfield Township—Burlington County
Tabernacle Township—Burlington County
Weehaken Township—Hudson County
Wyckoff Township—Bergen County

New York

Argyle Town—Washington County
Aurora Town—Eric County
Beekman Town—Dutchess County
Cairo Town—Greene County
Cambria Town—Niagara County
Canton Town—St. Lawrence County
Caroline Town—Tompkins County
Carroll Town—Chautauqua County
Catlin Town—Chemung County
Charlton Town—Saratoga County
Chester Town—Warren County
Clarence Town—Erie County
Colden Town—Erie County
Copake Town—Columbia County
Cornwall Town—Orange County
Deerfield Town—Oneida County
Deerpark Town—Orange County
Delaware Town—Sullivan County
Ellisburg Town—Jefferson County
Fallsburg Town—Sullivan County
Fort Ann Town—Washington County
Goshen Town—Orange County
Granville Town—Washington County
Greenville Town—Greene County
Hanover Town—Chautauqua County
Hopewell Town—Ontario County
Jerusalem Town—Yates County
Lake Luzerne—Warren County
Lansing Town—Tompkins County
Lewisboro Town—Westchester County
Lewiston Town—Niagara County
Lisbon Town—St. Lawrence County
Malone Town—Franklin County
Mamakating Town—Sullivan County
Mamaroneck Town—Westchester County
Marilla Town—Erie County
Moriah Town—Essex County
Norfolk Town—St. Lawrence County
Oneonta Town—Otsego County
Oswegatichie Town—St. Lawrence County
Palermo Town—Oswego County
Parma Town—Monroe County
Richland Town—Oswego County
Riga Town—Monroe County
Rochester Town—Ulster County
Rockland Town—Sullivan County
Rose Town—Wayne County
Shandaken Town—Ulster County
Sullivan Town—Madison County
Trenton Town—Oneida County
Verona Town—Oneida County
Vienna Town—Oneida County
Waterloo Town—Seneca County
Wheatfield Town—Niagara County

Pennsylvania

Alsace Township—Berks County
Amwell Township—Washington County
Armagh Township—Mifflin County
Barrett Township—Monroe County
Bradford Township—Clearfield County
Brecknock Township—Lancaster County
Bushkill Township—Northampton County
Butler Township—Schuylkill County
Carroll Township—Washington County
Chanceford Township—York County
Coal Township—Northumberland County
Conemaugh Township—Cambria County
Cowanshannock Township—Armstrong County
Croyle Township—Cambria County
Damacus Township—Wayne County
Derry Township—Mifflin County
Dunbar Township—Fayette County
Dunkard Township—Greene County
East Cocalico Township—Lancaster County
East Hanover Township—Lebanon County
East Marlboro Township—Chester County
East Taylor Township—Cambria County
Earl Township—Lancaster County
East Bethlehem Township—Washington County
East Huntingdon Township—Westmoreland County
Fallowfield Township—Washington County
Franklin Township—Fayette County
Franklin Township—Greene County
Georges Township—Fayette County
German Township—Fayette County
Green Township—Indiana County
Harris Township—Centre County
Hegins Township—Schuylkill County
Hopewell Township—York County
Jefferson Township—Butler County
Jefferson Township—Lackawanna County
Lower Chichester Township—Delensee County
Lackawannock Township—Mercer County
Leacock Township—Lancaster County
Lehman Township—Luzerne County
Lower Alsace Township—Berks County
Lower Towamensing Township—Carbon County
Lower Yoder Township—Cambria County
Luzerne Township—Fayette County
Maxatawny Township—Berks County
Menallen Township—Fayette County
Millcreek Township—Erie County
Mount Carmel Township—Northumberland County
Mount Pleasant Township—Washington County
Mount Pleasant Township—Westmoreland County
New Garden Township—Chester County
Oakland Township—Butler County
Paradise Township—Lancaster County
Penn Township—Butler County
Penn Township—Lancaster County
Peery Township—Fayette County
Plainfield Township—Northampton County
Quincy Township—Franklin County
Redstone Township—Fayette County
Rush Township—Centre County
Rush Township—Schuylkill County
Salisbury Township—Lancaster County
Saltlick Township—Fayette County
Shade Township—Somerset County
Shippensburg—Cumberland County
Shrewsbury—York County
Smith Township—Washington County
Snyder Township—Blair County
Springfield Township—Erie County
Springfield Township—Fayette County
Springhill Township—Fayette County
Stowe Township—Allegheny County
Straban Township—Adams County
Strasburg Township—Lancaster County
Summerhill Township—Cambria County
Summit Township—Somerset County
Susquehanna Township—Cambria County
Tinicum Township—Bucks County
Tinicum Township—Delaware County
Union Township—Mifflin County
Upper Augusta Township—Northumberland County
Upper Nazareth Township—Northampton County
West Earl Township—Lancaster County
West Mead Township—Crawford County
Warwick Township—Bucks County
Westtown Township—Chester County
Wilmington Township—Lawrence County

Rhode Island

Jamestown Town—Newport County

Vermont

Brandon Town—Rutland County
Brattleboro Town—Windham County
Essex Town—Chittenden County
Fair Haven Town—Rutland County
Hinesburg Town—Chittenden County
Jericho Town—Chittenden County
Shaftsbury Town—Bennington County
Swanton Town—Franklin County

Puerto Rico Under 50,000 Population

Adjuntas
Aguada
Aguas Buenas
Aibonito
Anasco
Arroyo
Barceloneta
Barranquitas
Cabolrrojo
Camuy
Canovanas
Catano
Cayey
Ceiba
Ciales
Cidra
Coamo
Comerio
Corozal
Culebra
Dorado
Fajardo
Florida
Guanica
Guayama
Guayanilla
Gurabo
Hatillo
Hormigueros
Humacao
Isabela
Jayuya
Juanalodiaz
Juncos
Lajas
Lares
Las Marias
Las Piedras
Loiza
Luquillo
Manati
Maricao
Munabo
Moca
Morovis
Naguabo
Naranjito
Orocovis
Patillas
Penuelas
Querbradillas
Rincon
Rio Grande
Sabana Grande
Salinas
San German
San Lorenzo
San Sebastian
Santa Isabel
Tao Alta
Utaudo
Vega Alta
Vega Baja
Vieques
Vilalba
Yabucoa
Yauco

Authority: Sec. 17(d)(2), United States Housing Act of 1937 (42 U.S.C. 1437o(d)(2); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 8, 1984.

Maurice L. Barksdale,

Asssistant Secretrary for Housing—Federal Housing Commissioner.

FR Doc. 84-16470 Filed 6-19-84; 8:45 am]

BILLING CODE 4210-27-M

federal register

Wednesday
June 20, 1984

Part V

Civil Aeronautics Board

14 CFR Part 252
Smoking Aboard Aircraft; Final Rule

CIVIL AERONAUTICS BOARD

14 CFR Part 252

[Economic Reg. Amdt No. 3; Docket 41431; Reg. ER-1383]

Smoking Aboard Aircraft

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB adopts new rules to ban smoking on small aircraft and to ban cigar and pipe smoking on all flights. The CAB also retains current rules requiring fully functioning ventilation systems and discouraging airlines from sandwiching nonsmokers between two smoking sections, and rejects proposals to ban smoking on short flights or to require special provisions for passengers especially sensitive to smoke.

DATES: Adopted: June 1, 1984. Effective: July 20, 1984.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Associate General Counsel, Rules and Legislation Division; or David Schaffer, Attorney-Advisor, Office of General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION:

Background

The Board first adopted a rule on smoking in 1973, ER-800, 38 FR 19146, May 10, 1973. This rule, at 14 CFR Part 252, simply required airlines to provide separate sections for smokers and nonsmokers.

In 1976, the Board launched a new proceeding on smoking, EDR-308, 41 FR 44425, October 8, 1976. Between that date and 1981, the Board considered the full range of issues on smoking. These included whether the Board should regulate smoking at all, whether it should ban it entirely, whether it should ban it on short flights or small aircraft, whether it should ban cigar and pipe smoking, whether it should require special protections for passengers who are especially sensitive to smoke, and whether it should prohibit airlines from sandwiching nonsmokers between two smoking sections.

While these possible rule changes were pending, the Board decided to make some changes to Part 252, ER-1091, 44 FR 5071, January 25, 1979. It required airlines to specially segregate cigar and pipe smokers, ban smoking when the aircraft ventilation system was not fully functioning, and ensure that nonsmokers were not unreasonably burdened when a non-smoking section was sandwiched between two smoking sections.

In 1981, however, the Board decided to keep a smoking rule but without the details on cigars and pipes, ventilation systems, and sandwiching that it had adopted 2 years earlier. ER-1245, 46 FR 45934, September 16, 1981. It also decided not to adopt any of the proposed smoking bans or the provision for passengers especially sensitive to smoke. The rule simply required airlines to guarantee a seat in the no-smoking to every nonsmoker who met the airline's check-in deadline.

This decision was challenged in Federal court by smokers, nonsmokers, and airlines. The courts upheld the Board's legal authority to regulate smoking, *Diefenthal* v. *CAB*, 681 F.2d 1039 (5th Cir. 1982) and *Action on Smoking and Health* v. *CAB*, 699 F.2d 1209 (D.C. Cir. 1983). However, the D.C. Circuit ordered the Board to reinstate the provisions on cigars and pipes, ventilation, and sandwiching that it had previously eliminated and to reconsider the decision not to adopt proposals to ban smoking on short flights and small aircraft or to provide special protections for passengers especially sensitive to smoke.

Shortly thereafter, the Board republished the provisions on cigars and pipes, ventilation, and sandwiching as the court had ordered, ER-1245A, 48 FR 24866, June 3, 1983 and ER-1356, 48 FR 36093, August 9, 1983. Also in accordance with the court order, the Board issued two notices of proposed rulemaking to reconsider these provisions and the three proposals that it had previously decided not to adopt, EDR-461, 48 FR 24918, June 3, 1983 and EDR-461B, 48 FR 43341, September 23, 1983. In these notices, the Board proposed the following:

—A ban on smoking on short flights, defined as flights of either 1 hour or less or flights of 2 hours or less;
—A ban on smoking on small aircraft, defined as aircraft of either 30 seats or less or aircraft of 60 seats or less;
—A ban on cigar and pipe smoking;
—A ban on smoking when the ventilation system is inadequate;
—A requirement that airlines provide special protections for passengers who are especially sensitive to smoke; and
—Elimination of the provision on sandwiching.

In response to these proposals, the Board received written comments from at least two U.S. government agencies (Department of Transportation and Department of Health and Human Services, Office of the Assistant Secretary for Health), fourteen airlines or airline organizations (Air Transport Association of America, International Air Transport Association, Regional Airline Association, Aerospace Industries Association of America, Republic Airlines, Midway Airlines, Air Florida, Southwest Airlines, Transamerica Airlines, United Airlines, Piedmont Aviation, Wings West Airlines, Atlantic Air, Newair), six unions (Engineering and Air Safety Department of the Airline Pilots Association, Association of Flight Attendants, Health and Safety Department of Teamster Local 2707, Food and Allied Service Trades Department of the AFL-CIO, Independent Union of Flight Attendants, and Bakery, Confectionery and Tobacco Workers International Union), eleven consumer and health groups (Aviation Consumer Action Project, Action on Smoking and Health, Coalition on Smoking or Health, American Heart Association, American Cancer Society, American Lung Association, American Lung Association of San Diego and Imperial Counties, Georgia Lung Association, American Public Health Association, Massachusetts Group Against Smoking Pollution, New Jersey Group Against Smoking Pollution), four tobacco groups (Tobacco Institute, Kentucky Farm Bureau Federation, North Carolina Farm Bureau Federation, Bright Belt Warehouse Association, Inc.), and several others (County of San Diego, Xenex Corp., Experimental Aircraft Association, Meyer H. Sharlin, Captain H.B. "Chuck" Fulton Jr.). The Board also received more than 20,000 letters from individuals.

In addition, the Board held three days of oral argument in which 42 people, including 10 members of Congress, were able to present their views directly to the Board. All viewpoints were well represented.

Government agencies, consumer and health groups, flight attendant unions, a few small airlines, and about 30% of the individuals who wrote us were in favor of the sort of strict rules on smoking that the Board was proposing. Airlines, unions representing pilots or tobacco workers, pro-tobacco groups, and about 70% of the people who wrote us generally opposed the Board's proposals.

After considering all the arguments presented, and for the reasons set forth below, the Board has decided to ban smoking on small aircraft and to ban cigar and pipe smoking on all flights, but not to make the other changes that it had proposed. Thus the Board's new

rule, applicable to all U.S. airlines, will contain the following features.

—A requirement that airlines provide a seat in the no-smoking section to all nonsmokers that meet the airlines check-in deadline, even if the airline must expand that section to accommodate them;
—A ban on smoking on small aircraft;
—A ban on cigar and pipe smoking on all flights;
—A requirement that airlines ban all smoking when their ventilation system is not fully functioning; and
—A requirement that airlines ensure that nonsmokers are not unreasonably burdened when a no-smoking section is sandwiched between two smoking sections.

General Considerations

Several general objections were raised against any further Board regulation of smoking. Some argued that further regulation would be inconsistent with the policy of deregulation mandated by Congress in the Airline Deregulation Act, Pub. L. 95–504. They viewed the marketplace as being capable of fairly accommodating smokers and nonsmokers, and claimed that airlines are already attentive to the needs of nonsmokers.

Nonsmokers, particularly Action on Smoking and Health (ASH), disputed this contention. They claimed that airlines cannot be trusted to protect nonsmokers and that they have little real sympathy for or understanding of the problems many nonsmokers face. They were opposed to leaving further regulation of smoking to the marketplace. In their view, smoking is a health and safety matter that should be treated differently than routes, rates, or other economic matters that are the focus of the Airline Deregulation Act. They were particularly concerned about especially sensitive nonsmokers who are too small a minority to achieve protection through the operation of the marketplace.

The Board agrees with the nonsmokers insofar as they argue that Board regulation in this area is not inconsistent with the Deregulation Act. As a legal matter, arguments to the contrary have already been rejected by the two cases cited above.

Smoking is not analogous to economic issues, such as routes and pricing, because Congress did not call for the abolition of section 404(a) of the Act, the statutory authority to regulate smoking, as it did with respect to routes and fares. Unlike these economic issues, smoking evokes strong passenger emotions, and causes extreme distress for at least some people.

The additional protections for nonsmokers adopted here will impose a minimal burden on airlines. They represent a further compromise in the on-going dispute among nonsmokers, smokers, and airlines. We expect that this new rule will continue to receive widespread public support.

The widespread public support for the current rule was also cited as a reason for not making any more changes. The tobacco industry submitted surveys by Tarrance & Associates and the International Airline Passenger Association (IAPA) as evidence that passengers are not greatly concerned about smoking or are satisfied with the current rule. In the Tarrance survey, a majority of those questioned responded affirmatively to the question whether the "present arrangement works pretty well." In addition, some airlines pointed to surveys of their own passengers that indicated that passengers were satisfied with the current rules on smoking (For example, oral argument transcript pp. 192–193).

ASH and several individuals questioned the tactics and credibility of the tobacco industry surveys. ASH and the Georgia Lung Association also countered with surveys of their own. In these surveys, a majority of those questioned favored a ban on smoking on short flights (Georgia Lung survey), smoke-free flights (Midway Airlines and Wien Air Alaska survey), and a smoking ban in flight to reduce the possibility of fire (Gallup Poll published in Newsweek, January 30, 1984).

The surveys submitted by the tobacco industry, which has long opposed the Board's efforts in this area, show that most passengers are satisfied with what the Board has done. In our view, the further restrictions imposed here will also have public support. The fact that most people may feel that the "present arrangement works pretty well" (Tarrance & Associates survey) is not inconsistent with the position that further restrictions adopted here would also receive support.

Indeed, a 1977 survey for IAPA, when it was known as the Airline Passenger Association, revealed that a majority of passengers favored a ban on cigar and pipe smoking even though they opposed a ban on all smoking. In addition, a survey by Newair of its passengers found that a majority favored a ban on smoking on small aircraft. The fact that a majority of airlines have voluntarily banned smoking on small aircraft and cigars and pipes on all flights is further evidence that these actions are supported by the flying public.

Surveys indicating that a majority might also favor a ban on smoking on short flights are relevant, but are outweighed by the other problems that such a ban would create, as described below. The Newsweek/Gallup poll is questionable because it assumes that smoking in designated smoking sections is a fire hazard, although the evidence is to the contrary. In the Board's view, this poll is more indicative of the public's strong concern for safety rather than their views about smoking.

Several commenters also cited the low level of complaints that the Board receives about smoking as evidence that the public is not greatly concerned about this issue and that no further rule changes are necessary. Only about two to three percent of the complaints that the Board receives involve smoking.

But nonsmokers, particularly the Aviation Consumer Action Project (ACAP), insisted that complaints to the Board do not indicate the scope of the problem. They stated that there is little incentive for a passenger to file a smoking complaint after a flight because the discomfort has ended and unlike a baggage problem, for example, monetary compensation will not be available. Moreover, they claimed that a passenger may suffer from smoke aboard aircraft even when there is no violation of Board rules that would warrant the filing of a complaint.

The Board recognizes that the number of complaints about smoking, relative to complaints about other problems, is low. On the other hand, the ones we do receive about smoking are among the most violent complaints with which the Board must deal. And there may be many reasons, such as those noted above, why we do not receive more. Complaints may be directed to the carrier rather than the Board. In the Board's view, the action taken here strikes an appropriate balance.

The International Air Transport Association (IATA), while recognizing that the Board's smoking rule applies only to U.S. airlines, opposed restrictions on smoking. It stated that U.S. domestic regulations are likely to be followed by foreign governments.

The changes adopted here will not apply to IATA member foreign airlines. The Board's smoking rule, Part 252, applies only to "air carriers", which section 101 of the Federal Aviation Act defines as U.S.-citizen airlines. To the extent that foreign airlines may choose to follow them, that is not cause for the Board to change its course.

ASH argued that smoking should be treated like chewing and spitting, a practice that is now generally prohibited in public places. Unlike chewing and

spitting, however, smoking remains a socially acceptable practice.

Short Flights

Proponents of a smoking ban on short flights rested their argument on three grounds—health, safety, and passenger comfort.

As a preliminary matter, many opponents of this ban argued that health and safety were not proper considerations for an economic regulatory agency such as the CAB. They claimed that the Federal Aviation Administration (FAA) was the sole agency to rule on the smoking issue from the health and safety perspective.

The statutory basis for Board action on smoking is the provision in section 404(a) of the Federal Aviation Act (49 U.S.C. 1374(a)) that requires airlines to provide "safe and adequate service." While the Board has in the past not denied that public health is an aspect of "safe and adequate service," it has not acted specifically on the basis of health considerations. Health has, to be sure, come somewhat more to the forefront in its smoking-rule deliberations, as the public comments have tended to focus on it.

When it first adopted a rule on smoking in 1973, ER–800, the Board did so solely on the basis of the need to minimize passenger discomfort and annoyance caused by smoke. Safety and health were not cited as justification for the Board's action.

In 1976, in proposing to strengthen this rule, EDR–306, the Board stated that since "the Federal Aviation Administration has already asserted jurisdiction of the health question under its authority to promote safety of flight, we think it appropriate to continue to defer to that agency on this issue." In 1981, when amending the smoking rule, ER–1245, the Board stated:

> The only finding that would, in the Board's judgment, justify a total ban would be that smoking aboard aircraft under the present rules is significantly damaging the health of nonsmokers. But it is questionable whether the Board's authority could be exercised on that basis, since the FAA has primary jurisdiction over matters of health and safety in aircraft operations.

Thus, the Board has historically viewed the public safety and health aspects of smoking primarily as the responsibility of the FAA, although not denying their relevance.

In exercising its responsibilities in this area, the Board continues to believe that it should defer to the expertise of the FAA where that agency has ruled on the issue. The FAA has a medical office and the technical expertise that the Board lacks in the health and safety area. In considering the smoking issue from the health and safety perspective therefore, the Board will give great weight to the findings of the FAA.

Health. The advocating a smoking ban relied on studies that demonstrate that the health of nonsmokers may be harmed by breathing second-hand smoke. Pro-tobacco groups countered with studies of their own demonstrating that passive smoking is not harmful to nonsmokers. Airlines argued that the superior ventilation system of their aircraft reduced any risks associated with second-hand smoke. It thus appears that the evidence of adverse health effects of passive smoking is still being disputed.

Assuming, however, that the studies cited by the proponents of the proposed smoking ban are valid, no commenter has shown that the findings of those studies are applicable to the situation aboard aircraft. The cited studies involved smoking in the home or office, places where people spend a significant portion of their life. This differs from the situation aboard aircraft where most people spend a relatively short time. Aircraft also differ from homes and offices in that nonsmokers are separated from the smokers in the former, but usually are not in the latter.

The only study that dealt specifically with the situation aboard aircraft found smoking "not to represent a hazard to the nonsmoking passengers, * * *" *Health Aspects of Smoking in Transport Aircraft*, FAA/HEW, December 1971. It reached this conclusion at a time when nonsmokers were not always separated from smokers aboard aircraft as they are now.

Although this study is now 13 years old, as recently as last November, in Congressional testimony, FAA officials reaffirmed its findings.

> I am advised that based on these and other studies it is the FAA's view that the casual exposure to cigarette smoke in a reasonably ventilated environment is not expected to have any relationship to cardiovascular or pulmonary disease causation. S. Rep. No. 98–54, 98th Cong., 1st Sess. 10 (1983).

As explained above, the FAA's views on the health issue are given great weight by the Board. The Board finds no sufficient basis to override the FAA's position on this point, and therefore declines to act on the specific basis of the health aspects of passive smoking.

It was argued that even if passenger health is not adversely affected by smoking, flight attendant health is, because they spend more time aboard aircraft than do passengers. Many flight attendants did write to us claiming such adverse health effects from passive smoking. However, the New England Journal of Medicine reported a study that found that the health of flight attendants was not adversely affected by passenger smoking. Foliart, Benowitz & Becker, "Passive Absorption of Nicotine in Airline Flight Attendant," N. Engl. J. Med 1983; 308:1105. This study was conducted on flights to Japan where smoking could be expected to be particularly heavy. The results of another study by the National Institute for Occupational Safety and Health (NIOSH) were inconclusive. Thus, the available scientific evidence at this time does not appear to support a conclusion that the health of flight attendants is harmed by smoking aboard aircraft.

Some nonsmokers conceded that the scientific evidence may not support their view, but felt that further research would eventually prove them correct. That may be, but the Board must base its decision on the objective evidence that now exists to the extent that such evidence is available.

Safety. Proponents of the proposed smoking ban also cited the fire danger as justification for such action. But once again, the available evidence is that there is no significant danger, except for smoking in the lavatories where it is already banned by an FAA airworthiness directive.

The FAA has considered the alleged fire danger of smoking aboard aircraft and has concluded that it does not justify further regulation. For example, in a letter to Congress last summer, the FAA's acting director of flight operations stated:

> Electrical, fuel, and other aircraft systems are specifically designed to first prevent ignition and secondly to contain, control, or extinguish a fire in the event ignition does occur. Similarly, the interiors of aircraft cabins are designed and constructed to provide protection from fire in a manner which is superior to other means of public transportation. Because of these inherent design factors and because fire retardant materials are used in the construction of aircraft interiors, smoking on board commercial aircraft does not constitute a significant compromise to safety.

Letter from FAA's Acting Director of Flight Operations to the Honorable Lindsay Thomas, July 25, 1983. As the agency responsible for safety, including fire safety, the FAA's conclusions in this area also are entitled to great weight by the Board. The FAA is moving to improve aircraft fire safety by proposing new and more stringent flammability requirements for seat cushions, 48 FR 46250, October 11, 1983.

Supporters of the proposed smoking ban claimed that there were 45 major

fires aboard aircraft between 1973 and 1981. Many cited the Varig fire in France and the 1983 Air Canada fire as proof that cigarette smoking is dangerous.

A fire safety expert, however, who reviewed the National Transportation Safety Board files on major aircraft fires since 1970 testified that none of them were caused by cigarette smoking in the passenger compartment. Oral argument transcript, volume 2, pp. 13–15. This appears to be the result of the fire retardant materials that are used for aircraft passenger seats.

The Varig and Air Canada fires occurred in the aircraft lavatories, where smoking is already banned, not in the designated smoking section. There is doubt that the Air Canada fire was caused by a cigarette. *Aviation Week and Space Technology* (August 22, 1983) p. 30. Banning smoking in designated smoking sections might increase, rather than decrease, the incidents of smoking and risk of fire in the aircraft lavatories where it poses the greatest danger to the lives of passengers.

Passenger comfort. The docket of this proceeding contains a large number of letters from nonsmokers complaining in the strongest terms of the problems they have experienced aboard aircraft because of smoking there. It is quite clear that, for at least some people, smoking aboard aircraft causes a high level of annoyance and discomfort.

On the other hand, the docket contains even more letters from passengers claiming that they need to smoke and would not, or could not, fly if they were prohibited from doing so. Many threatened to defy a smoking ban or to continue indulging their habit in the aircraft lavatory, regardless of the risks. These smokers often claimed that they have a "right" to smoke.

The Board does not accept the argument that there is an absolute legal right to smoke on an airplane. The first section of the Board's smoking rule has always given airlines the discretion to ban all smoking, and some have done so. Courts have recognized that a smoker's right to smoke "may have to give way to the freedom of others to be unannoyed by smoke," *Nader* v. *Federal Aviation Administration,* 40 F. 2d 292, 295, n.4 (D.C. Cir. 1971).

Nevertheless, the letters from smokers make clear that for those who choose to participate, smoking is very important. Many smokers are apparently unable to suppress this desire for very long.

At present, the Board's rule favors the nonsmokers. This seems reasonable since a majority of passengers are nonsmokers. The current rule requires airlines to guarantee a no-smoking seat to every passenger that wants one and meets the airline's check-in deadline. Smokers, however, have no right to a smoking seat no matter how early they check in. If a no-smoking section on a flight is full, an airline must expand it to accommodate additional nonsmokers and prevent smokers from smoking in the expanded no-smoking section. Airlines are under no obligation to accommodate smokers in this way, and indeed would be prohibited from doing so if that would result in nonsmokers being encompassed by the smoking section. In addition, some more provisions for the benefit of nonsmokers are being adopted by this rule.

The Board finds that further protections for nonsmokers based on flight length are not justified. The additional comfort that that would provide for them is outweighed by the administrative, confusion, and competitive problems that it would create, as explained below.

Differences between short-flight and other smoking bans. Those opposing the short flight smoking ban noted that nonsmokers are likely to suffer more on long flights than on short ones. The primary rationale offered for the short-flight smoking ban by the nonsmokers, however, was that smokers are able to refrain for short periods in other places. Ground transportation and public buildings, especially theaters, churches, and courtrooms, were cited as places where smoking bans for short periods have proven successful. Yet there are differences between these and airplanes that make a ban more feasible and essential in the former than in the latter. These differences include the following:

- Smokers can step outside or into the lobby of theaters but cannot do so while in an airplane. Their only alternative would be the lavatory.
- Ground transportation trips are usually shorter than air transportation trips and typically allow passengers to get off at short intervals or provide them a smoking car or section.
- Smoking presents a fire hazard in many public buildings but, as explained above, does not present a similar hazard in an airplane, as long as it is done in the designated smoking section.
- Its easier for smokers to comply with a smoking ban for a short time in theaters or courtrooms because their attention is riveted on the performance or proceeding while in an airplane a smoker may be nervous and fidgety, and have nothing to do but think about how much he or she would like to light up.
- The relatively careful allocation of seats and supervision by flight attendants aboard aircraft make separation into smoking and no-smoking sections a feasible alternative to a total ban.
- The duration of a flight is not as certain as the duration of a movie. If a flight unexpectedly exceeded the 1- or 2-hour period for the ban, airlines might be expected to rearrange passengers so some could smoke.
- The air in modern aircraft is filtered and recirculated more rapidly than it is in many public buildings.

Proponents of the smoking ban also pointed to total smoking bans on some small aircraft and on Muse Air, as well as to the ban on cigars and pipes on most airlines as evidence that a short-flight smoking ban was feasible.

In the Board's view, these are not comparable. To the extent that their smoke is not inhaled, cigars and pipes are less addictive than cigarettes, so it is easier for a cigar and pipe smoker to refrain, especially when the cigarette option is available. The proponents of the short-flight smoking ban recognized that. ASH comments, p. 67 ("cigar and pipe smokers—unlike cigarette smokers—rarely have the strong craving which requires them to smoke regularly during the day.").

Smoking bans that are airline-wide or based on aircraft size are also not comparable, as they do not present the problems of a ban based on flight length. They are easy for airlines to administer and for passengers to understand. A short-flight smoking ban, in contrast, would in many situations create administrative headaches for carriers and appear arbitrary or illogical to passengers.

Administrative problems. The difficulties arise because not all short flights are turnaround operations. Many are one segment of a two- or three-stop flight, and the other segments may be longer flights outside the time limit of a ban. Passengers boarding or deplaning at one of the intermediate stops will probably be unaware that their flight is only one segment of a multi-segment flight.

There are several ways that the airline could handle this if the Board were to adopt the short-flight smoking ban, but all are likely to result in confusion or administrative problems. The Aviation Consumer Action Project (ACAP) suggested that the airline could place smokers in a smoking section for the short-flight segment but prohibit smoking until the long-flight segment. For a smoker who was traveling on only the short-flight segment, this arrangement would make no sense, and would likely prompt anger and defiance.

Smokers might well feel that when placed in a smoking section, they have

the right to smoke. An explanation that the flight is continuing on to a longer segment would mean little to those who were planning to disembark before then.

Alternatively, the airline could do without separate sections on the short-flight segment and then rearrange the remaining passengers for the longer segment. This would surely be an annoyance for passengers who were already settled in, and a burden on the airlines.

Or, the Board could require airlines to simply ban smoking on any flight, regardless of length, if it included a short-flight segment. This, however, goes against the primary rationale for the proposed ban, which is that smokers can easily refrain for a short time but not for a longer flight.

Another option would be to exempt short-flight segments of multi-segment flights from the ban. But this would mean that flights on the same route, with the same flight duration, and possibly of the same airline with the same aircraft type would be subject to different smoking rules, resulting in further confusion and administrative problems.

Proponents of the smoking ban pointed out that many aspects of airline service, such as fares or whether there will be meal service, are confusing or may not be known to passengers until they are on board the aircraft. But none of those service features are as emotionally charged as smoking. It is unlikely that anyone would cause an incident aboard an aircraft because the airline failed to provide an expected meal.

The possibility of defiance of a short-flight smoking ban, however, is quite real. Compliance problems under the Board's simple and less restrictive rule have been widely reported. They could get worse if smoking were banned.

The danger of such defiance is not merely hypothetical. Airlines have been known to land prematurely to deal with such problems. The safety hazards of smoking in the aircraft lavatories are well documented. There was the Varig fire mentioned above. More recently, the New York Times (March 7, 1984) reported an incident in China, where in-flight smoking is banned, where an aircraft caught fire because a passenger was smoking in the lavatory. Many died in that blaze.

Both the airlines and the airline pilots were concerned about this danger and therefore urged the Board not to adopt the short-flight smoking ban. Individual flight attendants tended to support the ban but some of their union leadership was more hesitant, fearing the dangers of defiance. For example, one from Chicago, while passing along the concerns of her membership about smoking, let it be known that she was concerned that "many smokers will smoke whether you allow them to or not" * * * and that this "could create further safety hazards * * *."

The Department of Transportation (DOT) was also concerned. Although it was sympathetic to a short-flight smoking ban, it concluded its comments on this issue by stating:

> There is a possibility that the Board's smoking ban might actually increase the chance of fire if smokers, trying to avoid the ban, smoke in the lavatory. Before adopting the proposed rule, we urge the Board to consider the possibility of such actions.

DOT did offer a way to ban smoking on short flights without the safety hazard. They suggested coordinating the short-flight smoking ban with the FAA's rulemaking to require smoke detectors in aircraft lavatories. The problem with this is that the FAA is still in the early stages of this rulemaking. The smoke detector requirement will not take effect before the Board, and possibly the statutory authority to regulate smoking, sunsets on January 1, 1985. Even with smoke detectors, there might still be a safety hazard because passengers could disconnect them.

Competitive problems. A further problem with the short-flight smoking ban is its possible anti-competitive effects. The Air Transport Association (ATA) cited several examples where flight times of one carrier would be shorter than those of another on the same route as a result of the type of aircraft utilized, the particular airport being served, the season of the year, or the direction of the flight. This would result in one carrier being subject to more restrictive smoking rules than its competitor.

On short routes to Canada and the Caribbean, U.S. carriers would be subject to much more restrictive smoking rules than their foreign competitors if the short-flight smoking ban were adopted. Foreign airlines are not covered by Board smoking rules.

With a 1- or 2-hour smoking ban, airlines with connecting flights might find both segments of the route governed by the smoking ban. But another airline, with nonstop service between the same points might be able to avoid the ban and offer both smoking and no-smoking sections on the route.

For example, Air One, a new airline, testified that it had been operating a flight between St. Louis and Washington that was not attracting a sufficient number of passengers. In order to maintain that flight, Air One added a connecting flight between Dallas/Fort Worth and St. Louis. It testified that both the Dallas/Fort Worth-St. Louis flight and the St. Louis-Washington flight would come within the 2-hour smoking ban, but that passengers flying on Air One from Dallas through to Washington would actually be on the plane for more than 4 hours. Because both segments of the route are 2 hours or less, Air One claimed that it would be severely handicapped by the smoking ban and would experience difficulty in competing in the Dallas/Ft. Worth-Washington market because of the restriction.

There are many airlines like Air One that are in similar situations. While no-smoking restrictions are important, the government should not impose restrictions on airlines that hamper their growth or ability to compete. A smoking ban based on flight length would create these sorts of problems.

Conclusion. For these reasons, the short flight smoking ban is not adopted. While there are many people on both sides of the issues, some satisfied and some dissatisfied, in the Board's view the current system of separating smokers from nonsmokers on 30-seat and larger aircraft works reasonably well and should be retained.

Small Aircraft

In contrast to the short-flight proposal, a ban on smoking on small aircraft can be accomplished without major problems or passenger confusion.

The rationale for a small aircraft smoking ban is much the same as that for short flights—that smokers can refrain for the short time that they are on board. Yet, unlike a short-flight smoking ban, a ban based on aircraft size would be simple to apply and for passengers to understand. Passengers, including smokers, are likely to agree that separate seating arrangements for smokers and nonsmokers are less likely to be effective on small aircraft than on large ones. Nonsmokers are therefore more likely to experience discomfort on small aircraft.

Protection of nonsmokers aboard small aircraft becomes increasingly important as these small carriers assume a larger role in the national air transportation system as a result of deregulation.

The feasibility of the small aircraft smoking ban is demonstrated by the fact that many small carriers have voluntarily adopted it, apparently with success. A survey of carriers last year revealed that more than half banned smoking on their 30-seat and smaller aircraft.

The prevalence and success of the voluntary small aircraft smoking ban stands in contrast to the status of the short flight proposal. Only one carrier (SAS) has experimented with a smoking ban based solely on flight length, and it abandoned that experiment after only a few weeks.

Those who opposed a smoking ban on small aircraft have argued that ventilation on the small aircraft is just as good as on the larger ones. This was contested by DOT and other proponents of the smoking ban. They claimed that ventilation systems on small aircraft were less sophisticated than those on the larger planes. Thus, at the very least, the capability of small aircraft ventilation systems is open to question.

Even assuming, however, that their ventilation systems are equal to those on large aircraft, the fact remains that in the small confines of commuter-type aircraft, it is just more difficult to separate nonsmokers from the smokers and their smoke. The problems of smoking on small aircraft are well illustrated by the statement of the Piper Aircraft Corporation, a manufacturer of small aircraft—"Ventilation systems on small aircraft are efficient, ours changes the air every minute or so but in airplanes our size, it is physically impossible to attain any significant separation between smokers and nonsmokers."

Those passengers who are especially bothered by tobacco smoke can, on a larger aircraft, usually get a seat far from the smoking section. On a small aircraft, however, no matter where sensitive passengers sit, they are bound to be near the smoke. If the smoke drifts at all, they are sure to be adversely affected by it.

Opponents of this ban also argued that it would cause small carriers to lose passengers. The Board doubts that this would be a problem. If it were, there would not be so many small carriers now banning smoking on their aircraft voluntarily. Many small carriers in fact supported the Board's action. Wings West airlines pointed out that most people can do without tobacco for the short duration of a commuter flight. Atlantic Air favored a smoking ban on small aircraft because, in its view, the size of the aircraft cabin lends itself to a single environment whether or not there is segregation of smokers and nonsmokers. Newair also cited aicraft size as the reason to ban smoking. It stated that the limited space of small aircraft accelerates the drifting of smoke. It also felt that smokers would not be upset by refraining from smoking for the short time that small aircraft are in flight.

In short, a smoking ban on small aircraft is feasible, and would provide important protections for nonsmokers, particularly especially sensitive ones, without seriously burdening smokers or airlines. The Board has therefore decided that it should be adopted. The only question that remains is where the line should be drawn—at 30 seats or at 60 seats.

Although any line drawing contains a certain element of arbitrariness, the proper place to draw it here appears to be at 30 seats. It is at that point that planes become so small as to make segregation largely ineffective. Also, many of the smaller aircraft lack flight attendants to monitor the separation and have open cockpits so that pilots could be adversely affected by the smoke.

There are significant differences in cabin size between over-30 and under-30 seat aircraft that justify different treatment of the two groups. Air Florida noted that its 50-seat aircraft are quite unlike the smaller unpressurized aircraft. It stated that they have a spacious jet-like look. Republic explained that it had modified the ventilation systems on its Convair 580's so that the air is exchanged more frequently and rapidly in these aircraft than in its larger ones.

The difference between the over- and under-30 seat aircraft is illustrated by comparing some of the aircraft in each group. A comparison of the Beech C99 (15 seats), Cessna 402C (9 seats), Embraer 110P1 (18 seats), Metro III (19 seats), Nomad N24 (16 seats), and G111 Albatross (28 seats), with the Saab Fairchild 340 (34 seats), Shorts 360 (36 seats), Gulfstream 1C (37 seats), Dash 7 (50 seats), and Fokker F27 (50 seats) show that the smaller aircraft have an average cabin volume of 550.5 cu. ft. while the larger aircraft were more than three times larger at 1676.6 cu. ft. The largest of this group of under 30-seat aircraft still had only two-thirds of the volume of the smallest in the over-30-seat group.

Furthermore, the Board has traditionally drawn its regulatory line at 30, rather than 60, seats where smoking is concerned. It is true that for other Board consumer rules such as those concerning passenger bumping from oversold flights (14 CFR Part 250) and airline liability for lost luggage (14 CFR Part 254) the line is drawn at 60 seats. Those rules differ, however, from the one adopted here in two respects. The problem this rule addresses, inadequate separation of smokers and nonsmokers, increases as the aircraft gets smaller. This is not true in the case of lost luggage or bumping.

Secondly, the lost luggage and bumping rules, unlike the smoking rule, require airlines to pay money to passengers. They therefore may have a significant economic impact if applied to small carriers, in contravention of the Regulatory Flexibility Act, Pub. L. 96-354. The economic impact of the Board's smoking rule, in contrast, is slight. No money is involved in the implementation the rule. Indeed, Newair suggested that segregating smokers and nonsmokers is apt to be more burdensome than the simple ban adopted here.

In this connection, it is again worth noting that most operators of less than 30-seat aircraft ban smoking on those aircraft while almost all operators of 30- to 60-seat aircraft allow it. This is further evidence that a ban is necessary and acceptable to passengers on the smaller aircraft but not on the larger ones.

The argument that different smoking rules based on aircraft size would cause problems for mixed fleet operators is without merit. The survey of last year referred to above revealed that some carriers with mixed fleets already have different smoking policies governing their larger and smaller aircraft. If some consider this to be a burden, they could resolve the difference by banning smoking on all their aircraft. In any event, it is doubtful that there would be such problems because differing smoking policies based on aircraft size would be simple for carrier employees to apply and easy for passengers to understand.

Midway Airlines suggested that the small aircraft smoking ban should be phrased so that it applies to aircraft *designed* to accommodate a maximum of 30 seats, rather than to aircraft that happen to have that many seats. Midway pointed out that under a strict reading of the Board's proposal, the smoking ban would apply to large aircraft with few seats, such as an ultra-first-class service, but not on small aircraft with unusually dense seating. In Midway's view, this would be an illogical result.

The Board agrees. The rules is therefore revised so that application of the smoking ban will depend on the number of seats that the aircraft is designed for rather than the number of seats it actually may have. This will prevent carriers from avoiding the ban by adding seats.

After the Board had discussed the smoking issue at its March 19, 1984 public meeting and announced its tentative decision to adopt the proposal to ban smoking on aircraft with 30 seats or less, Embraer Aircraft Corporation,

the Regional Airline Association (RAA), and several small airlines filed additional comments. The RAA and the small airlines argued that their 30 seat aircraft, the Shorts 330, lends itself to smoking/no-smoking sections as well as the slightly larger ones that would not be subject to the ban. They claimed that the 30-seat Shorts bears a strong resemblance to its slightly larger counterpart, the 36-seat shorts SD–360. They stated that the two are used interchangeably and they were concerned that different smoking rules for each would cause passenger confusion.

They also cited competitive problems. They stated that the 30-seat aircraft frequently competes with the slightly larger aircraft that could still offer passengers a choice of smoking accommodations.

Embraer, a Brazilian manufacturer, was concered with the impact of the ban on the sales of its new 30-seat EMB–120 Brasilia. It claimed that there were five medium-size commuter aircraft types competing for sales in the U.S. market. Only the EMB–120 Brasilia would be affected by the smoking ban. Embraer argued that this would be discrimination against it.

According to Embraer, this discrimination is not in U.S. interests because many of the components of their aircraft are made by U.S. companies and because their aircraft sales generate dollars to pay back loans to American banks.

They asked that the smoking ban apply only to aircraft with less than 30 seats, and not to those with precisely 30 seats. They claimed that this would not create additional controversies for the Board because there are almost no aircraft in the 20 to 29 seat range.

Board rules prohibit the filing of "pleadings, or other documents based on the comments of Board members or staff at open discussions," 14 CFR 310b.9(c). ASH alleged that this provision barred the above filings but waived this procedural objection and instead filed comments responding to them on the merits.

It urged the Board not to change its instructions because "the interior area of the 30-seat aircraft is simply too small to permit a healthful and comfortable separation between smokers and nonsmokers."

It further argued that the smoking ban should be increased to include aircraft with 50 seats or less. It considered these aircraft to also be too small to effectively segregate smokers and nonsmokers. RAA filed a response challenging ASH's position.

Section 310b.9(c) of the Board's rules does not prevent a person from filing supplemental comments in an attempt to change a Board decision as long as those comments do not rely on discussion at the Board meeting as the basis for its argument. The Board does not view the filings of the airlines or ASH to be improperly relying on Board comments. Their pleadings are therefore not barred by section 310b.9(c).

Given this and ASH's waiver of any procedural objection that it might have had, the Board has decided to reconsider its decision regarding 30-seat aircraft and grant the airlines' request. The smoking ban adopted here will apply only to aircraft with less than 30 seats. Aircraft with precisely 30 seats will follow the same rules as the larger carriers.

The above figures on cabin volume, which are generally available, make clear that there is a significant difference in cabin size between the over and under 30-seat aircraft. Those with precisely 30 seats seem closer to the larger aircraft than the smaller ones. For example, the 30-seat Shorts has a cabin volume of 1230 cu. ft., which is more than double that of most of the smaller aircraft and even more than the 34-seat Saab-Fairchild 340.

The Board is also persuaded by the carrier arguments of passenger confusion and anti-competitive effects of a smoking ban on 30-seat aircraft. Those were two of the primary reasons that the Board decided not to ban smoking on short flights. They support a similar result here.

The Board is not increasing the cut-off for the ban to 50 seats as ASH suggested. That would create a new set of competitive problems because there are many 50-seat aircraft operating in markets where there are small jets that could still offer passengers a choice. That problem does not arise when the ban is limited to aircraft with less than 30 seats because there are so few aircraft in the 20- to 29-seat range.

Cigars and Pipes

The least controversial of the Board's proposals was the one to ban cigars and pipes. This is probably due to the fact that most airlines have already adopted such a ban on their own initiative.

It is clear that many passengers find cigar and pipe smoke significantly more irritating than cigarette smoke. A survey of frequent flyers by the Airline Passenger Association revealed that, although most opposed a ban on smoking generally, they favored a ban on cigar and pipe smoking. The fact that most airlines have chosen to ban cigars and pipes but not cigarettes is further evidence that the cigar and pipe ban is feasible and acceptable to passengers. Studies have been cited in the past indicating that cigars and pipes produce far more pollutants than do cigarettes. See for example, EDR–306, ft. 9 and 351 ICC 883, 917 (1976).

The letters to the Board indicate that cigar and pipe smoke is more offensive to many passengers than cigarettes. For example, one individual wrote in reference to cigars and pipes that the "noxious and disgusting stink is totally intolerable." Letter of Mary M. Meisner of Pittsburgh, Pa., August 15, 1983. Another stated that since cigars and pipes "emit such a vile stench, merely segregating them to a special smoking area is insufficient protection for the non-smoking passengers on the plane." Letter of Roy R. Torcaso of Wheaton, Md., September 7, 1983.

The Board has therefore decided to adopt the proposed ban on cigar and pipe smoking.

The primary argument against such a ban was that it would place U.S. carriers at a competitive disadvantage with respect to foreign air carriers that still allowed cigar and pipe smoking.

It is doubtful, however, that traffic would be diverted to foreign air carriers by a cigar and pipe ban on U.S. carriers. Unlike cigarette smokers, cigar and pipe smokers tend to be less dependent. It should be no problem for them to abstain, especially when the cigarette option is available. Most are likely to be more concerned about scheduling or price than on whether they can puff on a cigar or pipe. Indeed, given the strong adverse reaction of many people to cigars and pipes, it would seem equally likely that U.S. carriers would gain as lose business from a ban on cigar and pipe smoking.

Especially Sensitive Persons

There is no doubt that providing special protections for passengers who are especially sensitive to smoke would be desirable. The problem is that there does not appear to be any satisfactory way to protect especially sensitive persons aboard aircraft.

In EDR–461 and EDR–461B, the Board offered two proposals. It proposed to require airlines to provide the seat, among those still available, that is farthest removed from all smoking sections, for any person that presented written medical evidence of a substantial susceptibility to tobacco smoke.

The commenters described several problems with this proposal. For instance, they contended that especially sensitive is not a recognized medical

category, so passengers could claim the privilege of special seating merely by getting a friendly doctor to write them a note. More importantly, it is unclear where especially sensitive persons should be seated in the aircraft. ASH suggested placing them in the middle of the no-smoking section. But in small or medium-sized aircraft, that may be of little value. Placing them in the front of the no-smoking section might be better, unless that left them immediately behind the first-class smoking section.

In short, it is unclear where especially sensitive persons should be seated even if it could be objectively determined who they are.

A further problem with the Board's proposal is that, upon close examination, it becomes clear that it provides little or no additional protection for especially sensitive persons. Many commenters noted that nonsmokers can already get the available seat farthest removed from the smoking section simply by requesting it. The Board's proposal, in the form proposed, would therefore add nothing.

If the Board were to require that other passengers be moved about in order to accommodate an especially sensitive passenger, the system would become unduly burdensome for airlines. It would require a second passenger reshuffling as airlines are already required to move people around if more nonsmokers show up than the designated no-smoking section can accommodate. Such a reshuffling seems particularly senseless here since, as explained above, it is uncertain whether the seat eventually assigned would be any more free of smoke.

Some airlines suggested that they could hold a reasonable number of seats for especially sensitive persons in the area of the plane they consider to be freest of smoke. Oral argument transcript, p. 188. This was not an option that was proposed but the Board would strongly urge airlines to do this if it would in fact be feasible.

The Board's second proposal under the especially-sensitive heading was to ban smoking when a passenger experiences illness caused by smoking. It was strongly opposed by the airlines. They feared that such a rule could turn attention from the critical need of the ill passenger to the side question of whether smoking caused the illness or should be banned. They also noted that the cabin crew is unlikely to be able to determine the underlying cause of the illness, so needless disputes will arise. Others pointed out that if a ban on smoking was really needed in a given situation, airlines would surely respond in a humane fashion. Nonsmokers tended to favor this proposal because they apparently feared that some airlines would not respond properly.

The Board concludes that this second proposal provides little or no additional protection for sensitive nonsmokers, and has the potential for creating even more problems for the cabin crew.

ASH argued that persons who are especially sensitive to tobacco smoke are handicapped persons and therefore entitled to special protections, or a short-flight smoking ban, under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. That Act prohibits discrimination against qualified handicapped persons in programs and activities that receive Federal financial assistance.

It is unclear whether especially sensitive persons are handicapped within the meaning of the Rehabilitation Act. Although one court decided that they were, *Vickers* v. *Veterans Admin.*, 549 F Supp. 85 (W.D. Wash. 1982), another decided that they were not, *GASP* v. *Mecklenburg County*, 42 N.C. App. 225, 256 S.E. 2d 477 (1979).

Even assuming that especially sensitive persons should be considered handicapped, no additional rules on smoking would be necessary. The Rehabilitation Act applies only to recipients of Federal financial assistance, that is recipients of subsidy under section 419 of the Act. Most of those receiving these subsidies are the small commuter carriers where smoking is now banned in any event.

Even on carriers where smoking is allowed, the required separate seating is sufficient to meet the nondiscrimination obligation of the Rehabilitation Act. In the Vickers case, even though the especially sensitive person was found to be handicapped, the court decided that the VA had not discriminated against him in part because it had provided him with a separate no-smoking area.

In addition, it is well-settled that the Rehabilitation Act would not require an airline to modify its service if that would impose undue financial or administrative burdens on it, *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (1981), SPR–189, 47 FR 25936, June 16, 1982. As explained above, special protections for especially sensitive persons or a short-flight smoking ban would, if adopted, have imposed such burdens on the airlines. They are therefore not adopted.

Until it is possible to mandate specific protections for especially sensitive persons that are effective, practical, and not unduly burdensome, no special provisions should be codified in the Board's rules. Nevertheless, the Board is aware that some people are adversely affected by cigarette smoke. We believe airlines will take the necessary and proper measures to accommodate the needs of these passengers.

Ventilation

The Board's current rule on ventilation prohibits "the smoking of tobacco whenever the ventilation system is not fully functioning." 14 CFR 252.2a. This is generally referred to as the fully functioning ventilation standard. A "fully functioning" ventilation system is defined in the rule as one where "all parts are in working order and operating at the capacity designed for normal service."

The fully functioning ventilation standard was one of the provisions that had been added to the rule in 1979 (ER–1091), eliminated in 1981 (ER–1245), and then reinstated by order of the court in 1983 (ER–1245A). During the time that it was in effect, there was some dispute as to whether it required all available aircraft ventilation units to be operating full blast at all times. ASH and other groups representing nonsmokers contended that it did, while airlines did not view it that way.

The Board itself did not resolve the question when reinstating the provision. It did state, however, that "a rule that prevents airlines from adjusting their ventilation to reflect the actual needs of a particular flight is unduly restrictive." EDR–461, p.11, 48 FR, at 24921. Since the fully functioning standard could be construed as preventing such adjustments, the Board proposed to replace it in EDR–461.

The Board's primary proposal was to prohibit smoking "whenever the ventilation system is not producing adequate ventilation for the conditions that exist aboard the aircraft." This has been referred to as the "adequate" ventilation standard.

The Board also offered an alternate proposal. Under this alternate proposal, smoking would be banned "whenever the ventilation system is turned off." It was explained that this was directed toward banning smoking when the aircraft was on the ground awaiting takeoff. EDR–461, p. 11.

Nonsmokers and flight attendants favored retention of the fully functioning standard. They claimed that cabin ventilation is generally inadequate and that airlines are reducing it further to save fuel. They viewed the fully functioning standard as clear and precise, and providing them with the most protection from smoke.

Airlines and tobacco interests opposed this standard. They cited testimony of the FAA and other studies as proof that cabin air quality is good and that further regulation is not needed. They urged the Board to defer to the FAA in this area because that agency has the requisite technical expertise. Some also expressed concern that any rules on ventilation would prompt passengers to second-guess operational decisions that properly belong to airline management.

The airlines and DOT favored the Board's proposals. In their view, the Board's proposals recognized the need to rely on the crew's good judgment to maintain a safe and comfortable environment.

Nonsmokers and flight attendants did not approve of the Board's proposals. They considered "adequate" to be too vague a term. ASH stated that it was illegally vague. Neither proposal, in their view, would provide sufficient protection for the health and comfort of nonsmokers. They pointed out that the subjective decision as to how much ventilation to provide will rest with the captain, who is not in the passenger cabin and who may be under pressure to reduce ventilation to improve fuel economy. They argued that the goal of fuel efficiency could be achieved by combining a reduction in ventilation with a ban on smoking. They also suggested that the cost of the extra ventilation be recouped by charging extra for the privilege of smoking during flight.

Much of the debate about the ventilation standard centered on how many air pacs must be operating and on how much fresh air is needed per passenger. Airlines claimed that aircraft air is exchanged 15 to 20 times per hour, that passengers receive 15 to 25 cubic feet of air per minute, and that these figures exceed that which is typical of nonaviation environments. They cited the "guidelines" of the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE), information from the Aerospace Industries Association, and Congressional testimony of the FAA as proof of this. United Air Lines cited studies by Boeing and Lufthansa German Airlines as proof that no further regulation of ventilation is necessary.

Nonsmoker groups countered that the cabin ventilation figures relied on by the airlines were only "design values," and not the rates that occur during actual operation. They considered airline claims of many air exchanges per hour to be misleading because, they claimed, the air is recirculated air and thus already polluted with smoke. They further claimed that the aircraft recirculation systems do not filter out many of the gases in cigarette smoke.

The airlines disagreed. They stated that many aircraft types do not recirculate air at all, so that all the air exchanged is fresh air. Those that do recirculate, according to United, limit the recirculated air to 60% of the total air. Airlines contended that aircraft recirculation systems filter out odors and cigarette smoke.

Even if the airline claims were accurate, the nonsmokers contended, higher ventilation rates are needed in places where smoking is permitted. The American Lung Association (ALA) stated that passengers need 40 to 60 cubic feet of fresh air per minute.

Again, the airlines disagreed. ATA questioned whether there is any scientific support for the claim that air levels of 40 to 60 cubic feet per minute (cfm) are needed for good health.

With respect to air pacs, nonsmokers and some flight attendants reemphasized their concerns about the air quality aboard aircraft, which they viewed as uncomfortable if not unhealthy. They insisted that this problem is exacerbated by the airline policy of turning off one air pac to save fuel.

The airlines, however, stated that the fuel savings from turning off one pac were not significant. They contended that operation of the third air pac was simply not necessary in all cases. They claimed that aircraft ventilation systems are designed with a measure of redundancy so that, at less than 100% loads, all air pacs need not be operating to ensure passenger comfort.

ASH objected to any rule that gave airlines discretion to turn off one air pac in any situation. It stated that giving airlines such discretion would, in effect, be allowing equipment manufacturers to set ventilation rates. They feared that airlines would be able to evade the fully functioning requirement by obtaining instructions from the aircraft manufacturer that only two air pacs were necessary in a particular situation. In ASH's view, this would constitute an unlawful delegation of agency rulemaking authority to private parties.

To prevent airlines from exercising this sort of discretion, ASH urged the Board to delete the reference to "normal service" in that part of the rule that defines fully functioning. It considered this at odds with the explanatory statement accompanying the adoption of the fully functioning standard (ER-1091). There the Board has stated that when ventilation is cut back for any reason, smoking should be prohibited. ASH viewed this statement as more accurately representing the meaning of the fully functioning standard.

ASH and many nonsmokers also asked that smoking be banned when the aircraft is on the ground awaiting takeoff. They stated that at such times ventilation is inadequate or even nonexistent.

Given the airlines' reliance on their ventilation system as the basis for allowing any smoking, the Board again concludes that that system must be fully functioning if smoking is to be permitted. The adequate ventilation proposal is simply too vague to provide any real basis for regulating in this area.

The Board is also adopting the alternative proposal to ban smoking when the ventilation system is turned off, but with some modifications. As noted above, this alternative proposal was directed toward the problem of smoking when flights are delayed on the ground.

This proposal received widespread support. ATA stated that, if adopted, it could be incorporated into the captain's manual, thereby fostering compliance. Nonsmokers also supported it but were concerned that it did not go far enough. They pointed out that when the aircraft is on the ground, the engines are idling and that, as a result, the ventilation system is operating at a very low level, if at all. They urged a total ban on smoking when the aircraft is on the ground awaiting takeoff.

The Board has decided to adopt the proposal to ban smoking when the aircraft is on the ground. The fully-functioning standard will apply only when the aircraft is in the air.

The smoking ban on the ground will apply even if the ventilation system is on. Airlines did not rebut the nonsmokers' arguments about the inadequacy of aircraft ventilation when the aircraft is on the ground. The Board concludes that in such situations the ventilation system is operating at a level that is too low to provide adequately for nonsmokers' comfort. The Board is adding a separate paragraph codifying this particular smoking ban (§ 252.3(b)). In light of the comments, it views such a ban as justifiable under the fully functioning standard as well.

This smoking ban will provide important protections for nonsmokers without imposing a serious additional burden on smokers. The no-smoking sign is now typically on preceding take-off in any event. This will now be mandatory. The change in the rule adopted from that which was proposed should not make compliance any more difficult for airlines or their pilots. This

smoking ban is simple and straightforward.

The Board is also by this rule resolving the question raised by commenters concerning the meaning of "fully functioning." It is true that the Board did make a statement in ER–1091, at p. 16, that implied that the fully functioning standard requires airlines to operate all pacs at all times when smoking is allowed. But this statement was made without the benefit of notice and comment, and does not have decisive weight here in light of the information we acquired during this proceeding.

The Board is inclined to accept the views of the airlines and aircraft manufacturers about the capabilities of their ventilation systems. These groups state that all pacs need not be operating, at passenger loads of less than 100%, to provide design ventilation levels. Aircraft systems are constructed with a significant amount of redundancy.

The Board concludes that, based on the information now available to it, requiring all air pacs to be operating at a maximum capacity at all times that smoking is allowed would go too far. Such a rule may impose substantial fuel/cost penalties at a time when airlines are going to great lengths to save fuel and other costs.

The Board does not decline to adopt such a rule merely out of a concern for carrier costs or fuel savings. Specifying how aircraft systems should be operated goes beyond the Board's traditional regulatory function and may encroach on the FAA's jurisdiction to regulate the operation of aircraft.

Furthermore, if the Board were to require airlines to operate all air pacs when smoking was allowed, it would create a perverse incentive for airlines to reduce, or have aircraft manufacturers reduce, overall ventilation capacity. This would not benefit nonsmokers.

But the Board does agree with nonsmokers that airlines cannot be allowed absolute discretion over their ventilation systems when passengers are smoking. Since the rule's current definition of fully functioning ("in working order and operating at the capacity designed for normal service") has been interpreted by some as granting such discretion, the Board is replacing it. As revised, the rule makes it clear that fully functioning means operating so as to provide the level and quality of ventilation specified and designed by the manfacturer for the number of persons currently in the passenger compartment.

Although there are some differences among aircraft types, the comments indicate that aircraft ventilation is now "specified and designed" by the manufacturers to provide 15 to 25 cubic feet of air per person per minute.[1] The Board declines at this time to attempt to set an absolute quantitative limit with respect to ventilation rates or other aspects of air quality. It assumes, however, in light of the intense public interest in the matter, that airlines and manufacturers will not weaken the current design standards, and that if they were to do so, further regulatory action might be required.

The Board recognizes that some feel that even higher rates are needed where smoking is permitted. But that would probably require technical modifications in aircraft that are beyond the scope of this proceeding.

The Board recognizes that flight attendants, because of longer exposure, are in a different position from passengers with respect to passive smoking. Their working conditions, however, are the direct concern of agencies other than the CAB. Congress is now considering the question of aircraft cabin quality in S. 197, which would fund a major study on the subject.

The Board does not consider its approach to the ventilation issue to constitute an improper delegation to private parties. The law in this area "has not crystallized any consistent principles," Davis, *Administrative Law Treatise*, § 3:12. In the Board's view, an improper delegation would only exist in this situation if aircraft manufacturers or nonsmokers were allowed to impose a specific ventilation level on carriers, for "one person may not be entrusted with the power to regulate the business of another, * * *" *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 311 (1936). Here the Board is merely relying on information from the private parties in order to establish a rule.

The Board also considers its approach to the ventilation issue to be consistent with that of the FAA, the agency with the greater technical expertise in this area. FAA officials have testified that, in certain circumstances, operation of only one air pac would be sufficient, S. Rep. No. 98–54, 98th Cong., 1st Sess. 15 (1983). They further testified that there is no evidence to indicate that permitting airlines "to dispatch with a ventilation pac inoperative or shut down has created a ventilation problem," *id*, p. 12. They pointed out that there is much in the aircraft that is designed "with redundant systems, systems that exceed what is required by * * * passenger comfort" and that "that is true in the ventilation systems." *id*, p. 14.

[1] There was a wide range of comments on this issue. As noted above, the ALA claimed that 60 cubic feet per person per minute was necessary. Others cited evidence that rates as low as 5 cubic feet per minute per passenger would be "adequate" (*ASHRAE Handbook and Product Directory*, 1978 Applications, p. 9.2.) But most commenters seemed to agree that 15 to 25 cfm per person were what aircraft were typically designed for.

Unreasonable Burden

The "unreasonably burdened," sandwiching, or drifting smoke rule, as it is variously known, was first adopted by the Board in 1979 (ER–1091). Orginally, the Board had proposed that sandwiching, the placement of a non-smoking section between two smoking sections, be prohibited (EDR–306). This, however, was not adopted by ER–1091. Instead, the Board, in ER–1091, adopted a lesser requirement that airlines ensure that nonsmokers are not "unreasonably burdened" if they are sandwiched between two smoking sections. This requirement was codified in § 252.2(e), now § 252.2(a)(4), of the Board's rule.

In addition to the new § 252.2(e), ER–1091 also revised the introductory paragraph of § 252.2. As revised, the term "unreasonably burdened" appeared there as well. It was explained in ER–1091 that the term was meant "to place a special burden on carriers who use" a sandwiching configuration. The explanation did not explain why the term appeared twice in the rule, but there was no indication that any other practice beside sandwiching was to be affected by it.

Nevertheless, nonsmoking parties have argued that the term also prohibits such practices as longitudinal separation of smokers and nonsmokers, smoking by crew members, and drifting smoke. The Board itself has not accepted their position on these issues, viewing the introductory paragraph as stating the goal of the requirements that followed in § 252.2(a)(1)–(a)(4) rather than being a requirement itself. ER–1245A, p.3.

The Board has decided to keep the "unreasonably burdened" language in § 252.2(a)(4) where it explicitly pertains to sandwiching, but delete it from the introductory paragraph of § 252.2 where its purpose is unclear. The term is vague in the introductory paragraph. However, in § 252.2(a)(4) it can be viewed as creating a presumption against sandwiching, a practice that in the past generated many complaints.

In the introductory paragraph, however, the term is merely redundant. If there are additional problems that the Board should deal with, it would be better to institute a new rulemaking rather than to rely on a vague provision

that was intended to deal with sandwiching only.

The Board does not agree that this term, even if retained, would have any bearing on the general problem of drifting smoke. In the Board's view, the current system of separating smokers from nonsmokers works reasonably well in protecting nonsmokers from drifting smoke, especially in light of the frequent air exchanges of which the aircraft is capable. Retaining this term in the introductory paragraph would produce no further benefits. Arguments about drifting smoke are therefore no basis for keeping this term in the introductory paragraph of § 252.2.

It is also unnecessary to keep this term to deal with the problem of cabin crew smoking in the no-smoking section. In the Board's view, that is already prohibited by Part 252.

Cabin crew smoking. Section § 252.2(a)(1) requires airlines to provide a "no-smoking area for each class of service * * *" It should be obvious that the required no-smoking area cannot have smokers smoking in it.

Furthermore, under § 252.3, *Enforcement,* (now § 252.6), each air carrier is obligated to "take such action as is necessary to ensure that smoking is not permitted in no-smoking sections * * *." No distinction is made between passengers and crew. It cannot be said that this provision means that the no-smoking rule is to be enforced only with respect to passengers. The Board understands it to mean that this rule must be enforced for all aboard the aircraft, including the crew.

To make this clear, the phrase "by passengers or crew" is inserted so that the section now reads "Each air carrier shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in the no-smoking sections * * *." Since this amendment is interpretative in nature, the Board finds that notice and public procedure are unnecessary. Any staff interpretations of Part 252 that are inconsistent with the above are overruled.

It is not the intention of this interpretation to entirely prevent those crew members who wish to smoke from doing so. But the airlines cannot carve out niches within or adjacent to the areas where nonsmokers are assigned, such as a jump seat or the galley area, and declare that they are not part of the non-smoking area. Crew members may still smoke in the designated smoking area.

Also, if an area adjacent to the no-smoking section is enclosed and separate from that section, a crew member could smoke there. Thus, nothing in this interpretation would affect the captain's ability to permit smoking in the cockpit when the door to the passenger area is closed. DOT has informed us that a FAA study found that banning smoking in the flight deck area could jeopardize safety by causing "tension, depression, irritability, difficulty in concentration * * * and impaired performance", Dille and Linder, "The Effects of Tobacco on Aviation Safety" 6 (1980).

On the other hand, a mere curtain, which is all that usually stands between the galley and the rest of the no-smoking area, would not be sufficient. See flight attendant testimony at Transcript p. 150.

Additional Suggestions

Many more requirements, not proposed by the Board, were suggested by commenters. These included separate flights for smokers and nonsmokers, separate sections in airport waiting area, partitions between smoking and no-smoking sections, and smoke detectors in the aircraft lavatories.

There are substantive reasons for not adopting most of these proposals.

Separate flights. Separate smoking and no-smoking flights would be economically impractical, except on the most heavily traveled routes. Even for those, such a requirement would be sure to create problems if a nonsmoker sought a flight at the time the smoking flight was departing or when the no-smoking flight was full. In addition, a Board requirement that there be separate flights for smokers and nonsmokers at about the same time might violate the prohibition in section 402(e)(4) of the Act against regulating carrier schedules.

Airport waiting rooms. Separate sections in airport waiting areas may be desirable, but this is beyond the jurisdiction of the CAB. Airports are typically controlled by a local airport authority or the U.S. Department of Transportation. Suggestions about smoking and no-smoking sections should be directed to them, or to the airline involved.

Partitions. The Board considered the issue of partitions in EDR–377, 44 FR 29846, May 21, 1979, but rejected it in ER–1245 and ER–1245A, 48 FR at 24867–24868. The main problem with partitions has been the difficulty in finding one that is substantial enough to block the smoke but that can still be moved at the last minute to accommodate an unexpectedly large number of nonsmokers as is required by § 252.2(a)(3). Many nonsmokers seemed to feel that a simple curtain would not be enough. For example, Meyer Sharlin, a nonsmoking passenger, commented that a "curtain is not a deterrent to drifting smoke * * *."

In addition, the ATA in its reply comments cited many problems with partitions. These included both safety and practical problems. It stated that a partition would block the passengers' view of the flight attendants' instructions and demonstrations before takeoff or during an emergency. It was concerned that a partition would interfere with a passenger's ability to recline the seat or to use the fold-down trays. It also questioned whether a curtain could be attached to the overhead rack as ASH had claimed.

Smoke detectors. The smoke detector suggestion is the most worthwhile one. Smoke detectors, being closely related to aircraft fire safety, are within the jurisdiction of the FAA, not the CAB. Some airlines have voluntarily installed them. The FAA recently proposed that each lavatory and galley be equipped with a smoke detector system. 49 FR 21010, May 17, 1984. The Board strongly urges them to adopt this proposal as a final rule. The installation of smoke detectors would be an important step in improving aircraft flight safety.

Final Regulatory Flexibility Analysis

The discussion above constitutes the Board's final regulatory flexibility analysis of this rule under 5 U.S.C. 604. Copies of this document can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673–5432, by referring to the "ER" number at the top of the document.

List of Subjects in 14 CFR Part 252

Air carriers, Consumer protection, Smoking.

Chairman McKinnon concurred. Vice Chairman McConnell and Member Smith concurred and dissented and filed separate concurring and dissenting statements. Member Morales dissented and concurred and filed a dissenting and concurring statement. Member Schaffer dissented on the issue of short flights and concurs on all other issues.

Members' Statements

McConnell, Vice Chairman, Concurring and Dissenting

I agree with the majority that we should neither expand our rules to include a governmental ban on smoking on "short" flights or attempt to devise a special provision to define and protect "sensitive" passengers.

However, there are several issues on which I cannot agree with the majority.

First, it has been our policy to minimize government intervention in the operations of all airlines but especially

operators of small aircraft. Many small carriers already ban smoking. Therefore, expanding the smoking regulations to this group of carriers is an unnecessary regulatory burden.

Second, the majority vote to ban cigar and pipe smoking is meaningless. Almost all airlines ban pipes and cigars to enhance the comfort of passengers. The cigar and pipe prohibition by most airlines shows that carriers respond to consumer comfort. A rule to require these actions which most carriers already take is doubly intrusive. Similarly, most U.S. airlines prohibit smoking when the aircraft is on the ground.

With respect to ventilation systems, this is an area with which the Board has little expertise for which the record offered no clear standard on which to rely. The Board should leave operation of the ventilation system to the experts running the airlines.

Finally, I believe the majority straddled the fence on what to do about language proclaiming the "sandwiching" of a non-smoking sections between smoking sections may "unreasonably burden" the non-smoker, and language that states that the purpose of our rules is to ensure non-smokers are not "unreasonably burdened". The majority retained the former and eliminated the latter. If the standard is impractical and legally insufficient, as I believe it is, in one context, it is for the other. It can only lead to further interpretation and regulation, which is exactly the opposite of where we should be heading.

Procedurally, I believe that we should ask for comment under the Administrative Procedure Act for certain matters included in this rule: the change in definition of small aircraft, and to ban smoking when the aircraft is on the ground. These issues were not sufficiently addressed by the Board in its notice, and deserve comment before Board action.

Smoking is a strong concern for all—carriers, smokers and non-smokers. The changes adopted by the majority are simply not needed and in some cases meaningless. Further, the vast majority of passengers are neither smokers nor especially sensitive to smoking. All passengers and their smoking preferences can be accommodated voluntarily by the airlines without government intervention. I believe that the airlines are in the best position to determine whether and when, passengers should be allowed to smoke.

(Signed) Barbara E. McConnell.

Smith, Member, Concurring and Dissenting

As I have stated in the past, it is inappropriate to create a line of distinction for smoking regulations on aircraft at 30 seats. Similar Board regulations use 60 seats as the determining factor and aircraft with 60 seats or less should not be subject to any smoking regulations at all. There is no empirical evidence that federal regulations banning smoking on 30 seat aircraft is necessary.

The order acknowledges that many commuter airlines ban smoking and nothing prohibits others from doing so. By definition, a commuter airline operates aircraft up to 60 seats. A 30-seat smoking regulation would require an unnecessary federal requirement and an administrative burden on carriers with mixed fleets.

The prohibition of smoking on airline crew areas was never fully argued, nor was a record developed. It is inappropriate to "interpret" smoking regulations into crew area applications without due process.

(Signed) James R. Smith.

Morales, Member, Dissenting and Concurring

I must dissent from the Board's decision in this rulemaking. As I noted when the Board instructed the staff on this rule a few months ago, I have consistently favored stricter restraints on smoking aboard aircraft. While a majority of the Board then favored the rule which is adopted today, I did so because there was not a majority to adopt stricter rules. However, it appeared that in reviewing the provisions of the rule adopted today, the opinions of some Members of the Board had shifted to favor additional restraints. They proposed adopting a ban on smoking on short flights of 2 hours or less. In my opinion, the reasons supporting a 2-hour ban also support a total ban on smoking aboard aircraft, and in fact are even more persuasive when considered against that goal. In my opinion, when compared to a 2-hour ban, the total ban would be more fair to all carriers. No carrier of any size or with any particular route structure would be considered potentially at any type of competitive disadvantage.

- To whatever extent the short flight or small aircraft bans might cause certain administrative complications for crew members, that potential difficulty is eliminated.
- To the extent that smoking is a potential fire hazard, the risk is eliminated.
- To the extent that passive smoking is indeed injurious to the health of non-smokers, that argument is put to rest.
- To the extent that the cumulative effects of smoke-filled planes cause health problems for flight attendants, working conditions would be considered improved. Medical expenses for carriers and personnel could potentially be lower and productivity might increase.
- To whatever extent carriers must now add additional ventilation (through use of additional air pacs) to compensate for smoking and air quality considerations, those additional efforts could be eliminated and thereby cause a potential savings of fuel and cost.
- The portions of Congress' study dealing with cabin safety and air quality as it relates to smoking would be rendered moot.
- It has been well documented that the by-products of smoke from cigarettes clog the moving parts of planes, thus adding to the maintenance costs for carriers. A ban could indeed translate into cost savings.

While I sought support for a total ban when the shift in Board opinion became obvious, it was clear that there was not a majority for that option. Lacking that support, I would have joined in a decision to ban smoking on aircraft for 2-hour flights or less. The 2-hour ban would have affected 85–90% of all domestic flights, a result close to the one I consider optimal. Additionally, because of the high percentage of affected flights, potential competitive disadvantages would be minimized.

Since a majority no longer favors the 2-hour ban, and since it is not the *most* desirable result in my opinion, I will state my preference for a total ban, which would have eliminated a plethora of problems. I favor such a ban, and consequently I must dissent from the rule finally adopted by the majority today.

(Signed) Diane K. Morales.

Because without my vote there would not be a majority to ban pipe and cigar smoking and smoking on aircraft of less than 30 seats, I will join Chairman McKinnon and Member Schaffer in voting to do so. I will also concur in the interpretation of the rule which prohibits

smoking by crew members in galleys located in the non-smoking section.

(Signed) DKM

Final Rule

PART 252—[AMENDED]

Accordingly, the Board amends 14 CFR Part 252, *Smoking Aboard Aircraft*, as follows:

1. The authority for Part 252 is:

(Secs. 204, 404, 407, and 416, Pub. L. 85–726, as amended, 72 Stat. 743, 760, 766, 771, 49 U.S.C. 1324, 1374, 1377, 1386)

2. The table of contents is revised to read:

* * * * *

252.1 Applicability.
252.2 Non-smoking sections.
252.3 Ventilation systems.
252.4 Cigars and pipes.
252.5 Small aircraft.
252.6 Enforcement.
252.7 Waivers.

3. Section 252.1 is revised to read:

§ 252.1 Applicability.

This part establishes rules for the smoking of tobacco aboard aircraft. It applies to all operations of direct air carriers, except on-demand services of air taxi operators. Nothing in this regulation shall be deemed to require carriers to permit the smoking of tobacco aboard aircraft.

§ 252.1a [Removed]

4. Section 252.1a, *Special segregation of cigar and pipe smokers*, is removed.

5. In §252.2, the introductory paragraph of paragraph (a) is revised as follows:

§ 252.2 No-smoking sections.

(a) Except as provided in paragraph (b) of this section, air carriers, when operating aircraft designed to have a passenger capacity of 30 seats or more, shall provide at a minium:

* * * * *

6. Section 252.2a, *Ban on smoking when ventilation systems not fully functioning*, is renumbered § 252.3, retitled, *Ventilation systems*, and revised to read as follows:

§ 252.3 Ventilation systems.

(a) Carriers shall adopt and enforce rules prohibiting the smoking of tobacco whenever the ventilation system is not fully functioning. Fully functioning for this purpose means operating so as to provide the level and quality of ventilation specified and designed by the manufacturer for the number of persons currently in the passenger compartment.

(b) Carriers shall adopt and enforce rules prohibiting the smoking of tobacco whenever the aircraft is on the ground.

7. A new § 252.4 is added to read:

§ 252.4 Cigars and pipes.

Carriers shall adopt and enforce rules prohibiting the smoking of cigars and pipes aboard aircraft.

8. A new § 252.5 is added to read:

§ 252.5 Small aircraft.

Carriers shall adopt and enforce rules prohibiting the smoking of tobacco on aircraft designed to have a passenger capacity of less than 30 seats.

9. Section 252.3 *Enforcement*, is redesignated § 252.6 and is revised, to read:

§ 252.6 Enforcement.

Each air carrier shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in no-smoking sections and to enforce its rules with respect to the banning of smoking or the separation of passengers in smoking and no-smoking areas.

§ 252.7 [Redesignated from § 252.4]

10. Section 252.4 *Waivers*, is redesignated § 252.7.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–16478 Filed 6–19–84; 8:45 am]

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Presidential Documents

Title 3—

The President

Proclamation 5212 of June 18, 1984

Harmon Killebrew Day, 1984

By the President of the United States of America

A Proclamation

On August 12, 1984, Harmon Killebrew will be inducted into the Baseball Hall of Fame in Cooperstown, New York. As a seventeen-year-old, Harmon Killebrew signed with the late Washington Senators and played with that franchise in the Nation's Capital and after its transfer to Minnesota. In an illustrious career, he hit 573 home runs, second only to Babe Ruth among all players in American League history. Harmon Killebrew was a member of the American League All-Star team on eleven occasions, and in 1969, he hit 49 home runs and batted in 140 runs and was named the American League's Most Valuable Player.

In honoring Harmon Killebrew, we recognize the accomplishments of the other baseball immortals enshrined in Cooperstown and the many contributions the sport has made to American culture and myth. Harmon Killebrew is the latest in a lengthy list of players who, in the words of Justice Harry Blackmun of the United States Supreme Court, "have sparked the diamond and its environs and that have provided tinder for recaptured thrills, for reminiscence and comparisons, and for conversation and anticipation . . . and all other happenings, habits, and superstitions about and around baseball that have made it the 'national pastime' or, depending upon the point of view, 'the great American tragedy'."

The Congress, by Senate Joint Resolution 285, has designated June 13, 1984, as "Harmon Killebrew Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 13, 1984, as Harmon Killebrew Day, and I call upon the people of the United States to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of June, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-16789
Filed 6-20-84; 10:31 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 49, No. 121
Thursday, June 21, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-34-AD; Amdt. 39-4881]

Airworthiness Directives; McDonnell Douglas Model DC-8-11 Through -61 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to McDonnell Douglas Model DC-8-11 through -61 series airplanes which requires an initial and repetitive inspection of the left and right wing front spar lower caps in the region of the inboard pylon for cracks, and a rework modification if necessary. This AD is prompted by five reports of cracks in the wing front spar lower cap in the inboard pylon area. If left unattended, these cracks may cause spar cap failure and a reduction of load carrying capacity of the wing.

DATES: Effective June 27, 1984.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y. J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548-2524.

SUPPLEMENTARY INFORMATION: Five reports were received of the failure of the wing front spar lower cap in the inboard pylon area. The conditions of the spar cap varied in the five cases. Though associated consistently with fatigue, the two cases with the most critical damages found are described below:

(1) During the re-engine modifications, cracks were found in the forward tang of the wing front spar lower cap at stations XFS=273.429 and XFS=280.5, originating in the spar cap attach holes and progressing through the thickness of the cap. The cracks were attributed to metal fatigue and attachment hole conditions. They were found on an airplane having logged approximately 36,000 flight hours and 14,000 landings.

(2) While performing McDonnell Douglas DC-8 Service Bulletin 57-89 maintenance inspection, an operator found cracks in similar locations except in a much worse condition on an airplane having logged approximately 35,000 flight hours and 25,000 landings; through cracks were noticed in the wing front spar lower cap at the left hand inboard pylon area. The cracks originated in a fastener hole in the forward tang and propagated such that the forward tang was cracked through. The aft tang was cracked about 0.5 inches and up the vertical leg about 1.75 inches into the fuel cell area. No fuel leakage was reported. These conditions, if not corrected, could compromise the integrity of the wing fuel cell and then structural integrity of the wing.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires an initial inspection of the wing front spar lower cap in the inboard pylon areas of all airplanes which have accumulated 30,000 flight hours or 14,000 landings, using the methods of inspection prescribed in McDonnell Douglas DC-8 Service Bulletin 57-89, Revision 2, dated July 27, 1983. The AD requires the accomplishment of the prescribed initial inspection within 300 flight hours after the effective date of this AD.

Information collection requirements contained in this regulation (§ 39.13) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0056.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8-11, through -61 series airplanes, certificated in all categories, having accumulated 30,000 flight hours or 14,000 landings. Compliance required as indicated unless previously accomplished.

To prevent failure of the wing front spar lower cap, accomplish the following:

A. Within 300 flight hours or upon the accumulation of either 30,000 flight hours or 14,000 landings, whichever occurs later, after the effective date of this AD perform the initial inspection in accordance with paragraph 1.C in McDonnell Douglas DC-8 Service Bulletin 57-89, Revision 2, dated July 27, 1983, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. If no cracks are found, repeat the inspection of paragraph A., above, at intervals not to exceed 3,600 flight hours until the modification described in paragraph C., below, is accomplished.

C. The repetitive inspection requirement of paragraph B., above, may be discontinued for aircraft modified (enlarge and stress-coin attachment holes and install angles) in accordance with McDonnell Douglas DC-8 Service Bulletin 57-89, Revision 2.

D. If cracks are found, repair in accordance with McDonnell Douglas DC-8 Service Bulletin 57-89 under Conditions II through VI.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate airplanes to a base in order to comply with the requirements of this AD.

G. Report the results of the initial inspections required by paragraph A., above, to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. Include in the reporting information the date and condition of the structure or repair per McDonnell Douglas DC-8 Service Bulletin 57-89, McDonnell Douglas factory serial number, fuselage number, registration number, and accumulated number of flight hours and landings.

H. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average from takeoff to landing for the airplane type.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective June 27, 1984.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, Jan. 12, 1983); and 14 CFR 11.89)

Note: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington, on June 7, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84-16546 Filed 6-20-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-AWA-22]

Alteration of the Dallas-Fort Worth, TX, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Dallas-Fort Worth, TX, Terminal Control Area (TCA). This action modifies Area B southeast of the airport to fully contain large turbine-powered aircraft executing an instrument landing system (ILS) Runway 31R approach, thereby complying with the FAA's policy to ensure all large turbine-powered aircraft remain within the confines of the TCA while executing standard instrument approach procedures (SIAPs).

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Brent A. Fernald, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On February 8, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify Area B of the Dallas-Fort Worth TCA to fully contain all aircraft executing an ILS Runway 31R approach, by extending Area B one and one-half miles each side of the localizer course extending to an arc 9.5 miles southeast of the airport (49 FR 4765). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Five comments were received, of which four supported and one objected to the proposed modification. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.401(a) of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations modifies the Dallas-Fort Worth TCA by extending Area B one and one-half miles each side of the localizer course extending to an arc 9.5 miles southeast of the airport.

Discussion of Comments

The objecting commenter stated that the proposed modification of Area B would extend into the visual flight rule (VFR) corridor causing compression of VFR traffic. FAA does not agree, as this area is not a VFR corridor under the TCA shelf, and the extension is so minor in size that it will not increase compression of VFR traffic. The one and one-half mile extension of the 2,000 feet MSL Area B TCA floor into Area C, which has a 3,000 feet MSL floor, will still leave more than adequate room for the VFR traffic.

List of Subjects in 14 CFR Part 71

Aircraft, Aviation safety, Terminal control areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.401(a) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, August 30, 1984, as follows:

Dallas-Fort Worth, TX [Amended]

In Area B, by inserting the words "to lat. 32°49'42"N., long. 96°52'12"W.; thence clockwise along a 9.5-mile arc of the Dallas-Fort Worth Airport to lat. 32°47'30"N., long. 96°55'00"W.; to lat. 32°47'30"N., long. 96°55'00"W.;" after the word "lat. 32°50'10"N., long. 96°52'30"W.;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69.)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on June 14, 1984.

Harold W. Becker,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-16547 Filed 6-20-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 84-ANM-2]

Alteration of Jet Route J-7; Dillon, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J-7 between Oakland, CA, and Swift Current, Saskatchewan, Canada. Jet Route J-7 between Boise, ID, and Great Falls, MT, was initially routed and described via Dillon, MT, to conform with navigational aid use limitations. In recent years, a new high altitude very high frequency omni-directional radio range distance measuring equipment (VOR DME) navigation aid has been established at Salmon, ID. This action aids flight planning and improves the flow of traffic between Oakland, CA, and Saskatchewan, Canada.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (AAT-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On March 8, 1984, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Route J-7 between Oakland, CA, and Saskatchewan, Canada (49 FR 8623). Jet Route J-7 between Boise, ID, and Great Falls, MT, was initially routed and described via Dillon, MT, to conform with navigational aid use limitations. In recent years, a new high altitude VOR DME navigational aid has been established at Salmon, ID. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposals were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the description of Jet Route J-7 between Oakland, CA, and Swift Current, Saskatchewan, Canada. Jet Route J-7 between Boise, ID, and Great Falls, MT, was initially routed and described via Dillon, MT, to conform with navigational aid use limitations. This action aids flight planning and improves the flow of traffic between Oakland, CA, and Saskatchewan, Canada.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, effective 0901 GMT, August 30, 1984, as follows:

J-7 [Amended]

By deleting the words "Boise, ID; Dillon, MT; Great Falls, MT;" and substituting the words "Boise, ID; Salmon, ID; Great Falls, MT;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Note—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on June 14, 1984.

Harold W. Becker,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-16548 Filed 6-20-84; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Commodity Option Pilot Program; Delegation of Authority

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has previously established a pilot program for the trading of commodity options on domestic exchanges. 46 FR 54500 (Nov. 3, 1981). Option trading under that pilot program commenced on October 1, 1982 and, unless otherwise extended, will expire on October 1, 1985, when the designations granted by the Commission for the trading of commodity options will terminate.

Commission regulations accordingly provide that except as may be specifically authorized by the Commission, no exchange may list for trading any option which would expire subsequent to the termination of the effective period of that exchange's designation for options trading. The Commission is now delegating to its staff the authority to approve specific listings of option months proposed by the exchanges where those options would expire after October 1, 1985.

EFFECTIVE DATE: June 21, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: Unless extended by the Commission, the commodity option pilot program will expire on October 1, 1985. *See* 47 FR 56996, 56998 n.14 (Dec. 22, 1982). The Commission has indicated, however, that it:

> Recognizes * * * that both the industry and other option market participants will need to know prior to the scheduled expiration of that program whether or not the pilot program will be made permanent, modified or terminated. The Commission will, therefore, give notice of its determination in this regard well before the expiration of the pilot program.

46 FR 54500, 54502 (Nov. 3, 1981).

A number of the exchanges designated for option trading, however, are rapidly approaching the pilot program's October 1, 1985 expiration. In particular, the gold futures option at the Commodity Exchange, Inc. is currently listed for trading through April 1985, the Chicago Mercantile Exchange option on the Standard & Poor's 500-Stock Index futures contract is listed through June 1985, while the Coffee, Sugar & Cocoa Exchange, Inc. has already listed the July 1985 sugar futures option contract. Failure to allow the listing of additional option contracts beyond these dates would reduce the number of option expirations from which market participants may choose to trade, thereby potentially reducing the utility of the option markets.

Although the Commission has not yet made a final determination as to

whether the pilot program should, in fact, be made permanent, the Commission is nonetheless unaware of any reason why it should not, in the interim, continue to allow the exchanges to list option contracts in accordance with the cycles specified by exchange rules which have previously been approved by the Commission.[1] As contemplated by Commission regulation 33.5(c), the Commission is approving in principle the listing of additional option contract months where such options will expire after the termination of the exchange's option contract market designation. Any such proposed listing, however, must be in conformity with the exchange's previously approved rule relating to the listing cycle for that option and must be submitted to the Commission pursuant to Section 5a(12) of the Act and Commission regulation 1.41(b). Because the Commission anticipates that virtually all such new listings would be relatively routine, the Commission is delegating to its staff, effective immediately, the authority to approve these rule submissions.

This action now being taken by the Commission is expressly contemplated by regulation 33.5(c). The Commission therefore finds that prior notice and an opportunity for public comment are unnecessary. The Commission further finds that the delegation of authority set forth below relates solely to agency organization, procedure, or practice and that prior notice and an opportunity for public comment on that decision are unnecessary. 5 U.S.C. 553(b). Because the Commission's action grants or recognizes an exemption or otherwise relieves a restriction, the rule being adopted herein may be made effective immediately. 5 U.S.C. 553(d). Finally, because no notice of proposed rulemaking is required, a regulatory flexibility analysis is unnecessary. 5 U.S.C. 603(a), 604(a).

List of Subjects in 17 CFR Part 1

Commodity options, Contract markets, Delegation of authority, (Government agencies).

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a), 4c, and 8a, and 15 thereof, 7 U.S.C. 4a, 6c, 12a, 19, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

[1] In a separate **Federal Register** notice being published today, the Commission is requesting comment on whether it should modify the existing pilot program to allow qualifying exchanges to be designated for up to five options on futures contracts not involving the commodities specifically enumerated in Section 2(a)(1)(A) of the Commodity Exchange Act ("Act").

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.41b is revised to read as follows:

§ 1.41b Delegation of Authority to the Director of the Division of Trading and Markets and Director of the Division of Economic Analysis.

(a) The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis, with the concurrence of the General Counsel or his or her delegee, to be exercised by either of such Directors or by such other employee or employees of the Commission under the supervision of such Directors as may be designated from time to time by the Directors, the authority to approve, pursuant to Section 5a(12) of the Act and § 1.41(b), contract market rules that relate to terms and conditions and that:

(1) Do not materially change the quantity, quality, or other delivery specifications, procedures or obligations under a contract designated for trading by the Commission (such as, but not limited to, rules affecting procedures for inspecting, grading or weighing a commodity, the costs of such procedures, notice deadlines, payment procedures, the content of delivery forms and other similar procedures);

(2) Reflect routine modifications that are expressly required or anticipated by the specific terms of a contract market rule (such as the specification of delivery grades, growths or differentials, the listing of trading months or the modification of trading hours); or

(3) Authorize the listing, in accordance with rules of the contract market which have been approved by the Commission, of option contracts that expire after the termination of the designation of that board of trade as a contract market for the trading of commodity options.

(b) The Director of the Division of Trading and Markets or the Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(c) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis under this section.

Issued in Washington, D.C. on June 15, 1984, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

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17 CFR Part 31

Interim Final Rules for Certain Leverage Transactions; Corrections

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rules; corrections.

SUMMARY: This document corrects certain omissions and other errors in, and makes certain technical amendments to, the interim final rules for certain leverage transactions as published in the **Federal Register** on February 13, 1984, at 49 FR 5498, *et seq.*

EFFECTIVE DATE: These corrections and technical amendments shall become effective on June 21, 1984.

FOR FURTHER INFORMATION CONTACT: David R. Merrill, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254-9880; Lawrence B. Patent, Special Counsel, Division of Trading Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254-8955; or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone (202) 254-6990.

SUPPLEMENTARY INFORMATION: On February 13, 1984, the Commodity Futures Trading Commission published in the **Federal Register** interim final rules pertaining to certain leverage transactions (49 FR 5498). Those rules as published contain certain inadvertent omissions and other technical errors which could, if not corrected, cause some confusion to the persons to whom these rules apply as well as to members of the public who enter into leverage contracts pursuant to these rules. To eliminate this potential for confusion, the Commission is hereby making the corrections and technical amendments to the rules specified below.

As noted above, the Commission has determined to make these corrections and technical amendments effective immediately upon publication in the **Federal Register**. However, should any

persons believe themselves to be affected adversely by the immediate effective date of these corrections and technical amendments, they may petition the Commission for relief pursuant to §31.24 of the interim final rules (49 FR 5541).

The corrections and technical amendments to the Commission's interim final rules for certain leverage transactions are as follows:

1. On page 5512, in the first column, in line 12, the word "or" should be "of."

2. On page 5515, in the first column, the first sentence of the second full paragraph should be corrected to read "An LTM which uses leverage customer funds to margin futures contracts or to purchase commodity options used as cover for the LTM's obligations on leverage contracts must use a commodity account *which is separate from any trading account* containing futures or option contracts which do not represent cover." (The italicized material had been omitted in the interim final rules document.)

3. On page 5515, in the third column, 10 lines from the bottom, the word "may" should be "must".

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4. On page 5521, in the first column under the heading "E. List of Subjects" and the subheading "17 CFR Part 31," the third and fourth lines should be corrected to read "transaction merchants and associated persons of leverage transaction merchants, Minimum financial".

5. On page 5531, in the first column, in § 31.7(c), the first line should be corrected to read "The requirements of § 1.12(c)".

6. On page 5532, in the first column, in § 31.9(a)(4), in line 12, the first word should be "in", not "is".

7. On page 5534, in the second column, in § 31.11(e)(2), in line 4, the second word should be "three" not "there".

8. The Commission has become aware of some confusion among prospective LTMs regarding the method of calculating the percentage price change necessary to break-even required in the disclosure document and confirmation statement pursuant to § 31.11(a)(3) and (k), respectively. The Commission notes that the disclosures to customers specified in § 31.11 require in some places that LTMs state certain charges in dollar amounts while an individual LTM might calculate such charges as a percentage of the bid price of a leverage contract which will change over the life of the contract. For example, the termination charge might be 3 percent of the bid price for a leverage contract which, since it is variable, cannot be specified exactly in advance of repurchase by the LTM. Since the specified formats require the calculation to be made under the assumption that the leverage contract will be held for one year, in making the calculation, the LTM may use the currently prevailing charge (*e.g.*, 3 percent) based on the price necessary to break-even at the time the calculation is made.

The Commission has also become aware that the required percentage to break-even calculations may in certain instances result in an ambiguous figure, particularly in the case of repurchase where, as noted above, termination charges are expressed as a percentage of the LTM's bid price. However, the Commission remains convinced that this information generally would be valuable to leverage customers and prospective leverage customers. In view of this, Commission staff explored various methods of specifying the required calculation which would eliminate such ambiguity for all cases, *i.e.*, in the case where termination charges are based on a percentage of the repurchase price, or in the case where termination charges are stated as a fixed absolute dollar amount without regard to repurchase price. To eliminate this ambiguity, the Commission is amending the specified formats by revising the required disclosure statement to identify separately the termination charges after all other amounts affecting the break-even prices have been calculated. The Commission is also availing itself of this opportunity to correct typographical errors and make other minor technical amendments to the formats appended to the Commission's final interim leverage regulations.

9. Upon publication of the interim final leverage rules in the **Federal Register** the Commission noted that § 31.11(k)(1), as adopted, inadvertently required an LTM to send confirmation statements only to first-time leverage customers. The Commission intended at the time of adoption of the leverage rules to require written confirmation to all leverage customers of all leverage transactions. The Commission believed, and continues to believe, that written confirmation in the prescribed format is a prime customer protection measure and good business practice for LTMs.

Accordingly, on page 5534, in the third column, § 31.11(k)(1) is revised to read: "(k)(1) Within 24 hours after the entry into a leverage contract, each leverage transaction merchant shall furnish to each leverage customer, by first-class mail or other, at least equivalent, means of communication, a written confirmation statement in a format specified by the Commission containing: (1) the following bold-faced statement in at least ten point type:

If you are a first time leverage customer you may rescind your first leverage contract purchase subject only to actual price losses but otherwise without penalty for three business days following and including receipt of this confirmation. Actual losses are calculated by subtracting the ask price of the leverage contract at the time of the customer's rescission from the asking price at which the leverage contract was purchased and which appears on this confirmation. To rescind this contract send a telegram to (name and address of LTM) or you may telephone (name of LTM) at (telephone number). If you rescind by telephone, you must also send immediate written affirmation by telegram, by certified letter or by at least equivalent means to the address provided above.

10. The Commission has also become aware of some confusion among prospective LTMs regarding the definitions of minimum leverage margin and maintenance leverage margin as provided in § 31.4(r). Prospective LTMs have indicated that the present construction of § 31.4(r) does not properly describe the distinction between the concepts of minimum leverage margin and maintenance leverage margin. As constructed, § 31.4(r) might be interpreted to mandate a common minimum leverage margin and maintenance leverage margin.

The Commission is aware of the distinction between the concepts of minimum leverage margin and maintenance leverage margin. For example, § 31.11(a)(2)(v) requires an LTM to provide in its customer disclosure statement an explanation of margins applicable to each leverage contract, including, as required, initial leverage margins, minimum leverage margins and maintenance leverage margins. Moreover, § 31.11(k)(2) (xiv) and (xv) require the LTM's customer confirmation statement to state in dollars per contract, based on the rates or levels prevailing at the time the contract is entered into, the minimum leverage margin (§ 31.11(k)(2)(xiv)), and the maintenance leverage margin (§ 31.11(k)(2)(xv)). Thus, the rules adopted by the Commission clearly distinguish between the concepts of minimum leverage margin and maintenance leverage margin for the purpose of an LTM's required disclosure to customers of types of margin and margin amounts.

The Commission wishes to note that when it initially made available for comment its proposed regulations for certain leverage transactions (48 FR 28668 (June 23, 1983)), § 31.4 contained separate definitions for minimum leverage margin (§31.4(r)) and maintenance leverage margin (§ 31.4(s)). Although the Commission believes the current regulations clearly differentiate between the concepts of minimum leverage margin and maintenance leverage margin, the Commission is amending § 31.4 of the final interim regulations to avoid any confusion that might exist by restoring the separate definitions for minimum leverage margin and maintenance leverage margin. Accordingly, on page 5527 in the third column, § 31.4(r) is revised to read:

"Minimum Leverage Margin" means the amount of funds which a leverage transaction merchant requires a leverage customer to maintain on deposit for each open leverage contract in the leverage customer's account.

Further, on page 5528 in the first column, § 31.4(s) is added to read:

"Maintenance Leverage Margin" means the level to which the funds in a leverage customer's account must be restored after a margin call to the leverage customer has been effected by the leverage transaction merchant.

Copies of the corrected sample format of the illustrative example of a leverage transaction required by § 31.11(a)(3), and of the written confirmation required by § 31.11(k) appear at the end of this document.

Issued in Washington, D.C., on June 15, 1984.

Jane K. Stuckey,

Secretary of the Commission.

Note.—This form will not be shown in the Code of Federal Regulations.

Date: _____

Disclosure Statement, Illustrative Transaction

Commodity _____
Contract Expiration: _____
Leverage Transaction Merchant's Ask Price Per Contract _____
Leverage Transaction Merchant's Bid Price Per Contract _____

BREAK-EVEN CALCULATION FOR A LEVERAGE CONTRACT LEFT OPEN FOR ONE YEAR [a]

	If contract is repurchased	If contract is liquidated	If delivery is taken
Initial charges			
Carrying charges			
Bid-Ask spread			[b]
Price to break-even excluding termination charges	[c]	[d]	[e]
Termination charges			
Total price to break-even			
Percentage price change to break-even	[f]	[g]	[h]
Price Series to Evaluate the Leverage Contract			
Source of the Price Series			

[a] Based on current fee schedules, which are subject to change.
[b] Bid-ask spread not applicable since delivery is taken at contract ask price.
[c] Equals initial and carrying charges and spread plus bid price of the contract.
[d] Equals initial and carrying charges plus the ask price per contract. Does not include any expenses which will be incurred privately by the customer reselling the commodity, such as freight, insurance, assay, inspection or discounts typical in the retail market.
[e] Equals total price to break-even divided by the bid price per contract.
[f] Equals total price to break-even divided by the ask price per contract.

BREAK-EVEN CALCULATION FOR A LEVERAGE CONTRACT LEFT OPEN FOR ONE YEAR [a]—Continued

	If contract is repurchased	If contract is liquidated	If delivery is taken
Percentage price change to break-even	[f]	[g]	[h]
Price Series to Evaluate the Leverage Contract			
Source of the Price Series			

[a] Based on current fee schedules, which are subject to change.
[b] Bid-ask spread not applicable since delivery is taken at contract ask price.
[c] Equals initial and carrying charges and spread plus bid price of the contract.
[d] Equals initial and carrying charges plus the ask price per contract. Does not include any expenses which will be incurred privately by the customer reselling the commodity, such as freight, insurance, assay, inspection or discounts typical in the retail market.
[e] Equals total price to break-even divided by the bid price per contract.
[f] Equals total price to break-even divided by the ask price per contract.

Note.—This form will not be shown in the Code of Federal Regulations.

If you are a first-time leverage customer you may rescind your first leverage contract purchase subject only to actual price losses but otherwise without penalty for three business days following and including receipt of this confirmation. Actual losses are calculated by subtracting the ask price of the leverage contract at the time of the customer's rescission from the ask price at which the leverage contract was purchased and which appears on this confirmation. To rescind this contract send a telegram to (name and address of LTM) or you may telephone (name of LTM) at (telephone number). If you rescind by telephone, you must also send immediate written affirmation by telegram, by certified letter or by at least equivalent means to the address provided above.

Confirmation Statement

Date: _____
Transaction I.D. Number _____
Commodity _____
Contract Expiration: _____
Leverage Transaction _____
Merchant's Ask Price Per Contract _____
X Number of Contracts _____
Total Value _____

BREAK-EVEN CALCULATION FOR A LEVERAGE CONTRACT LEFT OPEN FOR ONE YEAR [a]

	If contract is repurchased	If contract is liquidated	If delivery is taken
Initial			
Carrying charges			
Bid-ask spread			[b]
Price to break-even excluding termination charges	[c]	[d]	[e]
Termination charges			
Total price to break-even			
Percentage price change to break-even	[f]	[g]	[h]

[a] Based on current fee schedules, which are subject to ask price.
[b] Bid-ask spread not applicable since delivery is taken at contract ask price.
[c] Equals initial and carrying charges and spread plus bid price of the contract.
[d] Equals initial and carrying charges plus the ask price per contract. Does not include any expenses which will be incurred privately by the customer reselling the commodity, such as freight, insurance, assay, inspection or discounts typical in the retail market.
[e] Equals total price to break-even divided by the bid price per contract.
[f] Equals total price to break-even divided by the ask price per contract.

Margin Requirements (Dollars Per Contract)

Initial Margin _____
Minimum Margin _____
Maintenance Margin _____
Price Series to Evaluate the Leverage Contract _____
Source fo the Price Services _____

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 82N-0314]

GRAS Status of Peptones

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that peptones are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 3, 1982 (47 FR 54456), FDA published a proposal to affirm that peptones are GRAS for use as direct human food ingredients. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on peptones and the report of the Select Committee on GRAS Substances (the Select Committee) on peptones are available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents also are available from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of peptones, FDA gave public notice that it was unaware of any prior-sanctioned food ingredient uses for

these ingredients other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of peptones recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for peptones were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of peptones under conditions different from those set forth in this final rule has been waived.

Two comments were received from food manufacturers in response to the proposal. The comments raised three issues. The comments and the agency's responses are as follows:

1. One comment questioned the inclusion of specific protein sources in the proposal for use in the manufacture of peptones. The comment argued that the listing of specific sources was inconsistent with the Select Committee's opinion that peptones derived from enzymatic and acid hydrolysis of food-grade protein sources would not be expected to be toxic, if they were manufactured in accordance with current good manufacturing practice. The comment therefore requested that the proposal be modified to permit any safe and suitable protein source to be used in the manufacture of peptones; or that lactalbumin, egg albumin, whey protein, corn gluten, and wheat gluten be added to the list of protein sources in the regulation.

FDA has thoroughly reviewed this comment and discussed it further in telephone conversations with the company that submitted it. The agency acknowledges that the Select Committee was of the opinion that peptones derived from enzymatic and acid hydrolysis of food-grade protein sources would be expected to be safe. However, the Select Committee also expressed its concern over the potential use of wheat gluten or peptic digests of gluten in the manufacture of peptones because these substances may cause problems for persons with celiac disease. FDA shared this concern and therefore included in the proposal a description of the specific protein sources reported by the Select Committee as currently used in the manufacture of peptones.

Conversations with the company have revealed that wheat gluten and corn gluten are not used by this company in the manufacture of peptones. The company was primarily interested in the potential use of egg albumin and lactalbumin (also known as whey protein) in the manufacture of peptones for use as nutrient supplements in medical foods. FDA has therefore limited its review to consideration of the GRAS status of peptones derived from these protein sources and of whether peptones may be used as nutrient supplements in food.

Based upon its review of the data and information contained in the Select Committee's report on peptones, the agency concludes that peptones derived from egg albumin and lactalbumin (whey protein) are as safe as those derived from the protein sources originally listed in the proposal. Therefore, the agency is amending the final rule to include egg albumin and lactalbumin (whey protein) among the protein sources for the production of peptones. The agency, however, is denying the comment's request that other protein sources be listed in the regulation because of the concerns expressed by the Select Committee and because the agency has no evidence that any other protein sources are currently in use.

FDA has also considered whether peptones derived from the protein sources listed in this final rule may be safely used as nutrient supplements in food. The agency concludes that there is a large margin of safety for the use of peptones in food and that the additional exposure to these ingredients that will result from their use as nutrient supplements would be well within this safety margin. Accordingly, the agency is adding this technical effect to the final rule.

2. One comment indicated that peptones are currently used in food categories in addition to those that were reported in the proposal: as surface-active agents in fruit and water ices and in processed fruits and fruit juices and as processing aids in gelatins, puddings, and fillings. The comment requested that the agency modify the final rule to affirm as GRAS the use of peptones in these additional food categories.

The agency has reviewed this comment and concurs that peptones may be safely used in the food categories reported. Upon reflection, FDA has decided that it is not necessary to list in the regulation the food categories in which peptones are used. Both the Select Committee and the agency have concluded that a large margin of safety exists for the use of peptones, and that a reasonably foreseeable increase in the level of consumption of peptones, including that which results from their use in the food categories reported in the comment, will not adversely affect human health. Therefore, the agency has decided to affirm the GRAS status of peptones when they are used under current good manufacturing practice conditions of use in accordance with § 184.1(b)(1) (21 CFR 184.1(b)(1)). To make clear, however, that the affirmation of the GRAS status of peptones is based on the evaluation of currently known uses, the regulation sets forth the technical effects that FDA has evaluated.

3. One comment requested that § 184.1553(a) be amended to include protease enzymes that are derived from safe and suitable microbial sources among the enzymes that can be used in the hydrolysis of the source protein. The comment attached a copy of a 1980 letter from FDA that stated that the use of proteases obtained from nonpathogenic strains of *Bacillus subtillus, Aspergillus flavus oxyzae,* or *Aspergillus niger* is GRAS. The comment also noted that the agency had recently affirmed a protease enzyme derived from *B. licheniformis* as GRAS.

The agency agrees that protease enzymes derived from nonpathogenic and nontoxic strains of the four microorganisms mentioned above may be safely used in the manufacture of peptones. Enzymes derived from these microorganisms have been safely used in food production for many years, and the agency concludes that their use in the production of peptones will not present any new toxicological problems. The agency is concerned however that use of the term "safe and suitable" to describe the protease enzymes that can be used in making peptones is too broad and may be subject to misinterpretation. The agency is therefore amending § 184.1553(a) to permit the use of proteolytic enzymes that are considered by FDA to be GRAS or that are regulated as food additives.

In the proposal, FDA stated that it would work with the Committee on Codex Specifications (now known as the Committee on Food Chemicals Codex) of the National Academy of Sciences to develop acceptable specifications for peptones used as direct human food ingredients and would incorporate these specifications into the regulation when

they were developed. To date, however, work on the specifications is still incomplete. Until the specifications are developed, peptones for direct food uses must comply with the description in § 184.1553 and be of food grade purity (21 CFR 182.1(b)(3) and 170.30(h)(1)).

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency has previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the ageny has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, the agency has previously considered the potential effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by that Order. FDA has not received any new information or comments that would alter its previous determination.

The agency's finding of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 184 is amended by adding new § 184.1553, to read as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

§ 184.1553 Peptones.

(a) Peptones (CAS Reg. No. 977027–88–5) are a variable mixture of polypeptides, oligopeptides, and amino acids that are produced by partial hydrolysis of casein, animal tissue, soy protein isolate, gelatin, defatted fatty tissue, egg albumin, or lactalbumin (whey protein). Peptones are produced from these proteins using proteolytic enzymes that either are considered to be generally recognized as safe (GRAS) or are regulated as food additives. Peptones are also produced by denaturing any of the proteins listed in this paragraph with safe and suitable acids or heat.

(b) FDA is developing food-grade specifications for peptones in cooperation with the National Academy of Sciences. In the interim, these ingredients must be of a purity suitable for their intended use.

(c) In accordance with § 184.1(b)(1), these ingredients are used in food with no limitation other than current good manufacturing practice. The affirmation of these ingredients as GRAS as direct human food ingredients is based upon the following current good manufacturing practice conditions of use:

(1) These ingredients are used as nutrient supplements as defined in § 170.3(o)(20) of this chapter; as processing aids as defined in § 170.3(o)(24) of this chapter; and as surface-active agents as defined in § 170.3(o)(29) of this chapter.

(2) These ingredients are used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for these ingredients different from the uses established in this section do not exist or have been waived.

Effective date. This regulation shall be effective July 23, 1984.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)).)

Dated: May 23, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

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21 CFR Part 680

[Docket No. 80N–0051]

Allergenic Products; Criteria for Source Materials

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to establish manufacturing or propagation criteria for certain allergenic source materials (molds, and mammals and birds), require the submission of a listing of allergenic source materials and suppliers by licensed manufacturers, and require records of the manufacturing process of each lot of source material. This regulation is intended to give manufacturers of the final products and FDA increased assurance that an allergenic source material has been properly obtained, identified, or processed and is safe for use in an injectable human drug product.

DATE: Effective October 19, 1984.

FOR FURTHER INFORMATION CONTACT: Michael L. Hooton, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN–368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 15, 1983 (48 FR 32361), FDA reproposed regulations for allergenic source materials that were first proposed on September 26, 1978 (43 FR 43472)

Allergenic Products, defined in 21 CFR 680.1(a), include any licensed biological product intended for the diagnosis, prevention, or treatment of allergies. Allergenic source materials used to produce an Allergenic Product include allergens, such as molds, feathers, and hair. It is essential that the source material be suitable for manufacture into final Allergenic Products, most of which are administered to humans by injection. FDA's Center for Drugs and Biologics has examined certain allergenic source materials that unlicensed suppliers were shipping to licensed manufacturers of Allergenic Products. FDA's examinations revealed that occasionally the unlicensed source material suppliers ship such manufacturers incorrectly identified or contaminated allergenic source materials. If licensed manufacturers use incorrectly identified or contaminated source materials, the resulting licensed Allergenic Product used by practitioners may be harmful. If a patient receives and reacts to an incorrectly identified diagnostic Allergenic Product, the practitioner may give a patient a long series of costly and ineffective injection treatments for the wrong allergen. If a practitioner gives a patient an Allergenic Product that is contaminated with an unknown allergen, the patient may become sensitized to the contaminant(s), unnecessarily complicating the patient's treatment and causing a worsening of the patient's condition. Also, the unknown

contaminating allergen rarely may cause a severe allergic reaction in a patient.

The criteria established in this final rule for manufacture or propagation of a specific source material provide requirements to assure the identity and purity of molds or the good health of certain animals (mammals and birds) intended for use as an allergenic source material. However, the requirements in this final rule concerning listing of nonlicensed establishments and recordkeeping apply to any licensed manufacturer who uses any allergenic source material to manufacture a final Allergenic Product. Notwithstanding the requirements in this final rule that apply to nonlicensed source material establishments, FDA emphasizes that the manufacturer of the licensed final product must continue to ensure that the allergenic source materials used in its manufacturing will produce a final product that meets current standards of purity and quality.

Interested persons were provided 60 days to submit comments on the proposal of July 15, 1983. FDA received three letters of comment in response to the proposals and several letters included more than one comment. A summary of the comments received and FDA's responses follow.

1. One comment on proposed § 680.1(b)(2)(iii) concerning the requirements for processing molds requested that the requirement be clarified to specify that only three consecutive lots representative of the processing of molds need to be tested and test data approved by FDA, not three consecutive lots of each species of molds that are produced.

FDA agrees with the comment. Manufacturers may use one standard operating procedure for processing several species of molds, if the procedure is applicable to each such species. If different procedures are necessary for the processing of a certain species of mold, a separate standard operating procedure for that species of mold, including tests on three consecutive lots of mold, is required. Accordingly, in the final rule § 680.1(b)(2)(iii) is amended to clarify that only three consecutive lots of a representative species of mold produced by a particular standard operating procedure are required to be tested to determine the acceptable limits and kinds of contamination in the molds.

2. One comment on proposed § 680.1(b)(2)(iii) concerning the requirements for standard operating procedures for molds stated that manufacturers of allergenic extracts already are required to have written standard operating procedures approved by FDA and, therefore, the proposed requirements under § 680.1(b)(2)(iii) are unnecessary.

FDA disagrees with the comment. Although §§ 211.100, 211.160, 211.180, 601.2, and 601.12 of the regulations now require licensed manufacturers of Allergenic Products to maintain written standard operating procedures that have been approved by FDA, these regulations do not prescribe specific requirements for the processing of molds. FDA intended that proposed § 680.1(b)(2)(iii) clarify the requirements concerning the standard operating procedures for the processing of molds. Further, proposed § 680.1(b)(2)(iii) applies to molds produced at an unlicensed establishment and intended for use as an allergenic source material by a manufacturer of a licensed final Allergenic Product. In such cases, the licensed manufacturer may prepare, and submit to FDA for approval, the standard operating procedures of the unlicensed manufacturer. Alternatively, an unlicensed mold manufacturer may prepare, and submit to FDA for approval, its own standard operating procedure in the form of a master file (see 21 CFR 314.11).

3. Three comments on proposed § 680.1(b)(3)(ii) concerning the requirement for quarantine of animals and use of only healthy animals acknowledged the need for use only of animals that are in good health and free from detectable skin diseases as a source material for Allergenic Products. However, two comments said that a quarantine period prior to collection of the allergen is not necessary, that it may increase costs, and that the same objective would be achieved by requiring a veterinarian or other competent individual to inspect and certify the good health of the animal.

FDA agrees with the comments. Based on the information provided to FDA by the comments, FDA now believes that a quarantine period is not required if prior to collection of the allergen the good health of the animals is determined by a licensed veterinarian or a competent individual under the supervision and instruction of a licensed veterinarian. The manufacturer's standard operating procedures must specify a reasonable time limit between the veterinary examination and collection of the allergen, and the manufacturing records must state clearly how the good health of the animals has been determined. Because FDA and the comments agree that only healthy animals should be used for allergenic source materials, the agency will continue to review this issue and, if further requirements are determined to be necessary, will amend the regulations appropriately. Accordingly, in the final rule § 680.1(b)(3)(ii) is amended to provide for a determination of good health of animals and delete the requirement for animal quarantine.

4. One comment on proposed § 680.1(b)(3)(ii) concerning the requirement for veterinary care of animals said that veterinary certification or supervision is unnecessary for an animal used as a source of allergens when these allergens are obtained from a professional pet groomer. The comment asked that FDA clarify the veterinary care requirements related to a source material such as feathers collected from animals obtained from dealers licensed by the U.S. Department of Agriculture (USDA) and processed feathers collected from feather-stuffed materials.

FDA disagrees with the comment. FDA disagrees that the veterinary examination that would be required under § 680.1(b)(3)(ii) is unnecessary where the source material of animal origin is obtained from an animal pet tended by a professional pet groomer. Because FDA is eliminating in the final rule the requirement for animal quarantine (see paragraph 3 above), the requirement for veterinary examination of animals, including pets, is of added importance to assure that the allergenic source material is derived from healthy animals.

Therefore, allergenic source material collected from an animal that is a pet may be used in the manufacture of an Allergenic Product, if the veterinary examination of the animal is performed within the timeframe specified in the manufacturer's standard operating procedure that has been approved by FDA and the manufacturer can be certain that its labeling of the final product accurately identifies the source material used in the manufacture of that final product. Further, the regulation allows use of other allergenic source materials of epidermal origin, such as bird feathers that are obtained from dealers licensed by USDA and bird feathers used to produce a feather-stuffed material, when a veterinary examination of the animal is performed within the timeframe specified in the manufacturer's standard operating procedure. The veterinary examination may be performed at a location other than the licensed manufacturer of the Allergenic Product, including the location of a licensed dealer, if the manufacturing records identify the veterinary examiner and the time and location of the examination. FDA proposed that animals obtained from

dealers licensed by USDA be exempt from the specific quarantine and veterinary care requirements because USDA's provisions for licensed dealers prohibit the housing of animals of different species in the same primary enclosure and require that the establishment of appropriate programs of veterinary care are at least as stringent as the requirements proposed by FDA. FDA's proposed regulation was not intended to establish different criteria for animals obtained from such licensed dealers and animals obtained from other sources. Because FDA's regulation neither prohibits the use of allergenic source material from animals obtained from such licensed dealers nor imposes any additional requirements for use of such animals, FDA believes that the reference to licensed dealers in the proposed codified text is unnecessary and that the regulation would be clarified by deleting that reference. Accordingly, in the final rule FDA is amending § 680.1(b)(3)(vi) by deleting the reference to licensed dealers.

5. One comment on proposed § 680.1(c) concerning the required listing of source materials and suppliers stated that such listing information should be treated by FDA as confidential business information.

FDA agrees that under the applicable provisions of the Freedom of Information Act (5 U.S.C. 552(b)) and FDA regulations concerning confidential information (21 CFR 20.61 and 601.51), the listing required from each licensed manufacturer of Allergenic Products under § 680.1(c) will not be available for public disclosure.

6. One comment asked that the final rule permit a manufacturer to process further a source material that did not comply with the manufacturer's own specifications. Such processing may include cleaning and defatting in preparation for proper storage.

FDA advises that this rule will not prohibit further processing of a source material that does not comply with a manufacturer's own specifications. There are approximately 2,000 different source materials used to make Allergenic Products. It may be appropriate to perform further processing steps on some of those source materials and such processing steps and specific source materials should be identified in the manufacturer's standard operating procedures. When a manufacturer follows the applicable regulations and its FDA-approved standard operating procedures, further processing of a source material to enable the source material to meet the manufacturer's specifications is permitted.

FDA proposed that this rule be effective 60 days after its date of publication in the **Federal Register**. No comments were received concerning the effective date. However, FDA now believes that an effective date of 60 days after publication of the final rule may not allow sufficient time for manufacturers to prepare to implement the rule. FDA believes that an effective date of 120 days after publication would be appropriate and would eliminate any potential hardship on manufacturers in meeting the requirements of this rule. Therefore, this regulation is effective on October 19, 1984. In addition to the other changes discussed above that have been made in the final rule, the references to the Director, Office of Biologics, are changed to the Director, Office of Biologics Research and Review (HFN-800), Center for Drugs and Biologics, to reflect a recent reorganization within FDA (March 19, 1984; 49 FR 10168).

The agency has determined pursuant to 21 CFR 25.25(b)(10) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Section 680.1(c) of this rule contains new collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA submitted a copy of the proposal for this rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. OMB has approved these requirements and has assigned to them OMB control number 0910-0161.

FDA has reexamined the regulatory impact and regulatory flexibility implications of the regulations in accordance with Executive Order 12291 and the Regulatory Flexibility Act. The agency concludes that 18 Allergenic Product manufacturers will be affected by these requirements, of which approximately 14 are small manufacturers. Costs per firm could possibly vary from zero to several thousand dollars, depending upon current practices, number of source suppliers, kinds of source materials, and applicability of exemptions. The anticipated costs are insufficient to warrant designation of this rule as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291 or to require a regulatory flexibility analysis. Accordingly, under section 605(b) of the Regulatory Flexibility Act, the Commissioner of Food and Drugs certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch.

List of Subjects in 21 CFR Part 680

Biologics, Blood.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 501, 510, 704, 52 Stat. 1049-1050 as amended, 67 Stat. 477 as amended, 76 Stat. 794-795 as amended (21 U.S.C. 351, 360, 374)) and under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under 21 CFR 5.11, Part 680 is amended as follows:

PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

1. In § 680.1 by revising paragraph (b) and adding new paragraphs (c) and (d) to read as follows:

§ 680.1 Allergenic products.

* * * * *

(b) *Source materials*—(1) *Criteria for source material.* Only specifically identified allergenic source materials that contain no more than a total of 1.0 percent of detectable foreign materials shall be used in the manufacture of Allergenic Products, except that this requirement shall not apply to molds and animals described under paragraph (b)(2) and (3) of this section, respectively. Source materials such as pelts, feathers, hairs, and danders shall be collected in a manner that will minimize contamination of the source material.

(2) *Molds.* (i) Molds (excluding rusts and smuts) used as source material in the manufacture of Allergenic Products shall meet the requirements of § 610.18 of this chapter and § 680.2 (a) and (b).

(ii) Mold cultures shall be free of contaminating materials (including microorganisms) prior to harvest, and care shall be taken to minimize contamination during harvest and subsequent processing.

(iii) Mold manufacturers shall maintain written standard operating procedures, developed by a qualified individual, that will ensure the identity of the seed culture, prescribe adequate processing of the mold, and specify the acceptable limits and kinds of contamination. These limits shall be based on results of appropriate tests performed by the manufacturer on at least three consecutive lots of a mold that is a representative species of mold subject to the standard operating procedures. The tests shall be performed at each manufacturing step during and

subsequent to harvest, as specified in the standard operating procedures. Before use of the mold as a source material for Allergenic Products, in accordance with 21 CFR 601.2, the standard operating procedures and test data from the three representative lots described above shall be submitted to and approved by the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics.

(Collection of information requirements approved by the Office of Management and Budget and assigned OMB control number 0910–0124.)

(3) *Mammals and birds*—(i) *Care of animals.* Animals intended as a source material for Allergenic Products shall be maintained by competent personnel in facilities or designated areas that will ensure adequate care. Competent veterinary care shall be provided as needed.

(ii) *Health of animals.* Only animals in good health and free from detectable skin diseases shall be used as a source material for Allergenic Products. The determination of good health prior to collection of the source material shall be made by a licensed veterinarian or a competent individual under the supervision and instruction of a licensed veterinarian provided that the licensed veterinarian certifies in writing that the individual is capable of determining the good health of the animals.

(iii) *Immunization against tetanus.* Animals of the equine genus intended as a source material for Allergenic Products shall be treated to maintain immunity to tetanus.

(iv) *Reporting of certain diseases.* In cases of actual or suspected infection with foot and mouth disease, glanders, tetanus, anthrax, gas gangrene, equine infectious anemia, equine encephalomyelitis, or any of the pock diseases among animals intended for use or used as source material in the manufacture of allergenic Products, the manufacturer shall immediately notify the Director, Office of Biologics Research and Review (HFN–800), National Center for Drugs and Biologics.

(v) *Dead animals.* Dead animals may be used as source material in the manufacture of Allergenic Products: *Provided*, That (*a*) the carcasses shall be frozen or kept cold until the allergen can be collected, or shall be stored under other acceptable conditions so that the postmortal decomposition processes do not adversely affect the allergen, and (*b*) when alive, the animal met the applicable requirements prescribed in paragraph (b)(3) (i), (ii), and (iii) of this section.

(vi) *Mammals and birds inspected by the U.S. Department of Agriculture.* Mammals and birds, subject to inspection by the U.S. Department of Agriculture at the time of slaughter and found suitable as food, may be used as a source material, and the requirements of paragraph (b)(3) (i) through (iv) of this section do not apply in such a case. Notwithstanding U.S. Department of Agriculture inspection, the carcasses of such inspected animals shall be frozen or kept cold until the allergen is collected, or shall be stored under other acceptable conditions so that the postmortal decomposition processes do not adversely affect the allergen.

(c) *Listing of source materials and suppliers.* Each licensed manufacturer shall initially list with the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics, the name and address of each of the manufacturer's source material suppliers. The listing shall identify each source material obtained from each source material supplier. The licensed manufacturers shall update the listing annually to include new source material suppliers or to delete those no longer supplying source materials. (Collection of information requirements were approved by the Office of Management and Budget and assigned OMB control number 0910–0161.)

(d) *Exemptions.* (1) Exemptions or modifications from the requirements under paragraph (b) of this section shall be made only upon written approval by the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics.

(2) Nonlicensed source material suppliers are exempt from drug registration.

2. In § 680.2 by reserving paragraph (e) and by adding new paragraph (f) to read as follows:

§ 680.2 Manufacture of allergenic products.

* * * * *

(e) [Reserved]

(f) *Records.* A record of the history of the manufacture or propagation of each lot of source material intended for manufacture of final Allergenic Products shall be available at the establishment of the manufacturer of the source material, as required by § 211.188 (OMB control number 0910–0139) of this chapter. A summary of the history of the manufacture or propagation of the source material shall be available at the establishment of the manufacturer of the final product.

Effective date. This regulation is effective on October 19, 1984.

(Secs. 501, 510, 704, 52 Stat. 1049–1050 as amended, 67 Stat. 477 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 351, 360, 374)); (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Mark Novitch,

Acting Commissioner of Food and Drugs.

Dated: June 5, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-16000 Filed 6-20-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 140

Licensed Indian Traders and Bureau of Indian Affairs Employees Contracting and Trading With Indians

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is publishing this final rule which permits certain contracting and trading between employees of the Bureau of Indian Affairs and Indians. Certain types of trading are being regulated to prevent overreaching and possible conflicts of interest.

EFFECTIVE DATE: July 23, 1984.

SUPPLEMENTARY INFORMATION: This rule is being promulgated to implement Pub. L. 96–277 (94 Stat. 544; 18 U.S.C. 437) which repealed certain previous laws (25 U.S.C. 68, 68a, 87a and 441) dating back to the Indian Intercourse Act of 1834 (4 Stat. 38; 25 U.S.C. 68) which regulated trading between Federal employees and Indians. This final rule is published in exercise of the rulemaking authority delegated by the President to the Secretary of the Interior, pursuant to Executive Order No. 12328. Executive Order No. 12328 gives the Secretary of the Interior and the Secretary of Health and Human Services, respectively, the authority to regulate trade between employees of the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) and Indians.

This final rule is being published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Bureau of Indian Affairs published a proposed rule on October 7, 1983 (48 FR 45789), that offered the public an opportunity to comment on regulations which prescribed the conditions governing trade between employees of the Bureau of Indian

Affairs and Indians. Comments on the proposed rule were received from four sources—individuals, Indian organizations, law firms representing various Indian interests and BIA field officials.

The views expressed by commenters ranged from suggestions that the rule be more stringent than proposed, or, in the alternative, that the effort to regulate trading with Indians be abandoned. Representatives for several Indian interests stated that the provisions of the statute and the proposed rule do not go far enough to prevent BIA employees from overreaching their authority in their relationship with Indians.

The law requires that certain types of trading be regulated to prevent overreaching and possible conflicts of interest on the part of the BIA employee, when trading with Indians.

One commenter suggested that the regulations include employees of the Indian Health Service of the United States Department of Health and Human Services. The BIA has no jurisdiction over IHS employees. Regulations controlling IHS employees trading with Indians must be developed and issued by that Agency.

The following paragraphs summarize the comments and suggestions received and actions taken.

One commenter expressed disappointment that the proposed regulations do not resolve the issue presented in *Wright* v. *Schweiker, et al.*, No. 82–1392 (8th Cir. 1982), a suit brought by Indian employees of the Bureau of Indian Affairs and the Indian Health Service to obtain grazing permits from their tribes at a tribal rate—a rate which is less then the appraised values set by the Bureau of Indian Affairs for non-tribal members. Under previous law relating to employees trading with Indians, the BIA concluded the employees could not receive the preferential permits. Except as provided in Subsection (b)(2) Section 437 of Title 18, Unites States Code, Section 437 states that nothing shall be construed as perventing any employee of the Bureau who is Indian, of whatever degree of Indian blood, from obtaining or receiving any benefit or benefits made available to Indians generally or to any member of his or her particular tribe, under any Act of Congress, nor to prevent any such employee who is an Indian from being a member of or receiving benfits by reason of his or her membership in any Indian tribe, corporation, or cooperative association organized by Indians, when authorized under such rules and regulations as the Secretary of the Interior or his/her designee has prescribed or shall prescribe.

Thus, grazing permits, such as those at issue in *Wright* v. *Schweiker*, for members of an Indian tribe, who are also employees of the BIA, are permissible trading transactions if not prohibited by 18 U.S.C. § 437(b)(2). Because the proposed rule did not define commercial trading, which is prohibited under § 437(b)(2), a definition of "commerical trading" has been added to the regulations at § 140.5(a)(7).

Several commenters asked what the term "fair market value" in Section 140.5(e)(2)(iii) means as applied to acquisition of grazing permits. When a grazing permit is issued to a tribal member it may be issued at a tribal rate which is less than the "fair market value" of the permit. Therefore, the following has been added to § 140.5(e)(2)(iii): "or the employee is the recipient of a benefit for tribal members for which a uniform charge to all members is made."

One commenter suggested that the last three words of the definition of "contract" in § 140.5(a)(5) be deleted since, presumably, transactions would involve sales both to and from Indians. The last three words have been deleted as suggested.

One commenter suggested that "any service" be deleted from § 140.5(d)(1) because BIA employees should not be providing services to Indians. This suggestion was rejected as the language is quoted directly from 18 U.S.C. § 437.

Several comments were received suggesting the exemption of transactions of less than $1,000 was too low and several suggested $1,000 was too high. The comments illustrate the difficulty of setting an appropriate level at which trading transactions will be approved and below which they will be exempt from approval. It was decided that the $1,000 level would be retained for the present.

A comment that sales should be recorded to discourage attempts to evade the approval level by breaking up $1,000 or more sales into smaller sales was rejected on the basis that its perceived effectiveness would not be worth the costs it would entail.

One commenter suggested that motor vehicle sales leave a great deal of room for overreaching and should not be exempt from approval. This suggestion was duly considered and it was decided the trading of automobiles should be subject to approval if the trade involves $1,000 or more. An appropriate change has been made in § 140.5(d)(1) to provide for this.

One commenter suggested that a section be added which exempts purchases made by BIA employees from Indian-owned businesses that sell goods and services to the Indians at the same terms and prices that are sold to the general public. This suggestion was rejected. The only perceived effect of this proposal would be to provide an exception to the requirement that transactions involving $1,000 or more must be approved, and we find no justification for doing that.

One commenter proposed elimination of § 140.5(e) to prevent BIA employees from acquiring interests in trust property to eliminate the possibility of speculation in Indian oil and gas rights. The statute, however, provides for acquisitions of rights in trust property, subject to certain specific restrictions. Since the prohibition on commercial trading prevents speculation in Indian oil and gas rights, nothing needs to be done to the proposed rule to prevent such speculation. The comment is rejected.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*).

The Department of the Interior has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environment Policy Act of 1969.

This rule does not contain any information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. § 3504(h). The primary author of this document is John G. Combs, Bureau of Indian Affairs, Division of Personnel Management, telephone number (202) 343–8718.

List of Subjects in 25 CFR Part 140.

Indians, Business and industry, Penalties.

PART 140—LICENSED INDIAN TRADERS AND BUREAU OF INDIAN AFFAIRS EMPLOYEES CONTRACTING AND TRADING WITH INDIANS

Accordingly, Part 140 of Chapter I of Title 25 of the Code of Federal Regulations is amended as follows:

1. The authority and cross reference sections under the Table of Sections are revised to read as follows:

Authority: Sec. 5, 19 Stat. 200, se. 1, 31 Stat. 1066 as amended; 25 U.S.C. § 261, 262; 94 Stat. 544, 18 U.S.C. § 437; 25 U.S.C. 2 and 9, and 5 U.S.C. § 301, unless otherwise noted.

Cross Reference.

For law and order regulations on Indian Reservations, see part 11 of this Chapter. For regulations pertaining to business practices on Navajo, Hopi and Zuni reservations, see Part 141 of this Chapter. For additional regulation of certain employees trading with Indians, see 43 CFR Part 20.735–28 and 29.

2. Section 140.5 is revised to read as follows:

§ 140.5 Bureau of Indian Affairs employees not to contract or trade with Indians except in certain cases.

(a) Definitions of terms as used in this part:

(1) "Indian" means any member of an Indian tribe recognized as eligible for the services provided by the Bureau of Indian Affairs who is residing on a Federal Indian Reservation, on land held in trust by the United States for Indians, or on land subject to a restriction against alienation imposed by the United States. The term shall also include any such tribe and any Indian owned or controlled organization located on such a reservation or land.

(2) "Bureau" or the "Bureau of Indian Affairs" means the Bureau of Indian Affairs and the Office of the Assistant Secretary for Indian Affairs, both in the Department of the Interior.

(3) "Employee" means an officer, employee, or agent of the Bureau of Indian Affairs.

(4) "Secretary" means the Secretary of the Interior.

(5) "Contract" means any agreement made or under negotiation with any Indian for the purchase, transportation or delivery of goods or supplies.

(6) "Trading" means buying, selling, bartering, renting, leasing, permitting and any other transaction involving the acquisition of property or services.

(7) "Commercial trading" means any trading transaction where an employee engages in the business of buying or selling services or items which he/she is trading.

(b) With the exceptions provided in subsection (b) of section 437 of Title 18, the United States Code, section 437 provides that whoever, being an officer, employee, or agent of the Bureau of Indian Affairs, has (other than as a lawful respresentative of the United States) any interest, in such officer, employee, or agent's name, or in the name of another person where such officer, employee, or agent benefits or appears to benefit from such interest:

(1) In any contract made or under negotiation with any Indian, for the purchase, transportation or delivery of goods or supplies for any Indian, or

(2) In any purchase or sale of any service or real or personal property (or any interest therein) from or to any Indian, or colludes with any person attempting to obtain any such contract, purchase, or sale, shall be fined not more than $5,000 or imprisoned not more than six months or both, and shall be removed from office, notwithstanding any other provision of law concerning termination from Federal employment.

(c) The further subsections of this section authorize certain employees contracting and trading with Indians as authorized by the exceptions in Section 437 of Title 18, United States Code. All such contracting and trading is subject to the express provision of Section 437 that none of the sales or purchases so authorized may be made if the purpose of any such sale, trade, or purchase is that of commercially selling, reselling, trading, or bartering such property.

(d)(1) Under authority granted by section 437(b)(1) of Title 18, United States Code, employees of the Bureau of Indian Affairs may with the approval of an authorized officer of the Bureau, as designated in (d)(2) of this subsection, purchase from or sell to an Indian any service or any real or personal property, not held in trust by the United States or subject to a restriction against alienation imposed by the United States, or any interest in such property. In addition, employees may purchase from Indians without approval from an authorized officer of the Bureau any non-trust or unrestricted personal property for home use or consumption the value of which property does not exceed $1000. Where the purchase or sale price is less than $1,000, employees may also purchase motor vehicles for their personal use from Indians or sell their personal motor vehicles to Indians without obtaining approval of such purchases or sales from an authorized officer of the Bureau. Approval must be obtained if the purchase or sale price is $1,000 or more.

(2) As used in (d)(1) above an authorized officer of the Bureau of Indian Affairs for employees on reservations and in agencies or in field service units shall be the superintendent or other officer in charge of the unit in which the employee is employed. The authorized officer for the superintendent or officer in charge is his or her immediate supervisor. The authorized officer for employees in area offices is the Area Director, and the authorized officer for an Area Director is his or her immediate supervisor. The authorized officer for employees in the Central Office is the Deputy Assistant Secretary—Indian Affairs (Operations).

(e) No employee of the Bureau of Indian Affairs may have any interest in any purchase or sale involving property or funds which are either held in trust by the United States for Indians or which are purchased, sold, utilized, or received in connection with a contract or grant to an Indian from the Bureau if such employee is employed in the office or installation of the Bureau which recommends, approves, executes, or administers such transaction, grant, or contract on behalf of the United States, except that, as authorized by section 437(b)(1) of Title 18, United States Code an employee of the Bureau may have such an interest if such purchase or sale is approved by an authorized officer of the Bureau, as designated in paragraphs (e) (3) to (5) below, and the conditions in (e) (1) and (2) below are satisfied to the extent to which they are applicable to the transaction concerned:

(1) The coveyance or granting of any interest in property held in trust or subject to restriction against alienation imposed by the United States is otherwise authorized by law.

(2) Trading by employees with Indians which involves property or funds which are either held in trust by the United States or are subject to restrictions against alienation imposed by the United States must be conducted on the basis of sealed bid or public auction. If the trading involves leases or sales of trust or restricted Indian land it must be conducted on the basis of sealed bids. Such requirements for sealed bid or public auction may only be waived by the Assistant Secretary for Indian Affairs on the basis of a full report showing:

(i) The need for the transaction,

(ii) The benefits accruing to both parties,

(iii) That the consideration for the proposed transaction shall be not less than the fair market value of the trust or restricted property or interest therein, unless the employee is involved in a transaction in accordance with 25 CFR § 152.25 (c) or (d) or 25 CFR § 162.5(b) (1), (2), or (3) or the employee is the recipient of a benefit for tribal members for which a uniform charge to all members is made, and

(iv) An affidavit as follows shall accompany each proposed transaction: "I (name) (title), swear (or affirm) that I have not exercised any undue influence nor used any special knowledge received by reason of my employment in the Bureau in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction."

(3) The authorized officer of the Bureau for employees employed on reservations, in agencies or service units is one who is not a relative by blood or marriage of the employee, and is not

employed at the employee's reservation, agency or service unit. That officer must also be employed at not less than one grade level higher than such employee at the Wahington, District of Columbia, Central Office or at an Area Office other than that with authority over the employee's reservation, agency, or service unit.

(4) The authorized officer of the Bureau for employees employed in Area offices is one who is not a relative by blood or marriage of the employee, is not employed at the employee's area office, and must be employed at not less than one grade level higher than the employee at the Washington, District of Columbia, Central Office.

(5) The authorized officer of the Bureau for employees employed at the Washington, District of Columbia, Central Office is the Secretary.

(f) Except as provided in subsection (b)(2) of Section 437 of Title 18, United States Code as implemented by this section, nothing in the cited law shall be construed as preventing any employee of the Bureau who is an Indian, of whatever degree of Indian blood, from obtaining or receiving any benefit or benefits made available to Indians generally or to any member of his or her particular tribe, under any Act of Congress, nor to prevent any such employee who is an Indian from being a member of or receiving benefits by reason of his or her membership in any Indian tribe, corporation, or cooperative association organized by Indians, when authorized under such rules and regulations as the Secretary or his/her designee has prescribed or shall prescribe.

§ 140.6 [Removed]

3. Section § 140.6 is removed.

Sidney L. Mills,

Acting Deputy Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 84-16402 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 84-40]

Marine Event; Coronado 4th of July Rehearsals and Demonstration

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule will establish Special Local Regulations for the Coronado 4th of July Rehearsals and Demonstration in Coronado, CA. This event will be held on 4 July 1984, at Glorietta Bay, with rehearsals on 29 June–2 July (3 July inclement weather backup day). These regulations are needed to provide for the safety of life and property on navigable waters during the periods set forth.

EFFECTIVE DATE: These regulations become effective on 29 June 1984 and terminate on 4 July 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Commander (bb), Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822, (213) 590–2331.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. The application to hold this event was not received until 5 May 1984, and there was not sufficient time to publish proposed rules in advance or to provide for a delayed effective date. Nevertheless, interested persons wishing to comment may do so by submitting written comments to the office listed under **FOR FURTHER INFORMATION CONTACT** in this preamble. Commenters should include their name and address, identify this notice CGD11 84–40, and give reasons for their comments. Based on comments received, the regulation may be changed.

Drafting Information

The drafter of this regulation are LTJG Jorge Arroyo, Chief, Boating Affairs Branch, Eleventh Coast Guard District, Project Officer, and CDR M.K. Cain, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

Citizens Committee for the Coronado Fourth of July Celebration "Coronado 4th of July Rehearsals and Demonstration" will be conducted beginning 29 June 1984. This event will have Navy Underwater Demolition Seal teams in water, parachute, and helicopter operations which could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

List of Subjects In 33 CFR Part 100

Marine Safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following § 100.35–11–84–40

§ 100.35–11–84–40 Coronado Fourth of July Rehearsals and Demonstration.

(a) *Regulated area.* That portion of the San Diego Bay from the tip of the marina, Lat 32 degrees 40'43"N, Long 117 degrees 10'20.5"W, NE to Lat 32 degrees 40'48.5"N, Long 117 degrees 10'10.5"W, E along shoreline to Lat 32 degrees 40'43.5"N, Long 117 degrees 10'00"W, E to Lat 32 degrees 40'46"N, Long 117 degrees 09'58"W, S to Lat 32 degrees 40'37.5"N, Long 117 degrees 09'58.5"W, SW to shore at Lat 32 degrees 40'31"N, Long 117 degrees 10'03.5"W; thence NW along shoreline to initial point.

(b) *Effective date.* The regulated area will be closed intermittently to all vessel traffic from 1:30 PM to 4:30 PM on 29 June-2 July (3 July inclement weather backup date) and from 2:00 PM to 4:00 PM on 4 July 1984.

(c) *Special Local Regulations.* (1) No vessels, other than participants, U.S. Coast Guard operated and employed small craft, public vessels, state and local law enforcement agencies and the sponsor's vessels shall enter the regulated area during the above hours, unless cleared for such entry by or through a patrolling law enforcement vessel, or an event committee boat.

(2) When hailed by U.S. Coast Guard operated and employed small craft, law enforcement agencies and/or the sponsor's vessels patrolling the event area, a vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Regatta Patrol.

(3) These regulations are temporary in nature and shall cease to be in effect at the end of each period set forth.

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: June 15, 1984.

F. P. Schubert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 84-16563 Filed 6-20-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-84-07]

Special Local Regulations; Chicago Park District Air and Water Show

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Chicago Park District Air & Water Show. This event

will be held on Lake Michigan on 13–15 July 1984. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 13 July 1984 and terminate on 15 July 1984.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures is unnecessary as per 5 U.S.C. 553(b)(3)(B), since this is a temporary regatta regulation. This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Chicago Park District Air and Water Show will be conducted in the Chicago Harbor area on 13–15 July 1984. This event will have an estimated 300 boats and many aerial events which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, Coast Guard Station Calumet Harbor, IL).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary section 100.35–0918 to read as follows:

§ 100.35–0918 Lake Michigan—Chicago Harbor/Illinois.

(a) *Regulated area.* (1) That portion of Lake Michigan 1,500 feet on both sides of a line from the north end of the Jackson Park breakwall to the easternmost edge of Promontory Point.

(2) That portion of Lake Michigan 1,500 feet on both sides of a line from the northwest corner of the filtration plant retaining wall to the North Avenue Jetty Light (LLNR 2300).

(b) *Special local regulations.* (1) Regulated area (1) above will be closed to vessel navigation or achorage from 11:00 a.m. (local time) until 2:30 p.m. on 13 July 1984.

(2) Regulated area (2) above will be closed to vessel navigation or anchorage from 2:00 p.m. (local time) until 5:00 p.m. on 14–15 July 1984.

(3) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the partol, in the performance of their assigned duties.

(4) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: June 18, 1984.

J. R. Kirkland,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 84–16002 Filed 6–20–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CCGD13 84–04]

Establishment of Special Local Regulations for the Harbor Fair Offshore Race on Elliott Bay, Seattle, Washington

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This notice establishes special local regulations for a part of Elliott Bay to be in effect from 1100 to 1700 Pacific daylight time, 23 June 1984. This action is required to permit the conducting of an approved marine event. It is intended to restrict general navigation in the area for the safety of the spectators and participants in the event.

EFFECTIVE DATE: June 23, 1984 between the hours of 1100 and 1700 Pacific daylight time.

FOR FURTHER INFORMATION CONTACT: LCDR J. M. Hammond, Boating Safety Office (206–442–7356).

SUPPLEMENTARY INFORMATION: On 12 April 1984, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (48 FR 6135). One comment was received in response to this notice.

Drafting Information

The principal persons involved in drafting this proposal are LCDR J. M. Hammond, USCG Project Officer, Thirteenth Coast Guard District Boating Safety Office, and LT A. W. Bogle, USCG Project Attorney, Thirteenth Coast Guard District Legal Office. Since there was insufficient time to allow a full thirty day delay before the effective date of this Final Rule and also for a full 45 day comment period after publication of the notice of proposed rulemaking, this final rule will become effective in less than 30 days.

Discussion of Comments

In addition to the one comment received in response to the notice of proposed rulemaking, the race sponsor provided copies to the Coast Guard of four letters it had solicited from shoreside businesses and maritime activities whose interest might be adversely affected by the event. These letters were considered in the promulgation of this Final Rule. None of the letters submitted opposed the proposed regulation or the holding of the event, however one comment qualified its nonopposition by requesting that the race course not extend past Pier 56. This letter also requested that access to Pier 56 not be obstructed by spectator boats. A second letter pointed out the potential problems associated with large numbers of spectator boats near the ferry lanes and requested that no spectator boats be allowed at the south end of the course near the turn. In response to these comments, the southerly end of the race course has been moved 500 yards to the northwest to minimize the potential for interference with traffic from Pier 56 and the Washington State Ferry Docks. This regulation has been revised to reflect these changes. Additionally, an additional margin of safety has been provided for spectator craft by prohibiting such craft from approaching within 200 yards of the race course. Finally, the regulation has been clarified by providing that, although vessels may not transit to and from or change anchorage locations in the Smith Cove Anchorage (East and West) during the period of time this regulation is in effect, vessels anchored at the time the regulation becomes effective may remain so anchored unless otherwise

directed by the Coast Guard Patrol Commander.

Economic Assessment and Certification

This proposed regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.0 of 5–22–80). An economic evaluation of the proposal has not been conducted since its impact is expected to be minimal because the regulations will affect only spectators and participants in the race and applies to a small area of Elliott Bay for a limited period of time. Additionally, any adverse economic consequences to businesses affected by this regulation are expected to be minimal due to the short duration of the race and the offsetting economic benefits anticipated to such businesses from the presence of a large number of shore spectators expected to attend the event. Based upon this assessment, it is certified in accordance with Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that these rules, if promulgated, will not have significant economic impact on a substantial number of small entities. Also, this regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal regulations and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (Water).

Proposed Regulation

In consideration of the foregoing the Coast Guard is amending Part 100 of Title 33, Code of Federal Regulations, by adding § 100.35–1301, to read as follows:

§ 100.35–1301 Elliott Bay/Harbor Fair Offshore Race.

(a) This regulation will be in effect on 23 June 1984 between the hours of 1100 Pacific Daylight Time and 1700 Pacific Daylight Time.

(b) The Coast Guard will maintain a patrol consisting of active and auxiliary Coast Guard vessels in the vicinity of the below described area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander is empowered to forbid and control movement of vessels on the race course and in the adjoining water areas immediately prior to, during, and after the race for such time as he finds it necessary for the safe and orderly conduct of the program.

(c) The area where the Coast Guard will restrict general navigation by this regulation during the hours it is in effect is:

(1) The race course on the waters of Elliott Bay which is: Point A 47–38–11.5N 122–24–47.5W; Point B 47–37–52N 122–24–54.5W; Point C 47–36–25.4N 122–21–26.2W; Point D 47–36–23N 122–21–11.5W; Point E 47–37–18N 122–22–14.5W.

(2) All waters within 200 yards of the race course.

(d) Movement of vessels into and out of the anchorages and marine facilities in the area of the race course may be restricted by the Patrol Commander during the hours this regulation is in effect.

(e) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 33 CFR 100.35; 49 CFR 1.46(b))

Dated: June 7, 1984.

R. J. Copin,

Captain, U.S. Coast Guard, Acting Commander, 13th Coast Guard District.

[FR Doc. 84–16608 Filed 6–20–84; 8:45 am]

BILLING CODE 4910–01–M

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33 CFR Part 100

[CGD 09–84–11]

Special Local Regulations; International Freedom Festival Air and Water Show

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the International Freedom Festival Air & Water Show. This event will be held on the Detroit River on June 23 and 24, 1984. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 23 June 1984 and terminate on 26 June 1984.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures is unnecessary as per 5 U.S.C. 553(b)(3)(B), since this is a temporary regatta regulation. This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Freedom Festival Air and Water Show will be conducted on the Detroit River on 23 and 24 June 1984. In the event of inclement weather this event will be held on 25 and 26 June 1984. This event will have a variety of water activities and air events which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0908 to read as follows:

§ 100.35–0908 International Freedom Festival Air and Water Show, Detroit River.

(a) *Regulated Area.* That portion of the Detroit River which lies between 083 degrees 01.9 minutes West, and 083 degrees 03 minutes West, from the international boundary to the U.S. shoreline.

(b) *Special Local Regulations.*

(1) The above area will be closed to navigation or anchorage by vessels less than 65 feet in length from 6:00 p.m. (local time) until 10:00 p.m. on 23 and 24 June 1984. In case of inclement weather, the above area will be closed from 6:00 p.m. (local time) until 10:00 p.m. on 25 and 26 June 1984.

(2) No vessel shall anchor in or around the main shipping channel of the Detroit River within the U.S. waters nor shall any spectator craft impair the free passage of any commercial vessel in the main fairways of the Detroit River.

(3) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum

and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(4) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: June 6, 1984.

J. R. Kirkland,

Captain, U.S. Coast Guard Acting Commander, Ninth Coast Guard District.

[FR Doc. 84-16008 Filed 6-20-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-84-02]

Special Local Regulations; International Freedom Festival Fireworks Display, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the International Freedom Festival Fireworks. This event will be held on the Detroit River on July 2, 1984. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective 8:00 pm (local time) to 12:00 pm on July 2, 1984.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures is unnecessary as per 5 U.S.C. 553(b)(3)(B), since this is a temporary regatta regulation. This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Freedom Festival Fireworks Display will be conducted on the Detroit River on 02 July 1984. An unusually large concentration of spectator boats could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group, Detroit, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-0909 to read as follows:

§ 100.35-0909 International Freedom Festival Fireworks Display, Detroit River.

(a) *Regulated Area.* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 8:00 p.m. (local time) until 12:00 p.m. on 02 July 1984:

The U.S. waters of the Detroit River between the Ambassador Bridge and the downstream end of Belle Isle.

(2) The following portion of the Detroit River will be closed to all vessel traffic, from 8:00 p.m. (local time) until 12:00 p.m. on 02 July 1984:

The area bound on the south by the International Boundary, on the west by 083 degrees 03 minutes West, on east by 083 degrees 02 minutes West, and the north by the U.S. shoreline.

(b) *Special Local Regulations.*

(1) Vessels under 65 feet shall begin clearing the shipping channels at 11:30 p.m. local or when the fireworks display end, whichever comes first.

(2) Fireworks barges will be moved to positions in the Detroit River after 5:00 p.m. on 02 July 1984, and will be removed immediately after the fireworks display. The barges will be located within 950 feet of the U.S. riverbank opposite each of the following landmarks: Cobo Hall, Veterans Memorial Bldg., and the Ford Auditorium. Vessel masters shall pass with caution. Each barge will be marked in accordance with rule 30 of the Inland Rules of the road for a vessel at anchor, and a fixed white light on each corner of the barges will be shown at night and an orange bouy with horizontal white bands will mark each special mooring.

(3) If the weather on 02 July 1984 is inclement, the fireworks display and the river closure will be postponed until 8:00 p.m. to 12:00 p.m. on July 3, 1984. If postponed, notice will be given on 02 July 1984 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: June 18, 1984.

J. R. Kirkland,

Captain, U.S. Coast Guard Acting Commander, Ninth Coast Guard District.

[FR Doc. 84-16005 Filed 6-20-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-84-10]

Special Local Regulations; WIVB-TV Waterfront Festival Fireworks Display—Niagara River, Black Rock Canal

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the WIVB-TV Waterfront Festival Fireworks. This event will be held on the Black Rock Canal on July 3, 1984. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective 4:00 pm (local time) to 11:00 pm on July 3, 1984.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures is unnecessary as per 5 U.S.C. 553(b)(3)(B), since this is a temporary regatta regulation.

Drafting Information:

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Officer of Search and Rescue and LCDR A.R. Butler, project attorney, Ninth Coast Guard District Legal Officer.

Discussion of Regulations:

The WIVB–TV Waterfront Festival Fireworks Display will be conducted on the Black Rock Canal on July 3, 1984. This event will have falling debris and ash, a submerged firing cable from the barge to the control station at LaSalle Park, and an unusually large concentration of spectator boats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station Buffalo, NY).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary §100.35–0909 to read as follows:

§ 100.35—0909 Niagara River, Black Rock Canal.

(a) *Regulated Area:* The following area will be closed to vessel navigation or anchorage for all vessels from 4:00 p.m. (local time) until 11:00 p.m. on July 3, 1984:

The Black Rock Canal bound on the south by a line between Black Rock Canal Buoy 3 (LLNR 421) and the southern end of the LaSalle Park Boat Ramp and the north by a line between Black Rock Canal Buoys 14 (LLNR 429) and 15 (LLNR 430).

(b) *Special Local Regulations.*

(1) A fireworks barge will be moved to position in the Black Rock Canal after 4:00 p.m. on June 30, 1984, and will be removed by 12:00 a.m. on July 5, 1984. The barge will be attached to the breakwall 100 meters northwest of Black Rock Canal Buoy 7 (LLNR 423), opposite LaSalle Park. There will be a submerged firing cable from the barge to the control station at LaSalle Park which will be removed immediately after the fireworks is completed and, in any event, prior to 11:00 p.m. on July 3, 1984.

(2) If the weather on July 3, 1984 is inclement, there will be no alternate date for the display.

(3) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(4) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S. C. 454; 49 U.S. C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: June 5, 1984.

J. R. Kirkland,

Captain, U.S. Coast Guard Acting Commander, Ninth Coast Guard District.

[FR Doc. 84–16007 Filed 6–20–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 09–84–06]

Special Local Regulations; Stroh Gold Cup Regatta, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Stroh Gold Cup Regatta to be held on the Detroit River. This event will be held on 11, 12, 13 and 15 July 1984. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 11 July 1984 and terminate on 15 July 1984.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from date of publication. Following normal rule making procedures is unnecessary as per 5 U.S.C. 553(b)(3)(B), since this is a temporary regatta regulation. This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Stroh Gold Cup Regatta will be conducted on the Detroit River on the 11–13, and 15 July 1984. This event will have an estimated 25 Hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0907 to read as follows:

§ 100.35–0907 Stroh Gold Cup Regatta, Detroit River.

(a) *Regulated Area.* That portion of the Detroit River lying between Belle Isle and the U.S. shoreline, bound on the west by the Belle Isle Bridge and on the east a north-south line drawn through the Waterworks Intake Crib Light (LL 1022).

(b) *Special Local Regulations.*

(1) The above area will be closed to navigation or anchorage from 8:00 A.M. (local time) until 12:00 A.M. and from 1:00 P.M. until 5:00 P.M. on the 11, 12, 13 and 15 July 1984.

(2) In addition, two safety zones for race craft will be established. The first will be from the Waterworks Intake Crib Light (LL 1022) eastward to the Detroit Edison Lighted Buoy 1A (LL 1023) then north to the Edison Boat Club. The second safety zone will be within an area bound by a line drawn from the center span of the Belle Isle Bridge to the stacks at the Uniroyal Plant, north to the U.S. shore.

(3) An escape zone for recreational craft will also be established from the Rooster Tail Marina out to Lake St. Clair.

(4) Special care shall be exercised by the Master or operator of every vessel proceeding up or down the main channel of the Detroit River between Belle Isle and Windmill Point.

(5) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(6) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: June 18, 1984.

J. R. Kirkland,

Captain, U.S. Coast Guard Acting Commander, Ninth Coast Guard District.

[FR Doc. 84-16604 Filed 6-20-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 5-T84-06]

Special Local Regulations: Regatta; Elizabeth River Power Boat Race

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: Special local regulations are adopted for the Elizabeth River Power Boat Race. This event will be held on the Elizabeth River, between the Norfolk and Portsmouth downtown areas. It will consist of 35 outboard powered boats 13 feet to 19 feet in length racing a triangular course at the junction of the Eastern and Southern branches of the Elizabeth River. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 1:00 pm, 21 July 1984 and terminate at 5:00 pm, 21 July 1984. In case of inclement weather causing the event to be postponed, these regulations become effective at 1:00 pm, 22 July 1984 and terminate at 5:00 pm, 22 July 1984. If the event is postponed, the Patrol Commander will issue a broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Duane I. Preston, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804-398-6204).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until 26 April 1984, and there was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafters of this regulation are LCDR Duane I. Preston, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and LT Walter J. Brudzinski, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulations

The following organizations are jointly sponsoring the Elizabeth River Power Boat Race:

1. Norfolk FESTEVENTS, INC.
2. City of Portsmouth.
3. Portsmouth Power Boat Association.

The event will consist of six (6) classes of boats running two (2) heats per class. Closure of the waterway for any extended period is not anticipated and thus commercial traffic should not be severely disrupted at any given time.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary section 100.35-505 to read as follows:

PART 100—[AMENDED]

§ 100.35-505. Elizabeth River, Norfolk, Virginia

(a) *Regulated Area:* The waters of the Elizabeth River and its branches from shore to shore, bounded by the Midtown tunnel on the north, the Downtown tunnel on the south, and the Berkley Bridge on the east.

(b) *Special Local Regulations:* Except for participants in the Elizabeth River Power Boat Race, or persons or vessels authorized by the Coast Guard Patrol Officer, no person or vessel may enter or remain in the above area. The operator of any vessel in the immediate vicinity of this area shall:

(1) Stop his vessel immediately upon being directed to do so by any Coast Guard officer or petty officer on board a vessel displaying a Coast Guard ensign, and

(2) Proceed as directed by any Coast Guard officer or petty officer.

(c) Any spectator vessel may anchor outside of the area specified in paragraph (a) of these regulations.

(d) The Coast Guard Patrol Officer is a commissioned officer of the Coast Guard who has been designated by the Commander, Fifth Coast Guard District. The Patrol Commander will be stationed at the West side of Otter Berth, Town Point Park.

(e) The Coast Guard Patrol Officer has been authorized to stop the race to allow the transit of backed up marine traffic through the regulated area.

(f) These regulations and other applicable laws and regulations will be enforced by Coast Guard officers and petty officers on board Coast Guard and private vessels displaying the Coast Guard ensign.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: June 1, 1984.

John D. Costello,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 84-16586 Filed 6-20-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11 84-54]

Marine Event; Parker Area Championship Budweiser Tube Float

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule will establish Special Local Regulations for the Parker Area Championship Chamber Budweiser Interstate Tube Float at Lake Moovalya, Parker, Arizona. These regulations are needed to provide for the safety of life and property on navigable waters during the periods set forth.

EFFECTIVE DATE: These regulations become effective on 23 June 1984 and terminate on 23 June 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Commander (bb), Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822, (213) 590-2331.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. The

application to hold this event was not received until 29 May 1984, and there was not sufficient time to publish proposed rules in advance.

Nevertheless, interested persons wishing to comment may do so by submitting written comments to the office listed under **"FOR FURTHER INFORMATION CONTACT"** in this preamble. Commenters should include their name and address, identify this notice CGD11 84–54, and give reasons for their comments. Based on comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Chief, Boating Affairs Branch, Eleventh Coast Guard District, Project Officer, and CDR M. K. Cain, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulation

Parker Area Chamber of Commerce "Parker Area Championship Chamber Budweiser Interstate Tube Float" will be conducted on Lake Moovalya beginning on 23 June 1984. This event will have 1500 intertube floaters that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended by adding a temporary § 100.35–11–84–54 to read as follows:

§ 100.35–11–84–54 Parker Area Championship Budweiser Tube Float.

(a) *Regulated Area:* That portion of the Lake Moovalya, Parker, Arizona from Echo Lodge on the California side to down river approximately 3 miles to La Paz County Park.

(b) *Effective Date:* The regulated area will be closed intermittently to all vessel traffic from 11:15 AM to 4:30 PM on 23 June 1984.

(c) *Special Local Regulations:*

(1) No vessels, other than participants, U.S. Coast Guard operated and employed small craft, public vessels, state and local law enforcement agencies and the sponsor's vessels shall enter the regulated area during the above hours, unless cleared for such entry by or through a patrolling law enforcement vessel, or an event committee boat.

(2) When hailed by law enforcement agencies and/or the sponsor's vessels patrolling the event area, a vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Regatta Patrol.

(3) These regulations are temporary in nature and shall cease to be in effect at the end of each period set forth.

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: June 13, 1984.

F. P. Schubert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 84–16562 Filed 6–20–84; 8:45 am]
BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD2 84–08]

Special Local Regulations: St. Paul Riverfront Days, St. Paul, MN.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 839.5 to 840.2, Upper Mississippi river.

Marine events will be held between the dates June 13 thru 24, 1984, at St. Paul, Minnesota. These special local regulations are needed to provide for the safety of life and property on navigable waters during the events.

EFFECTIVE DATES: These regulations will be effective on the following dates; June 13, 15, 16, 17, 22, 23 and 24, 1984.

These regulations will also be effective on June 18, should inclement weather affect the races scheduled on June 16, 1984.

FOR FURTHER INFORMATION CONTACT: CDR. R. B. Bower, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, Mo 63103 (314) 425–5971.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Upper Mississippi River between miles 839.5 and 840.2 during the "St. Paul Riverfront Days", June 13 thru 24, 1984, inclusive. These events will consist of water ski shows, power boat races, a rowing race, towboat races, cruiser races, and a sternwheeler race, which could pose hazards to navigation in the area.

Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The revised applications and schedules to hold the event were not received until April 25, 1984, and there was insufficient time remaining to publish proposed rules in advance of the event, or to provide for a delayed effective date.

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W. L. Giessman, USCGR, Project Officer, Boating Technical Branch, and LT. R. E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0207 to read as follows:

§ 100.35–0207 Upper Mississippi River, miles 839.5 through 840.2.

(a) *Regulated Area:* The area between Mile 839.5 and 840.2 Upper Mississippi River is designated the regatta area, and may be closed to commercial navigation or mooring during the following dates and (local) times:

June 13, 6:30 p.m. to 8:30 p.m.
June 15, 6:30 p.m. to 8:30 p.m.

June 16, 1:00 p.m. to 8:30 p.m.
June 17, 11:00 a.m. to 8:30 p.m.
June 18, 2:00 p.m. to 5:00 p.m. should inclement weather affect event scheduled June 16.
June 22, 7:00 p.m. to 9:00 p.m.
June 23, 2:00 p.m. to 8:30 p.m.
June 24, 12:00 noon to 8:30 p.m.

All times listed are local time.

The above times represent a guideline for possible intermittent river closures not to exceed three (3) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations:* Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(1) The Patrol Commander may be reached on Channel 16 (156.8MHZ) when required, by the call sign "Coast Guard Patrol Commander".

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the marine event area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0207 will be effective on the following dates and times;

June 13, 6:30 p.m. to 8:30 p.m.
June 15, 6:30 p.m. to 8:30 p.m.
June 16, 1:00 p.m. to 8:30 p.m.
June 17, 11:00 a.m. to 8:30 p.m.
June 18, 2:00 p.m. to 5:00 p.m. should inclement weather affect event scheduled June 16.
June 22, 7:00 p.m. to 9:00 p.m.
June 23, 2:00 p.m. to 8:30 p.m.
June 24, 12:00 noon to 8:30 p.m.

All times listed are local time.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: June 11, 1984.

S. B. Vaughn,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 84–16586 Filed 6–20–84; 8:45 am]
BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD3–84–36]

Special Local Regulations: Liberty Cup Regatta, New York

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Liberty Cup Regatta sponsored by the Harbor Festival Foundation, Inc. of New York. This sailboat racing event will be held off the south shore of Staten Island from June 29, 1984 to July 3, 1984. This regulation is needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: This regulation becomes effective on June 29, 1984 through July 3, 1984 between the hours of 8:00 a.m. to 7:00 p.m. daily.

FOR FURTHER INFORMATION CONTACT: LTJG D.R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. Although the application for this event was received at the Third District Boating Safety Office on April 6, 1984, the determination of the area where this regulation will take effect was not agreed upon until May 25, 1984. Therefore, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LTJG D.R. Cilley, Project Officer, Boating Safety Office and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Liberty Cup Regatta is just one of several marine events making up this year's Harbor Festival 1984, celebrating the Fourth of July in the Port of New York/New Jersey. The Harbor Festival Foundation, Inc. will sponsor this international, world class, sail boat race series designed as a miniature "America's Cup" competition. This match series will be a competition between eight (8), 30 foot identical sailing Auxiliary vessels. These vessels will be racing on a diamond shaped course with windward and leeward legs of 1.5 nautical miles in length. The sponsor will provide four (4) yachts to mark the corners of the race course, the exact location of which will be set up daily depending on the wind conditions. Great Kills Harbor on Staten Island will serve both as the race headquarters and the staging area for the race boats and their crews. Mariners should use caution in this area as the race participants, under committee patrol boat escort will enter and depart this area enroute the race course throughout the effective period. A regatta patrol under the control of the Coast Guard Patrol Commander will supervise this event in conjunction with the vessels provided by the race sponsor and other local government agencies. All patrol vessels provided by the sponsor will fly a distinctive flag or similar device on the race days to aid in their identification. A safety voice broadcast will be issued by the Coast Guard to properly notify boaters of this event and the contents of this regulation issued for its control. In order to provide for the safety of life and property on navigable waters the Coast Guard will regulate the movement of vessels prior to and during the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water)

PART 100—[AMENDED]

Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–308 to read as follows:

§ 100.35–308 Liberty Cup Regatta, New York

(a) *Regulated Area:* Raritan Bay commencing in position 40 degrees 30 minutes 05 seconds N, 074 degrees 08 minutes 55 seconds W; thence southeast to position 40 degrees 28 minutes 49 seconds N, 074 degrees 03 minutes 06 seconds W; thence north to position 40 degrees 32 minutes 48 seconds N, 074 degrees 02 minutes 30 seconds W; thence northwest to the southeast tip of Swinburne Island to position 40 degrees 34 minutes 31 seconds N, 074 degrees 04 minutes 44 seconds W on the south shore of Staten Island thence following the shoreline westward to position 40 degrees 32 minutes 04 seconds N, 074

degrees 08 minutes 55 seconds W to include Great Kills Harbor.

(b) *Effective Period:* This regulation will be effective from 8:00 a.m. to 7:00 p.m. on June 29, 1984 through July 3, 1984. The approved rain date is July 5, 1984 and this regulation will be in effect for the same time period.

(c) *Special Local Regulations:*

(1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) All spectators shall remain 150 yards from the sailing vessels participating in the race.

(3) No spectator shall enter, pass through or remain within the diamond course area as marked by the sponsor provided yachts unless authorized by the race sponsor or Coast Guard patrol personnel.

(4) All spectators shall navigate using extreme caution and shall travel at no wake speeds when within ¼ mile of race participants and when within Great Kills Harbor.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include Commissioned, Warrant and Petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(6) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: June 4, 1984.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 84-16600 Filed 6-20-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD3-83-72]

Anchorage Ground; Delaware River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the U.S. Army Corps of Engineeers, Philadelphia District, the U.S. Coast Guard is changing a portion of the eastern boundary of Anchorage 12 on the Delaware River at Gloucester, NJ. A marginal wharf being constructed in the Delaware River by Holt Hauling and Warehousing Systems, Inc., under U.S. Army Corps of Engineers permit NAPOP-R-83-0047, encroaches slightly upon a portion of the eastern boundary of Anchorage 12. The purpose of this rule making is to bring the regulatory description of Anchorage 12 in line with actual usable anchorage ground.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) K. L. King, Commander (mpv-p), Third Coast Guard District, at (212) 668-7179.

SUPPLEMENTARY INFORMATION: On January 26, 1984, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (49 FR 3210). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of this notice are LTJG K. L. King, project officer for Commander (mpv-p), Third Coast Guard District, and Mrs. M. A. Arisman, project attorney, Third Coast Guard District Legal Office.

Discussion of Comments

One comment was received from the Pilots' Association for the Bay and River Delaware. This organization was in full agreement with the proposed change to a portion of the eastern boundary of Delaware River Anchorage 12.

Economic Assessment and Certification

This regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since this minor change to a portion of the boundary of Anchorage 12 will not impact upon business competition, the operation of State or local governments, or the regulations of other programs or agencies. Based upon this assessment, it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulations, and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final regulation: In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended by revising § 110.157(a)(13) to read as follows:

PART 110—[AMENDED]

§ 110.157 Delaware Bay and River.

(a) * * *

(13) Anchorage 12 between Gloucester and Camden. On the east side of the channel adjoining and on the upstream side of Anchorage 11, from the Gloucester to Camden, bounded as follows: Beginning at a point on the east edge of the channel at latitude 39°54'16"; thence northerly along the edge of the channel to latitude 39°56'32.5"; thence 133°, 283 yards to a point on a line 100 feet west of the established pierhead line; thence southerly along this line to latitude 39°54'34"; thence 196°16', 882 yards to latitude 39°54'08.5"; thence 354°36', 267 yards to the point of beginning. The area between New York Shipbuilding Corporation Pier No. 2 and the MacAndrews and Forbes Company pier, Camden, shall be restricted to facilitate the movement of carfloats to and from Bulson Street, Camden. The area in front of the Public Service Electric and Gas Company pier shall be restricted to facilitate the movement of vessels to and from the pier. Should the anchorage become so congested that vessles are compelled to anchor in these restricted areas, they must move immediately when another berth is available.

(33 U.S.C. 471; 49 U.S.C. 1655(g)(1); 49 CFR 1.46; and 33 CFR 1.05-1(g))

Dated: June 5, 1984.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 84-16504 Filed 6-20-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD-83-2R]

Establishment of Special Anchorage Area; Mattapoisett Harbor, Mattapoisett, Massachusetts

AGENCY: Coast Guard, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule will amend the anchorage regulations so as to establish a Special Anchorage Area in the east and west sides of Mattapoisett Harbor, Mattapoisett, Massachusetts at the request of the town of Mattapoisett.

This rule is necessary to insure that mariners are aware that small craft may be moored or anchored in this area and would relieve the anchored craft of the requirement to carry and display anchor lights while utilizing this Special Anchorage.

EFFECTIVE DATE: This regulation becomes effective July 23, 1984.

FOR FURTHER INFORMATION CONTACT: LTJG Chris Oelschlegel, U.S. Coast Guard Marine Safety Office, John O. Pastore Federal Building, Providence, Rhode Island 02903. Tel: (401) 528–5335.

SUPPLEMENTARY INFORMATION: On August 25, 1983, the Coast Guard published a notice of proposed rulemaking (Vol. 48 FR No. 166, P. 38652) and invited comments. No comments were received.

Drafting Information

The drafters of this regulation are LTJG Chris Oelschlegel, U.S. Coast Guard, U.S. Coast Guard Marine Safety Office, John O. Pastore Federal Building, Providence, Rhode Island and LT Susan Krupanski, U.S. Coast Guard, Project Attorney, Commander (dl), First Coast Guard District, 150 Causeway Street, Boston, Massachusetts.

Discussion of Regulation

The Coast Guard, at the request of the Town of Mattapoisett, Massachusetts, is amending the Anchor Regulations by establishing a Special Anchorage Area in Mattapoisett Harbor, Mattapoisett, Massachusetts. The anchorage area will be for the use of the general public. The number of small commercial shellfishing and pleasure crafts utilizing Mattapoisett Harbor warrants the establishment of the Special Anchorage Area. In Special Anchorage Areas vessels of not more than 65 feet in length, when at anchor, are not required to carry or display anchor lights. The shoreline is bounded by town property controlled by the Mattapoisett Harbor Development Committee and the remainder is privately owned.

The designation of this Special Anchorage Area will have no significant impact on the quality of the human environment. This action is consistent to the maximum extent practicable with the Massachusetts Coastal Zone Management Plan. Environmental information can be obtained from Mr. P. V. Kaselis, Environmental Specialist, First Coast Guard District, 150 Causeway Street, Boston, MA 02114.

Economic Assessment and Certification

This proposed regulation has been reviewed under the provisions of Exective Order 12291 and has been determined not to be a major rule. In addition, this proposed regulation is considered to be non significant in accordance with the guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164) it is certified that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulation

PART 110—[AMENDED]

In consideration of the foregoing, Part 110 of Title 33 of the Code of Federal Regulations is amended by adding section 110.45a to read as follows:

§110.45a Mattapoisett Harbor, Mattapoisett, Mass.

(a) Area No. 1 beginning at a point on the shore at latitude 41°39′23″ N., longitude 70°48′50″ W.; thence 128.5° T. to latitude 41°38′45″ N., longitude 70°48′02″ W.; thence 031° T. to latitude 41°39′02″ N., longitude 70°47′48″ W.; thence along the shore to the point of beginning.

(b) Area No. 2 beginning at a point on the shore at latitude 41°39′24″ N., longitude 70°49′02″ W.; thence 142.5° T. to latitude 41°38′10″ N., longitude 70°47′45″ W.; thence 219° T. to latitude 41°37′54″ N., longitude 70°48′02″ W.; thence along the shore to the point of beginning.

Note.—Administration of the Special Anchorage Area is exercised by the Harbormaster, Town of Mattapoisett pursuant to a local ordinance. The town of Mattapoisett will install and maintain suitable navigational aids to mark the perimeter of the anchorage area.

(33 U.S.C. 2030, 2035, and 2071; 49 CFR 1.46, 33 CFR 1.05–1(q))

Dated: June 18, 1984.

R. A. Bauman,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 84–16588 Filed 6–20–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 12–84–02]

Drawbridge Operation Regulations; Connection Slough, Calif.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Reclamation District No. 2027, the Coast Guard is adding regulations governing the Mandeville-Bacon Island bridge over Connection Slough near Stockton, California. This change is being made because there has been little demand for bridge openings during the night hours. This action will relieve the bridge operator of the burden of having a person constantly available to open the draw and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule becomes effective on July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Rose E. Guerra, Bridge Administrator, at (415) 437–3514.

SUPPLEMENTARY INFORMATION: On March 19, 1984, the Coast Guard published a proposed rule (49 FR 10126) concerning this amendment. The Commander, Twelfth Coast Guard District, also published this proposal as a Public Notice dated Apirl 2, 1984. Interested persons were given until May 3, 1984 to submit comments.

Drafting Information

The drafters of this rule are Rose E. Guerra, project officer, and Lieutenant C. A. Amen, project attorney.

Discussion of Comments

No comments were received. At the suggestion of the Coast Guard the bridge operator has voluntarily installed a radiotelephone at the bridge as a service to mariners. A DOT evaluation has not been prepared because of minimal economic impact. The section number has been renumbered to 117.150 to conform to the numbering system established on April 24, 1984 (49 FR 17450).

Economic Assessment and Certification

These final regulations have been reviewed under the provisions of Executive Order 12291 and have been

determined not to be major rules. They are considered to be non-significant in accordance with guidelines set out in Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 22, 1980). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with § 605(d) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by adding a new Section number: 117.150 to read as follows:

§ 117.150. Connection slough.

The draw of the Reclamation District No. 2027 bridge between Mandeville and Bacon Islands, mile 2.5 near Stockton, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m., and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours notice is given to the drawtender during regular operating hours, or to the Rio Vista bridge across the Sacramento River, mile 12.8. The draw shall open on signal if at least one hour notice is given for emergency vessels owned, operated or controlled by the United States or the State of California, for commercial vessels engaged in rescue or emergency salvage operations, or for vessels in distress.

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: May 23, 1984.

W. F. Merlin,

Captain, U.S. Coast Guard, Commander, Twelfth Coast Guard District, Acting.

[FR Doc. 84–16565 Filed 6–20–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 147

[CCGD11–84–04]

Establishment of Temporary Safety Zone Around Structure Being Constructed on the Outer Continental Shelf (OCS)

AGENCY: Coast Guard, Department of Transportation.

ACTION: Final rule.

SUMMARY: This document implements a temporary OCS Safety Zone and related regulation under the provisions of 33 CFR 147.10(c). The Safety Zone was established around the construction site of Platform Eureka, a structure being constructed on the OCS off of Southern California. The Commander, Eleventh Coast Guard District has made a determination that this Safety Zone is necessary to promote the safety of life and property on the structure, its appurtenances, attending vessels and other vessels on the adjacent waters during the installation and construction period.

EFFECTIVE DATE: The Safety Zone described herein is effective from 4:30 a.m. on June 30, 1984 through September 13, 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Varanko, Commander (mcs), Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822, (213) 590–2301.

SUPPLEMENTARY INFORMATION: The Commander, Eleventh Coast Guard District has determined that the establishment of a temporary Safety Zone is necessary to promote the safety of life and property on the structure, its appurtenances, attending vessels and other vessels on the adjacent waters during the installation and construction periods. Further, he has determined that without the establishment of a temporary Safety Zone, an imminent danger would exist. Therefore, this regulation is issued without publication of a Notice of Proposed Rulemaking and is effective in less than 30 days from the date of publication. Immediate notification was accomplished utilizing Broadcast Notice to Mariners.

Drafting Information

The principal persons involved in the drafting of this rule are Lieutenant Commander Robert Varanko, Project Manager, Eleventh Coast Guard District Marine Safety Division and Commander M. K. Cain, Project Counsel, Eleventh Coast Guard District Legal Office.

Summary of Final Evaluation

This regulation is considered to be of a temporary nature in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation of the rule has not been conducted since its impact is expected to be minimal.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Title 33, Code of Federal Regulation, Subpart 147 is hereby amended by establishing a new § 147.T1114 as follows:

§ 147.T1114 Platform EUREKA temporary safety zone, San Pedro Channel.

(a) *Description.* A circle 500 meters in radius around the construction site of Platform Eureka. The position of the center of the construction site is 33°33′50″ N., 118°07′00″ W.

(b) *Regulations.* No vessel may enter or remain within the Safety Zone except: (1) Vessels involved in the actual installation and construction of the platform and (2) any other vessels specifically authorized by the Commander, Eleventh Coast Guard District.

(c) *Effective date.* This Safety Zone and its related regulation are effective from 4:30 a.m., June 30, 1984 through September 13, 1984.

Authority: 43 U.S.C. 1333(d)(1), 49 U.S.C. 1655(b)(1), 49 CFR 1.46(b).

Dated: June 18, 1984.

F. P. Schubert,

Rear Admiral, U.S. Coast Guard Commander Eleventh Coast Guard District.

[FR Doc. 84–16581 Filed 6–20–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD3–84–06]

Safety Zone Regulations: New York, New Jersey, Sandy Hook Channel, Raritan Bay, Arthur Kill

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around all loaded Liquefied Petroleum Gas (LPG) vessels during their transit through New York Harbor. The safety zone will be discontinued, for LPG vessels entering port when they are safely moored at the LPG receiving facility in the Arthur Kill and, for LPG vessels departing the port, when they pass the Scotland Lighted Horn Buoy "S" (LLNR 1619) at the entrance to Sandy Hook Channel. This safety zone is needed to minimize the risk of collision between LPG carriers and other vessels. This precautionary measure is deemed necessary in consideration of the nature and quantity of the LPG cargo involved and the limited ability of these vessels to take

evasive action when maneuvering through New York Harbor or approaching and departing the terminal. This safety zone regulation requires each person to comply with the general safety zone regulations contained in 33 CFR 165.23 which prohibits persons from entering the safety zone without the authorization of the Captain of the Port. Mariners will be provided advance notice of scheduled LPG vessel harbor transits through the Port of New York via Marine Safety Information Radio Broadcast.

EFFECTIVE DATE: July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant Peter C. Blaisdell, Acting Port Safety Officer, Captain of the Port, New York, Building 109, Governors Island, NY 10004, telephone (212) 668-7834.

SUPPLEMENTARY INFORMATION: On March 29, 1984, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for this regulation (49 FR 12282). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are Lieutenant Gary W. Chappell, project officer, Captain of the Port, New York, and, Ms. M. A. Arisman, project attorney, Third Coast Guard District Legal Office.

Discussion of Comments

No comments were received regarding the proposed rule and no changes have been made in the final rule.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Its economic impact is expected to be minimal since the theory and practice of establishing a safety zone around a loaded LPG vessel has been in effect for many years. Small and large companies with vessels operating in New York Harbor are aware of scheduled LPG vessel harbor transits and adjust their vessel movements accordingly causing minimum economic impact.

Since the impact of this regulation is expected to be minimal the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding § 165.310 to read as follows:

§ 165.310 New York, New Jersey, Sandy Hook Channel, Raritan Bay, Arthur Kill-Safety Zone.

(a) The following areas are established as Safety Zones during the specified conditions:

(1) For incoming tank vessels loaded with Liquefied Petroleum Gas, the waters within a 100 yard radius of the LPG carrier while the vessel transits the Sandy Hook Channel, Raritan Bay East and West Reach, Ward Point Bend East and West Reach, and the Arthur Kill to the LPG receiving facility. The Safety Zone remains in effect until the LPG vessel is moored at the LPG receiving facility in the Arthur Kill.

(2) For outgoing tank vessels loaded with LPG, the waters within a 100 yard radius of the LPG carrier while the vessel departs the LPG facility and transits the Arthur Kill, Ward Point Bend West and East Reach, Raritan Bay West and East Reach, and Sandy Hook Channel. The safety zone remains in effect until the LPG vessel passes the Scotland Lighted Horn Buoy "S" (LLNR 1619) at the entrance to the Sandy Hook Channel.

(b) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(c) The Captain of the Port will notify the maritime community of periods during which this safety zone will be in effect by providing advance notice of scheduled arrivals and departures of loaded LPG vessels via a Marine Safety Information Radio Broadcast.

(33 USC 1225 and 1231; 49 CFR 1.46; 33 CFR 160.5)

Dated: May 31, 1984.

James L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, New York

[FR Doc. 84-16601 Filed 6-20-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251 and 261

Special Uses; Prohibitions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises parts of the existing 36 CFR 251 and 261 by more clearly defining who is required to have a special-use authorization for recreation use of National Forest System lands. It also makes technical and editorial changes to clarify other parts of the existing rules.

EFFECTIVE DATE: June 21, 1984.

ADDRESS: Comments or questions on these final rules may be addressed to: R. Max Peterson, Chief, (2340), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: David A. Hammond, Recreation Staff, Room 4247—South Building, 12th and Independence Avenue SW., Washington, D.C. 20013, (202) 447-2311.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service, USDA, has the responsibility for management of recreation resources on 190 million acres of National Forest, National Grassland and other lands known collectively as the National Forest System. Present regulations governing use of these lands do not adequately explain when advanced permission is required for certain recreation activities and assemblies.

Ambiguous language in the present regulations sometimes leads to confusion by the public and could result in lack of uniform application by Forest Officers. Changes in terminology and conflicting wording in the existing rule have necessitated technical and editorial updating of other parts of 36 CFR Part 251 and of 36 CFR Part 261.

Analysis of Public Comment

Analysis of the present regulation through administrative appeals and court challenges has indicated the need to clarify certain parts relating to what types of recreation uses of National Forest lands require a written authorization and who is required to have such authorization.

A proposed revision of the present regulation was published August 4, 1983, at 48 FR 35465.

The proposed rule generated little public interest. A total of eleven (11)

responses were received on the proposal, distributed as follows:

Type of respondent	Number of comments received	Percent of the total
Citizens	2	18
Environmental Organization	1	9
Forest Service Units	7	64
Government, excluding U.S.D.A.	1	9
Total	11	100

The majority of comments were very specific in nature and contained recommendations applicable to particular sections of the rule. Most of the comments were of a technical nature regarding rewording certain sections to provide additional clarity. The public comments were from two individuals belonging to an organization which objects to the permitting process on the basis of constitutional rights.

All suggestions and comments were reviewed and considered in preparation of this final rule. Responses are available for review at the office of the Director of Recreation, Forest Service, USDA, Room 4241 South Agriculture Building, 12th & Independence Avenue SW., Washington, D.C.

The following summarizes the major comments and suggestions received on the proposed revision of 36 CFR Part 251 and 36 CFR Part 261, and the Department's response to these comments. Comments are keyed to the section numbers and headings of the proposed rule document.

Section 251.51 Definitions.

Comment: Most respondents suggested that the word "not" had been left out of the definition of recreation event where it refers to an event "* * * that involves competition, entertainment, or training such as, but (not) limited to animal or vehicle races * * *"

Response: This exclusion resulted from a printing error. The word "not" is added to the text in the final rule.

Comment: A respondent questioned why the wording "by ten (10) or more participants and/or spectators" contained in the definition of recreation event is excluded from the definition of special event.

Response: Analysis of the definition of the two types of events indicates that there is no reason to exclude the criterion of ten (10) or more participants from the definition of special event, and it has been added as suggested.

Section 251.53 Special use authorizations.

Comment: It was pointed out that the authority cited for issuance of authorizations for special events should be under the Act of June 4, 1897 (16 U.S.C. 551), instead of the Land and Water Conservation Fund Act of September 3, 1964 (16 U.S.C. 4601).

Response: The term "special event" has been added to § 251.53(a) which now reads "Permits governing occupancy and use, including special events, under the Act of June 4, 1897 (30 Stat. 35: 16 U.S.C. 551)". The term is eliminated from part 251.53(k)

Comment: A respondent pointed out that reference to issuing a permit for "specialized recreation uses" had been eliminated from 251.53(k) and they felt this should be reinstated since it is specifically provided for in the law.

Response: In the final rule the term "other specialized recreation uses" is added to 251.53(k). With this change and with deletion of the L&WCF citation for "special event", 251.53(k) will read "Permits under the Land and Water Conservation Fund Act of September 3, 1964, 78 Stat. 897, as amended (16 U.S.C. 4601–6a(c)), for recreation events and other specialized recreation uses".

Section 251.54 (i) Denial of application for special event.

Comment: Two letters were received from, and a meeting held with, one group that uses the National Forests for annual gatherings. This group objects to the rule on the basis that the requirement to obtain a written authorization to gather on National Forest land violates their rights under the First Amendment to the Constitution.

Response: Recent court cases have held that while groups have the right under the First Amendment to gather on Federal lands, the land managing agencies have the responsibility and the authority to control that use through an authorization (permit) process. The existing rule requires all groups to have a special use permit. The revised rule severely restricts the reasons for which a Forest Officer may deny an authorization for a special event. Therefore, the final rule has not been changed on the basis of this concern.

Section 261.3 Interfering with a Forest Service officer, volunteer or "hosted enrollee" or giving false report to a forest officer.

Comment: One respondent suggested that the term "hosted enrollee" be changed to read "human resources program enrollee". The term "hosted enrollee" is vague and may not include such programs as the Senior Community Service Employment Program or others which are highly visible to the public at National Forest facilities.

Response: The term "human resources program enrollee" was substituted, in the final rule, for the term "hosted enrollee".

The proposed rule also makes technical and conforming amendments to certain sections of 36 CFR Part 261, which set forth those activities that are prohibited on National Forest System lands. Comments on proposed revisions to Part 261 are given below.

Section 261.9 (f) Property.

Comment: An environmental organization wanted the words fungicide and herbicide added to this section to make it read "Using any pesticide, fungicide, or herbicide except for personal use as * * *"

Response: The word pesticide is a generic word which applies to insecticides, fungicides, herbicides or any other agent used to control plant or animal pests. The rule, as proposed, will provide the protection this group wants.

Section 261.10(m) Occupancy and Use.

Comment: One respondent suggested that the word "rental" be eliminated from part (m) and that it be revised by adding "or other charges" to read: "(m) Failing to pay any special use fee or other charges as required."

Response: This recommendation was adopted and incorporated in the final rule.

Section 261.16(b) National Forest Wilderness.

Comment: The proposed rule would revise paragraph (b) to exclude the word "bicycle" from the provision prohibiting "(b) Possessing or using a hang glider or bicycle". It was pointed out that there is a conflict between this section and 261.57(h) which states that bicycles are prohibited from wildernesses when provided by an order.

Response: The reference to bicycle was supposed to be retained in 261.16(b) and eliminated from 261.57(h). Section 261.16(b) will not be changed in this revision. The final rule revises 36 CFR 261.57(h) to exclude the word "bicycle".

With incorporation of the changes noted above, the final rule establishes uniform guidelines for requiring a special-use authorization for recreational activities and special events on National Forest System lands while allowing flexibility needed to meet special conditions of particular areas. This uniformity will assure better understanding by the public of the circumstances under which they are required to have an authorization for use of National Forest land. This will, in turn, reduce the amount of time required

to administer National Forest units and reduce instances where law enforcement action is required.

This action has been reviewed pursuant to Executive Order 12291. It has been determined that this action is not a major rule and does not require a regulatory impact analysis. The rule will have no impact on the economy and will result in no increase in cost or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions. The rule will have no effect on competition, employment, investment productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Assistant Secretary for Natural Resources and Environment has determined that this action does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), because the action will not have a significant economic impact on a substantial number of small entities; it imposes no paperwork or recordkeeping requirements on small entities; it does not affect the competitive position of small entities in relation to large entities; and it does not affect cash flow, liquidity, or ability to remain in the market for small entities.

There are no new paperwork or information collection requirements contained in the rule. Any authorizations issued pursuant to this rule will be applied for on Forest Service Form 2700–3 which has previously been approved for use by the Office of Management and Budget and assigned Control Number 0596–0082.

List of Subjects in 36 CFR Parts 251 and 261

Administrative practice and procedure, Law enforcement—prohibitions, National Forests, and Public lands—Permits.

Therefore, for the reasons set forth in the preamble, Parts 251 and 261 of Title 36 of the Code of Federal Regulations are amended as follows:

PART 251—LAND USES [AMENDED]

1. The authority citation for 36 CFR Part 251 reads as follows:

Authority: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, Sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472), 90 Stat. 2776 (43 U.S.C. 1761–1771), unless otherwise noted.

Other authorities are listed in 36 CFR 251.53.

2. In 36 CFR 251.50, paragraphs (a), (c), and (d) are revised to read as follows:

§ 251.50 Special uses.

(a) All uses of National Forest System land, improvements, and resources, except those provided for in the regulations governing the disposal of timber (Part 223) and minerals (Part 228) and the grazing of livestock (Part 222), are designated "special uses" and must be approved by an authorized officer.

* * * * *

(c) With the exception of "recreation events" and "special events" as these terms are defined in § 251.51 of this part and unless otherwise provided by order issued under § 261.50 or by regulation issued under § 261.70 of this Chapter, special-use authorization is not required for the noncommercial use or occupancy of National Forest System lands or facilities for camping, picknicking, hiking, fishing, hunting, horse riding, boating, or similar recreational activity.

(d) Unless otherwise required by order issued under § 261.50 or by regulation issued under § 261.70 of this Chapter, the use of existing forest development roads and trails does not require a special-use authorization; however, any such use is subject to compliance with all Federal and State laws governing the roads or trails to be used.

3. 36 CFR 251.51 is amended by redesignating paragraphs (i), (j), (k), and (l) as (j), (k), (m), and (n) respectively, and adding new paragraphs (i) and (l) to read as follows:

§ 251.51 Definitions.

* * * * *

(i) "Recreation event"—a planned, organized, or publicized recreational activity engaged in by a total of ten (10) or more participants and/or spectators, that involves competition, entertainment, or training such as, but not limited to, animal or vehicle races or rallies, dog trials, fishing contests, rodeos, fairs, regattas, and games.

* * * * *

(l) "Special event"—a meeting, assembly, demonstration, parade, or other activity, engaged in by ten (10) or more participants and/or spectators, for the purpose of expression or exchange of views or judgments.

* * * * *

4. In 36 CFR 251.53, paragraph (a) and paragraph (k) are revised to read as follows:

§ 251.53 Authorities.

Special-use authorizations may be issued for:

(a) Permits governing occupancy and use, including special events, under the act of June 4, 1897, 30 Stat. 35 (16 U.S.C. 551);

* * * * *

(k) Permits under the Land and Water Conservation Fund Act of September 3, 1964, 78 Stat. 897, as amended (16 U.S.C. 4601–6a(c)), for recreation events and other specialized recreation uses;

* * * * *

5. In 36 CFR 251.54, the heading and introductory clause of paragraph (h) is revised and a new paragraph (i) is added to read as follows:

§ 251.54 Special use applications.

* * * * *

(h) *Denial of applications for a special use other than a special event.* An application for a special use other than a special event may be denied if the authorized officer determines that:

* * * * *

(i) *Denial of application for special event.* An application for a special event shall be granted unless the authorized officer determines that:

(1) The special event would conflict with another use which has been previously approved by special use authorization, contract, or approved operating plan, under this Part or Part 222, 223, or 228 of this Chapter; or

(2) The special event would present a clear and present danger to the public health or safety; or

(3) The special event would be of such nature or duration that it could not reasonably be accommodated in the particular place and time applied for; or

(4) The application proposes activities that are contrary to the provisions of Part 261 of this Chapter or the provisions of any other Federal or State criminal law.

When an application is denied on the basis of paragraph (i)(1) or (i)(3) of this section, the authorized officer shall provide the applicant the opportunity to accept an alternative site or time selected by that officer.

PART 261—PROHIBITIONS [AMENDED]

6. The table of contents for 36 CFR Part 261 is amended by removing § 261.3a and by revising the entry for § 261.3 to read as follows:

Sec.

* * * * *

261.3 Interfering with a Forest Officer, volunteer, or human resource program enrollee or giving false report to a Forest Officer.

* * * * *

7. The authority citation for 36 CFR Part 261 reads as follows:

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); Sec. 1, 33 Stat. 628 (16 U.S.C. 472); 50 Stat. 526, as amended (7 U.S.C. 1011, (f)); 82 Stat. 916 (16 U.S.C. 1281(d)); 82 Stat. 922 (16 U.S.C. 1246, (i)), unless otherwise noted.

8. 36 CFR 261.1a is revised to read as follows:

§ 261.1a - Special use authorizations, contracts and operating plans.

The Chief, each Regional Forester, each Forest Supervisor, and each District Ranger or equivalent officer may issue special-use authorizations, award contracts, or approve operating plans authorizing the occupancy or use of a road, trail, area, river, lake, or other part of the National Forest System in accordance with authority which is delegated elsewhere in this Chapter or in the Forest Service Manual. These Forest Officers may permit in the authorizing document or approved plan an act or omission that would otherwise be a violation of a Subpart A or Subpart C regulation or a Subpart B order. In authorizing such uses, the Forest Officer may place such conditions on the authorization as that officer considers necessary for the protection or administration of the National Forest System, or for the promotion of public health, safety, or welfare.

§ 261.2 [Amended]

9. 36 CFR 261.2 is amended by inserting, in correct alphabetical order, the definition of "special use authorization" to read as follows:

* * * * *

"Special-Use Authorization" means a permit, term permit, lease or easement which allows occupancy, or use rights or privileges of National Forest System land.

* * * * *

§ 261.3a [Amended]

10. The text of 36 CFR 261.3a is revised and redesignated as paragraph (c) of 36 CFR 261.3, and the heading for § 261.3 is revised to read as follows:

§ 261.3 Interfering with a Forest officer, volunteer, or human resource program enrollee or giving false report to a Forest officer.

* * * * *

(c) Threatening, intimidating, or intentionally interfering with any Forest officer, volunteer, or human resource program enrollee while engaged in, or on account of, the performance of duties for the protection, improvement, or administration of the National Forest System or other duties assigned by the Forest Service.

11. In 36 CFR 261.6, paragraphs (a) and (h) are revised to read as follows:

§ 261.6 Timber and other forest products.

The following are prohibited:

(a) Cutting or otherwise damaging any timber, tree, or other forest product, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation.

* * * * *

(h) Removing any timber, tree or other forest product, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation.

12. In 36 CFR 261.9, paragraph (f) is revised to read as follows:

§ 261.9 Property.

* * * * *

(f) Using any pesticide except for personal use as an insect repellent or as provided by special-use authorization for other minor uses.

* * * * *

13. In 36 CFR 261.10, paragraph (a), (b), (c), (g), (i), (j), and (k) are revised and paragraph (m) is added to read as follows:

§ 261.10 Occupancy and use.

The following are prohibited:

(a) Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, or other improvement on National Forest system land or facilities without a special-use authorization, contract, or approved operating plan.

(b) Taking possession of, occupying, or otherwise using National Forest System lands for residential purposes without a special-use authorization, or as otherwise authorized by Federal law or regulation.

(c) Selling or offering for sale any merchandise or conducting any kind of work activity or service unless authorized by Federal law, regulation, or special-use authorization.

* * * * *

(g) Posting, placing, or erecting any paper, notice, advertising material, sign, or similar matter without a special-use authorization.

* * * * *

(i) Operating or using a public address system, whether fixed, portable or vehicle mounted, in or near a campsite or developed recreation site or over an adjacent body of water without a special-use authorization.

(j) Use or occupancy of National Forest System land or facilities without special-use authorization when such authorization is required.

(k) Violating any term or condition of a special-use authorization, contract or approved operating plan.

* * * * *

(m) Failing to pay any special use fee or other charges as required.

14. In 36 CFR 261.12, paragraph (a) is revised to read as follows:

§ 261.12 Forest development roads and trails.

The following are prohibited:

(a) Violating the load, weight, height, length, or width limitations prescribed by State law except by special-use authorization or written agreement or by order issued under § 261.54 of this Chapter.

* * * * *

15. In 36 CFR 261.14, paragraph (p) is revised to read as follows:

§ 261.14 Developed recreation sites.

* * * * *

(p) Distributing any handbill, circular, paper or notice without a special-use authorization.

16. In 36 CFR 261.17, paragraph (c) is revised to read as follows:

§ 261.17 Boundary Waters Canoe Area, Superior National Forest.

* * * * *

(c) Using wheels, rollers, or other mechanical devices for the overland transportation of any watercraft, except by special-use authorization, or as authorized by Federal law or regulation.

17. 36 CFR 261.18 is revised to read as follows:

§ 261.18 Pacific Crest National Scenic Trail.

It is prohibited to use a motorized vehicle on the Pacific Crest National Scenic Trail without a special-use authorization.

18. 36 CFR 261.57 paragraph (h) is revised to read as follows:

§ 261.57 National Forest Wilderness

* * * * *

(h) Possessing or using a wagon, cart or other vehicle.

* * * * *

Dated: June 8, 1984.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 84-16480 Filed 6-20-84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OAR-FRL-2612-5; TN-011]

Approval and Promulgation of Implementation Plans, Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of TSP, SO_2 and Ozone Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving certain requests by Tennessee to redesignate a number of counties for particulate (TSP), sulfur dioxide (SO_2), and ozone (O_3). Other redesignation requests made by Tennessee are not being approved because they are not adequately supported by data or other demonstration required by EPA redesignation policy. This action was proposed in the October 13, 1983, **Federal Register** (48 FR 46549). A public comment period was announced, and it is noted here that comments were received.

EFFECTIVE DATE: This action is effective July 23, 1984.

ADDRESSES: Copies of the materials submitted by Tennessee may be examined during normal business hours at the appropriate location:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street NE, Atlanta, GA 30365

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 9th Avenue North, Nashville, Tennessee 37203

Library, Office of Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005.

Also, a Technical Support Document in which the criteria upon which EPA evaluated the State's requests is set forth, may be examined at the Public Information Reference Unit (address given above).

FOR FURTHER INFORMATION CONTACT: Raymond S. Gregory, EPA Region IV Air Management Branch, at the Atlanta address above, telephone 404/881-3286 [FTS 257-3286].

SUPPLEMENTARY INFORMATION: Section 107 of the Clean Air Act provides for changes in attainment status designation by the Administrator. Tennessee has submitted several requests that EPA promulgate new air quality classifications for various areas with respect to various pollutants. The criteria upon which EPA evaluated these requests is set forth in a Technical Support Document (TSD) that has been placed in the rulemaking record for this Agency action. The TSD explains the basis and the purpose behind the action taken today.

Tennessee submitted a petition requesting redesignation of certain nonattainment and unclassified areas on December 9, 1982. After EPA had commented on the requests, Tennessee requested reconsideration of certain areas and supplied supplemental information on January 21, 1983. In addition to requesting the changes in attainment status designation, Tennessee has revised its State Implementation Plan (SIP), changing the list which identifies the nonattainment areas in the State; these changes were submitted to EPA on January 19, 20, and 21, February 9, March 4, 14, and 22, April 6, and June 1, 1983, as SIP revisions.

As reported in the October 14, 1983, proposal notice (40 FR 46550) EPA would not consider the following changes requested by Tennessee for the reasons stated: Shelby County, from nonattainment to attainment for ozone, because the calculated number of expected exceedances is greater than 1.0; Fayette and Tipton Counties, from unclassified to attainment for ozone, because they are in the same air shed as Shelby County and influenced by its urban impact; Bradley County, from nonattainment to unclassified for ozone, because no air quality data or emission reduction summary was available with which to determine the status of this county; and a portion of LaFollette, from primary and secondary nonattainment for TSP to secondary nonattainment, because although four quarters of air quality data were submitted, the State was unable to identify commensurate emission reductions.

EPA originally proposed (40 FR 46550) to approve the redesignation of the Nashville area (Davidson, Rutherford, Sumner, Williamson, and Wilson Counties) from nonattainment to attainment for ozone. However, subsequent analysis of the ozone data for 1983 shows that the calculated number of expected exceedances for the downwind monitoring site for this group of counties which are in a common airshed is greater than 1.0. As a result, EPA is not taking final action on the redesignation of the Nashville area for ozone. Reconsideration of this requested redesignation will be made after the 1984 ozone data is analyzed.

On the basis of eight quarters of data showing attainment plus implementation of an approved SIP, EPA proposed to redesignate the following areas from TSP nonattainment, primary and secondary, to secondary nonattainment only: portions of Davidson and Hamilton Counties; and on the basis of four quarters of data plus a demonstration of emission reduction, it was proposed to redesignate the following areas from TSP nonattainment primary and secondary, to attainment for all TSP standards: portions of Campbell, Sullivan, and Shelby Counties.

Also, on the basis of eight quarters of data, EPA proposed to redesignate the following areas from SO_2 nonattainment, primary and secondary: portions of Benton and Humphreys Counties to secondary nonattainment only, and a portion of Polk County to attainment for all SO_2 standards.

On the basis of a demonstration that emission densities are equal to or less than other rural areas where monitoring data shows attainment, it was proposed to change the designation of Grainger County, Jefferson County, and the unclassifiable areas in AQCR's 007 (Tennessee portion), 207, 208, and 209 (except Fayette and Tipton Counties) from ozone unclassifiable to attainment. On the basis of four quarters of data plus a demonstration of emission reduction, it was proposed to redesignate the following ozone nonattainment areas to attainment: Knox County, Maury County, and Sullivan County. Public comments were as follows:

Comments

(1) One representative of an industrial source wrote in support of the reclassification of the Kingsport TSP nonattainment area and the Sullivan County ozone nonattainment areas to attainment status.

(2) The Memphis and Shelby County Health Department has requested that their February 2, 1983, request for reclassification be withdrawn due to findings in a recent review of ozone data obtained at the Frayser and Shelby County Mudville Monitoring stations.

(3) The Tennessee Division of Pollution Control has requested that action on there classification of Polk County to attainment for all SO_2 standards be delayed due to exceedances found in SO_2 ambient air quality on two consecutive days in October of 1983.

Action

In light of all information received and considering all comments the following

actions are being taken. EPA is not redesignating: Shelby, Davidson, Rutherford, Sumner, Williamson, and Wilson Counties from nonattainment to attainment for ozone; Fayette and Tipton Counties, from unclassified to attainment for ozone; Bradley County, from nonattainment to unclassified for ozone; and a portion of LaFollete, from primary and secondary nonattainment for TSP to secondary nonattainment, all for reasons already discussed.

As proposed, the following areas are being redesignated from TSP nonattainment, primary and secondary, to secondary nonattainment only: portions of Davidson and Hamilton Counties; and the following are being redesignated from TSP nonattainment, primary and secondary, to attainment for all TSP standards: portions of Campbell, Sullivan and Shelby Counties. In considering the redesignation of portions of Hamilton County, it was determined that the current attainment status of the area is not a result of emission reductions brought about by economic downturn in the area.

EPA is not taking final action on the proposed redesignations of portions of Benton and Humphreys Counties from SO_2 nonattainment, primary and secondary, to secondary nonattainment only. These areas are affected by stacks subject to Section 123 of the Clean Air Act and EPA's stack height regulations. (*See* 47 FR 5864 (Feb. 8, 1982), codified at 40 CFR 51.1, 51.12 and 51.18 (1983).) On October 13, 1983 the United States Court of Appeals for the District of Columbia Circuit overturned portions of EPA's stack height regulations. *Sierra Club* v. *EPA*, 719 F.2d 436. The decision has been appealed to the United States Supreme Court by a group of affected industries. Until the judicial process is completed and the stack height regulations are either upheld by the Court or revised, EPA intends to stay action on redesignations from nonattainment to attainment for areas affected by stacks subject to Section 123 requirements.

EPA is delaying a decision on the reclassification of Polk County from SO_2 nonattainment, primary and secondary, to attainment for all SO_2 standards in light of the request by the Tennessee Division of Air Pollution Control. EPA has agreed to delay action until an investigation can be completed by Tennessee and a final determination made.

EPA is also delaying action on the redesignation of the Nashville area (Davidson, Rutherford, Sumner, Williamson and Wilson Counties) from nonattainment to attainment for ozone. Reconsideration of this requested redesignation will be made after the 1984 ozone data has been analyzed.

As proposed, the following areas are being redesignated from unclassifiable for ozone to attainment: Grainger County, Jefferson County, and the unclassified areas in AQCR's 007 (Tennessee portion), 207, 208, and 209 (except Fayette and Tipton Counties). Also, the following areas are being redesignated from ozone nonattainment to attainment: Knox County, Maury County, and Sullivan County, on the basis of four quarters of data plus a demonstration of emission reduction.

The reader should note that none of the Tennessee counties today redesignated from unclassifiable to attainment for ozone will be listed in the attainment status tables of Subpart C, 40 CFR Part 81; this is because section 107 of the Clean Air Act does not provide for such a distinction.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, intergovernmental relations, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

(Sections 107 and 110 of the Clean Air Act (42 U.S.C. 7407 and 7410))

Dated: June 15, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. In § 52.2220, paragraph (c) is amended by adding subparagraph (58) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * *

(58) Materials related to attainment status designations of various areas, submitted on January 19, 20, and 21, February 9, March 4, 14, and 22, April 6, and June 1, 1983, by the Tennessee Department for Health and Environment.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart C—Section 107 Attainment Status Designations

2. In § 81.343, the Tennessee-TSP table is revised to read as follows:

§ 81.343 Tennessee.

TENNESSEE—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
That portion of Campbell County within downtown LaFollette.	X	X		
Those portion of Davidson County within a section of downtown Nashville and in West Nashville.		X		
That portion of Hamilton County within approximately the city limits of Chattanooga.		X		
That portion of Knox County within a section of downtown Knoxville.			X	
That portion of Maury County within the northern section of Columbia.			X	
That portion of Roane County within a downtown section of Rockwood.			X	
Rest of State				X

4. In § 81.343, the Tennessee-O_3 table is amended by removing the entries for Knox County, Maury County, and Sullivan County.

[FR Doc. 84-16538 Filed 6-20-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 61

[AD-FRL 2611-4]

National Emission Standards for Hazardous Air Pollutants; Amendments to Asbestos Standard: Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule for amendments to the Asbestos Standard that was published April 5, 1984 (49 FR 13657). This action is necessary to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell, Standards Development Branch, ESED (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541-5624.

Dated: June 11, 1984.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

The following corrections are made in 40 CFR Part 61 appearing on page 13657 in the issue of April 5, 1984:

1. On page 13661, column two, the definition of "asbestos waste from control devices" is corrected by replacing the word "in" with "by."

2. On page 13661, column two, the term "Emergency renovation operations" is corrected to "Emergency renovation operation."

3. On page 13661, column three, in the definition of "strip," insert "a" between "part of" and "facility."

4. On page 13661, column three, in the third line of the definition of "structural member," replace the word "loan" with "load."

5. On page 13662, column one, § 61.143, the first two lines are corrected to read "No person may surface a roadway with asbestos tailings or * * *"

6. On page 13662, column two, § 61.145(b), the sixth line is corrected to read, "components, only the * * *"

7. On page 13662, column three, § 61.146(c)(3), the first sentence is corrected to read, "Estimate of the approximate amount of friable asbestos material present in the facility in terms of linear feet of pipe, and surface area on other facility components."

8. On page 13664, column one, § 61.152, the first sentence, third line is corrected to read, "§§ 61.147 and 61.149 shall:"

9. On page 13664, column one, § 61.152(b)(1)(iv), the word "hazardous" should be capitalized.

10. On page 13664, column three, § 61.154(a), the third and fourth lines are corrected to read "61.147(d)(2), 61.148(b)(2), 61.149(b), 61.151(b), 61.151(c)(1)(ii), 61.152(b)(1)(ii), and 61.152(b)(2)(ii) shall:"

11. On page 13664, column three, § 61.154(a)(1)(i), the third line is corrected to read, "no more than .995 kilopascal (4 inches water gage), as".

[FR Doc. 84-16528 Filed 6-20-84; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 717

[OPTS-83001E; TSH-FRL 2600-8]

Confirmation of Effective Date for Recordkeeping and Reporting Procedures

Correction

In FR Doc. 84-14977 beginning on page 23182 in the issue of Tuesday, June 5, 1984, make the following corrections:

1. On page 23183, first column, **SUPPLEMENTARY INFORMATION,** line two, "2070-007" should read "2070-0017".

2. On the same page, first column, **SUPPLEMENTARY INFORMATION,** first complete paragraph, line seventeen, "2070-007" should read "2070-0017".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 26, 30, 31, 32, 35, 70, 71, 75, 77, 78, 90, 91, 94, 96, 97, 107, 108, 109, 163, 188, 189, 192, 195, 196

[CGD 79-032]

Pilot Boarding Equipment

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its installation, equipment, and operating standards for embarking and disembarking pilots on vessels underway or at anchor. These regulations combine existing requirements with international standards contained in Regulation 17, Chapter V, of the Convention for Safety of Life at Sea (SOLAS) 1974, and add new provisions concerning replacement steps. The regulations apply to all U.S. vessels and certain foreign vessels that board pilots when calling at U.S. ports. The purpose of these regulations is to minimize the potential for hazardous situations when boarding pilots.

EFFECTIVE DATE: These regulations become effective on July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant John Astley (202-426-4431).

SUPPLEMENTARY INFORMATION: On October 5, 1983, the Coast Guard published a notice of proposed rulemaking (48 FR 45425) concerning these regulations. Interested parties were given until November 19, 1983, to submit comments. Eight letters were received.

Discussion of Comments and Changes Made

1. The proposed rules prohibited pilot ladders from having more than 2 replacement steps and required that lighting for pilot boarding equipment be permanently installed. In accordance with recommendations of several commenters, these provisions have been deleted from the final rules. Further analysis of these provisions showed that their underlying safety purposes could be accomplished as effectively through compliance with the remaining rules in the proposal.

2. The proposed rules required pilot boarding equipment for all vessels that normally employ pilots. One commenter stated that this requirement should not apply to vessels that have a pilot on board as a part of the regular crew complement. An exception has been added for these vessels in the final rules.

3. One commenter recommended deleting the requirement to have approved replacement steps because it is inconsistent with SOLAS requirements. SOLAS allows 2 non-approved steps to be inserted for damaged steps. The requirement for approved replacement steps has been retained in the final rules. Non-approved steps are often not of adequate quality for safe use. In upcoming meetings of the International Maritime Organization, the Coast Guard will be urging changes to the SOLAS requirements for pilot ladders to incorporate a provision on approved replacement steps.

4. One commenter stated that the requirement to mark replacement steps differently from other steps is unnecessary and should be deleted. This comment has not been adopted. As stated in the notice of proposed rulemaking, the purpose of this requirement is to alert the user that a particular step has been replaced and that due caution should be exercised when stepping on it.

5. One commenter stated that the Coast Guard should require a manufacturer's instruction manual covering replacement step installation. This comment has not been adopted. Both the proposed and final rules have a similar provision requiring each

replacement step to be "secured by the method used in the original construction of the ladder, and in accordance with the manufacturer's instructions."

6. The comments included recommendations that the use of tag lines in boarding operations be regulated, that heavy pilot ladders be prohibited, and that a recall system be established for faulty equipment. Analysis of these recommendations failed to demonstrate a hazard or problem that warrants additional regulations. Prudent handling of tag lines and pilot ladders should prevent accidents. Also, both the proposed and final rules provide that, if a vessel has only one pilot ladder, the ladder must "be capable of being easily transferred to and rigged for use on either side of the vessel." A recall system would be an excessive measure when considering that the equipment will be periodically inspected by the Coast Guard in addition to shipboard maintenance required by these regulations.

7. The proposed rules required uninspected vessels that normally employ pilots to carry pilot boarding equipment. This requirement has been deleted from the final rules. It became evident as a result of further study of the proposed rules that uninspected vessels do not normally employ pilots and, accordingly, the requirement is unnecessary.

Effective date of final rules: These rules will become effective one year from the date of publication. A one year delay should provide sufficient time to purchase and install upgraded equipment.

Final evaluation and economic certification: These final rules are considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

A final regulatory evaluation has been prepared and placed in the public docket. It may be inspected or copied at Room 4402, 2100 Second St., S.W., Washington, D.C. from 7:30 a.m. to 4:00 p.m. Copies may also be obtained by contacting the person listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph.

The principal costs of these regulations to vessel owners will involve purchasing pilot ladders that meet 46 CFR Subpart 163.003. Approximately 720 vessels will have to comply with the regulations. Approximately 80% of the affected vessels already have an approved pilot ladder. Assuming that most vessels have, on the average, a 30 foot ladder costing $1,500, the total cost of the regulations will be as follows: (720 vessels x 20% needing new ladders x $1,500 per ladder = $216,000.) For an individual vessel, the $1,500 cost can be prorated over an estimated 5 year service life of the ladder. By comparison, normal vessel operating costs exceed $10,000 per day.

Other costs involving maintenance, installation, and operation should be minimal. The vessels involved already have accommodation ladders and lighting, as required under existing regulations, and no new costs should arise from complying with these rules. Pilot hoists are optional and, accordingly, costs to use them will be elective.

The purpose of these regulations is to minimize the potential for hazardous situations when boarding pilots. Resulting benefits should include a reduction in injuries associated with these boarding operations.

The Coast Guard has assessed the environmental effects of this rulemaking and found no foreseeable significant impact on the environment.

Based upon the analysis of costs per vessel, as discussed above, the Coast Guard certifies that these rules will not have a significant economic impact on a substantial number of small entities.

Authority: The principal authority for these regulations is 46 U.S.C. 3306 and 3703 (Pub. L. 98–89 of August 26, 1983). These laws replace old 46 U.S.C. 375, 391a, and 416. However, paragraph one of the regulations below cites the old laws as authority since they appear as citations in the current edition of Title 46, Code of Federal Regulations. Referring to the old laws rather than the new ones is permitted under Section 2(b) of Pub. L. 98–89. In a separate rulemaking project, the Coast Guard is in the process of replacing the old authority citations in Title 46 with the new cites in Pub. L. 98–89.

List of Subjects

46 CFR Part 24

Marine safety, Vessels, Fishing vessels, Passenger vessels, Authority delegation.

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements, Vessels, Navigation (water), Passenger vessels, Fishing vessels.

46 CFR Part 30

Administrative practice and procedure, Foreign relations, Hazardous materials transportation, Penalties, Tank vessels, Barges.

46 CFR Part 31

Marine safety, Tank vessels, Barges, Law enforcement, Flammable materials.

46 CFR Part 32

Marine safety, Fire protection, Tank vessels, Barges.

46 CFR Part 35

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Tank vessels, Barges, Seamen.

46 CFR Part 70

Passenger vessels, Marine safety, Foreign trade, Treaties.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements, Foreign trade, Law enforcement.

46 CFR Part 75

Marine safety, Passenger vessels.

46 CFR Part 77

Marine safety, Passenger vessels, Navigation (water).

46 CFR Part 78

Marine safety, Passenger vessels, Penalties, Reporting and recordkeeping requirements, Navigation (water).

46 CFR Part 90

Cargo vessels, Marine safety, Administrative practice and procedure, Authority delegations (Government agencies).

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Law enforcement.

46 CFR Part 94

Cargo vessels, Marine safety.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR Part 107

Vessels, Continental shelf, Oil and gas exploration, Marine safety, Marine resources.

46 CFR Part 108

Fire prevention, Vessels, Continental shelf, Oil and gas exploration, Marine safety, Marine resources.

46 CFR Part 109

Reporting and recordkeeping requirements, Vessels, Continental shelf oil and gas exploration, Marine safety, Marine resources.

46 CFR Part 163

Marine safety.

46 CFR Part 188

Oceanographic vessels.

46 CFR Part 189

Marine safety, Oceanographic vessels.

46 CFR Part 192

Marine safety, Oceanographic vessels, Communications equipment.

46 CFR Part 195

Marine safety, Oceanographic vessels, Navigation (water).

46 CFR Part 196

Marine safety, Oceanographic vessels, Reporting and recordkeeping requirements, Navigation (water), Penalties.

In consideration of the foregoing, the Coast Guard amends Title 46, Code of Federal Regulations, as follows:

1. **Authority:** 46 U.S.C. 375, 391a, and 416; 49 U.S.C. 108; 50 U.S.C. 198; 49 CFR 1.46.

2. By removing the words "pilot ladders" in § 31.01–5(a), § 31.10–15(b), § 71.20–15(a), § 71.25–10(a), § 91.20–15(a), § 91.25–10(b), § 189.20–15(a), and § 189.25–10(a) and by inserting in their place the words "pilot boarding equipment."

3. By adding § 30.10–50, § 70.10–36, § 90.10–30, and § 188.10–56 and by revising § 107.11. The text of the sections is set out only once. The text of each section is identical except for the section number in the heading.

§ . Pilot Boarding Equipment and Point of Access.

(a) "Pilot Boarding Equipment" means a pilot ladder, accommodation ladder, pilot hoist, or combination of them as required by this subchapter.

(b) "Point of Access" means the place on deck of a vessel where a person steps onto or off of pilot boarding equipment.

4. By removing § 26.03–15, § 35.01–20, § 75.50–5(a)(3), § 94.50–5(b)(2), § 108.711, § 109.343, § 109.345 and § 192.50–5(b)(2).

5. By adding new Subpart 32.90 consisting of § 32.90–1, Subpart 77.40 consisting of § 77.40–1, Subpart 96.40 consisting of § 96.40–1, Subpart 195.40 consisting of §§ 195.40–1, and 108.719. The text of each section is identical except for the section number in the heading. The text of the sections is set out only once.

Subpart —Pilot Boarding Equipment

§ . Pilot Boarding Equipment.

(a) This section applies to each vessel that normally embarks or disembarks a pilot from a pilot boat or other vessel.

(b) Each vessel must have suitable pilot boarding equipment available for use on each side of the vessel. If a vessel has only one set of equipment, the equipment must be capable of being easily transferred to and rigged for use on either side of the vessel.

(c) Pilot boarding equipment must be capable of resting firmly against the vessel's side and be secured so that it is clear from overboard discharges.

(d) Each vessel must have lighting positioned to provide adequate illumination for the pilot boarding equipment and each point of access.

(e) Each vessel must have a point of access that has—

(1) a gateway in the rails or bulwark with adequate handholds; or

(2) Two handhold stanchions and a bulwark ladder that is securely attached to the bulwark rail and deck.

(f) The pilot boarding equipment required by paragraph (b) of this section must include at least one pilot ladder approved under subpart 163.003 of this chapter. Each pilot ladder must be of a single length and capable of extending from the point of access to the water's edge during each condition of loading and trim, with an adverse list of 15°.

(g) Whenever the distance from the water's edge to the point of access is more than 30 feet, access from a pilot ladder to the vessel must be by way of an accommodation ladder or equally safe and convenient means.

(h) Pilot hoists, if used, must be approved under subpart 163.002 of this chapter.

6. By adding new § 35.01–55, Subpart 78.90 consisting of § 78.90–1, Subpart 97.90 consisting of § 97.90–1, and Subpart 196.95 consisting of § 196.95–1. The text of each section is identical except for the section number in the heading. The text of the sections is set out only once.

Subpart —Pilot Boarding Operations

§ . Pilot Boarding Operation:

(a) The master shall ensure that pilot boarding equipment is maintained as follows:

(1) The equipment must be kept clean and in good working order.

(2) Each damaged step or spreader step on a pilot ladder must be replaced in kind with an approved replacement step or spreader step, prior to further use of the ladder. The replacement step or spreader step must be secured by the method used in the original construction of the ladder, and in accordance with manufacturer instructions.

(b) The master shall ensure compliance with the following during pilot boarding operations:

(1) Only approved pilot boarding equipment may be used.

(2) The pilot boarding equipment must rest firmly against the hull of the vessel and be clear of overboard discharges.

(3) Two man ropes, a safety line and an approved lifebuoy with an approved water light must be at the point of access and be immediately available for use during boarding operations.

(4) Rigging of the equipment and embarkation/debarkation of a pilot must be supervised in person by a deck officer.

(5) Both the equipment over the side and the point of access must be adequately lit during night operations.

(6) If a pilot hoist is used, a pilot ladder must be kept on deck adjacent to the hoist and available for immediate use.

7. By adding a new § 109.347 to read as follows:

§ 109.347 Pilot boarding equipment.

(a) The master or person in charge shall ensure that pilot boarding equipment is maintained as follows:

(1) The equipment must be kept clean and in good working order.

(2) Each damaged step or spreader step on a pilot ladder must be replaced in kind with an approved replacement step or spreader step, prior to further use of the ladder. The replacement step or spreader step must be secured by the method used in the original construction of the ladder, and in accordance with manufacturer instructions.

(b) The master or person in charge shall ensure compliance with the following during pilot boarding operations:

(1) Only approved pilot boarding equipment may be used.

(2) The pilot boarding equipment must rest firmly against the hull of the vessel and be clear of overboard discharges.

(3) Two man ropes, a safety line and an approved lifebuoy with an approved water light must be at the point of access and be immediately available for use during boarding operations.

(4) Rigging of the equipment and embarkation/debarkation of a pilot must be supervised in person by a deck officer.

(5) Both the equipment over the side and the point of access must be adequately lit during night operations.

(6) If a pilot hoist is used, a pilot ladder must be kept on deck adjacent to the hoist and available for immediate use.

8. In § 163.003–13 by adding a new paragraph (c)(10), and revising the introductory text of paragraph (d) and revising (g) to read as follows:

§ 163.003–13 Construction.

* * * * *

(c) * * *

(10) Each replacement step must be either white or yellow instead of the orange color required under paragraph (c)(8) of this section, and must have the special marking required in § 163.003–25(b).

(d) *Spreaders.* Each pilot ladder with 5 or more steps must have one or more spreaders that meet the following requirements:

* * * * *

(g) *Special arrangements for pilot hoists.* Each pilot ladder produced for use with an approved pilot hoist must have at least 8 steps. The top ends of its suspension members need not have an eye splice or thimble or be arranged as required in paragraph (b) of this section if necessary to permit attaching the ladder to fittings of a particular pilot hoist. The spreader required in paragraph (d) of this section may be omitted from an 8 step ladder for a pilot hoist.

8. By adding a new § 163.003–25(b) to read as follows:

§ 163.003–25 Marking.

* * * * *

(b) In addition to the markings required under paragraph (a) of this section each step sold as a replacement step must be branded or otherwise permanently and legibly marked with the words "REPLACEMENT STEP ONLY."

Dated: June 13, 1984.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 84–16288 Filed 6–20–84; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[General Docket No. 80–113, RM–3232, RM–3537; FCC 84–175]

Amendment of the Commission's Rules With Regard to the Multipoint Distribution Service; and Petitions for Rulemaking Regarding the Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting new rules for the Multipoint Distribution Service (MDS). The rules define adjacent channel interference and cochannel interference and establish a protected service area for MDS stations. The reasons for adopting these rules are to facilitate settlement of interference disputes in this service and to aid in the location of new stations.

DATE: The new rules will be effective on July 23, 1984.

FOR FURTHER INFORMATION CONTACT: Kevin Kelley, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 634–1860.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 21

Communications common carriers, Point-to-Multipoint microwave.

First Report and Order

In the matter of amendment of parts 21, 74, and 94 of the Commission Rules and Regulations with regard to technical requirements applicable to the Multipoint Distribution Service, the Instructional Television Fixed Service and the Private Operational-Fixed Microwave Service (OFS). Amendment of Part 21 of the Commission's Rules to make the prior coordination requirement of § 21.100(d) applicable to Multipoint Distribution Service. Amendment of Part 21 of the Commission's Rules to define the Interference Studies Required by § 21.902(c) and to Establish Minimum Criteria for the Acceptance of Newly Filed Applications Proposing the Construction of New MDS Stations or the Amendment of Existing MDS Authorizations; General Docket No. 80–113, RM–3232 and RM–3537.

Adopted: April 26, 1984.
Released: June 14, 1984.

By the Commission.

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Appendix A—List of Commenters.
Appendix B—Amended Rules

I. Introduction

1. On April 24, 1980, the Commission released a Notice of Inquiry and Proposed Rulemaking in this Docket in which it proposed changes to Subpart K of Part 21 of the Rules pertaining to the Multipoint Distribution Service (MDS).[1] An inquiry was made concerning the possible application of the proposed rules to the 2500–2690 MHz band that the Commission had proposed be shared by the MDS, the Instructional Television Fixed Service (ITFS) and the Private Operational Fixed Microwave Service (OFS).[2]

2. The ITFS channels are licensed primarily to educational institutions that use them to transmit instructional television material to remote locations such as schools, hospitals and industrial plants. The MDS channels are used primarily for the distribution of premium television to hotels, motels, and single family and multiunit residences.

3. Approximately 70 entities submitted comments and reply comments in response to the *Notice*. On February 10, 1982, Microband Corporation of America (Microband) submitted a 3 volume proposal to create what it termed a "wireless cable system" using frequencies in the 2500–2690 MHz band.[3] Microband simultaneously submitted a "Motion for Acceptance of Additional Comments" requesting that its proposal be accepted as additional comments in this proceeding and in the companion proceeding in General Docket No. 80–112, which was granted.[4] Approximately 150 reply comments were received in response to the Microband proposal.[5]

4. On May 26, 1983, the Commission adopted a Report and Order in the companion proceeding in General Docket No. 80–112 reallocating 8 channels in the 2500–2690 MHz band from the ITFS to the MDS. The channels reallocated were the four channels in the "E" Group (E_1, 2596–2602 MHz; E_2, 2608–2614 MHz; E_3, 2620–2626 MHz and E_4, 2632–2638 MHz) and the four

[1] Notice of Inquiry and Proposed Rulemaking in General Docket No. 80–113, FCC 80–137, 45 FR 29350 (1980) (hereinafter cited as *Notice*.)

[2] Notice of Inquiry, Proposed Rulemaking and Order in General Docket No. 80–112, FCC 80–136, 45 FR 29323 (released May 2, 1980) (hereinafter cited as *Companion Notice*.)

[3] Proposal of Microband Corporation of America, General Docket Nos. 80–112 and 80–113 (February 10, 1982) (hereinafter cited as *Microband Proposal*).

[4] Order Accepting Additional Comments, 47 FR 18,932 (1982).

[5] A list of all those submitting comments in this proceeding is contained in Appendix A. This list includes all comments both formal and informal. Comments that were not filed in a timely manner are hereby accepted as informal comments. Some entities submitted more than one set of comments and hence are listed more than once.

channels in the "F" Group (F_1, 2602–2608 MHz; F_2, 2614–2620 MHz; F_3, 2626–2632 MHz and F_4, 2638–2644 MHz).[6]

5. Before the adoption of the *Multichannel Order*, the MDS was allocated two channels. In the 50 areas listed in Section 21.901(c) of the Rules, 47 CFR 21.901(c), the channels are each 6 MHz wide and are designated channel 1 (2150–2156 MHz) and channel 2 (2156–2162 MHz). In all other areas, channel 1 is available but channel 2 is replaced by channel 2A that is only 4 MHz wide (2156–2160 MHz). Only channel 1 and channel 2 have sufficient bandwidth to transmit a standard television signal (6 MHz of bandwidth is required). Prior to the adoption of the *Multichannel Order*, there were twenty-eight, 6 MHz channels available for ITFS use. As a result of the reallocation, the ITFS is now authorized twenty, 6 MHz channels in all markets. In addition, all ITFS applicants for and licensees and permittees of the channels reallocated to the MDS as of the date of reallocation are grandfathered. Thus, as a result of the reallocation, the MDS is now authorized ten, 6 MHz channels in the fifty metropolitan areas where two, 6 MHz channels were previously available and nine, 6 MHz channel and one, 4 MHz channel in all other areas. In both situations, the reallocated channels are subject to the rights of grandfathered ITFS users.[7]

6. In the *Notice*, we observed the MDS technical rules were adopted in 1974 [8] when there were no MDS stations in operation. As the service has become operational, a number of technical problems have been encountered by licensees in the operation of their stations and by the Commission's staff in processing the large number of MDS applications that were not fully anticipated by the technical rules. One source of difficulty encountered both by those operating MDS stations and those processing applications was actual or anticipated electrical interference between stations operating on the same channel in adjacent areas or between stations on adjacent channels operating in the same areas. When we adopted the existing rules, we depended on informal coordination between those involved to anticipate and resolve interference conflicts. This informal procedure has not been successful because we have experienced a large number of circumstances in which proposals for construction of new stations or modification of existing stations are met with formal petitions alleging electrical interference.[9] We therefore decided there was a need to establish technical rules to resolve these conflicts. It was also our intention to establish criteria that would guide us in locating new stations.

7. At the time of the adoption of the *Notice*, a similar set of problems did not exist in either the ITFS or the OFS. In the ITFS, this was because the larger number of channels available allowed channel assignments to be made so that very little adjacent area, cochannel operation or same area, adjacent channel operation was authorized. In the OFS, these problems had not occurred because the channels assigned to that service were very lightly used. We recognized, however, that if we decided to reallocate some of the ITFS channels to the OFS and/or the MDS, similar problems might occur in these services. For this reason, we asked for comments on the feasibility of applying the proposed new technical rules to all services sharing the band.

II. The Proposed Rules

8. In the *Notice*, we proposed several new rules for the MDS to govern matters relating to interference. The proposed rules concerned cochannel and adjacent channel interference standards, a standard receiving antenna, the definition of a protected service area, transmitting antenna height and location standards, and adjacent channel transmitter location standards. In this section, we will address each of these matters. In the Notice of Inquiry portion of the *Notice*, we requested comment on several issues, including the appropriateness of applying the proposed MDS rules to the ITFS and OFS users of the 2500–2690 MHz band. We will discuss the applicability of each of the proposed MDS rules to the ITFS. Also, notwithstanding the Commission's decision to prohibit use of the H group (OFS) channels for video entertainment services until August 1, 1985,[10] the OFS channels ultimately may be used in part for delivery of video entertainment programming. Therefore, some of the same considerations raised with respect to MDS technical standards may be made generally applicable to OFS.

A. Interference Standards

1. Cochannel Interference

9. Section 21.902(c) of the Commission's Rules, 47 CFR 21.902(c), requires that all MDS applications include an analysis of the potential for harmful interference to all existing and previously proposed cochannel or adjacent channel operations with transmitters located within 50 miles of the applicant's proposed transmitter location. We have received many petitions to deny containing claims that a newly proposed cochannel station would cause harmful interference to the petitioner's stations, but often the petitions do not state what constitutes harmful cochannel interference. Similarly, the existing MDS rules do not contain a definition of harmful cochannel interference. In the *Notice*, we proposed that an undesired cochannel signal be deemed to be causing harmful cochannel interference when the ratio of the desired signal to the undesired cochannel signal was less than 45 dB at the output of a standard receiving antenna oriented to receive the maximum desired signal.

10. Our choice of 45 dB as the proposed standard was based both on previous Commission determinations and generally accepted international standards. Since 1952 the Commission has recognized, that for Grade B service with no frequency offset, (see paragraphs 14–18 below for a discussion of the use of frequency offset techniques to reduce cochannel interference problems) a signal that is within 45 dB of the desired signal is an interfering signal.[11] This standard was reiterated by the Commission in the Low Power Television and VHF "Drop-In" Rulemaking Proposals.[12] It is also the standard used by the CCIR.[13]

11. The 45 dB ratio was established on the basis of tests conducted by the Television Allocation Study Organization (TASO) in which actual television pictures, both with and without cochannel interference, were

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[6] Report and Order, General Docket No. 80–112, 94 F.C.C. 2d 1203 (1983) (hereinafter cited as *Multichannel Order*).

[7] A complete description of the reallocation plan is contained in the Multichannel Order. *Multichannel Order*, at 1248.

[8] Report and Order, Docket No. 19493, 45 F.C.C. 2d 616 (1974), *recon.*, 57 F.C.C. 2d 301 (1975).

[9] *Notice*, at para. 3.

[10] Private Operational-Fixed Microwave Service; Various Methods of Transmitting Program Material to Hotels and Similar Locations and; Use of the Business Radio Service for the Transmission of Motion Pictures or Other Program Material to Hotels or Other Similar Points, 48 FR 32,576, 32,583 (July 18, 1983). *See also*, 47 CFR 94.81(b) n.20.

[11] Television Assignments, 41 F.C.C. 142, 177 (1951).

[12] TV Translators and Low Power-Stations, 87 F.C.C. 2d 610, 613 (1981), Table of TV Channel Allotments, 83 F.C.C. 2d 51; 93 (1980).

[13] *Ratio of Wanted-to-Unwanted Signal for AM Vestigial Sideband Color Television Systems*, Report 306–4, Recommendations and Reports of the CCIR, 1982 Volume XI, Part 1, Broadcasting Service (television) 225, (1982) (hereinafter cited as CCIR Report 306–4). The CCIR recommendation of 45 dB is just *tolerable* interference that occurs between 1% and 10% of the time. An additional 10 dB of protection would be required to provide a picture with just *perceptible* interference. The latter is the recommended standard where both the wanted and unwanted signals are substantially non-fading.

compared by a panel of viewers.[14] When the ratio of the desired signal to the undesired signal was 45 dB, the picture observed was judged to be "passable" or better by 60% of those viewing the picture.[15] Passable refers to one of six television picture grades used by the TASO to rate the quality of television pictures. A passable picture is defined as one in which the interference is perceptible but not objectionable. A picture of this quality is designated a TASO Grade 3 picture.[16] The next higher grade picture, a TASO Grade 2 or fine, is obtained when the ratio is in the 50 to 55 dB range.

12. Because signal strength received is dependent on both a transmitting antenna's proximity and power, defining what constitutes an interfering signal determines how close together stations can be located or alternatively, how much power stations can radiate. Increasing the ratio to 50 dB would mean that a new applicant would be required to locate its transmitter further from an existing station and/or to radiate less power. Since new stations would be required to locate further from existing stations, there would be fewer opportunities for new stations to be licensed. Of course, receiving sites located further from the existing station would be less likely to experience harmful cochannel interference.

13. On the other hand, reducing the ratio below 45 dB would mean new stations could be located closer to existing stations and hence there would be more stations available. It would also mean that some of those receiving service from the existing station would be receiving a level of service inferior to that received under the 45 dB standard.

14. One commenter, John F. X. Browne, suggested that 45 dB was not sufficient protection and that we should adopt 50 dB as the standard. Mr. Browne claimed the additional protection is needed to combat the "low frequency beat" that is typical of cochannel interference. He further suggested that these deleterious effects can be ameliorated by using "exotic methods such as precisely controlled frequency offsets."[17] The effect of cochannel interference referred to by Mr. Browne is that which occurs when cochannel stations are operating on their nominal frequencies and the ratio of the desired channel signal to the undesired channel signal is less than 45 dB at the television receiver. The interference shows up as a slowly moving horizontal bar superimposed on the television picture. The width of the bar and the speed at which it moves are determined by the difference in frequency between the visual carrier of the desired station and the visual carrier of the undesired station. This difference, which is apparently the low frequency referred to by Mr. Browne, is commonly called the frequency offset between the two stations.

15. The Commission has long been aware that controlling the offset between cochannel transmitters located in adjacent areas increases the level of undesired signal that can be tolerated by approximately 17 dB.[18] That is when the frequency offset between the transmitters is maintained at 10 KHz±1 KHz a passable television picture (TASO Grade 3) will be available where the ratio of the desired signal to the undesired signal is 28 dB as contracted with the 45 dB ratio required when the offset is not controlled. If the offset is maintained within ±2 Hz (this is called a "precise" frequency offset), the required ratio is reduced another 6 dB to 22 dB.[19]

16. Because of the higher frequencies used for MDS transmission (also ITFS) using frequency offset techniques is technically more difficult than at either VHF or UHF television frequencies. For this reason we have not required closely spaced MDS stations (or ITFS stations) to use this technique to reduce the possibility of cochannel interference problems. We have, however, always required that all applicants and licensees "make exceptional efforts to avoid harmful interference to other users and to avoid blocking * * * cochannel use in nearby cities." 47 CFR 21.902(a). In the first instance in which we authorized the MDS station to increase its power from 10 watts to 100 watts, we recognized that using frequency offset techniques would reduce the required desired to undesired signal ratio by at least 16 dB. Because of this, that grant was subject to the condition that the licensee use frequency offset techniques if a station were subsequently authorized in an adjacent area.[20]

17. Thus, we conclude that, although Mr. Browne is correct in stating that frequency offset techniques will reduce the effects of cochannel interference, we do not agree stations not using these techniques require more than the 45 dB of protection we proposed.

18. Another commenter, Cox Cable Communications, Inc. (CCCI) suggested that we use 55 dB rather than 45 dB because our calculations "do not take into considerations reflections, refractions, ducting, ground waves and other deleterious phenomena that can only be properly evaluated while a system is in actual operation.[21] These phenomena do produce signal levels in practice that may vary considerably from the levels that would be predicted by standard propagation calculations. In some situations, the desired signal will be affected more than the undesired signal; in other situations the undesired signal will be affected more. It is more likely, however, that the undesired signal, which generally travels over a much longer propagation path, will be affected by such phenomena.

19. Another commenter, R. L. Vega, suggested that the protection ratio proposed was too high and that 40 dB was adequate. Mr. Vega claimed the lower protection ratio was justified because the Commission analysis did not consider significant propagation factors that reduce the level of the undesired signal received.[22] These are apparently the same factors cited by CCCI to support its argument that a higher ratio should be used. Reducing the ratio would allow stations to be located closer together thereby reducing

[14] Engineering Aspects of Television Allocations. Report of the Television Allocations Study Organization to the Federal Communications Commission, 535–537, (March 16, 1959) (hereinafter cited as TASO *Report*). *See also*, Dean, et al *Measurements of the Subjective Effects of Interference in Television Reception*. 48 Proceedings of the IRE 1035 (June 1960). (This is a detailed summary of the TASO tests of the effects of interference on perceived television picture quality).

[15] *Id.* at 536 (Figure 42).

[16] The six TASO grades and their description are:

Grade 1, Excellent. The picture is of extremely high quality, as good as you could desire.

Grade 2, Fine. The picture is of high quality providing enjoyable viewing. Interference is perceptible.

Grade 3, Passable. The picture is of acceptable quality. Interference is not objectionable.

Grade 4, Marginal. The picture is poor in quality and you wish you could improve it. Interference is somewhat objectionable.

Grade 5, Inferior. The picture is very poor but you could watch it. Definitely objectionable interference is present.

Grade 6, Unusable. The picture is so bad that you couid not watch it. *Id.* at 500.

[17] Comments of John F. X. Browne, General Docket No. 80–113, 2–3 (September 2, 1980) (hereinafter cited as Brown Comments).

[18] Table of TV Channel Allotments, *supra* note 12, at 93.

[19] Kalagian, G.S., A Review of the Technical Planning Factors for VHF Television Service, FCC/OST Report RS77–01, 12 (March 1, 1977). National Technical Information Service No. 266341.

[20] Micro-TV, Inc., 54 F.C.C. 2d 100, 101–102 (1975).

[21] Comments of Cox Cable Communications, Inc. General Docket No. 80–113, 2–3 (September 2, 1980) (hereinafter cited as CCCI Comments).

[22] Comments of Richard L. Vega, Northstar Communications, Elborn MDS Company, San Bernadino MDS Company, Angeles MDS Company, and Microwave Communications Systems, Inc., General Docket No. 80–113, 4 (September 2, 1980) (hereinafter cited as Vega Comments).

what Mr. Vega refers to as "white" areas (this refers to areas between stations that cannot be served by either station). Of course locating the stations closer together also will increase the possibility of cochannel interference. In any case, what CCCI and Mr. Vega are really arguing is not that the proposed ratio is incorrect but rather that the methods used to calculate it are not always accurate. We agree; however, we do not believe that we should adopt a different standard in an attempt to account for unquantifiable propagation phenomena. Neither CCCI nor Mr. Vega offered any analytical or experimental data to support the suggested changes in the standard. We believe that 45 dB is a reasonable compromise between insuring that a licensee has an adequate level of protection and insuring there are sufficient stations to serve the public.

20. Several members of the ITFS community suggested that because the proposed standard was based on entertainment programming it was not necessarily appropriate for other types of programming.[23] Their claim was that programming material that contains more detail requires a higher level of protection than ordinary entertainment programming. They cited schematic diagrams, mathematical formulas, and detailed textual information as examples of material that would require more protection against cochannel interference than entertainment programming. We are aware that the level of cochannel interference that viewers will find unacceptable is dependent upon the nature of the material being transmitted. In the TASO tests, comparisons were made between a scene with relatively little detail and one with considerable detail; the results of these tests showed that for the same interference level, scenes with more detail are more likely to be perceived as having unacceptable levels of interference than are scenes with less detail.[24]

21. Because our purpose in adopting a definition of what constitutes cochannel interference is to have a basis for determining the separation between cochannel stations, it is not clear that we need to use the same standard in every situation. If it can be shown by an applicant or a licensee that the programming being transmitted is of a type that requires a level of protection greater than that afforded by the standard we are adopting, we can use a standard appropriate for the situation. In such a case, it would be the responsibility of the licensee to show clearly that the 45 dB ratio was not sufficient protection for the service being provided. Such a showing would consist of test data similar to that provided in the original TASO report.

22. Several commenters noted that we only considered cochannel interference in situations where both channels were being used to transmit conventional television signals and that we failed to consider the susceptibility of a television signal to cochannel interference caused by a channel carrying digital information.[25] The interference that would result from the transmission of digital data is dependent upon the data rate being transmitted, the modulation method employed, and other characteristics of the digital data system as well as the relative powers of the signals involved. At this time, there is virtually no use of either the 2150–2162 MHz band or the 2500–2690 MHz bands for the transmission of digitized information. We received neither theoretical nor empirical data that could be used to predict the strength of a digitally modulated signal that might cause harmful interference. For these reasons, we do not believe we should consider developing digital vs. video interference standards at this time.

23. On the basis of this analysis, we have concluded that the proposed 45 dB cochannel interference standard represents a reasonable compromise between the need to insure that existing MDS operations do not experience harmful interference from new stations and the need to not restrict unnecessarily the construction of new facilities that will provide service to areas not now being served. We have also concluded that this standard should be used to resolve cochannel interference standards between multichannel MDS stations and the "grandfathered" operators of E–group and F–group ITFS facilities. As noted above, we have received no evidence that ITFS operations need a higher level of protection than do MDS operations. We will also use this standard to resolve any cochannel interference issues involving only ITFS stations. Thus, we are amending the MDS rules to make the proposed interference standard the permanent standard. We are not, at this time, amending Part 74 to make this standard a part of the ITFS rules.

2. Adjacent Channel Interference

24. Adjacent channel interference is interference that occurs as a result of the operation of either an upper adjacent channel transmitter or a lower adjacent channel transmitter in the vicinity of the desired channel system. Adjacent channel interference would not exist if reception equipment did not respond to adjacent channel signals *and* transmission equipment never radiated out of band signals. Unfortunately, this is not the case. Adjacent channel interference can and does occur in two ways. It occurs when the reception equipment produces either a visual or an aural output in response to an adjacent channel signal, and it also occurs when a transmitter emits a signal outside its assigned channel and within an adjacent channel.

25. In the *Notice*, we explained that whether a television receiver produces an undesirable output in response to an undesired adjacent channel signal is affected by three factors: the absolute level of the signals received, the relative level of the signals received, and the design of the receiver itself. On the basis of a 1974 report from the Office of the Chief Engineer,[26] we concluded that if

[23] *See, e.g.*, Comments of Leland Stanford Junior University, General Docket No. 80–113, Attachment, at 3 (September 2, 1980) (hereinafter cited as Stanford Comments).

[24] *TASO Report, supra* note 14, at 537.

[25] *See, e.g.*, Comments of the Corporation for Public Broadcasting, General Docket No. 80–113, 7–8, (September 2, 1980).

[26] FCC, A Study of the Characteristics of Typical Television Receivers Relative to the UHF Taboos, Project Number 2229–3 (June 1974). The purpose of the work described in this report was to investigate certain performance characteristics of UHF television receivers that relate to the so-called "UHF Taboos" that are contained in §§ 73.698 and 73.610(d) of the rules, 47 CFR 73.698, 73.610(d). Tests were conducted on 47 receivers to determine their susceptibility to interference caused by the following type of undesired signals:

Adjacent channels
Image frequency channels
Channel combinations creating intermodulation (two undesireds)
Channels creating cross-modulation
Channels differing in frequency by the IF of the receiver

The results of the tests were presented as a set of graphs that showed the relationship between the level of the desired signal and the level of the undesired signal that would just cause perceptible interference. The undesired levels plotted were the levels that caused perceptible interference in the best receiver, the fifth best receiver, fifth worst receiver, the worst receiver and the mean of the interference producing levels of the 47 receivers. In this order, we are only establishing protection from adjacent channel interference and cochannel interference. We recognize that it is possible that interference problems could occur as a result of the operation of noncolocated channels further removed than 1 channel from the desired station; however, we believe that it is better to deal with such occurrences on a case-by-case basis rather than attempt to setup interference standards at this time. *See also*, Middlekamp, L. C., *UHF Taboos-History and Development*, CE–24 IEEE Transactions on Consumer Electronics 514 (November, 1978) (This article contains a discussion of the technical and policy implications of the taboos.).

the desired signal were 15 dB higher than the undesired adjacent signal there would be little, if any, adjacent channel interference produced by reception equipment. We also pointed out that a conventional MDS downconverter is a nonselective device that will downconvert both MDS channel 1 and MDS channel 2 and present downconverted versions of both to the television receiver. For these reasons, we proposed a rule, § 21.902(b)(5), that would require new stations to provide a signal at the input to the television receiver that was at least 15 dB higher than an undesired adjacent channel signal. Implicit in our proposal was a definition of what constitutes adjacent channel interference. That is an adjacent channel signal will be considered an interfering signal when the ratio of the desired signal to the undersired signal is less than 15 dB when measured at the input of the television receiver that is connected to the output of the MDS downconverter.

26. At this point, it is useful to review the background that lead to our proposal. The adjacent channel interference that occurs when television receivers respond to adjacent channel signals is different depending upon whether the interfering channel is an upper adjacent channel or a lower adjacent channel. Upper adjacent channel interference occurs when the television receiver responds to the visual carrier and sidebands of an upper adjacent channel by producing an unsyncronized, undesired picture superimposed on the desired picture. In the Chief Engineer's test at a desired signal level of −45 dBm (the signal level required by the mean receiver to produce a high quality picture), the ratio of desired signal to undesired signal that produced just perceptible upper adjacent channel interference in the mean receiver was −12 dB. The ratio for the best receiver was −27 dB and for the worst receiver it was +10 dB. Thus at this level of desired signal, there was a 37 dB difference between the ability of the best and worst receivers in rejecting upper adjacent channel interference. At much higher desired signal levels, the receivers did not perform as well. For example when the desired signal level was −15 dBm, the ratio for the mean receiver was 2 dB, for the best receiver it was −12 dB and for the worst receiver it was +16 dB. What these results mean is that depending on the desired signal level, some receivers do not respond to upper adjacent signals until the adjacent signal is considerably stronger (25 dB or more) than the desired signal but that and there are other receivers that respond to upper adjacent channel signals that are a lower level (in some case more than 15 dB lower) than the desired signal.

27. Lower adjacent channel interference occurs when a television receiver responds to the aural carrier and associated sidebands of the lower adjacent channel and is manifested by bar patterns superimposed on the displayed pictures. The results of the Chief Engineer's test showed that most of the receivers tested were more susceptible to lower adjacent channel interference than they were to upper adjacent channel interference. The effect of lower adjacent channel interference also varies with ratio of visual carrier to aural carrier in the adjacent channel signal. The Chief Engineer's tests were done with this ratio set at 10 dB.[27]

28. It can readily be seen from this review of the test data upon which we based our proposed adjacent channel interference standard that our approach was extremely conservative. For example, our proposed standard of a desired to undesired signal ratio of 15 dB was 42 dB higher than the ratio required by the best receiver in the presence of an upper adjacent channel interfering signal when the desired signal level was −45 dBm. It gave 5 dB more protection than required by the worst receiver at this level of desired signal. Only the worst receiver operating under the worst conditions performed poorer than our proposed standard.

29. We did not receive much comment on our proposed adjacent channel interference standard. One commenter did point out that cable television systems operate with equal levels of desired and adjacent channel signals without apparent problem.[28] The National Telecommunications and Information Administration (NTIA) suggested that we should not base our standards on the worst equipment but rather on the best equipment.[29] Microband suggested that the Chief Engineer's test should not be automatically applied to MDS stations.[30] It also suggested that we might look to the cable television industry for guidance in this area.[31] Microband also suggested that in those cases where adjacent channel interference occurs because of the high signal levels involved the solution was merely to pad down the signal input to the receiver.[32]

30. Since this proceeding began, the CCIR has issued the following adjacent channel protection ratios for UHF and VHF television systems: for lower adjacent-channel interference the ratio of the desired signal to the undesired signal should be equal to or greater than −6 dB; for upper adjacent channel interference the ratio should be equal to or greater than −12 dB. These recommendations are accompanied by the acknowledgement that "fairly conservative values have been chosen to account for the divergence in performance between different types of receivers."[33] The CCIR recommendations also contain the notation "Investigations by Canada [CCIR, 1978–82] indicate the appropriate values appear to be −9 dB for lower adjacent channel and −13 dB for upper adjacent channel on system M/NTSC."[34] The M/NTSC is the television transmission system used in the U.S. and Canada.

31. The lower adjacent channel interference standard recommended by CCIR was based on the assumption that the undesired aural carrier was 7 dB below the undesired visual carrier. If this ratio was increased (the aural carrier reduced relative to the visual carrier), the lower adjacent channel interference standard could be reduced. In its comments filed in this proceeding, Contemporary Communications Corporation recommends that the visual-to-aural ratio be 15–17 dB.[35] John F. X. Browne in his comments points out that cable television systems typically operate with a visual-to-aural ratio of 15 dB and equal level visual carriers without apparent difficulty.[36]

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[27] Section 21.904(d) of the Rules, 47 CFR 21.904(d), requires that, an MDS station being used for television transmission, must maintain the aural signal between 7 and 10 dB below the visual signal. This is the same standard required of broadcast television stations. 47 CFR 73.682(a)15. Cable television systems operate with the aural carrier 15 to 17 dB below the visual carrier to reduce the occurrence of lower adjacent channel interference. This apparently does not effect the audio performance of these systems. *See*, Additional Comment of Contemporary Communications Corporation, General Docket Nos. 80–112 and 80–113, 21 (July 2, 1982). *See also, infra*, para. 29.

[28] Browne Comments, *supra* note 17, at 6.

[29] Comments of the National Telecommunications and Information Administration, General Docket No. 80–113, 7 (September 2, 1980) (hereinafter cited NTIA Comments).

[30] Comments of Microband Corporation of America, General Docket No. 80–113, 63, (September 8, 1983) (hereinafter cited as Microband Comments).

[31] *Id.*

[32] *Id.*

[33] *Ration of the Wanted-to-Unwanted Signal in Monochrone Television*, Recommendation 418–3, Recommendations and Reports of the CCIR, 1982, Volume XI–Part I, Broadcasting Service (Television) 215, 216 (1982).

[34] CCIR Report 306–4, *supra* note 13, at 232.

[35] See, *supra* note 27.

[36] Browne Comments, *supra* note 17, at 6.

32. Although there has not been extensive testing of adjacent channel MDS operations, two such tests have occurred. First was the test that was conducted in New York City in 1974. A statistical analysis of the results of the test indicated that if the ratio of the desired signal to the undesired signal was greater than −2.5 dB, it could be stated at the 72% confidence level that no adjacent interference would be observed. Similarily, it could be stated at the 32% confidence level that if the ratio was between −2.5 and −7.7 dB adjacent channel interference was barely visible and at the 45% confidence level that if the ratio were less than −7.7 dB the interference would be easily visible.[37] Microband included with its comments in this proceeding the results of another adjacent channel test conducted in Cincinnati in 1980.[38] Unfortunately in this test, the ratio of the desired channel signal to the undesired channel signal was between +8 dB and +30 dB. Not unexpectedly no adjacent channel interference was observed on the desired channel.

33. We recognize that the adjacent channel performance of the television receiver is not the only factor that determines the adjacent channel performance of an MDS reception system. A typical MDS reception system consists of an antenna, a downconverter, and a television receiver. The downconverter can consist of an amplifier and a mixer followed by a second amplifier. If there are two or more signals present at the output of the receiving antenna, each of the components in the downconverter could generate intermodulation products that would interfere with television reception. For example, if there were two or more very strong signals present at the input to the first amplifier, the amplifier could be overloaded, that is forced to operate in a nonlinear manner, thereby produce undesired intermodulation products. The mixer that is used to change the frequency of the MDS signal to the desired television channel is inherently nonlinear device that will always produce intermodulation products when more than one signal is present. The second amplifier can also generate intermodulation products if the received signal levels are too high. We did not receive any quantitative information in this proceeding concerning these problems despite the fact that we specifically requested it in the *Notice*. It is known that MDS downconversion equipment is available that can handle 8 equal amplitude adjacent channels but only if the ratio of the visual carrier to aural carrier is increased from the normal 10 dB to 17 dB. The existing MDS system in Phoenix successfully transmits channels 1 and 2 with equal power levels from the same location. Thus, each channel is available at the output of the antenna and no objectionable adjacent interference has been reported.

34. After carefully considering these facts, we have concluded that our proposed adjacent channel interference standard was overly conservative. We believe that a more appropriate ratio would be 0 dB. That is, if the ratio of the desired signal to the undesired signal measured at the output of a standard antenna oriented to receive the maximum desired signal is less than 0 dB, the adjacent channel signal will be deemed to be causing undesirable adjacent channel interference. This protection ratio is higher than the CCIR recommendation for UHF and VHF television systems and lower than performance achieved by more than 90% of the receivers in the Chief Engineer's test. It is also higher than any desired to undesired signal ratio at which adjacent channel interference has been observed in any adjacent channel MDS test.

35. Because many of the existing grandfathered ITFS operations were not designed to operate in the presence of adjacent channels signals, we do not believe that it would be reasonable to use the same adjacent channel interference standards for that service. We are especially concerned about the situation where a grandfathered E group ITFS operator and a multichannel MDS F group operator are operating in the same area. On the one hand, we want to make certain that the MDS operator does not cause harmful interference to the ITFS operator; and on other hand, we do not wish to limit unduly the ability of the new multichannel MDS operator to provide service to the public. Because we have not received any quantitative information on which to base a protection standard for this situation, we will use the Chief Engineer's data. That data showed that if the ratio of the desired signal to the undesired adjacent channel were 10 dB only the worst receiver would experience harmful interference. We assume that the downconversion equipment and television receivers that are in use in the ITFS today together perform at least as well as the worst television receiver tested in the 1974 tests. Thus, we will require multichannel MDS operators to demonstrate that their signal will be at least 10 dB below the adjacent channel ITFS signal. The signals are to be compared at the output of the ITFS receiving antenna with the antenna oriented to receive the maximum ITFS signal. This standard also will be used in cases involving the "bookend" ITFS channel D_4 and G_1. We stress that this 10 dB standard applies only to those ITFS stations that were constructed prior to May 26, 1983. All subsequently constructed stations will only be entitled to protection to the 0 dB standard.

36. If an adjacent channel transmitter emits sufficiently strong spurious emissions that are outside its assigned band but are within the band of a desired channel, such spurious emissions can be a source of cochannel interference to the desired channel. The existing MDS rules require that the spurious emissions from MDS transmitters be at least 40 dB below the main channel signal.[39] Because such emissions constitute cochannel interference to adjacent channel operations, the cochannel interference rule we are adopting today requires that the level of these emissions be such that they are always 45 dB below the level of the desired signal when measured at the output of an antenna, oriented to receive the maximum desired signal, located within the service area of the desired station, and with an unobstructed propagation path to the desired station. The implications of this result for colocated and noncolocated adjacent channel operations and for transmitter standards are discussed further below.[40]

3. The Standard Antenna

37. The determination of whether an undesired signal will cause harmful interference is made at the output terminals of a reference antenna oriented to receive the maximum desired signal. The reference antenna we proposed for use in making this determination has characteristics generally associated with a 2 foot parabolic reflector antenna. We made the choice of these characteristics by comparing the costs, size, and angular discrimination characteristics of the various alternatives. We stress again, as we did in the *Notice*, that we are not requiring that antennas with such characteristics be used but rather that these characteristics are to be used in

[37] F.C.C., Adjacent Channel Interference Test for the Multipoint Distribution Service, FCC/CC No. 75–01, Appendix C (1975).

[38] Microband Comments, *supra* note 30, Appendix V.

[39] 47 CFR 21.906(b). This section requires only 30 dB of suppression for transmitters rated at less than 10 watts; there are few, if any, such transmitters in use today.

[40] *See infra* paras. 128–136.

making interference and other calculations.

38. The proposed standard did not elicit much comment from the MDS community. Microband did point out that such antennas cost 8 to 9 times as much as existing antennas, are difficult to install, and are seldom used on private homes.[41]

39. Microband is correct. The antennas commonly used in the MDS industry have lower gain, higher side lobes, and lower front-to-back ratios, than the proposed standard antenna. Reception sites equipped with such antennas are much more susceptible to cochannel interference and also require a much higher signal level to achieve the equivalent picture quality as sites equipped with the standard antenna. We proposed the adoption of a standard antenna to aid in determining when harmful interference was present and to aid in the determination of the boundary of an MDS station's protected service area. In making this proposal, we were aware that most receiving sites would not be subject to harmful cochannel interference nor would they be located in areas of low signal strength. We choose as our proposed standard an antenna that was likely to be used when one or both of these conditions existed.

40. NTIA expressed the belief that our proposed standard be a minimum requirement and that we consider adopting a more completely defined standard in a future proceeding which included side-lobe and back-lobe specifications.[42]

41. NTIA also stressed the importance of recognizing a distinction between mandatory specifications and protection standards. Mandatory specifications are a set of requirements that all equipment must meet and protection standards are defined as "technical and operation characteristics which must be observed to reduce interference to prescribed levels as such interference becomes operationally likely."[43] A licensee that failed to use equipment that met the protection standard would not be entitled to relief from an interfering licensee using proper equipment. We believe that our proposed rule concerning the receiving antenna follows these recommendations.

42. Many members of the ITFS community claimed that the proposed reference antenna had much lower performance standards than the antennas being used at many ITFS receive sites.[44] The use of a larger antenna makes receiving stations less susceptible to interference because such antennas have higher gain in the direction of desired signal and lower gain in the direction of the undesired signal than a smaller antenna. (Of course, when the desired and undesired stations have the same bearing relative to the receiving station the antenna gain characteristics have little effect on the desired to undesired signal ratio.) For this reason, we do not believe that using a 2 foot diameter antenna to make interference calculations would adversely affect those using larger antennas. In fact, the adoption of a larger antenna would be a disadvantage to both grandfathered users of the E and F group channels and to the users of ITFS channels D_s and G_s that are adjacent to the E and F group channels. If the receiver sites of such operations actually used 2 foot antennas and the interference calculations were made using the characteristics of a larger antenna, the levels of cochannel and adjacent channel interference that would actually occur would be higher than calculated. Thus, it could appear as a result of calculations that such locations would not experience harmful interference when in practice they would.

43. In addition to its effect on interference susceptibility, antenna size also plays a large part in determining the minimum useful signal. For instance, the gain of a 10 foot parabolic antenna would be in the range of 34–37 dB compared with 20–23 dB for a 2 foot antenna. Thus, a station using a 10 foot antenna would require a power flux density level 10–12 dB below that required by a station using a 2 foot antenna to produce the same quality picture. However, a 10 foot antenna is more expensive and more difficult to install than a 2 foot antenna. In fact, in many locations the installation of such an antenna is impossible. Given the nature of the services which we are addressing, it would not be reasonable to adopt a large antenna as reference antenna. The use of such antennas is discussed further below in our consideration of required signal level.[45]

44. Finally with regard to the proposed standard, we have become aware that its cross-polarization characteristics have caused confusion concerning the maximum cross-polarization discrimination that should be used in making cochannel and adjacent channel interference studies. In a Public Notice issued on June 1, 1979 (PN 18063 June 1, 1979), it was stated that in calculating interference levels the maximum cross-polarization discrimination to be used was 20 dB. In the proposed standard antenna, there are directions in which the cross-polarization discrimination exceeds 20 dB. In particular, between 0° and 9° off the main axis of the antenna the discrimination varies from 25 dB to 20 dB and from approximately 103° to 180° the discrimination is approximately 21 dB. These differences have been a source of controversy in some contested application proceedings. Although we did not receive any comment on this discrepancy in this proceeding, we believe this is the proper forum in which to resolve the matter.

45. As polarized radio signals propagate through the atmosphere, there is a probability that the direction of polarization will change as a result of fluctuations in the propagation path. Such fluctuation can substantially affect the amount of polarization discrimination available at a receiving site. For example, consider a signal that is vertically polarized when it leaves the transmitting antenna and is polarized 10° away from vertical when it reaches a receiving antenna 30 miles away. Approximately 3% of the power in such a signal would be contained in a horizontally polarized component of the signal that did not exist when the signal left the transmitting antenna. In other words, at the receiving antenna, such a signal would consist of a vertically polarized component containing almost the same power as would be contained in a signal that had not undergone a polarization change (actually such a signal would be 0.13 dB below an unshifted signal) and a horizontally polarized component with a power level approximately 15 dB below the unshifted signal. Because the horizontally polarized component of such a signal would not be subject to any polarization discrimination, its effect as an interfering signal would be 5 dB higher than the unaltered, vertically polarized signal that is subject to 20 dB of polarization discrimination and 10 dB higher than the same unaltered signal subject to 25 dB of polarization discrimination ($-15+20=+5$ or $-15+25=+10$). Furthermore, in order to realize the full cross-polarization discrimination of the receiving antenna even when there is no polarization shift, it is necessary for the polarizations of the transmitting and receiving antennas to be exactly 90° apart. Any variation will reduce the polarization

[41] Microband Comments, *supra* note 30, at 48.
[42] NTIA Comments, *supra*, note 29, at 10.
[43] *Id.* at 3.

[44] *See*, e.g., Comments of C. Peter Magrath, President, University of Minnesota, General Docket No. 80-113, Enclosure, "Technical Comments on FCC General Docket No. 80-113" 2 (September 5, 1980).
[45] *See infra*, paras. 70–84.

discrimination in a manner similar to that which occurs when the signal polarization is rotated.

46. For these reasons, we believe that it is reasonable to limit the maximum cross-polarization discrimination that can be used in interference calculations to 20 dB. We believe this approach provides some compensation for the variations described and thus will yield calculation results that are closer to real world results. We have adjusted the standard antenna characteristics accordingly.

47. Finally with regard to the proposed standard antenna, we have become aware that the antenna upon which we based the proposed standards, the Andrew Corporation MD2 series antenna, is no longer being manufactured. We do not believe this fact is of any decisional significance since there are other antennas available with similar electrical characteristics.

48. In summary, we believe that our proposed standard antenna characteristics as modified represent a reasonable model of antennas that might be used either in areas of low signal strength or where interference is likely to occur. For the reason, we are adopting the modified standard as shown in appendix B. We also believe that it is reasonable to use this antenna to adjudicate adjacent channel and cochannel interference questions involving MDS stations and grandfathered ITFS stations using the E and F group channels and also ITFS users of channels D_4 and G_1. We shall also use this antenna to resolve cochannel and adjacent channel questions that might arise concerning ITFS station operations.

B. Protected Service Area

1. Policy Considerations

49. The concept of a protected service area has always been implicit in the MDS rules. We have always required an applicant proposing to construct a new station to submit an interference analysis demonstrating that the proposed station would not cause harmful interference to any existing or previously proposed station located within 50 miles of the new station. 47 CFR § 21.902(c). The boundary of the protected service area was never specified nor was the exact nature of the protection within the service area afforded clearly stated. In attempting to fashion a more precise definition of the protected service, it is necessary first to define the objective we are trying to achieve.

50. Our primary objective is to structure the protected service area so as to maximize the number of sites that can be served and, concomitantly, to minimize the number of sites that are unable to receive service. Specifically, we believe that the protected service area should be that area in which reliable service is available to the majority of receiver locations within the area. We do not believe it is in the public interest to extend the protected service area to include the most remote location that could theoretically receive service assuming ideal propagation conditions existed and the highest quality reception equipment were used. Proceeding in this manner would result in large sections of such extended service areas not being able to receive service from the station serving the area because not all locations between the transmitter and such location would enjoy ideal propagation conditions. Furthermore, the creation of extended service areas might prevent the licensing of new stations that could serve those locations. This is because proposed stations that could serve those areas would more be likely to cause harmful interference within an extended protected service area and thus not be eligible to be licensed.

51. Microband argues strongly that our policy encourages more and closer spaced stations with moderate transmitter power rather than fewer, more widely spaced, stations with higher power with the result that fewer receiver sites will be served.[46] Microband supports its claim with analysis and graphical representations of coverage zones for 3 cities: Chicago, Detroit and Miami. All the data submitted by Microband purport to show that using low power (10 watts) closely spaced stations will result in a much smaller area being served than could be served by a single 100 watt station. In Chicago, Microband shows service from a 100 watt station out to almost 60 miles from the transmitter. Microband states that these analyses represent "real world situations."[47]

52. Microband's analysis is at variance with other studies. On June 19, 1978, Multipoint Communications Corporation, the then licensee of the Chicago MDS station, requested authority to increase its transmitter power from 10 watts to 100 watts. Accompanying that request was an Exhibit "M" that contained the following statement:[48]

> As result of receiving installations that have been made in the Chicago area to make use of the service provided by the existing 10 watt MDS station, many problems have been encountered in obtaining adequate signal strength and quality of received signal. This has resulted in a need to install 4 foot diameter antennas, and even 6 foot diameter antennas. As compared with 2 foot diameter antennas, both 4 foot and 6 foot antennas are significantly more expensive. In addition to the material cost of the antennas, the installation cost rapidly increase with size. For example, the cost of installing a 6 foot antenna is more than double the cost of a 4 foot antenna and a 4 foot antenna installation is 50% more expensive than a 2 foot one. Larger antennas also present significant aesthetic problems to property owners.

53. It was not clear from the exhibit at what distances from the transmitter it was necessary to install the larger antennas; however, the station file also contains a letter from the programmer of the Chicago station to its attorney supporting the 100 watt request. This letter contains the following statement:[49]

> Within a 15 mile range, our successful installation rate has been as low as 30%.

Thus, it is clear that, while it may be theoretically possible to serve the area indicated by Microband in its comments, the reality is that it is very difficult to serve many locations located much closer to the transmitter than the large distances claimed by Microband. The issues of how far from a transmitter it is possible to provide reasonable service and what is an adequate level of transmitter power are discussed in detail in subsequent sections of this *Order* and in the Further Notice of Proposed Rulemaking we are adopting today. We mention them here only to make the point that we do not believe that data presented by Microband supports its contention that more sites could be served by fewer, widely spaced higher power stations than could be served by lower power closer-spaced stations. We also believe it is clear that limiting the size of the protected service area decreases rather than increases the possibility that a cochannel interference problem will occur. This is because sites located at the edge of a smaller protected service area are closer to the desired station and farther from the undesired station than are the sites located at the edge of the larger protected area suggested by Microband. Thus, the calculated ratio of the desired signal to the undesired signal would be lower at distant sites and if the site were partially obstructed, as sites

[46] Microband Comments, *supra* note 30, at 15.

[47] *Id.*, at 25.

[48] Multipoint Distribution Service Station File WOF49, Application File No. 2741–CM–P–78, Exhibit "M", June 19, 1978.

[49] *Id.* Letter from Michael Dubester to Bill Reyner (Aug. 13, 1980).

located farther from the transmitter are more likely to be, it is very likely that the ratio will fall below the minimum acceptable level.

54. We also believe that the size of the protected service area really has very little to do with how close stations can be located to each other. That this is true can be seen by considering the following analysis. First, it must be realized the receiving sites that are most likely to experience harmful cochannel interference are those located on the radial that connects the desired station and the undesired station and are located on the side of the desired transmitter that is away from the undesired transmitter. The receiving antennas at such sites will be pointed directly at both the desired transmitter and the undesired transmitter. If we assume that the transmitting antennas are cross-polarized and that the receiving antenna can provide 20 dB of cross-polarization discrimination, then the propagation loss between the undesired transmitter and such a receive site must exceed the propagation loss between the desired transmitter and the receive site by at least 25 dB if a desired to undesired signal ratio of 45 dB is to be achieved. If we assume free space propagation conditions and look at a site located 10 miles from the desired station, we find that the undesired station must be located at least 168 miles from the desired station to achieve the desired 25 dB differential in propagation loss. A site located 10 miles from the transmitter would be within the protected service area of the desired station regardless of how large the protective service area was as long as the radius was at least 10 miles. Because the difference in propagation loss gets smaller as the site is moved farther from the desired station, all points on the radial located more than 10 miles from the desired station would also experience harmful cochannel interference. Of course, it is extremely unlikely that a station 168 miles away could cause such interference because the receive site would most likely be beyond the radio horizon of the undesired stations. Thus it is clear that it is the location of the radio horizon of the undesired transmitter rather than the size of the desired station's protected service that will determine how close an undesired station can be located to an existing cochannel station. A more reasonable way to determine how close a cochannel station can be located is to assume that all sites located on the radial connecting the two stations and located on the side of the desired transmitter away from the undesired station must be beyond the radio horizon of the undesired station. If we assume the receiving antenna height is 30 feet then, assuming 4/3 earth radius propagation conditions, a 300 foot high transmitter would have to be located 32.2 miles away. A 500 foot transmitter would have to be 39.4 miles away and a 1,000 foot transmitter would have to be 52.5 miles away. The separation requirements are relatively independent of the protected service size.

55. Microband also submitted an analysis of the relationship between antenna height and service area size.[50] The analysis showed the variation in transmitter height as a function of protected service area radius assuming that the stations were located as close as possible. That is each station had a service area of radius r miles and was surrounded by eight other stations. Four of which were located 2r miles away, the other four stations were located 2 times square root of 2r miles away. Using this model, Microband showed that if the service area radius were 15 miles, the transmitter height of all stations would have to be limited to 153 feet. In a further refinement of the analysis, Microband shows that if one of the stations used dual-polarized antennas rather than a single-polarized antenna to achieve omnidirection coverage the transmitter height would have to be less than 27 feet. We agree with Microband's conclusion that this is impractical; however, we do not agree that the solution is to expand the size of the service area. Rather, we believe it is better to limit the size of the service area to that area in which reasonable service can be provided and require subsequently proposed station to not interfere with existing or previously proposed stations. This can be achieved by making adjustments in the separation between stations and in the height of the transmitting antenna. This is the manner in which existing MDS stations have been located.

56. Finally in this regard, we are aware that our rules only require that an applicant submit an interference analysis if the proposed facility is withint 50 miles of an existing or previously proposed adjacent channel or cochannel station. As can be seen from the above analyses, the mileage between these stations is not the only factor that determines whether interference will occur—transmitting antenna height is equally important. In Petition for Rulemaking RM-3232,[51] Microband suggested that we extend the 50 miles requirement to 125 miles—that is require an interference analysis from any applicant that proposes to locate its facility within 125 miles of an existing or previously proposed station. We believe that this is unnecessary. A station located 125 miles from a cochannel or adjacent station would need an antenna height of more than 6,800 feet in order to have a line of sight path to a 30 foot high receiving antenna 125 miles away. We think such an occurrence would be rare. However, we do believe that whenever an applicant proposes to construct a station such that there is a line of sight propagation path between the proposed transmitting antenna and the protected service area of an existing or previously proposed cochannel of adjacent station, the applicant should submit an interference analysis showing the effect of the proposed station on the existing or previously applied for stations. For this reason, we are amending § 21.902(c)(1) of the rules, 47 CFR 21.902(c)(1), to require the submission of such and analysis.

57. Finally in regard to MDS protected service area policy, we stress that it is our intention to enforce rigorously § 21.902(a) of the rules, 47 CFR 21.902(a), that requires, *inter alia*, that "all applicants, permittees, and licensees shall make exceptional efforts to avoid harmful interference to other users and to avoid blocking potential adjacent channel use in the same city and cochannel use in nearby cities." All petitions to deny that include allegations of cochannel or adjacent interference must include a detailed statement of what efforts were made to comply with this section. We do not intend to accept any new MDS applications that do not contain a detailed explanation of how the applicant has complied with this section and how it will comply in the future should the need arise.

58. Another policy issue raised by our protected service area proposal was whether it was desirable to have a protected service area at all. Although most members of the MDS community questioned the wisdom of some or all of the service area characteristics virtually all agreed that there was a need to have a clearly defined protected service area. For example, Contemporary Communications Corporation commented as follows: [52]

> Initially, we would like to register our support for the Commission's efforts to define the zone of protection from electrical interference to be afforded existing and new

[50] Microband Comment, *supra* note 30, at 16–25.

[51] See *infra*, paras. 141–143.

[52] Comment of Contemporary Communications, General Docket No. 80–113, 1 (Sept. 8, 1980).

MDS stations. As the industry has grown, disputes over interference have multiplied and will continue to do so. Clarification in this area should tend to reduce these disputes and save the Commission and the carriers time and expense.

The ITFS community, on the other hand, expressed the view that using a single protected service area definition for all ITFS operations was not appropriate. In support of this view, many ITFS system operators cited examples of receiver sites that were located well beyond the proposed protected service area boundary.[53] Others pointed out that the area served by ITFS facilities is often conterminous with a school district or other political subdivision.[54]

59. We agree that the nature of a typical ITFS operation is different from the typical MDS operation in that an ITFS operator frequently must provide service to certain sites regardless of the engineering difficulties involved whereas an MDS operator will rarely make extraordinary efforts to reach difficult or remote locations. On the other hand, we also believe that the reason that many ITFS operators have not felt the need for a protected service area was that the frequency allocation plan used in that service was such that adjacent channel service in the same area and cochannel service in adjacent areas were seldom required. Finally, the facts that ITFS licensees are primarily interested in spectrum as an aid to further educational purposes and that the spectrum was not congested have led to a tradition that ITFS operators were more collegial than MDS operators and therefore had a greater tendency to work out interference problems among themselves.

60. The reallocation plan that was adopted in the *Multichannel Order* could change this situation. In the first place, the fact that there are fewer channels available for ITFS use will increase the likelihood of interference problems occurring. In addition, because ITFS operators may now lease excess capacity on their facilities, there may be many more sites being served thereby increasing the possibility that interference problems will occur. This is especially likely to occur if the lessee of the excess capacity uses the facility to deliver entertainment programming to single family dwellings. Such sites are unlikely to be as well engineered as traditional ITFS receiver sites.

[53] *See e.g.*, Comments of the Catholic Television Network and The National Instructional Telecommunications Council, Inc., General Docket No. 80–113, 6 (Sept. 2, 1980).

[54] Comments of the Joint Council on Educational Telecommunications, General Docket No. 80–112, 2 (Sept. 3, 1980).

61. Because of these considerations, we do not think it is appropriate to adopt specific service area boundaries for ITFS operators. We believe that it is in the best interest of that service to continue to allow ITFS operators to engineer their facilities to serve to all sites they have traditionally served regardless of location and to protect all such locations. This should not be taken to be an invitation to ITFS operators to claim expanded service areas by finding remote locations that might conceivably be logical recipients of the service.

62. We do not believe that similar considerations apply during the hours the ITFS facilities are being leased or being used by the licensee for non ITFS purposes. It is likely that lessees of ITFS facilities will be offering services that are similar to those offered on MDS facilities. For this reason, we have concluded that during the hours ITFS facilities are being leased or used by the licensee for non ITFS purposes the service area should be the same MDS service area. In this regard, we also stress that it is the licensee that it protected from harmful interference not the lessee.

63. We did not receive any comment on the applicability of the protected service area concept for OFS stations. At the time the *Notice* was released, there was little interest in the OFS portion of the 2500–2690 MHz band. In Docket 80–112, we decided not to reallocate additional spectrum for OFS channels in recognition of our stated intention that, initially, data and non-entertainment services receive priority consideration over video entertainment services for use of the OFS spectrum.[55] To date, as a result of the new filing period opened August 1, 1983 for applications proposing data and other non-entertainment services on the OFS H group channels, the Commission has received approximately 2,100 applications for these three channels. The MDS and OFS services are similar technically, and many of the same considerations raised with respect to MDS technical standards may be generally applicable to OFS.

64. Finally with regard to policy considerations, we address the question of the nature of the protection afforded within the protected service or, more particularly, what we shall do if a licensee or applicant alleges that harmful interference is taking place or will likely take place as a result of the operation of an existing or proposed station. If a station causes either harmful adjacent channel or harmful cochannel interference within the protected service area of another existing station and that interference is not *de minimis*, we will require the offending station to cease operations until the interference is eradicated. The station alleging that it is being interfered with will be required to make a clear and convincing showing that the interference is occurring.

[55] *Memorandum Opinion and Order* in Docket 19671, 48 FR at 32583.

65. An application that proposes cochannel or adjacent channel operation and does not contain a showing that the proposed operation will not cause harmful interference as described herein will not be accepted for filing.

2. *The Protected Service Area Boundary*

66. In the *Notice*, we determined the boundary of the proposed protected service area by first defining what constitutes a minimally acceptable picture and then calculating the signal level needed at the receiver to produce such a picture. In particular, we calculated the power flux density required to produce a minimally acceptable television picture 99.9% of the time. In making this calculation, we assumed the use of reasonable reception equipment and worst case propagation conditions. The protected service area boundary was defined to be equivalent to the calculated power flux density contour. The policy underlying our proposal was that the protected service area should be the area in which service would generally be available. That is, it would not be reasonable either to protect a licensee's signal where a significant amount of service could not be provided or to not protect a licensee's signal where a significant amount of service could be provided. We recognize that the physics of the situation is such that there is not a sharp dividing line between those areas in which service will be available and those areas in which service will not be available. We believe that our proposals represented a reasonable compromise between the lack of precision in the physical world and the need for precision in our rules. We also proposed certain other limitations on the protected service area boundary that will be discussed below.

67. Before discussing in detail the elements used to determine the proposed boundary, we believe it is important to emphasize what the calculations represent. The calculated power flux density is that which will be available at the far edge of the protected service area. Because power flux density varies as the inverse square of the distance from the transmitter, any unobstructed location closer to the transmitter than the edge of the service

area will have a higher power flux density than locations on the boundary. For example, at a location 7½ miles from the transmitter, the power flux density will be 4 times as large as the power flux density 15 miles from the transmitter. Further, the calculation was made assuming worst case propagation conditions. When the propagation conditions are ideal, the signal power available at 15 miles will be 21 dB greater than that available when worst case propagation conditions exist. This means the available signal power will be more than 100 times larger under ideal conditions than it will be under worst case conditions. The signal will be higher than the worst case level 99.9% of the time. Thus, at most locations, most of the time the available signal power will be much higher than the calculated value. This means, of course, that the available picture will be much better than the minimally acceptable standard most of the time.

a. *The Minimally Acceptable Picture.* 68. the first issue to be resolved in determining the needed signal level, and hence the protected service area boundary, is what constitutes a minimally acceptable picture. In the *Notice*, we said that we would consider a minimally acceptable picture to be equivalent to a TASO Grade 4 picture as judged by 50% of those viewing the picture. This picture is called "marginal" and is described as being "poor in quality causing the viewer to wish it could be improved." The interference (or noise) is described as being somewhat objectionable. Whether a given picture meets this standard is determined by the viewing standards of the observer and the type of material being presented as well as the amount of interference. The amount of noise in the picture background is a function of the signal-to-noise ratio available at the input terminals of the television receiver and to a lesser degree the quality of the receiver itself. For a given input signal-to-noise ratio a certain percentage of those viewing a picture will rate it a TASO Grade 4 or better. As the signal-to-noise ratio increases, a larger percentage of those viewing the picture will rate it a TASO Grade 4 or better and as the signal-to-noise ratio decreases a smaller percentage of those viewing it will rate it a TASO Grade 4 or better. In the *Notice*, we defined a minimally acceptable picture as the picture that was available when the signal-to-noise ratio at the television receiver input was such that 50 percent of those viewing the picture would rate it a TASO Grade 4 or better. The signal-to-noise ratio required for this result is 23 dB.[56]

69. We did not receive any comment from the MDS community concerning what constitutes a minimally acceptable picture. Some members of the ITFS community commented that we should have used as TASO Grade 3 picture or, equivalently, that we should have used a higher signal-to-noise ratio.[57] Their disagreements are apparently based on two factors: a perceived need for a higher quality picture in the ITFS and a misinterpretation of how we were using the TASO Grade 4/23 dB signal-to-noise ratio definition.

70. The nature of the video information being transmitted has much to do with the subjective rating a viewer assigns to a television picture. When images containing more than the average amount of detail are being transmitted a higher signal-to-noise ratio is required to achieve a given perception of picture quality. We selected the signal-to-noise ratio for a picture of average detail and believe that it is representative of most material being transmitted by MDS operators.[58] We recognize that some educational material contains much more detail than an average entertainment television picture; however, we have not been presented with any data on how frequently these transmissions occur.

71. Most of those who argued in favor of a higher TASO grade, or, equivalently, for a higher signal-to-noise ratio, as the definition of a minimally acceptable picture appear to be losing sight of what this standard represents. This is not the picture that will be available on the average. At most locations most of the time, a much better picture will be available. Even at the most distant locations the picture available will be better 99.9% of the time.

72. Further, the effect of raising the standard for what constitutes a minimally acceptable picture is to reduce the size of the protected service area if all other factors remained the same. For instance, if we were to raise the standard to a TASO Grade 3 as perceived by at least 90% of those viewing the picture, the required signal-to-noise ratio would be approximately 10 dB higher or 33 dB. Using the equations derived in Appendix 2 of the *Notice*, it can be shown that this signal-to-noise ratio would be available under worst case propagation conditions at a distance of 9.5 miles from the transmitter. We do not believe that a decrease in the size of the service area of this degree is justified by the benefits that would be derived from adopting a higher standard for the minimally acceptable picture.

b. *Signal Availability and Propagation Model Considerations.* 73. The next element in the determination of the needed signal level is the availability of the minimally acceptable picture. The nature of electromagnetic propagation is such that there are frequent changes in the signal level available at receiver locations. Most of these changes are of short duration and small in magnitude and hence not noticeable by the viewer. There are, however, other changes that last for significant periods of time and are of such a magnitude that the received signal is significantly reduced. These changes, which result from a combination of climatic and geographic factors, are referred to as fades. The exact magnitude and duration of these fades are difficult to predict; however, very good mathematical approximations of their behavior are available. In Appendix 2 of the *Notice*, we calculated the signal-to-noise ratio that would be available at least 99.9% of the time under the worst climatic conditions. We did this calculation for several distances from the transmitter and used the results to construct a table of available signal-to-noise ratio as a function of distance from the transmitter.

74. We pointed out in the *Notice* that this means that the available signal would fall below the specified value about 45 minutes per month. Microband in its comments calls this assertion "misleading and inaccurate."[59]

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[56] There appears to be some confusion about the difference between the terms signal-to-noise ratio and carrier-to-noise ratio and the relationship of each to the TASO results. The Corporation for Public Broadcasting, in its Reply Comment filed in General Docket No. 80-112, correctly points out that the signal-to-noise ratios used in the TASO reports are really carrier-to-noise ratio measured at the inputs to the television receiver. The carrier power is defined as the sync tip power and the noise is defined as noise power contained in a 6 MHz bandwidth. CPB futher claims that the relationship between signal-to-noise ratio and carrier-to-noise ratio is:

$$S/N = C/N + 3\ dB$$

Comments of the Corporation for Public Broadcasting, General Docket No. 80-112, Appendix one, 62-63, 67-68, 72-76 (September 26, 1980). John F. X. Browne on the other hand claims that the relationship is:

$$S/N = C/N - 6\ dB$$

Browne Comments, *supra* note 17, at 3. There are also variations in the definitions of signal-to-noise ratio. *See*, Strus, T.M. "*The Relationship between the NCTA, EIA, and CCIR Definitions of Signal-to-Noise Ratio*, 20 IEEE Transactions on Broadcasting 36 (September, 1974).

[57] *See* e.g. CTN Comments, *supra* note 53, at 6-7.

[58] *See* Dean, *supra* note 14, at 1037.

[59] Microband Comment, *supra*, note 30, at 44.

Microband claims that fades are seasonal in nature and that many months have no fades. For this reason, it claimed that it would be more meaningful to speak of 99.9% availability as meaning outages of 9 hours per year. We do not agree with Microband's characterization of our statement; however, there is no doubt that it is difficult to predict the temporal distribution of the fades.

75. The fades will neither occur in a single 9 hour stretch once a year nor in regular monthly stretches of 45 minutes. Their fundamental nature is statistical and they will occur in a non-uniformly random manner throughout the year. The important point is that they do occur and they must be considered in determining where and for what duration a minimally acceptable signal is available.

76. Of course, it could be argued, as Microband does, that 99.9% availability is too high for a service such as MDS. Microband believes that 99.5% is enough. We recognize that our choice of 99.9% availability was somewhat arbitrary, but since we choose a relatively low quality picture as the minimally acceptable standard we believe our availability choice is justified. The calculated results would not be significantly different if we choose 99.5% availability figure and a TASO Grade 2 picture standard. We believe that our choice of a 99.9% availability standard and a TASO Grade 4 picture most closely approximates what is an acceptable system performance. We do not believe that it would be any more reasonable to use a TASO Grade 3 with a 99.5% availability as Microband suggests.

77. NTIA questioned whether the propagation model we used was appropriate for the signal propagation conditions encountered in the MDS.[60] NTIA based its view on the fact that the model used was developed for use in modeling long path point-to-point microwave links rather than for use in modeling the relatively short path MDS transmissions. We agree that the method is more suitable for longer paths and note that these are exactly the paths for which we used the model in the *Notice*. We do not expect fading to be a problem close to the transmitter; however, it could be a serious problem near the edge of the service area. For this reason, we did not make any calculations for locations closer to the transmitter than 14 miles. We also agree with NTIA's contention that for non-line of sight paths effects other than fading will dominate. For this reason, we specifically stated that we were only considering those receiver locations that had an unobstructed propagation path to the transmitter. There may be other models that could more accurately predict propagation phenomena; however, we do not believe the use of such models would substantially alter the results. Further, no results using other models were submitted for comparison.

78. Finally, we have become aware during the pendency of this proceeding that certain meteorological conditions can cause unusual propagation phenomena, such as superrefraction and ducting, that can lead to much stronger radio signals beyond the radio horizon than would normally be expected.[61] These phenomena occur for small percentages of time over most of the U.S. and for very significant percentages of time over some areas usually associated with large bodies of water and are especially prevalent in the Southern California coastal area and around the Gulf Coast. Recent long-term measurements by the Office of Science and Technology on VHF/UHF paths in Southern California showed free space fields well beyond the radio horizon for significant periods of time during some seasons of the year. These phenomena are more prevalent at microwave frequencies than at VHF and UHF and can be expected to result in interfering signal levels in the 2100–2600 MHz band under certain circumstances. Sufficient data are not available at this time to permit reliable predictions of enhanced field strengths for most of the country. However, as a precautionary step we have added a requirement to section 21.902(c) of the rules intended to identify those situations where significant interference due to this phenomenon is most likely to occur.

c. *Equipment Considerations.* 79. In making the calculation to determine how far from the transmitter a minimally acceptable picture was available, it was necessary to make certain assumptions about the amount of signal being transmitted and the equipment being used to receive the signal.

80. In the *Notice*, we assumed a 10 watt transmitter and a 13 dB gain transmitting antenna. This combination gives an effective isotropic radiated power (EIRP)[62] of 23 dBW or 200 watts. We assumed a lossless transmission line between the transmitter and the transmitting antenna. In practice, there will always be some loss between the transmitter and the antenna. The exact loss will depend upon the type and length of the transmission line used. A review of the MDS station files indicates that this loss can be as large as 7 or 8 dB.

81. the two most important characteristics of reception equipment in determining what power flux density will produce a minimally acceptable picture are the receiver antenna gain and the noise figure of the reception equipment.

82. We assumed that a typical receiver installation is equipped with the standard two-foot parabolic receiving antenna discussed above and downconversion equipment with a 10 dB noise figure. Noise figure is a measure of the amount of noise the reception equipment generates in the bandwidth of interest. An ideal receiver would generate no noise and would have a noise figure of 0 dB. A larger noise figure indicates an increase in the amount of noise generated and therefore less desirable reception equipment.

83. We did not receive much comment on our equipment assumptions. Microband did claim that most of the assumptions were overly conservative and not representative of the equipment actually being used in the MDS industry. Microband expressed the view that our calculations should have been based on a 100 watt transmitter rather than the 10 watt transmitter.[63] All members of the MDS community commenting in this proceeding, including Microband, stressed that it is usually impossible to serve many sites located very close to the transmitter with a 10 watt transmitter. We have always recognized that many MDS receiver sites have less than ideal propagation paths to the transmitter. For this reason our Rules provide [64] that although transmitter power generally will be 10 watts, a licensee may be authorized up to 100 watts of transmitter power on showing that reliable service cannot be provided to a reasonable number of locations within the service area of the station using a 10 watt transmitter. What this means is that the service area is defined assuming 10 watt line-of-sight service but if it turns out in practice that the licensee cannot provide reliable service

[60] NTIA Comments, *supra* note 29, at 11–14.

[61] Dougherty & Dutton, *The Role of Elevated Ducting for Radio Service and Interference Fields*, NTIA Report 81–69, March 1981. *See also Effects of Large-Scale Tropospheric Refraction on Radiowave Propagation*, Report 718–1 Recommendations and Reports of the CCIR, 1982, Volume V, Propagation in Non-Ionized Media, 123 (1982).

[62] Effective Isotropic Radiated Power expressed in dBW is the ratio of the power radiated in the direction of maximum gain to the ratio of power that would be radiated by a 1 watt transmitter radiating uniformly in all directions.

[63] Microband Comments, *supra* note 30, at 45.

[64] 47 CFR 21.904(b).

within the service area, we will authorize such licensee to use up to a maximum of 100 watts of power to provide reliable service in that service area. It seems that Microband is arguing on the one hand that 10 watts is not enough power to provide reliable service to many points within the 10 watt line-of-sight service area and on the other hand that we should use 100 watts to determine the location of the service area boundary.

84. In a Further Notice of Proposed Rulemaking in this proceeding, we propose eliminating the 10 watt limitation and authorizing all MDS stations to transmit the functional equivalent of 100 watts of power. Experience with this service has shown that losses caused by partial blockage of receiver sites or by foliage induced attenuation make 10 watts impractical for MDS as used today. We do not believe, however, that we should use 100 watts to calculate the service area boundary when we do not account for these phenomena in our calculations. We believe the better course is to calculate the service area boundary using line-of-sight methodology and a 10 watt transmitter. By proceeding in this manner, we are able to make a relatively straightforward calculation unencumbered by difficult model assumptions. We believe that the combination of a 10 watt transmitter and a line-of-sight propagation model is a reasonable way to calculate the power flux density available at reasonable distances from transmitter. Finally, it should be noted that the propagation variations we are referring to here are those which are of a constant nature and not the time-varying fading phenomena that we considered in our calculations.

85. Microband also claimed that our assumption of a downconverter noise figure of 10 dB was overly conservative. They suggested that a 5.5 dB noise figure was more representative of the present "state of the art" in such equipment. Microband further stated that near the edge of the service area equipment with noise figures as low as 2.5 dB might be used.[64] The reason we used the higher noise figure was to compensate for other system losses that we did not include in our calculations. As stated above, we did not include transmission line loss in our calculations, in addition we include other system losses such as connector loss, receiver-transmitter antenna misalignment loss, and receiver equipment loss in our calculation. Furthermore, we assumed that all receiver locations were equipped with the equivalent of 2-foot parabolic antenna. This is frequently not the case. In many instances, the antennas used have much lower gain than the standard antenna. The better method may have been to make an estimate of each of these losses and make the calculation using the total estimated loss. However, we do not believe that the results would have been substantically different. In fact, the sum of the losses described probably exceeds the 4.5 dB increase in system performance that would result from using the lower noise figure downconverter suggested by Microband.

d. *Theoretical Calculations.* 86. In Appendix 2 of the *Notice*, we calculated the power flux density, the power received and associated signal-to-noise ratio as a function of distance from the tramsmitter for each mile from 14 miles to 20 miles. These calculations were made assuming free space propagation conditions and using the EIRP and equipment parameters described in the previous sections. The signal-to-noise ratio calculation was made using an information bandwidth of 4.2 MHz, the video bandwidth of a television receiver. In making the signal-to-noise calculation, we did not include any noise other than that generated in the downconversion equipment. That is, we assumed that the downconverter was being driven by a source with a characteristic impedence equal to the input impedence of the downconverter and that the input reference temperature was 290° K.

87. We then reduced the calculated signal-to-noise ratio by the calculated worst case fading loss for each distance. By this procedure, we arrived at the signal-to-noise ratio that would be available at the output of the downconverter equipment 99.9% of the time.

88. The result of these calculations shows that a signal-to-noise ratio of 23.3 dB will be available 15 miles from the transmitter. This signal-to-noise ratio will produce a television picture that will be judged a TASO Grade 4 or better by 50% of those viewing the picture. It should be stressed again that the picture will be better than this 99.9% of the time. In fact when no fading is occurring, the signal-to-noise ratio will be 44 dB. At this signal level, 55% of those viewing the signal would rate it a TASO Grade 1 and 99% of those viewing it would rate a TASO Grade 2 or better.[66]

89. As a result of these calculations, we proposed to define the protected service area boundary as the −75.6 dBW/m² power flux density contour. This is the power flux density at 15 miles assuming a 10-watt transmitter, 13-dB gain transmitting antenna, and free space propagation conditions.

90. NTIA stated that it supported our adoption of the −76.6 dBW/m² contour as the boundary of the protected service area because it was based "solely on the properties of the receiving system and (was) independent of the propagation mechanism or model assumed."[67] This is incorrect. Our choice of a minimally acceptable picture as that produced by a 23 dB signal-to-noise ratio at the input to the television receiver was independent of any other consideration; however, all other calculation parameters influenced the result. For example, if we had used the same propagation model but changed the values of the climatic and terrain parameters in the model, we would have arrived at a different power flux density. If we had used the terrain roughness factor for rough earth in place of the smooth earth factor and if we had used the average climatic factor in place of the coastal climate climatic factor, the resulting fading loss would have been approximately 14dB lower. This means that the 23 dB signal-to-noise ratio would have been available at 29 miles where the unfaded power flux density is −81.3 dBW/m². At this distance, the unfaded signal-to-noise ratio would be 38 dB which would produce a television picture which would be judged to be TASO Grade 1 or better by 30% of those viewing it and would be judged a TASO Grade 2 or better by 88% of those viewing it. Thus, it is clear that our choice of −75.6 dBW/m² contour as the boundary of the protected service area is dependent not only on our choice of reception equipment but also is dependent on our fading model and the parameters used in the model.

91. It should also be noted that if we increase the EIRP by 10 dB (a 100 watt transmitter) the 23 dB faded signal-to-noise ratio would be available at 23 miles where the power flux density would be −69.3 dBW/m². Thus, the power flux density we choose as the service area boundary was also dependent upon the EIRP we choose to use in making the calculation.

92. We point all this out merely to emphasize the fact that the calculation of a protected service area boundary is a complicated procedure that depends heavily upon the assumptions used in making the calculations. In making these calculations, we made conservative assumptions concerning equipment and propagation mode parameters. We recognize that there are valid arguments

[64] Microband Comments, *supra* note 30, at 42, 43.

[66] TASO Report, *supra* note 14, at 533.

[67] NTIA Comments, *supra* note 29, at 7.

that support less conservative assumptions; however, we believe that the more prudent course in a complex procedure such as this is more conservative. This, of course, results in a smaller protected service area than would have been calculated if we had used the less conservative assumptions. This result is in accord with the public policy considerations outlined above.

e. *Power Flux Density and Fixed Mileage Limitation.*

93. As outlined in the previous section and in the *Notice,* we calculated that a station with a 200 watt EIRP will produce an "unfaded" power flux density of −75.6 dBW/m² at a distance of 15 miles from the station and that a minimally acceptable picture will be available at this distance 99.9% of the time using the reception equipment specified. On the basis of these results, we proposed to specify the protected service area boundary to be either the −75.6 dBW/m² power flux density contour or the locus of points 15 miles from the transmitter, whichever is closer to the transmitter. Our reasoning for specifying the maximum distance to the service area boundary as 15 miles was based on our calculations that it was impossible to provide reliable service beyond this distance. We are aware, as was detailed in the previous section, that if the assumptions relied upon to arrive at the 15 mile limitation were changed, a significantly different result would have been obtained. We believe that our assumptions, although conservative, were reasonable.

94. The 15 mile limitation on the protected service area boundary elicited a response from nearly all the commenters in this proceeding. Microband concluded, on the basis of what it claimed were more realistic assumptions, that it was possible to provide reliable service to sites located as far as 39 miles from the transmitter. On the basis of this conclusion, it suggested that boundary of the service area should be determined by calculating the distance at which the faded signal-to-noise ratio, S/N(F), is 23 dB using the actual station EIRP, and the actual terrain and climatic factors for the area involved.[68] Cox Cable Communications Inc. (CCCI) called the 15 mile limit "unduly restrictive"; [69] and noted that only in those situations where it is possible to locate the transmitter at the center of the area to be served is it conceivable that a 15 mile radius service area would be adequate. CCCI suggested that a 30 mile radius protected service area is required to provide adequate service. South Florida Communications Inc. claimed that the proposed 15 mile limitation would drastically curtail its ability to provide an acceptable signal throughout its useful service area. It claims that the boundary of the protected service area should be the −75.6 dBW/m² power flux density contour regardless of the distance of the contour from the transmitter. South Florida claims the imposition of the 15 mile limitation would be inequitable and discriminatory to licensees such as itself that constructed stations to serve more than one service area with a single transmitter. It cites the fact that it was authorized a 100 watt transmitter to enable it to serve two population centers located equi-distant from its transmitter and that limiting the protected service area boundary location to 15 miles from the transmitter would remove protection from many of the receiver sites it is now serving. South Florida further suggests that if we should adopt the 15 mile limitation that we "grandfather" protection for all receiver locations presently being served regardless of their distance from the transmitter.[70]

95. Contrasted with the above assertions are comments of R. L. Vega, an engineer who claims to have designed and constructed fourteen MDS stations and supervised the installation of over 15,000 MDS receivers. Mr. Vega agrees with the 15 mile limitation and expressed the view that the claims of large service areas were illusory and not deserving of Commission protection. He also stressed the need for any new rules adopted to be clear and concise. [71] South Jersey Radio also supported the 15 mile limitation but expressed the view that strict enforcement of the service area "inviability" may not be in the public interest. It believes that by allowing minimal interference in the protected services area more service can be provided to the public.[72]

96. The National Telecommunications and Information Administration (NTIA) favored the use of the power flux density contour to determine the protected service area boundary but expressed serious reservations about the fixed mileage limitation. Its major concern was that it encouraged the use of omnidirectional antennas and circular service areas. NTIA suggested that a more appropriate alternative would be to permit an applicant to define an area to be served and to use the best possible combination of antenna location, antenna height, and antenna pattern to serve the area.[73]

97. All of the commenters from the ITFS community that addressed our 15 mile proposal expressed the view that such a limitation was inappropriate for the ITFS. This claim was based on the fact that many ITFS systems serve receiver locations that are much more than 15 miles from the transmitter. Stanford University cited the fact that it serves one receiver 45 miles from its transmitter by using a high gain transmitting antenna on a portion of its transmitter output.[74] Several other ITFS licensees cited similar instances of service to distant receiver locations. Since we are not adopting protected service area rules for the ITFS operators, there is no need to discuss the applicability of the 15 mile rule to such ITFS operations.

98. The only empirical data on the variation of received signal as a function of distance from the transmitter was submitted by Microband. The data was from field measurements made in St. Louis, Missouri; Columbus, Ohio; and Palo Alto, California. The receiver locations were characterized by Microband as being "not obviously blocked by a nearby building, trees or other obstruction." Microband further stated that "where rolling terrain was present, readings taken as close to the top of hill as possible, as opposed to locations in valleys." [75] At the time the data was taken, the Palo Alto and Columbus stations were equipped with 10 watt transmitters and the St. Louis station had a 100 watt transmitter. Most of the data taken in Palo Alto and Columbus were taken at sites located within 15 miles of the transmitter. Almost half of the sites in St. Louis were located between 15 and 20 miles from the transmitter.

99. The most noteworthy feature of the data presented by Microband was the wide variation from the predicted value of received power. Most of the measured signal level data were lower than the theoretically predicted level; however, there were a significant number of sites at which the measured signal level exceeded the calculated level. Microband did not offer an explanation for this result. The Corporation for Public Broadcasting

[68] Microband Comment, *supra* note 30, at 46, 53.

[69] CCCI Comments, *supra* note 4, at 1.

[70] Comments of South Florida Communications, Inc., General Docket No. 80-113, 1-8 (September 2, 1980).

[71] Vega Comments, *supra* note 22, at 2.

[72] Comments of South Jersey Radio, General Docket No. 80-113, at 1, 2 (September 25, 1980).

[73] NTIA Comments, *supra* note 29, at 8.

[74] Stanford Comments, *supra* note 23, Attachment at 4.

[75] Microband Comments, *supra* note 30, Appendix 1.

(CPB) offered the following comment on the Microband data: [76]

> Although there are numerous physical reasons why field measurements would fall *below* maximum free space predicted values (obstructions, atmospheric conditions, etc.); measurements which are *above* the maximum free space values should not occur. The only possible reason for a large number of measurements exceeding the maximum theoretical value is some systematic error in the measurement procedure. (emphasis in original)

This conclusion differs from the conclusion the Corporation for Public Broadcasting reached in its comments in General Docket No. 80–112 where it stated that "the expected received signal strength can actually increase and reach a maximum of 6 dB above the predicted free-space value, . . ." [77]

100. The Commission conducted an analysis of the data to quantify these variations. The absolute value of difference between the measured received power and the predicted received power was calculated for all the data submitted by Microband. The mean value and the standard deviation of these differences were calculated for each of the cities. The results of these calculations are as follows:

City	Mean value of difference (dB)	Standard deviation
St. Louis	10	6.7
Columbus	8.7	7.76
Palo Alto	11.27	9.89

The results clearly indicate that it is very difficult to make accurate predictions at these frequencies. The variations from the predicted received power levels were not correlated with distance. Variations from the predicted value occurred at all distances from the transmitter. Because these measurements were taken at locations that Microband claimed had an unobstructed path to the transmitter, it can be assumed that if locations were chosen at random so that obstructed or partially obstructed sites were used even wider variations would have been measured. We do not believe it is useful or possible to try to find theoretical explanation for these results. Rather, we believe that we should recognize that wide variations from theoretical predictions will occur and make reasonable rules that reflect the lack of precision in theoretical predictions. We also wish to stress again that the theoretical predictions themselves are the subject of considerable controversy as was shown by the comments we received in this proceeding.

101. Because we have concluded that both the calculated and measured power flux density contours are subject to wide variations, we do not believe that it is reasonable to rely solely on either method to define the boundary of the protected service area. We do believe, however, that there is a need to establish a protected service area boundary that is easy to use and understand so that the spectrum use rights of licensees are clear. Unlike calculated and measured contours, a fixed mileage boundary is easy to use and understand. It also can be generally related to both measured and calculated power flux density contours. For these reasons, we have concluded that the best way to define the boundary of the protected service area is in terms of a fixed distance from the transmitter.

102. Having decided to use fixed mileage to determine the maximum distance to the protected service area boundary, we are faced with the question of what distance to use. As indicated above and in the *Notice*, we calculated that the maximum distance at which a reasonable signal would be available was 15 miles. On the other hand, Microband calculated that under ideal conditions reasonable service can be obtained at 39 miles. Contrasted with these theoretical predictions are the results obtained by those with actual field experience in the MDS industry. In an appendix filed with its reply comments Microband's customer in the Washington, D.C. area, Marquee Television Network, Inc., states that even with 100 watts of transmitter power, it can serve 60.8% of the sites within 7 miles of the transmitter but that it can only serve 29.12% of the sites located between 7 and 30 miles from the transmitter. [78] Because the number of locations that can be served decreases with distance, it is fair to assume that the percentage of locations between 15 and 30 miles that could be served would be considerably less than 29%. These results are typical of the information we have received from MDS licensees requesting 100 watt transmitter power authorization. Although no comprehensive analysis has been made of all the data submitted in support of the 100 watt transmitter power requests, it is fair to say that all applicants have informed us that they are unable to provide service to many sites located much closer to the transmitter than 15 miles using 10 watts of transmitter power.

103. We have not been given any data either in this proceeding or elsewhere that indicate that a 100 watt omnidirectional transmitting station can serve a significant number of receiver sites located more than 15 miles from the transmitter. In commenting on Microband's Petition for Rulemaking requesting that the MDS power limitation be expressed in terms of effective radiated power and that the ERP limit be set at 1,000 watts, Telecommunications System Inc. (TSI) stated that [79]:

> It has been the experience of TSI that a minimum of 100 watts of transmitter output power is required to serve an area of average terrain with an adequate signal level within a 10 mile radius from the transmission facility;
> * * *

This is typical of the type of information we have been furnished by MDS licensees concerning actual service area limitations. On the basis of this information, we have concluded that the maximum distance between the transmitter and the protected service area boundary should be 15 miles, for all stations using omnidirectional transmitting antenna.

104. We acknowledge that the 15 mile limitation on the protected service area is somewhat arbitrary in nature and that arguments can be made that some distance other than 15 miles would be equally reasonable. But the record in this proceeding demonstrates there is a lack of certainty in both theoretical calculations and field test data as means of establishing the service area boundary and we have a responsibility to adopt rules that are easy to understand and apply. We believe that the 15 mile rule we are adopting today can be justified using either theoretical calculations or field test data; however, we are not resting the adoption of the Rule solely on either of these methods. Rather, we have concluded that the 15 mile limitation is not unreasonable, is easy to understand and use, and is representative of the areas actually being served by existing MDS stations using either 10 watt or 100 watt transmitters and omnidirectional transmitting antennas.

105. As noted above (paragraph 95), NTIA suggested that the fixed 15 mile radius protected service area reduced the flexibility afforded MDS operators in locating their facilities and selecting

[76] Reply Comments of the Corporation for Public Broadcasting, General Docket No. 80–113, Engineering Statement at 4, October 1, 1980.

[77] Comments of the Corporation for Public Broadcasting, General Docket No. 80–112, Appendix 1, at 84 September 20, 1980).

[78] Reply Comment of Microband Corporation of America, General Docket No. 80–113, Appendix A at 5 (October 14, 1980).

[79] Comments of Telecommunications System, Inc., RM–3221, 1 (November 20, 1978).

their transmitting antennas. NTIA suggest that, in many cases, it may be more practical to locate the MDS transmitter somewhere other than in the center of the potential service area. It cited the example of an operator attempting to serve a 30 mile diameter, circular service who found it more convenient to serve the area from the edge of the service than from the center. NTIA suggested we accommodate such varying circumstances by limiting the area of the protected service rather than the radius of the area. It further suggested that 700 square miles would be an appropriate standard. [80]

106. We agree that a uniform fixed mileage service area boundary makes most sense where a station radiates its power in an omnidirectional manner in the horizontal plane; however, when the horizontal plane radiation pattern is not omnidirectional some adjustment must be made. For example, when a station uses a single cardioidal pattern antenna the gain in the direction of maximum radiated power is 16 dB.[81] In the opposite direction, the gain is approximately 0 dB. It would not be reasonable to locate the protected service area boundary the same distance from the transmitter in the direction of 0 dB gain and in the direction of 16 dB gain.

107. In this situation, the power radiated in the direction of 16 dB gain is 3dB higher than the power radiated by 13 dB omnidirectional antenna assuming equal transmitter powers. If the service area boundary were extended out to that point at which the power flux density were equal to the power flux density at the boundary of the 13 dB omnidirectional antenna, the maximum distance to boundary would be approximately 21.2 miles from the transmitter. If we assume such a service area can be approximated by 21.2 mile radius semi-circle, we can estimate the area of the protected service to be approximately 706 square miles. The area of 15 mile radius circle is approximately 707 square miles. We agree that it is more reasonable to limit the protected service area of non-omnidirectional radiation patterns by area rather that by a fixed radius. So that disputes are easily resolved we must also adopt a clear and easy to understand method by which the boundary of such service areas can be determined. We believe the best method to accomplish this is to make the service area have the same shape as horizontal plane radiation pattern of the transmitting antenna and limit the total area served to 710 square miles. To accomplish this result the protected service area boundary will be defined by the following formula:

$$D_b = \frac{D_{bmax}}{\text{antilog}\left(\frac{G_{max} - G}{20}\right)}$$

In which the parameters are defined as follows:

D_b = the distance to the boundary in direction of interest,

G = the antenna gain in the direction of interest,

G_{max} = the maximum gain of the transmitting antenna,

D_{bmax} = the distance to boundary, in the direction of maximum gain that will make the total area of the protected service area equal to or less than 710 square miles, the antilog is to be computed using the base 10; all distances are in miles and all gains are in dB.

We stress that all distance must be adjusted so that the total area contained within the protected service area boundary does not exceed 710 square miles. We expect each applicant that does not intend to use an omnidirectional transmitting antenna to include a complete description of the proposed service area with its application. The description must include the number of square miles contained in the proposed service area and also contain sufficient detail to allow the easy determination of the distance from the proposed transmitter site to the boundary in all directions.

108. We recognize that an applicant could use such a narrow beamwidth transmitting antenna that the protected service area boundary determined using this formula would be beyond the area that could be served by the transmitter. We have considered both limiting D_{bmax} and specifying a minimum antenna beamwidth to deal with this problem. However, we have decided this is not necessary. We believe that limiting the protected service area boundary to the radio horizon will adequately deal with this problem. Furthermore, there may be a case where it is necessary to use such an antenna to serve the desired service area.

f. *Radio Horizon and Antenna Height.*

109. In the *Notice*, we also proposed that if the radio horizon were closer to the transmitting site than the boundary determined either by the fixed mileage limit or the power flux density contour then radio horizon would be the boundary. We made this proposal because there is little energy propagated beyond the radio horizon at MDS frequencies and consequently there would be no service available beyond the radio horizon. We proposed that for purposes of determining the service area boundary, we would consider the radio horizon to be the horizon determined by natural terrain features or significant man made structures. We further proposed not to consider the effect of receiver antenna height in determining the radio horizon.

110. Most of the commenters favored our proposal to fix the service area boundary at the radio horizon in those cases where it was closer than the power flux density contour or the fixed mileage distance. However, there were concerns expressed about how the radio horizon is determined and whether it would be feasible to limit the radio horizon by restricting transmitter antenna height.

111. For a particular transmitter site, the major factor that determines whether a natural terrain feature or a man made obstacle will become the radio horizon is the transmitting antenna height. NTIA suggested that the height of all MDS transmitters be limited so that the resulting radio horizon was located at the protected service area boundary determined by either a fixed mileage or a power flux density contour. NTIA suggested a formula that could be used to determine transmitting antenna height.[81a] The formula was derived assuming a 4/3 earth radius propagation condition and a 100 foot high receiving antenna. In its reply comments, NTIA suggested a modified formula that was derived assuming a 30 foot high receiving antenna.[82] When evaluated for 15 miles, this formula yields a transmitting antenna height of 25.5 feet. In its reply comments Microband noted the antenna height implied by the NTIA suggestion and stated that radiation from such a height would not clear most obstacles in most areas.[83]

112. In its comments Microband submitted an analysis in which it attempted to derive an analytical expression to predict the percentage of an area that would have an unobstructed propagation path to the transmitting antenna. The variables in the analysis were the transmitting antenna height, the receiver height, the obstacle height, the distance to the

[80] NTIA Comments, *supra* note 29, at 8.

[81] The horizontal plane gain of either an omnidirectional or directional antenna varies with the vertical beamwidth of the antenna. Here we are assuming that the cardioidal antenna has the same vertical characteristics as the 13 dB gain omnidirectional antenna we used to calculate the −75.8 dBw/m² power flux density contour.

[81a] NTIA Comments, *supra* note 29, at 5.

[82] Reply Comments of the National Telecommunications and Information Administration, General Docket No. 80-113, 3 (October 2, 1980).

[83] Reply Comments of Microband Corporation of America, General Docket No. 80-113, 6 (October 14, 1980).

obstacle, and the distance to the desired receiver.[84] Although the Microband analysis is flawed in some respects, we agree with the basic result of the analysis; [85] that is, it is necessary to have a transmitting antenna height considerably higher than the obstacles located in a service area if there is to be reliable service to a significant portion of the area. In addition to its analytical model, Microband also submitted maps showing the variation of an obstructed area as function of antenna height for Birmingham, Alabama. These maps show that raising the transmitting antenna from 300 feet above ground level to 737 feet above ground level significantly reduces the area within 10 miles of the antenna that is blocked by natural terrain obstructions. We believe the maps and analysis submitted by Microband clearly demonstrate that it would be unwise to restrict transmitting antenna heights as suggested by NTIA. There is little doubt that if a restriction were applied, it would be impossible to serve any significant percentage of any service area. Thus, we reject NTIA's suggestion that we limit transmitting antenna heights.

113. We recognize that by declining to place a limit on transmitting antenna height, we could be encouraging MDS operators to place antennas higher than needed to serve their service area. However, we also recognize that it could be expensive to construct higher antennas; and if the additional height did not add significantly to the area that could be served, it would be unlikely that an MDS operator would spend the necessary money without realizing any return. In addition, our rules require all MDS operators to construct their facilities so as to not block cochannel use in adjacent areas. Thus if an operator did construct an unnecessarily high antenna, we have the regulatory tools to deal with such an occurrence. Finally, in regard to transmitting antenna height, we do not believe there is anything wrong with an MDS operator raising its antenna as Microband did in Birmingham if the purpose is to get its signal over obstructions within its service area.

[84] Microband Comments, *supra* note 30, at 32–41.

[85] The analysis is flawed in two respects. First, it does not consider the effect of the width of the obstacle; and second, it masks the effect of the distance between the transmitting antenna and the obstacle. The first is important because a wide obstacle such as a natural terrain obstruction will shadow a much larger area than a narrow obstacle such as a building. The second is important because the amount of area shadowed by an obstacle varies with the distance between the obstacle and the transmitter. An obstacle close to the transmitter will shadow less area than an obstacle located further from the transmitter.

114. We also have decided that in making the determination of whether an obstacle constitutes the radio horizon a reasonable receiving antenna height should be assumed. In many cases, a relatively modest receiving antenna height will overcome the blocking effect of an obstacle. NTIA in its reply comment suggested that 30 feet was the typical height of receiving antennas. [86] Microband also used this height in its analysis. [87] We agree that 30 feet is representative of the actual heights at which antennas generally will be mounted on private residences. For these reasons, we have decided to use a 30 foot receiving antenna to determine the location of the radio horizon. We also expect all protected service area calculation to be made assuming a 30 foot receiving antenna height.

115. In summary, the protected service boundary will be the radio horizon in those situations in which the radio horizon is closer to the transmitting antenna than the protected service area boundary determined as above. The location of the radio horizon is to be determined using the actual transmitter height and a 30 foot receiving antenna height.

g. *Limitations Imposed by Preexisting Cochannel Station.* 116. In the *Notice*, we observed that there were a number of existing MDS operations in which interference already existed within the proposed protected service area boundary. That is, there are situations in which the ratio of the desired signal to an undesired cochannel signal is less than 45 dB within the protected service area of the desired station. Because of our belief that it would not be useful to disturb existing situations where the operators had adapted to the interference, we proposed to "grandfather" all such situations. To accomplish this, we proposed to limit the service area of such stations to the boundary at which the ratio of the desired signal to the undesired signal is 45 dB.

117. We received little comment on this proposal. Microband basically supported the concept but stressed that once a contour was established for a station, it should be permanent unless voluntarily changed by the applicant.[88]

118. We agree with Microband. With regard to the permanence of the protected service area, we stress that we proposed the interference contour boundary only in those cases where the stations were already operating and had reached an accommodation. We expect there to be very few such situations. In most cases, the protected service area boundary will be described above and will be permanent. All applicants must show that they will not cause harmful interference within the protected service area of any existing or previously applied for station with an expired cutoff date located within 50 miles of the proposed station or that have an unobstructed propagation path to the protected service area of any such station. An application that does not contain such a showing will not be accepted for filing. The protected service areas of existing stations or previously proposed stations with expired cutoff dates will not be changed to accommodate additional more closely spaced stations.

119. There is one situation involving the reduction of the protection service area boundary by "grandfathered interference" that requires clarification. The reason we proposed to limit the protected service boundary to the interference contour produced by an existing or previously proposed station was that we did not want to allow the new rules to be used to generate controversies where the licensees and applicants had accommodated themselves to the situation. The question then is should a subsequent applicant be required to show noninterference in the protected service area boundary determined by the fixed mileage boundary (or the radio horizon if applicable) or should it only be required to show noninterference within the area bounded by the interference contour? On the one hand, it could be argued that because the protected service area was reduced only to avoid a conflict between stations that were operating prior to the adoption of these rules or had agreed for their own reasons to accept interference from each other, it would not be fair to let a new applicant benefit from such accommodations. This argument is especially persuasive in those situations where the licensee with the reduced service area is providing service in the unprotected area that lies within 15 miles by the use of good engineering techniques. A new entrant could cause a level of interference that could negate the results of good engineering solutions. For example, if a licensee had oriented its receiving station antennas in the unprotected area so that there was a small decrease in gain in the direction of the desired station but a much larger reduction in gain in the direction of the undesired station that caused the service area reduction, it could be providing an interference free picture. A

[86] NTIA Rely Comment, *supra* note 81, at 3.

[87] Microband Comments, *supra* note 30, at 37, 54.

[88] *Id.*, at 54.

new station could be so located that it would cause a much higher level of interference and thus negate the engineering solution the licensee had implemented.

120. On the other hand, it could be argued that since those persons living in the unprotected area may not be able to get an interference free signal from the existing station using standard techniques, there is no reason to protect its signal in that area.

121. After considering these arguments, we have concluded that it would better serve the public interest if we granted the existing station a protected service area determined by the above rules relative to new applicants and use the reduced protected service area only in cases involving the station that caused the reduction. This result has two benefits. First, it encourages the station with the reduced service area to develop engineering solutions to protect against the interfering station. Second, it makes it more likely that locations in unprotected areas will get service because it limits the interference within the unprotected area to that caused by one station.

h. *Adjacent Channel Considerations.*

122. In the *Notice*, we expressed the view that adjacent channel operation was feasible if the transmitting antennas were colocated and cross-polarized and the EIRP of both stations was the same. In particular, we concluded that if the receiving antennas could provide 15 dB of cross-polarization discrimination between the desired signal and an undesired adjacent channel signal, then, because the signal from the colocated transmitters would be the same at all receiving sites, the 15 dB protection ratio we had concluded was necessary for adjacent channel operation would be achieved. Because we have concluded here that the required protection ratio is only 0 dB, we believe more strongly that such operation is feasible. During the pendency of this proceeding, colocated adjacent channel stations have been successsfully operated in Phoenix. Other colocated adjacent channel operations are expected to begin soon.

123. The operation of noncolocated adjacent channel stations presents more difficult issues. In Appendix 3 of the *Notice*, we developed an analytical model to predict the effect noncolocated adjacent channel stations would have on each other. We developed the model assuming that the transmitting stations used copolarized antennas,[89] had the same EIRP, and that all receive sites were equipped with the standard antenna oriented to receive the maximum desired signal. We also assumed that the ratio of the desired signal to the undesired adjacent channel signal had to be at least 15 dB for satisfactory operation. Using this model, we showed that if the stations were located less than ½ mile apart and the transmitting antennas were cross-polarized each station would lose less than 0.3% of its 15 mile protected service area. That is, we showed the area that could not be served because of adjacent channel interference was less than 2 square miles. When the transmitter separation was increased to 2 miles, the model showed that less than 4% of the service area was lost.

124. On the basis of this analysis, we concluded that because the 0.3% loss of service area was "diminutive" and would have little effect on the operation of either station, we could exclude from the protected service area of each station that area in which adjacent channel interference occurred so long as the area excluded did not exceed 0.3%. This proposal was contained in proposed new Section 21.902(d)(4).

125. We received very little comment on the technical analysis we presented. Dr. William Kincheloe of Stanford University did suggest that our reliance on cross-polarization to achieve adjacent channel operation was misplaced because there is likely to be significant signal depolarization when the propagation path exceeds 7 miles.[90] We agree that the likelihood of achieving significant cross-polarization discrimination (15–20 dB) decreases as the propagation path length increases. However, because adjacent channel interference is greater near the undesired station and because the desired and undesired transmitters are to be located near each other, significant depolarization is not likely to occur between the transmitters and the receiving sites where cross-polarization discrimination is most needed; that is near the undesired transmitter. At receiver sites located near the edge of the protected service area, the propagation path length to each transmitter will be approximately the same and thus the signal levels at the receiver will be approximately the same. If 15 dB of protection were required as assumed in the *Notice* and all, or most, of the polarization discrimination were lost, significant adjacent channel interference might occur. However, as was discussed above, it is reasonable to expect television receivers to operate successfully even when the undesired signal *exceeds* the desired signal by as much as 5 dB. Thus, we do not believe there will be harmful adjacent channel interference at those sites located more than 7 miles from the transmitters where significant depolarization of the signal is more likely to occur. Furthermore, the amount of adjacent channel interference that will occur is less than predicted in the *Notice* because of the very conservative adjacent channel protection ratio (15 dB) used to make the calculations.

126. Microband criticized our proposal to authorize noncolocated adjacent channel operations that would reduce the service areas of existing stations. Microband argued that, although the area lost might constitute only 0.3% of the total service area, it could include a much larger percentage of the sites actually being served. Microband suggested that the better method would be to require adjacent channel applicants to show the effect of the proposed operation on existing operations and let the Commission make a case-by-case determination of whether the amount of area lost is significant.[91] Contrasted with Microband's views were those of Richard L. Vega who strongly opposed any rule that would require an adjacent channel applicant to show how it would avoid causing harmful adjacent channel interference. Mr. Vega states that "[e]ither the Commission believes that adjacent channel transmissions are possible or they doubt it!"[92]

127. As we stated in the *Notice*, we believe that two conclusions are irrefutable. First, it is possible to achieve successful adjacent channel operation using MDS channels 1 and 2 if the transmitting antennas are cross-polarized, colocated, and have the same EIRPs. Second, if the transmitters are not colocated, there will always exist an area surrounding the undesired transmitter where it will be virtually impossible to receive an interference-free picture. The size of the area can be reduced by careful engineering but there will always be some area in which harmful adjacent channel interference will occur. Thus, the policy choice is between requiring colocation and insuring interference-free operation and allowing some flexibility in adjacent channel transmitter location. In the

[89] We made the calculation using copolarized transmitting antennas and then determined contours of additional protection required to provide the 15 dB of adjacent channel protection. It was assumed that most of the protection would come from cross-polarizing the transmitters.

[90] Stanford Comments, *supra* note 23, Attachment at 7.

[91] Microband Comment, *supra* note 30, at 61–62.

[92] Vega Comments, *supra* note 30, at 61–62.

Notice, we proposed to allow adjacent channel transmitters to be located as much as ½ mile apart and to reduce the protected service areas of each station by not including the area near the adjacent channel station where harmful interference will occur.

128. While this may be the best policy to follow when both stations are proposed at approximately the same time, we do not believe it is the best policy when the second station is applied for after the first station has either begun operation or has made substantial progress toward beginning operation. In the case of an operating station, a new adjacent channel station located within ½ mile would cause interference in that portion of the existing station's protected service area where the best signal generally is available—that is within a few miles of the transmitter. Thus, it is likely, as Microband suggests, that a noncolocated adjacent channel station could disrupt the service of a substantial number of the existing station's customers. For this reason, we believe that the better course to follow is to require the adjacent channel applicant to show the effect its proposed operation will have on existing and previously proposed operations. Thus, we will require all applicants proposing noncolocated adjacent channel operations to show first, why they are unwilling or unable to colocate their proposed facilities with existing or previously proposed operations and second, to show how much harmful interference will be caused by the proposed noncolocated operation. We will then make a decision, on a case-by-case basis, of whether to accept the application. We believe that variations from case-by-case are so wide that it is not feasible to adopt a single rule that would apply to all situations. Furthermore, we remind all existing licensees and permittees of their obligation to "make exceptional efforts . . . to avoid blocking potential adjacent channel use in the same city. . . ." 47 CFR 21.902(a).

129. The operation of adjacent channel stations also can be affected by the radiation of out-of-band emissions by station transmitters. For example, if a channel 1 transmitter emits a significant amount of energy within the band assigned to MDS channel 2, a channel 2 receiver could experience harmful *cochannel* interference. Section 21.908 of the rules, 47 CFR 21.908, contains the technical requirements for MDS transmitters. This section requires that a transmitter rated at 10 or more watts (this includes virtually all MDS transmitters) must attenuate all emissions that are more then 3 MHz above or below the edges of the assigned band at least 40 dB relative to the peak visual output power. Emission standards for the bands between the authorized band edges and 3 MHz above and below the band edges are contained in § 73.687(a)(3) of the Rules. 47 CFR § 73.687(a)(3), that applies to broadcast television stations. This section requires that all emissions in these bands be attenuated at least 20 dB below a reference level described in § 73.687(a)(4) except that, for color television transmission, the emission at 2.32945 MHz below the lower band edge must be attenuated at least 42 dB below the reference level. The nature of the reference level specified in § 73.687(a)(4) is such that the attenuation required in these 3 MHz bands is approximately 38 dB relative to the peak visual signal.[93] Thus, the MDS rules only require that transmitter out-of-band emissions to be attenuated 40 dB below the peak visual signal. This means that one colocated adjacent channel transmitter can emit signals that are only 40 dB below the peak visual power of a colocated transmitter and are within the authorized band of that transmitter. Because these out of band emissions are within the band of the second channel, they will appear as cochannel interference that is only 40 dB below the desired signal and thus will not meet the 45 dB cochannel interference standard. Of course, if the adjacent channel transmitters are cross-polarized, there could be as much as 20 dB of additional attenuation of the out-of-band emission by the receiving antenna thereby reducing the level of the undesired signal to 60 dB below the desired signal. A cochannel signal at this level would not cause preceptible interference.

130. During the pendency of this proceeding, we authorized Channel View, Incorporated to conduct an experiment in Salt Lake City to test the feasibility of adjacent channel operation.[94] The experiment was conducted by Channel View, the licensee of MDS channel 1 in Salt Lake City, with the assistance of American Home Theaters, Channel View's customer in Salt Lake City. The experiment was conducted using the four E group channels and the four F-group channels that were than allocated to the ITFS. These eight channels are assigned the following bands:

E_1 2596–2602 MHz	F_1 2602–2608 MHz
E_2 2608–2614 MHz	F_2 2614–2620 MHz
E_3 2620–2626 MHz	F_3 2626–2632 MHz
E_4 2632–2638 MHz	F_4 2638–2644 MHz.

Thus all the channels except E_1 and F_4 were operated in the presence of both an upper adjacent channel and a lower adjacent channel. E_1 operated in the presence of only an upper adjacent channel and F_4 operated in the presence of only a lower adjacent channel. The experiment was conducted with the transmitting antenna for the channels in one group cross-polarized relative to the transmitting antennas of the other group. Because the experiment was being conducted to show the feasibility of 8-channel operation, the receiving antennas were oriented with their polarization plane at 45° to the horizontal plane, that is halfway between vertical and horizontal polarization.[95] This allowed the receivers to receive the same level of signal from both the E group and F group transmitters. A horizontally polarized signal received with the receiving antenna oriented at this angle is only 3 dB lower than the signal that would be received if the receiving antenna were oriented horizontally. A vertically polarized signal received by the same antenna is also only 3 dB lower than the signal that would be received if the antenna were vertically polarized. Thus, the received signals were of equal amplitude and only 3 dB lower than the signals that would have been received in either the vertical or horizontal orientation. Of course, if the antenna were either horizontally or vertically polarized the received signal on the cross-polarized channel would be approximately 20 dB lower than the signal received on the copolarized channel. During the experiment, it was determined the out-of-band emissions from the adjacent channel transmitter had to be kept at least 51 dB below the peak video power to avoid perceptible interference. That is a transmitter that only met the current MDS out-of-band emission requirements would have caused adjacent channel interference when operated in this manner. The transmission systems in the experiment were adjusted so that the out-of-band

[93] Erickson, D. E., *Measuring TV Sidebands & Spurious Emissions*, Broadcast Engineering, May 1982, at 70.

[94] Experimental Station KM2XBN, Salt Lake City, Utah; File No. 8666–ED–PL–81. *See also*, Mackey R. J., *MMDS—Where Does It Stand Six Months After FCC Approval?* 3 Private Cable at 16 (January, 1984) (This article contains a discussion of some of the relevant technical aspects of the Salt Lake City experiment.).

[95] There is nothing in the rules we are adopting today or in any existing rules that preclude licensees from operating adjacent channels with the same polarization. We believe this would be desirable in some situations because the additional 3 dB of signal that would be obtained could improve the level of service provided.

emissions were 60 dB below the peak visual signal and successful 8-channel operation was achieved.

131. These experimental results validate the conclusion that if cross-polarized, colocated, adjacent channel transmitters are used and if receiving antennas can provide 20 dB of cross-polarization discrimination, successful adjacent channel operation using multiple channels can be achieved. However, because we believe, as many of the commenters in this proceeding suggested, that in some cases it may be difficult to achieve this level of cross-polarization discrimination, we strongly recommend that all new licensees use transmitters that achieve more than the required out-of-band emissions suppression. In this regard, it should be noted that Section 21.908(b) requires that greater attenuation of out-of-band emissions be achieved if harmful interference occurs. In the Further Notice of Proposed Rulemaking we are adopting today, we are proposing to change the required out-of-band emission attenuation from 40 dB to 60 dB.

132. If the adjacent channel transmitters are not colocated, the probability of the out-of-band emissions causing harmful interference is much greater. For any achievable level of out-of-band emission suppression, there will always be an area in the vicinity of a non-colocated adjacent channel station in which the out-of-band emission will cause harmful interference. Reducing these emissions, as suggested above, will reduce the size of this area but it cannot be eliminated. We have not attempted to develop an analytical model to determine the size of this area but we believe the results would be qualitatively similar to those in Appendix 3 of the *Notice*. It should be stressed in this regard that this problem cannot be solved or mitigated by improved receiver design. The signals of concern here are in the same band as the desired signal and therefore will always be a potential source of harmful interference. For these reasons, we strongly urge all new MDS permittees to make exceptional efforts to colocate adjacent channel facilities. In those cases in which this cannot be done, we will proceed as described above. That is, in those cases where the applications were filed at the same time, we will not protect a station against harmful interference that is caused by the non-colocated adjacent facility. In the case of a subsequently filed application, we will require that the applicant submit an analysis of the harmful interference that will occur within the protected service areas of existing or previously proposed adjacent channel facilities as a result of out-of-band emissions from the proposed new facility. We will make a case-by-case determination of whether to accept such applications.

133. Finally, we wish to address the issue of out-of-band emissions from ITFS transmitters. Section 74.936(b) of the Rules, 47 CFR 74.936(b), requires that all ITSF transmitters rated at 10 watts or more attenuate all emissions more than 3 MHz above or below the assigned channel edges at least 40 dB relative to the peak visual output power. This requirement is the same as the MDS transmitter requirement. However, Section 74.938(b), 47 CFR 74.938(b), exempts ITFS operators from complying with Section 73.687(a)(3) that applies to lower sideband emissions except in those cases in which "interference to reception of another station results. . . ." There are several questions raised by these sections. First, what level of protection from existing adjacent channel ITFS stations will new MDS stations using the E or F group channels be entitled to? The existing ITFS stations that could cause such interference include both grandfathered ITFS users of the E and F group channel and the operators of D_4 and G_1, the channels that "bookend" the reallocated E group and F group channels.

134. In reallocating the spectrum from the ITFS to the MDS, one of our primary objectives was to cause as little disruption as possible to existing ITFS operations. To accomplish this goal, we "grandfathered" all ITFS licensees, permittees, and applicants of the reallocated channels. What this means in the present context is that such grandfathered operators that have already constructed will not be required to modify or replace existing equipment. If an adjacent channel MDS operator believes that its operation would be improved if the ITFS facilities were improved, it is free to furnish new equipment for the ITFS operator. We expect that ITFS operators will cooperate by accepting reasonable offers to furnish new equipment made by adjacent channel MDS operators. Of course, the same result will apply to both existing E and F group transmitters and existing channel G_4 and channel G_1 transmitters. Thus when there are pre-existing adjacent channel ITFS operators, we will not protect the MDS station from harmful interference that occurs as a result of the operation of the ITFS station.

135. Prior to the adoption of the *Multichannel Order* a number of E-group and F-group ITFS applications were filed. Since that time many of these applications have been granted; however, many of the recipients of these grants will not have constructed their facilities by the date of this order. The question raised by this situation is what kind of adjacent channel protection should such licensees be required to give to an adjacent channel multichannel MDS station. For example, assume that a grandfathered E-group ITFS applicant has not yet constructed facilities in an area where we have received a number of F-group MDS applications. The best way to proceed would be to colocate the two facilities and cross-polarize the transmitting antennas. In addition, if the effects of out-of-band emission are to be mitigated, the ITFS transmitter should at least meet the existing MDS transmitter out-of-band emission requirement. As stated above, it would be even better in both transmitters had out-of-band emissions that were 60 dB below the peak visual power. Many of the commenters in this proceeding made the point that in many cases because of legal restrictions, it will be impossible for ITFS and MDS facilities to be colocated. Specifically, it was suggested that many ITFS transmitters are located on public property that is not available for private use.[96] We believe that in such situations the ITFS operator should use a transmitter that emits the lowest possible level of out-of-band emissions. Specifically, such transmitters shall comply with Section 73.687(b)(3) as is required by 74.938(b) when interference occurs, as it most likely would if this standard were not met. In addition, although Section 74.936(b) only requires that the emissions beyond 3 MHz from the band edges be attenuated only 40 dB below the peak visual power (for transmitter rated at 10 watts or more), 60 dB of attenuation as specified in Section 73.687(i) should be achieved if at all possible.

136. We will, therefore, not protect a multichannel MDS station from harmful interference that is caused by a colocated or non-colocated E or F group ITFS facility constructed after the date of this order if that ITFS station transmitter complies with §§ 73.687(b)(3) and 74.936(b) of the Rules. If such an ITFS station uses a transmitter that does not comply with these sections, it will not be allowed to continue operation.

137. We will treat D_4 and G_1 ITFS stations constructed after the date of this order in a similar manner. That, is

[96] Comments of the Corporation for Public Broadcasting, General Docket No. 80-113, 14 (September 2, 1980).

we will not protect a MDS station from harmful interference that occurs when the transmitter of a D_4 or G_1 station is in compliance with Sections 73.687(b)(3) and 74.930(b).

3. Summary of Protected Service Parameters.

138. An MDS station will be protected from harmful cochannel and adjacent channel interference as defined herein within an area described as follows:

i. For a station using a transmitting antenna with an omnidirectional horizontal plane radiation pattern the boundary of the protected service area will be 15 miles;

ii. For a station using a transmitting antenna with an nonomnidirectional horizontal plane radiation the boundary of the protected service area will be the locus of all points located at distances from the transmitter as determined by the following equation;

$$D_b = \frac{D_{bmax}}{\text{antilog}\left(\frac{G_{max} - G}{20}\right)}$$

in which the parameters are defined as follows:

D_b = the distance to the boundary in direction of interest.

G = the transmitter antenna gain in the direction of interest.

G_{max} = the maximum antenna gain.

D_{bmax} = the distance to boundary in the direction of maximum antenna gain that will make the total area within the boundary less than or equal to 710 square miles.

All the distances are in miles; the gains are in decibels and are relative to an isotropic antenna; and the antilog is taken to the base 10.

C. Service of a Single Metropolitan Area

139. In the *Notice*, we proposed to require that each MDS station be engineered so that it would serve only one metropolitan area with a population that exceeded 50,000. The proposal was contained in proposed Section 21.902(b)(6). This proposal did not elicit much comment. Microband stated that it opposed the Rule and also suggested that it would be difficult to administer because of a lack of a definition of what constitutes a metropolitan area.

140. Upon further consideration, we have concluded that the Rule is not necessary. Existing Section 21.902(a) already requires that stations be engineered to avoid blocking cochannel use in adjacent cities. We also agree with Microband's contention that the rule would be difficult to administer.

III. Notice of Inquiry Issues

141. In the *Notice*, we asked a number of questions concerning several issues that we believe could be a source of future problems if we were to authorize more than two adjacent channels. We did not receive very many substantive comments in response to our questions. For this reason, we will only discuss each of these issues on which we received substantive comments.

A. Coordination

142. In the *Notice*, we expressed the belief that any applicant in the 2500–2690 MHz band regardless of the service should submit a technical analysis of the affect its operation would have on existing or previously applied for stations on the same or adjacent channels. The proposed rules in the *Notice* contained an extensive revision of Section 21.902 that is now used in the MDS to avoid interference problems. We asked what if any changes would be appropriate if these procedures were made applicable to the 2500–2690 MHz band. We also asked for comment on the advisibility of using coordination procedures similar to those in section 21.100(d) in this band.

143. We receive little comment on this issue. John F.X. Browne did indicate that the coordination between ITFS and MDS applicants would be desirable. He also pointed out that a procedure similar to that set out in Section 21.100(d) would not be appropriate because that procedure is adapted to point-to-point microwave use whereas any procedure to be used in the 2500–2690 MHz band would have to deal with point-to-multipoint interference problems.[97] We believe that the rules we are adopting today adequately deal with the required coordination between MDS and ITFS users of the 2500–2690 MHz band. It is not clear, however, that we have adequate procedures to deal with interference problems that might occur between and among ITFS applicants, permittees and licensees. Because of the increased ITFS filing activity that has resulted from our decision to allow ITFS applicants to lease the excess capacity that is available on their system, there are many more cases that require that we decide whether ITFS applications are mutually-exclusive. We believe that a procedure similar to that used in the MDS could be used in the ITFS. We did not propose to adopt such a procedure in the *Notice* nor are we prepared to do so now. We believe that we should wait until we have more experience with the ITFS leasing activity before proposing a procedure.

144. We also have pending before us a Petition for Rulemaking submitted by Microband Corporation (RM–3232)[98] which requests, *inter alia*, that we make Section 21.100(d) with certain changes applicable to the MDS. For the reason stated above, we do not believe that such a prior coordination procedure is suitable for the MDS. Furthermore, we believe that the service area definitions and associated rules we are adopting today deal more effectively with the other issues raised by Microband in its petition, and hence we shall deny the petition.

B. Other Notice of Inquiry Issues

145. In the *Notice*, we asked also for comment on spuriously generated interference, receive equipment considerations, channel plans, power and service area limitations, and transmitter stability. As noted above, we did not receive extensive comments on these questions. In the *Multichannel Order*, we considered the various channel plans suggested in the proceeding and in this proceeding. We do not believe that this issue requires further comment. However, we do believe that all of the other issues listed are vital to the successful operation of both MDS channel 1 and channel 2 stations and to all multichannel MDS stations that might be authorized in the future. We believe that if we propose specific rule changes, we will receive more and more focused comments on these important issues. For this reason, we are today adopting a Further Notice of Proposed Rulemaking in which we propose specific rule changes addressing these issues.

IV. Other Matters

146. In the *Notice*, we stated our intention to deal with two Pending Rulemaking Petitions in this proceeding. One of these, RM–3540, filed by Microband requested that we investigate the feasibility of exchanging the existing MDS channel 2 band for a 6 MHz band allocated to another service. We resolved the issues raised by Microband's Petition in the *Multichannel Order* and thus do not need to consider it in this proceeding.[99]

147. The other Petition, RM–3537, filed by Telecommunications Services, Inc. (TSI) requested that we amend Section 21.902(c) to establish minimum criteria for the acceptance of MDS applications.[100] In particular, TSI

[97] Browne Comments, *supra* note 17, at 7.

[98] Petition for Rulemaking RM–3232, In the Matter of Amendment of Part 21 of the Commission's rules to make the prior coordination requirement of Subsection 21.100(d) applicable to Multipoint Distribution Service; Microband Corporation of America (Oct. 27, 1978).

[99] *Multichannel Order*, *supra* note 6, at 33,868.

[100] Petition for Rulemaking RM–3537, In re: Amendment of Part 21 of the Commission's Rules to

Continued

suggested an amendment to Section 21.902(c) that it claimed would provide for the acceptance of all applications that proposed locating a new station more than 30 miles from an existing or previously proposed station and were also cross-polarized with all existing or previously proposed stations located within 40 miles of the proposed station. On the basis of the adjacent channel and cochannel interference analysis contained in this order, we have concluded that the rule changes proposed by TSI would not adequately protect existing stations from harmful cochannel and adjacent channel interference. We also believe that the rules we are adopting in the Order provide adequate protection for existing stations and also give new applicants clear guidelines for locating new cochannel and adjacent channel stations. For these reasons, we have concluded that it would not be in the public interest to consider further the suggestions made by TSI and we are therefore denying its petition.

V. Regulatory Flexibility Act

148. The Regulatory Flexibility Act of 1980 does not apply to rules adopted after January 1, 1981 when the underlying notice of proposed rulemaking was adopted before that date. The underlying *Notice of Inquiry of Proposed Rulemaking* in this proceeding was adopted March 19, 1980. Accordingly, there is no need for certification under the Regulatory Flexibility Act. See 5 U.S.C. 601.

VI. Conclusion

149. We believe that we have in this *Report and Order* adopted standards for the regulation of the Multipoint Distribution Service that are reasonable, easy to understand and apply, and are in the public interest. We believe that the rules and policies set out herein should insure that MDS licensees are guaranteed protection from harmful cochannel and adjacent channel interference in the area in which they can provide reliable service while at the same time allowing for the licensing of new stations as close to existing stations as is technically feasible.

150. Accordingly, it is ordered, pursuant to sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. 154(i), 303(r), that Title 47 of the Code of Federal Regulations is amended as described in Appendix B. These amendments shall become effective thirty days after publication of this Order in the **Federal Register.**

151. It is further ordered that the Microband Petition for Rulemaking RM-3232 is denied and that proceeding is terminated.

152. It is further ordered that the Telecommunications Systems, Inc. Petition for Rulemaking RM-3537 is denied and that proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

List of Comments

Formal and informal comments were filed in this proceeding by the following:

Advanced Micro Devices, Inc.
American Association for Community and Junior Colleges
Task Force on the Uses of Mass Media for Learning
Bakersfield City School District (California)
Board of Education, City of Chicago
Birmingham Board of Education
Catholic Television Network
Center for Excellence, Inc.
Colorado State University
Contemporary Communications, Inc.
Commonwealth Edison (Chicago)
Corporation for Public Broadcasting
Cox Cable Communications, Inc.
Department of Communications, United States Catholic Conference
Department of Education, San Diego County
Eastfield College (Texas)
Bert Edwards
Educational Television Association of Metropolitan Cleveland
El Centro College (Texas)
Entertainment Network, Inc.
Ford Aerospace and Communications Corporation
General Dynamics—Fort Worth Division
Hewlett-Packard Company
Indiana Higher Education Telecommunications System
Intel Corporation
Norman Jackson
Jet Propulsion Laboratory of the California Institute of Technology
John F. X. Browne & Associates, Inc.
Joint Council for Educational Telecommunications
Kirkwood Community College
Lawrence Livermore Laboratory of the University of California
Leland Standford Junior University
Long Beach Unified School District
Magic Lantern Television Microband Corporation
National Association of Public Television States
National Public Radio, Inc.
National Telecommunications Council, Inc.
National Telecommunications and Information Admininstration
Northeastern University
Public Interest Satellite Association
Public Service Satellite Consortium
Richard L. Vega & Associates
Richardson Independent School District (Texas)
The School Board of Marion County (Florida)
South Florida Communications
South Jersey Radio Inc.
Standard Oil of California
Systems Control Incorporated
University of Maryland
University of Minnesota
University of Southern California
Watkins-Johnson Company
Marabeth F. Webb

Reply comments were filed by the following:

Archdiocese of San Francisco *
Catholic Television Network
Center for Excellence *
Corporation for Public Broadcasting
Illinois Institute of Technology *
Joint Council on Educational Telecommunications
Leland Stanford Junior University *
Microband Corporation
National Association for Public Television Stations
National Aeronautics and Space Administration
National Instructional Telecommunications Council, Inc.
National Telecommunications and Information Agency
South Florida Communication Incorporated.

Those organizations listed with an asterisk did not actually file reply comments, but rather incorporated by reference the comments they had filed in the related proceeding in General Docket 80-112.

Responses to Microband's "Urbanet" Proposal

Reverend Jesse L. Jackson, Operation Push, Inc.
The Archdiocese of Los Angeles
Ad Hoc Committee for Wireless Cable
American Home Theater, Inc.
Bogner Broadcast Equipment Corporation
Omega Communications, Inc.
Test, Inc.
Vista Unified School District
National School District, National City, CA
San Dequito Union School District, CA

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define Interference Studies Required by Subsection 21.902(c) and to Establish Minimum Criteria for the Acceptance of Newly Filed Applications. Proposing Construction of New MDS Stations or the Amendment of Existing MDS Authorizations, Telecommunications Systems, Inc. (Dec. 7, 1979).

Chula Vista City School District, CA
Cajon Valley Union School District, CA
San Diego Unified School District
Palomar College
California Media and Library Educators Association
National Cable Television Association, Inc.
Microband Corporation of America
Pay Television of Greater New York, Inc.
American Cable
Showbiz
Santa Ana Unified School District
Alfred E. Anscombe
Regional Educational Television Advisory Council of Los Angeles County
Telicare, Diocese of Rockville Centre
Ultravision Communications
State of Connecticut, Board of Education
California State University, Sacramento
The California State University System
University of Maryland—College of Engineering
Public Broadcasting Service
Turner Broadcasting System
Indiana Higher Education Telecommunication System
Mary Sue Manley
TRI-State Regional Planning Commission
Northeastern University
Multipoint Distribution Systems
Superintendent, Fresno County Schools
California State College, Stanislaus
Legislative Commission on Science and Technology, State of N.Y.
CBS, Inc.
The Association of Hospital Television Networks
Microband Corporation of America
Long Beach Unified School District
Metropolitan Education and Cultural Communications Association
Northeastern University
Simmons College
Suffolk University
WGBH Educational Foundation
University of Massachusetts
Boston Catholic Television Center
Harris Corporation-Farinon Electric Operations
Aiken Cablevision, Inc.
Colony Communications Corporation
Comcast Corporation
Connersville Cable TV, Inc.
Cox Cable Communications, Inc.
Multimedia Cablevision, Inc.
Palmer Communications Incorporated
Televents, Inc.
U.S. Cable Corporation
The Association for Higher Education of North Texas
Catholic Television Network
Center for Excellence, Inc.
Illinois Institute of Technology
National Instructional Telecommunications Council, Inc.
The Leland Stanford Junior University
San Francisco Archdiocese
Movie Systems, Inc.
Walter B. Hewlett and Michel Guite
Robert A. Bednarek
The Corporation for Public Broadcasting
Department of Education, San Diego County
Richard L. Vega & Associates
First National Home Theaters, Inc.
Microwave Communications Associations Inc.
South Carolina Educational Television Commission
Michael Benages
Sunday School Board of the Southern Baptist Convention
Rev. George Byrne Diocese of San Diego
University of California, Berkeley
Contemporary Communications Corporation
Indiana University
National Black Media Coalition
Sterling Recreation Association
National Association of MDS Service Companies
Oklahoma State Regents for Higher Education
Department of Communications, United States Catholic Conference
Sterling Recreation Organization Company
State of New York, Legislative Commission on Science & Technology
David S. Saxon, President University of California
University of California, Systemwide Administration
California Community Colleges ITFS Advisory Committee
Superintendent of Public Instruction, State of California
University of California, San Francisco
San Diego and Imperial Counties, Community Colleges Association
Tekkom, Inc.
KLVX Channel 10, Las Vegas, Nevada
Standard Communication
Goradon & Healy
Warner Amex Cable Communications, Inc.
Emerson College
National Association of Public Television Stations
Central Committee on Telecommunications of the American Petroleum Institute
Department of Education, State of Florida
Los Rios Community College District
TV 5 The Movie Channel
Grambling State University
Georgia Institute of Technology
Bay Area Community College Television Consortium
University of South Carolina
Telecommunications Systems, Inc.
Viking Communications
Lance Industries
Grossmont Community College District
Imperial Valley College
University of South Carolina
Marshall University
San Diego State University
Ninth District PTA (CA)
Mendocino County Superintendent of Schools
University of California, San Diego
Muzak Dynamic Sound
TDS Engineering Co.
Conifer Corporation
Lipper-LaRue
Twin Cities Public Television Inc.
Troy State University
Miami-Dade Community College
Townsend Associates
Southwestern College
Electronics, Missiles & Communications, Inc.
Archdiocese of New York
The School Board of Broward County, Florida
Channel Master
Coronado Unified School District
University of California, Davis
University of California, Irvine
University of California, Riverside
University of California, San Diego
San Diego Miramar College
John W. Hunt
California State Steering Committee for Curriculum Development & Publications
Woodrow Wilson Junior High School, CA
Lawrence Livermore National Laboratory
The School Board of Marion County, FL
Taft Broadcasting Corporation
Southern California Instructional TV Fixed Service Advisory Committee
Superintendent of Public Instruction, State of California
Ms. Anne G. Wall
Don Ferkovich
David D. Pascoe
W. D. Stainback
Ms. Helen L. Patterson
Rosemarie Nelson
Temple University
Grossmount Union High School, CA
Catholic Television Network of Chicago
Ms. Mary M. Long, Meridian School
Ms. Linda A. Brown
Ms. Carol R. Esmay
Mr. Peter J. Saccone
Bernadine Hollers
Ms. Sabina R. Meyers
School Board of Palm Beach County, FL
Ms. Janice E. Peters
Miramar Ranch School
Lakeside Union School District
Ms. Deanna Oakes
Ballantyne Elementary School
Mr. Paul Dekock
Diocese of San Diego
Santee School District

Marquee Television Network, Inc.
Nevada Pay Television, Inc.
Educational TV Association of Metropolitan, Cleveland
American Association of State Colleges & Universities
Sandia National Laboratories at Livermore, CA
NASA
Edmund G. Brown, Jr.
California Postsecondary Education Commission
American Council on Education
American Association of Community and Junior Colleges
National University Continuing Education Association
Fresno County Department of Education
California Community Colleges
Assemblyman, Denes J. Butler, New York State
CBS, Inc.
Eastfield College
Dr. Henry McCorty

Appendix B

PART 21—[AMENDED]

Part 21 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section(s) 21.901 (c) and (e) are revised to read as follows:

§ 21.901 Frequencies.

* * * * *

(c) Channel 2 will be assigned only where there is evidence that no harmful interference will occur to any authorized point-to-point facility in the 2160–2162 MHz band. Channel 2 may be assigned only if the transmitting antenna of the station is to be located within ten (10) miles of the coordinates of the following metropolitan areas:

Principal City	Coordinates

* * * * *

(e) Where adjacent channel operation is proposed in any area, the preferred location of the proposed station's transmitting antenna is at the site of the adjacent channel transmitting antenna. If this is not practicable, the adjacent channel transmitting antennas should be located as close as reasonably possible.

2. Section 21.902 is amended by revising paragraphs (b)(1)–(4) and (c)(1)–(5); revising existing paragraph (d) and redesignating it as (i); adding new paragraphs (d), (e), (f), (g), and (h) to read as follows:

§ 21.902 Frequency interference.

* * * * *

(b) * * *

(1) Not enter into any lease or contract or otherwise take any action that would unreasonably prohibit location of another station's transmitting antenna at any given site.

(2) Cooperate fully and in good faith to resolve interference and transmission security problems.

(3) Engineer the system to provide at least 45 dB of cochannel interference protection within the protected service areas of all other authorized or previously proposed stations that transmit, or may transmit, signals for standard television reception.

(4) Engineer the station for adjacent channel operation and, if transmissions are to be provided for standard television reception, insure that, whenever possible, the ratio of the signal transmitted to the signal of any authorized, or previously proposed, adjacent channel station is less than 0 dB when measured at the output of a standard antenna located anywhere within the protected service area of the adjacent channel station and oriented to receive the maximum possible adjacent channel signal.

(c) * * *

(1) An analysis of the potential for harmful co-channel interference with any authorized or previously proposed station(s), if: (i) The proposed transmitting antenna has an unobstructed electrical path to any part of the protected service area of any other station(s) that utilize(s), or would utilize, the same frequency; or (ii) if the proposed transmitter is within 50 miles of the coordinates of any such station; or (iii) if the great circle path between the proposed transmitter and the protected service area of any such station is 150 miles or less and 90 percent or more of the path is over water or within 10 miles of the coast or shoreline of the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico, any of the Great Lakes, or any bay associated with any of the above. (See § 21.701(a), 21.901(a) and 74.902 of this chapter);

(2) An analysis of the potential for harmful interference with any authorized or previously proposed station(s), if the proposed transmitting antenna has an unobstructed electrical path to any part of the protected service area of any other station(s) that utilizes, or would utilize, an adjacent channel frequency (see §§ 21.701(a), 21.901(a) and 74.902 of this chapter);

(3) In the case of a proposal to operate a non-colocated station within the protected service area of an authorized, or previously proposed, adjacent channel station, an analysis that identifies the areas within the protected service areas of both the authorized or previously proposed adjacent channel station and the proposed station that cannot be protected as specified in § 21.902(b)(4) and an explanation of why the proposed station cannot be colocated with the existing or previously proposed station.

(4) In the case of a proposal for use of channel 2, an analysis of the potential for harmful interference with any authorized point-to-point station located within fifty (50) miles which utilizes the 2160—2162 MHz band; and

(5) An analysis concerning possible adverse impact upon Mexican and Canadian communications if the station's transmitting antenna is to be located within 35 miles of the border.

(d) Subject to the limitations contained in (e) of this section each MDS licensee shall be protected from harmful electrical interference as determined by the theoretical calculations within an area described as follows:

(1) For a station using a transmitting antenna with an omnidirectional horizonal plane radiation pattern the boundary of the protected service area will be 15 miles from the transmitter site.

(2) For a station using a transmitting antenna with a non-omnidirectional horizonal plane radiation pattern the boundary of the protected service area will be the locus of all points located at distances from the transmitter as determined by the following equation;

$$D_b = \frac{D_{bmax}}{\text{antilog}\left(\frac{Gmax - G}{20}\right)}$$

in which the parameters are defined as follows:

D_b = the distance from the transmitter site to the boundary in direction of interest;
G = the transmitter antenna gain in the direction of interest;
G_{max} = the maximum antenna gain
D_{bmax} = the distance to boundary, in the direction of maximum gain that will make the total area of the protected service area equal to or less than 710 square miles; all distances are in miles, the gains are in dB relative to an isotropic antenna, and the antilog is taken to the base 10;

(3) Except that when the electrical horizon determined using the transmitting antenna height, a 30 foot receiving antenna height, and assuming 4/3 earth radius propagation conditions, is closer to the transmitter than boundary described in paragraph (d) (1) or (2) of this section, the electrical horizon shall be the boundary of the protected service area.

(e) No MDS licensee will be protected from harmful interference caused by:

(1) Any station with an earlier filing date.

(2) Any station that was authorized before July 1984.

(3) Any multichannel MDS station whose application was pending on September 9, 1983.

(f) In addressing potential harmful interference in this service the following definitions shall be used:

(1) Co-channel interference is defined as the ratio of the desired signal to the undesired signal present in the desired channel, at the output of a reference receiving antenna oriented to receive the maximum desired signal. Harmful interference will be considered present when a free space calculation determines that this ratio is less than 45 dB.

(2) Adjacent interference is defined as the ratio of the desired signal to undesired signal present in an adjacent channel, at the output of a reference receiving antenna oriented to receive the maximum desired signal level. Harmful interference will be considered present when a free space calculation determines that this ratio is less than 0 dB except that in cases between MDS stations and Instructional Television Fixed Service stations constructed before May 26, 1983 the ratio shall be less than 10 dB.

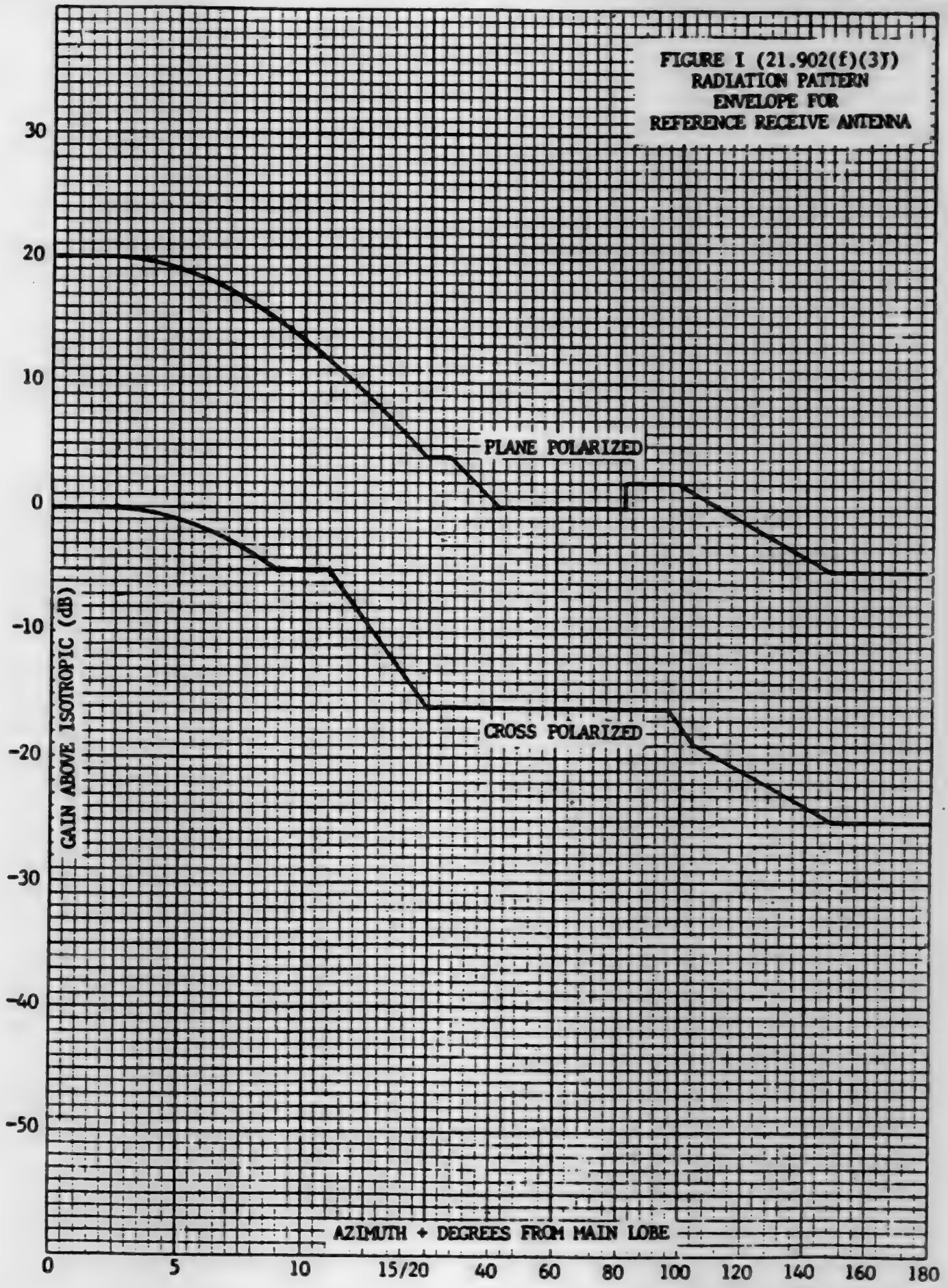
(3) For purposes of this section all interference calculations involving receive antenna performance shall use the reference antenna characteristics shown in figure 1.

(g) All interference studies submitted pursuant to paragraph (c) of this section shall be served on all licensees and permittees of, and applicants for the stations considered in such studies. This service shall occur on or before the date of submission and a list of all parties so served shall be submitted with the study.

(h) For purposes of § 21.31(a) an MDS application for a facility that would cause harmful electrical interference within the protected service area of any authorized or previously proposed station will be presumed to be mutually exclusive with the application for such authorized or previously proposed station.

(i) All applicants for frequencies in 2596–2644 MHz band must, prior to receiving a construction permit and at such time as the Commission requests, file with the Commission an analysis demonstrating that the facility to be constructed will not cause harmful interference to existing cochannel or adjacent channel Instructional Television Fixed Service receiver locations within 50 miles of the transmitter, or, in the alternative, submit a statement from the ITFS licensee that the interference is acceptable.

BILLING CODE 6712-01-M
[FR Doc. 84-16431 Filed 6-20-84; 8:45 am]



BILLING CODE 6712-01-C

Proposed Rules

Federal Register
Vol. 49, No. 121
Thursday, June 21, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Charges for the Production of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by revising the charges for copying records publicly available at the NRC Public Document Room in Washington, D.C. The proposed amendments are necessary in order to reflect the change in copying charges resulting from the Commission's award of a new contract for the copying of records. In addition, the proposed amendments would provide for any future change in copying charges to become immediately effective for the interim period pending completion of the Commission's rulemaking to establish the new charges.

DATE: Comment period expires July 6, 1984. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESS: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room at 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–8689.

SUPPLEMENTARY INFORMATION: The NRC maintains a Public Document Room (PDR) at its headquarters at 1717 H Street, NW, Washington, DC. The PDR contains an extensive collection of publicly available technical and administrative records that the NRC receives or generates. Requests by the public for the reproduction of records at the PDR have traditionally been accommodated by a copying service contractor selected by the NRC. The schedule of reproduction charges to the public established in the copying service contract is set forth in 10 CFR 9.14 of the Commission's regulations. Due to circumstances beyond the Commission's control, the present contract was abruptly terminated. As a result, the NRC has recently negotiated a new copying service contract. The proposed amendments would revise the fee schedule set forth in 10 CFR 9.14 to reflect the changes in copying costs to the public that have resulted from the awarding of the new contract for the reproduction of records at the PDR.

In addition, § 9.14(a)(5) of the proposed amendments would provide for any future change in copying charges resulting from the renegotiation of the copying service contract to become immediately effective for the interim period pending completion of the Commission's rulemaking to establish the new fee schedule. This provision will ensure that the Commission will not violate any Congressional restrictions on the expenditure of appropriated funds, while at the same time maintaining the public's ability to copy NRC records.

Finally, the proposed amendments would delete those provisions of § 9.14(a) that do not concern the price to be charged for the copying of records. Accordingly, the name and address of the current contractor in § 9.4(a)(3)(ii) and the billing information in § 9.14(a)(1)(v) and § 9.14(a)(3)(ii), have been deleted. In the future, this information will routinely be available from the PDR.

Regulatory Flexibility Act

5 U.S.C. 552(a)(4)(A) requires the NRC, as a Federal agency, to promulgate regulations "* * * specifying a *uniform* schedule of fees applicable to all constituent units of such agency." (emphasis added). Therefore, no analysis of any differential impacts on small entities is necessary.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*).

List of Subjects in 10 CFR Part 9

Freedom of Information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for Part 9 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552, and 31 U.S.C. 9701. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.14, paragraph (a) is revised to read as follows:

§ 9.14 Charges for production of records.

(a)(1) Charges for the copying of records at the NRC Public Document Room (PDR) 1717 H Street, NW, Washington, DC by the copying service contractor are as follows:

(i) Seven cents per page for paper copy to paper copy, except for engineering drawings and any other records larger than 8½ x 14 inches for which the charges vary as follows depending on the reproduction process that is used: Xerox process—$1.50 per square foot for large documents or engineering drawings (random size up to 24 inches in width and a maximum of 44 inches in length) reduced or full size; Photographic process—$7.80 per square foot for large documents or engineering drawings (random size exceeding 24 inches in width up to a maximum size of 44 inches in length) full size only.

(ii) Seven cents per page for microform to paper copy, except for engineering drawings and any other records larger than 8½ x 14 inches for which the charge is $2.20 per square foot or $2.60 for a reduced size print (18 x 24 inches).

(iii) One dollar per microfiche to microfiche.

(iv) One dollar per aperture card to aperture card.

(2) Self-service, coin operated, copying machines are available at the PDR for the use of the public. Paper to paper is $0.10 per page. Microform to paper is $0.10 per page on the reader printers.

(3) Mail order requests for contractor copying of NRC records may be made by writing to the PDR. The charges for mail order reproduction of records are the same as those set out in paragraph (a)(1) of this section, plus mailing or shipping charges.

(4) Accounts can be opened with the copying service contractor. The name and address and billing policy of the contractor can be obtained from the PDR.

(5) Any change in the above costs resulting from renegotiation of the copying service contract will become immediately effective for the interim period pending completion of the Commission's rulemaking to establish the new charges.

* * * * *

Dated at Bethesda, MD, this 14th day of June 1984.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Executive Director for Operations.

[FR Doc. 16021 Filed 6-20-84; 8:45 am]

BILLING CODE 7590-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Proposed Expansion of Commodity Option Pilot Program

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend the regulations governing its pilot program for the trading of commodity options on domestic boards of trade. The Commission's regulations currently permit domestic boards of trade to be designated as contract markets for two options on futures contracts, two options on physical commodities, or one option on a futrues contract and one option on a physical commodity for all commodities other than those domestic agricultural commodities specifically enumerated in Section 2(a)(1)(A) of the Commodity Exchange Act ("Act"). The Commission's regulations separately allow each exchange to be designated for two options on futures contracts in the enumerated agricultural commodities. The Commission is now proposing to amend its regulations to modify the pilot program's numerical limitations with respect to options which do not involve domestic agricultural commodities to permit qulaifying boards of trade to be designated for up to five such option contracts, of which no more than two contracts could involve an option on a physical commodity. Options on futures contracts involving domestic agricultural commodities would remain subject to existing restrictions.

DATE: Comments must be received no later than July 23, 1984.

ADDRESS: Send comments to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

When the Commission first adopted regulations establishing a three-year pilot program for the trading of options on futures contracts, each domestic board of trade was permitted to apply for designation as a contract market to trade options on one contract for future delivery if that exchange was already designated as a contract market in the commodity and that commodity was not among the domestic agricultural commodities enumerated in Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2). As the Commission explained at that time, its decision to so limit the pilot program resulted from its concern that a more expansive approach might not provide adquate safeguards against a recurrence of the type of abusive practices which had previously characterized the sale of certain types of off-exchange option transactions. The Commission nonetheless indicated that it would consider expanding the pilot program prior to its scheduled expiration "if the participants in the pilot program adequately fulfill their responsibilities under the Commission's regulations * * * and the program otherwise progresses satisfactorily * * *." 46 FR 54500, 54501 (November 3, 1981).

The Commission subsequently adopted rules which allowed any domestic board of trade to apply for designation as a contract market for the trading of one option on a physical commodity, regardless of whether that exchange was already designated as a contract market for the trading of futures contracts or options on those contracts. 47 FR 56996 (December 22, 1982). Prior to expanding the pilot program to include options on physicals, the Commission specifically requested comments as to whether it should allow the exchanges to trade any two option contracts (regardless of whether those option contracts would involved options on futures contracts, options on physicals, or one of each type of option). The Commission decided at that time, however, not to broaden the pilot program more than was necessary to allow each qualifying exchange to be designated for one option on a physical commodity, thereby permitting a test of direct options on underlying commodities. The Commission nonetheless reiterated its intention to monitor closely all facets of option trading under the pilot program to determine if further expansion—both as to the number and type of commodities traded—was warranted. *Id.* at 56997-98.

Accordingly, after more than a year of trading in the pilot program had elapsed without serious problems, the Commission acted to permit the exchanges to select the two option contracts—whether options on futures contracts, options on physicals, or one of each type—which best reflected the exchanges' judgment as to which option contracts would be most useful economically. 48 FR 41575 (September 16, 1983). In taking that action, the Commission noted that "the rationale for limiting the pilot program to no more than one option on [a] futures [contract] and no more than one option on a physical no longer exists." *Id.* at 41577. In particular, the Commission noted that the absence of any apparent problems to date with either options trading practices or options sales practices had significantly diminished the Commission's previously-articulated concerns. Of equal importance, the Commission also noted that although it had already designated seven exchanges to trade options on futures contracts, only two exchanges had thus far applied to trade an option on a physical commodity, "an indication that the exchanges may prefer options on futures and, more importantly, may believe that options on futures contracts are the more commercially viable contracts * * *" *Id.*[1] Finally, the

[1] One of those exchanges, the Chicago Mercantile Exchange ("CME"), has since withdrawn its

Continued

Commission noted that its decision to provide the exchanges with this additional degree of flexibility was intended to provide the Commission with important data about the viability of certain instruments which may be helpful in the Commission's ultimate evaluation of the pilot program.

More recently, the Commission adopted regulations which will permit the trading of options on futures contracts in the domestic agricultural commodities specifically enumerated in Section 2(a)(1)(A) of the Act. 49 FR 2752 (January 23, 1984). These regulations were adopted in response to amendments contained in the Futures Trading Act of 1982 which removed a longstanding proscription on the trading of options involving the domestic agricultural commodities[2] and superimpose a new, three-year pilot program upon the structure already established by the Commission for non-agricultural options. Under this second pilot program, domestic exchanges will be permitted to apply for contract market designation for two options on futures contracts in domestic agricultural commodities, in addition to any option contract designations in non-domestic agricultural options on futures contracts or options on physicals which an exchange may obtain under Commission rules already in effect. Thus, at present, Commission regulation 33.4(a)(6) limits domestic exchanges to two options on futures contracts in the domestic agricultural commodities and to two option contracts of either type on all other commodities. 49 FR at 2757.

II. Expansion of the Pilot Program

In a petition filed with the Commission on February 9, 1984, the Chicago Mercantile Exchange has requested that the Commission either delete regulation 33.4(a)(6) entirely or in the alternative, amend that rule to exempt options on foreign currencies and currency futures contracts from the limitations established therein. In support of its petition, the CME explained that although it is designated to trade futures contracts on the British pound, Japanese yen, Canadian dollar, Swiss franc, French franc, Dutch guilder, Mexican peso, and Italian lira, Commission regulation 33.4(a)(6) effectively precludes the Exchange from offering options on those futures contracts.[3] Indeed, because the CME earlier elected to apply for designation to trade an option on the Standard & Poor's 500 Stock Index futures contract, its remaining choice, an option on the Deutschemark futures contract, has exhausted CME's permitted allotment under the terms of the Commission's original pilot program. Thus, the CME presently cannot offer any additional option contracts other than those involving the domestic agricultural commodities specified in Section 2(a)(1)(A) of the Act.

The CME noted in its petition, that, by comparison, the Philadelphia Stock Exchange has already been authorized by the Securities and Exchange Commission to trade options on five of the foreign currencies for which futures contracts are traded on the CME.[4] The CME maintains that while it pioneered the exchange trading of foreign currencies and has expended substantial resources to foster the development of those markets, it is artificially and unnecessarily impeded from competing with the Philadelphia Stock Exchange for reasons that are no longer necessary to the continued success of the pilot program, to the protection of option customers under that program, or to the Commission's ability to successfully regulate that program with respect to options on futures contracts. Citing the volume and open interest in the Deutschemark options traded on the two Exchanges, the CME contends that the public, including commercial hedgers, would apparently prefer to trade currency options on the CME but that the constraints imposed by regulation 33.4(a)(6) "compels" these potential users of the market to trade on the Philadelphia Exchange, to find some other substitute (*e.g.*, the interbank market), or to absorb the exchange-rate risk. The CME maintains that as a result of these limitations, options on futures contracts may not be getting a true test of their economic usefulness during the term of the pilot program.

The CME further asserts that the reasons originally advanced by the Commission for limiting the scope of the pilot program have been satisfied or otherwise resolved since option trading commenced on October 1, 1982. For example, while the Commission initially limited the pilot program to one option for each qualifying exchange in order to allow the Commission to monitor carefully the exercise by the self-regulatory organizations of the additional responsibilities associated with the pilot program and to afford the Commission time to review adequately each exchange's structure for monitoring option trading, the Commission has recently noted that the exchanges have thus far adequately fulfilled these responsibilities. 48 FR at 41577. Moreover, the National Futures Association ("NFA") is providing significant contributions to the oversight of option market participants.

The Commission believes that the arguments advanced the CME are not without merit. Although the Commission has repeatedly indicted that it intended to proceed cautiously in any expansion of the pilot program,[5] the Commission's Experience to date has largely mitigated its earlier concerns. Thus, the Commission recently transmitted to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry documentation, which consisted primarily of a description of the Commission's experience with its already-exciting pilot program, of its projected ability to regulate successfully the pilot program in options on the domestic agricultural commodities.[6] The Commission, therefore, has no reason to believe that an enlargement of the scope of the pilot program, as now being proposed by the Commission, would result in a diminution of the special protections afforded option customers by the Commission's pilot program regulations. To the extent that the Commission might have any reservations about the abilities of any particular self-regulatory organization to continue to provide these protections under the somewhat broader pilot program contemplated by

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application to trade an option on a physical commodity and is now designated as a contract market for options on two futures contracts.

[2] Futures Trading Act of 1982, Pub. L. No. 97-444, section 208, 96 Stat. 2294 (1983).

[3] The Italian lira contract has not been listed for trading by the CME. In addition, the Dutch guilder contract has been delisted by the Exchange.

[4] Section 4c(f) of the Act (7 U.S.C. 6c(f)) provides that the provisons of the Commodity Exchange Act shall not be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange. Subsequent to the filing of the CME petition, the Securities and Exchange Commission further authorized the Philadelphia Stock Exchange to trade options on the French franc.

[5] *See, e.g.*, 49 FR 2752, 2755–56 (January 23, 1984); 47 FR 56998, 56997 (December 22, 1982); 47 FR 28401, 28404 (June 30, 1982); 46 FR 54500, 54501–02 (November 3, 1981); 46 FR 33293, 33294, 33295 (June 29, 1981).

[6] For example, the exchanges and the Commission's Complaints Section have yet to receive a customer complaint relating to option sales practices. In addition, the Commission's staff has conducted oversight audits of the sales practice audit programs of the four exchanges which, in the aggregate, account for approximately 95% of the volume in exchange-traded commodity options and of NFA's sales practice program. These audits have not disclosed any serious deficiencies in the sales practice programs which have been adopted by each of the exchanges that has been designated as a contract market for options trading and by NFA in accordance with the requirements of Commission regulation 33.4(c).

the Commission's proposal, the Commission believes that those concerns may be best addressed in the context of specific contract market designation proceedings rather than through continuing the present restrictions on the activities of all exchanges. Nevertheless, the Commission is requesting comment on the propriety and timing of its proposed expansion of the pilot program.

Furthermore, the Commission anticipates that continuing to provide the exchanges with greater flexibility in the selection of option contracts will foster the further development of the pilot program and, correspondingly, will provide the Commission with data essential to the Commission's continuing evalution of that program. *See* 48 FR at 41577. For example, the Commission expects that such an expansion should permit a fuller test of commercial interest in the use of options on futures contracts and a more extensive test of the exchanges' abilities to conduct effective surveillance of active option markets. These types of data and information would, of course, be beneficial to the Commission's ultimate decision of whether to continue the pilot program in effect after its scheduled expiration on October 1, 1985[7] and, if so, what modifications to that program might be appropriate.[8]

The Commission is, therefore, proposing to amend regulation 33.4(a)(6) to modify the existing limits on the number of options on non-agricultural futures contracts for which a qualifying exchange may be designated as a contract market. Specifically, the Commission's proposal would allow qualifying exchanges to be designated for up to five options on commodities not specifically enumerated in Section 2(a)(1)(A) of the Act, of which no more than two contracts could involve an option on the actual, physical commodity.

The Commission anticipates that retaining the existing limitation on the number of options on physicals which may be traded on any exchange will not adversely affect the exchanges or impair the Commission's evaluation of the pilot program. Only two exchanges have applied for contract market designation to trade options on physical commodities and one of those applications has since been withdrawn. If fact, during the nine-month period during which an exchange wishing to trade a second option contract was effectively compelled to choose an option on a physical, six of the seven exchanges which has already been designated as contract markets for options declined to apply for an option on a physical. It is, therefore, apparent that the exchanges are not likely to be hampered unduly by continuing this restriction with respect to options on physicals. Furthermore, in light of what the Commission has previously characterized as "the unique attributes" of options on physicals,[9] the Commission believes that the more prudent course would be to continue to limit the number of options on physicals which may be traded on any single board of trade, at least until the Commission can obtain greater experience with the trading of those contracts and the effects, if any, of such trading upon the futures markets. The Commission is nonetheless requesting comments on this proposed continuation of the limitation on options on physicals.

The action now being proposed by the Commission also would not affect the newly-established pilot program for the trading of options on futures contracts in agricultural commodities. As the Commission has recently explained, the implementation of a limited pilot program for the trading of options on domestic agricultural futures contracts, as contemplated by Section 4c(c) of the Act, is essential to permit adequate consideration by the Commission of the issues particular to such contracts. Thus, for example, any increase in the size and scope of that pilot program could disrupt the orderly testing of the markets which will be created by options on agricultural commodities. The Commission has therefore made clear that it will proceed cautiously with this newly-established program. Accordingly, the Commission is not now proposing to expand its pilot program for options on the domestic agricultural commodities inasmuch as no experience has been obtained in the trading of such options. In particular, the Commission believes that it is important to consider the effects, if any, of such trading upon the existing futures markets and on the relevant cash markets and to report on such matters to Congress before taking futher action to expand trading in agricultural options. *See* 47 FR 2752, 2754–55 (January 23, 1983).[10] The Commission is nonetheless requesting comments on this aspect of its proposal.

Regulatory Flexibility Act

The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act (5 U.S.C. 605) and that the requirements of that Act do not, therefore, apply to contract markets. 47 FR 18618 (April 30, 1982). Furthermore, the Chairman of the Commission has previously certified on behalf of the Commission that comparable rule proposals would not, if adopted, have a significant economic impact on a substantial number of small entities. *See, e.g.*, 48 FR 32835, 32836 (July 19, 1983).

For the reasons set forth above, and pursuant to Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman hereby certifies, on behalf of the Commission, that the following amendment to Commission regulation 33.4(a)(6) will not, if adopted, have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 33

Commodity options, Commodity exchange designation procedures, Commodity futures.

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[7] *See* 47 FR 56998, 56998 n.14 (December 22, 1982). In a separate Federal Register notice being published today, the Commission has delegated to its staff the authority to approve the listing of options which will expire after October 1, 1985 upon application by the affected contract markets.

[8] The Commission contemplates, however, a final rule would not be likely to be adopted until the latter part of 1984 and that the Commission would not accept applications for contract market designation pursuant to such an amended rule until after the Congressional review period specified in section 4c(c) of the Act had expired.

[9] 47 FR 56998, 56997 (December 22, 1982). For example, the Commission's regulations relating to options on physical commodities permit cash settlement. By comparison, its regulations governing options on futures contacts specify that the exercise of such options must result in the establishment of a position in the underlying futures contract. *Id.* at 56998–99. In addition, whereas an exchange applying for contract market designation in options on futures contracts must be designated as a contract market in the underlying future, any domestic board of trade may apply for designation in option on physicals, regardless of whether it is currently designated as a contract market for any commodity. *Id.* at 56996–98; *see* Commission regulations 33.4(a) (3), (4).

[10] By letter dated March 1, 1984, the Chicago Board of Trade ("CBT") separately petitioned the Commission to repeal regulation 33.4(a)(6) in its entirety or, in the alternative, to increase uniformly the number of option contracts permitted under the Commission's pilot programs. If the Commission were to adopt this latter approch, each board of trade designated for option trading would be authorized to trade a predetermined number of option contracts, which number would be uniform for all exchanges and for all three types of option contracts permitted under the Act and the Commission's regulations (*i.e.*, options on futures contracts involving the domestic agricultural commodities, and options on "non-agricultural" futures and physicals). The CME filed a second petition, this time in support of the position advanced by the CBT, on May 2, 1984. For the reasons set forth above, the Commission intends, subject to review of the comments received on its proposal and its further deliberations on this matter, to deny the petitions filed by the CBT and the CME to the extent that the petitions would be inconsistent with the relief herein proposed by the Commission.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4c, 8a and 15 thereof, 7 U.S.C. 6c, 12a, 19, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. Section 33.4 is proposed to be amended by revising paragraph (a)(6) to read as follows (the introductory text has not been changed but is included for the convenience of the reader):

§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade located in the United States as a contract market for the trading of options on contracts of sale for future delivery on any commodity regulated under the Act, or for options on physicals in any commodity regulated under the Act other than those commodities which are specifically enumerated in Section 2(a)(1)(A) of the Act, when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), these regulations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) Such board of trade—

* * * * *

(6)(i) For commodities specifically enumerated in Section 2(a)(1)(A) of the Act, is not designated as a contract market for more than one other commodity option; and

(ii) For commodities not specifically enumerated in Section 2(a)(1)(A) of the Act, is not designated for more than four other commodity options: *Provided, however,* that with respect to options on physicals, no such board of trade may be designated as a contract market for more then two commodity options.

* * * * *

Issued in Washington, D.C., on June 15, 1984, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-16531 Filed 6-20-84; 8:45 am]

BILLING CODE 6351-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[General Docket No. 80-113, RM-3221, RM-3819; FCC 84-176]

Proposed Amendment of the Commission's Rules With Regard to the Multipoint Distribution Service; and Petitions for Rulemaking Regarding the Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking and notice of inquiry.

SUMMARY: The Commission is proposing to amend its rules to specify the power of Multipoint Distribution Service (MDS) stations in terms of equivalent isotropically radiated power (e.i.r.p.) rather than transmitter power and to require the use of transmitters with higher frequency stability and lower out of band emissions. The Commission is also instituting and inquiring into the use of booster in the MDS. This action is being taken to equalize the power radiated by MDS station and to facilitate the operation for adjacent channel DMS stations.

DATE: Comments are due on or before August 6, 1984. Reply Comments are due on or before September 5, 1984.

FOR FURTHER INFORMATION CONTACT: Kevin Kelley, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 634-1860.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 21

Communications common carriers, Point-to-multipoint microwave.

Proposed Rulemaking and Notice of Inquiry

In the matter of amendment of Parts 21, 74 and 94 of the Commission Rules and Regulations with regard to technical requirements applicable to the Multipoint Distribution Service, the Instructional Television Fixed Service and the Private Operational-Fixed Microwave Service (OFS) (General Docket No. 80-113), amendment of Part 21 of the Commission's Rules to measure authorized power in terms of effective radiated power and to increase such authorized power to 1,000 watts (RM-3221) and authorizing repeater operation in the Multipoint Distribution Service (RM-3819).

Adopted: April 26, 1984.

Released: June 14, 1984.

By the Commission.

1. Notice is hereby given that the Commission is proposing to amend Part 21 of its rules that pertains to the Multipoint Distribution Service (MDS) to specify the power of MDS stations in terms of equivalent isotropically radiated power, to increase the required stability of MDS transmitters and to decrease the allowed level of out-of-band emissions from MDS transmitters. Inquiry is also made into the feasibility of allowing MDS licensees to use boosters (repeaters).

Proposed Rulemaking

I. Background

2. On March 19, 1980, the Commission adopted a Notice of Inquiry and Propsed Rulemaking initiating this proceeding.[1] The rules proposed therein concerned the establishment of a protected service area for MDS stations, a definition of what constitutes cochannel and adjacent channel interference and the adoption of receiving antenna standards to be used to determine the existence of interference. We are, in a separate action today, adopting final rules concerning these matters.[2]

3. In the *Notice,* we also initiated inquiries concerning other matters that relate to the operation of MDS transmitters. This included spuriously generated interference, transmitter power and its relationship to service area limitations, and transmitter stability. As we noted in the *1st Report,* we did not receive many substantive comments in response to these specific questions.[3] However, we did receive many comments concerning the more general matter of the minimum power required for the successful operation of an MDS station.[4] We also have pending before us the above captioned Petitions filed by Microband Corporation of America (RM-3221) and Multipoint Communications Corporation (RM-3819) that bear on transmitter operations. The Petitions request that we amend our rules to allow the use of MDS repeater stations (RM-3819), to express the power of MDS stations in terms of equivalent isotropically radiated power (RM-3221) and to set the authorized equivalent isotropically radiated power at 1,000 watts (RM-3221).

4. we are making the proposals contained herein concerning these related matters in response to the petitions and the comments filed in response to the rulemaking petitions and the comments filed in response to the *Notice.* We seek comment on our

[1] Notice of Inquiry and Proposed Rulemaking, General Docket No. 80-113, FCC 80-137, 45 FR 29,350 (1980) (hereinafter cited as *Notice*).

[2] First Report and Order, General Docket No. 80-113, — F.C.C.2d —, FCC — (hereinafter cited as *1st Report*).

[3] *Id.* at para. 144.

[4] *Id.* at para. 62.

analysis, and invite specific alternative language to address the problems we have described.

II. Discussion

A. *Equivalent Isotropically Radiated Power (EIRP)*[5]. 5. At present, the maximum power output of MDS stations is specified in terms of the transmitter power output. Section 21.904(a) of the rules, 47 CFR 21.904(a), limits the maximum power to 10 watts. Subsection (b) of the same section provides for the authorization of up to 100 watts if it can be shown that the additional power is requred "* * * to provide adequate, reliable service to a reasonable service area * * *" The ability of a station to serve a particular receiver site with fixed receiver characteristics is determined in large measure by the amount of power the station radiates in the direction of the receive site. This quantity, which is called the effective radiated power (ERP), or EIRP[6] of the station, is determined by the station transmitter power, the gain of the transmitting antenna in the relevant direction and the amount of loss between the transmitter output and the antenna input (line loss). Since the gain of the antenna is a funcition of direction, the EIRP will also be a function of direction. Generally when reference is made to the EIRP of a station, the reference is to the maximum EIRP or the EIRP in the direction of maximum antenna gain.

6. Because our present rule addresses only one element of three that relate to a station's ability to serve a particular receive site, it is not an accurate measure of the ability of a particular station to serve points within the service area. For example, we have observed large variations in the amount of line loss reported by MDS applicants. This may result from either variations in the transmitter-antenna separation, from variations in the type of transmission line being used or both. The two types of transmission line used to connect transmitters to antennas in these frequency bands are, coaxial cable and elliptical waveguide. Typically the loss in coaxial cable is 4 dB per 100 feet of ½ inch diameter foam coaxial cable and 1.1 dB per 100 feet of 1⅝ diameter air filled coaxial cable; while the loss per 100 feet of elliptical waveguide is 0.34 dB.[7] The waveguide has the disadvantages that it is more expensive, heavier, and produces greater windloading (wind resistance, because it is larger) than coaxial cable. Whatever the cause, the result is that stations with identical transmitters frequently have very different EIRPs. This means the operator of a station in which the transmitter must be located some distance from the antenna must either purchase the more expensive waveguide transmission line or operate withe less EIRP. In some localities the antenna support structure cannot support the additional weight and windloading of the waveguide thus eliminating the waveguide option. In other locations, the distance is so great that even using waveguide would not result in a line loss which is as low as that available to other operators.

7. For these reasons, we solicited comments on specifying the power limitations on MDS stations in terms of EIRP rather than transmitter power. we did not receive much comment in response. The National Telecommunication and Information Administration (NTIA) gave strong support to the idea and suggested we adopt an EIRP standard for services in which high gain transmitting antennas are used.[8]

8. In Petition RM–3221, Microband requested that we express the power output of MDS stations in terms of effective radiated power.[9] In its Petition, Microband noted that the Commission had considered using this method when the MDS rules were originally adopted but had rejected it because it believed using transmitter power was "more practical." *Multipoint Distribution Service*, 45 F.C.C.2d 616, 623 n. 13 (1974). The practical difficulties referred to were highlighted in the Reply Comment filed by Visions Ltd. in response to the Microband Petition. Visions analyzed four cases to support its contention that using an EIRP standard was not practical.[10] The first case was that submitted by Microband in support of its Petition. It showed that the EIRP of a typical MDS station was 1,000 watts. The next case was that of Visions' common carrier, MDS System, Inc. It has an EIRP of 2238.7 watts. The other two cases were hypothetical stations. One had an EIRP of 3630.8 watts and the other had an EIRP of 501.2 watts. The variations resulted from a combination of differences in line losses and antenna gains. As noted above, the reason we proposed to use EIRP in place of transmitter power was to compensate for the differences in line losses among MDS stations.

9. The variations in antenna gains present more complex problems. Many MDS stations use transmitting antennas with similar characteristics. These antennas usually give omnidirectional coverage in the horizontal plane and have a 4° beamwidth in the vertical plane. Such antennas usually have a gain of approximately 13 dB (above isotropic). In some instances, cardioid antennas are used that have vertical profiles similar to the omnidirectional antenna but that cover only 180° of the horizontal plane. Two of these antennas are sometimes used in a "back-to-back" configuration to give the desired 360° coverage. The gain of each antenna is 16 dB but since the power must be split between the two antennas the resulting EIRP is the same. Some stations such as MDS Systems, Inc. use only a single

[5] In the Notice and elsewhere we have used the term effective isotropically radiated power. In the Second Report and Order in General Docket 80–739 [49 FR 2358 (January 19, 1984)] the Commission amended section 2.1 of the rules to make the definitions contained therein consistent with international definitions approved at the 1979 World Administrative Radio Conference (1979 WARC). Section 2.1. (1) now reads as follows: Where a term or definition appears in this Part of the Commission's Rules, it shall be the definitive term or definition and shall prevail throughout the Commission's Rules. Section 2.1(c) contains the following definition: Equivalent Isotropically Radiated Power (e.i.r.p.): The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna. (RR) To be consistent with this definition we shall use the term *equivalent* isotropically radiated power.

[6] The term effective radiated power is defined in § 21.2 of the rules, 47 CFR 21.2 as follows: The product of the antenna power input and the antenna power gain. This product should be expressed in watts. (If specified for a particular direction, effective radiated power is based on the antenna power gain in that direction only.)

Antenna power gain is defined in the same section as follows: The square of the ratio of the root-mean-square free space field intensity produced at one mile in the horizontal plane, in millivolts per meter for one kilowatt antenna input power to 137.6 mV/m. This ratio should be expressed in decibels (dB). (If specified for a particular direction, antenna power gain is based on the field strength in that direction only.)

The latter definition is the antenna gain relative to a half-wave dipole antenna. That is if 1 kilowatt of power were radiated by a half-wave dipole, the field strength at 1 mile would be 137 mV/m. If the same power were radiated uniformly in all directions (isotropically), the field strength at 1 mile would be 107.6 mV/m. Thus, the half-wave dipole antenna has 2.13 dB of gain relative to an isotropic radiator. ($10\log (137.6/107.6)^2 = 2.13$ dB). *See* S. Ramo, J. Whinnery, and T. Van Duzer, Fields and Waves in Communications Electronics, 642–650 (1965). We used EIRP in the *Notice* because most MDS antenna gains are specified relative to an isotropic radiator. As shown above, a gain specified in this manner would be 2.13 dB higher than the gain specified relative to half-wave dipole. Thus for the same antenna input power, the ERP and the EIRP differ by the same 2.13 dB.

[7] Petition for Rulemaking, RM–3221, Microband Corporation of America, Engineering Attachment, at 1 (hereinafter cited as Microband Petition).

[8] Comments of the National Telecommunications and Information Administration, General Docket No. 80–113, 14.

[9] Microband used the term effective radiated power but it actually used the equivalent isotropically radiated power in making its calculations.

[10] Reply Comments of Visions Ltd., RM–3221, Attachment.

cardioid antenna. If such a station were subject to the same EIRP limitation as a station using an omnidirectional antenna and if each station had the same line loss, the station using the single cardioid would have to reduce its transmitter power by 3 dB to meet the EIRP limitation.

10. This problem can be eliminated by allowing a station that uses a non-omnidirectional transmitting antenna to increase its EIRP in the direction of maximum gain in accordance with the following formula:

$EIRP_{max} = EIRP_{omni} + 10 \log (360/BW)$

in which

$EIRP_{max}$ = EIRP in the direction of maximum gain in dBW

$EIRP_{omni}$ = the EIRP of a station that uses an omnidirectional transmitting antenna in dBW

BW = the total horizontal plane beamwidth of the station's transmitting antenna system measured at the one half-power points.

Proceeding in this manner allows stations using non-omnidirectional transmitters to use the same transmitter power as stations using omnidirectional antennas and still allows compensation for variations in line loss. We stress that stations using more than one antenna in their non-omnidirectional antenna system must use the total beamwidth of all antennas in calculating the allowed EIRP.

11. The amount of transmitter power and hence the EIRP required to provide adequate signal levels in the MDS has been a matter of some controversy. In formulating the adjacent and cochannel interference rules proposed in the *Notice*, we assumed the EIRP was 23 dBW (200 watts). This EIRP was based on the combination of a 10 watt transmitter (10 dBW) and a 13 dBW gain antenna. We assumed no line loss between the transmitter and the antenna. In using this EIRP, we noted that the existing MDS rules allow authorizations of up to 100 watts of power in those cases where it can be shown that the requested authorization is the minimum needed to supply reliable service to a reasonable service area. We also suggested that since the rules did not contain a definition of terms "reliable signal" or "reasonable service area", it may have been possible that we granted more 100 watt authorizations than would be allowed under the service area definitions proposed in the *Notice*.[11]

12. There are approximately 130 MDS stations that have customers for their service; of these approximately 95 have been authorized to use a 100 watt transmitter. Thus, it can be seen that what is nominally a 10 watt service is in reality a 100 watt service. The combination of a 100 watt (20 dBW) transmitter and a 13 dB gain antenna results in an EIRP of 33 dBW or 2000 watts.

13. Although we did not solicit comments on transmitter power, virtually every member of the MDS community filing comments in response to the *Notice* claimed that 100 watts was the minimum required to provide service within 15 miles of the transmitter. One licensee, Contemporary Communications, suggested that what was really required was 1,000 or even 10,000 watts.[12] The Corporation for Public Broadcasting (CPB) in its reply comments contested the claims made by the MDS industry and contended that most of the signal losses reported by MDS licensees were the result of obstructions and that "signal losses caused by . . . obstructions cannot usually be overcome by any realistic increase in EIRP." CPB further claimed that a single "knife edge" obstruction between a transmitter and a receiver at these frequencies would cause 25 dB of additional signal attenuation between the transmitter and receiver.[13] This is clearly more than would be compensated for by a 10 dB increase in transmitter power from 10 watts to 100 watts. We agree with CPB. On the other hand, we note, as they also pointed out, that many obstructions are not the "knife edge" variety. As Microband noted in its Petition:[14]

> Frequency inversions, storms, natural and man made obstacles, even the leaves on trees, have all too often acted to severely attenuate the MDS signal to the point that we have been unable to provide the type of service demanded despite our best technical and engineering efforts.

The amount of attenuation caused by foliage is generally claimed to be around 10 dB.[15]

14. There is no doubt that any 10 dB increase in transmitter power—whether from 10 watts to 100 watts or from 100 watts to 1,000 watts—will increase the number of receiver sites at which an acceptable signal level is available. The difficulty is that any increase in transmitter power also increases the possibility that harmful cochannel interference will be experienced by other licensees in adjacent service areas. Thus, the task is to balance the requirement for an adequate level of power to serve a station's service area with the requirement to keep adjacent service areas as free of cochannel interference as possible. A 10 dB increase in transmitter power will increase the distance at which a potentially interfering signal will exist by a factor of 3.16. That is, if a potentially interfering signal existed 20 miles from the transmitter, increasing the transmitter power by 10 dB would make this same signal available at 63.2 miles from the transmitter. This assumes, of course, that the latter location was still within the line of sight of the transmitter.

15. It is much more difficult to determine the marginal increase in the percentage of receiver sites that will have an adequate signal level available for each 10 dB increase in transmitter power. In the *Notice*, we claimed that a 10 watt transmitter with a 13 dB gain antenna will supply an adequate signal to cover a 15 mile radius service area. As was pointed out above, all of the MDS operators who commented on this issue claimed that 100 watts was the minimum power needed to provide such service. This discrepancy is most likely explained by the fact that our calculation was based on the assumption that there was a clear line-of-sight path between the receiver and the transmitter. Any variations from this condition will, of course, require more transmitter power to get the same performance. For example, one major problem for MDS operators is the approximately 10 dB of signal attentuation produced by foliage. We have routinely authorized a 10 dB increase to 100 watts needed to overcome this and other forms of signal loss.

16. The only data presented in this proceeding concerning the effect of increasing the authorized power from 100 watts to 1,000 watts were submitted by Microband and were based on information collected by its customer in Washington, D.C., Marquee Television Network.[16] The data presented were the number of attempted service installations and the number of successful service installations as a function of distance from the transmitter. Marquee also estimated the number of unsuccessful installations that would have been successful if the transmitter power were increased by 10 dB. The data were presented for each

[11] *Notice*, *supra* note 1, note 7.

[12] Comments of Contemporary Communication Corporation, General Docket No. 80-113, 2 (September 8, 1980).

[13] Reply Comments of the Corporation for Public Broadcasting, General Docket No. 80-113, Engineering Statement at 6.

[14] Microband Petition, *supra* note 6, at 4.

[15] Reply Comments of Microband Corporation of America, General Docket No. 80-113, Exhibit A, at 4.

[16] *Id.*, at 6.

mile out to 7 miles. All of the data for locations more than 7 miles from the transmitter were presented together. The data presented are as follows:

Distance in miles	Attempts	Successes	Percent successes	Successes added by 10 dB increase	Successes rate with 10 dB increase (percent)
0 to 1	126	114	90.5	6	95.2
1 to 2	186	125	67.2	26	81.2
2 to 3	166	94	56.6	27	66.9
3 to 4	137	86	62.8	25	81.0
4 to 5	153	126	68.3	23	83.4
5 to 6	175	104	59.4	40	82.3
6 to 7	230	96	41.7	46	62.6
7 [1]	361	111	29.1	113	58.3

[1] This data was treated as though the area involved was between 7 and 30 miles.

Microband claims that these results show that an increase in authorized power to 1,000 watts would allow Marquee to serve an additional 269,100 homes.[17] The estimate of 269,100 was made by multiplying the increase in the success rates by the estimated number of homes in each area.

17. There are two reasons why we do not believe the data presented support this conclusion. First, the installations were apparently only attempted in areas where there was a chance that a successful installation would occur. This means that in areas where natural obstructions block most locations, no installations were attempted. We believe that homes located in such areas should not be included in the total number of possible homes. More important is the fact that the same percentage was applied to the whole area between 7 and 30 miles. This is the area in which most of the additional homes claimed by Microband are located (232,000 of 269,100 were located beyond 7 miles). The estimate was made assuming the same percentage increase would occur between 29 and 30 miles as would occur between 7 and 8 miles. We do not believe this is a reasonable assumption. Of course, because of the manner in which the data is presented, we have no way of knowing where the 111 original successes and 113 additional successes were located within the 7–30 mile area. But it is not unreasonable to assume that the number of successes in the 7–8 mile area would not differ greatly from the number in 8–7 mile area. Because there were 96 successes in the 6–7 mile area, it is reasonable to assume that many of the 111 successes listed for greater than 7 miles were in the 7–8 mile area. Indeed, it is most likely that most of the 113 additional successes listed for the greater than 7 mile area were also located within the 7 to 8, 8 to 9, and 9 to 10 mile areas rather than in the 29 to 30 mile area. We recognize that it may be possible to serve a structure such as a high rise apartment building located 30 miles from the transmitter if there is an unobstructed line-of-sight path between the roof of the building and the transmitter and if a high gain receiving antenna is used. However, we do not believe it is reasonable to assume, as Microband did in arriving at its conclusion, that 58.6% of the homes located between 29 and 30 miles from the transmitter could be served if the transmitter power were increased to 1,000 watts. In fact, Microband did not submit any evidence that showed that any homes located between 29 and 30 miles away can be served by its 100 watt transmitter.

18. We believe that the data presented show that increasing the power beyond 100 watts will, as expected, provide a small increase in the percentage of homes that can be served near the transmitter where a large percentage of the homes already receive a good signal, and a larger increase in the number of homes that could be served at 8, 9, and 10 miles from the transmitter where many more homes receive a marginal or poorer signal. On the other hand, while not in agreement with the numbers, we do agree with the conclusion reached by Microband when it stated: [18]

> * * * while an MDS station may or may not be able to provide service out to 40 miles, several stations located within 50, 60 or even 80 miles of existing transmitters have, in fact, caused disruptive interference to areas well within 25 miles of a licensed MDS station. In short, the distance from a transmitter which can experience interference is not the same thing as the distance which can be served.

19. We are convinced that an increase in EIRP to 2,000 watts is justified by the need to provide reliable service to a reasonable percentage of the protected service area on a year round basis. We base this conclusion on the filings made in the proceeding and in our experience in processing applications for 100 watt service. We are not convinced, however, that any increase in EIRP beyond 2,000 watts is justified. We believe that any marginal increase in the number of sites which could be served would not justify the large increase in potential interference that would result.

20. For these reasons, we are proposing to change the rules to specify the power limit on MDS stations in terms of EIRP and to specify the EIRP limit as 2,000 watts or 33 dBW for stations using omnidirectional antennas. This is based on a station having a 100 watt transmitter, a 13 dB gain antenna and no line loss. We believe that this is representative of the manner in which the most successful MDS stations are now operated. We do not believe any increase in EIRP beyond this level is justified for omnidirectional stations so we are proposing to eliminate that provision of the rules which provides for exception to the power limitation. This will eliminate the administration delays and paperwork burdens that result from the existing 100 watt authorization procedure.

21. For stations using non-omnidirectional antennas, we are proposing to limit the EIRP in accordance with the formula described in paragraph 10. We stress that the EIRPs we are proposing today are maximums. All applicants are still expected to comply with Section 21.107 of the Rules, 47 CFR 21.107, which provides that transmitter power may be ordered to be reduced if harmful interference is being caused.

22. We ask those commenting on this proposed rule change to address the following issues: (1) What will be the effect of increasing the EIRP of existing stations? In particular, we are concerned about the situation where existing stations already radiating this power are located near cochannel 10 watt stations. If an existing 10 watt station were to raise its power level by 10 dB, there would be an increased possibility of cochannel interference. (2) What will be the effect of this rule change on adjacent channel stations that are operating at the lower power level in the same area? (3) Finally, we ask it the same result as is reached by the proposed rule change could not be better reached by merely specifying the power of MDS stations at the input to the transmitting antenna and limiting such power to 100 watts?

23. The proposed new section 21.904 is contained in the Appendix.

B. *Frequency Tolerance.* 24. Sections 21.908(c) and 21.101(a) require that MDS stations maintains the frequency of their visual carriers within 0.001% of its nominal value. 47 CFR 21.908(c), 21.101(a). This means that an MDS station operating on channel 1, channel 2 or channel 2A must maintain its carrier frequency within ±21.5 kHz of its nominal value. Broadcast television stations are required to maintain their visual carriers within ±1 kHz of their

[17] Reply Comment of Microband, *supra* note 13, at 4.

[18] *Id.*, at 12.

nominal frequency. 47 CFR 73.687(c)(1). Both MDS and broadcast television stations are required to keep the frequency of the aural carrier 4.5 MHz ± 1 kHz above the visual carrier. 47 CFR 21.908(c) and 73.687(c)(1).

25. In the *Notice*, we suggested that it might be desirable to tighten the frequency tolerance to allow for the use of frequency offsets to reduce cochannel interference.[19] Frequency stability similar to that used by broadcast television transmitters is necessary to make frequency offset techniques effective. Because the required stability is ± 1 kHz, and increase of more than an order of magnitude in the stability of MDS transmitters would be required. Frequency offset is now being used in Los Angeles by Microband; thus, we know that attaining such stabilities is technically feasible. The frequecy stability of the oscillators used by stations KFF79 and KFI79 is 1×10^{-5}.[20] This is three orders of magnitude better than the existing MDS requirement (.001% corresponds to 1×10^{-5}). The cost of implementing this change to the transmitters was approximately $2,000 per transmitter.[21] Because we believe that the use of frequency offset techniques will eliminate many cases of cochannel interference, we are proposing to require that all new MDS stations install transmitters that are capable of maintaining the visual carriers within ± 1 kHz of the assigned frequency.

26. We are aware that there may be manuacturers with transmitters in their inventories that do not meet this specification. For this reason, we are requesting that equipment manufactures and other interested partes advise when the proposed rule should become effective if it is adopted. We also request comment on the applicability of the proposed rule to transmitters already in service. We are expecially interested in the cost and complexity of modifying existing equipment to bring it into compliance with the proposed rule.

C. *Out-of-Band Emissions. 27. In the 1st Report*, we concluded that adjacent channel operation of MDS stations would be easier if we required all emissions from MDS transmitters appearing more than 3 MHz above or below the band edges to be attenuated at least 60 dB below the peak visual output power of the transmitter.[22] Existing § 21.908(b), 47 CFR 21.908(b), requires that such emission be attenuated at least 30 dB for transmitters rated at less than 10 watts and 40 dB for all other transmitters.

28. Because the successful operation of the multichannel MDS service we recently authorized requires this performance, we are proposing to amend section 21.908(b) to require all MDS transmitters to meet the 60 dB attenuation requirement. Here, as with frequency tolerance, we ask equipment manufacturers to advise us when they believe we should make the change effective if we do adopt it. We also request comment on the applicability of the proposed rule to existing equipment. Again we are especially interested in the cost and complexity of bringing existing into compliance with the proposed rule.

Notice of Inquiry

I. Background

29. On November 5, 1980, Multipoint Communications Corporation (Multipoint) filed a Petition for Rulemaking in which it petitioned "the Commission to amend its rules, to the extent such an amendment may be required, to permit operation of low power repeater stations in the Multipoint Distribution Service (MDS)."[23] Multipoint suggested that the repeaters be authorized subject to the following conditions:[24]

(1) Repeaters would only be authorized to the licensees of primary MDS stations and only for use in the authorized service areas of those primary stations;

(2) Output power of the MDS repeaters would be limited to a maximum of .5 watts;

(3) The repeaters would have to be so directed and situated that their interference contour would extend no further than the contour of the primary MDS station;

(4) As few or as many repeater stations as would be technically feasible could be employed in each primary service area;

(5) Reapeater stations would not need prior Commission approval to commence operation. Proposed operators would be required to notify the Commission of the specifics of their proposed operation in a manner similar to that applicable to cable television registration. The concept of non-licensed, subsidiary authorization is not new to the Commission. The Commission has, for example, recently terminated the individual licensing of mobile radios of the DPLMRS. These radio stations actively radiate energy, but, because they operate in conjunction with and under the umbrella of a licensed base station, the Commission has determined that separate individual licenses are not required. A similar approach might work here. Alternatively, licensing of repeater stations could be handled in a manner similar to that proposed for MDS return channels in Docket 80-112.

(6) The repeaters would operate in an unattended mode, subject to the ability of local maintenance crews to quickly be apprised of and to correct any malfunction. In many respects, MDS repeater service can be compared to TV broadcast booster stations. (See § 74.733 of the Commission's rules).

(7) The repeaters are envisioned as not extending the service area of primary MDS stations but, rather, filing in the holes of their existing service areas. However, it is certainly conceivable that in some instances, particularly in rural areas, extension of primary MDS service in order to reach isolated service points lying on the fringe of the service area may be desirable. In such instances, repeater operation could be authorized subject to the proviso that such operation would have to be terminated upon the commencement of operation of the potentially interfering primary MDS station.

(Footnotes omitted.)

30. Comments in support of Multipoint's Petition were filed by Microband Corporation of America and the National Association of MDS Service Companies (NAMSCO). Comments opposing the Petition were filed by the National Association of Public Television Stations (NAPTS). The American Telephone and Telegraph Company (AT&T) also filed comments. Multipoint filed a reply to the NAPTS opposition and NAPTS subsequently withdrew its opposition.

31. NAPTS originally objected to the Petition because of its belief that Multipoint was proposing a translating repeater. That is, a repeater that receives a signal on one frequency and retransmits it on a different frequency. In its Reply, Multipoint stated that what it was proposing was the use of non-translating repeater. That is, an active device that receives the signal, amplifies it and retransmits it on the same frequency. On learning of the true nature of Multipoint's proposal NAPTS withdrew its opposition.

32. AT&T was concerned with the possible interference the proposed

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[19] *Notice, supra* note 1, para. 54.

[20] Letter from Microband to Demestic Facilities Division, Federal Communications Commission, May 10, 1982, Station File KFF79.

[21] *Id.*

[22] *1st Report, supra* note 2, at paras. 128-130.

[23] Petition for Rulemaking RM-3819, Multipoint Communications Corporation, 1 (November 5, 1980).

[24] *Id.* at 2-5.

repeaters might cause to licensees in the Point-to-Point Microwave Radio Service that share the 2160–2162 MHz with MDS channel 2. AT&T suggested that the best way to avoid such problem was to have the Commission issue a Public Notice of any proposed MDS operation and give interested parties 30 days to review the proposal.

33. Both Microband and NAMSCO expressed support for the repeater concept. Microband expressed some doubt concerning adequacy of the record in support of Multipoint's 1/2 watt recommendation. Microband also was concerned about the possibility that cochannel or adjacent channel interference might be caused by repeaters.

II. Discussion

34. At the outset, we believe that some clarification in terminology is necessary. As discussed above, NAPTS filed its opposition because it believed Multipoint was proposing the use of frequency translating repeaters. In a recent action, we defined an active repeater as a device that amplified, redirected and transmitted on a *different* frequency the signal received. We used the term booster to described a device that used the same frequency for both reception and retransmission and simply amplified the received signal.[35] Thus, we believe that the term that should be applied to the device Multipoint proposed is booster rather than repeater. The term booster may also be applied to a passive device. That is a device that merely redirects the signal it receives but does not amplify it.

35. After reviewing Multipoint's petition and the comments filed in response thereto, we have concluded that the use of boosters in the MDS could serve a very useful function. The problem of obstructed receiver locations has been a continuing source of difficulty for MDS licensees. We have authorized the use of two boosters on a temporary basis in Chicago.[36] These boosters are being used to get the MDS signal over buildings that are obstructing critical receiver locations. They have apparently been operated without causing any interference. We believe that other licensees could make effective use of these devices to overcome the effects of obstructions in their protected service area.

36. Although we believe that the use of such devices may be in the public interest, we do not believe that we have an adequate record upon which to base propbsed rules. We are, therefore, requesting that interested parties file comments that address the following specific questions.

1. What is the maximum EIRP that a booster should be allowed to radiate?

2. Should we limit the location of the boosters to be no closer to the boundary of the protected service area than 5 miles?

3. What should be the role of boosters in those cases where the protected service area boundary is determined by radio horizon rather than 15 miles?

4. Should we require a separate application for each booster and place each such application on public notice?

5. What will be the effect of boosters on adjacent channel operations in the same city?

6. Should we require that booster equipment be subject to our authorization procedures (type acceptance or notification)? *See* Report and Order, General Docket No. 83–10, —— F.C.C. 2d ——, FCC 84–21, Released January 26, 1984.

We do not suggest that this list is exhaustive but merely representative of some of the major issues we believe should be addressed before we propose specific booster rules. We request that interested parties file comments on any other aspect of booster use by MDS licensees they deem relevant.

Regulatory Flexibility Act Initial Analysis

I. Reason for Action. This action is being taken in response to petitions for rulemaking filed by Microband Corporation of America and Multipoint Communications Corporation and in response to comments filed is response to our inquiry into these matters. On the basis of the record in these proceedings, we have concluded that the rules porposed herein may result in the elimination the unnecessary filing of requests for increased power authorization by MDS licensees, provide a higher quality of service to the public and eliminate potential adjacent channel and cochannel interference problem in this service. In addition, we believe that use of boosters will provide service to areas not now being served.

II. Objective. The objective of this action is to makemore efficient use of the spectrum allotted to this service.

III. Legal Basis. Action is proposed in accordance with section 303(e) and 303(f) of the Communications Act of 1934, as amended, that authorizes the Commission to regulate the apparatus used by radio stations and to make such regulations as may be necessary to prevent interference between stations.

IV. Description, Potential Impact and Number of Small Entities Effected. The proposed rules would affect MDS licensees and equipment manufacturers. The licensees would benefit from the simplified application procedures and by having facilities that were less likely to cause or experience harmful interference. Licensees could also serve a larger segment of the public and hence receive more revenue from the operation their stations. The cost of new MDS transmitters may be increased by the proposed rules. Equipment manufacturers would be required to produce a higher quality transmitter. The action could effect as many as 1,000 MDS licensees and as many as 10 equipment manufacturers.

V. Recording, Record Keeping and Other Compliance Requirements. Manufacturers would be required to have new transmitters type accepted.

VI. Federal Rules which Overlap, Duplicate or Conflict with this Rule. None.

VII. Any Significant Alternative Minimize Impact on Small Entities and Consistant with the Stated Objective. None.

Conclusion

37. Accordingly, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, it is proposed that Part 21 of the Commission's rules be amended as set forth in the attached Appendix.

38. Pursuant to procedures set out in § 1.415 of the Commission's rules, interested parties may file comments on or before August 6, 1984 and reply comments on or before September 5, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

39. In accordance with the provisions of § 1.419 of the rules, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each

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[35] Report and Order, BC Docket No. 82–20, RM–2500, —— F.C.C. 2d ——, FCC 84–40, para. 3 (released February 17, 1984).

[36] *See* s' ation files WHE 983 and WFY 953.

Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting 1 copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters, Room 239, 1919 M Street, NW., Washington, D.C. For general information on how to file comments, please contact the FCC Consumer Assistance and Information Division at (202) 632–7000.

40. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff that addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation, and serve it on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.231.

41. For further information regarding this proceeding, contact Kevin J. Kelley, Common Carrier Bureau, (202) 634–1860.

(Secs. 4(i) and 303, Communications Act of 1934, as amended)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 21—[AMENDED]

It is proposed that Part 21 of Chapter I of Title 47 of the Code of Federal Regulations be amended as follows:

1. Section 21.2 is amended by adding the following definition.

§ 21.2 Definitions.

* * * * *

Equivalent Isotropically Radiated Power (EIRP). The product of the antenna input power and the antenna power gain relative to an isotropic radiator. This product may be expressed in watts or dB above 1 watt (dBW).

* * * * *

2. Section 21.107 is amended by revising footnote 2 of paragraph (b) to read as follows:

§ 21.107 Transmitter power.

* * * * *

(b) * * *

[2] In the bands, 5.925–6.425 MHz and 27.500–29.500 MHz the maximum equivalent isotropically radiated power of the transmitter and associated antenna of a station in the fixed service shall not exceed +55 dBW. This limitation is necessary to minimize the probability of harmful interference to reception in this band by space stations in the fixed satellite service. In the bands 2150–2162 MHz and 2596–2644 MHz the maximum transmitter power shall be no greater than is required to comply with the Equivalent Isotropically Radiated Power limitations contained in § 21.904.

* * * * *

3. Section 21.904 is amended by revising paragraphs (a) and (b) to read as follows:

§ 21.904 Transmitter power.

(a) The equivalent isotropically radiated power of a transmitting station in this service shall not exceed 2,000 watts (33 dBW) except as provided in paragraph (b) of this section.

(b) The maximum equivalent isotropically radiated power in dBW of a station that uses a transmitting antenna with a non-omnidirectional horizontal plane radiation pattern shall be determined by the following formula:

$$EIRP_{max} = 33 + 10 \log 360/BW$$

in which BW is the total horizontal plane beamwidth of the transmitting antenna system in degrees, measured at the half-power points.

* * * * *

4. Section 21.908 is amended by revising paragraphs (a) through (e) to read as follows:

§ 21.908 Television transmitting equipment.

(a) Except as otherwise provided in this section, the requirements of paragraphs (a), (b), (c), (d), and (e) of § 73.687 of this chapter shall apply to stations in this service transmitting standard television signals.

(b) The average power of radio frequency harmonics of the visual and aural carriers, measured at the output terminals of the transmitter, shall be attenuated no less than sixty (60) decibels below the peak visual output power within the assigned channel. All other emissions appearing on frequencies more than fifty (50) percent of the authorized bandwidth above or below the upper and lower edges, respectively, of the assigned channel shall be attenuated no less than sixty (60) decibels. However, should interference occur as the result of emissions outside the assigned channel, greater attenuation may be required.

(c) The requirements of § 73.687(c)(2) will be considered to be satisfied insofar as measurements of operating power are concerned if the transmitter is equipped with instruments for determining the combined visual and aural operating power. However, licensees are expected to maintain the operating powers within the limits specified in § 21.904. Measurements of the separate visual and aural operating powers should be made at sufficiently frequent intervals to insure compliance with the rules and in no event less than once a month.

(d) Television transmitting equipment designed for stations whose authorized bandwidth in 4 MHz or less for the visual and accompanying aural signal is subject to the provisions of § 21.101 with respect to the frequency tolerance of the visual and aural carriers. Such equipment is also subject to paragraphs (a) and (b) of this section, except that the provisions of § 73.687(a), (b), and (c)(1) of this chapter shall not apply.

(e) As a further exception to the other requirements of this section, transmitting equipment characteristics may vary from these requirements to the extent necessary to insure that transmitted information is not likely to be received in intelligible form by unauthorized subscribers or licensees, provided such variations permit recovery of the transmitted information without perceptible degradation as compared to the same information transmitted without such variations.

* * * * *

[FR Doc. 84–16469 Filed 6–20–84; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 49, No. 121
Thursday, June 21, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Annual Survey of Manufactures
Form Number: Agency—MA–1000(MU); MA–1000(SU); MA–1000(S); MA–1000(B); MA–1000(E); OMB–0607–0449
Type of Request: Revision
Burden: 122,000 respondents; 222,600 reporting hours
Needs and Uses: The Annual Survey of Manufactures has been conducted since 1949 to provide key measures on manufacturing during intercensal periods. The annual survey's production and input data are used widely as benchmarks for other Federal statistical programs including the Federal Reserve Board's index of industrial production, the Bureau of Economic Analysis estimates of the gross national product, and the Department of Commerce annual publication, *Industrial Outlook*.
Affected Public: Businesses
Frequency: Annually
Respondents Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the respective OMB Desk Office, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: June 15, 1984.
Edward Michals,
Department Clearance Officer.
[FR Doc. 84–16610 Filed 6–20–84; 8:45 am]
BILLING CODE 3510–(CW)–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—Wave 6 Pretest
Form Numbers: Agency—SIPP 4600(x), SIPP 4605(x); OMB—0607–0425
Type of Request: Revision of a currently approved collection
Burden: 260 respondents; 130 reporting hours
Needs and Uses: The Survey of Income and Program Participation (SIPP) collects information on the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. This information is extremely important for the formulation of government domestic policy. This survey will pretest Wave 6 topical module questions on earnings and benefits and property income and taxes. These questions will be added to the SIPP 1984 Panel Wave 6 Questionnaire.
Affected Public: Individuals or Households
Frequency: Other—Pretest
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: June 15, 1984.
Edward Michals,
Department Clearance Officer.
[FR Doc. 84–16609 Filed 6–20–84; 8:45 am]
BILLING CODE 3510–(CW)–M

International Trade Administration

Amoxicillin Trihydrate and its Salts From Spain; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On March 30, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on amoxicillin trihydrate and its salts from Spain. The review covers the period January 1, 1982 through December 31, 1982.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: June 21, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 12730) the preliminary results of its administrative review of the countervailing duty order on amoxicillin trihydrate and its salts from Spain (44 FR 44154, July 27, 1979). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Spanish amoxicillin trihydrate and its salts ("amoxicillin"), an antibiotic which is a semi-synthetic

penicillin. Such merchandise is currently classifiable under item 411.7400 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1982 through December 31, 1982 and four programs: (1) A rebate of indirect taxes upon exportation under the Desgravacion Fiscal a la Exportacion ("the DFE"); (2) an operating capital loans program; (3) a short-term export credit program; and (4) research and development incentives.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine the aggregate net subsidy to be 3.17 percent *ad valorem* for the period January 1, 1982 through December 31, 1982.

The Department will instruct the Customs Service to assess countervailing duties of 3.17 percent of the f.o.b. invoice price on all shipments of amoxicillin trihydrate and its salts from Spain exported on or after January 1, 1982 and entered, or withdrawn from warehouse, for consumption on or before June 20, 1982.

On June 21, 1982, the International Trade Commission ("the ITC") notified the Department that the Spanish government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. Should the ITC find that there is material injury to an industry in the United States, the Department will instruct the Customs Service to assess countervailing duties, in the amount of the estimated duties required to be deposited, on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 21, 1982 and through the date of the ITC's notification to the Department of its determination.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, of 1.67 percent of the entered value on any shipment of Spanish amoxicillin entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: June 18, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-16022 Filed 6-20-84; 8:45 am]
BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on these applications must be submitted on or before July 11, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84-00021."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596-10604 (Mar. 11, 1983) (to be codified at 15 CFR Part 325).

A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade acivities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-15910 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application(s) is

exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Apparatex International Trading Company, 350 Fifth Avenue, Room 4920, New York, New York 10118.

Application No.: 84–00021.

Date Received: June 1, 1984.

Date Deemed Submitted: June 7, 1984.

Members in Addition to Applicant: The William Carter Co., Stanwood Corporation, and Mr. Anthony J. Cascardi.

Summary of the Application

A. Export Trade

Apparatex will export knit, woven and non-woven apparel, including sleepwear, playwear, sportswear, activewear, outerwear, undergarments, jeans, slacks, shirts, and socks for infants, toddlers, children, girls and women, and boys and men, accessories and related textile products (the "goods"). Apparatex also intends to facilitate the export of these items by providing export trade services (consulting, international market research, brokerage, negotiation of contracts, transporation, freight forwarding from point of origin to destination abroad, and international documentation of international traffic) to manufacturers and suppliers. (Apparatex will also provide import services, but it is not seeking to have these activities certified because they are not eligble for certification.)

B. Export Markets

The export markets will be worldwide, but Apparatex will initially concentrate on Europe.

C. Export Trade Activities and Methods of Operation

Apparatex seeks certification:

1. To purchase and take title to goods for export from the members and other manufacturers and suppliers.

2. To enter into non-exclusive agreements with the members or individually with other manufacturers and suppliers, to act as a broker and/or export sales representative.

3. To enter into exclusive and non-exclusive agreements with agents, brokers, representatives and distributors located in the Export Markets and to include in these agreements sales, territorial and price maintenance restrictions.

4. To act as a purchasing agent by obtaining orders from foreign buyers and filling the orders with goods from the members or other manufacturers and suppliers.

5. To broker goods for export by matching buyers and sellers, with or without handling the goods.

6. Organize and broker licensing agreements providing exclusive or non-exclusive rights to manufacture and/or sell in the Export Markets goods currently manufactured in the United States by the members and other suppliers.

7. To acquire and sell to the Export Markets on a speculative basis inventory from the members and other suppliers.

The OETCA is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued.

Dated: June 15, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84–16563 Filed 6–20–84; 8:45 am]

BILLING CODE 3510–DR–M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Request for a National Voluntary Laboratory Accreditation Program for Building Seals and Sealants.

SUMMARY: In accordance with section 7c.4 of the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) pertaining to private sector organizations (15 CFR 7c.4), notice is hereby given by the National Bureau of Standards of the receipt of a letter dated March 23, 1984, from the American Society for Testing and Materials (ASTM) Committee C–24 Building Seals and Sealants requesting the development of a laboratory accreditation program (LAP) to accredit laboratories that test building seals and sealants. The ASTM Committee's letter, which is set out at the conclusion of this notice, includes a statement of need and the procedures followed in support of its request.

ASTM Committee C–24 meets the conditions set out in 15 CFR 7c.3(b). A copy of the March 23, 1984, letter from ASTM Committee C–24 has been filed in the Central Reference and Records Inspection Facility (CRRIF), Room 6628, Herbert C. Hoover Building, 14th Street between E Street and Constitution Avenue, NW., Washington, D.C. 20230.

Any person desiring to comment regarding the need for this LAP is requested to do so, in writing, no later than August 20, 1984. Comments should be sent directly to Saul Spindel, Chairman C–24.82, D/L Laboratories, 118 E. 16th Street, New York, NY 10003.

A copy of such comments should be sent to Mr. John. W. Locke, Manager, Laboratory Accreditation, NBS, TECH B141, Gaithersburg, MD 20899; (301) 921–3431. Additional inquiries related to NVLAP can also be directed to Mr. Locke.

Dated: June 18, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

March 23, 1984.

Dr. Ernest Ambler,

Director, National Bureau of Standards, Washington, D.C.

Dear Dr. Ambler: In accordance with section 7c.4 of Title 15 of the Code of Federal Regulations, the ASTM Committee C–24 of Building Seals and Sealants requests that you establish a laboratory accreditation program (LAP) under the National Voluntary Laboratory Accreditation Program (NVLAP) to accredit laboratories which test building seals and sealants to the requirements of applicable standards.

For the purpose of defining the scope of this proposed LAP, "building seals and sealants" include caulking compounds, putty, elastomeric compounds, glazing compounds, preformed gaskets, and sealing tapes for joint application; and membranes and liquid-applied elastomeric sealing compounds for surface application.

There are numerous applicable standards used in the evaluation of building seals and sealants, many of which are shown in the Appendix. It is requested that the NVLAP provide a method of accreditation for the procedures listed in the LAP.

Number of Laboratories

There are many laboratories, including both independent and commercial, that perform this testing in the U.S.A. and in foreign countries, many of which may be interested and eligible to become accredited under this proposed LAP.

Users of Laboratories

Users of accredited laboratory services would include owners, architects and specifiers responsible for the design, construction maintenance of new and existing commercial and non-commercial structures, including office, residential and public building facilities and municipal and national agencies that specify the use of building seals and sealants as well as manufacturers of these products.

Need for the LAP

National Need: Building seals and sealants are used in the construction of all facilities, including commercial and non-commercial, to provide a water and air tight seal. These sealants are used to join similar and dissimilar materials of construction and, because of the stresses and strains placed upon them as a result of weathering, aging and movement, must possessn sufficient integrity not to fail and thereby allow water or air to infiltrate or exfiltrate the facility. The test procedures to be certified under this LAP are designed to predict the effectiveness of building seals and sealants on a variety of surfaces, and where applicable, on specific surfaces. Sealants which conform to the standards established by ASTM C–24 are expected to provide years of durable, effective performance.

Benefits to Public Interest: The importance of the long term, durable performance of building seals and sealants cannot be overstated. The cost of the erection of the structures that they seal runs into the hundreds of thousands and millions of dollars. The premature failure of seals and sealants can cause significant and costly water damage to both the interior and exterior portions of the structures, resulting in a need for costly repairs. In addition, air infiltration or exfiltration can result in the increased use of energy to heat or air condition the structure, or both. The way to assure that building seals and sealants meet perforance standards is by having them tested properly to established standards by competent, appropriately equipped laboratories.

This is the purpose of these standards and this LAP. The manufacture, development and evaluation of building seals or sealants is not simple. The LAP is required to assure the delivery and installation of seals and sealants which meet established standards.

Existing Valid Testing Methodology—ASTM C–24 has numerous standards that can be used to evaluate the performance of building seals and sealants. Sealant performance properties such as color change, staining, application characteristics, rheology, hardness, tack-free time, volatility, flexibility, slump and adhesion and cohesion are evaluated by ASTM C–24 standards. In addition, there are specifications that can be used to evaluate the performance of chemically curing sealants, oil and resin base caulking glazing compounds and latex sealing compounds as well as recommended guides for their application and use. All of these standards have been in use for many years.

Feasibility and Practicality of Administering a LAP

A LAP for the evaluation of building seals and sealants appears to be as feasible as any other LAP now established by NVLAP. There are many laboratoris that use ASTM standards as well as other recognized specifications to evaluate sealants and persons who are engaged by these laboratories are potential sources of consultation by NBS.

Procedures Used in Formulating This Request

The following was considered by ASTM Committee C–24 in arriving at the request for LAP:

The committee was organized in 1959 to develop standards for building seals and sealants. Presently there are 18 active technical subcommittees:

C–24.12 Oil and Resin Base Sealants
C–24.15 Hot Applied Sealants
C–24.16 Latex Sealants
C–24.18 Solvent Release Sealants
C–24.32 Chemically Curing Sealants
C–24.35 Structural Sealants
C–24.40 Back-up Materials
C–24.50 Tape Sealants
C–24.70 Lock Strip Gaskets
C–24.72 Compression Seal Gaskets
C–24.74 Pipe Gaskets
C–24.76 Pipe Couplings
C–24.80 Waterproofing Systems
C–24.82 Criteria For Evaluation of Sealant Testing Laboratories
C–24.84 Sealants for Insulated Glass
C–24.83 Statistical Analysis
C–24.85 Sealants for Acoustical Applications
C–24.87 International Standards

The development of a standard relatd to accreditation of laboratories which test building seals and sealants is the responsibility of Subcommittee C–24.82. C–24 Subcommittee operate under the rules of ASTM which maintain open access to all interested parties. Membership repesents a wide spectrum of industry interests and to assure this board spectrum of industry participation a recruitment program for new membrs is maintained. Standards established by this committee evolve through several draft versions which are discussed and amended in open committee meetings. Final versions are submitted to three separate ballots; Subcommittee, Main Committee and the entire ASTM Society. In all cases where three are negative votes, these are answered either by clarification (with the dissenting voter agreeing to reverse his vote), by committee adoption of the dissenting opinion is "not persuasive". Records of these procedures are maintained throughout the development of these standards. In addition, this application has been circulated and balloted through the C–24.82 Subcommittee and Executive Committee of ASTM C–24.

Although ASTM C–24 has been the committee which has had primary responsibility for the development of standards for building seals and sealants it has not been alone in its interest. The Federal Government, first through the National Bureau of Standards and presently, through the General Services Administration, has also developed specifications for building seals and sealants.

ASTM C–24.82, using consensus development procedures, prepared a final draft of a Standard Practice for Laboratories Engaged in the Testing of Building Sealants which was approved by the Subcommittee, submitted to the C–24 Main Committee and is presently being balloted thru the ASTM Society. All negative and editorial comments were handled in accordance with the due process procedures as described above.

We assert that the ASTM Committee C–24 qualifies under the due process requirements of the NVLAP Part 7c Procedures for private sector organizations to make this request.

Developments of Technical Details

ASTM C–24 is ready to provide technical support for the development of the details for administering this LAP. In addition, we hope to identify technical experts for your use in assessing applicant laboratories. We hope that members of ASTM Committee C–24 can continue to contribute to the development of technical requirements

for accrediting laboratories to implement this LAP.

Please advise us if you require any other information regarding this request. We look forward to your favorable consideration of this application.

Sincerely,

Thomas J. O'Connor,

Chairman.

Appendix—List of ASTM C–24 Standards

C–510 Test for Staining and Color Change of Single or Multi-component Joint Sealants.
C–570 Specification for Oil and Resin-Base Caulking Compound For Building Construction.
C–603 Test for Extrusion Rate and Application Life of Elastomeric Sealants.
C–639 Test for Rheological (Flow) Properties of Elastomeric Sealants.
C–661 Test for Identation Hardness of Elastomeric Type Sealants by Means of a Durometer.
C–669 Glazing Compounds for Back Bedding and Face Glazing of Metal Sash.
C–679 Test for Tack-Free Time of Elastomeric-Type Joint Sealants.
C–681 Test for Volatility of Oil and Resin-Based, Knife-Grade, Channel Glazing Compounds.
C–711 Test for Low-Temperature Flexibility and Tenacity of One-Part, Elastomeric, Solvent-Release Type Sealants.
C–712 Test for Bubbline of One-Part, Elastomeric Solvent-Release Type Sealants.
C–713 Test for Slump of an Oil-Base Knife-Grade Channel Glazing Compound.
C–717 Definition of Terms Relating to Building Seals.
C–718 Test for UV-Cold Box Exposure of One-Part, Elastomeric, Solvent-Release Type Sealants.
C–719 Test for Adhesion and Cohesion of Elastomeric Joint Sealants Under Cyclic Movement.
C–731 Test for Extrudability, After Package Aging, of Latex Sealing Compounds.
C–732 Test for Aging Effects of Artificial Weathering on Latex Sealing Compounds.
C–733 Test for Volume Shrinkage of Latex Sealing Compounds.
C–734 Test for Low-Temperature Flexibility of Latex Sealing Compounds After Artificial Weathering.
C–736 Test for Extension-Recovery and Adhesion of Latex Sealing Compounds After Artificial Weathering.
C–741 Test for Accelerated Aging of Wood Sash Face Glazing Compound.
C–742 Test for Degree of Set for Wood Sash Glazing Compound.,
C–792 Test for Effects of Heat Aging of Weight Loss, Cracking and Chalking of Elastomeric Sealants.
C–793 Test for Effects of Accelerated Weathering on Elastomeric Joint Sealants.
C–794 Test for Adhesion-in-peel of Elastomeric Joint Sealants.
C–834 Specification for Latex Sealing Compounds.
C–910 Standard Test for Bond and Cohesion of One Part Elastomeric Solvent Release Type Sealants.
C–920 Specification for Elastomeric Joint Sealants.
D–2202 Test for Slump of Caulking Compounds and Sealants.
D–2203 Test for Staining of Caulking Compounds and Sealants.
D–2249 Predicting the Effect of Weathering on Face Glazing and Bedding Compounds on Metal Sash.
D–2376 Test for Slump of Face Glazing and Bedding Compounds on Metal Sash.
D–2377 Test for Tack-Free Time of Caulking Compounds and Sealants.
D–2450 Test for Bond of Oil and Resin-Base Caulking Compounds.
D–2451 Test for Degree of Set for Glazing Compounds on Metal Sash.
D–2452 Test for Extrudability of Oil and Resin-Base Caulking Compounds.
D–2453 Test for Shrinkage and Tenacity of Oil and Resin-Base Caulking Compounds.

[FR Doc. 84–16542 Filed 6–20–84; 8:45 am]
BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing.

SUMMARY: The North Pacific Fishery Management Council will hold a public hearing to gather comments on permit applications submitted by Poland for directed fishing and joint ventures off Alaska in 1984.

DATE: The hearing will begin at 2:00 p.m., on June 29, 1984.

ADDRESS: The hearing will take place in the Bill Ray Center, Room 203, 1108 "F" Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jim H. Branson, Executive Director, North Pacific Fishery Management Counicl, P.O. Box 103136, Anchorage, Alaska 99510, 907–274–4563.

Dated: June 15, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84–16633 Filed 6–20–84; 8:45 am]
BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Controlling Imports of Certain Wool Apparel Products Produced or Manufactured in Uruguay

June 18, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 1, 1984. For further information contact William Boyd, International Trade Specialist (202) 377–4212.

Background

The bilateral agreement of January 23, 1984 between the Governments of the United States and Uruguay establishes a specific restraint limit of 5,959 dozen for women's, girls' and infants' wool suits in Category 444, produced or manufactured in Uruguay and exported during the agreement year beginning on July 1, 1984 and extending through June 30, 1985. The letter which follows this notice directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption of wool textile products in Category 444, produced or manufactured in Uruguay and exported during the year beginning on July 1, 1984, in excess of 5,959 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 18, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the bilateral agreement of January 23, 1984, between the Governments of the United States and Uruguay; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in category 444, produced or manufactured in Uruguay and exported during the twelve-month period which began on July 1, 1984 and extending through June 30, 1985, in excess of 5,959 dozen.

In carrying out this directive entries of wool textiles products in Category 444, produced or manufactured in Uruguay, which have been exported on and after August 1, 1983 and extending through June 30, 1984, shall, to the extent of any unfilled balances, be charged to the limit established for such goods during that eleven-month period. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the limit set forth in this directive.

This limit is subject to adjustment in the future according to the provisions of the bilateral agreement of January 23, 1984 which provide, in part, that: (1) the specific limit may be adjusted for carryover and carryforward and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 F.R. 55709), as amended on April 7, 1983 (48 F.R. 15175), May 3, 1983 (48 F.R. 19924) and December 14, 1983 (48 F.R. 55607), December 30, 1983 (48 F.R. 57584), and April 4, 1984 (49 F.R. 13397).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken will respect to the Government of Uruguay and with respect to imports of wool textile products from Uruguay has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-16555 Filed 6-20-84; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Republic of Indonesia To Review Trade in Categories 339 (Women's, Girls' and Infants' Knit Shirts and Blouses) and 640 (Woven Shirts)

June 18, 1984.

On May 29, 1984, the government of the United States requested consultations with the Government of the Republic of Indonesia with respect to Categories 339 and 640. This request was made on the basis of the agreement, as amended, between the Governments of the United States and the Republic of Indonesia relating to trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products of October 13 and November 9, 1982.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the United States will establish prorated specific limits for the May 29–June 30, 1984 period and twelve-month specific limits of 182,058 dozen for Category 339 and 182,698 dozen for Category 640 for the subsequent agreement period which begins on July 1, 1984 and extends through June 30, 1985.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution to control imports in these categories exported during the 90-day consultation period (May 29–August 26, 1984) at levels of 49,627 dozen for Category 339 and 49,801 dozen for Category 640. In the event the limits established for the ninety-day period are exceeded, such excess amounts, if allowed to enter, may be charged to the levels established during the subsequent agreement year.

Summary market statements for these categories follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 339 and 640 under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of the Republic of Indonesia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Effective Date: June 22, 1984.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Indonesia—Market Statement

Category 640—Men's & Boys' Woven Man-Made Fiber Shirts & Blouses

May 1984.

U.S. imports of Category 640 from Indonesia for the year ending March 1984, at 151,590 dozen, were nearly three and a half times the level of the previous twelve months. Imports during the first three months of 1984 were 54,374 dozen, up 165 percent from January-March 1983. This is a sharp and substantial increase of imports in a sector severely affected by imports.

Domestic production of Category 640 decreased 10 percent in 1982 to 11,521,000 dozen from 12,792,000 dozen in the previous year. The 1982 output level was the lowest in a decade. Imports, however, increased 10 percent to 11,809,000 dozen in 1982. The import to production ratio increased from 83.6 percent in 1981 to 102.5 percent in 1982. Although imports declined in 1983, a 25 percent increase in Category 640 imports during January-March 1984, to 3,381,818 dozen, indicates a 1984 recovery to a level above the record 1981 imports.

Category 339—WGI Cotton Knit Shirts and Blouses

U.S. imports of Category 339 from Indonesia reached 256,823 dozen in the year ending March 1984, 608 percent above the previous twelve months. In the first three months of 1984, these imports reached 201,442 dozen which is nearly 16 times greater than during January-March 1983 and nearly three times greater than total 1983 imports of Category 339 from Indonesia. This is a sharp and substantial increase of imports in a sector already severely affected by imports.

Domestic production in 1982 partially recovered from the recession affected level of 1981; however, at 7,386,000 dozen, the 1982 level was the second lowest of the last decade and compares with 7,610,000 in 1980. Imports in 1983 were 7,409,000 dozen, down from 7,838,000 dozen in 1982 but up from 7,082,000 in 1980. Imports for the year ending March 1984 were 8,582,000 dozen, up 20 percent from a year earlier. Imports were large during the first quarter of 1984, reaching 3,724,000 dozen or 46 percent above a year earlier. The ratio of imports to domestic production was at the record level of 106.1 percent in 1982, up from 102.2 percent in 1981.

These imports from Indonesia are imported at duty-paid values below the U.S. producer prices for similar and comparable garments.

June 18, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended and extended, between the Governments of the United States and Republic of Indonesia; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 22, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Categories 339 and 640, produced or manufactured in Indonesia and exported during the ninety-day period which began on May 29, 1984 and extends through August 28, 1984, in excess of the following levels of restraint:

Category	Ninety day restraint [1] (dozen)
339	49,627
640	49,601

[1] The levels have not been adjusted to reflect any imports exported after May 28, 1984.

Textile products in Categories 339 and 640 which have been exported to the United States prior to May 29, 1984 shall not be subject to this directive.

Textile products in Categories 339 and 640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709) as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the Republic of Indonesia and with respect to imports of man-made fiber textile products from Indonesia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-16554 Filed 6-20-84; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session on 10 and 11 July 1984 at Palisades Institute for Research Services, Inc., 1925 North Lynn Street, Suite 1000, Arlington, Virginia 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended (5 U.S.C. App. II 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: June 18, 1984.

M. S. Healy,
OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-16522-6 Filed 6-20-84; 8:45 am]
BILLING CODE 3810-01-M

Department of the Army

Privacy Act of 1974; Deletions of and Amendments to Notices for Systems of Records

AGENCY: Department of the Army, DoD.

ACTION: Deletion of and amendments to notices for systems of records.

SUMMARY: The Department of the Army proposes to delete 2 and amend 10 system notices for systems of records subject to the Privacy Act of 1974, as amended. Following identification of changes, amended notices are printed below in their entirety.

DATES: Actions shall be effective July 23, 1984.

ADDRESSES: Comments may be submitted to Headquarters, Department of the Army, ATTN: DAAG-AMR-S, 2461 Eisenhower Avenue, Alexandria, VA 22331.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Karkanen, Office of The Adjutant General, Headquarters, Department of the Army, at the above address; telephone: 703/325-6163.

SUPPLEMENTARY INFORMATION: The Army's system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** as follows:

FR Doc 83-12048 (48 FR 25502), June 6, 1983
FR Doc 83-18883 (48 FR 32046), July 13, 1983
FR Doc 83-24181 (48 FR 40291), September 6, 1983
FR Doc 83-28792 (48 FR 49066), October 24, 1983
FR Doc 84-1118 (48 FR 2006), January 17, 1984
FR Doc 84-2331 (49 FR 3506), January 27, 1984
FR Doc 84-3683 (49 FR 5170), February 10, 1984
FR Doc 84-6438 (49 FR 8983), March 9, 1984
FR Doc 84-11652 (49 FR 18600), May 1, 1984

FR Doc 84–14035 (49 FR 22122), May 25, 1984
FR Doc 84–15558 (49 FR 24045), June 11, 1984

The proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 18, 1984.

Deletions

A1301.07aAMC

System name:

Alphabetical Listing of Scientists (48 FR 25755), June 6, 1983.

Reason:

Records are no longer subject to the Privacy Act.

A1301.07cAMC

System name:

Visiting Scientist Research Associates Reference Files (48 FR 25757), June 6, 1983.

Reason:

Records are no longer required or maintained.

AMENDMENTS

A0102.13DAPC

System name:

Administrative Military Personnel Records

Changes:

After "Authority for maintenance of the system", add:

"*Purpose:* To provide supervisors a ready source of information for day-to-day operations and administrative determinations pertaining to assigned/attached personnel."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry: substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

A0722.02DACH

System name:

Baptism, Marriage, and Funeral Files

Changes:

After "Authority for maintenance of the system", add:

"*Purpose:* To render service to military members, their dependents and authorized civilians."

Routine uses of records maintained in the system including categories of users and the purposes of such uses:

Delete entries: substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Record source categories:

Change entry to read: "From the individual".

A0722.05aDACH

System name:

Chaplin Counseling/Interview Files

Changes:

System Identification: Delete suffix "a".

After "Authority for maintenance of the system", add:

"*Purpose:* To document privileged counseling/interview sessions between Army Chaplains and individuals."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "None authorized: see Army Regulation 165–20."

A0722.06aDACH

System name:

Religious Census, Education, and Registration Files

Changes:

System Identification:
Delete suffix "a".

Categories of individuals covered by the system:

Change entry to read: "Military, dependent, and civilian personnel who voluntarily participate in religious services and activities."

Categories of records in the system:

Change entry to read: "Individual's name, age, denominational preference, religious education desired/attained, and similar information."

Authority for maintenance of the system:

Delete entry; substitute therefor: "5 U.S.C., section 301".

Add: "*Purpose:* To provide data on religious education/training or needs of faith groups, denominations, or religious sects; to determine and administer educational or training needs in social, spiritual, and humanitarian relationships for the military community served; to record attendance, training accomplished, participation and spiritual growth."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefore: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retention and disposal:

Change entry to read: "Information is retained until individual is no longer active in official chaplain-sponsored services and activities."

Record access procedures:

Change entry to read: "See 'Notification procedure'.

Contesting record procedures:

After "determinations", delete remainder and substitute therefor: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

A0912.04DASG

System name:

Medical Staff Credentials File

Changes:

After "Authority for maintenance of the system", add:

"*Purpose:* To determine and assess capability of practitioner's clincial practice."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "In specific instances, clinical privilege information from this system of records may be provided to civilian and military medical facilities, Federation of State Medical Boards of the United States, State Licensure Authorities and other appropriate professional regulating bodies."

A0914.02aDASG

System name:

Pathology Consultation Record Files

Changes:

System Identification:

Delete suffix "a".

Authority for maintenance of the system:

Delete "Title 44 U.S.C., section 3101".

Add: "*Purpose:* To ensure complete medical data are available to pathologist providing consultative diagnosis to requesting physician in order to improve quality of care to

individuals; to provide a data base for education of medical personnel; to provide a data base for medical research and statistical purposes and when required by law or for official purposes."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "Individual records may be released to referring physician, to physicians treating the individual, to qualified medical researchers and students, and to other Federal agencies and law enforcement personnel when requested for official purposes involving criminal prosecution, civil court action, or regulatory orders."

A0914.04aDASG

System name:

Research and Experimental Case Files

Changes

System Identification:

Delete suffix "a".

After "Authority for maintenance of the system", add:

Purpose: To follow up on individals who voluntarily participated in Army chemical/biological agent research projects for the purpose of assessing risks/hazards to them, and for retrospective medical/scientific evaluation and future scientific and legal significance."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "Information may be disclosed to the Veterans Administration in connection with benefits determinations."

A1301.07bAMC

System name:

Food Taste Test Panel Reference Files.

Changes:

System Identification:

Delete suffix "b".

System name:

Delete "Reference".

System location:

Delete all information except "US Army Natick Research and Development Center, Natick, MA 01760".

After "Authority for maintenance of the system", add:

"*Purpose:* To evaluate food rations under development by the Army; to determine acceptability of food items in consideration of purchase."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entries; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

Record access procedures:

Delete all entries; substitute therefor: "Individuals who believe information on them is contained in this system of records should write to the Sensory Analysis Branch, Science and Advanced Technology Laboratory, US Army Natick Research and Development Center, Natick, MA 01760, furnishing their full name and current address."

A1306.01DAPE

System name:

Behavioral and Social Sciences Research Project Files

Changes:

After "Authority for maintenance of the system", add:

"*Purpose:* To research human factors inherent in the recruitment, selection, classification, assignment, evaluation, and training of military personnel; to enhance readiness effectiveness of the Army by developing personnel management methods, training devices, and testing of weapons methods and systems aimed at improved group performance. (No decisions affecting an individual's rights or benefits are made using these records.)"

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983".

A1401.07aAMC

System name:

Resumes for Non-Government Technical Personnel

Changes:

System location:

Delete second and third paragraphs.

After "Authority for maintenance of the system", add:

"*Purpose:* To provide a source of personal information/qualifications on qualified scientific and technical personnel able to solve scientific and technical problems of interest to the US Government."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete all information; substitute therefor: "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983."

System manager(s) and address:

Delete entry; substitute therefor: "Director, US Army Research Office, P.O. Box 12211, Research Triangle Park, NC 27709."

Notification procedure:

Delete entry; substitute therefor: "Information may be obtained from the Contracting Officer, US Army Research Office, P.O. Box 12211, Research Triangle Park, NC 27709."

Record access procedures:

Delete all information; substitute therefor: "Written requests may be sent to the System Manager; requester must provide his/her full name, current address and telephone number, position title, and current employer."

Contesting record procedures:

After "determinations", delete remainder and add: "are contained in Army Regulation 340–21 (32 CFR Part 505)."

The amended systems of records read as follows:

A0102.13DAPC

SYSTEM NAME:

Administrative Military Personnel Records.

SYSTEM LOCATION:

Headquarters, Department of the Army Staff, major commands, field operating agencies, installations and activities performing unit level administration for military personnel, whether active, inactive (reservist, MOBDES), and including the National Guard.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel (and in some instances, their dependents) at the local supervisory level (i.e., company, platoon/squad, or comparable office size) when the individual's MPRJ is maintained elsewhere.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records/documents of a temporary nature which are needed in the day-to-day administration/supervision of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE:

To provide supervisors a ready source of information for day-to-day operations and administrative determinations pertaining to assigned/attached personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" and 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, index cards, microfiche, magnetic tape/disc.

RETRIEVABILITY:

By individual's surname or SSN.

SAFEGUARDS:

Information is stored in locked rooms/buildings with access restricted to individuals whose duties require a need-to-know. Where information exists on word processing disk/diskettes/tapes or in automated media, the administrative, physical, and technical requirements of Army Regulation 380–380 are assured to preclude improper use or inadvertent disclosure.

RETENTION AND DISPOSAL:

Records are destroyed not later than 30 days after individual transfers/separates.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not this system of records contains information on them should inquire of their immediate supervisor.

RECORD ACCESS PROCEDURES:

Requests should be made of the custodian of the record at the location assigned/attached; individual must provide full name, SSN, and particulars which facilitate locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Copy of documents in individual's Official Military Personnel File, Military Personnel Records Jacket, Career Management Information File; his/her supervisor; other Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0722.02DACH

SYSTEM NAME:

Baptism, Marriage, and Funeral Files.

SYSTEM LOCATION:

Records from 1917–1952 are in the National Archives, General Services Administration. Records from 1953 to 1977 are in the Washington National Records Center, Washington, DC 20409, as well as in the Office, Chief of Chaplains, Department of the Army, Washington, DC 20310.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any service member, his/her dependent, authorized civilian personnel, or retired service member for whom an Army chaplain has performed a baptism, marriage, or funeral.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals who apply for marriage, those on whom funeral services are conducted, or baptisms are performed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3547.

PURPOSE:

To render service to military members, their dependents and authorized civilians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm at Office of the Chief of Chaplains; paper records at the Washington National Records Center for period 1917–1952.

RETRIEVABILITY:

Marriage records are filed by groom's surname; funeral records by surname of deceased person; baptismal records by the individual's surname.

SAFEGUARDS:

Records are retained in buildings which employ security guards.

RETENTION AND DISPOSAL:

Records from 1953 to 1977 are retained for 50 years; this system was discontinued October 1, 1977 after which no information was collected or is retained.

SYSTEM MANAGER(S) AND ADDRESS:

The Chief of Chaplains, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, ATTN: DACH–AMW, Room 1E–417, The Pentagon, Washington, DC 20310.

RECORD ACCESS PROCEDURES:

Individuals may write to the System Manager, providing the following information:

a. For baptismal records: Full name of person baptized, approximate date, names of parents, name of chaplain, and place of baptism.

b. For marriage records: Full name of groom and maiden name of bride, approximate date, installation at which married, and name of chaplain.

c. For funeral records: Name of deceased person, year of death, and name of next-of-kin.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0722.05DACH

SYSTEM NAME:

Chaplain Counseling/Interview Files.

SYSTEM LOCATION:

Army installations; official addresses are contained in the directory following the Army inventory of system notices at 48 FR 25773, June 6, 1983.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army members, their dependents, and other individuals who have received pastoral counseling from Army chaplains.

CATEGORIES OF RECORDS IN THE SYSTEM:

Memoranda and/or documents resulting from counseling or interview sessions between a chaplain and an individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE:

To document privileged counseling/interview sessions between Army chaplains and individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None authorized; see Army Regulation 165–20.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is stored in locked cabinets or desks, and is accessible only to the chaplain maintaining the record.

RETENTION AND DISPOSAL:

Retained for 2 years after the individual case is closed; then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

The Chief of Chaplains, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records should inquire of either the System Manager or the Chaplain at the Army installation where counseling or interview occurred.

RECORD ACCESS PROCEDURES:

Individuals may write to the System Manager or the Chaplain at the Army installation where record is believed to exist; individuals must provide their full name, present address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0722.06DACH

SYSTEM NAME:

Religious Census, Education, and Registration Files.

SYSTEM LOCATION:

Army installations; official addresses are contained in the directory following the Army inventory of system notices at 48 FR 25773, June 6, 1983.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, dependent, and civilian personnel who voluntarily participate in religious services and/or activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, age, denominational preference, religious education desired/attained, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE:

To provide data on religious education/training or needs of faith groups, denominations, or religious sects; to determine and administer educational or training needs in social, spiritual, and humanitarian relationships for the military community served; to record attendance, training accomplished, participation, and spiritual growth.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and/or card files.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessed only by individuals determined to have need therefor in the performance of official business.

RETENTION AND DISPOSAL:

Information is retained until individual is no longer active in official chaplain-sponsored services and activities.

SYSTEM MANAGER(S) AND ADDRESS:

The Chief of Chaplains, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals may inquire of the Chaplain at the Army installation where he/she participated in religious education/training.

RECORD ACCESS PROCEDURE:

See "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0912.04DASG

SYSTEM NAME:

Medical Staff Credentials File.

SYSTEM LOCATION:

Medical treatment facilities at Army commands, installations and activities. Official mailing addresses are contained in the appendix to the Army's inventory of system notices at 48 FR 25773, June 6, 1983.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals performing clinical practice in medical treatment facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting delineation of clinical privileges and clinical performance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301; 10 U.S.C., section 1071.

PURPOSE:

To determine and assess capability of practitioner's clinical practice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In specific instances, clinical privileged information from this system of records may be provided to civilian and military medical facilities, Federation of State Medical Boards of the United States, State Licensure Authorities and other appropriate professional regulating bodies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to the medical treatment facility commander and credentials committee members.

RETENTION AND DISPOSAL:

Records are retained in medical treatment facility of individual's last assignment. Upon separation, retirement, or termination, records are destroyed not later than 5 years thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be requested from the commander of the medical treatment facility where practitioner provided clinical service.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information from this system should contact the commander of the medical treatment facility where clinical service was provided, furnishing full name, SSN, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Interviewer, individual's application, medical audit results, other administrative or investigative records obtained from civilian or military sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0914.02DASG

SYSTEM NAME:

Pahtology Consultation Record Files.

SYSTEM LOCATION:

Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20306.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals treated in military or civilian medical facilities whose were reviewed on a consultative basis by members of the staff of the Armed Forces Institute of Pathology.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents, tissue blocks, microscopic slides, X-rays and photographs reflecting outpatient or inpatient treatment or observation of all individuals on whose cases consultation has been requested.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSES:

To ensure complete medical data are available to pathologist providing consultative diagnosis to requesting physician in order to improve quality of care to individuals; to provide a data base for education of medical personnel; to provide a data base for medical research and statistical purposes and when required by law or for official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Individual records may be released to referring physician, to physicians treating the individual, to qualified medical researchers and students, and to other Federal agencies and law enforcement personnel when requested for official purposes involving criminal prosecution, civil court action, or regulatory orders.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, X-rays, photographs in paper file folders, microfiche, magnetic tape, printout; tissue blocks in appropriate storage containers; and microscopic slides in cardboard file folders.

RETRIEVABILITY:

By last name or terminal digit (SSN) or accession number assigned when case is received for consultation.

SAFEGUARDS:

Access to the Armed Forces Institute of Pathology is controlled. Records are maintained in areas accessible only to authorized personnel who are properly screened and trained.

RETENTION AND DISPOSAL:

Retained as long as case material has value for medical research or education. Individual cases are reviewed periodically and materials no longer of value to the Institute are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtrained from the Chief, Patient Records and Tissue Repository Division, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20306. Requesting individual must submit full name, SSN or service number of military sponsor and branch of military service, if applicable, or accession number assigned by the Armed Forces Institute of Pathology, if known. For requests made in person, identification such as military ID card or valid driver's license is required.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the Chief, Patient Records and Tissue Repository Division, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20306.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCES CATEGORIES:

Interview, diagnostic test, other available administrative or medical records obtained from civilian or military sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0914.04DASG

SYSTEM NAME:

Research and Experimental Case Files.

SYSTEM LOCATION:

US Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010.

Individual research/test/medical documents (paper records) are contained in individual's health record which, for reserve and retired military members, is at the US Army Reserve Components Personnel and Administration Center, St Louis, MO; for other separated military members, is at the National Personnel Records Center, St Louis MO; for military members on

active duty, is at the servicing medical facility/center; for civilians (both Federal employees and prisoners) is in a special file at the National Personnel Records Center.

As paper records are converted to microfiche, the original (silver halide) and 1 copy of the microfiche will be located at the Washington National Records Center; 1 copy will be located at The Surgeon General's Office (DASG–PSA), Headquarters, Department of the Army, Washington, DC 20310; 1 copy will reside with the Army contractor—the National Academy of Sciences; and 1 copy retained at the US Army Medical Research Institute of Chemical Defense.

Historical 16mm film and audio visual tapes are at Norton Air Force Base, CA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers (military members, Federal civilian employees, state prisoners) who participated in Army tests of potential chemical agents and/or antidotes from the early 1950's until the program ended in 1975.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual pre-test physical examination records and test records of performance and biomedical parameters measured during and after test exposure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012e and 4503.

PURPOSE:

To follow up on individuals who voluntarily participated in Army chemical/biological agent research projects for the purpose of assessing risks/hazards to them, and for retrospective medical/scientific evaluation and future scientific and legal significance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Veterans Administration in connection with benefits determinations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in individual's medical file folders, see "system location" above for storage of microfiche, computer magnetic tapes and paper printouts, video tapes and 16mm film.

RETRIEVABILITY:

Paper records in individual's health record are retrieved by surname and/or service number/SSN. Microfiche are retrieved by individual's surname. Film/video tape is accessed by case number and/or volunteer's number. Automated records are accessed by volunteer's number or case number.

SAFEGUARDS:

Paper records and microfiche are kept in locked rooms/compartments with access limited to authorized personnel. Access to computerized data is by use of a valid site ID number assigned to the individual terminal and by a valid user ID and password code assigned to authorized user, changed periodically to avoid compromise. Data entry is on-line using a dial-up terminal. Computer files are controlled by keys known only to US Army Medical Research Institute of Chemical Defense personnel assigned to work on the data base. Data base output is available only to designated computer operators at the Institute. Computer facility has double barrier physical protection. The remote terminal is in a room which is locked when vacated and the building is secured when unoccupied. The contractor (National Academy of Sciences) employes equal safeguards which meet Army standards for Privacy Act data.)

RETENTION AND DISPOSAL:

Records stored in the computer and on microfiche are retained indefinitely at the sites identified under "system location". Paper medical records in an individual's health record are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Commander, US Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010. Written requests should include the full name, SSN, current address and telephone number of the requester. For personal visits, the individual should provide acceptable identification such as valid driver's license, employer or other individually identifying number, building pass, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access should follow the procedures in "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual through test/questionnaire forms completed at test location: from medical authorities/sources by evaluation of data collected previous to, during, and following tests while individual was participating in this research program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A1301.07AMC

SYSTEM NAME:

Food Taste Test Panel Files.

SYSTEM LOCATION:

US Army Natick Research and development Center, Natick, MA 01760.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military personnel who volunteer to participate in sensory taste tests of food items.

CATEGORIES OF RECORDS IN THE SYSTEM:

Questionnaire and locator documents completed by participants containing name, date, organization, business telephone number, sex, age, marital status, rank/grade, present/prior military service, highest educational level attained, section of country lived in the longest, willingness to test irradiated foods, food aversion/preference data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012.

PURPOSE:

To evaluate food rations under development by the Army; to determine acceptability of food items in consideration of purchase.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer paper printouts, cards, magnetic tapes and paper records in file folders.

RETRIEVABILITY:

By participant's surname or assigned unique number.

SAFEGUARDS:

Records are stored in metal file cabinets which are locked when not under the control of authorized personnel. Buildings housing the records employ security guards.

RETENTION AND DISPOSAL:

Records are destroyed when participant is no longer active in the program.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Army Natick Research and Development Center, Natick, MA 01760.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: Science and Advanced Technology Laboratory.

RECORD ACCESS PROCEDURE:

Individuals who believe information on them is contained in this system of records should write to the Sensory Analysis Branch, Science and Advanced Technology Laboratory, US Army Natick Research and Development Center, Natick, MA 01760, furnishing their full name and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A1306.01DAPE

SYSTEM NAME:

Behavioral and Social Sciences Research Project Files.

SYSTEM LOCATION:

Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333 and field offices located at Ft Sill, OK; Ft Benjamin Harrison, IN; Ft Benning, GA; Ft Bliss, TX; Ft Hood, TX; Ft Knox, KY; Ft Leavenworth, KS; Ft Rucker, AL; Ft Monroe, VA; Ft McPherson, GA; Presidio of San Francisco, CA; and HQ US Army Europe, APO NY 09403.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officer, warrant officer, and enlisted military personnel, including Army Reserves and National Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and SSN: questionnaire type data relating to service member's pre-service education, work experience and social environment/culture, learning ability, physical performance, combat readiness, discipline, motivation, attitude about Army life, and measures of individual and organizational adjustments; test results from Armed Service Vocational Aptitude Battery and Skill Qualification Tests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. section 4503.

PURPOSE:

To research human factors inherent in the recruitment, selection, classification, assignment, evaluation, and training of military personnel; to enhance readiness effectiveness of the Army by developing personnel management methods, training devices, and testing of weapons methods and systems aimed at improved group performance. (No decisions affecting an individual's rights or benefits are made using these research records.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; punch cards; magnetic tape.

RETRIEVABILITY:

By individual's name and/or SSN.

SAFEGUARDS:

Access to records is restricted to authorized personnel having official need therefor; automated data are further protected by controlled system procedures and code numbers governing access.

RETENTION AND DISPOSAL:

Information is retained until completion of appropriate study or report, after which it is destroyed by shredding erasing.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not this system of records contains information about them should write to the System Manager and provide their full name, SSN, current address, and subject area and year of testing.

RECORD ACCESS PROCEDURE:

For access to information about them in this system of records, individuals should follow information in "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, his/her peers, or, in the case of ratings and evaluations, from supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A1401.07aANC

SYSTEM NAME:

Resumés for Non-Government Technical Personnel.

SYSTEM LOCATION:

US Army Research Office, P.O. Box 12211, Research Triangle Park, NC 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resumés of candidates to provide scientific services to Federal agencies in the fields of mathematics and the physical, engineering, life, and geosciences.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, personal history resumé, affiliations, area of expertise, SSN, record of remuneration for services provided, and performance evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE:

To provide a source of personal information/qualifications on qualified scientific and technical personnel able to solve scientific and technical problems of interest to the US Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" at 48 FR 25503, June 6, 1983.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in metal containers; magnetic disc, tape.

RETRIEVABILITY:

By candidate's surname; automated records are retrieved by key word.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized, properly trained personnel who have official need therefor.

RETENTION AND DISPOSAL:

Retained for life of the contract; destroyed by shredding when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, US Army Research Office, P.O. Box 12211, Research Triangle Park, NC 27709.

NOTIFICATION PROCEDURE:

Information may be obtained from the Contracting Officer, US Army Research Office, P.O. Box 12211, Research Triangle Park, NC 27709.

RECORD ACCESS PROCEDURES:

Written requests may be sent to the System Manager; requester must provide his/her full name, current address and telephone number, position title, and current employer.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual candidate.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–16520 Filed 6–20–84; 8:45 am]
BILLING CODE 3710–08–M

Department of the Navy

Privacy Act of 1974; Amended Systems of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of amended systems of records.

SUMMARY: The Department of the Navy proposes to amend six systems of records in its inventory of systems of records subject to the Privacy Act of 1974.

DATES: The proposed actions will be effective without further notice in thirty (30) days, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the systems managers identified in the systems notices.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350. Telephone: (202) 697–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93–579 were published in the **Federal Register** as follows:

FR Doc. 83–109 (48 FR 26029) June 6, 1983
FR Doc. 84–2616 (49 FR 3901) January 31, 1984
FR Doc. 84–2828 (49 FR 4124) February 2, 1984
FR Doc. 84–4908 (49 FR 6967) February 24, 1984
FR Doc. 84–8893 (49 FR 13350) April 4, 1984
FR Doc. 84–8901 (49 FR 13399) April 4, 1984
FR Doc. 84–10509 (49 FR 15601) April 19, 1984
FR Doc. 84–10681 (49 FR 16777) April 20, 1984
FR Doc. 84–14818 (49 FR 23107) June 4, 1984

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o) which requires the submission of altered systems reports.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 18, 1984.

N01070–7

System name:

Resale System Military Management Information System (48 FR 26040) June 6, 1983

Changes:

System location:

In lines two and three, delete "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232" and substitute with "* * * Fort Wadsworth, Staten Island, New York 10305."

Purpose(s):

Add the following entry: "Officials and employees of the Navy Resale and Services Support Office in the performance of their official duties related to the management, supervision and administration of its personnel."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Retention and disposal:

Delete the entire entry and substitute with the following: Records are permanent. Records are maintained for five years and then retired to the Federal Records Center, St. Louis, Missouri.

System manager(s) and address:

Delete the entire entry and substitute with the following: *"Policy Official:* Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305." Records Holder: Director, Office of Military Personnel (OMP), Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

Notification procedure:

In line four, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232 * * *" and substitute with "* * * Fort Wadsworth, Staten Island, New York 10305."

N04066–1

System name:

Bad Checks and Indebtedness Lists (48 FR 26075) June 6, 1983.

Changes:

System location:

In lines two and three, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232" and substitute with "* * * Fort Wadsworth, Staten Island, New York 10305."

Purpose(s):

Add the following entry: "Officials and employees of the Department of the Navy in the performance of their official duties related to recording receipt of bad checks from patrons; monitoring and avoiding undue losses because of continued passing of bad checks and correspondence issued in an effort to recover losses; and recording credit sales and the payment of these accounts."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

In addition, to cashiers, exchange and commissary officers for a bad check list."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Retention and disposal:

Delete the entire entry and substitute with the following: "Records are kept for four years and then destroyed."

System manager(s) and address:

Delete the entire entry and substitute with the following: *"Policy Official:* Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305. *Record Holder:* Director, Treasury Division (TD), Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305."

Notification procedure:

In lines four and five, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232" and substitute with "Fort Wadsworth, Staten Island, New York 10305."

N04066–2

System name:

Commercial Fidelity Bond Insurance Claims (48 FR 26076) June 6, 1983

Changes:

System location:

In lines two and three, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232 * * *" and substitute with "* * * Fort Wadsworth, Staten Island, New York 10305."

Purpose(s):

Add the following entry: "Officials and employees of the Department of the Navy in the performance of their official duties related to processing insurance claims."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

In addition, to the insurance carrier (Fidelity Bond Underwriter) to ensure appropriate coverage."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Retention and disposal:

Add the following phrase at the end of the entry: "* * * Federal Records Center, St. Louis, Missouri."

System manager(s) and address:

Delete the entire entry and substitute with the following: "Commander, Navy Resale and Service Support Office, Fort Wadsworth, Staten Island, New York 10305.

Notification procedure:

In lines four and five, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232" and substitute with: "Fort Wadsworth, Staten Island, New York 10305."

N04066–3

System name:

Layaway Sales Records (48 FR 26077) June 6, 1983

Changes:

System location:

In lines two and three, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232 * * *" and substitute with "* * * Fort Wadsworth, Staten Island, New York 10305."

Purpose(s):

Add the following entry: "Officials and employees of the Department of the Navy in the performance of their official duties related to recording the selection of layaway merchandise, recording payments, verifying merchandise pick-up and performing sales audits."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

System manager(s) and address:

Delete the entire entry and substitute with the following: *"Policy Official:* Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305. *Record Holder:* Director, Controller Non-appropriated Fund Division (CNAFD), Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

Individual record holders within the central system may be contacted through the central system record holder."

Notification procedure:

In lines four and five, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232" and substitute with: "Fort Wadsworth, Staten Island, New York 10305."

N04066–4

System name:

Navy Lodge Records (48 FR 26077) June 6, 1983

Changes:

System location:

In lines two and three, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232 * * *" and substitute with "* * * Fort Wadsworth, Staten Island, New York 10305 (for all Navy Exchanges)."

Purpose(s):

Add the following entry: "Officials and employees of the Department of the Navy in the performance of their official duties related to the recording of reservations to insure orderly room assignments and avoiding improper bookings; recording registration and payment of accounts; verifying proper usage by eligible patrons; controlling cash; gathering of occupancy data; determining occupancy breakdown; and accountability of rentals and furnishings."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Retention and disposal:

Delete the entire entry and substitute with the following: "Navy Lodge records are kept for two years and then destroyed."

System manager(s) and address:

Delete the entire entry and substitute with the following:

"*Policy Official:* Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York

10305. *Record Holder:* Manager, Personalized Services (SODI), Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

Individual record holders within the central system may be contacted through the central system record holder."

Notification procedure:

In lines four and five, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232" and substitute with: "Fort Wadsworth, Staten Island, New York 10305."

N12950–3

System name:

Payroll and Employee Benefits Records (48 FR 26158) June 6, 1983

Changes:

System location:

In lines two and three, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232 * * *" and substitute with "* * * Fort Wadsworth, Staten Island, New York 10305."

Purpose(s):

Add the following entry: "Officials and employees of the Department of the Nary in the performance of their official duties related to calculating pay; preparing checks and deduction registers; leave records; submitting federal and state tax reports; recording contributions to benefit plans; processing insurance claims; and calculating retirement benefits upon request of employee."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with the following: "The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

In addition, to the insurance carriers and the U.S. Department of Labor, Bureau of Employees Compensation."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Retention and disposal:

Delete the entire entry and substitute with the following: Permanent records maintained for five years and then retired to the Federal Records Center, St. Louis, Missouri.

System manager(s) and address:

In lines two and three, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232" and substitute with: "* * * Fort Wadsworth, Staten Island, New York 10305."

Notification procedure:

In lines four and five, delete: "* * * 3rd Avenue and 29th Street, Brooklyn, New York 11232" and substitute with: "Fort Wadsworth, Staten Island, New York 10305."

The amended systems of records read as follows:

N01070–7

SYSTEM NAME:

Resale System Military Management Information System.

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

* * * * *

PURPOSE(S):

Officials and employees of the Navy Resale and Services Support Office in the performance of their official duties related to the management, supervision and administration of its personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Records are permanent. Records are maintained for five years and then retired to the Federal Records Center, St. Louis, Missouri.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Resale and Services Suport Office, Fort Wadsworth, Staten Island, New York 10305. *Record Holder:* Director, Office of Military Personnel (OMP), Navy Resale and Services Support Ofice, Fort Wadsworth, Staten Island, New York 10305.

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

* * * * *

N04066–1

SYSTEM NAME:

Bad Checks and Indebtedness Lists.

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305 (for all Navy Exchanges) Commissary Store operations as listed in the directory of Department of the Navy mailing addresses.

* * * * *

PURPOSES(S):

Officials and employees of the Department of the Navy in the performance of their official duties related to recording receipt of bad checks from patrons; monitoring and avoiding undue losses because of continued passing of bad checks and correspondence issued in an effort to recover losses; and recording credit sales and the payment of these accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

In addition, to cashiers, exchange and commissary officers for a bad check list."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Records are kept for four years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

Record Holder: Director, Treasury Division (TD), Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

In the initial inquiry the requester must provide full name, social security number, activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office

listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

* * * * *

N04056-2

SYSTEM NAME:

Commercial Fidelity Bond Insurance Claims.

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

* * * * *

PURPOSE(S):

Officials and employees of the Department of the Navy in the performance of their official duties related to processing insurance claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

In addition, to the insurance carrier (Fidelity Bond Underwriter) to ensure appropriate coverage."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Records are kept for four years and then retired to the Federal Records Center, St. Louis, Missouri.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

In the initial inquiry the requester must provide full name, payroll number or military service number and activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

* * * * *

N04066-3

SYSTEM NAME:

Layaway Sales Records.

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305 (for all Navy exchanges).

* * * * *

PURPOSE(S):

Officials and employees of the Department of the Navy in the performance of their official duties related to recording the selection of layaway merchandise, recording payments, verifying merchandise pick-up and performing sales audits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

Record holder: Director, Controller Non-appropriated Fund Division (CNAFD), Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

Individual record holders within the central system may be contacted through the central system record holder.

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander, Navy Resale and Service Support Office, Fort Wadsworth, Staten Island, New York 10305.

In the initial inquiry the requester must provide full name, social security number, activity where layaway sales were transacted. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

* * * * *

N04056-4

SYSTEM NAME:

Navy Lodge Records.

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305 (for all Navy exchanges).

* * * * *

PURPOSE(S):

Officials and employees of the Department of the Navy in the performance of their official duties related to the recording of reservations to insure orderly room assignments and avoiding improper bookings; recording registration and payment of accounts; verifying proper usage of eligible patrons; controlling cash; gathering of occupany data; determining occupany breakdown; and accountability of rentals and furnishing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Records are kept for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

Record Holder: Manager, Personalized Services (SODI), Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

Individual record holders within the central system may be contacted through the central system record holder.

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

In the initial inquiry the requester must provide full name, service number and location of the last Navy Lodge where they had dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide

proof of identity containing the requester's signature.

* * * * *

N12950-3

SYSTEM NAME:

Payroll and Employee Benefits Records.

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

* * * * *

PURPOSE(S):

Officials and employees of the Department of the Navy in the peformance of their official duties related to calculating pay; preparing checks and deduction registers; leave records; submitting federal and state tax reports; recording contributions to benefit plans; processing insurance claims; and calculating retirement benefits upon request of employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

In addition, to the insurance carriers and the U.S. Department of Labor, Bureau of Employees Compensation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Permanent records-maintained for five years and then retired to the Federal Records Center, St. Louis, Missouri.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

Record Holder: Risk Manager, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

Individual record holders within the central system may be contacted through the central system record holder.

NOTIFICATION PROCEDURE:

Written contact may be made by addressing inquiries to: Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, New York 10305.

In the initial inquiry the requester must provide full name, social security number, activity where last employed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

* * * * *

[FR Doc. 84-16521 Filed 6-20-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Status of Environmental Documents Relating to the Y-12 Plant Site, Oak Ridge, Tennessee

The Department of Energy announces the status of several documents which are or will be available to the public containing environmental information relative to the Y-12 Plant in Oak Ridge, Tennessee. Copies of any of these documents may be requested from: Paul W. Kaspar, Assistant Manager for Safety and Environment, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37831, (615) 576-7749.

The first of these reports is the "Environmental Program Management Plan for the Oak Ridge Complex." This report was prepared for submission to the Congress in response to a recommendation of the Houses Subcommittee on Energy Research and Production and the Subcommittee on Investigations and Oversight, following their hearing in Oak Ridge on July 11, 1983. The plan identifies those facilities and activities which are needed to assure that operations at the DOE Oak Ridge complex comply with applicable environmental regulations. In addition to the Y-12 Plant, two other major DOE facilities in Oak Ridge are included in this report: the Oak Ridge National Laboratory and the Oak Ridge Gaseous Diffusion Plant. While each of these three facilities is discussed independently, some of the proposed environmental facilities will be shared, and many of the environmental research and develpment activities identified will be broadly applicable. This report was issued in March 1984.

The second report is the annual "Environmental Monitoring Report, DOE Oak Ridge Facilities." This report, which has been routinely issued for about 25 years, documents the levels of environmental contaminants in the Oak Ridge area and compares these levels with natural background and, where available, applicable standards and guidelines. In order to better address public environmental concerns, the report this year will be expanded to include onsite as well as offsite data; it will include more offsite date than previously reported; and it will incorporate qualitative evaluations of the significance of the reported data. This report is scheduled for release in May 1984.

The third report will be issued at the completion of a study now being conducted by the interagency Oak Ridge Task Force. This Task Force, which consists of representatives of DOE, the U.S. Environmental Protection Agency, the Tennessee Department of Health and Environment, the Tennessee Valley Authority, the U.S. Geological Survey, and the City of Oak Ridge, is conducing an approximately two-year study of the potential public health impacts of past Y-12 Plant waste management practices in Oak Ridge. The results of this study will be used to assist DOE, the State, TVA, and the City in determining what remedial measures, if any, are warranted to assure that the long-term risk to public health from residual environmental contamination is acceptable.

In addition to the above reports, the Department intends to prepare and distribute appropriate National Environmental Policys Act (NEPA) documentation on future proposed actions at the Y-12 Plant and other Oak Ridge facilities. For example, an environmental impact statement (EIS) is being prepared on the proposed Central Low-Level Radioactive Waste Disposal Facility for the Oak Ridge Reservation (48 FR 51952, November 15, 1983). A draft EIS is expected to be available for public review by the fall of 1984.

In a related matter, DOE issued an environmental assessment (EA) in December 1982 on the continued operation of the Y-12 Plant, even though DOE believes that preparation of an EA is not required under NEPA for continuing operation of an existing facility. Based on subsequent review, DOE has concluded that the EA did not accurately represent certain environmental problems existing at the time of EA publication, including those related to mercury contamination and waste disposal practices. Because of these factors, DOE will not use this EA for environmentals planning or decisionmaking. Furthermore, in light of the reports discussed above which provide descriptions of current environmental conditions at the Y-12 Plant and identify current and proposed projects designed to assure compliance with applicable environmental

regulations, DOE has no current plans to revise the EA.

Any questions regarding these environmental documents may be directed to Mr. Kaspar at the above address.

Dated at Washington, D.C. this 31st day of May, 1984, for the United States Department of Energy.

Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 84-16583 Filed 6-20-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S-EU-806, for 148.4 grams of natural uranium, for use as standard reference material by Agip S.p.A., Laboratori Di Medicina, Italy.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of this nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 15, 1984.

John R. Brodman,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-16560 Filed 6-20-84; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Poland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S-IA-132, to the Institute of Chemistry and Nuclear Techniques, Warsaw, Poland, 0.75 grams of plutonium, 7.0 grams of uranium, enriched to an average of 38.6% in U-235, 0.005 grams of uranium-233, and 21.2 grams of natural uranium, for use as standard reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 15, 1984.

John R. Brodman,

Acting Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-16561 Filed 6-20-84; 8:45 am]

BILLING CODE 6450-01-M

Conservation & Renewable Energy

National Energy Extension Service Advisory Board; Renewal

Notice is hereby given that the National Energy Extension Service Advisory Board, which was established in accordance with Pub. L. 95-39, Title V, the National Energy Extension Service Act, has been renewed for a 2-year period ending June 14, 1986.

The Board will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), the National Energy Extension Service Act (Pub. L. 95-39), the GSA Interim Rule on Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee may be obtained from Gloria Decker (202/252-8990).

Issued at Washington, D.C., on June 14, 1984.

K. Dean Helms,

Advisory Committee Management Officer.

[FR Doc. 84-16586 Filed 6-20-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-84-009; OFP Case No. 61049-9246-20-24]

Order Granting to Bayou Cogeneration Plant Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") to Bayou Cogeneration Plant (Bayou or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a proposed 302.12 net megawatt (MW) cogeneration facility designed to produce electricity and process steam at the petitioner's plant in Pasadena, Harris County, Texas. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATE: The order shall take effect on August 20, 1984.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Anthony C. Wayne, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073C, Washington, D.C. 20585, Phone (202) 252-1730

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-141, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6739

SUPPLEMENTARY INFORMATION: On March 5, 1984, Bayou petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in its proposed 302.12 net megawatt (MW) powerplant and cogeneration facility in Pasadena, Harris County, Texas. Natural gas will be the sole fuel utilized; there will be no emergency standby fuel. The system will consist of four (4) gas turbine generators coupled to four (4) supplementary fired heat

recovery steam generators. The combustion gas turbines will produce the necessary hot gases for the heat recovery steam generators which are supplementally fired with natural gas. At design conditions, the energy output of the facility will be as follows: Electric power from the gas turbine driven generators will be 302.12 net megawatts (MW); process steam for industrial use will be 1,249,600 pounds per hour at 800 psig and 1,369 net Btu's per pound, and 130,000 pounds per hour at 175 psig and 1198.3 net Btu's per pound. Virtually all of the net annual electric power generation of Bayou's turbine generators will be sold to the Houston Lighting and Power Company (HLP) thereby classifying the unit, by definition, an electric powerplant under 10 CFR 500.2.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Bayou's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the proposed powerplant, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petiton and Availability of Certification in the **Federal Register** on April 24, 1984 (49 FR 17562), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on June 8, 1984; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption clearly will not result in significant effects on the quality of the human environment, and, as such, requires neither an environmental impact statement nor an environmental assessment. ERA's compliance with the documentary requirements of the National Environmental Policy Act of 1969 (NEPA) has accordingly been accomplished by the preparation of a memorandum to the file in accordance with section A.3(c)(1) of DOE's NEPA guidelines.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Bayou has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Bayou to permit the use of natural gas as the primary energy source for its cogeneration facility at Pasadena, Harris County, Texas.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C., on June 12, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-16507 Filed 6-20-84; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-84-006; OFP Case No. 63024-9244-21-24]

Order Granting to Greenleaf Power Corporation Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") to the Greenleaf Power Corporation (Greenleaf or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a proposed 49.5 megawatt (MW) cogeneration facility designed to produce electricity and useful thermal energy at the petitioner's plant in Sutter County, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on August 20, 1984.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Anthony Wayne, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue. SW., Room GA-073C, Washington, D.C. 20585, Phone (202) 252-1730

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-141, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6739

SUPPLEMENTARY INFORMATION: On February 15, 1984, Greenleaf petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a proposed 49.5 MW cogeneration facility in Sutter County, California consisting of a gas turbine, an associated natural circulation duct-fired heat recovery steam generator, a condensing steam turbine-generator set, and a system for using thermal energy to benefit local agriculture. The termal energy will be used in either a wood chip dryer or an irrigation water warming service. Only one of these options will be constructed at the proposed site.

Virtually all of the net annual generation of electric power from the unit will be sold to the Pacific Gas & Electric Company (PG&E) thereby classifying the unit, by definition, an electric powerplant under 10 CFR 500.2.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Greenleaf's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the proposed powerplant, for which an

exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

Procedural requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on April 24, 1984 (49 FR 17563), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on June 8, 1984; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption clearly will not result in significant effects on the quality of the human environment, and, as such, requires neither an environmental impact statement nor an environmental assessment. ERA's compliance with the documentary requirements of the National Environmental Policy Act of 1969 (NEPA) has accordingly been accomplished by the preparation of a memorandum to the file in accordance with section A.3(c)(1) of DOE's NEPA guidelines.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Greenleaf has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Greenleaf to permit the use of natural gas as the primary energy source for its cogeneration facility at its plant in Sutter County, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, D.C., on June 12, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-16595 Filed 6-20-84; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ERA-FC-84-013; OFP Case No. 55393-9247-01-12]

Acceptance of Petition for Exemption and Availability of Certification by Owens-Illinois, Inc. for its Orange, Texas Facility

On June 1, 1984, Owens-Illinois, Inc. (Owens-Illinois) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent emergency purposes exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for a new boiler to be located at its unbleached kraft linerboard pulp and paper mill at Orange, Texas. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new major fuel burning installation (MFBI) consisting of a boiler. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the emergency purposes exemption are found at 10 CFR 503.39.

The project for which the exemption is requested consists of a package, emergency standby natural gas-fired boiler with the capacity to generate 170,000 pounds per hour of steam at a pressure of 850 psig.

ERA has determined that the petition is sufficient to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3 and 501.63. ERA retains the right, however, to request additionl relevant information from Owens-Illinois at any time during the proceeding, as circumstances may require. A review of the petition is porvided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing. The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before August 6, 1984. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-033, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-84-013 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Roland DeVries, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, D.C. 20585, Phone (202) 252-6002

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-141 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6739

SUPPLEMENTARY INFORMATION: Title II of FUA prohibits the use of natural gas or petroleum in new MFBI's that consist of a boiler unless an exemption for such use has been granted by ERA. Owens-Illinois has filed a petition with ERA requesting a permanent emergency purposes exemption to permit the use of these fuels as the primary energy source in the proposed new package standby boiler to be located at its unbleached kraft linerboard pulp and paper mill at Orange, Texas. The new unit will operate during periods when any of the four boilers at the existing facility are shutdown or turned down in order to ensure continued facility production which would otherwise be reduced due to interruption of alternate fuel supplies, equipment failures, imminent equipment failures, temporary environmental restrictions, and other qualifying emergency conditions. The unit will generate 170,000 lbs/hr steam at 850 psig.

Section 212(e) of the Act and 10 CFR 503.39 provide for a permanent emergency purposes exemption from the prohibitions of Title II of FUA. In accordance with the requirements of §503.39(a), Owens-Illinois has certified to ERA that:

1. It will operate and maintain the proposed unit for emergency purposes only; and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the proposed boiler for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.39(c) (and in addition to the certifications discussed above), Owens-Illinois has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. Environmental certifications, as required under 10 CFR 503.13(b).

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for emergency purposes, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Owens-Illinois has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption. ERA will review the completed environmental checklist submitted by Owens-Illinois pursuant to 10 CFR 503.13(b), together with other relevant information. Unless it appears during the proceeding on Owens-Illinois' exemption request that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that Owens-Illinois is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on June 12, 1984.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-16694 Filed 6-20-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Clean Coal Use Technology Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Clean Coal Use Technology Panel of the Energy Research Advisory Board (ERAB).

Date and time: July 31, 1984 from 9 a.m. to 5 p.m.

Place: Los Alamos National Laboratory, J. Robert Oppenheimer Research and Study Center, Casa Grande Drive, Building SM-207, Room 218, Los Alamos, NM 87545.

Contact: Charles E. Cathey, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252-5444.

Purpose of the parent board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative agenda:

- Discussions of:

Precombustion Technologies:

A. Coal preparation (coarse and fine cleaning by physical and chemical means)

B. Coal/liquid (water) mixture preparation and handling

Combustion:

A. Pulverized coal furnaces: technologies for emission abatement, for retrofitting and new units (all sizes)

B. Fluidized bed combustion systems (all types)

C. Air blown gasification (2-stage combustion systems)

Post Combustion Abatement

A. Fluegas treatment for SO_x, NO_x

B. Particulate removal, etc.

Solid waste disposal

Other Systems: direct use of coal in gas turbines and diesel engines, etc.

- Public Comment (10 minute rule).

Public participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 12, 1984.

J. Ronald Young

Director, Office of Management, Office of Energy Research.

[FR Doc. 84-16689 Filed 6-20-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. G-2569-002 and CI64-612-002]

Aminoil Inc.; Amendment to Application for Partial Abandonment Authorization and Request for Limited-Term Certificate

June 18, 1984.

Take notice that on June 8, 1984, Aminoil Inc. (Aminoil) of P.O. Box 94193, Houston, Texas 77292 filed an application pursuant to section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c) (1976 and Supp. IV 1980)] and §§ 157.23, *et seq.*, (1983)], to amend its Application for Partial Abandonment Authorization filed in Docket Nos. G-2569-002 and CI64-612-002 on June 22, 1983. This amendment requests certificate authorization with pregranted abandonment for Aminoil to make sales for resale to Neches Gas Distribution Company (Neches) of all gas released from Aminoil's certificate to Northwest Central Pipeline Corporation (Northwest Central) under the June 1983 partial abandonment application.

Pursuant to a Gas Sales and Purchase Agreement dated September 1, 1983 Aminoil agreed to sell to Neches certain quantities of residue gas, as available, from Aminoil's Fox Plant. This agreement covers gas which Aminoil has the right to sell and dispose of from the Fox Plant which is not required by other purchasers under existing

contracts. The term of the agreement is for two years and year-to-year thereafter. Furthermore Aminoil requests that the Commission provide for pregranted abandonment of this sale to Neches when the sales to Northwest Central of this excess gas recommence. The gas to be released under the partial abandonment request and, in turn, sold to Neches is covered by sections 102, 103, 106(a), 108, 109 and 104 (Post-1974, 1973–74 Biennium, Replacement Contract, and Flowing Gas).

Aminoil requests that the limited-term certificate with pregranted abandonment for sales to Neches, as requested herein, be issued concurrently with the authorization for the limited-term partial abandonment of sales to Northwest Central.

Any person desiring to be heard or to make protest with reference to said application should on or before, June 29, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–16576 Filed 6–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP84–90–000]

Lone Star Gas Company; Tariff Filing

June 18, 1984.

Take notice that on June 12, 1984, Lone Star Gas Company (Lone Star) tendered for filing its FERC Gas Tariff, Original Volume No. 2 in accordance with the requirements of § 154.61 of the Federal Energy Regulatory Commission's (Commission) regulations. This tariff is an initial filing and is accompanied by Lone Star's Cost of Service study supporting the proposed rate.

This tariff will permit Lone Star to offer transportation service on its interstate facilities under the Blanket Certificate issued to Lone Star in CP83–59–000. Lone Star has not previously offered this service on these facilities. All transportation performed under this tariff will comply with the requirements of § 157.209 of the Commission's regulations.

Lone Star proposes an effective date of July 13, 1984 and requests that, if necessary, notice requirements be waived pursuant to § 154.51 of the Commission's regulations in order to permit this new service to begin at the earliest possible date.

Lone Star rates that since this is an initial filing, dealing with a transportation service it has not previously offered, copies of the filing have not been provided to any other persons.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–16577 Filed 6–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA84–2–41–003]

Southwest Gas Corp.; Change In Rates Pursuant to Purchased Gas Cost Adjustment

June 18, 1984.

Take notice that Southwest Gas Corporation (Southwest) on June 13, 1984, tendered for filing Twenty-third Revised Sheet No. 10 pursuant to Section 9, Purchased Gas Adjustment Clause of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. The purpose of said filing is to reflect a decrease in rates occasioned by a decrease in rates from Southwest's northern Nevada sole supplier of gas, Northwest Pipeline Corporation, effective May 1, 1984. The proposed effective date for Southwest's proposed decrease in rates is May 1, 1984.

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb.

Secretary.

[FR Doc. 84–16578 Filed 6–20–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA84–2–9–001]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Rate Change Under Tariff Rate Adjustment Provisions

June 18, 1984.

Take notice that on June 7, 1984, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing the following tariff sheet to its FERC Gas Tariff to be effective July 1, 1984:

Original Volume No. 1

Substitute Twelfth Revised Sheet No. 21.

Tennessee states that the purpose of the revised tariff sheet is to reflect the Section 3 Surcharge as a positive rather than a negative amount.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb.

Secretary.

[FR Doc. 84-16573 Filed 6-20-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-487-000]

Texas Gas Transmission Corp.; Application

June 15, 1984.

Take notice that on June 14, 1984, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP84-487-000 an application pursuant to Section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Applicant to sell, during the period of June 1, 1984, through October 31, 1984, natural gas to its jurisdictional customers purchasing under its Rate Schedules G, CD, and CDL in accordance with an interim, experimental Summer Excess Gas Rate Schedule, to be incorporated in Applicant's FERC Gas Tariff, Third Revised Volume No. 1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes that its interim Rate Schedule SXS would be made available beginning June 1, 1984, through October 31, 1984, to Applicant's jurisdictional customers purchasing gas on a firm basis under its Rate Schedule G, CD, or CDL and taking delivery of such natural gas in one or more of Applicant's service zones 1, 2, 3, and 4. Further, Applicant proposes that customers electing to purchase volumes made available under Rate Schedule SXS must notify Applicant that they may desire to purchase gas when offered under this rate schedule.

Applicant asserts that service under Rate Schedule SXS would apply to gas delivered to purchasers in excess of Applicant's obligations to such purchasers under executed service agreements for service under Rate Schedules G, CD, or CDL. It is further asserted that the deliveries of gas are interruptible and are subject to curtailment, interruption, or discontinuance at any time as Applicant in its sole judgment, deems desirable.

Applicant proposes that the charge for deliveries in each zone is the applicable commodity rate as set forth in the currently effective Sheet No. 7 of Applicant's FERC Gas Tariff.

Applicant asserts that if it delivers gas to a purchaser under Rate Schedule SXS and under other rate schedules at the same point or points of delivery on the same day, the volumes under Rate Schedule SXS on such day would be all gas delivered to the purchaser on such day in excess of the volume which Applicant is obligated to deliver to the purchaser on such day under executed service agreements for service under other rate schedules.

Whenever Applicant is able and willing to offer gas for sale under this rate schedule, Applicant asserts it would offer such gas in an equitable manner to all purchasers which have notified Applicant of the desire to purchase gas when offered under Rate Schedule SXS. Applicant asserts that any gas rejected by a purchaser may be offered by Applicant to other purchasers in any manner Applicant desires.

Applicant asserts that the proposed rate schedule is necessary to permit and create greater competition in the natural gas market generally, and, specifically in Applicant's traditional market.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16580 Filed 6-20-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Period of May 21 Through June 1, 1984

During the period of May 21 through June 1, 1984, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: June 13, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Welsch Oil Company, Bellevue, Iowa, HEE-0090, Reporting Requirements

Mr. Greg Welsch, owner of Welsch Oil Company, filed an Application for Exception from the provisions of the Energy Information Agency's form filing requirements. The exception request, if granted, would permit Welsch Oil Company to be exempted from filing Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On May 30, 1984, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted. The Office of Hearings and Appeals ruled that Welsch Oil Company has demonstrated that the form filing requirement will result in an excessive burden to the firm.

[FR Doc. 84-16591 Filed 6-20-84; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Period of May 21 Through June 1, 1984

During the period of May 21 through June 1, 1984, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed request to participate. Persons may also be placed on the official service list as nonparticipants for good cause shown.

All request to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 13, 1984.

George B. Brenznay,

Director, Office of Hearings and Appeals.

Compton Corporation and Gratex Corporation, Abilene, Texas, HRO-0230, Crude Oil

On May 29, 1984, the Assistant Attorney General of the State of Texas filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas Field Office of the Economic Regulatory Administration issued to the firms on April 27, 1984. In the PRO the Dallas Field Office found that during the period December 1978 through December 1980, Compton Corporation and Gratex Corporation sold crude oil at prices in excess of those permitted under 10 CFR Part 212.

According to the PRO the Compton and Gratex violation resulted in $6,065,681.93 of overcharges.

[FR Doc. 84-16592 Filed 6-20-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of April 20 Through April 27, 1984, and Objection to Proposed Remedial Order Filed; Week of March 26 Through March 30, 1984; Correction

This is a correction to a **Federal Register** document entitled "Cases Filed; Week of April 20 Through April 27, 1984" beginning on page 21792, published May 23, 1984. In the table for List of Cases Received, the Type of Submission entry on page 21793 for Case No. HRS-0043 now reading "* * * pending a final determination on its appeal to the United States Bankruptcy Court for the Northern District of Texas." The entry should read: "* * * pending a final determination by the United States Bankruptcy Court for the Northern District of Texas in the bankruptcy proceeding involving International Crude Corporation."

This a correction to a **Federal Register** document entitled "Objection to Proposed Remedial Order Filed; Week of March 26 Through March 30, 1984" on page 18168, published April 27, 1984. In the third column of page 18168, line 20, the portion of the sentence reading "In the PRO the ERA and Mr. Pritchard found that * * *" should read "In the PRO the ERA found that * * *".

Dated: June 13, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84-16590 Filed 6-20-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[(OPTS-51520); TSH-FRL 25934]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-13950 beginning on page 22128 in the issue of Friday, May 25, 1984, make the following corrections:

1. On page 22129, third column, PMN 84-698, *Toxicity Data,* line twelve, "TL^{e}" should read "TL_{e}".

2. On page 22130, third column, PMN 84-711, *Environmental Release/Disposal,* second line "J..2" should read "0.2".

3. On page 22131, first column, PMN 84-716, *Chemical,* second line, "informatin" should read "information".

4. On the same page, first column, PMN 84-717, *Toxicity Data,* line six, "Photoxicity" should read "Phototoxicity"; and "pototoxic" should read "phototoxic".

BILLING CODE 1505-01-M

[OPTS-51522; TSH-FRL 2604-4]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-15279, beginning on page 23916, in the issue of Friday, June 8, 1984, make the following corrections:

1. On page 23916, column three, PMN 84-744, *Toxicity Data,* line five, "Non-mutagenci" should read "Non-mutagenic".

2. On the same page, column three, PMN 84-746, *Toxicity Data,* line three, "Non-mutagenci" should read "Non-mutagenic".

3. On page 23917, column one, PMN 84-749, *Exposure,* second line, "upt" should read "up".

4. On page 23919, column three, PMN 84-786, *Toxicity Data,* should read "Acute oral: Males, females > 3,200 mg/kg; Acute dermal: > 20 ml/kg/; Irritation: Skin—Slight, Eye—Slight.".

BILLING CODE 1505-01-M

[(OPTS-59158); BH-FRL 2593-3]

Certain Chemicals; Premanufacture Exemption Applications

Correction

In FR Doc. 84-13951 appearing on page 22132 in the issue of Friday, May 25, 1984, make the following corrections:

1. In column three, TME 84-53, *Use/Import,* second line, a comma should appear between "caulks" and "carpet".

2. In column three, TME 84-53, *Import range,* "confidential" should read "Confidential".

BILLING CODE 1505-01-M

[OPTS-59156A; TSH-FRL 2603-1]

Toxic and Hazardous Substances Control; Certain Chemicals; Approval of Test Marketing Exemptions

Correction

In FR Doc. 84-15280 beginning on page 23690 in the issue of Thursday, June 7, 1984, make the following corrections:

1. In the heading, the third line should read "[OPTS–59156A; TSH–FRL 2603–1]".

2. On page 23691, column two, line five, "effectively" should read "effective"; and in line thirteen "tothe" should read "to the".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

Bank of New England Corp., et al.; Applications To Engage De Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 11, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New England Corporation,* Boston, Massachusetts; to engage through its subsidiary Beacon Asset Management, Inc., Boston, Massachusetts, in the investment advisory business, including providing investment advisory services to individuals, trusts, employee benefit plans, corporations, government bodies, banks, thrift institutions, insurance companies, investment companies and other legal entities.

B. *Federal Reserve Bank of Dallas* (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Friona Bancoporation,* Friona, Texas; to engage through its subsidiary Sunshine Leasing, Friona, Texas, in leasing activities.

Board of Governors of the Federal Reserve System, June 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–16516 Filed 6–20–84; 8:45 am]

BILLING CODE 6210–01–M

First Interstate Bancorp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 28, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp,* Los Angeles, California; to acquire 20 percent of the common stock of Leland, O'Brien, Rubenstein Associates Incorporated, Los Angeles, California, and thereby to engage in investment advisory services, specifically, providing portfolio investment advice to any other person.

Board of Governors of the Federal Reserve System, June 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–16518 Filed 6–20–84; 8:45 am]

BILLING CODE 6210–01–M

Marshall & Ilsley Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a

hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 11, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation,* Milwaukee, Wisconsin; to acquire through its wholly owned subsidiary, M&I Data Services Corporation, Moline, Illinois, the assets of Midwest Banks Data Processing, Inc., and thereby provide data processing services to financial institutions.

Board of Governors of the Federal Reserve System, June 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16517 Filed 6-20-84; 8:45 am]

BILLING CODE 6210-01-M

Montgomery County Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this service have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 13, 1984.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Montgomery County Bancshares, Inc.,* Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Montgomery County, Mount Ida, Arkansas.

2. *Mutual Banc Corp.,* New Albany, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Mutual Trust Bank, New Albany, Indiana.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Union Bancshares, Inc.,* Laredo, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Union National Bank of Laredo, Laredo, Texas.

2. *Springhill Bancshares, Inc.,* Springhill Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Springhill Bank & Trust Company, Springhill, Louisiana.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Guardian Bancorp, Inc.,* Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the shares of Guardian Bank, Phoenix, Arizona.

Board of Governors of the Federal Reserve Systems, June 15, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16519 Filed 6-20-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84F-0011]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]methane as an antioxidant/stabilizer in ethylene-vinyl acetate copolymers used in contact with alcoholic foods.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3764) has been filed by Ciba-Geigy Corp., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant/stabilizer in ethylene-vinyl acetate copolymers that comply with 21 CFR 177.1350, and that are used in articles contacting alcoholic foods.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 14, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-16509 Filed 6-20-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Utah 53716]

Salt Lake District; Sale of Public Lands in Tooele County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This is a Notice of a direct sale of 140 acres of public land in Tooele County, in accordance with existing law.

DATE: The date of the sale is August 21, 1984.

ADDRESS: Comments concerning the sale will be accepted for a period of 45 days from the date of this notice by the:

District Manager, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, Pony Express Realty Specialist, (801) 524–5348.

SUPPLEMENTARY INFORMATION: This Notice replaces an earlier Notice which described a sale of the same lands to Mr. Eldon Stubbs. That Notice is hereby cancelled.

The following described public land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) or FLPMA:

Legal description	Acreage
T. 6 S., R. 18 W., SLB+M:	
Sec. 4, W½E½SW¼	40
Sec. 8, NE¼NE¼	40
Sec. 9, W½NE¼NW¼, NW¼NW¼	60
Total acres	140

The land is being offered by direct sale to Mr. Gail Bunker at the appraised fair market value of $17,500.

The lands are being offered for sale to serve the public objective of economic development and the growing of cultivated crops. Authorizing the farming of these lands will enhance Mr. Bunker's adjoining farm operation. The objective could not be achieved on other public land such as a parcel that was noncontiguous. The parcel does not possess more important public values than economic development since livestock grazing is the present and projected use of the land. The tract is no larger than necessary to support a family-sized farm.

A direct sale to Mr. Bunker will recognize a preference to him as a user with existing improvements and as an adjoining landowner, as set forth in FLPMA.

The sale is consistent with the Bureau of Land Management's planning system and with Tooele County planning and zoning.

The public lands will be sold on the 21st day of August, 1984.

Terms and conditions applicable to the sale are:

1. The sale of these lands will be subject to all valid existing rights.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. All minerals will be reserved to the United States.

4. Federal law requires that the buyer be a U.S. citizen. Proof of this requirement shall be presented by Mr. Bunker on the date of the sale.

The designated purchaser, Mr. Bunker, will be required to pay for the cost to publish this notice in the **Federal Register** and in the local paper. He will also be required to submit a nonrefundable deposit of one-fifth of the full price of $17,500 on the sale date, August 21, 1984, by certified check. The remainder of the full price shall be paid within 30 days of the sale date. Failure to pay the full price within 30 days shall disqualify Mr. Bunker as the designated purchaser and the deposit shall be forfeited and disposed of as other receipts of sale. The lands many then be offered on a competitive bidding basis, with details of such a sale to be set forth in a subsequent notice.

Detailed information concerning the sale, including the planning documents and environmental assessment is available for review at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Frank W. Snell,

Salt Lake District Manager.

[FR Doc. 84–16410 Filed 6–20–84; 8:31 am]

BILLING CODE 4310–DQ–M

[A–17362]

Public Lands Exchange; Mohave County, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Exchange, Public Lands in Mohave County, Arizona.

SUMMARY: The following described public lands and interests have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 27 N., R. 20 W.,
Section 16, SW¼NE¼, NW¼ and S½;
Section 20, N½, NW¼SW¼, S½SW¼, and SE¼.

Comprising 1120 acres of public land.

In exchange for these lands, the Federal government will acquire non-Federal land from Dale D. Smith described as follows:

Gila and Salt River Meridian, Arizona

T. 28 N., R. 16 W.,
Section 1, lots 1 thru 4, S½N½, S½;
Section 11, E½, NW¼, NE¼SW¼, S½SW¼;
Section 15, all;
Section 19, lots 1 thru 4, E½, E½W½;
Section 21, all.

Comprising 3157.48 acres of private land.

The above described public lands were previously segregated by Bureau action of June 16, 1982. Whereas, final appraisals have been completed and an exchange agreement consummated, it is necessary to initiate an additional segregative action to afford the proponent ample time to obtain mortgage releases.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. Right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1980, 26 Stat, 391, 43 U.S.C. 945.

2. A reservation of all oil and gas in the N½NW¼, SW¼NW¼, NW¼SW¼, section 20, T. 27 N., R. 20 W., G&SRM, to the United States with the right to prospect for, mine and remove such deposits.

3. A road easement 100 feet in width for the White Hills Road constructed under the authority of R.S. 2477 as recorded in Mohave County, Book 274, Page 50, of Official Records.

4. A reservation for a powerline as has been granted to Citizens Utilities, its successors and assigns, by right-of-way AR–035294–A under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

5. Subject to those rights for a roadway as have been granted to Mohave County Board of Supervisors, its successors or assigns, by right-of-way A–10109 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Private lands to be acquired by the United States will be subject to the following reservations, terms and conditions:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company.

The publication of this notice in the **Federal Register** will segregate the public lands described herein to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. This segregative effect shall terminate upon issuance of patent to such lands, upon publication in the **Federal Register** of a termination of the segregation, or 2 years from date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange including the environmental analysis

and the record of public discussions, is available for review at the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

For a period of 45 days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: June 18, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84-16502 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-32-M

[C-17-83]

California; Filing of Plat of Survey

June 13, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Nevada County

T. 16 N., R. 8 E.

2. This supplemental plat of the NE¼ Section 26, Township 16 North Range 8 East, Mount Diablo Meridian was accepted May 29, 1984.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-16503 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-40-M

[Group 805; Group 825]

California; Filing of Plat of Survey

June 13, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Nevada County

Tulare and Mariposa Counties

T. 25 S., R. 32 E.
T. 9 S., R. 19 E.

2. These plats, representing the (1) metes-and-bounds survey of Tract 37, T. 25 S., R. 32 E., Mount Diablo Meridian, under Group No. 825, California; and (2) the corrective dependent resurvey of a portion of the subdivisional lines of T. 9 S., R. 19 E., Mount Diablo Meridian, under Group No. 805, California, were accepted May 23, 1984.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. This survey was executed to meet certain administrative needs of the Department of Agriculture, Forest Service, and this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 84-16504 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-40-M

[I-20586]

Idaho: Notice of Realty Action—Exchange

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Exchange.

SUMMARY: The following described federal land comprising 60.00 acres in Kootenai County, Idaho, has been determined to be suitable for disposal by exchange under Section 205 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

T. 49 N., R. 5 W.,
Sec. 3, NW¼SW¼, N½SW¼SW¼.

The Federal Government is offered the following described 8.00 acres of private land in Kootenai County, Idaho by Jack Marshall, et al.:

Boise Meridian, Idaho

T. 49 N., R. 3 W.,
Sec. 2, Lot 9.

The purpose of this exchange is to acquire private land adjacent to the Bureau of Land Management Mineral Ridge Recreation area and Beauty Bay. This proposed exchange will be based on equal value determined by fair market value appraisals and may ultimately involve less than the total acreage described for federal land.

This exchange is consistent with Bureau of Land Management Land use planning. The federal land is not needed for any federal program. The land has previously been identified for transfer from federal ownership by private exchange.

Grazing privileges of Forest Godde will be reduced upon successful completion of this exchange. The grazing permittee was first notified of the planned disposal of the subject federal land by letter dated January 24, 1984. Forest Godde waived his right to a two-year continuance of these privileges on January 31, 1984.

There is no known value for minerals in the Federal land. It is expected that the mineral estate will be conveyed with the surface estate.

Patent, if and when issued, will contain the following reservation to the United States:

1. A right-of-way, 60-feet in width, for the existing road which crosses the public lands to be transfered. The distance of this right-of-way will depend upon how much Federal land will be transfered.

Upon publication of this Notice in the **Federal Register**, the public land will be segregated from all appropriation under the public land laws, including the mining laws, except exchanges, for a period of two years or upon issuance of patent. After acquisition, the private land will become a part of the Mineral Ridge Recreation Area.

ADDRESS: Detailed information concerning this exchange is available for review at the Coeur d'Alene District Office, Bureau of Land Management, 1808 North Third, Coeur d'Alene, ID 83814.

For a period of 45 days from the first publication of this Notice, interested parties may submit comments to the District Manager and forwarded to the Idaho State Director, Bureau of Land Management, who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: June 14, 1984.

Wayne Zinne,

District Manager, Coeur d'Alene District.

[FR Doc. 84-16500 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-GG-M

[M-55662]

Montana; Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Order Providing for Opening of Public Lands in Garfield County, Montana.

SUMMARY: This order opens the lands reconveyed to the United States in an exchange pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716 (1976)) to the operation of the public land laws. No mineral estate was acquired in the exchange.

DATE: At 9 a.m. on August 8, 1984, the following described lands that were conveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, (406) 657–6082.

1. The following described lands were conveyed to the United States without a mineral reservation since all minerals are already held by the U.S.:

Principal Meridian, Montana

T. 18 N., R. 38 E.,
Sec. 24, SE¼NE¼.
T. 18 N., R. 39 E.,
Sec. 7, lot 4;
Sec. 9, S½N½S½, S½SE¼;
Sec. 19, lots 2, 3, 4; and
Sec. 30, NE¼NW¼.
T. 19 N., R. 39 E.,
Sec. 31, lot 3.

Aggregating 426.69 acres.

2. The following described lands were conveyed to the United States with a reservation to the grantors, their successors and assigns, or to their predecessors, all right and title to all minerals except coal (which is federally owned):

Principal Meridian, Montana

T. 18 N., R. 38 E.,
Sec. 12, E½E½;
Sec. 13, E½SE¼; and
Sec. 24, NE¼NE¼.
T. 18 N., R. 39 E.,
Sec. 6, lots 1, 2, 3 and 7, SW¼NE¼, SE¼NW¼;
Sec. 7, lots 1, 2, 3;
Sec. 8, S½S½;
Sec. 10, S½NE¼SW¼, SE¼SW¼, S½SE¼;
Sec. 15, E½E½;
Sec. 17, N½, N½S½;
Sec. 18, lots 3 and 4, SE¼NE¼, E½SW¼, SE¼;
Sec. 19, lot 1, E½, E½W½; and
Sec. 30, N½NE¼.
T. 19 N., R. 39 E.,
Sec. 30, SW¼NE¼.

Aggregating 2,559.76 acres.

3. At 9 a.m. on August 8, 1984, the above lands will be open to the operation of the public and laws.

Dated: June 14, 1984.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 84-16496 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-DN-M

Land Resource Management; Montana State Office

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of filing of plat of survey.

SUMMARY: Plat of survey of the lands described below accepted May 31, 1984, will be officially filed in the Montana State Office effective 8 a.m. on August 13, 1984.

Principal Meridian, Montana

T. 9 S., R. 26 E.

The supplemental plat of sections 19 and 33, Township 9 South, Range 26 East, Principal Meridian, Montana, shows a subdivision of original Lot 1, Section 19, and a subdivision of original Lots 2, 5, and 7, Section 33, Township 9 South, Range 26 East, Principal Meridian, Montana. The area described is in Carbon County.

This plat was prepared to meet certain administrative needs of the Bureau.

EFFECTIVE DATE: August 13, 1984.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: June 12, 1984.

Linda M. Wagner,

Chief, Branch of Records.

[FR Doc. 84-16499 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-DN-M

[N-39007; N-39008]

Nevada; Realty Action—Sale of Public Lands in White Pine County, Nevada

The following lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value:

Parcel	Serial No.	Legal description, Mt. Diablo Meridian, Nevada	Acreage
1	N-39007	T. 12 N., R. 70 E., Sec. 34, lot 1.	31.50
2	N-39008	T. 15 N., R. 68 E., Sec. 24, SE¼SW¼NE¼SE¼SE¼, N½NE¼NW¼SE¼SE¼SE¼, W½W½SW¼SE¼NE¼SE¼SE¼, W½W½N½NW¼NE¼SE¼SE¼SE¼.	1.17

Parcel 1 is a surveyed lot located between two parcels of private land. The lot is composed of a steep sided canyon with about five acres of level ground which has been used to grow alfalfa. Parcel 2 has three graves on it. One of the relatives wishes to purchase the parcel for a family cemetery. Disposal of these lands will resolve the unauthorized use of public land. Parcel 1 is located 75 miles from Ely, Nevada and Parcel 2 is located 50 miles from Ely, Nevada.

The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The sale is consistent with the Schell Resource Area Land Use Plan which received public review prior to it's implementation. Disposal would best serve the public interest.

Both parcels will be first offered by direct noncompetitive sale to the following designated bidders:

Parcel No.	Serial No.	Designated bidders
1	N-39007	John Osborne.
2	N-39008	David Eldridge.

Successful purchasers will be given the opportunity to purchase the mineral estate (with the exception of the oil and gas resources which will be reserved to the United States) for $50.00 nonrefundable filing fee. The locatable and saleable mineral estate being offered have no known mineral value and are being offered for conveyance under the authority of Section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)).

The patents when issued as the result of the sale will be subject to all valid existing rights of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945), and all the oil and gas mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of Interior may prescribe.

The patent when issued for parcel no. 1 will be subject to those rights granted by oil and gas lease N–32114, made under Section 29 of the Act of February 25, 1920; 41 Stat. 437 and the Act of March 4, 1933, 47 Stat. 1570.

Parcel Serial No. N–39007.

Lease No. N–32114.

This patent is issued subject to the right of the prior permittee or lessee to use so much of the surface of said land as is required for oil and gas exploration and development operations, without compensation to the patentee for damages resulting from proper oil and gas operations for the duration of oil and gas lease N–32114, and any authorized extension of that lease. Upon termination or relinquishment of said oil and gas lease, this reservation shall terminate.

Parcel 1 will further be subject to: Those rights for power line purposes which have been granted to Bell Telephone Company of Nevada, its successors or assigns, by permit No. N–17524 under the Act of October 21, 1976, Title V, 90 Stat. 274, 43 U.S.C. 1713.

Parcel 2 will be subject to: An easement for White Pine County Road No. 40.

Any unsold parcels will be reoffered on the first Wednesday of each month beginning December 5, 1984, until they are sold or removed from sale. The offering will be by competitive sale bidding procedures required by 43 CFR 2711.3–1.

The loss of AUMs due to the land transfer will be less than 1 AUM per grazing allotment; therefore, there will be no reduction in any permittee privileges.

The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or applicable laws. The land will not be offered for sale sooner than 60 days after the date of this notice.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the Ely District Manager. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action. Detailed information concerning the sale, including the land report and environmental assessment report is available for review at the Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301.

Merrill L. DeSpain,

District Manager.

[FR Doc. 84–16501 Filed 6–20–84; 8:45 am]

BILLING CODE 4310–HC–M

[M 59731]

Conveyance and Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conveyance and Order Providing for Opening of Public Lands in Blaine County, Montana.

SUMMARY: This order will open the lands reconveyed in an exchange under the Act of October 21, 1976, et seq., to the operation of the public land laws. No mineral estate was transferred or acquired in the exchange.

DATE: At 9 a.m. on August 6, 1984, the lands reconveyed to the United States shall be open to the operation of the public lands laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The segregation of the public land that was subsequently transferred to William A. Nace and Loretta K. Nace, which was created by the Notice of Realty Action published in the **Federal Register** on April 5, 1984 (49 FR 13596), terminated on issuance of the deed on June 4, 1984.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, MT 59107, Phone: (406) 657–6082.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716 (1976)), the surface estate of the following described lands in Phillips County was conveyed to William A. Nace and Loretta K. Nace of Turner, Montana:

Principal Meridian, Montana

T. 37 N., R. 27 E.,
Sec. 1, S½; and
Sec. 12, all.
T. 37 N., R. 28 E.,
Sec. 4, lots 10–12, inclusive; and
Sec. 6, lots 6, 7, 12, and 13, and E½SW¼.
Aggregating 1,278.41 acres.

In exchange for the above land, the United States acquired the following described land in Blaine County:

Principal Meridian, Montana

T. 37 N., R. 24 E.,
Sec. 10, SE¼;
Sec. 11, NW¼;
Sec. 14, W½;
Sec. 15, E½; and
Sec. 22, S½NE¼.
Containing 1,040 acres.

At 9 a.m. on August 6, 1984, the above-described lands that were reconveyed to the United States will be open to the operation of the public land laws.

June 14, 1984.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 84–16505 Filed 6–20–84; 8:45 am]

BILLING CODE 4310–DN–M

[M–60210]

Conveyance and Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conveyance and Order Providing for Opening of Public Lands in Phillips County, Montana.

SUMMARY: This order will open the lands reconveyed in an exchange under the Act of October 21, 1976, 43 U.S.C. 1701, et seq., to the operation of the public land laws. All minerals in the offered lands were reserved to the private party in the exchange. The government reserved all minerals on 314.35 acres, and the oil and gas deposits only on the remaining public lands transferred.

DATE: At 9 a.m. on August 6, 1984, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provision of existing withdrawals and the requirements of applicable law. The segregation of the public land that was subsequently transferred to the private party, which was created by the Notice of Realty Action published in the **Federal Register** on March 27, 1984 (49 FR 11721–11722), terminated on issuance of the patent and deed on May 21, 1984.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone: (406) 657–6082.

SUPPLEMENTARY INFORMATION: /1. Notice is hereby given that pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716 (1976)), the following described land, with a reservation to the United States of all mineral deposits, was conveyed to First Montana Title Insurance Company, as Trustee for the benefit of Federal Land Exchange of Nevada, Inc.:

Principal Meridian, Montana

T. 31 N., R. 31 E.,
Sec. 19, lot 3, S½NE¼, NE¼SW¼, and SE¼.

Containing 314.35 acres.

2. The following described lands, with a reservation to the United States of all of the oil and gas deposits, were also conveyed to First Montana Title Insurance Company, as the Trustee:

Principal Meridian, Montana

T. 29 N., R. 27 E.,
Sec. 17, NE¼NW¼.
T. 29 N., R. 28 E.,
Sec. 5, lots 1 and 2, S½NE¼;
Sec. 19, W½NE¼, NE¼SW¼, and NW¼SE¼.
T. 35 N., R. 29 E.,
Sec. 26, SE¼NW¼.
T. 28 N., R. 31 E.,
Sec. 32, E½, N½SW¼, SE¼SW¼, excluding from the NW¼SW¼ a one-acre tract of ground as described on the quitclaim deed;
Sec. 33, W½SW¼.
T. 36 N., R. 32 E.,
Sec. 27, SE¼NE¼; and
Sec. 34, NW¼NE¼.
T. 34, N., R. 33 E.,
Sec. 31, SE¼.

Aggregating 1,165.89 acres.

3. In exchange for the above selected land, the United States acquired the surface estate of the following describing land in Phillips County, Montana:

Principal Meridian, Montana

T. 31 N., R. 31 E.,
Sec. 13, SW¼SW¼;
Sec. 14, W½NE¼ and SE¼NW¼; and
Sec. 22, N½N½.
T. 36 N., R. 31 E.,
Sec. 3, lot 1 and SE¼; and
Sec. 10, E½NE¼ and NE¼SE¼; and
T. 28 N., R. 32 E.,
Sec. 32, N½.
T. 33 N., R. 32 E.,
Sec. 2, E½SW¼.
T. 29 N., R. 34 E.,
Sec. 27, NW¼NW¼, S½N½, NE¼SW¼, and N½SE¼.
T. 35 N., R. 34 E.,
Sec. 2, lots 1, 2, and 3.
T. 36 N., R. 34 E.,
Sec. 35, E½SW¼, NW¼SE¼, and S½SE¼.

Aggregating 1,704.54 acres.

At 9 a.m. on August 6, 1984, the above described lands that were conveyed to the United States will be open to the operation of the public land laws.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewal Resources.

[FR Doc. 84-16506 Filed 6-20-84; 8:45 am]
BILLING CODE 4310-DN-M

[A-19263]

Public Lands Exchange; Mohave County, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Exchange, Public Lands in Mohave County, Arizona.

SUMMARY: The following described public lands are being considered for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 20 N., R. 21 W.,
Sec. 28, all.
T. 19 N., R. 22 W.,
Sec. 12, N½ and N½S½.

Comprising 1,120 acres, more or less.

In exchange for these lands, the federal government would acquire approximately 6,309 acres from Mr. George M. Aeed of Scottsdale, Arizona. The private offered lands contain highly diversified wildlife habitat and exhibit potential for recreational development in the Walnut Creek area of the Hualapai Mountains south of Kingman, Arizona.

The purpose of this Notice of Realty Action is two-fold. First, this action will provide a response period of forty-five (45) days during which public comments will be accepted. Secondly, this action, as provided in 43 CFR 2201.1(b), shall segregate the public lands described herein to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. This segregative effect shall terminate upon issuance of patent to such lands, upon publication in the **Federal Register** of a termination of the segregation, or 2 years from date of this publication, whichever occurs first.

This action is necessary to avoid the occurrence of nuisance mining claims that could encumber the public lands while the preparation of an environmental assessment is ongoing. Upon completion of the environmental assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchange and any reservations of records.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange including a list of the offered lands is available for review at the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

For a period of 45 days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: June 14, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84-16507 Filed 6-20-84; 8:45 am]
BILLING CODE 4310-33-M

Utah; Filing of State Indemnity Selection Application

On December 4, 1983, the State of Utah filed a state indemnity selection application, U-53874, to have 11,346.58 acres of federally-owned land and interest in land transferred to the State of Utah pursuant to sections 2275 and 2276 of the Revised Statutes, as amended, (43 U.S.C. 851-852).

The lands containing the federally-owned lands and interests in land included in this application are described as follows:

Salt Lake Meridian, Utah

T. 36 S., R. 4 E.,
Secs. 34-35, all.
T. 37 S., R. 4 E.,
Sec. 1, all;
Sec. 3, all;
Secs. 10-12, all.
T. 36 S., R. 5 E.,
Sec. 31, lots 1-4, E½W½.
T. 37 S., R. 5 E.,
Sec. 6, S½, NW¼;
Sec. 7, all.
T. 37 S., R. 11 E.,
Sec. 8, all;
Sec. 17, all.
T. 37 S., R. 18 E.,
Secs. 10-15, all.
T. 25 S., R. 21 E.,
Sec. 24, lots 1-4;
Sec. 25, lots 1-4; W½NE¼, E½NW¼.

The filing of this application segregates the federally-owned lands and interests in land in the above-described lands from settlement, sale, location, or entry under the public land laws, including the mining laws but not the mineral leasing laws or the Geothermal Steam Act. This segregative effect shall terminate upon the issuance of a document of conveyance to these federally-owned lands and interests in lands, or upon the publication in the **Federal Register** of a notice of termination of the segregation, or upon the exipration of two years from the date of the filing of this application, whichever occurs first.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-16544 Filed 6-20-84; 8:45 am]
BILLING CODE 4310-DQ-M

[M 57954]

Conveyance and Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Notice of Convynance and Order Providing for Opening of Public Lands in Valley County, Montana.

SUMMARY: This order will open lands reconveyed in an exchange under the Act of October 21, 1976, 43 U.S.C. 1701, et seq., to the operation of the public land laws. No minerals were acquired or transferred in the exchange.

DATE: At 9 a.m. on July 30, 1984, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The segregation of the public land that was subsequently transferred to Valley County, which was created by the Notice of Realty Action published in the **Federal Register** on December 22, 1983 (48 FR 56651), terminated on issuance of the patent and quitclaim deed on May 17, 1984.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone: (406) 587–6082.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716 (1976)), the surface estate of the following described land was conveyed to Valley County, Montana.

Principal Meridian, Montana

T. 30 N., R. 40 E.,
sec. 3, lots 1–4, S½N¼; and
sec. 4, lots 1–3, S½NE¼ and SE¼NW¼
T. 31 N., R. 40 E.,
sec. 35, lots 2 and 3, NE¼, NE¼ SW¼ and N½ SE¼.
Aggregating 922.16 acres.

In exchange for the above land, the United States acquired the surface estate of the following described land in Valley County, Montana:

Principal Meridian, Montana

T. 30 N., R. 35 E.
sec. 11, lots 1, 2, 3, SW¼NE¼ and SE¼NW¼.
T. 35 N., R. 35 E.
sec. 19, SW¼NE¼ and SE¼.
T. 34 N., R. 39 E.,
sec. 16, SE¼NW¼, NE¼SW¼ and S½SW¼;
sec. 17, S½; and
sec. 20, N½NW¼, E½SE¼NW¼.
Aggregating 978.48 acres.

At 9 a.m. on July 30, 1984, the above-described lands that were reconveyed to the United States will be open to the operation of the public land laws.

Dated: June 13, 1984.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 84–16351 Filed 6–20–84; 8:45 am]

BILLING CODE 4310-ON-M

Intent To Amend and Availability of Pre-Planning Criteria

AGENCY: Bureau of Land Management.

ACTION: Notice of Intent and Availability.

SUMMARY: Notice is hereby given, pursuant to 43 CFR 1600, that the California Desert District is planning to amend the California Desert Plan to allow the withdrawal of twelve sections of public land adjacent to the China Lake Naval Weapons Center for inclusion in the Center.

DATE: An Environmental Assessment (EA) on the amendment will be completed by early August, 1984. Any comments received within 30 days of the publication of this notice will be considered in the preparation of the EA.

SUPPLEMENTARY INFORMATION: The China Lake Naval Weapons Center (NWC) applied in December 1983 to the California State Director, Bureau of Land Management (BLM) for withdrawal from the public domain of approximately 8,320 acres of land adjacent to NWC in San Bernandino County, California. The NWC, which encompasses 1,095,680 acres of land in Kern, Inyo and San Bernardino Counties, is the United States Navy's principal laboratory for research, development, testing, and evaluation of air and electronic warfare systems.

Two of the most important facilities at NWC are Sea Site and the Tactical Air Navigation Facility (TACAN). They were constructed near the boundary of the NWC in the early 1970's. At that time, very limited and sporadic activity occurred on the public lands west of the NWC boundary, so the location of these facilities to the perimeter of Navy land posed no apparent major problems. Since that time, use of the public lands for recreation has increased greatly. Part of the adjacent region was designated as an "open" area by the Desert Plan. As a result, the potential for accidental intrusions on the NWC have increased. In addition, interested in prospecting for precious metals has been received in the area due to higher prices on the world market. The renewed mining interest may promote increased human activity near Sea Site.

The NWC withdrawal application stated that unrestricted use of Sea Site is integral to the continued evolution of the Navy's electronic warfare defenses and capabilities. The Bureau of Land Management recognizes the importance of Sea Site and the need for the withdrawal. However, the proposed withdrawal is not in conformance with the California Desert Plan. All BLM actions not in conformance with approved land use plans can only be taken through an amendment to the existing plan (43 CFR 1610.5–3). Accordingly, an amendment to the California Desert Plan will be considered through an environmental assessment to be prepared and released for public review by early August, 1984. The EA will address the impacts of the withdrawal, as well as impacts of alternatives, including a smaller withdrawal and a denial of the withdrawal. A final decision is expected by the Fall of 1984.

Consideration of the amendment will be guided by the following pre-planning criteria:

1. What procedures will be used for phasing out the use of the portion of the Spangler Hills grazing allotment within the withdrawal area?

2. What alternative methods are available for conducting organized vehicle competitive events in the Spangler Hills Open Area?

3. What is the likely future of mineral development in the area if the withdrawal is denied, as well as procedures for compensation of phased-out operations if the withdrawal is accepted?

4. How would that portion of the Christmas Canyon Area of Critical Environmental Concern remaining outside the withdrawal area (a strip of six sections) still be manageable as an ACEC? How would that portion of the ACEC within the withdrawal be managed?

FOR FURTHER INFORMATION CONTACT: Mark Lawrence at (619) 375–7125

Dated: June 15, 1984.

H. W. Riecken,

District Manager.

[FR Doc. 84–16549 Filed 6–20–84; 8:45 am]

BILLING CODE 4310-40-M

[I, 20887]

Realty Action; Exchange of Public Lands for Private Lands all within Blaine County, Idaho

AGENCY: Bureau of Land Management.

ACTION: Notice of Realty Action, Exchange of public land for private land all within Blaine County, Idaho, I–20887.

DATE: Comments should be submitted to the Shoshone District Office, Bureau of Land Management, P.O. Box 2B, Shoshone, Idaho 83352, by July 30, 1984.

SUMMARY: The purpose of the exchange is to acquire non-Federal grazing land to improve the manageability of the public lands for livestock and wildlife habitat. The exchange is consistent with the Bureau's planning of the lands involved and has been discussed with Blaine County Commissioners and Idaho Department of Fish & Game. The public interest will be well served by making the exchange.

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Blaine County, Idaho

T. 1 N., R. 21 E.,
Section 24: E1/2SW1/4
Containing 80 acres.

In exchange for these lands, the Federal government will acquire a parcel of non-Federal land from Little Fish Creek Grazing Association, described as follows:

Boise Meridian, Blaine County, Idaho

T. 1 N., R. 22 E.,
Section 20: SW1/4NE1/4, E1/2NW1/4
Containing 80 acres.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

There are no minieral reservations, including geothermal or oil and gas, on either the private or public land.

The patent when issued will contain the following reservations and conditions to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945;

2. All valid exising rights and reservations of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

ADDRESS: Detailed information concerning the exchange, including the environmental assessment and the record of public discussions, is available for review at the Shoshone District Office, 400 West F Street, Shoshone, Idaho, or by calling Ervin Cowley at (208) 886–2206.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Shoshone District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Charles J. Haszier, District Manager.

Dated: June 12, 1984.

Charles J. Haszier,
District Manager.

[FR Doc. 84–16550 Filed 6–20–84; 8:45 am]
BILLING CODE 4310–GG–M

[M–57784]

Conveyance and Order Providing for Operating of Public Lands; Custer County, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance and order providing for opening public lands in Custer County, Montana.

SUMMARY: This order will open the lands reconveyed in an exchange under the Act of October 21 1976, 43 U.S.C. 1701, et seq., to the operation of the public land laws. No mineral estate was transferred or acquired in the exchange.

DATE: At 9 a.m. on August 6, 1984, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The segregation of the public land that was subsequently transferred to Griffin Ranch Company, which was created by the notice of realty action published in the **Federal Register** on January 19, 1984 (49 FR 2315), terminated on issuance of the patent and deed on May 17, 1984.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau Chief, Land Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone: (406) 657–6062).

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716 (1976)), the surface estate of the following described land was conveyed to Griffin Ranch Company of Locate, Montana:

Principal Meridian, Montana

T. 9 N., R. 50 E.,
sec. 24, W½.

T. 9 N., R. 51 E.,
sec. 28, lots 2, 3, 4, 5, 8 and 9, NE¼;
sec. 32, lots 1, 4, and 5; and
sec. 33, lot 5, N½SE¼ and SE¼SE¼
Aggregating 799.35 acres.

In exchange for the above land, the United States acquired the followig described land in Custer County, Montana;

Principal Meridian, Montana

T. 9 N., R. 50 E.,
sec. 27, all.

T. 9 N., R. 51 E.,
sec. 22, S½;
sec. 25, NW¼; and
sec. 34, W½SE¼.

T. 9 N., R. 52 E.,
sec. 30, lots 1, 2, 3, E½NW¼, NE¼SW¼ and W½SE¼.
Aggregating 1,518.27 acres.

At 9 a.m. on August 6, 1984, the above-described lands that were recoveyed to the United States will be open to the operation of the public land laws.

Dated: June 14, 1984.

John A. Kwiatkowski,
Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 84–16552 Filed 6–20–84; 8:45 am]
BILLING CODE 4310–DN–M

Nevada; Realty Action; Sale of Public Land

June 13, 1984.

Pub. L. 96–586, enacted December 23, 1980, authorizes and directs the sale of certain public lands in and around Las Vegas, Nevada. The following described lands have been determined to be suitable for sale utilizing competitive procedures, at not less than fair market value:

Parcel No.	Serial No.	Legal Description	Acres
T. 20 S., R. 60 E., MDM., Section 27			
84–01	N–39190	SW¼NW¼NE¼NW¼	5.0
84–02	N–39191	SW¼NE¼NE¼SW¼	2.5
84–03	N–39192	N½SE¼SW¼SW¼SW¼SE¼ SW¼SW¼.	7.5

Parcel No.	Serial No.	Legal Description	Acres
		T. 20 S., R. 60 E., MDM., Section 20	
84-04	N-39193	E½NW¼SW¼SE¼	5.0
84-05	N-39194	W½NE¼SE¼SE¼	5.0
		T. 20 S., R. 60 E., MDM., Section 22	
84-06	N-39195	W½SW¼SE¼	20.0
84-07	N-39196	SW¼NW¼SE¼	10.0
84-08	N-39197	NW¼NE¼	40.0
		T. 20 S., R. 60 E., MDM., Section 15	
84-09	N-39198	N½SW¼SW¼, SE¼SW¼ SW¼, N½SW¼SW½SW¼.	35.0
84-10	N-39199	SE¼SW¼	40.0
84-11	N-39200	W½SW½SW¼SE¼	5.0
84-12	N-39201	N½SW¼SE¼	20.0
84-13	N-39202	NW¼SE¼SE¼, N½SW¼ SE¼SE¼, SE¼SW¼SE¼ SE¼.	17.5
84-14	N-39203	NE¼SE¼SE¼, N½SE¼SE¼ SE¼, SW¼SE¼SE¼SE¼.	17.5
84-15	N-39204	NW¼SW¼	40.0
84-16	N-39205	W½NE¼SW¼	20.0
84-17	N-39206	NE¼NE¼SW¼	10.0
84-18	N-39207	NW¼SE¼, W½W½NE¼ SE¼, W½SE¼NW¼NE¼ SE¼, W½E½SW¼NE¼ SE¼.	53.75
84-19	N-39208	E½NE¼SE¼, NE¼NW¼ NE¼SE¼, E½SE¼NW¼ NE¼SE¼, E½E½, SW¼ NE¼SE¼.	26.25
84-20	N-39209	W½W½W½SE¼NE¼, SW¼ NE¼.	45.0
84-21	N-39210	E½W½SE¼NE¼, E½W½ W½SE¼NE¼.	15.0
84-22	N-39211	W½NE¼SE¼NE¼, SE¼ NE¼SE¼NE¼.	7.5
84-23	N-39212	E½SE¼SE¼NE¼, SW¼ SE¼SE¼NE¼.	7.5
84-24	N-39213	S½N½NW¼NE¼, S½NW¼ NE¼.	30.0
84-25	N-39214	S½N½NE¼NE¼, S½NE¼ NE¼.	30.0
		T. 20 S., R. 60 E., MDM., Section 33	
84-26	N-39215	Lot 60	5.0
84-27	N-39216	Lot 61	5.0
		T. 21 S., R. 60 E., MDM., Section 3	
84-28	N-39217	Lot 36	5.32
84-29	N-39218	Lot 65	5.31
		T. 21 S., R. 60 E., MDM., Section 10	
84-30	N-39219	W½NE¼NW¼NW¼	5.0
84-31	N-39220	W½NE¼SW¼SW¼	5.0
84-32	N-39221	W½NW¼SE¼SE¼	5.0
		T. 21 S., R. 60 E., MDM., Section 21	
84-33	N-39222	NW¼NE¼NE¼, W½NE¼ NE¼NE¼.	15.0
84-34	N-39223	N½NW¼NE¼	20.0
84-35	N-39224	W½SE¼NW¼NW¼, E½ SW¼NW¼NW¼.	10.0
		T. 21 S., R. 61 E., MDM., Section 30	
84-36	N-39225	NW¼NE¼NW¼NE¼	2.5
84-37	N-39226	NW¼SE¼NW¼NE¼	2.5
		T. 21 S., R. 62 E., MDM., Section 19	
84-38	N-39227	Lot 7	4.42
		T. 21 S., R. 62 E., MDM., Section 28	
84-39	N-39228	SW¼SW¼SW¼	10.0
84-40	N-39229	N½SW¼SW¼	30.0
84-41	N-39230	E½SW¼SE¼SW¼, W½SE¼ SE¼SW¼.	10.0
84-42	N-39231	S½SE¼NE¼SW¼, N½NE¼ SE¼SW¼.	10.0
		Total acres	655.05

These parcels, situated in the Las Vegas Valley, have potential for urban-suburban, commercial and industrial development. Transfer of this land from Federal ownership will facilitate local land use planning and enhance its compatibility with adjoining private land uses. All or portions of the subject land herein described will be offered for sale initially at a public auction to be held in the last quarter of 1984 in Las Vegas. The parcels not sold through the initial auction will be offered by procedures outlined by the Bureau of Land management's Las Vegas District Office at a later date.

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. A bid will constitute an application for conveyance of those mineral interests offered on the parcel. The declared high bidder will be required to deposit one/fifth of the full bid price and a $50.00 nonreturnable filing fee for conveyance of the mineral interests immediately at the sale. Failure to deposit these sums will result in disqualification as the high bidder. The authorized officer shall then determine whether to accept the next highest bid, withdraw the public lands from the market, or reoffer them for sale at a later date.

General terms and conditions of the sare are:

1. The land will be sold subject to all valid existing rights such as power transmission and telephone line easements and federally issued oil and gas leases.

2. The land will be sold subject to reservation for streets, roads, flood control and public utilities, both existing and proposed, in accordance with Clark County and City of Las Vegas plans.

3. All land that is sold will be subject to applicable Clark County and City of Las Vegas ordinances.

4. Any development and proposed development of a parcel affected by the 100-year flood plain shall be subject to review and regulations by Clark County Department of Public Works, Flood Control Division for flood control and storm water management.

5. The United States reserves the oil and gas, sodium and potassium leaseable mineral interests on all parcels being offered, and reserves the geothermal leaseable mineral interests on those parcels in T. 21 S., R. 61 and 62 E., without limitation under the General Mineral Leasing Law and the Geothermal Steam Act.

6. The United States reserves to itself, its permittees and lessees, the right to prospect for, mine and remove minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the geothermal and mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, open pit or surface mining operations, storage and transportation facilities deemed necessary and authorized under law and implementing regulations.

7. Permittees, and lessees of the United States shall only be liable for and shall only compensate owners of the surface estate for damages to the extent prescribed by regulations issued by the Secretary of the Interior.

8. Unless otherwise provided by separate agreement with the surface owner, permittees and lessees of the United States shall reclaim desturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior.

9. All causes of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against permittees, and lessees of the United States and the United States shall not be liable for the acts or omissions of its permittees, and lessees.

Adjoining landowners have no preference rights. Only U.S. citizens and legally chartered U.S. corporations are eligible to purchase these lands. Specific information regarding the time and site of the auction, and sale procedures will be published in a sale brochure and made available to the public prior to the sale.

The Bureau of Land Management may accept or reject any and all offers, or withdraw any lands or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws.

For a period of 45 days from the date of the notice, interested persons may submit comments regarding this sale to the District Manager, Las Vegas District Office, P.O. Box 26569, Law Vegas, Nevada 89126–0569.

Dated: June 13, 1984.

Kemp Conn,

District Manager, Las Vegas.

[FR Doc. 84–16553 Filed 6–20–84; 8:45 am]
BILLING CODE 4310–HC–M

[A-18888-S and A-14965]

Arizona; Notice and Conveyance

June 13, 1984.

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750, 2757, 43 U.S.C. 1713, 1719), the following patents have been issued to the individuals listed for the lands described:

Patentees	Legal description	Patent No.	Date issued	Purchase price
Marilyn W. Al-Jahani	Gila & Salt River Mer. T. 5 N., R. 15 W., containing 160 acres.	02-84-0047	May 25, 1984	$36,000
Mathew E. and Myrtle E. Gibson	Gila & Salt River Mer. T. 6 S., R. 26 E., containing 20 acres.	02-84-0050	June 8, 1984	19,000

The purpose of the Notice is to inform the public and interested State and local governmental officials of the issuance of the patents.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-16564 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-32-M

[CA-15731]

California; Notice of Realty Action, Competitive Sale of Public Land in San Bernardino, San Diego, and Riverside Counties, California

The following described parcels of land have been examined and identified as suitable for disposal by sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value shown:

Parcel No.	Legal description	Acres	Appraised value
San Bernardino County, Calif.			
1 CA 15365	T. 1 S., R. 2 W., SBM; Sec. 34, SW¼NW¼	40.00	$16,000
2 CA 15366	T. 1 S., R. 1 W., SBM; Sec. 32, Lots 1, 2, 3, 4, N½SE¼	233.28	72,000
3 CA 15367	T. 1 N., R. 4 W., SBM; Sec. 6, Lot 2	40.00	24,400
4 CA 15368	T. 1 N., R. 7 W., SBM; Sec. 13, W½NW¼NE¼SE¼, NE¼NE¼SE¼SE¼	7.50	3,000
San Diego County, Calif.			
5 CA 15369	T. 11 S., R. 2 W., SBM; Sec. 25, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16.	71.20	290,000
6 CA 15370	T. 11 S., R. 2 W., SBM; Sec. 26, W½NE¼, E½NW¼	160.00	600,000
7 CA 15371	T. 11 S., R. 2 W., SBM; Sec. 22, NE¼SE¼	40.00	160,000
8 CA 15372	T. 11 S., R. 2 W., SBM; Sec. 23, NW¼SE¼	40.00	210,000
9 CA 15373	T. 12 S., R. 1 W., SBM; Sec. 4, Lots 5, 6, 7, 8, 9, 10, S½N½N½NE¼, S½N½NE¼, SE¼NE¼, S½N½NE¼NW¼, S½NE¼NW¼.	160.79	480,000
10 CA 15373A	T. 12 S., R. 1 W., SBM; Sec. 4, SW¼, NW¼SE¼	200.00	500,000
11 CA 15374	T. 13 S., R. 1 W., SBM; Sec. 21, Lots 9, 16, 17, 24, 25	26.23	118,000
12 CA 15375	T. 13 S., R. 1 W., SBM; Sec. 21, Lots 27, 28, 29, 30, 31, 32	31.45	167,000
13 CA 15376	T. 14 S., R. 1 E., SBM; Sec. 9, Lot 2	1.02	100
14 CA 15378	T. 13 S., R. 1 E., SBM; Sec. 5, Lots 6, 7	36.44	100,000
15 CA 15379	T. 14 S., R. 1 E., SBM; Sec. 8, NE¼SW¼	40.00	80,000
16 CA 15380	T. 15 S., R. 1 E., SBM; Sec. 35, Lot 3	19.42	80,000
17 CA 15380A	T. 15 S., R. 1 E., SBM; Sec. 35, Lot 4	4.21	10,000
18 CA 15381	T. 10 S., R. 1 W., SBM; Sec. 5, Lot 1	1.71	25,000
19 CA 15382	T. 13 S., R. 1 W., SBM; Sec. 22, W½W½NW¼SE¼, W½NW¼SW¼SE¼, S½SW¼SE¼.	35.00	225,000
20 CA 15383	T. 11 S., R. 3 E., SBM; Sec. 30, Lot 1	9.79	5,000
21 CA 15384	T. 10 S., R. 3 W., SBM; Sec. 33, NW¼NW¼	40.00	300,000
22 CA 15385	T. 13 S., R. 1 W., SBM; Sec. 20, W½SW¼SE¼	20.00	120,000
Riverside County, Calif.			
23 CA 15386	T. 6 S., R. 2 E., SBM; Sec. 14, NW¼NW¼	40.00	80,000

The sale parcels will be offered for competitive sale by sealed bid to the highest qualified bidder.

This sale is consistent with the existing land use plans developed in accordance with the Department's planning regulations, public participation and in coordination with local governmental entities. The parcels because of their location and physical characteristics are difficult and uneconomical to manage as part of the public lands and are not suitable for management by another Federal department or agency.

The sale will be held on Wednesday, September 12, 1984 at 10:30 a.m., in the Conference Room at the California Desert District Office, 1695 Spruce Street, Riverside, California.

Sealed bids will be considered only if received by the Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507, prior to 4:30 p.m., Tuesday, September 11, 1984, and made for no less than the fair market value. A separate bid must be submitted for each parcel. Each bid must be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior-BLM for not less than one-fifth of the amount bid and shall be enclosed in a sealed envelope. The aforementioned envelope shall be clearly marked "Bid for Public Land Sale, Notice of Realty Action, CA-15731," and include a reference to the sale parcel number and county and dated September 12, 1984. The sealed bids will be opened and publicly declared at the time of the sale by the authorized officer. If 2 or more valid bids of the same amount are receive and they are the high bid, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying bid shall then be publicly declared.

The successful bidder must submit the remaining four-fifths of the amount bid within 30 days from the date of sale. Failure to submit the remaining bid amount within 30 days from the date of sale shall result in forfeiture of the deposit, and the lands will be offered to the next highest qualified bidder. If there are no other qualified bidders subsequent to the September 12, 1984 sale, any remaining parcels of land will be disposed of through sale and/or exchange in 1985. Consideration may also be given toward disposal of any remaining parcels through lease/patent for planned public-benefiting recreation or public purposes projects to qualified state, County or local government authorities or non-profit corporations or associations. Any action involving the disposal of the aforementioned public land will be preceded by the appropriate notice(s) of realty action pursuant to Title 43 of the Code of Federal Regulations.

The authorized officer may reject the highest qualified bid and release the bidder from their obligation and withdraw any parcel from the sale, if he determines that consummation of the

sale would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered or restrained free and open bidding, or consummation of the sale would encourage or promote speculation in public lands. Until the acceptance of the offer and payment of the purchase price, the bidder has no contractual or other rights against the United States, and no action taken shall create any contractual or other obligations of the United States.

It has been determined that the sale parcels are without known mineral value and a successful high bid will constitute a simultaneous request for conveyance of the mineral estate. Therefore, pursuant to 43 CFR 2711.5–1, the successful high bidder, as a condition of the sale, will be required to deposit a $50.00 nonrefundable filing fee for conveyance of the mineral estate in addition to the one-fifth of the amount bid.

Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2440.4, the sale parcels will be segregated from appropriation under the mining laws but not the mineral leasing laws for a period not to exceed two years, or until the lands are sold, whichever occurs first. The segregative effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the **Federal Register** prior to the expiration of the two year period.

All bidders must be either: (1) 18 years of age or older and provide proof of U.S. citizenship; or (2) a State, State instrumentality or political subdivision authorized to hold property; or (3) a corporation authorized to own real estate in the State of California or (4) an entity legally capable of conveying and holding lands or interests therein under the laws of the State of California, and where applicable, the entity shall also meet the requirements of 1 and 3 above.

The patents for the lands, when issued, will be subject to the following reservations:

1. A right of way for ditches or canals reserved pursuant to the act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All valid existing rights and reservations of record.

Further information concerning this sale, including the planning documents and Environmental Assessment is available in the California Desert District Office, Bureau of Land Management, 1695 Spruce Street, Riverside, California 93507.

For a period of 45 days from the date of this notice, interested parties may submit comments to the California Desert District Manager at the above address. Any adverse comments will be evaluated by California State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a Final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Hugo Riecken,

Associate District Manager.

[FR Doc. 84-16505 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-40-M

[ORE 011183]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that the land withdrawal for the Wapinitia Project continue for an additional 100 years. The land(s) would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

The Bureau of Reclamation proposes that the existing land withdrawal made by Secretarial Order of March 21, 1916, as amended by Public Land Order No. 2733 of July 19, 1962, be continued in part for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land(s) involved are located adjacent to Clear Lake approximately thirteen miles south of Mt. Hood and aggregate 1,198.06 acres within T. 4 S., R's. 8½ and 9 E., W.M., Wasco and Clackamas Counties, Oregon.

The purpose of the withdrawal is to protect the Wapinitia Reclamation Project. The withdrawal segregates the land(s) from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions,or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: June 15, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-16506 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-33-M

[W-81777]

Wyoming; Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 6,449 acres of public land and public mineral interests in private land for protection of the Tres Charros and Great Expectations cave systems near Hyattville, Wyoming. This notice closes the land for up to 2 years from surface entry and mining location. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received by September 19, 1984.

ADDRESS: Comments and requests for a public meeting should be sent to: Wyoming State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, (307) 772–2089.

On June 8, 1984, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the nondiscretionary public land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Wyoming, Big Horn County

T. 51 N., R. 88 W.,

sec. 4, lots 5, 6, and 7, S½NE¼, S½NW¼, SW¼, and SE¼;
sec. 5, lots 6, 7, 8, 9, and 10, SW¼NE¼, S½SE¼NE¼, and SE¼;
sec. 8, lot 1 and NW¼NE¼;
sec. 9, NE¼, E½NW¼, N½NE¼SW¼, and N½NW¼SE¼.
T. 52 N., R. 88 W.,
sec. 15, W½, unsurveyed;
sec. 16, E½, E½W½, and SW¼SW¼;
sec. 17, E½SE¼SE¼;
sec. 20, lots 1, 2, and 3, NE¼, and NW¼NW¼SE¼;
sec. 21, N½, N½NE¼SW¼, and N½SE¼;
sec. 22, NW¼ and N½SW¼, unsurveyed;
sec. 32, lot 4 and SW¼SE¼;
sec. 33, SE¼SW¼ and S½SE¼.
T. 51 N., R. 89 W.,
sec. 1, lots 10 and 11, and SW¼;
sec. 11, E½E½;
sec. 12, lots 1, 2, 3, and 4, W½NE¼, W½, and W½SE¼;
sec. 13, lots 1, 2, and 3, and N½MW¼;
sec. 14, lot 1 and E½NE¼.
T. 52 N., R. 89 W.,
sec. 14, NE¼NE¼SW¼, W½NE¼SW¼, W½SW¼, and NW¼SE¼SW¼;
sec. 15, SE¼NE¼SE¼, NE¼SW¼SE¼, S½SW¼SE¼, and SE¼SE¼;
sec. 22, NE¼, NE¼NW¼, S½NW¼, SW¼, N½SE¼, W½SW¼, SE¼, and NE¼SE¼SE¼;
sec. 23, E½NW¼, SE¼NW¼NE¼, SW¼NE¼, W½NW¼, SE¼NW¼, and S½;
sec. 24, lots 2, 3, and 4, S½SW¼NE¼, W½NW¼, SW¼, and W½SE¼
sec. 25, N½NW¼NW¼;
sec. 26, NE¼NE¼NE¼.

The areas described, including both public lands and lands with private surface ownership and public minerals, aggregate 6,449.08 acres.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those currently ongoing discretionary uses including livestock grazing, timber harvesting, wildlife habitat management, and outdoor recreation.

All communications in connection with this proposed withdrawal should be addressed to the State Director, Bureau of Land Management, Wyoming State Office, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

P. D. Leonard,

Associate State Director, Wyoming.

[FR Doc. 84-16567 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-22-M

[W-86132]

Nebraska; Conveyance Sale of Public Land in Brown County, Nebraska

June 11, 1984.

Notice is hereby given that pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976), Clifford and James Barta have purchased and received a patent for the following described public land in Brown County, Nebraska:

Sixth Principal Meridian

T. 27 N., R. 21 W.,
sec. 27, SE¼NW¼.
Containing 40.00 acres.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 84-16566 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Meeting of FWS Migratory Bird Regulations Committee

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: The U.S. Fish and Wildlife Service Migratory Bird Regulations Committee will meet to review preliminary information on the status of waterfowl on the breeding grounds in 1984.

DATE: July 6, 1984.

ADDRESS: The meeting will be held in room 7000A, Main Interior Building, 18th and C Streets, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, telephone AC 202-254-3207.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service Migratory Bird Regulations Committee, including Flyway Council Consultants to the Committee, will meet in Washington, D.C. on July 6 at 8:30 a.m. in room 7000A, Main Interior Building to receive and consider staff reports on results of 1984 waterfowl breeding grounds surveys.

The reports will include breeding population estimates, pond indexes, and other information on habitat conditions on the breeding grounds. The purpose is to provide the Committee with preliminary information about the impact of continuing drought conditions on prairie and parklands breeding habitats. Additional information and a more complete assessment of 1984 conditions will be presented to the Committee at the regularly scheduled waterfowl status meeting to be held in Denver, Colorado on July 25, 1984.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by persons outside the Department, this meeting will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Dated: June 18, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-16562 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Mobil Oil Exploration & Producing Southeast Inc.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Mobil Oil Exploration & Producing Southeast Inc., Unit Operator of the Ship Shoal Block 72 Federal Unit Agreement No. 14-08-001-2945, submitted on June 1, 1984, a proposed development operations coordination document describing the activities it proposes to conduct on the Ship Shoal Block 72 Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 14, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–16514 Filed 6–20–84; 8:45 am]

BILLING CODE 4310–MR–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Forest Oil Corporation

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Forest Oil Corporation, Unit Operator of the Eugene Island Block 292 Federal Unit Agreement No. 14–08–0001–8764, submitted on May 21, 1984, a proposed development operations coordination document describing the activities it proposes to conduct on the Eugene Island Block 292 Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendment of 1978, the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838–0519.

SUPPLEMENTARY INFORMATION: Revised rules governing parctices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 15, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–16515 Filed 6–20–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5438 and 4215, Blocks 314 and 315, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on June 6, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Matairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert, Minerals Management Service, Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 13, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–16573 Filed 6–20–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3340, Block 53, Breton Sound Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from

an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on June 12, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux, Jr., Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0872.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 12, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–16570 Filed 6–20–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; CNG Producing Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that CNG Producing Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5391, Block 299, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on June 12, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. A. D. Gobert, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 12, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–16571 Filed 6–20–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4754, Block 132, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on June 15, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert, Minerals Management Service, Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information

contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 15, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-16572 Filed 6-20-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-12 (Sub.-72X)]

Southern Pacific Transportation Co.—Abandonment—In Los Angeles County, CA; Exemption

Southern Pacific Transportation Company (SP) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments.* The line to be abandoned is between milepost 495.14 and milepost 495.18, a distance of 0.04 mile, in Los Angeles County, CA.

SP has certified (1) that no local traffic has moved over the line for at least 2 years and overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line or by a State or local governmental entity acting on behalf of such user regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in California has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on July 20, 1984 (unless stayed pending reconsideration). Petitions to stay must be filed by June 29, 1984, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed July 10, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to SP's representative: G.A. Laakso, One Market Plaza, San Franisco, CA 94105.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 13, 1984.

By the Commission, Heber P. Hardy Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-16495 Filed 6-20-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30501]

Alabama Industrial Railroad, Inc.—Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Alabama Industrial Railroad, Inc., from the provisions of 49 U.S.C. 11301 in connection with a stock issuance of $5,000 pertaining to the operations of a 13.25 mile line of railroad.

DATES: This exemption is effective on June 18, 1984. Petitons to reopen must be filed by July 11, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30501 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll-free (800) 424-5403.

Decided: June 13, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison, joined by Vice Chairman Andre, would have also exempted future issuances of securities relating to operation of this particular line as requested by the petitioner.

James H. Bayne,

Secretary.

[FR Doc. 84-16630 Filed 6-20-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-111 (Sub-No. 7)]

Grand Trunk Western Railroad Co.—Abandonment—In Pike and Jackson Counties, OH; Findings

The Commission has issued a certificate authorizing the Grand Trunk Western Railroad Company to abandon its 18.3 mile rail line between milepost 288.5 near Greggs and milepost 306.8 near Jackson in Pike and Jackson Counties, OH. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84-16632 Filed 6-20-84; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Approval of Rail Cost Adjustment Factor and Adjustment in Maximum Allowable Increase to Compensate for an Overstatement in the First Quarter of 1984.

SUMMARY: The Commission has decided to approve the cost index filed by the Association of American Railroads (AAR) under the procedures of Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* The application of the index provides for a third quarter 1984 Rail Cost Adjustment Factor (RCAF) of 1.058. Application of the RCAF provides for a maximum increase of 0.4 percent above the level authorized in our decision served March 21, 1984, after a .1 percent downward adjustment to compensate for a similar

overstatement occurring in the first quarter of 1984.

EFFECTIVE DATE: July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 275–0938 or Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: By decision served April 17, 1981 (46 FR 22594, April 20, 1981), we outlined the procedures for the calculation of the interim mid-quarter index of railroad costs and the methodology for the computaition of the RCAF. AAR was required to calculate and submit the mid-quarter index to the Commission no later than 20 days before the end of each quarter.

By decision served June 14, 1084, the Commission decided to make an adjustment to compesnate for the overstatement of .001 made in the first quarter 1984 RCAF. This adjustment is a reduction of .1 percent in the maximum rate increase allowed for the third quarter of 1984 and will be effective for one quarter only. Therefore, although the third quarter RCAF is set at 1.058, maximum rate increases under these provisions will be limited to .4 percent. Rate increases taken under these provisions for the fourth quarter 1984 or thereafter may include the .1 percent to the extent that the RCAF remains at or exceeds 1.058.

We have reviewed AAR's calculations of the mid-quarter index for the third quarter of 1984 and find that these calculations comply with the guidelines contained in our decision served April 17, 1981.

EX PARTE NO. 290 (SUB-NO. 2) Interim Mid-Quarter Index

Line No. and category	1982 weights (percent)	First quarter 1984 actual	Second quarter 1984 forecast	Third quarter 1984 forecast
1—Salaries, wages and supplements	46.3	147.7	147.3	147.3
2—Fuel	11.3	99.9	98.9	98.4
3—Materials and supplies	10.4	102.3	102.8	104.2
4—Other expense	30.0	115.1	116.3	117.6
5—Weighted average:				
a. 1980=100 (1982 weights)		xxx	127.9	128.5
b. 1980=100 (1980 weights)		127.2	127.3	[1] 127.9
6—Rail Cost Adjustment Factor [2] (10/1/82=100) 120.9=100		[3] 1.052	1.053	1.058

[1] Linking is necessitated by a change of weights from 1980 to 1982. The following formula was used: 3rd Quarter 1984 Index (1982 Weights) 2nd Quarter 1984 Index (1982 Weights) × 2nd Quarter 1984 Index (Linked Index)=Linked Index (1980 Weights to 1982 Weights), or 128.5/127.9×127.3=127.9.

[2] The denominator was rebased to an October 1, 1982 level in accordance with the requirments of the Staggers Rail Act of 1980.

[3] For comparative purposes an RCAF for the first quarter 1984 is shown using actual data. The published RCAF is computed using forecasted data.

This decision will not significantly affect the quality of the human environment or conservation of energy resources. This proceeding will not have a significant adverse impact on a substantial number of small entities.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Dated: June 15, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84–16020 Filed 6–20–84; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30398]

St. Joseph and Grand Island Railway Co. Purchase (Portion)—Exemption—Missouri Pacific Railroad Co.; Amended Notice of Exemption

On February 2, 1984, a notice was served, allowing Union Pacific Railroad Company (UP) to acquire about 6 miles of the Missouri Pacific Railroad Company (MP), using the class exemption at 49 CFR 1180.2(d).

By petition filed May 9, 1984, MP, UP and St. Joseph and Grand Island Railway Company (St. J&GI) seek to amend the prior notice to reflect that the track will be acquired by St. J&GI and operated by UP. The segment of track being conveyed is the same as in the prior notice, the Hastings Subdivision, extending from milepost 547.7 near Muriel to milepost 580.3 at Hastings in Adams County, NE.

The amended proposal, involving more than one common carrier by railroad, is within one corporate family, the Union Pacific System, and comes within that class of transactions described at 49 CFR 1180.2(d), which has been exempted from Commission regulation. The transaction as modified will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of the amended exemption, any employees affected by the acquisition of the line by St. J&GI shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Decided: June 14, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84–16021 Filed 6–20–84; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket Nos. 30435 and 30464]

Union Pacific Railroad Co., et al.—Trackage Rights Exemption—Wallula, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval (1) under 49 U.S.C. 11343 the acquisition by Union Pacific Railroad Company (UP) of trackage rights over a Burlington Northern Railroad Company (BN) line of track from milepost 0.36 near Wallula, WA to milepost 2.39 near Wallula, WA to milepost 2.39 near Wallula Junction, WA and the acquisition by BN of trackage rights over a parallel UP line of track running from and to the same points, subject to standard labor protection, and (2) under 49 U.S.C. 10901 the relocation by BN of its turnout located at point H, shown in UP's appendix to its petition filed with the Commission, to point F (BN milepost 0+2.20) and construction by UP and BN of new crossover tracks from UP milepost 213.37 to BN milepost 0+2.20 and from UP milepost 214.27 to BN milepost 0+1.54.

DATES: This exemption will be effective on July 23, 1984. Petitions to stay must be filed by July 2, 1984, and petitions for reconsideration must be filed by July 11, 1984.

ADDRESSES: Send pleadings referring to Finance Docket Nos. 30435 and 30464 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives: Joseph D. Anthofer (UP), 1416 Dodge Street, Omaha, NE 68179

Douglas J. Babb (BN), 176 East Fifth Street, St. Paul, MN 55101

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: June 13, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-16529 Filed 6-20-84; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (84-60)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council.

DATE AND TIME: July 18, 1984, 9 a.m. to 5:15 p.m., and July 19, 1984, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, 400 Maryland Avenue, Room 7002, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of twenty-five members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, and history, as they relate to NASA's activities.

Visitors will be admitted to the meeting room up to its capacity, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting

Open.

Agenda

July 18, 1984

9 a.m.—Introductory Remarks.
9:15 a.m.—Overview of NASA's FY 1986 Planning.
10:15 a.m.—Aeronautics and Space Technology Planning.
1:15 p.m.—Space Science and Applications Planning.
3:15 p.m.—Report of the Shuttle Science Working Group.
4 p.m.—Space Station Planning.
5:15 p.m.—Adjourn.

July 19, 1984

8:30 a.m.—Space Flight Planning.
9:30 a.m.—Space Tracking and Data Systems Planning.
10:15 a.m.—Discussion of NAC Views of Long Range Planning and Proposed Programs.
1:15 p.m.—Status Reports and New Business.
3 p.m.—Adjourn.

Dated: June 14, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-16512 Filed 6-20-84; 8:45 am]

BILLING CODE 7510-01-M

[Notice (84-59)]

NASA Wage Committee, Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Wage Committee.

DATE AND TIME: June 27, 1984, 1:30 p.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 5092, Federal Building 6, 400 Maryland Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms Deborah C. Green Code NPC, National Aeronautics and Space Administration, Washington, DC. 20546 (202/453-2622).

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the NASA Director of Personnel Programs Division on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, Wage area, pursuant to Pub. L. 92-392. The Committee, Chaired by Mr. William Dey, consists of members. During this meeting the Committee will consider wages data, local reports, recommendations, and statistical analyses and proposed wage schedules reviewed therefrom. Discussions of these matters in a public session would constitute release of confidential commercial and financial information obtained from private industry. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that this meeting will be entirely closed to the public. However, members of the public who may wish to do so, are invited to submit material in writing to the Chairperson concerning matters felt to be deserving of the Committee's attention. This meeting must be held on June 27, 1984, because it is the only day that all Committee members will be available to attend before the July 4, 1984, holiday and the deadline for submitting the wage survey results is early in July.

Type of Meeting

Closed.

Purpose of Meeting

The NASA Wage Committee will recommend to the NASA Wage Fixing Authority the Proposed wage schedule to be adopted.

Dated: June 14, 1984.

Richard L. Daniels,

Deputy Director, Logistics, Management and Information Programs Division, Office of Management.

[FR Doc. 84-16513 Filed 6-20-84; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-254/265]

Commonwealth Edison Co. et al. (Quad Cities Nuclear Power Station, Units 1 and 2); Exemption

I

The Commonwealth Edison Company (CECo/the licensee) is the holder of Facility Operating License Nos. DPR-29 and DPR-30 (the licenses) which authorize operation of the Quad Cities Nuclear Power Station, Units 1 and 2 respectively, located in Rock Island County, Illinois, at steady state reactor core power levels not in excess of 2527 megawatts thermal. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor

containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate the containment. Appendix J was published on February 14, 1973 and in August 1975, each licensee was requested to review the extent to which its facility met the requirements.

On September 26, 1975, Commonwealth Edison Company submitted its evaluation of the Zion Station Unit Nos. 1 and 2, Dresden Station Unit Nos. 1, 2, and 3, and Quad Cities Station Unit Nos. 1 and 2 in which it assessed compliance with the rule and also requested an exemption from certain requirements of the rule. This Exemption addresses only the Quad Cities Nuclear Power Station, Units 1 and 2. The CECo submittal for the Quad Cities Nuclear Power Station, Unis 1 and 2 was supplemented by letters dated September 9, 1976, April 5, 1977, and March 21, 1978. In these submittals, CECo requested that certain test sequences and methodology, components, and penetrations be exempted from Appendix J requirements. The Franklin Research Center, as a consultant to NRR, has reviewed the licensee's submittals and prepared a Technical Evaluation Report (TER) of its findings. The NRC staff has reviewed this TER and, in its Safety Evaluation, the staff has made the following findings. Item 4 below required additional staff evaluation prior to determining the acceptability of the licensee's request.

The exemption requests found to be acceptable are as follows:

1. Section III.A.1.(a) of Appendix J requires, in part, that the Type A test be performed as close as practical to the "as is" condition. When excessive leakage paths are identified during the Type A test, the test is to be terminated and leakage through such paths is to be measured by local leakage rate procedures. After repair or adjustment, a subsequent Type A test is performed.

CECo requested an exemption from this requirement in order to perform local valve leakage rate tests (Type C tests) prior to the integrated primary containment leakage rate test (Type A test) and to back-correct the results of the Type A test with the results of the Type C tests. CECo submitted its methodology and justification that performance of the test sequence in this manner would yield conservative results.

We have reviewed CECo's submittals and have concluded that the licensee's methodology will yield conservative results under certain conditions. Therefore, the licensee's request for exemption from the required sequence of conducting Type A and C tests is acceptable, provided that:

a. When performing Type C tests, the conservative assumption that all measured leakage is in a direction out of the containment is applied, unless the test is performed by pressurizing between the isolation valves; and,

b. When performing Type C tests by pressurizing between the isolation valves, the conservative assumption that the two valves leak equally is applied, where the isolation valves are shut by normal operation without preliminary exercising or adjustment.

2. Section II.H.1 of Appendix J requires, in part, Type C testing of containment isolation valves which provide a direct connection between inside and outside atmospheres of the primary reactor containment under normal operation. CECo requested an exemption frm this requirement in order to exclude certain instrument line manual isolation valves from the Type C test requirements and submitted certain design information as justification.

We have reviewed the licensee's submittals and have determined that the instrument line manual isolation valves are not instrument valves which provide a direct connection between the inside and outside atmospheres of the primary reactor containment under normal operation. In addition, the instrument lines were installed in accordance with Regulatory Guide 1.11, Instrument Lines Penetrating Primary Reactor Containment.

Since these valves remain open in both normal and accident conditions, the licensee's request for exemption from Type C test requirements for the instrument line manual isolation valves is acceptable, provided that the affected instrument lines are not isolated from the containment atmosphere during the performance of a Type A test.

3. Section III.C.2 of Appendix J requires, in part, that Type C testing be performed at the peak calculated accident pressure (Pa). CECo requested an exemption from this requirement for the Main Steam Isolation Valves (MSIVs) to permit testing at 25 psig rather than a Pa (62 psig) and submitted certain design information as justification.

The MSIVs are leak tested by pressurizing between the valves. The MSIVs are angled in the main steam lines in the direction of flow in order to afford better sealing upon closure. Consideration of this feature was included at the design stage of the facility when the original test pressure of 25 psig was established. A test pressure of Pa acting under the inboard disc is sufficient to lift the disc off its seats, and results in excessive leakage into the reactor vessel.

We have reviewed the licensee's submittals and have concluded that testing of the MSIVs at a reduced pressure of 25 psig will result in a conservative determination of the leakage rate through the MSIVs and, therefore, the proposed exemption is acceptable.

4. Section III.D.2 of Appendix J requires, in part, that Type B tests be performed on containment airlocks at six-month intervals at a test pressure of not less than Pa. CECo requested an exemption from the frequency requirement in order to permit testing on a schedule consistent with the plant operating cycle (i.e., each refueling outage). CECo also requested an exemption to conduct the tests at a reduced pressure.

Our contractor's evaluation of the licensee's submittals concluded that the licensee's program related to test frequency and pressure should conform to the requirements of Section III.D.2 of Appendix J. However, subsequent discussions with the licensee regarding test methodology and additional evaluation by the NRC staff of airlock degradation causal factors and operating history have resulted in a reevaluation of our position. The staff agrees with the licensee that without this exemption from the Appendix J requirements, the plant would have to be shutdown and the equipment hatch opened in order to install a strongback on the inner airlock door to perform the test, and subsequent door and hatch openings to remove it. This would result in an outage of several days for the licensee, the cost of replacement power to the public, and could subject operating personnel to additional radiation exposure. In addition, the additional openings of the equipment hatch and airlock provide additional opportunities for inadvertent seal degradation.

As a result, the staff has reevaluated the six-month test requirement and has developed a revised position which is believed to meet the objectives of Appendix J requirements for containment airlock door tests. This revised position still requires the containment airlock to be tested at six-month intervals at a pressure of Pa in accordance with Appendix J, except that this test interval may be extended up to

the next refueling outage (up to a maximum interval between Pa tests of 24 months) if there have been no airlock openings since the last successful test at Pa and a Pa test is performed following the next airlock opening. The intent of the Appendix J requirement is to assure that the airlock door seal integrity is maintained and no degradation has occurred as a result of opening of the airlock doors between testing intervals at Pa. Since there is no adequate basis to conclude that airlock seal integrity is maintained if the airlock doors have been opened between extended testing intervals at Pa, we believe that a reduced pressure test or testing between seals every six months should be performed to assure that the airlock door seal integrity is maintained between the extended testing intervals at Pa. We believe this position satisfies the objectives of the requirements. Therefore, the exemption from the airlock testing frequency requirement of Appendix J requested by the license is granted on condition that the licensee complies with the staff's revised position on airlock testing and should be granted. Upon implementation of this Exemption, the licensee should propose modifications to the Technical Specifications as appropriate.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption requests:

1. Exemption is granted from the requirements of Section III.A.1(a) of Appendix J pertaining to the sequence for conducting Type A and Type C tests provided that:

a. When performing Type C tests, the conservative assumption that all measured leakage is in a direction out of the containment is applied unless the test is performed by pressurizing between the isolation valves; and,

b. When performing Type C tests by pressurizing between the isolation valves, the conservative assumption that the two valves leak equally (and therefore one half of the measured leakage is in a direction out of the containment) is applied, where the isolation valves are shut by normal operation without preliminary exercising or adjustment.

2. Exemption is granted from the requirements of Section II.H.1 of Appendix J pertaining to the Type C testing of instrument lines provided that the affected instrument lines are not isolated from the containment atmosphere during the performance of a Type A test.

3. Exemption is granted from the requirements of Section III.C.2 of Appendix J pertaining to the Type C testing of the main steamline isolation valves at a test pressure of Pa. Testing at a reduced pressure of 25 psig is acceptable due to the unique design of the valves.

4. Exemption is granted from the requirements of Section III.D.2 of Appendix J pertaining to the test frequency for conducting Type B tests at six-month intervals at a test pressure of not less than Pa. The test interval may be extended to the next refueling outage, but in no case shall exceed 24 months from the last test at Pa, provided that there have been no airlock openings since the last successful test at Pa and a Pa test is performed following the next airlock opening. A reduced pressure test or testing between seals every six months shall be performed to assure that airlock door seal integrity is maintained between extended testing intervals at Pa.

The NRC staff has determined that the granting of these exemptions will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 12th day of June, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-16011 Filed 6-20-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-254/265]

Commonwealth Edison Co. et al. (Quad Cities Nuclear Power Station, Unit Nos. 1 and 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Commonwealth Edison Company (CECo) (the licensee) is the holder of Facility Operating License Nos. DPR-29 and DPR-30 which authorize the operation of the Quad Cities Nuclear Station, Unit Nos. 1 nd 2 (the facility) at steady-state power levels not in excess of 2511 megawatts thermal. The facility is two boiling water reactors (BWRs) located in Rock Island County, Illinois.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

CECo responded to Generic Letter 82-33 by letter dated April 14, 1983. By letters dated July 20 and 28, August 25, November 15, and December 15, 1983, CECo modified several dates as a result of negotiations with the NRC staff. In these submittals, CECo made commitments to complete the basic requirements. The following Table summarizing CECo's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by CECo.

CECo's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain

requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed CECo's April 14, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these negotiations, the licensee modified certain dates by letters dated July 20 and 28, August 25, November 15, and December 15, 1983. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of CECo's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in the Attachment to this order in the manner described in CECo's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concernng this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Complete.
	1b. SPDS fully operational and operators trained	June 1, 1985.[1]
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	May 1, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Aug. 1, 1985.
	3b. Implement (installation or (upgrade) requirements	Provide an implementation schedule by Feb. 1, 1986.
4. Upgrade Emergency Operating Procedures (EOP's)	4a. Submit a Procedures Generation Package to the NRC	Oct. 30, 1984.
	4b. Implement the upgraded EOP's	Oct. 30, 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Complete.[2]
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	Jan. 30, 1985.[2]

[1] Consistent with Item I.a.1 and I.b of Attachment A of the November 15, 1983 letter from Cordell Reed to Harold Denton.
[2] The modifications and construction of the structures are finished but the TSC and EOF are not considered to be fully functional until the changes resulting from the R.G. 1.97 and human factors reviews are implemented and all testing and training are completed.

[FR Doc. 84–16612 Filed 6–20–84; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–220]

Niagara Mohawk Power Corp. et al. (Nine Mile Point Nuclear Station, Unit No. 1); Order Confirming Licensee Commitments on Emergency Response Capability

I

The Niagara Mohawk Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–63 which authorizes the operation of the Nine Mile Point Nuclear Station, Unit No. 1 (the facility) at steady-state power levels not in excess of 1850 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Oswego County, New York.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requiremetns to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG –0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic

requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and intergration of emergency response activities including training.

III

Niagara Mohawk responded to Generic Letter 82–33 by letter dated April 15, 1983. by letter dated July 7, 1983, Niagara Mohawk modified a date as a result of negotiations with the NRC staff. By letter dated September 30, 1983, Niagara Mohawk provided a firm completion date for the final summary report and schedule for the detailed control room designed review. In these submittals, Niagara Mohawk made commitments to complete the basic requirements. By letter dated February 1, 1984, Niagara Mohawk provided the following: firm completion dates for the fully operational Safety Parameter Display System and Emergency Operations Facility; informed the NRC the Operational Support Center is fully functional; and committed to providing a firm completion date for the Technical Support Center by May 1, 1984. The following Table summarizing Niagara Mohawk's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by the licensee.

Niagara Mohawk's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reveiwed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed Niagara Mohawk's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these negotiatins, the licensee modified certain dates by letters dated July 7 and September 30, 1983 and February 1, 1984. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of Niagara Mohawk's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in the Attachment to this order in the manner described in Niagara Mohawk's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Jan. 1, 1984 (submitted).
	1b. SPDS fully operational and operators trained	1986 refueling outage.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Oct. 1, 1983 (submitted).
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Jan. 1, 1985.
2. Regulatory Guide 1.97—Application to Emergency Response Facilities	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	April 1, 1984 (submitted).
	3b. Implement (installation or upgrade) requirements	Complete.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a procedures generation package to the NRC	March 1, 1984 (submitted).
	4b. Implement the upgraded EOP's	1986 refueling outage.
5. Emergency Response Facilities	5a. Technical support center fully functional	Submit a firm completion date by May 1, 1984 C.
	5b. Operational support center fully functional	Complete Feb. 1, 1984.
	5c. Emergency operations facility fully functional	Dec. 31, 1985.

[FR Doc. 84–16613 Filed 6–20–84; 8:45 am]

BILLING CODE 1990–01–M

[Docket No. 50–263]

Northern States Power Co. et al. (Monticello Nuclear Generating Plant); Order Confirming Licensee Commitments on Emergency Response Capability

I

Northern States Power Company (NSP) (the licensee) is the holder of Facility Operating License No. DPR–22 which authorizes the operation of the Monticello Nuclear Generating Plant (the facility) at steady-state power levels not in excess of 1670 megawatts thermal. The facility is a boiling water reactor (BWR) located in Wright County, Minnesota.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational

Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

NSP responded to Generic Letter 82–33 by letter dated April 15, 1983. In a meeting on July 20, 1983, these dates were negotiated between NRC and NSP staffs. In a letter dated November 11, 1983, NSP committed to the negotiated dates. In this submittal, NSP made commitments to complete the basic requirements. In letters dated December 28 and 30, 1983, and March 30, 1984, NSP provided additional information and made additional commitments to meet all requirements. The following Table summarizing NSP's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by NSP during the meeting.

NSP's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed NSP's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. The NRC staff finds that the dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of NSP's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in the Attachment to this order in the manner described in NSP's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12 day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	May 31, 1984: C Implementation Plan December 31, 1984: Safety Analysis Report.
	1b. SPDS fully operational and operators trained	Before startup of Cycle 12: SPDS equipment installed, software, operator training and preoperational training completed.
	6 Mos. after startup of Cycle 12: Operational testing of SPDS w/followup corrective actions completed..	
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	July 31, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Complete.
	3b. Implement (installation or upgrade) requirements	Before startup of Cycle 12.
4. Upgrade Emergency Operating Procedures (EOPs)	4a Submit a Procedures Generation Package to the NRC	July 31, 1984
	4b. Implement the upgraded EOP's	Sept. 30, 1985: EOP Implementation w/o SPDS.
	6 mos. after startup of Cycle 12: EOP Implementation w/ SPDS..	

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737—Continued

Title	Requirement	Licensee's completion schedule (or status)
8. Emergency Response Facilities	5a. Technical Support Center fully functional	Dec. 31, 1983: (Completed) Complete w/meteorological data and offsite dose assessment.
	Within 6 mos. after startup of Cycle 12: later enhancement by SPDS.	
	Before startup of Cycle 12: Further enhancement by R.G. 1.97.	
	5b. Operational Support Center fully functional	Complete and fully functional.
	5c. Emergency Operations Facility fully functional	Same as response to 5a (above).

[FR Doc. 84-16014 Filed 6-20-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York et al. (James A. FitzPatrick Nuclear Power Plant); Order Confirming Licensee Commitments on Emergency Response Capability

I

Power Authority of the State of New York (PASNY) (the licensee) is the holder of Facility Operating License No. DPR-59 which authorizes the operation of the James A. FitzPatrick Nuclear Power Plant (the facility) at steady-state power levels not in excess of 2436 megawatts thermal. The facility is a boiling water reactor (BWR) located in Oswego County, New York.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

PASNY responded to Generic Letter 82-33 by letter dated April 15, 1983, and supplemented their response by letters dated June 30, 1983 and August 24, 1983. In these submittals, PASNY made commitments to complete the basic requirements. The following Table summarizing the licensee's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by the licensee.

PASNY's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed the licensee's April 15, 1983 and June 30, 1983 letters and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee modified certain dates by letter dated August 24, 1983. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of PASNY's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall: Implement the specific items described in the Attachment to this order in the manner described in PASNY's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	December 1, 1984.
	1b. SPDS fully operational and operators trained	Submit a firm completion date by December 1, 1984.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Completed (Submitted on October 24, 1983).
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	November 15, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	December 1, 1984.
	3b. Implement (installation or upgrade) requirements	Submit a firm completion date by December 1, 1984.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Completed (Submitted on June 30, 1983).
	4b. Implement the upgraded EOPs	December 31, 1984.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Submit a firm completion date by December 1, 1984.
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	June 28, 1985.

[FR Doc. 84–16615 Filed 6–20–84; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–259]

Tennessee Valley Authority et al. (Browns Ferry Nuclear Plant, Unit No. 1); Order Confirming Licensee Commitments on Emergency Response Capability

I

The Tennessee Valley Authority (TVA) (the licensee) is the holder of Facility Operating License No. DPR–33 which authorizes the licensee to operate the Browns Ferry Nuclear Plant, Unit No. 1 (the facility) at power levels not in excess of 3293 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Limestone County, Alabama.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

TVA responded to Generic Letter 82–33 by letters dated April 15, 1983, November 29, 1983 and February 6, 1984. In these submittals, TVA made commitments to complete the basic requirements. The following Table summarizing TVA's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by TVA.

TVA's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed TVA's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of TVA's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall: Implement the specific items described in the Attachment to this order in the manner described in TVA's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the Federal Register. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12 day of June 1984.

For the Nuclear Regulatory Commission.
Darrell G. Eisenhut,
Director, Division of Licensing, Office of Nuclear Reactor Regulaton.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	July 30, 1984.
	1b. SPDS fully operational and operators trained	Submit a firm completion date by July 30, 1984.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Submit summary report of completed reviews by December 31, 1986.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met	April 30, 1984C.
	3b. Implement (installation or upgrade) requirements	Submit a firm completion date by April 30, 1984C.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Submit a firm completion date by December 31, 1984.
	4b. Implement the upgraded EOPs	Submit a firm completion date by March 31, 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Complete except for data systems which are dependent on SPDS
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	Complete.

[FR Doc. 84-16616 Filed 6-20-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-260]

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit No. 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

The Tennessee Valley Authority (TVA) (the licensee) is the holder of Facility Operating License No. DPR-52 which authorizes the licensee to operate the Browns Ferry Nuclear Plant, Unit No. 2 (the facility) at power levels not in excess of 3293 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Limestone County, Alabama.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the times identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

TVA responded to Generic Letter 82-33 by letters dated April 15, 1983, November 29, 1983 and February 6, 1984. In these submittals, TVA made commitments to complete the basic requirements. The following Table summarizing TVA's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by TVA.

TVA's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed TVA's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of TVA's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall: Implement the specific items described in the Attachment to this order in the manner described in TVA's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should

also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	June 30, 1984.
	1b. SPDS fully operational and operators trained	Submit a firm completion date by June 30, 1984.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Submit summary report of completed reviews by December 31, 1986.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	April 30, 1984C.
	3b. Implement (installation or upgrade) requirements	Submit a firm completion date by April 30, 1984C.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Submit a firm completion date by December 31, 1984.
	4b. Implement the upgraded EOPs	Submit a firm completion date by March 31, 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Complete except for data systems which are dependent on SPDS.
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	Complete.

[FR Doc. 84–16617 Filed 6–20–84; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–296]

Tennessee Valley Authority et al. (Browns Ferry Nuclear Plant, Unit No. 3); Order Confirming Licensee Commitments on Emergency Response Capability

II

The Tennessee Valley Authority (TVA) (the licensee) is the holder of Facility Operating License No DPR–68 which authorizes the licensee to operate the Browns Ferry Nuclear Plant, Unit No. 3 (the facility) at power levels not in excess of 3293 megawatts thermal. The facility is a boiling water reactor (BWR) located at the licensee's site in Limestone County, Alabama.

I. Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basis requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

TVA responded to Generic Letter 82–33 by letters dated April 15, 1983, November 29, 1983 and February 6, 1984. In these submittals, TVA made commitments to complete the basic requirements. The following Table summarizing TVA's schedular commitments or status was developed by the NRC staff from the Generic Letter and the Information provided by TVA.

TVA's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation date for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed TVA's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of TVA's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall: Implement the specific items described in the Attachment to this ORDER in the manner described in TVA's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the

Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	June 30, 1984.
	1b. SPDS fully operational and operators trained	Submit a firm completion date by June 30, 1984.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Submit summary report of completed reviews by December 31, 1986.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	April 30, 1984C.
	3b. Implement (installation or upgrade) requirements	Submit a firm completion date by April 30, 1984C.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Submit a firm completion date by December 31, 1984.
	4b. Implement the upgraded EOPs	Submit a firm completion date by March 31, 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Complete except for data systems which are dependent on SPDS.
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	Complete.

[FR Doc. 84-16618 Filed 6-20-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-142 OL (Proposed Renewal of Facility License)]

The Regents of the University of California (UCLA Research Reactor)

June 18, 1984.

Please take notice that the evidentiary hearings in the above proceeding scheduled to take place beginning on June 21, 1984, in the NRC Hearing Room, fifth floor, 4350 East-West Highway, Bethesda, Maryland, and continuing on June 25, 1984, in the Court of Claims, eighth floor, Federal Building, 300 North Los Angeles Street, Los Angeles, California, are hereby cancelled.

It is so ordered.

For the Atomic Safety and Licensing Board.

John H. Frye III,

Chairman, Administrative Judge.

[FR Doc. 84-16619 Filed 6-20-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp. et al. (Vermont Yankee Nuclear Power Station); Order Confirming Licensee Commitments on Emergency Response Capability

I

Vermont Yankee Nuclear Power Corporation (VYNPC) (the licensee) is the holder of Facility Operating License No. DPR-28 which authorizes the operation of the Vermont Yankee Nuclear Power Station (the facility) at steady-state power levels not in excess of 1593 megawatts thermal. The facility is a boiling water reactor (BWR) located in Windham County, Vermont.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

VYNPC responded to Generic Letter 82-33 by letter April 19, 1983. By letters dated August 4 and 12, and November 16, 1983, VYNPC modified several dates as a result of negotiations with the NRC staff. In these submittals, VYNPC made commitments to complete the basic requirements. The following Table summarizing VYNPC's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by VYNPC.

VYNPC's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule

for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed VYNPC's April 19, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these negotiations, the licensee modified certain dates by letters dated August 4 and 12, 1983. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of VYNPC's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall: Implement the specific items described in the Attachment to this order in the manner described in VYNPC's submittals noted in Section III herein no later the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12 day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	February 1, 1985.
	1b. SPDS fully operational and operators trained.	Submit a firm completion date by February 1, 1985.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	May 1, 1984.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Submit a firm completion date by July 1, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	August 1, 1984.
	3b. Implement (installation or upgrade) requirements	Submit a firm completion date by August 1, 1984.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	July 1, 1984.
	4b. Implement the upgraded EOPs	February 1, 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Fully functional except that data acquisition will be complete when SPDS is complete.
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	November 1, 1985.

[FR Doc. 84–16620 Filed 6–20–84; 8:45 am]
BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Coal Options Task Force; Regular Meeting

AGENCY: Coal Options Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Approval of minutes of the first meeting
- Review of the activities of the Option Steering Committee, State Options Task Force, Hydropower Options Task Force and Cogeneration Options Task Force
- Review of Bonneville findings regarding the implications of The Clear Air Act and Clean Water Act on the options concept
- Review of PNUCC thermal resource data base, update activities in relation to smaller plant sizes, cycling and consideration of advanced technologies.
- Comment on the findings of the Battelle options report with respect to coal plants
- Review of Bonneville work regarding advanced coal technologies
- Review of Bonneville work regarding the effect of NEPA on the options concept
- Arrangements for reviews of the current status of the Creston plan and a second unit at Boardman
- New business
- Public comment
- Schedule next meeting of the Task Force

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Coal Options Task Force.

DATE: June 29, 1984. 9:00 a.m.

ADDRESS: The meeting will be held at the Council Conference Room at 700 SW., Taylor, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jeff King (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84–16543 Filed 6–20–84; 8:45 am]
BILLING CODE 9000–00–M

River Assessment Task Force; Regular Meeting

AGENCY: River Assessment Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council)
Status: Open.

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- 201 Goals Briefing
- Strategy for Resident Fish and Wildlife
- State/Regional Structure for Non-Fish and Wildlife Assessment
- Category III Alternatives
- Integration of River Assessment Anadromous Fish Results with 201 Goals
- Other Business

SUMMARY: The Northwest Power Planning Council hereby annouces a forthcoming meeting of its River Assessment Task Force.

DATE: June 26, 1984. 9:00 a.m.

ADDRESS: The meeting will be held at the Council Conference Room at 700 SW. Taylor, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet (503) 222–5161.

Edward Sheets,
Executive Director.

[FR Doc. 84–16544 Filed 6–20–84; 8:45 am]
BILLING CODE 0000–00–M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan: Peabody Coal Co. et al.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted Peabody Coal Company an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974. A notice of the request for exemption was published in the **Federal Register** on April 6, 1984 (49 FR 13784). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254–4860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), a sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser furnish a bond or escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for an exemption if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of an exemption request in the **Federal Register**, and to give interested parties an opportunity to comment on the proposed exemption.

Decision

On April 6, 1984 (49 FR 13784), the PBGC published a notice of the pendency of a request from Peabody Coal Company ("Peabody"), Armco, Inc. ("Armco"), and Big Mountain Coals, Inc. ("Big Mountain"), for an exemption from the bond/escrow requirement of ERISA section 4204(a)(1)(B), in connection with the purchase by Peabody of certain assets of Armco and all of Big Mountain's coal production properties. The sale contract was signed on January 20, 1984. Big Mountain is a wholly-owned subsidiary of Armco. No comments were received in response to the notice.

In connection with the sale, Peabody assumed Armco's and Big Mountain's obligation, under the National Bituminous Coal Wage Agreement of 1981, to contribute to the United Mineworkers of America 1950 Pension Plan ("1950 Plan") and the United Mineworkers of America 1974 Pension Plan ("1974 Plan").

Both the 1950 Plan and the 1974 Plan have adopted amendments to include the text of section 4204 (a) and (b), which otherwise would not apply to these plans under ERISA section 4211(d)(2). Section 4204 (c) and (d) apply as a matter of law. *U.S. Steel Mining Co., Inc.*, 49 FR 9037, 9038 (March 9, 1984).

Armco's and Big Mountain's estimated withdrawal liability, and the estimated amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B), with respect to each plan are as follows:

	Withdrawal liability	Bond/escrow amount
1950 plan:		
Armco	$15,379,725	$3,496,254
Big Mountain	3,385,674	550,504
Subtotal	18,765,399	4,046,758
1974 plan:		
Armco	14,210,774	2,429,696
Big Mountain	2,899,760	403,053
Subtotal	17,110,534	2,832,749
Total	25,875,933	6,879,507

All of the bond amounts are based on the average annual contributions that Armoc and Big Mountain were required to make to the plans for the three plan years preceeding the sale.

Peabody's average net income after taxes for the fiscal years 1981–1983, reduced by the interest expense incurred with respect to the sale and payable in the fiscal year following the sale, was over $100 million.

Based on the facts of this case and the representations and statements made in connection with the exemption request, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan.

Therefore, the PBGC hereby grants the request for an exemption from the b ond/escrow requirement of section 4204(a)(1)(B) with respect to Peabody's purchase of assets from Armco and Big

Mountain. The granting of such an exemption does not constitute a determination by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). That determination is made by the plan sponsor.

Issued at Washington, D.C. on this 18th day of June 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-16627 Filed 6-20-84; 8:45 am]

BILLING CODE 7708-01-M

Pendency of Request for Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan: J.J.W. Trucking, Ltd., d.b.a. James J. Williams

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation ("PBGC") has received a request from J.J.W. Trucking Ltd., for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for a period of five plan years beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

DATE: Comments must be submitted on or before August 6, 1984.

ADDRESSES: All written comments (at least three copies) should be addressed to: Director, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. The request for exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1384, provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) the purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred; and

(C) the contract of sale provides that if the purchaser withdraws from the plan within first five plan years beginning after the sale and fails to pay its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the requirements of section 4204(a)(1)(B) does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from J.J.W. Trucking, Ltd., dba James J. Williams (formerly Michaud-Wyman, Inc.) ("Michaud-Wyman") to waive the bond/escrow requirement of ERISA section 4204(a)(1)(B). Michaud-Wyman represents, among other things, as follows:

1. Pursuant to an asset purchase agreement with J.D.R. Enterprises, Inc. (formerly J.J.W. Trucking, Ltd., dba James J. Williams) ("J.D.R."), Michaud-Wyman purchased substantially all of the assets of J.D.R. The agreement recited an effective date of July 1, 1983; the agreement was made, and the sale closed, on August 30, 1983,

2. In connection with the sale, Michaud-Wyman has assumed J.D.R.'s responsibilities, under a collective bargaining agreement with Local 690 of the Western Conference of Teamsters, to contribute to the Western Conference of Teamsters Pension Trust Fund (the "Fund") for substantially the same number of contribution base units for which J.D.R. had an obligation to contribute.

3. The amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) is $49,832.71 (the average annual contributions of J.D.R. for the three plan years preceding the sale). J.D.R.'s potential withdrawal liability to the Fund is estimated to be $67,010.72.

4. Michaud-Wyman is a new corporation, and thus is unable to submit financial statements in compliance with PBGC regulation (29 CFR § 2643.2(d)(7)). It did submit unaudited financial statements for its short first year of operations ending December 31, 1983, showing a net loss of $25,111.25 and net assets of $19,888.75.

5. Michaud-Wyman stated that the request for an exemption should be granted on a *de minimis* basis. The average annual contributions made by all employers to the Fund for the three plan years preceding the plan year in which the sale occurred was $470,590,339. Thus, the amount of the bond/escrow is about one-hundredth of one percent of the amount of employer contributions.

6. Michaud-Wyman has sent a copy of its request to the Fund and to the collective bargaining representative of J.D.R.'s former employees

Comment

All interested persons are invited to submit written comments on the pending exemption to the above address, on or before August 6, 1984. All comments will be made a part of the record. Comments received, as well as the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, D.C., on this 18th day of June, 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-16628 Filed 6-20-84; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549.

New

EDGAR
Form S-E (No. 270-289)
Transmittal Form for Electronic Format Documents (No. 270-290)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance two forms under the Securities Act of 1933 and the Securities Exchange Act of 1934 for use by registrants voluntarily participating in the EDGAR Pilot Project. The first, Form S-E, will be used by new registrants to file paper copies of exhibit documents that cannot be transmitted electronically. The second, the Transmittal Form for Electronic Format Documents, will accompany tapes and diskettes submitted to the Commission.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

George A. Fitzsimmons,

Secretary.

June 15, 1984.

[FR Doc. 84-16634 Filed 6-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13988; 812-5775]

Federal Life Insurance Company, et al.; Application for an Order of Exemption Pursuant to Section 6(c) of the Act From the Provisions of Section 12(d)(1)

June 15, 1984.

Notice is hereby given that Federal Insurance Company ("Federal Life"); 3750 West Deerfield Road, Riverwoods, Illinois, 60015, Variable Annuity Account C of Federal Life, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust ("Account") Portfolio of Bond Shares, Inc., Portfolio of Income and Growth Fund Shares, Inc., and Portfolio of Mutual Fund Shares, Inc., management investment companies registered under the Act (collectively, "Portfolio Funds"); and FED Mutual Financial Services, Inc., underwriter for the Account (all parties collectively, "Applicants"), filed an application on February 17, 1984 for an order pursuant to Section 6(c) of the Act granting an exemption from the provisions of Section 12(d)(1) to the extent necessary to permit the transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein in support of the requested relief pursuant to Section 6(c), which are summarized below, and are referred to the Act for a statement of the relevant provisions.

The Account proposes to issue variable annuity contracts funded by the Portfolio Funds which, in turn, will invest solely in shares of publicly available mutual funds. The Portfolio Funds will charge no sales load and will invest solely in shares of mutual funds which also charge no sales load and which have the same investment objectives as the respective Portfolio Funds. Furthermore, Applicants state that the Portfolio Funds will invest in no mutual fund which is subject to an asset charge for distribution expenses pursuant to Rule 12b-1 in excess of .25%, on an annual basis, or for which selling dealers are paid a commission for selling shares. Should a mutual fund adopt an asset charge pursuant to Rule 12b-1 in excess of .25%, the Portfolio Funds will liquidate any positions in such fund as soon as practicable thereafter. An advisory fee of .5% of average total net assets will be deducted from the Portfolio Funds, and a mortality and expense risk charge of no more than .95% will be decucted from contract values. In addition, Applicants will deduct a maximum contingent deferred sales load ("CDSL") of 6% of purchase payments.

In support of their application, Applicants assert that they could rely on Section 12(d)(1)(F), and will comply therewith, except for subsection (ii) thereof which would limit the Account to a sales load of 1½% of purchase payments. In establishing that the requested relief meets the standards of Section 6(c) of the Act, Applicants assert, *inter alia*, the following general legal and policy grounds: (1) Section 12(d)(1)(F) contemplates a layering of sales loads aggregating to no more than 10% (8½% plus 1½%) of purchase payments, and Applicants propose an aggregate sales load of no more than 6% of purchase payments; (2) since the CDSL will be imposed in a diminishing amount and only upon withdrawal, and because annuity contracts are by their nature long term investments, a significant majority of contractholders will not be subject to any sales load; (3) the Portfolio Funds will perform a valuable service to contract-owners analogous to a switching service; and (4) contractholders will have access to large, well-managed, publicly available mutual funds to fund their contracts, notwithstanding certain tax determinations by the Internal Revenue Service. Applicants also assert that complying with the provisions of Section 12(d)(1)(F) (except for (ii) as noted above) and the above representations will resolve the concerns Section 12(d)(1) was intended to address: pyramiding of investment company control, excessive advisory fees, and duplication of administrative charges and sales loads.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 6, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should

be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by cetificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16639 Filed 6-20-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21058; SR-Amex-84-14]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Temporary Accelerated Approval of Proposed Rule Change

June 15, 1984.

The American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, NY 10006; submitted on May 21, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to enhance its existing AUTOPER system with an odd-lot feature known as AUTOPER ODD-LOT for the execution of market day orders under 100 shares.[1] On June 8, 1984, Amex Submitted Amendment No. 1 to the proposed rule change to request temporary accelerated approval, pending final Commission action, in order to permit the Exchange to commence the AUTOPER ODD-LOT program in the equities of up to three specialist units. According to the Exchange, this will enable Amex to make immediately available to its membership and the investing improved accuracy of processing of odd-lot orders in those equities.

The proposed system would process applicable odd-lot orders whether received before or after the market opening. The orders would be automatically accumulated by security and routed to the applicable specialist for display on his AUTOPER touch-screen. The specialist could execute the orders via the touch-screen or remove the orders and execute via standard card input. The system automatically will total daily odd-lot volume for each security and apply odd-lot differentials, if any (as determined by the specialist), to each security. The Amex states that the proposed AUTOPER ODD-LOT will: (i) Increase the order handling capability of the Amex's automated execution system, and (ii) provide for more accurate executions and reports of odd-lot orders.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change on a temporary accelerated basis prior to the thirtieth day after the date of publication of notice of filing thereof, in that Amex is currently ready to implement its AUTOPER ODD-LOT system on a limited basis, and has indicated that its system will result in improved accuracy of processing odd-lot orders.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16633 Filed 6-20-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21059; File No. SR-CBOE-83-52]

Self-Regulatory; Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc.

June 15, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1984, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would amend Article VI, ("Board of Directors") Sections 6.1 and 6.3(d) of the CBOE's Constitution. The proposed amendment to Section 6.1 ("Number, Election and Term of Office of Directors") provides that the terms of office of directors will expire at the first regular meeting of the Board of Directors following the annual election meeting. In its filing, the Exchange has noted that this amendment will serve to assure that the terms of directors are consistent with the terms of the members of the Executive and other Exchange Committees. The Exchange is also proposing to add a new Section 6.3(d) ("Resignation, Disqualification, and Removal of Directors") to provide that if, for any reason, the number of floor directors falls below six, because of a failure of that director to maintain the qualifications for election to the Board, as specified in Section 6.1 of the Constitution, any vacancy will be filled at the next scheduled meeting of the Board of Directors with a member who qualifies as a floor director. According to the CBOE, the purpose of the proposed change to Section 6.3(d) is to insure that there are always a minimum of six floor directors, consistent with Section 6.1 of the Constitution which provides for the election of six directors. In addition, the Exchange is proposing to amend Section 6.3(d) to require that firm and public directors shall maintain the qualifications for election to those offices and provides that the Board of Directors will be the sole judge as to whether qualifications have been maintained. The Exchange has noted that this amendment serves to impose a maintenance of qualifications requirement on all directors, rather than only on floor directors.[1] The Exchange states that the proposed rule change is consistent with Section 6 of the Act, in that it would provide for an orderly transition in the terms of directors, as well as insuring that a fair representation of floor members would be maintained on the Board.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publicaiton in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-83-62.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the

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[1] Notice of the proposed rule change was provided by issuance of a Commission release (Securities Exchange Act Release No. 21006, May 31, 1984), and by publication in the **Federal Register** (49 FR 24190, June 12, 1984).

[1] This provision was requested by the Commission in order to impose a uniform standard on all directors and was submitted by the CBOE to the Commission as Amendment No. 2, filed with the Commission on May 3, 1984.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16640 Filed 6-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21054; SR-MSRB-84-8]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

June 15, 1984.

The Municipal Securities Rulemaking Board ("MSRB"), 1150 Connecticut Avenue, NW., Washington, D.C. 20036, on March 16, 1984, submitted copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend the procedures under MSRB rule G-12(g) for reclamation of interdealer deliveries of municipal securities.

The proposed rule change would revise rule G-12(g) to describe the procedures and effects of a reclamation in greater detail. (In general, a reclamation is a return of securities received by a party because improper securities were delivered or delivery was in some other sense incomplete.) The rule change makes clear that (1) a reclamation is accomplished by the recipient returning securities previously delivered, while a demand for reclamation involves a request for return from the original delivering party; (2) that only those securities on which a delivery problem exists need be returned to accomplish a reclamation; (3) that settlement of a reclamation shall be accomplished by substituting securities in "good delivery" form for those received on the reclamation or by return of the money previously paid at the time of the delivery being reclaimed; and (4) that reclamation reopens a "fail to deliver" on the reclaimed transaction which may be subsequently completed by a delivery of securities in "good delivery" form or by completion of a close-out procedure.

The proposed rule change also makes several revisions to the existing rules for reclamation of securities reported to be lost, stolen, fraudulent, or counterfeit. The proposed rule change allows dealers to reclaim a portion of securities reported to be lost, stolen, counterfeit, or fraudulent without waiting to reclaim all such securities at once. The dealer would be required to provide at the time of reclamation some evidence of the report it received that the securities have been lost, stolen, fraudulent, or counterfeit, and to provide evidence that the incident of loss or theft had occurred prior to the date of the delivery being reclaimed.

The MSRB has proposed this change in rule G-12(g) to provide additional guidance concerning reclamations, in part codifying Board interpretative positions. The proposed rule change also modifies the rule's application to lost, stolen, fraudulent, or counterfeit securities. The changes are intended to clarify reclamation procedures and strengthen protections against traffic in lost, stolen, fraudulent, or counterfeit securities.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 20815, published in the **Federal Register** (49 FR 20397, May 14, 1984). The only comment received by the Commission was a copy of a comment submitted to the MSRB regarding an earlier exposure draft of the proposed rule change. This comment generally supported the proposed rule change; the two specific issues raised in the comment on the exposure draft of the rule change were addressed for the most part in the final proposed rule change filed by the MSRB.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16637 Filed 6-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21057; File No. SR-MSTC-84-04]

Self-Regulatory Organizations; the Midwest Securities Trust Co.; Order Approving Proposed Rule Change

June 15, 1984.

On May 16, 1984, the Midwest Securities Trust Company ("MSTC") filed with the Commission a proposed rule change that would amend MSTC's By-laws to increase the number of MSTC directors. Specifically, the proposed rule change would authorize MSTC to increase its Board of Directors from seventeen to eighteen. The additional director would be a qualified individual from the business community. Notice of the proposed rule change was given in Securities Exchange Act Release No. 20968.[1] No letters of comment were received.

The Commission believes that this proposed rule change is consistent with the Act in general and with Section 17A(a)(3)(C) in particular. Specifically, the Commission believes that increasing the number of MSTC directors to 18 continues to provide for fair representation of participants in the selection of MSTC directors.

Accordingly, it is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-MSTC-84-04) be, and hereby is, approved.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16635 Filed 6-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21048; File No. SR-NYSE-84-22]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Options on a Doubled NYSE Composite Index

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 12, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 49 FR 21588 (May 22, 1984).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides for Exchange trading of options on an index having twice the value of the NYSE Composite Index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*—The Exchange proposes to offer a second contract based on its composite index. The new contract will better meet the needs of some market participants by translating a change in the NYSE Composite Index into greater dollar changes than does the currently-traded NYA Option.

The NYA Option is particularly well-suited for retail customers, since it meets their desires for relatively lower premium costs and for relatively smaller margin deposits. These two benefits derive from the relatively smaller value of the option's underlying index: when multiplied by the standard multiplier of 100, the smaller index value creates a relatively smaller contract size. The NYA Option's high "retail" participation, approximately 35 percent, demonstrates its utility to that group of market participants.

The relatively smaller index value of the NYA Option necessarily results in a relatively smaller dollar change when the market moves and in premiums that are less responsive to market changes. Moreover, because the industry has established five-point strike-price intervals for index options, the NYA Option's smaller index value also means that the five-point interval covers a relatively larger percentage of the index value.[1]

[1] Halving the "nominal" strike-price interval to 2½ would achieve the same effect. However, a 2½-point strike-price interval would not translate index value changes into greater premium sensitivity and would require non-standard quotation device symbols.

The interest of some market participants in greater premium sensitivity can be understood intuitively. When the market moves, a dollar invested in the new contract will yield twice the growth—or shrinkage—as one invested in the NYA Option. The new contract will permit more finely-tuned investment, hedging and trading strategies.

Strike-price intervals convering a smaller percentage of the index value will create premiums that are more responsive to changes in the index value in a second respect. Trading in the NYA Option has shown that near-term series with strike prices close to the index value have the greatest open interest and volume. The market depth and liquidity in such series lead to narrower market quotations—quotations that more accurately reflect the current market.

These characteristics are, of course, desirable for a variety of trading strategies. Some of these strategies bring into play series that are further in, or out-of, the money, thereby fueling their liquidity. The cumulative result is a deeper, more liquid market overall.

The Exchange expects the creation of a second contract based upon the same index to have beneficial synergistic effects. The Second contract will provide retail customers with a wider range of opportunities while creating arbitrage opportunities that can be expected to enhance the overall liquidity of the market.

(2) *Statutory Basis*—The statutory basis for the proposed rule change is section 6(b)(5) of the 1934 Act. Trading of options on a doubled index will provide members of the public with useful new hedging and trading opportunities under a scheme of regulations designed to facilitate the maintenance of a fair and orderly market, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

The new contract will trade under the same regulatory framework as the currently-traded NYA Option. Accordingly, the Exchange's more extensive statements of statutory basis in regard to the NYA Option applies with equal force to the new contract. The Exchange's filing therefore incorporates those statements. Please see File No. SR–NYSE–82–2.

(B) Self Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change has been approved unanimously by the NYSE Options Sub-Committee on Market Performance, which is comprised of individuals representing member organizations and a broad cross-section of the investment community. The Exchange does not intend to solicit further comments regarding this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 12, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 14, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16635 Filed 6-20-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20979; File No. SR-NYSE-84-20]

Self-Regulatory Organizations; Proposed Rule Changes by New York Stock Exchange, Inc.; Relating to Changes to Rules 601, 603, 606, 609, 612, 626 and 630 of the Board of Directors New Rule 634

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

It is filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B) and (C) below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) *Purpose of Proposed Rule Changes.* The purposes of the proposed rule changes are to:

- Permit the simplified small claims procedures to be used in disputes involving up to $5,000.
- Permit the filing of certain cases even though more than six years shall have elapsed from the occurrence of the event giving rise to the dispute.
- Permit additional peremptory challenges in certain cases and specifying that there are unlimited challenges for cause.
- Permit the arbitrators to bar certain defenses at hearings when they have not been pleaded.
- Permit the Arbitration Director to make preliminary determinations regarding severance.
- Permit amendments after a responsive pleading has been filed.
- Raise fees in selected cases, and
- Impose a surcharge in cases where a member organization is a claimant against a non-member.

(b) *Statutory Basis for the Proposed Rule Changes.* The proposed changes are consistent with Section 6(b)(5) of the Act in that they promote just and equitable principles of trade by insuring that members and member organizations and the public have an impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes do not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule changes.

II. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule changes; or

B. institute proceedings to determine whether the proposed rule changes should be disapproved.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, D.C. Copies of such filing will be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 12, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

May 18, 1984.

[FR Doc. 84-16641 Filed 6-20-84; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

June 15, 1984.

The Midwest Stock Exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Midwest Energy Company Common Stock, $5 Par Value (File No. 7-7518)
Reading & Bates Corporation Adjustable Rate Cumulative Preferred 5th Series (File No. 7-7521)
Michigan General Corporation Common Stock, $1 Par Value (File No. 7-7522)
Western Digital Common Stock, $.10 Par Value (File No. 7-7523)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 9, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16638 Filed 6-20-84; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-045]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. APP I) notice is hereby given of the Fourth meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, July 17, 1984 in the 29th Floor Boardroom of the International Trade Mart Building, New Orleans, Louisiana. The meeting is scheduled to begin at 9:00 a.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the April 17, 1984 meeting.
3. Chairman's Message.
4. Introduction of items for full committee discussion (These items will be discussed as they relate to Vessels Traffic Service, New Orleans, LA).
   A. Resolution of multichannel vessel monitoring requirements.
   B. Resolution of traffic information pertinence.
   C. Resolution of computer capacity deficiency producing accurate time, speed and distance data.
   D. Resolution of VHF—transmission/reception deficiencies.
   E. Resolution of lack of hard data gathering equipment necessary to support the reliability of advisory information.
   F. The establishment of viable criteria of those vessels who would be required to participate.
5. Introduction of any new items for discussion.
6. Announcements.
7. Adjournment.

The purpose of this committee is to provide a public forum which will furnish to the U.S. Coast Guard consultation, local expertise, and advice on a wide range of matters regarding all facets of navigation safety.

Attendance is open to the public with advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Lower Mississippi River Waterway Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the advisory committee at any time.

Additional information may be obtained from Commander, R.A. Brunell, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA, 70130, telephone number (504) 589-6901.

Dated: June 18, 1984.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 84-16556 Filed 6-20-84; 8:45 am]
BILLING CODE 4910-14-M

[CGD 84-046]

Lower Mississippi River Waterway Safety Advisory Committee; River Navigation Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. APP I) notice is hereby given of a meeting of the River Navigation Subcommittee for the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Wednesday, July 11, 1984 in the Board Room of the New Orleans Board of Trade Building, New Orleans, Louisiana. The meeting is scheduled to begin at 9:00 a.m. and end at 4:00 p.m.

The agenda for the meeting consists of the following items:

1. Call to Order
2. Chairman's Message
3. Introduction of items for full committee discussion. These items will be discussed as they relate to Vessel Traffic Service, New Orleans, LA
   A. Resolution of multichannel vessel monitoring requirements
   B. Resolution of traffic information pertinence
   C. Resolution of computer capacity deficiency producing accurate time, speed and distance data
   D. Resolution of VHF—transmission/reception deficiencies
   E. Resolution of lack of hard data gathering equipment necessary to support the reliability of advisory information
   F. The establishment of viable criteria of those vessels who would be required to participate.
4. Introduction of any new items for discussion
5. Announcements
6. Adjournment

This subcommittee has been established to provide consultation and advice to the U.S. Coast Guard via the Lower Mississippi River Waterway Safety Advisory Committee on all areas of maritime safety affecting the Lower Mississippi River and Vessel Traffic Service Auxilliary Waterways.

Attendance is open to the public with advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Lower Mississippi River Waterway Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the advisory committee at any time.

Additional information may be obtained from Commander, R. A. Brunell, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, telephone number (504) 589-6901.

Dated: June 13, 1984.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 84-16557 Filed 6-20-84; 8:45 am]
BILLING CODE 4910-14-M

[CGD 84-047]

Lower Mississippi River Waterway Safety Advisory Committee; Auxiliary Waterways Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. APP I) notice is hereby given of a meeting of the Auxiliary Waterways Subcommittee for the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Thursday, July 12, 1984 in the Board Room of the New Orleans Board of Trade Building, New Orleans, Louisiana. The meeting is scheduled to begin at 9:00 a.m. and end at 4:00 p.m.

The agenda for the meeting consists of the following items:

1. Call to Order
2. Chairman's Message
3. Introduction of items for full committee discussion. These items will be discussed as they relate to Vessel Traffic Service, New Orleans, LA
   A. Resolution of multichannel vessel monitoring requirements
   B. Resolution of traffic information pertinence
   C. Resolution of computer capacity deficiency producing accurate time, speed and distance data
   D. Resolution of VHF-transmission / reception deficiencies
   E. Resolution of lack of hard data gathering equipment necessary to support the reliability of advisory information
   F. The establishment of viable criteria of those vessels who would be required to participate.
4. Introduction of any new items for discussion
5. Announcements
6. Adjournment

This subcommittee has been established to provide consultation and advice to the U.S. Coast Guard via the Lower Mississippi River Waterway Safety Advisory Committee on all areas of maritime safety affecting the Lower Mississippi River and Vessel Traffic Service Auxiliary Waterways.

Attendance is open to the public with advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Lower Mississippi River Waterway Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the advisory committee at any time.

Additional information may be obtained from Commander R. A. Brunell, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA, 70130, telephone number (504) 589–6901.

Dated: June 18, 1984.

W. H. Steward,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 84–16558 Filed 6–20–84; 8:45 am]

BILLING CODE 4910–14–M

[CGD 84–048]

Houston/Galveston Navigation Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of the seventh meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, July 26, 1984 in the Student Conference Room of the Northern Student Center located at Texas A & M University at Galveston, Pelican Island, Galveston, Texas. The meeting is scheduled to begin at 9:00 a.m. and end at 5:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Discussion of previous recommendations made by the Committee
3. Reports of Subcommittees
   A. Inshore Waterway Management
   B. Offshore Waterway Management
4. Discussion of Subcommittee Reports
5. Presentation of any additional new items for consideration to the Committee
6. Adjournment

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance at all subcommittee and full committee meetings is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander, R. A. BRUNELL, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, Telephone number (504) 589–6901.

Dated: June 18, 1984.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 84–16559 Filed 6–20–84; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

United States Mint

Use of Metal Tokens; Proposed Policy Change

AGENCY: United States Mint, Treasury.

ACTION: Amending Notice on Proposed Change in Treasury Policy Regarding the Use of Metal Tokens.

SUMMARY: The United States Mint, Department of Treasury proposes revisions to its policy regarding the use of metal tokens. The Mint, with certain exceptions, has been generally opposed to the production and use of metal tokens. The exceptions have included the use of metal tokens by gambling casinos and have developed on a case by case basis.

On September 2, 1983, the Mint notified the public that it was proposing to change its policy of opposition to metal tokens provided that certain enumerated criteria were met. *See* 48 FR 40054. Public comment was invited. Having received and analyzed these comments, the Mint proposes to revise the criteria for metal tokens. Essentially, the revisions take the form of broadening the prohibited diameter ranges for metal tokens, increasing the minimum thickness requirement, and further restricting the composition of the tokens. The revisions are aimed at providing added assurances that the tokens will not be used unlawfully in vending machines and similar devices. The Department believes that the revised criteria strike a more appropriate balance between the need to protect U.S. coinage and the desire to minimize the adverse impact of the restrictions on legitimate users of tokens.

DATE: Interested members of the public are invited to furnish written comments on the proposed policy. Comments must be received on or before July 23, 1984.

ADDRESS: Send comments to Kenneth B. Gubin, Legal Counsel, United States

Mint, Room 1032 Warner Building, 501 13 Street, N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Gubin (address above) (202) 376-0564.

SUPPLEMENTARY INFORMATION: Generally, the Department has been opposed to the production and use of metal tokens because of its concern that widespread use of the tokens would lead to their circulation in the community as coinage in violation of certain provisions of the criminal code. These provisions, sections 486, 489, and 491 of title 18, United States Code, provide essentially that the manufacture, use or passing of tokens as current money is prohibited. Nonetheless, the Department has recently, on a case by case basis, not opposed individual requests by gambling casinos to use tokens for gaming purposes. In light of the considerable demand for the use of such tokens, and in order to maintain a uniform policy in this area, the Department decided that it will not oppose the manufacture and use of tokens which meet certain specifically enumerated criteria.

On September 2, 1983, the Department published certain criteria for tokens which were aimed at providing the necessary guidance in this area. Comments were received. Upon analysis of public comments to these criteria, the Department has determined that certain revisions are appropriate.

Summary of Comments

Approximately one dozen comments were received. Generally, the commenters endorsed the concept of restrictions on the use of metal tokens. Most of the commenters advocated increases in the restrictions.

One commenter suggested that the issuing establishment be required to redeem tokens at their face value. This requirement, it was suggested, would protect third parties who are in receipt of unwanted tokens.

The Department is sympathetic to the purpose of the suggestion. Its implementation would, however, have the effect of increasing the value of the tokens and would result in their increased unlawful circulation as money. Accordingly, the Department declines to adopt this suggestion.

Another commenter suggested expanding the prohibited ranges for the diameter of tokens that correspond to the size of the nickel and the dime in order to assure rejection of the tokens by vending machines. The Department agrees that increased protection is appropriate. Accordingly, these ranges have been revised so as to exclude any token whose diameter is between .680 and .860 inches.

A number of commenters stated that large numbers of quarter-sized metal tokens have been used to slug their vending machines, resulting in large financial losses. Expansion of the prohibited diameter range for this token has been vigorously requested. The Department has adopted this suggestion so as to exclude any token which is between .890 and .980 inches in diameter.

One commenter requested that the minimum thickness of the tokens be increased to 0.060 inches to insure that tokens would not be lodged in coin paths. This change has likewise been adopted.

It was noted that certain machines may be jammed as a result of receiving metal coins and disks. The suggestion was that any magnetic material be excluded from the composition of the tokens. The change has been adopted so that no ferromagnetic material may be used in making tokens.

Commenters took issue with the provisions in our original notice which prohibited reeded or serrated edges on tokens which are less then 1.475 inches in diameter and limited the number of them on larger tokens. It was noted that the Department has not objected to reeds on certain smaller tokens and that smaller tokens routinely contain reeded edges. Upon reconsideration of this issue, the Department has determined that the regulations concerning reeds are no longer necessary in view of the increased protection provided by the additional restrictions on the diameter of tokens. Accordingly, the restrictions on reeds have been eliminated.

One commenter requests the Department to undertake a nationwide effort to persuade the United States Attorneys to vigorously enforce the counterfeiting statutes as applied to metal tokens. As the commenter suggests, the ultimate responsibility for the enforcement of the criminal statutes rests with the Department of Justice. Each case must of necessity be evaluated in light of the particular facts presented. The United States Secret Service is responsible for conducting investigations into violations of these provisions pursuant to specific complaints. Any person who believes that such a violation has occurred should contact the Secret Service.

Revised Token Restrictions

The Department is of the view that compliance with the following restrictions will minimize the possibility of a violation of the criminal statutes cited above.

1. Tokens must be clearly identified with the name and location of the establishment from which they originate on at least one side.

2. Tokens must contain language which limits their redemption to the issuing establishment.

3. Tokens must meet the following specifications:

(a) Weight—Tokens shall weigh no less than two grams.

(b) Diameter—Tokens must be outside the following ranges in diameter (inches):

0.680—0.860
0.890—0.980
1.018—1.068
1.180—1.230
1.475—1.525

(c) Thickness—No token shall be less than 0.060 inch thick.

(d) Tokens shall not be manufactured from a three layered material consisting of a copper-nickel alloy clad on both sides of a pure copper core, nor from a copper based material, except if the total of zinc, nickel, aluminum, magnesium and other alloying materials exceeds twenty-five percent of the token's weight. In addition, tokens shall not be composed of a ferromagnetic material.

4. Establishments using these tokens shall prominently and conspicuously post signs on their premises notifying patrons that federal law prohibits the use of such tokens outside the premises for any monetary purpose whatever.

5. The issuing establishments shall not accept tokens as payment for any goods or services offered by such establishment with the exception of the specific use of which the tokens were designed.

6. The design on the token shall not resemble any current or past foreign or U.S. coinage.

The Department of the Treasury anticipates that the publication of the foregoing restrictions will obviate the necessity of examining individual tokens for compliance. Should a novel question be presented with regard to a token's design or specifications, the Department will be willing to review the matter.

Katherine D. Ortega,

Treasurer of the United States.

[FR Doc. 84-16656 Filed 6-20-84; 8:45 am]

BILLING CODE 4810-37-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Office (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 389–2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Officer of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503 (202) 395- 6880.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: June 18, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extensions

1. Department of Veterans Benefits
2. Loan and Cash Surrender Values
3. VA Form 29–5772
4. On occasion
5. Individuals or households
6. 27,000 responses
7. 4,500 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Supporting Statement Regarding Marriage
3. VA Form 21–4171
4. On occasion
5. Individuals or households
6. 2,400 responses
7. 800 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Agreement for Paying Delinquent Loan Payments
3. VA Form 26–6392
4. On occasion
5. Individuals or households
6. 960 responses
7. 80 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Statement of Applicant and/or Physical Examination Report
3. VA Form 29–4465
4. On occasion
5. Individuals or households
6. 1,400 responses
7. 1,820 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Manufactured Home Loan Claim Under Loan Guaranty Combination Loan—Manufactured Home Unit and Lot or Lot Only
3. VA Form 26–8630
4. On occasion
5. Businesses or other for-profit
6. 75 responses
7. 25 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Application of Education Loan
3. VA Form 22–8725
4. On occasion
5. Individuals or households
6. 540 responses
7. 360 hours
8. Not applicable

[FR Doc. 84–16530 Filed 6–20–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 49, No. 121

Thursday, June 21, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Equal Employment Opportunity Commission	2
Federal Deposit Insurance Corporation	3–5
Federal Election Commission	6
Federal Reserve System	7
National Credit Union Administration	8

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: June 25, 1984, Monday.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS: Open to the Public 8:30 a.m.

MATTERS TO BE CONSIDERED:

Commission—Staff Briefing

The Commissioners and staff will have a discussion of matters in general.

10:00 a.m.

FY 85 Operating Plan

The Commission will consider issues related to the Operating Plan for Fiscal Year 1985.

For a recorded message containing the latest agenda information call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Dated: June 19, 1984.

Sheldon Butts,

Deputy Secretary.

[FR Doc. 84–16700 Filed 6–19–84; 1:30 pm]

BILLING CODE 6355–01–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, June 26, 1984, 9:30 a.m. (Eastern Time).

PLACE: Commission Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C 20507

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Freedom of Information Act Appeal No. 84–04–FOIA–06–AT, concerning a request for a copy of the transcript of an EEO hearing.
4. Freedom of Information Act Appeal No. 84–4–FOIA–76–CL, concerning a request for an investigator's memorandum and other information in an ADEA charge file.
5. Freedom of Information Act Appeal No. 84–4–FOIA–67–CL, concerning a request for documents contained in a closed Title VII/ ADEA charge file.
6. Freedom of Information Act Appeal No. 84–04–FOIA–46–HU, 84–5–FOIA–9–LA, 84–4–FOIA–84–CL and 84–04–FOIA–81–PA, concerning the same request to four district offices for all files regarding a particular respondent
7. Proposed Qualification Criteria for EEOC's Tribal Employment Rights Office (TERO) Program
8. Proposed Modification to Procedure for Issuance of Determinations of Reasonable Cause
9. Proposed Apprenticeship Program Regulation
10. Equal Pay Act (EPA) Opinion Letter Procedures
11. Procedures for Issuance of Opinion Letters under Title VII, ADEA and EPA
12. Procedures for Issuance of Title VII Opinion Letters
13. Pension Benefits at Normal Retirement Age—Public Comments and Options

Closed

1. Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634–6748.

Dated: June 19, 1984.

Treva McCall,

Executive Secretary, to the Commission.

[FR Doc. 84–16705 Filed 6–19–84; 2:59 pm]

BILLING CODE 6750–06–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, June 18, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the Corporation's assistance agreement involving an insured bank pursuant to Section 13 of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation and that the matter could be considered in a closed meeting by authority of subsection (c)(4) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4)).

Dated: June 18, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–16721 Filed 6–19–84; 3:57 pm]

BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, June 18, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague

(Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Lynn Five Cents Savings Bank, Lynn, Massachusetts, an insured mutual savings bank, for consent to purchase the assets of and assume the liability to pay deposits made in the Colonial National Bank, Danvers, Massachusetts, and for consent to establish the two offices of The Colonial National Bank as branches of the resultant bank.

Application of Bankers Trust of South Carolina, Columbia, South Carolina, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the South Windmere Branch, Charleston, South Carolina, of The South Carolina National Bank, Charleston, South Carolina, and the St. Andrew's Branch, Charleston, South Carolina, of the First National Bank of South Carolina, Columbia, South Carolina, and for consent to establish the South Windmere Branch and The St. Andrew's Branch as branches of Bankers Trust of South Carolina.

Application of Tri-City Bank and Trust Company, Blountville, Tennessee, an insured State nonmember bank, for consent to merge, under its charter and title, with Farmers and Merchants Bank, Limestone, Tennessee, and for consent to establish the sole office of Farmers and Merchants Bank as a branch of the resultant bank.

The Board further determined, by the same majority vote, that Corporation business required, on less than seven days' notice to the public, the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the Board's closed meeting to be held at 2:30 p.m. that same day, of the following matters:

Application of Northwest Bank & Trust Company, Davenport, Iowa, for consent to establish a branch at #48 Northpark Shopping Mall, 320 West Kimberly Road, Davenport, Iowa.

Application of Northwest Bank & Trust Company, Davenport, Iowa, for consent to establish a remote service facility at St. Lukes Hospital, 1227 East Rusholme Street, Davenport, Iowa.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,060–L—Toney Brothers Bank, Doerun, Georgia

In voting to move these matters from open session to closed session, the Board further determined, by the same majority vote, that the public interest did not require consideration of the matters in a meeting open to public observation and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: June 19, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–16722 Filed 6–20–84; 3:58 pm]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:35 p.m. on Friday, June 15, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Lawrence County Bank, Lawrenceburg, Tennessee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Friday, June 15, 1984; (2) accept the bid for the transaction submitted by Farmers Bank of Lawrence County, Lawrenceburg, Tennessee, a newly-chartered State nonmember bank; (3) approve the applications of Farmers Bank of Lawrence County, Lawrenceburg, Tennessee, for Federal deposit insurance, for consent to purchase the assets of and to assume the liability to pay deposits made in The Lawrence County Bank, Lawrenceburg, Tennessee, and for consent to establish the two branches of The Lawrence County Bank as branches of Farmers Bank of Lawrence County; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. David L. Chew, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 3:40 p.m., and at 4:45 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors:

(A) Modified certain conditions relating to a previous Order approving the applications of Farmers Bank of Lawrence County, Lawrenceburg, Tennessee, for Federal deposit insurance, for consent to purchase the assets of and to assume the liability to pay deposits made in The Lawrence County Bank, Lawrenceburg, Tennessee, and for consent to establish the two branches of The Lawrence County Bank as branches of Farmers Bank of Lawrence County;

(B)(1) received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Farmers State Bank, Lyons, South Dakota, which was closed by the Director of Banking and Finance for the State of South Dakota on Friday, June 15, 1984; (2) accepted the bid for the transaction submitted by Dakota State Bank, Colman, South Dakota, an insured State nonmember bank; (3) approved the application of Dakota State Bank, Colman, South Dakota, for consent to purchase certain assets of and to assume the liability to pay deposits made in Farmers State Bank, Lyons, South Dakota, and for consent to establish the main office and one branch of Farmers State Bank as branches of Dakota State Bank; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(C) considered a recommendation with respect to the initiation and conduct of a removal proceeding against certain individuals in connection with an insured bank (names of persons and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

In reconvening the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. David L. Chew, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the

meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 4:55 p.m., and at 6:20 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Corning Bank, Corning, Arkansas, which was closed by the State Bank Commissioner for the State of Arkansas on Friday, June 15, 1984; (2) accepted the bid for the transation submitted by The Corning Bank, Corning, Arkansas, a de novo bank; (3) approved the application of The Corning Bank, Corning, Arkansas, a de novo bank, for Federal deposit insurance, for consent to purchase certain assets of and to assume the liability to pay deposits made in The Corning Bank, Corning, Arkansas (the failed bank), and for consent to establish the two branches of the failed bank as branches of the de novo bank; and (4) provided such financial assistance, pursuant to section 13 (c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), was necessary to effect the purchase and assumption transaction.

In reconvening the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. David L. Chew, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public obervation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 18, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-16723 Filed 6-19-84; 8:45 am]

BILLING CODE 6714-01-M

6

FEDERAL ELECTION COMMISSION

[Federal Register No. 84-15345]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 21, 1984, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN CONTINUED FROM THE MEETING OF JUNE 14, 1984: Draft Advisory Opinion #1984-23, Charles E. Hawkins, III, on behalf of Associated Builders and Contractors, Inc.

* * * * *

DATE AND TIME: Tuesday, June 26, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, June 28, 1984, 10:00 a.m.

PLACE: 1325 K STREET, NW., WASHINGTON, D.C. (FIFTH FLOOR).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential Primary Matching Funds
Draft Advisory Opinion #1984-17: James Bopp, Jr., on behalf of National Right to Life Committee, Inc.
Draft Advisory Opinion #1984-26: J. David Keaney, on behalf of Honorable David M. Bartley for U. S. Senate Committee
Finance Committee report
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-16663 Filed 6-19-84; 11:24 am]

BILLING CODE 6715-01-M

7

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10:00 a.m., Wednesday, June 27, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16724 Filed 6-19-84; 8:45 am]

BILLING CODE 6210-01-M

8

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 2:30 p.m., Tuesday, June 26, 1984.

PLACE: Department of Agriculture, Thomas Jefferson Memorial Auditorium, Wing 5 Entrance, 14th and Independence, Washington, DC 20250.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Special Share Insurance Premium.
4. Appeal of Regional Director's Denial of Charter Amendment for Waterford School Employees FCU #7604.
5. Appeal of Regional Director's Denial of Bylaw Amendment for Mid States Corporate FCU #22253.
6. Community Charter Application: Proposed Southeast Fort Worth Federal Credit Union (Texas).
7. Committee Report on Field of Membership Study.

TIME AND DATE: 9:00 a.m., Wednesday, June 27, 1984.

PLACE: National Credit Union Administration, Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Insurability of Accounts Under Sections 101 and 207 of the Federal Credit Union Act. Closed pursuant to exemption (9)(A)(ii).
3. Special Assistance Under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 84-16825 Filed 6-18-84; 5:01 pm]

BILLING CODE 7535-01-M

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federal register

Thursday
June 21, 1984

Part II

Department of Energy

41 CFR Ch. 109

Property Management Regulations; Final Rule

DEPARTMENT OF ENERGY

41 CFR Ch. 109

Property Management Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Energy Property Management Regulations (DOE–PMR, 41 CFR Ch. 109) which were published on January 3, 1979 (44 FR 986). The revisions update the regulations to reflect: (i) Organizational, policy, and procedural changes that have occurred subsequent to their issuance; (ii) amendments to the Federal Property Management Regulations (41 CFR Ch. 101); and (iii) the issuance of the Federal Acquisition Regulations (FAR) and the Department of Energy Acquisition Regulations (DEAR) which became effective April 1, 1984. Because of the extensive changes to the DOE–PMR, with the exception of Parts 109–35 and 109–40, they are printed in their entirety in this final rule.

EFFECTIVE DATE: June 21, 1984.

FOR FURTHER INFORMATION CONTACT:

John D. French, Director, Property and Equipment Management Division, Procurement and Assistance Management, Department of Energy, Washington, D.C. 20585, (202) 252–8255

Elliot Winnick, Office of General Counsel, Department of Energy, Room 6B–190, Washington, D.C. 20585, (202) 252–1526

SUPPLEMENTARY INFORMATION:

I. Legislative Background
II. Written Comments
III. Procedural Requirements

I. Legislative Background

Under Section 644 of the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7101 *et seq.*), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in him. The Department of Energy Property Management Regulations (DOE–PMR) were promulgated on January 3, 1979 (44 FR 986, 41 CFR Chapter 109).

On March 30, 1984, DOE published proposed amendments to the aforesaid Property Management Regulations in the **Federal Register** (49 FR 12822). Interested persons were invited to submit written comments on the proposed amendments, and such comments were received from DOE component organizations. The changes made in this final rule reflect the recommended revisions contained in the comments received.

II. Written Comments

Written comments were received from five DOE component organizations and were carefully reviewed and fully considered in the formulation of the final rule. Accordingly, this final rule reflects the following revisions which were recommended in the comments received:

1. Part 109–29 has been inserted in the table of contents and in the regulation. This part was erroneously omitted in the proposed amendment. There is no substantive change from the current DOE–PMR.

2. Section 109–1.5106–1 has been revised to clarify the requirement for identification marking of Government property.

3. Section 109–45.5003–2 has been revised to reflect the current operating policy of heads of field offices approving or disapproving requests for utilization or disposal of contaminated property outside of DOE.

4. In Section 109–50.310, the DOE office in Seattle, Washington, has been deleted from the list of screening locations.

5. In Section 109–60.001, the acquisition cost of equipment for capitalization purposes has been revised to $1,000 to reflect the current DOE policy.

6. Several changes have been made to correct typographical errors or to make editorial improvements or clarifications. These changes do not substantively revise DOE policies or procedures.

III. Procedural Requirements

A. Review Under Executive Order 12291

Inasmuch as this final rule relates to agency management of personal property under the DOE procurement function, the OMB clearance procedures set forth in Executive Order 12291 (February 17, 1981) are not applicable.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE has determined that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The information collections in this rule have been submitted to the Office of Management and Budget for clearance under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and 5 CFR 1320.

List of Subjects in 41 CFR Ch. 109

Government property, DOE property management regulations.

(Section 644 of the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7254))

For the reasons set out above, Chapter 109 of Title 41 of the Code of Federal Regulations, except for Parts 109–35 and 109–40, is hereby revised to read as set forth below.

Issued in Washington, D.C. June 15, 1984.

Thomas J. Davin, Jr.,

Acting Director, Procurement and Assistance Management Directorate.

Chapter 109—Department of Energy Property Management Regulations

SUBCHAPTER A—GENERAL

Part
109–1—Introduction

SUBCHAPTER C—DEFENSE MATERIALS

109–14—National Defense Stockpile

SUBCHAPTER E—SUPPLY AND PROCUREMENT

109–25—General
109–26—Procurement sources and programs
109–27—Inventory management
109–28—Storage and distribution
109–29—Federal Specifications and Standards
109–30—Federal catalog system

SUBCHAPTER F—ADP AND TELECOMMUNICATIONS

109–36—ADP management

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

109–38—Motor equipment management
109–39—Interagency motor vehicle pools

* * * * *

SUBCHAPTER H—UTILIZATION AND DISPOSAL

109–42—Property rehabilitation services and facilities
109–43—Utilization of personal property
109–44—Donation of personal property
109–45—Sale, abandonment, or destruction of personal property
109–46—Utilization and disposal of personal property pursuant to exchange/sale authority
109–48—Utilization, donation, or disposal of abandoned and forfeited personal property
109–50—Programmatic disposal of DOE property

SUBCHAPTER I—INDUSTRIAL PLANT EQUIPMENT

Part

109–51—Loans of industrial plant equipment from the defense industrial plant equipment center

SUBCHAPTER K—GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

109–60—Management of government property in the possession of off-site contractors

SUBCHAPTER A—GENERAL

PART 109–1—INTRODUCTION

Sec.

109–1.000–50 Scope of part.

Subpart 109–1.1—Regulation System

109–1.100–50 Scope of subpart.
109–1.100–51 Definitions.
109–1.102–50 Department of Energy Property Management Regulations.
109–1.103–50 DOE–PMR Bulletins.
109–1.104–50 Publication and distribution of DOE–PMR.
109–1.104–1–50 Publication.
109–1.104–2–50 Distribution.
109–1.106–50 Applicability of Federal and Departmental regulatory issuances.
109–1.107–50 Consultation regarding DOE–PMR.
109–1.108 Agency implementation and supplementation of FPMR.
109–1.109–50 Numbering of DOE–PMR.
109–1.110–50 Deviation procedures.

Subpart 109–1.50—Personal Property Management Program

109–1.5000 Scope of subpart.
109–1.5001 Policy.
109–1.5002 Property management program objectives.
109–1.5003 Definitions.
109–1.5004 Delegation of authority.
109–1.5005 Responsibilities.
109–1.5005–1 The Director of Procurement and Assistance Management.
109–1.5005–2 The Departmental Property Management Officer.
109–1.5005–3 The Director of Administration.
109–1.5005–4 Director, Office of Procurement Operations, Procurement and Assistance Management.
109–1.5005–5 Heads of field offices.
109–1.5005–6 Organizational Property Management Officer.
109–1.5005–7 Contracting officers.

Subpart 109–1.51—Personal Property Management Standards and Practices

109–1.5100 Scope of subpart.
109–1.5101 Definition.
109–1.5102 Official use of property.
109–1.5103 Maximum use of property.
109–1.5104 Loan of property.
109–1.5105 Borrowing of property.
109–1.5106 Control of property.
109–1.5106–1 Identification marking of property.
109–1.5106–2 Segregation of property.
109–1.5106–3 Physical protection of property.
109–1.5106–4 Control of sensitive items.
109–1.5106–5 Physical inventories.
109–1.5107 Retirement of property.
109–1.5108 Property belonging to others.
109–1.5109 Employee participation.
109–1.5110 Use of non-Government-owned property.
109–1.5148 Personal property management reports.

Subpart 109–1.52—Contractors' Personal Property Management Program

109–1.5200 Scope of subpart.
109–1.5201 Policy.
109–1.5202 Designation of property administrator.
109–1.5203 Review and approval of contractor's property management system.
109–1.5204 Property management appraisals.
109–1.5205 Reporting.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–1.000–50 Scope of part.

This part establishes a system by which the Department of Energy (DOE) implements and supplements the Federal Property Management Regulations (FPMR) (41 CFR Chapter 101) issued by the General Services Administration (GSA).

Subpart 109–1.1–Regulation System

§ 109–1.100–50 Scope of subpart.

This subpart establishes the Department of Energy Property Management Regulations (DOE–PMR), Chapter 109 of the Federal Property Management Regulations System (FPMR)(41 CFR Chapter 109).

§ 109–1.100–51 Definitions.

As used in this chapter the following definitions apply:

(a) "Heads of field offices" are the heads of any Departmental office located outside the Washington, D.C. metropolitan area. In addition, the Federal Energy Regulatory Commission, Headquarters, shall be considered a field office for purposes of these regulations. See § 109–1.5005–4 concerning the responsibilities of the Director, Office of Procurement Operations, Procurement and Assistance Management Directorate, Headquarters.

(b) "Direct operations" means operations conducted by DOE personnel.

(c) "Contractor" means a management and operating contractor, as that term is defined in the Federal Acquisition Regulation (FAR) 48 CFR 17.601 as supplemented by the Department of Energy Acquisition Regulations (DEAR) 48 CFR 917.604–70, and such other contractors as may be designated by the Procurement Executive or head of the contracting activity as subject to the provisions of this chapter.

§ 109–1.102–50 Department of Energy Property Management Regulations.

The DOE–PMR, established in this part, implement and supplement the FPMR provisions governing the acquisition, utilization, management, and disposal of personal property. The DOE–PMR are issued to establish uniform property management policies and, as necessary, procedures for the Department of Energy. (See 109–1.106–50(d) and (e) with respect to management of property in the possession of other DOE contractors and financial assistance recipients).

§ 109–1.103–50 DOE–PMR Bulletins.

A DOE–PMR Bulletin will be used to disseminate information not affecting policy or to clarify instructions in actions required by the FPMR or the DOE–PMR.

§ 109–1.104–50 Publication and distribution of DOE–PMR.

§ 109–1.104–1–50 Publication.

The DOE–PMR will be published in the **Federal Register** and will appear in the Code of Federal Regulations as Chapter 109 of Title 41, Public Contracts and Property Management. Looseleaf publications will be distributed to DOE offices.

§ 109–1.104–2–50 Distribution.

The responsibilities and authorities for distribution of publications in the FPMR series are as follows:

(a) The Director of Procurement and Assistance Management—

(1) Designates an official to serve as liaison with GSA;

(2) Establishes and maintains distribution patterns; and

(3) Processes DOE–PMR Handbooks for final approval and publication.

(b) The Director of Administration—

(1) Distributes publications in accordance with established patterns;

(2) Maintains a stock of FPMR and DOE–PMR publications for furnishing additional copies; and

(3) Provides additional support services as required.

(c) Heads of field offices—

(1) Provide the Director of Procurement and Assistance Management with field organization requirements;

(2) Forward one-time requests for additional copies of centrally distributed publications to the Office of Administrative Services, Headquarters (MA–234.2); and

(3) Distribute publications to their offices and contractors in accordance with established distribution patterns.

§ 109–1.106–50 Applicability of Federal and Departmental regulatory issuances.

(a) The FPMR and this DOE–PMR apply to all direct operations.

(b) Unless otherwise provided in the appropriate part or subpart, contracting officers shall assure that the FPMR and DOE–PMR are applied to contractors.

(c) The FPMR and DOE–PMR, as appropriate, shall be used by contracting officers in the administration of contracts, and in the review, approval, or appraisal of such contractor operations.

(d) Regulations for the management of Government property in the possession of other DOE contractors are contained in the Federal Acquisition Regulations, Part 45 (48 CFR Chapter 1) and in the DOE Acquisition Regulations, Part 945 (48 CFR Chapter 9).

(e) Regulations for the management of property held by financial assistance recipients are contained in the DOE Financial Assistance Rules (10 CFR Part 600) and the Financial Assistance Procedures Manual, DOE Order 4600.1.

§ 109–1.107–50 Consultation regarding DOE–PMR.

The DOE–PMR shall be fully coordinated with all Departmental elements substantively concerned with the subject matter.

§ 109–1.108 Agency implementation and supplementation of FPMR.

(a) The DOE–PMR shall include regulations deemed necessary to understand basic and significant Departmental property management policies and procedures which implement, supplement, or deviate from the FPMR. In the absence of any DOE–PMR issuance, the basic FPMR material shall govern.

(b) The DOE–PMR shall be consistent with the policies and procedures contained in the FPMR and shall not duplicate or paraphrase the FPMR material.

(c) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DOE–PMR may be issued by Headquarters or field organizations provided that the implementing procedures, instructions and guides—

(1) Are consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time;

(2) To the extent practicable, follow the format, arrangement, and numbering system of this regulation; and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

§ 109–1.109–50 Numbering of DOE–PMR.

(a) Where the DOE–PMR implement the FPMR, the implementing part, subpart, section or subsection of the DOE–PMR will be numbered and captioned, to the extent possible, to correspond to the applicable part, subpart, section, or subsection of the FPMR.

(b) Where the DOE–PMR supplement the FPMR, the numbers 50 and up will be assigned to the parts, subparts, sections or subsections involved.

§ 109–1.110–50 Deviation procedures.

(a) Requests for deviations from the FPMR and the DOE–PMR shall be forwarded to the Headquarters organization having functional responsibility, as follows:

(1) Part 109–35—Director, Division of Telecommunications.

(2) Part 109–40—Assistant Secretary for Defense Programs.

(3) All other parts—Director of Procurement and Assistance Management.

(b) In individual cases, deviations from the FPMR and DOE–PMR may be authorized by the Headquarters organization having functional responsibility. A supporting statement for each individual deviation, which indicates briefly the nature of the deviation, the reasons for such special action, and the Headquarters approval, shall be maintained by the Headquarters organization concerned.

(c) In classes of cases, requests for deviations from the FPMR and the DOE–PMR shall be accompanied by a supporting statement. Requests shall be considered on an expedited basis and coordination with Headquarters organizations will be obtained as appropriate. Requests involving the FPMR will be considered jointly by DOE and GSA, unless, in the judgment of the Headquarters organization having functional responsibility, circumstances preclude such joint effort. In such cases, the organization having functional responsibility will approve such class deviations as determined to be necessary and notify GSA.

Subpart 109–1.50—Personal Property Management Program

§ 109–1.5000 Scope of subpart.

This subpart supplements the FPMR, states DOE personal property management policy and program objectives, and prescribes authorities and responsibilities for the conduct of an effective property management program in DOE.

§ 109–1.5001 Policy.

It is DOE policy that a program for the management of Government personal property (sometimes referred to as personal property or as property) shall be established and maintained to meet program needs economically and efficiently and in accordance with applicable Federal statutes and Federal agency regulations.

§ 109–1.5002 Property management program objectives.

The objectives of the DOE property management program are to provide—

(a) A system for effectively managing Government personal property in the custody or possession of DOE organizations and DOE contractors; and

(b) Uniform principles, policies, standards, and procedures for economical and efficient management of Government personal property that are sufficiently broad in scope and flexible in nature to facilitate adaptation to local needs and various kinds of operations.

§ 109–1.5003 Definitions.

As used in these regulations, the following definitions apply:

(a) "Government personal property" means property of any kind or type which is Government-owned or -rented or -leased from commercial sources in the custody of DOE or its contractors except real property; records; special source materials, which includes source materials and special nuclear material, and those other materials to which the provisions of DOE Order 5630.2 "Control and Accountability of Nuclear Materials, Basic Principles" apply, such as deuterium, enriched lithium, neptunium 237 and tritium, and atomic weapons and byproduct materials as defined in Section II of the Atomic Energy Act of 1954, as amended; enriched uranium in stockpile storage; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

(b) "Personal property management" means the development, implementation, and administration of policies, programs and procedures for effective and economical acquisition, receipt, storage, issue, use, control, physical protection, care and maintenance, determination of requirements and maintenance of related operating records, and disposal, as appropriate, for Government personal property exclusive of the accounting records.

§ 109–1.5004 Delegation of authority.

(a) The Secretary of Energy has delegated to the Assistant Secretary,

Management and Administration, on a non-exclusive basis, the authority to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors.

(b) The Assistant Secretary, Management and Administration has delegated to the Director, Procurement and Assistance Management, the authority to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors.

(c) The Director of Administration and Heads of field offices are delegated appropriate procurement authority by memorandum from the Director, Procurement and Assistance Management, to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors, consistent with policies, standards, and procedures as contained in this regulation.

§ 109–1.5005 Responsibilities.

§ 109–1.5005–1 The Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management provides direction and general supervision in the development and administration of an effective and efficient personal property management system for the Department, to include:

(a) The establishment of Department-wide policies, standards, systems, regulations, and procedures in accordance with applicable laws and regulations and sound management practice; and

(b) The review, evaluation, and improvement of personal property management programs, functions, operations, and procedures in the Department.

§ 109–1.5005–2 The Departmental Property Management Officer.

The Departmental Property Management Officer shall be the Director, Property and Equipment Management Division, Headquarters. This individual is responsible for developing, promoting, monitoring, administering, coordinating, and evaluating the Department-wide personal property management program, and shall—

(a) Develop and maintain Departmental personal property policies, standards and procedures;

(b) Develop and publish Departmental regulations relating to personal property management;

(c) Represent the Department with GSA and other agencies on matters relating to personal property management;

(d) Submit Departmental personal property management reports to GSA, the Congress and other Federal agencies, as required;

(e) Provide staff assistance to Departmental organizations performing personal property management functions;

(f) Conduct reviews and appraisals of Departmental personal property management functions; and

(g) Prepare the Departmental aircraft and motor vehicle budget.

§ 109–1.5005–3 The Director of Administration.

The Director of Administration—

(a) Manages personal property for DOE direct operations located in the Washington, D.C. metropolitan area with the exception of the Federal Energy Regulatory Commission.

(b) Exercises responsibilities cited in § 109–1.5005–5 as they relate to functions under his/her management control; and

(c) Appoints an Organizational Property Management Officer to be responsible for his/her organization's personal property management program.

§ 109–1.5005–4 Director, Office of Procurement Operations, Procurement and Assistance Management.

The Director, Office of Procurement Operations, Procurement and Assistance Management Directorate, Headquarters, shall exercise the responsibilities of the head of a field office as set forth in these regulations with respect to the management of property held under contracts for which his/her office is responsible.

§ 109–1.5005–5 Heads of field offices.

Heads of field offices shall—

(a) Appoint an Organizational Property Management Officer who shall be responsible for the organization's personal property management program; and

(b) Establish and administer a personal property management program within the organization which will provide for—

(1) Effective management of Government personal property in the custody of DOE and its contractors, consistent with applicable laws and regulations;

(2) Application of personal property management regulations, instructions, standards, procedures, and practices as prescribed in the FPMR and DOE–PMR;

(3) Planning and scheduling of property requirements to assure that supplies and equipment are readily available to satisfy program needs while minimizing operating costs and inventory levels;

(4) Development and maintenance of complete and accurate inventory control and accountability record systems;

(5) Maximum utilization of available property for official purposes;

(6) Proper care and securing of property to include storage, handling, preservation, and preventative maintenance;

(7) Identification of property excess to the needs of the organization, and proper reutilization of this property within the Department and reporting to GSA for transfer, donation, or disposal;

(8) The development and submission of required property management reports;

(9) Assuring that DOE employees and contractors are aware that acts of theft, illegal possession, and unlawful destruction or use of Government personal property are violations punishable under Federal law, notwithstanding disciplinary measures taken under administrative policy;

(10) Assuring that DOE employees and contractors are aware that every user of Government personal property is responsible for its physical protection and for reporting the loss, theft, destruction or damage of property;

(11) The conducting of periodic management reviews within the activity to assure compliance with prescribed policies, regulations, standards, and procedures; and

(12) The establishment of equipment and supply subsidiary records and accounts to support general ledger control accounts for personal property.

§ 109–1.5005–6 Organizational Property Management Officer.

The Organizational Property Management Officer (OPMO)—

(a) Provides advice and guidance for the organization's personal property mangement program;

(b) Coordinates and conducts the activities of the organization's personal property management program;

(c) Serves as principal contact point for the organization in matters concerning personal property management; and

(d) Represents the organization, or designates a representative, to attend Department meetings concerning personal property management issues, and acts as liaison with other DOE offices or other Federal agencies in property management matters affecting their organization.

§ 109–1.5005–7 Contracting officers.

Contracting officers shall—

(a) Assure that all contracts that involve property contain the applicable DEAR property clause; and

(b) Assure that contractors' personal property management systems are reviewed, appraised, and approved as provided for in § 109–1.52.

Subpart 109–1.51—Personal Property Management Standards and Practices

§ 109–1.5100 Scope of subpart.

This subpart provides guidance on DOE standards and practices to be applied in the management of Government personal property.

§ 109–1.5101 Definition.

"Sensitive items" are those items of property, regardless of value, which are considered to be susceptible to being appropriated for personal use or which can be readily converted to cash, for example: firearms, portable photographic equipment, binoculars, portable tape recorders, portable calculators, and portable power tools.

§ 109–1.5102 Official use of property.

Property shall be used only in the performance of official work of the United States Government, except (a) in emergencies threatening loss of life or property, or (b) as otherwise authorized by law and approved by the Director of Administration and heads of field offices for their respective organizations, or by the contracting officer for contractor-held property.

§ 109–1.5103 Maximum use of property.

Property management practices shall assure that the best possible use is made of property. Supplies and equipment shall be generally limited to those items essential for carrying out the programs of DOE effectively. Adequate staff review shall be made of operating programs to coordinate and plan future supply activities and to assure against overstocking, waste, and improper use of property.

§ 109–1.5104 Loan of property.

(a) Property which would otherwise be out of service for temporary periods (and not excess) may be loaned to other DOE offices and contractors, other Federal agencies, and to others for official purposes. Such loans shall be covered by written agreements or memorandum receipts which shall include all terms of the loan (such as loan period, delivery time, method of payment of transportation, point of delivery and return, conditions of use, responsibilities of the borrower for condition of property on return, inspection requirements, etc.) that may be required to ensure proper control and protect DOE's interest. The loan period should not exceed one year, but may be renewed.

(b) Requests for loan by foreign Governments and other foreign organizations shall be submitted through the Property and Equipment Management Division (MA–422) to the Assistant Secretary for International Affairs for approval, with a copy to the cognizant Headquarters program office.

§ 109–1.5105 Borrowing of property.

(a) DOE organizations and contractors are encouraged to borrow property within DOE to further DOE programs. Property classified as "Equipment Held For Future Projects (EHFFP)" or as "In Standby" should be reviewed by those receiving availability inquiries for short-term loans (one year or less). Borrowing of Government property from other Federal agencies is also encouraged when required for short periods of time. Such transactions shall be covered by written agreements which include all the terms of the transaction.

(b) In determining whether it is practical and economical to borrow property, consideration shall be given to suitability, condition, value, extent and nature of use, extent of availability, portability, cost of transportation, and other similar factors.

§ 109–1.5106 Control of property.

§ 109–1.5106–1 Identification marking of property.

(a) Government property will be identified as U.S. Government property subject to the criteria below. Marking may be accomplished by any means which will produce a permanent marking and which is most adaptable to the particular item of property.

(1) Capitalized and sensitive property shall be marked as U.S. Government property and by numbering for control purposes.

(2) Other property susceptible to unauthorized personal use, such as hand tools, should be considered for marking as U.S. Government property, and by numbering for control purposes.

(b) Property which by its nature cannot be marked, such as stores items, metal stock, etc., is exempted from this requirement. Such Government property in the custody of contractors should not be commingled with contractor-owned property unless it is determined by the contracting officer to be advantageous to the Government.

(c) To the extent practicable and economical, markings shall be removed prior to disposal outside of DOE, or additional markings may be added to indicate such disposal.

§ 109–1.5106–2 Segregation of property.

Ordinarily, provisions shall be made for the contractor to keep Government property segregated from contrator-owned property. Commingling of Government-owned and contractor-owned property may be allowed only when—

(a) The segregation of the property would materially hinder the progress of the work, i.e., segregation is not feasible for reasons such as small quantities, lack of space, or increased costs; and

(b) Control procedures are adequate, i.e., the Government property is specifically marked or otherwise identified as being Government property.

§ 109–1.5106–3 Physical protection of property.

Controls such as property pass systems, memorandum records, regular or intermittent gate checks, marking of tools, and perimeter fencing shall be established as required to prevent loss, theft, or unauthorized movement of property from the premises on which such property is located.

§ 109–1.5106–4 Control of sensitive items.

(a) Controls shall be established over the acquisition, storage, issue, use, and return of sensitive items of property.

(b) Items on capital equipment which are also designated as sensitive items will be controlled as sensitive items and as capital equipment.

(c) A list of sensitive items shall be maintained for property considered to require special controls before and after issue. Determination of specific sensitive items shall be a matter for management judgment at individual locations, taking into consideration the dollar value of the items to be controlled and costs of administration.

(d) Written procedures shall be established for control of sensitive items, to include:

(1) Approval of purchase requisitions or issue documents at an appropriate supervisory level prior to acquisition or issue;

(2) Establishment of administrative controls in the central receiving and warehousing department. Such controls should include extraordinary physical protection, guidance for receiving and warehousing personnel as to procedures for protection, and a current listing of sensitive items;

(3) Establishment and maintenance of appropriate property management records;

(4) Requirements for tagging and identification;

(5) Use of memorandum receipts or custody documents at time of assignment or change in custody;

(6) Establishment of custodial responsibilities describing—

(i) Need for extraordinary physical protection;

(ii) Requirement for prompt reporting of apparent loss, damage or destruction;

(iii) Requirement to return items in condition beyond economical repair to an appropriate organizational element;

(iv) Requirement for promptly reporting changes in custody or extended loans;

(v) Reminder of prohibition of use for other than official purposes, and penalties for misuse;

(vi) Requirement for effective physical and administrative control of sensitive items assigned for general use within an organizational unit as appropriate to the type of property and the circumstances; and

(vii) A clear definition of the extent of responsibility or financial accountability, depending on contractor policy.

(7) Requirement for annual physical inventory;

(8) Requirement for prompt and thorough investigation of losses;

(9) Requirement for an employee transfer or termination checkout procedure and examination and adjustment of records; and

(10) Other property management procedures which, through experience and independent audit, have demonstrated effective physical and administrative control over sensitive items.

§ 109–1.5106–5 Physical inventories.

(a) Physical inventories of property shall be conducted at all DOE and contractor locations, consistent with approved procedures and generally accepted accounting procedures.

(b) The preferred method of performing physical inventories is by the use of personnel other than the property staff or custodian of the property. Where staffing restraints or other considerations require, the inventory may be performed by the property staff or the custodian.

(c) Detailed procedures for the taking of physical inventories shall be developed for each DOE organization and contractor. The Director of Administration and heads of field offices shall approve the procedures for their respective DOE operation. The appropriate field organization staff shall review and approve contractor's procedures.

(d) The taking of a physical inventory will be observed, or follow-on audits made, by independent representatives, e.g., finance, audit, or property staffs, to the extent deemed necessary to assure that the procedures are being followed and the results are accurate. These observations or audits should be documented and the documentation should be retained in the inventory record file.

(e) Procedures that are limited to a check-off of a listing of recorded property without actual verification of the location and existence of such property do not meet the requirements of a physical inventory.

(f) The frequency of physical inventories shall be as follows:

(1) *Moveable capital equipment*—not less frequently than every two years.

(2) *Sensitive items*—not less frequently than every twelve months.

(3) *Stores inventories*—not less frequently than every twelve months.

(4) *Precious metals*—not less frequently than every six months.

(g) A physical inventory shall be performed at intervals more frequently than required in § 109–1.5106–5(f) whenever experience at any given location or with any given item or items indicates that this action is necessary for effective property accounting, utilization, or control.

(h) Special inventories may be required on certain types of property or on certain items or kinds of items when circumstances arise requiring such action, such as audits or special reviews.

(i) The results of physical inventories shall be reconciled with the property records and, except for non-capital sensitive items, with the financial control accounts in accordance with Chapter VI of the DOE Accounting Practices and Procedures Handbook.

(j) Physical inventories of capital equipment and stores inventories may be conducted by the "statistical sampling" method in lieu of the normal "wall-to-wall" method. In addition, the "inventory by exception" method may be used for capital equipment physical inventories. However, the system and procedures for taking physical inventories by these methods must be fully documented and approved by the Director of Administration and by heads of field offices for their respective organizations.

§ 109–1.5107 Retirement of property.

When Government property is worn out, lost, stolen, destroyed, abandoned, or damaged beyond economical repair, it shall be listed on a retirement work order. A full explanation shall be supported by an investigation, if necessary, as to the date and circumstances surrounding loss, theft, destruction, abandonment, or damage. The retirement work order shall be reviewed by the property management staff and signed by the responsible official initiating the report and reviewed and approved by an official at least one supervisory echelon above the official initiating the report.

§ 109–1.5108 Property belonging to others.

Procedures shall be established which will provide for adequate attention to the management of property belonging to other Federal agencies in the possession or custody of DOE organizations or its contractors.

§ 109–1.5109 Employee participation.

Full advantage shall be taken of suitable methods for stimulating employee participation and cooperation in carrying out an effective and economical program of property management. Some examples of effective methods are (a) indoctrination of new employees and others who have access to or use property, (b) the use of incentive award plans to promote interest, and (c) the use of visual aids such as posters, plant publications, outdoor signboards, and displays to keep employees informed as to progress and to remind them of their responsibilities.

§ 109–1.5110 Use of non-Government-owned property.

Non-Government-owned personal property shall not be installed in, affixed to, or otherwise made a part thereof, of any Government-owned personal or real property. This restriction does not apply to the use and installation of privately owned decorative items or memorabilia to the workplace, provided that the structure or safety of the facility is not thereby degraded.

§ 109–1.5148 Personal property management reports.

Property management reports to be submitted to the Property and Equipment Management Division (MA–422) are listed below.

Report title	Due at DOE headquarters	References	Form No.
(a) Reports required of all offices.			
(1) Utilization and Disposal of Personal Property Pursuant to Exchange/Sale Authority.	Nov. 30	FPMR 101-46.407, DOE-PMR 109-46.407.	Letter.
(2) Excess Personal Property Furnished to Non-Federal Recipients.	Nov. 15	FPMR 101-43.4701(c), DOE-PMR 109-43.4701(c).	Letter.
(3) Contractor Property Holdings	Oct. 31	DOE-PMR 109-1.5205	Letter.
(4) Precious Metals	Oct. 31	FPMR 101-42.301-1, DOE-PMR 109-42.301-1.	Letter.
(5) Agency Report of Motor Vehicle Data.	Oct. 31	FPMR 101-38.1, DOE-PMR 109-38.1	SF 82.
(6) Unused Passenger Vehicle Replacement Authorizations.	June 15	DOE-PMR 109-38.5101-5(b)	Letter.
(7) Report of Exempted Motor Vehicles.	On request	FPMR 101-38.607, DOE-PMR 109-38.607.	Letter.
(8) Annual Forecast for Acquisition of Fuel Efficient Passenger Automobiles.	Dec. 1	Executive Order 12375, DOE-PMR 109-38.1305.	Letter.
(9) Aircraft Cost and Operations	Dec. 31	DOE-PMR 109-38.5212(a)	DOE F 4450.1.
(b) Reports required from field offices not reporting through the DOE Financial Information System.			
(1) Utilization and Disposal of Excess and Surplus Personal Property.	Nov. 15	DOE Order 2200, Chapter XI	CR 85-2.
(2) Summary of Excess Property Received from Other Agencies.		DOE Order 2200, Chapter XI	CR 85-4.
(3) Supply Activity Report	Nov. 15	DOE-PMR 109-25.48	GSA F 1473.
(4) Direct Labor Costs of Stores Warehousing Activities.	Nov. 15	DOE Order 2200, Chapter XI	CR 85-7.
(5) Completed Plant and Equipment	Oct. 31	DOE Order 2200, Chapter XI	CR 84-32.
(6) Equipment Held for Future Projects	Oct. 31	DOE Order 2200, Chapter XI	CR 57.

Subpart 109-1.52—Contractors' Personal Property Management Program

§ 109-1.5200 Scope of subpart.

This subpart prescribes policy and responsibilities for the establishment, maintenance, review and appraisal of a contractor's program and system for the management of Government personal property.

§ 109-1.5201 Policy.

(a) Contractors shall establish, maintain, and administer a program for the effective management of Government personal property consistent with the terms of the contract and directives for the contracting officer.

(b) Contractors shall maintain their personal property management systems in writing on a current basis.

(c) Contractors shall require those subcontractors provided Government property under the prime contract to establish and maintain a system for the management of such property. Procedures for assuring effective property management shall be included in the contractor's property control system. As a minimum, a subcontractor's system for control of Government property shall provide for the following:

(1) Adequate records.

(2) Controls over acquisitions.

(3) Identification as Government property.

(4) Physical inventories.

(5) Proper care, maintenance, and protection.

(6) Reporting, redistribution, and disposal of excess and surplus property.

(7) A retirement work order procedure to account for property that is worn out, lost, stolen, destroyed, abandoned, or damaged beyond economical repair.

(8) Periodic reporting, including physical inventory results and, at least annually, the total acquisition cost of Government property in the possession of the subcontractor.

(9) An internal surveillance system, including periodic reviews, to ensure that property is being managed in accordance with established procedures.

§ 109-1.5202 Designation of property administrator.

The contracting officer shall designate a property administrator to be responsible for property administration. This property administrator will be delegated the authority to assist the contracting officer on all matters involving the Government-owned personal property held by the contractor. If a property administrator has not been designated, the contracting officer is the property administrator.

§ 109-1.5203 Review and approval of contractor's property management system.

(a) A contractor's property management system should be reviewed by the property administrator within one year after the execution date of the contract, and the property administrator shall approve or disapprove the system in writing. If the system is disapproved, the property administrator shall advise the contractor, in writing, of deficiencies that need to be corrected, and a time schedule established for completion of the corrective actions.

(b) The purpose of the review is to determine whether the system will adequately protect, maintain, utilize, and dispose of Government personal property in accordance with the FPMR, the DOE-PMR, and applicable DOE directives.

(c) Appropriate follow-up will be made by the property administrator to ensure that corrective actions are taken.

(d) Any change to the approved property management system made after the original review and approval should be reviewed by the property administrator at the earliest possible time. Such changes should then be approved/disapproved by the property administrator as appropriate.

§ 109-1.5204 Property management appraisals.

(a) At least every two years (with a maximum period of three years) after the execution date of the contract, the property administrator shall make an appraisal of the property management operation of the contractor. The appraisal may be based on a formal in-depth appraisal on-site or a series of formal appraisals of the functional segments of the contractor's property management system to determine if the contractor is managing the Government personal property in its custody in accordance with its previously approved policies and procedures, the FPMR, the DOE-PMR, and applicable DOE directives. The property administrator shall bring deficiencies in the contractor's property management operation to the attention of the contractor's management for correction.

(b) Appropriate follow-up will be made by the property administrator to ensure that corrective actions are taken.

§ 109-1.5205 Reporting.

Within 30 days after the end of each fiscal year, heads of field offices shall report the following information to the Director, Property and Equipment Management Division (MA-422):

(a) Name and address of each contractor.

(b) Contract number.

(c) Date contractor's property management system was approved.

(d) Date of most current appraisal of contractor's property management system, and status of the system (satisfactory or unsatisfactory).

SUBCHAPTER C—DEFENSE MATERIALS

PART 109-14—NATIONAL DEFENSE STOCKPILE

Sec.

109-14.000 Scope of part.

Subpart 109-14.1—Transfer of Strategic and Critical Materials Excess to Agency Needs to the National Defense Stockpile

Sec.

109-14.103-1-50 Exceptions to reporting.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-14.000 Scope of part.

This part implements and supplements FPMR Part 101-14, National Defense Stockpile.

Subpart 109-14.1—Transfer of Strategic and Critical Materials Excess to Agency Needs to the National Defense Stockpile

§ 109-14.103-1-50 Exceptions to reporting.

The following materials excess to the needs of a DOE organization or contractor shall be reported to the DOE pool instead of to GSA:

(a) Precious metals, which include gold, silver, and the platinum family (See § 109-43.313-54).

(b) Lead (See § 109-43.313-57).

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 109-25—GENERAL

Sec.

109-25.000-50 Scope of subchapter.
109-25.001-50 Scope of part.

Subpart 109-25.1—General Policies

109-25.100 Use of Government personal property and nonpersonal services.
109-25.101-1-50 Definitions.
109-25.104 Acquisition of office furniture and office machines.
109-25.109 Laboratory and research equipment.
109-25.109-1 Identification of idle equipment.
109-25.109-2 Equipment pools.
109-25.110-4 Recordkeeping responsibilities.
109-25.113 Leasing of motor vehicles.

Subpart 109-25.3—Use Standards

109-25.302 Office furniture, furnishings and equipment.
109-25.302-1 Executive type office furniture and furnishings.
109-25.302-2-50 Filing cabinets and equipment.
109-25.302-3 Electric typewriters.
109-25.302-4 Figuring machines.
109-25.302-6 Electronic office machines.
109-25.304 Additional systems and equipment for passenger motor vehicles.
109-25.304-50 Communications equipment exemption.
109-25.350 Use of furnishings and household goods in Government personnel quarters.
109-25.351 Furnishing of Government clothing and individual equipment to employees.

Subpart 109-25.4—Replacement Standards

109-25.401-50 Replacement approvals.

Subpart 109-25.48—Reports

Sec.

109-25.4800 Scope of subpart.
109-25.4800-50 Applicability.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-25.000-50 Scope of subchapter.

This subchapter implements and supplements FPMR Subchapter E, Supply and Procurement.

§ 109-25.001-50 Scope of part.

This part implements and supplements FPMR Part 101-25, General, and provides cross-references to the DOE Acquisition Regulations (DEAR) where appropriate.

Subpart 109-25.1—General Policies

§ 109-25.100 Use of Government personal property and nonpersonal services.

The Director of Administration and heads of field offices for their respective organizations shall ensure that the provisions of FPMR 101-25.100 are enforced to restrict the use of Government property/services to officially designated activities.

§ 109-25.101-1-50 Definitions.

As used in this subpart, the following definitions apply:

(a) "Equipment" consists of those items of nonexpendable personal property having an anticipated service life of one year or more regardless of use or source of funding.

(b) "Equipment pool" is a formally designated collection of equipment, generally functionally associated, which is available for loan or temporary use. The pool may be a physical collection of equipment or may be a record system which provides identification, location and availability information on equipment available for loan or temporary use.

(c) "Equipment in storage" is all equipment not in use, whether stored in formal storage areas, stored in or adjacent to work areas, held for future projects, or retained in standby or abandoned facilities.

§ 109-25.104 Acquisition of office furniture and office machines.

In making a determination as to whether requirements can be met through the utilization of already owned furniture and office machines as contemplated in FPMR § 101-25.104, reasonable efforts shall be made to determine whether such items are available from other DOE organizations and contractors within a reasonable transport distance. Such efforts shall include direct inquiries and shall not be limited to a review of available property circularized in accordance with § 109-43.311-1-50.

§ 109-25.109 Laboratory and research equipment.

(a) The provisions of FPMR 101-25.109 and this section shall apply to all types of personal property, including office furniture and office machines, in addition to laboratory and research equipment.

(b) The provisions of FPMR 101-25.109 and this section apply to all DOE field organizations and contractors, and are not limited to Federal laboratories.

§ 109-25.109-1 Identification of idle equipment.

(a) See § 109-25.109(b).

(b) As a minimum, management walk-through inspections shall be scheduled to provide for coverage of all operating and storage areas at least once every two years to identify idle and unneeded personal property. The frequency of management walk-through inspections may vary with the operation or area involved. A report of walk-throughs conducted, including participants, areas covered, findings, recommendations, and results achieved shall be submitted to the head of the laboratory or other facility involved. Equipment identified as idle and unneeded shall be redeployed, reassigned, placed in equipment pools or declared excess, as appropriate.

(c) In accordance with FPMR § 101-25.109-1(c), members of management walk-through inspection teams should be appointed by the head of the DOE or contractor facility.

(d) Heads of field offices and contracting officers shall periodically review walk-through procedures and practices of organizations under their jurisdiction to evaluate their effectiveness. This review should include actual walk-through inspections of representative DOE or contractor facilities.

§ 109-25.109-2 Equipment pools.

(b) In accordance with FPMR § 101-25.109-2(b), equipment pools shall be established where practicable to obtain optimum utilization of equipment. The number and types of pools to be established will depend upon local circumstances. In addition to those provided in FPMR § 101-25.109-2, factors to be considered are types of equipment, number and location of potential users and distances involved.

(c) In accordance with FPMR § 101-25.109-2(c), surveys of equipment holdings should be conducted periodically to determine those items which are suitable for pooling. Criteria

for placing an item in a pool should include (but not be limited to) the following: The item is suitable for use by more than one individual or group; its use is intermittent rather than full time; it has a degree of portability; and it has sufficient cost or value to merit controlling. It is anticipated that items pooled would vary from one activity to another due to local conditions, and each activity should develop its own criteria for items to be pooled. Items to be considered for pooling include (but are not limited to) certain types of measuring and recording equipment, pumps, electric motors, photographic equipment, portable tools, microscopes, portable radios, power supplies, amplifiers, business machines, radiation detection instruments, and construction and automotive equipment. Where feasible, equipment pools should be combined with existing calibration and maintenance services to foster use and control of pooled equipment.

(d) Records of usage shall be maintained to permit the evaluation of need for quantities and types of equipment in pools. Reviews of usage should be conducted periodically (at least annually) to eliminate items which are no longer required. Heads of field offices shall require DOE and contractor facilities to submit to them annually the report on the use and effectiveness of equipment pooling required by FPMR § 101–25.109–2(d).

(e) Heads of field offices and contracting officers shall require periodic independent reviews of equipment pool operations as required by FPMR § 101–25.109–2(e).

§ 109–25.110–4 Recordkeeping responsibilities.

In accordance with FPMR 101–25.110–4, heads of field offices shall establish procedures for promptly identifying and locating all tires whether in storage or in use on vehicles so that tire recall notices may be acted upon expeditiously.

§ 109–25.113 Leasing of motor vehicles.

See DEAR 908.11 and FPMR §§ 101–26.501–9 and 101–39.601 for additional guidance concerning the leasing of motor vehicles.

Subpart 109–25.3—Use Standards

§ 109–25.302 Office furniture, furnishings, and equipment.

(a) The criteria contemplated in FPMR § 101–25.302 shall be established by the Director of Administration and heads of field offices for their respective DOE operations, consistent with FPMR § 101–25.302–1 and this subpart. Office furniture, furnishings, and equipment shall be limited to that required for immediate needs, considering such factors as ordering lead time, potential emergency needs and economical ordering quantities. Requirements shall be met to the fullest extent practicable and economical from available excess or by rehabilitation or repair.

(d) Contractors should be encouraged to limit executive-type furniture and furnishings to contractor personnel who organizationally are in positions that are similar or comparable to DOE positions authorized to use executive type office furniture as provided in FPMR § 101–25.302–1, when such action will effect economy without decreasing efficiency.

§ 109–25.302–1 Executive type office furniture and furnishings.

The Director of Administration and heads of field offices for their respective organizations are authorized to make the determination contemplated by FPMR § 101–25.302–1.

§ 109–25.302–2 Filing cabinets and equipment.

In addition to the use standards prescribed in FPMR § 101–25.302–2, Departmental policies, standards, procedures, and guidelines for the files management program is contained in DOE Order 1324.3.

§ 109–25.302–3 Electric typewriters.

The Director of Administration and heads of field offices for their respective organizations shall establish policies, procedures, and standards for the use of electric typewriters as contemplated in FPMR § 101–25.302–3, and are authorized to approve exceptions to the criteria contained in that section.

§ 109–25.302–4 Figuring machines.

The Director of Administration and heads of field offices for their respective organizations shall establish standards for the use of figuring machines as contemplated in FPMR § 101–25.302–4.

§ 109–25.302–6 Electronic office machines.

The Director of Administration and heads of field offices for their respective organizations shall establish standards for the use of electronic office machines as contemplated in FPMR § 101–25.302–6.

§ 109–25.304 Additional systems and equipment for passenger motor vehicles.

(a) If an item is determined to be essential and the guidelines in FPMR § 101–25.304 cannot be met, or the required item is not shown in Federal Standard 122, requisitions, accompanied by supporting justifications, shall be submitted to the Property and Equipment Management Division (MA–422), for further coordination with the Commissioner, Federal Supply Service, General Services Administration, prior to acquisition.

(b) See FPMR § 101–26.501, "Purchase of new motor vehicles," and DEAR 908.7101–2, "Consolidated purchase of new vehicles by General Services Administration."

§ 109–25.304–50 Communications equipment exemption.

Communications equipment considered to be essential for the accomplishment of security and safety responsibilities is exempt from the requirements of § 109–25.304. Communications equipment may be acquired and installed in motor vehicles operated by DOE and its contractors after approval by the Director of Administration and heads of field offices for their respective organizations.

§ 109–25.350 Use of furnishings and household goods in Government personnel quarters.

The Director of Administration and heads of field offices for their respective organizations have the authority to authorize the use of furnishings and household goods in Government personnel quarters.

§ 109–25.351 Furnishing of Government clothing and individual equipment to employees.

(a) Government-owned clothing and individual equipment may be furnished employees under the circumstances indicated below. Care should be exercised to avoid the acquisition and furnishing of clothing and individual equipment to be fitted to an employee who may soon be separated from service or permanently assigned to other duties. This section does not apply to provision of uniforms or uniform allowances under the Federal Employees Uniform Allowances Act of 1954, as amended.

(b) Special clothing and individual equipment for the protection of personnel from physical injury or occupational disease may be furnished employees.

(c) Articles of clothing and individual equipment may be furnished employees when the items are such that the employee could not reasonably be required to furnish them as a part of their personal clothing and equipment necessary to enable them to perform the regular duties of the position to which they are assigned or for which services were engaged.

Subpart 109-25.4—Replacement Standards

§ 109-25.401-50 Replacement approvals.

The Director of Administration and heads of field offices for their respective organizations are authorized to approve replacement of office machines, furniture, and materials handling equipment under the conditions cited in FPMR Subpart 101-25.4.

Subpart 109-25.48—Reports

§ 109-25.4800 Scope of subpart.

This subpart supplements information concerning the reporting of supply management data to GSA as contained in FPMR §§ 101-25.48 and 101-25.49.

§ 109-25.4800-50 Applicability.

The provisions of FPMR Subparts 101-25.48 and 101-25.49 and this subpart apply only to those DOE direct operations and contractors controlling Government-owned stores inventories. However, based on an agreement with GSA, the DOE Supply Activity Report is prepared at Headquarters from supply management data available in DOE's financial reports and is sent to GSA by the Property and Equipment Management Division (MA-422). Therefore, no additional reports are required from those field organizations or contractors reporting under the DOE financial reporting system. Those activities with stores operations which do not report under the DOE financial reporting system shall submit Supply Activity Reports to the Property and Equipment Management Division (MA-422) by November 15 for inclusion in the Departmental report.

PART 109-26—PROCUREMENT SOURCES AND PROGRAMS

Sec.
109-26.000 Scope of part.
109-26.050 Applicability.

Subpart 109-26.2—Federal Requisitioning System

109-26.203 Activity address codes.

Subpart 109-26.4—Purchase of Items From Federal Supply Schedule Contracts

109-26.406-1 General.

Subpart 109-26.5—GSA Procurement Programs

109-26.501 Purchase of new motor vehicles.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254)

§ 109-26.000 Scope of part.

This part implements and supplements FPMR Part 101-26, Procurement Sources and Programs.

§ 109-26.050 Applicability.

FPMR Part 101-26 and this part are applicable to contractors to the extent that Government supply sources are made available. For DOE policy on the use of Government supply sources by contractors, see DEAR Subpart 970.51.

Subpart 109-26.2—Federal Requisitioning System

§ 109-26.203 Activity address codes.

In accordance with FPMR § 101-26.203, the Property and Equipment Management Division (MA-422) has been designated the DOE point of contact with GSA for matters concerning activity address codes. DOE organizations shall designate a point of contact who shall coordinate all matters concerning activity address codes with the DOE point of contact.

Subpart 109-26.4—Purchase of Items from Federal Supply Schedule Contracts

§ 109-26.406-1 General.

The Director of Administration and heads of field offices for their respective organizations may authorize the use of U.S. Government National Credit Cards in accordance with FPMR § 101-26.406-1. See FPMR § 101-38.12 and 109-38.12 for information on the assignment of billing address code numbers and the control of U.S. Government National Credit Cards.

Subpart 109-26.5—GSA Procurement Programs

§ 109-26.501 Purchase of new motor vehicles.

In addition to the provisions of FPMR § 101-26.501, DEAR 908.7101 contains DOE requirements concerning the purchase of new motor vehicles, and DEAR 908.11 contains the DOE requirements concerning the leasing of motor vehicles.

PART 109-27—INVENTORY MANAGEMENT

Sec.
109-27.000 Scope of part.
109-27.001-50 Definitions.

Subpart 109-27.1—Stock Replenishment

109-27.102-2 Guidelines.

Subpart 109-27.2—Management of Shelf-Life Materials

109-27.202 Applicability.

Subpart 109-27.3—Maximizing Use of Inventories

109-27.302 Applicability.

Subpart 109-27.4—Elimination of Items from Inventory

Sec.
109-27.402 Applicability.

Subpart 109-27.50—Inventory Management Policies, Procedures and Guidelines

109-27.5001 Scope of subpart.
109-27.5002 Objectives.
109-27.5003 Stores inventory turnover ratio.
109-27.5004 Stock control.
109-27.5004-1 General.
109-27.5004-2 Construction inventories.
109-27.5005 Guide levels for construction inventories.
109-27.5006 Sub-stores.
109-27.5007 Shop, bench, cupboard or site stock.
109-27.5008 Stores catalogs.
109-27.5009 Physical inventories.
109-27.5009-1 Procedures.
109-27.5009-2 Inventory adjustments.
109-27.5010 Control of drug substances and potable alcohol.
109-27.5011 Containers returnable to vendors.
109-27.5012 Identification marking of metals and metal products.
109-27.5012-1 General.
109-27.5012-2 Exception.
109-27.5012-3 Federal standards applicable to marking.

Subpart 109-27.51—Management of Equipment Held for Future Projects

109-27.5100 Scope of subpart.
109-27.5101 Definition.
109-27.5102 Objective.
109-27.5103 Records.
109-27.5104 Storage.
109-27.5105 Justification and review procedures.
109-27.5106 Field organization review.
109-27.5107 Utilization.

Subpart 109-27.52—Management of Spare Equipment

109-27.5200 Scope of subpart.
109-27.5201 Definition.
109-27.5202 Exclusions.
109-27.5203 Management policy.

Subpart 109-27.53—Management of Precious Metals

109-27.5300 Scope of subpart.
109-27.5301 Definition.
109-27.5302 Policy.
109-27.5303 Precious metals control officer.
109-27.5304 Practices and procedures.
109-27.5304-1 Acquisitions.
109-27.5304-2 Designation of custodians.
109-27.5304-3 Physical protection and storage.
109-27.5304-4 Perpetual inventory records.
109-27.5304-5 Physical inventories.
109-27.5304-6 Stock issue.
109-27.5304-7 Control by using organization.
109-27.5305 Management reviews and audits.
109-27.5306 Precious metals pool.
109-27.5306-1 Purpose and operation.
109-27.5306-2 Withdrawals.
109-27.5306-3 Returns.
109-27.5306-4 Withdrawals/returns forecasts.

Sec.
109–27.5306–5 Assistance.
109–27.5307 Recovery of silver from used hypo solution and scrap film.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

109–27.000 Scope of part.

This part implements and supplements FPMR Part 101–27, Inventory Management, but excludes atomic weapons or byproducts and source or special nuclear materials as defined in the Atomic Energy Act of 1954, as amended, enriched uranium in stockpile storage, and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

109–27.001–50 Definitions.

As used in this part the following definitions apply:

(a) "Construction inventories" are supplies, materials and parts held for exclusive use on construction projects.

(b) "Economic order quality (EOQ)" means the size of the order which produces a level at which the combined costs of procuring and carrying inventory are at a minimum.

(c) "Expensed inventories" are items for which the cost is charged to operations and are not under financial control.

(d) "Inventories" are stocks of stores, construction, special reactor and other special materials, supplies and parts used in support of DOE programs.

(e) "Inventory level," usually expressed in the number of months supply on hand based on anticipated usage, is the amount of supplies authorized to be on hand and due-in less any amount due-out.

(f) "Inventory management" means the effective use of methods, procedures and techniques for recording, analyzing, and adjusting inventories in accordance with established policy. The following related functions are included:

(1) Providing adequate protection against misuse, theft, and misappropriation.

(2) Providing accurate analyses of quantities to determine requirements so that only minimal obsolescence losses will be encountered, while ensuring adequate inventory levels to meet program schedules.

(3) Providing adequate and accessible storage facilities and services based upon analyses of program requirements so that a minimum and economical amount of time is required to service the program.

(g) "Other special materials" include precious metals and other rare materials having a very high monetary value in relation to volume or weight, special barrier materials, and any others that have been specifically approved by the DOE Controller.

(h) "Physical inventory" means the process of counting the quantities of items on hand and reconciling quantities counted with the quantities shown on control records.

(i) "Quantity control" means the management of inventories through control of levels, determination of requirements, and replenishment of stock.

(j) "Safety stock" is that portion of inventories under stock control carried for protection against stock depletion due to an increase in demand or when lead time is greater than anticipated.

(k) "Shop, bench, cupboard or site stock" is a collection or store of materials located at or near the point of use.

(l) "Special reactor materials" include special materials approved for research and for use in reactors but not generally available through the usual channels in sufficient quantity because of limited commercial production applications.

(m) "Standardization" is the reduction of stores inventories to the least practicable variety of sizes, shapes and materials compatible with program needs.

(n) "Stock record" is a device for collecting, storing, and providing historical data on recurring transactions for each line item of inventory. The stock record of a line item may be a visible register of transactions recorded by hand or by machine for that item, or it may be the input, output, stored data, or the corresponding print-out of such data representing transactions on the item in an electronic data processing system.

(o) "Stores catalog" means a listing of stock items for use in requisitioning supplies and materials.

(p) "Sub-store" is a geographically removed part of the main store's operation conducted as a subordinate element of it and subject to the same management policies and inventory controls.

Subpart 109–27.1—Stock Replenishment

109–27.102–2 Guidelines

Procedures and practices shall provide for replenishment of stock items having recurring demands to minimize costs involved. When considered more suitable, contractors may use other generally accepted approaches to EOQ.

Subpart 109–27.2—Management of Shelf-Life Materials

109–27.202 Applicability.

Procedures and practices shall provide for managing shelf-life materials to minimize loss and ensure maximum use prior to deterioration. When considered more suitable, contractors may use other generally accepted approaches to the management of shelf-life items.

Subpart 109–27.3—Maximizing Use of Inventories

109–27.302 Applicability.

Procedures and practices shall provide for maximizing use of inventories. When considered more suitable, contractors may use other generally accepted approaches to maximizing use of inventories.

Subpart 109–27.4—Elimination of Items From Inventory

§ 109–27.402 Applicability.

Procedures and practices shall provide for eliminating from inventory items that can be obtained more economically from readily available sources on a timely basis. When considered more suitable, contractors may use other generally accepted approaches to determine which items should be retained in inventory.

Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines

§ 109–27.5001 Scope of subpart.

This subpart supplements FPMR Part 101–27 by providing additional policies, principles and guidelines for the economical and efficient management of inventories in support of DOE programs.

§ 109–27.5002 Objectives.

Necessary inventories shall be established and maintained at reasonable levels, consistent with program requirements. They shall be managed and controlled in the most practicable and economical manner consistent with program needs, applicable laws and regulations and the following objectives:

(a) Provide materials and supplies as needed to meet DOE requirements.

(b) Maintain reasonable inventory levels.

(c) Provide adequate safeguards for protection.

(d) Maintain adequate quantity controls for effective management ov[illegible] all inventories, including those not under financial controls.

(e) Assure maximum efficient utilization and avoid waste.

(f) Maintain an economical operation.

(g) Standardize inventories to the greatest extent practicable.

§ 109–27.5003 Stores inventory turnover ratio.

Comparison of investment in stores inventories to annual issues shall be made to assure that minimum inventories are maintained for the support of programs. This comparison may be expressed either as a turnover ratio (issues divided by dollar value of inventory) or in the average number of month's supply on hand. Turnover or number of month's supply is calculated only on "current-use" inventory. Performance goals, i.e., a six months investment or a turnover ratio of 2.0, shall be established for each stores using activity. However, it is recognized that extenuating operating circumstances may preclude the achievement of such objectives.

§ 109–27.5004 Stock control.

§ 109–27.5004–1 General.

Stock control shall be maintained on the basis of stock record accounts of inventories on hand, on order, received, issued, and disposed of, and supported by proper documents in evidence of these transactions. Stock record accounts shall be available for review and inspection.

§ 109–27.5004–2 Construction inventories.

Stock control from construction inventories shall be maintained by the regular checking of individual items to assure that the quantities ordered plus amounts on hand do not exceed current job requirements. To test the effectiveness of such checks, they should be supplemented with DOE reviews of inventory items on a selective basis at approximately the 25 percent, 50 percent, and 75 percent construction completion stages. Undelivered portions of purchase orders, which these checks and reviews indicate are not needed to complete the project, should be canceled.

§ 109–27.5005 Guide levels for construction inventories.

To ensure that inventories maintained for construction programs and activities are reasonable, the following standards are established as guides (variations may be used where it is established by field organizations that they will more effectively or economically assure that inventory levels are held to the amount required to complete the construction project):

(a) Ordinary construction materials and supplies readily available from commercial sources, and not available as Government excess, permit phasing of deliveries and cancellation of undelivered quantities that may prove excess to project requirements. The onhand inventory of such materials generally should not exceed a three or four months supply at the anticipated usage rates.

(b) Ordinary construction materials and supplies readily obtainable from Government excess should be acquired only in the amounts estimated to complete the construction project.

(c) Items obtainable only by special manufacture or fabrication should be limited to the estimates of requirements to complete the project as determined from project plans and specifications, except as outlined in (d) below.

(d) Inventory levels in excess of estimates to complete the project should be confined to items so unusual in character or unique to the DOE project that they are obtainable only by special manufacture and will be required for maintenance purposes or for operation of the completed plant.

§ 109–27.5006 Sub-stores.

(a) Sub-stores shall be established when necessary to expedite delivery of materials and supplies to the users, serve emergencies, provide economy in transportation, reduce shop and site stocks, and enable stores personnel to provide assistance in obtaining materials and supplies as needed.

(b) Items stored for issue in the sub-stores shall be treated as inventory items for control and reporting purposes. Stock records shall be integrated with central stock records so that the total amount on hand of any item at all locations is known.

§ 109–27.5007 Shop, bench, cupboard or site stock.

(a) Shop, bench, cupboard or site stocks are an accumulation of small inventories of fast-moving materials at the point of use. Normally, these inventories are expensed. However, when stocks of such inventories are not consumed or do not turn over in a reasonable period of time, which normally should not exceed 90 days, these items should be subject to the required physical controls and recorded in the proper inventory account.

(b) Care shall be exercised to prevent excessive accumulation of inventories at such points. As a control measure, requisitions should be screened against issue data as reflected in stock records at the supply point. Also, work orders, retirement notices, minor construction projects, maintenance programs, and research and experimental projects, involving removal and dismantling should be reviewed and screened to prevent excessive inventories at point of use. However, the most effective control at point of use may be effected by administrative action through visual examination of quantities on hand, and close supervisory control and training of persons who requisition materials and supplies.

§ 109–27.5008 Stores catalogs.

A suitable stores catalog for customer use in requisitioning stores items shall be established for each stores operation. Exceptions to this requirement are authorized where establishment of a catalog is impracticable or uneconomical because of small total value or number of items involved, or temporary need for the facility. Revisions to the catalog should be made at reasonable intervals.

§ 109–27.5009 Physical inventories.

§ 109–27.5009–1 Procedures.

The following procedures shall be established for taking physical inventory of stocks subjected to quantity controls as well as those under financial control:

(a) Completion of a physical inventory not less frequently than every twelve months.

(b) Reconciliation of inventory quantities with the stock records.

(c) Preparation of a report of the physical inventory results.

§ 109–27.5009–2 Inventory adjustments.

(a) Discrepancies between physical inventories and stock records shall be adjusted and the supporting adjustment records shall be reviewed and approved by a responsible official at least one supervisory echelon above the supervisor in charge of the warehouse or storage facility. Items on an adjustment report which are not within reasonable tolerances for particular items shall be thoroughly investigated before approval.

(b) Such inventory adjustment reports, when properly approved, support adjustments to the stock records and debits and credits to the financial inventory accounts. Adjustment reports shall be retained on file for inspection and review.

§ 109–27.5010 Control of drug substances and potable alcohol.

(a) The term "controlled substance" means any drug or substance which has been assigned a "Bureau of Controlled Substance Code Number" pursuant to 21

CFR Part 1308–Schedule of Controlled Substances.

(b) Effective procedures and practices shall provide for the management and physical security of controlled substances and potable alcohol from receipt to the point of use. Such procedures shall, as a minimum, provide for safeguarding, proper use, adequate records, and compliance with applicable laws and regulations. Controls and records of potable alcohol shall be maintained on quantities of one quart and above.

(c) Effective procedures and practices shall provide for the management and physical security of hypodermic needles to prevent illegal use. Controls shall include supervisory approval for issue, storage in locked repositories, and the rendering of the needles useless upon disposal.

§ 109–27.5011 Containers returnable to vendors.

Containers furnished by vendors shall be administratively and physically controlled before and after issuance. Prompt action shall be taken to return such containers to vendors for credit after they have served their intended use.

§ 109–27.5012 Identification marking of metals and metal products.

§ 109–27.5012–1 General.

Metals and metal products shall be identification marked in accordance with applicable Federal standards. This requirement applies to direct charges as well as to items procured for store, shop or floor stock, or for use on construction projects. Additional markings not covered by the Federal standards should be used to show special properties, corrosion data or test data as required. The preferred process is for the marking to be done in the manufacturing process, but it may be applied by jobbers or other vendors when circumstances warrant.

§ 109–27.5012–2 Exception.

Exception to the marking requirement may be made when—

(a) It is necessary to procure small quantities from suppliers not equipped to do the marking;

(b) It would delay delivery of emergency orders; or

(c) Procurement is from DOE or other Federal agency excess.

§ 109–27.5012–3 Federal standards applicable to marking.

The Federal standards listed below can be obtained from the General Services Administration, Federal Supply Service (3 FRI), Washington, D.C. 20407.

(a) Federal Standard 182A(2) "Identification Marking of Nickel and Nickel Base Alloys."

(b) Federal Standard 183B "Continuous Identification Marking of Iron and Steel Products."

(c) Federal Standard 184A "Identification Marking of Aluminum, Magnesium and Titanium."

(d) Federal Standard 185 "Continuous Marking of Copper and Copper Base Alloy Mill Products."

Subpart 109–27.51—Management of Equipment Held for Future Projects

§ 109–27.5100 Scope of subpart

This subpart provides policies, principles and guidelines to be used in the management of equipment held for future projects.

§ 109–27.5101 Definition.

"Equipment held for future projects (EHFFP)" is equipment that is being retained, based on approved justifications, for a known future use, or for a potential use in planned projects. This classification excludes spare equipment retained as backup for equipment in service or equipment placed in equipment pools (classified as "In Service"), spare and other equipment constituting a part of the facilities in standby (classified as "Standby"), excess equipment, and equipment classified as "Plant and Equipment Changes in Progress".

§ 109–27.5102 Objective.

The objective of the "equipment held for future projects" program is to enable DOE offices and contractors to retain equipment not in use in current programs but which has a known or potential use in future DOE programs, while providing visibility on the types and amounts of equipment so retained through review and reporting procedures. It is intended that equipment be retained which is economically justifiable for retention, considering costs of replacement, storage, obsolescence, deterioration, or future availability, that it be made available for use by others, and that equipment no longer needed be promptly excessed.

§ 109–27.5103 Records.

Records of all EHFFP shall be maintained by the holding organization. Included shall be a listing of items with original date of classification as EHFFP, initial justifications for retaining EHFFP, rejustifications for retention, and documentation of reviews made by higher levels of management.

§ 109–27.5104 Storage.

EHFFP should be stored in warehouse space designated for that purpose. When such space cannot be made available, such equipment may be stored in storage yards or other areas with due consideration to the type of property and protection required.

§ 109–27.5105 Justification and review procedures.

Procedures shall provide for the following:

(a) The original decision to classify and retain equipment as EHFFP shall be justified in writing, providing sufficient detail to support the need for retention of the equipment. This justification will cite the project for which retained, the potential use to be made of the equipment, or other reasons for retention.

(b) The validity of initial classification of equipment held for future projects shall be reviewed at a level of management one echelon above that of the individual making the initial determination.

(c) Retention of EHFFP must be rejustified annually to ensure that original justifications remain valid. These rejustifications will be supported with sufficient detail to support retention.

(d) Annual rejustifications for retention of EHFFP for longer than one year shall be reviewed at a level of management at least two levels above that of the individual making the determination to retain the equipment as held for future projects. EHFFP retained for periods longer than three years should be approved by the head of the DOE field office or his designee.

§ 109–27.5106 Field organization review.

Heads of field offices and contracting officers shall conduct periodic reviews to ensure the validity of justifications for retaining EHFFP. These reviews should include onsite surveys of a representative sample of equipment in this classification.

§ 109–27.5107 Utilization.

It is DOE policy that, where practicable and consistent with program needs, EHFFP be considered as a source of supply to avoid or postpone acquisition. Procedures shall be established to provide for—

(a) Distribution within the holding organization of lists of EHFFP to acquisition offices (or some other central screening office) and potential users for screening against requirements prior to acquisition; and

(b) Exchange of lists of EHFFP which can be made available for loan between organizations involved in the same or similar programs.

Subpart 109-27.52—Management of Spare Equipment

§ 109-27.5200 Scope of subpart.

This subpart provides policy guidance to be used in the management of spare equipment.

§ 109-27.5201 Definition.

"Spare equipment" is equipment held as replacement spares for equipment in current use in DOE programs.

§ 109-27.5202 Exclusions.

The following categories of equipment will not be considered spare equipment:

(a) Equipment installed for emergency backup, e.g., an emergency power facility, or an electric motor or a pump, any of which is in place and electrically connected.

(b) Equipment-like items properly classified as stores inventory.

§ 109-27.5203 Management policy.

(a) Procedures shall require records of spare equipment and purpose for retention, cross-referenced to location in facility and engineering drawing number.

(b) Reviews shall be made based on technical evaluations of the continued need for the equipment. Frequency of review should be biennial. In addition, individual item levels shall be reviewed when spare equipment is installed for use, the basic equipment is removed from service, or the process supported is changed.

(c) Procedures shall be established to provide that unneeded spare equipment be identified and reported in excess.

Subpart 109-27.53—Management of Precious Metals

§ 109-27.5300 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of DOE-owned precious metals by DOE organizations and contractors.

§ 109-27.5301 Definition.

"Precious metals" means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are gold, silver, and the platinum group metals—platinum, palladium, rhodium, iridium, ruthenium and osmium.

§ 109-27.5302 Policy.

DOE organizations and contractors shall establish effective procedures and practices for the administrative and physical control of precious metals in accordance with the provisions of this subpart.

§ 109-27.5303 Precious metals control officer.

Each DOE organization and contractor holding precious metals shall designate a responsible individual as Precious Metals Control Officer. This individual shall be the organization's primary point of contact concerning precious metals control and management, and shall be responsible for the following:

(a) Assuring that the organization's precious metals activities are conducted in accordance with the requirements of this subpart and Chapter IV of the DOE Accounting Practices and Procedures Handbook.

(b) Maintenance of an accurate list of the names of precious metals custodians.

(c) Providing instructions and training to precious metals custodians and/or users as necessary to assure compliance with regulatory responsibilities.

(d) Insuring that physical inventories are performed as required by, and in accordance with, these regulations.

(e) Witnessing physical inventories.

(f) Performance of periodic unannounced inspections of custodian's precious metals inventory and records.

(g) Conduct of an annual review of precious metals holdings to determine excess quantities.

(h) Preparation and submission of the annual forecast of anticipated withdrawals from, and returns to, the DOE precious metals pool.

(i) Conduct of a program for the recovery of silver from used hypo solution and scrap film in accordance with FPMR §§ 101-42.3 and 109-42.3.

(j) Preparation and submission of the annual report on recovery of silver from used hypo solution and scrap film as required by § 109-42.301-1.

(k) Developing and issuing current authorization lists of persons authorized by management to withdraw precious metals for stockrooms.

§ 109-27.5304 Practices and procedures.

§ 109-27.5304-1 Acquisitions.

DOE organizations and contractors shall contact the DOE Precious Metals Pool Manager to determine the availability of precious metals prior to acquisition on the open market.

§ 109-27.5304-2 Designation of custodians.

Responsible individuals shall be designated as precious metals custodians. Custodians shall be responsible for proper control and safeguarding of the precious metals when issued for use.

§ 109-27.5304-3 Physical protection and storage.

Precious metals shall be afforded exceptional physical protection from time of receipt until disposition. Precious metals not in use shall be stored in a noncombustible combination locked repository with access limited to the custodian and an alternate. When there is a change in custodian or alternate having access to the repository, the combination shall be changed immediately.

§ 109-27.5304-4 Perpetual inventory records.

Perpetual inventory records shall be maintained as specified in Chapter V of the DOE Accounting Practices and Procedures Handbook.

§ 109-27.5304-5 Physical inventories.

(a) Physical inventories shall be conducted semiannually by custodians, and witnessed by the Precious Metals Control Officer or his designee.

(b) Precious metals not in use shall be inspected and weighed on calibrated scales. The inventoried weight and form shall be recorded on the physical inventory sheets by class of metal. Metals in use in an experimental process, or which are contaminated and therefore cannot be weighed, shall be listed on the physical inventory sheet as observed and/or not observed as applicable.

(c) Any obviously idle or damaged metals should be recorded during the physical inventory. Justification for further retention of idle materials shall be required from the custodian or disposed of in accordance with established procedures.

(d) The dollar value of physical inventory results shall be reconciled with the financial records. All adjustments shall be supported by appropriate adjustment reports, and approved by a responsible official.

§ 109-27.5304-6 Stock issue.

Metals in stock are metals held in a central location and later issued to individuals when authorized requests are received. The following control procedures shall be followed for such metals:

(a) Stocks shall be held to a minimum consistent with effective and economical support to programs.

(b) The name and organization number of each individual authorized to withdraw precious metals, and the type and kind of metal, shall be prominently

maintained in the stockroom. This authorization shall be issued by the Precious Metals Control Officer or his designee and updated semiannually. Issue of metals will be made only to authorized persons.

(c) Accurate records of all movements (receipts, issues, returns, and disposals) shall be developed by, and maintained in, the stockroom.

(d) Receipts for metal issues and returns to stock shall be provided to users. Such receipts, signed by the authorized requesting individual and the stockroom clerk, shall list the requesting organization, type and form of metal, quantity, and date of transaction.

§ 109-27.5304-7 Control by using organization.

(a) After receipt, the using organization shall provide the necessary controls for the precious metal. Materials shall be stored in a locked repository at all times except for small quantities at the actual point of use.

(b) Each using organization shall maintain a log showing the individual user, type and form of metal, and the time, place, and purpose of each use. The log shall be kept in a locked repository when not in use.

(c) The logs and secured locked storage facilities are subject to review by the Precious Metals Control Officer and other audit or review staffs as required.

(d) Cognizant Department Managers are responsible for assuring that minimum quantities of precious metals are withdrawn consistent with work requirements and that quantities excess to requirements are promptly returned to the stockroom.

(e) Employee termination and transfer procedures shall include clearance for precious metals possession.

§ 109-27.5305 Management reviews and audits.

(a) Unannounced inspections of custodian's precious metals inventory and records may be conducted between scheduled inventories.

(b) DOE organizations and contractors holding precious metals shall annually review the quantity of precious metals on hand to determine if this quantity is in excess of programmatic requirements. Precious metals which are not needed for current or foreseeable requirements shall be promptly reported to the DOE Precious Metals Pool. The results of this annual review are to be documented and entered into the precious metals inventory records.

§ 109-27.5306 Precious metals pool.

§ 109-27.5306-1 Purpose and operation.

The purpose of the precious metals pool is to recycle DOE-owned precious metals within the Department at the minimum cost to participants. The pool is operated by a private firm under a contract with the Oak Ridge Operations Office. Current information regarding the contractor's name, address, and telephone number and processing charges can be obtained by request through the Chief, Property Management Branch, Oak Ridge Operations Office.

§ 109-27.5306-2 Withdrawals.

Pure metal, parts, fabricated products, catalysts, or solutions, are generally available and the DOE pool contractor can provide assistance in supplying such requirements. Metals can be shipped to any facility to fulfill fabrication requirements.

§ 109-27.5306-3 Returns.

The pool is entirely dependent on metal returns; therefore, metal inventories should be maintained on an as-needed basis, and any excess metals should be returned to the pool for recycling. With the exception of silver, this includes precious metals in any form, including shapes, scrap, or radioactively contaminated. Only high grade nonradioactively contaminated silver should be included. Procedures have been developed by the precious metals pool contractor for metal returns, including storing, packaging, shipping, and security.

§ 109-27.5306-4 Withdrawals/returns forecasts.

The precious metals pool contractor will request annually from each DOE field organization its long-range forecast of anticipated withdrawals from the pool and returns to the pool.

§ 109-27.5306-5 Assistance.

DOE organizations or contractors may obtain specific information relative to the operation of the precious metals pool by contacting the Oak Ridge Operations Office as indicated in § 109-27.5306-1.

§ 109-27.5307 Recovery of silver from used hypo solution and scrap film.

The requirements for the recovery of silver from used hypo solution and scrap film are contained in § 109-42.302.

PART 109-28—STORAGE AND DISTRIBUTION

Sec.
109-28.000 Scope of part.
109-28.001-50 Policy.
109-28.001-51 Storage guidelines.

Subpart 109-28.3—Self Service Stores

Sec.
109-28.308-3 Limitations on use.
109-28.308-6 Safeguards.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-28.000 Scope of part.

This part implements and supplements FPMR Part 101-28, Storage and Distribution.

§ 109-28.001-50 Policy.

Storage and warehouse services shall be—

(a) Established for the receipt, storage, issue, safekeeping and protection of Government-owned property when advantageous to the Government;

(b) Provided in the most economical and efficient manner through the use of Government-owned facilities, and where necessary available commercial facilities, consistent with program requirements; and

(c) Operated in accordance with generally accepted industrial management practices and principles.

§ 109-28.001-51 Storage guidelines.

(a) Adequate storage facilities shall be provided to ensure the proper safeguarding of all Government property.

(1) Indoor storage areas should be arranged to obtain proper stock protection and maximum utilization of space within established floor load capacities.

(2) Storage yards for items not requiring covered protection shall be protected by locked fenced enclosures to the extent necessary to protect the Government's interest.

(3) Storage areas shall be prominently posted to clearly indicate that the property stored therein is U.S. Government property. Entrance to such areas should be restricted to authorized personnel only.

(b) The following general storage principles shall be observed in the planning for the storage of Government personal property:

(1) Efficient storage demands the maximum utilization of space with a minimum amount of labor. Where practicable, labor should be conserved by use of modern materials handling equipment and storage aids which permit stacking by unit loads rather than by individual container units.

(2) Fast-moving items should be stored in convenient locations from which they can be issued with minimum handling. Stocks of individual items or classes of items should be segregated to facilitate handling, issuing, and inventorying.

(3) Property should be stored according to the kind of protection required. All items must be protected from fire and theft. Certain items require protection from dampness, heat, freezing, or extreme temperature changes. Others must be stored away from light and odors, protected from vermin infestation, or, because of their hazardous characteristics, stored separate from other stocks. These factors, as well as maximum protection of property against all causes of deterioration or destruction, must be considered in selecting proper storage locations.

(4) Orderly arrangement is essential to efficient operation of storehouses. All items should be so arranged that nomenclature and quantity may be readily determined.

(5) Stock rotation is based on the general storage principle of "first in, first out." Many items, such as perishables, food stuffs, medicines, paints, and chemicals, are subject to deterioration or infestation which require that the older stock be issued first.

Subpart 109–28.3—Self Service Stores

§ 109–28.308–3 Limitations on use.

The Director of Administration and heads of field offices for their respective organizations shall establish internal controls for the use of GSA shopping plates in accordance with FPMR § 101–28.308–3.

§ 109–28.308–6 Safeguards.

The Director of Administration and heads of field offices for their respective organizations shall establish internal controls for safeguarding of GSA shopping plates in accordance with FPMR § 101–28.308–6.

PART 109–29—FEDERAL SPECIFICATIONS AND STANDARDS

Sec.
109–29.000 Scope of part

Subpart 109–29.1—General

109–29.103 Availability of Federal standardization documents.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254)

§ 109–29.000 Scope of part.

This part implements and supplements FPMR Part 101–29, Federal Specifications and Standards.

Subpart 109–29.1—General

§ 109–29.103 Availability of Federal standardization documents.

The Index of Federal Specifications and Standards may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies of Federal Specifications and Standards may be obtained as provided in the Index.

PART 109–30—FEDERAL CATALOG SYSTEM

Sec.
109–30.000 Scope of part.
109–30.000–50 Applicability.

Subpart 109–30.5—Maintenance of the Federal Catalog System

109–30.503 Maintenance actions required.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–30.000 Scope of part.

This part supplements FPMR Part 101–30, Federal Catalog System.

§ 109–30.000–50 Applicability.

The provisions in FPMR Part 101–30 and this part do not apply to contractors.

Subpart 109–30.5—Maintenance of the Federal Catalog System

§ 109–30.503 Maintenance actions required.

(b) Standard Form 1303 shall be sent directly to GSA for processing. Inquiries concerning policy should be directed to the Property and Equipment Management Division (MA–422).

SUBCHAPTER F—ADP AND TELECOMMUNICATIONS

PART 109–36—ADP MANAGEMENT

Sec.
109–36.000 Scope of part.

Subpart 109–36.3—Reutilization of Automatic Data Processing Equipment and Supplies

109–36.300–50 Scope of subpart.
109–36.302–50 Reassignment of ADPE within DOE.
109–36.303–1 Designation of agency ADPE point of contact.
109–36.303–3–50 Reporting excess or exchange/sale ADPE within DOE.
109–36.304 Availability list.
109–36.306 Requests for transfer of excess ADPE or exchange/sale ADPE.

Subpart 109–36.47—Reports

109–36.4700 Scope of subpart.
109–36.4702 Reporting excess or exchange/sale ADPE.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–36.000 Scope of part.

This part implements and supplements FPMR Part 101–36 as it relates to utilization and disposal of excess automatic data processing equipment (ADPE).

Subpart 109–36.3—Reutilization of Automatic Data Processing Equipment and Supplies

§ 109–36.300–50 Scope of subpart.

This subpart implements and supplements FPMR Part 101–36.3. Policies and procedures relating to acquisition, reassignment, or retention of excess ADPE are contained in policies and procedures established by the Office of the Director of Administration.

§ 109–36.302–50 Reassignment of ADPE within DOE.

(a) Transfers within DOE of excess ADPE having a current market price equal to or greater than that specified for major items as defined in the DOE Program Budget Structure are made pursuant to the requirement for proposals submitted in accordance with instructions from the Office of the Director of Administration.

(b) Transfers within DOE of excess ADPE with a current market price of less than that specified for major items shall be approved by the head of the field office and the head of the Headquarters organization having ADPE responsibility for the equipment. However, when more than one request is received, the field office head shall notify the requestors that acquisition proposals prepared in accordance with instructions from the Office of the Director of Administration shall be forwarded to the field organization for review. After receipt of all proposals, the field office head shall—

(1) Approve the request for transfer which is judged to be in the best interest of DOE; or

(2) Where this judgment cannot be made locally, forward the proposals to the Director of Administration for action in a manner similar to proposals for equipment having a current market price equal to or greater than that specified for major items.

§ 109–36.303–1 Designation of agency ADPE point of contact.

The Director of Administration shall designate the DOE point of contact to carry out the responsibilities contained in FPMR § 101–36.303–1.

§ 109–36.303–3–50 Reporting excess or exchange/sale ADPE within DOE.

(a) All ADPE, either Government-owned or-leased, which is no longer needed or is scheduled for replacement, shall be made available for utilization within DOE as soon as plans for the release of such equipment are known.

(b)(1) Government-owned ADPE shall be reported for utilization screening

within DOE on Standard Form (SF) 120, Report of Excess Personal Property. The SF 120 shall contain the information required in FPMR 101–36.4702 and, for internal screening purposes, a release date (date of availability). If the release date is not firm, a tentative release date should be given, which would be subject to change until the actual release date is established.

(2) The SF 120 shall be submitted to the Property and Equipment Management Division (MA–422) for inclusion in the Reportable Excess Automated Property System (REAPS) in accordance with § 109–43.311–1–50.

(3) ADPE shall not be reported to GSA as excess until this screening has been accomplished and it has been established that there are no DOE claimants. Concurrent screening within DOE and GSA is not authorized. A minimum of 45 days should be allowed for screening ADPE prior to reporting it to GSA. In those instances where the release date can be determined sufficiently in advance, additional screening time should be allowed to permit maximum time for processing of requests to acquire excess ADPE.

(c) The procedures prescribed in § 109–36.303–3–50(b) shall be followed for leased ADPE. However, when time does not permit sequential DOE and GSA circularization, excess leased ADPE may be circularized concurrently in DOE and GSA to assure earned credits are not lost to the Government. The SF 120 should clearly indicate concurrent screening by DOE and GSA. Where time does not permit assurance that earned credits are not lost to the Government, announcement of availability of excess leased ADPE may be circularized within DOE by teletype (TWX). The TWX should be sent to all DOE field offices with a request to further distribute to applicable contractors, and copies should be sent to the Office of ADP Management (MA–24) and to the Property and Equipment Management Division (MA–422) at Headquarters.

§ 109–36.304 Availability list.

The Director of Administration shall develop and maintain distribution patterns for availability lists of excess and exchange/sale ADPE as contemplated in FPMR § 101–36.304.

§ 109–36.306 Requests for transfer of excess ADPE or exchange/sale ADPE.

The Director of Administration, heads of field offices, the Administrator, Energy Information Administration and contracting officers are authorized to sign Standard Form (SF) 122, Transfer Order Excess Personal Property, after appropriate approvals, involving requests for transfer of excess or exchange/sale ADPE, as required by FPMR § 101–36.306(a).

Subpart 109–36.47—Reports

§ 109–36.4700 Scope of subpart.

This subpart implements and supplements FPMR Subpart 101–36.47 as it relates to reporting excess or exchange/sale ADPE to GSA.

§ 109–36.4702 Reporting excess or exchange/sale ADPE.

Excess Government-owned or-leased ADPE and exchange/sale ADPE shall be reported to GSA on Standard Form (SF) 120, Report of Excess Personal Property, in accordance with the requirements of FPMR § 101–36.4702. No provision is made in FPMR § 101–36.4702 for the use of a TWX as a substitute for the SF 120 in reporting excess ADPE to GSA. When a TWX is used to report excess leased ADPE to GSA, it shall be followed up with an SF 120 to GSA, providing appropriate cross-reference information.

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

PART 109–38—MOTOR EQUIPMENT MANAGEMENT

Sec.

109–38.000 Scope of part.
109–38.000–50 Policy.

Subpart 109–38.0—Definition of Terms

109–38.001 Definitions.

Subpart 109–38.1—Reporting Motor Vehicle Data

109–38.100–1–50 Reporting DOE motor vehicle data.
109–38.102–2–50 Reporting DOE domestic and foreign vehicles.

Subpart 109–38.2—Registration and Inspection

109–38.202–50 Registration in foreign countries.
109–38.202–51 Shipment to foreign countries.

Subpart 109–38.3—Official U.S. Government Tags

109–38.302 Records.
109–38.303 Procurement.
109–38.305–50 Security.
109–38.305–51 Lost or stolen license tags.

Subpart 109–38.4—Official Legend and Agency Identification

109–38.404 Procurement of decalcomanias.
109–38.404–50 Security of decals.

Subpart 109–38.6—Exemptions From Use of Official U.S. Government Tags and Other Identification

109–38.602 Unlimited exemptions.
109–38.602–50 Additional Department of Energy exemptions.
109–38.605 Additional exemptions.
109–38.606 Approval of tag requests for exempted vehicles in the District of Columbia.
109–38.607 Report of exempted motor vehicles.

Subpart 109–38.7—Transfer of Title to Government-Owned Motor Vehicles

109–38.701 Methods of transfer.
109–38.701–50 Delegation of authority to sign Standard Forms 97 and 97A.

Subpart 109–38.9—Motor Vehicle Replacement Standards

109–38.900–50 Policy.
109–38.907 Fleets.
109–38.908 Exception.
109–38.908–50 Prompt disposal of replaced passenger vehicles.

Subpart 109–38.10—Scheduled Maintenance of Motor Vehicles

109–38.1003–50 DOE guidelines.

Subpart 109–38.12—Preparation and Control of Standard Form 149, U.S. Government National Credit Card

109–38.1200 General.
109–38.1201 Billing Code.
109–38.1202 Administrative control of credit cards.
109–38.1202–50 Additional control of credit cards.

Subpart 109–38.13—Energy Conservation in Motor Vehicle Management

109–38.1304 Mandatory provisions affecting the acquisition and use of all motor vehicles.
109–38.1304–50 Selection of type of motor vehicles.
109–38.1305 Mandatory provisions affecting the acquisition, use, and replacement of passenger automobiles.
109–38.1306 Acquisition of fuel-efficient passenger automobiles.
109–38.1306–50 Certification of fuel-efficient passenger automobile acquisitions.
109–38.1307 Acquisition of fuel-efficient light trucks.
109–38.1350 Conservation of motor vehicle fuels.

Subpart 109–38.50—Utilization of Motor Vehicles

109–38.5000 General.
109–38.5001 Utilization controls and practices.
109–38.5002 Use objectives for motor vehicles.
109–38.5003 Application of use goals.

Subpart 109–38.51—Acquisition of Motor Vehicles

109–38.5100 General requirements.
109–38.5101 Authority required for acquisition or hire of passenger motor vehicles.
109–38.5102 Passenger motor vehicle allocations.
109–38.5103 Acquisition.

Subpart 109–38.52—Aircraft

109–38.5200 Scope of subpart.
109–38.5201 Definitions.
109–38.5202 General.

Sec.
109–38.5203 Aircraft safety.
109–38.5204 Pilot responsibility and authority.
109–38.5205 Authority required for the acquisition, hire, or borrowing of aircraft.
109–38.5205–1 Statute.
109–38.5206 Aircraft authorization.
109–38.5207 Management responsibility.
109–38.5208 Registration and identification.
109–38.5209 Airworthiness.
109–38.5210 Maintenance.
109–38.5211 Operation.
109–38.5212 Records.
109–38.5213 Reports.

Subpart 109–38.53—Watercraft

109–38.5300 Scope of subpart.
109–38.5301 Definitions.
109–38.5302 General.
109–38.5303 Watercraft safety.
109–38.5304 Watercraft operations.
109–38.5305 Watercraft identification and numbers.
109–38.5306 Display of flags and seal.

Subpart 109–38.54—Official Use of Motor Vehicles and Aircraft

109–38.5400 Scope of subpart.
109–38.5401 Statutory requirement.
109–38.5402 Policy.
109–38.5403 Official purposes.
109–38.5404 Approval of authorizations.
109–38.5405 Duration of authorizations.
109–38.5406 Use of a motor vehicle to drive to residence at start of official travel.
109–38.5407 Use of Government-owned or Government-furnished motor vehicle in travel status.
109–38.5408 Use of Government-owned or leased bus systems.
109–38.5409 Use of Government motor vehicles in emergencies.
109–38.5410 Use of motor vehicles by the Postal Service.
109–38.5411 Instructions to motor vehicle operators.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§109–38.000 Scope of part.

This part implements and supplements FPMR Part 101–38 concerning the management of motor equipment, vehicles, aircraft and watercraft.

§109–38.000–50 Policy.

Necessary motor equipment, vehicles, aircraft and watercraft shall be provided, maintained and utilized in support of DOE programs in the most practical and economical manner consistent with program requirements, safety considerations, fuel economy and applicable laws and regulations.

Subpart 109–38.0—Definition of Terms

§109–38.001 Definitions.

As used in this Part the following definitions apply:

(a) "Motor equipment" means any item of equipment which is self-propelled or drawn by mechanical power, including motor vehicles, motorcycles and scooters, construction and maintenance equipment, materials handling equipment, aircraft and watercraft.

(b) "Motor vehicle" means any equipment, self-propelled or drawn by mechanical power, designed to be operated principally on the highways in the transportation of property or passengers. This includes both motorcycles and motor scooters.

(c) A "replacement off-set" is an authorization to one DOE field organization to acquire a new passenger motor vehicle to replace an old passenger motor vehicle which has become excess to another DOE field organization. The transaction does not require the physical transfer of the excess vehicle, but is limited to a documentary transfer.

(d) "Special purpose vehicles" have limited but essential missions. They are not generally used to carry passengers, freight or other materials. Trucks with permanently mounted equipment, (such as fire trucks, special tank trucks, wreckers and trucks with compressors or generators in fixed mounting on the body), may be classified as special purpose trucks. Vehicles other than sedans and station wagons which are to be used only during a defined or specified contingency, such as evacuation or other similar emergency, may also be classified as special purpose vehicles. For reporting purposes within DOE, motorcycles and motor scooters will also be reported as special purpose vehicles.

(e) "Experimental vehicles" are those acquired solely for testing and research purposes or otherwise designated for experimental purposes. Such vehicles are to be the object of testing and research as differentiated from those used as vehicular support to testing and research. Experimental vehicles are not to be used for passenger carrying services, and they are not subject to statutory price limitations or to authorization limitations.

Subpart 109–38.1—Reporting Motor Vehicle Data

§109–38.100–1–50 Reporting DOE motor vehicle data.

(a) Organizations operating DOE-owned and/or commercially term leased (60 continuous days or more) motor vehicles shall provide one copy of the following reports to the Property and Equipment Management Division (MA–422) by October 31 of each year.

(1) DOE Report of Motor Vehicle Data.

(2) DOE Report of Truck Data.

(b) Copies of the report forms may be obtained by contacting the Property and Equipment Division.

§109–38.102–2–50 Reporting DOE domestic and foreign vehicles.

Separate forms shall be prepared for vehicles located: (a) In the United States, including territories and possessions, and (b) in a foreign country.

Subpart 109–38.2—Registration and Inspection

§109–38.202–50 Registration in foreign countries.

Motor vehicles used in foreign countries are to be registered and carry license tags in accordance with the existing motor vehicle regulations of the country concerned.

§109–38.202–51 Shipment to foreign countries.

(a) When motor vehicles are being shipped for use in a foreign country, the desk officer or individual handling the affairs pertaining to the country in the Department of State shall be contacted before shipment is made for information concerning the licensing and shipping of the vehicle.

(b) The person responsible for, and expected to use, a motor vehicle in a foreign country shall make inquiry at the United States Embassy, Legation, or Consulate concerning the regulations that apply to registration, licensing, and operation of motor vehicles and shall be guided accordingly.

Subpart 109–38.3—Official U.S. Government Tags

§ 109–38.302 Records.

(a) The Property and Equipment Management Division (MA–422) assigns "blocks" of U.S. Government license tag numbers to DOE organizations and maintains a current record of such assignments. Additional "blocks" will be assigned upon request.

(b) Each Departmental organization shall maintain a current record of individual assignments of license tags to the motor vehicles under its jurisdiction as required by FPMR § 101–38.302.

§109–38.303 Procurement.

The procedures for acquiring official Government license tags by DOE organizations are covered in DEAR 908.7101–7.

§ 109–38.305–50 Security.

Unissued license tags shall be stored in a locked drawer, cabinet or storage area with restricted access to prevent possible fraud or misuse.

§ 109-38.305-51 Lost or stolen license tags.

Fleet managers, upon receipt of information on lost or stolen Government license tags, should promptly report the loss to the local DOE security office and local law enforcement authorities. Lost or stolen Interagency Motor Pool Vehicle license tags should be reported to the applicable General Services Administration motor pool manager. District of Columbia or state license tags which are lost or stolen should be reported to the District of Columbia, Department of Transportation, or the appropriate state agency.

Subpart 109-38.4—Official Legend and Agency Identification

§ 109-38.404 Procurement of decalcomanias.

The official legend and agency identification for DOE shall be of elastomeric pigmented film type decalcomania which are currently available in black (DOE Form 1530.1) and white (DOE Form 1530.2). These forms shall be requisitioned from the Logistics Management Division (MA-235) using DOE Form 4250.2, "Requisition for Supplies, Equipment or Services", a local supply request form or a memorandum.

§ 109-38.404-50 Security of decals.

Unissued decals shall be stored in a locker drawer, cabinet or storage area with restricted access to prevent possible fraud or misuse.

Subpart 109-38.6—Exemptions From Use of Official U.S. Government Tags and Other Identification

§ 109-38.602 Unlimited exemptions.

(e) Exemptions from the requirement for the display of Federal license tags and other official identification may be approved by heads of field offices and the Director of Administration for motor vehicles under their cognizance which are used in the conduct of security operations or in the enforcement of security regulations of DOE.

§ 109-38.602-50 Additional Department of Energy exemptions.

The requirements for the display of Federal license tags and other identification do not apply to motor vehicles used in foreign countries, Trust Territories, or the Pacific Test Areas (see FPMR §§ 101-38.202 and 109-38.202-50).

§ 109-38.605 Additional exemptions.

(a) Requests made pursuant to FPMR § 101-38.605 for exemption from the requirement for displaying U.S. Government tags and other identification on motor vehicles which are not within the criteria in FPMR § 101-38.602 shall be submitted through normal administrative channels to the Property and Equipment Management Division (MA-422). Each such request shall describe the vehicle for which exemption is sought, the nature of the work on which it is used, and include a certification to the effect that conspicuous identification would interfere with such use.

(b) The Property and Equipment Management Division (MA-422) shall be notified promptly when the need for a previously authorized exemption no longer exists.

(c) Copies of certifications and cancellation notices required to be furnished to GSA pursuant to FPMR § 101-38.605 will be transmitted to GSA by the Property and Equipment Management Division.

§ 109-38.606 Approval of tag requests for exempted vehicles in the District of Columbia.

The Director of Administration is designated as the DOE liaison representative to approve requests for regular District of Columbia license tags for Headquarters motor vehicles exempted from carrying U.S. Government license tags and other official identification, and furnishes annually to the District of Columbia Department of Motor Vehicles the name and specimen signature of each representative authorized to approve such requests.

§ 109-38.607 Report of exempted motor vehicles.

The Director of Administration and heads of field offices for their respective organizations shall maintain records of motor vehicles exempted from displaying Federal license tags and other identification which will permit the submission of reports by the Property and Equipment Management Division upon request of GSA in accordance with FPMR § 101-38.607. The records shall contain a listing by type of each exempted vehicle operated during the previous fiscal year, giving the information for each vehicle on hand at the beginning of the year and each of those newly authorized during the year, including—

(a) By whom exemption was authorized, by name and title of authorizing official (including any authorization by Headquarters and GSA);

(b) Date exemption was authorized;

(c) Justification for exemptions and limitations on uses of the exempted vehicle;

(d) Date of discontinuance for any exemption discontinued during the year; and

(e) Probable duration of exemption for vehicles continuing in use.

Subpart 109-38.7—Transfer of Title to Government-Owned Motor Vehicles

§ 109-38.701 Methods of transfer.

(c) The certificates and copies of Certificate of Release of a Motor Vehicle (SF's 97 and 97A) shall be numbered consecutively by each DOE field and Headquarters organization disposing of motor vehicles.

§ 109-38.701-50 Delegation of authority to sign Standard Forms 97 and 97A.

(a) Heads of DOE field offices and the Director of Administration may delegate the authority to sign SF's 97 and 97A to responsible DOE personnel under their jurisdiction. The name of the officer delegated to sign will be typed on the certificate in addition to the signature in ink.

(b) All DOE field and Headquarters organizations shall establish proper controls to prevent blank copies of SF's 97 and 97A from being obtained by unauthorized persons.

Subpart 109-38.9—Motor Vehicle Replacement Standards

§ 109-38.900-50 Policy.

It is the policy of DOE to continue in service motor vehicles which meet prescribed replacement standards, but which are in usable and workable condition, provided that—

(a) A continued need exists for the vehicle;

(b) The vehicle can be operated safely and dependably without excessive repair and maintenance costs. Normally, when any single repair job exceeds 25 percent of the estimated current market value of a vehicle, consideration should be given to replacement in lieu of repair and retention;

(c) Repair parts are readily obtainable; and

(d) Retention will not substantially reduce the exchange/sale value of the vehicle.

§ 109-38.907 Fleets.

The replacement limitations cited in FPMR § 101-38.907 are applicable to each of DOE's field organizations and may not be exceeded.

§ 109–38.908 Exception.

Motor vehicles may be replaced without regard to the replacement standards in FPMR § 101–38.9 only after certification by the appropriate head of the field or Headquarters organization that a vehicle is beyond economical repair due to accident damage or wear caused by abnormal operating conditions.

§ 109–38.908–50 Prompt disposal of replaced passenger vehicles.

Because of the limitation on the total number of passenger vehicles which DOE may own, replaced passenger vehicles shall be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement equipment to avoid concurrent operation of both vehicles. Because of disposal problems, there may be occasions where quick disposal of the old equipment may not be feasible or advantageous to the Government, e.g., it may be determined that there is an insufficient number for economical sale, or that sale would bring substantially better prices at a later date because of seasonal effects on sale prices. Under such circumstances, temporary retention of the replaced passenger vehicle may be justified. However, such retention may not be used as justification for concurrent operation of the new and replaced vehicles.

Subpart 109–38.10—Scheduled Maintenance of Motor Vehicles

§ 109–38.1003–50 DOE guidelines.

(a) Whenever practicable, existing Government service facilities shall be consolidated, or commercial services shall be utilized, to reduce to a minimum the maintenance facilities and equipment, supplies, parts, stocks and overhead costs.

(b) Maintenance also shall be geared to a planned replacement program. Individual vehicle maintenance record files shall be kept and made readily available to appropriate maintenance personnel to provide historical records of past repairs, as a control against unnecessary repairs and excessive maintenance, and as an aid in determining the most economical time for replacement.

(c) One-time maintenance and repair limitations shall be established by heads of field offices. To exceed repair limitations, approval from heads of field offices is required, particularly as the time of replacement approaches.

(d) Adequate maintenance schedules shall be provided to accomplish the following objectives in the most economical manner:

(1) To maintain equipment in safe and economical operating condition.

(2) To prevent equipment failures resulting in program delays and excessive downtime.

(3) To prevent premature wear and deterioration.

(4) To prevent undue depreciation.

(5) To conserve materials and manpower.

(e) Warranties.

(1) Special attention shall be devoted to the warranty on each motor vehicle to ensure that maximum benefits are realized. A system should be established to assure that defective materials and workmanship on vehicles under warranty are corrected under the terms of the warranty to avoid maintenance and repair of such vehicles at Government expense.

(2) When motor vehicles are maintained in Government shops in isolated locations that are distant from franchised dealer shops, or when it is not practical to return the vehicles to a dealer, billback agreement shall be sought from manufacturers to permit warranty work to be performed in Government shops on a reimbursable basis.

Subpart 109–38.12—Preparation and Control of Standard Form 149, U.S. Government National Credit Card

§ 109–38.1200 General.

FPMR § 101–26.406 authorizes the use of Standard Form 149, U.S. Government National Credit Card for Federal agencies for obtaining service station deliveries and services. The use of the SF–149 by each field organization or by Headquarters is optional. When a field organization elects to use the form, it shall be used on a field organization basis.

§ 109–38.1201 Billing Code.

DOE organizations shall request the assignment of billing address code numbers from the Property and Equipment Management Division (MA–422). Following the assignment, DOE organizations shall submit orders for issuance of national credit cards in accordance with FPMR § 101–26.406–5 and the current Federal Supply Schedule FSC Group 75, Part VII. The billing code consists of the following:

(a)(1) The first three digits of the 10–digit billing code embossed on national credit cards in use by DOE will always be 000.

(2) The fourth digit may be used by DOE organizations and contractors to designate the vehicle class or provide additional billing code numerals. If not used for either of these purposes, zero will be used.

(3) The fifth and sixth digits will be "89", the agency code assigned to DOE.

(4) The seventh, eighth, and ninth digits indicate the billing address code number.

§ 109–38.1202 Administrative control of credit cards.

(a) The head of each organization using credit cards shall be responsible for establishing procedures to provide for the administrative control of credit cards in accordance with the guidelines set forth in FPMR Part § 101–38.1202.

§ 109–38.1202–50 Additional control of credit cards.

(a) All vehicle operators should be provided with appropriate instructions regarding the use and protection of credit cards against theft and misuse.

(b) In the event an SF–149 is lost or stolen, reasonable precautions shall be taken to minimize the opportunity of purchases being made by unauthorized persons. In addition to the written notification required in FPMR § 101–38.1202(b)(1), the paying office shall be promptly notified of the loss or theft and to be on the alert for any unauthorized bills.

Subpart 109–38.13—Energy Conservation in Motor Vehicle Management

§ 109–38.1304 Mandatory provisions affecting the acquisition and use of all motor vehicles.

(c) The use of motor vehicles for official purposes within DOE is governed by the provisions of DOE Subpart 109–38.54.

(d) All requirements for term rentals or leases of sedans, station wagons or light trucks under 8,500 pounds gross vehicle weight shall be submitted to the Property and Equipment Management Division (MA–422) in accordance with §§ 109–38.1306–50, 109–38.1307 and DEAR 908.1170.

§ 109–38.1304–50 Selection of type of motor vehicles.

(a) All vehicles acquired for use, whether by buy, hire, lease, forfeiture or transfer from another agency, shall be limited to the minimum body and engine size, and to only that operational equipment (if any) necessary to fulfill programmatic needs.

(b) The least expensive unit overall should be used, considering both acquisition and operating costs for units to be bought, and rental rates for rented or leased units.

(c) Dual-purpose vehicles capable of hauling both personnel and light cargo shall be used whenever appropriate to avoid the need for two vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid limitations on the number of passenger vehicles which may be acquired.

(d) Motor scooters and motorcycles in place of higher cost motor vehicles can be used advantageously for certain applications within plant areas, such as mail and messenger service and small parts and tool delivery. Their advantage, however, should be weighed carefully from the standpoint of overall economy (comparison with cost for other types of motor vehicles) and increased safety hazards, particularly when mingled with other motor vehicle traffic.

(e) Electric vehicles may be used advantageously for certain applications. The use of these vehicles is encouraged wherever it is feasible to use them to further the goal of fuel conservation.

§ 109–38.1305 Mandatory provisions affecting the acquisition, use, and replacement of passenger automobiles.

In accordance with FPMR § 101–38.1305, all requests to acquire passenger automobiles larger than class 1A, 1B or II shall be forwarded with justifications through normal administrative channels to the Property and Equipment Management Division (MA–422) for certification to GSA.

§ 109–38.1306 Acquisition of fuel-efficient passenger automobiles.

(a) Organizations conducting motor vehicle operations shall forward annually (on or before December 1) to the Property and Equipment Management Division (MA–422) a plan for acquisition of passenger motor vehicles for the next fiscal year. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by Executive Order 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the Property and Equipment Management Division (MA–422) as required. This organization shall also review each submission for conformance with established fuel efficiency standards and shall develop and forward to GSA the Departmental consolidated annual motor vehicle acquisition forecast.

§ 109–38.1306–50 Certification of fuel-efficient passenger automobile acquisitions.

(a) Requisitions for the buying of passenger motor vehicles shall be forwarded to the Property and Equipment Management Division (MA–422) for review, certification and submission to GSA.

(b) Proposals/ requests for commercially leased passenger automobiles, for a period of 60 continuous days or more, shall be forwarded to the Property and Equipment Management Division (MA–422) for review and certification prior to entering into an agreement to lease to insure compliance with Executive Order 12375 as implemented by GSA.

§ 109–38.1307 Acquisition of fuel-efficient light trucks.

In accordance with FPMR § 101–38.1307 and Executive Order 12375, the requirements of §§ 109–38.1306 and 109–38.1306–50 also apply to the acquisition of any truck under 8,000 pounds gross vehicle weight and covered by Federal Standards 292 and 307.

§ 109–38.1350 Conservation of motor vehicle fuels.

In furtherance of energy conservation objectives, each organization within DOE shall establish programs which will ensure achievement of the reduced motor vehicle fuel consumption objectives. The following actions shall be adopted to achieve the conservation goals of reduced motor vehicle fuel consumption:

(a) Do not idle engine for long periods of time.

(b) Reduce motor vehicle travel to the maximum extent practicable without jeopardizing essential business.

(c) Use the smallest vehicle that is feasible for the job.

(d) Maintain tire pressure to tire manufacturer's recommendations. Check pressure at least once each week.

(e) Give wide publicity on proper driving techniques as prescribed by GSA to conserve fuels and require that all drivers diligently follow them.

(f) Limit speed to the National Speed Limit.

(g) Ensure proper maintenance and servicing procedures, such as tuneups, in accordance with the manufacturer's latest specifications.

Subpart 109–38.50—Utilization of Motor Vehicles

§ 109–38.5000 General.

It is DOE policy to keep the number of motor vehicles at the minimum needed to satisfy program requirements. To assure attainment of this goal, continuing attention shall be given to developing and implementing controls and practices which will help achieve the most practical and economical utilization of vehicles.

§ 109–38.5001 Utilization controls and practices.

Controls and practices to be used by DOE organizations and contractors for achieving maximum economical utilization of motor vehicles shall include, but not be limited to—

(a) The maximum use of equipment pooling arrangements, taxicabs, shuttle buses, or other common service arrangements;

(b) The minimum, practicable assignment of equipment to individuals, groups or specific organizational components with periodic documented reviews of such assignments to determine if underutilization exists and whether reassignment is necessary;

(c) Frequent review of vehicle utilization statistics by appropriate levels of management, with prompt reassignment and/or disposal action performed as required;

(d) The careful selection of equipment types to permit the maximum appropriate use of multi-purpose equipment;

(e) The rotation of equipment between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy; and

(f) The maintenance of individual equipment use records, such as trip tickets or vehicle logs, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage.

§ 109–38.5002 Use objectives for motor vehicles.

The following use goals are established for DOE as average objectives:

(a) Sedans and station wagons—3,000 miles per quarter or 12,000 miles per year.

(b) Light trucks and general purpose vehicles, one ton and under (less than 12,500 GVW)—10,000 miles per year.

(c) Medium trucks and general purpose vehicles, 1½ ton through 2½ ton (12,500 to 16,999 GVW)—7,500 miles per year.

(d) Heavy trucks and general purpose vehicles, three ton and over (17,000 GVW and over)—7,500 miles per year.

(e) Truck tractors—10,000 miles per year.

(f) All-wheel-drive vehicles—7,500 miles per year.

(g) Other motor vehicles—No average use goals for other trucks, ambulances, buses, and special purpose vehicles are established. The use of such equipment shall be reviewed and necessary action taken to ensure that the equipment is fully utilized or declared excess to the Department's needs.

§ 109–38.5003 Application of use goals.

Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard. Other measures of use will need to be considered. Accordingly, as an aid in achieving maximum feasible utilization, local use objectives which represent practical units of measurement for vehicle utilization and for planning and evaluating future vehicle requirements must be established. Such objectives should generally be initiated by the organization involved and reviewed and adjusted as appropriate, but not less often than annually. The objectives will take into consideration past performance, future requirements and special operating conditions, and should be consistent with the justifications used to obtain vehicle authorizations. Both Department-wide and local use objectives should be applied in such a manner that their application does not stimulate vehicle use for the purpose of meeting the objective. The ultimate standard against which vehicle use must be measured is that the minimum number of vehicles will be retained to satisfy program requirements.

Subpart 109–38.51—Acquisition of Motor Vehicles

§ 109–38.5100 General requirements.

The acquisition of motor vehicles shall be limited to the minimum number needed to adequately serve program requirements and satisfy the intent of Congress. Any additions to the fleet must be fully justified and the justification shall include substantiation that the intent of 109–38.000–50 and 109–38.50 are satisfied.

§ 109–38.5101 Authority required for acquisition or hire of passenger motor vehicles.

(a) In accordance with 31 U.S.C. 1343, authority for the buying, leasing, or hire of passenger motor vehicles is contained in the annual appropriation act for DOE.

(b) The acquisition of passenger motor vehicles by transfer from another Government agency shall be considered as an addition to the DOE passenger motor fleet.

(c) Passenger motor vehicles may not be bought or acquired by transfer or loan unless they are—

(1) Specifically authorized by the Director of Procurement and Assistance Management, pursuant to the appropriation concerned or other law;

(2) Acquired from excess for upgrading or replacement purposes and an equal number of replaced vehicles are reported for disposal as excess within 30 days; or

(3) For temporary emergency needs not in excess of three months in lieu of commercial rentals.

(4) For temporary emergency needs over three months and approved by the Director of Procurement and Assistance Management.

§ 109–38.5102 Passenger motor vehicle allocations.

(a) To assure that DOE acquisitions do not exceed the number of passenger motor vehicles authorized to be acquired in any fiscal year, the Director of Procurement and Assistance Management shall allocate to and inform the field organizations of the number of passenger motor vehicles which may be acquired each fiscal year. These allocations and the statutory cost limitations shall not be exceeded.

(b) In order that unused allocations to acquire passenger motor vehicles may be reassigned within the Department, the organizations concerned shall notify the Property and Equipment Management Division (MA–422) when allocations will not be used. Such notification shall be submitted as soon as possible but not later than June 15 of each year.

(c) Passenger motor vehicles acquired from excess to meet temporary emergency needs for longer than three months shall be charged against the number authorized for purchase unless otherwise approved by the Director of Procurement and Assistance Management (See Comp. Gen. Decision. B–154282 dated October 15, 1966).

(d) In order that passenger vehicles no longer needed by one field organization may be used by another, either by actual transfer for continued use or as replacement off-sets, they shall be reported to the Property and Equipment Management Division (MA–422) prior to any disposal action so that such use can be properly coordinated within DOE.

§ 109–38.5103 Acquisition.

(a) Policies and procedures for the procurement of new motor vehicles, including provisions for the acquisition of additional systems and equipment for sedans and station wagons, are set forth in FPMR 101–25.304 and 101–26.5 and DEAR 908.7101.

(b) Policies and procedures for the leasing of motor vehicles are set forth in FPMR § 101–39.601 and DEAR 908.11. The Director of Administration and heads of field offices for their respective organizations are responsible for certifying that leased passenger vehicles larger than type II (compact) are essential to the mission of the organization concerned.

Subpart 109–38.52—Aircraft

§ 109–38.5200 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of aircraft and aircraft services, excluding aircraft owned and operated by other Federal activities for DOE.

§ 109–38.5201 Definitions.

As used in this subpart the following definitions apply:

(a) "Aircraft" means a device that is used or intended to be used for flight in the air, including: heavier than air, and lighter than air and ultra-light aircraft, gliders, helicopters, rigid and nonrigid airships, and balloons.

(b) "Chartered aircraft" are aircraft rented or hired on an intermittent basis, with or without the services of a pilot or other operating aircrew members.

(c) "Leased aircraft" are aircraft obtained on a contractual basis, for a stipulated time interval, as distinguished from intermittent charter or short-term rental.

(d) "Military aircraft" are aircraft on loan from the Department of Defense (DOD).

(e) "Pilot" is an individual possessing the required FAA credentials and meeting the qualification requirements and other criteria as required by the employing organization.

(f) "Part-time pilot" is one who is employed specifically to operate aircraft on a "when-needed" basis.

§ 109–38.5202 General.

Department-wide policies, standards, guidelines and procedures for management of aircraft and aviation services, necessary staff assistance, and general liaison with other Federal agencies are provided by the Director of Procurement and Assistance Management. Heads of field offices

must ensure that management review, approval and accounting procedures and systems are implemented to comply with the requirements of OMB Circular A–126, "Improving the Management and Use of Government Aircraft."

§ 109–38.5203 Aircraft safety.

(a) Policy development and general overview of aircraft safety in Departmental operations is exercised by the Assistant Secretary for Policy, Safety and Environment.

(b) Aviation operations and aircraft safety standards, criteria and procedures for DOE aviation operations are established by the Assistant Secretary for Policy, Safety and Environment. Heads of field offices may establish higher safety standards, criteria and procedures when they have determined that it is necessary to assure the safety of specific operations under their jurisdiction.

§ 109–38.5204 Pilot responsibility and authority.

(a) It shall be the responsibility of the pilot to be aware of, and conform to, Federal Aviation Regulations and other requirements of the Federal Aviation Administration (FFA), Department policies and field organization directives, and the regulations and directives of other applicable authority, including those relating to use for official purposes only.

(b) The pilot is responsible for ensuring that all necessary maintenance, repairs and FAA inspections are accomplished and for determining that the aircraft is airworthy.

(c) The pilot is at all times responsible for the safe operation of his aircraft and for the safety of his crew and passengers. Insofar as the loading of the aircraft, weather, mechanical, and other safety conditions are concerned, the pilot shall have final authority for determining whether a particular flight shall be continued or terminated and how it shall be made.

§ 109–38.5205 Authority required for the acquisition, hire, or borrowing of aircraft.

§ 109–38.5205–1 Statute.

(a) In accordance with 31 USC 1343(d), authority for the buying, leasing, or hire of aircraft is contained in the annual appropriation act for DOE.

(b) The acquisition of aircraft by transfer from another Government agency shall be considered as an addition to the DOE aircraft fleet.

(c) Aircraft may not be bought, leased, or acquired by transfer or loan unless they are—

(1) Specifically authorized by the Director of Procurement and Assistance Management, pursuant to the appropriations concerned or other laws (except for temporary rentals or loans of 30 days or less);

(2) Temporary rental or loans (30 days or less) approved by the head of the field office; or

(3) Acquired from Government excess for upgrading or replacement purposes, provided: (i) That such acquisition is without reimbursement, (ii) that the aircraft can be certified as airworthy without extensive or costly modification, and (iii) that an equal number of aircraft is reported for disposal as excess within 30 days after delivery of the replacement aircraft.

§ 109–38.5206 Aircraft authorization.

(a) To assure that acquisitions do not exceed the number of aircraft authorized to be acquired in any fiscal year, the Director of Procurement and Assistance Management shall inform DOE field organizations each fiscal year of the number of aircraft which may be acquired. These authorizations shall not be exceeded.

(b) The acquisition of specific aircraft by type shall be coordinated with the Office of Operational Safety (PE–242) to assure that the selected aircraft type can perform the mission requirements safely and meet all applicable safety standards.

§ 109–38.5207 Management responsibility.

The head of each field organization having an aircraft operation shall establish procedures to ensure—

(a) That the acquisition of aircraft, including military aircraft, is centrally controlled to ensure that authorizations are not exceeded;

(b) Because of the statutory limitations on the number of aircraft which DOE may acquire, replaced aircraft must be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement equipment to avoid concurrent operation of both aircraft.

(c) That each aircraft is equipped with the appropriate avionics and accessories required by its FAA type certification or military department's operators manual for the type of flight intended. Life jackets shall be provided and readily available for all occupants of aircraft on extended overwater flights as defined in Federal Aviation Regulation 1.1. Aircraft on flights into isolated areas shall be equipped with emergency rations and appropriate survival gear;

(d) Conformance with FAA requirements for the registration, certification, maintenance, and operation of aircraft, engines, and component equipment;

(e) Selection of qualified pilots and crew members and the maintenance of pilot and crew competence commensurate with job requirements;

(f) Establishment of dispatching and tracking procedures or other controls that will assure knowledge of aircraft location when operating in areas where flight plan service is not available;

(g) Overall safe, efficient, and economical operation, maintenance, utilization, and replacement of aircraft;

(h) That pooling is used as necessary to obtain maximum utilization;

(i) That contract or charter pilots are duly certified to meet all requirements and regulations established by the FAA for the particular aircraft;

(j) That chartered, leased, or rented aircraft are operated and maintained in compliance with all rules, regulations, and minimum standards of the FAA;

(k) Than any charter, rental or hire of aircraft and operators shall meet the requirements of 14 CFR 135; and

(l) That DOE-owned, -leased, and borrowed aircraft are used for official purposes only and that all flight and operational personnel, including the pilots, are aware of the provisions of § 109–38.54.

§ 109–38.5208 Registration and identification.

(a) Department-owned aircraft shall be registered with the FAA. The certificate of registration shall be displayed in the aircraft in accordance with FAA requirements. A similar requirement shall be included in any arrangement for the charter, rent, hire, loan or lease of aircraft.

(b) All aircraft shall display markings as required by the Federal Aviation Regulations for registered aircraft of the United States.

§ 109–38.5209 Airworthiness.

With the exception of public use aircraft being operated under special regulations of the FAA, all aircraft shall be required to have a currently effective FAA Airworthiness Certificate appropriate to the proposed usage. This certificate shall be displayed in the aircraft. Exceptions to this requirement are: (a) Uncertified aircraft may be ferried with minimum crew when there is a written determination by the head of the field office or his designee that the aircraft is safe for flight, and (b) aircraft obtained by transfer from the Department of Defense or the U.S. Coast Guard may be ferried incident to such transfer when the aircraft has been released as airworthy for flight.

§ 109-38.5210 Maintenance.

As a minimum, all aircraft, aircraft engines, propellers, accessories, and equipment shall be maintained and serviced in accordance with FAA requirements for air carrier and non-air carrier aircraft, as appropriate, and the instructions of the manufacturer. All repairs and alterations shall be performed and approved in accordance with applicable FAA or military standards and requirements. Preventive maintenance inspections shall be made of the airframe, engine, and accessory equipment in conformance with the equipment manufacturer's recommendations and FAA or military requirements, as applicable.

§ 109-38.5211 Operation.

(a) Flight operations must comply with the Federal Aviation Regulations, and responsibility for such compliance rests with the pilot of the aircraft (§ 109-38.5204). Any special problem requiring deviation from the regulations shall be submitted through normal administrative channels to the Assistant Secretary for Policy, Safety and Environment for review and possible referral to the FAA for an appropriate waiver. Such a waiver is required for all fixed-wing aircraft engaged in low-level flying, and any change of conditions shall be reported to the responsible FAA District Office.

(b) Flight plans are required for all flights over isolated areas, and are also required for flights under visual flight rules (VFR) conditions except where the flight is of a local nature. Where normal flight plan channels are not available, the procedures as stated in § 109-38.5207(f) or other controls shall be followed that will assure current knowledge by responsible DOE or DOE contractor personnel of the aircraft's operating plan and of its arrival at destination.

(c) Aircraft, engines, and equipment shall be operated within the operating limits prescribed by the manufacturer.

(d) Adequate preflight and in-flight check lists shall be provided to, and used by, all pilots. A visual preflight inspection shall be made by the pilot before each takeoff, and any deficiency which might affect the safety of the flight shall be corrected before takeoff.

(e) All flights shall be planned and conducted so that the aircraft will arrive over its destination with a fuel reserve sufficient to reach a planned alternate destination. Flights conducted under FAA Instrument Flight Rules shall be required to conform to FAA fuel-time minimum requirements, or better.

§ 109-38.5212 Records.

As a minimum, flight, aircraft, and engine logs shall be maintained in accordance with FAA requirements, and records of operations, maintenance, and costs shall be maintained as required for management budgetary and reporting purposes. Heads of field offices shall establish requirements for other records needed.

§ 109-38.5213 Reports.

(a) Organizations operating aircraft shall complete a DOE Form 4450.1, Aircraft Cost and Operations Report, for each DOE-owned, -leased (over 30 days) or borrowed aircraft operated during the fiscal year. The completed forms shall be submitted to the Property and Equipment Management Division (MA-422) by December 31 of each year, or upon receipt or disposal of individual aircraft.

(b) Reports shall be submitted as required by the Federal Aviation Administration, the National Transportation Safety Board, the General Services Administration, and the Assistant Secretary for Policy, Safety and Environment. Heads of field offices shall establish the requirements for other reports that may be needed for management or other purposes.

(c) All accidents involving aircraft shall be reported promptly to the National Transportation Safety Board, the Federal Aviation Administration as required, the head of the field organization concerned and the Assistant Secretary for Policy, Safety and Environment.

Subpart 109-38.53—Watercraft

§ 109-38.5300 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of all watercraft operated by DOE organizations and contractors. The policies and procedures set forth herein are minimal, and the head of each Departmental organization operating watercraft shall issue such supplemental instructions as may be needed to ensure the effective and efficient management of watercraft.

§ 109-38.5301 Definitions.

As used in this subpart the following definitions apply:

(a) "Watercraft" means any vessel used to transport persons or material on water.

(b) "Qualified Operator" means any person who has exhibited skill in handling watercraft, knowledge of "Rules of the Road," and other basic watercraft knowledge necessary for safe and efficient operation.

(c) "Rules of the Road" means laws which govern the operation of watercraft on: (1) Great Lakes, (2) western rivers, (3) Inland, and (4) International Waters.

§ 109-38.5302 General.

Departmental-wide policies, standards, guidelines and procedures for management of watercraft are established by the Director of Procurement and Assistance Management.

§ 109-38.5303 Watercraft safety.

Policy development and general overview of watercraft safety in Departmental operations is exercised by the Assistant Secretary for Policy, Safety and Environment.

§ 109-38.5304 Watercraft operations.

(a) No person may operate a watercraft on a waterway until skill of operation, knowledge of rules of the road, and basic watercraft knowledge have been exhibited to the head of the field office. The U.S. Coast Guard Auxiliary (USCG), American Red Cross and U.S. Power Squadrons teach public courses in some locations which are applicable to small boat operations (non-commercial watercraft up to 65' overall length).

(b) Before a watercraft is put underway, the operator shall check the vessel to ensure that the necessary equipment, including personal flotation devices and lights, as required by laws applicable to the area of operation, are present, properly stowed and in proper working order. Optional equipment recommended by USCG or other competent authority shall also be included when determined to be necessary by the responsible field office.

(c) Operators shall comply with all applicable Federal, state and local laws pertaining to the operation of watercraft. Where no state boating law exists, the requirements of the Federal Boating Act of 1958, as amended, shall apply.

(d) Operators shall not use watercraft or carry passengers except in the performance of official Departmental assignments.

§ 109-38.5305 Watercraft identification and numbers.

(a) Watercraft in the custody of DOE or DOE contractors shall display identifying numbers, whether issued by the U.S. Coast Guard, state or local field office. The numbers will be in addition to Departmental property control or other identification. Numbers shall be in block form affixed to the bow section, on both sides. Numbers and/or letters shall read from left to right in

contrasting color to background not less than three (3) inches in height. When a watercraft is not registered by either the U.S. Coast Guard or state, the field organization shall assign an alpha-numeric designation, which will reflect Departmental and field office [illegible]. Example—DOE–4560–SR. (Note: Some states specify the arrangement of numbers and letters which shall be used by Federal small boats home posted in the state's waters. Compliance with such a requirement is appropriate.)

(b) DOE is not required to have DOE-owned watercraft inspected and registered by the U.S. Coast Guard, but these services may be provided upon request.

§ 109–38.5306 Display of flags and seal.

Watercraft with overall length of twenty (20) feet or more, except barges, shall display the U.S. Ensign (National Flag). The display of the Departmental flag is optional. Location and times of display of flags shall be in accordance with accepted practice. A facsimile of the Departmental seal may also be displayed. When the seal is used it shall be placed on the superstructure in a prominent place and a size appropriate to the superstructure; except that if there is no superstructure, the seal shall be placed above the water line in the midship section of watercraft.

Subpart 109–38.54—Official Use of Motor Vehicles and Aircraft

§ 109–38.5400 Scope of subpart.

This subpart supplements FPMR Part 101–38, implements the provisions of statutes concerning the use of Government-owned, -rented or -leased motor vehicles and aircraft for official purposes and prescribes policies and procedures governing the use of such vehicles and aircraft acquired for official purposes.

§ 109–38.5401 Statutory requirement.

(a) 31 U.S.C. 1344(a) provides that, unless otherwise specifically provided, no appropriation available for any department shall be expended for the maintenance, operation, and repair of any Government-owned passenger motor vehicle or aircraft not used exclusively for official purposes. Official purposes shall not normally include the transportation of officers and employees between their domiciles and places of employment, except in cases of medical officers on outpatient medical service, and where officers and employees are performing field work which makes such transportation necessary and which has been approved by the head of the department concerned.

(b) In accordance with 31 U.S.C. 1349(b), any officer or employee of the Government who willfully uses or authorizes the use of any Government-owned motor vehicle or aircraft or any motor vehicle or aircraft leased by the Government, for other than official purposes, shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month and shall be suspended for a longer period or summarily removed from office if circumstances warrant.

(c) Under the provisions of 18 U.S.C. 641, any person who knowingly misuses any Government property (which includes Government motor vehicles) is subject to criminal prosecution and, upon conviction, to fines up to $10,000 and/or imprisonment for up to 10 years.

(d) In addition to the potential administrative sanctions and criminal prosecution cited above, 31 U.S.C. 1344 is interpreted to preclude reimbursement to Government contractors for the maintenance, operation or repair of Government-owned, -rented, or -leased passenger motor vehicles or aircraft which are used by contractor personnel for other than official purposes.

§ 109–38.5402 Policy.

All Government-owned, -rented or -leased motor vehicles and aircraft operated by DOE and its contractors shall be utilized for official purposes only, and officers, employees and contractors of the Department shall not use or authorize others to use any Government-owned, -rented or -leased motor vehicle or aircraft for other than official purposes. It should be understood that use of Government-owned, -rented or -leased motor vehicles between an employee's domicile and place of employment when adequately justified may be authorized only as an exceptional action but not as a routine occurrence.

§ 109–38.5403 Official purposes.

(a) The term "official purposes" means those purposes required to carry out authorized programs, including program work carried out under contracts made pursuant to authority vested in the Department. "Official purpose" largely is a matter of administrative discretion and determination based on the particular facts of the case and the Government interest in the proposed use of the Government motor vehicle. It is the responsibility of the person authorizing or approving the use to examine the circumstances surrounding such use and assure that the facts sufficiently justify a conclusion of "official purpose."

(b) The term "field work" as used in 31 U.S.C. 1344a quoted above refers to the nature of the work performance; it is not restricted to "field service" as distinguished from "Headquarters service."

§ 109.38.5404 Approval of authorizations.

(a) The Director of Administration and heads of field offices for their respective organizations may approve the use of a Government-owned, -rented, or -leased motor vehicle between a DOE employee's domicile and place of employment. This authority may be redelegated but not below the chief administrative officer level.

(b) Heads of field offices and contracting officers shall require:

(1) Contracting officer approval for all contractor authorizations over 10 days;

(2) That contractors prescribe and issue, subject to approval by the head of the field organization or contracting officer, such local written guidelines regarding the official use of motor vehicles or aircraft and the penalties for unauthorized use as may be necessary and appropriate for particular operating situations; and

(3) That the use of Government-owned, -rented, or -leased motor vehicles or aircraft by contractor employees for transportation between places of employment and domiciles, including storage at or near such domiciles, is justified in accordance with § 109–38.5403, and that such justifications, administrative determinations, and authorizations for such use and storage by contractor employees are documented and approved at appropriate supervisory levels within the contractor's organization and by the contracting officer when required by § 109–38.5404(b)(1).

(c) The approving official shall determine whether the official duties of the employees justify a conclusion of official purpose in accordance with § 109–38.5403. All approvals and supporting documentation shall be in writing and retained for three calendar years.

§ 109–38.5405 Duration of authorizations.

An authorization to use a motor vehicle for transportation between a domicile and place of employment shall be limited to the period of actual need or 60 days, whichever is less. Requests for renewals of such authorizations shall be subject to the same justification and document retention procedures as original requests, and must also indicate what attempts were made during the

original period to eliminate the necessity for such use.

§ 109–38.5406 Use of a motor vehicle to drive to residence at start of official travel.

The use of a Government motor vehicle by an officer or employee to drive to his/her residence when it is in the interest of the Government that the employee start on official travel in the vehicle from that point, rather than from his/her place of business, is not regarded as prohibited by 31 USC 1344(a), (25. Comp. Gen. 844) or by Departmental policy.

§ 109–38.5407 Use of Government-owned or Government-furnished motor vehicles in travel status.

The use of Government-owned or Government-furnished motor vehicles by Government employees while in travel is governed by the Federal Travel Regulations (FTR 1–2.6a) and Chapter III–3 of DOE Order 1500.2 (DOE Travel Policy and Procedures Manual).

§ 109–38.5408 Use of Government-owned or-leased bus systems.

The provisions of this subpart do not affect passenger use of Government-owned or -leased bus systems (regardless of type of vehicle used in such system) established under the provisions of section 161e of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201e).

§ 109–38.5409 Use of Government motor vehicles in emergencies.

In limiting the use of Government motor vehicles to official purposes, it is not intended to preclude their use in emergencies threatening loss of life or property (see § 109–1.5102). Such use shall be documented.

§ 109–38.5410 Use of motor vehicles by the Postal Service.

(a) Section 411 of the Postal Reorganization Act provides that executive agencies are authorized to furnish property and services to the Postal Service under such terms and conditions, including reimbursability, as the Postal Service and the agency concerned deem appropriate. Executive Order 11672 establishes a requirement for reimbursement at fair market value of such property or at a rate based on appropriate commercial charges for comparable property , as agreed to by the agency head and the Postmaster General, unless the Director of the Office of Management and Budget finds that a different basis of valuation is more equitable or better serves the public interest.

(b) Pursuant to the authority in 39 U.S.C. 411, motor vehicles may be made available to the Postal Service for temporary use. The rental rate to be charged shall be the same as is charged by the General Services Administration for similar motor vehicles available from the interagency motor pool serving the geographical area involved, with appropriate allowances for any fuel and oil furnished by the Postal Service.

§ 109–38.5411 Instructions to motor vehicle operators.

Procedures shall be established to inform motor vehicle operators concerning—

(a) The statutory requirement that motor vehicles shall be used only for official purposes;

(b) Personal responsibility for safe driving and operation of motor vehicles, and for compliance with Federal, State, and local laws and regulations, and all accident reporting requirements;

(c) Protection for DOE employees under the Federal Tort Claims Act (28 U.S.C. 2671) when acting within the scope of their employment;

(d) The penalties for unauthorized use of motor vehicles;

(e) The prohibition against picking up strangers or hitchhikers, and the transportation of non-official passengers:

(f) The proper care, control and use of credit cards; and

(g) Any other duties and responsibilities assigned to motor vehicle operators with regard to use, care, operation, and maintenance of motor vehicles.

PART 109–39—INTERAGENCY MOTOR VEHICLE POOLS

Sec.

109–39.000 Scope of part.

Subpart 109–39.3—Motor Vehicle Exemptions

109–39.302 Unlimited exemptions.
109–39.303 Limited exemptions.

Subpart 109–39.4—Establishment, Modification, and Discontinuance of Motor Pools

109–39.404–3 Problems involving service or cost.
109–39.404–4 Agency requests to withdraw participation.

Subpart 109–39.6—Official Use of Government Motor Vehicles and Related Motor Pool Services

109–39.602–1 Government vehicles.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–39.000 Scope of part.

This part implements and supplements FPMR Part 101–39 concerning the establishment and operation of interagency motor vehicle pools and systems.

Subpart 109–39.3—Motor Vehicle Exemptions

§ 109–39.302 Unlimited exemptions.

In those instances where it is determined that an unlimited exemption from inclusion of a vehicle in a motor pool system is warranted under the criteria set forth in FPMR § 101–39.302, full particulars shall be forwarded to the Property and Equipment Management Division (MA–422) for consideration and possible referral to the Administrator of General Services.

§ 109–39.303 Limited exemptions.

The procedure established in § 101–39.302 shall be followed in seeking limited exemptions under the criteria set forth in FPMR § 101–39.303.

Subpart 109–39.4—Establishment, Modification, and Discontinuance of Motor Pools

§ 109–39.404–3 Problems involving service or cost.

To resolve problems involving motor pool service or cost, the affected field or Headquarters organization shall bring the matter to the attention of the chief of the motor pool providing the vehicles. In the event a satisfactory solution does not result, full particulars shall be forwarded to the Property and Equipment Management Division (MA–422) for consideration and possible referral to the Administrator of General Services.

§ 109–39.404–4 Agency requests to withdraw participation.

Should circumstances arise at a given interagency motor pool location which tend to justify discontinuance or curtailment of participation by a DOE organization, as contemplated in FPMR § 101–39.404–4, the participating organization should forward complete details to the Property and Equipment Management Division (MA–422) for consideration and possible referral to the Administrator of General Services.

Subpart 101–39.6—Official Use of Government Motor Vehicles and Related Motor Pool Services

§ 109–39.602–1 Government vehicles.

(a) Subpart 109–38.54, Official Use of Motor Vehicles and Aircraft, prescribes DOE policies and procedures governing the official use of Government motor vehicles.

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 109–42—PROPERTY REHABILITATION SERVICES AND FACILITIES

Sec.
109–42.000 Scope of part.
109–42.000–50 Applicability.

Subpart 109–42.3—Recovery of Precious Metals and Strategic and Critical Materials

109–42.301 General.
109–42.301–1 Guidelines for conducting agency surveys and reporting to GSA.
109–42.302 Recovery of silver from used hypo solution and scrap film.
109–42.350 Excess precious metals.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–42.000 Scope of part.

This part implements and supplements FPMR Part 101–42, Property Rehabilitation Services and Facilities.

§ 109–42.000–50 Applicability.

The provisions of FPMR 101–42 and this part apply to contractors which generate used hypo solution, scrap film, other precious metals scrap and other recoverable scrap materials.

Subpart 109–42.3—Recovery of Precious Metals and Strategic and Critical Materials

§ 109–42.301 General.

The Director of Administration and heads of field offices for their respective organizations are responsible for establishing a program for the recovery of precious metals and strategic and critical materials in accordance with FPMR 101–42.3 and this subpart.

§ 109–42.301–1 Guidelines for conducting agency surveys and reporting to GSA.

Each DOE organization and contractor generating silver or other precious metals shall prepare the report on precious metals recovery in accordance with FPMR § 101–42.301–1, except that the reports shall be prepared on an annual basis for the fiscal year. Negative reports are required. Contractors shall submit reports to the DOE contracting office for review and approval. DOE organizations shall submit reports, including contractor reports, to the Property and Equipment Management Division (MA–422) not later than 30 days after the end of the fiscal year.

§ 109–42.302 Recovery of silver from used hypo solution and scrap film.

The Director of Administration and heads of field offices for their respective organizations are responsible for the establishment and maintenance of a program for silver recovery from used hypo solution and scrap film in accordance with FPMR § 101–42.302.

§ 109–42.350 Excess precious metals.

See § 109–43.313–54 for procedures for reporting excess precious metals to the DOE precious metals pool for recovery and subsequent redistribution within DOE.

PART 109–43—UTILIZATION OF PERSONAL PROPERTY

Sec.
109–43.000 Scope of part.
109–43.000–50 Applicability.
109–43.001–14 Personal property.

Subpart 109–43.1—General Provisions

109–43.101 Surveys.
109–43.102 Reassignment of property within executive agencies.
109–43.103 Agency utilization officials.

Subpart 109–43.3—Utilization of Excess

109–43.301–50 Policy.
109–43.302–50 Utilization and disposal by contractors.
109–43.303–1 Acquisition of mercury.
109–43.306 Property not required to be reported.
109–43.311–1–50 DOE utilization screening.
109–43.311–1–51 Procedures for effecting transfers within DOE.
109–43.311–5 Property at installations due to be discontinued.
109–43.312 Exceptions to reporting.
109–43.313–2 Printing, binding, and blankbook equipment and supplies.
109–43.313–50 Radioactively and chemically contaminated property.
109–43.313–51 Automatic data processing equipment.
109–43.313–52 Classified property.
109–43.313–53 Naval gun mounts.
109–43.313–54 Precious metals.
109–43.313–55 Shielding material.
109–43.313–56 Property in which the Government has an interest.
109–43.313–57 Lead.
109–43.315–5 Procedure for effecting transfers.
109–43.317–1 Cost of care and handling.
109–43.317–2 Proceeds.
109–43.319 Use of excess property on cost-reimbursement type contracts.
109–43.321 Certification of non-Federal agency screeners

Subpart 109–43.5—Utilization of Foreign Excess Personal Property.

109–43.503 Holding agency responsibilities.
109–43.504–50 Disposition of property not selected for return to the United States.

Subpart 109–43.47—Reports

109–43.4701 Performance reports.

Subpart 109–43.51—Utilization of Personal Property Held for Facilities in Standby

109–43.5100 Scope of subpart.
109–43.5101 Definition.
109–43.5102 Policy.
109–43.5103 Reviews to determine need for retaining items.
109–43.5104 Utilization of property in facilities in standby status.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–43.000 Scope of part.

This part implements and supplements FPMR Part 101–43, Utilization of Personal Property.

§ 109–43.000–50 Applicability.

The provisions of FPMR Part 101–43 and this part are applicable to contractors unless otherwise provided herein.

§ 109–43.001–14 Personal property.

For the purposes of this part personal property means property of any kind or type except real and related personal property; records; special source materials, which includes source materials and special nuclear material, and those other materials to which the provisions of DOE Order 5630.2 "Control and Accountability of Nuclear Materials, Basic Principles" apply, such as deuterium, enriched lithium, neptunium 237 and tritium, and atomic weapons and byproduct materials as defined in Section 11 of the Atomic Energy Act of 1954, as amended; enriched uranium in stockpile storage; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

Subpart 109–43.1—General Provisions

§ 109–43.101 Surveys.

The Director of Administration and heads of field offices are responsible for continuously surveying property under their control to assure efficient use and shall promptly identify and report excess property available for use elsewhere. See 109–25.109–1 for DOE policy on the conduct of management walk-through inspection tours to identify idle and unneeded equipment.

§ 109–43.102 Reassignment of property within executive agencies.

See Chapter XI of the DOE Accounting Practices and Procedures Handbook for preparation of the feeder reports upon which the consolidated DOE report of internal property reassignments is based.

§ 109–43.103 Agency utilization officials.

The Director, Property and Equipment Management Division, Headquarters, is designated as the DOE National Utilization Officer.

Subpart 109-43.3—Utilization of Excess

§ 109-43.301-50 Policy.

It is the policy of DOE to consider excess property as the first source of supply. In no case, however, will excess property be acquired unless a present or foreseeable program need exists for the property. In carrying out this policy, the objective of which is to obtain maximum effective and economical utilization of property already owned by the Federal Government, consideration should be given to such factors as—

(a) Nature and cost of any repairs required to restore excess equipment to a safe, dependable, and economical operating condition;

(b) Duration of the job on which the equipment will be used;

(c) Economic feasibility of ownership vs. loan or rental of the equipment. Frequency of use, particularly where the equipment will be needed only infrequently, is one of the factors which must be considered in determining the most economical method of acquisition; and

(d) Handling and transportation costs involved in acquisition of excess property.

§ 109-43.302-50 Utilization and disposal by contractors.

Heads of field offices may authorize contractors to perform the functions pertaining to utilization and disposal of excess property, provided such activities are in accordance with written policies and procedures which they have approved as being consistent with this part and those contained in FPMR Part 101-45 and Part 109-45.

§ 109-43.303-1 Acquisition of mercury.

Requests for 76 pound flasks of mercury, for use by DOE or its contractors, shall be forwarded to the Director, Supply Division, Oak Ridge Operations Office, Oak Ridge, Tennessee.

§ 109-43.306 Property not required to be reported.

To the extent practicable and economical, notification of availability of nonreportable excess property (See FPMR § 101-43.312) shall be made on an informal basis to other DOE installations in the area known to use such property. If no requirement is established within a reasonable time, usually not more than 30 days after the availability of the property is announced, the property will be considered excess to the needs of the DOE and made available to GSA as provided for in FPMR Part 101-43.306.

§ 109-43.311-1-50 DOE utilization screening.

(a) Prior to reporting excess personal property to GSA as required by FPMR § 101-43.311-1, reportable property, as identified in FPMR § 101-43.4801, shall be reported to the Property and Equipment Management Division (MA-422) through the DOE Reportable Excess Automated Property System (REAPS) for completion of the 30-day DOE screening period. Information regarding REAPS reporting and screening procedures are provided in instructions and directives issued by MA-422.

(b) In exceptional cases where time does not permit formal DOE utilization screening through REAPS, notification of the availability of excess property may be made by telegram, teletype or telephone, with due consideration to the additional costs involved.

(c) Concurrent utilization screening within DOE and to other Federal agencies generally shall not be permitted.

(d) If, after DOE circularization, reportable property is desired by another Federal agency, it may be transferred as provided in FPMR § 101-43.315-5(a).

§ 109-43.311-1-51 Procedures for effecting transfers within DOE.

In accordance with instructions provided for the operation of the REAPS program, transfers between DOE organizations and contractors shall be effected by completion of an SF-122, Transfer Order Excess Personal Property. Except for those contractors authorized by the DOE contracting office to execute transfer orders, transfers to DOE contractors must be approved by the cognizant DOE contracting officer for the contractors receiving the property.

§ 109-43.311-5 Property at installations due to be discontinued.

(a) In closing out installations or any activities where it is important that upon completion of the work the personnel be released and activities ended as quickly as possible in order to avoid large expenditures, arrangements may be made for expediting the utilization and disposal of excess inventories and other excess property.

(b) Personal and real property staffs of DOE field organizations shall work with appropriate GSA regional offices to develop a utilization and disposal program which takes into consideration all the factors involved, is expedited to the maximum degree, and is mutually satisfactory and in the best overall interest of the Government. When closeout involves an activity which is not located geographically in a DOE installation, information concerning the situation shall be given to the appropriate regional administrator of GSA, as early as possible, by letter (copy to the Property and Equipment Management Division (MA-422)). The information should include the types of property available and indicate that the activity is to be discontinued, the scheduled date for the removal of personnel from the location, and the last dates when the property will be needed. The following guidelines are furnished for possible use, although variations may be used as long as agreement is reached with GSA and there is no conflict with DOE requirements except as noted in (1) below:

(1) If a proposed expedited program provides for deviation from the DOE policy or procedural requirements, approval of the Director of Procurement and Assistance Management shall be obtained.

(2) Approval of the proposed program by the appropriate GSA regional office, when deviation from existing GSA regulations is involved, will be sufficient to validate the program. A copy of the approved program should be forwarded for information to the Property and Equipment Management Division (MA-422).

(3) In developing an expedited disposal program, property shall be determined to be excess to DOE before it is reported to GSA. Concurrent circularization of lists of DOE excess property within DOE and to other Federal agencies generally is not permitted.

(4) Summary catalog listings of certain categories of excess property, such as property in classes 48, 51, 55, 56, etc., showing estimated release dates, might be furnished GSA with good utilization results. Excess property in such classes as 23, 24, 32, 34 and 38 shall normally be listed by individual item with sufficient description for ready identification.

(5) In order to obtain maximum utilization of the property by other Federal agencies, the disposal program shall provide that the field organization will furnish assistance to GSA, upon request, to arrange for invitational inspections by Federal agency representatives.

(6) Upon request, DOE can provide assistance to GSA in its circularization of reportable items to other Federal agencies or in locating potential users within the government.

(7) Care should be exercised to be sure that orders from other Federal agencies for excess property are processed through GSA, as may be

required by the GSA regional office concerned.

(8) Although it may be possible to arrange for expediting donations for educational, public health, or civil defense purposes, adequate time must be allowed for the screening of all donable property.

(9) Provisions should be made for accelerated release by GSA of excess property for disposal as surplus, particularly where there is little or no potential use by other Federal Agencies.

(10) Methods should be developed whereby last minute requests for surplus property, cataloged for an auction sale or listed in a sealed bid invitation and inspected by prospective bidders, can be kept to a minimum.

§ 109–43.312 Exceptions to reporting.

In addition to the categories of nonreportable property identified in FPMR § 101–43.312 (a) through (g), the following property, when determined excess to a DOE installation, is not reportable and shall not be formally circularized within DOE or reported to GSA—

(h) Asphalt products in less than carload (LCL) quantities (roofing tile, paving materials);

(i) Cement and fabricated cement products in LCL quantities (concrete block, pumic block, cinder block, pipe and fittings);

(j) Fabricated clay products in LCL quantities (brick, tile, pipe and fittings);

(k) Fuels in LCL quantities (gasoline, diesel fuels, coal, coke and kerosene);

(l) Special purpose or site fabricated shelving, cabinets, shop tables, etc., of limited adaptability or with high cost of disassembly or transportation;

(m) Uncrated window glass; and

(n) Equipment, parts, accessories, jigs and components, which are of special design, composition, or manufacture and which are intended for use only by specific DOE installations, such as spare parts for equipment used in atomic processes.

§ 109–43.313–2 Printing, binding, and blankbook equipment and supplies.

DOE organizations shall report excess printing, binding and blankbook equipment to the Office of Administrative Services, Headquarters, for processing in accordance with the Joint Committee on Printing Regulations.

§ 109–43.313–50 Radioactively and chemically contaminated property.

Radioactively and chemically contaminated property should be handled in accordance with § 109–45.50.

§ 109–43.313–51 Automatic data processing equipment.

Automatic data processing equipment should be handled in accordance with FPMR §§ 101–36.3 and 109–36.3.

§ 109–43.313–52 Classified property.

Classified personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be classified, or otherwise rendered unclassified prior to disposal, in accordance with instructions of the head of the field organization concerned. Declassification shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the property.

§ 109–43.313–53 Naval gun mounts.

When a naval gun mount obtained from the Naval Sea Systems Command, Department of the Navy, becomes excess, it may be listed, circularized, and transferred within DOE in the same manner as other excess property. However, when a naval gun mount is determined to be excess to DOE, it shall be reported to the Department of the Navy, Naval Sea Systems Command, Washington, D.C. 20360, and shall be disposed of in accordance with instructions of that Department.

§ 109–43.313–54 Precious metals.

All precious metals which become excess to current or foreseeable requirements shall be reported to the Oak Ridge Operations Office. With the exception of silver, this includes precious metals in any form, including shapes, scrap or radioactively contaminated. Only high grade nonradioactively contaminated silver should be reported, i.e., silver-bearing photo solutions, scrap film, or other low grade silver scrap should not be reported. (See § 109–27.53)

§ 109–43.313–55 Shielding material.

All excess movable shielding material of any type will be circularized within DOE using normal excessing procedures. However, prior to disposal outside DOE, the Property and Equipment Management Division (MA–422) shall be advised concerning the types and quantities which remain available.

§ 109–43.313–56 Property in which the Government has an interest.

Personal property in which the Government has an interest means: (a) Government-owned property which is available for exchange or sale, and (b) property leased with an option to purchase. Such property shall be circularized within DOE in accordance with § 109–43.311–1–50 for possible utilization whenever it is practicable to do so, considering the contract terms, cost in relation to remaining useful life, location of item, purchase option time remaining, etc.

§ 109–43.313–57 Lead.

Excess lead and lead bearing scrap, such as batteries, with the exception of radioactively contaminated lead, should be reported to the Idaho Operations Office for reclaiming and subsequent redistribution within DOE from the DOE lead bank. Only quantities of 40,000 pounds or more should be reported. The Idaho Operations Office will furnish shipping instructions upon request.

§ 109–43.315–5 Procedure for effecting transfers.

In accordance with a DOE agreement with GSA, execution of transfer orders by a DOE official is not required in those cases where heads of field offices have authorized contractors to perform this function, and GSA has been notified of such authorization. GSA regional offices will furnish the cognizant DOE field organization a copy of each transfer ordered received from contractors. This copy of the transfer order will be reviewed by the cognizant DOE field organization to determine if the contractor has been authorized to submit orders for excess property. If the contractor submitting the transfer order to the GSA regional office has not been authorized in writing to submit such orders, GSA will not honor such requests unless they are subsequently executed by an appropriate DOE official.

§ 109–43.317–1 Cost of care and handling.

DOE field organizations and contractors shall comply with the provisions of Chapter III of the DOE Accounting Practices and Procedures Handbook as they relate to billings for direct costs incurred in the transfer of excess property.

§ 109–43.317–2 Proceeds.

For DOE procedures on the handling of proceeds from transfer of excess property to another Government agency with reimbursement, see Chapter III of the DOE Accounting Practices and Procedures Handbook.

§ 109–43.319 Use of excess property on cost-reimbursement type contracts.

(b) It is DOE policy for contractors to use Government excess personal property to the maximum extent possible to reduce contract costs. However, the determination required in FPMR § 101–43.319(b) does not apply to such contracts and the acquisitions of

Government excess personal property by these contractors are not subject to the annual reporting requirements of FPMR § 101–43.4701(c). The procedures prescribed in § 109–43.315–5 for execution of transfer orders apply.

§ 109–43.321 Certification of non-Federal agency screeners.

Contracting officers shall maintain a record of the number of certified non-Federal agency screeners operating under their authority and shall immediately notify the appropriate GSA regional office of any changes in screening arrangements.

Subpart 109–43.5—Utilization of Foreign Excess Personal Property

§ 109–43.503 Holding agency responsibilities.

(a) Property which remains excess after utilization screening within the general foreign geographical area where the property is located should be reported by the accountable field office or Headquarters program organization to the Property and Equipment Management Division (MA–422) for consideration for return to the U.S. for further utilization within DOE, by other Government agencies, or for donation, based on such factors as cost, residual value, usefulness in ongoing or future programs, condition, and cost of transportation.

§ 109–43.504–50 Disposition of property not selected for return to the United States.

Property not selected for return to the United States for utilization within DOE or the Government or for donation in accordance with FPMR § 101–44.7 shall be disposed of in accordance with 109–45.5105.

Subpart 109–43.47—Reports

§ 109–43.4701 Performance reports.

(a) The DOE report of the utilization of domestic excess personal property as required in FPMR § 101–43.4701(a) is submitted to GSA by the Property and Equipment Management Division (MA–422). DOE field organizations and contractors reporting under the DOE financial reporting system should furnish this information to the Office of Controller in accordance with Chapter III of the DOE Accounting Practices and Procedures Handbook. Those activities which do not report under the DOE financial reporting system shall submit an SF 121 directly to MA–422 by November 15.

(c) The report required in FPMR § 101–43.4701(c) shall be submitted to the Property and Equipment Management Division (MA–422) within 45 days after the close of each fiscal year, in the format illustrated below. This reporting requirement does not apply to excess property acquired by management and operating contractors.

Name and address of recipient	Recipient's status	Original cost of property	Federal supply classification group

Subpart 109–43.51—Utilization of Personal Property Held for Facilities in Standby

§ 109–43.5100 Scope of subpart.

This subpart supplements FPMR Part 101–43 by providing policies and procedures for the economic and efficient utilization of personal property associated with facilities placed in standby status.

§ 109–43.5101 Definition.

"Facility in standby" is a significant segment of plant and equipment, such as a complete plant or section of a plant, which is neither "in service" or declared "excess".

§ 109–43.5102 Policy.

Procedures and practices shall assure economical and efficient utilization of property associated with facilities placed in standby status as provided for in this subpart.

§ 109–43.5103 Reviews to determine need for retaining items.

Procedures and practices shall require an initial review at the time the plant is placed in standby to determine which items can be made available for use elsewhere within the established startup criteria, periodic reviews (no less than biennially) to determine need for continued retention of property, and special reviews when a change in startup time is made or when circumstances warrant. Such procedures should recognize that: (a) Generally, equipment, spares, stores items, and materials peculiar to a plant should be retained for possible future operation of the plant, (b) where practicable, common-use stores should be removed and used elsewhere, and (c) uninstalled equipment and other personal property not required should be utilized elsewhere onsite or be disposed of as excess.

§ 109–43.5104 Utilization of property in facilities in standby status.

(a) Procedures and practices shall require that property comprising the plant in standby, to the extent consistent with program requirements reflected by the startup criteria, be considered as a source of supply prior to procurement. Such procedures should provide for: (1) Furnishing potential users and procurement officers or some other responsible screening office with listings of equipment and other significant property holdings available for loan or transfer, and (2) removal and use elsewhere of installed equipment which can be replaced or returned within the established startup criteria.

(b) In addition to the above procedures, DOE organizations and contractors should encourage informal contacts between their technical staffs and those engaged in similar work at other DOE locations for the purpose of ascertaining the availability of Government property to meet their program requirements.

PART 109–44—DONATION OF PERSONAL PROPERTY

Sec.

109–44.000 Scope of part.

Subpart 109–44.7—Donations of Property to Public Bodies

109–44.701 Findings justifying donation to public bodies

Subpart 109–44.47—Reports

109–44.4701 Reports.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–44.000 Scope of part.

This part implements and supplements FPMR Part 101–44, Donation of Personal Property. For donation of surplus personal property in foreign areas, see § 109–45.51.

Subpart 109–44.7—Donations of Property to Public Bodies

§ 109–44.701 Findings justifying donation to public bodies.

The Director of Administration and heads of field offices for their respective organizations shall appoint officials to make findings and reviews as required in FPMR § 101–44.7.

Subpart 109–44.47—Reports

§ 109–44.4701 Reports.

The report of the donation of surplus personal property is furnished to GSA in combination with the report of the utilization of domestic excess personal property required in FPMR § 101–43.4701. See § 109–43.4701 for DOE reporting requirements.

PART 109–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Sec.

109–45.000 Scope of part.

Subpart 109–45.1—General

109–45.101–50 Applicability.
109–45.103–1 Responsibilities of the General Services Administration.
109–45.103–2 Responsibilities of holding agencies.
109–45.105–3 Exemptions.

Subpart 109–45.3—Sale of Personal Property

109–45.301–50 Sales by DOE contractors.
109–45.302–50 Sales to DOE and contractor employees.
109–45.303–50 Contractor reporting of property for sale.
109–45.304–2–50 Negotiated sales and negotiated sales at fixed prices.
109–45.304–6 Reviewing authority.
109–45.304–50 Processing bids and award of contract.
109–45.304–51 Documentation.
109–45.307 Proceeds from sales.
109–45.309–50 Unserviceable property (salvage and scrap).
109–45.310 Antitrust laws.
109–45.316 Report on identical bids.

Subpart 109–45.5—Abandonment or Destruction of Surplus Property

109–45.501–1 General.
109–45.502–1 Reviewing authority.

Subpart 109–45.47—Reports

109–45.4701 Performance reports.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

109–45.5001 Scope of subpart.
109–45.5002 Policy.
109–45.5003 Responsibilities.
109–45.5003–1 Development of criteria for utilization and disposal outside DOE.
109–45.5003–2 Approval of requests for utilization and disposal outside DOE.
109–45.5004 Procedures.
109–45.5004–1 Suspect personal property.
109–45.5004–2 Handled as uncontaminated equipment.

Subpart 109–45.51—Disposal of Excess Personal Property in Foreign Areas

109–45.5100 Scope of subpart.
109–45.5101 Authority.
109–45.5102 General.
109–45.5103 Definitions.
109–45.5104 Responsibilities.
109–45.5104–1 Director of Procurement and Assistance Management.
109–45.5104–2 Heads of offices in foreign areas.
109–45.5105 Disposal.
109–45.5105–1 General.
109–45.5105–2 Methods of disposal.
109–45.5106 Reports.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–45.000 Scope of part.

This part implements and supplements FPMR 101–45, Sale, Abandonment, or Destruction of Personal Property, but does not apply to (a) properties which are sold or otherwise disposed of pursuant to special statutes, or (b) disposal of personal property in foreign areas (see § 101–45.51).

Subpart 109–45.1—General

§ 109–45.101–50 Applicability.

The provisions of FPMR 101–45 and this part are applicable to contractors authorized to dispose of surplus personal property.

§ 109–45.103–1 Responsibilities of the General Services Administration.

GSA regional offices are responsible for the conduct of sales of surplus and replacement property in the custody of DOE direct operations, except that DOE will continue to sell replacement property where trade-in offers are also involved in the transaction.

§ 109–45.103–2 Responsibilities of holding agencies.

See §§ 109–45.105–3 and 109–45.3 for policy and procedures governing the sale of personal property by DOE contractors.

§ 109–45.105–3 Exemptions.

The General Services Administration, by letter dated May 28, 1965, authorized DOE contractors to sell contractor inventory, including replacement property. This exemption is for sales of contractor inventory only. All surplus property in the custody of DOE direct operations (except replacement property where trade-in offers are involved) will be reported to GSA in accordance with FPMR § 101–45.303.

Subpart 109–45.3—Sale of Personal Property

§ 109–45.301–50 Sales by DOE contractors.

Sales of surplus contractor inventory will be made by DOE contractors when heads of field offices determine that it is in the best interests of the Government to do so.

§ 109–45.302–50 Sales to DOE and contractor employees.

(a) Employees of DOE and DOE contractors shall be afforded the same opportunity to acquire Government-owned property as is afforded the general public, provided the employees warrant in writing prior to award that they have not either directly or indirectly—

(1) Participated in the determination to dispose of the property;

(2) Participated in the preparation of the property for sale;

(3) Participated in determining the method of sale; or

(4) Obtained information not otherwise available to the general public regarding usage, condition, quality, or value of the property.

(b) Special clothing and other articles of personal property acquired for the exclusive use of and fitted to an individual employee, when not otherwise usable by, and in all respects excess to the needs of, the holding organization, may be sold to DOE or contractor employees at the best price obtainable in the event of termination of their employment or their permanent assignment to duties not requiring such clothing or property.

§ 109–45.303–50 Contractor reporting of property for sale.

GSA normally initiates sales action from the items remaining as surplus after utilization and donation screening. In order to assure no misunderstanding at GSA regional offices as to who is to perform the sales function for contractor inventory, each Standard Form 120 report forwarded to GSA shall bear a capitalized notation in a prominent place reading either "TO BE SOLD BY GSA" or "NOT TO BE SOLD BY GSA" as appropriate.

§ 109–45.304–2–50 Negotiated sales and negotiated sales at fixed prices.

(a) Negotiated sales, including purchases or retentions at less than cost by the contractor, may be made when the contracting officer determines and documents that the use of this method of sale is essential to expeditious contract closeout, or is otherwise justified on the basis of circumstances enumerated below, provided that the Government's interests are adequately protected. Negotiated sales, including purchases or retentions at less than cost by the contractor, shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the property was offered for competitive sale. Specific conditions justifying negotiated sales are when—

(1) No acceptable bids have been received as a result of competitive bidding under a suitably advertised sale;

(2) Property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(3) The disposal will be to States, territories, possessions, political

subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(4) The specialized nature and limited use potential of the property would create negligible bidder interest;

(5) Removal of the property would result in a significant reduction in value, or the accrual of disproportionate expense in handling; or

(6) It can be clearly established that such action is in the best interests of the Government.

(b) Negotiated sales at fixed prices. When determined to be in the best interests of the Government, heads of field offices may authorize fixed-price sale of contractor inventory by DOE contractors provided (1) the reasonable recovery value of the property to be sold to any one purchaser at any one time does not exceed $1000, (2) adequate procedures for publicizing such sales have been established, (3) the sales prices are not less than could reasonably be expected if competitive bid sales were employed and the prices have been approved by a reviewing authority designated by the heads of field offices, and (4) the warranty prescribed in § 109–45.302–50(a) is obtained when sales are made to employees.

§ 109–45.304–6 Reviewing authority.

The reviewing authority required under FPMR § 101–45.304–6 may consist of one or more persons designated by the head of the field office who will be responsible for providing an adequate and independent review of proposed sales for the purpose of determining whether—

(a) The method of sale is in accordance with established policies and procedures; and

(b) Proceeds constitute a reasonable return for the property sold.

§ 109–45.304–50 Processing bids and award of contract.

The procedures established in Federal Acquisition Regulation 14.4 and DEAR 914.4 shall be made applicable to execution, receipt, safeguarding, opening, abstracting, and evaluation of bids and awarding contracts, except that in evaluating bids and awarding contracts, disposal under conditions most advantageous to the Government based on high bids received shall be the determining factor. For mistakes in bids, see FPMR 101–45.8.

§ 109–45.304–51 Documentation.

Files pertaining to sales shall contain copies of all documents necessary to provide a complete record of the transaction and as a minimum shall include the following:

(a) A copy of request for proposals if written proposals are employed.

(b) A list of prospective bidders contacted.

(c) An abstract of proposals received, whether oral or written.

(d) Copies of written proposals or confirming proposals received, including Standard Forms 119 (see FPMR § 101–45.313–9) which have been received from prospective bidders, together with other relevant information.

(e) A notation concerning basis for determination that proceeds constitute a reasonable return for property sold.

(f) Full and adequate justification for not advertising for competitive bids when the fair market value of property sold in this manner in any one case exceeds $1,000.

(g) A notation concerning any award made to other than the high bidder.

(h) The approval of reviewing authority when required.

(i) A copy of notice of award.

(j) All related correspondence.

(k) In the case of auction or spot bid sales, the following additional information should be included:

(1) A list of items or lots sold indicating book cost and sales price for each item or lot sold.

(2) A copy of advertising literature distributed to prospective bidders.

(3) A summary listing of advertising by means of newspapers, radio, television, public posting, etc.

(4) The names of prospective bidders who attended sale if list was made.

(5) A copy of any pertinent contract for auctioneering services and related documents or appropriate reference to files containing such documents.

(6) A record of deposits and payments made or appropriate reference to files containing such records.

§ 109–45.307 Proceeds from sales.

DOE installations shall comply with the provisions of Chapter IV of the DOE Accounting Practices and Procedures Handbook.

§ 109–45.309–50 Unserviceable property (salvage and scrap).

(a) A continuous cleanup program shall be maintained at all DOE installations to locate, efficiently handle, and promptly dispose of unserviceable property (salvage and scrap). Property inventories and construction, wrecking, dismantling and other projects which might produce scrap, should be regularly reviewed, particularly for metals and other items which offer potential as marketable materials and for economic returns to the Government. (See FPMR Part 101–42 and Part 109–42 for recovery of precious metals and reporting requirements.)

(b) Scrap metals shall be segregated to the maximum economical extent consistent with good industrial practice.

(c) Scrap metal which is contaminated with radioactive material and/or chemically hazardous materials shall be segregated and appropriately marked at the source as to type and degree of contamination and shall be controlled and disposed of in accordance with application regulations. (See Subpart 109–45.50).

§ 109–45.310 Antitrust laws.

Selling organizations shall submit to the Office of the General Counsel, with a copy to the Director of Procurement and Assistance Management, the report on proposed sales of surplus personal property with an acquisition cost of $3,000,000 or more, or a patent, process, technique, or invention, regardless of cost. Information to be included is contained in FPMR § 101–45.310.

§ 109–45.316 Report of identical bids.

Selling organizations shall forward the report on identical bids required by FPMR § 101–45.316 to the Office of the General Counsel, with a copy to the Director of Procurement and Assistance Management.

Subpart 109–45.5—Abandonment or Destruction of Surplus Property

§ 109–45.501–1 General.

(a) The finding required by FPMR § 101–45.501–1(a) that property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale shall be in writing and shall be made by an official designated by the head of the field office concerned.

§ 109–45.501–2 Reviewing authority.

The head of the field office concerned will be the reviewing authority for approval to abandon or destroy property with an acquisition cost of more than $1,000.

Subpart 109–45.47—Reports

§ 109–45.4701 Performance reports.

The report of the sale or other disposition of surplus personal property is furnished to GSA in combination with the report of the utilization of domestic excess personal property required in FPMR § 101–43.4701. See § 109–43.4701 for DOE reporting requirements.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

§ 109–45.5001 Scope of subpart.

This subpart sets forth policies and procedures for the utilization and disposal outside of DOE of excess and surplus personal property which has been radioactively or chemically contaminated.

§ 109–45.5002 Policy.

When the holding organization determines it is appropriate to dispose of contaminated personal property, such contaminated personal property shall be disposed of by DOE in accordance with appropriate Federal regulations governing radiation/chemical exposure to the public and contamination in the environment. In special cases where Federal regulations do not exist or apply, appropriate national consensus standards shall be used.

§ 109–45.5003 Responsibilities.

§ 109–45.5003–1 Development of criteria for utilization and disposal outside DOE.

The Assistant Secretary for Policy, Safety and Environment (PE–1) has responsibility for the development of criteria for utilization and disposal of excess and surplus radioactively and chemically contaminated personal property outside of DOE.

§ 109–45.5003–2 Implementation of policy.

Heads of field offices shall overview the implementation of policy as set forth in § 109–45.5002 and approve or disapprove requests for utilization and disposal outside of DOE.

§ 109–45.5004 Procedures.

§ 109–45.5004–1 Suspect personal property.

(a) Each excess item of personal property (including scrap), having a history of use in an area where exposure to radioactively or chemically contaminated materials may occur, shall be considered suspect and shall be monitored using appropriate instruments and techniques by qualified personnel of the DOE office or contractor generating the excess.

(b) Prior to utilization or disposal outside DOE, with due consideration to the economic factors involved, every effort shall be made to reduce the level of contamination of items of excess or surplus property to the lowest practicable level.

(c) If contamination is suspect and the property is of such size, construction, or location as to make the contamination inaccessible for the purpose of measurement, such property shall not be utilized or disposed of outside DOE through normal channels.

§ 109–45.5004–2 Handled as uncontamination equipment.

If monitoring of suspect equipment indicates that the contamination does not exceed applicable standards, it may be utilized and disposed of in the same manner as uncontaminated equipment, provided the guidance in § 109–45.5004–1(b) has been considered. However, recipients shall be advised where levels of radioactive contamination require specific controls for shipment as provided in Department of Transportation Regulations for shipment of radioactive materials (49 CFR Parts 171–179, inclusive). In addition, when any contaminated equipment is circularized within DOE, reported to GSA, or otherwise disposed of, the kind and degree of contamination must be plainly indicated on all pertinent documents.

Subpart 109–45.51—Disposal of Excess Personal Property in Foreign Areas

§ 109–45.5100 Scope of subpart.

This subpart sets forth policies and procedures governing the disposal of DOE-owned foreign excess and surplus personal property.

§ 109–45.5101 Authority.

The policies and procedures contained in this subpart are issued pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471). Title IV of that Act entitled "Foreign Excess Property" provides that, except where commitments exist under previous agreements, all excess property located in foreign areas shall be disposed of by the owning agency, and directs that the head of such agency conform to the foreign policy of the United States in making such disposals.

§ 109–45.5102 General.

Disposal of Government-owned property in the custody of DOE organizations or its contractors in foreign areas shall be made in an efficient and economical manner, and in conformance with the foreign policy of the United States.

§ 109–45.5103 Definitions.

As used in this subpart, the following definitions apply:

(a) "Foreign" means outside the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(b) "Foreign service post" means the local diplomatic or consular post in the area where the excess property is located.

§ 109–45.5104 Responsibilities.

§ 109–45.5104–1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management develops and interprets policies, principles, and general procedures for the disposal of excess property in foreign areas.

§ 109–45.5104–2 Heads of offices in foreign areas.

Heads of DOE foreign offices—

(a) Are authorized to handle foreign excess disposal matters in accordance with Title IV, "Foreign Excess Property" of the Federal Property and Administrative Services Act of 1949, as amended and this subpart;

(b) Shall refer to the Property and Equipment Management Division (MA–422), any requests for advice or approval of the State Department on proposed disposals of excess property in foreign areas for review, coordination and handling through appropriate channels; and

(c) Shall approve the exchange or lease of foreign excess property when in their opinion such action is clearly in the best interest of the Government as provided in § 109–45.5105–2(b).

§ 109–45.5105 Disposal.

§ 109–45.5105–1 General.

(a) Foreign excess property which is not required for transfer within DOE or to other U.S. Government agencies shall be considered surplus and may be disposed of by transfer, sale, exchange, or lease, for cash, credit, or other property and upon such other terms and conditions as may be deemed proper. Such property may also be donated, abandoned, or destroyed under the conditions specified in § 109–45.5105–2(c). Most foreign governments have indicated to the State Department that they wish to be consulted before U.S. Government property is disposed of in their countries (except in the case of transfers to other U.S. Government agencies). Matters concerning customs duties and taxes, or similar charges, may require prior agreement with the foreign government involved. The State Department shall be contacted in regard to these problems. Whenever advice or approval of the State Department is required by this subpart, it may be obtained either through the foreign service post in the foreign area involved or from the State Department in

Washington, D.C. If the problem is to be presented to the State Department in Washington, D.C., it shall be referred through appropriate administrative channels to the Director of Procurement and Assistance Management, for review, coordination and handling.

(b) Foreign excess property which is not transferred for use may be transferred to other U.S. Government agencies for disposal. This procedure may often prove advantageous, particularly when only small amounts of property are involved or when personnel of the other agencies are generally engaged in disposal activities.

§ 109–45.5105–2 Methods of disposal.

(a) Sales of foreign excess shall be conducted in accordance with the following guidelines:

(1) Generally, all sales of surplus foreign excess property shall be conducted under the competitive bid process unless it is advantageous and more practicable to the Government not to do so. When competitive bids are not solicited, reasonable inquiry of prospective purchasers shall be made in order that sales may be made on terms most advantageous to the U.S. Government.

(2) In no event shall any property be sold in foreign areas without a condition which states that its importation into the United States is forbidden unless the U.S. Secretary of Agriculture (in the case of any agricultural commodity, food, or cotton or woolen goods), or the U.S. Secretary of Commerce (in the case of any other property), determines or has determined that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of the United States.

(3) Sales documents shall provide that the purchaser must pay any import duties or taxes levied against property sold in the country involved and further provide that the amount of this duty or tax shall not be included as a part of the price paid the U.S. Government for the property. In the event the levy is placed upon the seller by law, the buyer will be required to pay all such duties or taxes and furnish the seller copies of his receipt prior to the release of the property to him. However, if the foreign government involved will not accept payment from the buyer, the seller will collect the duties or taxes and turn the amounts collected over to the foreign government. Accounting for the amounts collected shall be coordinated with the disbursing officer of the nearest United States foreign service post. The property shall not be released to the purchaser until the disposal officer is satisfied that there is no responsibility for payment by the United States (as contrasted to collection by the United States) of taxes, duties, excises, etc.

(4) Certain categories of property, including small arms and machine guns; artillary and projectiles; ammunition, bombs, torpedoes, rockets and guided missiles; fire control equipment and range finders; tanks and ordnance vehicles; chemical and biological agents, propellents and explosives; vessels of war and special naval equipment; aircraft and all components, parts and accessories for aircraft; military electronic equipment; aerial cameras, military photo-interpretation, stereoscopic plotting and photogrammetry equipment; and all material not enumerated which is classified from the standpoint of military security (United States Munitions List, 22 CFR 121.01), are subject to restrictions as to disposal. Advance approval must be obtained from the State Department for the sale of all such articles. Therefore, prior to the sale of any of the articles enumerated in the U.S. Munitions List, the foreign service post in the area shall be consulted.

(5) Prior to the sale of property which had a total acquisition cost of $250,000 or more, plans for such sale shall be reported to the Property and Equipment Management Division (MA–422) in ample time to allow considerations of possible foreign policy aspects and advice thereon from the State Department. (See § 109–45.5106(a)). All proposed sales, regardless of the total acquisition cost of the property involved, which the head of the DOE foreign office believes might have a significant effect on the economic or political situation in a particular area, shall be discussed with the foreign service post.

(b) While there is authority for exchange or lease of foreign surplus property, such authority shall be exercised only when such action is clearly in the best interests of the U.S. Government. Disposals by exchange are subject to the same requirements as disposals by sale under § 109–45.5105–2(a).

(c) Foreign excess or surplus property (including waste, salvage, and scrap) may be donated, abandoned, or destroyed provided (1) the property has no commercial value, or the estimated cost of its care and handling would exceed the estimated proceeds from its sale, and (2) a written finding to that effect is made and approved by the head of the DOE foreign office. No property shall be abandoned or destroyed if donation is feasible. Donations under these conditions may be made to any agency of the U.S. Government, or to educational, public health or charitable nonprofit organizations of governments. Foreign excess property may also be abandoned or destroyed when such action is required by military necessity, safety, or considerations of health or security. A written statement explaining the basis for disposal by this means and approval by the head of the DOE foreign office is required. Property shall not be abandoned or destroyed in a manner which is detrimental or dangerous to public health and safety, or which will cause infringement on the rights of other persons.

§ 109–45.5106 Reports.

(a) Proposed sales of foreign excess property having an acquisition cost of $250,000 or more reported to the Property and Equipment Management Division (MA–422) should present all pertinent data, including the following:

(1) The description of property to be sold, including—

(i) Identification of property (description should be in terms understandable to persons not expert in technical nomenclature); property covered by the Munitions List and regulations pertaining thereto (as published in 22 CFR 121.01) should be clearly indicated;

(ii) Quantity;

(iii) Condition; and

(iv) Acquisition cost.

(2) The proposed method of sale (i.e., bid, negotiated sale, etc.).

(3) Any currency to be received and payment provisions (i.e., U.S. dollars, foreign currency, or credit, including terms of proposed agreement).

(4) Any restrictions on use of property to be sold (such as retransfer of property, disposal as scrap, demilitarization, etc.).

(5) Any special terms.

(6) The categories of prospective purchasers (e.g., host country, other foreign countries, special qualifications, etc.).

(7) How taxes, excises, duties, etc. will be handled.

(b) Instructions for reporting foreign excess utilization and disposal transactions are contained in Chapter III of the DOE Accounting Practices and Procedures Handbook.

PART 109–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

Sec.

109–46.000 Scope of part.
109–46.000–50 Applicability.

Subpart 109–46.4—Disposal

Sec.
109–46.406 Records.
109–46.407 Records.

Authority: Sec. 644, Pub. L. 95–91, Stat. 599 (42 U.S.C. 7254).

§ 109–46.000 Scope of part.

This part implements and supplements FPMR Part 101–46.

§ 109–46.000–50 Applicability.

Except as set forth below, the requirements of FPMR Part 101–46 and this part are not applicable to DOE contractors. Contractors shall comply with the following requirements:

FRMR § 101–46.201
FPMR § 101–46.202(a)
FPMR § 101–46.202(d) (1), (2), (4), (5), (6), (7), and (10)
FPMR § 101–46.202(e)
FPMR § 101–46.401
DOE–PMR § 109–46.406

Subpart 109–46.4—Disposal

§ 109–46.406 Records.

Contractor shall prepare and maintain such records as will show full compliance with the applicable provisions of FPMR Part 101–46.

§ 109–46.407 Reports.

The report of exchange/sale transactions required by FPMR § 101–46.407 shall be submitted through normal administrative channels to the Property and Equipment Management Division (MA–422) within 60 days after the close of the fiscal year. Negative reports are required.

PART 109–48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

Sec.
109–48.000 Scope of part.
109–48.001–50 Applicability.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

109–48.101–6 Transfer to other Federal agencies.
109–48.102–4 Proceeds.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–48.000 Scope of part.

This part implements and supplements FPMR Part 101–48, Utilization, Donation, or Disposal of Abandoned and Forfeited Personal Property.

§ 109–48.001–50 Applicability.

The provisions of FPMR 101–48 and this part are applicable to contractor operations where the abandoned or forfeited personal property is found on premises owned or leased by the Government.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

§ 109–48.101–6 Transfer to other Federal agencies.

(d) Transfer orders covering requests for transfers of forfeited or voluntarily abandoned distilled spirits, wine and malt beverages for medicinal, scientific or mechanical purposes shall be forwarded through normal administrative channels for signature by the Property and Equipment Management Division (MA–422) and for subsequent forwarding to GSA for release.

§ 109–48.102–4 Proceeds.

After retention of any monies received from disposal of abandoned or forfeited property for the three-year period specified in FPMR § 101–48.102–4 with no claim being filed, such monies shall be deposited as provided in Chapter IV of the DOE Accounting Practices and Procedures Handbook.

PART 109–50—PROGRAMMATIC DISPOSAL OF DOE PROPERTY

Sec.
190–50.000 Scope of part.
190–50.001 Applicability.

Subpart 109–50.1—General

190–50.101 Authority.

Subpart 109–50.3—Used Energy-Related Laboratory Equipment Grant Program

109–50.300 Scope of part.
109–50.301 Applicability.
109–50.302 General.
109–50.303 Authority.
109–50.304 Definitions.
109–50.305 Responsibilities and authorities.
109–50.305–1 Director of Procurement and Assistance Management.
109–50.305–2 Director, Office of Field Operations Management, Office of Energy Research.
109–50.305–3 Heads of field offices.
109–50.305–4 Contracting officers.
109–50.305–5 Excess used energy-related laboratory equipment holding organizations.
109–50.305–6 Screening locations.
109–50.306 Types of equipment which may be granted.
109–50.307 Types of equipment which may not be granted.
109–50.308 Procedure.
109–50.309 Reports.
109–50.310 Screening locations.

Subpart 109–50.4—Programmatic Disposal to Contractor of DOE Property in a Mixed Facility

109–50.400 Scope of subpart.
109–50.401 Definitions.
109–50.402 Responsibilities and authorities.
Sec.
109–50.402–1 Director of Procurement and Assistance Management.
109–50.402–2 Heads of Headquarters program organizations.
109–50.402–3 Heads of field offices and contracting officers.
109–50.403 Programmatic disposal of DOE property in mixed facilities.
109–50.403–1 Submission of proposals.
109–50.403–2 Need to establish DOE program benefit.
109–50.404 Notification.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–50.000 Scope of part.

This part provides guidance on the authorities, policies, and procedures for the disposal of DOE property for programmatic purposes.

§ 109–50.001 Applicability.

The provisions of this Part 109–50 apply to direct DOE operations, but do not apply to contractors unless specifically provided in the appropriate subpart.

Subpart 109–50.1—General

§ 109–50.101 Authority.

Programmatic disposals of DOE property generally are made under the authority and subject to the provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011), the Energy Reorganization Act of 1974 (42 U.S.C. 5801), the Department of Energy Organization Act (42 U.S.C. 7101), and other special laws which provide authority for DOE program activities.

Subpart 109–50.3—Used Energy-Related Equipment Grant Program

§ 109–50.300 Scope of subpart.

This subpart provides guidance on the granting of used, energy-related laboratory equipment to universities and colleges and other nonprofit educational institutions of higher learning in the United States for use in energy-oriented educational programs.

§ 109–50.301 Applicability.

This subpart is applicable to direct operations and to contractors.

§ 109–50.302 General.

DOE, to encourage research in the field of energy, awards grants of used energy-related laboratory equipment to eligible institutions for use in energy-oriented educational programs. Under the Used Energy-Related Laboratory Equipment Grant Program, grants of used energy-related equipment excess to the requirements of DOE offices and contractors may be made to eligible

institutions prior to reporting the equipment to GSA for utilization.

§ 109–50.303 Authority.

The used Energy-Related Laboratory Equipment Grant Program is conducted under the authority of Article 31 of the Atomic Energy Act of 1954, as amended, section 103, paragraph 10, of the Energy Reorganization Act of 1974, and Title III of the Department of Energy Organization Act.

§ 109–50.304 Definitions.

As used in this subpart the following definitions apply:

(a) "Book value" means acquisition cost less depreciation.

(b) "Eligible institution" means any nonprofit educational institution of higher learning, such as universities, colleges, junior colleges, hospitals, and technical institutes or museums located in the United States and interested in establishing or upgrading energy-oriented educational programs.

(c) "Energy-oriented education program" means one that deals partially or entirely in energy or energy-related topics.

(d) "DOE Financial Assistance Rules" (10 CFR Part 600) is the Department of Energy directive which establishes a uniform administrative system for application, awards, and administration of assistance awards, including grants and cooperative agreements.

§ 109–50.305 Responsibilities and authorities.

§ 109–50.305–1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management establishes policies and procedures for the award and administration of grants.

§ 109–50.305–2 Director, Office of Field Operations Management, Office of Energy Research.

The Director, Office of Field Operations Management, Office of Energy Research—

(a) Has program responsibility for the Used Energy-Related Laboratory Equipment Grant Program;

(b) Issues general instructions and information on the program to institutions;

(c) Reviews and, where appropriate, approves requests from institutions for used equipment where the book value of an item of equipment exceeds $100,000 or where the cumulative book value of used equipment grants to any one institution exceeds $100,000; and

(d) Issues annual summary reports of equipment granted under this program to field and Headquarters organizations. Advises when grants to individual institutions approach the $100,000 book value cumulative limit.

§ 109–50.305–3 Heads of field offices.

Heads of field offices shall establish procedures for review and evaluation of equipment grant proposals in accordance with this subpart.

§ 109.50.305–4 Contracting officers.

Contracting Officers—

(a) Award energy-related laboratory equipment grants under this program in accordance with the DOE Financial Assistance Rules and program instructions issued by the Director, Office of Energy Research and this subpart;

(b) Forward a copy of each approved and accepted grant to the Office of Energy Research; and

(c) Forward to the Office of Field Operations Management, Office of Energy Research, for approval prior to award of grant, requests from institutions for used equipment where the book value of the equipment exceeds $100,000 or where the cumulative book value of grants to an institution exceeds $100,000.

§ 109–50.305–5 Excess used energy-related laboratory equipment holding organizations.

Each DOE and contractor organization holding excess used energy-related laboratory equipment shall forward copies of excess reports (SF–120) to screening locations cited in § 109–50.310 after DOE screening through the REAPS program (See § 109–43.311–1–50).

§ 109–50.305–6 Screening locations.

Organizations designated in § 109–50.310 shall retain current files of reports of excess used energy-related laboratory equipment for review by eligible institutions.

§ 109–50.306 Types of equipment which may be granted.

Examples of types of equipment which may be granted under the Used Energy-Related Laboratory Equipment Grant Program are listed below. These examples are merely illustrative and not inclusive.

—Radiation detectors, monitors, scalers, and counters
—Nuclear reactors and accelerators
—Neutron howitzers and generators
—Critical and subcritical assemblies
—Bubble and cloud chambers
—Dosimeters, survey meters, radiometers, and spectroscopes
—Radiation shields and reactor associate components
—Mass spectrometers, infrared spectrometers, and ultraviolet spectrometers
—Gas and liquid chromatographs
—Ammeters, voltmeters, electrometers
—Linear and pulse-height analyzers
—Power supplies
—Catalyst test units
—Distillation columns
—Temperature and pressure recorders
—Ion control gauges
—Gas tracers and analyzers
—Solar collectors and heliometers

§ 109–50.307 Types of equipment which may not be granted.

Types of equipment which will not be granted include—

(a) Any equipment determined to be required by DOE direct operations or DOE contractors;

(b) General supplies, such as Bunsen burners, hoods and work benches; furniture; office equipment, such as typewriters, adding machines, and duplicating machines; drafting and office supplies; refrigerators; tools; presses, lathes, furnaces, hydraulic and mechanical jacks, cranes and hoists; and computing equipment; or

(c) Any equipment which has been obtained as excess from another Federal agency.

§ 109–50.308 Procedure.

(a) After completion of DOE utilization screening, copies of excess reports (SF 120) of used energy-related laboratory equipment will be forwarded by each holding organization to the sites listed in § 109–50.310 for use by eligible institutions in reviewing and earmarking specific equipment. These reports will be separately prepared and identified with the caption "Used Energy-Related Laboratory Equipment."

(b) The following periods have been established during which time equipment will remain available to this program prior to reporting it to the General Services Administration for utilization by other Federal agencies:

(1) Sixty days from the date DOE utilization screening is completed and the report is issued to screening locations, to permit suitable time for eligible institutions to review and earmark the desired equipment.

(2) An additional sixty days after the equipment is earmarked to permit the eligible institutions to prepare and submit an equipment proposal request and to provide time for field organizations to review and evaluate the proposal and take appropriate action.

(c) Upon approval of the proposal, the issuance of the grant instrument and acceptance by the institution are deemed to constitute transfer of title.

(d) A Standard Form 120, accompanied by a copy of the completed grant, shall be used to drop accountability of the granted equipment from the financial records.

(e) The cost of care and handling of property incident to the grant shall be charged to the receiving institution. Such costs may consist of packing, crating, shipping and insurance, and are limited to actual costs. In addition, where appropriate, the cost of any repair and/or modification to any equipment shall be borne by the recipient institution.

§ 109–50.309 Reports.

(a) In addition to the copy of the awarded grant required to be forwarded in accordance with § 109–50.305–4(b), each awarded grant shall be reported in the Procurement Assistance Data System.

(b) Heads of field offices shall include grants made under this program in the annual report of property transferred to non-Federal recipients, as required by FPMR § 101–43–4701(c).

§ 109–50.310 Screening locations.

The locations shown on the following pages shall retain current files of SF–120s, reports of excess used energy-related laboratory equipment, for review by eligible institutions. After completion of DOE utilization screening through REAPS, DOE activities shall forward copies of SF 120s covering used energy-related laboratory equipment to these locations.

California

Property Management Office, Atomics International Division, Rockwell International Corporation, 8900 DeSoto Avenue, Canoga Park, California 91305
Property Manager, Lawrence Livermore Laboratory, University of California, Livermore, California 94720
Business Services, L–53, Lawrence Livermore Laboratory, University of California, Livermore, California 94550

Colorado

Department of Energy, P.O. Box 26247, Belmar Branch, 1075 S. Yukon, Lakewood, Colorado 89226
Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, Colorado 80401

District of Columbia

Department of Energy, ER–44 Room 3F–053, 1000 Independence Avenue., SE. Washington, DC 20585. Attn: Dr. Larry L. Barker, (202) 252–6512
Department of Energy, MA–422, Room 8H–089, 1000 Independence Avenue., SE. Washington, DC 20585. Attn: Mr. J. H. Mackey, (202) 252–8261

Georgia

Department of Energy, 1655 Peachtree Street, NE., 8th Floor, Atlanta, Georgia 30309

Idaho

EG & G, Property Management Branch, 539 Second Street, Idaho Falls, Idaho 83401
Department of Energy, Idaho Operations Office, Property Management and Administrative Services Branch, 550 Second Street, Idaho Falls, Idaho 83401

Illinois

Argonne National Laboratory, Plant Operations, Plant Management, 9700 South Cass Avenue, Argonne, Illinois 60439

Iowa

Ames Laboratory, Iowa State University, Materials Handling and Property Office, Room 152, Research Building, Ames, Iowa 50010

Missouri

Department of Energy, 23rd Floor, 324 E. 11th St., Kansas City, Missouri 64106
Department of Energy, Kansas City Area Office, P.O. Box 202, Kansas City, Missouri 64141

Nevada

Department of Energy, Nevada Operations Office, Contract and Property Division, Property Management Branch, P.O. Box 14100, Las Vegas, Nevada 89114

New Mexico

Sandia Laboratories, Office of University Relations, P.O. Box 5800, Albuquerque, New Mexico 87115

New York

Brookhaven National Laboratory, Supply and Materials Office, Upton, Long Island, New York 11973

Ohio

Monsanto Research Corporation, Mound Laboratory, Property Management, P.O. Box 32, Miamisburg, Ohio 45342

Pennsylvania

Department of Energy, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 10102

South Carolina

E. I. Dupont de Nemours & Co., Savannah River Laboratory, University Relations Office, Aiken, South Carolina 29801

Tennessee

Oak Ridge National Laboratory, Material and Services, P.O. Box X, Oak Ridge, Tennessee 37830

Texas

Department of Energy, P.O. Box 5800, 2626 Mockingbird Lane, Dallas, Texas 75235

Washington

Rockwell Hanford, Excess Utilization, Building 1167–A, P.O. Box 250, Richland, Washington 99352

Subpart 109–50.4—Programmatic Disposal to Contractor of DOE Property in a Mixed Facility

§ 109–50.400 Scope of subpart.

This subpart contains guidance to be followed when it is proposed to sell or otherwise transfer DOE personal property located in a mixed facility to the contractor who is the operator of that facility.

§ 109–50.401 Definitions.

As used in this subpart, the following definitions apply:

(a) "DOE property" is the DOE-owned personal property in a mixed facility.

(b) "Contractor" is the operator of the mixed facility.

(c) "Mixed facility" is a partly DOE-owned and partly contractor-owned facility. For purposes of this subpart, however, this definition does not apply to such a facility operated by an educational or other nonprofit institution under a basic research contract with DOE.

§ 109–50.402 Responsibilities and authorities.

§ 109–50.402–1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management is authorized to approve proposals for the programmatic disposal of DOE personal property in a mixed facility to the contractor operating that facility.

§ 109–50.402–2 Heads of Headquarters program organizations.

Heads of Headquarters program organizations shall review and forward to the Property and Equipment Management Division (MA–422) for approval, proposals for programmatic disposal of DOE personal property in a mixed facility to the contractor operating that facility.

§ 109–50.402–3 Heads of field offices and contracting officers.

Heads of field offices and contracting officers shall submit proposals involving programmatic disposals of DOE property in mixed facilities through appropriate administrative channels to the cognizant Headquarters program organization for review and forwarding for approval.

§ 109–50.403 Programmatic disposal of DOE property in mixed facilities.

§ 109–50.403–1 Submission of proposals.

Proposals involving programmatic disposals for DOE personal property in mixed facilities to contractors operating the facility shall be forwarded through

the appropriate program organization to the Property and Equipment Management Division (MA–422) for review and processing for approval. Each such request for review and approval shall include all information necessary for a proper evaluation of the proposal. The proposal shall include, as a minimum—

(a) The purpose of the mixed facility;

(b) The character, condition and present use of the DOE property involved, as well as its acquisition cost, accumulated depreciation, and net book value;

(c) The programmatic benefits which would acrue to DOE from the disposal to the contractor (including the considerations which become important if the disposal is not made);

(d) The appraised value of the DOE property (preferably by independent appraisers); and

(e) The proposed terms and conditions of disposal (covering for example, (1) price, (2) priority to be given work for DOE requiring the use of the transferred property, and including the basis for any proposed charge to DOE for amortizing the cost of plant and equipment items, (3) recapture of the property if DOE foresees a possible future urgent need, and (4) delivery of the property, whether "as is-where is," etc.).

§ 109–50.403–2 Need to establish DOE program benefit.

When approval for a proposed programmatic disposal of DOE personal property in a mixed facility is being sought, it must be established that the disposal will benefit a DOE program. For example, approval might be contingent on a showing that—

(a) The entry of the contractor as a private concern into the energy program is important and significant from a programmatic standpoint; and

(b) The sale of property to the contractor will remove obstacles which otherwise discourage his entry into the field.

§ 109–50.404 Notification.

The Under Secretary will be advised prior to any disposal which is considered sensitive.

SUBCHAPTER I—INDUSTRIAL PLANT EQUIPMENT

PART 109–51—LOANS OF INDUSTRIAL PLANT EQUIPMENT FROM THE DEFENSE INDUSTRIAL PLANT EQUIPMENT CENTER

Sec.

109–51.000 Scope of part.
109–51.001 Policy.
109–51.002 Memorandum of Agreement.
109–51.003 General provisions.
109–51.004 DIPEC Handbook.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–51.000 Scope of part.

This part prescribes the policy and conditions for loans of industrial plant equipment (IPE) from the Department of Defense General Reserve under the management of the Defense Industrial Plant Equipment Center (DIPEC) and makes reference to the DOE DIPEC Handbook which prescribes procedures for arranging loans of IPE from DIPEC.

§ 109–51.001 Policy.

Since loan of DIPEC equipment is at no cost, except for packing, crating, handling, and transportation charges, DOE field organizations and contractors are encouraged to use DIPEC as a source of industrial plant equipment in lieu of purchasing such equipment.

§ 109–51.002 Memorandum of Agreement.

An agreement between DOE and the Defense Logistics Agency establishes the policies, procedures and conditions by which DOE may obtain loans of IPE from DIPEC. (Exhibit A of the DIPEC Handbook).

§ 109–51.003 General provisions.

(a) DOE field organizations and contractors may requisition IPE on a loan basis for periods up to five years. The IPE loan period may be extended on mutual agreement between DIPEC and the DOE field office involved.

(b) DOE has a 30-day period to accept or reject IPE placed on hold by DIPEC.

(c) DOE field organizations or contractors will pay costs of transportation, dismantling, crating and handling of IPE from and to DOD.

(d) On completion of the loan period, the DOE field organization or contractor shall return the DIPEC–IPE in the same condition as received except for fair wear and tear.

(e) DOE is required under terms of the agreement to decontaminate IPE prior to return or replace the equipment with an equivalent item.

§ 109–51.004 DIPEC Handbook.

The DIPEC Handbook is available through field organizations or by request to the Property and Equipment Management Division (MA–422). The Handbook cites the procedures for arranging loan of IPE, illustrates the forms used and provides a bibliography of DIPEC publications which list the available IPE by type of equipment and by DIPEC control numbers.

SUBCHAPTER K—GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

PART 109–60—MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

Sec.

109–60.000 Scope and applicability of part.
109–60.001 Definitions.

Subpart 109–60.1—Contractor's Responsibility

109–60.100 General.
109–60.101 Assumption of responsibility.
109–60.102 Contractor's liability.
109–60.103 Segregation of Government property.
109–60.104 Physical protection of property.
109–60.105 Control of sensitive items of property.
109–60.106 Disposition.
109–60.107 Relief from responsibility.

Subpart 109–60.2—Records and Financial Reports

109–60.200 General.
109–60.201 Unit Cost.
109–60.202 Records of plant and capital equipment.
109–60.203 Records of material maintained in stores.
109–60.204 Records of material issued upon receipt.
109–60.205 Financial property control reports.
109–60.206 DOE plant and equipment asset types.

Subpart 109–60.3—Identification

109.60.300 General

Subpart 109–60.4—Physical Inventories

109–60.400 General.
109–60.401 Frequency.
109–60.402 Reporting results of inventories.
109–60.403 Records of inventories.
109–60.404 Inventories upon termination or completion.

Subpart 109–60.5—Care and Maintenance

109–60.500 General.
109–60.501 Contractor's maintenance program.

Subpart 109–60.6—Utilization, Disposal, and Retirement

109–60.600 General.
109–60.601 Maximum use of property.
109–60.602 Disposal.
109–60.603 Retirement of property.

Subpart 109–60.7—Motor Vehicle and Aircraft Management

109–60.700 Scope of subpart.
109–60.701 Definition.
109–60.702 Policy.
109–60.703 Classification of motor vehicles.
109–60.704 Acquisition of motor vehicles.
109–60.705 Identification of motor vehicles.
109–60.706 Use of the GSA Interagency Motor Pool System.
109–60.707 Official use of motor vehicles.
109–60.708 Maintenance.

Sec.
109-60.709 Disposition of motor vehicles.
109-60.710 Required motor vehicle reports.
109-60.711 Aircraft.

Subpart 109-60.8-109-60.46—[Reserved]

Subpart 109-60.47—Reports

109-60.4700 Required reports.

Authority: Sec. 644, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109-60.000 Scope and applicability of part.

This part sets forth the minimum requirements to be observed by off-site contractors in establishing and maintaining control over Government property provided pursuant to a contract with DOE. This part does not apply to transportation contracts, grants, cooperative agreements, contracts with state and local governments, and to operating and on-site service contractors. To the extent of any inconsistency between this part and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

§ 109-60.001 Definitions.

As used in this part the following definitions apply:

(a) "Accessory item" means an item that facilitates or enhances the operation of capitalized equipment but which is not essential for its operation, such as remote control devices.

(b) "Auxiliary item" means an item without which the basic unit of equipment cannot operate, such as motors for pump and machine tools.

(c) "Capital equipment" means personal property items having a unit acquisition cost of generally $1,000.00 or more and an anticipated service life in excess of one (1) year, regardless of type of funding, are not properly chargeable to buildings or utilities, and having the potential for maintaining their integrity as capital items, i.e., not expendable due to use.

(d) "Government personal property" means all property provided at Goverment expense for performance of the contract, regardless of the method by which it is provided, including rented or leased equipment, except real property, records of the Federal Government, nuclear and special source materials, and atomic weapons and by-product materials.

(1) "Government-furnished property" means property in the possession of or directly acquired by the Government and subsequently made available to the contractor for use in performance of the contract.

(2) "Contractor-acquired Government property" means property acquired or otherwise provided by the contractor for performance of a contract and to which the Government has title or the right to take title under the contract terms.

(e) "Materials" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in normal use in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, or supplies.

(f) "Property administrator" means an authorized representative of the contracting officer assigned to administer the contract requirements and obligations relative to Government property. If an authorized representative has not been designated as the property administrator, the contracting officer is the property administrator.

(g) "Plant and equipment" means land, land rights, depletable resources, improvements to land, buildings and structures, utilities, and capital equipment having an anticipated service life of 1 year or more, the individual units of which satisfy the monetary and other criteria for capital charges and which therefore justify the maintenance of continuing plant and equipment records.

(h) "Salvage" means that property which has some value in excess of its basic material content but which is in such condition that it has no reasonable prospect of use for any purpose as a unit and its repair or rehabilitation for use is clearly impracticable.

(i) "Scrap" means property that has no value except for the recoverable value of its basic material content.

(j) "Sensitive items" means those items of property which are susceptible to being appropriated for personal use or which can be readily converted to cash. Examples are firearms, photographic equipment, binoculars, tape recorders, calculators, and power tools.

(k) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of a contract. It consists of items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for the installation of special test equipment), and equipment items used for general testing purposes.

(l) "Special tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

Subpart 109-60.1—Contractor's Responsibility

§ 109-60.100 General.

(a) The contractor is directly responsible and accountable for all Government property in its possession or control in accordance with the provisions of the contract, including property provided under such contract which may be in the possession or control of a subcontractor. The contractor shall establish and maintain a system, in accordance with the provisions of this part, to control, protect, preserve and maintain all Government property. If the contractor is expected to acquire and be accountable for, or does acquire Government personal property with an acquisition value of $500,000 or more, the contractor's property management system shall be in writing. Contractors holding Government personal property with an acquisition value of less than $500,000 may, at the discretion of the contracting officer, be required to have their property management system in writing. The requirement for written systems may be waived in writing by the contracting officer where the contracting officer determines that maintenance of a written system is unnecessary. The system shall be reviewed and if satisfactory, approved in writing by the contracting officer.

(b) The contractor shall maintain and make available such records as are required by Subpart 109-60.2 and shall account for all Government property until relieved of that responsibility. Liability for loss, damage, or improper use of property in a given instance will depend upon all the circumstances surrounding the particular case and will be determined in accordance with the provisions of the contract. The contractor shall furnish all data necessary to substantiate any request for discharge from responsibility.

(c) The contractor shall require subcontractors provided Government property under the prime contract to

comply with the provisions of this part. Procedures for assuring subcontractor compliance shall be included in the contractor's property control system.

(d) If any portion of the contractor's property control system is found to be inadequate upon review by the property administrator, necessary corrective action will be accomplished by the contractor prior to approval of the system. When agreement as to adequacy of control or corrective action cannot be reached between the contractor and the property administrator, the matter will be referred to the contracting officer.

(e) The property records and the premises where any Government property is located shall be accessible to the property administrator or other authorized representative during contract performance, at contract completion or termination, or at all reasonable times. The contractor's property control system is subject to audit by the Government as often as circumstances warrant during the contract's performance, at its completion or termination, or at any time thereafter while the contractor is required to retain the contract records. All these records, including related correspondence, shall be made available to the auditors.

§ 109–60.101 Assumption of responsibility.

(a) The contractor becomes responsible for Government-furnished property upon its delivery into the contractor's custody or control. For contractor-acquired Government property, the contractor assumes responsibility in accordance with the property provisions of the contract.

(b) All Government-furnished property shall be inspected and checked promptly at the time of receipt. Any visible or other external evidence of damage or error in quantity should be noted on the waybill with the signature of the carrier's agent. As soon as possible, the contractor shall send the contracting officer a full report of the damage or quantity error, including extent, apparent cause, and the estimated cost of repairs. The contracting officer will advise the contractor of the action to be taken.

(c) It is the contractor's responsibility to inspect, at the time of receipt, all property not furnished by the government that is acquired in the performance of the contract, and to take any necessary action with the vendor and/or carrier if there should be any damage or error in quantity.

(d) Procedures shall be established to protect any warranty rights which accrue to the Government with the acquisition of Government property.

§ 109–60.102 Contractor's liability.

(a) Subject to the terms of the contract, the contractor may be liable for shortage, loss, damage, or destruction of Government property or when there is evidence of improper or unreasonable use or consumption of Government property.

(b) The contractor shall report promptly to the property administrator any shortage, loss, damage, or destruction of Government property in its possession or control, or in the possession or control of any subcontractor, together with all the facts and circumstances of the case.

(c) Any loss that may be due to theft shall be reported by the contractor immediately to the local police and/or Federal Bureau of Investigation and the property administrator.

§ 109–60.103 Segregation of Government property.

Ordinarily, provisions shall be made by the contractor to keep Government property segregated from contractor-owned property. Commingling of Government and contractor-owned property may be allowed only when the segregation of the property would materially hinder the progress of the work, (e.g., segregation is not feasible for reasons such as quantities, lack of space, or costs caused by additional handling), and where control procedures are adequate, i.e., the Government property is identified as being Government property. Commingling must be approved in advance by the property administrator. In case of research and development contracts with educational institutions, commingling is authorized without the requirement for advance approval unless physical segregation is otherwise required by the contracting officer.

§ 109–60.104 Physical protection of property.

(a) Controls such as property pass systems, memorandum records, marking of tools, regular or intermittent gate checks and perimeter fencing shall be implemented, recognizing the value of the property, to prevent loss, theft, or unauthorized movement of Government property from the premises on which such property is located.

(b) Classified Government property will be handled in accordance with instructions of the contracting officer.

§ 109–60.105 Control of sensitive items of property.

(a) The contractor shall assure that effective procedures and practices are established for the administrative and physical control of sensitive property items before and after issuance. Each contractor shall prepare a list of the types of property considered to be sensitive. This list, together with control procedures, shall be provided to the property administrator for review and approval.

(b) At a minimum, controls on sensitive property shall include property records, memorandum receipts, bin or tool check systems, or combinations thereof. Procedures shall provide for physical inventories at least once each year, and methods for adjustment of inventory levels due to losses, thefts and damage. More frequent inventories of sensitive property may be necessary where the value of the property, degree of security achieved, or loss experience indicates greater controls are required in order to protect the Government's interest. Such procedures and practices shall be subject to review and approval by the property administrator.

§ 109–60.106 Disposition.

The contractor is responsible for disposing of Government property as provided for in the contract or as directed by the contracting officer. The contractor shall promptly advise the property administrator of any Government property that becomes excess to requirements for contract performance and to take such action for its disposition as directed.

§ 109–60.107 Relief from responsibility.

Subject to instructions of the contracting officer and the terms of the contract, the contractor may be relieved of responsibility for Government property when the property is—

(a) Consumed or expended in contract performance—to the extent the contracting officer has determined that its consumption or expenditure was for proper purposes and in reasonable quantity for performance of the contract;

(b) Removed from contractor's possession—when removed as directed by the property administrator or contracting officer;

(c) Lost, damaged or destroyed (including property consumed or expended in excess of reasonable requirements, and non-severable Government-owned property which has been connected to contractor-owned property for the performance of the contract and cannot be removed without destroying its serviceability)—when the contracting officer has determined the contractor's liability, if any; the Government has been reimbursed to the extent required by the contracting

officer's determination; and, property disposition has been made of any property rendered unserviceable by damage; or

(d) Retained by the contractor, with approval of the contracting officer, and for which the Government has received adequate consideration.

Subpart 109–60.2—Records and Financial Reports

§ 109–60.200 General.

(a) The contractor shall establish and maintain adequate property control records, either manual or mechanized and consistent with the requirements of this subpart, for all Government property provided under a contract, including property provided under such contract as may be in the possession or control of a subcontractor. Unless otherwise directed by the contracting officer, records of Government property established and maintained by the contractor under the terms of the contract shall be designated and utilized as the official contract records. Duplicate records shall not be furnished to nor be maintained by the Government.

(b) If a contractor has multiple contracts with DOE, separate property records for each contract should be maintained. However, if approved by the contracting officer, a consolidated property record may be maintained if it provides the pertinent information set forth in this subpart and the property is identified to the applicable contract.

(c) Property records of the type established for components acquired separately shall be used for serviceable components removed from items of Government property as a result of modification.

(d) The contractor's property control system shall contain a system or technique to locate any item of Government property with reasonable promptness.

§ 109–60.201 Unit cost.

(a) The unit cost of each item of Government property shall consist of the acquisition cost and the cost of any additional components, and shall be contained in the contractor's property control system. Unless the contractor's quantitative inventory record contains unit cost, the supplementary records containing this information must be identified and recognized as a part of the official property records. For Government-furnished property, copies of documents needed for record purposes, including pricing, will be furnished to the contractor.

(b) For property record purposes, original transportation and installation costs are to be considered as part of the acquisition cost of an item. Subsequent costs incurred in transporting and/or installing transferred or relocated property should not be added to the original acquisition cost.

§ 109–60.202 Records of plant and capital equipment.

(a) For each item of plant and capital equipment (as defined in § 109–60.001), the contractor shall maintain an individual item record containing, at a minimum the—

(1) Contract number;
(2) Asset type (Ref. § 109–60.206);
(3) Nomenclature or description of item;
(4) U.S. Government identification tag number;
(5) Manufacturer's name;
(6) Manufacturer's model number;
(7) Serial number;
(8) Acquisition document reference and date;
(9) Location; and
(10) Unit cost (including transportation and installation).

(b) Accessory and auxiliary items that are attached to, part of, or acquired for use with a specific item of capital equipment shall be recorded on the record of the associated item of capital equipment. Useable accessory and auxiliary items that are removed from items of Government equipment shall also be separately recorded, and the cost of the basic item reduced proportionally.

§ 109–60.203 Records of material maintained in stores.

Records of Government-owned material maintained by the contractor in stores, and held under inventory control, shall contain the—

(a) Contract number;
(b) Nomenclature or description of item;
(c) Quantity received;
(d) Quantity issued;
(e) Balance on hand;
(f) Posting reference and date of transaction;
(g) Unit price;
(h) Location; and
(i) Disposition.

§ 109–60.204 Records of material issued upon receipt.

(a) The property administrator may authorize the contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Government-provided materials that is issued for immediate consumption and not entered in the inventory records as a matter of sound business practice.

(b) With respect to non-profit organizations, where material is issued directly upon receipt, Government invoices, contractor's purchase documents, or other evidence of acquisition and issue will be accepted as adequate property records for material furnished to or acquired by the contractor and issued directly so to be considered consumed under the contract.

§ 109–60.205 Financial property control reports.

The contractor shall prepare a semi-annual report, as of March 31 and September 30 of each year, for each contract and subcontract thereunder showing the dollar amount and the number of line items of plant and capital equipment, by DOE asset type (see § 109–60.206), acquired or disposed or during the period. The report will show, at a minimum, the beginning balance, acquisition, disposition, and ending balance. The report format and the DOE office to which the report will be furnished will be as directed by the property administrator. The reports are due not later than 45 days after the end of the reporting period.

§ 109–60.206 DOE plant and equipment asset types.

401 Land
410 Land Rights
430 Minerals
440 Timber
460 Site Preparation, Grading and Landscaping
470 Roads, Walks, and Paved Areas
480 Fences and Guard Towers
490 Other Improvements to Land
501 Buildings
550 Other Structures
610 Communications Systems
615 Electric Generation, Transmission and Distribution Systems
620 Fire Alarm Systems
625 Gas Production, Transmission and Distribution Systems
630 Irrigation Systems
635 Railroad Systems
640 Sewerage Systems
645 Steam Generation and Distribution Systems
650 Water Supply, Pumping, Treatment and Distribution Systems
655 Nuclear Steam and Electric Generation and Transmission Systems
660 SPR Crude Oil Piping System
665 NPR Crude Oil Extraction and Distribution System
710 Heavy Mobile Equipment
715 Hospital and Medical Equipment
720 Laboratory Equipment
725 Motor Vehicles and Aircraft
730 Office Furniture and Equipment
735 Process Equipment

740 Railroad Rolling Stock
745 Reactors and Accelerators
750 Security and Protection Equipment
755 Shop Equipment
760 Reserve Construction Equipment Pool
770 Automatic Data Processing Equipment
799 Miscellaneous Equipment
800 Improvements to Property of Others
900 Unclassified Plant and Equipment

Subpart 109–60.3—Identification

§ 109–60.300 General.

(a) The contractor shall identify, mark, and record all capital and sensitive items of equipment promptly upon receipt, except leased or rented equipment, and shall maintain this identification as long as such property remains in the custody, possession, or control of the contractor. Property identification numbers will be recorded on all applicable receiving, shipping, and disposal documents, and any other documents pertaining to the property control system where practicable. Marking and numbering shall be accomplished by etching, stamping, painting, attaching metal or plastic tags or decalcomanias. Each item shall be marked "Property of the U.S. Government, Department of Energy." Information on property numbers will be furnished by the property administrator. If practicable, such markings shall be removed or obliterated from the property involved, if and when Government ownership is relinquished. Leased or rented equipment shall be identified in such manner as will not damage the property. Property which by its nature or size cannot be marked shall not be commingled with contractor-owned property unless approved by the property administrator. When items are not susceptible to marking, they shall be subject to other specific control measures, such as custodial receipts.

(b) Where special tooling or special test equipment is utilized under a contract or subcontract, it shall be identified as required by the contracting officer.

Subpart 109–60.4—Physical Inventories

§ 109–60.400 General.

The contractor shall periodically physically inventory Government property in its possession or control and shall require such inventories of property held by subcontractors. The physical inventory shall be consistent with approved contractor procedures and generally accepted accounting principles. Procedures that are limited solely to a check-off of a listing of recorded property do not meet the requirements of a physical inventory. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property unless the contractor's operation is too small to do otherwise.

§ 109–60.401 Frequency.

Physical inventories of permanently affixed plant (such as fencing, buildings, other structures, utilities and systems) are to be taken not less frequently than every 10 years. Inventories of movable capital equipment are to be taken not less frequently than every 2 years. Inventories of sensitive items (capital and non-capital) shall be taken not less frequently than annually. Substantial quantities of materials (stores) held under inventory control shall be inventoried annually. Small quantities of material representing bench stock need not be inventoried.

§ 109–60.402 Reporting results of inventories.

The contractor shall, at a minimum, submit to the property administrator a listing of all discrepancies disclosed by a physical inventory, and a signed statement that the physical inventory was completed on a certain date and that the official property records were found to be in agreement with the physical inventory, except for the discrepancies reported. As a minimum, the discrepancy listing shall contain the property number, nomenclature, and unit cost. The listing and signed statement shall be furnished with a minimum of delay after completion of the physical inventory, but no later than 60 days after its completion.

§ 109–60.403 Records of inventories.

Appropriate inventory records and reports shall be maintained and will serve as a basis for (a) effecting maximum utilization of available property, (b) prompt identification and reporting of excess property, (c) effective physical protection of property, and (d) the preparation of special and recurring reports. Full use will be made of accounting records and reports to avoid duplication.

§ 109–60.404 Inventories upon termination or completion.

(a) Immediately upon termination or completion of a contract, the contractor shall submit an inventory report adequate for determining appropriate disposal of all Government property applicable to the terminated or completed contract. Further, this report shall include an inventory report of all Government property in a subcontractor's possession or control which is also applicable to the terminated or completed contract. This inventory report will be submitted to the property administrator for verification and disposition action.

(b) Exception. The requirement for physical inventory of Government property at the completion of a contract may be waived by the contracting officer when the property is authorized for use on a follow-on contract, provided that—

(1) Past experience has established the adequacy of property controls; and

(2) A statement is provided by the contractor indicating that transfer of record balances has been made in lieu of preparing a formal inventory list and the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

Subpart 109–60.5—Care and Maintenance

§ 109–60.500 General.

The contractor shall be responsible for the proper care and maintenance of Government property in its possession or control from the time of receipt until properly relieved of responsibility. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

§ 109–60.501 Contractor's maintenance program.

The contractor's maintenance program shall be consistent with sound economic industrial practice, the manufacturer's recommendation, and the terms of the contract, and shall include the following:

(a) Preventive maintenance. Preventive maintenance is generally performed on a regularly scheduled basis in order to detect and correct unfavorable conditions or defects before they result in breakdowns and to maximize the useful life of the equipment. An effective preventive maintenance program shall consist of, but not be limited to—

(1) Inspection of equipment at periodic intervals to detect maladjustment, wear, or impending breakdown;

(2) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;

(3) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;

(4) Removal of sludge, chips, and cutting oils from equipment which will not be used for a period of time;

(5) Taking necessary precautions to prevent deterioration from contamination and corrosion; and

(6) Proper storage and preservation of accessories and special tools furnished with an item of equipment but not regularly used with it.

(b) Major repairs or rehabilitation. The maintenance program of the contractor shall provide for the disclosure and reporting to the property administrator of the need for major repairs, replacement, and other rehabilitation work on Government property in its possession or control.

(c) Records of maintenance. The contractor shall keep records sufficient to disclose the maintenance and repair performed and associated cost.

Subpart 109–60.6—Utilization, Disposal, and Retirement

§ 109–60.600 General.

It is DOE's policy that all property furnished under a contract shall be utilized to the fullest extent possible. The contractor's procedures shall be adequate to assure that Government property will be utilized only for those purposes authorized in the contract, and that the contracting officer's approval is obtained prior to noncontract use.

§ 109–60.601 Maximum use of property.

Property and supply management practices shall assure that the maximum and best possible use is made of property. Materials and equipment shall be limited to those items essential for effective execution of work performed under the contract.

§ 109–60.602 Disposal.

Unless otherwise authorized, contractors having property determined to be excess shall contact the property administrator for instruction as to the proper method of disposal. Property shall not be disposed of without prior approval of the contracting officer.

§ 109–60.603 Retirement of property.

When capital equipment is worn out, lost, stolen, destroyed, abandoned or damaged beyond economical repair, it shall be listed on a retirement work order. A full explanation shall be made, supported by an investigation, if necessary, as to the date and circumstances surrounding loss, theft, destruction, or damage. The retirement work order shall be signed by the responsible contractor administrative official initiating the report and reviewed and approved by an official at least one supervisory echelon above the official initiating the report, and the property administrator. Detailed information concerning the retention and/or submission of retirement work orders will be furnished by the property administrator.

Subpart 109–60.7—Motor Vehicle and Aircraft Management

§ 109–60.700 Scope of subpart.

This subpart prescribes basic policies and procedures for the management of Government-owned motor vehicles and aircraft in the possession of off-site contractors.

§ 109–60.701 Definition.

"Government-furnished motor vehicles" are DOE-owned vehicles, vehicles leased from the General Services Administration Interagency Motor Pool System (GSA–IMPS), and vehicles leased from commercial sources.

§ 109–60.702 Policy.

(a) Government-furnished motor vehicles and aircraft shall be provided to or acquired by off-site contractors when considered essential for the performance of the contract work and when approved by the contracting officer.

(b) Government-owned motor vehicles and aircraft shall be maintained and utilized by contractors in the most practical and economical manner consistent with DOE program requirements, safety considerations, fuel economy, and applicable laws and regulations.

(c) DOE–PMR Parts 109–38 and 109–39 (41 CFR Chapter 109) contain the requirements for management of DOE-owned motor vehicles and aircraft. DOE contracting officers shall apply the applicable provisions contained therein in their management of contractor motor vehicle and aircraft operations.

(d) Contractors shall conform fully to the average fuel economy standards established by law and these regulations in the selection of Government-furnished motor vehicles.

(e) Contractors shall maintain and operate motor vehicles in such a manner as to foster reduced fuel consumption.

(f) Normally, motor vehicles will not be furnished to fixed-price contractors.

(g) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA–IMPS; and

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by a GSA–IMPS.

§ 109–60.703 Classification of motor vehicles.

Because of differences in controls or limitations on possession and use, Government vehicles are classified as follows:

(a) *Passenger vehicles.*

(1) Sedans and station wagons (small, subcompact, compact, mid-size, and large).

(2) Ambulances.

(3) Buses.

(b) *Trucks.*

(1) Light, less than 8,500 GVWR (Gross Vehicle Weight Rating).

(i) 4 x 2.

(ii) 4 x 4.

(2) Light, 8,500 to 12,499 GVWR.

(i) 4 x 2.

(ii) 4 x 4.

(3) Medium, 12,500 to 23,999 GVWR.

(4) Heavy, 24,000 GVWR or more.

(c) *Special purpose vehicles.*

(1) Fire trucks.

(2) Construction vehicles.

(3) Other vehicles equipped for special purposes.

§ 109–60.704 Acquisition of motor vehicles.

(a) GSA has the responsibility for procurement of motor vehicles for Government agencies.

(b) Contractors shall submit motor vehicle requirements to the contracting officer for approval.

(c) The acquisition of passenger vehicles is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards.

(d) The DOE Procurement and Assistance Management Directorate, Headquarters, (MA–422), shall certify all requisitions for the following:

(1) The acquisition of small, subcompact, and compact passenger vehicles.

(2) The lease (60 continuous days or more) of light trucks less than 8,500 GVWR.

(e) Purchase requisitions for acquisition of passenger vehicles by purchase or lease must be processed in accordance with 41 CFR 109–38.1306.

(f) Purchase requisitions for other motor vehicles may be submitted to GSA as directed by the contracting officer.

(g) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

§ 109–60.705 Identification of motor vehicles.

(a) Except as indicated in § 109–60.705(b), DOE-owned motor vehicles will have Government license tags and the following identification, which will

be furnished and displayed as specified by the property administrator:

For Official Use Only
U.S. Government
Department of Energy

(b) Security vehicles may be exempted from the above requirements by the contracting officer. All other exemptions require approval by the DOE Director of Procurement and Assistance Management Directorate.

§ 109–60.706 Use of the GSA Interagency Motor Pool System.

Where authorized by the contracting officer, contractors may use the services of the GSA–IMPS.

§ 109–60.707 Official use of motor vehicles.

Government-owned vehicles are to be used for "Official Use Only." Contracting officers may approve home-to-work or work-to-home transportation on a one-time exceptional basis. Home-to-work or work-to-home transportation on a continuing basis requires approval of the head of the cognizant DOE field office. Records of such approval will be kept on file.

§ 109–60.708 Maintenance.

Contractors shall maintain Government-owned vehicles according to a systematic written procedure and in accordance with manufacturer's specifications and the terms of the warranty. The GSA publication "Guide for the Preventive Maintenance of Motor Vehicles" provides guidance for the maintenance of Government-owned vehicles.

§ 109–60.709 Disposition of motor vehicles.

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer; however, a designated DOE official must execute the Title Transfer forms.

§ 109–60.710 Required motor vehicle reports.

Contractors shall submit the following annual fiscal year-end reports of Government-furnished motor vehicles to the contracting officer. Information on preparation and submission of the reports will be furnished by the property administrator.

(a) Agency Report of Motor Vehicle Data (Standard Form 82).

(b) Special Purpose Vehicle Report.

(c) Age and Mileage Analysis.

§ 109–60.711 Aircraft.

(a) Acquisition of aircraft requires statutory authority. Contracting officers may authorize a lease, rental, hire, or loan of an aircraft if the period is less than 30 days. If longer than 30 days, approval must be obtained from the DOE Director of Procurement and Assistance Management.

(b) Aircraft shall be used for official purposes only.

Subpart 109–60.8–109–60.46—[Reserved]

Subpart 109–60.47—Reports

§ 109–60.4700 Required reports.

Following is a summary listing of those property reports required to be submitted by the contractor, along with the frequency of the reports and the subpart which describes the report:

(a) Loss, damage, or destruction of Government property (On occurrence) § 109–60.102(b).

(b) Loss due to theft (On occurrence) § 109–60.102(c).

(c) Financial property control reports (Semi-annual) § 109–60.205.

(d) Physical inventories of permanently affixed plant (Not less frequently than every 10 years) § 109–60.402.

(e) Physical inventories of capital equipment (Not less frequently than biennial) § 109–60.402.

(f) Physical inventories of sensitive items (Not less frequently than annual) § 109–60.402.

(g) Termination inventories (Termination or completion) § 109–60.404.

(h) Motor vehicle reports (Annual) § 109–60.710.

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S.J. Res. 261/Pub. L. 98–320

To provide for the designation of the last week in June 1984 as "Helen Keller Deaf-Blind Awareness Week". (June 18, 1984; 98 Stat. 248) Price: $1.50

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue

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Presidential Documents

Title 3—

The President

Proclamation 5213 of June 19, 1984

Minority Enterprise Development Week, 1984

By the President of the United States of America

A Proclamation

America's growth and prosperity depend on the full participation of all its citizens. If we as a Nation are to remain the world's leader in innovation, technology and productivity, we must ensure that all Americans are involved in our economic progress.

The fulfillment of this challenge has become more realistic today, because of the significant contributions of minority American entrepreneurs to our economy. The Nation's 600,000 minority-owned businesses reveal the true meaning of entrepreneurship. They have emerged as a dynamic force in the marketplace, bringing innovative products and services to our economy, and constituting the principal source for jobs and training for thousands of American workers.

As we enter an era of greatly expanded opportunities in economic growth and development, it is appropriate that we encourage minority business owners by recognizing their tremendous contributions toward the continued economic development of our Nation.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 7 through October 13, 1984, as Minority Enterprise Development Week, and I urge all Americans to join together with the minority business enterprises of our Nation in appropriate observances.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of June, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-16794
Filed 6-20-84; 11:44 am]

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Presidential Documents

Executive Order 12480 of June 20, 1984

Establishing an Emergency Board To Investigate a Dispute Between The Long Island Rail Road and the Brotherhood of Locomotive Engineers

A dispute exists between The Long Island Rail Road and the Brotherhood of Locomotive Engineers representing employees of The Long Island Rail Road.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ("the Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to Section 9A of the Act.

Section 9A(c) of the Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, as amended (45 U.S.C. 159a), it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective June 20, 1984, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(c) of the Act, as amended, from the date of the creation of the board, and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
June 20, 1984.

[FR Doc. 84-16891
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Billing code 3195-01-M

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Presidential Documents

Executive Order 12481 of June 20, 1984

Establishing an Emergency Board To Investigate a Dispute Between The Long Island Rail Road and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

A dispute exists between The Long Island Rail Road and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, representing employees of The Long Island Rail Road.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ("the Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to Section 9A of the Act.

Section 9A(c) of the Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, as amended (45 U.S.C. 159a), it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective June 20, 1984, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(c) of the Act, as amended, from the date of the creation of the board, and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
June 20, 1984.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Trust Territories and Possessions and Areas Under Its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Food Distribution Program Regulations (7 CFR Part 250). This amendment extends the prohibition relating to charges imposed by distributing agencies for the storage and transportation of commodities through September 30, 1985, and makes technical changes to conform the statutory language cited in the regulation to changes in the Temporary Emergency Food Assistance Act of 1983.

DATES: This rule is effective June 22, 1984.

FOR FURTHER INFORMATION CONTACT: Gwena Kay Tibbits, Chief, Program Administration Branch, (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

These regulations have been reviewed under Executive Order 12291 and have been classified as "non-major." This rule will not have an annual effect on the economy of $100 million or more nor will it cause a major increase in costs or price for consumers; individual industries; Federal, State or local government agencies; or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the Regulatory Flexibility Act (Pub. L. 96–354). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Public Law 98–92 amends Pub. L. 98–8, extending the Temporary Emergency Food Assistance Act of 1983 through September 30, 1985, including the prohibition of certain charges imposed by distributing agencies for the storage and transportation of commodities. The regulation, with minor changes, merely recites the prohibition against charges contained in section 208 of Pub. L. 98–8 and as such is a nondiscretionary provision. In addition to the update to § 250.6(j), § 250.1(b)(21) is being amended to reflect the changes in section 202 of Pub. L. 98–8 which were made by Pub. L. 98–92. Since § 250.1(b) merely quotes the language of various commodity statutes for the ease of reference of the user, these changes are also nondiscretionary. Accordingly, Robert E. Leard has determined that this is an interpretive rule and that pursuant to 5 U.S.C. 553 (b) and (d) this rule is issued without solicitation of comments and is made effective upon publication. It is the Department's position, however, that the statutory prohibition against charges continued to be in effect prior to the publication of this rule. Section 250.6(j) is being amended to avoid confusion regarding this matter. Section 250.6(j) of the current regulations prohibits States from charging recipient agencies any amount that is in excess of the State's direct costs of storing and transporting commodities, minus any amount the Department provides the State for paying such costs, when such commodities are made available without charge or credit under any nutrition program administered by the Department. However, this provision expired on September 30, 1983. Through an oversight, the Interim Rule extending the Temporary Emergency Food Assistance Program through Fiscal Years 1984 and 1985 which was published on December 16, 1983 (48 FR 55498), does not contain an extension of the prohibition against recipient agencies being assessed charges for the storage and transportation of commodities.

This regulation does not contain any new recordkeeping or information collection requirements which are subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 7 CFR Part 250

Aged, Disaster assistance, Food Assistance Program, Grant programs-Social programs, Infants and children. Reporting and recordkeeping requirements, Surplus, Agricultural commodities.

PART 250—[AMENDED]

Accordingly, Part 250 is amended as follows:

1. In § 250.1, paragraph (b)(21) is revised to read as follows:

§ 250.1 General purpose and scope.

* * * * *

(b) *Legislation* * * *

(21) Section 202 of Pub. L. 98–8, as amended, reads as follows: (a) Notwithstanding any other provision of law, in order to complement the domestic nutrition programs, make maximum use of the Nation's agricultural abundance, and expand and improve the domestic distribution of price-supported commodities, commodities acquired by the Commodity Credit Corporation that the Secretary of Agriculture (hereinafter referred to as the "Secretary") determines, in his discretion, are in excess of quantities needed to—

(1) Carry out other domestic donation programs,

(2) Meet other domestic obligations (including quantities needed to carry out a payment-in-kind acreage diversion program),

(3) Meet international market development and food aid commitments, and

(4) Carry out the farm price and income stabilization purposes of the Agricultural Adjustment Act of 1938, the Agricultural Act of 1949, and the Commodity Credit Corporation Charter Act, shall be made available by the Secretary, without charge or credit for such commodities, for use by eligible recipient agencies for food assistance.

(b) Notwithstanding any other provision of law, if wheat stocks acquired by the Commodity Credit Corporation are not available for the purposes of this Act, up to 300,000 metric tons of wheat designated under section 302(b)(1) of the Food Security Wheat Reserve Act of 1980 may be used for the purposes of this Act. Any amount of wheat used from the Food Security Wheat

Reserve under this Act shall be replenished by an equivalent quantity of wheat under the provisions of section 302(b) of the Food Security Wheat Reserve Act of 1980 as soon as practicable, but before October 1, 1985.

* * * * *

2. In § 250.6, paragraph (j) is revised to read as follows:

§ 250.6 Obligations of distributing agencies.

* * * * *

(j) *Distribution charges.* (1) Except as provided in paragraph (j)(2) of this section, recipient agencies may be required to pay part or all of the intrastate costs of distribution through a system of charges assessed by distributing or subdistributing agencies. Any system of assessment operated by the distributing or subdistributing agency shall have the prior approval of and be subject to review by the FNSRO. The charges assessed shall be used solely in accordance with the provisions of paragraph (k) of this section.

(2) For the period September 30, 1983, through September 30, 1985, whenever a commodity is donated to a State without charge or credit against entitlement, recipient agencies may not be assessed for any part of the intrastate costs of storage and transportation of such commodity that is in excess of the distributing or subdistributing agency's direct costs for such storage and transportation minus any amount that the Department provides to the State to pay such costs under Part 251 of this chapter.

(3) Under no circumstance shall recipients be required to make any payments in money, materials, or services for or in connection with the receipt of donated foods, nor shall voluntary contributions be solicited in connection with the receipt of donated foods for any purpose.

* * * * *

(Catalog of Federal Domestic Assistance No. 10.550.)

(Sec. 208, Pub. L. 98-8, as amended)

Dated: June 14, 1984.

Robert E. Leard,

Administrator.

[FR Doc. 84-16087 Filed 6-21-84; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 469]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 325,000 cartons during the period June 24–30, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: June 24, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on June 19, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.769 is added as follows:

§ 910.769 Lemon Regulation 469.

The quantity of lemons grown in California and Arizona which may be handled during the period June 24, 1984, through June 30, 1984, is established at 325,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 20, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-16636 Filed 6-21-84; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 84-049]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the States of North Carolina and South Carolina from Class A to Class Free. This action is necessary because it has been determined that these States meet the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the States of North Carolina and South Carolina.

DATES: Effective date of the interim rule is June 22, 1984. Written comments must be received on or before August 21, 1984.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:
Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine. This document changes the classification of the States of North Carolina and South Carolina from Class A to Class Free.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) program reactor rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the entire States of North Carolina and South Carolina were classified as Class A States. It had been necessary to classify these States as Class A rather than Class Free because of the herd infection rate. A State or Area must remain free from brucellosis in cattle for the preceding 12 month period in order to meet the herd infection rate criteria for Class Free Status. A review of brucellosis program records establishes that the States of North Carolina and South Carolina should be changed to Class Free since these States now meet the criteria for classification as Class Free.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of the States of North Carolina and South Carolina reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter, or to quarantined feedlots are not affected by the changes in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by these changes in status. It has been determined that the changes in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for the Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from the States of North Carolina and South Carolina.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register.**

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

§ 78.20 [Amended]

1. Section 78.20(a) is amended by adding "North Carolina," immediately before "North Dakota," and by adding "South Carolina," immediately before "Utah,".

2. In § 78.20(b), "North Carolina," and "South Carolina," are removed.

Authority: Secs. 4, 5, and 6, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 19th day of June, 1984.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-16780 Filed 6-21-84; 8:45 am]
BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 507, 508, 509, 509a, 512 and 513

[No. 84-307]

Practice Before the Board

Dated: June 14, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; request for comments.

SUMMARY: The Federal Home Loan Bank Board ("Board") has revised its rules of practice and procedure regarding persons, particularly professionals representing other persons, practicing before the Board. These regulations: (1) define what constitutes "practice" before the Board, (2) clarify those persons who may practice before the Board, (3) authorize the Board, without preliminary hearing, to exclude an attorney from an adjudicatory, investigatory, rulemaking or removal proceeding for dilatory, obstructionist, egregious, contemptuous or contumacious conduct, and (4) establish procedures for the temporary or permanent suspension or debarment of a person's privilege to practice before the Board.

DATES: Effective June 20, 1984. Comments must be received by August 17, 1984.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Rosemary Stewart (202-377-6437), Director, Enforcement Division, Office of General Counsel, Federal Home Loan Bank Board, or Marianne E. Roche (202-377-7000), Attorney, Enforcement Division, Office of General Counsel, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: The Board is adopting regulations in connection with (1) practice before the Board generally and at specific administrative proceedings and (2) the debarment or suspension of persons from that practice. The purpose of these regulations is to enable the Board to preserve the integrity of its administrative processes by temporarily or permanently suspending from practice before it those persons who misuse those processes. Any person who intentionally files false information or otherwise engages in unethical, dishonest or unprofessional conduct before the Board, or who is found to have violated the laws or regulations administered by the Board or to be otherwise unfit to practice before the Board, will be subject to the suspension and debarment procedures.

The Board's present regulations describe various forms of proceedings before the Board: rulemaking proceedings for Federal Home Loan Bank Board regulations in 12 CFR Part 507, general rulemaking proceedings in 12 CFR Part 508, adjudicatory proceedings in 12 CFR Part 509, expedited removal hearings in 12 CFR Part 509a and investigatory proceedings in 12 CFR Part 512. In each of these proceedings, a party or interested person, as appropriate, may come before the Board in the proceedings directly or through counsel. It is only in Part 509 that any minimum level of competency has been required for such counsel or that the Board has given itself the opportunity to expel a person from a proceeding for egregious conduct.

Under § 509.3(b), the Board has the authority to summarily suspend any person, including an attorney, from a hearing for contemptuous conduct; however, such suspension pertains solely to the duration of that particular hearing. The Board believes it has the authority, generally, to suspend attorneys or other persons from appearing before the Board if they have a history of similar conduct at any type of hearing or proceeding, in investigations or in other dealings with the Board.

The number of professionals appearing before the Board and its staff has increased in recent years as the thrift industry has become more complex and, particularly, as a rising number of institutions have converted from mutual to stock form and have become subject to the federal securities laws. Unfortunately, filings in connection with these conversions, securities filings and audit reports filed pursuant to Board regulations have often evidenced a lack of proper care in their preparation and a failure on the part of the attorney, accountant or other expert preparing the document to comply with applicable statutory and regulatory requirements or accepted practices in their respective professions. Furthermore, professionals have utilized dilatory or obstructionist practices during formal investigations and adjudicatory hearings to the detriment of the Board's administrative processes, and, sometimes, to the institutions they represent. This unprofessional conduct degrades the Board's processes, consumes an inordinate amount of the Board's staff time, and hinders the Board's ability to adequately regulate institutions and protect the public.

The new Part 513 (to be codified at 12 CFR Part 513) being adopted today generally governs practice before the Board and specifies under what circumstances a person may be censured or temporarily or permanently suspended or debarred from such practice. Suspension under Part 513 generally precludes practice in any form of proceeding. These regulations also provide for expulsions, without a preliminary hearing, in connection with specific proceedings.

The Board emphasizes that these regulations are intended to cover only those activities involving some form of contact with the Board, its staff or its administrative processes. The Board does not intend that the suspension and debarment powers in §513.4 be used as a new enforcement tool in lieu of removal or prohibition orders, cease-and-desist orders, injunctions, criminal referrals, administrative hearings, or other enforcement proceedings in connection with violations of laws or regulations by a person who happens to be an attorney or other professional. Furthermore, it does not intend to establish special standards of conduct for attorneys or other professionals practicing before the Board. Rather, the Board believes it should suspend from practice before it those persons who either engage in unethical or dishonest behavior in connection with direct dealings with the Board or its staff, or who have been found to have engaged in improper or unprofessional conduct or violated a law or regulation administered by the Board.

The Board, in any determination to suspend an attorney, will weigh the right of persons to choose their counsel against the duty of the Board to protect its administrative processes and the risk to those processes if the attorney in question is permitted to continue appearing before the Board. Such consideration is of particular importance when a summary suspension is being considered in the context of an adjudicatory proceeding under § 509.3(b). These regulations are not intended to require attorneys to report to the Board violations of laws and regulations by their client or to infringe otherwise on the attorney-client privilege.

Persons Previously Debarred or Suspended Under New Part 513

Sections 507.11 and 508.13 are being amended to prohibit persons who have

been debarred or suspended from practice before the Board under Part 513 from participating in the rulemaking proceedings in Parts 507 and 508. Furthermore, §§ 509.3, 509a.3 and 512.5 are being amended to preclude an attorney who has been suspended or debarred under Part 513 from representing another person in the proceedings under Parts 509, 509a and 512.

Exclusions From Specific Proceedings

Currently, under § 509.3, the Board or a presiding officer may exclude any person from a specific adjudicatory hearing temporarily, or for the duration of the hearing, based on a finding that such person has engaged in contemptuous conduct. That provision is being amended to provide that such exclusions may be based on a finding that the person has engaged in dilatory, obstructionist, egregious or contumacious conduct as well. Sections 507.11, 509a.4 and 512.5 are being amended to establish similar grounds for expulsion from the proceedings under Parts 507, 509a and 512. Section 512.5 is also being amended to clarify that the only attorney entitled to be present during the testimony of any witness shall be the attorney personally representing that witness.

Appearance and Practice in Adjudicatory Proceedings

Section 509.3 is being amended further to clarify that a person need not be represented by an attorney at an adjudicatory proceeding. The amendment provides that in any adjudicatory proceeding, an individual may appear in his own behalf; a partner may represent the partnership; a bona fide officer of a corporation, trust or association may represent that corporation, trust or association; and an officer or employee of any government unit, agency or authority may represent that unit, agency or authority.

Practice Before the Board

Practice is defined in § 513.2(e) to cover any business transacted with the Board, including:

(i) The representation of any person at an adjudicatory, investigatory, removal or rulemaking proceeding;

(ii) The preparation of a statement, opinion, financial statement, appraisal report, audit report, or other document or report for filing or submission to the Board;

(iii) Appearance at a conference or meeting relating to an institution's or other person's rights, privileges or liabilities with the Board, its staff, or a presiding officer;

(iv) Any business correspondence or communication with the Board, its staff or a presiding officer;

(v) The transaction of any other formal business with the Board as an attorney, an accountant or other licensed expert representing another person.

The Board intends that the scope of Part 513, and, therefore, the meaning of "practice", be limited to direct dealings with the Board and its staff or direct involvement in its administrative processes. Any improper conduct or violation of law not directly involving such dealings or processes will not be redressed under Part 513, but rather will continue to be remedied with the various enforcement tools at the Board's disposal or by referral to the appropriate bar, licensing, certifying or law enforcement authorities.

Who May Practice Before the Board

Section 513.3 provides that any individual may appear before the Board in his own behalf and that the authorized representative of any business, government or other entity may appear on behalf of that business, government or other entity. In addition, it provides that any accountant or other licensed expert may practice before the Board. Furthermore, any person may be represented before the Board by any attorney who is a member in good standing of the highest court of any State, possession, territory, Commonwealth or the District of Columbia.

The Board retains the authority to require any professional who is representing another before the Board to produce evidence that he is authorized to act in such capacity. The Board does not intend to create any requirements or qualifications for practice before the Board other than that which is permissible under 5 U.S.C. 500 (the Administrative Practice Act).

Suspension or Debarment

Section 513.4 designates three suspension and/or debarment procedures. Under the first method, set forth at § 513.4(a), the Board, after notice and a hearing on the matter, may censure any person practicing before it or temporarily or permanently suspend or debar any person from practicing before the Board based on a finding that such person: (1) Does not have the required qualifications to represent others, (2) is lacking in professional character or professional integrity, (3) has engaged in dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical conduct before the Board, or (4) has willfully violated any provision of the laws administered by the Board or the regulations promulgated thereunder. Such hearing will be conducted pursuant to Part 500.

The second form of suspension, set forth at § 513.4(b), is automatic upon the occurrence of the following events: (1) A licensed expert or professional is convicted of a felony or of a misdemeanor involving moral turpitude, personal dishonesty or breach of trust; (2) an accountant's, appraiser's, or other expert's license is revoked; or (3) an attorney is suspended or disbarred by any state or federal bar. These events are deemed to have occurred when the deciding court, agency or tribunal enters its judgment (even if on a plea of *nolo contendere* or when an appeal is pending or could be taken). Persons suspended under this method are automatically reinstated upon application to the Board if the conviction, revocation or disbarment has been reversed or terminated.

The third form of suspension, set forth at § 513.4(c), is a temporary suspension, initiated without a preliminary hearing, of any person who, after the effective date of this regulation, has been permanently enjoined by a court in an action brought by the Board for a violation of, or the aiding or abetting of a violation of, the laws administered by the Board or any regulations promulgated thereunder. In addition, any person may be temporarily suspended, without a preliminary hearing, if he has been convicted by a court for violating, or found by the Board in an administrative proceeding to which he is a party and the Board is the complainant to have violated, any law administered by the Board or any regulations promulgated thereunder. Such an order is effective upon delivery by registered or certified mail to the person suspended. This form of temporary suspension cannot be entered more than three months after the entering of the final judgment or order against the individual and the completion of all review and appeal procedures. A recipient of a temporary suspension order has 30 days to petition that the suspension be lifted. If a petition is not filed, the suspension automatically becomes permanent. If a petition is filed, the Board will expedite the hearing process to the extent practicable. At such hearing, the Board need only prove the conviction or the existence of the final order or other action. The petitioner then must show why he should not be censured, suspended or debarred. The merits of the prior action and order will not be reconsidered, and the petitioner will be

deemed to have engaged in whatever violations he has been convicted of, even if the conviction or order was issued with his consent. In all other respects, the hearing shall conform to the procedural requirements in Part 509. The temporary suspension shall remain in effect during the hearing, unless the Board reinstates the person for good cause shown.

Unless the conviction, revocation or disbarment is based on an action initiated by the Board, any person appearing or practicing before the Board is required by § 513.6 to file any order, judgment or decree entered, after a finding of the kind described in § 513.4 (b) or (c), together with the related opinion or statement of the court, agency or tribunal involved with the Secretary to the Board. Failure to so file within 30 days of the later of the effective date of these regulations, the entry of the order, judgment or decree, or the date the person initiates practice before the Board, is grounds for a temporary suspension until such filing is made.

Reinstatement

Any person debarred or suspended from practice before the Board may apply for reinstatement at any time. In addition, any person suspended under § 513.4(b) automatically is reinstated, upon appropriate application, if the grounds for such suspension have been removed, reversed or terminated. If the grounds for the suspension under § 513.4(b) remain in effect, the person subject to the suspension may request an informal hearing or submit written application with regard to removing that suspension or debarment.

Regulatory Flexibility

Although the regulations promulgated herein have not been proposed for public notice and comment, and, therefore, do not require a regulatory flexibility analysis, the Board had determined that the proposed rules will not have a significant economic impact on small entities, as they only apply to attorneys and other persons who engage in improper conduct before the Board or its staff. The rules therefore do not appear to be of a kind that raises regulatory flexibility considerations.

List of Subjects in 12 CFR Parts 507, 509, 509a, 512 and 513

Savings and loan associations, Administrative rule-making and adjudicatory proceedings, Formal examination proceedings.

The Board finds that the public notice and comment procedures of 5 U.S.C. 553(b) and 12 CFR 508.13 are unnecessary because these regulations relate only to practice and procedure before the Board, and, therefore, are excepted from those procedures by 5 U.S.C. 553(b) and 12 CFR 508.11. However, as these regulations establish a new procedure for suspending or debarring persons from practice before the Board, the Board is soliciting comments from the public for a period of 60 days regarding the suspension and debarment aspects of Part 513. Furthermore, the Board finds for good cause that delay of the effective date of the regulations pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary because it is in the public interest to act expeditiously to protect the Board's administrative processes.

Accordingly, the Board hereby amends Parts 507, 508, 509, 509a and 512 and adds a new Part 513 under Subchapter A, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER A—GENERAL

1. Ament § 507.11 by adding the following two sentences at the end thereof:

PART 507—HEARINGS

§ 507.11 Recommendations and representations at hearings by persons other than those requesting hearing.

* * * However, no person who has been suspended or debarred from practice before the Board in accordance with the provisions of Part 513 of this subchapter is entitled to appear or be heard at any such hearing. The Board may, for good cause, exclude any person from further participation in any rulemaking hearing in which the Board has found the person to have engaged in dilatory, obstructionist, egregious, contemptuous or contumacious conduct.

2. Amend § 508.13 by adding the following sentence at the end thereof:

PART 508—PROMULGATION OF REGULATIONS AND AMENDMENTS

§ 508.13 Participation of interested persons in a proposed amendment or rule.

* * * However, no person who has been suspended or debarred from practice before the Board in accordance with the provisions of Part 513 of this subchapter may submit, either directly or on behalf of an interested party, any written documents or petitions otherwise permitted by this section.

3. Revise the title of Part 509 and revise § 509.3 as follows:

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

§ 509.3 Appearance and practice in an adjudicatory proceeding.

(a) *Appearance before the Board or a presiding officer—*

(1) *By non-attorneys.* An individual may appear in his own behalf; a member of a partnership may represent the partnership; a bona fide and duly authorized officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of any government unit, agency or authority may represent that unit, agency or authority.

(2) *By attorneys.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia, and who has not been suspended or debarred from practice before the Board in accordance with the provisions of Part 513 of this subchapter, may represent parties in adjudicatory proceedings before the Board or a presiding officer. An attorney representing a person before the Board or a presiding officer in a specific adjudicatory proceeding shall file a notice of appearance with the Secretary which shall contain a written declaration that he is currently qualified as provided by this paragraph (a)(2) and is authorized to represent the particular party on whose behalf he acts.

(b) *Summary suspension.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any hearing before the Board or a presiding officer shall be grounds for exclusion therefrom and suspension for the duration of the hearing.

4. Amend § 509a.6 by revising paragraph (c) as follows:

PART 509a—REMOVALS, SUSPENSIONS, AND PROHIBITIONS WHERE A CRIME IS CHARGED OR PROVED

§ 509a.6 Initiation of hearing.

* * * * *

(c) A party may appear personally or through an attorney to submit relevant written materials and oral argument thereon: *Provided,* however, that any attorney is subject to all the requirements and limitations imposed on attorneys in § 509.3 of this subchapter.

* * * * *

5. Amend § 512.5 by revising paragraph (b) as follows:

PART 512—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS

§ 512.5 Rights of witnesses.

* * * * *

(b) Any witness at an investigative proceeding or formal examination proceeding may be accompanied and advised by an attorney personally representing that witness.

(1) Such attorney shall be a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia, who has not been suspended or debarred from practice before the Board in accordance with the provisions of Part 513 of this title and has not been excluded from the particular investigative proceeding in accordance with paragraph (b)(3) of this section.

(2) Such attorney may advise the witness before, during and after the taking of his testimony and may briefly question the witness, on the record, at the conclusion of his testimony, for the sole purpose of clarifying any of the answers the witness has given. During the taking of the testimony of a witness, such attorney may make summary notes solely for the use of his client. All witnesses shall be sequestered and, unless permitted in the discretion of the designated representative, no witness or accompanying attorney may be permitted to be present during the taking of the testimony of any other witness called in such proceeding. Attorney(s) for the institution(s) that are the subject of the formal examination proceeding shall have no right to be present during the testimony of any witness not personally being represented by such attorney.

(3) The Board, for good cause, may exclude a particular attorney from further participation in any investigation in which the Board has found the attorney to have engaged in dilatory, obstructionist, egregious, contemptuous or contumacious conduct. The person conducting an investigation may report to the Board instances of apparently dilatory, obstructionist, egregious, contemptuous or contumacious conduct on the part of an attorney. After due notice to the attorney, the Board may take such action as the circumstances warrant based upon a written record evidencing the conduct of the attorney in that investigation or such other or additional written or oral presentation as the Board may permit or direct.

* * * * *

6. Add a new Part 513 as follows:

PART 513—PRACTICE BEFORE THE BOARD

Sec.

513.1 Scope of part.
513.2 Definition.
513.3 Who may practice.
513.4 Suspension and debarment.
513.5 Reinstatement.
513.6 Duty to file information concerning adverse judicial or administrative action.
513.7 Proceeding under this part.

Authority: Sec. 17, 47 Stat. 736, as amended, (12 U.S.C. 1437); Sec. 5, 48 Stat. 132, as amended, (12 U.S.C. 1464); Sec. 407, 48 Stat. 1260, as amended, (12 U.S.C. 1730); Sec. 12, 48 Stat. 892, as amended, (15 U.S.C. 781).

§ 513.1 Scope of part.

This part prescribes rules with regard to general practice before the Board on one's own behalf or in a representative capacity and prescribes rules describing the circumstances under which attorneys, accountants, appraisers, or other persons may be suspended or debarred, either temporarily or permanently, from practicing before the Board. In connection with any particular matter, reference also should be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Board thereunder, which special requirements are controlling. In addition to any suspension hereunder, a person may be excluded from further participation under this subchapter in a particular Federal Home Loan Bank rulemaking hearing in accordance with § 507.11, from a rulemaking hearing in accordance with § 508.13, from an adjudicatory proceeding in accordance with § 509.3(b), from a removal hearing in accordance with § 509a.3, or from an investigatory proceeding in accordance with § 512.5(b)(2).

§ 513.2 Definitions.

As used in this part:

(a) "Board" means the Federal Home Loan Bank Board or, where appropriate, the Federal Savings and Loan Insurance Corporation;

(b) The term "Secretary" means the Secretary and any Assistant or Acting Secretary to the Board;

(c) The term "presiding officer" includes the Board, one or more members thereof or an administrative law judge appointed under section 3105 or detailed pursuant to section 3344 of title 5 of the United States Code and, as used in this part, the term shall be construed to refer to whichever of the above-identified individuals presides at a hearing or other proceeding, except as otherwise specified in the text;

(d) The term "attorney" means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia; and

(e) The term "practice" means transacting any business with the Board, including:

(1) The representation of another person at any adjudicatory, investigatory, removal or rulemaking proceeding conducted before the Board, a presiding officer or the Board's staff, including those proceedings covered in Parts 507, 508, 509, 509a and 512 of this subchapter;

(2) The preparation of any statement, opinion, financial statement, appraisal report, audit report, or other document or report by any attorney, accountant, appraiser or other licensed expert which is filed with or submitted to the Board, with such expert's consent or knowledge in connection with any application or other filing with the Board;

(3) A presentation to the Board, a presiding officer or the Board's staff at a conference or meeting relating to an institution's or other person's rights, privileges or liabilities under the laws administered by the Board and rules and regulations promulgated thereunder;

(4) Any business correspondence or communication with the Board, a presiding officer or the Board's staff; and

(5) The transaction of any other formal business with the Board on behalf of another, in the capacity of an attorney, accountant, appraiser or other licensed expert.

§ 513.3 Who may practice.

(a) *By non-attorneys*—

(1) An individual may appear on his own behalf (*pro se*); a member of a partnership may represent the partnership; a bona fide and duly authorized officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a commission, department or political subdivision may represent that commission, department or political subdivision before the Board.

(2) Any accountant, appraiser or other licensed expert may practice before the Board in a professional capacity.

(b) *By attorneys*—Any institution or other person may be represented in any proceeding or other matter before the Board by an attorney.

(c) Any licensed expert or professional transacting business with the Board in a representative capacity may be required to show his authority to act in such capacity.

§ 513.4 Suspension and debarment.

(a) The Board may censure any person practicing before it or may deny, temporarily or permanently, the privilege of any person to practice before it if such person is found by the Board, after notice of and opportunity for hearing in the matter, (1) not to possess the requisite qualifications to represent others, (2) to be lacking in character or professional integrity, (3) to have engaged in any dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper professional conduct before the Board, or (4) to have willfully violated, or willfully aided and abetted the violation of, any provision of the laws administered by the Board or the rules and regulations promulgated thereunder.

(b) *Automatic suspension.* (1) Any person who, after being licensed as a professional or expert by any competent authority, has been convicted of a felony, or of a misdemeanor involving moral turpitude, personal dishonesty or breach of trust, shall be suspended forthwith from practicing before the Board.

(2) Any accountant, appraiser or other licensed expert whose license to practice has been revoked in any State, possession, territory, Commonwealth or the District of Columbia, shall be suspended forthwith from practice before the Board.

(3) Any attorney who has been suspended or disbarred by a court of the United States or in any State, possession, territory, Commonwealth or the District of Columbia, shall be suspended forthwith from practicing before the Board.

(4) A conviction (including a judgment or order on a plea of *nolo contendere*), revocation, suspension or disbarment under paragraphs (b) (1), (2) and (3) of this section shall be deemed to have occurred when the convicting, revoking, suspending or disbarring agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken.

(5) For purposes of this section, it shall be irrelevant that any attorney, accountant, appraiser or other licensed expert who has been suspended, disbarred or otherwise disqualified from practice before a court or in a jurisdication continues in professsional good standing before other courts or in other jurisdictions.

(c) *Temporary suspension.* (1) The Board, with due regard to the public interest and without preliminary hearing, by order, may temporarily suspend any person from appearing or practicing before it who, on or after June 20, 1984, by name, has been:

(i) Permanently enjoined (whether by consent, default or summary judment or after trial) by any court of competent jurisdiction or by the Board itself in a final administrative order, by reason of his misconduct in any action brought by the Board based upon violations of, or aiding and abetting the violation of, any provision of the Federal Home Loan Bank Act, as amended, 12 U.S.C. 1421 *et seq.*, the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1461 *et seq.*, and Title IV of the National Housing Act, as amended, 12 U.S.C. 1724 *et seq.*, or any provision of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a, *et seq.*, which is administered by the Board, or of any rule or regulation promulgated thereunder; or

(ii) Found by any court of competent jurisdiction (whether by consent, default, or summary judgment, or after trial) in any action brought by the Board to which he is a party or found by the Board (whether by consent, default, upon summary judgment or after hearing) in any administrative proceeding in which the Board is a complainant and he is a party, to have willfully committed, caused or aided or abetted a violation of any provision of the Federal Home Loan Bank Act, as amended, 12 U.S.C. 1421 *et seq.*, the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1461 *et seq.*, and Title IV of the National Housing Act, as amended, 12 U.S.C. 1724 et seq. or any provision of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a, *et seq.*, which is administered by the Board, or of any rule of regulation promulgated thereunder.

(2) An order of temporary suspension shall become effective when served by certified or registered mail directed to the last known business or residential address of the person involved. No order of temporary suspension shall be entered by the Board pursuant to paragraph (c)(1) of this section more than three months after the final judgment or order entered in a judicial or administrative proceeding described in paragraphs (i) or (ii) of paragraph (c)(1) has become effective and all review or appeal procedures have been completed or are no longer available.

(3) Any person temporarily suspended from appearing and practicing before the Board in accordance with paragraph (c)(1) may, within 30 days after service upon him of the order of temporary suspension, petition the Board to lift such suspension. If no petition is received by the Board within those 30 days, the suspension shall become permanent.

(4) Within 30 days after the filing of a petition in accordance with paragraph (c)(3) of this section, the Board shall either lift the temporary suspension or set the matter down for hearing at a time and place to be designated by the Board, or both. After opportunity for hearing, the Board may censure the petitioner or may suspend the petitioner from appearing or practicing before the Board temporarily or permanently. In every case in which the temporary suspension has not been lifted, the hearing and any other action taken pursuant to this paragraph (4) shall be expedited by the Board in order to ensure the petitioner's right to address the allegations against him.

(5) In any hearing held on a petition filed in accordance with paragraph (c)(3) of this section, a showing that the petitioner has been enjoined or has been found to have committed, caused or aided or abetted violations as described in paragraph (c)(1) of this section, without more, may be a basis for suspension or debarment; that showing having been made, the burden shall then be on the petitioner to show why he should not be censured or be temporarily or permanently suspended or debarred. A petitioner will not be permitted to contest any findings against him or any admissions made by him in the judicial or administrative proceedings upon which the proposed censure, suspension or debarment is based. A petitioner who has consented to the entry of a permanent injunction or order as described in paragraph (c)(1)(i) of this section, without admitting the facts set forth in the complaint, shall nevertheless be presumed for all purposes under this section to have been enjoined or ordered by reason of the misconduct alleged in the complaint.

§ 513.5 Reinstatement.

(a) Any person who is suspended from practicing before the Board under paragraph (a) or (c) of § 513.4 of this part may file an application for reinstatement at any time. Denial of the privilege of practicing before the Board shall continue unless and until the applicant has been reinstated by order of the Board for good cause shown.

(b) Any person suspended under paragraph (b) of § 513.4 shall be reinstated by the Board, upon appropriate application, if all of the grounds for application of the provisions of that paragraph subsequently are removed by a reversal of the conviction or termination of the suspension, disbarment or revocation. An

application for reinstatement on any other grounds by any person suspended under paragraph (b) of § 513.4 may be filed at any time. Such application shall state with particularity the relief desired and the grounds therefor and shall include supporting evidence, when available. The applicant shall be accorded an opportunity for an informal hearing in the matter, unless the applicant has waived a hearing in the application and, instead, has elected to have the matter determined on the basis of written submissions. Such hearing shall utilize the procedures established in § 509a.3 and paragraph (a) of § 509a.7 of this subchapter. However, such suspension shall continue unless and until the applicant has been reinstated by order of the Board for good cause shown.

§ 513.6 Duty to file information concerning adverse judicial or administrative action.

Any person appearing or practicing before the Board who has been or is the subject of a conviction, suspension, debarment, license revocation, injunction or other finding of the kind described in § 513.4 (b) or (c) of this part in an action not instituted by the Board shall promptly file a copy of the relevant order, judgment or decree with the Secretary together with any related opinion or statement of the agency or tribunal involved. Any person who fails to so file a copy of the order, judgment or decree within 30 days after the later of June 15, 1984, the entry of the order, judgment or decree, or the date such person initiates practice before the Board, for that reason alone may be disqualified from practicing before the Board until such time as the appropriate filing shall be made, but neither the filing of these documents nor the failure of a person to file them shall in any way impair the operation of any other provision of this part.

§ 513.7 Proceeding under this part.

(a) All hearings required or permitted to be held under paragraphs (a) and (c) of § 513.4 of this part shall be held before a presiding officer utilizing the procedures established in the rules of practice and procedure in adjudicatory proceedings under Part 509 of this subchapter.

(b) All hearings held under this part shall be closed to the public unless the Board on its own motion or upon the request of a party otherwise directs.

(c) Any proceeding brought under any section of this part shall not preclude a proceeding under any other section of this part or any other part of the Board's regulations.

(Sec. 17, 47 Stat. 736, as amended, (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended, (12 U.S.C. 1464); sec. 407, 48 Stat. 1260, as amended, (12 U.S.C. 1730); sec. 12, 48 Stat. 892, as amended, (15 U.S.C. 781))

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-16404 Filed 6-21-84; 8:45 am]
BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-14-AD; Amdt. 39-4883]

Mitsubishi Heavy Industries, Ltd. (MHI) Models MU-2B, -10, -15, -20, -25, -26, -30, -35, -36 Airplanes Mitsubishi Aircraft International, Inc. (MAI) Models MU-2B, -25, -26, -26A, -35, -36A, -40, -60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to certain serial numbered Mitsubishi Models MU-2B, -10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 airplanes manufactured by Mitsubishi Heavy Industries (MHI), Ltd., and Mitsubishi Aircraft International, Inc. (MAI). The AD requires the retorquing and lockwire safetying of coupling nuts on the bleed air tubing. A field report has been received indicating that the engine air inlet anti-ice system malfunctioned as a result of loss of bleed air at a loose tube coupling nut. The action required by this AD will eliminate the cause of this malfunction of the air inlet anti-ice system and the possible loss of engine power during in-flight icing conditions.

DATE: *Effective Date:* June 28, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Mitsubishi Heavy Industries, Ltd., MU-2 Service Bulletin No. 196A, dated April 12, 1984, applicable to this AD, may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aircraft Works, 10, Oye-cho, Minato-ku, Nagoya, Japan, or Mitsubishi Aircraft International, Inc., P.O. Box 3848, San Angelo, Texas 76901.

Mitsubishi Aircraft International, Inc., MU-2 Service Bulletin No. 047/30-001, dated February 20, 1984, applicable to this AD, may be obtained from Mitsubishi Aircraft International, Inc., P.O. Box 3848, San Angelo, Texas 76901.

Copies of these service bulletins are also contained in the Rules Docket, Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: For the MHI Series airplanes manufactured in Japan: John G. Sullivan, Aerospace Engineer, Western Aircraft Certification Office, ANM-172W, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, Telephone: (213) 536-6166.

For the MAI Series airplanes manufactured in the U.S.: Billy R. Parker, Propulsion Engineer, Airplane Certification Branch, ASW-150, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101, Telephone: (817) 877-2449.

SUPPLEMENTARY INFORMATION: As a result of a field report of an engine air inlet anti-ice system malfunction caused by loss of bleed air at a loose tube coupling nut on a Mitsubishi MU-2B airplane, the Japan civil Aviation Bureau (JCAB) issued their Airworthiness Directive (AD) No. TCD-2342-84 dated January 28, 1984, applicable to certain serial Mitsubishi Model MU-2B airplanes manufactured by MHI of Japan. This AD required retorquing and lockwire safetying the bleed air tube couplings in accordance with MHI Service Bulletin No. 196A, dated April 12, 1984.

MAI has also issued a service bulletin, SB 047/30-001, dated February 22, 1984. recommending the same action on Mitsubishi Model MU-2B Series airplanes manufactured in San Angelo, Texas.

The FAA has examined the available information relating to the issuance of the aforementioned service bulletins and the JCAB AD. Based on the foregoing, the FAA has determined that the condition addressed by these service bulletins and the JCAB AD is an unsafe condition and may exist on all Mitsubishi Model MU-2B Series airplanes certificated for operation in the United States irrespective of the location of their manufacture. Therefore, and AD is being issued which requires the retorquing and lockwire safetying of bleed air tubing coupling nuts on both MHI- and MAI-manufactured Mitsubishi Model MU-2B, -10. -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40 and -60 (all serial numbers up to and including 1564SA) airplanes in accordance with instructions contained in either Mitsubishi Heavy Industries MU-2 Service Bulletin No. 196A dated April 12,

1984, for MHI-manufactured airplanes or Mitsubishi Aircraft International, Inc., MU–2 Service Bulletin No. 047/30–001 dated February 20, 1984, for MAI-manufactured airplanes.

Because an emergency condition exists that requres the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Mitsubishi: Applies to Models MU–2B, –10, –15, 20, 25, –26, –26A, –30, –35, 36, 36A, 40, and –60 Serial Numbers 1 up to and including 1564 with or without the SA suffix airplanes certificated in any catagory.

Note: The Serial numbers of airplanes manufactured in the United States by Mitsubishi Aircraft International, Inc. (MAI) are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by Mitsubishi Heavy Industries, Ltd. (MHI) have no suffix.

Compliance: Required as indicated, unless already accomplished.

To prevent malfunction of the engine air inlet anti-ice system, accomplish the following:

(a) Within the next 25 hours time-in-service after the effective date of this AD, install on the main instrument panel, in full view of the pilot, a temporary placard, having letters at least 0.10 inch high, which reads as follows: "Flight Into Known Icing Is Prohibited."

(b) Within the next 100 hours time-in-service after the effective date of this AD, retorque and lockwire safety the bleed air tubing coupling nuts:

(1) On the MHI airplanes, in accordance with the instructions contained in Mitsubishi MU–2 Service Bulletin No. 196A, dated April 12, 1984, and

(2) On the MAI airplanes in accordance with the instructions contained in Mitsubishi Aircraft International, Inc., MU–2 Service Bulletin No. 047/30–001 dated February 20, 1984.

(c) When paragraph (b) of this AD has been accomplished, the placard specified in paragraph (a) is no longer required and shall be removed from the airplane.

(d) Airplanes may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(e) An equivalent method of compliance with this AD may be used on the MHI airplanes, if approved by the Manager, Western Aircraft Certification Office, ANM–170W, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, and on the MAI airplanes, if approved by the Manager, Airplane Certification Branch, ASW–150, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101.

This amendment becomes effective on June 28, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Note: The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034: February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption **"ADDRESSES"** At the location identified.

Issued in Kansas City, Missouri, on June 12, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84–16068 Filed 6–21–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ASW–3]

Alteration of Transition Area; Warren, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Warren, AR. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Warren Municipal Airport. This amendment is necessary since the Airport Commission is proposing to install a nonfederal nondirectional radio beacon (NDB) on the Warren Municipal Airport.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW–535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877–2630.

SUPPLEMENTARY INFORMATION:

History

On January 27, 1984, a notice of proposed rulemaking was published in the **Federal Register** (49 FR 3488) stating that the Federal Aviation Administration proposed to alter the Warren, AR, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendent is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, is amended, effective 0901 GMT, August 30, 1984, as follows:

Warren, AR Revised

That airspace extending upwards from 700 feet above the surface within a 6.5-mile radius of the Warren Municipal Airport (latitude 33°33'50" N., longitude 92°05'00" W.) and within 3 miles each side of a 214° bearing of the NDB (latitude 33°32'49" N., longitude 92° 05'45" W.) extending from the 6.5-mile radius area to 8.5 miles southwest of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.61(c).)

Note: The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on June 12, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-16069 Filed 6-21-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AWA-12]

Alteration of VOR Federal Airways, Ukiah, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action changes the descriptions of one Additional Control Area and five VOR Federal Airways in the State of California as necessitated by the imminent name change of a navigation aid.

DATES: *Effective date*—July 5, 1984.

Comments must be received on or before August 6, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-12, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule that was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of these amendments to § 71.123 and § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to change the descriptions of Control 1486, V-199, V-200, V-25, V-27 and V-494 to reflect the new name, Mendocino, CA, which heretofore, was referred to as Ukiah, CA. This action is part of a system-wide effort to rename each navigational aid that bears the same name as the airport which it serves, if the navigational aid is not located on the airport. Sections 71.123 and 71.163 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

Without these amendments, the descriptions of Control 1486, V-199, V-200, V-25, V-27 and V-494 will contain an erroneous reference to a navigational aid after July 5, 1984. The FAA, therefore, concludes that there is an immediate need for a regulation. Accordingly, I find that notice of public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective on July 5, 1984, which is coincident with the navigational aid name change.

List of Subjects in 14 CFR Part 71

VOR Federal Airways, Aviation Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 and § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, effective 0901 GMT, July 5, 1984, as follows:

§ 71.123

V-199 [Amended]

By deleting the word "Ukiah" wherever it appears and substituting the word "Mendocino"

V-200 [Amended]

By deleting the word "Ukiah" and substituting the word "Mendocino"

V-25 [Amended]

By deleting the word "Ukiah" and substituting the word "Mendocino"

V-27 [Amended]

By deleting the word "Ukiah" wherever it appears and substituting the word "Mendocino"

V-494 [Amended]

By deleting the word "Ukiah" wherever it appears and substituting the word "Mendocino"

§ 71.163

Control 1486 [Amended]

By deleting the word "Ukiah" and substituting the word "Mendocino"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on June 14, 1984.

Harold W. Becker,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-16067 Filed 6-21-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASW-17]

Revocation of Transition Area: Cleveland, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revoke the transition area at Cleveland, OK. The intended effect of the amendment is to cancel controlled airspace for aircraft executing a standard instrument approach procedure (SIAP) to the Cleveland Municipal Airport. This amendment is necessary since the sponsor of a proposed nondirectional radio beacon (NDB) has advised the facility will not be installed as planned, thereby eliminating the need for a 700-foot transition area at the Cleveland Municipal Airport.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW–535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877–2630.

SUPPLEMENTARY INFORMATION:

History

On April 16, 1984, a notice of proposed rulemaking was published in the **Federal Register** (49 FR 14973) stating that the Federal Aviation Administration proposed to revoke the Cleveland, OK, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, is amended, effective 0901 GMT, August 30, 1984, as follows:

Cleveland, OK [Revoked]

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.61(c))

Note: The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on June 12, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84–16065 Filed 6–21–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Docket No. 24116; Amdt. No. 1271]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in offical FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4 and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public

procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches—Standard Instrument, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective August 30, 1984*

Honolulu, HI—Honolulu Intl, VOR or TACAN–A, Orig.
Honolulu, HI—Honolulu Intl, VOR or TACAN RWY 4R, Orig.
Honolulu, HI—Honolulu Intl, VOR or TACAN RWY 8R, Orig.
Honolulu, HI—Honolulu Intl, VOR or TACAN RWY 8R, Amdt. 4, Cancelled
Honolulu, HI—Honolulu Intl, VOR or TACAN RWY 8L, Amdt. 17, Cancelled
Lanai City, HI—Lanai, VOR or TACAN–A, Amdt. 5
Lanai City, HI—Lanai, VOR or TACAN RWY 3, Amdt. 1
Kaunakakai, Molokai, HI—Molokai, VOR or TACAN–A, Amdt. 9
New Lexington, OH—Perry County, VOR/DME RWY 28, Orig.

** * * Effective August 2, 1984*

Flagstaff, AZ—Pulliam, VOR/DME RWY 21, Amdt. 1, Cancelled
El Dorado, AR—Goodwin Field, VOR/DME 1 RWY 4, Orig.
El Dorado, AR—Goodwin Field, VOR/DME RWY 22, Orig.
Watsonville, CA—Watsonville Muni, VOR/DME–A, Orig.
Clinton, IA—Clinton Muni, VOR RWY 3, Amdt. 11
Clinton, IA—Clinton Muni, VOR/DME RWY 21, Amdt. 6 .
Neodesha, KS—Neodesha Muni, VOR RWY 2, Amdt. 1
Cabool, MO—Cabool Memorial, VOR/DME RWY 21, Amdt. 1
Goldsboro, NC—Goldsboro-Wayne Muni, VOR/DME–A Amdt. 3
Goldsboro, NC—Goldsboro-Wayne Muni, VOR–B, Amdt. 2
Mohall, ND—Mohall Muni, VOR/DME RWY 31, Amdt. 1
Oklahoma City, OK—Sundance Airpark, VOR RWY 17, Orig.
Poteau, OK—Robert S. Kerr, VOR/DME RWY 36, Amdt. 2
Portland, OR—Portland Intl, VOR–A, Amdt. 7
Block Island, RI—Block Island State, VOR–A, Amdt. 3, Cancelled
Block Island, RI—Block Island State, VOR/DME RWY 10, Orig.
Block Island, RI—Block Island State, VOR RWY 28, Orig.
Clarksville, TN—Outlaw Field, VOR RWY 34, Amdt. 13
Waco, TX—Waco-Madison Cooper, VOR RWY 14, Amdt. 19
Waco, TX—Waco-Madison Cooper, VOR/DME RWY 32, Amdt. 11

** * * Effective July 5, 1984*

Amarillo, TX—Amarillo Intl, VOR RWY 22, Amdt. 24

** * * Effective May 30, 1984*

Columbus, MS—Columbus-Lowndes County, VOR–A, Amdt. 10

The FAA published an Amendment in Docket No. 24075, Amdt. No. 1269 to Part 97 of the Federal Aviation Regulations (VOL 49 FR No. 103 Page 22071; dated Friday, May 25, 1984) under Section 97.23 effective July 5, 1984, which is hereby amended as follows:

Mansfield, MA—Mansfield Muni, VOR–A, Amdt. 12
Cancellation is rescinded and VOR–A, Amdt. 12 remains in effect.
Marshfield, MA—Marshfield, VOR–A, Amdt. 4
Cancellation is rescinded and VOR–A, Amdt. 4 remains in effect.
Norwood, MA—Norwood Memorial, VOR RWY 35, Amdt. 5
Cancellation is rescinded and VOR RWY 35, Amdt. 5 remains in effect.
Plymouth, MA—Plymouth Muni, VOR RWY 15, Amdt. 2
Cancellation is rescinded and VOR RWY 15, Amdt. 2 remains in effect.
Taunton, MA—Taunton Muni, VOR–A, Amdt. 6
Cancellation is rescinded and VOR–A, Amdt. 6 remains in effect.

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective August 30, 1984*

Honolulu, HI—Honolulu Intl, LDA/DME RWY 26L, Amdt. 2

** * * Effective August 2, 1984*

El Dorado, AR—Goodwin Field, LOC RWY 22, Amdt. 3
Springdale, AR—Springdale Muni, LOC RWY 18, Amdt. 2
Clinton, IA—Clinton Muni, LOC RWY 3, Amdt. 3
Beverly, MA—Beverly Muni, LOC RWY 16, Amdt. 1
Columbia, MO—Columbia Regional, LOC BC RWY 20, Amdt. 8
El Paso, TX—El Paso Intl, LOC BC RWY 4, Amdt. 5
Ashland, VA—Hanover County Muni, SDF RWY 16, Amdt. 1

** * * Effective July 5, 1984*

Westerly, RI—Westerly State, LOC RWY 7, Amdt. 2
Amarillo, TX—Amarillo Intl, LOC BC RWY 22, Amdt. 15

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective August 30, 1984*

Honolulu, HI—Honolulu Intl, NDB RWY 8L, Amdt. 15

** * * Effective August 2, 1984*

Homerville, GA—Homerville, NDB RWY 14, Orig.
Clinton, IA—Clinton Muni, NDB RWY 14, Amdt. 1
Clinton, IA—Clinton Muni, NDB RWY 3, Amdt. 3
Fort Scott, KS—Fort Scott Muni, NDB RWY 17, Amdt. 7
Warroad, MN—Warroad Intl-Swede Carlson Field, NDB RWY 31, Amdt. 2
Cabool, MO—Cabool Memorial, NDB RWY 3, Amdt. 1
Cabool, MO—Cabool Memorial, NDB RWY 21, Amdt. 1
Goldsboro, NC—Goldsboro-Wayne Muni, NDB RWY 22, Amdt. 2
Wilson, NC—Wilson Muni, NDB RWY 3, Amdt. 4
Mohall, ND—Mohall Muni, NDB RWY 31, Orig.
Middletown, OH—Hook Field Muni, NDB RWY 5, Amdt. 10, Cancelled
Middletown, OH—Hook Field Muni, NDB–A, Orig.
Frederick, OK—Frederick Muni, NDB RWY 17, Amdt. 1, Cancelled
Frederick, OK—Frederick Muni, NDB RWY 35, Orig.
Pendleton, OR—Pendleton Muni, NDB–A, Amdt. 6
Philadelphia, PA—Philadelphia Intl, NDB RWY 27L, Amdt. 5
Pittsburgh, PA—Allegheny County, NDB RWY 10, Amdt. 6, Cancelled
Center, TX—Center Muni, NDB RWY 14, Orig., Cancelled
Ashland, VA—Hanover County Muni, NDB RWY 16, Orig.
Newport News, VA—Patrick Henry Intl, NDB RWY 2, Amdt. 2
Newport News, VA—Patrick Henry Intl, NDB RWY 7, Amdt. 1
Newport News, VA—Patrick Henry Intl, NDB RWY 20, Amdt. 1
Newport News, VA—Patrick Henry Intl, NDB RWY 25, Amdt. 1

** * * Effective July 5, 1984*

Amarillo, TX—Amarillo Intl, NDB RWY 4, Amdt. 15

** * * Effective June 11, 1984*

Blytheville, AR—Blytheville Muni, NDB–A, Amdt. 3

** * * Effective June 7, 1984*

Newark, NJ—Newark Intl, NDB RWY 4R, Amdt. 3
Newark, NJ—Newark Intl, NDB RWY 4L, Amdt. 7
Teterboro, NJ—Teterboro, NDB RWY 6, Amdt. 16

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective August 30, 1984*

Honolulu, HI—Honolulu Intl, ILS RWY 4R, Amdt. 8
Honolulu, HI—Honolulu Intl, ILS RWY 8L, Amdt. 17

* * * *Effective August 2, 1984*

Sarasota/Bradenton, FL—Sarasota-Bradenton, ILS RWY 14, Orig.
Pendleton, OR—Pendleton Muni, ILS RWY 25, Amdt. 22
Chattanooga, TN—Lovell Field, ILS RWY 20, Amdt. 33
Temple, TX—Draughon-Miller Muni, ILS RWY 15, Amdt. 7

* * * *Effective July 5, 1984*

Lihue, HI—Lihue, ILS RWY 35, Orig.
Amarillo, TX—Amarillo Intl, ILS RWY 4, Amdt. 19

* * * *Effective June 7, 1984*

Newark, NJ—Newark Intl, ILS RWY 4R, Amdt. 4
Newark, NJ—Newark Intl, ILS RWY 4L, Amdt. 7
Teterboro, NJ—Teterboro, ILS RWY 6, Amdt. 24

5. By amending Part 97.31 RADAR SIAPS identified as follows:

* * * *Effective August 2, 1984*

Fort Huachuca, AZ—Libby AAF/Sierra Vista Muni, RADAR–1, Amdt. 2
Eugene, OR—Mahlon Sweet Field, RADAR–1, Orig., Cancelled
Philadelphia, PA—Philadelphia Intl, RADAR–1, Amdt. 17
Waco, TX—Waco-Madison Cooper, RADAR–1, Amdt. 1

* * * *Effective July 5, 1984*

Amarillo, TX—Amarillo Intl, RADAR–1, Amdt. 14

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective August 2, 1984*

Perryville, MO—Perryville Muni, RNAV RWY 19, Amdt. 1
Charlotte, NC—Charlotte/Douglas Intl, RNAV RWY 23, Amdt. 2, Cancelled
Oklahoma City, OK—Sundance Airpark, RNAV RWY 35, Orig.
Philadelphia, PA—Philadelphia Intl, RNAV RWY 17, Amdt. 4

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(3)).

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexiblity Act.

Issued in Washington, D.C. on June 15, 1984.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Kenneth S. Hunt,
Director of Flight Operations.

[FR Doc. 84–16670 Filed 6–21–84; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C–3135]

Adria Laboratories, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Dublin, Ohio manufacturer and seller of over-the counter drugs, among other things, to cease promoting "Efficin," or any other over-the counter internal analgesic containing magnesium salicylate, by representing that the product contains no aspirin, or by comparing the product's safety to any product containing aspirin, unless representations are accompanied by prescribed disclosure warnings and substantiated by reliable and competent scientific evidence.

DATE: Complaint and Order issued June 5, 1984.[1].

FOR FURTHER INFORMATION CONTACT: FTC/PA, T. Bringier McConnell, Washington, DC 20580, (202) 724–1098.

SUPPLEMENTARY INFORMATION: On Wednesday, March 28, 1984, there was published in **Federal Register**, 49 FR 11843, a proposed consent agreement with analysis In the Matter of Adria Laboratories, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.20 Comparative data or merits; § 13.20–20 Competitors' products; § 13.45 Content; § 13.135 Nature of product or service; § 13.195 Safety; § 13.195–60 Product; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or Requirements; § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1605 Content; § 13.1685 Nature; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1850 Content; § 13.1870 Nature; § 13.1890 Safety; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Over-the-counter drugs, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Emily H. Rock,
Secretary.

[FR Doc. 84–16673 Filed 6–21–84; 8:45 am]
BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 82F–0315]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of terephthalic acid as an alternative reactant in the manufacture of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer intended for use in contact with food. This action responds to a petition filed by Eastman Kodak Co., Eastman Chemicals Division.

DATES: Effective June 22, 1984; objections by July 23, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 29, 1982 (47 FR 49092), FDA announced that a petition (FAP 2B3667) had been filed by Eastman Kodak Co., Eastman Chemicals Division, Kingsport, TN 37662, proposing that the food additive regulations be amended to provide for the safe use of terephthalic acid as an alternative diacid moiety for dimethyl terephthalate as a reactant in the manufacture of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The Agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Bureau of Foods (21 CFR 5.61), Part 177 is amended in § 177.1315 by revising paragraph (a) and by revising items 1, 2, and 3 under the heading "Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers" in the table in paragraph (b), to read as follows:

§ 177.1315 Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers.

* * * * * *

(a) *Identity.* For the purposes of this section, ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers (1,4-benzene dicarboxylic acid, dimethyl ester, polymerized with 1,4-cyclohexanedimethanol and 1,2-ethanediol) (CAS Reg. No. 25640–14–6) or (1,4-benzenedicarboxylic acid, polymerized with 1,4-cyclohexanedimethanol and 1,2-ethanediol) (CAS Reg. No. 25038–91–9) are basic copolymers meeting the specifications prescribed in paragraph (b) of this section, to which may have been added certain optional substances required in their production or added to impart desired physical or technical properties.

(b) * * *

Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers	Inherent viscosity	Maximum extractable fractions of the copolymer in the finished form at specified temperatures and times (expressed in micrograms of the terephthaloyl moieties/square centimeter of food-contact surface)	Test for orientability	Conditions of use
1. *Non-oriented* ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer is the reaction product of dimethyl terephthalate or terephthalic acid with a mixture containing 99 to 66 mole percent of ethylene glycol and 1 to 34 mole percent of 1,4-cyclohexane-dimethanol (70 percent *trans* isomer, 30 percent *cis* isomer).	* * *	* * *	* * *	* * *
2. *Non-oriented* ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer is the reaction product of dimethyl terephthalate or terephthalic acid with a mixture containing 69±3 mole percent of ethylene glycol and 31±3 mole percent of 1,4-cyclohexane-dimethanol (70 percent *trans* isomer, 30 percent *cis* isomer).	* * *	* * *	* * *	* * *
3. *Oriented* ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer is the reaction product of dimethyl terephthalate or terephthalic acid with a mixture containing 99 to 85 mole percent ethylene glycol and 1 to 15 mole percent of 1,4-cyclohexane-dimethanol (70 percent *trans* isomer, 30 percent *cis* isomer).	* * *	* * *	* * *	* * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 23, 1984, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation becomes effective June 22, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C.) 321(s), 348))

Dated: June 14, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-16060 Filed 6-21-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 83F-0224]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers; Antioxidants and/or Stabilizers for Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as an antioxidant and/or stabilizer in certain polymers in contact with food. This action responds to a petition filed by the Ciba-Geigy Corp.

DATES: Effective June 22, 1984; objections by July 23, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 29, 1983 (48 FR 34513), FDA announced that a petition (FAP 3B3725) had been filed by the Ciba-Geigy Corp., Hawthorne, NY 20532, proposing that 21 CFR Parts 177 and 178 be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite as a component of food-packaging polymers.

FDA has evaluated data in the petition and other relevant material, and concludes that the proposed food additive is safe for expanded uses as an antioxidant/stabilizer and that § 178.2010 should be amended as set forth below.

It is not necessary to amend Part 177 to provide for these new uses, because their listing in § 178.2010 permits the use of tris(2,4-di-*tert*-butylphenyl)phosphite in the sections which are referenced.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 178 is amended in § 178.2010(b) for the item "Tris(2,4-di-*tert*-butylphenyl)phosphite" by revising under "Limitations" items 1 and 4 and adding new items 9 and 10 to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Tris(2,4-di-*tert*-butylphenyl) phosphite (CAS Reg. No. 31570-04-4).	For use only: 1. At levels not to exceed 0.5 percent by weight of elastomers used in rubber articles complying with § 177.2600 of this chapter. * * * 4. At levels not to exceeds 0.2 percent by weight of polystyrene and rubber-modified polystyrene polymers complying with § 177.1640 of this chapter: *Provided*, that the finished polymer contacts food only under conditions of use B, C, D, E, F, G, and H described in table 2 of § 176.170(c) of this chapter. * * * 9. At levels not to exceed 0.5 percent by weight of acrylic and modified acrylic plastics, semirigid and rigid, complying with § 177.1010 of this chapter. 10. At levels not to exceed 0.1 percent by weight of isobutylene polymers complying with § 177.1420 of this chapter.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 23, 1984, submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the even that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective June 22, 1984.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended 21 U.S.C. 321(s), 348))

Dated: June 13, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-16060 Filed 6-21-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 82N-0342]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Colorants for Polymers; Reopening o. Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the

period for submitting comments on its food additive regulation that established a category called "colorants for polymers" for coloring agents used in polymeric food-contact materials. FDA is granting this reopening of the comment period in response to a request.

DATE: Comments by July 23, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 6, 1972 (37 FR 11255), FDA published a proposed regulation entitled "Colorants for plastics" that would establish a section in the Code of Federal Regulations for coloring agents used in plastics intended for food-contact use. In the **Federal Register** of October 14, 1983 (48 FR 46773), FDA published a final rule that established § 178.3297 *Colorants for polymers* (21 CFR 178.3297). (See that document for discussion of the issue.)

Because considerable time had elapsed between the 1972 proposal and publication of the final rule, the agency provided a 30-day period for interested persons to comment on any aspect of the final rule. The agency stated that it would consider making revisions to the final regulation based upon comments received.

FDA has received a request from the Dry Color Manufacturers' Association to extend the comment period. The Association argued that the 30-day comment period did not allow its members sufficient time to review the rule adequately, because there have been a number of changes during the 11-year time period between the proposal and the final regulation in the various regulations and in the organizations and concerns of the parties involved in the regulatory process. The request is on file with the Dockets Management Branch (address above).

FDA has evaluated the request, and concludes that it is appropriate to reopen the comment period. The agency believes that information, such as the Association may submit, will be helpful and it wishes to ensure that other interested parties have the opportunity to comment on this final rule. Therefore, FDA is reopening the comment period to July 23, 1984.

List of Subjects in 21 CFR Part 178

Food additives; Food packaging; Sanitizing solutions.

Interested persons may, on or before July 23, 1984, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 15, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–16050 Filed 6–21–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 84–11]

Special Local Regulations; Freedom Festival's Thunder on the Ohio

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 792.0 to 793.0, Ohio River.

Marine events will be held on June 29, 30, and July 1, 1984, at Evansville, Indiana. These special local regulations are needed to provide for the safety of life and property on navigable waters during the events.

EFFECTIVE DATES: These regulations will be effective on June 29, 30, and July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Cdr. R. B. Bower, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103 (314) 425–5971.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Ohio River between miles 792.0 and 793.0 during the "Freedom Festival's Thunder on the Ohio", June 29, 30 and July 1, 1984. These events will consist of Unlimited Hydroplane Boat Races which could pose hazards to navigation in the area.

Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The necessity of establishing special local regulations for this event did not become apparent until June 6, 1984, and there was insufficient time remaining to publish proposed rules in advance of the event, or to provide for a delayed effective date.

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–23–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W. L. Giesseman, USCGR, Project Officer, Boating Technical Branch, and LT. R. E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35—0210 to read as follows:

§ 100.35—0210 OHIO RIVER, miles 792.0 through 793.0.

(a) *Regulated Area.* The area between Mile 792.0 and 793.0 Ohio River is designated the regatta area, and may be closed to commercial navigation or mooring during the following dates and (local) times:

June 29, 9:00 a.m. to 6:00 p.m.

June 30, 9:00 a.m. to 6:00 p.m.
July 1, 9:00 a.m. to 6:00 p.m.

The above times represent a guideline for possible intermittent river closures not to exceed THREE (3) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(1) The Patrol Commander may be reached on Channel 16 (156.8MHZ) when required, by the call sign "Coast Guard Patrol Commander".

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the marine event area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0210 will be effective on the following dates and times;

June 29, 9:00 a.m. to 6:00 p.m.
June 30, 9:00 a.m. to 6:00 p.m.
July 1, 9:00 a.m. to 6:00 p.m.
All times listed are local time.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: June 13, 1984.

S. B. Vaughn,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 84–16653 Filed 6–21–84; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CGD2 84–10]

Special Local Regulations; River Bend Festival

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 463.5 to 464.4, Tennessee River. Marine events will be held on June 23 thru 24, 1984, at Chattanooga, Tennessee. These special local regulations are needed to provide for the safety of life and property on navigable waters during the events.

EFFECTIVE DATES: These regulations will be effective on June 23 and 24, 1984.

FOR FURTHER INFORMATION CONTACT: Cdr. R.B. Bower, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103 (314) 425–5971.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Tennessee River between miles 463.5 and 464.4 during the "Riverbend Festival", June 23 and 24, 1984. These events will consist of Formula 1 Outboard Races which could pose hazards to navigation in the area.

Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The revised applications and schedules to hold the event was not received until April 24, 1984, and there was insufficient time remaining to publish proposed rules in advance of the event, or to provide for a delayed effective date.

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures of Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W. L. Giessman, USCGR, Project Officer, Boating Technical Branch, and Lt. R. E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0208 to read as follows:

§ 100.35–0208 Tennessee River, miles 463.5 through 464.4.

(a) *Regulated Area.* The area between Mile 463.5 and 464.4 Tennessee River is designated the regatta area, and may be closed to commercial navigation or mooring during the following dates and (local) times:

June 23, 9:00 a.m. to 4:00 p.m.
June 24, 12:00 noon to 4:00 p.m.

The above times represent a guideline for possible intermittent river closures not to exceed Four (4) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(1) The Patrol Commander may be reached on Channel 16 (156.8MHZ) when required, by the call sign "Coast Guard Patrol Commander".

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and

shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the marine event area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0208 will be effective on the following dates and times;

June 23, 9:00 a.m. to 4:00 p.m.
June 24, 12:00 noon to 4:00 p.m.
All times listed are local time.

(33 U.S.C. 407, 411, 1233–1236; 46 U.S.C. 2106–2107, 2302, 4308, 4311 (a) and (c), 49 U.S.C. 1655(b)(1), 33 CFR 100.35, 100.40, 100.50, 49 CFR 1.46(b), 1.46(n)(1))

Dated: June 13, 1984.

S. B. Vaughn,

Rear Admiral, U. S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 84–16654 Filed 6–21–84; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[WH–FRL–2610–4]

Vermont Agency of Environmental Conservation Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State program.

SUMMARY: The State of Vermont has submitted an application under section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program meets the requirements of section 1422 of the Act. Therefore, this application is approved.

EFFECTIVE DATE: This approval shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on July 6, 1984. This approval shall become effective on July 6, 1984.

FOR FURTHER INFORMATION CONTACT: Jerome J. Healey, Water Supply Branch, Environmental Protection Agency, Region I, JFK Federal Building, Boston, Massachusetts 02203. PH: (617) 223–6486.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Vermont was listed as needing a UIC program on March 19, 1980 (45 *FR* 17632). The State submitted an application under section 1422 on January 10, 1984, for a UIC program to be administered by the Vermont Agency of Environmental Conservation (VAEC). On February 3, 1984, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the VAEC (49 *FR* 4216). Neither requests for public hearing nor requests to offer testimony at such hearings were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31(c), the public hearing was cancelled because of lack of sufficient public interest.

After careful review of the application, I have determined that the Vermont UIC program submitted by the VAEC to regulate Classes I, II, III, IV, and V injection wells meets the requirements established by the Federal regulations pursuant to section 1422 of the SDWA and, hereby approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for the State of Vermont.

This approval will be codified in 40 CFR 147.2300. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions are enforceable by EPA pursuant to section 1423 of the SDWA.

On May 11, 1984, EPA proposed a Federally administered UIC program for the State of Vermont (49 FR 20238). Approval of the State-administered program withdraws the proposed EPA-administered program (§ 147.2301).

Since this approval, in large part, simply approves as the Federal UIC program State regulations and requirements already in effect under State law, EPA is publishing this approval effective two weeks after the date of publication in the **Federal Register**. This will enable Vermont to begin issuing UIC permits for injection wells under the Federally approved program at the earliest possible date.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 147, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 147

Indians—lands, Reporting and recordkeeping requirements, Incorporation by reference, Intergovernmental relations, Penalties, Confidential business information, Water supply.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under section 1422 of the Safe Drinking Water Act of the application by the Vermont Agency of Environmental Conservation will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: June 14, 1984.

William D. Ruckelshaus,

Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart UU—Vermont

Amend 40 CFR Part 147 by revising § 147.2300 to read as follows:

§ 147.2300 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, & V wells in the State of Vermont is the program administered by the Vermont Department of Water Resources and Environmental Engineering, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the **Federal Register** on June 22, 1984; the effective date of this program is July 6, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Vermont. This incorporation by reference was approved by the Director of the Federal Register July 6, 1984.

(1) Vt. Stat. Ann. tit. 10, sections 1251, 1259, 1263 (1973 and Supp. 1981). Effective date: July 1, 1982.

(2) Vermont Department of Water Resources and Environmental Engineering, Chapter 13 Water Pollution Control Regulations, Subchapter 13.UIC—Underground Injection Control, Discharges to Injection Wells, Effective Date: June 21, 1984.

(b) *Other Laws.* The following statutes and regulations although not incorporated by reference, also are part of the approved State-administered program:

(1) Vt. Stat. Ann. tit. 10, sections 1251 through 1283 (1973 and Supp. 1981).

(2) Vt. Stat. Ann. tit. 10, sections 901 through 911 (1973 and Supp. 1981).

(3) Vt. Stat. Ann. tit. 3, sections 801 through 847 (1973 and Supp. 1981).

(c)(1) The Memorandum of Agreement between EPA Region I and the Vermont Agency of Environmental Conservation signed by the EPA Regional Administrator on January 16, 1984.

(d) *Statement of Legal Authority.* (1) "Vermont Attorney General's Statement for Classes I, II, III, IV and V Injection Wells," signed by Attorney General John J. Easton, Jr., as submitted with Vermont Application for Primary Enforcement Responsibility to Administer the Underground Water Source Protection Program Pursuant to the Safe Drinking Water Act and 40 CFR 145.21–45.24 (December 20, 1983).

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

(42 U.S.C. 300)

[FR Doc. 84–16540 Filed 6–21–84; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 420

[OW–FRL 2609–7]

Iron and Steel Manufacturing Point Source Category; Effluent Limitations Guidelines

Correction

In FR Doc. 84–16076 appearing on page 24726 in the issue of Friday, June 15, 1984, make the following corrections in the middle column:

§420.04 [Corrected]

1. In the first line, "of" should read "or".

2. In the third line, "1." should read "2."

§ 420.102 [Corrected]

3. In the tenth line, "§ 240.102(b)(1)" should read "420.102(b)(1)".

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Various Health Professions Projects

Correction

In FR Doc. 84–12735 beginning on page 19999 in the issue of Friday, May 11, 1984, make the following corrections:

1. On page 19999, in the third column, in the first complete paragraph, in the sixth line, "no not" should read "do not".

2. On page 20001, in the first column, in § 57.3910, in the sixth line, "proposed" should read "approved".

BILLING CODE 1505–01–M

Proposed Rules

Federal Register
Vol. 49, No. 122
Friday, June 22, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Proposed Changes in Weight Dockage System, Incoming and Outgoing Grade Standards, and Reserve Pool Setaside Procedures for Certain Reconditioned Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on modification of the weight dockage system for substandard seedless raisins delivered by producers to raisin packers, changes in the grade standards for seedless raisins delivered by producers to packers, changes in the grade standards for packed seedless raisins moving into commercial channels, and reserve pool setaside procedures for certain reconditioned raisins. The proposed changes in the dockage system and raisin standards would apply to Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless, and Monukka raisins. They are designed to help the California raisin industry become more competitive with other world producers in terms of maturity levels, promote handler efficiencies of operation, and encourage producers to improve the quality of the raisins they deliver to packers. The proposal permitting setaside of certain reconditioned raisins recognizes that the proposed changes in the dockage system and incoming raisin standards could increase the quantity of raisins needing reconditioning and that there may not be enough unreconditioned raisins to meet reserve obligations. In the interest of providing equity among growers of all raisins covered under the program, this change would apply to all raisins covered under the raisin order. All of the changes were recommended by the Raisin Administrative Committee, which works with the USDA in implementing the order.

DATE: Comments must be received by July 23, 1984.

ADDRESSES: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposal will not have a significant economic impact on a substantial number of small entities.

The weight dockage system for substandard raisins is contained in § 989.210 of Subpart—Supplementary Regulations (7 CFR 989.210–989.221; 49 FR 10082). The incoming grade standards for raisins delivered by producers to packers of the varietal types proposed to be changed are contained in § 989.701 of Subpart—Quality Control (7 CFR 989.701–989.702; 49 FR 10082). The outgoing grade standards for packed raisins are contained in § 989.702 of that subpart. The proposal to allow certain reconditioned raisins to be held in satisfaction of reserve pool setaside obligations requires a change in § 989.158(c)(4)(i) of Subpart—Administrative Rules and Regulations (7 CFR 989.102–989.176; 49 FR 18727). These subparts are operative pursuant to the marketing agreement and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Authority for the following proposals is contained in §§ 989.58 and 989.59 of the order.

Section 989.210 prescribes a weight dockage system which permits handlers to acquire as standard raisins any lot of Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless, and Monukka raisins, even though the lots have been determined to be off-grade because they contain an excess of substandard raisins. The current tolerance for substandard seedless raisins changes from 6 percent to 5 percent beginning with the 1984–85 crop year (49 FR 10082). That crop year begins August 1, 1984. The creditable weight of such lots is computed by multiplying the net weight of the lot by a factor from the dockage tables in § 989.210(g). The factor reduces the weight of the lot by an amount approximating the weight of the substandard raisins needed to be removed from the lot in order for the balance of the lot to meet grade standards.

Under the current weight dockage system, no limit is prescribed on the quantity of substandard raisins in a lot which can be acquired under that system. Raisin lots with large quantities of substandard raisins usually have small quantities of raisins meeting the maturity requirements for U.S. Grade B or better, the maturity level desired by consumers and the trade.[1]

Consequently, handlers experience higher than normal yield losses, and processing costs in delivering the product required by users. The Committee believes that an upper limit on acquisitions under the dockage system will help improve the quality of the raisins delivered by producers for processing, thus enable packers to market raisins with higher maturity levels at lower procesing costs, help the California raisin industry become more cost competitive with foreign producers, and increase the user acceptance of California raisins.

Therefore, the Committee proposed that the dockage system in § 989.210 for Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless, and Monukka raisins

[1] For the purposes of this document, references to B or better maturity raisins means raisins which are well-matured or reasonably well-matured as defined in the United States Standards for Grades of Processed Raisins (7 CFR 52.1841–52.1858).

be modified to provide for dockage on lots containing substandard raisins in the range from 5.1 percent to 10 percent. Lots containing more than 10 percent substandard raisins would be off-grade and require reconditioning before they can be acquired by handlers as standard raisins. In the absence of reconditioning, the raisins would be returned to the producer who delivered them, or disposed of by the handlers in non-traditional outlets. These dockage system changes would be effective beginning with the 1984–85 crop year; i.e., August 1, 1984.

Experience has shown that raisin users generally prefer raisins which are soft, fleshy, and pliable. Less mature raisins generally are not as soft and pliable as more mature raisins. Based on industry information, foreign produced raisins generally are higher in maturity than California raisins. This results from variances in cultural and harvesting practices between California and other world raisin producers.

To make the California raisins more competitive with foreign produced raisins, the Committee proposed changes in the incoming grade standards for raisins delivered by producers to packers contained in § 989.701 and the grade standards for packed raisins contained in § 989.702. The incoming and outgoing grade changes would apply to Natural (sun-dried) Seedless, Dipped Seedless, Oleate and Related Seedless, Golden Seedless, and Monukka raisins. Beginning August 1, 1985, raisin lots of these varietal types delivered by producers to packers would have to contain a minimum of 50 percent B or better maturity raisins. Raisin lots containing less than 50 percent B or better raisins would be off-grade and have to be reconditioned before they could be acquired by the packer as standard quality raisins.

With regard to packed raisins of these varietal types, the Committee proposed that the requirements in § 989.702 be made tighter with respect to maturity and pieces of stem. For select and mixed-size packed raisins, the minimum grade requirement would be as specified in U.S. Grade C, except that the minimum percent B or better would be raised from 55 percent to 62.5 percent, and the tolerances for pieces of stem, and substandard and undeveloped raisins contained in U.S. Grade B would apply. For small (midget) sized raisins of these varietal types, the Committee proposed that the maturity requirements be increased from the U.S. Grade C level of 55 percent to 62.5 percent, but that the minimum for pieces of stem, and substandard and undeveloped as provided in U.S. Grade C be retained. If the tolerances for pieces of stem, and substandard and undeveloped raisins under U.S. Grade B were applied to lots of small (midget) sized raisins, the supply of that size would virtually disappear. The mechanical facilities available to handlers cannot eliminate U.S. Grade C for small (midget) sized raisins without also eliminating a large amount of otherwise acceptable grade raisins as well.

Since a large inventory of 1983–84 crop raisins remains in the handlers' inventory, the proposed changes in the standards for packed raisins would not be made effective until November 15, 1984. It is also proposed that the 62.5 percent B or better standard would increase to 70 percent B or better for the 1985 crop, effective November 15, 1985.

The foregoing changes will not be applicable to raisins with seeds, such as Zante Currant, Sultana and Muscat (including other raisins with seeds) raisins. The California raisin industry has indicated that the current quality requirements for such raisins are in line with packer and user preferences, and that quality improvements for those raisins are not needed at this time.

Regulations presently preclude handlers from holding reconditioned raisins to satisfy a reserve pool setaside obligation. This appears appropriate for raisins which are reconditioned by full processing, including washing and capstemming. Raisins processed to that point do not store well for any significant period of time and are therefore not suitable for retention in the reserve. However, raisins which are reconditioned through a process known in the industry as "dry conditioning" do store for longer periods of time and are suitable for reserve use. This process involves passing the raisins over screens and under vacuums which remove some large stems and substandard raisins. However, these are not considered processed or packed raisins. These raisins are not washed or capstemmed and are not acceptable for use in commercial channels without processing.

As discussed earlier, current regulations allow handlers to acquire raisins with an unlimited amount of excessive substandard raisins under a dockage system. Such raisins may be held by a handler to satisfy a reserve pool obligation. The instant proposal would require seedless raisin lots with substandard raisins in excess of 10 percent to be reconditioned to remove the excess substandard raisins before they can be acquired by the handler as standard quality raisins. Prohibiting a handler from setting aside raisins which have been dry reconditioned to satisfy a reserve pool obligation is unnecessarily restrictive, denies the handler the right to use raisins previously eligible to satisfy a reserve pool obligation, and could influence the handler to refuse to receive and recondition a producer's raisins with excessive substandard raisins.

The regulations established under the order currently recognize a difference in the effects various reconditioning methods have on raisins. Section 989.158(c)(4)(i) provides that, for purposes of inspection, natural condition raisins which have been reconditioned shall continue to be considered natural condition raisins after such reconditioning if no water or moisture was added in the reconditioning process. It is proposed that this provision be broadened so dry reconditioned raisins can be considered as natural condition raisins and thus be eligible for use in meeting a handler's reserve pool setaside obligation. To accomplish this, the second sentence of § 989.158(c)(4)(i) would be revised to provide that natural condition raisins which have been reconditioned shall continue to be considered natural condition raisins for purposes of reinspection (inspection pursuant to § 989.58(d)) or setaside by a handler to satisfy the handler's reserve pool obligation, after such reconditioning has been completed if no water or moisture has been added; otherwise, such raisins shall be considered as packed raisins. This change would be effective August 1, 1984.

Other provisions of the regulations require handlers to properly store raisins which meet the incoming grade standards, except for normal and natural deterioration. There is no recommendation to modify these provisions. Thus, the integrity of maintaining the growers equity in the reserve pool is preserved. This proposed modification is optional and packers who have any fears relative to holding dry reconditioned raisins to satisfy a reserve pool obilgation may choose not to do so. This recommendation is not imposing additonal restrictions, but rather is relaxing the reserve pool setaside requirements, as far as dry reconditioned raisins are concerned.

The proposed changes hereinafter set forth are part of the Committee's 1984 marketing plan to realign supplies with needs. That plan also includes a price Inventory Adjustment/Domestic Merchandising program. This measure was discussed in a proposal published

in the **Federal Register** on June 5, 1984 (49 FR 23193).

List of Subjects in 7 CFR Part 989

Marketing agreements, Grapes, Raisins, and California.

The proposal is as follows:

1. Section 989.158(c)(4)(i) of Subpart—Administrative Rules and Regulations (7 CFR 989.102–989.176; 49 FR 18727) is amended by changing the second sentence to read as follows:

§ 989.158 Natural condition raisins.

* * * * *

(c) * * *

(4) *Reconditioning off-grade raisin—reconditioning requirements. (i)* * * *

Natural condition raisins which have been reconditioned shall continue to be considered natural condition raisins for purposes of reinspection (inspection pursuant to § 989.58(d)) or setaside by a handler to satisfy the handler's reserve pool obligation, after such reconditioning has been completed, if no water or moisture has been added; otherwise, such raisins shall be considered as packed raisins.

* * * * *

2. Section 989.210 (a) and (g) of Subpart—Supplementary Regulations (7 CFR 989.210–989.221; 49 FR 10082) are revised to read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

(a) *General.* Subject to prior agreement between handler and tenderer, a handler may acquire as standard raisins any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless and Monukka raisins containing more than 6 percent beginning with the 1983–84 crop year, and between 5.1 percent and 10 percent beginning with the 1984–85 crop year, by weight, of substandard raisins under a weight dockage system. A handler also may, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing more than 12 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired in this manner shall be that obtained by multiplying the net weight of the raisins in the lot by the applicable dockage factor from the appropriate dockage table prescribed in paragraphs (g) or (h) of this section.

* * * * *

(g) *Dockage tables applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, And Monukka Raisins.*

Percent substandard	Dockage factor
Crop Year—1983–84	
6.0	(1)
6.1	.999
6.2	.998
6.3	.997
6.4	.996
6.5	.995
Crop Year—1984–85 and Thereafter	
5.0	(1)
5.1	.999
5.2	.998
5.3	.997
5.4	.996
5.5	.995
NO DOCKAGE FOR DELIVERIES IN EXCESS OF 10 PERCENT SUBSTANDARD.	

[1] No dockage.

Note.—Percentage in excess of the last percentage shown in each table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment.

* * * * *

3. Section 989.701 (a)(3), (b)(3), and (c)(3) of Subpart—Quality Control (7 CFR 989.701–989.702; 49 FR 10082) are revised to read as follows:

§ 989.701 Minimum grade and condition standards for natural condition raisins.

(a) * * *

(3) Shall for the 1983–84 crop year contain not more than 6 percent, and for the 1984–85 and subsequent crop years, contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and for the 1985–86 and subsequent crop years also contain at least 50 percent well-matured or reasonably well-matured raisins;

* * * * *

(b) * * *

(3) Shall for the 1983–84 crop year contain not more than 6 percent, and for the 1984–85 and subsequent crop years, contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and for the 1985–86 and subsequent crop years also contain at least 50 percent well-matured or reasonably well-matured raisins;

* * * * *

(c) * * *

(3) Shall for the 1983–84 crop year contain not more than 6 percent, and for the 1984–85 and subsequent crop years, contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and for the 1985–86 and subsequent crop years also contain at least 50 percent well-matured or reasonably well-matured raisins;

* * * * *

3. Section 989.702 of Subpart—Quality Control (7 CFR 989.701–989.702; 49 FR 10082) are revised to read as follows:

§ 989.702 Minimum grade standards for packed raisins.

Effective pursuant to § 989.59, the minimum grade standards for packed raisins shall be as follows:

(a) *Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless Raisins.* Packed Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless raisins shall meet the requirements of U.S. Grade C as defined in the effective United States Standards for Grades of Processed Raisins (§§ 52.1841–52.1858 of this title): *Provided,* That at least 62.5 percent, by weight, of the raisins shall be well-matured or reasonably well-matured, effective November 15, 1984. Beginning November 15, 1985, that tolerance shall be 70 percent. With respect to select-sized and mixed-sized raisin lots, the raisins shall at least meet the U.S. Grade B tolerances for pieces of stem, and underdeveloped and substandard raisins, and small (midget) sized raisins shall meet the U.S. Grade C tolerances for those factors.

(b) *Golden Seedless Raisins.* Packed Golden Seedless raisin shall at least meet the requirements prescribed in paragraph (a) of this section, and the color requirements for "colored" as defined in said standards.

(c) *Monukka Raisins.* Packed Monukka raisin shall at least meet the requirements prescribed in paragraph (a) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent.

(d) *Muscat (including other raisins with seeds) Raisins.* Packed Muscat (including other raisins with seeds) raisins shall at least meet the requirements of U.S. Grade C of the said standards. Layer Muscat (including other raisins with seeds) raisins shall at least meet U.S. Grade B as defined for "Layer or Cluster Raisins With Seeds" in said standards, except for the provisions therein relating to moisture content.

(e) *Sultana Raisins.* Packed Sultana raisins shall meet the requirements of U.S. Grade C as defined in said standards.

(f) *Zante Currant Raisins.* Packed Zante Currant raisins shall at least meet

the requirements of U.S. Grade B as defined in said standards.

(g) A handler may grind raisins which do not meet the minimum grade standards prescribed in paragraphs (a) through (f) of this section because of mechanical damage or sugaring, into a raisin paste.

(Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674)

Dated: June 19, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84–16759 Filed 6–21–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

Proposed Advisory Circular—Flutter Substantiation of Transport Category Airplanes

Correction

In FR Doc. 84–16027 appearing on page 24749 in the issue of Friday, June 15, 1984, make the following correction:

On page 24749, second column, the sixth line should read as follows: "Leroy A. Keith, *Aircraft Certification Division,*".

BILLING CODE 1505–01–M

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14 CFR Part 39

[Docket No. 84–NM–37–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an amendment that would supersede an existing airworthiness directive (AD) applicable to certain Boeing Model 737 airplanes. The existing AD requires a one-time visual inspection of the horizontal stabilizer rear spar attach lugs. Subsequent reassessment has shown the need for repetitive inspections. Accordingly, this amendment proposes to establish repetitive inspections. Failure to detect cracks in the horizontal stabilizer rear spar attach lugs may result in separation of the horizontal stabilizer from the airplane.

DATE: Comments must be received on or before August 7, 1984.

ADDRESSES: The applicable service bulletin may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton A. Holmes, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2926. Mailing Address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–37–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Boeing Company has conducted a structural reassessment of the Model 737 airplane as part of their program to develop a Supplemental Structural Inspection Document (SSID) for the airplane. In conducting this reassessment, Boeing used advanced analysis techniques which were not available during the original design and certification of the Model 737, and used as guidelines the requirements of Federal Aviation Regulation 25.571, Amendment 25–45. The reassessment included structural details that have a history of cracking. The analysis has revealed that certain of these details should receive increased emphasis in the maintenance program of operators to maintain the structural integrity of the airplane. The attach lugs of the horizontal stabilizer are in this category of details.

The FAA issued Advisory Circular AC 91–56 on May 6, 1981, which provides guidelines for the development and implementation of supplemental structural inspection programs for large transport category airplanes. AC 91–56 states in part "any service bulletin or other service information publications found to be essential for safety during the initial SSID assessment process should be implemented by AD action."

There was a report of a cracked horizontal stabilizer rear spar attach lug on an airplane with 28,704 flight cycles. The crack originated on the forward face of the aft lug of the rear spar upper clevis and is attributed to fatigue. The Boeing Company issued Service Bulletins 737–55–1028 and 737–55A1029 which provide inspection, repair, and preventive modification instructions. The structural reassessment established the inspection threshold and repetitive inspection intervals necessary for detecting cracks prior to their reaching critical length. Failure to detect cracks prior to their reaching critical length may result in loss of the horizontal stabilizer.

Airworthiness Directive 81–11–07, Amendment 39–4122 (46 FR 28147; May 26, 1981), was issued on May 15, 1981, to require a one-time visual inspection of the horizontal stabilizer rear spar attach lugs for cracks in accordance with Boeing Alert Service Bulletin 737–55A1029 dated April 30, 1981. Subsequently, this bulletin was revised (reference Service Bulletin 737–55A1029, Revision 3) to include repetitive high frequency eddy current inspections at intervals of 5700 flights. This amendment would supersede Airworthiness Directive 81–11–07 and require these repetitive inspections.

It is estimated that 200 airplanes of U.S. operators would be affected by this AD. Approximately 4 manhours would be required per airplane to perform the inspection. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the proposed inspections would be $32,000. Therefore, the proposed rule is not considered a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737 series airplanes, certificated in all categories, listed in Boeing Service Bulletin 737–55A1029, Revision 3, or later FAA approved revision. To insure continued structural integrity of the horizontal stabilizer, accomplish the following, unless previously accomplished:

A. Inspect the rear horizontal stabilizer attach lugs for cracks in accordance with instructions in Boeing Service Bulletin 737–55A1029, Revision 3, or later FAA approved revision, upon the accumulation of the threshold number of landings specified in Table I of the service bulletin or within 200 landings after the effective date of this AD, whichever occurs later. Repeat these inspections at intervals not exceeding those specified in Table I of the service bulletin.

B. Cracked parts must be replaced or repaired in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region before further flight.

C. Airplanes may be flown to a maintenance base for repairs or replacement in accordance with FAR 21.197 and 21.199 with prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with the AD, subject to the acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Upón request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection interval in this AD, if the request contains substantiating data to justify the increase for the operator.

This supersedes Amendment No. 39–4122 (46 FR 28147; May 26, 1981), AD 81–11–07.

All persons affected by this directive who have not already received the appropriate service bulletins from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents also may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble: the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on June 14, 1984.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–16669 Filed 6–21–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ASW–25]

Proposed Alteration of Transition Area: El Dorado, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to alter the transition area at El Dorado, AR. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to Runway 04 at Goodwin Field. This action is necessary since a temporary VOR has been commissioned on Goodwin Field to provide service in place of the El Dorado VORTAC which is temporarily out of service.

DATE: Comments must be received on July 23, 1984.

ADDRESSES: Send coments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW–535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101; telephone: (817) 877–2630.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G § 71.181 as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area at El Dorado, AR, will necessitate an amendment to this subpart. This amendment will be required at El Dorado, since a new SIAP will be developed using the temporary VOR located on the Goodwin Field Airport.

Comments Invitied

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions of the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identity the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ASW–25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date of comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM)

by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 877–2630. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Control Zones, Transition Areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by adding the following:

El Dorado, AR Revised

. . . and within 3 miles each side of a 215-degree bearing from the airport to 11 miles southwest.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on June 12, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84–16864 Filed 6–21–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No 84–1171; FR–1976]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: Part 115 of the Code of Federal Regulations describes the procedure for recognition of State and local fair housing laws that provide rights and remedies substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968 (Act). This proposed rule would amend 24 CFR 115.11 to recognize the laws of several additional local jurisdictions.

DATES:

Comment Due August 21, 1984.

ADDRESS: Interested persons are invited to submit comments regarding the rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steven J. Sacks, Director, Federal, State and Local Programs Division, Room 5214, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 426–3500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Recognition of Additional Laws

The Department is proposing to grant recognition to the fair housing laws of the following additional jurisdictions in accordance with section 810(c) of Title VIII of the Civil Rights Act of 1968: (1) Hillsborough County, Florida; (2) Tampa, Florida; (3) Dubuque, Iowa: (4) Lawrence, Kansas; (5) Jefferson County, Kentucky and (6) Reading Pennsylvania. The evaluation of the laws of these jurisdictions was conducted in accordance with the provisions of 24 CFR Part 115, with particular focus on §§ 115.2(a), 115.3 and 115.8. These sections are set forth below to give appropriate information to all parties with an interest in HUD's proposed action.

Section 115.2, Procedure for Recognition, provides, in paragraph (a): Recognition under this part shall be based on a consideration of the following materials and information: (1) The text of the jurisdiction's fair housing law and any regulations or directives issued thereunder; (2) the organization of the agency responsible for administering and enforcing such law; (3) the amount of funds and personnel made available to such agency for fair housing purposes during the current operating year; (4) when considering agencies which have been in operation for 1 year or more, any available indicia of the agency's ability to satifactorily administer its law consonant with the performance standards delineated in § 115.8; and (5) any additional documents which the agency may wish to have considered.

Section 115.3, Criteria, provides: In order for a determination to be made that a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to those provided in the Act, the law or ordinance must: (a) Provide for an administrative enforcement body to receive and process complaints; (b) delegate to the administrative enforcement body comprehensive authority to investigate the allegations of complaints, and power to conciliate complaint matters; (c) not place any excessive burdens on the complainant which might discourage the filing of complaints; (d) not contain exemptions which substantially reduce the coverage of housing accommodations as compared to section 803 of the Act which provides coverage with respect to all dwellings except, under certain circumstances, single-family homes sold or rented by the owner, and units in owner-occupied dwellings containing living quarters for no more than four families; and (e) be sufficiently comprehensive in its prohibitions so as to be an effective instrument in carrying out and achieving the intent and purposes of the Act, i.e., the prohibition of the following acts if they are based on discrimination because of race, color, religion, sex, or national orgin:

[1] Refusal to sell or rent.

[2] Refusal to negotiate for a sale or rental.

[3] Making a dwelling unavailable.

[4] Discriminating in terms, conditions, or privileges of sale or rental, or in the provisions of services or facilities.

[5] Advertising in a discriminatory manner.

[6] Falsely representing that a dwelling is not available for inspection, sale or rental.

[7] Blockbusting.

[8] Discrimination in financing.

[9] Denying a person access to or membership or participation in multiple listing services, real estate brokers' organizations, or other services.

Provided, that a law may be determined substantially equivalent if it meets all of the criteria set forth in this section but does not contain adequate prohibitions with respect to one or more

of the acts based on discrimination because of sex, or with respect to one or more of the cases described in paragraphs (e) (7), (8), and (9) of this section; (f) In addition to the factors described in paragraphs (a), (b), (c), (d), and (e) of this section, consideration will be given to the provisions of the law affording judicial protection and enforcement of the rights embodied in the law. However, a law may be determined substantially equivalent even though it does not contain express provisions for access to State or local courts.

Section 115.8, Performance Standards, provides: (a) The initial and continued recognition by the Secretary that a State or local fair housing law provides rights and remedies substantially equivalent to those provided in the Act will be dependent upon, where applicable, an assessment of the State or local agency's administration of its fair housing law to ensure that the law is in fact providing substantially equivalent rights and remedies. The performance standards set forth in paragraph (b) of this section will be used in making such assessment; (b) A State or local agency must: (1) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law; (2) consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices; (3) establish a mechanism for monitoring compliance with any agreements or orders entered into with or issued by the State or local agency to resolve discriminatory housing practices; (4) engage in comprehensive and thorough investigative activities; and (5) commence and complete the administrative procesing of a complaint in a timely manner, i.e., the average complaint should, under ordinary circumstances, be investigated and, where applicable, set for conciliation within 30–45 days.

II. Other Matters

On August 9, 1983, the Department published a proposed rule (48 FR 36133) to revise 24 CFR Part 115. The proposed rule would enable the Department to add or delete jurisdictions through publication of rule-related notices in the **Federal Register.** Since the August 9, 1983 proposed rule is not final, this proceeding continues the past practice of adding or deleting jurisdictions by rule amendments. If the August 9, 1983 proposed rule becomes final and effective before the current proceeding is concluded, however, we will publish our final decision here by a rule-related notice. No such Notice including these jurisdictions will be published, however, until after the close of the comment period for this proposed rule.

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 24 CFR 50.20(k), this rulemaking is not subject to the environmental assessment requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

Under 5 U.S.C 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule only carries out the Department's statutory responsibility as set out in section 810(c) of the Fair Housing Act, 42 U.S.C 3610(c).

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program numbers and titles are: 14.400, Equal Opportunity in Housing and 14.401, Fair Housing Assistance Program.

List of Subjects in 24 CFR Part 115

Fair housing, Intergovernmental relations.

PART 115—RECOGNITION OF SUBSTANTIALLY EQUIVALENT LAWS

Accordingly, the Department proposes to amend 24 CFR Part 115 as follows:

Section 115.11 is amended by adding, in alphabetical order, the following jurisdictions to the list of "Localities" having substantially equivalent laws:

§ 115.11 Jurisdictions with substantially equivalent laws.

* * * * *

Hillsborough County, Florida

* * * * *

Tampa, Florida

* * * * *

Dubuque, Iowa

* * * * *

Lawrence, Kansas

* * * * *

Jefferson County, Kentucky

* * * * *

Reading, Pennsylvania

* * * * *

Authority: Sec. 810(c) of the Civil Rights Act of 1968, 42 U.S.C. 3610, sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 13, 1984.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 84–16708 Filed 6–21–84; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 530

Employment of Homeworkers in Certain Industries; Reopening of Comment Period

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Proposed rule; reopening of comment period and invitation for additional comments on alternative proposals.

SUMMARY: On March 27, 1984, the Department of Labor published a proposed rule rescinding the ban on homework in the knitted outerwear industry currently in effect pursuant to the regulations issued implementing section 11(d) of the Fair Labor Standards Act (FLSA). In addition to soliciting comment on the proposed rescission, the Department sought comments on various alternatives to such action (49 FR 11786). The period for public comment on the proposed rule, after having been extended once, expired on May 11, 1984 (49 FR 17974). The views of more than 6,000 commenters were received. The information contained in these comments is currently being reviewed by the Department.

As noted in the Department's March 27, 1984 proposal, the alternatives to the proposed rescission include employer licensing or registration, expanded homeworker certification criteria and other regulatory measures that would allow individuals to engage in homework in the knitted outerwear industry under certain conditions. To

further assist the Department in evaluating these alternatives, the Department invites interested persons to submit additional written comments, especially those relevant to licensing or registration of employers of homeworkers in the knitted outerwear industry, as alternatives to total rescission of the ban on homework in that industry. For this purpose, the comment period is reopened for 15 days.

DATE: Comments should be received on or before July 9, 1984.

ADDRESS: Send written comments to William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, Room S–3502, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, Room S–3502, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523–8305. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

The background of the current proposal is detailed in the Department's March 27, 1984 Notice of Proposed Rulemaking (49 FR 11786), which is hereby incorporated by reference into this announcement. The Department has received the views of more than 6,000 individuals in response to the Notice. The information contained in these comments is currently being reviewed by the Department. The vast majority of the comments addressed only the proposal to rescind the ban on knitted outerwear homework. Relatively few referred to the four alternatives that were set forth in the **Federal Register** notice.

The Department is continuing to consider the proposed rule and the various alternatives outlined in its March 27, 1984 Notice. At this time, the Department is reopening the comment period to solicit additional comments on the alternatives set forth in that Notice, particularly alternative D, involving the licensing or registration of employers of homeworkers in the knitted outerwear industry, under which an employer would be required to notify the Department that it intends to utilize homeworkers as employees. In order for the Department to consider more fully this alternative, commenters are requested to address the following issues:

1. The procedure by which employers in the knitted outerwear industry would obtain a license or certificate of registration permitting them to hire homeworkers;

2. Whether there should be any limitations on permitting employers to obtain a license or certificate of registration to permit such activity and, if so, what they should be;

3. Whether there should be certain assurances or conditions attached to employer performance under such license or certificate of registration and, if so, what they should be;

4. Whether there should be sanctions for employer non-compliance with licensing or registration requirements and, if so, what they should be and what procedures should be utilized for imposing them;

5. Whether a licensing or registration program, if established, should be administered by the Federal government or should be delegated to those state governments seeking the authority to administer such programs.

Commenters addressing any of the posed alternatives to total rescission may wish to discuss the following:

(1) The difficulties and/or advantages under the particular alternative of enforcing FLSA minimum wage and overtime standards, as compared to total rescission of the ban or maintenance of the ban in its entirety;

(2) The burdens, if any, under the particular alternative, placed on employers desiring to use homeworkers;

(3) The responsiveness of a particular alternative to the needs of employees engaged in homework for knitted outerwear employers.

Commenters wishing to address other alternatives are asked to focus on and address the same criteria, as appropriate.

Conclusion

In making its decision as to an appropriate final rule regarding homework in the knitted outerwear industry, the Department will consider all timely comments it receives in response to this notice in addition to those already received in response to its March 27, 1984 notice of Proposed Rulemaking. The entire record of this proceeding will be made available for inspection during office hours at Room C–4316, Frances Perkins Buiding, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 19th day of June, 1984.

William M. Otter,

Administrator.

[FR Doc. 84–16834 Filed 6–21–84; 8:45 am]

BILLING CODE 4510–7–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 84–15]

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of New Jersey Department of Transportation, the Coast Guard is considering a change to the regulations governing the Route 35 Bridge across the New Jersey Intracoastal Waterway (Manasquan River) at Brielle, NJ by permitting the number of openings to be limited from Memorial Day through Labor Day on weekends and holidays from 10 a.m. to 8 p.m. The bridge is currently required to open on signal. This proposal is being made because peak vehicular traffic generally coincides with peak bridge openings for vessels. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before August 6, 1984.

ADDRESS: Comments should be submitted to and are available for examination from 9 a.m. to 3 p.m., Monday through Friday, except holidays, at the office of the Commander (oan-br), Third Coast Guard District, Bldg 135A, Governors Island, NY 10004. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668–7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reason for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District will evaluate all communications received and will determine a final course of action on the proposal. The proposed regulations may

be changed in light of comments received.

Drafting Information

The drafters of this notice are Ernest J. Feemster, project manager, and Mary Ann Arisman, project attorney.

Discussion of Proposed Regulations

Since New Jersey DOT requested half-hourly openings (from Memorial Day through Labor Day) at the Route 35 Bridge, the Coast Guard issued temporary regulations to evaluate effects of half-hourly openings. Temporary regulations were issued August 5, 1983 through September 15, 1983 allowing the bridge to open only on the hour and half-hour from 10 a.m. to 8 p.m. on weekends and Labor Day.

No unusual problems were reported during the evaluation period and generally favorable comments were received. Many respondents also suggested that half-hourly openings be extended throughout the week. However, bridge opening logs show for 1982–83 (exclusive of the evaluation period) that three or more requests for openings (from 10 a.m. to 8 p.m.) only occur about 2% of the time during the week. Therefore weekday, half-hourly openings would provide little benefit for vehicular traffic.

The Route 35 Bridge has four lanes and carries a high volume of daytime, vehicular traffic during the summer boating season. Vehicular traffic counts, taken during evaluation of timed openings, show that an average of about 1380 vehicles cross the bridge per hour each weekend day (and Labor Day) from 10 a.m. to 8 p.m. Even though the bridge has a minimum 30-foot vertical clearance in the closed position, there are still a moderate number of vessels (mostly sail) which are unable to transit under the closed draw. Bridge openings for these vessels cause traffic "build up" in the vicinity of the bridge, especially so on weekends.

No draft, economic evaluation has been prepared for this action because of minimal impact of this proposed action. No economic consequences will accure to any organization, party or entity. Expected benefits will be derived in the form of less vehicular traffic congestion during peak boating periods without undue delay to vessels.

Economic Assessment and Certification

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that these rules, if promulgated, would not have a significant economic impact on a substantial number of small entites.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by renumbering the existing § 117.733(b) through (g) as § 117.733(c) through (h), respectively and adding a new § 117.733(b) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.733 New Jersey Intracoastal Waterway.

(a) * * *

(b) The draw of the Route 35 bridge, mile 1.1 (Manasquan River) at Brielle shall open on signal; except that, from Memorial Day to Labor Day on Saturdays, Sundays, and federal holidays from 10 a.m. to 8 p.m., the draw need only open on the hour and half hour. The draw shall open at all times as soon as possible for passage of a public vessel of the United States, or for a vessel in distress.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(2); 33 CFR 1.05–1(g)(3))

Dated: June 5, 1984.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 84–16599 Filed 6–21–84; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[AMS–FRL 2575–7]

Control of Air Pollution From Aircraft and Aircraft Engines; Exemptions for Low Production Engines

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to grant a petition submitted by the Aerospace Industries Association (AIA) on August 31, 1983, recommending that the maximum annual production limit of 20 engines per year be eliminated from the low production engine provisions of the EPA aircraft engine emission standards. Several other minor revisions are also proposed..

DATE: All comments should be submitted by July 23, 1984 or, if a hearing is held, within 30 days after the date of the hearing.

Any person requesting a public hearing on this proposal should submit a request in writing to the information contact identified below no later than July 9, 1984. If a hearing is requested, its date and location will be announced in a subsequent **Federal Register** Notice.

ADDRESS: Interested parties may participate in this rulemaking by submitting written comments to the U.S. Environmental Protection Agency, Central Docket section (A–130), Attn: Docket No. A–83–39, 401 M Street, SW, Washington, D.C. 20460. Two copies of comments are requested but not required. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Kittredge (AR–455), Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street SW, Washington D.C. 20460. Telephone: (202) 382–4981.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1982 EPA isued final rules which amended emissions standards applicable to aircraft gas turbine engines (47 FR 58462). One change consisted of specifying a number of situations under which engines could qualify for exemption from compliance with emission standards, one of which exempts engines produced in very low quantities from compliance with the standards. The criteria which determine whether an engine qualifies for exemption (§ 87.7(b)) are:

(1) A maximum annual production rate after January 1, 1984 of 20 units covered by the same type certificate; and

(2) A maximum total production after January 1, 1984, of 200 untis covered by the same type certificate.

On August 31, 1983 AIA submitted a petition which recommended that the annual production limit be eliminated, because some low production engines are likely to be ordered and built in quantities above 20 units per year during their final year or two of production.

even though the total number built after January 1, 1984 will not exceed 200.

On September 13, 1983 EPA responded to the AIA petition by requesting that supporting information be submitted which shows actual examples of past and projected future production rates for engines during their final years of production. This information has now been received. Copies of the AIA petition, the EPA response and letters from individual manufacturers in support of the petition are available in Public Docket A–83–39.

II. Discussion of Issues

A. AIA Petition

The EPA production limits of 20 engines per year and 200 engines total were derived from comments submitted on December 2, 1978 by one manufacturer, General Motors Corporation, in response to the March 24, 1978 Notice of Proposed Rulemaking (43 FR 12615) which resulted in the 1982 rulemaking. No doubt the 20 engines per year projected rate of production was realistic for that manufacturer at that time. However, EPA recognizes that a 20 engine per year maximum limit as one criterion for identifying a "very low production" engine may not hold for all engines produced by all manufacturers today. Review of the information submitted by manufacturers in support of the petition appears to verify that this is the case, with some low production engines showing a sharp rise in rate of production during the last few years they are produced. This may be the result of customer purchases for inventory in anticipation of the future non-availability of engine types scheduled to be phased out.

The air quality impact of eliminating the 20 engine per year annual production limit would consist only of that represented by giving manufacturers the flexibility to apportion segments of their total 200 engine maximum limit over the complete phaseout period in any way necessary to respond to consumer demand. As an extreme example, if a manufacturer chose to build all of its 200 engines in 1984, their lifetime emissions will be compressed into a shorter time span and the annual emissions throughout that time span would be higher than would be the case if it built only 20 engines for each of 10 consecutive years starting with 1984. The lifetime emissions in either case would of course be the same.

The available production estimates suggest that the most likely emissions impact would consist only of minor fluctuations above and below that corresponding to a 20 engine production rate, and that the air quality implications would be negligible. Therefore there is no air quality impact which would justify a decision to reject the AIA recommendation to eliminate the 20 engine per year annual production limit, when balanced against the anticipated production scheduling problems which it may impose, together with possible lost sales.

It appears that the available information supports a decision to respond affirmatively to the AIA recommendation. Therefore, EPA is proposing to eliminate the 20 engine per year limit as a criterion which must be met for an engine to qualify for exemption from emission standards on the basis of very low production.

B. Other Issues

Two other minor amendments are proposed, the first of which concerns the wording of the fuel venting "applicability" provisions of § 87.10, which had been drastically shortened in the 1982 amendments in an attempt to be more concise. In doing so, the original intent of this provision was unintentionally altered by making it appear that only in-use engines built after 1974 must comply, and by omitting the distinction between engines manufactured after January 1, 1974 and January 1, 1975, respectively. While these items may appear unimportant after a ten year lapse in time, they do complicate the enforcement of the fuel venting standards by the Federal Aviation Administration (FAA), which must consider the actual production dates and in-use histories of individual engines manufactured after the 1974 and 1975 dates of compliance as well as of older engines which were retrofitted to comply. Accordingly, it is proposed to return as closely as possible to the original wording of § 87.10, with due allowance for changes in engine classifications, to explicitly show the compliance schedule for new and in-use engines respectively. In addition, the difference in compliance schedule for engines rated above and below the 36 kilonewton thrust threshold use in the original standards to delineate between commercial and general aviation applications is clarified. These changes will improve the consistency in language between the EPA standards and the FAA standards published on December 26, 1983 (48 FR 56735) to enforce them.

The second minor proposed amendment is to revise the test fuel specifications slightly to broaden the ranges of allowable naphthalenes content, hydrogen content, viscosity and final boiling point values. The proposed changes will respond to reported difficulties in procuring fuels meeting the present specifications, which have resulted in several requests to FAA by individual manufacturers for deviations from these two specification requirements. While the changes will result in a difference in test fuel specifications between the United States and International Civil Aviation Organization (ICAO) standards, it is believed that ICAO will soon follow with matching changes.

The revised values for these four fuel properties will allow wider bands of acceptability and will be more representative of fuels available on the current market. The measured emissions characteristics should also be more characteristic of engines operated on currently available fuels.

III. Regulatory Analysis

Under Executive Order 12291 EPA must judge whether a regulation is "major" and therefore subject to requirements for a Regulatory Impact Analysis. This rulemaking is not major because it will result in annual effects on the economy of less than $100 million. There are no adverse effects on competition, productivity, investment, employment or innovation. For these reasons EPA has not prepared a formal Regulatory Impact Analysis.

This proposal has been sent to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12291. Any OMB comments and EPA responses thereto have been placed in the docket.

IV. Impacts on Reporting Requirements

This proposal does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine when a regulation will have a significant effect on a substantial number of small entities so as to require a Regulatory Flexibility Analysis. Because no small entities (as defined by the Small Business Act) will be affected, I certify that these amendments will not have a significant impact on a substantial number of small entities; therefore no regulatory flexibility analysis has been prepared.

List of Subjects in 40 CFR Part 87

Air pollution control, Aircraft.

Dated: June 14, 1984.

William D. Ruckelshaus,

Administrator.

(Secs. 231, 301(a), Clean Air Act as amended (42 U.S.C. 7571, 6701(a)))

PART 87—[AMENDED]

For the reasons set forth above, 40 CFR Part 87 is proposed to be amended as follows:

§ 87.7 [Amended]

1. In § 87.7, paragraph (b)(1) is removed and paragraph (b)(2) is redesignated as (b)(1).

2. Section 87.10 is revised to read as follows:

§ 87.10 Applicability.

(a) The provisions of this subpart are applicable to all new aircraft gas turbines of classes T3, T8, TSS and TF equal to or greater than 36 kilonewton rated output, manufactured on or after January 1, 1974, and to all in-use aircraft gas turbine engines of classes T3, T8, TSS and TF equal to or greater than 36 kilonewton rated output beginning February 1, 1974.

(b) The provisions of this subpart are also applicable to all new aircraft gas turbines of classes TP and TF less than 36 kilonewton rated output manufactured on or after January 1, 1975 and to all in-use aircraft gas turbines of classes TP and TF less than 36 kilonewton rated output beginning January 1, 1975.

3. Section 87.61 is revised to read as follows:

§ 87.61 Turbine Fuel Specifications.

For exhaust emission testing, fuel meeting the specifications listed below shall be used. Additives used for the purpose of smoke suppression (such as organometallic compounds) shall not be present.

Property and Allowable Range of Values

Specific gravity at 15 °C: 0.78–0.82.

Distillation temperature, °C: 10% boiling point, 165–201; final boiling Point, 250–285.

Net heat of combustion, kJ/kg: 42,860–43,500.

Aromatics, volume %: 15–20.

Naphthalenes, volume %: 1.0–3.0.

Smoke point, mm: 20–28.

Hydrogen, mass %: 13.5–14.0.

Sulfur, mass %: less than 0.3%.

Kinematic viscosity at −20 °C, mm/s: 4.0–6.5.

[FR Doc. 84–16725 Filed 6–21–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 215

[FRA Docket No. RSFC–6, Notice 7]

Railroad Freight Car Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to amend the Freight Car Safety Standards (49 CFR Part 215) to clarify the definition of defective wheels. The amendment would make a technical correction to § 215.103 to eliminate confusion over the proper measurement of the extensiveness of discoloration found on freight car wheels due to an oxidation process that occurs after a wheel has been subjected to thermal abuse.

DATES: (1) A public hearing will begin at 10:00 a.m. on July 26, 1984.

(2) Prepared statements to be made at the hearing should be submitted to the Docket Clerk at least seven days before the hearing date.

(3) Persons desiring to participate in the hearing should notify the Docket Clerk at least seven days before the hearing.

(4) Written comments concerning this proceeding must be received not later than July 31, 1984. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: (1) Hearing location Room 2230, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(2) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA shall submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 5101 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Office of Safety, Federal Railroad Administration, Washington, D.C. 20590, telephone (202) 426–0897.

SUPPLEMENTARY INFORMATION:

Background

A typical railroad freight car wheel is approximately one-inch thick in the plate area. If a wheel is subjected to thermal abuse, the front and back faces of the plate area receive essentially the same amount of heat. A consequent oxidation process then causes discoloration that appears on both the front and back plate areas to a substantially equal extent. To identify wheels that have been thermally abused, the rail industry has historically relied on a visual observation technique based on that oxidation process.

Since a wheel that has been thermally abused presents a significant risk of sudden failure and consequent derailment, FRA's Freight Car Safety Standards (49 CFR Part 215) define such wheels as defective and prohibit a railroad from keeping a freight car in service if it has a defective wheel. In the absence of effective alternative detection methods, FRA adopted the industry's visual observation technique for identifying thermally abused wheels when it issued its original Freight Car Safety Standards in 1973. Under the industry's standard, a wheel was not considered defective unless discoloration was present on both sides of the plate area. However, in the process of proposing and adopting the initial Freight Car Safety Standards during 1972 and 1973, FRA inadvertently used disjunctive wording in § 215.43 that had the effect of defining a wheel as defective if discoloration was present on either side of a wheel.

Neither the preamble for the proposed rule nor that for the original final rule contained any significant discussion of this provision, and none of the commenters focused on its disjunctive language. In 1974, responding to a petition from the Association of American Railroads for a variety of changes to the rule, FRA issued a notice of proposed rulemaking (39 FR 367) in which FRA proposed to revision of its definition to conform to a recently improved industry standard that was more specific than the FRA rule. The revised industry standard, which continued to require the presence of discoloration on both faces of the wheel before a wheel would be considered defective, was incorporated in FRA's revision of § 215.43 on July 11, 1974 (39 FR 25497).

Current Rule

In proposing a complete revision of its standards on January 5, 1979, (44 FR 1419) FRA retained the use of this visual observation technique, but proposed to

reduce the area of the wheel face that must display the discoloration before a wheel is considered defective. FRA proposed to consider discoloration that extended more than four inches into the plate area as an indication of thermal abuse, instead of the more ambiguous, "one-half the distance to the axle" language of the earlier rule. In drafting the proposed regulatory language, FRA inadvertently revived the use of the unintended disjunctive wording of the original rule in attempting to indicate that, although substantial discoloration on both sides is required, only one side of the plate area need exceed the four-inch criterion for the wheel to be considered defective under § 215.103(h). This inartful draftsmanship was compounded when FRA modified the proposed language in adopting the final rule in response to a commenter's concern that FRA has failed to specify the point from which the four-inch measurement was to be taken. FRA's final rule, published on December 31, 1979, (44 FR 77328) defined that point as the bottom of the face of the rim. Since it is physically easier to make such measurements on the back side of a wheel, FRA used back-side-of-the-wheel language in the final rule, without any intent to mandate that procedure because of safety considerations.

The result of the foregoing errors in drafting is that the current language, read literally, has a more restrictive effect than FRA intended. This lack of clarity has caused confusion among those subject to the regulation and prompted a number of communications recently concerning the intent and appropriate interpretation of the language contained in § 215.103(h). To eliminate this confusion and to state the agency's intent more clearly, FRA is proposing to amend § 215.103(h) to specify that (i) discoloration must be present on both faces of a freight car wheel, (ii) measurement can be made on either face, and (iii) measurements are to be made from the inner edge of the wheel rim.

Public Participation

FRA has interpreted and enforced § 215.103(h) in accordance with the intent stated explicitly in this notice and implicitly in the current rule. Consequently, this technical amendment will impose no new or additional burdens; indeed it may have the effect of reducing burdens for those who have read the section literally. Although there is no technical basis for retaining the current wording, nor safety implication inherent in revision of the rule language, FRA believes that all interested parties should be given an opportunity to comment on this issue. The opportunity for public comment will also assist in identifying and resolving any problems that may have resulted from the imprecise language of the existing rule.

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should identify the regulatory docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

In addition, FRA will hold a public hearing on this proposal in Washington, D.C. The public hearing will be held beginning at 10:00 a.m. on July 26 in Room 2230 of the Nassif Building, located at 400 Seventh Street, SW., Washington, D.C.

List of Subjects in 49 CFR Part 215

Railroad safety.

Regulatory Impact

This proposed amendment is simply a technical language change to eliminate confusion and would, if adopted, have no substantive impact. FRA has evaluated it in accordance with existing regulatory policies. It is considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT policies and procedures (44 FR 11034; February 26, 1979). It will have no economic impact. Based on these facts, FRA certifies tht the proposed amendment will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The proposed amendment will not have any environmental impact and does not involve, directly or indirectly, any information collection requirements.

The Proposed Rule

In consideration of the foregoing, it is proposed to amend § 215.103 of Part 215 of Title 49, Code of Federal Regulations, by revising paragraph (h) to read as follows:

PART 215—[AMENDED]

§ 215.103 Defective Wheel.

* * * * *

(h) A wheel on the car shows signs of having been overheated as evidenced by a reddish brown discoloration, to a substantially equal extent on both the front and the back face of the rim, that extends on either face more than four inches into the place area measured from the inner edge of the front or back face of the rim; or,

* * * * *

(Secs. 202 and 208, Federal Railroad Safety Act of 1970 (45 U.S.C. 431, 437); sec. 1.49(n) of the regulations of the Office of the Secretary, 49 CFR 1.49(n))

Issued in Washington, D.C., on June 14, 1984.

John H. Riley,

Administrator.

[FR Doc. 84-16600 Filed 6-21-84; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations

Correction

In FR Doc. 84-15805 beginning on page 24417 in the issue of Wednesday, June 13, 1984, make the following correction on page 24423: In the first column, under the heading "Flyway Council Meetings", the description of the Mississippi Flyway meeting should read as follows: "*Mississippi Flyway*—Collinsville, IL (Hilton Inn) July 28–29".

BILLING CODE 1505-01-M

Notices

Federal Register
Vol. 49, No. 122
Friday, June 22, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Human Nutrition Board of Scientific Counselors; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of the Secretary reschedules the following meeting:

Name: Human Nutrition Board of Scientific Counselors.

Date: August 9–10, 1984.

Time and Place: August 9, 1984, 1:00–5:00 p.m.; Room 212–E, Administration Building, U.S. Department of Agriculture, Independence Avenue, between 12th and 14th Streets SW., Washington, D.C.; August 10, 1984, 8:30 a.m.–3:00 p.m.; Crystal 5, Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review and advise the Department as to the scope and quality of the research carried out at the Human Nutrition Research Centers in Houston, Texas; Boston, Massachusetts; San Francisco, California; Grand Forks, North Dakota; and Beltsville, Maryland. The board will also prepare an annual report of its review, including evaluation and recommendations, to be submitted to the Secretary of Agriculture.

Contact Person: Anne Winslow, Confidential Assistant, Office of the Assistant Secretary for Science and Education, U.S. Department of Agriculture, Room 217–W, Administration Building, Washington, D.C. 20250, telephone (202) 447–5035.

Done at Washington, D.C., this 18th day of June, 1984.

Orville G. Bentley,

Assistant Secretary, Science and Education.

[FR Doc. 84–16086 Filed 6–21–84; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Lincoln National Forest Grazing Advisory Board; Meeting

The Lincoln National Forest Grazing Advisory Board will meet at 9:00 a.m., July 12, 1984, at the Community Center at Mayhill. The purpose of the meeting is to provide grazing permittees of the Lincoln National Forest means for offering advice and recommendations concerning:

(a) Review of FY84 Improvement Projects;

(b) Status of FY84 Allotment Management Plans;

(c) Management of allotments within the 1974 Spring Burn.

Other items to be discussed include off-road vehicle use, spruce budworm project, ten-year grazing permits, New Mexico Department of Game and Fish regulations related to off-road vehicle use for retrieval of game animals.

Dated: June 12, 1984.

Donald E. Cunico,

Acting Forest Supervisor.

[FR Doc. 84–16560 Filed 6–21–84; 8:45 am]

BILLING CODE 3410–11–M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended June 15, 1984

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
June 11, 1984	42194	Air Via, Inc., c/o John W. Simpson, Kelley Drye & Vaughan, 1333 New Hampshire Avenue, NW., Washington, D.C. 20036. Amendment No. 1 to the Application of Air Via, Inc. in response to Order 84–5–93, May 31, 1984. Answer may be filed by July 9, 1984.
June 14, 1984	42286	Zas Airlines of Egypt, c/o Howard G. Feldman, Seamon, Wasko & Ozment, 1211 Connecticut Avenue, NW., Washington, D. C. 20036. Application of Zas Airlines of Egypt pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit authorizing the carriage of property and mail between a point or points in Egypt and New York via; (a) Greece, Italy, Switzerland, France, Ireland and the Netherlands. (b) Greece, Italy, Switzerland, Federal Republic of Germany, United Kingdom, Ireland and the netherlands. Zas also requests that it be granted authority to operate cargo charters subject to the Board's rules and regulations. Answer may be filed by July 12, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–16778 Filed 6–21–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84-6-49; Docket 41961]

Application of Airwest International, Inc., for Certificate

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting Fitness Investigation.

SUMMARY: The Board is instituting the *Airwest International Fitness Investigation* to determine if Airwest International is fit to provide interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file requests for additional evidence and requests to intervene should do so in Docket 41691 by July 5, 1984.

ADDRESSES: Request for additional evidence and requests to intervene should be filed in Docket 41691 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Copies of such filings should also be served on Airwest International, Inc.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-6-49 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-6-49 to that address.

By the Bureau of Domestic Aviation: June 15, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-16779 Filed 6-21-84; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee Meeting; Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Florida Advisory Committee to the Commission originally scheduled for June 29, 1984, at the Tampa Airport Marriott, Tampa, Florida (FR Doc. 84-15650 on page 24154) has been cancelled.

Dated at Washington, DC, June 18, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-16678 Filed 6-21-84; 8:45 am]

BILLING CODE 6335-01-M

Arkansas Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 5:00 p.m., on July 17, 1984, at the Riverfront Hilton Inn, Argenta West, 2 Riverfront Place, North Little Rock, Arkansas 72114. The purpose of the meeting is to discuss program plans.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Southwestern Regional Office at (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 19, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-16777 Filed 6-21-84; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:30 a.m. and will end at 2:00 p.m., on July 13, 1984, at the Springfield and Sangamon County Community Action Inc., 1101 South 15th Street, Conference Room, Springfield, Illinois 62703. The purpose of the meeting is to plan new projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Midwestern Regional Office at (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 19, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-16775 Filed 6-21-84; 8:45 am]

BILLING CODE 6335-01-M

Indiana Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 6:30 p.m. on July 19, 1984, and will end at 12:00 noon, July 20, 1984, at the Fort Wayne Public Library, 901 Webster Street, Fort Wayne, Indiana 46802. The purpose of the meeting is to discuss the status of the proposed block grant project and followup plans respecting the Fort Wayne School desegregation issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Midwestern Regional Office at (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 18, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-16679 Filed 6-21-84; 8:45 am]

BILLING CODE 6335-01-M

Nevada Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 2:00 p.m., on July 13, 1984, at the Sands Hotel and Casino, Board Room, Arlington at 3rd Street, Reno, Nevada 89501. The purpose of the meeting is to obtain information on civil rights issues in Washoe County.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Western Regional Office at (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 19, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-16774 Filed 6-21-84; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights,

that a meeting of the West Virginia Advisory Committee to the Commission will convene at 11:45 a.m. and will end at 3:00 p.m., on July 20, 1984, at the West Virginia Human Rights Commission, Conference Room, 1036 Quarrier Street, 215 Professional Building, Charleston, West Virginia 25301. The purpose of the meeting is to discuss plans for future projects of the Committee.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Mid-Atlantic Regional Office at (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 19, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–16776 Filed 6–21–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration, Import Administration

[A–412–012]

Antidumping Postponement of Final Determination; Choline Chloride From the United Kingdom

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for petitioner that the final determination on choline chloride from the United Kingdom be postponed to facilitate a thorough investigation of his sales below cost of production allegation, and that the Department has determined to postpone its final determination as to whether sales of choline chloride from the United Kingdom have occurred at less than fair value, until not later than September 12, 1984.

EFFECTIVE DATE: June 22, 1984.

FOR FURTHER INFORMATION CONTACT: David Johnston, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–2239.

SUPPLEMENTARY INFORMATION: On December 5, 1983, the Department of Commerce published a notice in the **Federal Register** that it was initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether choline chloride from the United Kingdom is being, or is likely to be, sold at less than fair value. On April 30, 1984, the Department published a negative preliminary determination (49 FR 18345). The notice stated that if this investigation proceeded normally we would make a final determination by July 9, 1984. Section 735(a)(2)(B) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value if the petitioner requests an extension after a negative preliminary determination.

Accordingly, the Department will issue a final determination in this case not later than September 12, 1984. The hearing originally scheduled for May 24, 1984 has been postponed. The new hearing date is August 6, 1984, at 2:00 p.m., in Room 3708, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number, (2) the number of participants, (3) the reason for attending, and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by August 30, 1984. All written views should be filed in accordance with 19 CFR 353.46, at the above address and in at least 10 copies not later than the date established for the submission of post-hearing briefs which will be announced at the hearing. If no hearing is held, all written views should be submitted not later than August 20, 1984.

This notice is published pursuant to section 735(d) of the Act.

Dated: June 14, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84–16732 Filed 6–21–84; 8:45 am]

BILLING CODE 3510–DS–M

[A–506–032]

Large Power Transformers From Japan; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on large power transformers from Japan. The review covers two of the three known manufacturers of this merchandise and consecutive periods from July 1, 1980 through May 31, 1983.

As a result of the review, because both firms provided inadequate responses to the Department's questionnaire, the Department has preliminarily determined to assess dumping duties on those firms' sales during the periods using the best information available.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 22, 1984.

FOR FURTHER INFORMATION CONTACT: Michael J. Altier or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 26498) the final results of its last administrative review of the antidumping finding on large power transformers from Japan (37 FR 11773, June 14, 1972) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of large power transformers ("transformers"), that is, all types of transformers rated 10,000 KVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors,

autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination rectifier-transformer units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. Transformers covered by this finding are currently classifiable under items 682.0755, 682.0765, and 682.0775 of the Tariff Schedules of the United States Annotated.

The review covers two of the three known manufacturers of Japanese large power transformers, Hitachi, Ltd. and Tokyo Shibaura Electric Co., Ltd. ("Toshiba") and consecutive periods from July 1, 1980 through May 31, 1983. We will cover the third firm, Fuji Electric Co., Ltd., in a separate notice.

Hitachi and Toshiba failed to provide adequate responses to our questionnaire. For those non-responsive firms we used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available includes information from the U.S. Customs Service and the petitioner, Westinghouse Electric Corporation.

Preliminary Results of the Review

As a result of our reveiw, we preliminarily determine that the following margins exist:

Manufacturer	Period	Margin (percent)
Hitachi	07/01/80–07/23/81	12.09
	07/24/81–05/31/83	[1] 12.09
Toshiba	07/01/80–10/17/81	[1] 8.65
	10/18/81–05/31/82	27.50
	06/01/82–05/31/83	[1] 27.50

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the most recent of the above margins shall be required for those firms. For any future entries from a new firm not covered in this or prior reviews, whose first shipments of transformers occurred after May 31, 1983 and who is unrelated to any reviewed firm, a cash deposit of 10.63 percent shall be required. These deposit requirements are effective for all shipments of Japanese large power transformers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: June 18, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-16642 Filed 6-21-84; 8:45 am]

BILLING CODE 3510-DS-M

Perchlorethylene From France; Preliminary Results of Administrative Review of Antidumping Finding and Intent To Revoke

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding and intent to revoke.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on perchlorethylene from France. The review covers the one known exporter of this merchandise to the United States, Atochem, and the period May 19, 1983 through August 19, 1983, the date of publication of our tentative determination to revoke. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

The Department intends to revoke the finding on perchlorethylene from France. Interested parties are invited to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: June 22, 1984.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 4029) the final results of its last administrative review of the antidumping finding on perchlorethylene from France (44 FR 29045, May 18, 1979) and announced its intent to conduct immediately the next review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of perchlorethylene, including technical grade and purified grade perchlorethylene. Perchlorethylene is a clear water-white liquid at ordinary temperature with a sweet odor and is completely capable of being mixed with most organic liquids. It is a chlorinated solvent used mainly for drycleaning of clothing, but is also used in other applications such as vapor degreasing of metals. Such merchandise is currently classifiable under item 429.3400 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of French perchlorethylene to the United States, Atochem, and the period May 19, 1983 through August 19, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review and Intent To Revoke

As a result of our review, we intend to revoke the finding on perchlorethylene from France. Atochem has not shipped this merchandise to the United States from May 18, 1979, the date of the finding, through August 19, 1983, the date of our tentative determination to revoke.

As provided for in § 353.54(e) of the Commerce Regulations, Atochem has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding (as an order) if circumstances develop which indicate that perchlorethylene manufactured by Atochem and thereafter imported into the United States is being sold by Atochem at less than fair value. If this revocation is made final it will apply to all unliquidated entries of this merchandise

entered, or withdrawn from warehouse, for consumption on or after August 19, 1983. The Department shall instruct the Customs Service to continue to suspend the liquidation of entries pending the Department's final determination of whether or not to revoke the finding.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review, intent to revoke, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: June 15, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-16604 Filed 6-21-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-061]

Precipitated Barium Carbonate From the Federal Republic of Germany; Final Results of Adminitrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping duty order.

SUMMARY: On February 24, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany. The review covers the two known manufacturers and/or exporters of this merchandise to the United States and generally the period February 18, 1981 through June 30, 1982.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. At the request of E. Merck, a manufacturer/exporter, we held a public hearing on April 16, 1984. Based on our analysis of the comments received, the final results remain unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: June 22, 1984.

FOR FURTHER INFORMATION CONTACT: John M. Andersen or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 6957-8) the preliminary results of its administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany (46 FR 32864, June 25, 1981). The Department has now completed that adminstrative review.

Imports covered by the review are shipments of precipitated barium carbonate, a chemical compound ($BaCO_3$), currently classifiable under item 472.0600 of the Tariff Schedules of the United States Annotated.

The review covers the two known manufacturers and/or exporters of German precipitated barium carbonate to the United States and generally the period February 18, 1981 through June 30, 1982.

Analysis of Comments Received

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. At the request of one of the respondents, E. Merck, we held a public hearing on April 16, 1984.

Comment 1: Merck and EM Science, Merck's subsidiary, contend that prices for sales to the United States were established in good faith because those prices were set by market conditions in the United States for barium carbonate. Such prices were acceptable to Merck because they included a reasonable margin of profit.

Department's Position: Dumping is not determined by profit margins, or the lack thereof. Under certain market conditions, a firm may actually maximize profits by engaging in price discrimination in various markets. Sales at less than fair value occur if a firm's ex-factory packed price to the United States is less than the foreign market value of such or similar merchandise.

Comment 2: Merck maintains that its exports did not injure any U.S. industry. Moreover, Merck points out that it manufactures several grades of barium carbonate. Guaranted reagent grade is the only grade sold by Merck through EM Science. Merck argues that guaranteed reagent grade barium carbonate was not actually covered by the original antidumping order.

Department's Position: Questions concerning injury to a United States industry are within the jurisdiction of the U.S. International Trade Commission and are not of concern to the Department.

On matters concerning the scope of a finding or order, our primary bases for determining whether a product is covered are the descriptions of the products contained in the petition, the initial investigation, and the International Trade Commission, Treasury, or Commerce determinations.

When, because of vagueness in the description of the product, we cannot make a determination concerning the scope of a finding or order based upon the documentation mentioned above, we use four additional criteria to make a determination on scope.

These criteria are:

1. The physical characteristics of the merchandise;
2. The uses for which the merchandise is imported;
3. The expectations of the ultimate purchaser;
4. The channels of trade in which the merchandise moves.

With respect to guaranteed reagent grade barium carbonate, we did not consider it necessary to use the four criteria because the order clearly covers all precipitated barium carbonate.

Comment 3: Merck argues that the Department failed to take into account that the home market sales were of pre-packaged precipitated barium carbonate in quantities of 250 grams to one kilo, whereas the United States sales were of bulk quantities in fifty kilo drums. The pre-packed quantities sold in the home market are directly sold to laboratories for consumption, whereas the larger quantity U.S. sales are to bulk users who reanalyze the chemical, repackage it with their own labels, or use the chemical in the manufacture of other products. Thus, the Department's chosen comparisons are inappropriate.

Department's Position: Merck has not adequately quantified an adjustment based on differences in levels of trade, as required by § 353.19 of the Commerce Regulations, now shown either evidence of quantity discounts or cost savings due to the larger quantities sold to the U.S.

Therefore, we have not made an adjustment to the foreign market value for differences in level of trade or differences in quantities.

Final Results of the Review

After analysis of all the comments received, the final results of our review are the same as those presented in the preliminary results of review, and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Kali-Chemie AG	6/25/81–6/30/82	0
E. Merck	2/18/81–6/30/82	39.36

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after June 30, 1982, and who is unrelated to any reviewed firm, a cash deposit of 39.36 percent shall be required. These deposit requirements are effective for all shipments of German percipitated barium carbonate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final reuslts of the next administrative review. The Department intends to begin immediately the next adminstrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: June 14, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84–16695 Filed 6–21–84; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–014]

Tuners (of the Type Used in Consumer Electronic Products) From Japan; Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding and tentative determination to revoke in part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on tuners (of the type used in consumer electronic products) from Japan. The review covers 39 of the 65 known manufacturers and/or exporters of this merchandise to the United States currently covered by the finding and various periods through November 30, 1982. The review indicates the existence of dumping margins in particular periods for certain firms.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of their sales during the periods of review. Where company-supplied information was inadequate or firms failed to respond to our questionnaire, we used the best information available for assessment and estimated antidumping duties cash deposit purposes.

The Department has also tentatively determined to revoke the finding with respect to Alps Electric Co., Ltd., Hitachi Ltd., Mitsumi Electric Co., Ltd., and Nippon Electric Company.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: June 22, 1984.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1970, the Treasury Department ("Treasury") published in the **Federal Register** as Treasury Decision 70–257 (35 FR 18914) an antidumping finding with respect to tuners (of the type used in consumer electronic products) from Japan. Susequently, Treasury modified the finding to exclude tuners produced and/or sold by the following companies:

Matsushita Electric Industrial Co., Ltd. and Matsushita Electric Trading Co., Ltd., T.D. 75–80 (40 FR 14591, 4/2/75);

Victor Company of Japan Ltd., T.D. 75–80 (40 FR 14591, 4/2/75);

Sanyo Electric Co., Ltd. and Sanyo Electric Trading Co., Ltd., T.D. 76–215 (41 FR 32421, 8/3/76);

Tokyo Shifaura Electric Co., Ltd. (Toshiba), T.D. 76–143 (41 FR 21185, 5/24/76);

Sony Corporation of Japan, T.D. 77–26 (42 FR 2501, 1/12/77).

On January 19, 1977, Treasury published a tentative revocation of the antidumping finding in the **Federal Register** (42 FR 3725).

On January 1, 1980, the provisions of title I of the Trade Agreements Act of 1979 became effective. Title I replaced the provisions of the Antidumping Act of 1921 ("the 1921 Act") with a new title VII to the Tariff Act of 1930 ("the Tariff Act"). On January 2, 1980, the authority for administering the antidumping duty law was transferred from Treasury to the Department of Commerce ("the Department"). The Department published in the **Federal Register** of March 28, 1980 (45 FR 20511) its intent to conduct administrative reviews of all outstanding dumping findings. On February 8, 1984, the Department published in the **Federal Register** (49 FR 4811) a partial revocation of the finding with regard to merchandise from the Sharp Corporation. As required by section 751 of the Tariff Act, the Department has now conducted an administrative review of the antidumping finding on tuners (of the type used in consumer electronic products) from Japan. The substantive provisions of the 1921 Act and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of tuners (of the type used in consumer electronic products) consisting primarily of television receiver tuners and tuners used in radio receivers such as household radios, stereo and high fidelity radio systems, and automobile radios. They are virtually all in modular form, aligned, and ready for simple assembly into the consumer electronic product for which they were designed. The term "consumer electronic products" relates to television sets, radios, and other electronic products of a type commonly bought at retail by household

consumers, whether or not used in or around the household. Excluded are complete stereophonic tuners which are consumer products themselves, but not excluded are modular-type stereophonic tuners, which are intended to become component parts of such stereophonic tuners. These tuners are currently classifiable under items 685.1700 and 685.2976 of the Tariff Schedules of the United States Annotated.

The review covers 39 of the 65 known manufacturers and/or exporters of Japanese tuners to the United States currently covered by the finding and various periods through November 30, 1982. We are deferring our review of the remaining 26 firms until a subsequent administrative review.

Seventeen firms failed to respond to our questionnaire or provided inadequate responses to our questionnaire for certain periods. We could not locate three firms. For those 20 non-responsive firms we used the best information available to determine the assessment and estimated antidumping duties cash deposit rates. The best information available is the highest rate for responding firms with shipments during the applicable period.

Nineteen firms did not ship this merchandise to the United States during certain periods. For these firms the estimated antidumping duties cash deposit rate will be the last margin found for each firm or the margin found for the fair value investigation.

Treasury's tentative revocation of the finding was based on reports of *de minimis* antidumping assessments on shipments of this merchandise to the United States by only 12 firms. Subsequent review of entry records indicates that a number of shipments during periods prior to the date of the tentative revocation (January 19, 1977), covered by assessment instructions ("master lists") issued prior to January 1, 1980, have not been appraised, and the extent of possible antidumping duties liabilities is unknown. Therefore, we will not consider Treasury's tentative revocation of the entire finding during this administrative review.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), as defined in section 772 of the Tariff Act or sections 203 and 204 of the 1921 Act, as appropriate. Purchase price was based on the f.o.b., packed price to unrelated purchasers in the United States or to a Japanese trading company for export to the United States. Exporter's sales price was based on the delivered, packed price to the first unrelated purchaser in the United States. Where applicable, we made deductions for foreign and U.S. inland freight, ocean freight, insurance, foreign shipping charges, sales commissions to unrelated parties, U.S. import duties, U.S. brokerage charges, and the U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act or section 205 of the 1921 Act, as appropriate, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the delivered, packed price to unrelated purchasers with adjustments, where applicable, for foreign inland freight and differences in credit, advertising, packing, and the physical characteristics of the merchandise. We made further adjustments for indirect selling expenses to offset U.S. selling expenses for ESP calculations. We denied claimed adjustments for education expenses and a "subsidy," because they are not selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Tentative Determination To Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Aimor Electronics Co., Ltd.	04/01/70-07/27/76	1.9
	07/28/76-11/30/81	23.66
Aiwa Co., Ltd.	12/01/72-11/30/82	[1]0
Akai Electric Co., Ltd.	04/01/70-12/31/79	[1]1.9
Alpine Electronics, Inc. (formerly Alps-Motorola.	04/01/70-01/19/77	[1]1.9
Alps Electric Co., Ltd.	01/20/77-11/30/82	0
AVNET International, Inc. (formerly Channel Master).	01/01/76-11/30/82	[1]0
Beltek	04/01/70-07/27/76	1.9
	07/28/76-11/30/82	23.66
Chinon Industries Inc.	04/01/70-11/30/81	[1]1.9
Chuomusen Co., Ltd.	04/01/70-01/19/77	[1]1.9
Clarion Shoji	01/01/75-07/27/76	1.9
	07/28/76-01/19/77	23.66
Crown Radio Corp.	04/01/70-12/31/74	[1]1.9DP1.9
	01/01/75-07/27/76	
Daisei Electric Co., Ltd.	04/01/70-06/30/80	[illegible]
Dai-Ichi Shoji Co., Ltd.	04/01/70-04/30/76	[illegible]
Fujitsu Ten Limited	04/01/70-07/27/76	[illegible]
	07/28/76-11/30/81	
Kanematsu-Gosho Ltd.	02/01/77-11/30/82	
Kiyo Inc.	04/01/70-07/27/76	[illegible]
	07/28/76-11/30/81	
Kraco Enterprises	04/01/70-07/27/76	[illegible]
	07/28/76-11/30/82	
Marantz Japan, Inc. (formerly Standard Radio Corp.).	01/01/75-01/19/77	[illegible]
Maruberni Corp. (formerly Maruberni-Iida Co., Ltd.).	04/01/70-11/30/81	[illegible]
	12/01/81-11/30/82	
Maruwa Electronic & Chemical Co., Ltd.	01/01/75-07/27/76	[illegible]
	07/28/76-11/30/82	
Midland Overseas Ltd.	04/01/70-01/19/77	[illegible]
	01/20/77-11/30/82	
Mitsumi Electric Co., Ltd.	01/20/77/11-30/82	0
Murata Manufacturing Co., Ltd.	01/01/73-11/30/82	11.9
Nansei Denki	04/01/70-07/27/76	1.9
	07/28/76-12/31/80	[illegible]
Nichimen Co., Ltd.	06/01/71-07/27/76	[illegible]
	07/28/76-05/31/77	[illegible]
Nihon Tuner K.K.	01/01/76-07/27/76	[illegible]
	07/28/76-11/30/82	
Nippon Rokkl	04/01/70-07/27/76	1.9
	07/28/76-11/30/82	23.66
Orion Electric Co., Ltd.	04/01/70-01/19/77	[1]1.9
Pioneer Electronic Corp.	04/01/70-12/31/77	[illegible]
Roadstar Corp.	04/01/70-07/27/76	[illegible]
	07/28/76-11/30/82	23.66
The Rotel Co., Ltd. (formerly Roland Electronics Co., Ltd.).	02/01/77-11/30/82	[1]0
Sanshin Electronics Co., Ltd.	02/01/77-11/30/82	23.66
Shibe Electric Co., Ltd.	04/01/70-07/27/76	[illegible]
	07/28/76-11/30/82	
Toa Electric Co., Ltd.	01/20/77-11/30/82	[illegible]
Tokyo Cabinet Kogyo Co., Ltd.	04/01/70-07/27/76	[illegible]
	07/28/76-11/30/81	23.66
	12/01/81-11/30/82	[illegible]
Tuner Shoji Co., Ltd.	01/20/77-11/30/82	23.66
Waken Electronics	04/01/70-07/27/76	1.9
	07/28/76-01/19/77	[illegible]

[1]No shipments during the period.

The Department has concluded that Alps Electric Company, Ltd., Hitachi Ltd., Mitsumi Electric Co., Ltd., and Nippon Electric Company (NEC), made all sales of tuners (of the type used in consumer electronic products) to the United States at not less than fair value for at least a two-year period. As provided for in § 353.54(e) of the Commerce Regulations, the firms have agreed in writing to an immediate suspension of liquidation and reinstatement in the finding if circumstances develop which indicate that tuners manufactured and exported to the United States by Alps, Hitachi, Mitsumi, or NEC are being sold at less than fair value.

Therefore, we tentatively determine to revoke the finding on Japanese tuners (of the type used on consumer electronic products) with regard to Alps, Hitachi, Mitsumi, and NEC. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Hitachi or NEC and entered, or withdrawn from warehouse, for consumption on or after January 19, 1977, and it will apply to all unliquidated entries of this merchandise manufactured and exported by Alps or Mitsumi and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, the Department shall require a cash deposit of estimated antidumping duties based upon the most recent of the above margins for those firms. For any future entries from a new exporter not covered in this review, whose first shipments of tuners (of the type used in consumer electronic products) occurred after November 30, 1982, and who is unrelated to any reviewed firm, we shall not require a cash deposit. These deposit requirements are effective for all shipments of Japanese tuners (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: June 16, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-16697 Filed 6-21-84; 8:45 am]
BILLING CODE 3510-DS-M

[A429-101]

Unrefined Montan Wax From the German Democratic Republic; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping duty order.

SUMMARY: On April 30, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke the antidumping duty order on unrefined montan wax from the German Democratic Republic. The review covers the one known exporter of this merchandise to the United States and the period September 1, 1982, through August 31, 1983.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke. We received no comments. Based on our analysis, the final results of our review are the same as the preliminary results.

EFFECTIVE DATE: June 22, 1984.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 18843-18844) the preliminary results of its administrative review and tentative determination to revoke the antidumping duty order on unrefined montan wax from the German Democratic Republic (the GDR) (46 FR 45177-45178, September 10, 1981). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of unrefined montan wax which is a non-oxidized mineral extracted from lignite, not advanced beyond extraction or cleaning by solvent. This product is primarily used as a flow agent in one-time carbon ink formulas. It is also used for producing polishes, mold release agents for casting, and is currently classifiable under item 494.2000 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of unrefined montan wax from the GDR to the United States, VEB Braunkohlenwerk "Gustav Sobottka", and the period September 1, 1982, through August 31, 1983.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as the preliminary results, and we determine that no dumping margins exist for the period.

The Department shall instruct the Customs Service not to assess antidumping duties on appropriate entries. Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, on any shipments of unrefined montan wax from the GDR entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and this requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin

immediately the next administrative review.

We will examine exports by Gustav Sobottka made during the period September 1, 1983, through April 30, 1984, the date of our tentative determination to revoke the order, in our next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: June 15, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-16086 Filed 6-21-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-021]

Countervailing Duty Order; Certain Carbon Steel Products From Brazil

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations, the United States Department of Commerce (the Department) and the United States International Trade Commission (ITC) have determined that certain carbon steel products from Brazil are receiving benefits which constitute subsidies within the meaning of the countervailing duty law and that certain carbon steel products from Brazil are materially injuring a United States industry. Additionally, although the Department found that "critical circumstances" existed with respect to certain carbon steel products from Brazil, the ITC found that "critical circumstances" did not exist in this case. Therefore, based on these findings, all entries, or withdrawals from warehouse, for consumption, of certain carbon steel products from Brazil made on or after February 10, 1984, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determinations" in the **Federal Register**, will be liable for the possible assessment of countervailing duties. Furthermore, a cash deposit of estimated countervailing duties must be made on all such entries, and withdrawals from warehouse, for consumption, on or after the date of publication of this order in the **Federal Register**.

Since the ITC made a negative finding regarding "critical circumstances" under section 705(b)(4)(A) of the Tariff Act of 1930, as amended (the Act) [19 U.S.C. 1671d(b)(4)(A)], the suspension of liquidation, previously ordered 90 days retroactively from the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determinations" in the **Federal Register**, is no longer in effect. Therefore, customs officials will be directed to terminate any retroactive suspension of liquidation, release any bond or other security, refund any cash deposit, and liquidate all entries, or withdrawals from warehouse, for consumption, of certain carbon steel products from Brazil made before February 10, 1984.

EFFECTIVE DATE: June 22, 1984.

FOR FURTHER INFORMATION CONTACT: Alain Letort, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5050.

Scope of Investigations

The merchandise covered by this order consists of certain carbon steel products, which are described in the Appendix to this notice.

In accordance with section 703 of the Act (19 U.S.C. 1671b), on February 10, 1984, the Department published its preliminary determinations that there was reason to believe or suspect that certain carbon steel products from Brazil received benefits which constitute subsidies within the meaning of the countervailing duty law (49 FR 5157). On March 29, 1984, in accordance with section 703(e) of the Act [19 U.S.C. 1671b(e)], the Department published its preliminary determination that "critical circumstances" existed with respect to imports of certain carbon steel products from Brazil (49 FR 13726). In accordance with section 705 of the Act (19 U.S.C. 1671d), on April 26, 1984, the Department published its final determinations that these imports are being subsidized and that "critical circumstances" exist with respect to these imports (49 FR 17988).

On June 11, 1984, in accordance with section 705(d) of the Act [19 U.S.C. 1671d(d)], the ITC notified the Department that such importations are materially injuring a United States industry. The ITC made a negative determination regarding "critical circumstances."

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 706(a)(1) of the Act [19 U.S.C. 1671e(a)(1)], countervailing duties equal to the amount of the net subsidy for all entries of certain carbon steel products from Brazil. These countervailing duties will be assessed on certain carbon steel products entered, or withdrawn from warehouse, for consumption, on or after February 10, 1984, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determinations" in the **Federal Register**.

The Department further directs United States Customs officers to terminate any retroactive suspension of liquidation, release any bond or other security, refund any cash deposit, and liquidate all entries, or withdrawals from warehouse, for consumption, of certain carbon steel products from Brazil made before February 10, 1984.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimated net subsidy as listed in the table below:

Manufacturer/producer/exporter	Ad valorem rate (percent)
Companhia Siderurgica Paulista (COSIPA)	[illegible]
Companhia Siderurgica Nacional (C.S.N.)	82.18
Usinas Siderurgicas de Minas Gerais (USI-MINAS)	17.49
All other manufacturers/producers/exporters	56.35

The amounts listed are expressed as a percentage of the FOB price.

These determinations constitute a countervailing duty order with respect to certain carbon steel products from Brazil, pursuant to section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

We have deleted from the Commerce Regulations Annex 1 to 19 CFR Part 355, which listed countervailing duty findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that it is commencing an administrative review of this order on June 22, 1984. For further information regarding this review,

contact Mr. Richard Moreland (202) 377–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

Dated: June 17, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix

For purposes of these investigations:

1. The term "*carbon steel plate in coil*" covers the following hot-rolled carbon steel products. Hot-rolled carbon steel plate in coils is a flat-rolled carbon steel product in coils, 0.1875 inch or more in thickness and over 8 inches in width, currently provided for in item 607.6610 of the *Tariff Schedules of the United States, Annotated (TSUSA)*.

2. The term "*hot-rolled carbon steel sheet*"[1] covers the following hot-rolled carbon steel products. Hot-rolled carbon steel sheet is a flat-rolled carbon steel product, whether or not corrugated or crimped and whether or not pickled; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; 0.1875 inch or more in thickness and over 8 inches in width and pickled, as currently provided for in item 607.8320 of the *TSUSA;* or under 0.1875 inch in thickness an over 12 inches in width, whether or not pickled, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*. PLEASE NOTE THAT THE DESCRIPTION OF HOT-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS PLATE IN THE *TSUSA*.

3. The term "*cold-rolled carbon steel sheet*" [1] covers the following cold-rolled carbon steel products. Cold-rolled carbon steel sheet is a flat-rolled carbon steel product, whether or not corrugated or crimped, whether or not painted or varnished and whether or not pickled; not cut, not pressed and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width, and 0.1875 or more in thickness, as currently provided for item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inches in thickness; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*. PLEASE NOTE THAT THE DESCRIPTION OF COLD-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS, CLASSIFIED AS "PLATE" IN THE *TSUSA*.

[FR Doc. 84-16098 Filed 6-21-84; 8:45 am]

BILLING CODE 3510-DS-M

[1] "Sheet" is a generic term used in the steel industry for certain flat-rolled products. We have used the terms "hot-rolled carbon steel sheet" and "cold-rolled carbon steel sheet" for purposes of clarity. These products are also known as "hot-rolled carbon steel flat-rolled products" and "cold-rolled carbon steel flat-rolled products."

[C-201-018]

Preliminary Affirmative Countervailing Duty Determination; Lime from Mexico

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers or exporters in Mexico of lime. The estimated net bounty or grant for each firm is listed in the "Suspension of Liquidation" section of this notice. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of lime from Mexico which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on this merchandise in the amount equal to the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination by August 28, 1984.

EFFECTIVE DATE: June 22, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth Haldenstein or Vincent Kane, Office of Investigations, Import Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–4136 or 5414.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we have determined that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers or exporters in Mexico of Lime, as described in the "Scope of Investigation" section of this notice. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX)
- Import Duty Reductions and Exemptions
- Fund for Industrial Development (FONEI)
- Preferential Federal Tax Incentives (CEPROFI)
- Guarantee and Development Fund for Medium and Small Industries (FOGAIN)
- Accelerated Depreciation Allowances
- Certain Equity Infusions
- Loans from the Mexican Trust for Non-Metallic Minerals.

We preliminary determine the estimated bounty or grant to be the rate specified for each company in the "Suspension of Liquidation" section of this notice.

Case History

On March 21, 1984, we received a petition from the Paul Lime Division of Can-Am Corporation, Chemical Lime Inc., Genstar Lime Company, and the United Cement, Lime, Gypsum and Allied Workers International Union, AFL-CIO/CLC, filed on behalf of U.S. lime manuacturers. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers or exporters in Mexico of lime receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. Because the subject merchandise is nondutiable and there is no "international obligation" within the meaning of section 303(a)(2) of the Act which requires an injury determination for nondutiable merchandise from Mexico, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten to cause material injury to a U.S. insustry.

We presented a questionnaire concerning the allegations to the government of Mexico in Washington, D.C. on April 10, 1984. On May 21 and 29, 1984, we received responses to the questionnaire.

Scope of Investigation

The products covered by this investigation are calcium oxide (CaO), commonly called quicklime or lime, and calcium hydroxide ($Ca(OH)_2$), commonly called hydrated lime or hydrate. Hydrated lime is currently classified under 512.1100 of the *Tariff Schedules of the United States Annotated* (TSUSA) and lime, other than hydrated, is currently classified under TSUSA item number 512.1400.

There are three known manufacturers and exporters in Mexico of lime which export to the United States and eight other producers that have applied for exclusion from this investigation. We have received information from the government of Mexico regarding Sonocal, S.A., Mexicana de Cobre, S.A., Productos Calizos de Baja California, S.A. (PCBC), Incalpa, S.A., Materiales BYM, S.A., Cales de Chiapas, S.A., Cal de Apasco, S.A., Cales de Puebla, S.A., Materiales Titan, S.A., Industrias Quimicas de Yucatan, S.A. (IQY), and Calteco, S.A.

The period for which we are measuring benefits is the most recent fiscal or calendar year for which we have complete data, calendar year 1983. In their responses, the government of Mexico and respondents provided data for the applicable period.

Analysis of Programs

Throughout this notice, we have applied to the facts of the current investigation general principles described in detail in the Subsidies Appendix of the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina"; 49 FR 18006 (April 26, 1984). As per the Subsidies Appendix, we have used the national average commercial rate as the benchmark for short-term peso-denominated borrowing. For this purpose, we chose the nominal rate published monthly by the Banco de Mexico in the *Indicadores Economicos* ("IE rate"). These rates are the weighted averages of the rates charged by commercial banks on peso loans. Because we lack information to construct company-specific long-term benchmarks, we have also used this benchmark on long-term peso loans as the best information available. The "IE" rate is a representative benchmark for both short and long-term borrowing rates because Mexico's recent inflationary experience has virtually eliminated all long-term fixed-rate financing. Long-term loans are generally provided at variable short-term interest rates.

As specified in 19 CFR 355.28(a)(3), "if separate enterprises have received materially different benefits, such differences shall also be estimated and stated." Because of the differences in the size and structure of the companies under investigation and in company usage of the programs determined to confer bounties or grants, we have calculated company-specific rates.

We have consistently held that government provision of, or assistance in, obtaining capital or debt does not *per se* constitute a subsidy. Government equity purchases or financial backing bestows a countervailable benefit only when it is on terms inconsistent with commercial considerations. To determine if such action is commercially unsound, we review and assess financial data for the company in question. With regard to whether a company is a reasonable equity investment (a condition we have termed "equityworthiness"), we examined the financial ratios, operating profits or losses and other relevant data to evaluate the company's current and future ability to earn a reasonable rate of return on equity investments.

Based on our examination of these factors with respect to Sonocal, a company alleged to be unequityworthy, we preliminarily determined that this company was unequityworthy as of 1981. Our examination of these factors for Mexicana de Cobre revealed preliminarily that this company has been equityworthy.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers or exporters in Mexico of lime under the following programs:

A. FOMEX

FOMEX is a trust established by the government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department with the Bank of Mexico acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions, which establish contracts for lines of credit with manufacturers and exporters. On July 27, 1983, FOMEX was formally incorporated into the National Bank of Foreign Trade.

In order for a company to be eligible for FOMEX financing for exports, the following requirements must be met: (1) The product to be manufactured must be included on a list made public by FOMEX; (2) the company must have majority Mexican capital; (3) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (4) loans granted for pre-export must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the Bank of Mexico; and (5) the exporter must carry insurance against commercial risks to the extent of the loans. The maximum annual interest rate for FOMEX pre-export financing is 8 percent and for FOMEX export financing, 6 percent.

Sonocal received short-term export financing from FOMEX for exports to the U.S. of the subject merchandise. Since FOMEX export financing provides loans for export-related purposes at interest rates significantly less than those for comparable commercially available loans, we preliminarily determine that this program confers a bounty or grant upon the exportation of lime.

Sonocal has not paid either interest or principal on these loans, which were due to be repaid in early 1983. Because these loans have not been repaid to date, we treated them as zero interest rate loans. We used as our benchmark, for purposes of calculating the bounty or grant, the "IE" rate, as described *supra*. We allocated the benefit over the value of Sonocal's 1983 U.S. exports of lime and calculated a bounty or grant in the amount of 4.48 percent *ad valorem*.

B. Fund For Industrial Development (FONEI)

FONEI is a specialized financial development fund, administered by the Bank of Mexico, which grants long-term credit at below-market rates for the creation, expansion or modernization of enterprises in order to foster industrial decentralization and the efficient production of goods capable of competing in the international market. FONEI loans are available under various programs having different eligibility requirements.

Sonocal had one FONEI loan outstanding during the period for which we are measuring bounties or grants. It received the loan for plant expansion.

We have evidence that FONEI loans for plant expansion are only available to companies located outside of Zone IIIA (Mexico City and environs). Because such loans are limited to particular geographic regions and are made at below-market rates, we preliminarily determine that FONEI loans for plant expansion confer a bounty or grant upon Sonocal.

We have determined the benefits from this loan according to the methodology outlined in the Subsidies Appendix. We used as our benchmark the IE rate, as described *supra*. We allocated the benefit over Sonocal's total sales value of lime and determined a bounty or grant in the amount of 1.07 percent *ad valorem*.

C. CEPROFI

CEPROFIs are tax credits used to promote National Development Plan (NDP) goals, which include increased employment, encouragement of regional decentralization, and industrial development, particularly of small and medium sized firms.

CEPROFI certificates are tax certificates of fixed value which may be used for a five-year period to pay federal taxes. Certain CEPROFI certificates are granted for carrying out investments in "priority" industrial

activities; others are available to all industries on equal terms.

Industrials Quimicas de Yucatan received CEPROFIs for carrying out investments in priority industrial activities. These CEPROFIs were for investment to increase productivity. Because this type of CEPROFI is limited to a specific group of industries or to companies located in specific regions, we preliminarily determine that this program confers a bounty or grant.

Article 25 of the decree authorizing the issuance of CEPROFIs, published in the *Diario Oficial de la Federacion (Diario Oficial)* on March 6, 1979, provides for a 4 percent supervision fee. We determine that the 4 percent supervision fee is "paid in order to qualify for, or to receive" the CEPROFIs, and is therefore an allowable offset from the gross bounty or grant, as provided in section 771(6)(A) of the Act. Therefore, the benefit provided by CEPROFIs is the amount of the certificate received less the supervision fee.

We allocated the CEPROFI benefit over the total sales of Industrias Quimicas de Yucatan and determined a bounty or grant in the amount of 2.25 percent *ad valorem.*

D. Import Duty Reductions and Exemptions.

Petitioner alleged that lime exporters receive import duty reductions or exemptions on equipment used in the production of lime. Mexicana de Cobre received reductions on import duties for equipment used in manufacturing lime under a special tax agreement between it and the government of Mexico. Because this reduction was limited to a specific company, we preliminarly determine that it conferred a bounty or grant on Mexicana de Cobre. We calculated the benefit by dividing the amount of the reduction in 1983 by total sales of lime of the company to calculate a bounty or grant of 0.07 percent *ad valorem.*

E. Accelerated Depreciation Allowances

Petitioner alleged that the lime industry benefited from federal income tax reductions through accelerated depreciation.

For purposes of economic development, the Income Tax Department may grant accelerated depreciation allowances to industries in certain geographical regions or for designated industrial activities. Mexicana de Cobre used accelerated depreciation in 1983 under an agreement with the government of Mexico.

We preliminarily determine that accelerated depreciation allowances confer a bounty or grant because such allowances are limited to a specific group of industries or to companies located in specific regions.

To determine the benefit received under this program, we took, as best information available, the amount of tax savings realized by Mexicana de Cobre from accelerated depreciation in 1983 and allocated that amount over the company's total 1983 sales of lime. On this basis, we calculated a bounty or grant of 1.73 percent *ad valorem.* At verification we will seek information on the company's use of the program on its income tax return for the 1982 tax year, which was filed in 1983, following our policy of recognizing income tax benefits in the year when the tax return is actually filed.

F. Certain Equity Infusions

Petitioner alleged that the government of Mexico has provided bounties or grants through equity infusions to Mexican companies on terms inconsistent with commercial considerations. NAFINSA, a government-owned development bank, purchased stock in Sonocal, a company whose stock is not publicly traded, between 1976 and 1983. Using the criteria described in the "Analysis of Programs" section of this notice, we determined that Sonocal became an unequityworthy company as of 1981. Therefore, we preliminarily determine that the investments in 1981 and after confer a bounty or grant because they were made on terms inconsistent with commercial considerations.

We calculated the benefits from these purchases according to the methodologies outlined in the Subsidies Appendix. We applied the rate of return shortfall and allocated the amount of Sonocal's benefit over its total sales value for 1983. We used as our discount rate the "IE" rate, as described *supra.* We calculated a bounty or grant of 47.45 percent *ad valorem.* Government equity infusions in another lime company are described in the "Programs Determined Not to Confer Bounties or Grants" section of this notice.

G. Loans From the Mexican Trust for Non-Metallic Minerals

Sonocal received a loan from the Mexican Trust for Non-Metallic Minerals. Since this loan was provided at interest rates lower than those for comparable commercially available loans and appears to be limited to a specific industry or group of industries, we preliminarily determine that this loan conferred a bounty or grant on Sonocal.

Since this loan has variable interest rates, we treated the loan as a series of short-term loans. For purposes of this preliminary determination, we are using as our benchmark the IE rate, as described *supra.* We allocated the amount of the benefit over Sonocal's total 1983 sales value of lime and determined a bounty or grant of 1.44 percent *ad valorem.*

H. Guarantee and Development Fund for Medium and Small Industries (FOGAIN)

Productos Calizos de Baja California (PCBC), Materiales BYM, and Industrias Quimicas de Yucatan (IQY) received FOGAIN loans that had outstanding principal during the period of investigation. We preliminarily determine that the FOGAIN program confers a benefit which constitutes a bounty or grant within the meaning of the countervailing duty law upon the respondent lime companies. The FOGAIN program provides preferential financing at interest rates below prevailing commercial rates to all small and medium sized firms in Mexico. However, interest rates will vary depending upon: (a) Whether a small or medium sized business has a designated priority status, and (b) the geographical location of the business. Small and medium sized businesses with priority designation and located in specific zones targeted for industrial growth receive the most preferential rate. Medium sized businesses, not designated as priority and located in an area of controlled industrial growth, may receive the least preferential FOGAIN interest rate. We preliminarily determine this program to be countervailable because it provides preferential financing on the basis of priority status for designated industries and regional preferences within the program. Without these designations, FOGAIN would not be countervailable, since all small and medium sized firms in Mexico are at least eligible to receive FOGAIN loans at the least preferential rate of interest available under this program. Therefore, we determine the program is countervailable to the extent that the interest rate received by a particular company is below the least preferential rate that a company would receive under FOGAIN.

To determine the estimated bounty or grant conferred upon these companies, we used as our benchmark the least preferential interest rate available under FOGAIN. PCBC, Materiales BYM and IQY obtained FOGAIN financing in July 1983, May 1982, and March 1982, respectively; the least preferential rates applicable on those dates were 45%, 37% and 35%, respectively. PCBC and Materiales BYM obtained their loans at

rates lower than the least preferential rates applicable.

Since the FOGAIN loans have variable interest rates we treated the loans as a series of short-term loans and computed the difference in interest payments between the FOGAIN loans received by PCBC and Materiales BYM and those which would have been incurred had the loans been made at the least preferential rate of interest under this program. We allocated the amount of benefit from the loans over the company's total value of sales of all products during 1983. We determine the net amount of the bounty or grant to be 0.21 percent *ad valorem* for PCBC and 1.39 percent *ad valorem* for Materiales BYM.

II. Programs Preliminarily Determined Not To Confer Bounties or Grants

We preliminarily determine that bounties or grants are not being provided to manufacturers or exporters in Mexico of lime under the following programs:

A. Other Equity Infusions

Both NAFINSA and the Comision de Fomento Minero, a publicly-owned lending institution, purchased stock in Mexicana de Cobre. Private investors made purchases of the company's stock at comparable terms on approximately the same dates. Using the criteria described in the "Analysis of Programs" section of this notice, and considering the fact that government investment in this company was or the same terms and conditions as private investment, we preliminarily determine that government equity investment did not confer a bounty or grant on Mexicana de Cobre.

B. Dual Level Currency Exchange Rate System

Petitioner alleged that the dual level exchange rate system existing in Mexico constitutes a countervailable benefit to the lime industry. Petitioner alleged that priority industries, including lime, when exchanging pesos for dollars to make foreign purchases, are allowed to convert currency at a "controlled" rate, but that other industries must make foreign purchases at the free market rate. Currently, the controlled rate is less than the "free" rate of exchange.

According to the responses of the respondent companies, all industries in Mexico, including lime, obtain dollars from the government under the same terms to purchase imports. Therefore, we preliminarily determine that the dual currency exchange rate system does not confer a bounty or grant to the manufacturers or exporters in Mexico of lime.

C. CEPROFIs for Salary Increases

Sonocal received CEPROFIs for salary increases. We preliminarily determine that this type of CEPROFI does not confer a bounty or grant because it is not limited to a specific industry, group of industries, or to companies located in specific regions of the country.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs have not been used by manufacturers or exporters of lime.

A. Article 94 Loans

Under section II of Article 94 of the *General Law of Credit Institutions and Auxiliary Organizations* (the Banking Law), the Bank of Mexico establishes channels of credit to different sectors of economic activity. There are 12 categories of credit under section II.

Most categories carry their own maximum interest rate which is set by the Bank of Mexico. Loans granted under category 12 are targeted to exports of manufactured products. The maximum interest rate under this category is 8 percent. The Mexican government stated in its responses that these loans were not used by the companies under investigation.

B. FOMEX and BANCOMEXT Loans to U.S. Importers

U.S. customers of lime were alleged to have received FOMEX and BANCOMEXT loans. The government of Mexico stated in its responses that no U.S. customers of lime received FOMEX or BANCOMEXT loans that had outstanding principal during the period of investigation.

C. National Preinvestment Fund for Studies and Projects (FONEP)

FONEP, administered by the NAFINSA, finances economic, technical and feasibility studies, as well as basic and detailed engineering projects. The Mexican government stated in its responses that this program was not used by the companies under investigation.

D. Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN)

This program is aimed at developing industrial parks and cities. The Mexican government stated in its responses that this program was not used by the companies under investigation.

E. Fondo Nacional de Fomento Industrial (FOMIN)

FOMIN operates as a trust fund, providing funding to certain small and medium sized companies by either buying stock or providing loans at rates below those of commercial lending institutions. The Mexican government stated in its responses that this program was not used by the companies under investigation.

F. PROFIDE

PROFIDE has been established under the auspices of FOMEX to administer a new financing program to provide exporters with foreign currency financing needed for imports. The Mexican government stated in its responses that this program was not used by the companies under investigation.

G. Preferential Prices for Natural Gas, Oil, Electricity, Diesel Fuel and Petrochemicals

Petitioner alleged that prices for natural gas, oil, diesel fuel, petrochemicals and electricity are set by the Mexican government and could include a 30 percent discount for respondents. The government of Mexico stated in its responses that the lime industry has not received price discounts for these items.

IV. Programs for Which Additional Information Is Needed

We preliminarily determine that more information is needed to determine whether the following programs conferred a bounty or grant on manufacturers or exporters of lime.

A. Nacional Financiera, S.A., Loans

Mexicana de Cobre received loans from the Nacional Financiera, S.A. (NAFINSA), a government-owned development bank, during the last month of the period of investigation. More information is needed concerning the terms of these loans before a determination can be made as to whether they conferred a bounty or grant on Mexicana de Cobre.

B. BANCOMEXT Financing

Petitioner alleged that lime producers receive financing from the Mexican National Bank for Foreign Trade (BANCOMEXT). Sonocal appears to have received BANCOMEXT financing for uses other than the operation of its lime plant. We will seek more information about this financing at verification. The government of Mexico stated in its responses that no other

respondent received BANCOMEXT financing.

C. Tax Exemptions on Interest Paid to Foreign Lenders and Income Tax Rate Reductions

Mexicana de Cobre received a tax exemption on interest paid to foreign lenders and an income tax rate reduction under an agreement with the Mexican Department of the Treasury. The company stated in its response that these tax benefits did not apply because it did not have taxable income in tax year 1982. We will seek further information on these programs at verification.

D. Loan Guarantees Provided by NAFINSA

Petitioner alleged that various Mexican government entities guaranteed loans to the lime industry. During the period of investigation, Mexicana de Cobre had several outstanding loans guaranteed by NAFINSA, a government-controlled institution which is a shareholder of Mexicana de Cobre. Mexicana de Cobre paid a guarantee fee to NAFINSA and provided security for the guarantees.

We plan to investigate whether it is standard practice in Mexico for a shareholder to provide such guarantees and the normal commercial terms for loan guarantees at verification.

Verification

In accordance with section 776(a) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of lime from Mexico which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise.

All of the respondent companies claim and certain of them appear to have received either no benefits or benefits in *de minimis* amounts from the programs under investigation. Those apparently receiving no benefits or benefits in *de minimis* amounts are: PCBC, Incalpa, Cales de Chiapas, Cal de Apasco, Cales de Puebla, Materiales Titan, and Calteco. If during verification we determine that these firms have received either no benefits or benefits in *de minimis* amounts, we will exclude these firms in the event of a final affirmative determination.

The net bounty or grant for duty deposit purposes for each of the firms is as follows:

Manufacturer/Exporter	Ad valorem rate (percent)
Sonocal	54.44
All Other Manufacturers/Exporters	1.00

The rate for all other manufacturers/exporters is the average of the rates for Mexicana de Cobre and PCBC. Since we have no evidence of unequityworthiness for any respondent company other than Sonocal, we considered it inappropriate to include Sonocal in this average.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on July 12, 1984, at the U.S. Department of Commerce, Conference Room D, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy for Policy to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted in at least 10 copies to the Deputy Assistant Secretary by July 5, 1984. Oral presentations will be limited to issues raised in the briefs.

Written comments should be submitted in accordance with 19 CFR 355.33(d) and 355.34(a), within thirty days of publication of this notice, at the above address and in at least 10 copies.

Dated: June 14, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-16693 Filed 6-21-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; U.S. Department of Agriculture

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 84-110. Applicant: U.S. Department of Agriculture, Urbana, IL 61801. Instrument: Oxygen Electrode Unit. Manufacturer: Hansatech Limited, United Kingdom. Intended use: See notice at 49 FR 13734.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes at it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument simultaneously measures oxygen evolution and fluorescence occurring during photosynthesis. The National Institutes of Health advises in its memorandum dated June 1, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc. 84-16726 Filed 6-21-84; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; Minneapolis Medical Research Foundation, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-85. Applicant: Minneapolis Medical Research Foundation, Minneapolis, MN 55415. Instrument: Electron Microscope, Model JEM-100CX with Accessories. Manufacturer: JEOL Co., Ltd., Japan. Intended Use: See notice at 49 FR 8056.

Instrument Ordered: December 14, 1983.

Docket No.: 84-89. Applicant: Duke University Medical Center, Durham, NC 27710. Instrument: Electron Microscope, Model JEN-1200EX/SEG with

Accessories. Manufacturer: JEOL Co., Ltd., Japan. Intended Use: See notice at 49 FR 10139.

Instrument Ordered: August 27, 1982.

Docket No.: 84–90. Applicant: University of Virginia School of Medicine, Charlottesville, VA 22908. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 49 FR 10139. Instrument Ordered: January 16, 1984.

Docket No.: 84–91. Applicant: Albany Medical College of Union University, Albany, NY 12208. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 49 FR 10139. Instrument Ordered: January 27, 1984.

Docket No.: 84–92. Applicant: Johns Hopkins University, Baltimore, MD 21218. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 49 FR 10139. Instrument Ordered: January 19, 1984.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–16728 Filed 6–21–84; 8:45 am]

BILLING CODE 3510–DS–M

Vanderbilt University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84–127. Applicant: Vanderbilt University, Nashville, TN 37232. Instrument: (2) Gas Chromatograph/Mass Spectrometers, Model 1000. Manufacturer: Nermag, France. Intended use: See notice at 49 FR 19563.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument is of high performance quadrupole design and it can measure compounds of interest down to the tens of femtograms (1.0×10^{-15}). It is about ten times more sensitive than the most comparable domestic instrument. The National Institutes of Health advises in its memorandum dated June 1, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Dreel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–16727 Filed 6–21–84; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will meet in San Diego, CA, on July 11–12, 1984. On July 11, the Council will adopt a proposed FY85 budget; review the performance of the 1983–84 anchovy fishery and an estimate of the 1984–85 spawning biomass and preliminary quotas; adopt inseason groundfish management measures; and conduct a public comment period. On July 12, the Council will hear a status report on the salmon fishery and discuss policy and procedural issues.

The Council's Scientific and Statistical Committee (SSC) will meet in San Diego, July 10–11 to discuss the same subjects. The Groundfish Advisory Panel (GAP) and Groundfish Task Force (GTF) will meet jointly at the same time and place to discuss groundfish items. A detailed agenda for Council, SSC, GAP/GTF meetings will be available to the public about June 29. All meetings are open to the public. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill St., Portland, OR 97201; telephone: (503) 221–6352.

Dated: June 19, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84–16688 Filed 6–21–84; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will convene three public workgroup meetings as follows:

(1) *Groundfish Data Technical Team* will meet at 9 a.m. on June 26–27, 1984, in Room 369 of the Northwest and Alaska Fisheries Center, National Marine Fisheries Service (NMFS), 2725 Montlake Blvd., East, Seattle, WA, to discuss data needs for management of the U.S. groundfish fishery off Alaska.

(2) *Advisory Panel Operations Workgroup* will meet at 8:30 a.m. on June 27, 1984, in Room 438E of the Northwest and Alaska Fisheries Center (see address above), to discuss the role and composition of the Council's Advisory Panel and whether operational improvements should be made.

(3) *Workgroup on Joint Venture and Permit Review* will meet at 9 a.m. on June 28–29, 1984, in Room 203 of the Bill Ray Center, 1108 F Street, Juneau, AK, to discuss criteria for reviewing joint venture permit applications and foreign fishing vessel permits and formulate recommendations to the Council for review in September.

For further information contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: June 19, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84–16689 Filed 6–21–84; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Restraint Limits for Certain Cotton Apparel Exported From India

June 19, 1984.

On April 18, 1984 a notice was published in the **Federal Register** (49 FR 15254) announcing that, on March 27, 1984, the United States Government, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, had requested the Government of India to enter into consultations concerning exports to the United States of cotton playsuits in Category 337 and cotton coveralls, overalls, and jumpsuits in Category 359pt., produced or manufactured in India.

Consultations have been held concerning these categories, but no agreement has been reached on a mutually satisfactory solution. The United States Government has decided, therefore, until such time as a different solution is agreed, to control imports of cotton apparel in Category 337 and 359pt. (only T.S.U.S.A numbers 379.6410 and 383.5035), at the prorated twelve-month limits of 53,475 dozen for Category 337 and 84,963 dozen for Category 359pt., exported during the period which began on March 27, 1984 and extends through December 31, 1984. These limits are subject to flexibility adjustments under the terms of the agreement.

The limits may be adjusted to reflect final 1983 exports from India through April 30, 1984. For purposes of establishing the limits for the present restraint period, the count of 1983 exports from India in these categories at the end of April 1984 is considered final by the U.S. Government, and there will be no further adjustment made to these limits to reflect 1983 exports.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton apparel products in Categories 337 and 359pt., exported during the designated period.

Effective Date: June 26, 1984.

For Further Information Contact: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 19, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, between the Governments of the United States and India; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 26, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 337 and 359pt.[1], produced or manufactured in India and exported during the indicated period, in excess of the following limits:

Category	Prorated 12-month limit[2]	Period
337	53,475 dozen	Mar. 27 to Dec. 31, 1984.
359pt[1]	84,963 dozen	Mar. 27 to Dec. 31, 1984.

[1] In Category 359, only TSUSA numbers 379.6410 and 383.5035.
[2] The limit has not been adjusted to reflect any imports exported after March 26, 1984.

Textile products in Categories 337 and 359pt.[1] which have been exported to the United States during the ninety-day period which began on March 27, 1984, shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of India and with respect to imports of cotton textile products from India has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Comissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Texitle Agreements.

[FR Doc. 84–16729 Filed 6–21–84; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 359, only TSUSA numbers 379.6410 and 383.5035.

Request for Public Comment on Bilateral Textile Consultations With the Government of Pakistan To Review Trade in Category 335 (Cotton Coats)

June 19, 1984.

On May 29, 1984, the Government of the United States requested consultations with the Government of Pakistan with respect to Category 335. This request was made on the basis of the agreement between the Governments of the United States and Pakistan relating to trade in cotton textiles and cotton textile products of March 9 and 11, 1982. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that if no solution is agreed upon in consultations between the two governments, CITA, pursuant to the Agreement, may establish a prorated specific limit of 22,904 dozen for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 335, produced or manufactured in Pakistan and exported to the United States during the period beginning on May 29, 1984 and extending through December 31, 1984.

The Government of the United States has decided, pending a mutually satisfactory alternative solution, to control imports in this category during the 90-day consultation period which began on May 29 and extends through August 26, 1984 at a limit of 10,460 dozen.

In the event the limit established for Category 335 during the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to

the limit established during the subsequent restraint period.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register.**

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

Anyone wishing to comment or provide data or information regarding the treatment of Category 335 under the Bilateral Cotton Textile Agreement with the Government of Pakistan, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Supplementary Information: On December 16, 1983 a letter was published in the **Federal Register** (48 FR 55892) to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton textiles and cotton textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1984. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements pursuant to the bilateral agreement, directs the Commissioner of Customs, pending agreement on a different solution, to prohibit entry for consumption or withdrawal from warehouse for consumption, of cotton textile products in Category 335, produced or manufactured in Pakistan and exported during the indicated ninety-day period, in excess of 10,460 dozen.

Effective date: June 25, 1984.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Pakistan—Market Statement

Category 335—Women's, Girls' and Infants' Cotton Coats

May 1984.

U.S. imports of Category 335 from Pakistan increased from 13,202 dozen for the year ending March 1983 to 34,978 dozen for the year ending March 1984, up 164.9 percent. Imports during the first quarter of 1984 were 16,993 dozen, more than two and one-half times the imports of the first quarter of 1983. These are substantial increases of imports in a category already adversely affected by imports. Pakistan is the largest supplier whose exports of Category 335 are not subject to a specific limit.

U.S. domestic production of Category 335 trended downward during the past decade. Production in 1982 was 647,000 dozen, down 8 percent from 1981. Imports, on the other hand, trended strongly upward during the decade ending in 1981, declined by small quantities in 1982 and 1983, but resumed the upward trend in 1984. Imports during the year ending March 1984 from all sources were 1,842,432 dozen, higher than any calendar year on record. This increase occurred during the first quarter of 1984 when 577,747 dozen were imported, up 57.4 percent from the same period in 1983, and at an annual rate of 2.3 million dozen. The ratio of imports to domestic production was 253.6 percent in 1981 and 268.0 percent in 1982.

June 19, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 13, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry of certain cotton textile products, produced or manufactured in Pakistan and exported during 1984.

Effective on June 25, 1984, paragraph one of the directive of December 13, 1983 is hereby further amended to include a limit of 10,460 dozen [1] for cotton textile products in Category 335 exported during the period which began on May 29 and extends through August 26, 1984.

Textile products in Category 335 which have been exported to the United States before May 29, 1984 shall not be subject to this directive.

Textile products in Category 335 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The action taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-16730 Filed 6-21-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List of 1984; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1984 a commodity to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: June 22, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 2, and March 16, 1984 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 7844 and 49 FR 9941) of proposed additions to Procurement List 1984, October 18, 1983 (48 FR 48415).

[1] The limit has not been adjusted to account for any imports exported after May 28, 1984.

After consideration of the relevent matter presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substanial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and service listed.

c. The actions will result in authorizing small entities to produce or provide a commodity and a service procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1984:

Class 5120

Vise, Multiposition, 5120–00–901–1907

SIC 7349

Janitorial Service, Federal Aviation Administration, Air Traffic Control Tower, Atlanta, Georgia

C. W. Fletcher,

Executive Director.

[FR Doc. 84–16761 Filed 6–21–84; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1984; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1984 commodities and military resale commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received On or Before: July 25, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities, military resale commodities, and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities, military resale commodities, and services to Procurement List 1984, October 18, 1983 (48 FR 48415):

Class 5140

Belt, Tool, Repairman's
5140–00529–2517
5140–00529–2694
5140–00529–2691

Class 9310

Paper, Index
9310–00–955–0217
9310–00–160–7835
9310–00–555–4968

Military Resale Item Nos. and Names

No. 620 Tablecloth, Solid, 52 × 52
No. 621 Tablecloth, Solid, 52 × 70
No. 622 Tablecloth, Solid, 52 × 70
No. 623 Tablecloth, Solid, 60 × 84
No. 624 Tablecloth, Solid, 60 × 84
No. 625 Tablecloth, Solid, 60″ × Round
No. 630 Tablecloth, Printed, 52 × 52
No. 631 Tablecloth, Printed, 52 × 70
No. 632 Tablecloth, Printed, 52 × 70
No. 633 Tablecloth, Printed, 60 × 84
No. 634 Tablecloth, Printed, 60 × 84
No. 635 Tablecloth, Printed, 60″ × Round

SIC 0782

Grounds Maintenance, Recreation Areas, Naval Air Station, Lemoore, California.

SIC 7349

Janitorial Service, Federal Building and U.S. Courthouse, 517 East Wisconsin Avenue, Milwaukee, Wisconsin

SIC 9199

Administrative Services, Environmental Protection, Agency, 1600 Lincoln Street, Denver, Colorado

Administrative Services, DCASR Building B–95, 805 Walker Street, Marietta, Georgia

C. W. Fletcher,

Executive Director.

[FR Doc. 84–16762 Filed 6–21–84; 8:45 am]

BILLING CODE 6820–33

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD-University Forum Working Group on Export Control; Advisory Committee Meeting; Cancellation

The meeting of the DoD-University Forum Working Group on Export Control, scheduled for June 28, 1984, from 9:30 a.m. until 4:00 p.m., at Number 11 Dupont Circle, Washington, D.C. 20036, and announced in the **Federal Register** issue of Monday, June 11, 1984 (49 FR 24044) is hereby cancelled.

Dated: June 19, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84–16682 Filed 6–21–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Wednesday & Thursday, 11 & 12 July 1984.

Times of Meeting: 0830–1700 hours, both days (Closed).

Place: Fort Belvoir, Virginia.

Agenda: The Army Science Board 1984 Summer Study Panel on Technology to Improve Logistics and Weapon Support for Army 21 will meet for classified orientation briefings and in-depth discussions regarding logistic support for the Army on 11 July. The panel will begin to organize and draft the report on 12 July. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84–16683 Filed 6–21–84; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: Tuesday, 17 July 1984.

Time: 0900–1700 hours (Open).

Place: The Pentagon, Washington, DC.

Agenda: The study Chairman and Subpanel Chairman (Leadership, Manning a Ready Force, and Personnel Factors in Weapons Systems Performance Subpanels) of the Army Science Board 1984 Summer Study on Leading and Manning Army 21 will meet to review study progress to date, draft tentative findings, and prepare for the Summer Study writing session. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3030/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84–16684 Filed 6–21–84; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday and Friday, 19 & 20 July 1984.

Times of Meeting: 0830–1700 hours, both days (Closed).

Place: U.S. Army Communications Electronics Command, Fort Monmouth, New Jersey.

Agenda: The Army Science Board Ad Hoc Subgroup on Nondevelopmental C³I Items will meet for classified briefings and discussion on intelligence systems. The purpose of the study is to effect an increase in the purchase of "off the shelf" equipment for the Army when feasible. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84–16685 Filed 6–21–84; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Accepting Services of Volunteers; New Program

Notice is hereby given that pursuant to the authority contained in Pub. L. 98–63 the Corps of Engineers is accepting the services of volunteers to carry out activities of the agency except policy making or law or regulatory enforcement. In some instances the incidental expenses of volunteers may be reimbursed.

Individual volunteers or groups wishing to sponsor a number of volunteers should apply to the nearest Corps of Engineers facility for details of specific volunteer activities available. Opportunities for volunteers will vary with facility needs but in most instances will be associated with the administration, operations, and maintenance of water resource development projects.

Voluntary service will be accepted without regard to race, creed, religion, age, sex, color, national origin or handicap.

Dated: June 15, 1984.

Michael Volpe,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 84–16691 Filed 6–21–84; 8:45 am]

BILLING CODE 3710–08–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) on Construction of Authorized Channel Enlargement

AGENCY: U.S. Army Corps of Engineers, Defense.

ACTION: Notice.

Summary:

1. *Proposed Action:* The proposed action is to provide a solution to flood problems in the Boeuf River and Tributaries area of northeastern Louisiana. The purpose of the study is to reevaluate the authorized channel improvements on Big and Colewa Creeks and Bayou LaFourche that were stopped as a result of the 1977 Presidential Review. In additon, the study will assess flood damages downstream of the authorized work in the Lower Boeuf River area and formulate potential solutions for this area.

2. *Alternatives:* Nonstructural alternatives considered included no action, flood plain zoning, flood insurance, flowage easements, sediment control buffer strips, and reforestation of cleared flood-prone lands. Structural alternatives included diversions of floodwaters, levee systems, floodwater pumping plants and varying degrees of channel enlargement.

3. *Description of Scoping Process:*

a. *Public Involvement.* Public meetings were held in Jonesville and Rayville, Louisiana, in March 1977, as a result of the 1977 Presidential Review of the overall Tensas Basin Project, Louisiana and Arkansas. Subsequently, in March 1979, public meetings were held in Columbia and Winnsboro, Louisiana, to inform the public of the initiation of the Boeuf-Tensas Basin Study and to obtain public input relating to the study. Various coordination meetings have since been held with the USDA Soil Conservation Service, the U.S. Fish and Wildlife Service, the Louisiana Office of Public Works, the Louisiana Department of Wildlife and Fisheries, the Tensas Basin Levee District, and various state and local officials. A public meeting is planned for the summer of 1984 to present findings of the study and receive comments from the public concerning the tentatively selected plan.

b. *Issues Analyzed in the EIS.* Impacts of the channel enlargement on the aquatic ecosystem, water quality, terrestrial ecosystems, endangered species, the Russell Sage, Ouachita, and Boeuf Wildlife Management Areas, and cultural resources will be analyzed in the EIS.

c. *Assignments for Input into the EIS.* No specific assignments other than the Corps of Engineers as the lead agency.

d. *Environmental Review and Consultation Requirements.* Review of the Draft Report and EIS by appropriate Federal, state, and local agencies and interested groups and individuals will be achieved, and comments and views will be addressed and incorporated in the Final Report and EIS.

4. *Scoping Meetings Scheduled:* A plan of study has been coordinated with Federal, state, and local agencies and serves as the initial phase of the scoping process in lieu of formal scoping meetings.

5. *Date DEIS Will Be Available to Public:* The current study schedule estimates that the DEIS will be available to the public in July 1984 with a public meeting scheduled for August 1984.

ADDRESS: Questions concerning the DEIS can be answered by: Mr. Charles E. Crowther, U.S. Army Corps of Engineers, Vicksburg District, Attn: LMKPD–Q Post Office Box 60 Vicksburg, Mississippi 39180, Telephone: FTS 542–5430, Commercial (601) 634–5430.

John O. Roach, II,

Department of the Army, Liaison Officer with the Federal Register.

[FR Doc. 84–16692 Filed 6–21–84; 8:45 am]

BILLING CODE 3710–PU–M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Anti-Submarine Warfare Task Force; Closed Meeting; Correction

Notice was given June 12, 1984, at 49 FR 24163 of a meeting of the Chief of Naval Operations Executive Panel Advisory Committee Anti-Submarine Warfare Task Force on June 27–28, 1984, from 9 a.m. to 5 p.m. each day. The dates and times for the meeting have been changed to July 9, 1984, from 9 a.m. to 5 p.m. All other information in the previous notice remains effective.

For further information on this meeting contact Lieutenant Thomas E. Arnold, Executive Secretary of the Chief of Naval Operations Executive Panel Advisory Committee, telephone (703) 756–1205.

Dated: June 19, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval reserve, Federal Register Liaison Officer.

[FR Doc. 84–16784 Filed 6–21–84; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Man-in-the-Loop Targeting will meet on July 12–14, 1984, at the Naval Postgraduate School, Monterey, California. Sessions of the meeting will commence at 8:00 a.m. and terminate at 4:40 p.m. each day. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review material and presentations previously received by the Panel and to conduct a working session to draft the final report. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870

Dated: June 19, 1984.

William R. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–16785 Filed 6–21–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC)

Date and Time: July 19, 1984—9:00 a.m.—5:00 p.m. July 20, 1984—9:00 a.m.—Noon.

Place: U.S. Department of Energy, Room A–453, Germantown, Maryland 20545.

Contact: David A. Smith, Department of Energy, Office of Health and Environmental Research (ER–72), Office of Energy Research, Washington, D.C. 20545, Telephone: 301/353–2987.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative Agenda: Briefings and discussions of:

Thursday, July 19, 1984

- Discuss Complex Mixture Subcommittee Report
- Discuss Epidemiology Subcommittee Report
- Discuss Report on HER Program Plan
- Public comment (10 minute rule)

Friday, July 20, 1984

- Discuss Report on HER Program Plan
- Public comment (10 minute rule)

Public Particiaption: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact David A. Smith at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on June 19, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84–16783 Filed 6–21–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP84–453–000]

ANR Pipeline Co.; Proposed Blanket Authorization Activity

June 19, 1984.

Take notice that on June 1, 1984, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84–453–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that ANR proposes to undertake a transportation service on behalf of Sohio Chemical Company (Sohio), an eligible end-user, under its authorization issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with Commission and open to public inspection.

It is stated that the gas to be transported would be sold to Sohio by Sohio Petroleum Company (Sohio Petroleum), Oklahoma Natural Gas Company (ONG), and ANR Gathering Company (Gathering), all referred to also as Sellers. ANR would take receipt of up to 90 billion Btu equivalent of gas per day which the Sellers would tender or cause to tender to ANR for Sohio's account. ANR states that its system is interconnected with that of the Sellers, at various existing and proposed points of interconnection in the States of Kansas, Oklahoma, Texas and Louisiana. ANR would transport and deliver the volumes to Sohio and/or Columbia Gas Transmission Corporation (Columbia) for Sohio's account. It is explained that ANR's pipeline system is interconnected with the facilities of Sohio near Haviland, Ohio, and with the pipeline system of Columbia in Paulding County, Ohio. ANR advises that, where necessary, Columbia would provide additional transportation service for Sohio.

It is further stated that the gas to be transported would be used as boiler fuel, feedstock, and process gas in Sohio's Lima, Ohio, plant.

In addition to the request for authority to undertake the specific transportation service, ANR requests flexible authority to provide transportation on behalf of Sohio. It is explained that the additional transportation service would be to Sohio's facility in Lima, Ohio, and would be within the peak day, average day and annual transportation volumes stated in the request. ANR further states that in the event Sohio should acquire other sources of natural gas requiring transportation service by ANR, or obtain gas at other points of receipt, or require delivery at other points of delivery, ANR would provide such transportation under the flexible authority requested and would advise the Commission within 30 days of any addition or deletion of any gas suppliers and/or receipt or delivery points.

It is stated that as consideration for providing the transportation service, ANR would receive 54.7 cents per dt equivalent for all gas transported from points of receipt in Kansas, Oklahoma and Texas and delivered to, or for Sohio's account; and/or 51.5 cents per dt equivalent for all gas transported from points of receipt in Louisiana and delivered to, or for Sohio's account. ANR states that Sohio would reimburse ANR for the transportation costs ONG incurs in transporting the gas from Sohio Petroleum's facilities to ANR's facilities, which costs are determined by taking the total of the amounts received by (i) multiplying the volumes of "dedicated gas" transported by zero cents and (ii) multiplying the volumes of "released gas" transported by ten cents. It is further stated that Sohio would pay ANR a metering charge of 2.0 cents per dt for all gas ANR delivers to Columbia for Sohio's account until an aggregate of 28,364,000 dt has been delivered to Columbia under this and all other agreements utilizing the Paulding County, Ohio, interconnection.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16708 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-438-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Application

June 19, 1984.

Take notice that on May 23, 1984, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP84-438-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for an existing industrial customer, Agrico Chemical Company (Agrico), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has instituted a transportation program for various of its existing large industrial customers called the ECOSHARE plan. Applicant indicates that the ECOSHARE plan was developed as part of a settlement in a general retail rate increase proceeding at the Arkansas Public Service Commission involving Applicant's Rate Schedule No. 4. It is stated that under the ECOSHARE program instead of buying all its plant requirements from Applicant, the customer may purchase spot gas from other suppliers which would be transported by Applicant to the customer's plant. It is further stated that Applicant would continue to sell a substantial part of the plant's gas requirements and that the total volume of gas delivered by Applicant to the plant, including both transported volumes and sales volumes may not exceed the maximum daily quantity of gas specified in Applicant's Arkansas Public Service Commission Rate Schedule 4 service agreement governing the plant. It is said that Applicant under the ECOSHARE program has the option to purchase for its own system supply 50 percent of the spot gas arranged for by the large industrials.

Specifically, Applicant proposes to transport, on a firm basis, natural gas for Agrico from three delivery points located in Custer County, Oklahoma, Grady County, Oklahoma, and Franklin County, Arkansas, to Agrico's Blytheville, Arkansas fertilizer plant. Applicant also requests blanket authorization for the addition and deletion of delivery points as necessary. The transportation service for Agrico is proposed for term ending on May 1, 1987. Applicant proposes to charge Agrico $0.3484 per million Btu for a gas delivered directly into Applicant's transmission system and $0.5338 per million Btu for gas delivered into Applicant's gathering facilities. It is said that these charge are based on the methodology and billing determinants used in designing rates to recover the transmission, storage, and gathering costs in Arkla's presently effective FERC Gas Rate Schedule Nos. X-26 and G-2. Applicant indicates that because volumes transported under the ECOSHARE program would mean reduced sales volumes, Applicant cannot afford to continue the program unless it can recover its unit systemwide transmission, storage and gathering costs associated with transporting a portion of a plant's requirements instead of selling that gas to the plant. It is also indicated that under Applicant's Arkansas Public Service Commission Rate Schedule 4, The ECOSHARE transportation service may be terminated unless Applicant's costs are fully recoverable by it and are not required to be credited to Account 191.

Applicant states that the ECOSHARE transportation program offers opportunities to alleviate take-or-pay supply arrangements on its system, while at the same time benefiting the industrial customer involved, the producer involved and the other customers on Applicant's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules or Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to invervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 16707 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-463-000]

Florida Gas Transmission Co.; Application

June 19, 1984.

Take notice that on June 4, 1984, Florida Gas Transmission Company (FGT), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP84-463-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Mid Louisiana Gas Company (Mid Louisiana) and facilities constructed therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT states that it was transporting up to 3.5 billion Btu of natural gas per day for Mid Louisiana from the Bayou Bleu Field Area in Iberville Parish, Louisiana, to East Baton Rouge Parish, Louisiana, pursuant to a transportation agreement dated July 30, 1979. It is asserted that both FGT and Mid Louisiana constructed connections to their existing facilities and installed meters to effect the transportation service. FGT now proposes to abandon the transportation service and associated facilities because the production of gas in the Bayou Bleu Field ceased in September 1983, and further production is unwarranted.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on it own review of the matter finds that and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16708 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-251-001]

K N Energy, Inc.; Amendment to Application

June 19, 1984.

Take notice that on June 14, 1984, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP84-251-001 an amendment to the pending application filed in Docket No. CP84-251-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity requesting waiver of §13.b(1)(a) of K N's FERC Gas Tariff with respect to the sale of gas to Iams Company, Inc. (Iams), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

K N explains that it has an application on file with the Commission in Docket No. CP84-251-000 for authorization to render service to Iams near Aurora, Nebraska. It is further stated that the application involves, in part, an existing customer's transferring a portion of its annual volumetric limitation to Iams.

K N herein amends its application to request permanent waiver of § 13.b(1)(a) of its FERC Gas Tariff so as to permit Iams to use, on an annual basis, in excess of 100,000 Mcf of gas. K N states that this tariff provision restricts the boiler fuel use of a new customer to 100,000 Mcf of gas annually. Under the certificate authorization sought in this docket and the waiver requested herein, K N would provide natural gas service to Iams' boiler and non-boiler fuel requirements, it is stated. The estimated maximum peak day capability of the equipment to be initially installed would be about 300 Mcf for boiler fuel and 108 Mcf for dryer fuel, with natural gas to be also used for industrial non-boiler fuel human needs requirements. Within three years, Iams anticipates installing additional gas fuel equipment resulting in a peak day capability to approximately 454 Mcf for boiler fuel and 217 Mcf for dryer fuel, it is stated.

The non-boiler fuel use would be an essential agricultural use and would be classified in Priority 2 under K N's curtailment plan, K N alleges. It is explained that as the boiler fuel would be used for pet food manufacture, it does not qualify as essential agricultural use and would fall within Priority 3(b) of K N's curtailment plan initially, subject to reclassification later based upon actual peak day usage.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before July 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16709 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP4-451-000]

Michigan Gas Storage Co.; Application

June 19, 1984.

Take notice that on May 31, 1984, Michigan Gas Storage Company (Applicant), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP84-451-000 an application pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition and operation of facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and services, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16710 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-486-000]

Niagara Mohawk Power Corp.; Filing

June 19, 1984.

The filing Company submits the following:

Take notice that on June 11, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing a proposed rate schedule between Niagara and the Power Authority of the State of New York (PASNY) dated March 3, 1983.

Niagara presently has on file an agreement with PASNY dated March 3, 1983. This agreement with PASNY provides for Niagara to deliver for PASNY over Niagara's transmission system power and energy of PASNY to Pennsylvania Electric Company at the New York-Pennsylvania State Line.

Niagara states that the instant filing agreement proposes to revise the transmission rates for transmitting power and energy for PASNY. The proposed rates are those contained in the settlement agreement of Docket No. ER83-652-000. An effective date of May 1, 1984 is proposed.

Copies of this filing were served upon Allegheny Electric Cooperative, Inc., the Power Authority of the State of New York and the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 2, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16712 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-487-000]

Niagara Mohawk Power Corp.; Filing

June 19, 1984.

The filing Company submits the following:

Take notice that on June 11, 1984, Niagara Mohawk Power Corporation (Niagara) tendered for filing a proposed rate schedule between Niagara and the Power Authority of the State of New York (PASNY) dated March 22, 1983.

Niagara presently has on file an agreement with PASNY dated March 22, 1983. This agreement with PASNY provides for Niagara to deliver for PASNY over Niagara's transmission system power and energy of PASNY to Pennsylvania Electric Company at the New York-Pennsylvania State Line.

Niagara states that the instant filing agreement proposes to revise the transmission rates for transmitting power and energy for PASNY. The proposed rates are those contained in the settlement agreement of Docket No. ER83-652-000. An effective date of May 1, 1984 is proposed.

According to Niagara copies of this filing have been served upon the Division of Light and Power of the City of Cleveland, the Power Authority of the State of New York, and the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 2, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16713 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-420-000]

Northern Border Pipeline Co.; Application

June 19, 1984.

Take notice that on May 18, 1984, Northern Border Pipeline Company

(Northern Border), 224 South 108th Avenue, Omaha, Nebraska 68154, filed in Docket No. CP84-420-000 an application pursuant to section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16714 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-229-001]

Northwest Central Pipeline Corp.; Petition To Amend

June 19, 1984.

Take notice that on May 25, 1984, Northwest Central Pipeline Corporation (Northwest), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP82-229-001 a petition pursuant to section 7 of the Natural Gas Act to amend the order issued August 25, 1982, in Docket No. CP82-229-000, as amended, so as to authorize a company-owned 230 horsepower compressor unit to be installed in place of a 270 horsepower rental compressor unit at Northwest's South Welda Storage Field located in Anderson County, Kansas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that the additional horsepower was required to reinject storage field gas which was being released from the reservoir as a result of drilling to other zones by oil producers. The development of the area by the producers was slower than anticipated and only now is additional horsepower actually required. Northwest states that in the interim it has returned to stock a 230 horsepower company-owned compressor unit which would fulfill the present and anticipated future additional compression requirements at the South Welda Storage Field.

Northwest states that the cost of installing the company-owned compressor unit is estimated to be $162,211 which compares to the 1982 estimate of $29,590 to install the rental compresor unit; however, the monthly rental charge of $5,991.50 would be avoided by installing the company-owned unit.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16715 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP82-322-006 and CP82-322-007]

Northwest Pipeline Corp.; Petition To Amend

June 19, 1984.

Take notice that on May 18, 1984, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108-0900, filed in Docket No. CP82-322-006 a petition to amend further the order issued September 30, 1982, as previously amended, in Docket No. CP82-322-000 pursuant to section 7 of the Natural Gas Act so as to authorize the addition of a receipt point and an extension of the term of the certificated transportation service authorized to be provided for the account of J.R. Simplot Company (Simplot), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Northwest requests herein that the Commission amend its orders of September 30, 1982, and May 13, 1983, so as to authorize the transportation service until May 20, 1987. Northwest also requested authorization to add a receipt point in Rio Arriba County, New Mexico, but on May 25, 1984, filed in Docket No. CP82-322-007 an amendment to the subject petition to amend to rescind that request. Northwest indicates that it would continue to receive up to 10 billion Btu of natural gas purchased by Simplot from Southern Union Gathering Company and redeliver gas to Simplot near Pocatello, Idaho.

Northwest states that Simplot continues to require purchases of natural gas in the operation of its Pocatello plant. Northwest indicates that it proposes by this petition no other changes to the existing authorization.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests

filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16716 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-442-000]

Northwest Pipeline Corp.; Application

June 19, 1984.

Take notice that on May 24, 1984, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84110, filed in Docket No. CP84-442-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northwest to continue exchanging natural gas with Colorado Interstate Gas Company (CIG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests that the Commission authorize service pursuant to two transportation and exchange agreements between Northwest and CIG so as to add the CIG-Green River meter as an exchange redelivery point under the exchange agreements. It is stated that the subject exchange agreements constitute Rate Schedules X-26 and X-66 in Northwest's FERC Gas Tariff and that service under Rate Schedule X-26 was certificated in Docket Nos. CP75-295 and CP78-119 and that service under Rate Schedule X-66 was certificated in Docket No. CP78-122. It is further stated that the CIG-Green River meter would be located on the suction side of Northwest's Green River Compressor Station in Sweetwater County, Wyoming, and would enable Northwest physically to receive gas from CIG under the exchange agreements.

Northwest explains that it sells gas to CIG under Rate Schedule PL-1 and physically delivers such gas to CIG at an existing sales delivery point located on the discharge side of Northwest's Green River Compressor Station in Sweetwater County. It is further explained that the Northwest-Green River meter is the only certificated redelivery point from CIG to Northwest under the exchanges and that CIG's redeliveries under the exchanges are accomplished at the Northwest-Green River meter by displacement of the physical deliveries of gas which Northwest would otherwise make to CIG under Rate Schedule PL-1.

Northwest states that CIG filed an application in Docket No. CP84-290 requesting authorization to construct and operate the CIG-Green River meter in order to deliver gas physically to Northwest under the exchange agreements. It is further indicated that the CIG-Green River meter would be used to provide for the redelivery of Northwest's gas under the exchange agreements during periods when CIG is not purchasing gas at the Northwest-Green River meter.

Other than the addition of the CIG-Green River meter as an authorized exchange redelivery point from CIG, Northwest states that it proposes no changes to the certificated service currently provided under the exchange agreements. Northwest explains that upon Commission approval of its application it would timely file revisions to Rate Schedules X-26 and X-66 of its FERC Gas Tariff to incorporate the CIG-Green River meter as a redelivery point thereunder.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16717 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-2-28-000]

Panhandle Eastern Pipe Line Co.; Change in Tariff

June 19, 1984.

Take notice that on June 15, 1984, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Forty-Ninth Revised Sheet No. 3-A
Twenty-Sixth Revised Sheet No. 3-B

An effective date of July 1, 1984 is proposed.

Panhandle stated that these revised tariff sheets reflect a reduced PGA rate adjustment of (11.39¢) per Dt. in Panhandle's applicable commodity and one-part rates.

This proposed rate reduction represents a downward revision of the PGA rate adjustment which became effective March 1, 1984 in Docket No. TA84-1-28, and is being filed at this time in compliance with various Commission orders in the Docket No. TA84-1-28 and Docket No. TA83-2-28, as more fully explained below.

Docket Nos. TA84-1-28-002 and TA84-1-28-004

Ordering Paragraph (B) of the Commission's *Order Accepting Revised Tariff Sheets, Subject to Conditions*, dated May 25, 1984 in Docket Nos. TA84-1-28-002 and TA84-1-28-004, conditioned acceptance of the previously filed tariff sheets effective March 1, 1984, upon Panhandle filing revised tariff sheets within thirty days to reflect the removal of certain carrying charges from Account No. 191 associated with the unrecovered gas costs for the months of June 1983 through August 1983. This adjustment represents a (0.21¢) per Dt. reduction in the carrying charge surcharge, and is reflected in the instant filing, in compliance with the Commission's May 25, 1984 Order, without prejudice to Panhandle's right to seeking judicial review of the Commission's Order dated May 25, 1984.

With respect to the refunds that result from this (0.21¢) per Dt. reduction in

rates, effective March 1, 1984, Panhandle is proposing to refund these amounts by crediting Account No. 191.1306, in the amount of $257,382, which will result in an immediate reduction in Panhandle's rates effective July 1, 1984. The refund amount to be flowed through reflects the actual excess carrying charges collected during the period March through May 1984, and estimated excess charges applicable to June, 1984, together with appropriate interest.

Docket No. TA83-2-28-000

The Commission issued Opinion No. 223 dated June 1, 1984 which upheld the Initial Decision issued by Administrative Law Judge Murray on February 16, 1984, in the above-referenced proceeding. The effect of the Commission's June 1, 1984 Order was to deny Panhandle's request for carrying charges to be contemporaneous with the approved amortization period. Without prejudice to Panhandle's rights with respect to seeking judicial review of the June 1, 1984 Order, Panhandle has included in the instant filing a reduction of (2.87¢) per Dt. to reflect the elimination of carrying charges associated with the amortized deferred account subsequent to June 1, 1984, which was the end of the twelve-month period during which the Commission approved collection of carrying charges applicable to the amortized deferred account.

The remaining balance in Sub-Account 191.1304, which is solely related to the carrying charges permitted by the Commission during the first twelve months of the three-year amortization period of the Deferred Purchased Gas Costs, is being transferred to the current Sub-Account 191.1306, which will be recovered during this PGA period.

In addition to the above-described adjustments, the instant filing also reflects a reduction of (8.31¢) per Dt. to the applicable surcharges related to the "Current", as contrasted with the Amortized, Deferred Purchased Gas Cost Account and the Deferred Purchased Gas Cost Carrying Charge Account, respectively. This rate reduction reflects a diminution in the current deferred account balance, which reduction would normally be filed to become effective September 1, 1984, in conjunction with Panhandle's normally scheduled PGA rate adjustment. However, in light of the above-described compliance rate adjustments, Panhandle believes it is appropriate to include this reduction in the instant filing, to provide this rate relief to its customers at the earliest practicable date, and to provide a measure of rate stability on its system, by avoiding any additional rate changes.

Panhandle further states that in order to implement this rate reduction, it is necessary for Panhandle to request waiver of several requirements in the normal PGA and tariff procedures. All necessary waivers are hereby respectfully requested, including, but not limited to:

(a) Waiver of the twice a year PGA limitation in order to permit this intermediate PGA rate reduction to become effective July 1, 1984, in compliance with the various Commission Orders previously described. As the Commission is aware, the normal PGA rate adjustment dates for Panhandle are March 1 and September 1.

(b) Waiver of the 45 days' notice period for PGA rate adjustments specified in Section 18.1 of Panhandle's tariff, in order to bring the benefits of the lower rates to the resale customers as soon as practicable.

(c) Waiver of the provisions of the PGA tariff and regulations to permit this slight adjustment to the normal six month collection period to permit the collection of the deferred purchased gas cost account and the deferred purchased gas cost carrying charge account over a period of eight (8) months to coincide with the timing of Panhandle's next regularly scheduled PGA at March 1, 1985.

(d) Waiver of the provisions of the PGA tariff to permit the flow-through, by credit to Account 191.1306, of the excess carrying charges collected, including interest, during the period March–June, 1984.

To the extent required, if any, Panhandle requests that the Commission grant such other waivers as may be necessary for the acceptance of these tariff sheets to become effective July 1, 1984.

Supporting computation sheets are enclosed and copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before June 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16718 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-460-000]

Southern Natural Gas Co.; Application

June 19, 1984.

Take notice that on June 1, 1984, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP84-460-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 3 billon Btu of natural gas per day for Florida Gas Transmission Company (Florida Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to implement the terms of an agreement between Southern and Florida Gas dated March 6, 1984, whereby Southern has agreed to transport, on an interruptible basis, up to 3 billion Btu of gas per day for Florida Gas for an initial period of 3 years and year to year thereafter. Southern proposes a rate as may be set forth in its FERC Gas Tariff, Rate Schedule K-2, which is currently 32.7 cents per million Btu.

Southern states that the gas to be transported has been purchased by Florida Gas from Callon Petroleum Company, *et al.*, and would be received by Southern at the existing interconnection between the outlet of the Amine Processing Plant of Petroleum Corporation of Delaware and the inlet of Southern's existing measuring facilities located in Lawrence County, Mississippi. Southern would redeliver a thermally equivalent quantity of gas to Florida Gas at the flange or weld connecting the facilities of Florida Gas with the facilities of Southern near mile post 127.357 on Southern's 20-inch Main Pass—Franklinton Line, Washington Parish, Louisiana.

It is submitted that no new facilities are required in order to perform the transportation service.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a

protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16719 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-459-000]

Stingray Pipeline Co.; Application

June 19, 1984.

Take notice that on June 1, 1984, Stingray Pipeline Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-459-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the addition of a new point of receipt on its existing offshore system of natural gas to be transported by Applicant for United Gas Pipe Line Company (United), all as more fully described in the application which is on file and open to public inspection.

Applicant states that the proposed additional point of delivery would be at the inlet side of an existing measuring station located on Exxon's production platform in West Cameron Block 630, offshore Louisiana, and would be utilized to transport United's gas from West Cameron Block 637.

Applicant further states that the gas would be transported pursuant to Rate Schedule T-2 of Applicant's FERC Gas Tariff, Original Volume No. 1, to the northern terminus of Applicant's system near Holley Beach, Louisiana, as a part of United's existing transportation capacity in Applicant's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice on such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16720 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-76, et al.]

Mobil Oil Corp., et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates[1]

June 19, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 6, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[2]	Pressure base
G-7642-007, D, June 4, 1984	Mobil Oil Corp., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Northern Natural Gas Co., Hugoton Field, Stevens and Morton Counties, KS.	(3)	
G-7645-004, D, June 4, 1984	....do	Northwest Central Pipeline Corp., Guymon-Hugoton Field, Texas County, OK.	(3)	

[1] This notice does not provide for consolidation

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
G-7645-005, D, June 4, 1984	....do	Northwest Central Pipeline Corp., Guymon-Hugoton Field, Texas County, OK.	(1)	
CI84-429-000, E, June 5, 1984	The George R. Brown Partnership (successor in interest to George R. Brown), 800 San Jacinto Bldg., Houston, TX 77002.	Texas Eastern Transmission Corp., Lochridge and South Lochridge Fields, Brazoria County, TX.	(2)	
CI84-434-000, E, June 7, 1984	Proven Properties, Inc. (successor in interest to Petro-Lewis Funds, Inc.), P.O. Box 2049, Houston, TX 77252-2049.	Transcontinental Gas Pipe Line Corp., High Island Block A-563 Field, High Island Area, South Addition Offshore Texas, Outer Continental Shelf Area.	(3)	
CI84-435-000, A, June 7, 1984	Cities Service Oil & Gas Corp., P.O. Box 300 Tulsa, OK 74102.	Transcontinental Gas Pipe Line Corp., Block A-133 Field, Brazos Area (South Addition), Offshore TX.	(4)	14.73
CI84-436-000, E, June 7, 1984	Mitchell Energy Corp. (successor in interest to Walter Exploration, Inc.), P.O. Box 4000, The Woodlands, TX 77380.	Natural Gas Pipeline Co. of America, E.L. Birdwell Gas Unit No. 1, Wise County, TX.	(5)	
CI84-437-000, E, June 8, 1984	Shell Oil Co. (successor in interest to Partnership Properties Co.), P.O. Box 2463, Houston, TX 77001.	Northern Natural Gas Co., Prentice Plant, Yoakum County, TX.	(6)	
CI84-438-000, E, June 8, 1984	Phillips Oil Co. (successor in interest to Phillips Petroleum Co.), 336 HS&L Bldg., Bartlesville, OK 74004.	Florida Gas Transmission Co., Lake Chicot Field, St. Martin Parish, LA.	(7)	
CI84-440-000 (CI79-112), B, June 4, 1984.	Gulf Oil Corp., P.O. Box 2100, Houston, TX 77252	Southern Natural Gas Co., Fort Jackson Field, Plaquemines Parish, LA.	(8)	
CI84-439-000, F, June 11, 1984	Shell Offshore, Inc. (partial successor in interest to Petro-Lewis Funds, Inc.), P.O. Box 4480, Houston, TX 77210.	Transcontinental Gas Pipe Line Corp., Mississippi Canyon Block 194 Field, Offshore Louisiana.	(9)	
CI84-441-000, E, Jan. 30, 1984	Sun Exploration & Production Co. (successor in interest to Maurice L. Brown Co.), P.O. Box 2880, Dallas, TX 75221-2880.	United Gas Pipe Line Co., Bethany Field, Harrison and Panola Counties, TX.	(10)	
G-16583-000, F, June 8, 1984	Phillips Petroleum Co. (successor in interest to Phillips Oil Co.), 336 HS&L Bldg., Bartlesville, OK 74004.	Northern Natural Gas Co., McKinney Field, Clark County, KS.	(11)	
G-11948-000, D, May 25, 1984	Mobil Producing Texas & New Mexico, Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Panhandle Eastern Pipe Line Co., Panhandle Field, Moore County, TX.	(12)	
CI84-442-000, E, June 11, 1984	Diamond Shamrock Exploration Co. (successor in interest to Natomas Offshore Exploration, Inc.), P.O. Box 631, Amarillo, TX 79173.	Tennessee Gas Pipeline Co., E/2 NE/4 and NE/4 SE/4 of Block 225 and W/2 NW/4 NE/4; NE/4 NW/4; W/2 NW/4; W/2 SE/4 NW/4; NW/4 SW/4; W/2 NE/4 SW/4 of Block 226, Vermilion Area, Offshore (Federal) Louisiana.	(13)	
CI84-443-000, E, June 11, 1984	....do	Transcontinental Gas Pipe Line Corp., High Island Block A-446, OCS Lease G-2359, High Island Block A-447, OCS Lease G-2360, and High Island Block A-448, OCS-G Lease G-2361, High Island Area, South Addition Offshore (Federal) Texas.	(14)	
CI84-444-000, E, June 11, 1984	....do	Transcontinental Gas Pipe Line Corp., Block 131, OCS Lease G-2342 Galveston Area, South Addition, Offshore (Federal) Texas.	(15)	
CI84-445-000, A, June 11, 1984	Mesa Petroleum Co., One Mesa Square, P.O. Box 2009, Amarillo, TX 79189-2009.	Transcontinental Gas Pipe Line Corp., High Island Block A-567, Offshore Texas.	(16)	
CI84-447-000, (CI77-204), B, June 11, 1984.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Transcontinental Gas Pipe Line Corp., Bear Field, Beauregard Parish, LA.	(17)	

[1] To release gas for irrigation fuel.

[2] By general assignment and conveyance effective Feb. 1, 1984, Alice Pratt Brown, individually and as independent executrix of the estate of George R. Brown, deceased, conveyed all right, title and interest in the lease dedicated under the contract to Brown Partnership.

[3] On May 1, 1984, Petro-Lewis Funds, Inc., et al. assigned its leasehold rights in High Island Block A-563 Field (Blocks A-563, A-564, and A-582), High Island Area, South Addition, Offshore Texas, Outer Continental Shelf to Proven Properties Inc.

[4] Applicant is filing under gas purchase contract dated Mar. 1, 1984.

[5] On Feb. 1, 1984, Mitchell succeeded to the small producer interest of Walter Exploration in the E.L. Birdwell Gas Unit No. 1 well located in Wise County, TX.

[6] Effective as of May 1, 1984, Partnership Properties Co. conveyed its 11.8297 percent interest in the Prentice plant, Yoakum County, TX, to Shell.

[7] Effective Dec. 1, 1983, Phillips Petroleum Co. assigned to Phillips Oil Co., its interest in certain leases in the Lake Chicot Field, St. Martin Parish, LA.

[8] The last well has been plugged and abandoned and all Gulf's leases covered by this rate schedule have expired.

[9] Effective as of May 1, 1984, Petro-Lewis Funds, Inc., conveyed to Shell Offshore, Inc., an undivided 3.05 pct interest in three leases in the Mississippi Canyon Block 194 Field, Offshore Louisiana.

[10] Sun Gas Co. (predecessor in interest to Sun Exploration & Production Co., as Seller) has acquired acreage heretofore dedicated under the contract under a Farmout Agreement dated Feb. 25, 1981, between Maunce L. Brown and Sue Gas Co.

[11] Effective Dec. 1, 1983, Phillips Oil Co. assigned to applicant its working interest in the Gross Unit No. 1 located in the McKinney Field, Clark County, KS.

[12] By assignment and bill of sale dated Mar. 1, 1984, to be effective Jan. 9, 1984, Mobile Producing Texas & New Mexico, Inc., assigned to Gordon Taylor Oil Co., small producer No. 031097, a certain lease and said assignment.

[13] By assignments of operating rights made effective June 1, 1984, Natomas Offshore Exploration, Inc., assigned all of its right, title and interest in the operating rights in and to U.S.A. Oil and Gas Lease Serial Nos. OCS-G-1143 and OCS-G-1144 to applicant.

[14] By assignment made effective June 1, 1984, Natomas Offshore Exploration, Inc., assigned all of its right, title and interest in and to U.S.A. Oil and Gas Lease Serial Nos. OCS-G-2359, OCS-G-2360, and OCS-G-2361 to applicant.

[15] By assignment made effective June 1, 1984, Natomas Offshore Exploration, Inc., assigned all of its right, title and interest in and to U.S.A. Oil and Gas Lease Serial No. OCS-G-2342 to applicant.

[16] Applicant is filing under gas purchase agreement dated Mar. 7, 1984.

[17] Due to depletion of gas reserves, the unit well was plugged and abandoned, the leases expired and the contract terminated.

Filing code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 84-16711 Filed 6-21-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2612-4]

Availability of Environmental Impact Statements Filed June 11, Through June 15, 1984

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 840260, Final, SCS, IA, MO, West Fork of Big Creek Watershed Multipurpose Flood Control Plan, Ringgold and Decatur Cos., Iowa and Daviess and Harrison Cos., Missouri, Due: July 23, 1984, Contact: Paul Larson (314) 875-5214

EIS No. 840261, Draft, FHW, CA, I-80 At-Grade Access Closure, between Pedrick Road and Putah Creek, Solano County, Due: August 6, 1984, Contact: Jim Jelinek (209) 948-7987

EIS No. 840262, Draft, FHW, NC, LaSalle Street Extension, Statesville Avenue to Graham Street, Mecklenburg County, Due: August 6, 1984, Contact: Kenneth Bellamy (919) 755-4346

EIS No. 840263, Draft, SCS, PA, Jacobs Creek Watershed Flood Protection Plan, Fayette and Westmoreland Counties, Due: August 6, 1984, Contact: James Olsen (717) 782-4453

EIS No. 840264, Draft, IBR, CA, Day Creek Water Project, Grant, San

Bernardino Co., Due: August 6, 1984, Contact: Ron Riley (714) 383–2187

EIS No. 840265, Final, EPA, MT, Greene County Wastewater Treatment Facilities Plan, Approval, Grant, Due: July 23, 1984, Contact: Thomas Lorenz (816) 374–5593

EIS No. 840266, Final, FHW, MT, Helena-West/US 12 Improvement, MacDonald Bypass to Helena, Lewis and Clark County, Due: July 23, 1984, Contact: William Dunbar (406) 449–5310

EIS No. 840267, Final, AFS, SEV, Southern Regional Land/Resource Management, Standards and Guidelines, Due: July 23, 1984, Contact: Robert Williams (404) 881–2242

EIS No. 840268, Final, AFS, SEV, Pacific Norhwest Regional Land/Resource Management, Standards and Guidelines, Due: July 23, 1984, Contact: Harold Nygren (503) 221–2387

EIS No. 840269, Draft, UMT, MO, IL, St. Louis Central/Airport Corridor Improvement, St. Louis Co., Missouri and St. Clair Co., Illinois, Due: August 6, 1984, Contact: Charles Donald (816) 926–5053

EIS No. 840270, Final, DRBC, NJ, Merrill Creek Reservoir Project, Approval, Delaware River, Warren County, Due: July 23, 1984, Contact: J. W. Thursby (609) 883–5900.

EIS No. 840271, Final, EPA, REG, Petroleum Refining Industry, Emissions, performance Standards, Due: July 23, 1984, Contact: Gilbert Wood (919) 541–5578

EIS No. 840272, Draft, BLM, OR, John Day Planning Area, Resource Management Plan, Harney and Grant Counties, Due: September 13, 1984, Contact: Larry Morgan (503) 573–5241

Amended Notices:

EIS No. 840197, Draft, MMS, AK, 1985 St. George Basin OCS Oil and Gas Sale No. 89, Leasing, Due: July 30, 1984, Contact: Bruce Blanchard (202) 343–3891. Published FR 05/18/84—Review extended

EIS No. 760467, Draft, AFS, AZ, Copper Basin Phelps Dodge Land Exchange, Presecott National Forest, Yavapal County, published FR 04/06/76—Officially withdrawn

Correction: The Notice of Availability (NOA) published in the 6/12/84 **Federal Register** contained the wrong weekly receipt dates. The correct dates for the June 12, 1984 NOA are June 4, 1984 through June 8, 1984.

Dated: June 19, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84–16671 Filed 6–21–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30074A; PH–FRL 2612–3]

Ethylene Oxide; Certain Pesticide Products Registered for the Sterilization of Equipment and Supplies in Hospitals and Health Care Facilities; Withdrawal of Revised Labeling Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Notice.

SUMMARY: EPA issued a notice requesting registrants of pesticide products containing ethylene exide (EtO) registered for certain uses in hospitals and health care facilities to submit applications to amend approved labeling. Elsewhere in this issue of the **Federal Register**, the Occupational Safety and Health Administration (OSHA) has promulgated comprehensive exposure standards for all occupational uses of EtO. Therefore, EPA has decided to withdraw the original notice in recognition of concerns regarding the potential preemption of the OSHA standards.

FOR FURTHER INFORMATION CONTACT:

By Mail: Walter I. Waldrop, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 711C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7400.)

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency issued a notice published in the **Federal Register** of April 18, 1984 (49 FR 15268) announcing it was requesting that registrants of pesticide products containing ethylene oxide (EtO) which are registered for certain uses in hospitals and health care facilities submit applications to amend the approved labeling for such products to include specific directions for workplace design and workplace practices intended to limit worker exposure to EtO.

The **Federal Register** notice noted that the Occupational Safety and Health Administration was in the final stages of a rulemaking proceeding directed toward setting a comprehensive exposure standard for all occupational uses of EtO, including use in hospital and health care facilities, and that the requested label changes were intended to be consistent with and complement OSHA's regulatory efforts.

Since the issuance of the notice, substantial concern has been raised over the possibility that adoption of the requested labeling changes, which are intended to affect workplace design and practice in hospitals and health care facilities, might have a preemptive effect on OSHA's ability to set a comprehensive EtO standard. The Occupational Safety and Health Act includes a provision which forecloses OSHA's right to regulate those working conditions concerning which another Federal agency has exercised statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

Although the Federal courts have held that label language for registered EtO products previously approved by EPA does not foreclose OSHA regulation, a concern has been raised that adoption of the additional label changes described in the recent EPA notice could be construed as preempting OSHA regulation of EtO exposure in hospitals and health care facilities.

EPA stated in the April 18, 1984 **Federal Register** notice, that the agency has no intention of preempting OSHA with respect to regulation of EtO exposure in an occupational setting. EPA adheres to its belief that OSHA and EPA should work together toward setting standards that most effectively protect the exposed worker. In recognition of concerns regarding potential preemption of OSHA's standard, EPA has determined that it would be prudent to withdraw its April 18, 1984 notice and the associated requests that registrants submit revised labeling for registered pesticide products containing EtO.

EPA continues to believe that the label revisions described in the notice provide useful guidance concerning workplace design and practice changes which would assist affected facilities in complying with the OSHA standard. After OSHA issues its final standard, EPA may request that registrants adopt label changes intended to insure that users of pesticide products containing EtO conform to the OSHA standard.

Dated: June 14, 1984.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84–16455 Filed 6–18–84; 12:04 pm]

BILLING CODE 6560–50–M

[OPTS–59161, BH–FRL 2612–7]

Certain Chemicals; Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: July 9, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS–59161]" and the specific TME under should be sent to: Document Control Officer (TS–793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

TME 84–61

Close of Review Period. July 27, 1984.
Manufacturer. Confidential.
Chemical. (G) Polymer of adipic acid, polyalklene glycol and alkanepolyol.
Use/Production. (G) Precursor in the manufacture of polyurethanes. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 12 workers, up to 8 hrs/da, up to 4 da/yr.
Environmental Release/Disposal. No release. Disposal by publicly owned treatment works (POTW).

TME 84–62

Close of Review Period. July 28, 1984.
Manufacturer. Hercules Incorporated.
Chemical. (G) Phenolic modified rosin ester.
Use/Production. (S) Industrial and commercial use in formulating ink vehicles. Prod. range: 40,000, kg/6 months.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation, a total of 2–10 workers.
Environmental Release/Disposal. Disposal by municipal waste disposal facilities.

Dated: June 18, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–16536 Filed 6–21–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51524; BH–FRL 2612–6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-seven PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84–824, 84–825, 84–826, 84–827 and 84–828—September 5, 1984.
PMN 84–829, 84–830, 84–831, 84–832, 84–833, 84–834, 84–835, 84–836, 84–837, 84–838, 84–839, 84–840 and 84–841—September 8, 1984.
PMN 84–842 and 84–843—September 9, 1984.
PMN 84–844, 84–845, 84–846 and 84–847—September 10, 1984.
PMN 84–848, 84–849, and 84–850—September 11, 1984.

Written comments by:

PMN 84–824, 84–825, 84–826, 84–827 and 84–828—August 6, 1984.
PMN 84–829, 84–830, 84–831, 84–832, 84–833, 84–834, 84–835, 84–836, 84–837, 84–838, 84–839, 84–840 and 84–841—August 9, 1984.
PMN 84–842 and 84–843—August 10, 1984.
PMN 84–844, 84–845, 84–846 and 84–847—August 11, 1984.
PMN 84–848, 84–849, and 84–850—August 12, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS–51524]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M St., SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substancs, Environmental Protection Agency, Rm. E–216, 401 M St., SW., Washington, DC 20460, (202–382–3792).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

PMN 84–824

Manufacturer. Confidential.
Chemical. (G) Brominated aromatic.
Use/Production. (S) Flame retardant for plastics for industrial, commercial and consumer use. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—Non-irritant, Eye—Minimal; Inhalation: >7.3 mg/1; Ames Test: Negative; Skin sensitization: Non-sensitizer.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–825

Importer. Confidential.
Chemical. (G) Polymer of substituted polyalkylene polyamine and substituted alkane, alkyl carboxylate.
Use/Import. (S) Industrial auxiliary for paper. Import range: Confidential.
Toxicity Data. Acute oral: 6.930 g/kg; Irritation: Skin—No observable effects, Eye—No observable effects, LC 20–22 hr (Leuciscus idus): 20 mg/l; LC 48 hr (Leuciscus idus): 10 mg/l.
Exposure. No data submitted.
Environmental Release/Disposal. No release to air, water and land.

PMN 84–826

Importer. Confidential.
Chemical. (G) Polymer of aliphatic polyamines, dihaloalkane, aliphatic diacid.
Use/Import. (S) Industrial auxiliary for paper. Import range: Confidential.

Toxicity Data. Acute oral:<5.0 ml/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant, LC 7–8 hrs (Leuciscus idus): 10 mg/l; LC 23–48 hrs (Leuciscus idus): 5 mg/l.

Exposure. No data submitted.

Environmental Release/Disposal. No release to air, water and land.

PMN 84–827

Importer. Confidential.

Chemical. (G) Polymer of aliphatic polyamines, dihaloalkane, organic diamine.

Use/Import. (S) Industrial auxiliary for paper. Import range: Confidential.

Toxicity Data. Acute oral: <5.0 ml/kg, Irritation: Skin—Slight, Eye—Non-irritant; LC 14 hrs (Leuciscus idus): 10 mg/l; LC 14–48 hrs (Leuciscus idus): 5 mg/l; LC 48 hrs (Leuciscus idus):/l; 2 mg/l: LC 48 hrs (Leuciscus idus): 1 mg/l.

Exposure. No data submitted.

Environmental Release/Disposal. No release to air, water and land.

PMN 84–828

Importer. Confidential.

Chemical. (G) Polymer of substituted polyalkylene polyamine and substituted alkane.

Use/Import. (S) Industrial auxiliary for paper. Import range: Confidential.

Toxicity Data. Acute oral: 6,508 g/kg; Irritation: Skin—No observable effects, Eye—Moderate; LC 2 days (Leuciscus idus): 10 mg/l; LC 48 hrs (Leuciscus idus): 5 mg/l.

Exposure. No data submitted.

Environmental Release/Disposal. No release to air, water and land.

PMN 84–829

Manufacturer. Confidential.

Chemical. (G) Polymer of adipic acid, polyalkylene glycol and alkanepolyol.

Use/Production. (G) Precursor in the manufacture of polyurethanes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 12 workers, up to 8 hrs/da, up to 250 da/yr.

Enivronmental Release/Disposal. No release. Disposal by publicly owned treatment works (POTW).

PMN 84–830

Importer. E. I. du Pont Nemours and Company, Inc.

Chemical. (G) Styrene, nitrile, acrylic copolymer.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, total of 1 worker.

Environmental Release/Disposal. Confidential. Disposal by incineration.

PMN 84–831

Importer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Styrene acrylic copolymer.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 1 worker.

Environmental Release/Disposal. Confidential. Disposal by incineration.

PMN 84–832

Importer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic polymer.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 1 worker.

Environmental Release/Disposal. Release to air and land Disposal by incineration.

PMN 84–833

Manufacturer. Confidential.

Chemical. (G) Substituted anthraquinone.

Use/Production. (G) Additive for display devices. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Release of dross. Disposal by incineration.

PMN 84–834

Manufacturer. Confidential.

Chemical. (G) Trisazo dye.

Use/Production. (G) Additive for display devices. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted. Disposal by incineration.

PMN 84–835

Manufacturer. Confidential.

Chemical. (G) Trisazo dye.

Use/Production. (G) Additive for display devices. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Release of dross. Disposal by incineration.

PMN 84–836

Manufacturer. Confidential.

Chemical. (G) Trisazo dye.

Use/Production. (G) Additive for display devices. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Release of dross. Disposal by incineration.

PMN 84–837

Manufacturer. Globe Manufacturing Company.

Chemical. (G) Polyurea urethane.

Use/Production. (S) Industrial and consumer elastic fiber in wearing apparel. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to land. Disposal by city-operated landfill.

PMN 84–838

Manufacturer. Confidential.

Chemical. (G) Tetrasubstituted naphthalenecarboxamide.

Use/Production. (G) Chemical intermediate. Prod. range: 700—800 kg/yr.

Toxicity Data. Acute oral: Males and females— 3,200 mg/kg; Acute dermal:< 1g/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Normal.

Exposure. Manufacture and use: dermal and inhalation, a total of 7 workers, up to 0.8 hr/da, up to 6 da/yr.

Environmental Release/Disposal. No release. Less than 2 kg/batch of incineration.

PMN 84–839

Manufacturer. Confidential.

Chemical. (G) Polyfunctional aziridine.

Use/Production. (S) Industrial and commercial crosslinker for coatings and adhesion promoter. Prod. range: 10,000–40,000 kg/yr.

Toxicity Data. Acute oral: 2,250 mg/kg; Irritation: Skin—Mild, Eye—Primary irritant; Ames Test: Mutagenic; Skin Sensitization: Negative.

Exposure. manufacture: dermal, a total of 2 workers, up to 4 hrs/da, up to 4 da/yr.

Environmental Release/Disposal. No release.

PMN 84–840

Manufacturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Modified epoxy resin.

Use/Production. (G) Size ingredient. Prod. range; Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: a total of 40 workers, up to 24 hrs/da, up to 350 da/yr.

Environmental Release/Disposal. Release to air and water. Disposal by

POTW, incineration and on-site treatment plant.

PMN 84-841

Manufacturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Modified epoxy resin.

Use/Production. (G) Size ingredient. Prod. range; Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: a total of 40 workers, up to 24 hrs/da, up to 350 da/yr.

Environmental Release/Disposal. Release to air and water. Disposal by POTW, incineration and on-site treatment plant.

PMN 84-842

Manufacturer. Confidential.

Chemical. (G) Disubstituted benzothiazolium salt.

Use/Production. (G) Contained use in article. Prod. range: 1-2 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation, a total of 16-25 workers, up to 0.4 hr/da, up to 4 da/yr.

Environmental Release/Disposal. Negligible release. Less than 0.008 kg/batch disposed of by biological treatment system with less than 0.1 kg/batch incinerated.

PMN 84-843

Manufacturer. Confidential.

Chemical. (G) Modified epoxy prepolymer.

Use/Production. (G) Industrial adhesive basestock. Prod. range: Confidential.

Toxicity Data. Acute oral: Males and females—5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Moderate.

Exposure. Manufacture: dermal, a total of 21 workers.

Environmental Release/Disposal. No release. 1 qt disposed of as laboratory waste.

PMN 84-844

Manufacturer. Confidential.

Chemical. (G) Amine salt of a styrene—divinyl benzene ion exchange resin.

Use/Production. (G) Chemical intemediate used in a closed process. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal, a total of 33 workers.

Environmental Release/Disposal. Release to air and land. Disposal by incineration, approved landfill and navigable waterway after treatment.

PMN 84-845

Manufacturer. Kay-Fries, Inc.

Chemical. (G) Vinyl trialkoxy silane.

Use/Production. (G) Industrial surface treatment agent for inorganic material prior to incorporation into plastic material. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 22 workers, up to 0.1 hr/da, up to 16 da/yr.

Environmental Release/Disposal. 0.00005 to 0.0001 kg/day released to air.

PMN 84-846

Importer. King Industries, Inc.,

Chemical. (G) Fatty acids, compound with diamines.

Use/Import. (G) Additives for paints, caulks and sealants. Import range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal; >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Minimal; Inhalation: LC_{50}—>19.7 mg/1/hr, nominal.

Exposure. Import and processing: inhalation, a total of 21 workers, up to 8 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. Less than 100 kg/yr release to air and water.

PMN 84-847

Importer: Distritex, Inc.

Chemical. (G) Acrylic copolymer, sodium salt.

Use/Import. (S) Commercial thinner for drilling muds. Import range: Confidential.

Toxicity Data. Acute oral: 5,006 mg/kg; Acute dermal: <10,000, Irritation: Skin—Non-irritant, Eye—Slight; LC_{50} 6 hr (Green algae): 1,900 parts per million (ppm); LC_{50} 96 hr (Brown shrimp): 9,400 mg/1.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 84-848

Manufacturer. Confidential.

Chemical. (G) Alkyl thiophosphate amine salt.

Use/Production. (G) Product stabilizer. Prod. range: Confidential.

Toxicity Data. Acute oral: 2,600 mg/kg; Acute dermal: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Corrosive; LC_{50}—96 hrs (Bluegill sunfish): 64 mg/l; LC_{50}—96 hrs (Rainbow trout): 45 mg/l; LC_{50}—48 hrs (Daphnia magna): 51 mg/l.

Exposure. Manufacture: dermal, a total of 51 workers, up to 3 hrs/da, up to 18 da/yr.

Environmental Release/Disposal. Confidential.

PMN 84-849

Manufacturer. Confidential.

Chemical. (G) Fatty polyacrylate.

Use/Production. (G) Oil additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-850

Manufacturer. Confidential.

Chemical. (G) Fatty acrylate polymers.

Use/Production. (G) Oil additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: June 18, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-16537 Filed 6-21-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Meeting of Interested Parties to CC Docket No. 81-343, Policy for Overseas Common Carrier Facilities, Pacific Region, 1981-1995

June 15, 1984.

Members of the Common Carrier Bureau staff will convene the third of a series of public meetings of all interested parties to the Pacific Planning Process (CC Docket No. 81-343) in the Commission Meeting Room, Room 856, 1919 M Street NW., Washington, D.C., at 2 p.m. on Tuesday, June 26, 1984.

The agenda of the meeting will include: (1) Further discussion of alternative facilities plans proposed for construction during the 1987-1995 period; (2) further discussion of U.S. carriers' forecasted circuit demands and circuit requests for the 1987-1995 time frame; (3) further discussion of the proposed introduction and configuration of a fiber optic TPC-3 cable in 1998; (4) the scheduling of public meetings; and (5) any other matters related to this proceeding.

This meeting will be open to the public and anyone who wishes to attend and express views is invited. For

additional information, contact Laura Stein (202) 632–4047.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–16649 Filed 6–21–84; 8:45 am]

BILLING CODE 6712–01–M

Telecommunications Industry Advisory Group; Separations and Costing Subcommittee; Change in Location of Meeting

The location of Separations and Costing Subcommittee meeting scheduled for Tuesday, June 26, Wednesday, June 27, and Thursday, June 28, 1984, has been changed to USTA, 1801 K Street NW., Washington, D.C., Suite 1201 (Entrance on L Street).

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–16650 Filed 6–21–84; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Revisions of Savings Bank Call Reports

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Proposed Revisions to Savings Bank Reports of Income and Condition.

SUMMARY: The Federal Deposit Insurance Corporation has proposed revisions to the Reports of Income and Condition that are filed by savings banks with the FDIC. The revised reporting requirements will assist the FDIC in its efforts to more effectively and efficiently monitor the financial condition and performance of savings banks.

DATE: Comments on the proposal must be received by August 6, 1984. In this regard, the implementation of any final revisions to the Reports of Income and Condition would be scheduled to become effective on January 1, 1985, and would be first reflected in the Reports of Income and Condition filed by savings banks for the quarter ending March 31, 1985.

ADDRESS: Comments regarding the proposed revisions to the Reports of Income and Condition should be submitted to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., 20429 or delivered to Room 6108 at the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days. Comments may also be inspected in Room 6108 between 9:00 a.m. and 4:15 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Stephen G. Pfeifer, Examination Specialist, or Robert F. Storch, Examination Specialist, Federal Deposit Insurance Corporation, 550 17th Street, NW., 20429, telephone 202/389–4761.

SUPPLEMENTARY INFORMATION: Recent and probable reductions in Federal banking controls, including the expansion of asset powers and the deregulation of interest rates, increase the FDIC's need for additional information from savings banks regarding their financial condition and operating performance. Furthermore, the FDIC intends to increase its emphasis on offsite surveillance as a useful complement to onsite examinations. In view of the above, the FDIC is proposing a number of revisions to the savings bank Reports of Income and Condition in order to further assist the agency in fulfilling its supervisory responsibilities. Requests for copies of the proposed revisions should be directed to the FDIC Information Office at the above mentioned address.

By order of the Board of Directors, June 18, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–16651 Filed 6–21–84; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Definition of "Package" Under the Carriage of Goods by Sea Act; Filing of Petition of Rulemaking

Notice is given that a petition has been filed by Dow Chemical Company (Dow) for institution of a rulemaking proceeding to prescribe that, for purposes of section 4(5) of the Carriage of Goods by Sea Act, 46 U.S.C. 1304(5), bills of lading filed by carriers subject to the Commission's jurisdiction define a package as each individually wrapped bag, carton, box or drum whether or not palletized and/or placed or assembled in containers.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 11101.

Interested persons may submit replies to the petition to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before July 31, 1984. An original and fifteen copies of such replies shall be submitted. A copy of such replies shall also be served on filing counsel: Robert R. Tiernan, Esq., Shack & Kinball, P.C., 1129 20th Street, NW., Suite 500, Washington, D.C. 20036.

Francis C. Hurney,

Secretary.

[FR Doc. 84–16724 Filed 6–21–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Oneida Valley Bancshares, Inc., et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 13, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Oneida Valley Bancshares, Inc.*, Oneida, New York: to become a bank holding company by acquiring 100 percent of the voting shares of The Oneida Valley National Bank of Oneida, Oneida, New York.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Marion National Corporation*, Marion, South Carolina: to become a bank holding company by acquiring 80 percent of the voting shares of Marion National Bank, Marion, South Carolina.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lizton Financial Corporation,* Lizton, Indiana: to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Lizton, Lizton, Indiana.

D. **Federal Reserve Bank of Kansas City,** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Evergreen Bancorporation,* Evergreen, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Evergreen Interim National Bank, which will be merged into Evergreen National Bank, Evergreen, Colorado.

Board of Governors of the Federal Reserve System, June 18, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16652 Filed 6-21-84; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Hart-Scott-Rodino Antitrust Improvement Act; Notification and Report Form Information Collection Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for review and approval of an extension of an information collection requirement and form.

SUMMARY: The Commission is seeking OMB clearance for an extension for one year of the information collection requests made pursuant to provisions of the Hart-Scott-Rodino Antitrust Improvements Act, Title II (15 U.S.C. 18a), the approval for which is scheduled to expire July 31, 1984.

Section 7A of the Clayton Act provides that certain persons proposing to make acquisitions or engage in mergers shall file with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Divison a premerger notification report in a form prescribed by the Federal Trade Commission, with the concurrence of the Assistant Attorney General. The Commission has made and is continuing to make substantial progress in its efforts to reduce the reporting burden connected with the filing of such reports. During the one year extension the Commission will continue its review of the burden imposed by the report form. Minor clarifying changes have been made in the instructions to the Form as it was approved last year.

DATE: Comments on this clearance application must be submitted on or before July 23, 1984.

ADDRESS: Send comments to Mr. Donald R. Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Building, Room 3228, Washington, D.C. 20503. Copies of the application may be obtained from Public Reference Branch, Room 103, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Senior Attorney, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3404.

Emily H. Rock,

Secretary.

[FR Doc. 84-16675 Filed 6-21-84; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction	Waiting period terminated effective
(1) 84-0477—Berwind Corporation's proposed acquisition of voting securities of Sentrol Incorporated, (Thomas J. Holace and Joyce M. Holace, UPE's).	June 4, 1984.
(2) 84-0505—Petrie Stores Corporation's, (Milton Petrie, UPE) proposed acquisition of voting securities of The Miller-Wohl Company, Incorporated.	June 5, 1984.
(3) 84-0506—Petrie Stores Corporation's, (Milton Petrie, UPE) proposed acquisition of voting securities of The Miller-Wohl Company, Incorporated.	Do.
(4) 84-0461—Hasbro Industries Incorporated's proposed acquisition of voting securities of Milton Bradley, Company.	Do.
(5) 84-0462—Hasbro Industries Incorporated's proposed acquisition of voting securities of Playskool, Incorporated, (Milton Bradley, Incorporated, UPE).	Do.
(6) 84-0463—Hasbro Industries Incorporated's proposed acquisition of voting securities of Milton Bradley, Company.	Do.
(7) 84-0517—Minnesota Power & Light Company's proposed acquisition of voting securities of Universal Telephone Incorporated, (Ray H. Dittmore, UPE).	June 6, 1984.
(8) 84-0518—Minnesota Power & Light Company's proposed acquisition of voting securities of Universal Telephone Incorporated, (Ray H. Dittmore, UPE).	Do.
(9) 84-0520—Minnesota Power & Light Company's proposed acquisition of voting securities of Universal Telephone Incorporated, (Ray H. Dittmore, UPE).	Do.
(10) 84-0417—Twin City Federal Savings & Loan Association's proposed acquisition of voting securities of Commonwealth Leasing Corporation.	June 7, 1984.
(11) 84-0473—American Broadcasting Companies, Incorporated's proposed acquisition of voting securities of Texaco Incorporated, (Entertainment and Sports Programming Network, Incorporated, UPE).	June 8, 1984.
(12) 84-0498—Berwind Corporation's proposed acquisition of voting securities of Watson Bowman Associates, Incorporated, (Stewart C. Watson, UPE).	June 7, 1984.
(13) 84-0499—Berwind Corporation's proposed acquisition of voting securities of Watson Bowman Associates, Incorporated, (Thomas C. Bowman, UPE).	Do.
(14) 84-0502—General Electric Company's proposed acquisition of voting securities of Employers Reinsurance Corporation, (Texaco, Incorporated, UPE).	Do.
(15) 84-0507—Edgcomb Steel of New England Incorporated's proposed acquisition of assets of The Williams Company.	Do.
(16) 84-0516—AEA Investors Incorporated's proposed acquisition of voting securities of Birmingham Bolt Company, Incorporated, (United Coal Company, UPE).	Do.
(17) 84-0540—The Penn Central Corporation's proposed acquisition of voting securities of Mesa Offshore Company, (Mesa Petroleum Company, UPE).	June 8, 1984.

FOR FURTHER INFORMATION CONTACT: Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-16676 Filed 6-21-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on June 15.

Public Health Service

Centers for Disease Control

Subject: Chronic Stress in Office Work—NEW.

Respondents: Secretaries, clerical workers, and clerical information processors in two locations; one private sector employer and one public sector employer.

Subject: Gonorrhea Culture Test Results of Females (0920–0019)—REVISION.

Respondents: State and local health departments.

Health Resources and Services Administration

Subject: Dental Graduates Employment Pattern Survey—NEW.

Respondents: Dentists.

National Institutes of Health.

Subject: Relationship of Dietary Intake to Caries Incidence (0925–0186)—EXTENSION/NO CHANGE.

Respondents: School children aged 11–13 residing in a nonfluoridated water area.

Subject: Questionnaire for Former Trainees of the Minority Access to Research Careers Program—NEW.

Respondents: Individuals.

Office of the Assistant Secretary for Health

Subject: Annual Marriage and Divorce Statistical Report Forms (0937–0001)—EXTENSION/NO CHANGE.

Respondents: State and local vital statistics officials.

OMB Desk Officer: Fay S. Iudicello.

Food and Drug Administration

Subject: Blood Establishment Registration and Product Listing (0910–0052)—REINSTATEMENT.

Respondents: Manufacturers of blood and blood products

OMB Desk Officer: Bruce Artim.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: June 15, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84–16525 Filed 6–21–84; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 84P–0172]

Food for Human Consumption; Enriched Bread Deviating From Identity Standard; Temporary Permit for Market Testing

Correction

In FR Doc. 84–15908 appearing on page 24600 in the issue of Thursday, June 14, 1984, make the following correction.

In the third column, second complete paragraph, last line, "September 18, 1984." Should read "September 12, 1984."

BILLING CODE 1505–01–M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings: New Orleans District Office, chaired by Robert O. Bartz, District Director. Topics to be discussed are food irradiation and sulfiting agents in foods.

DATE: Monday, July 9, 1984, 1:30 p.m.

ADDRESS: Auditorium, Main Library, 7711 Goodwood Blvd., Baton Rouge, LA 70806.

FOR FURTHER INFORMATION CONTACT: Frances Brysson, Consumer Affairs Officer, Food and Drug Administration, 4298 Elysian Fields Avenue, New Orleans, LA 70122, 504–589–2420.

Atlanta District Office, chaired by John H. Turner, District Director. Topics to be discussed are ethylene dibromide (EDB), food irradiation, and update on aspartame.

DATE: Tuesday, July 17, 1984, 9 a.m. to 11 a.m.

ADDRESS: County Farm Bureau Auditorium, 4576 South Court St., Montgomery, AL 36196.

FOR FURTHER INFORMATION CONTACT: Carolyn Hommel, Consumer Affairs Officer, Food and Drug Administration, 1182 West Peachtree Street NW., Atlanta, GA 30309, 404–881–7355.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: June 18, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–16857 Filed 6–21–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 75N–0184; DESI 3265]

Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption for Single Entity Dicyclomine Hydrochloride ("Paragraph XIV/Category 18"); Followup and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug administration (FDA) is revoking the temporary exemption for single entity dicyclomine hydrochloride which is used for the treatment of irritable bowel syndrome. The exemption has permitted the drug to remain on the market beyond the time limit scheduled for implementation of the Drug Efficacy Study. In this notice, FDA is announcing the conditions for marketing dicyclomine hydrochloride for the indication for which it is now regarded as effective and is offering an oportunity for a hearing concerning indications reclassified to lacking substantial evidence of effectiveness.

DATES: Revocation of exemption effective June 22, 1984. Hearing requests due on or before July 23, 1984. Material to justify a hearing due on or before August 21, 1984. Supplements to approved new drug applications due on or before August 21, 1984 or, for bioavailability data December 19, 1984.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 75N–0184, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane Rockville MD 20857, except requests for opinion of applicability are to be sent to the address listed below.

Supplements to full new drug applications (identify with NDA number): Division of Cardio-Renal Drug Products (HFN-110), Center for Drugs and Biologics (formerly National Center for Drugs and Biologics).

Original abbreviated new drug application and supplements thereto (identify as such): Division of Generic Drugs (HFN–230), Center for Drugs and Biologics.

Requests for guidance in conducting bioavailability studies: Division of Biopharmaceutics (HFN–220), Center for Drugs and Biologics.

Requests for hearing (identify with Docket No. 75N–0184): Dockets Management Branch (HFA–305), Rm. 4–62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN–310), Rm. 216, Center for Drugs and Biologics, 5640 Nicholson Lane Rockville, MD 20852.

Requests for the reports of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFW–35), Rm. 12A–12.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** on June 18, 1971 (36 FR 11754), FDA classified a number of drugs, including dicyclomine hydrochloride, as effective for use as adjunctive therapy in the treatment of peptic ulcer; probably effective for use as adjunctive therapy in the irritable bowel syndrome and for use as adjunctive therapy in neurogenic bowel disturbances; and possibly effective and lacking substantial evidence of effectiveness for other labeled indications.

Subsequently, FDA published two notices pertaining to dicyclomine hydrochloride in the **Federal Register** of November 11, 1975. In one notice (40 FR 52649), the agency stated that it inappropriately classified dicyclomine hydrochloride as an anticholinergic instead of as an antispasmodic. The notice further stated that this drug, over the dose ranges studied, had not been shown to be effective as an antisecretory agent and in fact possessed little or no anticholinergic activity. In the other notice (40 FR 52644), FDA granted a temporary exemption from the time limits established for completing certain phases of the drug efficacy study (DESI) program for dicyclomine hydrochloride. Under the exemption, marketing of single entity products containing the drug could be continued provided studies were undertaken to show whether the drug was effective for the indications then classified as probably effective: i.e., irritable bowel syndrome, acute enterocolitis, and, for pediatric products, infant colic. All other indications for dicyclomine hydrochloride, including adjunctive thereapy in the treatment of peptic ulcer, were classified in the notice appearing at p. 52649 as lacking substantial evidence of effectiveness. That notice also offered affected firms an opportunity for hearing concerning the removal of those indications from labeling. No hearing requests were received.

On June 20, 1978 (43 FR 26490), the testing and marketing conditions set forth in the 1975 exemption for dicyclomine hydrochloride were amended to: (1) Require that each marketed drug be the subject of an approved new drug application or a conditionally approved abbreviated new drug application; (2) allow a drug product to remain on or enter the market even though its manufacturer was not conducting clinical studies of its effectiveness, provided that some manufacturer of that drug was conducting such studies: and (3) grant an additional year for the completion of clinical studies.

In response to the 1978 notice, Merrell Dow Pharmaceuticals, Inc., submitted two large multicenter studies using Bentyl (dicyclomine hydrochloride) in the treatment of irritable bowel syndrome (033–028 and 033–045–1). Two smaller studies were also submitted: one is a series of individual studies evaluated together (033–026, 033–041, and 033–050); the other study (033–045) was discontinued when the sponsor found that the protocol was not being properly followed. All the studies except 033–045 used a higher dose of Bentyl (40 milligrams (mg), four times a day) than is recommended in the current labeling. No studies were submitted for acute enterocolitis and infant colic.

Studies 033–028 and 033–045–1 show statistically significant improvement favoring Bentyl over placebo in the categories evaluated: physician's overall global assessment, abdominal pain, abdominal tenderness, and bowel habits. Findings in studies 033–026, 033–041, 033–050, and 033–045 fall short of providing substantial evidence of effectiveness of Bentyl but are consistent with the findings in the two multicenter studies; i.e., that Bentyl is effective for the treatment of irritable bowel syndrome. In studies 033–028 and 033–045–1, 82 percent of the patients treated with initial doses of 160 mg daily demonstrated a favorable response. Although 61 percent of the Bentyl patients experienced anticholinergic side effects in these studies, these side effects were neither severe nor intolerable, and generally did not interfere with successful treatment of the patient.

Effectiveness Decision

On the basis of the data and information submitted and reviewed, the Director of the Center for Drugs and Biologics has determined that dicyclomine hydrochloride is effective when administered orally or intramuscularly for the treatment of irritable bowel syndrome. Because the Director is not aware of any ongoing study that complies with the June 20, 1978 notice that would be applicable to dicyclomine hydrochloride in the treatment of acute enterocolitis and infant colic, he has further determined that the drug is no longer entitled to the temporary exemption and that these indications lack substantial evidence of effectiveness.

Revocation of Exemption

For the reasons stated above, the temporary exemption announced in the notices of November 11, 1975 and June 20, 1978, as it pertains to dicyclomine hydrochloride, is hereby revoked.

List of NDA's and ANDA's

The following approved new drug applications (NDA's) and conditionally approved or approved abbreviated new drug applications (ANDA's) provide for products that contain dicyclomine hydrochloride as the only active ingredient:

1. NDA 7–409; Bentyl Capsules, 10 mg; Merrell Dow Pharmaceuticals, Inc., 110 East Amity Rd., Cincinnati, OH 45215.

2. NDA 7–409; Bentyl Tablets, 20 mg; Merrell Dow Pharmaceuticals, Inc.

3. NDA 7–961; Bentyl Syrup, 10 mg/5 milliliter (mL); Merrell Dow Pharmaceuticals, Inc.

4. NDA 8–370; Bentyl Injection, 10 mg/mL; Merrell Dow Pharmaceuticals, Inc.

5. ANDA 80–614; Dicyclomine Hydrochloride Injection, 10 mg/mL; Carter-Glogau Laboratories, 5160 West Bethany Home Rd., Glendale, AZ 85301.

6. ANDA 80–971; Dicyclomine Hydrochloride Capsules, 10 mg; Private Formulations, Inc., 460 Plainfield Ave., Edison, NJ 08817.

7. ANDA 83–179; Dicyclomine Hydrochloride Capsules, 10 mg; Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726.

8. ANDA 83–860; Dicyclomine Hydrochloride Capsules, 10 mg; Boots Pharmaceutical Corp. (formerly Generic Pharmaceutical Corp.), 433 Commercial Ave., Palisades Park, NJ 07650.

9. ANDA 83–924; Dicyclomine Hydrochloride Tablets, 20 mg; Boots Pharmaceutical Corp.

10. ANDA 84–097; Dicyclomine Hydrochloride Tablets, 20 mg; Tablicaps, Inc., P.O. Box 5555, Franklinville, NJ 08322.

11. ANDA 84–285; Dicyclomine Hydrochloride Capsules, 10 mg; The Lannett Co., Inc., 9000 State Rd., Philadelphia, PA 19136.

12. ANDA 84–347; Dicyclomine Hydrochloride Capsules, 10 mg; Danbury Pharmacal, Inc., 131 West St., Danbury, Ct 06810.

13. ANDA 84–361; Dicyclomine Hydrochloride Tablets, 20 mg; Bolar Pharmaceutical Co., Inc.

14. ANDA 84–479; Dicyclomine Hydrochloride Syrup, 10 mg/5 mL; National Pharmaceutical Manufacuring Co., Inc., 4128 Hayward Ave., Baltimore, MD 21215.

15. ANDA 84–505; Dicyclomine Hydrochloride Capsules, 10 mg; Barr Laboratories, Inc., Northvale, NJ 07647.

16. ANDA 84–600; Dicyclomine Hydrochloride Tablets, 20 mg; Barr Laboratories, Inc.

17. ANDA 84–602; Dicyclomine Hydrochloride Tablets, 20 mg; Danbury Pharmacal, Inc.

18. ANDA 85–082; Dicyclomine Hydrochloride Capsules, 10 mg; Chelsea Laboratories, Inc., Inwood, NY 11696.

19. ANDA 85–223; Dicyclomine Hydrochloride Tablets, 20 mg; Chelsea Laboratories, Inc.

20. ANDA 86–527; Dicyclomine Hydrochloride Tablets, 20 mg; Lemmon Co., 850 Cathill Rd., Sellersville, PA 18960.

21. ANDA 86–528; Dicyclomine Hydrochloride Capsules, 10 mg; Lemmon Co.

22. ANDA 86–877; Dicyclomine Hydrochloride Capsules, 10 mg; Lederle Laboratories, North Middletown Rd., Pearl River, NY 10965.

23. ANDA 86–878; Dicyclomine Hydrochloride Tablets, 20 mg; Lederle Laboratories.

24. ANDA 87–993; Baycyclomine Syrup, 10 mg/5 mL; Bay Laboratories, 3654 West Jarvis, Skokie, IL 60076.

New Drug Status

Dicyclomine Hydrochloride-containing products are regarded as new drugs (21 U.S.C. 321(p)) and an approved new drug application is required for marketing them. The new drug applications listed above represent: (1) NDA's approved on the basis of safety before October 10, 1962; (2) ANDA's submitted and approved on the basis of the June 18, 1971 notice and for which approval of the peptic ulcer indication was later withdrawn (40 FR 52649, Nov. 11, 1975); and (3) ANDA's conditionally approved under the temporary exemption that allowed products containing dicyclomine hydrochloride to be marketed while effectiveness studies were conducted. None of these new drug applications is approved on the basis of effectiveness of the drug product. Therefore, supplemental new drug applications are now required to revise the labeling and to provide additional information necessary for full approval of the NDA's and ANDA's for safety and effectiveness.

In addition to the holders of the new drug applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

Conditions for Approval and Marketing

FDA has reviewed all available evidence and concludes that dicyclomine hydrochloride is effective for the indication listed in the labeling conditions below. The agency is prepared to approved abbreviated new drug applications and supplements to previously approved and conditionally approved new drug applications under conditions described herein.

1. *Form of drug.* The drug is in tablet, capsule, or syrup form suitable for oral administration, or injectable solution from suitable for intramuscular administration.

2. *Labeling Conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the Federal Food, Drug, and Cosmetic Act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

For the treatment of Functional Bowel/Irritable Bowel Syndrome (irritable colon, spastic colon, and mucous colitis).

c. The "Clinical Pharmacology" section of the labeling is to include the following paragraph:

In two controlled clinical trials, 82 percent of the patients treated with initial doses of 160 mg daily demonstrated a favorable clinical response. In these trials, however, 61 percent of the patients on the drug experienced one or more of the following typical anticholinergic side effects: (See "Adverse Reactions" for full information)

Side effect	Dicyclomine hydrochloride (percent)	Placebo
Dry Mouth	33	1
Dizziness	29	2
Blurred Vision	27	2
Nausea	14	6
Lightheadedness	11	3
Drowsiness	8	1
Weakness	7	1
Nervousness	6	2

In these trials, approximately 9 percent of the dicyclomine (and 2 percent of the placebo) patients discontinued therapy because of one or more of these side effects. For the most part, however, these side effects were neither severe not intolerable, and generally did nor interfere with successful treatment of the patient. In 25 percent of the patients who had these side effects, the side effects disappeared or were tolerated with no dose reduction. A total of 28 percent of the patients in these trials had their dose reduced (to an average dose of 90 mg daily) because of side effects. These patients generally continued to experience a favorable clinical response and their side effects either disappeared or were tolerated.

d. The "Dosage and Administration" section is to read as follows:

S-034999 0037(02)(21-JUN-84-15:51:51)

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Dosage and Administration

Dosage Must Be Adjusted to Individual Patient Needs—See Clinical Pharmacology

The only oral dose clearly shown to be effective is 160 mg per day (in four equally divided doses). Since this dose is associated with a significant incidence of side effects, it is prudent to begin with 80 mg per day (in four equally divided doses). Depending upon the patient's response, during the first week of therapy the dose should be increased to 160 mg per day unless side effects limit dosage escalation.

If efficacy is not achieved within two weeks or side effects require doses below 80 mg per day, the drug should be discontinued. Documented safety data are not available for doses of 80 to 160 mg daily for periods longer than two weeks.

The intramuscular dosage form is to be used temporarily when the patient cannot take oral medication. Intramuscular injection is about twice as bioavailable as oral dosage forms; consequently the recommended intramuscular dose is 80 mg daily (in four divided doses). Oral dicyclomine should be started as soon as possible and the intramuscular form should not be used for periods longer than one or two days. Not for intravenous use.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved, conditionally approved, or effective new drug application or abbreviated new drug application may be continued provided that, on or before August 21, 1984, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted and (ii) a supplement to provide updated information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and ——— controls) of new drug application form FD–356H (21 CFR 314.1(c)); and, further, provided that, on or before December 19, 1984, the application holder has submitted a supplement that presents bioavailability data in accord with item 4, below.

b. Drug products that are now the subject of an approved, conditionally approved, or effective NDA or ANDA will be given full approval based on effectiveness, as well as safety, if the supplements identified in item a above are submitted and determined to be satisfactory.

c. Approval of an abbreviated new drug application (21 CFR 314.2) must be obtained before marketing such products. The bioavailability regulations (21 CFR 320.21) require any person submitting a full or abbreviated new drug application after July 7, 1977, to include either evidence demonstrating in vivo bioavailability of the drug or information to permit waiver of the requirement. The bioavailability requirements for dicyclomine hydrochloride are described in item 4, below. Marketing drug products before approval of a new drug application will subject those products, and those persons who caused the products to be marketed, to regulatory action.

4. *Bioavailability requirements.* a. Because this is the first notice announcing the agency's determination that dicyclomine hydrochloride is effective, the drug has also been reviewed for actual or potential bioavailability/bioequivalence problems. (See 21 CFR 320.22(c)(3).) It has been determined that dicyclomine hydrochloride tablets and capsules should be added to the list of drugs for which bioavailability data are not waived (21 CFR 320.22(c)).

b. The bioavailability requirements for new applications and for previously approved or conditionally approved applications are as follows: (i) For solid oral dosage forms, in vivo bioavailability/bioequivalence data are required. (ii) For the syrup dosage form, bioavailability data are waived. (iii) For the intramuscular injection, in vivo bioavailability/bioequivalence data are required unless the applicant can provide adequate information to justify a waiver. Guidance for conducting suitable bioavailability studies may be obtained from the Division of Biopharmaceutics (address above).

Opportunity for Hearing

On the basis of all the data and information available to him, the Director of the Center for Drugs and Biologics is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, that meets the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5), and that demonstrates the effectiveness of dicyclomine hydrochloride for use in the treatment of acute enterocolitis or infant colic.

Notice is given to the holders of the new drug applications and conditionally approved abbreviated new drug applications listed above and to all other interested persons that the Director of the Center for Drugs and Biologics proposes to issue an order under section 505(e) of the act, withdrawing approval and conditional approval of the new drug applications and all amendments and supplements thereto providing for the indications lacking substantial evidence of effectiveness on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that the drug products will have all the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. If no hearing is requested, and the applications are further supplemented in accord with this notice to delete the claims lacking substantial evidence of effectiveness, approval of the indications that lack evidence of effectiveness will be considered withdrawn, and no further order will issue.

This notice of opportunity for hearing encompasses all issues relating to th legal status of the drug products subject to it, e.g., any contention that any such product is not a new drug because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act and the regulations promulgated under it (21 CFR Parts 310 and 314), the applicant and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above (21 CFR 310.6) and not the subject of a new drug application, are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn, and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products named above and of all identical, related, or similar drug products not the subject of a new drug application.

The applicant or any other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing, shall file (1) on or before July 23, 1984 a written notice of appearance and request for hearing, and (2) on or before August 21, 1984 the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of

opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a granting or denial of a hearing, are contained in 21 CFR 314.200.

The failure of the applicant or any other person subject to this notice to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed and a waiver of any contentions concerning the legal status of the relevant drug product. Any such drug product labeled for the indications referred to in this notice as lacking substantial evidence of effectiveness may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such a drug product from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in their request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat; 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: June 13, 1984.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc 84–16662 Filed 6–21–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84P–0209]

Food for Human Consumption; Enriched Bread Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Pepin de Puerto Rico, Inc., to market test a bread enriched to the nutrient levels recommended by the National Academy of Sciences. Food and Nutrition Board, in 1974 (with the exception that iron will remain at the level required by the standard of identity for enriched bread). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into commerce, but no later than September 20, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Pepin de Puerto Rico, Inc., Bayamon, PR 00620.

The permit covers limited interstate marketing tests of enriched special formula bread. The test product deviates from the standard of identity for enriched bread, 21 CFR 136.115, in that it will contain in each 2-slice (approximately 2 ounces) serving: (1) 6 percent of the U.S. Recommended Daily Allowance (RDA) of vitamin A, (2) 8 percent of the U.S. RDA of vitamin B–6, (3) 8 percent of the U.S. RDA of folic acid, (4) 6 percent of the U.S. RDA of magnesium, and (5) 6 percent of the U.S. RDA of zinc. The test product meets all requirements of § 136.115 with the exception of these deviations.

The permit provides for the temporary marketing of 5,000 pounds per day of the product. The test product will be distributed in the Commonwealth of Puerto Rico.

The principal display panel of the label states the product name as "enriched special formula bread", and each of ingredients used is states on the label as required by the applicable sections of 21 CFR Part 101. A side-by-side comparison of the percentage of U.S. RDA's for nutrients in the test products and in regular enriched bread is shown on the label for the applicable nutrients. This permit is effective for 15 months, beginning on the date the test product is introduced or caused tc be introducted into commerce, but no later September 20, 1984.

Dated: June 14, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84–16661 Filed 6–21–84; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Statement of Organization, Functions and Delegation of Authority; Division of Project Management Support and Security

Part S of the Statment of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA).

Notice is given that Part S, as published in the **Federal Register** on March 21, 1979 (44 FR 17218–17219) and amended by 44 FR 46350 of August 7, 1979, 46 FR 41215 of August 14, 1981 and 48 FR 337–343 of January 4, 1983 and Chapter ST as published in the **Federal Register** on January 4, 1983 (48 FR 337–343) and amended by 48 FR 36901–36904 of August 15, 1983 are amended to delete the Systems Security Staff and the Project Management Support Staff, delete the functions assigned to those Staffs and add the Division of Project Management Support and Security and the new Division functions.

The new material and changes are as follow:

Section ST. 10 *The Office of System Requirements*—(Organization): Subsection G. The Office of Planning, Control and Validation (STE) delete:

1. The System Security Staff (STE1);

2. The Project Management Support Staff (STE2) and

ADD:

1. The Division of Project Management Support and Security (STE5).

Renumber remaining Subsections G3 to G2 and G4 to G3.

Section ST. 20 *The Office of System Requirements*—(Functions):

Subsection G. The Office of Planning, Control and Validation (STE) delete:

1. The System Security Staff (STE1);
2. The Project Management Support Staff (STE2) and

ADD:

1. The Division of Project Management Support and Security (STE5).

a. Directs development, operation and maintenance of Management Support Systems which provide automated support to the Office of System Requirements (OSR) planning, monitoring, project and resource management functions. Analyzes management requirements and needs of other OSR components and develops appropriate systems support capability. Acquires necessary automated data processing (ADP) capability to meet user needs through equipment acquisition or timesharing agreements. Works with the Office of System Management (OSM), contractors and other invovled components to develop, maintain and implement Systems' management support and control processes to integrate OSR's management support systems and processes Systems-wide.

B. Provides standards, procedures, systems support and technical assistance to OSR project managers to facilitate preparation of work plans. Directs review of project work plans to ensure completeness, compatibility with standards and managerial directives and requirements and conformity to the ADP Systems Plan, Systems Control Board decisions and other management decisions. Coordinates Systems-wide approval of new and modified plans and endures that differences and conflicts among components are resolved. Provides for monitoring progress of work projects against work plans and reporting status to Systems management.

c. Monitors and directs analysis of pending legislation potentially affecting systems. Provides status of pending legislation and projections of anticipated impacts to OSR management. Coordinates analysis of enacted legislation, develops impact statements, resource projections, project plans and other documentation to facilitate OSR management planning for legislative implementation. Tracks progress of implementation and reports periodically to the Associate Commissioner, OSR.

d. Works with Systems management to develop, maintain and implement configuration control and systems change control processes. Directs review and control of requests for modification of SSA systems. Ensures that all requests are in accordance with ADP Plan and Systems Control Board decisions and correspond to approved project work plans. Monitors change requests through the systems life cycle and ensures that all necessary concurrences and approvals are obtained and that implementation is scheduled for appropriate systems versions.

e. Develops control, auditability and security standards for the organizational information requirements for all SSA systems, and ensures the implementation of the standards within all areas of OSR's functional responsibilities. Also, develops methods to improve control and security features based on established standards and cost/benefit considerations.

f. Reviews functional requirements documents, requests for system modifications, procedural issuance and related material developed by OSR components to determine adherence to SSA, HHS and the Office of Management and Budget standards relating to the security and integrity of SSA data processing and information systems.

g. Leads and/or coordinates reviews of programmatic processes and systems to identify weaknesses in control, auditability and security features, makes recommendations for improvement and coordinates activities with other SSA components to ensure that approved recommendations are implemented.

h. Provides the capability for and performs dynamic testing and static testing of all programmatic systems in support of SSA and oversight agency requirements, as well as in support of OSR control and audit process reviews.

i. Develops requirements for and authorizes systems software changes to various Control and Audit Test Facility software modules and programmatic modules used in the performance of static and dynamic testing and validates those changes. Authorizes changes to the SSA Data Acquisition and Response System's security system.

j. Coordinates with users and all Systems components on Privacy Act and Freedom of Information Act issues to ensure that functional requirements and procedures are in conformance with that legislation.

Renumber remaining Subsections G3 to G2 and G4 to G3.

Dated: May 31, 1984.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 84-16703 Filed 6-21-84; 8:45 am]

BILLING CODE 4110-07-M

Statement of Organization, Functions and Delegations of Authority; Office of Family Assistance

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Sections SF.10 and SF.20 of the SSA statement, most recently published in the **Federal Register** on November 9, 1981 (46 FR 55422–55423) and amended on June 1, 1983 (48 FR 24460–24463), describe the mission, organization and functions of SSA's Office of Family Assistance (OFA).

Notice is given that standard administrative codes (SAC) for Sections SF.10 and SF.20 are being corrected to reflect proper designation. In the organization statement, the SAC code for Section SF.10 Subsection E.1. was designated as (FSA1). The correct designation is (SFA1). In the function statement SAC code for Section SF.20 Subsection E.1. was designated as SFA3). The correct designation is (SFA1).

In the organization statement, the SAC code for Section SF.10 Subsection H. was designated as (SFM). The correct designation is (SFK). Section SF.10 Subsection H.1. was designated (SFM1). The correct designation is (SFK1). Section SF.10 Subsection H.2. was designated (SFM2). The correct designation is (SFK2). Section SF.10 Subsection H.3. was designated (SFM3). The correct designation is (SFK3).

In the functional statement, the SAC code for Section SF.20 Subsection H. was designated (SFM). The correct designation is (SFK). Section SF.20 Subsection H.1. was designated (SFM1). The correct designation is (SFK1). Section SF.20 Subsection H.2. was designated (SFM2). The correct designation is (SFK2). Section SF.20 Subsection H.3. was designated (SFM3). The correct designation is (SFK3).

Dated: June 15, 1984.

Bert Fowler,

Acting Director, Division of Classification and Organization Management, OHR, OMBP.

[FR Doc. 84-16704 Filed 6-21-84; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environment and Energy

[Docket No. NI-122]

Intended Environmental Impact Statements

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for the following project under HUD programs as described in the appendix to this Notice, Columbia Point Redevelopment, City of Boston, Massachusetts. This Notice is required by the Council on Environmental Quality under its rules (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Each Notice shall be effective for one year. If one year after the publication of a Notice in the **Federal Register**, a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the **Federal Register**, then a new and updated Notice of Intent will be published.

Issued at Washington, D.C., June 15, 1984.

Francis G. Haas,

Deputy Director, Office of Environment and Energy.

Appendix

EIS On Columbia Point Redevelopment, City of Boston, Massachusetts

The Department of Housing and Urban Development (HUD) Boston, Regional Office intends to prepare an Environmental Impact Statement (EIS), jointly with the City of Boston, for the project described below and solicit information and comments for consideration in the EIS.

Description: The proposed project for the construction and rehabilitation of a total of 1,400 residential apartment units on the site of the existing Columbia Point Public Housing Project. The apartments will include from one to six bedroom units totalling 2,804 bedrooms. Approximately half of the existing buildings will be demolished with the remainder being rehabilitated. New construction will provide townhouses and mid-rise (up to twelve stories) buildings. Community related amenities such as a community building, swimming pools, tennis courts, softball diamonds, tot lots and playgrounds will be provided. The 200 vehicle capacity garages will be constructed to supplement on-site parking. The project is being reviewed for acceptance under section 221(d)(3) and (4) of the National Housing Act of 1934, as amended under HUD's Urban Development Action Grant Program of the CDBG Program.

Need: An EIS is proposed because the proposed action, while not exceeding the threshold of 2,500 units, will have a significant impact on the human environment and require consideration of several potential adverse impacts such as airport, noise, traffic, flood hazards and reduction of public parklands.

Alternatives: At this time, the HUD alternatives are: accept the proposed development as submitted, accept the proposed development with modifications or reject the proposed development.

Scoping: HUD will not hold a scoping meeting because most of the significant issues were identified in a Certificate issued by the Massachusetts Secretary of Environmental Affairs on March 7 and additional issues were identified by HUD in a letter dated May 21, 1984.

Comments: Comments and questions regarding this proposal should be sent within twenty-one (21) days of the publication of this Notice in the **Federal Register** to: John Mongan, Regional Administrator-Regional Housing Commissioner, Attn: Sheldon Gilbert, Regional Environmental Officer, Department of Housing and Urban Development, 15 New Chardon Street, Boston, Massachusetts 02114.

[FR Doc. 84-16769 Filed 6-21-84; 8:45 am]

BILLING CODE 4210-29-M

[Docket No. NI-123]

Intended Environmental Impact Statements

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for the following project under HUD programs as described in the appendix: City of Warren, Michigan. This Notice is required by the Council of Environmental Quality under its rules (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Each Notice shall be effective for one year. If one year after the publication of a Notice in the **Federal Register**, a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the **Federal Register**, then a new and updated Notice of Intent will be published.

Issued at Washington, D.C., June 15, 1984.

Francis G. Haas,

Deputy Director, Office of Environment and Energy.

Appendix

EIS for the Chrysler Corporation Warren Assembly Plant, City of Warren, Macomb County, Michigan

The City of Warren intends to prepare an Environmental Impact Statement (EIS) on the project described below and solicit information and comments for consideration int he EIS.

Description: The proposed Chrysler Corporation Warren Assembly Plant will consist of the rehabilitation of the existing Warren Truck Assembly and the addition of a new 700,000 square foot paint shop. Construction of the new paint shop will require the demolition of an existing vacant foundry. The proposed project consists of approximately 130 acres and is located on the northeast corner of the Mound Road and 8 Mile Road. The approximate cost of the project is in excess of $500 million.

Federal funding for the project is expected to be from the United States Department of Housing and Urban Development (HUD), UDAG and Community Development Block Grant. Other funding sources may include the

Federal Highway Administration, Economic Development Administration or other Federal agencies.

Need: A decision to prepare an EIS has been based upon effects on air quality, noise quality, traffic and hazardous and toxic waste.

Alternatives: Alternatives being considered at this time include: (1) Demolition of existing Jones Laughlin Industrial Plant and development of the site for a new paint shop; (2) rehabilitation of the existing Jones & Laughlin building for its past purpose of a foundry; and (3) no project. A "no project alternative" would mean that the project would not be developed in the City of Warren and the possible relocation to another community.

Scoping: This notice is part of the process of scoping the EIS. Reponses will be used to: (1) Make a determination of the need to prepare a full EIS; (2) help determine significant environmental issues; (3) identify data that will be used in the EIS; and (4) identify agencies, groups and individuals that will participate in the EIS process.

A public scoping meeting will be held as follows: Fifteen (15) days after publication in the **Federal Register** at 1:00 p.m.–3:00 p.m. and 7:00 p.m.–9:00 p.m. at the Warren City Hall, 29500 Van Dyke, Warren, Michigan. Contact Gerald G. Noichel at (313) 574–4687 for correct date of the public scoping meeting.

Comment: Submission of comments and information prior to the Public meeting either in writing or by telephone should be directed to: Gerald G. Noichel, Economic Development Coordinator, City of Warren, 29500 Van Dyke, Warren, Michigan 48093, telephone number (313) 574–4687.

[FR Doc. 84–16770 Filed 6–21–84; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Membership Roll of the Confederated Tribes of the Grand Ronde Community of Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs is publishing the membership roll of the Confederated Tribes of the Grand Ronde Community of Oregon. The membership roll was prepared in accordance with the Act of November 22, 1983, which provided for the restoration of Federal recognition to the Confederated Tribes of the Grand Ronde Community. Publication of the membership roll in the **Federal Register** is required by section 7 of the Act of November 22, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Smith, Portland Area Office, Bureau of Indian Affairs, P.O. Box 3785, Portland, Oregon 97208, telephone number: (503) 231–6723 (FTS 429–6723).

SUPPLEMENTARY INFORMATION: The Act of November 22, 1983 (97 Stat. 1064), provided for the restoration of Federal recognition to the Confederated Tribes of the Grand Ronde Community of Oregon. Section 7 of the Act specified criteria governing eligibility for membership until the Tribes adopted a constitution and bylaws. A membership roll was to be prepared of persons who met the requirements specified in the Act. Not less than sixty (60) days before a Secretarial election of the membership is held to approve or disapprove the adoption of a constitution and bylaws, section 7(c)(4) requires the publication of the certified membership roll in the **Federal Register.**

Accordingly, the membership roll of the Confederated Tribes of the Grand Ronde Community of Oregon, which follows, was prepared as of June 1, 1984, of persons who met the requirements specified in section 7 of the Act of November 22, 1983. The membership roll was certified to be true and accurate by the Chairwoman of the Interim Council on June 6, 1984, and the Portland Area Director of the Bureau of Indian Affairs approved the roll on June 7, 1984.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

Kenneth Smith,

Assistant Secretary, Indian Affairs.

Department of the Interior

Bureau of Indian Affairs,

Portland Area Office, Approval—Membership Roll of the Confederated Tribes of the Grand Ronde Community of Oregon.

I hereby certify that the attached Membership Roll of the Confederated Tribes of the Grand Ronde Community of Oregon constitutes the tribal membership as of June 1, 1984, and was prepared in accordance with Section 7 of the Act of November 22, 1983 (97 Stat. 1064). Consequently, under the authority delegated to me to act for the Secretary of the Interior in approving tribal membership rolls, I am approving the attached roll and recommend that the Secretary of the Interior or his authorized representative prepare the roll for publication in the **Federal Register** pursuant to Section 7(c)(4) of the Act.

Dated: June 7, 1984.

Stanley Speaks,

Area Director.

Certification of the Grand Ronde Community Interim Council

I certify that to the best of my belief and knowledge the attached roll containing a total of 1101 names constitutes the Membership Roll of the Confederated Tribes of the Grand Ronde Community of Oregon prepared in accordance with Section 7 of the Act of November 22, 1983 (97 Stat. 1064), and is a true and accurate listing of enrolled tribal members as of June 1, 1984.

Dated: June 6, 1984.

Kathryn Harrison,

Chairman, Interim Council, Confederated Tribes of the Grand Ronde Community.

BILLING CODE 4310–02–M

MEMBERSHIP ROLL OF THE CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON PREPARED UNDER THE ACT OF NOVEMBER 22,1983 97 STAT. 1054

I.D.	NAME	DOB	I.D.	NAME	DOB
0863	ALBERTSON,PATRI	11/13/1955	0033	BLOOM,AGATHA	08/16/1904
0003	ALLEN,DEBORAH	07/01/1951	0034	BLOOM,BERNICE	06/02/1923
0864	ALLEN,DESIREE	07/09/1972	0865	BOBB,BILLY	12/06/1971
0004	ALLEN,JOHN	09/19/1944	0866	BOBB,CORY	12/17/1973
0005	ALLEN,LEROY	06/30/1949	0035	BOBB,DELLA	02/26/1934
0006	ALLEN,PATRICIA	01/30/1947	0037	BOBB,LENA	10/23/1892
0007	ALLEN,PAULINE	08/26/1943	0038	BOBB,STEVEN	04/07/1949
0042	ANDREWS,LINDA	11/17/1949	0867	BOBB,STEVEN	11/12/1969
0008	ASH,MATILDA	12/31/1908	0039	BOWMAN,PATRICIA	12/04/1944
0994	ASHMAN,EDWIN	12/15/1953	0040	BRANDON,JERRY	03/14/1954
0761	BAHR,JESSE	01/27/1923	0041	BRANDON,JOHNNY	02/26/1953
1016	BAILEY,JULIE	02/18/1962	0044	BRANDON,MYRNA	06/06/1932
0009	BAKER,DOLLIE	05/21/1893	1087	BRISBOIS,BRADY	12/22/1956
0010	BANKE,ETHEL	01/25/1900	0868	BRISBOIS,DALE	04/04/1947
0011	BANKE,HAZEL	10/24/1924	0869	BRISBOIS,FREDER	03/08/1951
0110	BASS,APRIL	04/22/1952	0870	BRISBOIS,JOANN	11/15/1932
1045	BAUER,HELEN	04/28/1934	0871	BRISSOIS,PALMER	02/21/1961
0013	BEAN,ELLEN	09/09/1943	0872	BROOKS,CHERYL	01/12/1963
0014	BEAN,FRANCIS	04/02/1940	0045	BROOKS,DWIGHT	06/04/1950
0015	BEAN,FREMOND	12/14/1914	0046	BROOKS,GREGORY	11/26/1945
0629	BEAN,JOLENE	11/22/1936	0047	BROOKS,JEFFREY	11/05/1948
0017	BEAN,LINDA	07/23/1947	0050	BROWN,JOHN	10/22/1919
0018	BEAN,MARGARET	01/28/1891	0051	BROWN,JOHN	10/20/1947
0019	BEAN,THOMAS	09/14/1945	0873	BROWN,PHYLLIS	12/05/1960
0371	BEARD,SHARON	03/12/1941	0052	BROWN,ROBERT	11/11/1950
0020	BECKER,TERRY	11/17/1946	0053	BROWN,THOMAS	08/31/1917
1017	BEDORTHA,TIMOTH	09/10/1959	0054	BUENO,LAVINA	10/01/1917
0021	BEEBE,ABRAHAM	06/16/1923	0055	BUENO,RUDOLPH	06/29/1941
0022	BEEBE,DOUGLAS	01/10/1951	0874	BULTER,CYNTHIA	06/10/1962
0023	BEEBE,ROBERT	12/07/1950	0056	BURR,MAY	05/26/1918
0024	BEEBE,SHARON	01/23/1952	0057	BURR,PATRICIA	08/17/1940
0025	BELLINGER,MAUDE	11/20/1896	0607	BUTLER,CHERIE	07/11/1941
1018	BENNET,ALONZO	01/04/1975	0058	BUTLER,LOIS	04/18/1934
1019	BENNET,ROCKY	02/26/1979	0704	BUTLER,WILMADEN	02/20/1934
0026	BENNETT,DONALD	05/03/1947	0035	BUXMAN,RITA	02/22/1948
0027	BENNETT,EVERETT	07/13/1951	0675	CADAL,ELOISA	10/21/1910
1086	BENNETT,LAVERN	06/02/1976	0099	CAIN,MADELINE	09/27/1952
0599	BENNETT,MERLENE	12/22/1952	1088	CAISSE,BONNIE	05/30/1955
0029	BENNETT,RAMONA	04/01/1938	0531	CARL,CHERYL	02/22/1953
0030	BENNETT,ROSE	05/30/1922	0059	CARLTON,GENE	03/13/1916
1020	BICE,GORDON	07/02/1954	006C	CARLTON,NELLIE	06/14/1897
0467	BILLINGS,NORMA	07/03/1944	0061	CARLTON,RAYMOND	01/01/1900
0031	BLAIR,HAROLD	06/20/1920	0062	CATAFFA,JOSEPHI	07/11/1911
0032	BLAIR,JESSIE	04/06/1923	0627	CATHERN,YVONNE	01/17/1944
0300	BLOMQUIST,ALTA	05/07/1930	0065	CHANDLER,GRACE	02/26/1939

MEMBERSHIP ROLL OF THE CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON PREPARED UNDER THE ACT OF NOVEMBER 22,1983 97 STAT. 1064 (CONTINUED)

I.D.	NAME	DOB	I.D.	NAME	DOB
0066	CHANDLER,JOYCE	01/19/1943	0306	CUNNINGHAM,EDIT	01/04/1923
0067	CHANDLER,LEROY	10/25/1940	0100	CUNNINGHAM,KATE	03/01/1883
0068	CHANDLER,DENNIS	07/23/1942	0103	CURETON,PHYLLIS	06/25/1930
0068	CHAVEZ,LIZZIE	01/01/1895	0104	CURETON,VICTOR	11/02/1951
1089	CHILDERS,ANGELA	05/11/1967	0106	CURL,IRENE	01/21/1904
1090	CHILDERS,DEBRA	04/06/1968	0459	CUTHBERT,DEBORA	09/15/1950
1091	CHILDERS,MICHAE	02/11/1970	0108	DAMLING,GWENDOL	07/14/1930
0246	CLARK,ARTHELIA	07/27/1927	0109	DAMLING,LARRY	01/01/1949
0875	CLARK,CHRISTOPH	04/09/1976	0111	DAVIDSON,GENE	12/05/1947
0249	CLARK,DAVID	12/24/1952	0112	DAVIDSON,HARRY	11/29/1943
0876	CLARK,JENNIFER	09/06/1979	0379	DAVIDSON,LORAN	09/09/1956
0877	CLARK,MICHELLE	06/15/1963	0341	DAVIDSON,MARIAN	04/27/1922
0878	COLEY,KATHRYN	08/01/1955	0113	DAVIDSON,OPAL	04/19/1915
0545	COLTON,JACQULYN	03/10/1951	0116	DAVIS,HOWARD	04/24/1947
0505	CONNEY,BEVERLY	08/27/1934	0166	DAVIS,MARIE	11/04/1939
0069	CONRAD,ESTHER	06/28/1902	0117	DAVIS,MARVIN	02/05/1946
0070	COOK,ELISE	09/30/1895	0118	DAY,ALEXANDER	07/22/1908
0071	COOK,IVANETTA	12/04/1920	0119	DAY,CLIFFORD	07/22/1918
0072	COOK,LYNN	12/04/1946	0120	DAY,FLOYD	08/24/1921
0073	COOK,MARCUS	12/27/1949	0838	DEHART,JOYCE	09/29/1941
0074	COOK,MICHAEL	12/27/1949	1092	DENHEM,EDWARD	05/25/1973
0075	COOK,PAMELA	09/25/1952	1093	DENHEM,SCOTT	06/09/1965
0076	COOK,PATRICK	04/06/1948	1094	DENHEM,SHANON	03/12/1967
0346	COOTE,JOANN	06/15/1946	1095	DENHEM,SHAWNA	07/15/1971
0077	COPELAND,ALVINA	03/10/1902	0410	DIXON,SHARON	07/13/1941
0078	COPELAND,JOSEPH	03/01/1923	0105	DOMPIER,VONNIE	05/28/1954
0079	COPELAND,TERESA	01/12/1927	0121	DOWD,BARBARA	10/23/1949
0030	COPELAND,VERONI	04/27/1921	0122	DOWD,DANIEL	05/15/1915
0081	COUNTRYMAN,HERM	10/09/1908	0123	DOWD,DOROTHY	04/28/1908
0082	COUNTRYMAN,IVA	02/23/1913	0124	DOWD,DREW	05/25/1944
0083	COUNTRYMAN,JOHN	11/29/1909	0125	DOWD,ELIZABETH	07/13/1943
0084	COUNTRYMAN,MARY	09/09/1876	0126	DOWD,GEORGE	09/11/1886
0086	COUNTRYMAN,SAMU	02/21/1904	0127	DOWD,GEORGE	10/27/1953
0087	CRAIG,JOYCE	02/06/1936	0128	DOWD,ILA	11/25/1909
0088	CRAIG,ROBERT	08/22/1937	0129	DOWD,JO ANN	12/30/1914
0089	CRAIG,THEODORE	01/29/1910	0130	DOWD,JOSEPH	06/10/1903
0090	CRAIG,THOMAS	12/11/1908	0131	DOWD,JUDY	07/06/1945
0091	CRAIG,WILL	01/13/1887	0132	DOWD,KATHLEEN	01/03/1947
0016	CRIPPEN,JOYCE	11/01/1949	0133	DOWD,MARY	09/21/1941
1021	CROUCH,RAYMOND	09/15/1957	0134	DOWD,MARY	06/19/1940
0094	CROWLEY,JAMES	03/07/1948	0136	DOWD,MICHAEL	01/09/1942
0095	CROWLEY,JEAN	07/02/1949	0135	DOWD,MICHAEL	12/25/1950
0096	CROWLEY,LORRAIN	07/21/1929	0137	DOWD,PATRICK	12/09/1942
0097	CROY,DELLMORE	08/04/1927	0138	DOWD,SUSAN	04/30/1953
0098	CROY,DELMER	10/29/1953	0140	DOWD,THOMAS	12/22/1952

MEMBERSHIP ROLL OF THE CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON PREPARED UNDER THE ACT OF NOVEMBER 22,1983
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I.D.	NAME	DOB	I.D.	NAME	DOB
0141	DOWD,VILAS	10/28/1913	0884	GEORGE,CYNTHIA	10/19/1963
0142	DOWD,VINCENT	10/28/1913	0176	GEORGE,LLOYD	01/21/1939
0143	DOWNS,BERTHA	01/20/1909	0885	GEORGE,MARGO	06/28/1955
0144	DRAKE,OLEDA	05/16/1911	0886	GEORGE,MARLO	08/20/1975
0600	DRUM,LEENNE	06/27/1949	0887	GEORGE,MARTIN	01/13/1969
0146	DUCHARME,HARVEY	12/31/1938	0177	GEORGE,MONTE	07/21/1952
0148	DUCHARME,YVONNE	07/31/1941	0888	GEORGE,RODNEY	07/30/1966
0149	DUGAN,CLARK	01/13/1952	0178	GEORGE,RONALD	11/13/1940
0150	DUGGAN,FRANCIS	12/31/1935	0889	GEORGE,SAMPSON	10/10/1981
0847	DUNCAN,JULIE	03/14/1949	1026	GEORGE,SOLOMON	03/17/1930
0151	DURSCHMIDT,BILL	09/02/1926	0890	GEORGE,TONIA	07/24/1971
0152	DURSCHMIDT,CATH	01/01/1930	0891	GEORGE,TRACY	12/24/1967
0153	DURSCHMIDT,FLOR	09/19/1905	0651	GIBBONS,EVELYN	04/15/1945
0880	EDWARDS,CAROL	12/27/1959	1027	GIBBONS,GUY	06/26/1968
0092	ELLISON,CLARICE	11/11/1927	1028	GIBBONS,MARCUS	06/20/1960
0810	EMERSON,MARY	03/11/1935	0179	GIFFIN,ARLENE	12/15/1928
0159	EMERY,SHARON	02/21/1942	0180	GIFFIN,DIANNE	04/30/1932
0154	EMERY,ZELDA	03/24/1922	0182	GIFFIN,JACK	09/29/1951
0780	EMPEY,JOANN	03/25/1950	0183	GIFFIN,MICHAEL	04/02/1950
0155	ENGELHARDT,GRAC	08/18/1912	1029	GILLESPIE,DOREEN	07/09/1956
0157	ERICKSON,FLOREN	02/15/1921	1030	GILLESPIE,JACQU	08/21/1965
0158	ERICKSON,RICHAR	02/06/1943	0418	GILLIAM,SUSAN	10/29/1951
0504	FEEHAN,BARBARA	05/04/1939	0184	GILLMAN,ARCHIE	03/31/1900
0474	FELIX,BETTY	03/05/1947	0185	GILMAN,CHARLES	04/02/1899
0101	FINNEY,COREAN	04/05/1953	0186	GILMAN,GLENDA	06/07/1937
1022	FLANSBERG,JUNE	03/19/1960	0187	GILMAN,LIZZIE	02/10/1876
0834	FLANSBERG,SHIRL	07/01/1937	0413	GLASS,CAROL	02/11/1947
0164	FORSTER,DOROTHY	03/14/1916	0214	GLEASON,CAROL	03/14/1947
0167	FORSTER,MARION	12/05/1917	0189	GLEASON,CLEO	01/02/1916
0160	FOSTER,DARRALIN	12/23/1949	0190	GLEASON,HAROLD	04/05/1943
0161	FOSTER,DEBORAH	09/09/1952	0191	GLEASON,JAMES	05/19/1946
0162	FOSTER,ESTHER	11/27/1951	0192	GLEASON,LAURA	07/09/1950
0163	FOSTER,LAURETTA	05/12/1931	1031	GOOD,DELORES	05/01/1921
0546	FRANCIS,JOANNE	10/01/1951	0892	GOOD,LEROY	11/03/1943
0196	FREEMAN,CHARLEN	09/29/1947	0192	GRAHAM,ANDREW	12/16/1943
1023	FUGATE,CORINNE	07/25/1964	0193	GRAHAM,CAROLYN	07/27/1914
1024	FUGATE,KELLY	06/05/1970	0195	GRAHAM,GALE	07/29/1937
1025	FUGATE,MICHAEL	07/04/1965	0196	GRAHAM,LESLIE	04/02/1936
0882	FULLER,CURTIS	12/28/1963	0197	GRAHAM,ROBERT	07/09/1939
0693	FULLER,IVA	05/20/1936	0650	GRAMMER,EILEEN	11/15/1952
0172	GASTON,ALBERTA	08/20/1918	0893	GRAMMER,FRANK	09/26/1976
0170	GASTON,MABEL	05/20/1911	0894	GRAMMER,JOSEPH	07/19/1974
0171	GASTON,RICHARD	09/06/1936	0895	GRANT,JACQUELIN	04/12/1953
0423	GATCHELL,SANDRA	01/15/1949	0093	GREENBERG,JOYCE	12/14/1951
0173	GEORGE,ANTHONY	01/31/1943	0198	GREENE,DOROTHY	09/26/1918

MEMBERSHIP ROLL OF THE CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON PREPARED UNDER THE ACT OF NOVEMBER 22,1983
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I.D.	NAME	DOB	I.D.	NAME	DOB
0199	GREGG,BOBBY	01/11/1948	0233	HAM,DANIEL	02/06/1953
0200	GREGG,CARL	11/13/1926	1034	HAM,FRANCINE	08/20/1963
0201	GREGG,CLARENCE	04/09/1918	0234	HAM,JOYCE	04/25/1931
0202	GREGG,CLIFFORD	09/17/1947	0228	HAMILTON,FRANK	10/27/1896
0203	GREGG,EARL	02/15/1925	0229	HAMILTON,GEORGE	10/12/1902
0204	GREGG,ELAINE	08/15/1944	0230	HAMILTON,JOSEPH	12/29/1875
0205	GREGG,EVA	08/08/1897	0231	HAMILTON,THOMAS	02/20/1870
0206	GREGG,EVA	01/06/1949	0605	HAMM,ANNABELLE	07/12/1939
0207	GREGG,GRACE	06/03/1896	0044	HANDSAKER,GENEV	12/20/1921
0208	GREGG,JOHN	06/13/1946	0165	HANSON,SHARON	08/26/1939
0210	GREGG,KAREL	03/23/1940	1096	HARRISON,DAVID	11/11/1960
0209	GREGG,KARON	12/09/1938	0908	HARRISON,DIANE	11/26/1959
0211	GREGG,NANCY	10/24/1947	0235	HARRISON,FRANK	01/15/1948
0212	GREGG,RUTH	06/12/1943	0236	HARRISON,JEANNE	05/16/1946
0470	GRIFFIN,CHRISTI	03/19/1952	0909	HARRISON,KAREN	04/06/1967
0575	GROSHONG,MARLEN	06/22/1950	0237	HARRISON,KATHRY	03/28/1924
0268	GROUT,VALARENE	05/16/1931	0910	HARRISON,RAYMON	04/28/1951
0213	HALLER,ADELINE	10/04/1905	0239	HARRISON,THOMAS	01/15/1949
0215	HALLER,CHARLES	09/28/1945	0240	HARSON,SUSAN	04/02/1902
0896	HALLER,CHARLES	02/22/1965	0529	HAUG R,CARMEN	08/07/1951
1032	HALLER,CHARLES	07/31/1972	0550	HENRY,MARION	07/06/1956
0217	HALLER,DANIEL	01/29/1952	0576	HERRON,SHARON	10/11/1951
0216	HALLER,DANIEL	02/29/1936	0687	HESLET,KCANN	08/02/1953
0218	HALLER,DAVID	01/19/1953	0241	HIBBS,THELMA	10/19/1913
0897	HALLER,DAVID	03/16/1964	0626	HOBBS,VIVIAN	07/11/1944
0219	HALLER,DONALD	08/04/1942	1035	HOFENBREDL,KEVI	08/24/1965
0220	HALLER,EDWARD	06/07/1953	1036	HOFENBREDL,LARR	07/20/1964
0221	HALLER,EDWARD	07/01/1934	1037	HOFENBREDL,LELA	06/09/1972
0222	HALLER,HARVEY	05/29/1944	0260	HOFENBREDL,PRIS	07/03/1941
0898	HALLER,JAMES	03/11/1963	0242	HOFFER,ERNEST	01/06/1917
0899	HALLER,JEREMIAH	10/10/1979	0243	HOFFER,HENRY	10/07/1900
0900	HALLER,JOHN	08/11/1919	0244	HOLMES,ABRAHAM	12/06/1886
0901	HALLER,JOHN	06/18/1958	0245	HOLMES,ARNOLD	11/27/1919
0902	HALLER,JOSHUA	10/20/1980	0247	HOLMES,CATHERIN	07/12/1892
0224	HALLER,KENNETH	03/11/1949	0911	HOLMES,CONNIE	11/06/1963
0732	HALLER,LEVETA	10/20/1945	0248	HOLMES,DAVID	04/03/1894
0903	HALLER,MICHAEL	06/29/1963	1038	HOLMES,DAVID	08/23/1970
0905	HALLER,REX	11/09/1965	0250	HOLMES,EARL	01/18/1936
0904	HALLER,RICHARD	07/18/1972	0251	HOLMES,ELMER	01/12/1940
0226	HALLER,ROBERT	03/28/1939	0252	HOLMES,HAZEL	05/17/1932
0906	HALLER,ROBYN	12/13/1967	1039	HOLMES,JAMES	10/16/1965
1033	HALLER,TALEASE	06/06/1971	0253	HOLMES,LESTER	05/30/1922
0907	HALLER,THERESA	07/03/1954	0254	HOLMES,LOREN	12/15/1937
0227	HALLER,WILBUR	08/18/1925	0255	HOLMES,MARVIN	04/05/1923
0232	HAM,ALLEN	12/27/1951	0256	HOLMES,MELVIN	03/22/1946

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I.D.	NAME	DOB	I.D.	NAME	DOB
0257	HOLMES,MERLE	12/09/1933	0294	JACKSON,FLORENC	05/02/1937
0258	HOLMES,MILDRED	06/10/1902	0295	JACKSON,JESSIE	10/05/1940
0259	HOLMES,PAUL	03/03/1931	0916	JACKSON,NATALIE	04/10/1963
0912	HOLMES,TIMOTHY	09/15/1962	0296	JACKSON,ROBERT	02/20/1944
0261	HOLMES,VIDA	02/16/1904	0893	JAMESON,ROSEMAR	03/27/1965
0913	HOPTOWIT,ELAINE	03/16/1948	0297	JAMISON,IVY	08/16/1919
0263	HOUCK,ARNOLD	05/16/1931	0298	JAMISON,JEANNE	04/28/1943
0266	HOUCK,ARVELLA	05/19/1909	0299	JAMISON,MAZIE	07/03/1942
0265	HOUCK,DEWALT	10/23/1910	0917	JEFFERIES,LEONA	10/23/1953
0266	HOUCK,LESLIE	12/05/1945	0301	JEFFERIES,BENJAM	05/29/1885
1060	HOUCK,TERRY	01/09/1956	0303	JEFFERIES,CLAREN	03/27/1926
0267	HOUCK,THEODORE	06/08/1909	0304	JEFFERIES,DONALD	04/07/1934
1041	HOUSTON,ANNA	09/25/1960	0307	JEFFERIES,EDWARD	09/29/1917
0673	HOWELL,BERDELL	10/25/1912	0308	JEFFERIES,EVELYN	12/20/1940
0676	HOWELL,FLOYD	09/08/1909	0309	JEFFERIES,FRED	09/29/1910
0269	HUDSON,ABRAHAM	06/01/1879	0310	JEFFERIES,HARRY	03/04/1893
0420	HUDSON,BETTY	12/12/1949	0311	JEFFERIES,IRA	03/04/1893
0270	HUDSON,CAROL	10/04/1941	0312	JEFFERIES,JAMES	03/03/1937
0271	HUDSON,CATHERIN	10/26/1951	0313	JEFFERIES,LENORA	10/13/1936
0272	HUDSON,EMANUEL	12/08/1901	0314	JEFFRIES,LEO	07/30/1919
0273	HUDSON,EUGENE	03/28/1921	0315	JEFFRIES,MARY	04/05/1935
0274	HUDSON,HERMAN	07/09/1903	0317	JEFFRIES,RUSSEL	10/16/1907
0275	HUDSON,HERMAN	01/04/1925	0318	JEFFRIES,SHIRLE	01/05/1939
0276	HUDSON,JOHN	03/28/1917	0359	JENNEFF,ELINORE	07/08/1938
0277	HUDSON,JOHN	08/01/1968	0107	JOHN,JUANITA	01/12/1916
0278	HUDSON,KENNETH	05/16/1927	0319	JOHNSON,DONNA	11/06/1949
0279	HUDSON,MAGDELIN	12/27/1870	1043	JOHNSON,GENENE	05/04/1972
0280	HUDSON,MAUDE	12/13/1876	0320	JOHNSON,LOUISE	07/24/1946
0281	HUDSON,MICHAEL	01/22/1953	0321	JOHNSON,MARY	01/27/1925
0282	HUDSON,STANFORD	06/15/1928	0322	JOHNSON,PAULINE	04/26/1905
0914	HUDSON,TIMOTHY	01/20/1953	0323	JOHNSON,REGINA	04/09/1951
0283	HUGHES,ETHEL	07/17/1917	0324	JOHNSON,ROY	01/06/1948
0284	HUGHES,LARRY	12/18/1944	0325	JONES,DOROTHY	03/11/1950
0285	HUGHES,STEPHEN	04/14/1935	0327	JONES,HAROLD	09/27/1948
0915	HUGHEY,BARBARA	03/06/1940	0326	JONES,HAROLD	12/23/1917
1042	HUGHEY,NANCY	12/29/1938	0328	JONES,NAOMI	12/05/1945
0691	HUTCHINS,DIANA	06/30/1942	0329	JONES,NORMA	02/09/1933
0286	HYDE,ANNA	12/13/1925	0330	JONES,ROBERT	09/27/1929
0287	ISAAC,HELEN	01/05/1910	0331	JONES,VERA	09/29/1952
0288	ISAAC,JOSEPH	10/29/1899	0918	JORDAN,ERIC	09/14/1971
0289	JACKSON,BERTHA	10/23/1913	0188	KAUTZ,ARLENE	09/07/1941
0290	JACKSON,CHARLES	10/12/1942	0001	KENNEDY,CHERYLE	04/03/1948
0291	JACKSON,CHARLOT	08/02/1935	0332	KENWORTHY,MARY	01/19/1899
0292	JACKSON,CLARA	07/06/1945	0333	KESSLER,ZELDA	12/12/1917
0293	JACKSON,DAVID	08/08/1933	0334	KIMSEY,MARVIN	02/27/1935

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I.D.	NAME	DOB	I.D.	NAME	DOB
0335	KIMSEY,NORA	12/02/1908	0373	LAFFERTY,ELIZAB	03/10/1949
0336	KIPP,ETHEL	10/01/1926	0374	LAFFERTY,GERALD	02/09/1931
0337	KIPP,GAIL	10/19/1948	0375	LAFFERTY,JAMES	01/25/1920
0338	KIPP,KEVIN	09/15/1950	0376	LAFFERTY,KENNET	11/20/1939
0822	KLEINSCHMIT,LIN	05/13/1947	0377	LAFFERTY,NORMA	03/01/1926
0002	KNEELAND,CORDEL	07/09/1925	0733	LANCOUR,MARLENE	03/17/1951
0919	KNEELAND,STANDF	12/04/1953	0378	LANDAY,CARL	03/24/1944
0920	KNEELAND,TIMOTH	02/11/1964	0379	LANDAN,CHARLES	04/26/1947
0339	KNIGHT,BRENDA	09/07/1953	0380	LANDAN,DARLENE	08/02/1965
0340	KNIGHT,DELORES	10/31/1931	0381	LANDAY,DELORES	09/17/1922
1044	KNIGHT,DENNIS	06/19/1957	0382	LANDAY,MARY	11/03/1949
0921	KNIGHT,JESSE	08/05/1966	0383	LANDAN,ROGERT	08/03/1949
0341	KNIGHT,LORETTA	06/23/1952	1047	LANE,ANTHONY	02/05/1959
0922	KNIGHT,WILLIAMS	10/15/1954	0115	LANE,DOROTHY	01/15/1925
0342	KNIGHTON,CLIFFO	01/01/1901	0925	LANE,E'LISHA	12/14/1980
0343	KNIGHTON,CLISSI	01/01/1905	0427	LANE,RENEE	02/22/1939
0344	KNIGHTON,MARY	01/01/1899	0926	LANGLEY,ALLEN	07/16/1925
0923	KREHBIEL,APLETT	07/17/1956	0384	LANGLEY,BERYLE	09/19/1936
1046	KRIEHBLE,BRIAN	12/11/1979	0336	LANGLEY,CLINTON	05/05/1905
0345	LABONTE,CAROL	03/09/1946	0337	LANGLEY,DALE	11/25/1931
0346	LABONTE,ESTHER	10/19/1907	0338	LANGLEY,ELLIS	06/03/1941
0349	LABONTE,EUGENE	07/07/1941	0389	LANGLEY,ERWIN	10/14/1934
0347	LABONTE,FLOYD	12/10/1942	0390	LANGLEY,FRANCIS	12/15/1912
0349	LABONTE,GUS	06/26/1896	0391	LANGLEY,FRANKLI	01/01/1929
0926	LABONTE,JOHN	07/31/1979	0392	LANGLEY,IVAN	10/27/1929
0350	LABONTE,JOSEPH	06/09/1916	0393	LANGLEY,IVAN	01/27/1903
1063	LACHANCE,ALFRED	08/01/1940	0394	LANGLEY,JODY	09/30/1951
0351	LACHANCE,ALVIN	03/22/1952	0395	LANGLEY,JONI	09/25/1953
0352	LACHANCE,ALVIN	02/08/1931	0396	LANGLEY,JOSEPH	07/06/1899
0354	LACHANCE,BENJAM	05/15/1899	0397	LANGLEY,KRTINS	07/12/1953
0355	LACHANCE,BENJAM	10/11/1923	0398	LANGLEY,LEONARD	07/13/1937
0356	LACHANCE,CARMIN	02/18/1963	0399	LANGLEY,MARVIN	02/20/1941
0357	LACHANCE,DAVID	02/01/1892	0400	LANGLEY,MICHAEL	03/04/1950
0358	LACHANCE,DORA	10/12/1900	0401	LANGLEY,MYRNA	01/27/1939
0360	LACHANCE,EDWIN	09/21/1889	0402	LANGLEY,NORITA	03/18/1937
0361	LACHANCE,GARY	09/12/1947	0403	LANGLEY,ORAL	07/06/1911
0362	LACHANCE,HARVEY	05/06/1915	0404	LANGLEY,ROSCOE	08/04/1909
0363	LACHANCE,JOSEPH	04/18/1895	0405	LANGLEY,ROSCOE	12/30/1932
0364	LACHANCE,MARIE	09/07/1913	0406	LANGLEY,ROSELLA	04/15/1914
0366	LACHANCE,NARCIS	03/05/1875	0407	LANGLEY,ROY	11/01/1907
0367	LACHANCE,NORA	07/17/1909	0408	LANGLEY,SADIE	01/01/1900
0368	LACHANCE,PROSPE	10/11/1965	0409	LANGLEY,SANORA	04/08/1947
0369	LACHANCE,RALPH	04/09/1914	0411	LANGLEY,SHELLA	03/04/1951
0370	LACHANCE,STELLA	04/06/1915	0412	LANGLEY,WILLIAM	06/03/1926
0372	LACHANCE,THOMAS	05/23/1939	0415	LARSEN,EDWARD	03/24/1910

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I.D.	NAME	DOB	I.D.	NAME	DOB
0848	MARTIN,SUSAN	06/12/1964	0521	MERCIER,AGNES	02/27/1887
0849	MARTIN,TIMOTHY	12/02/1952	0522	MERCIER,ARTHUR	06/10/1894
0483	MARTIN,VIVIAN	12/24/1925	0952	MERCIER,BARBARA	03/29/1965
0430	MCCARTHY,GERALD	12/31/1921	0523	MERCIER,BEVERLY	09/03/1931
0481	MCCARTHY,LILLIA	03/02/1936	0524	MERCIER,BLANCHE	09/30/1918
0482	MCCARTHY,TERRAY	04/21/1926	0525	MERCIER,BLANDIN	02/15/1924
0950	MCCOOL,ROBIN	04/26/1962	1058	MERCIER,BOBBY	08/11/1976
0461	MCCUTCHEON,KARE	08/13/1941	0526	MERCIER,BRICE	09/01/1953
0433	MCDANIEL,COLLEE	11/14/1949	0527	MERCIER,BRUCE	05/12/1963
0434	MCEACHRAN,JAMES	08/08/1947	0528	MERCIER,CARMEL	02/10/1947
0435	MCEACHRAN,GEORG	07/05/1949	0595	MERCIER,DARREL	09/23/1929
0436	MCEACHRAN,PRISC	04/23/1922	0536	MERCIER,DAVID	06/13/1949
0437	MCEACHRAN,RICHA	08/13/1949	1059	MERCIER,DAVID	06/14/1977
0483	MCGEE,ARTHUR	01/17/1950	0537	MERCIER,DENNIS	10/27/1943
0439	MCGEE,DAVID	05/16/1953	1060	MERCIER,ERIC	09/13/1958
0490	MCGEE,DENNIS	10/17/1944	0538	MERCIER,FRANCIS	05/12/1944
0492	MCGEE,EDNA	06/13/1922	0539	MERCIER,GERTRUD	09/12/1895
0493	MCGEE,FREDERICK	11/03/1929	0542	MERCIER,HAROLD	01/10/1950
0494	MCGEE,JOSEPH	04/26/1952	0540	MERCIER,HAROLD	02/12/1909
0495	MCGEE,LAURA	04/30/1945	0541	MERCIER,HAROLD	04/19/1930
0496	MCGEE,RICHARD	05/06/1941	0543	MERCIER,HARRY	01/06/1890
0497	MCGEE,RICHARD	06/05/1916	0544	MERCIER,HUBERT	09/22/1910
0498	MCGEE,RONALD	07/23/1948	0953	MERCIER,JOHN	08/29/1961
0499	MCGEE,WILFRED	06/24/1914	0547	MERCIER,JOSEPH	12/10/1922
0500	MCGEE,WILLIAM	04/10/1951	0548	MERCIER,LENNIS	10/27/1948
0502	MCKAY,JOSEPH	03/25/1933	0549	MERCIER,LONNELL	07/20/1949
0501	MCKAY,JOSEPH	09/15/1836	0954	MERCIER,LOWELL	11/19/1956
0503	MCKINNEY,JOSEPH	04/17/1901	0551	MERCIER,MARK	10/27/1952
0506	MCKNIGHT,CLEO	05/15/1922	0552	MERCIER,MARTHA	04/11/1910
0511	MCKNIGHT,CORRY	11/22/1952	0553	MERCIER,MICHAEL	02/07/1951
0507	MCKNIGHT,ELVIRA	03/21/1901	1098	MERCIER,MICHAEL	05/29/1956
0509	MCKNIGHT,JUNE	06/09/1930	0554	MERCIER,PEARL	09/07/1895
0510	MCKNIGHT,LESLIE	12/02/1949	0555	MERCIER,ROBERT	07/14/1943
0951	MCKNIGHT,LINDA	01/03/1951	0955	MERCIER,RONALD	12/31/1962
0512	MCKNIGHT,MELVIN	12/05/1936	0956	MERCIER,STEPHAN	07/25/1974
0513	MCKNIGHT,MYRTLE	06/28/1896	1061	MERCIER,TERI	03/29/1965
0514	MCKNIGHT,RAE AN	10/01/1952	0957	MERCIER,TONI	05/21/1973
0515	MCKNIGHT,RAY	12/29/1924	0959	MERCIER,TRESA	12/19/1964
0516	MCKNIGHT,RICHAR	01/01/1947	0958	MERCIER,TYSON	12/19/1974
0517	MCKNIGHT,ROBERT	06/19/1932	0556	MERCIER,VELMA	01/05/1907
0518	MCKNIGHT,STEVEN	09/08/1951	0557	MERCIER,VERNON	07/27/1913
0519	MCKNIGHT,WAYNE	06/24/1953	0558	MERCIER-VINCENT	11/25/1915
0049	MCNUTT,NADINE	05/15/1920	0559	MERCIER,WINSTON	03/19/1931
0165	MEDEROS,FRANCE	12/21/1937	0560	METCALF,EDWARD	04/16/1973
0520	MENARD,LINDSEY	09/02/1993	0561	MICHELLE,CLAREN	05/01/1897

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I.D.	NAME	DOB	I.D.	NAME	DOB
0414	LARSEN,EDWARD	12/04/1942	0448	LENO,NATHAN	03/11/1909
0418	LARSEN,JEANNE	03/30/1945	0450	LENO-DEVILLE	01/08/1918
0927	LARSEN,KENNETH	11/03/1955	0451	LENO,PATRICIA	05/14/1939
0417	LARSEN,MICHAEL	08/06/1948	0452	LENO,RAMONA	09/25/1929
0419	LARSEN,VERNA	07/08/1916	1052	LENO,RANDALL	05/17/1967
0421	LASH,JACK	04/13/1953	0453	LENO,REYNOLD	10/06/1950
1048	LASH,MICHAEL	08/26/1959	1097	LENO,RHONDA	09/26/1962
0928	LASH,RORY	07/04/1957	0454	LENO,ROBERT	06/05/1981
0424	LASH,VERA	02/22/1924	1054	LENO,RONALD	12/12/1954
0425	LAWE,DIANNE	11/16/1940	1055	LENO,RUSSEL	01/15/1960
0426	LAWE,DOROTHY	03/11/1933	0455	LENO,RUSSELL	06/11/1927
0428	LAWNEY,ABE	04/05/1891	0938	LENO,TARA	12/13/1981
0429	LAWNEY,ELMER	04/13/1909	0456	LENO,THOMAS	03/25/1949
0929	LAZORE,KELLY	09/04/1960	0457	LENO,TILLMAN	01/01/1900
0674	LEATON,BERNICE	01/01/1907	0458	LENO,WILMER	09/06/1921
0930	LENABURG,SCOTT	02/23/1954	0460	LEWIS,GARY	03/02/1943
0430	LENO,ADELINE	04/14/1933	0462	LEWIS-LAMEY	01/22/1952
0431	LENO,ARNOLD	03/14/1924	0463	LEWIS,NORMA	11/22/1924
1049	LENO,BARBARA	07/15/1959	0464	LEWIS,THOMAS	03/23/1954
0931	LENO,BRANDY	03/29/1982	0465	LILLARD,BLANCHE	04/03/1918
0932	LENO,BRIANNA	10/16/1930	0466	LILLARD,JOHN	02/20/1949
0432	LENO,CHARLES	04/18/1951	0468	LILLARD,YVONNE	09/12/1953
1050	LENO,DANA	04/06/1976	0939	LINDAHL,MARY	07/13/1928
0434	LENO,DARLENE	11/25/1943	0469	LINTON,CAROLINE	10/16/1936
0436	LENO,DAVID	12/08/1892	0472	LINTON,GORDON	11/03/1933
0435	LENO,DAVID	10/27/1941	0471	LINTON-THOMAS	01/11/1939
0437	LENO,DEBORAH	05/02/1953	0940	LINTON,WILLIAM	06/09/1953
0438	LENO,DOROTHY	05/19/1954	0475	LOCKWOOD,ROSE	10/17/1890
1051	LENO,DUSTIN	09/21/1977	0476	LOGSDEN,MAXINE	01/04/1926
0440	LENO,EDWIN	07/07/1937	0477	LOGSDEN,RACHEL	06/03/1896
0439	LENO,EDWIN	05/20/1910	0478	LONG,CEDRIC	03/02/1909
0933	LENO,EDWIN	07/06/1960	0532	LOPEZ,CONSTANCE	06/01/1950
0441	LENO,EMMA	09/15/1893	1056	LUX,DONNA	01/05/1957
0442	LENO,GEORGE	05/24/1935	1057	LUX,MATTHEW	10/04/1992
0443	LENO,GUS	04/02/1900	0535	LYNCH,DORIS	03/29/1924
0444	LENO,HATTIE	05/04/1881	2316	LYNCH,MILDRED	03/20/1921
1052	LENO,LISA	11/19/1968	0941	MANAGAN,ALFRED	05/24/1947
0934	LENO,LONITA	12/14/1965	0942	MANAGAN,JERRY	01/27/1959
0935	LENO,LONNIE	03/27/1957	0943	MANAGAN,PHILAM	07/06/1949
0936	LENO,MARTIN	04/27/1965	0944	MANAGAN,ROSETT	06/13/1927
0937	LENO,MARYKAY	06/01/1967	0945	MANAGAN,STEVE	08/16/1960
0445	LENO-MAXINE	01/24/1922	3534	MARTIN,BONNIE	11/27/1946
0446	LENO,MERLE	05/09/1932	0946	MARTIN,CINDY	07/07/1963
0447	LENO,MICHAEL	05/05/1946	0471	MARTIN,GERALDIN	03/02/1913
0448	LENO,MILDRED	06/17/1902	0947	MARTIN,KENNETH	02/07/1966

MEMBERSHIP ROLL OF THE CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON PREPARED UNDER THE ACT OF NOVEMBER 22,1983 97 STAT. 1064 (CONTINUED) PAGE 9

I.D.	NAME	DOB	I.D.	NAME	DOB
0562	MICHELLE,DOLORE	07/16/1944	0591	PELLUM,MARIE	06/08/1908
0563	MICHELLE,FRANCI	12/27/1923	0169	PEOPLES,ELAINE	04/05/1940
0564	MICHELLE,JACQUE	08/02/1951	0593	PETERS,ALBERT	03/09/1921
0565	MICHELLE,JOSEPH	06/16/1868	0592	PETERS,AUDREY	02/18/1926
0566	MICHELLE,MABEL	01/01/1907	0595	PETERS,HENRY	06/20/1924
0567	MICHELLE,MARY	01/06/1871	0965	PETERS,JAY	08/11/1975
0568	MICHELLE,NORA	04/09/1922	0596	PETERS,LAVERN	05/19/1951
0569	MICHELLE,NORMA	04/19/1922	0597	PETERS,MARGARET	05/07/1925
0570	MICHELLE,ORVILL	12/25/1936	0598	PETERS,MARY	03/13/1900
0571	MILLER,TENIE	03/20/1919	0601	PETERS,NONA	04/04/1948
0960	MINJAREZ,CHARLE	06/24/1964	0966	PETERS,TWYLA	11/20/1956
0792	MINJAREZ,CHARLO	02/26/1937	0602	PETERS,WAYNE	08/06/1946
0961	MINJAREZ,REINA	08/27/1965	0603	PETITE,ALICE	05/29/1950
0962	MINJAREZ,RENALD	08/27/1965	0604	PETITE,AMELIA	03/15/1912
0572	MISFELDT,THOMAS	07/04/1940	0606	PETITE,BEN	03/29/1932
0043	MOONEY,LORRIANE	08/30/1951	0608	PETITE,DELORES	06/17/1926
1062	MORGAN,BEVERLY	12/19/1952	0609	PETITE,DORMALEE	12/27/1953
0740	MORTON,JUANITA	02/12/1934	0610	PETITE,EDWARD	07/02/1876
0225	MURPHY,LINDA	03/02/1951	0611	PETITE,EDWIN	01/18/1906
0573	MUTTAL,BETTY	07/20/1922	0612	PETITE,ERNEST	09/16/1952
0574	NEAULT,MARGIE	05/15/1927	0613	PETITE,ETHEL	05/17/1888
0782	NELSON,JUDY	05/26/1951	0614	PETITE,EULA	11/27/1911
0963	NELSON,KELLY	07/19/1957	0615	PETITE,HENRY	09/29/1948
0577	NELSON,MARY	03/30/1876	0616	PETITE,JAMES	05/22/1896
0578	NICHOLS,DONALD	04/14/1947	0617	PETITE,JAMES	05/24/1923
0579	NICHOLS,GEORGIA	12/27/1923	0619	PETITE,LORIE	04/19/1937
0580	NICHOLS,KENNETH	05/09/1946	0620	PETITE,MELVIN	10/19/1927
0581	NICHOLS,LINDA	04/30/1952	0621	PETITE,PATRICIA	03/17/1940
0582	NICHOLS,RICHARD	01/06/1949	0622	PETITE,PETE	05/07/1910
0583	NORWEST,ALEX	01/06/1876	0624	PETITE,RAYMOND	10/13/1947
0584	NORWEST,ALPHEUS	07/19/1899	0623	PETITE,RAYMOND	05/31/1925
0585	NORWEST,LEO	09/25/1894	0625	PETITE,VIOLET	12/09/1942
0181	O'LEARY,DEBORAH	01/23/1953	0628	PHELPS,CAROLEEN	11/09/1962
0586	OLNEY,JOHN	07/13/1905	0630	PHELPS,JAXCINE	02/12/1967
0530	OLSON,CAROL	02/21/1947	0631	PHELPS,NETTIE	12/25/1908
0508	OLSON,JUDITH	10/02/1943	1064	PHILLIPS,DEBRA	07/07/1959
0840	OLSON,JUNE	01/01/1948	0632	PICHETTE,BARBAR	04/20/1934
0385	OLSON,KATHERINE	05/24/1951	0633	PICHETTE,CAROL	01/31/1944
1063	OLSON,SHELBY	08/13/1973	0634	PICHETTE,DAVID	03/29/1938
0964	OLSON,WENDELL	07/30/1966	0635	PICHETTE,EARL	07/20/1919
0781	PAGEL,JOYCE	03/25/1950	0636	PICHETTE,JIMMY	03/24/1942
0587	PALMER,MABEL	02/09/1904	0637	PICHETTE,JOHN	04/27/1921
0588	PEARSALL,BETTY	05/14/1929	0638	PICHETTE,JUDY	08/24/1942
0589	PEARSALL,EDWARD	01/10/1948	0640	PICHETTE,OREN	04/07/1913
0590	PEARSALL,RONNIE	02/01/1950	0639	PICHETTE,OREN	04/07/1913

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I.D.	NAME	DOB	I.D.	NAME	DOB
0641	PICHETTE,OREN	09/17/1941	0677	RENFROW,GEORGIA	09/10/1887
0262	POOLE,ANNABELL	08/30/1934	0678	RENFROW,LUELLA	09/03/1911
0642	PORTER,FRANCES	11/28/1891	0977	RENFROW,LUNITA	12/05/1970
0223	PORTER,HALEL	03/13/1941	0978	RENFROW,NANCY	03/25/1952
0643	PROVOST,JACQUEL	10/25/1951	0772	RICKARD,THELMA	11/14/1929
0644	PROVOST,KATHLEE	04/14/1950	0679	RIDDLE,DELORES	06/20/1927
0645	PROVOST,MARGARE	06/11/1930	0680	RIGGS,ALFREDA	10/21/1927
0967	PULLIN,DENVER	03/28/1962	0681	RIGGS,ALLIE	01/01/1877
1065	PULLIN,KELLY	05/19/1958	1066	RIGGS,AMANDA	03/24/1979
0238	PULLIN,PATRICIA	06/08/1943	0682	RIGGS,AMANDA	09/03/1859
0968	PULLIN,TOMMY	03/11/1963	0683	RIGGS,ANDREW	12/09/1880
0969	PULLIN,TRACY	08/10/1965	0684	RIGGS,BOYD	06/02/1910
0646	PURCHASE,MICHAE	05/03/1942	0685	RIGGS,CHERYL	01/28/1953
0970	QUEEN,PATTY	07/29/1974	0686	RIGGS,CLARA	02/21/1892
0647	QUENELLE,CAROL	06/10/1939	0689	RIGGS,FLOYD	04/01/1928
0649	QUENELLE,DONALD	12/11/1942	0690	RIGGS,FRANCES	05/25/1941
0652	QUENELLE,FABIAN	03/25/1880	0691	RIGGS,GEORGENE	10/24/1947
0653	QUENELLE,LARRY	08/11/1947	0692	RIGGS,GLORIA	01/01/1946
0655	QUENELLE,LEONAR	07/04/1935	0694	RIGGS,JACQUE	08/21/1950
0654	QUENELLE,LEONAR	01/04/1905	0695	RIGGS,JOHN	07/08/1907
0656	QUENELLE,LIZETT	12/14/1911	0696	RIGGS,LAURA	08/24/1908
0657	RAMOZ,BETTY	12/29/1925	0698	RIGGS,LEWIS	01/22/1943
0658	RAMOZ,IOLA	06/19/1951	0697	RIGGS,LEWIS	05/24/1920
0659	RAMOZ,RODNEY	08/23/1952	0700	RIGGS,LLOYD	07/28/1928
0660	RAMOZ,VICTORIA	01/05/1947	0701	RIGGS,ROGER	02/17/1917
0661	RAY,FLOREINE	02/10/1917	0702	RIGGS,SAMUEL	01/25/1898
0739	RAY,GENEVIEVE	06/14/1928	0705	RITCHIE,DELIGHT	06/20/1947
0971	REAM,DEBBIE	06/20/1967	0706	RITCHIE,TYRON	10/02/1968
0648	REAM,DELORES	12/15/1940	0979	RIVERA,KATERI	04/11/1982
0972	REAM,JESSE	10/18/1972	0980	RIVERA,LORENA	02/25/1991
0973	REAM,MARGARET	10/19/1975	1099	ROBERTSON,BRAND	10/30/1980
0974	REAM,TINA	01/21/1966	0174	ROBERTSON,CARME	10/18/1946
0302	REED,BETTY	03/01/1928	1100	ROBERTSON,DIANA	01/26/1982
0663	REED,CLEMENTINE	08/29/1925	1067	ROGERS,ARNELL	09/15/1954
0664	REED,DEANNA	01/31/1964	0707	ROGERS,ISABELLE	07/05/1915
0665	REED,JANET	06/12/1945	1068	ROGERS,MICHELE	07/01/1977
0685	REEVES,DARLENE	10/24/1939	1069	ROGERS,PATRICK	03/04/1974
0975	REEVES,KEITH	12/17/1962	1070	ROGERS,WILLIAM	09/16/1979
0666	REIBACH,GARY	02/18/1944	0981	ROLSTON,SANDRA	06/08/1956
0667	REIBACH,HARRIS	04/06/1911	0036	ROOK,DONICA	06/09/1936
0668	REIBACH,JAN	11/25/1944	0708	ROWLAND,KIMM	04/20/1969
0669	REIBACH,MICHAEL	03/30/1949	0709	ROWLAND,MARK	03/07/1951
0671	REIBACH,VICKI	02/27/1943	0711	ROWLAND,VIRGINI	11/12/1928
0672	REIBACH,WESLEY	03/29/1915	0712	RUSSIE,ARCHIE	01/19/1920
0976	RENFROW,DUPRE	01/23/1972	0713	RUSSIE,EUGENE	03/31/1929

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I.D.	NAME	DOB	I.D.	NAME	DOB
0714	RUSSIE,GENE	02/23/1950	0751	SIMMONS,WALTER	09/02/1941
0716	RUSSIE,HAROLD	10/20/1927	0752	SIMMONS,WILLIAM	06/15/1967
0715	RUSSIE,HAROLD	10/17/1950	0753	SIMMONS,WILLIAM	10/29/1939
1101	RUSSIE,JERRY	04/22/1946	0754	SMITH,CELLA	06/14/1901
0717	RUSSIE,JUDY	11/18/1942	0993	SMITH,CHRISTOPH	03/12/1992
0718	RUSSIE,RICHARD	12/13/1921	0755	SMITH,FAYE	10/04/1952
0719	RUSSIE,ROBERT	02/23/1953	0756	SMITH,GERALD	09/11/1953
0720	RUTHERFORD,FRAN	09/01/1920	0757	SMITH,IRENE	07/17/1895
0721	SCHEESE,ALLAN	01/10/1940	0758	SMITH,JAMES	01/20/1920
0722	SCHEESE,ANNA	01/27/1941	0759	SMITH,JANE	01/01/1863
0723	SCHEESE,JERRY	11/16/1945	0760	SMITH,JENNIFER	09/13/1950
0724	SCHEESE,LARRY	11/16/1945	0995	SMITH,JONI	04/07/1962
0725	SCHEESE,MARJORI	11/13/1920	0762	SMITH,LAWRENCE	09/02/1896
0727	SCHMID,KENNETH	10/29/1939	0763	SMITH,LAWRNENCE	03/01/1919
0728	SCHMID,RICHARD	05/17/1941	0764	SMITH,LILLIAN	09/16/1938
0729	SCHMID,ROBERT	05/28/1938	0765	SMITH,LORENE	03/19/1925
0983	SCHMIDT,RAYMOND	09/10/1951	0766	SMITH,LORETTA	02/18/1947
0730	SCHMIDT,VIVIAN	09/24/1926	0767	SMITH,MICHAEL	08/29/1951
0982	SCHMIDT,LINDA	12/02/1952	0768	SMITH,RALPH	08/22/1905
0984	SCHROEDER,SUSAN	12/10/1957	0769	SMITH,RONALD	12/26/1934
0726	SCLAPPI,JOSEPHI	06/11/1921	0770	SMITH,RODNEY	03/07/1949
0731	SELL,EMMA	12/17/1917	0771	SMITH,ROSE	04/27/1921
0734	SELL,NANCY	07/06/1942	0773	SMITH,VERNON	04/13/1920
1071	SELL,THOMAS	05/10/1956	0996	SMITH,WANDA	08/19/1943
0736	SELL,WAYNE	09/19/1943	0618	SNYDER,JEANNE	02/13/1947
0737	SEVERIN,LEONA	05/18/1915	0774	SNYDER,MAMIE	05/07/1907
0738	SEWARD,MARY	02/18/1908	0776	SODERBERG,CLARI	12/23/1907
0699	SHANDY,LOUISE	11/11/1939	0775	SODERBURG,ARTHU	02/01/1933
1072	SHANDY,MARDELL	06/02/1971	0777	SODERBURG,WILLI	12/29/1933
0986	SHAW,JIMMY	03/11/1953	0778	SORENSON,CLYDE	03/03/1926
0985	SHAW,KENNETH	05/25/1955	1073	SPOHN,JAMES	08/13/1922
0741	SHAW,LEROY	06/08/1951	0779	SPOHN,MARY	01/07/1903
0742	SHAW,PAUL	09/05/1949	1074	STEPHENS,PATRIC	08/19/1956
0987	SHAW,TERRY	11/20/1957	0175	STOGSDILL,DIANA	09/21/1944
0988	SHAW,WESLEY	10/08/1953	0145	STROM,HATTIE	06/16/1914
0735	SHERER,NELLIE	06/03/1948	0012	STRONACH,DONNNA	09/14/1938
0989	SHERWOOD,KENNET	03/20/1967	0997	STRYKER,CLYDE	01/03/1947
0990	SHERWOOD,MILTON	05/14/1965	0998	STRYKER,JOANNE	01/28/1951
0992	SHERWOOD,PATRIC	05/20/1964	0783	SULKEY,PETER	01/11/1921
0991	SHERWOOD,RICHAR	12/05/1969	0784	SUMMERLIN,DWIGH	10/20/1946
0783	SHORTT,DOROTHY	09/26/1947	0785	SUMMERLIN,EMMA	06/29/1918
0744	SIMMONNS,DONALD	09/16/1942	0999	SUPPAH,CECIL	07/14/1961
0743	SIMMONS,DEBORAH	10/25/1952	0786	SURBER,ARLENE	07/18/1924
0745	SIMMONS,EDGAR	11/04/1907	0787	SURBER,BETTY	02/14/1946
0746	SIMMONS,LEROY	03/25/1947	0789	SURBER,GERALD	04/05/1944
0809	SIMMONS,LINDA	02/28/1948	0790	SURBER,MARIE	03/11/1943
0747	SIMMONS,MURIEL	11/29/1943	0791	SURBER,NANCY	11/22/1948
0748	SIMMONS,SAMPSON	10/02/1908	1000	TAMBURINO,ANDRE	04/13/1960
0749	SIMMONS,SAMPSON	11/07/1939	0795	TANNER,BEATRICE	07/01/1929
0750	SIMMONS,SYLVEST	10/24/1906	0793	TANNER,FREDERIC	10/04/1952

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I.D.	NAME	DOB	I.D.	NAME	DOB
1002	TANNER,FREDERIC	08/22/1975	1079	WARREN,SEVERLY	12/17/1967
1001	TANNER,FREDRICK	12/10/1925	0829	WARREN,DONNA	06/10/1940
1075	TANNER,MARILYNN	08/05/1956	0830	WARREN,JOHN	06/05/1915
0794	TANNER,MARY	02/03/1900	1080	WARREN,LINDA	07/08/1963
0795	TANNER,WILLIAM	07/11/1921	1081	WARREN,PAMALA	02/05/1967
1003	TASA,PATRICIA	09/20/1949	0831	WARREN,PHILLIP	02/04/1942
0797	TAYLOR,THOMAS	01/01/1900	0832	WARREN,PHYLLIS	04/15/1928
0156	TEITZEL,DELORES	12/30/1940	0833	WARREN,RAYMOND	02/17/1924
0798	THOMAS,BARBARA	05/27/1927	1082	WARREN,ROBERT	01/08/1962
1005	THOMAS,BRIAN	05/11/1962	0836	WARREN,WILLIAM	01/18/1944
0799	THOMAS,BRUCE	01/29/1953	0835	WARREN,WILLIAM	02/12/1917
0800	THOMAS,CANDACE	01/24/1947	1007	WATSON,PATRICIA	11/27/1953
0533	THOMAS,CRYSTAL	11/05/1941	0839	WEST,JUDITH	04/12/1953
0801	THOMAS,DAVID	09/08/1950	0842	WEST,WESLEY	10/01/1942
0803	THOMAS,DONALD	02/07/1944	1008	WESTLEY,CHARLEN	09/27/1952
0804	THOMAS,FRANKIE	03/12/1938	1009	WESTLEY,KLARICE	07/04/1953
0805	THOMAS,ILENE	02/08/1936	1010	WESTLEY,MARLA	05/07/1956
0806	THOMAS,KENT	05/07/1954	0594	WHEATTLEY,AUDRE	01/31/1951
0807	THOMAS,LANA	02/24/1944	1083	WHEELER,CARLA	11/23/1969
0808	THOMAS,LANNY	08/03/1943	1084	WHEELER,DEANNE	03/20/1976
0811	THOMAS,MARY	09/25/1921	0843	WHEELER,EDWIN	01/01/1876
0812	THOMAS,MATHILDS	05/17/1918	0844	WHEELER,ELVINA	11/16/1901
1006	THOMAS,MATTHEW	08/19/1975	1085	WHEELER,SHELLY	06/06/1953
0813	THOMAS,RODNEY	06/11/1949	0857	WHILLIAMS,GOLDI	03/19/1912
1076	THOMPSON,DAVID	01/14/1965	1011	WHITE,CHRISTOPH	08/01/1975
1077	THOMPSON,KYLER	01/03/1969	0845	WHITE,EVELYN	06/25/1924
1078	THOMPSON,TONYA	02/20/1966	1012	WHITE,MATTHEW	07/09/1969
0881	THORNBROUGH,JAN	04/03/1974	1013	WHITE,MELINDA	09/18/1960
0703	THORNBROUGH,UNA	08/23/1949	1014	WHITE,MICHAEL	03/12/1965
1004	TILLIS,DOROTHY	05/19/1952	0848	WHITE,MURCH	05/03/1936
0814	TIPTON,GERALD	07/30/1906	0850	WHITE,ORRIN	05/24/1938
0815	TIPTON,LILLI	01/07/1877	0849	WHITE,ORRIN	08/20/1913
0816	TITO,HENRY	12/27/1912	0851	WHITE,PASQUELIA	03/24/1943
0479	TOM,CORA	09/09/1904	0852	WHITE,SANDRA	05/30/1949
0817	TOM,KATHLEEN	01/13/1953	0853	WHITE,SHARON	05/26/1946
0818	TOM,LEON	07/15/1928	0854	WHITE,SUE ANN	08/06/1947
0819	TOM,MICHAEL	10/16/1952	0855	WHITE,THOMAS	07/09/1950
0820	TOM,PATRICIA	07/06/1950	0856	WHITEAKER,MAY	01/01/1891
0821	TOM,VICTORIA	05/29/1949	1015	WIBLE,DEBRA	06/29/1961
0802	TOTTEN,DELCIE	03/01/1941	0048	WILLIAMS,MARY	06/07/1953
0822	TRACK,ROY	12/14/1941	0858	WILLING,CHARLES	03/21/1919
0670	TRINSVH,VERNON	05/01/1913	0365	WINKLEE,NAN	09/26/1950
0823	TROYSON,ETHEL	11/27/1909	0859	WINSLOW,EDWINA	01/14/1917
0837	TURMAN,GLORIA	01/20/1944	0860	WINSLOW,JEROME	12/27/1914
0662	VALERA,JUDITH	07/25/1945	0861	WINSLOW,JERRY	08/29/1935
0824	VOUTRIN,BART	03/28/1898	0114	WOOD,TERI	12/05/1946
0825	VOUTRIN,CAROLIN	03/06/1874	0710	WRIGHT,SUSAN	02/04/1952
0826	VOUTRIN,DONALD	09/12/1916	0862	ZAVODSKI,THERES	11/01/1891
0827	VOUTRIN,EVERETT	10/23/1911	0147	ZIMBRICK,VIOLET	03/03/1936
0828	VOUTRIN,NANCY	04/05/1939			

[FR Doc. 84-16609 Filed 6-21-84; 8:45 am]
BILLING CODE 4310-02-C

National Petroleum Reserve in Alaska; Oil and Gas Lease Sale No. 841

Correction

In FR Doc. 84–15756 beginning on page 24451 in the issue of Wednesday, June 13, 1984, make the following corrections.

1. On page 24451, second column, in the heading of the land descriptions below "Township/range", insert "Umiat Meridian, Alaska, (Unsurveyed) (except where otherwise designated)".

2. In item 841–033, line 4, under the heading "Township/range", should read "T 9 N., R. 36 W., Secs. 1 to 18,".

3. In Column three, item "841–0052" should read "841–052".

4. In item 841–085, line 5 should read "T. 5 S., R. 25 W., Secs. 1 to 5,".

5. On page 24452, column one, item 841–100, line eight should read "T. 7 S., R. 26 W., Secs. 1 to 18,".

6. In column two, first paragraph under the heading "When and Where To Submit Bids," line 4, "7901 C Street" should read "701 C Street".

7. On page 24454, the fouth complete paragraph, line 3, the word "or" should be inserted between "habitats" and "to".

8. In the second column, the third complete paragraph, line 6, "the" should be inserted between "by" and "AO".

9. In the third column the signature "Robert W. Arnodorfer" should read "Robert W. Arndorfer".

BILLING CODE 1505-01-M

Bureau of Land Management

[N–38898; N–38935; N–38995]

Order Providing for Opening of Lands; Nevada

June 12, 1984.

1. The following described lands were acquired by the United States pursuant to the Act of December 23, 1980 (94 Stat. 3381). Titles were accepted on January 27, 1983 (section 25) and March 2, 1983 (section 24.)

Mount Diablo Meridian, Nevada

T. 13 N., R. 18 E.,
Sec. 24, NW¼SW¼SE¼;
Sec. 25, NE¼.

The area described comprises approximately 160 acres.

2. The following described land was reconveyed to the United States in an exchange and title was accepted on October 12, 1983.

Mount Diablo Meridian, Nevada

T. 13 N., R. 20 E.,
That portion of the NW¼SE¼ of Section 8, beginning at the point on the northerly right-of-way line of Airport Road, said point bears South 7°35÷52" West, 14,708.02 feet from the NE corner of Section 32, Township 14 North, Range 20 East, MDB&M; thence from the initial point South 89°43÷16" West along the northerly right-of-way line of said Airport Road 215.00 feet; thence North 0°16÷44" West, 145.88 feet; thence North 89°43÷16" east 215.00 feet; thence South 0°16÷44" East 145.88 feet to the point of beginning.
Together with the warehouse located thereon.

The area described comprises approximately 0.72 acre.

The lands are located in Douglas County, within the boundaries of the Toiyabe National Forest, near Genoa, Nevada.

All minerals in the NE¼ of sec. 25, T. 13 N., R. 18 E., are in private ownership.

All minerals in the NW¼SW¼SE¼ of sec. 24, T. 13 N., R. 18 E., and the described portion of the NW¼SE¼ of sec. 8, T. 13 N., R. 20 E., were reconveyed to the United States.

At 9:00 a.m. on (July 23, 1984) the land described above shall be open to such forms of disposition as may by law be made of national forest land.

Inquiries concerning the forest land should be addressed to Forest Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431.

Wm. J. Malencik,

Deputy State Director, Operations.

[FR Doc. 84–16829 Filed 6–21–84; 8:45 am]

BILLING CODE 4310-HC-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b) (1) that the name corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: LTV Energy Products Company, P.O. Box 359, Dallas, Texas 75221.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation: (i) Fibercast Company, a Delaware Corporation.

1. Parent corporation and address of principal office: Mountain Fuel Supply Company, 180 East First South, P.O. Box 11368, Salt Lake City, UT 84139.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Mountain Fuel Resources, Inc.; Utah.

(ii) Wexpro Company; Utah.

(iii) Celsius Energy Company; Nevada.

James H. Bayne,

Secretary.

[FR Doc. 84–16786 Filed 6–21–84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30500]

Norfolk Southern Corp., Control of North American Van Lines, Inc.; Intent To File No. 1

On May 24, 1984, pursuant to 49 CFR 1180.4(b), Norfolk Southern Corporation (NS) and North American Van Lines, Inc. (NAVL), jointly filed an advance notice of intent to file with the Interstate Commerce Commission, on or about August 1, 1984, a joint application under 49 U.S.C. 11343 *et seq.* seeking approval of the acquisition by NS of control of NAVL through stock ownership.

NS, a noncarrier holding company, controls the Norfolk and Western Railway Company and the Southern Railway Company, class I rail carriers. NAVL is a motor carrier of household goods and general freight operating nationwide and throughout Canada. NAVL has a number of subsidiaries, including motor carriers, a freight forwarder, and a broker licensed by the Commission. It is a wholly-owned subsidiary of PepsiCo, Inc., a diversified noncarrier holding company.

NS and NAVL state that calendar year 1982 data, on an industry-wide basis, will be used for any impact analysis or other studies that may be submitted. Data for 1983 for NS and NAVL will be submitted where appropriate.

This Commission's regulations do not specifically apply to rail/motor consolidation applications. However, our railroad consolidation regulations provide suitable procedures for the consideration of the forthcoming application. Those regulations, subject to appropriate modifications, shall apply to this proceeding.

We find that the proposed acquisition is of regional and national significance and represents a major market extension by NS. Therefore, the application will be filed under the requirements of 49 CFR Part 1180 relating to significant transactions, subject to such modifications as may be ordered by the Commission in response to appropriate requests or on our motion. An order asking for additional information on specific issues may be issued subsequent to the publication of this notice. A procedural schedule will be issued after the application is filed.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

Dated: June 20, 1984

James H. Bayne,

Secretary.

[FR Doc. 84-16916 Filed 6-21-84; 11:25 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 11, 1984–June 15, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,090; Stromberg-Carlson Corp., Lake Mary, FL

TA-W-15,237; Lovingston Manufacturing Co., Lovingston, VA

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-15,264; Diamond Power Specialty Co., Lancaster, OH

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15,225; Anaconda Minerals Co., Butte Operations, Butte, MT

Aggregate U.S. imports of copper concentrate did not increase as required for certification.

TA-W-15,218; Griffith-Hope Co., West Allis, WI

Aggregate U.S. imports of steel dispensers are negligible.

TA-W-15,282; Reilly Plating Co., Inc., Nanticoke, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determination

TA-W-15,201; Felmont Oil Corp., Olean, NY

A certification was issued covering all workers separated on or after January 24, 1983 and before June 30, 1983.

I hereby certify that the aforementioned determinations were issued during the period June 11, 1984–June 15, 1984. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 19, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-16733 Filed 6-21-84; 8:45 am]

BILLING CODE 4510-30-M

Office of Federal Contract Compliance Programs, Reinstatement of Harry Myhre, Inc.

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of reinstatement, Harry Myhre, Inc.

SUMMARY: This notice advises that Harry Myhre, Inc. has been reinstated as an eligible bidder on Federal and federally assisted contracts and subcontracts.

FOR FURTHER INFORMATION CONTACT: H. Jack Bluestein, Director, Division of Program Operations, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3416, Washington, D.C. 20210 (202-523-9463).

SUPPLEMENTARY INFORMATION: Harry Myhre, Inc., Harrisburg, Pennsylvania, is, as of this date, reinstated as an eligible bidder on Federal contracts and federally assisted subcontracts. A copy of the consent decree, approved by Administrative Law Judge Thomas, which commits the company to specific affirmative action steps and reporting requirements follows.

Signed June 12, 1984, Washington, D.C.

Susan R. Meisinger,

Acting Director.

United States Department of Labor, Office of Administrative Law Judges

[No. 84-OFC-19]

Consent Decree

In the matter of Harry Myhre, Inc., respondent.

On March 27, 1974, Harry Myhre, Inc., its principal officers, directors, direct or beneficial owners and its purchasers, successors, assignees and/or transferees ("Respondent"), was debarred from Federal contracts, subcontracts or extensions or other modifications of existing contracts funded in whole or in part by any agency or instrumentality of the United States. This debarment was based upon an October 12, 1973, ruling by the Reviewing Authority for Civil Rights, U.S. Department of Health, Education, and Welfare ("HEW"). The HEW Reviewing Authority found that Respondent failed to comply with Executive Order 11246, as amended (30 FR 12319; 32 FR 14303), and the implementing regulations at 41 CFR Chapter 60, especially with regard to Respondent's failure to make good faith efforts to meet its minority goals, and it ordered Respondent's debarment. Since the October 12, 1973, ruling by HEW, Executive Order 11246 has been amended by Executive Order 12086 (43 FR 49240), which consolidated all the functions, previously assigned to various compliance agencies for enforcement of Executive Order 11246, into the Office of Federal Contract Compliance Programs ("OFCCP"), U.S. Department of Labor ("DOL"). This Consent Decree between OFCCP and Respondent resolves all outstanding issues between the parties.

The parties to this Decree hereby waive any further procedural steps provided in 41 CFR Part 60-30 for a Final Administrative Order, and provided in 5 U.S.C. 701 *et seq.*, for judicial review. Furthermore, the parties to this Decree hereby waive any right to challenge or contest the validity of this Consent Decree.

I. Jurisdiction

The Administrative Law Judge (hereinafter this "Court") has jurisdiction pursuant to sections 208, 209, 301 and 302 of Executive Order

11246; 41 CFR Part 60–1.26 and 41 CFR Part 60–30.

II. Applicability of Decree

This Consent Decree is applicable to and binding upon Harry Myhre, Inc., and all affiliates, purchasres, successors, transferees, and/or assignees of Respondent during the period the Consent Decree is in effect.

This Consent Decree shall be applicable to the Respondent's covered Federal and federally assisted construction projects as well as covered non-Federal and non-federally assisted construction projects.

III. Pledge of Compliance With Executive Order 11246

Nothing in this Consent Decree shall be construed to limit or reduce Respondent's obligation to comply fully with Executive Order 11246, as amended, and the implementing regulations.

IV. Goals for Minority Employment

Respondent agrees to make a good faith effort to achieve a minority utilization goal of 6.2 percent in its aggregate workforce in the Harrisburg, Pennsylvania, area. The goal represents the percentage of the total hours of employment to be worked by minorities in each trade or craft in the workforce. For construction work outside of the Harrisburg, Pennsylvania, area, Respondent agrees to make a good faith effort to achieve the applicable goal(s) for minorities established pursuant to 41 CFR 60–4.6.

V. Affirmative Action

Respondent agrees to implement the affirmative action standards required by the specifications set forth in 41 CFR 60–4.3(a)(7)(a)–(p), and agrees in particular to undertake the following:

A. Within thirty (30) days of the entry of this Consent Decree, Respondent shall write to the labor organizations with which it maintains a collective bargaining agreement and inform them of:

1. The Respondent's commitments under the Executive Order, as required by section 203(a) of the Order;

2. The existence of this Consent Decree;

(3) The Respondent's intent to hire minority workers and to make a good faith effort to achieve the applicable minority utilization goals; and

4. The Respondent's obligation to recruit minority workers from other sources if the union is unable to refer minority employees in sufficient numbers to allow the Respondent to meet its goals.

B. Immediately upon learning of the occurrence of any job vacancy due to expansion of the work force, the voluntary or involuntary separation of any of its incumbent emloyees, etc., Respondent shall first seek new or replacement employees through the duly authorized labor organizations with which it maintains a collective bargaining agreement so providing. Respondent will provide advance notice to these organizations to maximize each Union's opportunity to supply minority employees.

C. Within thirty (30) days of the entry of this Consent Decree, Respondent shall compile a list of minority recruitment sources, including local minority community organizations, local chapters of regional or national minority organizations, and local personnel agencies or employment referral agencies specializing in job placement of minority members.

D. Within thirty (30) days of the entry of this Consent Decree, Respondent shall write to each recruitment source on the list compiled pursuant to Paragraph C, above, and inform the organization of:

1. The existence of this Consent Decree;

2. The Respondent's intent to hire minority workers;

3. The Respondent's desire to receive the names, addresses, and telephone numbers of minority members interested in employment with it, for the purpose of hiring such individual or referring their names to appropriate unions.

E. Respondent shall notify the minority recruitment sources on the list compiled pursuant to Paragraph C, above, when it or its union(s) have employment opportunities available, and Respondent shall maintain records documenting these contracts and each organization's response.

F.1. The Respondent shall maintain a file of the names, addresses and telephone numbers of each minority off-the-street applicant and each minority referral from a union, recruitment source and community organization and shall record the action taken with respect to each such applicant or referred individual. If such applicant or individual is sent to the union hiring hall for referral and is not referred back by the union or, if referred, is not employed by Respondent, this shall be documented in the file with the reasons therefor, along with whatever actions Respondent undertakes.

2. If Respondent cannot immediately hire the applicant or referral, it shall inform the person of its hiring procedures, that it will keep the person's name for six (6) months for consideration for future openings and shall inform the person whether it anticipates a need for employees within that time.

G. The Respondent shall provide immediate written notification to the Office of Federal Contract Compliance Programs when the union(s) with which Respondent has a collective bargaining agreement has (have) not referred back to Respondent a minority person sent by Respondent, or when Respondent has other information that the union referral process has impeded Respondent's efforts to meet its affirmative action obligations.

H. Respondent will encourage present minority employees to recruit other minority persons, and where reasonable, provide after-school, summer and vacation employment to minority youth both on job sites and in other areas of Respondent's work force.

I. As part of its efforts to locate qualified minority employees from sources other than labor unions, Respondent shall advertise its need for employees in newspapers or in publications with minority circulation.

J. If Respondent has sufficient opportunities, it shall develop on-the-job training for minority workers and/or participate in training programs for the area in which Respondent's work is being performed which expressly include minorities. This shall include upgrading programs, and apprenticeship trainee programs relevant to Respondent's employment needs, especially those programs funded by the Department of Labor.

VI. Records

Respondent shall maintain all records required by the specifications set forth in 41 CFR 60–4.3(a)(7)(a)–(p); all records necessary to document its compliance with those specifications and all records identified in Paragraphs V. C, E and F, above. The Company shall also maintain records containing:

1. The name, address, telephone number, race, trade, experience or other qualifications in such trade, date of referral or application and referring entity for each of the following:

a. Each person applying for employment with Respondent;

b. Each person referred to Respondent by any entity mentioned in Paragraph V. C or by any other organization or individual;

c. Each person referred by Respondent to any union;

d. Each person referred by any union to Respondent for employment; and

e. Each employee of Respondent.

2. The reasons any applicant or referral was not hired;

3. The date of each hiring or termination of employment by Respondent of any employee, the name, race, address and telephone number of such employee, and the circumstances surrounding such action;

4. A description, and all available documentation, including, but not necessarily limited to, copies of letters, notes of telephone conversations and minutes of meetings, of affirmative action measures taken by Respondent, whether or not such measures are specifically required by this Consent Decree;

5. Copies of all correspondence sent by Respondent to, or received by Respondent from, any entity mentioned in Paragraphs V. C and D;

6. Copies of all correspondence sent by Respondent to, or received by Respondent from, any union, which is relevant to this Consent Decree.

VII. Compliance Reports

A. Respondent shall prepare and submit monthly a copy of form cc-257 (or any successor form) on all its construction work to the appropriate OFCCP office with jurisdiction for the particular geographic area in which the work is being performed.

B. Respondent shall submit compliance reports to the Director of OFCCP once every six months following the date of entry of this Consent Decree to demonstrate its compliance with this Consent Decree. Each compliance report shall, at a minimum, contain the following information:

1. A list of: (a) All current Federal construction contracts or subcontracts; (b) all current Federally assisted construction contracts or subcontracts; (c) all other current construction contracts or subcontracts; (d) construction contracts awarded or which Respondent anticipates receiving within the next reporting period.

2. By trade and minority group participation any change in its workforce during the reporting period (i.e., hirings, terminations, layoffs) and any anticipated changes in its workforce within the next reporting period;

3. All records described in paragraph VI. relevant to the preceding reporting period.

VIII. Implementation and Enforcement

A. This Court hereby retains jurisdiction of this case for the purpose of issuing any additional orders or decrees needed to effectuate Executive Order 11246, as amended, or to clarify the implementation of this Consent Decree. If an application or motion for an order indicates, by signature of counsel, that it is unopposed by Respondent and the United States Department of Labor, the application or motion may be presented to the Court without hearing, and the proposed order may be implemented immediately.

B. This Consent Decree shall remain in effect for a period of two years from the date of its entry.

At any time after the expiration of two years from the entry of this Consent Decree, the Respondent may move for its modification or dissolution, upon 60 days prior notice to counsel for OFCCP, and upon a showing of compliance with the terms and conditions of this Consent Decree.

C. If at any time during the operation of this Consent Decree, OFCCP believes that Respondent has violated any portion of this Consent Decree, Respondent shall be promptly notified of the fact in writing. This notification shall include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification shall provide Respondent with 15 days to respond in writing except where delay would result in irreparable injury. It is understood that a hearing on whether this Consent Decree has been violated can be initiated any time after the 15-day period has elapsed (or sooner if irreparable injury is shown) upon filing with the Court the written notification sent to Respondent, accompanied by a Motion for Sanctions.

D. A motion by OFCCP claiming a default under this Consent Decree: (1) Shall state briefly and concisely the facts providing the basis for the claim of violation; and (2) shall request the entry or an order for appropriate relief and/or sanctions. The procedures applicable to the resolution of such a motion are set forth at 41 CFR Part 60–30. However, the issues in a hearing on the motion shall be solely issues of the factual claims made by the motion and Respondent's good faith efforts to comply with this Consent Decree.

IX. Non-Limitation of Decree

Nothing provided in this Decree shall be construed as a limitation upon the application of state or local affirmative action or equal employment opportunity requirements.

X. Reinstatement as an Eligible Contractor

Wherefore, based on the foregoing agreements and representations, Harry Myhre, Inc., may be and hereby is reinstated as an eligible bidder on Federal and Federally assisted construction contracts and subcontracts effective on the date of entry of this Consent Decree. Thus, Harry Myhre, Inc., can receive any such contracts bid upon, on or after this date. The Director of OFCCP shall communicate this fact to contracting agencies and to the Comptroller General of the United States.

Signed and entered this 2nd day of May, 1984.

E. E. Thomas,

Administrative Law Judge, U.S. Department of Labor.

Approved as to form and substance: On behalf of the Office of Federal Contract Compliance Programs, U.S. Department of Labor:

Heidi D. Miller,

U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, Attorney for OFCCP.

On behalf of Harry Myhre, Inc.

H. Kenneth Myhre,

President.

Service Sheet

Case Name: Harry Myhre, Inc.,
Case No.: 84–OFC–19
Title of Document: Consent Decree

I certify that a copy of the foregoing document was sent to the following on May 2, 1984.

Vincent T. Hanlon,

Legal Clerk.

James D. Henry
Associate Solicitor
Civil Rights Division
Office of the Solicitor
Room N–2464
200 Constitution Avenue., NW
Washington, D.C. 20210

Marshall H. Harris
Regional Solicitor
Office of the Solicitor
3535 Market Street
Philadelphia, Pa. 19104

Bruce F. Brantton, Esq.,
Connelly, Martsolf and Reid
108–112 Walnut Street
P.O. Box 963
Harrisburg, Pa. 17108

[FR Doc. 84–16644 Filed 6–21–84; 8:45 am]
BILLING CODE 4510–27–M

Occupational Safety and Health Administration

[V–84–2]

Grant of Temporary Variance; ASARCO, Inc.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Grant of temporary variance.

SUMMARY: This notice announces the grant of temporary variance to ASARCO, Incorporated from the

standards prescribed in 29 CFR 1910.1025(k)(1)(i)(D), Medical Removal Protection, of the Standard for Occupational Exposure to Lead. The variance temporarily relieves ASARCO, Inc. of the requirement to comply with the removal trigger for medical removal protection. However, as conditions of the granted relief, ASARCO, Inc. must comply with the 60/40 removal and return triggers and all other provisions of the lead standard and must satisfy the conditions and requirements of the variance order. The grant of this relief applies to all employees in the lead-exposed workforce.

DATES: The effective date of the grant of temporary variance is June 15, 1984. The expiration date of the grant of temporary variance is February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Concannon, Director, Office of Variance Determination, U.S. Department of Labor—OSHA, 200 Constitution Avenue NW., Room N3656, Washington, D.C. 20210, Telephone: (202) 523–7193.

All pertinent information, including the original application and relevant data, may be reviewed at the Office of Variance Determination in Washington, D.C. or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 555 Griffin Square Building, Room 602, Dallas, Texas 75202
U.S. Department of Labor—OSHA, Federal Building, Room 421, 1205 Texas Avenue, Lubbock, Texas 79401
U.S. Department of Labor—OSHA, 911 Walnut Street, Room 406, Kansas City, Missouri 64106
U.S. Department of Labor—OSHA, Overland—Wolf Building, Room 100, 6910 Pacific Street, Omaha, Nebraska 68106
U.S. Department of Labor—OSHA, 4300 Goodfellow Boulevard, Building 105E, St. Louis, Missouri 63120
U.S. Department of Labor—OSHA, Federal Building, Room 1554, 1961 Stout Street, Denver, Colorado 80294
U.S. Department of Labor—OSHA, Petroleum Building, Suite 210, 2812 1st Avenue North, Billings, Montana 59101.

I. Background

In February of 1983, ASARCO, Incorporated, 120 Broadway, New York, New York 10271, made application pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.10 for a temporary variance from 29 CFR 1910.1025 (k)(1)(i)(C), (k)(1)(i)(D), and (k)(1)(iii)(A)(3) of the medical removal protection (MRP) provisions of the lead standard. The applicant also requested an interim order pending a decision on the variance application. An interim order was initially granted by letter, effective May 17, 1983. The notice of application for temporary variance and grant of interim order was published on July 15, 1983 (48 FR 32413–15; July 15, 1983). Although comments were solicited, none were received.

The provisions from which relief is requested state respectively:

The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that a periodic and a follow-up blood sampling test indicate that the employee's blood-lead level is at or above 60 μg/100g of whole blood;

The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood-lead level is at or above 50 μg/100g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level at or below 40 μg/100g of whole blood;

The employer shall return an employee to his or her former job status when two consecutive blood sampling tests indicate that the employee's blood-lead level is at or below 40 μg/100g of whole blood.

The purpose of these provisions is to provide protection from excessive lead exposure for employees with substantially elevated blood-lead levels. The addresses of the places of employment affected by the application are as follows:

ASARCO, Incorporated, Post Office Box 7, Glover, Missouri 63646
ASARCO, Incorporated, Post Office Box G, East Helena, Montana 59635
ASARCO, Incorporated, Fifth and Doyle Streets, Omaha, Nebraska 68102
ASARCO, Incorporated, Post Office Box 1111, El Paso, Texas 79940.

By letter of March 21, 1983, the applicant requested that the original application be amended. In addition, with the concurrence of the United Steelworkers of America, representing bargaining unit employees in the plants under agreement, ASARCO suggested that the concerned parties (ASARCO, the Steelworkers, and OSHA) participate in a tripartite cooperative assessment of each facility for the purpose of developing engineering compliance plans for these four facilities.

The terms of the relief proposed by ASARCO, include: (1) That employees be removed and returned at 60 μg/100g and 50 μg/100g, respectively, in lieu of the requirements contained in §§ 1910.1025 (k)(1)(i)(D) and (k)(1)(iii)(A)(3) of the lead standard; (2) that the relief be extended to all employees in the lead-exposed workforce; (3) that employees on medical removal protection be removed initially to areas where lead exposure is below 50 μg/m³ of air, rather than below the action level; and (4) that any employees removed to areas with air leads less than 50 μg/m³ be allowed to work for six months, whereupon, if the employee's blood lead level had not declined to 50 μg/100g, that employee would then be removed to an area where lead exposure is below 30 μg/m³. ASARCO further proposed that this six-month limit on the placement of a removed employee in a 30–50 μg/m³ exposure area would be jointly evaluated by ASARCO and the Steelworkers on or about November 1, 1983 on the basis of the observed rate of blood lead decline of removed employees. The six-month limit would continue in effect if it was determined that the blood lead levels of a substantial majority of the removed employees had declined to 50 μg/100g within six months of removal. If, however, they had not, ASARCO and the Steelworkers would reevaluate this provision and submit an application to modify the variance accordingly.

In support of plant-wide relief, the applicant stated that the percent of lead-exposed employees subject to removal under a 50 μg/100g trigger for the four plants in question would range between 10.4 percent and 18.6 percent. Almost all jobs in ASARCO's primary lead facilities, the applicant claimed, involve a degree of skill, training, and experience, and therefore the widespread removals and transfers necessary under the 50 μg/100g trigger would severely impair the safety and efficiency of the plant. Limitation of the relief from the 50 μg/100g removal trigger to supervisory, skilled or maintenance employees would, therefore, pose difficult administrative burdens and increase risks to other employees.

The applicant, in requesting that employees on removal be allowed to work in areas with air leads less than 50 μg/m³ for a six-month period stated that there are virtually no work areas where the ambient air leads are consistently under the 30 μg/m³ "action level." The

use of removal areas between 30 μg/m³ and 50 μg/m³ will substantially increase the number of productive positions at which removed workers could be employed. Employees working in such positions would have the additional benefit of full-shift respirator protection, thus reducing their effective exposure still further. As a further safeguard, the agreement between the Steelworkers and ASARCO contemplates that there would be a six-month time limit on a removed employee's placement in this exposure range, said time limit being subject to subsequent review based on the blood lead decline actually observed.

Upon review of the data submitted by ASARCO, OSHA decided to grant interim orders temporarily relieving the applicant from complying with the 50 μg/100g removal trigger. Employees would still be required to be removed at 60 μg/100g in compliance with the medical removal protection provision of 29 CFR 1910.1025(k)(1)(i)(C), except that employees would be permitted to be removed to areas where lead exposure was less than 50 μg/m³ of air. The interim order was also made applicable to all employees in the lead-exposed workforce. The order required compliance with all other provisions of the lead standard as well as with all conditions of the order. OSHA believed that the inclusion in the order of additional requirements for medical surveillance, in conjunction with the agreed upon tripartite process, demonstrated all parties' concern that the health of ASARCO's employees be well protected.

Regarding the request for relief from the 40 μg/100g return trigger, recent data submitted by ASARCO was insufficient to justify relief from the trigger at that time. In denying such relief, the Agency believes it is unlikely that an unreasonable burden is being imposed on the applicant.

However, the need for relief from the 40 μg/100g trigger was not considered a closed issue. OSHA recognized that it was dealing with an area of scientific uncertainty in which experience is limited and predictive models are inexact. It was determined, therefore, that if data showing the need for relief was developed during the time the interim order was in effect, the Agency would take whatever action was necessary.

The terms of the intrim order were as follows:

(1) The terms of the order apply to all employees in the lead-exposed workforce.

(2) As presently required by 29 CFR 1910.1025(j)(2) of the lead standard, employers shall perform blood-lead and zinc protoporphyrin (ZPP) tests every two months on each employee whose last blood test indicated a blood-lead level at or above 40 μg/100g and who is exposed to lead above the action level of 30 μg/m³.

(3) Employers shall remove and return all employees with blood-lead levels at or above 60 μg/100g in accordance with the provisions of §§ 1910.1025(k)(1)(i)(C) and 1910.1025(k)(1)(iii)(A)(3) of the lead standard, except that removal may be to areas where lead exposure is below 50 μg/m³. For those employees who are removed to areas where lead exposure is less than 50 μg/m³ but at or above 30μg/m³ of air, ASARCO shall also:

(a) Require effective respiratory protection to be worn at all times that employees are in these areas and do an immediate inspection and evaluation of the employee's respirator usage;

(b) Transfer to an area where lead concentration is below 30 μg/m³ of air any employee whose blood-lead level has not declined to or below 50 μg/100g of whole blood within 6 months from the date of removal; and

(c) Assure that any employee whose blood-lead level has risen 5 μg/100g or more above the previous test, and any employee whose last test result is 70 μg/100g or greater, upon confirmation of the result, be removed to an area where the lead concentration is less that 30 μg/m³ of air.

(4) Any employee removed with a confirmed blood-lead test result of 70 μg/100g or higher shall be removed to an area where the concentration of lead is less than 30 μg/m³ of air.

(5) For employees with blood-lead levels between 50–60 μg/100g, who need not be removed under the terms of this order, and who work in jobs having lead exposure at or above 30 μg/m³, the employer shall:

(a) Require that effective respiratory protection be worn at all times they are in the job area;

(b) Do an immediate inspection and evaluation of the employee's respirator usage;

(c) Do an immediate inspection and evaluation of the lead-related work practices affecting the employee;

(d) Do an immediate inspection and evaluation of the use and availability of hygiene facilities, and the employee's relevant personal hygiene habits;

(e) Provide a personal consultation with a licensed physician every two months; and

(f) Provide the comprehensive medical examination required under paragraph (j) of the lead standard by a licensed physician every three months.

(6) For all employees required to wear respiratory protection under ther terms of this order, ASARCO shall provide:

(a) Quantitative face fit tests at the time of initial fitting and at least semi-annually thereafter;

(b) An evaluation by a licensed physician prior to the time of initial fitting and at least annually thereafter of:

(i) A pulmonary function test which includes FEV_1 and FVC; and

(i) A physical examination.

(c) A posterior-anterior chest x-ray on a 14x17 inch film, on a five-year time interval.

(7) Based upon the inspections and evaluations required in paragraphs 5 (b), (c), and (d), the employer shall take all reasonable and appropriate corrective steps in these regards to reduce the employee's absorption of lead.

(8) After the various consultations, evaluations, examinations and tests required in paragraphs 5(e), 5(f), 6(b) and 6(c), the physician shall make a written determination as to whether the employee has a detected medical condition that places the employee at increased risk of material impairment to health from exposure to lead, or is unable to wear a respirator. If the employee is determined to have such a medical condition or to be unable to wear a respirator, he or she shall be removed from work areas where the exposure to airborne lead is at or greater than 30μg/m³.

(9) The employer shall agree to allow OSHA to inspect its premises in connection with this variance application and this interim order.

II. Conclusions

OSHA's analysis of the evidence available after the interim order had been in effect for more than six months (several one-month extensions were necessary because of certain extenuating circumstances), and after the operations in all four facilities had been investigated (leading to the development of engineering compliance plans to determine the lowest air lead levels that could be achieved by engineering controls), resulted in the following conclusions:

1. Temporary relief from the present medical removal protection requirements is warranted in all four facilities.

2. Relief for the entire lead-exposed workforce is necessary.

3. Without additional substantiating evidence, relief from the 40 μg/100g return trigger level does not appear necessary.

III. Order.

It appears from the application for temporary variance and the supporting data that ASARCO, Incorporated qualifies for a variance under section 6(b)(6)(A) of the Act.

Therefore, pursuant to the authority in section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, in the Secretary of Labor's Order No. 9–83 (48 FR 35736), and in 29 CFR Part 1905, it is ordered that the four plants listed below are authorized to comply with the requirements of the order set forth below, in lieu of complying with the requirements of 29 CFR 1910.1025(k)(1)(i)(D). All other provisions of the lead standard are unaffected by this order and therefore must be complied with in conjunction with the terms of this order.

Temporary variances are being issued to the following ASARCO, Incorporated primary lead smelting and refining plants:

ASARCO, Incorporated, Post Office Box 7, Glover, Missouri 63646
ASARCO, Incorporated, Fifth and Doyle Streets, Omaha, Nebraska 68102
ASARCO, Incorporated, Post Office Box G, East Helena, Montana 59635
ASARCO, Incorporated, Post Office 1111, El Paso, Texas 79940.

The terms of the order are as follows:

(1) The terms of the order apply to all employees in the lead-exposed workforce.

(2) As presently required by 29 CFR 1910.1025(j)(2) of the lead standard, employers shall perform blood-lead and zinc protoporphyrin (ZPP) tests every two months on each employee whose last blood test indicated a blood-lead level at or above 40 $\mu g/100g$ and who is exposed to lead above the action level of 30 $\mu g/m^3$.

(3) Employers shall remove and return all employees with blood-lead levels at or above 60 $\mu g/100g$ in accordance with the provisions of §§ 1910.1025(k)(9)(i)(C) and 1910.1025(k)(1)(iii)(A)(3) of the lead standard, except that removal may be to areas where lead exposure is below 50 $\mu g/m^3$. For those employees who are removed to areas where lead exposure is less than 50 $\mu g/m^3$ but at or above 30 $\mu g/m^3$ of air, ASARCO shall also:

(a) Require effective respiratory protection to be worn at all times that employees are in these areas and do an immediate inspection and evaluation of the employee's respirator usage;

(b) Transfer to an area where lead concentration is below 30 $\mu g/m^3$ of air any employee whose blood-lead level has not declined to or below 50 $\mu g/100g$ of whole blood within six months from the date of removal; and

(c) Assure that any employee whose blood-lead level has risen 5 $\mu g/100g$ or more above the previous test, and any employee whose last test result is 70 $\mu g/100g$ or greater, upon confirmation of the result, be removed to an area where the lead concentration is less that 30 $\mu g/m^3$ of air.

(4) An employee removed with a confirmed blood-lead test result of 70 $\mu g/100g$ or higher shall be removed to an area where the concentration of lead is less than 30 $\mu g/m^3$ of air.

(5) For employees with blood-lead levels between 50–60 $\mu g/100g$, who need not be removed under the terms of this order, and who work in jobs having lead exposure at or above 30 $\mu g/m^3$, the employer shall:

(a) Require that effective respiratory protection be worn at all times they are in the job area;

(b) Do an immediate inspection and evaluation of the employee's respirator usage;

(c) Do an immediate inspection and evaluation of the lead-related work practices affecting the employee;

(d) Do an immediate inspection and evaluation of the use and availability of hygiene facilities, and the employee's relevant personal hygiene habits;

(e) Do an immediate inspection and evaluation of the existing engineering controls to determine whether they are maintained properly, to insure that such controls do not have an adverse effect upon the employee;

(f) Provide a personal consultation with a licensed physician every two months; and

(g) Provide the comprehensive medical examination required under paragraph (j) of the lead standard by a licensed physician every three months.

(6) For all employees required to wear respiratory protection under the terms of this order, ASARCO shall provide:

(a) Quantitative face fit tests at the time of initial fitting and at least semi-annually thereafter;

(b) An evaluation by a licensed physician prior to the time of initial fitting and at least annually thereafter of:

(i) A pulmonary function test which includes FEV_1 and FVC; and

(ii) A physical examination.

(c) A posterior-anterior chest x-ray on a 14 x 17 inch film, on a five-year time interval.

(7) Based upon the inspections and evaluations required in paragraphs 5 (b), (c), (d), and (e), the employer shall take all reasonable and appropriate corrective steps in these regards to reduce the employee's absorption of lead. The employer shall submit to the Office of Variance Determination a written report documenting when and where the evaluation took place, any corrective actions that were necessary, and the name and job classification of the affected employee. This submission shall be made within 45 days after the effective date of this order.

(8) After the various consultations, evaluations, examinations and tests required in paragraphs 5(f), 5(g), 6(b) and 6(c), the physician shall make a written determination as to whether the employee has a detected medical condition that places the employee at increased risk of material impairment to health from exposure to lead, or is unable to wear a respirator. If the employee is determined to have such a medical condition or to be unable to wear a respirator, he or she shall be removed from work areas where the exposure to airborne lead is at or greater than 30 $\mu g/m^3$.

(9) For the duration of the variance, the employer shall submit every two months to the Office of Variance Determination, blood lead, ZPP, and air lead data as accumulated.

(10) The employer shall agree to allow OSHA to inspect its premises in connection with this variance order.

(11) The employer shall comply with all other provisions of the lead standard which are unaffected by this order.

As soon as possible ASARCO, Incorporated shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the application for temporary variance and interim order.

Effective date: This order shall become effective on June 15, 1984, and shall remain in effect until February 1, 1985, unless modified or revoked in accordance with section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970.

Signed at Washington, D.C. this 15th day of June 1984.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

[FR Doc. 84–16043 Filed 6–21–84; 8:45 am]
BILLING CODE 4510–26–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

National Environmental Policy Act Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: The United States Section, International Boundary and Water Commission has completed a Final Environmental Assessment (FEA), which describes and assesses past and future construction of the U.S. part of the Rio Grande Boundary Preservation Project where the manner of construction of the basic features was not or will not be entirely consistent with the proposal designated as the preferred alternative in the December 1978 Final EIS (FEIS). The purpose of the FEA was to determine whether to prepare a supplemental EIS or a Finding of No Significant Impact (FONSI), on proposed modifications in construction and on proposed mitigation measures.

Based on the attached FEA, the U.S. Section has determined that the proposed actions are not major Federal actions that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, and that, therefore, preparation of a supplemental environmental impact statement is not required. The proposed actions and support for a Finding of No Significant Impact follows:

Proposed Actions

1. To plant 9 acres of cottonwoods and willows around the mitigation pond sites to mitigate for the estimated 3,800 white-wing doves lost due to working in the breeding season to carry out the Treaty purpose of the Project.

2. To plant 1.8 acres of honey mesquite on the fringe and 1.8 acres of cottonwoods and willows at the mitigation pond sites or other suitable areas to mitigate for the loss of approximately 5 acres of fringe vegetation, largely salt cedar, overcleared by contractor operations.

3. To provide wildlife snags, escape cover and nesting devices, and prey-base improvements to mitigate for depositing excavation spoil on 38 acres of high quality wildlife habitat instead of on available selected areas of low quality habitat within one-eighth mile of the excavation site, and to mitigate for the effects of delay in seeding.

4. No action on orientation of spoil mounds is proposed. The alignment of spoil mounds generally parallel to the river rather than oblique as contemplated in the preferred alternative of the FEIS does not adversely affect use of the mounds by wildlife and secondary impacts are highly speculative.

5. No action in respect of use of draglines for channel excavation is proposed. Draglines were used to perform the channel work to fulfill the Treaty purpose of the Project to restore the river channel, because the channel was too wet to use bulldozers and scrapers as contemplated in the FEIS. Resultant impacts on wildlife due to use of draglines are judged insignificant.

6. Proposed actions for future construction include:

a. Spoil mound orientation will be generally parallel to the river;

b. Channel excavation will be performed by bulldozers and scrapers to the extent practical, but if timely restoration of the channel is needed to comply with the 1970 Boundary Treaty, and the channel has water in it, the work will have to be performed by draglines or other equipment; and

c. Future excavation spoils will be deposited in areas of lower value wildlife habitat where such habitat is available within one-eighth mile of the excavation site, or where such habitat is available but not used mitigation measures will be provided.

Environmental Effects of Completed Segments of the Project

In addition to fulfilling the Treaty purpose of restoring the Rio Grande as the international boundary, the completed segments of the Project have improved wildlife conditions over those that would have existed without the Project. The prior existing deteriorated channel in those segments was completely plugged in reaches, causing floodwaters to spread out over much of the flood plain creating wide-spread ponding. With no channel for the water to drain to, there was no outlet except by evaporation and the waters become increasingly saline and laden with plant toxins. There is evidence that even the better soils that support thorny shrub, the best remaining wildlife habitat, were becoming saturated with salts as the saline water moves upward through the soils by capillary action. The result was a die-off of thorny shrubs and an encroachment of salt cedar. The extremely high salt levels combined with other plant toxins would in time kill all vegetation, including salt cedar.

With the restoration of the river channel in the completed segments restoring the natural drainage, those adverse environmental effects have been checked and the adverse trends reversed toward improvement of the environment in the area for wildlife and man.

The completed segments of the Project are also providing improved wildlife benefits over those contemplated in the FEIS, based on a reevaluation using the same model and procedure used in the FEIS. The model was developed by biologists of the U.S. Fish and Wildlife Service, Texas Parks and Wildlife Department, and Arizona State University, and endorsed by private conservation associations. No additional mitigation measures over those proposed are needed to assure beneficial ecological impacts in the completed segments of the Project.

Environmental Effects of Future Construction

In addition to the proposed actions relating to the completed segments of the Project, outlined hereinabove, for future construction the U.S. Section will orient spoil mounds generally parallel to the river, will carry out construction using draglines or other equipment if necessary, will improve its practices regarding site selection for spoil placement, and will improve certain other practices and procedures in the performing of the construction work remaining for completion of the Project, as described in the FEA.

The proposed future actions in respect to the future construction required for completion of the U.S. part of the Project will have no significant adverse environmental effects.

On the basis of the foregoing, the U.S. Section finds that the proposed actions will have no significant impact and therefore will not prepare a supplemental environmental impact statement. This finding will be considered final July 13, 1984.

For Further Information

Contact Douglas Echlin, Biologist, United States Section, International Boundary and Water Commission, United States and Mexico; 4110 Rio Bravo; El Paso, Texas 79902. Telephone: (915) 541–7313, FTS 572–7313.

Dated: June 13, 1984.

R.D. Echlin,

Biologist, Special Studies Branch.

G.R. Baumli,

Principal Engineer, Investigations & Planning Division.

J.F. Friedkin,

Commissioner.

[FR Doc. 84–16731 Filed 6–21–84; 8:45 am]

BILLING CODE 4710–03–M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act of 1980 and OMB Guidelines, the National Science

Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9421
OMB Desk Officer: Carlos Tellez, (202) 395–7340
Title: Fellowship Application and Grant Forms
Affected Public: Individuals
Number of Responses: 7,000 respondents; total of 84,000 hours.

Abstract: The National Science Foundation Act, section 10, states that, "The Foundation is authorized to award scholarships for scientific study." These applications provide information used to identify some of the Nation's most talented science personnel for award of support for further study.

Dated: June 20, 1984.

Herman G. Fleming,

Agency Clearance Officer.

[FR Doc. 84–16772 Filed 6–21–84; 8:45 am]

BILLING CODE 7555–01–M

Ad Hoc Advisory Group on Continental Drilling; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Ad Hoc Advisory Group on Continental Drilling.

Date and Time: July 10 and 11, 1984; 9:00 a.m. to 5:00 p.m. each day.

Place: The National Science Foundation, Room 540, 1800 G Street NW., Washington, D.C. 20550.

Type of Meeting: Open.

Contact Person: Dr. James Fred Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 357–7958.

Summary Minutes: May be obtained from the contact person listed above.

Purpose of Advisory Group: To advise the Director, NSF, on the roles and relative priorities of continental scientific drilling and other proposed studies of the continental lithosphere.

Agenda:

(1) Review and evaluate the NSF response to recent NAS/NRC recommendations on earth sciences. (2) Assess the appropriate role and relative priority for continental scientific drilling within the context of other research needs in the earth sciences. (3) In the context of realistic budget alternatives, define the terms under which NSF might proceed with a program of continental drilling.

Dated: June 19, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–16677 Filed 6–21–84; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Arkansas Power & Light Co. (Arkansas Nuclear One, Unit 1); Order Confirming Licensee Commitments on Emergency Response Capability

I

Arkansas Power and Light Company (AP&L or the licensee) is the holder of Facility Operating License No. DPR–51 which authorizes the operation of the Arkansas Nuclear One, Unit 1 (the facility) at steady-state power levels not in excess of 2568 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Pope County, Arkansas.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

AP&L responded to Generic Letter 82–33 by letter dated April 15, 1983. In this submittal, AP&L made commitments to complete the basic requirements. The following Table summarizing AP&L's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by AP&L.

AP&L's commitments include (1) dates for providing required submittals to the NRC, (2) dates for providing schedules for providing required submittals to the NRC, (3) dates for implementing certain requirements, and (4) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed AP&L's April 15, 1983 letter and entered into discussions with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these discussions, the NRC staff finds that the dates are reasonable, achievable dates for meeting the NRC requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of AP&L's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this Order in the manner described in AP&L's submittal noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director,

Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	June 29, 1984.[1]
	1b. SPDS fully operational and operators trained	Complete.[2]
2. Detailed Control Room Design Review (DCRDR)	2a Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	August 14, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	June 29, 1984.
	3b. Implement (installation or upgrade) requirements	The implementation schedule will be provided in the report which will be submitted by June 29, 1984.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete.
	4b. Implement the upgraded EOPs	Dc
5. Emergency Response Facilities	5a. Technical Support Center fully functional	June 30, 1984.[3]
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	June 30, 1984.[4]

[1] Will incorporate results of other Supplement 1 initiatives to determine needs for SPDS upgrade.
[2] Operational with existing parameters.
[3] SPDS within the TSC will be operational with existing parameters.
[4] The licensee has requested exemption from locating the backup EOF 10 to 20 miles from ANO in favor of using the Russellville Local Office which is 7 miles from ANO. The acceptability of this request will be the subject of a seperate licensing action.

[FR Doc. 84-16738 Filed 6-21-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-368]

Arkansas Power & Light Co. (Arkansas Nuclear One, Unit 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Arkansas Power & Light Company (the licensee) is the holder of Facility Operating License No NPR-6 which authorizes the operation of Arkansas Nuclear One, Unit 2 (the facility) at steady-state power levels not in excess of 2815 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Pope County, Arkansas.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requriements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

Arkansas Power & Light Company (AP&L) responded to Generic Letter 82-33 by letter dated April 15, 1983. In this submittal, AP&L made commitments to complete the basic requirements. The following Table summarizing AP&L's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by AP&L.

AP&L's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed AP&L's April 15, 1983 letter and entered into discussions with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these discussions, the NRC staff finds that the proposed dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of AP&L's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in this ORDER in the manner described in AP&L's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of June, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	April 15, 1984.
	1b. SPDS fully operational and operators trained	December 15, 1985
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	May 5, 1986.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	April 15, 1984.
	3b. Implement (installation or upgrade) requirements	To be provided with the April 15, 1984, report.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Three months prior to the fourth refueling outage (estimated to commence on Sept. 15, 1985).
	4b. Implement the upgraded EOPs	During the fourth refueling outage (estimated to commence on Sept. 15, 1985).
5. Emergency Response Facilities	5a. Technical Support Center fully functional	June 30, 1984.[1]
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	June 30, 1984.[2]

[1] SPDS within the TSC will be operational with existing parameters.

[2] The licensee has requested exemption from locating the backup EOF 10 to 20 miles from ANO in favor of using the Russellville Local Office which is 7 miles from ANO. The acceptability of this request will be the subject of a separate licensing action.

[FR Doc. 84-16739 Filed 6-21-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co. et al. (Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

The Baltimore Gas and Electric Company (BG&E) is the holder of Facility Operating License Nos. DPR-53 and DPR-69 which authorizes the operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 1 and 2, at steady-state power levels not in excess of 2700 megawatts thermal. The facility comprises two pressurized water reactors located in Calvert County, Maryland.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergeny response activities including training.

III

BG&E responded to Generic Letter 82-33 by letter dated April 15, 1983. By letter dated July 22, 1983, BG&E modified several dates as a result of negotiations with the NRC staff. In these submittals,

BG&E made commitments to complete the basic requirements. The following Table summarizing BG&E's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by BG&E.

BG&E's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed BG&E's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these negotiations, the licensee modified certain dates by letters dated July 22 and November 18, 1983. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of BG&E's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in this order in the manner described in BG&E's submittals noted in Section III herein no later than the dates in the table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

BG&E may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status) [1]
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	June 1, 1984.
	1b. SPDS fully operational and operators trained	October 1, 1986 for Unit 2. October 1, 1987 for Unit 1.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	January 1, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	December 1, 1984.
	3b. Implement (installation or upgrade) requirements	Provide schedule by December 1, 1984.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete.
	4b. Implement the ugraded EOPs. (Provide Schedule)	Do.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Do.
	5b. Operational Support Center fully functional	Do.
	5c. Emergency Operations Facility fully functional	Do.

[1] The dates specified are for Units 1 and 2 unless otherwise stated.

[FR Doc. 84–16740 Filed 6–21–84; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. STN 50–454 OL; STN 50–455 OL; ASLBP 79–411–04 OL]

Commonwealth Edison Co. et al. (Byron Nuclear Power Station, Units 1 and 2); Hearing

June 18, 1984.

The Commonwealth Edison Company has applied for a license to operate the Byron Nuclear Power Station in Ogle County, Illinois. On January 13, 1984 the Atomic Safety and Licensing Board presiding over the hearing on the application issued an Initial Decision denying the application. On May 7, 1984 the Atomic Safety and Licensing Appeal Board, having considered the matter on appeal, directed the Licensing Board to conduct further hearings in the proceeding. On May 30 and 31, 1984 the Licensing Board presided over a prehearing conference among the parties to discuss the issues to be considered and the schedule for the reopened hearing. On June 8, 1984 the Licensing Board issued a Memorandum and Order specifying the issues to be considered and directing that a public hearing on the issues commence on July 16, 1984 at 2:00 p.m. at the Magistrate's Courtroom, Federal Building, 211 South Court Street, Rockford, Illinois 61101.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland, June 18, 1984.

Ivan W. Smith,

Chairman, Administrative Law Judge.

[FR Doc. 84–16743 Filed 6–21–84; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–247]

Consolidated Edison Company of New York (Indian Point Nuclear Generating Unit No. 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Consolidated Edison Company of New York (the licensee) is the holder of Facility Operating License No. DPR–64

which authorizes the operation of the Indian Point Nuclear Generating Unit No. 2 (the facility) at steady-state power levels not in excess of 2758 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Westchester County, New York.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82–33 by letter dated April 15, 1983, as supplemented August 31, 1983 and November 18, 1983. In these submittals, the licensee made commitments to complete the basic requirements. The following Table, summarizing the licensee's schedular commitments or status, was developed by the NRC staff from the Generic Letter and the information provided by the licensee.

The licensee's commitments include (1) dates for providing required submittals to the NRCM, (2) dates for implementing certain requirements, and (3) a schedule for providing implemention dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed the licensee's April 15, 1983 letter as supplemented by letters dated August 31, 1983, November 18, 1983, February 14, 1984 and March 12, 1984 and entered into negotiations regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. The NRC staff finds that the dates are reasonble, acheivable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	1. Safety Analysis: 9/84. 2. Implementation plan: Complete.
	1b. SPDS fully operational and initial operator training complete.	December 1985.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Draft Report: Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Licensee will submit schedule July 1984.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	September 1985.
	3b. Implement (installation or upgrade) requirements	December 1985.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	May 1984.
	4b. Implement the upgraded EOPs	October 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Operational[1].
	5b. Operational Support Center fully functional	Do.[1]
	5c. Emergency Operations Facility fully functional	Do.[1]

[1] ERF's will be revised based on RG 1.97 (December 1985) and DCRDR schedules.

[FR Doc. 84–16741 Filed 6–21–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-369; 50-370]

Duke Power Co. et al. (McGuire Nuclear Station Unit Nos. 1 and 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Duke Power Company (Duke) is the holder of Facility Operating License Nos. NPF-9 and NPF-17 which authorize the operation of the McGuire Nuclear Station, Unit Nos. 1 and 2 (the facilities) at steady-state power levels not in excess of 3411 megawatts thermal. The facilities are pressurized water reactors (PWRs) located in Mecklenburg County, North Carolina.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Suppelement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later that April 15, 1983:

(1) A proposed schedule for completing each of the basis requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

Duke responded to Generic Letter 82-33 by letter dated April 14, 1983, including commitments to complete the basic requirements. The following Table summarizes Duke's schedular commitments or current status.

Duke's commitments include (1) dates for providing required submittals to the NRC, and (2) dates for implementing certain requirements.

The NRC staff reviewed Duke's April 14, 1983, letter and finds that the dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading on the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of Duke's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in this Order in the manner described in Duke's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this order. This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 15 day of June 1984.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion scheudle (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Complete.
	1b. SPDS fully operational and operators trained	November 1984
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Do.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met	Do.
	3b. Implement (installation or upgrade) requirements	Do.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Do.
	4b. Implement the upgraded EOPs	November 1984
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Complete.
	5b. Operational Support Center fully functional	Do.
	5c. Emergency Operations Facility fully functional	Do.

[FR Doc. 84-16742 Filed 6-21-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co. et al. (Beaver Valley Power Station, Unit No. 1); Order Confirming Licensee Commitments on Emergency Response Capability

I

Duquesne Light Company (the licensee) is the holder of Facility Operating License No. DPR-66 which authorizes operation of the Beaver Valley Power Station (the facility) at steady-state power levels not in excess of 2652 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Beaver County, Pennsylvania.

II

Following the accident at Three Mile Island Unit No. 2 TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

Duquesne Light Company (DLC) responded to Generic Letter 82-33 by letter dated April 15,1983. In a subsequent meeting held with the NRC staff on May 2, 1983, the licensee provided clarification to the response, and provided additional information in letters dated July 25, 1983 and May 30, 1984. The following Table summarizing DLC's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by DLC.

DLC's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be revised, negotiated and confirmed by a subsequent order.

The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this Order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 12th day of June 1984.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

BEAVER VALLEY UNIT 1.—LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	(Uses the W design basis and functional analysis requirements; no plant specific submittal planned.)
	1b. SPDS fully operational and operators trained	July 1986 [1]
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Completed.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	November [illegible]30, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	[illegible]
	3b. Implement (installation or upgrade) requirements	Date to be provided in above report (3a).

BEAVER VALLEY UNIT 1.—LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737—Continued

Title	Requirement	Licensee's completion schedule (or status)
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	July 1, 1984.
	4b. Implement the upgraded EOPs	July 1986.[1]
5. Emergency Response Facilities	5a. Technical Support Center fully functional	February 1985.[2]
	5b. Operational Support Center fully functional	Already functional.
	5c. Emergency Operations Facility fully functional	February 1985.[2]

[1] Prior to restart after the 5th refueling outage; date is only approximate.
[2] Prior to restart after the 4th refueling outage; date is only approximate.

[FR Doc. 84–16744 Filed 6–21–84; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–335]

Florida Power and Light Co. et al. (St. Lucie Plant, Unit No. 1); Order Confirming Licensee Committees on Emergency Response Capability

I

Florida Power and Light Company (FP&L) (the licensee) is the holder of Facility Operating License No. DPR–67 which authorizes the operation of the St. Lucie Plant, Unit No. 1 (the facility) at steady-state power levels not in excess of 2700 megawatts thermal. The facility is a pressurized water reactor (PWR) located in St. Lucie County, Florida.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

FP&L responded to Generic Letter 82–33 by letter dated April 15, 1983. In this submittal, FP&L made commitments to complete the basic requirements. The following Table, summarizing FP&L's schedular commitments or status, was developed by the NRC staff from the Generic Letter and the information provided by FP&L.

FP&L's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff has reviewed FP&L's April 15, 1983 letter. As a result of this review, the NRC staff finds that the dates are reasonable and achievable for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of FP&L's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to section 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this Order in the manner described in FP&L's submittal noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 14th day of June 1984.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	March 1, 1984 (Complete).
	1b. SPDS fully operational and operators trained.	Fall 1985-Cycle 7 Outage (to be scheduled at time of Cycle 6 restart) Hardware is installed.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	May 14, 1983 (Complete).
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	November 1, 1983 (Complete).
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	January 1, 1984 (Complete).
	3b. Implement (installation or upgrade) requirements	End of Cycle 7 outage approximately December 1985
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	November 1, 1983 (Complete).
	4b. Implement the upgraded EOPs	July 1, 1985.
5. Emergency Response Facilities	5a Technical Support Center fully functional	Complete. SPDS installation complete. SPDS training and fully operational by end of cycle 7 outage (approximately 11/85)
	5b. Operational Support Center fully functional	Completed.
	5c. Emergency Operations Facility fully functional	Complete. SPDS installation complete SPDS training and fully operational by end of cycle 7 outage (approximately 11/85)

[FR Doc. 84-16745 Filed 6-21-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-389]

Florida Power and Light Company, Orlando Utilities Commission of the City of Orlando, Florida and Florida Municipal Power Agency (St. Lucie Plant, Unit 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Florida Power and Light Company (FP&L), Orlando Utilities Commission of the City of Orlando, Florida and Florida Municipal Power Agency (the licensees) are the holders of Facility Operating License No. NPF-16 which authorizes the operation of the St. Lucie Plant, Unit 2 (the facility) at steady-state power levels not in excess of 2560 megawatts thermal. The facility is a pressurized water reactor (PWR) located in St. Lucie County, Florida.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including trainig.

III

FP&L responded to Generic Letter 82-33 by letter dated April 15, 1983. In this submittal, FP&L made commitments to complete the basic requirements. The following Table summarizing FP&L's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by FP&L.

FP&L's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of FP&L's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in this order in the manner described in FP&L's submittal noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensees may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensees should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 14th day of June 1984.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	March 1, 1984 (Complete).
	1b. SPDS fully operational and operators trained	End of 1st Refueling (~January 1985).
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	June 9, 1983 (Complete).
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	September 30, 1983 (Complete).
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	November 30, 1983 (Complete).
	3b. Implement (installation or upgrade) requirements	End of 1st refueling outage approximately January 1985).
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	November 1, 1983 (Complete).
	4b. Implement the upgraded EOPs	July 1, 1985).
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Complete except for installing the SPDS which is scheduled for end of 1st refueling (approximately January 1985.
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	Complete except for installing the SPDS which is scheduled for end of 1st refueling (approximately January 1985.

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[Docket No. 50-289]

General Public Utilities Nuclear Corp.; Three Mile Island Nuclear Station, Unit No. 1; Order Confirming Licensee Commitments on Emergency Response Capability

I

The General Public Utilities Nuclear Corporation (the licensee) and three co-owners hold Facility Operating License No. DPR-50, which authorizes the licensee to operate the Three Mile Island Nuclear Station, Unit No. 1 (the facility) at power levels not in excess of 2535 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Dauphin County, Pennsylvania.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82-33 by letter dated April 15, 1983. By letters dated July 12, and September 1, 1983, the licensee modified several dates as a result of negotiations with the NRC staff. In these submittals, the licensee made commitments to complete the basic requirements. The following Table summarizing the licensee's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by the licensee.

The licensee's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed the licensee's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee modified certain dates by letters dated July 12, and September 1, 1983. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the NRC requirements. The

NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this ORDER in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the Federal Register. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	June 1984.
	1b. SPDS fully operational and operators trained	Prior to startup for Cycle 6 (est. August 1985
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	June 1984
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Do.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Prior to end of Cycle 5, but no later than September 1984.
	3b. Implement (installation or upgrade) requirements	Implementation schedule to be submitted prior to end of Cycle 5, but no later than September 1984.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete
	4b. Implement the upgraded EOPs	Do
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Do.[1]
	5b. Operational Support Center fully functional	Do.
	5c. Emergency Operations Facility fully functional	Do.[1]

[1] Indicates operability. Facilities to be upgraded to fully functional status on a schedule consistent with SPDS and Regulatory Guide 1.97 implementation.

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[Docket No. 50-309]

Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station); Order Confirming Licensee Commitments on Emergency Response Capability

I

Maine Yankee Atomic Power Company (the licensee) is the holder of Facility Operating License No. DPR-36 which authorizes the operation of the Maine Yankee Atomic Power Station (the facility) at steady-state power levels not in excess of 2630 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Lincoln County, Maine.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82-33 by letters dated April 19, 1983, December 2, 1983, January 6 and February 23, 1984. In these submittals, the licensee made commitments to complete the basic requirements. The following Table summarizing the licensee's schedular commitments or status was developed by the NRC staff

from the Generic Letter and the information provided by the licensee.

The licensee's commitments include (1) dates for providing required submittals to the NRC, and (2) dates for implementing certain requirements.

The NRC staff reviewed the licensee's April 19, 1983, December 2, 1983, January 6 and February 23, 1984 letters, and finds that the dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in this order in the manner described in licensee's submittals noted in Section III herein no later than the dates in the table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's Completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Mar. 1, 1985.
	1b. SPDS fully operational and operators trained.	Oct. 1, 1985.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Mar. 15, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Do.
	3b. Implement (installation or upgrade) requirements	Oct. 1, 1985.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a procedures generation package to the NRC	Complete.
	4b. Implement the upgrded EOPs	Oct. 1, 1985.
5. Emergency Response Facilities	5a. Technical support center fully functional	Functional—Dec. 31, 1983.[1]
	5b. Operational support center fully functional	Complete.
	5c. Emergency operations facility fully functional	Functional.[1]

[1] Subject to completion dates for item 3b above.

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[Docket No. 50-336]

Northeast Nuclear Energy Co.; Western Massachusetts Electric Co.; Connecticut Light and Power Co. et al. (Millstone Nuclear Power Station, Unit No. 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Northeast Nuclear Energy Company (NNECo), Western Massachusetts Electric Company, and the Connecticut Light and Power Company (the licensees) are the holders of Facility Operating License No. DPR-65 which authorizes the operation of Millstone Nuclear Power Station, Unit No. 2 (the facility) at steady-state power levels not in excess of 2700 megawatts thermal. The facility is a pressurized water reactor (PWR) located in New London County, Connecticut.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic

requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

NNECo responsed to Generic Letter 82–33 by letter dated April 15, 1983. By letters dated August 11, 1983, November 28, 1983, and December 20, 1983, January 31, 1984 and April 9, 1984, NNECo modified several dates as a result of negotiations with the NRC staff. In these submittals, NNECo made commitments for completion of the basic requirements. The following Table summarizing NNECo's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by NNECo.

NNECo's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed NNECo's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of the negotiations, the licensee modified certain dates by letters dated August 11, 1983, November 28, 1983, December 20, 1983, January 31, 1984, and April 9, 1984. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of NNECo's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in this order in the manner described in NNECo's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensees may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensees should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

MILLSTONE STATION UNIT 2.—NNECO'S COMMITMENT ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Mar. 25, 1985.
	1b. SPDS fully operational and operators trained	Submit schedule by Mar. 25, 1985.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Feb. 26, 1985.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Submit schedule by Feb. 6, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Completed Feb. 29, 1984.
	3b. Implement (installation or upgrade) requirements	Submit schedule July 17, 1984.
4. Upgrade Emergency Procedures (EOPs)	4b. Submit a procedures generation package to the NRC	Complete Oct. 1, 1983.
	4b. Implement the upgraded EOP's	Complete Jan. 7, 1984.
5. Emergency response facilities	5a. Technical support center fully functional	Interim TSC Operational.[1, 2]
	5b. Operational support center fully functional	Complete.[1]
	5c. Emergency operations facility fully functional	Complete[1] (EOF backup siting relief requested by NNECo letter dated August 3, 1983).[2]

[1] Except for any additional changes that may be required as a result of other reviews in the Order.
[2] This will be subject to future licensing action.
[3] Operational TSC temporarily relocated to EOF pending completion of Millstone site TSC (tentatively mid-1985).

[FR Doc. 84–16749 Filed 6–21–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–282 and 50–306]

Northern States Power Co. (Prairie Island Nuclear Generating Plan, Unit Nos. 1 and 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Northern State Power Company (NSP) is the holder of Facility Operating License Nos. DPR–42 and DPR–60 which authorize the operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2 (the facility) at steady-state power levels not in excess of 1650 megawatts thermal. The facility consists of two pressureized water reactors (PWR) located at the licensee's site in Goodhue County, Minnesota.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response

capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–03737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

NSP responded to Generic Letter 82–33 by letter dated April 15, 1983. By the negotiating meeting held at the plant site on June 24, 1983, NSP modified several dates as a result of negotiation with the NRC staff. NSP made commitments to complete the basic requirements. The following Table summarizing NSP's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by NSP.

NSP's commitments include (1) dates for providing required submittals to the NRC and (2) dates for implementing certain requirements.

The NRC staff reviewed NSP's April 15, 1983 letter and entered into negotiation with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these negotiations, the licensee modified certain dates that are reflected in the attached table. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of NSP's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this order in the manner described in NSP's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of June, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Apr. 15, 1984.
	1b. SPDS fully operational and operators trained	Unit 1: 3 mo. after return to power following 1986 refueling (Cycle 11). Unit 2: 4 mo. after return to power following 1985 refueling (Cycle 10)
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Jan. 1, 1985.[2]
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Complete.
	3b. Implement (installation or upgrade) requirements	Same as 1b. above.[2]
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a procedures generation package to the NRC	Complete.
	4b. Implement the upgraded EOP's	Do.
5. Emergency Response Facilities	5a. Technical support center fully functional	Complete.[1]
	5b. Operational support center fully functional	Do.[1]
	5c. Emergency operations facility fully functional	Do.[1]

[1] Enhancement to be completed with implementation of Reg. Guide 1.97 (3b above) and SPDS operational (1b above).
[2] Subject to change if additional NRC staff requirements issued.

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[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3); Order Confirming Licensee Commitments on Emergency Response Capability

I

Philadelphia Electric Company (PECO or the licensee) and three other co-owners are the holders of Facility Operating Licenses Nos. DPR-44 and DPR-56 which authorize the operation of the Peach Bottom Atomic Station Units Nos. 2 and 3 (the facilities) at steady-state power levels not in excess of 3293 megawatts thermal for each unit. The facilities are boiling water reactors (BWRs) located at the licensee's site in York County, Pennsylvania.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

PECO responded to Generic Letter 82-83 by letters dated April 15, 1983, and September 14, 1983. In these submittals, PECO made commitments to complete the basic requirements. The following Table summarizing PECO's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by PECO.

PECO's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These later implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed PECO's submittals and finds that the dates are reasonable, achievable dates for meeting the NRC requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of PECO's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this order in the manner described in PECO's submittals noted in section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Complete (Units 2 and 3).
	1b. SPDS fully operational and operators trained	Unit 2: By the end of the 7th refueling outage (est. Fall 1985); Unit 3: By the end of the 6th refueling outage (est. Spring 1985).
2. Detailed Control Room Design Review (DCRDR)	2.a Submit a program plan to the NRC	Complete (Units 2 and 3).
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	March 15, 1985 (Units 2 and 3).
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	July 1, 1984 (Units 2 and 3).
	3b. Implement (installation or upgrade) requirements	Unit 2: By the end of the 8th refueling outage (est. Spring 1987); Unit 3: By the end of the 7th refueling outage (est. Fall 1985).
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete (Units 2 and 3).

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737—Continued

Title	Requirement	Licensee's completion schedule (or status)
5. Emergency Response Facilities	4b. Implement the upgraded EOPs	Do.
	5a. Technical Support Center fully functional	Do.[1]
	5b. Operational Support Center fully functional	Do.[1]
	5c. Emergency Operations Facility Fully functional	Do.[1]

[1] In all respects except for SPDS and Reg. Guide 1.97 Instrumentation (See items 1 and 3 above).

[FR Doc. 84–16751 Filed 16–21–84; 8:45 am]
BILLING CODE 7590–01–

[Docket No. 50–344]

Portland General Electric Co., Pacific Power & Light Co., the City of Eugene, Oreg. (Trojan Nuclear Plant); Order Confirming Licensee Commitments on Emergency Response Capability

I.

Portland Electric Company, *et al.*, (the licensee or PGE) is the holder of Facility Operating License No. NPF–1 which authorizes the operation of the Trojan Nuclear Plant (the facility) at steady-state power levels not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Columbia County, Oregon.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were restricted to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III.

The licensee responded to Generic Letter 82–33 by letter dated April 15, 1983. In this submittal, the licensee made commitments to complete the basic requirements. The following Table summarizing the licensee's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by the licensee. The licensee supplied additional information on the status of the implementation of some related items by letters dated August 2, November 23, 1983, January 27 and May 23, 1984.

The licensee's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff has reviewed the licensee's April 15, 1983 letter and supplemental information provided on August 2, November 23, 1983, January 27 and May 23, 1984. The NRC staff finds that the licensee's proposed dates for meeting the requirements of Supplement 1 to NUREG–0737 are reasonable, achievable dates and that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of PGE's commitments is required in the interest of the public health and safety and should therefore be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this order in the manner described in PGE's submittals noted in Section III herein no later than the dates in the table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. A request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of June, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737 PORTLAND GENERAL ELECTRIC COMPANY

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Complete.
	1b. SPDS fully operational and operators trained	Startup following 1985 refueling (approx. July 1985).
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Fourth quarter, 1984.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Fourth quarter, 1984.
	3b. Implement (installation or grade) requirements	Implementation schedule to be provided with item 3a above.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete.
	4b. Implement the upgraded EOPs	Third quarter, 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Same as item 1b.
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility (EOF) fully functional	December 31, 1986.

[FR Doc. 84-16752 Filed 6-21-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272 and 50-311]

Public Service Electric & Gas Co. et al., Salem Nuclear Generating Station, Unit Nos. 1 and 2; Order Confirming Licensee Commitments on Emergency Response Capability

I

Public Service Electric and Gas Company (PSE&G or the licensee) is the holder of Operating License Nos. DPR-70 and DPR-75 which authorizes the operation of the Salem Nuclear Generating Station, Unit No. 1 and No. 2 (the facilities) at steady-state power levels not in excess of 3338 megawatts thermal and 3411 megawatts thermal, respectively. The facilities are located in Salem County, New Jersey.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

PSE&G responded to Generic Letter 82-33 by letter dated April 15, 1983. By letters dated June 1, 1983, August 18, 1983, and December 19, 1983, and April 5, April 6, and May 16, 1984, PSE&G modified several dates as a result of negotiations with the NRC staff. In these submittals, PSE&G made commitments to complete the basic requirements. The following Table summarizing PSE&G's schedular commitments or status was developed by the NRC staff from the generic letter and the information provided by PSE&G.

PSE&G's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed PS&EG's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee modified certain dates by letters dated June 1, 1983, August 18, and December 19, 1983, and April 5, April 6, and May 16, 1984. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of PSE&G's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant of sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in this Order in the manner described in PSE&G's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensees may request a hearing on this Order withing 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A

copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensees should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June 1984.

For the Nuclear Regulatory Commission.

Darrel G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's Completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Complete.
	1b. SPDS fully operational and operators trained	December 1986.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Do.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Do.
	3b. Implement (installation or upgrade) requirements	(1) August 1984 for Unit 1; (2) April 1984 for Unit 2.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete.
	4b. Implement the upgrded EOPs	(1) Without SPDS 3/85; (2) With SPDS 12/86.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Complete.
	5b. Operational Support Center fully functional	Do.
	5c. Emergency Operations Facility fully functional	December 1985.

[FR Doc. 84–16753 Filed 6–21–84; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–395]

South Carolina Electric & Gas Co.; South Carolina Public Service Authority (Virgil C. Summer Nuclear Station); Order Confirming Licensee Commitments on Emergency Response Capability

I

South Carolina Electric and Gas Company (SCE&G) and South Carolina Public Service Authority (the licensees) are the holders of Facility Operating License NPF–12 which authorizes the operation of the Virgil C. Summer Nuclear Station, (the facility) at steady-state power levels not in excess of 2775 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Fairfield County, South Carolina.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide subtantial additional protection in the operation of nulcear facilities and significant upgrading of emergency response capabaility based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

SCE&G responded to Generic Letter 82–33 by letter dated April 15, 1983. By letters dated May 16, July 21, and December 28, 1983, and April 4, 1984, SCE&G updated their original response. In these submittals, SCE&G made commitments to complete the basic requirements. The following Table summarizing SCE&G's schedular commitments or status was developed by NRC staff from the Generic Letter and the information provided by SCE&G.

SCR&G's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated, and confirmed by a subsequent order.

The NRC staff finds that the licensee's dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of SCE&G's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in this order in the manner

described in SCE&G's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensees may request a hearing on this Order within 20 days of the date of publication of this Order in the Federal Register. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue on Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensees should comply with the requirements set forth in Section IV of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 15th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Complete.
	1b. SPDS fully operational and operators trained	December 31, 1985.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	April 15, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Do.
	3b. Implement (installation or upgrade) requirements	Complete.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	December 30, 1984.
	4b. Implement the upgraded EOPs	October 1984.[1]
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Complete.
	5b. Operational Support Center fully functional	Do.
	5c. Emergency Operations Facility fully functional	Primary EOF—Complete; Backup EOF—25 mile location under staff review.

[1]Where completion date refers to a refueling outage (the estimated date when the outage begins), the item will be completed prior to the restart of the facility.

[FR Doc. 84-16754 Filed 6-21-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327]

Tennessee Valley Authority (Sequoyah Nuclear Station Unit No.1); Order Confirming Licensee Commitments on Emergency Response Capability

I

Tennessee Valley Authority (TVA) (the licensee) is the holder of Facility Operating License No. DPR-77 which authorizes the operation of the Sequoyah Nuclear Plant, Unit No. 1 (the facility) at steady-state power levels not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Hamilton County, Tennessee.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

TVA responded to Generic Letter 82-33 by letter dated April 15, 1983. By letters dated August 1, August 22, and December 16, 1983, TVA modified several dates as a result of negotiations with the NRC staff. In these submittals, TVA made commitments to complete the basic requirements. The following Table summarizing TVA's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by TVA.

TVA's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed TVA's April 15, 1983, letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of the negotiations, the licensee modified certain dates by letters dated August 1, August 22, and December 16, 1983. The NRC staff finds that the

modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of TVA's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this Order in the manner described in TVA's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**.Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 15th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's Completion Schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Completed.
	1b. SPDS fully operational and operators trained	September 1985.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Completed.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	November 1986.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Completed.
	3b. Implement (installation or upgrade) requirements	September 1987.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Completed.
	4b. Implement the upgraded EOPs	August 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	September 1985.
	5b. Operational Support Center fully functional	Completed
	5c. Emergency Operations Facility fully functional	Do.

[FR Doc. 84-16755 Filed 6-21-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-328]

Tennessee Valley Authority (Sequoyah Nuclear Station Unit No. 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Tennessee Valley Authority (TVA) (the licensee) is the holder of Facility Operating License No. DPR-79 which authorizes the operation of the Sequoyah Nuclear Plant, Unit No. 2 (the facility) at steady-state power levels not in excess of 3411 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Hamilton County, Tennessee.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability."

Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

TVA responded to Generic Letter 82-33 by letter dated April 15, 1983. By letters dated August 1, August 22, and December 16, 1983, TVA modified several dates as a result of negotiations with the NRC staff. In these submittals, TVA made commitments to complete the basic requirements. The following Table summarizing TVA's schedular commitments or status was developed

by the NRC staff from the Generic Letter and the information provided by TVA. Item 3b. to the Table, concerning the licensee's commitment to implement Regulatory Guide 1.97 as it applies to Emergency Response Facilities, will be required by a separate license amendment.

TVA's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed TVA's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of the negotiations, the licensee modified certain dates by letters dated August 1, August 22, and December 16, 1983. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of TVA's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this order in the manner described in TVA's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness fo this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 15th day of June 1984.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Completed.
	1b. SPDS fully operational and operators trained	October 1985.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Completed.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	November 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Completed.
	3b. Implement (installation or upgrade) requirements	Licensee commitment to be confirmed by separate license amendment.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Completed.
	4b. Implement the upgraded EOPs	August 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	October 1985.
	5b. Operational Support Center fully functional	Completed.
	5c. Emergency Operations Facility fully functional	Do.

[FR Doc. 84–16756 Filed 6–21–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–338 and 50–339]

Virginia Electric & Power Co., and Old Dominion Electric Cooperative (North Anna Power Station Units No. 1 and No. 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Virginia Electric and Power Company (VEPCO) and the Old Dominion Electric Cooperative (ODEC) are the holders of Facility Operating License Nos. NPF–4 and NPF–7 which authorize VEPCO to operate the North Anna Power Station, Unit No. 1 and No. 2 (the facility) at steady-state power levels not in excess of 2775 megawatts thermal. The facility consists of two pressurized water reactors (PWRs) located in Louisa County, Virginia.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible

control room design modifications, and specific information to submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

VEPCO responded to Generic Letter 82–33 by letters dated April 15, 1983, January 31, 1984, February 21, 1984, March 1, 1984 and March 13, 1984. In these submittals, VEPCO made commitments to complete the basic requirements. The following Table summarizing VEPCO's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by VEPCO.

VEPCO's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed VEPCO's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these negotiations, certain dates were modified by VEPCO. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of VEPCO's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this order in the manner described in VEPCO's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDAS)	1a. Submit a safety analysis and an implementation plant to the NRC.	Complete.
	1b. SPDS fully operational and operators trained	North Ana 1—Prior to Resuming Power Operation After the 5th Refueling Outage (1/1/86 to 2/22/86) [1]; North Anna 2—Prior to Resuming Power Operation After the 4th Refueling Outage (4/18/86 to 6/9/86).[1]
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Provide Schedule August 30, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Complete.
	3b. Implement (installation or upgrade) requirements	Refueling in 1986.[2]
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete.
	4b. Implement the upgrade EOPs	April 15, 1984.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	July 1, 1985.
	5b. Operational Support Center fully functional	Complete Except for Communications Tie-In with EOF.
	5c. Emergency Operations Facility fully functional	July 31, 1985 except for data communications which follows SPDS schedule.

[1] Present schedule.
[2] Incore Thermocouples are tracked on separate schedule.

[FR Doc. 84–16757 Filed 6–21–84; 8:45 am]
BILLING CODE 7590–01–M

Publication of Subagreement #1 Between U.S. NRC and the Illinois Department of Nuclear Safety

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Publication of Subagreement #1 between U.S. NRC and the Illinois Department of Nuclear Safety.

SUMMARY: Section 274i. of the Atomic Energy Act of 1954, as amended, allows the Commission to enter into agreements with the States "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." Section 274i MOUs differ from agreements entered into

between NRC and a State under the "Agreement State" program; the latter is accomplished only by entering into an agreement under section 274b. of the Atomic Energy Act. A 274i. MOU can be entered into by a State whether or not it has a 274b. agreement.

In April of 1984, an "umbrella" MOU was signed by the NRC and the State of Illinois, providing principles of cooperation between the State and NRC in areas of concern to the State.

Subagreement #1 provides the basis for mutually agreeable procedures whereby the State may perform inspection functions for and on behalf of the Commission at certain reactor and materials licensees' facilities which generate low-level radioactive waste.

FOR FURTHER INFORMATION CONTACT: Roland Lickus, Director, State and Government Affairs, U.S. NRC, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137 (Telephone 312/790–5666).

Dated at Glen Ellyn, IL, this 15th day of June, 1984.

For the U.S. Nuclear Regulatory Commission.

James G. Keppler,

Regional Administrator.

[FR Doc. 84–16756 Filed 6–21–84; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets By an Employer That Contributes to a Multiemployer Plan; Beloit Manhattan, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted Beloit Manhattan, Inc., an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974. A notice of the request for exemption from this requirement was published on March 9, 1984 (49 FR 9039). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254–4860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), a sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser furnish a bond or escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for an exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of an exemption request in the **Federal Register**, and to give interested parties an opportunity to comment on the proposed exemption.

Decision

On March 9, 1984 (49 FR 9039), the PBGC published a notice of the pendency of a request from Beloit Manhattan, Inc. ("Beloit"), for an exemption from the bond/escrow requirement of ERISA section 4204(a)(1)(B), in connection with the purchase by Beloit of the assets of the Huntington Roll Cover Division of Buckhorn, Inc., ("Buckhorn"), located in Federal Way, WA. The sale of assets was effective on October 1, 1982. No comments were received in response to the notice.

In connection with the sale, Beloit assumed Buckhorn's obligation, under a collective bargaining agreement with the Teamsters Local 763, to contribute to the Western Conference of Teamsters Pension Trust Fund (the "Fund"). Buckhorn's potential withdrawal liability to the Fund is estimated at $35,885. The amount of the bond/escrow required under ERISA section 4204(a)(1)(B) is $29,212 (Buckhorn's required annual contributions for the plan year preceding the sale).

Beloit asked that its exemption requests be granted on the ground that the bond/escrow amount is *de minimis* when compared with the average annual contributions to the Fund, totaling approximately $460 million, which were made by all employers together for the three plan years preceding the year of sale. The bond/escrow amount is less than one-tenth of one percent of this average total contribution figure.

Based on the facts of this case and the representations and statements made in connection with the exemption request, the PBGC has determined that an exemption from the bond/excrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants Beloit's request for an exemption from the bond/escrow requirement of section 4204(a)(1)(B). The granting of such an exemption does not constitute a determination by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). That determination is made by the plan sponsor.

Issued at Washington, D.C. on this 18th day of June, 1984.

C. C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84–16771 Filed 6–21–84; 8:45 am]

BILLING CODE 7708–01–M

[Release No. 21063; SR–AMEX–84–16]

American Stock Exchange, Inc., Filing and Order Granting Accelerated Approval of Proposed Rule Change

June 18, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 1984, the American Stock Exchange, Inc. ("Amex"), 86 Trinity Place New York, New York 10006, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the

proposed rule change from interested persons.

The rule change would conform Amex Rule 911 (Communications to Customers) to recent SEC amendments to Rule 134a under the Securities Act of 1933 relating to the content of written options materials disseminated to the public.[1] The purpose of the rule change is to allow offerors of option products to include certain explanatory information in advertisements for those products and permit a fuller explication of the nature of newly developed options products. Specifically, the rule change would eliminate the previous requirement that written materials disseminated to the public contain a legend indicating the name and address of a person from whom an Options Clearing Corporation prospectus can be obtained. Since the options disclosure documents(s), not the Options Clearing Corporation prospectus, advises potential customers of the risks and uses of listed options, it is unnecessary to indicate the name and address of a person from whom a prospectus can be obtained. The rule change would also permit the identification of certain specific securities, namely, those exempt from registration under the 1933 Act, options on such exempt securities and index options.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change conforms Amex Rule 991 with recent amendments to Rule 134a of the Securities Act of 1933, which were published in the **Federal Register** for comment, considered and approved by the Commission.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulations pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16730 Filed 6-21-84; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Act Release No. 33-6518, March 1984.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21062; (SR-Amex-84-9)]

American Stock Exchange, Inc.; Order Approving Proposed Rule Change

June 18, 1984.

The American Stock Exchange ("Amex"), 86 Trinity Place, New York, NY 10006, submitted on March 12, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder to implement on a twelve-month pilot basis an optional procedure permitting a newly listed company to choose the specialist unit in its stock from a list of seven specialist units selected by the Exchange's Committee on Equities Allocation ("Allocations Committee"). The proposal would, however, give the issuer the option of allowing the Amex to continue to select the specialist for its securities under the current allocation system. The proposal also provides that, whether or not a newly listed company chooses to participate in selection of the specialist unit, if a newly listed company becomes dissatisfied for any reason with its specialist unit within the first year of listing, it would be permitted to request a change.[1]

[1] Such request, however, could not be made until at least 120 days after the commencement of trading. The company is required to furnish an explanation of the reasons for its dissatisfaction. The Exchange will reallocate the stock within 30 days, if attempts at counseling the company and the specialist unit fail. In any such reallocation, the Exchange would follow its current allocation procedures without any input from the issuer. The Exchange has informed the Commission staff that, under this proposal, the initial selection of a unit would be a conditional allocation, and therefore, no adverse inference would be drawn if a stock was reallocated away. Under the proposal, a company could invoke the reallocation request only once during the first year of its listing.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20786, March 22, 1984) and by publication in the **Federal Register** (49 FR 12786, March 30, 1984). No comments were received with respect to the proposed rule filing.

I. Introduction and Background

Amex, like the other stock exchanges, currently allocates new listings to specialist units in part on the basis of their on-floor performance as measured by both objective and subjective criteria established by the Exchange.[2] Under the current system, the Amex Allocations Committee selects what it believes to be the specialist unit best qualified to handle the particular new listing. After narrowing the list of possible choices to what the Allocations Committee believes are the ten best qualified units, it gives the issuer the option to eliminate up to three units before making the final selection.

Amex believes that this proposal, allowing the issuer, rather than the Exchange, to be the final decision-maker regarding the choice of the specialist unit, will enable it to attract new listings and new capital to the floor of the Exchange. Amex contends that prospective listed companies desire greater involvement in the selection process and that the limited role assigned to a prospective listee under the current Amex system may be a significant disincentive to listing with the Exchange. Amex believes that the "issuer choice" proposal would accomplish this goal, while still preserving the incentive system of the performance-based allocation procedures.

The Commission has determined to approve the Amex's proposed procedures on a twelve month pilot basis. Although, as discussed below, the Commission has some reservations about giving Amex issuers the ability to make a final selection of a specialist for its stock, the Commission believes that the Amex has built into the system a sufficient number of safeguards to meet some of the concerns raised by the issuer choice approach. Thus, while Amex believes that such procedures

[2] The Amex submitted for Commission approval its procedures for the evaluation of equities specialist performance and for the allocation and reallocation of equities. See File No. SR-Amex-83-27, Securities Exchange Act Release No. 20353 (November 4, 1983), 48 FR 51992 (November 15, 1983). The Commission is currently in the process of reviewing these procedures.

may have a beneficial impact on its competitive position as a primary market for equity securities, the Commission finds that the proposal nevertheless retains incentives for quality specialist performance.

II. Specialist Performance Evaluation and Allocation of New Listings

Pursuant to Amex Rule 170,[3] the Amex has designed specialist evaluation procedures and procedures for the reallocation of securities as a result of substandard performance. The performance of a specialist is evaluated on a routine basis by Amex floor brokers, the Amex Performance Committee [4] and Exchange staff, and the data obtained from these sources is used by the Performance Committee to evaluate specialists and to suspend a specialist's registration in a stock as a result of poor performance. The data is also used by the Allocations Committee [5] to allocate new listings.

When the Amex has approved a new issue for listing, the Allocations Committee will convene to select a specialist unit for the issue. All units, except those which are precluded from allocations due to poor performance ratings,[6] are deemed to have applied for every new issue to be allocated.

In selecting a specialist unit, the Allocations Committee first complies a list of the ten specialist units considered most eligible for listing. From this list, an issuer that desires to have a role in the selection of its specialist may eliminate up to three of the ten units. The Allocations Committee will then reconvene to make the final choice from the remaining seven units. Under the current system, the Allocations Committee selects a specialist unit based on a number of performance-related criteria, as well as a number of additional factors regarding the suitability of a particular unit to the stock to be allocated.[7] Thus, under the Amex system, a specialist chosen for the new stock will not necessarily be the specialist unit that has received the highest ratings. Rather, the Allocations Committee will base its final decision on a variety of factors in addition to performance criteria, such as the size of the unit and capital requirements for handling the new stock, as well as factors internal to the Amex stock allocation system itself, such as whether the unit recently has been allocated a stock or whether it has recently lost a stock. The Allocations Committee, will, in effect, allocate a newly listed stock to the specialist unit considered "best suited" to handle that stock.

III. Discussion

The Amex evaluation system currently appears designed to further two ends: (1) That specialists receiving performance ratings above some minimum level are entitled to receive at least some allocations, and (2) that superior performance will result in a specialist unit receiving more desirable allocations and a greater number of allocations. Thus, although the current stock allocation procedure allocates newly listed stocks to a substantial percentage of all Amex specialist units, the system provides significant incentives for specialists to provide the highest quality markets possible.

The Amex proposal might weaken the link between new stock allocations and superior specialist performance, since the choice of specialist by the newly listed company would not longer be based in large part on the specialists' ratings under Amex's current procedures. Under the Amex proposal, performance criteria would be used only to determine which specialists would be among the seven finalists presented to the issuer. Each specialist qualifying as one of the seven suggested to the issuer, regardless of his relative performance ranking, would have the opportunity to be chosen by the issuer. The proposal could undermine the goals of the allocation system (1) by jeopardizing Amex's policy of distributing allocations to as many qualified specialists as possible, and (2) by no longer assuring top rated specialists that they will receive the bulk of the most desirable new stock allocations.

Specialists may perceive that their concerns about the quality of their performance need extend only to their ability to be chosen among the seven units recommended to the issuer and thus may shift their focus principally from performance-based concerns to promotional efforts designed to increase their visibility to prospective listees. The proposal may encourage a closer interrelationship between specialist and issuer, thereby creating the appearance of impropriety and the possibility of conflict of interest that the current system avoids by distancing issuers from the stock allocation decision.[8]

Questions also exist as to whether the Issuers will have the information or experience to enable them to make an informed decision as to their choice of specialist.[9] Issuers may be inclined to choose specialists that are well-known or well-publicized, and in the process, fail to choose smaller, high quality units that lack the public visibility of their larger or more publicity-oriented competitors. In response to the concerns noted above, the Amex has stated its

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[3] Under Rule 170, if the Amex determines that a specialist substantially or continuously fails to engage in a course of dealings reasonably calculated to assist in a fair and orderly market or fails to meet other specified performance standards which are conditions for continued registration as a specialist, it may suspend or revoke the specialist's registration in one or more of the securities in which he is registered.

[4] The Performance Committee is appointed by the Board and is charged with evaluating specialist performance as well as taking appropriate corrective action to improve the quality of Amex markets. The Committee is composed of approximately 20 floor members, including five floor governors, representing specialists, registered traders, and brokers, all of whom are Exchange officials or floor officials.

[5] The Allocations Committee has been delegated authority by the Board to allocate and reallocate securities to specialist units.

[6] The Amex employs two major evaluation tools in assessing specialist performance: (1) The specialist unit evaluation questionnaire ("questionnaire") which elicits the opinions of floor brokers as to the overall performance of a specialist unit, and (2) the Performance Committee evaluation ratings, based on specific trading irregularities detected by exchange staff and reviewed by the Committee. On a quarterly basis, the Exchange distributes the questionnaire to floor brokers and registered traders who evaluate the performance of specialist units based on their floor contact with them. The identity of and specific comments provided by evaluators is confidential. Four categories of specialist performance are evaluated: fiduciary responsibility, specialist unit staffing, communication and auction market maintenance. Members use a 1 (highest) to 5 (lowest) rating system. Brokers may also indicate no opinon due to insufficient contact with a particular unit.

The Performance Committee also provides a quarterly rating of 1 to 5 for each unit based on the number and severity of trading irregularities considered by the Committee. Performance Committee procedures are discussed comprehensively in SR-Amex-83-27. *See* note 2, *supra*.

A unit receiving a score of 4 or 5 on either the quarterly questionnaire or Performance Committee ratings is automatically precluded from applying for new allocations until its ratings improve.

[7] The Allocations Committee will receive a summary statistics sheet, compiled by the Trading Analysis Division, which includes, among other things, performance and questionnaire ratings, average principal participation for the most recent 6 months, average daily volume per active specialist for equities and options for the most recent 12 and 3 month period, and the number of issues allocated in the last 12 months.

[8] The Commission first documented the problems resulting from issuer-specialist relationships in the stock allocation process in the *SEC Staff Report on Organization Management, and Regulation of Conduct of Members of the American Stock Exchange 1962. See Report of Special Study of the Securities Markets*, H.R. Doc. No. 95, 88th Cong., 1st Sess., Pt. 4 pp. 774–775 (1963).

[9] Amex has informed the Commission staff that it will provide the newly listed company only with a limited amount of information, including the names of the seven units, the names of the partners in each of the units and the list of stocks in which the unit specializes. Specifically, performance ratings will not be made available to the companies. Over the course of the pilot, Amex will be considering the nature and amount of additional information it will offer to the issuer.

belief that issuers who elect to choose the specialist would likely do so on an informed basis by consulting their investment bankers and members of their corporate finance department. They would also solicit the opinions of the corporate "grapevine" (such as officers of other companies listed on Amex and their investment bankers) in order to evaluate the various Amex specialists. Indeed, the Amex also has stated that an issuer's decision might, if anything, be based more completely on trading performance than are the present allocation decisions. In particular, issuers would not be required to weigh which firms had not recently received a desirable allocation in making their decision.

The Exchange has informed the Commission that it will be closely monitoring trading in those companies participating in the pilot, as well as those specialist units allocated stock under the procedures.[10] In addition, Amex has agreed to include in the proposed one-year pilot certain provisions to respond to the possibility that the new procedures could increase the likelihood that specialists will develop inappropriate or prohibited relationships with issuers.[11] First, when a prospective company has decided to list on the Amex, specialist units will be barred from contacting the company for the purpose of influencing its decision. Once the Allocations Committee has selected the seven units, each unit will be notified and instructed that it may not initiate any further communication with the company. If the company wishes to interview the individual specialist units, the Exchange will arrange these interviews, providing all the units with an equal opportunity to meet with the company. Second, specialists will be advised that they must notify the Amex Marketing Department of any contact they wish to initiate with unlisted companies as well as of any unplanned contacts that occur with prospective issuers.[12] Third, as part of the Amex's marketing effort, individual specialists sometimes accompany Exchange staff personnel to prospective listees to familiarize them with the auction market operation and, in particular, the role of the specialist in the market. The Amex is aware that participation in this program offers the opportunity for a specialist to meet prospective listees and, thus, may affect the decision of companies that subsequently decide to list with the Exchange. To minimize their potential bias, the Exchange has provided for a procedure whereby all specialist units have an equal opportunity to participate in the marketing program.[13] The Commission emphasizes that it will itself monitor over the next twelve months Amex's operations with respect to both quality of markets and issuer-specialist relationships.

Despite the various possible concerns noted above, the Commission is aware of and is sensitive to the strong competition within the equity markets today for new listings. Amex is arguably competitively disadvantaged by the fact that issuers are often capable of influencing their investment bankers to make a market in their security in NASDAQ, while they have no effective role in the selection of an Amex specialist for their stock. Amex has indicated to the Commission staff that issuers will consult their investment bankers in making their selection and that those firms will generally be able to provide as accurate an evaluation of the relative quality of specialist units as the performance-based criteria. We are persuaded that the Amex should be given the flexibility to experiment with a plan that may positively affect its competitive posture. The Commission believes that, with the implementation of the proposed safeguards, the pilot may produce some important data as to the impact of issuer choice on the Amex specialist evaluation procedures and the Amex markets in general.

For the reasons discussed above, the Commission finds the proposed rule change is consistent with the requirements of the Act applicable to a national securities exchange, and, in particular, with the requirements of section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16737 Filed 6-21-84; 8:45 am]

BILLING CODE 8010-01-M

[10] The Exchange has informed the Commission staff that it will place special emphasis on analyzing the trading patterns and positions of a specialist unit for appropriate periods both prior to and subsequent to the public announcement by a listed company of significant financial news or important corporate developments. The Exchange will also monitor closely abrupt liquidations of short positions or increases in long positions which are followed by announcements of favorable news (or similar liquidations of long positions or increases in short positions in the case of unfavorable news).

[11] *See* letter from Robert J. Birnbaum, President, of Amex, to Richard Ketchum, Associate Director, Division of Market Regulation, dated May 8, 1984.

[12] The Exchange specifically has reserved the right to request specialist units to avoid making such contacts if it believes in any particular case that such activities could hinder its marketing effort or would otherwise be inappropriate.

[13] Each unit will be asked to designate a representative to accompany personnel on visits to companies, who will also become familiar with the Amex marketing program. All visits will be conducted with Exchange officers and marketing personnel present. Participation, which is voluntary, will be organized principally on a rotating basis. The Exchange will specifically inform the specialist that their function on these visits is not to promote themselves but rather to focus their efforts on representing Exchange interests. In addition, the specialists will be informed that their participation in the marketing process has no relation to whether their unit is included on the list presented to the company.

[Release No. 21064; (SR-CBOE-84-13)]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

June 18, 1984.

The Chicago Board Options Exchange, Incorporated ("CBOE"), LaSalle at Van Buren, Chicago, IL 60605, submitted on April 2, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to give a Board Broker or Order Book Official ("OBO"), prior to an opening of trade, discretion not to display, or to remove from display, high bids or low offers where such bids or offers appear to be materially away from the expected market in that series.[1] Under the proposal, these orders would be treated as market orders.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20861, April 13, 1984) and by publication in the **Federal Register** (49 FR 17656, April 24, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the

[1] As originally submitted, the text of the proposed rule change stated that the OBO would have discretion not to display, or remove from display, the highest bid or lowest offer in his book. Amendment No. 1 submitted on June 7, 1984 amends the text of the proposed rule change to clarify that this discretion extends to all high bids or low offers that appear to be materially away from the expected market in that series.

above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16735 Filed 6-21-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0331]

Advent V Capital Company LP; Application for a License To Operate as a Limited Partnership Small Business Investment Company (SBIC)

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.4 of the Regulations governing SBIC's (13 CFR 107.4 (1983)) under the name of Advent V Capital Co. Limited Partnership, 45 Milk Street, Boston, Massachusetts 02109 for a License to operate in the New England area as a Limited Partnership SBIC under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 *et seq.*).

The partnership will begin operations with private capital of $20,935,000.

The General Partner of the Partnership is T/A Associates Co., 45 Milk Street, Boston, Massachusetts 02109.

The general partners of T/A Associates Co. are:

Peter A. Brook, 45 Milk Street, Boston, Massachusetts 02109
C. Kevin Landry, 45 Milk Street, Boston, Massachusetts 02109
David D. Croll, 45 Milk Street, Boston, Massachusetts 02109
P. Andrew McLane, 45 Milk Street, Boston, Massachusetts 02109
Jeffery T. Chambers, 45 Milk Street, Boston, Massachusetts 02109
Michael A. Ruane, 45 Milk Street, Boston, Massachusetts 02109
Jacqueline C. Morby, 45 Milk Street, Boston, Massachusetts 02109
Richard H. Churchill, Jr., 45 Milk Street, Boston, Massachusetts 02109

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed General Partner and the reasonable prospects for successful operations of the SBIC under its management including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any interested person may (not later than 30 days from the publication of this Notice) submit written comments on the application to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Boston Area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 15, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-16647 Filed 6-21-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0478]

ASEA—Harvest Partners II; Application for a License To Operate as a Limited Partnership Small Business Investment Company (SBIC)

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.4 of the Regulations governing SBIC's (13 CFR 107.4 (1983)) under the name of ASEA—Harvest Partners II, 767 Third Avenue. New York , New York 10017 for a License to operate in the New York area as a Limited Partnership SBIC under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 *et seq.*).

The partnership will begin operations with private capital of $1,000,000.

The General Partners of the Partnership are individuals located at the abovementioned address and they are:

Harvey J. Wertheim, 767 Third Avenue, New York, New York 10017
Harvey Mallement, 767 Third Avenue, New York, New York 10017
Cloyd E. Marvin, 767 Third Avenue, New York, New York 10017

The sole limited partner is ASEA Venture Capital Inc., a New York Corporation wholly owned by ASEA, Inc., a U.S. subsidiary of ASEA AB, a publicly held Swedish Corp. The applicant has entered into a management advisory contract with Harvest Venture, Inc., 767 Third Avenue, New York, New York 10017. The general partners are also officers and directors of the advisor.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed General Partners and the reasonable prospects for successful operations of the SBIC under its management including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any interested person may not later than July 23, 1984, submit written comments on the application to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in the New York City Area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 15, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-16646 Filed 6-21-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2146]

Mississippi; Declaration of Disaster Loan Area

Coahoma County in the State of Mississippi constitutes a disaster area because of damage caused by tornadoes and high winds which occurred on April 29, 1984, through May 2, 1984. Applications for loans for physical damage may be filed until the close of business on August 13, 1984, and for economic injury until the close of business on March 14, 1985, at the address listed below: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Building, 75 Spring Street, SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Business (EIDL) without credit available elsewhere	4.000
Other (Non/profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 214612 for physical damage and for economic injury the number is 618200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 14, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-16648 Filed 6-21-84; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The Small Business Administration, Region VI Advisory Council, located in the geographical area of Phoenix, Arizona, will hold a public meeting on Thursday, July 26, 1984, at the Beefeater Restaurant, 300 West Camelback,

Phoenix, Arizona, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Walter Fronstin, District Director, U.S. Small Business Administration, 3030 North Central Avenue, Suite 1201, Phoenix, Arizona 85012, telephone (602) 241-2206.

Dated: June 15, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-16845 Filed 6-21-84; 8:45 am]

BILLING CODE 8025-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-6880.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

DATED: June 19, 1984.

By direction of the Administrator,

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extensions

1. Department of Veterans Benefits.
2. VA Request for Determination of Reasonable Value/HUD Application for Property Appraisal and Commitment.
3. VA Form 26-1805/HUD 92800-1.
4. On occasion.
5. Individuals or households.
6. 448,000 responses.
7. 89,600 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Enrollment Certification (Under 38 U.S.C. 32, 34 or 35).
3. VA Forms 22-1999, 22-1999-1 and 22-1999-2.
4. On occasion, quarterly, semi-annually, or each school term.
5. Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
6. 76,899 responses.
7. 286,667 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Notice of Lapse.
3. VA Forms 29-389 and 29-389-1.
4. On occasion.
5. Individuals or households.
6. 25,000 responses.
7. 4,166 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Request for Supplemental Information on Medical and Non-Medical Applications.
3. VA Form 29-615.
4. On occasion.
5. Individuals or households.
6. 15,000 responses.
7. 5,000 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Application for Ordinary Life Insurance (at age 65) and Information about Modified Life Insurance Reduction and Replacement Features (age 65).
3. VA Forms 29-8485 and 29-8700.
4. On occasion.
5. Individuals or households.
6. 6,818 responses.
8. 568 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Application for Ordinary Life Insurance (at age 70) and Information about Modified Life Insurance Reduction and Replacement Features (age 70).
3. VA Forms 29-8485a and 29-8701.
4. On occasion.
5. Individuals or households.
6. 6,818 responses.
7. 568 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Notice—Payment Not Applied.
3. VA Form 29-4499a.
4. On occasion.
5. Individuals or households.
6. 2,000 responses.
7. 500 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Application for Accrued Benefits by Veteran's Surviving Spouse, Child or Dependent Parent.
3. VA Form 21-551.
4. On occasion.
5. Individuals or households.
6. 1,000 responses.
7. 333 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Employment of Questionnaire.
3. VA Form 21-4140.
4. On occasion.
5. Individuals or housholds.
6. 45,480 responses.
7. 3,790 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Application for Accrued Amounts of Veteran's Benefits Payable to Widow, Widower, Child, or Dependent Parent.
3. VA Form 21-614.
4. On occasion.
5. Individuals or households.
6. 8,000 responses.
7. 4,000 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Obtaining Supplemental Information from Hospital or Doctor.
3. VA Form Letter 29-551b.
4. On occasion.
5. Individuals or households.
6. 250 responses.
7. 125 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Information from Remarried Widow/er.
3. VA Form 21-4103.
4. On occasion.
5. Individuals or households.
6. 22,000 responses.
7. 7,333 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Student Beneficiary Report—REPS.
3. VA Form 21-8938.
4. Annually.
5. Individuals or households.
6. 10,000 responses.
7. 3,333 hours.
8. Not applicable.

[FR Doc. 84-16310 Filed 6-21-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 122
Friday, June 22, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Postal Service	2
Tennessee Valley Authority	3

1

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Wednesday, June 20, 1984.

PLACE: Room 532, (open); Room 540 (closed) Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public:

(1) Oral Argument in Boise Cascade Corp., Docket No. 9133.

Portions closed to the Public:

(2) Executive Session to follow Oral Argument in Boise Cascade Corp., Docket No. 9133.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523–1892; Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 84–16790 Filed 6–20–84; 9:31 am]

BILLING CODE 6750–01–M

2

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, July 9, 1984, in Washington, D.C., and at 8:30 a.m. on Tuesday, July 10, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, D.C. As indicated in the following paragraph, the July 9 meeting is closed to public observation. The July 10 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245–3734.

At its meeting on June 5, 1984, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for July 9. (See 49 FR 24248, June 12, 1984.) The agenda item of the meeting to be closed concerns strategic planning in connection with collective bargaining negotiations involving parties to the 1981 National Agreements, between the Postal Service and four labor organizations representing certain postal employees, which are scheduled to expire in July 1984.

Agenda

Monday Session, July 9 (Closed)

1. Strategic Planning—Collective Bargaining.

Tuesday Session, July 10 (Open)

1. Minutes of the Previous Meeting, June 4–5, 1984.
2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)
3. Report on Operations Group Programs. (Mr. Jellison, Senior Assistant Postmaster General, Operations Group, will provide a report on Operations Group programs.)
4. Briefing on status of the Neighborhood Distribution and Collection Box Unit Program. (Mr. Hagburg, Assistant Postmaster General, Delivery Services Department, will brief the Board on the status of the "clusterbox" program.)
5. Review of Public and Employee Communications Programs. (Ms. Layton, Assistant Postmaster General, Public and Employee Communications Department, will report on communications and public affairs programs.)
6. Consideration of tentative agenda for the August 6–7, 1984, meeting of the Board in Cleveland, Ohio.

David F. Harris,

Secretary.

[FR Doc. 84–16828 Filed 6–20–84; 3:15 pm]

BILLING CODE 7710–12–M

3

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1332]

TIME AND DATE: 6:00 p.m. (CDT), Tuesday, June 26, 1983.

PLACE: Jaycee Civic Center, 2701 Park Avenue, Paducah, Kentucky.

STATUS: Open.

AGENDA ITEMS: Approval of minutes of meeting held on June 11, 1984.

C—Power Items

C1. Amendment to power contract with Bowater Incorporated, Calhoun, Tennessee, providing for a 35.2–MW increase of firm power.

C2. Joint memorandum governing power supply to the Office of Agricultural and Chemical Development's water-pumping station.

C3. Supplement to Contract No. TV–34823A with Memphis Light, Gas and Water Division for natural gas at Allen Steam Plant.

C4. Marketing agreement with Southeastern Power Administration covering the marketing of Cumberland River Power and Energy.

C5. Operating agreement with Southeastern Power Administration and Army Corps of Engineers covering the operations of the Cumberland River Projects.

C6. Supplement to Contract No. TV–55782A with the Massachusetts Institute of Technology for Atmospheric Fluidized Bed Combustion Technology Studies.

D—Personnel Items

D1. Renewal of consulting contract with John M. Kellberg, Knoxville, Tennessee, for consultation on major hydro projects and engineering problems associated with thermal power plants, requested by the Division of Engineering Design.

D2. Supplement to personal services Contract No. TV–63924A with United Engineers & Constructors, Inc., Philadelphia, Pennsylvania, for services in connection with pipe support design for Watts Bar and Bellefonte Nuclear Plants, requested by the Division of Engineering Design.

D3. Supplement to personal services Contract No. TV–63923A with Gilbert Associates, Inc., Reading, Pennsylvania, for services in connection with pipe support design for Watts Bar and Bellefonte Nuclear Plants, requested by the Division of Engineering Design.

E—Real Property Transactions

E1. Grant of permanent easement to the city of Bristol, Virginia, for public recreation purposes, affecting approximately 41 acres of Beaver Creek Reservoir land located in Washington County, Virginia—Tract No. XTBBCR–2E.

E2. Grant of permanent easement to McMinn County, Tennessee, for the construction, operation, and maintenance of a road and appurtenances, affecting approximately 0.32 acre of Chickamauga Reservoir land located in McMinn County, Tennessee—Tract No. XTCR–178H.

E3. Grant of 20-year easement to Boy Scouts of America, Four Rivers Council, Inc., for group camp purposes, affecting approximately 354.8 acres of Kentucky Reservoir land located in Marshall County, Kentucky—Tract No. XGIR–906RE.

F—Unclassified

F1. Revised TVA Policy Code Relating to Budget, Plan.

F2. Revised TVA Policy Code Relating to Budget, Controls.

F3. TVA Policy Code Relating to Cooperative Agreements.

F4. Agreement No. TV–64012A with Tennessee State University and the State of Tennessee Board of Regents for construction, operation, and maintenance of Private Enterprise Incubation Center in Nashville, Tennesseee.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: June 19, 1984.

W. F. Willis,

General Manager.

[FR Doc. 84–16808 Filed 6–20–84; 1:37 pm]

BILLING CODE 8120–01–M

federal register

Friday
June 22, 1984

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Ethylene Oxide; Final Standard

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Ethylene Oxide

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final Standard.

SUMMARY: In this Final Standard, the Occupational Safety and Health Administration (OSHA) establishes a permissible exposure limit for occupational exposure to ethylene oxide (EtO) of 1 part EtO per million parts of air (1 ppm) determined as an 8-hour time-weighted average concentration. The basis for this action is a determination by the Assistant Secretary, based on animal and human data, that exposure to EtO presents a carcinogenic, mutagenic, genotoxic, reproductive, neurologic and sensitization hazard to workers. The standard provides for, among other requirements, methods of exposure control, personal protective equipment, measurement of employee exposures, training, medical surveillance, signs and labels, regulated areas, emergency procedures and recordkeeping. An "action level" of 0.5 ppm as an 8-hour time-weighted average is established as the level above which employers must initiate certain compliance activities such as periodic employee exposure monitoring and medical surveillance. In instances where the employer can demonstrate that employee exposures are below the action level, the employer is not obligated to comply with most of the requirements set forth in this final rule. The 1 ppm 8-hour limit reduces significant risk from exposure to EtO and is considered by OSHA to be the lowest levels feasible.

EFFECTIVE DATE: This final standard shall become effective August 21, 1984, except the following paragraphs which contain information collection requirements which are under review at OMB: § 1910.1047 (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), (j)(1), (j)(2), and (j)(3).

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, Rm. N–3641, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 523–8151.

For additional copies of this regulation, contact: OSHA, Office of Publications, U.S. Department of Labor, Room N–4101, Washington, D.C. 20210, telephone 202–523–9667.

SUPPLEMENTARY INFORMATION:

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I. Physical Properties, Manufacture and Uses of Ethylene Oxide

Ethylene oxide (EtO), also known as 1,2-epoxyethane, oxirane, and dimethylene oxide, is a colorless gas with a characteristic ether-like odor. Its chemical formula is C_2H_4O, molecular weight is 44.06 and CAS Registry Number is 75–21–8. Although several processes exist for the production of EtO, all United States producers currently manufacture EtO through the catalytic oxidation of ethylene in the presence of a silver catalyst. EtO is completely miscible with water, alcohol, acetone, benzene, ether, carbon tetrachloride and most organic solvents. It is also highly reactive and potentially explosive when heated or when in the presence of alkali metal hydroxides and highly active catalytic surfaces. EtO is relatively stable in aqueous solutions or when diluted with carbon dioxide (CO_2) or halocarbons. In order to reduce explosion hazards when EtO is used as a fumigant or sterilant, it is often used in gaseous mixtures (such as 10% EtO and 90% CO_2, or 12% EtO and 88% halocarbon).

Since its first domestic production in 1925, EtO has become a major industrial chemical and is presently one of the 25 chemicals of highest production volume in the United States. During the period from 1967 to 1978, for example, the average rate of growth in the EtO industry was 6.7 percent. In 1980, over 5.2 billion pounds of EtO were produced domestically. Current production capacity is about 6.7 billion pounds per year [Ex. 2–14].

The primary use of EtO is as an intermediate in the manufacture of other products. Over 99% of total EtO production is used in the manufacture of other products, and almost 90% is consumed by the EtO manufacturers themselves. On a volume basis, the largest use of EtO is as an intermediate in the production of ethylene glycol, a major component of automotive and other anti-freeze products. Approximately 70% of all domestically produced EtO goes into the manufacture of ethylene glycol.

EtO is also widely employed in the production of non-ionic surface-active agents which are used in household detergents and as industrial sufactants. Other products manufactured from EtO include: (1) ethanolamines, used in sweetening natural gas and in the production of specialty chemicals, detergents and cosmetics; (2) glycol ethers, utilized as a jet fuel additive and in the formulation of coatings, cleaners,

automotive brake fluids and inks; (3) diethylene and triethylene glycol, used in drying natural gas and in the manufacture of polyester resins, emulsifiers, lubricants and plasticizers; (4) tetraethylene glycol, utilized to extract aromatic hydrocarbons from nonaromatic hydrocarbons; (5) polyethylene glycols, from which cosmetics, plasticizers, lubricants and dispersants are produced; (6) polyethylene glycols, used for water-soluble packaging and for warp sizing, and (7) crown ethers, used for extraction of liquids.

A small fraction of EtO production (less than 0.5 percent) is consumed by sterilant or fumigant users. EtO is utilized as a sterilizing agent by various facets of the health care industry for the sterilization of delicate instruments and heat or moisture sensitive devices, and is employed as a fumigant for a number of miscellaneous items, such as spices, black walnut meats, books, furniture, textiles, empty bin equipment, empty cargo holds, cosmetics and dairy packaging.

As used in the U.S. for gas sterilization, EtO is generally sold in gas cylinders. The cylinder contains various mixtures of EtO with either chlorofluorocarbons or carbon dioxide. EtO is also available in glass ampules. The concentration and duration of exposure to EtO plus the temperature, atmospheric pressure, and relative humidity determine the effectiveness of sterilization. The sterilant gas is held in the chamber, generally under high pressure, long enough to thoroughly penetrate all articles. In determining exposure time, the types of articles and wrappings are important considerations. Some porous articles require longer exposures, as do articles sealed in polyethylene bags. Moreover, some bacteria are expecially resistant and, thus, take longer to destroy. The concentration of EtO is important, but even with the highest concentration it is still necessary to properly humidify articles to be sterilized, and to allow sufficient time for the sterilant gas to diffuse into small pores and crevices. After a sufficient exposure time, the sterilant gas is evacuated from the chamber. When high ethylene oxide concentrations are used, extended aeration time (5 to 45 minutes) may be required to thoroughly purge the chamber of EtO vapor. After sterilization, all plastic and rubber articles must be aerated to allow residual ethylene oxide to diffuse from the article. This phase of the sterilization procedure is particularly critical for any articles that are used to administer materials to the human body. Examples of such articles are catheters, face masks, and tubing used in heart-lung machines and artificial kidneys.

II. Pertinent Legal Authority

The primary purpose of the Occupational Safety and Health Act (29 U.S.C. 655 *et seq.*) (the Act) is to assure, so far as possible, safe and healthful working conditions for every American worker over the period of his or her working lifetime. One means prescribed by the Congress to achieve this goal is the mandate given to, and the concomitant authority vested in, the Secretary of Labor to set mandatory safety and health standards. The Congress specifically directed that:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this and other health and safety laws. [Section 6(b)(5).]

Where appropriate, the standards are required to include provisions for labels or other appropriate forms of warning to apprise employees of hazards, suitable protective equipment, exposure control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, appropriate medical examinations, and training and education. Moreover, where a standard prescribes medical examinations or other tests, they must be available at no cost to employees [section 6(b)(7)]. Standards may also prescribe recordkeeping requirements where necessary or appropriate for enforcement of the Act or for the development of information regarding occupational accidents and illnesses [section 8(c)].

In vacating OSHA's revision to its benzene standard, the Supreme Court required in *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 601, 65 L. Ed. 2d 1010, 100 S. Ct. 2844 (1980), that before the issuance of a new or revised standard pursuant to section 6(b)(5) of the Act, OSHA must make two threshold findings. These are that a significant risk exists under the current standard and that the issuance of a revised standard would reduce or eliminate that risk. The Court stated:

> We agree * * * that § 3(8) requires the Secretary to find, as a threshold matter, that the toxic substance in question poses a significant health risk in the workplace and that a new, lower standard is therefore "reasonably necessary or appropriate to provide safe and healthful employment and places of employment." (448 U.S. 607 at 614–15; 65 L. Ed. 2d 1010 at 1018–19)

The Court also stated:

> * * * before he can promulgate any permanent health or safety standard, the Secretary [of Labor] is required to make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices * * * (448 U.S. at 642, 65 L. Ed. 2d at 1035)

The decision, although it recognized the uncertainties involved, indicated that the determination of "significant risk" should, if at all possible, be established on the basis of an analysis of the best available evidence through such means as quantitative risk assessments. However, in making that determination, the Supreme Court in its general guidance for the future, noted that:

> * * * the requirement that a "significant" risk be identified is not a mathematical straitjacket. It is the Agency's responsibility to determine, in the first instance, what it considers to be a "significant risk". (448 U.S. at 655, 65 L. Ed. 2d at 1043)

It pointed out that while OSHA:

> * * * must support its finding that a certain level of risk exists by substantial evidence, we recognize that its determination that a particular level of risk is "significant" will be based largely on policy considerations. (448 U.S. at 656, n. 62, 65 L. Ed. 2d at 1043, n. 62)

Finally, the Court pointed out that:

> * * * OSHA is not required to support its finding that a significant risk exists with anything approaching scientific certainty. Although the Agency's findings must be supported by substantial evidence * * * OSHA [has] some leeway where its findings must be made on the frontiers of scientific knowledge. (448 U.S. at 656, 65 L. Ed. 2d at 1043)

In the only concrete example of "significance of risk," the Court stated:

> Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person might well consider the risk significant and

take appropriate steps to decrease or eliminate it. (*Id.* at 655, 656 L. Ed. 2d at 1043)

After OSHA has determined that a significant risk exists and that such risk can be reduced or eliminated by the revised standard, it must set the standard "which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health * * *." [section 6(b)(5) of the Act] The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject only to the constraints of technological and economic feasibility. (*American Textile Manufacturers Institute, Inc. v. Donovan*, 452 U.S. 490 (1981)). The Court held that "cost-benefit analysis is not required by the statute because feasibility analysis is." (*Id.* at 509.)

In addition to section 6(b), authority to issue this standard is also found in section 8(c) of the Act. In general, this section empowers the Secretary to require employers to make, keep, and preserve records regarding activities related to the Act. In particular, section 8(c)(3) gives the Secretary authority to require employers to "maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6." Provisions of OSHA standards which require the making and maintenance of records of medical examinations, exposure monitoring, and the like are issued pursuant to section 8(c) of the Act.

The Secretary's authority to issue this final standard is further supported by the general rulemaking authority granted in section 8(g)(2) of the Act. This section empowers the Secretary "to prescribe such rules and regulations as he may deem necessary to carry out (his) responsibilities under the Act"—in this case as part of, or ancillary to, a section 6(b) standard. The Secretary's responsibilities under the Act are defined largely by its enumerated purposes which include:

Encourage employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions (29 U.S.C. 651(b)(1));

Authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to business affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act (29 U.S.C. 651(b)(3));

Building upon advances already made through employee and employer initiative for providing safe and healthful working conditions (29 U.S.C. 651(b)(4));

By providing for the development and promulgation of occupational safety and health standards; providing for appropriate reporting procedures with respect to occupational safety and health, which procedures will help achieve the objective of this Act and accurately describe the nature of the occupational safety and health problem; exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions * * * (29 U.S.C. 651(b)(6));

Encouraging joint labor-management efforts to reduce injuries and diseases arising out of employment (29 U.S.C. 651 (b)(13));

And developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems (29 U.S.C. 651(b)(5)).

Because the EtO standard is reasonably related to these statutory goals, the Secretary finds that this standard is necessary to carry out his responsibilities under the Act. In addition to its status as a section 6(b) standard, therefore, it also falls within the broader class of section 8 regulations.

In addition, section 4(b)(2) of the Act provides for OSHA standards to apply to construction and other workplaces where the Secretary determines these standards to be more effective than existing standards which would otherwise apply to these workplaces. The Secretary so finds, and this standard will therefore apply to all workplaces where the Secretary has authority to regulate.

Section 4(b)(1) of the Act restricts application of the Act so that it does not apply to working conditions with respect to which other Federal Agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health. On April 18, 1984, the Environmental Protection Agency published a notice under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, containing labeling changes for EtO pesticide products, and designed to limit ethylene oxide exposures resulting from the application of EtO as a sterilant or fumigant (49 FR 15268). The relevance of the FIFRA rule to OSHA jurisdiction is discussed below.

III. History of the Regulation

The OSHA standard for EtO that is being revised by this rule (29 CFR 1910.1000, Table Z–1) required employers to ensure that the level of employee exposure to EtO did not exceed 50 parts of EtO per million parts of air (50 ppm), determined as an 8-hour time-weighted average (TWA). That standard was adopted in 1971 from an existing Walsh-Healey Federal standard. The source of the Walsh-Healey standard was the Threshold Limit Value (TLV) recommend in 1968 by the American Conference of Governmental Industrial Hygienists (ACGIH) [Ex. 2–2].

The documentation for the exposure level recommended by the ACGIH in 1968 consisted of limited data from six month animal inhalation studies in which no adverse effects were observed at levels below 50 ppm and a study of employees exposed for 10 years or more to EtO at levels of 5 to 10 ppm with no reported adverse effects [EX 2–3]. No indications of the potential carcinogenicity of EtO were available at that time. Since 1968, however, a substantial number of new studies have become available that have added significantly to the body of knowledge regarding potential adverse health effects related to EtO exposure.

In 1977, the National Institute for Occupational Safety and Health (NIOSH) issued a "Special Occupational Hazard Review" [Ex. 2–5] on EtO, in which it recommended adoption of a ceiling limit of 75 ppm (based on a 15-minute sampling period) for EtO in addition to the 50 ppm TWA. Based upon observation of changes in the genetic material of cells in at least 13 biological species following EtO exposure and covalent chemical bonding between EtO and DNA, NIOSH also concluded that occupational exposure to EtO might increase the frequency of mutations in exposed populations. Although these observations raised concern regarding the potential carcinogenicity of EtO, no epidemiologic studies or long-term bioassays were available to assess its carcinogenic potential for humans.

In 1979, ACGIH published a Notice of Intended Change for EtO to lower its TLV to 10 ppm [Ex. 2–6]. ACGIH based its recommendation on a number of short-term, *in vitro* studies which demonstrated positive mutagenic responses for EtO and on a 1979 case report by Hogstedt et al. [Ex. 2–8] regarding the occurrence of 3 cases of leukemia in a group of 230 workers (more fully discussed in the Health Effect section). The ACGIH adopted this change in 1981 [Ex. 2–7].

The 1981 ACGIH publication [Ex. 2–7] also designated EtO as a substance suspected of having carcinogenic potential in humans and proposed to further lower the TLV for EtO to 5 ppm, based on the positive results from a two

year inhalation study in rats conducted at the Bushy Run Research [Ex. 2–9], which is discussed in the Health Effects section. On June 10, 1982, ACGIH adopted a proposal to lower the TLV to 1 ppm, such change to be effective in 1984.

On May 22, 1981, NIOSH issued a "Current Intelligence Bulletin" [Ex. 2–10] to inform employees and employers about the potential carcinogenic hazard of exposure to EtO. NIOSH recommended that EtO be regarded as a potential occupational carcinogen and that the current OSHA standard be reexamined in light of the information which has become available subsequent to the original adoption of that standard.

On January 26, 1982, OSHA published an ANPR (47 FR 3566) announcing its intention to conduct a reevaluation of the EtO standard. Interested parties were invited to submit data, views and comments with respect to the development of a revised standard for EtO and particularly with respect to a number of specified questions.

In August 1981, prior to publication of the ANPR, Public Citizen Health Research Group (Public Citizen) petitioned OSHA to issue an Emergency Temporary Standard (ETS) reducing the permissible exposure limit for EtO to an eight-hour time-weighted average of 1 ppm [Ex. 2–11]. OSHA denied Public Citizen's petition in September 1981 on the grounds that the available evidence did not indicate that an emergency situation existed to trigger the issuance of an ETS in accordance with section 6(c) of the Act [Ex. 2–12]. Prior to the denial of the petition, Public Citizen brought suit in U.S. District Court for the District of Columbia to obtain an order requiring the Agency to issue an ETS (*Public Citizen Health Research Group et al.* v. *Auchter*, 554 F. Supp. 242). On January 5, 1983, the District Court Judge ruled that OSHA's determination not to issue an ETS represented a "clear error of judgment," and ordered the Agency to promulgate an ETS within 20 days of the Court's decision [Ex. 6–1]. OSHA then sought and obtained a temporary stay of the District Court order pending review on the merits by the U.S. Court of Appeals for the District of Columbia Circuit.

On March 15, 1983, the Court of Appeals rendered its decision on the merits in *Public Citizen Health Research Group et al.* v. *Auchter et al.*, 702 F. 2d 1150 [Ex. 6–2]. In that decision, the Court ruled that the District Court had "impermissibly substituted its evaluation for that of OSHA" in ordering an ETS to be issued, 702 F. 2d at 1153. However, the Court then determined that, because, in the Court's terms, a "significant risk of grave danger" exists with regard to EtO exposures, the failure of the Agency to publish a proposed standard of EtO for 18 months after the Advance Notice of Proposed Rulemaking constituted rulemaking action "unreasonably delayed," under section 6(g) of the OSHA Act (29 U.S.C. 655(g)), and sections 555(b) and 706(1) of the Administrative Procedure Act (5 U.S.C. 555(b), 706(1)). Therefore, the Court ordered the Agency to expedite its development of a proposed rule on EtO, and to issue its proposal within 30 days of the Court decision.

In its January 5 decision, the District Court considered OSHA's arguments that the Environmental Protection Agency (EPA) had exercised its statutory authority over working conditions involving the application and use of EtO as a sterilant and fumigant under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, and that this exercise served to preempt OSHA regulation of these same working conditions pursuant to section 4(b)(1) of the OSH Act. The District Court determined, and the Court of Appeals subsequently agreed, that OSHA coverage of EtO was not preempted in "areas—such as the health care industry—where EPA has apparently exercised *minimal if any regulatory authority in an overlapping manner*" (emphasis added).

Pursuant to the Court decision, OSHA's proposed rule on Ethylene Oxide was published April 21, 1983 (48 FR 17284) and included within its scope EtO exposures resulting from the application of EtO as a sterilant or fumigant, including hospital and health care uses, as well as exposure to employees involved in the production and ethoxylation of EtO.

The proposal limited EtO exposure to 1 ppm (8-hour TWA) and contained additional provisions which OSHA believed appropriate. In the preamble to the proposal, OSHA requested public comments, information, and evidence on all issues raised.

The informal rulemaking hearing was convened by Administrative Law Judge Rhea Burrow on July 19, 1983 pursuant to notice and section 6(b) of the Act (29 U.S.C. 655(b)(3)). The hearing lasted through July 28, 1983. Post-hearing submissions of data requested by parties at the hearing were received through August 29, 1983; post-hearing comments and briefs were received through September 19, 1983.

The entire record, including over 300 exhibits and approximately 1600 transcript pages and errata, was certified by Judge Burrow on November 7, 1983, in accordance with 29 CFR 1911.17. Copies of materials contained in the record may be obtained from the OSHA Docket Office, Room S6212, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. The final standard on occupational exposure to Ethylene Oxide is based on full consideration of the entire record of this proceeding, including materials discussed or relied upon in the proposal, the record of the informal hearing, and all written comments and exhibits received.

In the *Public Citizen* case discussed above, OSHA argued that the labeling requirements which are mandated under FIFRA, and which are enforceable against users of EtO pesticides, constituted an exercise by EPA of that agency's statutory authority over working conditions involving EtO. Because of section 4(b)(1) of the OSH Act, OSHA contended that EPA's exercise of authority under FIFRA was sufficient to preempt OSHA's exercise of authority over the same working conditioins.

The Court in *Public Citizen* determined that EPA's exercise of authority under FIFRA was not sufficient to oust OSHA of jurisdiction , and directed OSHA to proceed with its rulemaking over all uses of EtO, including its use in pesticides and sterilants. Although OSHA maintains its previous views on the preemption issue, the Agency has complied with the Court decision, and has included hospital, health care, and other sterilant uses of EtO within the scope of both its proposed and final rules.

EPA has since published a notice in the **Federal Register** (April 18, 1984, 49 FR 15268), as modified in today's **Register**, providing guidance to manufacturers of certain EtO sterilants used in hospitals and health care facilities control methods and work practices to reduce EtO exposures.

OSHA has reviewed the EPA notice and has determined that the recommendations are not inconsistent with OSHA's final standard. As noted earlier, OSHA maintains the views on preemption that it argued unsuccessfully in *Public Citizen*. Nonetheless, based on the Court decision, OSHA is proceeding to regulate employee exposure to EtO in hospitals, health care facilities, and other workplaces where EtO is used as a sterilant or fumigant.

IV. Health Effects

OSHA has found that EtO can cause several serious adverse health effects. Studies in experimental animals supported by epidemiological studies of

working populations indicate that EtO is a potential occupational carcinogen. The evidence suggests that EtO may cause cancers of the blood (leukemia), as well as other organs in humans. In addition, EtO exposure causes mutations, increases the rate of chromosomal aberration and sister chromatid exchange, and causes other undesirable changes in the DNA of mammalian cells. These effects support OSHA's conclusion regarding the carcinogenicity of EtO. EtO exposure has also been associated with an increased risk of spontaneous abortion among pregnant women and is capable of causing other adverse reproductive effects in both men and women. Exposure to high concentrations of EtO causes central nervous system depression and other neurological effects which are thought to be reversible with cessation of exposure. In addition, exposure to EtO gas causes sensitization and irritation of human tissues, including the eyes and respiratory tract.

Three epidemiological studies indicate an association between worker exposure to EtO and a significant increase in the risk of death from cancer. Hogstedt et al. [Ex. 2–8] found an increased risk of death from leukemia among employees exposed to EtO when used as a sterilant. In a second study, these investigators confirmed an increased leukemia risk and also observed a significant excess of stomach cancer deaths and total cancer deaths among production workers [Ex. 2–22]. Morgan et al. [Ex. 6–5] found an increased risk of mortality from Hodgkin's disease and pancreatic cancer among EtO production workers.

Studies in experimental animals have provided definitive evidence that EtO is carcinogenic in multiple species and by several routes of administration. Leukemia, brain cancer and mesothelioma have been induced in animals exposed to EtO by inhalation. Cancers of the forestomach have been induced as a result of EtO administration by oral gavage. Injection site sarcomas and skin cancers have been observed in animals exposed to EtO by injection.

The studies in experimental animals in conjunction with the epidemiological studies indicate that EtO has the potential to cause cancers of the lymphohematopoietic system and other organs in humans. In addition, evidence derived from short-term tests clearly demonstrates DNA damage, mutations and chromosomal change in non-mammalian cells, mammalian cells, intact experimental animals or in occupationally exposed workers. These data provide supportive evidence that EtO is carcinogenic to humans.

EtO has been shown to induce cancer in laboratory animals at concentrations that are well below the current PEL of 50 ppm. Further, the available data on the effects of human exposure are consistent with the results of the animal studies. The health effects of EtO have been comprehensively and strikingly established. OSHA considers EtO to be a potential occupational carcinogen.

Based on the Hemminki et al. study (Ex. 6–7) of increased spontaneous abortions among hospital workers exposed to EtO and numerous studies in experimental animals supporting these findings, OSHA also concludes that exposure to EtO constitutes an occupational reproductive hazard. Adverse reproductive consequences of exposure to EtO have been manifested most frequently in animal studies by embryonic or fetal loss related to exposure of the female parent during critical periods of gestational development or exposure of the male parent prior to conception.

There is also substantial evidence that EtO is a direct-acting mutagen capable of causing mutations in the tissues of exposed humans. Inhaled EtO reacts with mammalian gonadal DNA as demonstrated by the induction of heritable translocations in male offspring and unscheduled DNA synthesis and dominant-lethal mutations in germinal cells. EtO that reaches the DNA of human germ cells is presumed to induce heritable mutations affecting future generations.

Exposure to high airborne concentrations of EtO causes respiratory tract irritation and central nervous system depression. Excessive exposures have produced convulsive movements, neuropathy, pulmonary edema and bronchitis in humans; headache, nausea, vomiting and diarrhea also are common systemic effects of EtO exposure. Evidence from human case reports also indicates that neurological effects (sensory motor neuropathy, seizures, headache) may result from intermittent high exposures. Hematologic effects (reduced hemoglobin and elevated lymphocytes) have been observed in production plant workers chronically exposed to EtO.

Following accidental or experimental exposure of human skin, liquid EtO has caused edema and erythema with progression to blister formation in 6–12 hours. The degree of skin injury is related to concentration and duration of exposure. These effects are reversible. As concentrated EtO evaporates, a freezing effect occurs, which may cause frostbite. Dilute solutions may penetrate the skin, producing a chemical burn. Skin burns have also been caused by the residual EtO in leather goods, belts and footwear. Skin sensitization has been associated with repeated dermal exposure.

High concentrations of EtO are irritating to the eyes of humans and animals. Direct ocular contact with liquid EtO can produce corneal injury. Repeated exposure to high airborne concentrations of EtO may result in the formation of cataracts.

Adverse effects of acute exposures also have been observed in experimental animals. Paralysis and periodic convulsions frequently have preceded death due to lung edema or secondary infection. Signs of poisoning from subchronic exposure by different routes of administration in various species of experimental animals include hindquarter neuropathy indicating neurotoxicity, and congestive and degenerative changes in the lungs, liver, spleen and kidneys. In addition, adverse testicular changes (tubular degeneration) and hematologic changes (anemia) have been produced.

Detailed information on the effects of exposure to EtO and deliberations on these data during the rulemaking are discussed in this section.

A. Carcinogenicity

Epidemiologic Studies

Three epidemiologic studies investigating the relationship between occupational EtO exposure and cancer have appeared in the scientific literature: Morgan et al. (Ex. 6–5); Hogstedt et al. (Hogstedt I, Ex. 2–8); and Hogstedt et al. (Hogstedt II, Ex. 2–22).

The Morgan et al. study (Ex. 6–5) reported the mortality experience of 767 potentially exposed (based on work history records) male workers who had been employed at an ethylene oxide-producing chemical plant for at least 5 years between 1955 and 1977. Industrial hygiene measurements taken at typical leak sources in the facility's operating units in July 1977 revealed no detectable EtO levels in most of the production areas. A leak in the tube used to gauge the level of EtO in tank cars during loading operations resulted in an isolated measurement of 6,000 ppm. At the sources of EtO (pump, valve, pipe flanges, spigots, and gauges), levels of less than 10 ppm were recorded. All other measurements were below 50 ppm. Fewer deaths were observed in the study population than expected from all causes and from all malignancies, based on U.S. mortality statistics; the

standardized mortality ratios (SMR's) for these causes were 58 and 79, respectively. No deaths from leukemia were observed, compared to 0.70 expected. A significant excess of deaths was demonstrated for pancreatic cancer (3 observed versus 0.8 expected, P less than 0.5) and for Hodgkin's disease (2 observed versus 0.35 expected, P less than 0.05) among workers at this plant.

Hogstedt and coworkers (Hogstedt I, Ex. 2–8) reported that three cases of leukemia had occurred between 1972 and 1977 among workers in a Swedish factory where a mixture of 50 percent ethylene oxide and 50 percent methyl formate had been used since 1968 to sterilize hospital equipment. Based on age and sex-specific Swedish national rates for 1972, 0.2 leukemia cases would have been expected between 1968 and 1977 among the 230 workers potentially exposed in this facility during this period. In 1977, the 8-hour TWA exposure concentration in the areas where two women who died from leukemia had worked was estimated to be 20±10 ppm; the levels of previous exposure for these women were not known. These two individuals had had no known occupational exposure to suspect leukemia-inducing agents other than EtO; the third individual who died from leukemia (a male manager exposed to EtO approximately 3 hours per week) had had occasional contact with benzene in laboratory work. The leukemias were classified as chronic myeloid leukemia and acute myelogenetic leukemia in the women and as primary macroglobulinemia in the man.

Hogstedt et al. (Hogstedt II, Ex. 2–22) reported the results of an historical prospective mortality study of 241 workers employed for more than one year in a Swedish EtO production facility. The study included three subcohorts, comprised of 89 full-time exposed men, 86 intermittently exposed men (maintenance workers), and 66 men who had no known exposure to EtO. The follow-up period started in January 1961 and continued until the end of December 1977. Exposure to EtO in the production areas was estimated to average below 14 ppm with peaks to 728 ppm in the 1940's, 6 to 28 ppm during the 1950's and 1960's with peaks above the odor threshold (approximately 700 ppm), and 0.6 to 6 ppm in the 1970's with occasional higher values. Among the 89 full-time workers in the EtO production areas, a significant excess in total mortality was observed (23 deaths observed, 13.5 expected based on Swedish national statistics, $p < 0.05$). Significant excesses in total cancer mortality (9 observed, 3.4 expected, $p < 0.01$) and in deaths from diseases of the circulatory system (12 observed, 6.3 expected, $p < 0.05$) were also reported in this group. Site-specific excess cancer mortality was noted for leukemia (2 observed, 0.14 expected, $p < 0.01$) and stomach cancer (3 observed, 0.4 expected, $p < 0.01$) for the full-time exposed workers. No statistically significant excess mortality was noted among the 86 intermittently exposed maintenance workers from the same facility or among the 66 workers who had never been exposed to EtO, although one leukemia death was noted among the group of maintenance workers (0.13 expected). The production and maintenance workers who were exposed to EtO were also exposed to ethylene, ethylene dichloride, ethylene chlorohydrin, and bis(2-chloroethyl) ether. Because of these multiple exposures, the authors were unable to attribute the excess cancer incidence to a specific chemical, although they speculated that EtO and ethylene dichloride were the most likely causative agents.

Several commenters (Exs. 66, 110, Tr. 632, 1529) pointed to weaknesses in these epidemiological studies. For example, Robert W. Morgan of Environmental Health Associates, who had been asked by the Ethylene Oxide Industry Council (EOIC) of the Chemical Manufacturers Association to evaluate the epidemiologic data on ethylene oxide, testified (Tr. 636) that the results of his study (the Morgan et al. study, Ex. 6–5) failed to support a causal link between EtO exposure and leukemia, and that his study should therefore be considered a negative study. However, OSHA notes that the study demonstrates a significant excess of deaths from pancreatic cancer and Hodgkin's disease among workers in EtO production.

Sidney Wolfe of the Public Citizen Health Research Group noted (Tr. 792) that the Morgan et al. study (Ex. 6–5) contained little information on the exposures of the 767 workers in the study, and thus the true size of the cohort exposed to EtO was not known. The inclusion in the Morgan et al. study of individuals with little or no exposure to EtO would bias the results toward an underestimation of any risk associated with EtO exposure.

Philip Landrigan, Director of NIOSH's Division of Surveillance, Hazard Evaluation and Field Studies, suggested that the findings of the Morgan study should be considered inconclusive rather than negative for leukemia because of the study's limited statistical power (Tr. 341). OSHA believes that Landrigan's characterization of the Morgan et al. study is an accurate one, because, as the study's authors themselves report, only "an excess of leukemia deaths as small as 10.5-fold could be detected at the 95 percent confidence level" (Ex. 6–5). As noted by Jeanne M. Stellman of the Women's Occupational Health Resource Center, Columbia University, "* * * a 10.5-fold (increase in) risk is well beyond the risk observed for most environmental agents, including cigarette smoking" (Ex. 4–59). Stellman, supporting the conclusion reached by Landrigan regarding the Morgan et al. study, commented:

> Had * * * (Morgan et al.) subsumed Hodgkin's disease under hematologic and hematopoietic cancer sites, this organ system would have shown an elevated SMR of 191.
>
> Therefore, instead of contradicting previous studies * * * (the two Hogstedt studies), this paper confirms an increased risk of hematologic and hematopoietic malignancy due to EtO exposure * * * Rather than being viewed as a negative study, Morgan et al. * * *. (Ex. 6–5) should be considered as a strong piece of evidence indicating that even in very small cohorts, with exposures well below the current OSHA standard, excess cancer risk (sic) was detected (Ex. 4–59).

Morgan criticized the first Hogstedt et al. paper (Ex. 2–8) reporting three leukemia deaths as being "anecdotal," and noted further that the numbers in this study were "simply too small," (Ex. 66). In testimony (Tr. 634), Morgan stated that the first Hogstedt study (Ex. 2–8) was "a description of a cluster * * * rather than an epidemiologic study."

The first Hogstedt study (Ex. 2–8) was also criticized by several commenters (Exs. 11–74, 47, 126) because workers in the cohort were exposed to a mixture of EtO and methyl formate. For example, Saul Kaye, independent consultant to hospitals and industry on sterilization practices, stressed that exposure to a mixture of EtO and methyl formate might be more hazardous to humans than exposure to EtO alone (Exs. 11–74, 126, Tr. 841). However, at the hearing, Kaye acknowledged the fact that there is no evidence in the reported literature that would indicate that methyl formate itself is carcinogenic (Tr. 845).

Several commenters (Exs. 11–74, 47, 126) also noted that the second Hogstedt study (Ex. 2–22) cohort had been exposed to several other chemicals (including ethylene dichloride, ethylene, ethylene chlorohydrin, bis (2-chloroethyl)ether).

NIOSH reviewed the two Hogstedt studies (Exs. 2–8, 2–22) in its Current

Intelligence Bulletin on EtO and concluded:

> These epidemiological investigations cannot be cited as definitive evidence of an excess risk of cancer resulting from EtO exposure, but they should be considered evidence that excess risk of cancer may exist for the EtO workers studied. (Ex. 2–10)

Despite these methodological shortcomings, only two commenters (Exs. 66, 110) concluded that the epidemiologic evidence failed to demonstrate that EtO exposure posed an increased risk of cancer. In comments prepared for the EOIC, Morgan concluded that, " * * * the ethylene oxide mortality studies fail to demonstrate any appreciable or significant risk of malignancy" (Ex. 66). However, Morgan went on to state " * * * because of the limited number of subjects involved in these studies, they may not provide as much reassurance (that EtO is not a carcinogen) as some would like" (Ex 66).

Although OSHA believes that none of the available epidemiologic studies are, in and of themselves, definitive evidence of EtO's carcinogenicity, the Agency agrees with Philip Landrigan of NIOSH that the two Hogstedt studies "provide evidence of a possible association between occupational exposure to ethylene oxide and death from leukemia" (Tr. 341). As Leon Golberg, Professor of Community and Occupational Medicine at Duke University and consultant to the EOIC observed, although "one cannot say that * * * (the human data) are positive, it is * * * impossible to say that they are entirely negative" (Tr. 520).

The increasing number of reports of EtO-induced mutagenic changes, manifested by alterations in the genetic material of peripheral blood cells in humans, as well as EtO's established genotoxic effects in other species, and the evidence for the induction of leukemia and solid tumors in experimental animals, such as brain tumors, lend credence to the observations of excess risk from leukemia and other cancers (including brain tumors) observed in the epidemiologic studies of workers exposed to EtO. The Hogstedt et al. and Morgan et al. studies are limited by the constraints that accompany any attempt in humans to characterize rare events in small populations that have been exposed to unspecified levels of contaminants. Nonetheless, OSHA finds that the epidemiologic evidence, although not by itself conclusive, is supportive of EtO's potential carcinogenic, and particularly leukemogenic, effects. OSHA thus agrees with NIOSH's assessment that EtO should be regarded as a potential human carcinogen (Tr. 303).

Experimental Studies

The experimental evidence most applicable to the question of EtO's occupational carcinogenicity is that provided by two studies involving inhalation as the route of EtO exposure: The Snellings et al. study performed at Bushy Run Research Center (BRRC Study, Bushy Run study) (Ex. 2–9) and the Lynch et al. study at NIOSH (NIOSH study) (Exs. 6–6, 6–16).

The Bushy Run Study. Snellings and colleagues conducted a two-year chronic inhalation study in which three groups of male and female Fischer 344 rats (120 rats per sex per group) were exposed to EtO at concentrations of 100, 33, or 10 ppm for 6 hours per day, 5 days per week. Two groups of rats served as concurrent controls and were exposed to air only.

Based on histopathological evaluation, the Bushy Run researchers concluded that the incidence of mononuclear cell leukemia and of peritoneal mesothelioma was significantly increased as a result of exposure to EtO. The incidence of mononuclear cell leukemia in female rats was dose-related, increasing with exposure concentration. A statistically significant increase in mononuclear cell leukemia was observed in the group of female rats exposed at 100 ppm. For female rats exposed to 33 ppm, the cumulative percentage of animals developing leukemia was significantly higher than that for one control group and for both control groups combined, but was not higher than the incidence for the second control group alone. The regression analysis of leukemia incidence versus exposure concentration was significant, with a correlation coefficient of +0.99, indicating that the induction of the leukemia was highly correlated to exposure at each concentration.

An increase in mortality from peritoneal mesothelioma was reported in the male rats exposed to 33 and 100 ppm. Among the males exposed at 100 ppm, the cumulative percentage developing a tumor of this type was reported to be statistically significantly higher than that of the controls, beginning with the 21st month of exposure, whereas the incidence of these tumors in males exposed at 33 ppm was not appreciably higher than that in the controls until the final month (the 24th) of the study. These peritoneal tumors originated in the testicular mesothelium and were confined to the abdominal cavity.

In addition, the Bushy Run investigators reported that EtO exposure was associated with a higher frequency and/or earlier onset of mononuclear cell leukemia in male rats. The researchers also reported that a mortality-adjusted trend analysis indicated that the onset of normally occurring pituitary adenomas in male and female rats was significantly accelerated by exposure to EtO.

Finally, the authors concluded that there was a dose-related increase in the number of rats with one or more primary neoplasms. Specifically, female EtO-exposed rats had an increase in the mean number of neoplasms per neoplasm-bearing rat, and the incidence of multiple neoplasms in females at all three exposure levels was significantly greater than that in the combined controls. The authors further pointed out: "* * * biologically significant adverse effects were observed at all concentrations tested" (Ex. 2–9).

The BRRC investigators also have reported, based on further evaluation of their slides, that there was a dose-related increase of gliomas (brain cancers) in the experimental animals (Ex. 15). The incidence of these tumors is given in Table 1. As can be seen from Table 1, there was a statistically significant increase in the incidence of gliomas in the male rats exposed at 100 ppm. The incidence of gliomas in the female rats exposed at 100 ppm was not statistically significant when a Bonferroni correction was applied to the test. (A Bonferroni correction adjusts p-values to account for multiple comparisons). However, the results of the test for linear trend were significant at the 5% level for both males and females, which corroborates that there is a dose-effect relationship between exposure to ethylene oxide and the incidence of these rare brain tumors.

TABLE 1.—FREQUENCY OF PRIMARY BRAIN NEOPLASMS IN RATS IN TWO-YEAR INHALATION STUDIES

Study	Sex	O C(I)		O C(II)	10 ppm	33 ppm	50 ppm	100 ppm
BRCC [1]	Male	[2] 1/98		0/98	1/92	5/96		7/99
	p-values [3]		0.0003			0.017		0.0024
	Female	1/98		0.98	1/95	3/96		4/99
	p-values		0.014			0.11		0.046

TABLE 1.—FREQUENCY OF PRIMARY BRAIN NEOPLASMS IN RATS IN TWO-YEAR INHALATION STUDIES—Continued

Study	Sex	0 C(I)	0 C(II)	10 ppm	33 ppm	50 ppm	100 ppm
NIOSH [4]	Male		0/78			2/77	5/78
	p-values [5]		0.011			0.2516	0.0323

[1] Ex. 15. Data for 18 and 24 months sacrifices, dead/euthanized.
[2] Numerator equals the number of brains with neoplasms. Denominator equals total number of animals whose brain tissues were examined microscopically.
[3] First p-value in row is for one-sided Cochran-Armitage test for a dose-response trend. Remaining p-values are for Fisher's exact test (one-sided) comparing responses in combined controls to those in the respective treatment groups (Ex. 34).
[4] Ex. 40.
[5] First p-value in row is for one-sided Cochran-Armitage test for a dose-response trend. Remaining p-values are for Fisher's exact test (one-sided) comparing responses in combined controls to those in the respective treatment groups.

Several commenters (Exs. 11–74, 47, 110, 126, 144, 152) submitted specific criticisms of the Bushy Run study to the record. Despite these criticisms, however, both the EOIC (Ex. 152) and the Health Industry Manufacturers Association (HIMA) (Ex. 153) concluded that the Bushy Run study presents evidence that EtO is carcinogenic. Several issues related to the Bushy Run study that were raised by commenters are discussed below.

First, two commenters (Exs. 11–74, 47) questioned the validity of the study results because they believe that the occurrence of the sialodacryoadenitis (SDA) viral infection among the rats in the study during the fifteenth month may have confounded the results. The EOIC (Ex. 47) speculated about the effects such a viral infection might have had on the immune status of the rats, and HIMA (Ex. 11–74) suggested that the SDA infection might have had an impact on the rat's long-term pulmonary absorption of EtO.

Clinically, SDA infections usually occur as acute epizootics that are manifested as cervical swellings, enlarged submaxillary salivary glands, red-brown-colored ocular and nasal discharges, sneezing, photophobia, and ophthalmic lesions. Histopathological lesions in rats infected with SDA virus have been characterized and described; the lesions involve the submaxillary salivary glands, Harderian gland, and parotid salivary glands. SDA viral epizootics vary in duration from 12 to 32 days.

The development of SDA viral infections among study animals would in general have an insignificant impact on the outcome of most toxicological studies. The possible occurrence of secondary infection could compromise respiratory ventilation and result in the appearance of acute clinical symptoms. Such an occurrence may compromise the results of an inhalation toxicology study in terms of high mortality from infectious diseases, altered pulmonary absorption of the test substance and, consequently, altered pulmonary morphology.

William Snellings, director of the Bushy Run study, testified (Tr. 525) with regard to the potential effects of the viral infection and the possibility of flaws in the study as follows:

> The thing that we did was to look not only at our two control groups very carefully, but control groups in our laboratory, the historical controls and also controls that have been published in (the) literature and results from controls published in (the) literature. In particular, in the tumors that were found * * * we found no difference * * * between the two controls * * * in the group * * * in the same study or the controls in our lab (or) historical controls or (controls) within (the) literature.
>
> So we made a statement that at least in the control groups we had no adverse affect (sic) that would contribute to an increase or a decrease in the normal spontaneous rate of tumor production in the Fisher (sic) rat.

J.M. Ward of the National Cancer Institute (NCI), a pathologist active in NCI's bioassay program, testified on behalf of OSHA (Tr. 1113) that:

> * * * There's been no evidence for any types of studies that show that (the) presence or absence of a virus or a bacterial infection or pneumonia will actually make a chemical become a carcinogen or not become a carcinogen * * *. I would * * * not consider any infections in these rat bioassays as being significantly important for deciding whether the chemical may or may not be a carcinogen * * *. There are many bioassays performed all throughout the world where most animals will have some type of infectious disease even when they're maintained in a very clean environment (Tr. 1114).

Since the tissues giving rise to tumors in the Bushy Run experiment are not those traditionally affected by the SDA virus (salivary glands, Harderian gland), and since in the Bushy Run controls the SDA infection did not have any effect that might conceivably influence the rate or occurrence of tumors, and in light of Ward's testimony, OSHA concludes that the outbreak of this infection among the animals used in this study did not have a substantial impact on the validity of the results of the study.

Other commenters (Exs. 47, 128) noted that the mononuclear cell leukemia (MCL) observed in the rats of the Bushy Run study did not occur in other strains of rats and mice and had no human counterpart. However, Jerrold M. Ward of NCI, testifying on behalf of OSHA, noted that:

> The leukemia in the Fisher (sic) rats in the Bushy Run study that was increased in incidence has been recently described as a specific type of leukemia not only in rats but also in humans as well * * * Recent reports of specific kinds of lymphocytic leukemia in humans have demonstrated that there are some, if not many, types of lymphocytic leukemias which have a similar or identical characteristics as * * * (those) of the Fisher (sic) rat mononuclear cell leukemia (Tr. 1107).

OSHA agrees with Ward that these recent findings demonstrate similarities between certain types of human and rat leukemias, a finding which increases the relevance of the BRRC results to humans.

The EOIC (Ex. 47) also criticized the findings of the Bushy Run study because, they contended, the only types of tumors that occurred among the treated animals were those that occur spontaneously in this strain of rat.

In this regard, the EOIC stated that:

> The tumors which have been observed have all been late-occurring neoplasms with a spontaneous incidence in the Fischer 344 rat. No unique tumors were produced by EO exposure, suggesting the possibility that EO is active through a mechanism which does not involve initiation but rather promotion or another form of modulation of the spontaneous tendency to tumor development (Ex. 47).

However, when questioned about the likelihood that EtO is a promoter rather than a frank carcinogen, Ward responded as follows:

> * * * The increase[d] incidence of spontaneous tumors (in the Bushy Run study) has been used by many people to say that the chemical is not a true carcinogen but * * * may be a promoter or a potentiator or a * modifier * * *.
>
> But there are many potent carcinogens that most people will agree * * * also increase the incidence or apparently increase the incidence of spontaneous tumors and you can almost say that every type of induced tumor * * * seen in rats has also been seen in control animals at least once.
>
> * * * I think the fact that ethylene oxide causes an increased incidence of leukemias and also squamous cell carcinomas may be indicative of the fact that the chemical may act on different types of tissues * * * which may increase the incidence or actually cause the type of leukemia that's found (Tr. 1119–1120).

When asked about whether there might be a promotional effect by EtO and

what the significance of such an effect might be, Ward responded:

> * * * Promotion is a fairly broad term * * *. [W]e can almost say that * * * most carcinogens are promoters because they would promote * * * rare tumors. So I don't like to use that term unless we really know more about the chemical (Tr. 1120).
>
> * * * Up until now, many papers and scientists have said that promoters may be less dangerous than carcinogens * * *. In the last two years * * * we have evidence that tumor promotion may also occur after * * * not only long-term exposure but after short-term exposure to low doses. So the tumor promoters may in fact be just as dangerous for causing or increasing the risk of cancer as * * * potent carcinogens * * * in my opinion, promoters may be as dangerous * * * as chemicals that are not thought of * * * [as] promoters. (Tr. 1121).

Although the EOIC argued (Ex. 47) that interpretation of the results of this study may be "complicated by the absence of a unique early-occurring tumor," this uncertainty was put to rest by the observation of gliomas in the Bushy Run slides. Gliomas, malignant tumors of the central nervous system, were generally characterized by Legator as "very rare" tumors (Tr. 104), and, as was pointed out by Lemen of NIOSH: "Gliomas had a low spontaneous instance (sic, incidence) in these two studies (BRRC, NIOSH): Goodman reported incidence rates of 1 to 2 per thousand in untreated Fischer 344 rats used as controls in several carcinogenicity tests" (Tr. 312).

Another study (Ex. 93) submitted by Ward confirmed the historically low spontaneous incidence of gliomas in the Fischer 344 rat; the spontaneous incidence of gliomas among almost 52,000 Fischer 344 rats used in the NCI bioassay program was reported to be 6.6 per thousand in male rats and 5.4 per thousand in female rats. Ward also testified that the incidence of brain tumors in EtO-treated rats might have been higher than the incidence found in the Bushy Run study if the rats had been exposed to EtO in utero or postnatally:

> * * * (The presence of) brain tumors suggest[s] that * * * these animals may, if exposed to this chemical * * * [in utero or postnatally) develop a higher incidence of tumors * * *.
>
> The brain tumors (found) * * * are also very disturbing because there are very few chemicals that cause brain tumors * * * (in animals exposed) after four weeks of age * * *.
>
> So I would have to say that potentially this chemical poses a * * * significant hazard based on the results of [the Bushy Run] bioassay * * * (Tr. 1128–1129).

The Health Industry Manufacturers Association (HIMA) questioned (Ex. 11–74) whether the large number of statistical analyses performed on Bushy Run data "may have produced some misleading results identified as significant" (Ex. 11–47, Appendix H). The Bushy Run researchers applied a statistical correction to their results, based on the Boneferroni inequality, to prevent just this type of problem. However, HIMA (Ex. 11–74, Appendix H) argued that had the BRRC study protocol been designed originally to include life-table analysis and the performance of statistical tests only at 12, 18, and 24 months, rather than at monthly intervals, the study's conclusions would have been more valid. HIMA pointed out that conducting so many statistical tests increases the likelihood of obtaining a significant number of false positives.

To test whether the number of statistical tests conducted had influenced the BRRC results, OSHA used an alternative approach to the Bonferroni inequality correction. The alternate approach bases calculations of significance on the assumption that the individual tests are independent. This would represent the "worst case," since any relation among tests decreases the probability of detecting false positives. After removing the Bonferroni corrections made by the BRRC researchers and applying the assumption that tests for survival rate are independent, OSHA determined that the probability of finding 15 tests with $p < 0.01$, or of finding five tests with $p < 0.001$ among the 260 tests is much less than 0.05. Therefore, OSHA finds that the statistical tests employed in treating the BRRC data are valid and that the Agency can be confident in its conclusion that the survival of male rats in the Bushy Run study was significantly diminished by exposure to ethylene oxide. If a similar probability approach is used on the survival test results for the female rats, the null hypothesis—that there was no mortality increase with exposure—is rejected even more decisively

If similar probability calculations are made for the results of the life table analysis, significant exposure-related effects are demonstrated for mononulcear cell leukemia among the female rats and for peritoneal mesothelioma among the male rats. To indicate a significant ($p < 0.05$) tumorigenic effect among the more than 250 tests conducted, at least 20 tests must be significant at $p < 0.05$, or 6 tests must be significant at $p < 0.01$, or 2 tests must be significant at $p < 0.001$. In the tests for female mononuclear cell leukemia, the results of at least 10 tests are significant at $p < 0.001$. In the tests for male peritoneal mesothelioma the results of at least 15 tests were significant at $p < 0.01$, and at least 7 tests are significant at $p < 0.001$. A significant overall tumorigenic effect is confirmed by the fact that the number of tests that are significant at the lower values of P exceeds the minimum number of tests that would have to be significant to demonstrate a significant overall tumorigenic effect.

The most important statistical argument for a dose effect is the identification of a progressive relationship between dose group and response. The BRRC used time-adjusted trend test analyses that were sensitive to differences in both tumor frequency and time-to-tumor, and consistently found significant positive trends in each of the five tests conducted to examine dose-effect. Further, the tests demonstated significant effects when dose groups were compared to controls, and additionally found significantly increased tumor incidences when high-dose groups were compared to low-dose groups. Because the BRRC study clearly identified these relationships, OSHA concludes that exposure to EtO significantly increased both mortality and tumorigenicity among the BRRC rats.

The NIOSH Study. The other animal evidence that relates most strongly to the question of carcinogenicity from occupaitonal exposure to EtO is provided by a two-year, NIOSH-conducted chronic inhalation study of male rats and male monkeys. The preliminary results of this study were reported in a 1982 memorandum from NIOSH (Ex. 6–16). In that study, two groups each of 80 male Fischer 344 rats and 12 male Cynomolgus monkeys were exposed to EtO at 50 ppm and 100 ppm, respectively. Two groups, one of 80 rats and one of 12 monkeys, were used as controls and exposed to conditioned ambient air. Durign the study, all of the rat groups became infected with *Mycoplasma pulmonis* which, begining with the sixteenth month, caused the death of a large portion of the rat population (Lynch et al. 1982, as cited in Ex. 47). Exposure was discontinued for two weeks to permit animals to recover from the infection.

Preliminary results of histopathological evaluations of the spleens from the EtO-exposed rats indicate an exposure-related increase of mononuclear cell leukemia in the rats exposed at 50 ppm but not in those exposed at 100 ppm. NIOSH has acknowledged (Ex. 6–16) that these preliminary results must be interpreted in light of the known spontaneous incidence of leukemia in Fischer 344

rats. It should be noted, however, that excess mortality occurred in the 100 ppm group (19 percent survived as compared to 49 percent of the controls). At the terminal kill a significantly higher frequency of leukemia was found only in the group exposed to EtO at 100 ppm.

Of equal or greater importance, however, is the study's dose response relationship between exposure and the development of gliomas, a rare tumor in Fischer 344 rats, as noted earlier (Ex. 15). Gliomas were found in 5 of 79 rats exposed at 100 ppm and 2 of 77 rats exposed at 50 ppm of EtO. There were no gliomas found in the 76 control rats (see Table 1). A significant association between exposure to EtO and the occurrence of peritoneal mesothelioma was also found in rats exposed to 100 ppm EtO, but not in those exposed at 50 ppm EtO. The findings of gliomas, peritoneal mesothelioma, and leukemia in the study parallel the findings made in the Bushy Run study.

None of the monkeys in the NIOSH study (Ex. 6–16) demonstrated any evidence of leukemia. Two of the monkeys in each exposure group were sacrificed for neuropathological evaluation. The only significant findings were the presence of axonal dystrophy in the nucleus gracilis (a specialized component of the central nervous system) and demyelination of portions of the gracilis tract in one monkey from the low and one from the high dose groups (Sprinz et al., 1982, as cited in Ex. 47). Based on this limited evidence, the researchers were not able to reach any conclusions as to the cause or significance of these findings, but they remain noteworthy in view of the findings of gliomas in the rats in this study, and confirm that EtO affects the central nervous system.

The overwhelming majority of comments on the NIOSH study agreed with OSHA's conclusions that these preliminary results provide additional evidence of EtO's carcinogenicity in experimental animals. Leon Golberg, consultant to the EOIC, testified that the Bushy Run and NIOSH studies "yield mutually confirming information, a dose response relationship is apparent for certain endpoint effects, and the exposure conditions were well controlled and monitored" (Tr. 491). In light of the finding of gliomas in the Bushy Run and NIOSH studies, Jerrold Ward (NCI) stated (Tr. 1129) that these "consistent results are also very disturbing because there are very few chemicals that cause brain tumors postnatally."

Other studies. Additional evidence supporting EtO's carcinogenicity has been obtained from animal studies using routes of exposure other than inhalation. Dunkelberg (Ex. 2–18) and Walpole (Ex. 2–20) administered EtO by subcutaneous injection; Van Duuren et al. (Ex. 2–21) observed the effects of dermal exposure, and Reyniers et al. (Ex. 2–19) observed the effects in rats accidentally exposed to EtO-treated bedding, while another study by Dunkelberg (Ex. 19) investigated the effects of intragastric administration of EtO. Several of these studies were discussed in the preamble to the proposal; a short review of each will be presented here.

In 1979, Dunkelberg (Ex. 2–18) reported preliminary results of a long-term carcinogenicity bioassay in which 100 female NMRI mice were given subcutaneous injections of EtO in 0.1 ml tricaprylin in weekly dosages of 0.1, 0.3, or 1.0 mg EtO per animal. Two control groups, 100 untreated and 100 tricaprylin-treated mice, were used. After 91 weeks of treatment, Dunkelberg reported that the number of sarcomas at the injection site increased with dosage, while no injection-site tumors had occurred in the control mice. The first tumor appeared in the fiftieth week of treatment. The number of tumors at sites distant from the injection sites was not significantly greater in the treated groups than in the controls.

HIMA's submission to the docket stated that, "the Dunkelberg study is of limited value because it lacked suitable controls and because irritants are known to cause oncogenic effects at the site of injection" (Ex. 11–74, Appendix G). However, OSHA agrees with Ward of the National Cancer Institute, who stated that, "inductions [sic] of tumors at the injection site means generally that when the chemical is given at other sites, it will cause tumors as well at other sites, either at the site of application or systemically" (Tr. 1124).

The further importance of the Dunkelberg study (Ex. 2–18) was brought to light when OSHA reviewed the results of that study, which were tabulated by the EOIC in its "Hazard Assessment" (Ex. 47). This tabulation shows that, regardless of the control population used, EtO treatment at the middle dose only once weekly induced a 100% increase in tumors as compared to treatment at the low dose.

Walpole (Ex. 2–20) subjected 12 "stock" rats to repeated subcutaneous injections of a dose of 1 g/kg EtO in Archis oil for 94 days. The small sample of animals was observed over their lifetimes. No sarcomas were observed at the injection site.

Van Duuren et al. (Ex. 2–21) applied 100 mg of a 10 percent EtO solution in acetone to the dorsal skin of 30 female Swiss Millerton mice three times per week for life. No tumors were observed. However, as Jeanne M. Stellman suggested, either the minimal dose of EtO administered or the route of dermal application may have accounted for the negative results seen in this study (Ex. 4–59).

Reyniers et al. (Ex. 2–19) accidentally exposed a colony of inbred albino mice to EtO-treated bedding for 150 days and then moved the survivors to untreated bedding for the remainder of their lifespans. The tumor incidence in the 73 surviving females, ranging in age from 300 to 900 days, was 86.3 percent. The most common tumors were ovarian, leukemic (malignant lymphomas), and pulmonary. In contrast, there were no grossly detectable tumors in 86 females, 100 to 600 days of age, in the mouseline from which the accidentally exposed colony was started. HIMA criticized the validity of this study on the grounds that any residual EtO would have been desorbed before the mice contacted the EtO-treated bedding (Ex. 11–74). Since the bedding was not analyzed for EtO content, the validity of HIMA's assertion cannot be tested. However, the authors of this study concluded that the incidence of tumors in the surviving mice could only be explained by their contact with the EtO-impregnated bedding.

Dunkelberg (Ex. 19) reported the results of a study in which 50 female Sprague-Dawley rats were intragastrically given EtO in 1 ml of salad oil twice weekly in doses of 7.5 or 30 mg/kg body weight for 150 weeks. Two control groups, 50 untreated rats and 50 salad-oil-treated animals, were used. Although no local tumors were induced in either of the control groups, 16 percent and 62 percent of the EtO-treated groups, respectively, incurred local tumors, mainly squamous cell carcinomas of the forestomach. The first tumor occurred in the 79th week. No tumors were induced at sites distant from the point of administration.

Conclusions

This comprehensive review of the scientific evidence in the rulemaking record has convinced OSHA that EtO is carcinogenic in laboratory animals and that a significant cancer risk exists for workers exposed to EtO. The Agency's conclusion is based on information from many investigations in several species of experimental animals involving different routes of administration, as well as positive results from several human studies.

The epidemiological study conducted by Morgan and coworkers (Ex. 6–5) showed that a significant increase in

pancreatic cancer and Hodgkins disease occurred among 767 workers generally exposed to EtO levels of 50 ppm or less. Another study (Ex. 2–8) described three cases of leukemia (vs. 0.2 expected) during the period 1972–1977 among Swedish factory workers exposed to an EtO-methyl formate mixture. Two of these workers with leukemia were exposed to an estimated EtO level of approximately 20 ppm (plus or minus 10 ppm). In a third human study (Ex. 2–22) significant excesses of mortality from leukemia and mortality from stomach cancer occurred among 89 full-time workers exposed to EtO. Although each of these studies report small numbers of cancer cases and is limited by the methodological constraints that usually accompany any attempt to describe rare events in small populations exposed to hazardous substances, both Stellman (Ex. 4–59) and representatives of NIOSH (Ex. 2–10) commented that these studies should be considered as evidence that EtO may produce an excess cancer risk for exposed workers. The Agency also agrees with the opinions of Landrigan (Tr. 341) and Golberg (Tr. 520) that, although these studies do not provide definitive evidence of carcinogenicity, they are suggestive of an association between occupational exposure to EtO and cancer (leukemia) mortality.

Among the animal studies examined in the record, the BRRC study (Ex. 2–9) provided the strongest evidence that EtO is carcinogenic. Following lifetime exposure to 33 ppm or 100 ppm EtO, there was a significant increase in the incidence of mononuclear cell leukemia in female Fischer 344 rats and of peritoneal mesothelioma in male rats of the same species, and both of these effects were shown to be dose-related. In addition, there was a significant dose-related increase in the incidence of gliomas, which are characterized as rare tumors, in both male and female rats. A study performed by NIOSH (Ex. 6–6, 6–16), in Fischer 344 rats showed results similar to those of the Bushy Run study. In the NIOSH study, there were significant increases in mononuclear cell leukemia, peritoneal mesothelioma, and gliomas among rats exposed to 50 or 100 ppm. Although not as well documented as the BRRC study, other studies have demonstrated the carcinogenicity of EtO in animals exposed by injection (Ex. 2–18) or oral (Ex. 19) routes.

OSHA agrees with NCI's Ward, who testified that these studies "provide significant evidence for the carcinogenicity of ethylene oxide" (Tr. 1106).

OSHA also concludes that the findings of gliomas among exposed rats in both the Bushy Run and NIOSH studies and findings described by Ward of similarities between the Fischer 344 rat leukemia model and some human leukemias, dramatically increase the importance and relevance of these studies in assessing the carcinogenic risk to EtO-exposed employees. In addition, since significant increases in tumor incidence occurred among rats exposed to EtO at 50 ppm (in the NIOSH study) or less (in the BRRC study), OSHA is confident that EtO's carcinogenic response is manifested at levels at and below those of OSHA's current PEL of 50 ppm, thus establishing that an excess significant cancer risk exists at the 50 ppm PEL.

B. Mutogenic and Cytogenetic Effects

In the preamble to the proposed rule on EtO, OSHA presented evidence that EtO is mutagenic in both experimental animals and in humans. As stated by NIOSH in its Current Intelligence Bulletin on EtO:

> The ability of a chemical to serve as an alkylating agent and to cause mutations in a variety of biological test systems is widely accepted as an indicator that the chemical may have carcinogenic potential. Both alkylation and mutagenicity have been demonstrated for EtO. Further, effects of a chemical on basic genetic material within the cells of living mammals are relevant for assessing mutagenic and carcinogenic hazards for humans. Evidence of this nature is available for EtO (Ex. 2–10).

The mutagenicity of EtO has been observed in a wide range of biological systems, including several microbial and plant systems, Drosophila, mice and rats. The submammalian studies have been reviewed extensively elsewhere (Ex. 2–10) and serve to further demonstrate the mutagenicity of EtO. Virtually every mutagenicity test system applied to EtO has shown the chemical to be mutagenic. Considerable scientific evidence also demonstrates the ability of EtO to induce chromosomal aberrations (structural changes in chromosomes that are mutational events) and sister chromatid exchanges (SCE) (the exchange of segments between the two chromatids of a chromosome) in several mammalian species, including humans.

Experimental Studies

Embree and coworkers (Ex. 2–35) have shown that EtO causes mutations in rat germinal cells using the dominant-lethal assay. Male Long-Evans rats were exposed to a single inhalation exposure of 1,000 ppm EtO for 4 hours. Each male rat was then mated to two females each week for 10 weeks. Significant increases in post-implantation fetal deaths were observed in the EtO test group when compared with the control group.

Dominant-lethal mutations and heritable translocations (a rearrangement between chromosomes which results in reduced fertility and has been passed from one generation to the next) were induced by EtO in two experiments conducted by Generoso and colleagues (Ex. 2–36). In the first experiment, male mice were injected intraperitoneally with 150 mg/kg EtO (the maximum tolerated dose) and caged with female mice for 22 days after treatment. In the second experiment, male mice were given intraperitoneal EtO injections of either 60 or 30 mg/kg for 5 days per week for 5 weeks. Immediately after the last injection, males were each caged with 3 females for one week. In addition to observed dominant-lethal effects, a dose-related increased frequency of heritable translocations was reported in male offspring of mice exposed to EtO. These findings demonstrated that EtO is highly effective in inducing genetic damage that is transmittable to subsequent generations.

Cumming et al. (Ex. 2–37) found that unscheduled DNA synthesis (a measure of repair of DNA damage) in the germ cells increased with increasing dose after male (101 x C3H) F1 hybrid mice were exposed to 300 or 500 ppm of EtO for 8 hours per day, 5 days per week for one week. Furthermore, EtO at doses of 600 and 800 ppm was found to inhibit the repair of DNA damage, as measured by a reduction in unscheduled DNA synthesis occurring after the first 4 hours of exposure. Following several exposure periods in a work-week type of exposure regimen, the capacity of germ cells to repair DNA damage decreased. Thus, EtO was found both to induce and to inhibit DNA repair, depending on dose and exposure schedule.

A study conducted by NIOSH (Exs. 4–60; 6–6; 6–16) was designed to explore the cytogenetic effects of EtO exposure in monkeys. Groups of 12 Cynomolgus monkeys were exposed by inhalation for 7 hours per day, 5 days per week for 24 months, to 0, 50, or 100 ppm EtO. Cytogenetic and spermatogenic evaluations of the monkeys were performed after 24 months of exposure. Peripheral lymphocytes were cultured and examined for chromosomal aberrations and sister chromatid exchanges (SCE); bone marrow was examined for the presence of micronucleated erythrocytes. NIOSH reported that exposure to EtO significantly increased the frequency of chromosomal aberrations in peripheral lymphocytes of monkeys in both

exposed groups; lymphocytes from animals exposed at 50 or 100 ppm showed approximately a 3-fold or 5.6-fold increase, respectively, in abnormal cells compared to the rate of aberrations found in unexposed animals. The aberrations observed by NIOSH included triradials and quadriradials. NIOSH noted that the presence of triradial and quadriradial aberrations in lymphocytes was also observed by Abrahams among EtO-exposed workers (Ex. 2–39), and the NIOSH results lend strong support to his findings. The mean number of SCE per cell was also significantly increased in EtO-exposed monkeys. The mean number of SCE per cell was 5.7 in the unexposed group, 10.2 in the group exposed at 50 ppm, and 16.8 in the group exposed at 100 ppm. There was also an increase in the number of micronuclei in polychromatic erythrocytes from the bone marrow of EtO-exposed monkeys (5 per 1,000 cells) as compared to controls (1 to 2 per 1,000 cells). NIOSH concluded that these results support the cytogenetic toxicity of EtO. The total sperm count and the percentage of motile sperm were reduced in monkeys exposed to either 50 or 100 ppm EtO when compared with controls, indicating an adverse effect on testicular function and thus on fertility.

Yager and Benz (Ex. 22) exposed groups of four male New Zealand white rabbits to 0, 10, 50, or 250 ppm of EtO by inhalation for 6 hours per day, 5 days per week for 12 weeks. Peripheral blood samples were taken before the start of exposure, at intervals during exposure, and up to 15 weeks after the end of exposure to measure SCE rates in peripheral lymphocytes. Lymphocytes taken from rabbits exposed at 50 ppm and 250 ppm showed statistically significant increases in mean number of SCE per cell (9.47 and 13.17, respectively, after 12 weeks of exposure) over lymphocytes from unexposed controls (mean number of SCE after 12 weeks was 7.26 per cell). Fifteen weeks after exposure ceased, the mean SCE levels in rabbits exposed to 50 or 250 ppm of EtO had declined but continued to remain above their baseline SCE levels. Mean SCE levels in the rabbits exposed to EtO at 10 ppm did not increase significantly above the baseline level. Yager and Benz concluded that EtO exposure results in a dose-related SCE effect.

Studies of Occupationally Exposed Workers

Several studies have demonstrated that mutagenic effects similar to those seen in animals can occur among humans exposed to EtO. Ehrenberg and Hallstrom (Ex. 2–38) examined lymphocytes taken from the blood of seven workers who were accidentally exposed to high (otherwise unspecified) levels of EtO for about 2 hours, and who had experienced acute symptoms. Two of these workers required hospitalization due to respiratory difficulties. Eighteen months after this accidental exposure, the authors observed a greater number of chromosomal aberrations (breaks, gaps, and exchanges) in the exposed workers than in an unexposed control group of persons from the same factory (p less than 0.05).

Pero and colleagues (Ex. 6–13) examined the effects of exposure to EtO on unscheduled DNA synthesis induced by N-acetoxy-2-acetylamino fluorene (2–AAF), a measure of repair of damage to DNA, and on chromosomal aberrations in the peripheral lymphocytes of women employees in a Swedish factory that manufactured disposable medical equipment. Seventeen EtO-exposed workers and 11 matched controls working at the same plant were examined. Group A consisted of 12 packers exposed to an average of 0.5 to 1 ppm EtO throughout each working day for 8 years. Group B was composed of 5 sterilizer technicians who had been exposed for 0.8 to 3.0 years at EtO concentrations of 5 to 10 ppm for 1 hour per day. Chromosomal aberrations were scored for both breaks and gaps. Significant increases in the number of total aberrations and the number of breaks were found for Group B alone and for Groups A and B combined, as compared to controls. 2–AAF-induced unscheduled DNA repair synthesis was inhibited significantly in Group A employees. Pero and coworkers verified these findings in *in vitro* studies of EtO-induced unscheduled DNA synthesis in human lymphocytes. Based on these tests of the effects of EtO *in vivo* and *in vitro*, Pero and colleagues reported that EtO can both induce and inhibit DNA repair and suggested that inhibited repair might play a role in the development of leukemia that has been reported among EtO-exposed workers.

In another study, Pero and coworkers (Ex. 6–12) examined the effects of EtO exposure on unscheduled DNA synthesis induced by 2–AAF in peripheral lymphocytes. Blood samples were obtained from five male workers, employed as sterilizing, packing, or truck-driving personnel, who were exposed to EtO at 8-hour TWA concentrations of 0.5 to 1 ppm for 0.3 to 5 years. Control samples were obtained from 12 men employed in a nearby facility where no known mutagens were in use; controls were matched with the exposed group for age and smoking history. A significant decrease in DNA repair proficiency was observed in the EtO-exposed workers when compared to controls. These results, when taken in conjunction with other study results, imply that EtO not only can induce genetic lesions but inhibits their repair. The two studies by Pero et al. indicate that exposure to EtO at average levels as low as 0.5 ppm can cause alterations in the genetic material of human cells, including significant increases in chromosomal breaks and aberrations.

The Pero studies (Exs. 6–12, 6–13) were criticized on the basis that the workers were exposed to methyl formate as well as EtO (Ex. 71). OSHA points out, however, that EtO was not mixed with methyl formate in the *in vitro* studies reported by Pero et al. (Ex. 6–13), which demonstrated similar effects of EtO. OSHA believes it is unlikely, therefore, that methyl formate elicited the *in vivo* effects.

Garry and coworkers (Ex. 6–14) studied a group of 15 employees who worked in an EtO sterilization facility. Clinical symptoms of the upper respiratory tract and central nervous system had been reported periodically by many of these employees. Air samples taken over a period of one-half hour or more revealed a maximum EtO concentration of 36 ppm at a distance of 15 feet from the sterilizer. Concentrations of EtO greater than 1,500 ppm during the purge cycle were reported near the open drain. Measured TWA concentrations of EtO were reported to be less than 50 ppm. Four of the employees reporting symptoms a significantly increased number of sister chromatid exchanges at 3 weeks and 8 weeks after their last known exposure to EtO as compared to a group of 12 employees who worked in an adjacent operating room. Another group of 8 EtO-exposed workers reporting fewer clinical symptoms showed a significant increase in the number of SCE as late as 9 weeks after their last EtO exposure.

A company using EtO in the manufacture of health care products reported the results of cytogenetic evaluations of 75 workers with potential EtO exposure at nine facilities (Ex. 2–39). A group of 37 workers with no known EtO exposure, who were employed at one of the facilities, served as controls. Exposure data indicated that the facilities had complied with the OSHA EtO PEL of 50 ppm as an 8-hour TWA, although there were instances when short-term exposures exceeded 75 ppm, the NIOSH recommended short-term limit at that time. Routine physical

examination showed no unusual clinical findings among EtO-exposed persons. However, the number of chromosomal aberrations was significantly increased in peripheral lymphocytes from exposed workers when compared to the number in the unexposed group. Chromosomal aberrations in exposed workers included quadriradials, a rare form of aberration. The frequency of sister chromatid exchanges was also significantly increased in exposed workers when compared to the unexposed group.

Shortly after these results were reported, Johnson & Johnson initiated a study to determine whether employees potentially exposed to EtO showed more chromosome changes than employees thought to be unexposed. Johnson & Johnson submitted results from the 24-month Pilot Research Chromosome Study of workers exposed to EtO at three facilities (Ex. 4–17, Ex. 137 A, B, C). The worksites selected were chosen on the basis of potential employee exposures to EtO prior to September 1980, with one site (Plant III) representing high exposures (5–200 ppm, 8–hour TWA), another site (Plant II) representing moderate exposures (1–10 ppm, 8–hour TWA), and the third site (Plant I) representing low exposures (less than 1 ppm, 8-hour TWA). Study participants wer employed in sterilizing areas and were classified according to whether their potential exposure to EtO was high or low for their particular worksite. Controls were randomly selected from other areas of each plant and matched by age and gender with exposed workers; in addition, an outside (community) control group was selected for the study conducted at Plant III (the high exposure worksite). Peripheral blood samples were collected at the start of the study and at 6–, 12–, and 24–month intervals. Chromosome studies included assays of the frequency of sister chromatid exchanges (SCE) and chromosomal aberrations. Study participants were interviewed to obtain information on work history, medical history, demographic data, and exposure to other agents considered to be potential confounders of a chromosome effect.

Preliminary results of initial testing and 6-month follow-up (Ex. 4–17) indicated that at Plants II and III a dose-related trend was observed for increases in SCE. All use of EtO at Plant III was discontinued after the first survey. In spite of the cessation of exposure at this plant, there was no significant reduction in SCE scores by the time of the 6-month follow-up study. Dose-related increases in the frequency of complex chromosomal aberrations were also observed at this plant (III). No significant differences in SCE scores were noted between potentially exposed and control groups at Plant I (the low exposure plant). Workers at Plant I were not sampled at the 6-month period.

In August 1983, Johnson & Johnson submitted to OSHA the 24-month SCE Report of the Pilot Research Chromosome Study, which completed the analysis of SCE data through the 24–month follow-up period (Ex. 137A). The aberration data through the 6-month follow-up period were also submitted (Ex. 137C).

At Plant I, where exposures were estimated to be below 1 ppm, when the results were adjusted for smoking habits, gender, and age, SCE levels for the high-exposure group were significantly higher than those of worksite controls at the initial examination only; there were no significant differences in adjusted SCE levels between the high-exposure, low-exposure, or control groups at Plant I at any of the other survey periods, nor were there differences in the unadjusted SCE level at this worksite at any survey period.

At Plant II, where exposures were estimated to range between 1 and 10 ppm, the ajusted SCE levels for the high-exposure group were significantly higher than those of worksite controls and the low-exposure group at the initial and 12-month surveys but were not significantly different at the 6-month or 24-month surveys.

Adjusted SCE levels at Plant III for both the high-exposure and low-exposure groups were significantly higher than worksite control levels at the initial and 6-month surveys. In addition, a clear dose-response trend was evident in the findings for this worksite. Although the use of EtO was discontinued at Plant III after the initial chromosome survey, adjusted SCE levels among the high-exposure group remained significantly higher than worksite control and community control levels throughout the 24-month testing period. Community controls were tested at the 6- and 24-month follow-up periods. SCE levels for the low-exposure group remained significantly higher than those of worksite controls at the time of the 6-month survey, but not at the 12- or 24-month survey; they were significantly higher than community controls at both the 6-month and 24-month follow-up.

Johnson & Johnson (Ex. 137A) concluded that an increase in the number of SCE in human peripheral lymphocytes is associated with EtO exposure and that the occurrence of this effect is related to exposure levels. Johnson & Johnson considers the persistence of high SCE levels among employees at Plant III, where exposures were highest for the three plants studied, to be the most striking observation of its study. It also concludes from results at Plant I that environmental control of EtO can prevent SCE levels that are above baseline even among workers in "high risk" jobs such as sterilizer operators.

Results of the 6-month aberration analysis (Ex. 137C) for this study are similar to those for the initial study. However, the analysis of aberration data for the 12- and 24-month follow-up periods had not been completed by Johnson & Johnson by the close of the rulemaking record.

Johnson & Johnson also prepared a summary of a chromosome surveillance project (Ex. 137D) conducted at three other plants (plants A, B, and C) independent of the Pilot Research Chromosome Study. For this study, historical EtO exposure information was collected from 1977 until the date the first blood samples were drawn for chromosome testing in 1981. These exposure histories include data from 8-hour TWA personal monitoring samples, short-term exposure samples, and exposure data collected for each employee on the date of blood sampling. The high potential EtO exposure group at Plant A had an increased frequency of SCE when compared to controls. The low potential exposure group did not have an increased frequency of SCE. The 8-hour average exposure levels on the date of blood sampling appear to be virtually the same for the high and low exposure groups. The high exposure group employees appear to have experienced higher short-term peak exposures (median short-term peak of about 9 ppm) than did the low potential exposure group (median short-term peak of about 2 ppm), based on available data for short-term exposure levels for Plant A between 1976 and 1981.

The effect of EtO exposure on SCE levels in humans was also studied by Yager and coworkers (Ex. 4–10, 6–15). The study population consisted of 14 sterilizer operators employed in two hospitals. Short-term breathing zone EtO exposures for these workers were rigorously characterized. EtO exposure for each worker and for each task was expressed as an estimated cumulative dose for the 6-month study period, on the basis of results of breathing zone samples and estimated EtO uptake. The cumulative EtO doses of the 14 workers studied ranged from 0 to 744 mg. For 30 observations of short-term exposure, the

mean concentration of EtO was found to be 82 ppm averaged over 3.5 minutes. Three sterilizer operators with cumulative doses of 0 mg were subsequently included in the control group. Control subjects were selected from clerical and administrative staff of the hospitals and two nearby research institutions. Exposed and control subjects were matched for smoking habits. Linear regressions of SCE with dose showed a positive slope and intercept (Ex. 6–18). The mean frequency of SCE per cell was significantly higher in workers with cumulative EtO doses exceeding 100 mg (10.69 SCE per cell) than for workers with cumulative doses of less than 100 mg (7.76 SCE per cell) or for controls (7.56 SCE per cell). Moreover, the emergence of a cell population with very high frequencies of SCE was evident in the high exposure group when the frequency distributions of pooled cells from the two worker populations were compared. This observation was analogous to the cell frequency distributions seen among highly exposed groups in the rabbit study reported by Yager and Benz (Ex. 22). Yager suggested that this shift in the SCE distribution may be attributable to the effect of cumulative unrepaired lesions in the non-dividing population of long-lived circulating lymphocytes.

The mutagenic potential of EtO and the relative importance of the results of investigations concerning its mutagenic potential received numerous comments during the hearings. There was little dispute that EtO is a mutagen and that the investigations indicated that this material has a genotoxic mode of action, that is, it directly affects the DNA.

For example, Leon Golberg testified for the EOIC with regard to EtO's mutagenic effects:

> In view of the alkylating properties of ethylene oxide it is not surprising that it gives rise to gene mutations and chromosomal aberrations in very short time test systems. Genotoxic effects observed in vivo include dominant lethality and inheritable translocations (Tr. 487).

Comments centered around three related issues. These are: (1) The exposure levels and durations that are associated with EtO-induced cytogenetic effects in humans, (2) the relationship between induction of chromosomal aberrations or SCE and health impairment, and (3) the usefulness and necessity of routine cytogenetic testing for EtO-exposed workers (see Medical Surveillance discussion in the Summary & Explanation Section). Arguments pertaining to the first two issues are discussed in the following sections.

Exposure Levels Associated With EtO-Induced Human Cytogenetic Effects

Testimony and comments received on the issue of the cytogenetic dose-response relationship and the relevance of the results of these studies to the promulgation of a specific PEL focused on the human studies conducted by Yager and coworkers (Ex. 6–15) and by Johnson & Johnson (Ex. 137). After a thorough review and evaluation of this evidence, OSHA finds that these studies indicate that chromosomal aberrations and SCE are induced in workers exposed to EtO levels between 1 and 10 ppm as an 8-hour TWA.

In reviewing the Johnson & Johnson study, Marvin S. Legator, testifying for OSHA, stated:

> The study conducted by Johnson & Johnson will probably rank as one of the most well conducted investigations in this area. The protocol is excellent, confounding factors were controlled, and an expert committee was convened to consult on this investigation. . . . The significance of this well conducted study can be appreciated better when one realizes that the pronounced effect was seen with a limited population. In one of the three plants studied, eight workers were considered in the high exposure, five in the low exposure and eleven in the control. A dose-related response and persistent effect was found at a TWA of 1–10 ppm. I know of no other chemical which, in a well conducted study, a persistent effect was detected at this low a concentration (Ex. 21–2).

Relationship Between Human Cytogenetic Effects and Health Impairment

Concern over the application of mutagenic investigations and/or testing centered on the ability of the Agency to use the mutagenicity data available to determine occupational risk in terms of current or subsequent disease. Legator testified as follows:

> In the area of toxicology, some of the most serious adverse health outcomes are those induced by chemicals that cause genetic damage. Following the initial chemical exposure, the induced genetic lesion may lead to irreversible, transmissible damage. The effects on somatic (body) cells include cancer, cellular senescence, behavorial anomalies (if neural dysfunction is involved), among other conditions. The effects of genotoxic agents on germinal cells may include aspermia and oligospermia, spontaneous abortions, congenital anomalies, diseases with chromosomal anomalies, and multifactoral conditions (Ex. 21–2).

Although at the present time, quantitative predictions of the human disease that may be induced by chromosomal or mutagenic changes cannot be made, it is clear that chromosomal abnormalities indicate an adverse effect on DNA. Furthermore, as a biological monitor, chromosomal changes indicate that changes have occurred in the genetic material of the cells and hence serve as an indicator of systemic tissue exposure and response in the DNA of the cells. Evidence in the record indicates that, in humans, changes in the genetic material and alterations in its repair occur at average EtO exposure concentrations of 1 ppm or less (Exs. 4–10, 6–12, 6–13, 6–15 173–D).

Comments on the use of the results of cytogenetic studies as a basis for promulgating a specific PEL centered on OSHA's ability to determine the risk of disease associated with EtO-induced cytogenetic effects. OSHA believes that the cytogenic effects of EtO exposure are of serious concern, particularly when viewed in combination with its carcinogenic and reproductive effects. Nonetheless, the Agency has determined that at the current state of scientific knowledge, the cytogenetic data cannot be used to quantify the excess risk of disease caused by EtO exposure.

Several commenters (Exs. 11–74, 11–135, 66, 141–A, 150, 153) questioned the nature of the health impairment resulting from cytogenetic changes associated with EtO exposure. On this issue, Johnson & Johnson commented that:

> (T)here is agreement in the scientific community that (correlations between chromosome changes and human health effects) have *not* been established with regard to ethylene oxide specifically, and that in general the mechanism of cancer induction has *not* been defined (Ex. 150).

Speaking for the EOIC, Julian Preston of Oak Ridge National Laboratory testified that increased frequencies of SCE or chromosomal aberrations "have not been associated with any subsequent health effects, such that they are not quantitative predictors of adverse health effects" [Tr. 1009]. Janice Yager commented that:

> A sister chromatid exchange (SCE) is the visual manifestation of a four-stranded exchange in the DNA. The number of such exchanges in eukaryotic chromosomes has been shown to be increased upon *in vitro* or *in vivo* exposure to agents that damage DNA by forming covalent adducts or distorting the bases by intercalation or formation of dimers. Many such compounds are known mutagen—carcinogens * * *. An association between SCEs and chronic health effects such as cancer has not been established. However, the biological significance of increased exchange rates may be of importance since SCEs appear to reflect perturbations during the synthesis phase of the cell cycle, and further, increases in SCE rates occur upon exposure to many mutagen/carcinogens

which also increase response in other tests for DNA damage (Ex. 2–13].

Regarding the uncertainty associated with predicting specific health outcomes from the appearance of SCE or chromosomal aberrations, Marvin Legator testified as follows:

(E)ven though the (correlation between chromosome abnormalities and cancer in experimental animals) is extremely good we are talking about the early stage in a multi-stage process. Therefore, we don't know the final, clinical outcome. We simply haven't got that data in front of us.

What we do know is, given a chemical that causes chromosome abnormalities in any biological system—this is a prime indicator of exposure to a carcinogen * * * if we're talking about ethylene oxide * * * not only do we have the animal data, but we show that this compound is also functioning and biologically active in man. And that kind of takes away a lot of the uncertainties in extrapolation, because we have biological effects in man at the cytogenetic level * * * multiple studies with ethylene oxide, where indeed we have had effects below ten parts per million.

I can't emphasize to you strongly enough * * * how unique this is. Again, I know of almost no chemical that would cause that effect at that low level (Tr. 68)

On the basis of the evidence in the record, OSHA concludes that EtO exerts a persistent and potent cytogrenetic effect in humans as well as in experimental mammalian and non-mammalian systems. EtO has been found to interact directly with DNA, most likely by an alkylation reaction. Cytogenetic findings in humans exposed to EtO have included unscheduled DNA synthesis and deficiencies in DNA repair, sister chromatid exchanges, and chromosomal aberrations, including quadriradials, a relatively rare aberration. Moreover, the mutagenic and cytogenetic findings described above support and strengthen OSHA's conclusion that EtO is a carcinogen.

C. Reproductive Effects

Experimental Studies

Four studies have assessed the reproductive and teratogenic potential of EtO in rodents. Snellings and coworkers (Exs. 2–23, 54) exposed groups of 30 male and 30 female Fischer 344 rats to 100, 33, or 10 ppm of EtO vapor for 6 hours per day, 5 days per week, for 12 weeks prior to mating. Males and females were exposed 6 hours per day, 7 days per week during the 2-week mating period, after which the females were exposed for 6 hours a day, 7 days a week from day 0 through day 19 of gestation. Two air-exposed control groups were used. The median number of pups born per litter in the 100 ppm exposure group (4) was significantly lower ($p < 0.001$) than the median number for either control group (9 or 10). The median number of implantation sites per pregnant female in the 100 ppm exposure group (6) was significantly lower than the median of 10 or 11 for the control groups. The percentage of females that became pregnant and the percentage of males proven fertile for the 100 ppm exposure group were lower than those for the control groups, but these differences were not statistically significant. No treatment-related effects were noted among dams or their litters in the 33 or 10 ppm exposure groups.

Hackett et al. (Ex. 6–10) exposed 50 female Sprague-Dawley CD rats to 150 ppm of EtO for 7 hours per day, 5 days per week, for 3 weeks prior to mating. After the mating period, the pregnant females were exposed to the same regimen through the 16th day of gestation. Two other previously unexposed groups of pregnant rats were exposed to 150 ppm of EtO from day 7 through day 16 of gestation, or from day 1 through day 16 of gestation. There was a significant increase in fetal deaths (resorptions) in the group receiving both pregestational and gestational exposure when compared with either of the groups receiving gestational exposure alone or the control groups. Ossification of fetal skulls and sternebrae was significantly reduced among EtO-exposed rats compared with non-exposed rats.

In the third study (Ex. 55), groups of 17–22 pregnant Fischer 344 rats were exposed to 100, 33, or 10 ppm of EtO vapor for 6 hours per day on days 6 through 15 of gestation. No significant differences were found between EtO-exposed groups and control groups in the number of dead fetuses per dam or the number of resorption sites per dam. However, there was significant weight reduction among fetuses in the 100 ppm exposure group compared with controls. The percentages oflitters and of fetuses in the 100 ppm exposure group having variations in ossification of distal thoracic vertebral centra were elevated compared with controls, but the difference was not significant. No gross abnormalities were noted among fetuses in any group. The authors interpreted the variation in ossification and depressed fetal weight in the 100 ppm group to be consequences of maternal or embryonic toxicity, not teratogenic effect.

LaBorde and Kimmel (Ex. 2–24) administered 75 or 150 mg/kg intravenously to pregnant CD–1 mice at one of four periods during gestation: days 4–6, days 6–8, days 8–10, or days 10–12. Mice administered the 150 mg/kg dose showed signs of toxicity, and a significant reduction in mean fetal body weight was noted for all four treatment periods compared with controls. A significant increase in the number of malformed fetuses per litter was observed among mice treated during days 6–8 or days 10–12 of gestation. The majority of defects involved the thoracic and cervical skeleton.

Two studies are available that examined the teratogenic potential and reproductive toxicity of EtO in rabbits. Hackett and coworkers (Ex. 6–10) exposed pregnant New Zealand white rabbits to 150 ppm of EtO by inhalation for 7 hours per day from day 7 through day 19 or day 1 through day 19 of gestation. No evidence of maternal toxicity, fetal toxicity, or teratogenicity was detected in exposed rabbits.

In another study conducted by Jones-Price and coworkers (Ex. 6–9), artificially inseminated New Zealand white rabbits were administered intravenous doses of 9, 18, or 36 mg EtO/kg/day on day 6 through day 14 of gestation, or doses of 18 or 36 mg/kg/day on day 6 through day 9 of gestation. Fifteen to 22 dams per group were evaluated at sacrifice on day 30. Among groups treated on day 6 through day 9 of gestation, maternal toxicity was minimal and no evidence of fetal toxicity or teratogenicity was observed. Administration of EtO on day 6 through day 14 of gestation resulted in a dose-related decrease in maternal body weight gain and gravid uterine weight. There were significant dose-related increases in the percentage of resorptions and dead fetuses per litter, and decreases in average live litter size. No evidence of a teratogenic effect was observed at any of the doses administered.

The studies described above demonstrate that at doses sufficient to cause signs of materials toxicity, EtO is fetotoxic in rabbits, mice, and rats, and teratogenic in mice, when administered during the gestation period. At doses below those that cause maternal toxicity, EtO is fetotoxic in rats when both males and females are exposed prior to and during mating, followed by exposure of females during the gestation period (Ex. 2–23). In addition to the fetotoxic effect of EtO , OSHA belives that the study by Snellings and coworkers (Ex. 2–23) indicates an effect on the male reproductive capacity. This is supported by studies (discussed in the section on Mutagenic and Cytogenetic Effects) showing the induction of dominant-lethal effects to EtO-exposed rats (Exs. 2–35, 2–36), increased levels of unscheduled DNA synthesis in the

testes of exposed male mice (Ex. 2–37), and reduced sperm count and motility in EtO-exposed monkeys (Ex. 6–6). Furthermore, the OSHA analysis (Ex. 6–18) of the Bushy Run one generation rat reproduction study (Exs. 2–33, 54) indicated that the adverse reproductive responses could be correlated with specific EtO exposure levels.

In its "Health Assessment of Ethylene Oxide" (Ex. 47), the EOIC emphasized two important facts with regard to EtO reproductive effects: 1. Evidence from a number of experimental studies indicates that EtO does reach and penetrate into the reproductive organs (Appelgren et al., 1977; Ehrenberg et al., 1974; Cumming et al., 1981; Sega et al., 1981). 2. EtO does cause damage to the gonads including testes and sperm (Hollingsworth et al., 1956; NIOSH 1982; Lynch et al., 1983; Embree et al., 1977; Cumming and Michaud, 1979; Generoso et al., 1980; Sega et al., 1981).

Considered as a body of evidence, OSHA believes that these experimental studies strongly indicate that EtO presents a potential reproductive hazard when males or females are exposed.

Epidemiologic Studies

Comment and testimony concerning the issue of EtO-induced reproductive toxicity focused primarily on a report published by Hemminki and coworkers (Ex. 6–7), which suggests that women exposed to EtO may be at an increased risk of spontaneous abortion. Postal questionnaires were sent to supervising nurses at all general hospital (about 80) in Finland to identify female workers using EtO, glutaraldehyde, or formaldehyde to sterilize medical instruments. Six months later, questionnaires were sent to all hospital staff engaged in sterilizing activities and to an equal number of unexposed nurses (controls) chosen by supervising nurses from nurse auxiliaries in the same hospitals. The response rate was greater than 90 percent for both groups. Information collected in the questionnaire permitted the researchers to adjust for age, parity (number of live-born children), decade of reported pregnancy, coffee and alcohol consumption, and smoking habits using a linear logistic regression model. The total number of reported pregnancies among the sterilizing staff and controls was 1,443 and 1,179, respectively.

No significant difference in crude spontaneous abortion rate was detected between sterilizing staff and controls (11.3 percent versus 10.6 percent). However, when pregnancies of sterilizing staff were stratified according to employment status at time of conception, significant increases ($p < 0.001$) in both crude and adjusted spontaneous abortion rates were observed among sterilizing staff who were exposed during pregnancy compared with sterilizing staff who were not exposed during pregnancy (15.1 percent versus 4.6 percent, adjusted rates). The controls had an intermediate adjusted spontaneous abortion rate of 10.5.

The effects of exposure to different sterilizing agents on the frequency of spontaneous abortion were analyzed. Although the number of pregnancies in exposed women was relatively small for some of the exposure categories when compared with the number of pregnancies in non-exposed women, significant increases in the spontaneous abortion rates were observed for the following categories: (1) Pregnancies among women exposed to EtO with and without other agents, (2) pregnancies among women exposed to EtO or glutaraldehyde, and (3) pregnancies among women exposed to EtO alone. (In the report, the category "ethylene oxide (with glutaraldehyde)" should read "ethylene oxide (or glutaraldehyde)". Correction explained in Ex. 6–25). No significant increases in adjusted spontaneous abortion rates were found among women exposed to glutaraldehyde (with and without other agents), formaldehyde (with and without other agents), or glutaraldehyde alone.

An examination of the trend in spontaneous abortion rates covering the period 1950–1981 revealed a significant increase in those rates for all pregnancies in the later decades. This result was interpreted by Hemminki and coworkers as being due perhaps to aging of the population or a potential bias resulting from the failure of women to recall spontaneous abortions that occurred 20–30 years ago. There appeared to be a slightly lower adjusted rate of spontaneous abortion among non-exposed sterilizer operators than among controls for each decade covered by the study. This difference was not explained by the authors, but may have been related to employment status, as many of the unexposed sterilizer operators were not employed during unexposed pregnancies, whereas many of the nurse auxiliaries (controls) were employed during pregnancies.

When the authors examined data on the pregnancies of the sterilizing staff and controls from the Finnish hospital discharge register, covering the period 1973–1979, they found a significantly higher rate of spontaneous abortion among EtO-exposed staff (22.6 percent) compared with the rate for controls (9.2 percent). The spontaneous abortion rate for non-exposed sterilizing staff was 9.9 percent. The ratio of the number of spontaneous abortions to the number of live births was also significantly higher among EtO-exposed staff (33.3 percent) compared with controls (11.8 percent). Since spontaneous abortion is known to affect the outcome of future pregnancies, data on one EtO-exposed woman and two control-group women who had had two or more spontaneous abortions were eliminated from the analysis (Ex. 6–25). After this adjustment, the spontaneous abortion rates were 17.2 percent for EtO-exposed women as compared with 8.2 percent for controls. The findings from the hospital register thus appear to corroborate the findings based on the postal questionnaire and suggest that a prior history of spontaneous abortion does not significantly affect the trend seen in the total register data set.

Exposures to EtO between 1976–1981 in Finnish hospitals were estimated to be 0.1 to 0.5 ppm TWA, with the highest recorded peak reaching 250 ppm. Exposure levels of other sterilizing agents were not reported.

The investigators had no measurements of exposure concentrations before 1976, but stated that no major changes in technology or instrumentation in these sterilizing units have taken place since 1964 when the present EtO gas mixture was introduced. However, on the basis of information obtained from supervisors of sterilizing units, they believed exposures to EtO may have been higher in the past because less information was available on EtO's harmful effects, and less caution, was taken in its use.

In response to comments on the appropriateness of the comparison group and the need for further age adjustment, Hemminki et al. performed an additional analysis of the interview data (Ex. 29), comparing only those pregnancies that began during hospital employment for both women exposed to sterilizing agents and unexposed nursing auxiliaries from the same hospitals. Data were age-adjusted by 5 year age groups. The rate of spontaneous abortion was found to be highest for pregnancies with exposure only to EtO and was significantly different (p less than 0.05) from the rate for controls working during pregnancy. In addition, Hemminki et al. found, using hospital discharge data, that the rate of spontaneous abortion for controls working in hospitals during pregnancy was not significantly different from the rate for all controls. These authors reiterated that in various tabulations, exposure to EtO, rather than to other agents, correlated with the highest rate

of spontaneous abortions. Hemminki et al. further addressed criticisms regarding potential sources of bias and concluded that none of these could explain the consistent increases in rate of spontaneous abortion with exposure to EtO.

Several concerns over possible limitations of the Hemminki study surfaced during the hearings and comment period. Much of this testimony was the result of a visit to Dr. Hemminki by representatives of the EOIC and HIMA, which was conducted to examine supplemental data (Exs. 63, 64). Concerns expressed by commenters fall generally into three categories. These include: (1) The possibility that participants in the study knew of its purpose, resulting in biased selection of cohort members and reporting of pregnancy outcomes, (2) inadequate control of confounding factors relevant to the induction of spontaneous abortion, and (3) the lack of industrial hygiene data that would relate exposure levels and durations to spontaneous abortion rates. Testimony and comments received by OSHA on these issues are summarized in the following sections.

Control of Potential Recall and Reporting Biases.

Several commenters (Exs. 11–74, 11–135, 61, 67, 141–E, 141–E–2, 141–E–3, 152, 153, Tr. 622, Tr. 689) expressed the opinion that the methods used by Hemminki and coworkers could have resulted in a biased selection of study participants as well as a biased recall of pregnancy outcomes. On the recall bias issue, Susan Austin of the EOIC commented in a letter to the editor of the British Medical Journal:

> If the questionnaire stated that the study was investigating sterilization gases, this could have introduced a stimulus for differential reporting of adverse outcomes between controls and sterilizers and * * * between the sterilizers' exposed and unexposed pregnancies. The direction of the bias * * * would be consistent with the observed excess of spontaneous abortions among exposed pregnancies. Although the hospital discharge data suggest that the observed elevation in abortion rates may be real, the data shown in Table 3 (of the Hemminki study) were crude, rather than adjusted rates and were based on smaller numbers of pregnancies than encompassed by the questionnaire. (Ex. 62, Attachment II.)

This comment was reiterated by the EOIC in its written assessment of the Hemminki study (Ex. 63).

Similarly, Otto Wong and Robert Morgan of Environmental Health Associates stated in a report to the EOIC that:

> Once the woman received a questionnaire, she might be more likely to report reproductive failure if she understood the purpose of the study * * * and that she was exposed (Ex. 67).

However, two other commenters suggested in letters to Austin that the extent of any recall bias is minimal. Jennie Kline of Columbia University pointed out that, because the data from the hospital discharge register are consistent with the questionnaire data, "* * * it seems unlikely that the increased risk of abortion among pregnancies exposed to ethylene oxide compared to those unexposed is owed in any large part to differences in recall" (Ex. 61). Bernard Pasternack of New York University School of Medicine stated that:

> (After adjustment for decade of pregnancy) the time-dependent recall effect appeared to be roughly equivalent for exposed sterilizers, unexposed sterilizers, and controls * * *. A selective recall bias may have existed to some extent as many of the non-exposed sterilizers were unemployed during their first pregnancies. The degree to which employment status affected recall or awareness of miscarriages would determine the importance of this factor. (Ex. 141E–2).

In response to the criticism that bias may have been present because many nonexposed sterilizers were unemployed at the time of their first pregnancies, Hemminki conducted a new analysis of the questionnaire data, including only those pregnancies that had occurred during hospital employment (Ex. 29). Spontaneous abortion rates, adjusted by 5-year age groups, were 20.4 percent among women exposed to EtO alone, as compared with 11.3 percent among non-exposed hospital workers ($p < 0.05$).

From this analysis, Hemminki concluded, "* * * we are unaware of any such bias that could explain why exposure to ethylene oxide rather than to glutaraldehyde or formaldehyde would correlate with an increased rate of spontaneous abortions * * *" (Ex. 29).

On the issue of the potential for selection bias among supervising nurses who were requested to identify control and sterilizer cohort members, Susan Austin commented as follows:

> [Dr. Hemminki] states that the covering letter to supervising nurses specified that the control group was to be selected preferably, from one clinic, which would inhibit them from selecting women based on a knowledge of their reproductive history. (Tr. page 725, lines 12–13). The actual wording of the questionnaire does not bear this out. It states: "For the control group, we wish you to choose assistant nurses who do not work in equipment maintenance, X-ray or operating rooms. There should be the same number of assistant nurses as there are of the individuals studied. This group could include, for example, all assistant nurses who work in a certain department. We hope that you will decide in advance (without consulting with the individuals in question) which assistant nurses are chosen for the study." These instructions permit a great deal of flexibility on the part of the supervisory nurses on the actual selection method which they could use. It does *not* specify how controls *must* be selected and therefore introduces a strong possibility that selection bias may have occurred. Dr. Hemminki further asserts that this letter to the supervisory nurses "did not give any specific information to the supervising nurses of the exact idea of the study" (Tr. page 727, lines 9–13). However, the letter does in fact explain very clearly the specific purpose of the study. To quote: "The purpose of the second part of our study is to concentrate on the possible harmful effects connected with the use of ethylene-oxide, glutaraldehyde and formaldehyde. For this, we are asking for information directly from those individuals who use these substances and from their control group." Therefore, bias could have been introduced as a result of this knowledge (Ex. 141–E).

In responding to this criticism, Hemminki testified as follows:

> * * * I should like to emphasize that the hospitals in Finland are fairly large. There are hundreds of nursing staff for each supervising nurse * * * It requires very much imagination to think [that] the supervising nurses would be aware of the pregnancies of all their staff * * * These matters are not openly discussed in Finland * * *. So, on this point I would say that * * * chances for selection * * * would be very minimal (Tr. 726).

Pasternack agreed with this assessment, commenting that:

> The authors rightfully pointed out the fact that (selection bias) was not likely to be a factor. As mentioned earlier, each supervisor had an excess of 100 employees, making contacts infrequent. Besides, it is apparently a custom in Finland not to openly discuss matters pertaining to pregnancies and miscarriages at work (as per Dr. Hemminki's testimony). In addition, the exposing agent information was obtained six months prior to the questionnaire distribution (Ex. 141E–2).

Kline commented that:

> Although the introductory paragraph to the questionnaire indicates a focus on the effects of exposure to instrument caretaking gases on fertility and health of offspring, response rates were similar and high for the sterilizing workers and comparison workers. We cannot, however, exclude the possibility that the reproductive experiences of these women who declined to complete the questionnaire differed for sterilizing workers and comparison workers. The somewhat greater proportion of women who had been pregnant at least once among the sterilizing workers who responded to the questionnaire than among the comparison workers who

responded is consistent with this possibility. With the data at hand, it is unclear whether or not response rates varied with exposure status (including sterilizing agent) and reproductive experiences for women who had been pregnant at least once (Ex. 61).

OSHA agrees with the comments and testimony of Hemminki, Pasternack, and Kline. Although, because of the wording of the letters to supervising nurses and of the questionnaires, there was a potential for recall and selection biases in the Hemminki study, it is unlikely that these biases significantly affected the results. This is suggested by the results obtained by Hemminki and coworkers from the hospital discharge register, which is relatively free of such biases, indicating that exposure to EtO is associated with an increased risk of spontaneous abortion. In addition, if significant recall and selection biases were present, one would expect that they would be reflected similarly in the adjusted spontaneous abortion rates among pregnant women exposed to glutaraldehyde or formaldelhyde. This is, in fact, contrary to the findings of Hemminki and coworkers.

Control of Factors Related to Spontaneous Abortion

Several commenters (Exs. 11–74, 11–135, 63, 64, 65, 67, 141C, 141E–2, 152, 153) expressed the opinion that there was inadequate control of confounding factors in the study by Hemminki and coworkers. Confounding factors that were discussed include age, prior reproductive history, and smoking and drinking habits. For example, the EOIC assessment of the Hemminki study reported as follows:

Although the rates reported in Tables I and II (of the Hemminki report) are adjusted for a number of variables including age, parity, year (or decade) of pregnancy, coffee drinking, smoking status and alcohol consumption, the adjusted rates for the two non-exposed groups continue to reflect considerable disparity. This could suggest that the adjustment procedure used was inadequate. The age control is of questionable usefulness given that 80 to 90 percent of all pregnancies fell within the 20 to 34 years of age group, and within this category, no further age adjustment was made. No control for employment status or history of previous spontaneous abortion was included and controls for alcohol, smoking and drinking habits related to a woman's "current" habits and not to her habits at the start of each pregnancy. These considerations suggests that disparities in the distribution of risk factors between groups may not have been completely corrected. (Another) concern is that this study focuses on "pregnancies" rather than "women" * * *. The analyses presented in the study require the assumption that the pregnancies are independent observations, which they are not (Ex. 63).

On the issue of appropriate control of the effects of age on reproductive outcome, Susan Austin added for the EOIC that:

The differential age distribution between the exposed and unexposed pregnancies of the sterilization workers is reported to have been "rather small" by Dr. Hemminki (Tr. page 767, lines 8–13). Table A–6 of the Trip Report (OSHA Ex. 64) contradicts this assertion * * *. When ethylene oxide exposed pregnancies are compared to the non-exposed sterilant workers pregnancies, the difference in maternal ages is quite marked. Sixty-four percent (64.5%) of the EtO exposed pregnancies were [among women] greater than 30 years of age compared with only nineteen percent (19%) of the non-exposed pregnancies. Such a large difference in maternal age distributions calls into question the adequacy of the method used to control [f]or age in this study (Ex. 141E).

The disparity between spontaneous abortion rates of non-exposed women and controls was also cited by the EOIC (Ex. 63) as evidence of improper control of age and other confounding factors. On this point, Kline responded as follows:

The Ethylene Oxide Industry Council critique points out that the frequency of abortions among the unexposed pregnancies of the sterilizing workers is lower than that among the pregnancies of the control group. Several possible sources for this disparity are suggested including insufficient analytic control of year of pregnancy, maternal age and parity, and differences in employment status (working/not working) during pregnancy. With regard to the conjecture that there was insufficient analytic control, the data at hand do not permit a full evaluation. I think it unlikely that differences in the distributions of pregnancies over time explain the disparity between unexposed and control pregnancies because Figure 1 (of the Hemminki study) suggests that the disparity has been relatively constant over time * * *. With respect to maternal age, in most populations the rates of spontaneous abortion between ages 21 and 34 years are fairly constant, increasing by about 25% during the interval. Thus it seems unlikely that a disparity between the unexposed pregnancies of sterilizing workers and controls is due to inadequate analytic control of maternal age. Parity was analyzed as a continuous variable, and *thus any disparities between unexposed pregnancies to sterilizers and controls that might exist have probably been controlled for adequately. We should note that these three factors undoubtedly vary together and so that even if there was inadequate control of all, the effects would be unlikely to be additive (emphasis added) (Ex. 61).*

Criticism of inadequate control for lifestyle and prior reproductive or medical history focused on the fact that information only on current health was sought on the questionnaire. As discussed by Austin, "* * * the factors smoking, drinking and coffee consumption, could not have been well controlled as they reflected the womans' [sic] habits at the time she answered the questionnaire—not at the time of her pregnancy" (Ex. 141E).

The lack of control for prior medical history was discussed by Shirley R. Andersen of H. W. Andersen Products, Inc.:

The Finnish questionnaire failed to collect crucial information concerning maternal health. Examination of the etiology of spontaneous abortions emphasizes the importance of this factor * * * maternal chronic diseases which affect the outcome of pregnancy (e.g., hypertension, diabetes, heart or renal disease), drug therapy or use of narcotics, and family history of illness * * * intercurrent illness during pregnancy (e.g., toxoplasmosis, herpes simplex or mycoplasma infections) and blood (ABO) incompatibilities. No sections of the Finnish questionnaire addressed these factors, which exert more influence than use of tobacco or alcohol, on the outcome of pregnancy (Ex. 11–135).

OSHA agrees that these factors may influence the outcome of pregnancy. However, many of the illnesses listed by Dr. Andersen are associated with late pre-natal and post-natal adverse effects such as low birth weight and neonatal morbidity and mortality.

Their influence on the rate of spontaneous abortion is not well defined. Second, the purpose of including comparison groups in the study is to control, via the design of the study, for other factors which might influence pregnancy outcome, and which could be assumed to be distributed randomly among EtO-exposed and unexposed groups of women.

A comment by Austin was typical of comments received on the issue of inadequate control for prior reproductive history:

Dr. Hemminki argued that multiple spontaneous abortions were not confounding factors in his study. (Tr. page 759, lines 107). However, it is possible that the distribution of women who had multiple spontaneous abortions could have differed sufficiently between the groups being compared to have produced artificial differences in rates. Dr. Hemminki produced data which suggested that this was not a problem with the subset of pregnancies hospitalized but no such data have been made available with respect to the much larger set of self-reported pregnancies. Since the risk of spontaneous abortion nearly doubles after a woman's first spontaneous abortion, failure to consider this problem in the analysis must be considered a great weakness of this study (Ex. 141E).

As pointed out by Kline, prior reproductive history and the issue of whether women or pregnancies are the proper unit of analysis are difficult

problems to resolve in conducting human studies like that of Hemminki and coworkers. Kline states:

> As the Ethylene Oxide Industry Council critique notes, the unit of analysis was pregnancies, not women. One assumption of maximum likelihood logistic regression is that observations are independent. This assumption was violated, and it is unclear what effects, if any, this might have on the results of the analysis. Studies of spontaneous abortions pose a particularly difficult problem since not only are characteristics of the woman, such as maternal age, related to abortion risk, but also characteristics of successive pregnancies; that is, women with one spontaneous abortion are at increased risk of a subsequent abortion. There is not even a modest experience in the literature to draw on which compares analyses of pregnancies versus analyses of women (Ex. 61).

In spite of these analytical problems, many commenters agreed that the results of the Hemminki study, taken in combination with animal data that demonstrate the fetotoxic potential of EtO, suggest that occupational exposure to EtO results in an increased risk of spontaneous abortion. For example, Kline commented as follows:

> In sum, I consider that the data presented by Hemminki et al. (1982) raise the possibility that working during pregnancy in a hospital job which involves exposure to ethylene oxide may increase the risk of spontaneous abortion. In spite of the several questions which we have discussed, the data show a good deal of internal consistency. Similar results were obtained from an analysis based on questionnaire data and one which was based on recent pregnancies ascertained in the hospital discharge data. The association was similar for registered nurses and for full-time instrument caretakers (data provided by Dr. Hemminki). Given that it appears that the increased risk of abortion related to work with ethylene oxide is greater than that related to work with glutaraldehyde, these data raise the possibility that the association is owed to exposure to the agent, ethylene oxide, rather than to employment during pregnancy (Ex. 61).

Similarly, Pasternack commented that:

> In spite of several problems in the study design, it is possible that EtO was responsible for an excess of spontaneous abortions (especially if supported by animal studies * * *). The fact that two other sterilizing agents did not result in a statistically significant excess of spontaneous abortions further supports this finding * * * (Ex. 141E–2).

After reviewing the Hemminki report NIOSH concluded that Hemminki's findings cannot be discounted, even though the study was not as definitive as desired. (Ex. 40).

The EOIC (Ex. 47) reported an investigation by Yakubova *et al.*, who examined the effects of EtO exposure in female production workers and reported an increased incidence of gynecological disorders among those with EtO exposure. Two hundred eighty-two exposed workers (equipment operators and laboratory assistants) were compared to plant administrators (259) in the same factory and 100 other nonexposed workers from other institutions. The level of EtO exposure was said not to have exceeded 1 mg/m³ (approximately 0.5 ppm). The increased incidence of gynecological disorders (described as diseases of the cervix and uterus) was reported to be highest among equipment workers and was attributed to exposure to higher concentrations of EtO for longer periods during a working day than was the case for the laboratory assistants. Other effects on pregnancy, such as threat of miscarriage and toxemia, were reported to have occurred in equipment operators and laboratory assistants at a higher frequency than in the nonexposed groups. Because of insufficient information on either the study design or the methods of assessing exposure or outcome, and an inadequate description of the study groups, this study is very difficult to evaluate and can only serve as suggestive supporting evidence for the findings of Hemminki et al. that EtO exerts an adverse effect on reproduction in females.

Although several commenters (Ex. 47) have characterized the reported findings on reproductive effects as attributable to a variety of other chemicals, the record evidence, especially that pertaining to the work of Hemminki and his co-investigators, suggests that reproductive disturbances do occur as a result of exposure to EtO. Moreover, these findings are supported by extensive evidence from experimental studies conducted at several institutions (Exs. 2–23, 2–36, 6–10).

The proper interpretation of reproductive animal data is a subject of debate among toxicologists. Little information is available as to the appropriateness of using animal reproduction data as a basis for the quantitative assessment of risk in humans. OSHA notes, however, that the excess adverse reproductive responses shown by the Bushy Run reproduction study are consistent with the excess in spontaneous abortions demonstrated by the Hemminki data.

Although it is possible to find methodological shortcomings in any one of these reproductive investigations, it is prudent to consider these findings as a body of evidence that provides additional support for the Agency's decision to take regulatory action on EtO. OSHA concludes that there is sufficient qualitative evidence in the rulemaking record to indicate that EtO poses a reproductive hazard for both men and women.

D. Other Health Effects

The ACGIH TLV of 50 ppm was established in 1968 on the basis of the toxic effects of EtO encountered in industry resulting from cutaneous contact with aqueous solutions of the compound (Ex. 6–3). These solutions cause primary irritation and sensitization of the skin. Chronic intoxication of humans by EtO had not been reported prior to 1968.

The ACGIH's 1966 documentation did discuss several experimental studies involving laboratory animals that showed that exposure to high concentrations of EtO vapor (204–841 ppm) caused irritation of the respiratory passages, growth depression, and injury to various organs. Repeated exposures for 6 or 7 months (at 113 or 49 ppm) in rats caused no effects except for a growth depression and a moderate increase in lung weight at 113 ppm. The 1966 documentation also noted that repeated exposure of dogs, rats, and mice at 100 ppm for six months caused no significant effects except for slight anemia in the dogs.

In the preamble to the proposal, OSHA requested additional information on all health effects resulting from exposure to ethylene oxide, including cancer. Several participants in the rulemaking submitted information and testimony about the neurotoxic and sensitization effects which can result from EtO exposure. Considerable evidence in the rulemaking record suggests that reducing the 8-hour TWA to 1 ppm will not only reduce the risk of EtO-related cancer but will also decrease the risk that workers will experience these unpleasant and potentially dangerous effects of exposure. Several of these effects have been observed in both animals and humans and will be discussed below.

Several animal species have shown the effects of peripheral neurotoxicity due to EtO exposure. The EOIC noted that:

> This (effect) takes the form of a paralysis and subsequent atrophy of the muscles of the hind limbs, with an associated decrease in pain perception and reflexes, also in the hind limbs. In those studies where post-exposure observations have been sufficiently prolonged, it has been observed that there is a slow but apparently full recovery within 3 to 6 months of the cessation of exposure to EO vapor. The species in which this peripheral neurotoxic effect has been described are rat, mouse, rabbit, monkey, dog and cat (Ex. 47).

A discussion of the neurotoxic effects seen in the EtO-exposed primates used in the NIOSH inhalation study (dose groups of 50 and 100 ppm) was described in the preamble to OSHA's proposed standard as follows:

> Two of the monkeys in each exposure group were sacrificed for neuropathological evaluation. The only significant finding was an increase of axonal dystrophy in the nucleolus [SIC, nucleus] gracilis of the experimental monkey as compared to the two controls and demyelination of portions of the gracile tract in one of the monkeys in each of the low and high dose groups (Ex. 6–6).

In its "Hazard Assessment", the EOIC also described the loss of reflex responses and neuromuscular function in mice exposed to EtO at 100 and 50 ppm (Ex. 47). The authors report that there were no effects at 10 ppm EtO and that histomorphological changes were not observed at any level. OSHA cannot evaluate the significance of these results because the detailed report of these findings is not available to the Agency at this time. OSHA is able to point out, however, that based on available evidence, the threshold for effects in mice, if one exists, is below 50 ppm, the level of the current OSHA PEL. Furthermore, the lack of neuromorphological changes in rodents at comparable concentrations suggests that primates may be more sensitive to neurotoxicity induced by EtO.

The EOIC further noted that (Ex. 47):

> * * * The lowest concentrations of EO likely to produce clinical evidence of hind-limb paralysis lie above 200 ppm, with no-effect concentrations having been demonstrated in the range of 100 to 115 ppm. It follows that the threshold concentration for the induction of paralytic neurotoxic effects for most species is in the range 100–200 ppm. This accords with the absence of clinical signs of neurotoxicity in Fischer 344 rats exposed to EO vapor at concentrations of 10, 33 and 100 ppm for 6 hours a day, 5 days a week for up to 2 years (Snellings *et al.*, 1981). Additionally, primates exposed to 50 or 100 ppm of EO for 6 hours a day, 5 days a week for (a) total of 24 months showed no clinical evidence of neurotoxicity, * * *. However, demyelination was seen in the distal portion of the fasciculus gracilis in 1 of 2 monkeys of both the high- and low-dose EO groups, and the presence of axonal dystrophy was also noted in the nucleus gracilis (Sprinz *et al.*, 1982).

However, when the early signs of neurotoxicity are considered, the no-effect level in animals is lower than that reported for obvious neurotoxic effects such as peripheral paralysis. Mice repeatedly exposed to EtO vapor at various concentrations in the range 10–236 ppm showed a dose-related trend in their responses on several neurobehavioral measures included in the Irwin neurobehavioral screen (Ex. 47). The EOIC (Ex. 47) reported that the threshold for induction of borderline neurotoxic effects, such as abnormal gait and locomotor activity, was 48 ppm, and the no-effect level was 10 ppm.

In humans, the most frequently cited effects of acute EtO overexposure include the following reversible effects: Eye and respiratory tract irritation, lassitude, nausea, vomiting, diarrhea, vertigo, headache, loss of consciousness, convulsions, and occasionally, disturbances of behavior (Ex. 47). Many of these effects appear to be neurotoxic in origin. For example, the EOIC (Ex. 47) noted the fact that nausea and vomiting occur following percutaneous absorption as well as inhalation of EtO. It suggested that these effects may be neuropathologic in origin, because substantial relief is obtained if anti-emetics are given intravenously. Dizziness, coma and convulsions are often also ascribed to a central depressant effect because they may occur even when lung function is not compromised.

The EOIC further discussed the matter of neuropathology when it reported that:

> The first credible clinical description of peripheral polyneuropathy occurring in man as a result of occupational overexposure to ethylene oxide (EO) vapor was not published until 1979 (Gross *et al.*, 1979). However, it had been appreciated since the 1930's that EO is capable of producing centrally mediated pharmacologic and behavioral effects. Now the number of published observations on exposed animals or clinical cases of overexposure to EO suffices to confirm that, under appropriate exposure conditions, inhalation of EO vapor can produce pharmacologic and toxic effects on the nervous system that present as sensorimotor central or peripheral signs and symptoms which may be accompanied by behavioral changes. (Ex. 47)

Although the effects of repeated exposure to EtO were reported in the literature as early as 1937, the first clear clinical description of peripheral neuropathy caused by such exposure was provided by Gross and his co-workers (1979), who examined four workers employed in a sterilizing facility that had a leaking sterilizing unit (Ex. 47). The EOIC reported that:

> * * * There was one case of acute encephalopathy with normal nerve conduction studies, two cases having both clinical and neurophysiological evidence of peripheral neuropathy affecting the upper and lower limbs, and one asymptomatic individual who had evidence of sensorimotor polyneuropathy on electrophysiological examination. The amplitude of muscle action potentials, moderate decrease in conduction velocity, and signs of denervation were compatible with an axonal degenerative neuropathy. In the symptomatic cases there was marked subjective improvement within two weeks of terminating EO exposure, but over a period of 10 months there was improvement in conduction studies in only one of the three individuals originally found to have abnormalities. The concentrations of EO to which the workers were exposed are unknown but all intermittently smelled the vapor, indicating an exposure on such occasions to at least 700 ppm, the mean detection odor concentration (Jacobson et al., 1956).

Two recent case studies of sterilizer workers exposed to EtO have come to OSHA's attention (Finelli et al., 1983 and Kuzuhara et al., 1983) (Ex. 47). Kuzuhara et al. found axonal degeneration with changes in the myelin sheath; unmyelinated nerves were also involved in the degenerative process; and muscle tissue showed typical denervation atrophy. The morphological degeneration was accompanied by electrophysiologic changes which implied axonal neuropathy. EOIC cites the authors as commenting that:

> Our experiences indicate that chronic repeated exposure to ethylene oxide can cause sensorimotor polyneuropathy of axonal type, even if each exposure is very brief. To eliminate the hazards, ethylene oxide levels should be monitored strictly, and a safety limit for peak exposure should be established. The ventilation system should efficiently reduce the ethylene oxide gas that diffuses from the sterilizer when the door is open in loading and unloading (Ex. 47).

The EOIC reported that Finelli et al. (1983) described similar peripheral nerve conduction abnormalities (Ex. 47). These authors noted that the changes detected by electromyogram as well as the signs and symptoms of neurological damage to be reversible, as NIOSH has previously noted. In commenting on the current OSHA standard, Finelli et al. (1983) stated:

> As in other toxic neuropathies, individual vulnerability to EtO is suggested by the involvement of only some exposed workers. The US standard for occupational exposure to EtO is 50 ppm for an eight-hour time weighted average. However, the concentration to which humans may be exposed safely is uncertain. In addition to measuring the concentration of EtO, it is suggested that when symptomatic cases of EtO-induced polyneuropathy are identified, fellow workers should be examined clinically and electrodiagnostically to determine the incidence of asymptomatic neuropathy in that particular facility. This may help to identify susceptible persons for whom removal from exposure to EtO would be advisable.

The lowest concentrations of EtO that have been reported to produce the early symptoms of neurotoxicity in humans were observed by Garry and colleagues

(Ex. 6–14), who conducted a study of 12 exposed employees working in a hospital sterilization area. The maximum EtO concentration to which these workers were exposed was stated to be 36 ppm. The investigators reported incoordination in 2 of the 12 exposed employees, dizziness in 3, weakness in 4, nausea and difficulty of speech in 5, headaches in 6, and diarrhea and conjunctival irritation in 7. None of the persons who served as controls in this study reported any of these symptoms (Ex. 6–14). However, there is little quantitative documentation concerning the concentrations of EtO that cause these effects in humans. The EOIC (Ex. 47) concluded that, "Since sensory irritant effects are often present, and because it has been stated that EO (in these cases) could be smelled, the signs and symptoms noted above probably only occur in man at EO concentrations of several hundred ppm."

During the informal public hearing, several witnesses described neurotoxic effects caused by repeated exposure to EtO at concentrations below 50 ppm. June McMahon of the Service Employees International Union, AFL–CIO, reported that several workers in Local 715 complained of tingling sensations in their extremities, headaches, and skin lesions, although air samples showed that exposure levels were below the 50 ppm limit prescribed by Table Z–1 (Tr. 1247). One of these workers was diagnosed as having neurological problems of unknown cause (Tr. 1247).

Eric Frumin of the Amalgamated Clothing and Textile Workers Union, AFL–CIO, testified that at Johnson & Johnson Company facilities, where an internal standard of 1 ppm as an 8-hour TWA has generally been met, there are still a substantial number of EtO-exposed workers who complain about eye irritation, dizziness, nausea, extreme fatigue, disorientation, and, in some cases, rashes (Tr. 1307–1308). Although the company does not believe that EtO is the cause of these complaints, the workers are convinced that they are caused by EtO (Tr. 1307).

Peter A. Roy, a Certified Industrial Hygienist from the University of Minnesota, testified about two cases of EtO-related peripheral neuropathy in his experience, one of which also resulted in permanent lung damage (Tr. 268). Roy (Ex. 36) and others also submitted information suggesting that EtO exposure may cause occupational EtO sensitizations in susceptible individuals. He noted that in one facility there were medically verified cases of damage to the sense of smell, which was attributed to nerve damage in the nasal epithelium.

Roy also testified (Tr. 269) about several cases of sensitization personally known to him that occurred as a result of relatively constant occupational exposures of 10–15 ppm as 8-hour TWA's in areas where sterilized products were being stored. According to Roy (Tr. 270–271), "Some of the people who developed the sensitizations * * * indicate that * * * (these) sensitization(s) kept getting worse and even levels similar to the existing or proposed PEL could still elicit the (sensitization) response."

In his written testimony, Roy (Ex 36) indicated that in numerous cases:

> Sensitizations were severe enough to require the affected employees to avoid all subsequent contact with ethylkene oxide. These health effects have resulted in workers compensation claims, difficulties in finding new employment, disruption of lifestyles, and apparent cross-sensitization susceptibilities in individuals that were so sensitive that other irritant or sensitizing chemicals would also have an effect.

According to Roy (Ex. 36), EtO sensitization symptoms

> * * *Included pulmonary sensitization, similar to asthma, and the development of skin rashes and facial swelling similar to "hives." This skin reaction to airborne EtO is, I presume, a systemic reaction to EtO exposure, and is not likely a direct skin contact phenomenon [sic]. My original reports of apparent EtO sensitizations were questioned by some, but I submit that if one analyzes the chemical activity of ethylene oxide, and its ready ability to alkylate other organic chemicals, including body proteins, then an immune allergic response via the "Hapten" mechanism, similar to that of many other small highly reactive molecules, is not hard to envision for EtO. In my opinion the occupational allergic illnesses, irritations I have seen (occur) at levels below the existing PEL. (Tr. 214)

Some similar reactions resulting from exposure to EtO were summarized by the EOIC (Ex. 47):

> For humans exposed to ethylene oxide vapor (EO), sensory warning signs, such as odor, cannot be detected until high concentrations of EO occur. Continued exposure results in olfactory fatigue (Cawse *et al.*, 1980). Other sensory warning signs, including irritation of the upper respiratory system, have been reported to be undetectable in humans accidentally exposed to high concentrations of EO (Thiess, 1963).
>
> Some of the problems encountered in human exposure to EO have resulted from cutaneous contact. Not only is EO a potent skin irritant (Taylor, 1977), but it has been reported in a study with humans, under laboratory research conditions, to result in delayed hypersensitivity following dermal exposure (Sexton and Henson, 1950). However, the authors of this report stated that these types of allergic reactions have not been observed in the workplace with employees who have had frequent contact with EO over a period of many years. Other reports of human signs from acute exposure to high concentrations of EO have included observations of diarrhea, delayed nausea, and vomiting (Thiess, 1963).

On the basis of the above evidence, OSHA believes that adverse neurotoxic and sensitization effects are occurring as a result of exposure conditions permitted by OSHA's current 50-ppm EtO standard. Regarding the neurologic effects, it is likely that these effects occur from chronic exposures at EtO levels lower than 50 ppm. Although current information does not permit the no-effect exposure levels for EtO neurotoxicity and sensitization to be determined with certainty, the record as a whole clearly suggests that lowering the TWA will significantly reduce the risk that employees exposed to EtO will experience these effects.

E. Conclusions

OSHA's determination that EtO is a potential occupational carcinogen was based primarily on the positive findings of the chronic inhalation studies performed at the Bushy Run Research Center and for NIOSH. This is supported by the strongly suggestive epidemiological findings of Morgan et al. and Hogstedt et al. Many positive effects from *in vitro* mutagenic investigations establish the genotoxic mechanism of cancer induction. The work of Calleman et al. suggests that EtO may elicit this action by alkylation of DNA.

The work of Pero et al. and the data submitted by Johnson & Johnson establish that EtO exposure at relatively low levels produces effects in man related to its probable carcinogenic mechanism.

The recent report of Hemminki et al. suggests that EtO exposure may cause an increase in spontaneous abortions. The fetotoxic hazard of EtO with regard to exposure of the female is supported by positive findings in the animal studies performed by Hackett et al., Jones-Price et al., and La Borde and Kimmel. This type of effect could be induced by changes in the DNA and which are known to be produced by many alkylating agents such as EtO. OSHA feels that the adverse spermatogenic effects of EtO on the primates alone, which are consistent with EtO's effects on DNA, are suggestive of an effect on the male reproductive capacity. This conclusion is supported by the one generation study in rats conducted at the Bushy Run

Research Center. Furthermore, the establishment of the dominant lethal effect by Embree et al., heritable translocations by Generoso et al., and alteration of DNA in testes of experimental animals establish the hazard of heritable changes following exposure of the male.

In summary, findings in humans and experimental animals exposed to EtO are indicative of damage to the genetic material (DNA). These include hemoglobin alkylation, unscheduled DNA synthesis, sister chromatid exchange, chromosomal aberrations, and functional sperm abnormalities. In addition, evidence from *in vivo* studies shows that in animals and man, DNA damage may occur in the form of increased incidence of cancer, mutation in offspring, and spontaneous abortions following exposure to EtO. Other adverse effects from EtO exposure such as neurotoxicity and sensitization, and acute effects such as skin lesions, eye irritation, dizziness and nausea have also been observed.

V. Quantitative Risk Assessment

As discussed in the proposal, OSHA's approach to risk assessment is guided by recent Supreme Court interpretations of the OSH Act, namely decisions involving benzene (*Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980)); and cotton dust (*American Textile Manufacturers Institute* v. *Donovan*, 452 U.S. 490 (1981)). The Court has ruled that OSHA may not promulgate a standard unless it has determined, based on substantial evidence in the record considered as a whole, that there is a significant risk of health impairment at existing permissible exposure levels and that issuance of a new standard is necessary to achieve a significant reduction in that risk. Although in the cotton dust case the Court rejected the use of cost-benefit analysis in setting OSHA standards, it reaffirmed its earlier holding in the benzene case that a risk assessment relating to worker health is not only appropriate, but is, in fact, required in order to identify a significant worker health risk and to determine whether a proposed standard will achieve a reduction in that risk. Although the Court did not require OSHA to perform a quantitative risk assessment in every case, the Court implied, and OSHA as a policy matter agrees, that such assessments should be put in quantitative terms to the extent possible (48 FR 17292).

OSHA has presented its views on risk assessment in detail in several proceedings (48 FR 1867, 48 FR 45956, 48 FR 51124), as well as in the rulemaking record for EtO, including the preamble to the proposed standard and the preliminary quantitative risk assessment for ethylene oxide (48 FR 17292, Ex. 6–18). A summary of OSHA's approach to quantitative risk assessment is offered below as introduction.

Several approaches have been used to estimate cancer risk from exposure to toxic agents. A standard approach uses mathematical models to describe the relationship between dose (such as airborne concentration) and response (e.g., cancer). Generally, curves are fit to the data points observed at different exposure levels and these curves are used to predict the risk that would occur at exposure levels which were not observed. The shape of these curves is varied, ranging from linear extrapolations from the observed points through the origin (zero exposure and zero risk) to curves which may deviate far from linearity at the very highest and very lowest doses. The use of a particular model or curve can be justified in part by a statistical measure of "fit" to available data points, that is, a statistical test which measures how closely a predicted dose-response curve is to the actual observed data.

In all cases it is assumed that the mathematical curves are reflective of biological processes that control the biological fate and action of the toxic compound. To date, many of these factors have not been quantitatively linked to the mathematical models. Biological factors which may play important roles in the risk assessment are: (1) Dose of the material at the sensitive tissue; (2) the sensitive tissue(s) itself; (3) the nature of the response(s); (4) rates and sites of biotransformation; (5) toxicity of metabolites; (6) chronicity of the compound (cumulative nature of the material or its actions); (7) pharmacokinetic distribution of the material (especially effects of dose on the distribution); (8) the effect of biological variables such as age, sex, species and strain of test animal; (9) and the manner and method of dosing the test animals (48 FR 45969).

It is clear that all of these factors cannot be easily incorporated into a single mathematical model. Therefore, careful selection of the data for evaluation in the model is important to the risk assessment in order to make use of as much information as possible. In cases where several data sets are available, such as the case of EtO, the results of different approaches applied to different data sets should provide a guide as to the optimal approach to risk assessment, and they should compare logically with each other.

Several different mathematical models are discussed in this preamble. Most of the models are based on theories of cancer development, such as the onehit, the multistage, and the gamma multihit models. Other models commonly used for risk assessment (such as the probit, logit, and Weibull models) have developed from tolerance curves of responses to toxic substances. These are often applied in the prediction of cancer but have also been used to predict risk for other actions of toxins. A linear model is generally used for epidemiologic data due to its biological plausibility and simplicity of use. Details on the form of these mathematical models can be found in OSHA's preliminary quantitative risk assessment (Ex. 6–18).

A number of participants in the ethylene oxide rulemaking commented on OSHA's approach to quantitative risk assessment (QRA) in general, particularly noting the need for human data on which to base a quantitative assessment of risk (Exs. 4–16, 4–22, 11–39, 11–110). However, the Court specifically noted in the benzene decision that "imposing a burden on the Agency of demonstrating a significant risk of harm will not strip it of its ability to regulate carcinogens, nor will it require the Agency to wait for deaths to occur before taking any action" (448 U.S. at 655). This holding by the Court strengthened OSHA' confidence in proceeding with the quantitative risk assessment based on animal data.

In the preamble to the proposed standard, OSHA outlined its approach to the quantitative estimation of risk from exposure to EtO, including the selection of the data base, general assumptions and models used. On the basis of its preliminary quantitative risk assessment, OSHA concluded that the best estimate of occupational risk from exposure to EtO 50 ppm was 634 to 1,093 excess cancer deaths per 10,000 exposed workers. This figure was used to support OSHA's finding that exposure to ethylene oxide represented a significant risk to workers.

Some commenters disagreed with OSHA's quantitative approach to risk assessment, specifically the reliance on results from mathematical models and experimental data in predicting human response (Exs. 4–51, 11–110). However, the comments submitted by BASF Wyandotte, a producer of EtO, expressed the views of many participants and recognized the suitability of OSHA's approach; BASF Wyandotte concluded that:

OSHA must perform formal risk assessments based on valid animal tests. The Agency must: (1) Extrapolate from the higher dose levels of response to the much lower exposure levels normally found in the workplace, and (2) extrapolate from the animal species to man. The methodology of extrapolations necessarily includes the use of mathematical models. This procedure is necessary in order for the Agency to establish a new standard which minimizes the possibility of adverse health effects from exposure to ethylene oxide based on cost-effective control measures (Ex. 4–54).

While a number of commenters expressed concern over certain aspects of the OSHA risk assessment, in general the comments noted the clear inadequacy of the 50 ppm PEL and the need to lower the PEL based on assessments of risk (Exs. 4–28, 11–68, 11–71, 11–110, 11–131, 11–133, 47).

The following discussion reviews OSHA's risk assessment as presented in the proposal, summarizes and evaluates comments submitted on that risk assessment, including alternative risk assessments, and offers OSHA's final assessment of the level of risk posed by occupational exposure to ethylene oxide.

A. Experimental Evidence Available for Risk Assessment.

The Bushy Run Research Center Carcinogenicity Study

OSHA's prelminary quantitative estimates of risk were derived from results of a two-year inhalation study on rats performed at the Bushy Run Research Center (Snellings et al., BRRC study, Bushy Run study) (Ex. 2–9). The study was selected for the quantitative assessment of risk because it provided at that time, by far, the most precise quantitative information available from any study on ethylene oxide. In the study, Fischer 344 rats were exposed to airborne concentrations of 100, 33, or 10 ppm of ethylene oxide vapor for six hours per day, five days per week, for approximately two years. Two control groups were exposed only to air under similar conditions. Initially, 120 rats per sex group were exposed, and at each six-month interval a portion of the animals was sacrificed to determine possible exposure-related effects.

The investigators employed two independent control groups in the study to gain a better assessment of variability in the unexposed animals. Results in the two control groups (for the tumors of interest) were not significantly different and the two groups were combined for purposes of the OSHA quantitative risk assessment.

In the preamble to the proposed standard, OSHA characterized the suitability of the BRRC study for risk assessment (48 FR 17293). OSHA concluded that the data were appropriate for risk assessment purposes for the following reasons:

(A) High quality of information (FDA good laboratory practices inspection);

(B) Statistical significance of observed increases in neoplasm incidence;

(C) Availability of concurrent control information;

(D) Dose-response relationships that were observed in both sexes;

(E) Well-documented specifics of the dosing regimen;

(F) Availability of information on ages of individual rats at death; and

(G) The inhalational dosage which is the major route of human exposure.

The usefulness of this study for quantifying risk was also attested to by the Ethylene Oxide Industry Council (EOIC) in its "Hazard Assessment of Ethylene Oxide":

> The results which are best able to support a quantitative assessment of human cancer risk are those of the Bushy Run study, with a preference expressed for use of the incidence data on peritoneal mesotheliomas. The leukemia data, while capable of supporting a quantitative risk assessment, offer a lower level of confidence in the results because of the higher spontaneous incidence of MCL than peritoneal mesothelioma in Fisher (sic) 344 rats (Goodman *et al.*, 1979), the possible specificity of this disease for this strain of rat, and the late-occurring nature of the disease (Ex. 47).

Several commenters raised a number of issues involving the suitability of using the results of the Bushy Run study as indicative of a carcinogenic effect of EtO, and the applicability of risk estimates derived from these data to the human situation. Several of these issues were well-delineated by the Health Industry Manufacturers Association (HIMA) in its review of the Bushy Run study (Ex. 11–74), and they include discussion of the effects of possible differences in dosage, dynamics of exposure, metabolism, pharmacokinetics and repair mechanisms between species. The questions raised concerning the use of this animal study for risk assessment purposes are not specific to ethylene oxide. These issues often present themselves in the task of extrapolating risks derived from animal data to man. The issue of the carcinogenicity of EtO has been discussed in detail in the Health Effects section of this preamble where OSHA concluded with confidence that EtO should be considered a potential human carcinogen. Moreover, in terms of the appropriateness of applying risks derived from animal data to the human situation, Crump testified that:

> * * * So, I would not certainly hold to the idea that regulation must wait until positive human data are available. I believe that animal data do provide an adequate basis for quantifying human risk (Tr. 142).

He noted that support for this comes from the fact that:

> Estimates of human risk from animal data are based upon the imperical (sic) observation that there is a quantitative relationship between chemical effects in animals and chemical effects in humans.
>
> Actually, this really forms a basis of toxicological investigations with animals. If there were no quantitative relationship between animal responses [and human responses], then the results obtained from animal data would be very limited. But there is a quantitative relationship which has been observed imperically (sic) and has been observed for carcinogenesis. (Tr. 143).

Although these issues may increase uncertainty in the final numerical risk estimates, they do not discount using animal studies for quantitative risk assessment purposes when epidemiologic data of sufficient quality are not available. Furthermore, there was little indication in the record to dispute the choice of the experimental animal data as the most appropriate data upon which to base the quantitative estimates of cancer risk from EtO exposure.

As Crump noted in his testimony (Tr. 142):

> The human studies available on Ethylene Oxide are limited in terms of size. They are also limited in terms of exposure. I believe that to be their principle (sic) limitations as far as quantitative risk assessment is concerned and quantification of risk assessment * * * I believe in the case of Ethylene Oxide. the animal data currently provides the strongest basis for doing quantitative risk assessment.

Therefore, OSHA concludes, as stated in the preamble to the proposal, that the Bushy Run study remains an appropriate data base on which to rely in making quantitative estimates of risk.

At the time of the proposal, the BRRC study reported that a statistically significant increased incidence over the control levels had been observed for two different neoplastic lesions: peritoneal mesothelioma in the male rats and mononuclear cell leukemia in the female rats. These lesions also showed significant dose-related trends (the p value for the one-sided Cochran-Armitage test was less than 0.00001 for both groups) (Ex. 34). As Crump testified, "For mesothelioma in male rats, and mononuclear cell leukemias in female rats, these tests are highly indicative of a dose-related carcinogenic effect of EtO" (Ex. 34).

The results of mathematical extrapolations based on these two tumor types formed the basis of OSHA's preliminary prediction of risk. As stated in the proposal, using the multistage model, OSHA predicted an excess lifetime risk for cancer from exposure to EtO at 50 ppm to be 634 to 1,093 per 10,000 workers, with 95% upper confidence limits on the excess risk of 1,008 to 1,524 deaths per 10,000 workers. The risk estimated at 1 ppm was approximately 12 to 23 excess deaths per 10,000, with 95% upper confidence limits of 21 to 33 excess deaths per 10,000.

As was noted in the preamble to the proposed standard, the increase in the incidence of mononuclear cell leukemia in male rats was not statistically significant at any level when a Bonferroni correction was applied to correct for multiple comparisons. Likewise, the Cochran-Armitage test for linear trend was not significant (the p value was 0.15) (Ex. 34). But, as Crump pointed out:

> * * * this lack of significance is chiefly due to a shortfall in response in the 100 ppm group. When this group is omitted from the analysis both the trend test and Fisher's exact test with the Bonferroni inequality are significant at the 0.05 level. The shortfall in the high dose group can be explained by the absence of these leukemias in the 100 ppm animals sarcificed at 18 months (10 and 33 ppm dose group animals sacrificed at 18 months were not examined for tumors). For cancers such as leukemia which can be detected for only a brief period before they are fatal, it is preferable to analyze fatal and incidental tumors separately (IARC, 1980). Such an analysis would probably detect a significant dose-related effect for mononuclear cell leukemia as suggested by the significant findings when the 100 ppm dose group is omitted.
>
> Considering these issues, in my judgement there is a dose-related increase in mononuclear cell leukemia in male rats and I have used these data as well to make risk estimates (Ex. 34).

Support for this analysis comes from several other commenters to the record. For example, the EOIC "Hazard Assessment for Ethylene Oxide" noted that "mortality-adjusted trend analysis revealed either an increased rate or an inceased incidence of MCL (mononuclear cell leukemia) in male rats ($p < 0.010$)" (Ex. 47) and employed these same data to calculate estimates of risk (Ex. 47).

OSHA has examined the impact of incorporating the male mononuclear cell leukemia data into the risk assessment. Crump presented the predictions of risk based on the male mononuclear cell leukemia data alone in Table 3 of his testimony (Ex. 34). This table shows that an excess risk of 284 deaths per 10,000 workers is predicted at 50 ppm, and 5.8 excess deaths per 10,000 are predicted at a PEL of 1 ppm. These estimates of risk are less than half the estimates of risk predicted from results at other tumor sites. However, it should be noted that the 95% upper confidence limits on these risk estimates are 717 and 14.9 excess deaths per 10,000, respectively, which fall within the range of OSHA's preliminary "best" estimates. (That is, this level of risk cannot be ruled out by the data.)

OSHA has considered the option of including the estimates of risk from the male MCL data in its overall estimates of risk. The tentative nature of the fit of all of the models to the female leukemia data was noted in the preliminary risk assessment (Ex. 6–18). The fit of the male MCL data is no better ($p=0.11$). In his testimony, Crump also noted that:

> * * * for both mononuclear cell leukemia in both males and females, the response at 100 ppm is below that suggested by the trend of the data at lower doses. This plateau effect suggests that uptake and distribution pathways for EtO may be saturated and the "effective internal dose" of EtO is less than 100 ppm. If this is the case, it would be reasonable to omit the 100 ppm data from the calculations. (Ex. 34).

OSHA refit the curves to the male mononuclear cell leukemia data excluding the responses at 100 ppm. This resulted in a much better fit to the one-hit model than when the 100 ppm data were included (p value for the chi-squared goodness-of-fit test rises from 0.11 to 0.53.) As anticipated, much higher predicted risks are given when the 100 ppm data are not included in the analysis. This approach gives an excess risk of 1,694 excess deaths per 10,000 at 50 ppm and 37 excess deaths per 10,000 at 1 ppm, with 95% upper confidence limits of 2,914 and 69 excess deaths per 10,000, respectively. This represents an almost 6-fold increase over the estimates predicted with the 100 ppm data points included in the curve-fitting, and approximately a 1.5-fold increase over the risk predicted by the female leukemia data, as reported in the proposal.

In its "Hazard Assessment of Ethylene Oxide," the EOIC also performed a quantitative evaluation of the risk posed by exposure to ethylene oxide. It based this assessment on the results of the BRRC study utilizing both the male and female mononuclear cell leukemia data and the male peritoneal mesothelioma data, as well as the mononulcear cell leukemia data from the NIOSH study, to be discussed below.

The EOIC calculated "continuous lifetime equivalent" doses based on parts per million (ppm) of ethylene oxide, rather that a body weight conversion (OSHA used the latter in its preliminary quantitative risk assessment), but it did not explain its objections to the use of a body weight conversion, nor did it offer a rationale for a preference for the ppm approach to dose. The EOIC did employ a scaling factor very similar to that used by OSHA to "normalize" exposure periods and noted that "Such a procedure is strictly a mathematical convenience to permit intercomparison of data * * *" (Ex. 47). The effect of different approaches to scaling factors for dose will be discussed below.

In making its estimates of risk, the EOIC employed a one hit model as the most appropriate mathematical dose-response function. The EOIC noted:

> Where more than one model fits the data, the basic criteria for selection and weighting results are the goodness of the fit and the reasonableness of the assumptions underlying the models in relation to the known data. * * * Numerous models have been proposed * * * However, the one-hit model provides an excellent fit to the four data sets for EO * * * Therefore, only the one-hit model will be used here initially (Ex. 47).

Based on the data described above, the EOIC predicted an excess risk of 18 to 79 deaths per 10,000 for on-the-job exposures of 1 ppm, approximately 1.5 to 3 times higher than OSHA's preliminary estimates of risk. The EOIC did not quote estimates of risk for exposure at 50 ppm.

The NIOSH Study. In addition to the BRRC study, at the time of the proposal there were preliminary results from a two-year chronic inhalation study on male rats conducted by NIOSH (Ex. 6–6). Since that time, more detailed results of the effects observed in this study have been reported (Exs. 11–146, 15, 40).

Though there were increases in the incidence of mononuclear cell leukemia in the rats, these increases were not statistically significant and the data were not employed in OSHA's preliminary quantitative risk assessment. The EOIC, however, did employ the leukemia data from the NIOSH study (using dose in ppm and a one hit model, the same methodology as it used for the BRRC data) to make predictions of risk. The estimates of risk based on the mononuclear cell leukemia data from this study produced risks comparable to those produced by the mononuclear cell leukemia data in the BRRC study that is, an approximate excess risk of 250 per 10,000 at 10 ppm.

Given the similarity with the BRRC data, the EOIC did not quote specific risks for this data set at all dose levels; however, based on the similarity of the BRRC and NIOSH data, OSHA has determined that the NIOSH MCL data will predict a risk of 35 excess deaths per 10,000 at 1 ppm.

Perhaps more important than the observation of leukemia in this study was the finding of a statistically significant increase in the incidence of peritoneal mesothelioma in the rats exposed to ethylene oxide. This finding also correlates directly with the finding of peritoneal mesothelioma in the BRRC study. As reported in NIOSH's testimony, the incidence of peritoneal mesothelioma was 3 out of 76, 9 out of 77 and 17 out of 77, for rats exposed at 0, 50 and 100 ppm, respectively (Ex. 40). (p values for Fisher's Exact test were 0.068 and 0.0007 when comparisons were made to the controls for the 50 and 100 ppm groups, respectively.) These data also showed a statistically significant linear trend (p value for linear trend test was 0.00048).

Using the same methodology as it employed for the BRRC data, OSHA fit a one-hit model to these data so that the results could be incorporated in the quantitative risk assessment. Based on these data, OSHA predicts an excess risk of 690 excess deaths per 10,000 workers from exposures at 50 ppm (95% upper confidence limit of 930 per 10,000). For exposures at 1 ppm, extrapolations based on these data show an excess risk of 14 deaths per 10,000, with a 95% upper confidence limit of 20 excess deaths per 10,000. These estimates of risk comport very closely with those predicted from the peritoneal mesothelioma data in the BRRC study and fall within the range predicted by OSHA in its preliminary quantitative risk assessment.

Primary Brain Neoplasms. In addition to the leukemia data from the NIOSH study, there was an increase in the incidence of primary brain neoplasms in the male rats. The BRRC researchers, after reexamining their data, have also reported a finding of primary brain neoplasms in their study. The incidence of this tumor in these two studies is given in Table 1. In the NIOSH study, the increase in primary brain neoplasms was not statistically significant when a Bonferroni correction was applied, but there was a statistically significant linear trend (P value 0.035). Since the increased incidence was not statistically significant, these data were not used for mathematical extrapolations when predicting risk.

For the BRRC data, there was a dose-related trend in primary brain neoplasms in both males and females; the linear trend was statistically significant when the Cochran-Armitage trend test was applied to the combined data from the rats sacrificed at 18 and 24 months and from animals dying spontaneously ($p=0.0003$ for males and $p=0.014$ for females) (Ex. 34). A statistically significant increase in gliomas were seen in the male rats exposed at 100 ppm (p equals 0.0024).

Crump combined the BRRC male and female data for risk assessment. Applying the multistage model (chi-squared goodness of fit test, $p=0.43$), the estimated lifetime excess cancer risk at 50 ppm is predicted as 185 excess cancers per 10,000 with a 95% upper confidence limit of 280 excess cancers per 10,000. At 1 ppm, the model predicts 3.7 excess cancers per 10,000, with a 95% upper confidence limit of 5.7 excess cancers per 10,000.

Sielken, a consultant to the EOIC, also performed an analysis on the brain tumors, analyzing two subsets of tumors: (1) Primary brain neoplasms, which include granular cell tumors, astrocytomas, and glial cell tumors, and (2) malignant reticuloses and glial cell tumors (which included all brain neoplasms except granular cell tumors). He fit the multistage model as well as the probit, logit, Weibull, and multihit models to these subsets of data using the mg/kg/day scale as defined in OSHA's preliminary quantitative risk assessment. Risk was quoted as additional risk $(P(d)-P(O))$ rather than excess risk $(P(d)-P(O))/1-P(O))$, but Sielken noted that in the case of brain tumors, these two measures of risk were "nearly identical" (Ex. 141–F). This seems likely due to the low spontaneous rate of brain neoplasms observed in this population. Using the multistage model, Sielken predicted estimates of risk at 1 ppm to be approximately 2 to 6 per 10,000 for all primary brain cell neoplasms in rats alive at 17 months, and approximately 1 to 5 per 10,000 for all rats. Sielken did not quote estimates of risk for exposure at 50 ppm. A comparison of these estimates with those made by Crump show that they are very similar; the estimate of 3.7 excess deaths per 10,000 made by Crump falls within the range suggested by Sielken.

The observation of primary brain tumors in these two studies has biological importance. Qualitatively, the occurrence of a tumor with low spontaneous incidence lends support to OSHA's finding that EtO is a carcinogen. As discussed in the section on Health Effects, some commenters have argued that ethylene oxide is only a promoter, not an initiator. If this were true, it would be inappropriate to use models which are linear at low doses (such as the onehit and multistage models) to make extrapolations, and applying these models to promoter data would greatly overstate the risk. OSHA concluded in the Health Effects section that there is sufficient evidence that EtO is indeed an initiating carcinogen. These findings were based on evidence of EtO's DNA alkylation and mutagenic properties, but in particular, on the observation of these very rare brain tumors. However, it should be noted that the same property that lends support to the finding of carcinogenicity (i.e., the rarity of the tumors) causes these data to yield low estimates of risk if they are used to predict human risk. Because these tumors occur so infrequently, the excess risk predicted on the basis of these data is low, approximately one-third the excess risk predicted using data from the other tumor sites.

In general, when making estimates of risk, OSHA makes no assumption of a direct correlation between the tumor sites observed in experimental animals and those expected to occur in man, although on occasion the tumor sites in several species (including humans) may coincide. (For example, there is some evidence that exposure to ethylene oxide gives rise to leukemia in both humans and rats.) The predictions of human risk made by OSHA are usually for "excess cancer," without regard to site. In other words, based upon the animal data, OSHA is not predicting that humans will contract brain cancer, leukemia, or mesothelioma, but only that humans will contract cancer. Thus, one way of incorporating the estimates of risk from the glioma data would be to include these estimates in the range of estimates over all sites, just as the mesothelioma data and leukemia data were combined in making OHSA's preliminary estimates of risk. This would change the lower limit of risk from 634 per 10,000 excess cancer deaths to 185 per 10,000. OSHA believes that it would be inappropriate to adopt the risks predicted on the basis of the brain tumor data as the lower end of the range of risk because there is some indication that OSHA's preliminary estimates of risk (634 to 1,093 per 10,000) may be, in fact, underestimates. (This is discussed further below.)

OSHA has considered other ways of incorporating the estimates of risk derived from the glioma data into estimates of the "total risk" of cancer. Crump noted in his testimony (Tr. 164) that in some sense, the estimates of risk from the glioma data should be *added* to the estimates of risk that were made from other sites. Although this is not

possible explicitly because of the possibility of double counting (the data for "total malignant tumors" did not include the gliomas), OSHA nevertheless believes that this position has important implications for the Agency's choice of a "best" estimate. In light of these data, OSHA does not feel it would be appropriate to *lower* its range of risk based on the inclusion of estimates of risk derived from the glioma data. In fact, considering these data in terms of the risk from all cancer, OSHA believes that its preliminary estimates of risk may have underestimated the total cancer risk to exposed workers.

B. Time-to-Tumor Analysis

Although most of the alternative risk assessments submitted to the record involved the use of quantal mortality data for the prediction of risk (Exs. 34, 44, 47, 141–F), Crump, OSHA's witness, and Sielken, testifying on behalf of the EOIC, both suggested a time-to-tumor analysis as an appropriate alternative approach. This approach was also recommended by the Union Carbide Corporation in its prehearing submission, which noted that:

> In view of the nature of the tumorigenic effects of ethylene oxide as learned from the Bushy Run study, i.e., that of a late-in-life enhancer of kinds of tumors to which the species under study is naturally prone, it would, in retrospect, have been more useful to conduct the animal studies with the "time-to-tumor" model, or a model to take into account the latency of the (presumed) cancers as part of the experimental design (Ex. 11–133).

Crump elaborated on the usefulness of a time-to-tumor analysis:

> When time-to-tumor data are used for risk assessment, there is a built-in method for correcting for differential mortality patterns in different dose groups, and consequently it is not necessary to resort to *ad hoc* methods such as deleting animals that die before the first tumor is discovered. Use of time-to-tumor also facilitates distinguishing between fatal tumors and incidental tumors (Ex. 34).

Further, Sielken noted that "Both (the OSHA and EOIC) quantitative hazard assessments can be strengthened by more fully including the role of time" (Ex. 53).

Crump conducted a time-to-tumor analysis of data from the BRRC study using the multistage-Weibull model (multistage in dose, Weibull in time). Based on leukemia mortality in both male and female rats, the excess risk of death from exposure at 50 ppm is predicted to be 484 to 546 excess deaths per 10,000, with 95% upper confidence limits of 866 to 1,135 excess deaths per 10,000. The estimates of risk made from the time-to-tumor analysis on the male leukemia data are approximately 1.8 times higher than the risks predicted by the analogous quantal data; the estimates of risk from the time-to-tumor analysis on the female leukemia data are approximately 2.2 times smaller than those estimated from the quantal data.

Crump also used the time-to-tumor approach to analyze the excess mortality from "all" cancers using the total number of (malignant) tumor-bearing animals provided in the BRRC data. (The primary brain tumors were not counted in this analysis.) Crump commented that "In terms of human risk, increased incidences of all malignancies are important rather than just increased numbers of cancers of a single type." * * * This is particularly true in view of the recent finding of Haseman (1982) that, in NTP studies involving rats, increases in tumors of one type are frequently associated with decreases in tumors of other types, with very little effect, if any, upon the total crop of tumors" (Ex. 34). The results of the time-to-tumor analysis of mortality due to "all malignant tumors" show an excess mortality of 637 to 727 deaths per 10,000 from exposure at 50 ppm, with 95% upper confidence limits of 1,070 to 1,600 excess deaths per 10,000. This estimate of risk is very similar to the excess risk predicted in the OSHA preliminary risk assessment.

In addition, Crump also conducted a time-to-tumor analysis on the incidence of cancer in the experimental animals for leukemia and separately for "all malignant tumors." Incidence refers to the occurrence of new tumors and does not refer to the mortality of the animals. The results of the analysis on the incidence of leukemia were 501 to 1,679 excess cancers per 10,000 from exposure to EtO at 50 ppm, with approximate 95% upper confidence limits of 1,032 to 2,233 per 10,000 respectively. The time-to-tumor analysis on the "all malignant tumors" incidence data produced an excess risk of 1,213 to 1,476 excess occurrences of cancer per 10,000 workers, with upper confidence limits of 1,941 to 2,210 excess cancers per 10,000. For three out of four analyses (males or females with leukemia or with "all malignant tumors"), the excess risk of occurrence (incidence) of cancer is substantially larger than the prediction of excess cancer mortality (approximately two to three times larger). Only the analysis of mononuclear cell leukemia in the male rats produces estimates of risk of the incidence of leukemia that are slightly smaller (546 versus 501 excess cases per 10,000) than the predicted estimates of mortality from leukemia.

Sielken took a different approach to the inclusion of time in the hazard assessment. In his pre- and posthearing submissions (Exs. 53, 141–F), he looked at several different measures of the effect of exposure to ethylene oxide on tumorigenesis: (1) The mean number of months until prescribed percentages of rats died from a particular tumor, (2) the mean number of months without a response during the entire 25-month experiment, (3) the mean number of months without a response for those rats surviving to 17 months. The overall trends seen in these different methods are similar and OSHA has only discussed the results of method (2) as a representative example. Measure (2) was chosen because of the comparability of these data and the data used by Crump in his time-to-tumor analysis.

Sielken calculated the average length of time, as a percentage of the experimental periods survived by rats in various dose groups in the BRRC study. He commented:

> * * * It seems reasonble to combine all undesirable responses and simply consider the time to death at the different dose levels. * * * These percentages include the impact of brain neoplasms as well as all other potential causes of death. * * * Of course, any effects of brain neoplasms on the time of death are a contributing factor to the time of death data (Ex. 141–F).

These percentages are given in Table 2.

TABLE 2.—AVERAGE LENGTH OF TIME, AS A PERCENTAGE OF THE EXPERIMENTAL PERIOD, SURVIVED BY RATS IN THE BRRC STUDY[1]

EtO dose, ppm	Male rats (percent)	Female rats (percent)
0	94.2	94.5
10	94.6	93.8
33	89.5	90.8
100	86.8	83.7

[1] Ex. 53, Table 1.3.

In his prehearing submission, Sielken examined the life-shortening effect of three tumors: Mononuclear cell leukemia in both male and female rats, peritoneal mesothelioma in male rats, and pituitary adenoma in both male and female rats. These tumors "were judged by the Bushy Run scientists to be 'nonincidental' " and it was noted that the pituitary adenomas were included because of their anatomical location. Sielken concluded, "The information in Table 1.2 (Ex. 53) clearly suggests that the mean time without a response is virtually the same at 0 and 10 ppm and hardly decreased even at 33 ppm." However, Sielken failed to note the decrease in the mean percentage of experimental period without response

observed in the 100 ppm groups, the experimental group in which the statistically significant increases in incidence generally occurred. Sielken also did not point to any statistical tests to determine if such decreases were or were not statistically significant. He merely stated that the decreases seemed small.

OSHA has calculated the statistical significance of the decrease in mean survival period for both male and female rats (Ex. 53, Table 1.3) and has determined that there is a statistically significant dose-related linear (downward) trend in survival times for both male and female rats (p values were 0.002 for female rats and 0.054 for male rats). After reviewing Sielken's discussion of the survival data, OSHA concludes that there is a definite dose-response relationship between exposure to ethylene oxide and survival time, that is, that exposure to EtO is associated with decreased survival in both male and female rats.

C. Equivalent Doses

Much material was submitted to the record on the subject of mathematical adjustments of dose in order to extrapolate from the animal carcinogenicity data in making risk predictions for humans. The EOIC noted that "such a procedure is strictly a mathematical convenience to permit intercomparison of data" between the exposures in experimental animals and workers (Ex. 47). As discussed in the proposal (48 FR 17293), OSHA employed a milligram per kilogram body weight per day adjustment to scale the animal doses to "equivalent human doses." These scaling factors were discussed in detail in the OSHA preliminary risk assessment (Ex. 6–16, Appendix B).[1]

A number of commenters suggested changes to these adjustment factors. Crump examined the impact of several changes in the assumptions on the OSHA estimates of risk (Ex. 34, Table 4). For example, both Crump and HIMA (Ex. 11–74, Appendix D) point out that when one averages dose over a complete lifespan rather than over the remaining livespan after first exposure (OSHA used the latter in its preliminary risk assessment), the estimates of risk computed under a linear model would be only 75% as large as those presently computed.

Crump and HIMA also raised some concerns about values that OSHA assumed were "standard" breathing rates. Crump pointed out that if different assumptions on the breathing rates of the animals had been used, the estimates of risk under a linear model would be 1.5 to 2.5 times higher. HIMA commented that OSHA had overestimated the total volume of air that a worker would be expected to breathe in a normal working day. HIMA estimated that the correct volume should be 7.2 m^3/workday, rather than the 9.3 m^3/workday, assumed by OSHA. Such a change would reduce the equivalent human dose by approximately 23%. As noted in the preliminary quantitative risk assessment, the value of 9.3 m^3/day, agrees with values from "Recommendations of the International Commission on Radiological Protection," 1977, and is a standard breathing rate employed by many regulatory agencies.

In addition, Crump examined the impact of different choices of scaling to achieve "equivalent human doses." As discussed in the proposal, OSHA relied on work by Crump and Howe (Ex. 6–17) in choosing mg/kg/day as the correct scaling procedure for ethylene oxide. As Crump reiterated in his testimony, "this work suggests that use of mg/kg/day body weight may be the most appropriate of the 4 dose measures for extrapolating from animals to humans, and that the other methods tend to overestimate human risk" (Ex. 34, p. 16). In its Hazard Assessment, the EOIC chose not to make such an adjustment based on body weight, but assumed dose in ppm to be an appropriate expression of equivalent dose. Crump had calculated that, had OSHA calculated risks on the basis of ppm in air (as the EDIC did), the estimates of risk would be less than 25% the magnitude of the risk presently predicted by OSHA. The EOIC did not elaborate on this choice of dose expression, but noted that "in establishing continuous lifetime equivalents, absorption dissemination elimination parameters between species (including man) are not taken into account" due to a lack of pertinent data (Ex. 57). After review of the record, and in light of Crump's testimony, OSHA believes that mg/kg/day is the most appropriate dose expression for assessing risks due to occupational exposure to ethylene oxide. Due to the systemic nature of the tumors used in the quantitative analysis (the tumors were not contact tumors), OSHA believes an expression of dose which in some way reflects the distribution of EtO tumors is more appropriate than expressing dose in terms of concentration at the site of contact (ppm). OSHA recognizes that much of the data on absorption and dissemination of EtO throughout the body is still lacking, but expressing the dose in mg/kg/day is a best attempt to incorporate this type of data.

Crump also calculated the effect on the estimates of risk if OSHA had used milligrams of intake per surface area per day, an expression of dose used routinely by the Environmental Protection Agency, instead of milligrams per kilogram of body weight per day. He calculated that this expression of dose would increase the estimates of risk approximately 5- to 6-fold. There was no other discussion of this expression of dose in the record, and as Crump noted above, dose measures other than mg/kg/day tend to overstate human risk. Hence, OSHA has not considered it appropriate to change its risk assessment in terms of dose measure and has calculated risk on the basis of milligram per kilogram of body weight per day.

In addition to using dose in ppm, the EOIC did mathematically adjust for differences in lifetimes and dosing regimens between the two animal studies and humans, adjusting for dose over a complete lifespan (72 years) rather than lifespan after first exposure (54 years, as was done by OSHA). In his testimony, Crump estimated that adjusting for complete lifespan would reduce estimates of risk by approximately 25%, when risk is computed under a linear model.

Another issue raised by several commenters was the use of 45 years of exposure as the basis upon which to make estimates of risk. HIMA (Ex. 11–74) expressed the views in many of the submissions:

> * * * OSHA's standard use of a 45-year exposure period is felt to be overly conservative; job changes occur, on the average, much more frequently than twice per lifetime and one should be willing to accept a 20-year period as a maximum time in any one position. This would lead to a 2.2-fold (20/74 vs. 45/74) reduction in risk.

HIMA has based its conclusion on the premise that by reducing the dose to which an individual is exposed (by decreasing the length of time he is exposed), one will lower the risk to that individual in a proportionate manner. While this may be the case for individual risks, it is not true when predicting population risks, as is pointed out by AFSCME (Ex. 44). In its prehearing submission, AFSCME noted that when there is a high turnover rate among workers in a particular industry (as there is in the health care industry),

[1] OSHA assumed a typical working lifetime of 8 hours per day, 5 days per week, 46 weeks per year, for 45 years out of a working lifespan of 54 years (assumes that a person begins work at age 20, retires at age 65, and lives 74 years).

an estimate of risk using, as OSHA did, a cumulative dose model may produce *lower* estimates of risk "than the estimate derived from evaluating successive independent periods of exposure to EtO" (Ex. 44). AFSCME noted that this approach may, in fact, be less protective in terms of overall health impact on a population of workers.

OSHA has recognized when discussing the disadvantages of worker rotation in earlier rulemakings that exposures of shorter duration may not necessarily have a lower total population risk than the risk produced by exposing a single population for the entire 45 years (49 FR 14125). Although HIMA notes that 20 years may be the maximum time spent in any one job position, a shorter job tenure implies that the population at risk will be more than doubled. The resulting risk experienced by the exposed population may consequently be the same, or even greater.

The submission by AFSCME offered an alternate interpretation of this problem. AFSCME presented the formulation by Day and Brown (1980), which is an extension of the Armitage-Doll multistage model of carcinogenesis. AFSCME pointed out that:

> This model assumes that there are one or more separate and distinct stages in the transformation of a normal cell into an observable tumor. Eariler stages involve permanent alteration in the genetic material. Later stages involve the replication of the altered cell into a detectable mass. Day-Brown provides a mathematical model for estimating excess risk of cancer to exposed human populations, taking into account the stage at which the substance acts, the age at which exposure starts and the duration of exposure.

AFSCME noted that because EtO acts directly on the DNA, at least with respect to the animal data, it appears to be an early stage carcinogen (Ex. 44). Consequently, under the formulation by Day and Brown (1980),

> Employee turnover, which leads to repeated exposures to different early stage carcinogens such as EtO may have a very important effect on the risk assessment. * * * Individual workers are unlikely to work for a full working lifetime of 45 years as sterilizer operators. In fact, workers may experience a period of exposure to EtO followed by subsequent periods of employment involving exposure to other early stage carcinogens. Such an employment profile would serve to increase that worker's lifetime probability of developing leukemia in excess of a profile involving no employee turnover (Ex. 44).

Thus, while HIMA may disagree with OSHA's choice of 45 years as a "working lifetime," OSHA feels confident that the level of risk assigned to a population of workers who are assumed to experience 45 years of exposure is reasonable, and may well represent an underestimate of the risk experienced by such a population if employee turnover rates are high.

Another type of mathematical adjustment to the estimates of risk was suggested by the American Federation of State, County and Municipal Employees (AFSCME) (Ex. 44). In its review of the OSHA preliminary risk assessment, AFSCME commented that the study was "flawed by its failure to take fully into account the difficulty in translating risk estimates obtained from experiments using genetically uniform laboratory animals to genetically varied human populations." AFSCME contended that test results from genetically uniform animals will yield "an underestimation of the human dose response curve at low exposure levels due to the relatively steeper slope of the test animal dose response curve" (Ex. 44).

AFSCME suggested that a safety factor of from 10 to 100 should be applied to such estimates from animal data to "generate prudent human risk" (Ex. 44). Employing such a safety factor would bring the estimates of risk from the animal data into approximate agreement with those that AFSCME computed from the epidemiological studies, as discussed below.

D. Epidemiologic Evidence Available for Risk Assessment

OSHA's preliminary determination was that the BRRC data "provided the most appropriate data on which to base the risk assessment" (48 FR 17294). At the time, it was felt that the epidemiologic evidence of risk to workers exposed to EtO was not strong enough to support a quantitative determination of risk. AFSCME expressed concern about this, however, when it noted that: "OSHA by apparently relying completely on laboratory data (i.e. experimental animals) to estimate the risk of developing cancer from lifetime exposure to EtO has seriously underestimated the total number of excess cancers which can be anticipated from various levels of workplace exposure to EtO" (Ex. 44). Crump noted that "* * * these (epidemiologic) studies do contain some useful information to aid in quantifying risk" (Ex. 34). Upon review of the record, OSHA has determined that risk assessments based on the epidemiologic data, the Hogstedt studies in particular, may be useful in the determination of the level of risk which may be experienced by workers exposed to EtO.

Crump calculated risk based upon the hogstedt et al. study (Hogstedt I, Ex. 2–8) of a population of Swedish workers exposed to EtO in the sterilization of hospital equipment from 1968 to 1977 (approximately 10 years). Three deaths from leukemia were observed among 230 workers. Based on information in the study, Crump assumed that average exposures in the population were 20 ppm, and that the minimal latency for environmentally induced leukemia was three to four years, suggesting an "effective" exposure duration of 6.5 years (10–3.5).

Using a linear model to describe the relationship between relative risk for leukemia and exposure, Crump predicted that exposure to EtO at 50 ppm would lead to a lifetime probability of leukemia mortality of 0.300 (3,000 per 10,000), with an 80% confidence limit of 0.125 to 0.50 (1,250 to 5,000 per 10,000) (Ex. 34). Recognizing the uncertainty in these estimates, Dr. Crump nonetheless concluded that "it does not appear that the Hogstedt et al. study suggests that the extimates from the animal data are too large" (Ex. 34).

As discussed in the proposal, the Environmental Protection Agency-Carcinogen Assessment Group (EPA–CAG) performed a quantitative assessment of risk based on the same report of leukemia in 3 out of 230 workers (Hogstedt I, Ex. 2–8). Based on an occupational exposure of nine years, CAG predicted a lifetime probability of dying from leukemia from breathing 1 mg/m^3 (0.56 ppm) of EtO of 1.2 deaths per 10,000. In the preamble to the proposed standard, OSHA noted CAG's discussion of various uncertainties with estimates derived from the Hogstedt et al. study (48 FR 17294).

AFSCME (Ex. 44) commented that the CAG analysis "assumed continuous lifetime exposure to EtO," and thus it submitted an alternate analysis to correct "for EPA's clear overestimation of the risk of occupational exposure to EtO." First, AFSCME adjusted the exposure level reported in the Hogstedt study by a factor of 9/45 to account for the relatively short period of follow-up in the study and to obtain an "equivalent working daily dose." Using this method of adjustment, AFSCME predicted an excess lifetime risk of leukemia at 1 ppm of 0.033 (330 per 10,000).

AFSCME also submitted a risk assessment based on the apparent genotoxic nature of EtO and the methodology of Day and Brown (1980) discussed earlier.

> * * * Their (the Day and Brown) model predicts that 58% of the excess risk resulting

from exposure to an early state (sic, stage) substance like EtO will develop from an exposure duration of 10 years. (Ex. 44).

Using this formulation, and scaling for an exposure of nine years, AFSCME suggested that the 20 ppm exposure be adjusted to accommodate the fact that 53% of the relative risk expected in a working lifetime was expressed in nine years. Using this method, AFSCME predicted a lifetime probability of leukemia as 0.012 (120 per 10,000) at a 1 ppm exposure. Similarly, if it is assumed that not all of the members of the Hogstedt study cohort worked for a full nine years, but rather an average of 5 years, then the effective dose would be even lower, and the excess lifetime risk of leukemia at 1 ppm is predicted to be 0.019, or 190 excess deaths per 10,000.

AFSCME noted that "the EPA model, by assuming purely cumulative equivalence of dose and time, appears to have underestimated the effective EtO dose and thus overestimated the lifetime EtO risk" (Ex. 44). In addition, AFSCME pointed out that employee turnover "can have a significant impact on the overall risk assessment" in light of the Day and Brown formulation of risk.

E. Risk Assessment by Rad-equivalence

In the proposal, OSHA discussed another approach to risk assessment introduced by Calleman and colleagues (Ex. 6–19) wherein they compare the degree of alkylation of histidine in the hemoglobin in EtO-exposed workers and workers exposed to ionizing radiation. The authors calculated the "red-equivalence" for certain alkylating agents, that is, the number of rads of acute gamma radiation that gives the same effect as a unit dose of the chemical. Using this approach, and based on EtO exposure profiles, Calleman et al. estimated that exposure to 1 ppm per hour of ethylene oxide resulted in a risk of 10 mrad-equivalents of effects in a genetic mechanism.

Thus, in industrial work environments with an average exposure level in the range of 5 to 10 ppm of EtO, Calleman et al., estimated that the midpoint of the range would correspond to approximately 120 rad-equivalencel per hear. On this basis they predicted that a group of 100 workers exposed at the 5 to 10 ppm level for 10 years could expect 3.6 cases of leukemia, one of which would be expected to appear before the end of the 10 year period (48 17294).

There were mixed reviews of this approach to risk assessment. Commenters such as HIMA (Ex. 11–74, Appendix D) pointed out that "* * * there are simply too many differences between the mechanisms of mutation induction by radiation compared to that by chemicals" and that this method "assumes that cancer in man is initiated by forward mutations in somatic cells," an assumption HIMA felt oversimplified the mechanism of cancer initiation.

At this time OSHA is unable to determine the ultimate advantage or disadvantage of this approach to risk assessment. In OSHA's view, calculation of rad-equivalence does not yet represent a generally accepted method for quantifying risks. Moreover, in light of the quality of the bioassay data and their suitability for making quantitative estimates of risk, OSHA is confident that the methodology that was used in performing its quantitative risk assessment, as applied to the available experimental data, represents the best available means of quantifying the risk of EtO exposure.

F. Conclusions

In this preamble OSHA has attempted to address the major issues relating to risk assessment which were presented in the comments and testimony of the ethylene oxide rulemaking. The range of all estimates submitted to the record is very wide (16-fold), from a low estimate of 185 excess deaths per 10,000, to 3,000 excess deaths per 10,000. This range covers both the experimental and the epidemiology data, all tumor types, all models, and all endpoints of mortality as well as incidence.

OSHA has examined the individual estimates of risk offered by participants in the rulemaking. OSHA's preliminary estimates of the risk from exposure to EtO at 50 ppm ranged from 634 to 1,093 excess deaths per 10,000, based only on the mortality from peritoneal mesothelioma and mononuclear cell leukemia observed in the Bushy Run study. Since that time, the observation of primary brain neoplasms in the rats of the Bushy Run Study, as well as the observation of tumors in the subjects of the NIOSH study has broadened the data base upon which to rely in making estimates of risk. Several participants in the rulemaking have made predictions of risk from these data sets, as well.

In summary, using quantal models, Crump estimated a risk of from 185 to 1,093 excess deaths per 10,000 workers from exposure to 50 ppm, and from 284 to 1,093 excess deaths per 10,000 when the brain tumor data are not included as the basis for independent estimates of risk. Using time-to-tumor models, his predictions of risk at 50 ppm range from 484 to 727 excess deaths per 10,000 based on mortality data, and 501 to 1,679 excess cases per 10,000, based on incidence data. In addition, Crump made estimates of risk based on the epidemiology data and predicted that exposure to EtO at 50 ppm may result in 3,000 excess deaths per 10,000 workers. Crump noted that there was a wide band of uncertainty around this estimate and that the estimate of risk from these data may be as low as 1,250 excess deaths per 10,000 or as high as 5,000 per 10,000.

The other participants in the rulemaking did not present their estimates of risk in a form which made them easily comparable to the preliminary estimates of risk made by OSHA. Many of them did not estimate the risk that may be posed by exposure to the current PEL of 50 ppm, the level at which OSHA must make a threshold finding of significant risk. However, almost all participants made predictions of the risk from exposure to 1 ppm, the proposed 8-hour TWA.

OSHA's preliminary estimates of risk at 1 ppm ranged from 12 to 23 excess deaths per 10,000. Crump's predictions of risk ranged from 3.7 to 23 per 10,000, including estimates made from the primary brain tumors. The EOIC made predictions of risk based on both the Bushy Run study and the NIOSH data and calculated an excess risk of 18 to 79 deaths per 10,000 workers from exposure to EtO at 1 ppm. Sielken calculated estimates of risk based only on the gliomas and predicted an excess risk of approximately 1 to 6 per 10,000 at 1 ppm.

HIMA's estimates of risk, based only on 20-year exposures, predicted a risk of 1.5 excess deaths per 10,000 at 1 ppm. AFSCME presented estimates of risk using several different approaches to risk assessment, employing both the epidemiologic and experimental data. Based on the epidemiologic leukemia data, AFSCME predicted estimates of risk of approximately 120 to 330 per 10,000 as the lifetime probability of developing leukemia from exposure to EtO at 1 ppm. Based on the experimental data, AFSCME has predicted a risk of 10 per 10,000 for exposures in the range of 0.05 to 0.1 ppm (10 times lower than OSHA's preliminary estimates of risk). After reviewing the record as a whole, and the many estimates of risk offered by participants in the rulemaking, OSHA has concluded that its original estimates of risk, as presented in the proposal, still validly project the risks from exposure to ethylene oxide over a working lifetime. That is, OSHA's best estimate of risk is approximately 634 to 1,093 excess deaths per 10,000 workers exposed to EtO at 50 ppm, and the risk at 1 ppm is approximately 12 to 23 excess deaths per 10,000 exposed

workers. The Agency's confidence in these estimates was greatly increased when predictions made from the data in the NIOSH study were found to agree closely with these estimates of risk. Uncertainties in these estimates as well as estimates of risk derived from the human data indicate that the risk may be approximately five times larger.

Taken as a whole, OSHA believes that the assumptions made in the Agency's preliminary quantitative risk assessment are reasonable and appropriate. Crump concluded that overall "assumptions made by OSHA produce risks which fall near the mid-range of those produced by other plausible assumptions; that is, other reasonable assumptions could produce risk estimates which fall within an order of magnitude in either direction of those estimated by OSHA" (Ex. 34).

Crump's evaluation is borne out by a comparison of the various risk estimates submitted to the record. The estimates proffered by other participants in the rulemaking did not differ substantially from those given by OSHA in the preamble to the proposal. The EOIC noted that:

> It is apparent in these comparisons that the estimates of excess risk are essentially of the same magnitude or differ by up to circa three-fold (as those produced by OSHA). * * * In view of the uncertainties outlined elsewhere in this chapter regarding translation of observed animal effects to calculation of risks to man, in addition to the lack of information regarding comparative pharmacokinetics, it is surprising that the results of these different approaches are as similar as they are (Ex. 47).

In determining the appropriateness of its risk assessment for EtO, OSHA considered the relative merits of making predictions of risk from epidemiologic data versus chronic inhalation bioassays in rodents. The human data offer the advantage that there is no need to extrapolate from animals to humans, and thus estimates of risk derived from these data may be more appropriately applied to workers. Likewise, exposure conditions experienced by the study cohorts (problems of mixed exposure, intermittent exposures, etc.) may more accurately represent the industrial scenario under which risk should be assessed. These are important advantages. On the other hand, the animal bioassays allow exact determination of administered dose and careful control of extraneous environmental factors which may influence carcinogenicity. These properties enhance the ability to tie response directly to dose in a causal manner.

In the case of ethylene oxide, it should be noted that the epidemiological studies are very small (three deaths in one, two deaths in another) and that small sample size leads to a great deal of statistical uncertainty in the estimates of risk. This was demonstrated by Crump when he pointed out that the 80% confidence interval around the estimate of risk for the Hogstedt et al. study was 125 to 500 excess deaths per 10,000 (a four-fold range) (Ex. 34). In addition, there were other methodological problems with the epidemiologic studies that further increase the uncertainty. However, upon consideration of the predictions of risk from the epidemiologic studies, it can be stated with reasonable assurance that the estimates of risk derived from the animal data do not overstate the risk from lifetime exposure to ethylene oxide, and, in fact, may understate the risk.

In choosing its best estimate of risk, OSHA considered both the risks derived from quantal data and the risks computed from time-to-tumor models. In addition, OSHA examined the estimates of risk from site-specific data versus data on total numbers of tumor-bearing animals. In general, the ranges of risk computed from these data overlapped.

The inclusion of the glioma data in the data for the risk assessment had little quantitative impact on the overall estimates of risk. The estimates of risk derived from these data are lower (by approximately 3-fold) than the estimates of risk derived from the other sites or total tumor-bearing animals. (The tabulations based on "all malignant tumors" did not include the mortality caused by the gliomas, and thus, these tumors did not contribute to these overall estimates of risk.) Given the rarity of this type of tumor, the glioma risk should be added to the risks from other causes, though this could not be done directly because the data on other tumors in animals with gliomas were not available. OSHA believes that using the estimates of risk derived from the glioma data as the lower end of the range of risk would greatly underestimate the total expected cancer risk from exposure to ethylene oxide.

There were participants in the rulemaking who felt that OSHA had overstated the risk. For example, HIMA (Ex. 11–74) concluded that once the "necessary biological and workplace corrections to yield a more correct estimate of the risk involved" were incorporated, the prediction of risk at 1 ppm would be reduced approximately 8-fold, from 12 per 10,000 (1 ppm for 45 years of exposure) to 1.5 per 10,000 (1 ppm for 20 years of exposure). HIMA's objections to this conclusion were discussed in detail earlier. Given the other submissions to the record, and the weight of evidence concerning the preliminary estimates, OSHA cannot agree with this characterization. Most indications lead to the conclusion that the risk is not overstated. Although OSHA does not believe HIMA's approach to be valid for these purposes, it should be noted that even the lower level of risk proposed by HIMA would still constitute a "significant" risk, as discussed in the following section.

The importance of these risk estimates, and their implications for justifying the permanent standard will be discussed in the section on significance of risk.

VI. Significance of Risk

OSHA's overall analytical approach to making a determination that workplace exposure to hazardous chemicals presents a significant risk of material health impairment takes into consideration a number of factors that are consistent with recent court interpretations of the OSH Act and rational, objective policy formulation. As prescribed by Section 6(b)(5) of the OSH Act, OSHA examines the body of "best available evidence" on the toxic effects of hazardous chemicals to determine the nature and extent of possible health consequences resulting from workplace exposure to the substance under consideration. Quantitative risk assessments are performed where possible and considered with other relevant information to determine whether the substance to be regulated poses a significant risk to workers at the current permissible exposure level. OSHA considers whether reduction of the permissible exposure level for the substance will substantially reduce the risk.

OSHA has reviewed the toxicologic and epidemiologic literature and the record evidence on EtO described in the Health Effects section of this preamble. The record, as summarized herein, clearly shows that EtO exposure is associated with a wide range of health effects; those effects include cancer, possibly of the blood as well as other organs; spontaneous abortions among exposed pregnant women; other reproductive effects among males and females; mutagenic and cytogenetic effects; neurotoxic effects; and sensitization reactions.

Of all the toxicologic evidence presented in the record, the evidence showing that EtO is carcinogenic is the most impressive. Three epidemiological

studies (Exs. 2–8, 2–22, 6–5) provide supportive evidence that EtO is carcinogenic in humans; although the groups of workers studied were small, two of these studies (Exs. 2–8, 2–22) described significant increases in deaths from leukemia among EtO-exposed workers. One described significant increases in deaths from stomach cancer (Ex. 6–5), another showed significant increases in pancreatic cancer and Hodgkin's disease.

In addition, a number of experimental studies provide evidence that EtO is carcinogenic. The Bushy Run study (Ex. 2–9) revealed both statistically significant and dose-related increases in peritoneal mesothelioma in male rats and mononuclear cell leukemia in female rats exposed to EtO by inhalation. In addition, an excess incidence of gliomas, a rare tumor in the Fischer 344 rat was detected. Although criticisms of this study were raised on specific methodological points, all interested rulemaking participants agreed that the study was conducted in accordance with good laboratory practices was well-suited for use as the basis for quantitative assessment of cancer risk related to EtO exposure. Because of these considerations and because the mode of exposure was by inhalation of EtO at concentrations both above and below the current PEL of 50 ppm, OSHA chose the Bushy Run bioassay as the basis for its quantitative risk assessment, as discussed in the previous section. The results of the Bushy Run study were supported by positive findings of EtO-induced cancer in four other bioassays (Exs. 2–18, 2–19, 6–16, 15, 19); furthermore NIOSH (Ex. 15), reported an increased incidence of gliomas among EtO-treated rats, further strengthening the findings of the Bushy Run study.

The first element established in the Supreme Court's Benzene decision (*IUD* v. *APA* 448 U.S.) for determining significant risk, that of demonstrating that exposure at the current PEL constitutes a significant risk of material health impairment, is clearly and definitively established by the rulemaking record for EtO. Based upon the quantitative risk assessment, OSHA has determined that the best estimate of excess risk of cancer at 50 ppm EtO (the current PEL) is between 634 and 1,093 cancer-related deaths per 10,000 employees. In making a determination that this risk is significant, OSHA relies, in part, upon the Supreme Court's indication of when a reasonable person might consider a risk significant and take steps to decrease that risk. The Court stated:

> It is the Agency's responsibility to determine in the first instance what it considers to be a "significant" risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2 percent benzene will be fatal, a reasonable person might well consider the risk significant and take the appropriate steps to decrease or eliminate it. (*IUD* v. *API* 448 U.S. at 655).

The estimated cancer mortality attributed to EtO exposure at the current PEL must be considered significant using virtually any reasonable basis for such a determination.

It is also evident that the estimates of cancer risk for EtO at the current 50 ppm exposure limit are significant when compared to risk estimates judged significant by OSHA for other hazardous substances in previous rulemakings. For example, the risks from EtO exposure at the current PEL are a higher than those for coke oven workers (10 cancer cases per 1,000 workers) which OSHA determined were sufficient to justify lowering the coke oven emissions standard (41 FR 46755). The risk from EtO exposure are near those from arsenic exposure at the former PEL (148–425 cases per thousand, as reported in the supplemental statement of reasons for the final rule for occupational exposure to arsenic (43 FR 19584)). The excess risk of cancer from EtO exposure also approaches the level of risk of byssinosis (130 cases per thousand) resulting from exposure to cotton dust at the former PEL.

Further insight into the significance of the magnitude of the risk can be gained by reviewing occupational accident fatality statistics. Such an analysis was performed previously by OSHA for the arsenic standard (48 FR 1864–1903).

Accident fatality rates are not directly comparable to the estimated excess cancer deaths resulting from EtO exposure. Fatality statistics represent deaths from accidents reported by the employers. They are calculated on an annual basis, and reflect accidents that have occurred due to all causes combined. To increase the comparability, annual BLS fatality accident rates were adjusted to be equivalent to a 45 years working lifetime. The reported annual accident fatality rates are lower than the estimated lifetime fatality rates given below. If OSHA calculated the excess cancer risk associated with a single year exposure to EtO, the excess cancer risk would also be lower than the 45 year lifetime risk. Smaller numbers would result for all statistics if a shorter time period, such as one month, is used as the basis for the comparison. A common time basis using a lifetime exposure associated with the comparison appears to be a logical approach. (In addition, see the discussion below regarding use of a 20 year working lifetime).

OSHA believes that the accident fatality statistics gives a general view of the conditions in the work environment that can place in perspective, to some extent, the types of situations that are considered very risky, and some that are not. As such, it can be seen that the cancer risks associated with EtO exposure are significant. EtO risks at 50 ppm are higher than accident fatality risks from all types of accidents combined, in most industries. Typical lifetime fatality risks for all manufacturing was 27 per 10,000 and for service employment was 16 per 10,000. Typical fatality risks in electrical equipment industries was 4.8 per 10,000 and 0.7 per 10,000 in retail clothing (48 FR 1902).

Although OSHA ultimately relied upon the multistage and one-hit model to determine risk from exposure to EtO at the current and proposed permissible exposure limits, the Agency also examined the results from other mathematical models. At the current exposure limits, maximum likelihood estimates based on the other models varied between 63 to 173 cancer cases per 1,000 workers. The Agency points out that with regard to the estimates of risk based on the finding of leukemia in female rats, use of these models gave higher maximum likelihood estimates of risk than did use of the one-hit model. Results of risk estimation based on these models support OSHA's determination that significant risks exist from exposure to EtO at the current PEL.

In accordance with the second element of the Supreme Court's Benzene decision on determination of significant risk, OSHA has determined that lowering the PEL for EtO from 50 ppm to 1 ppm is reasonably necessary to reduce the cancer risk for EtO exposed workers. OSHA's risk assessment indicates that the reduction in risk resulting from lowering the 8-hour TWA to 1 ppm will be dramatic. The best estimate, as determined by the risk assessment, is that the risk at 1 ppm will be between 12 and 23 cases per 10,000. The upper confidence limits for this assessment are 21 to 33 deaths per 10,000 workers.

In developing estimates of risk for occupational exposure to EtO, OSHA had the benefit of numerous

independent risk assessments that were submitted to the record, in addition to its own assessment. Although the estimates of the risk varied from one assessment to another, all of the assessments indicated that the excess cancer risk from EtO exposure at 1 ppm over a working lifetime are significant. Based upon the discussion referred to above, OSHA has determined that significant risk is *not* eliminated by lowering the TWA to 1 ppm.

Some participants have suggested that OSHA calculate the cancer risks to individuals attributable to EtO exposure for 20 years of exposure rather than 45 years of exposure. For example; HIMA (Ex. 11–74) noted that OSHA had greatly overstated the risk by computing risks on 45 years of exposure. HIMA suggested that 20 years would produce a more plausible risk estimate because most exposures to EtO in the hospital sector are for far less than 20 years, and therefore HIMA suggested using 20 years, not 45 years, as a maximum length of exposure in risk calculations.

There was discussion of the reasons for selection of the 45-year working lifetime in the quantitative risk assessment section of this document, which concluded that calculations of population risk based on 20 years of exposure may not necessarily reduce the risk calculated for a population which is exposed for 45 years.

Another reason for using the 45-year exposure as the lifetime risk is the use of comparative risk analysis when evaluating the importance of the magnitude of the risk. To gain a perspective on the significance of the risk, OSHA has examined occupational risks relative to one another. The data on work-related illnesses are very scanty and often OSHA must resort to comparisons with the risks of occupational injuries. In doing these relative comparisons, OSHA has chosen a common unit of time used for determining "occupational lifetime" risks, that is, 45 years. The common time basis for comparison is necessary because risk to an individual from exposure to a hazard for 45 years will be greater than risks from exposure for only 20 years, and similarly, risks to an individual exposed to a hazard for twenty years will be greater than the risks of exposure for only one year. OSHA believes it is appropriate (and necessary) to compare lifetime risks from EtO to lifetime risks from other causes, as long as the periods of "exposure" are the same.

The use of the 45-year lifetime is based upon guidance given in the OSH Act. As found in section 6(b)(5): "The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life." It is reasonable to assume that a person will begin work at age 20 and work until the age of 65 years old, a 45-year working lifetime, although the person may not work at the same job or be exposed to the same toxic substance for the entire 45 years. Changing jobs may result in increased risk from worker turnover.

As OSHA noted in the quantitative risk assessment section of this preamble, although the use of a 20-year lifetime risk will be lower than the 45-year risk for any single individual, the overall risk to the population will increase. Though workers will be exposed for shorter periods of time, the population at risk will increase dramatically, because turnover causes the exposure to be spread among several individuals (that is, two workers exposed for 20 years each, compared to one worker exposed for 40 years). Worker turnover is believed to increase the risk for the population to a level greater than that associated with individual risks. (See discussion in quantitative risk assessment. AFSCME has stated that, due to turnover, risks should be increased by a factor of ten.

OSHA has not made the adjustments suggested either by HIMA or AFSCME. OSHA believes that adding more factors for analysis in the significant risk determination is not necessary. In addition, calculating 20-year risks rather than 45-year risks increases uncertainties. The risks of 45 years of human exposure are comparable to the lifetime dosing pattern in the Bushy Run and NIOSH studies that were used as the basis for the quantitative risk assessment. If a 20-year human exposure is taken as the lifetime at risk, adjustments would have to be made to take into account the period of nonexposure. Because information is not available on which to base those adjustments further assumptions would have to be made in order to obtain estimates of risk. Although these assumptions might be reasonable they would, nonetheless, add uncertainty to the 20-year estimate that does not exist for the 45-year estimate. Finally, with the exception of HIMA, OSHA's approach to determining significant risk has been virtually unchallenged. OSHA's approach is consistent with other risk assessments previously conducted.

In conclusion, OSHA believes its approach, using a 45-year exposure as an occupational lifetime is an appropriate method for analyzing the significance of risk. Although risk from a 20-year exposure for any individual appears to be smaller than a 45-year exposure risk, when using comparative risk analysis, the regulatory decision remains the same. That is, that risks are significant at the existing 50 ppm PEL, that the new standard reduces the risks, and that the new 1 ppm TWA limit does not eliminate significant risks. In addition, using a 20-year exposure as lifetime rather than a 45-year lifetime means that more workers will be exposed to EtO, which will have the effect of increasing the risk to the population as a whole. If a 20-year lifetime were used, this turnover factor would have to be included in the significant risk determination. Evidence has not been sufficient in this rulemaking to adopt this type of population analysis for the significance of risk. It seems, however, that such an approach would, if used, lead to greater estimates of risk, and thereby provide further justification for the standard.

In accordance with the Supreme Court's guidelines, OSHA has attempted to quantify the risk of exposure to EtO by determining which levels of exposure constitute a significant risk to employees. However, as acknowledged by the Court, significant risk determinations involve more than mere mathematical treatment of the available health data. The use of mathematical risk assessment models is only one tool, though an important one, in the overall risk evaluation performed by OSHA in developing health standards. The Agency must evaluate all of the health evidence, including those data which do not readily lend themselves to quantification of risk, to determine necessary and appropriate protective provisions for exposed employees.

OSHA believes that the record evidence describing EtO's carcinogenic effects, along with the findings of the quantitative risk assessment, provide overwhelming evidence that a significant excess risk of cancer mortality is associated with EtO exposure and supports the need to reduce the PEL for EtO. In addition to this evidence, the record evidence showing that EtO exposure is associated with reproductive and cytogenetic effects buttresses the need to lower the PEL, although the available data do not permit development of reliable quantitative risk assessments for these

health effects. Evidence on reproductive effects include a study by Hemminki and coworkers (Ex. 6–7), who reported an increased incidence of a spontaneous abortion among pregnant EtO-exposed women, as well as findings from animal bioassays (Ex. 2–23, 6–9, 4–60, 6–10, 6–16) describing increased incidences of fetotoxicity, decreased fertility, and effects on sperm count and motility. Despite criticisms of these studies, many commenters (Exs. 21–261, 141E–2, 40) agreed that the results of the Hemminki study, taken in combination with the animal data describing fetotoxic and genotoxic effects resulting from EtO exposure, indicate that EtO poses a reproductive hazard for both men and women.

The genotoxic effects of EtO exposure described in the record include mutation of cells in culture, dominant-lethal mutations, heritable translocations, (Exs. 2–37, 2–352, 2–36), unscheduled DNA snythesis in germ cells of rodents, and increased frequency of chromosomal aberrations and SCE's in monkeys, rabbits (Exs. 4–60, 6–16, 22), and in humans occupationally exposed to EtO below the current PEL of 50 ppm. (Exs. 2–38, 6–13, 6–12, 6–14, 2–39, 137, 6–15) These effects are not surprising given that EtO is a highly reactive chemical and is capable of alkylating DNA. Although it is clear that the findings of chromosomal aberrations and SCE's in exposed humans stem from EtO acting upon DNA in human cells it is not clear what clinical manifestations would result from these effects. Nonetheless, the fact that EtO acts to alter the basic structure of genetic material, and resulting in alternations in ways that are both rare and persistent, and for which the clinical outcome is uncertain, is serious cause for concern.

The wide spectrum of effect attributable to EtO exposure is striking both in the number of test systems for which positive effects were found and in the relatively low exposures associated with those effects. These findings, taken together with the evidence on cancer, suggest similarities in the mechanism by which EtO induces mutagenic, carcinogenic, and reproductive effects. It is well established in the scientific community that most carcinogens have also been found to be mutagens when tested in *in vitro* and *in vivo* systems. For example, Legator testified:

> * * * we can talk at great length about the correlation between compounds that cause chromosome abnormalities * * * (and) cancer and the correlation is extremely impressive * * *" (Tr. 68).

Similarily, NIOSH has stated that the evidence that EtO exposure is associated with spontaneous abortion is supported by EtO's genotoxic activity. (Ex. 40).

Although the mechanisms by which EtO induces cancer or spontaneous abortion have not been precisely determined, the mutagenic activity of EtO suggests a mechanism by which EtO may cause these other effects. In evaluating the need to regulate occupational EtO exposures, OSHA must consider these elements in addition to the finding that a significant excess cancer mortality risk exists at the current 50 ppm EtO PEL. OSHA agrees with Legator's testimony that EtO is unusual in the breadth of its related toxic effects.

> I think you've had all the information that one could possibly gather to make a decision here. We can do all the risk estimates we wish and the answer is going to be that this is an extremely toxic chemical, a uniquely toxic chemical, a chemical that represents, in the pure sense of the word, a mutagenic, carcinogenic substance that does all the things that one would anticipate and one that we very seldom see in terms of (the) entire spectrum of results. (Tr. 81).

OSHA therefore concludes that EtO presents a serious and significant risk of adverse health effects going well beyond those of an excess risk of cancer, and believes that these risks will be substantially reduced by promulgation of the 1 ppm TWA.

Congress passed the Occupational Safety and Health Act of 1970 because of a determination that occupational safety and health risks in the American workplace were too high. Based on this, it is clear that Congress gave OSHA the authority to reduce serious occupational risks when feasible. OSHA believes that the proposed standard for EtO will reduce risk of cancer from a hundred per thousand to nearly one per thousand workers, and therefore, the Agency is carrying out the Congressional intent within the limits of feasibility and is not attempting to reduce insignificant risks.

In accordance both with Congressional intent and the Supreme Court's rationale, OSHA must, if it is feasible, seek to reduce risks below those estimated by the risk assessment to persist at a PEL of 1 ppm. OSHA expects that the final rule will reduce the risk of cancer below that estimated using the mathematical model. The estimates of risk only consider the standard's exposure level and do not take into account the other protective provisions of the standard such as respirators and medical surveillance. The decrease in risk to be achieved by these additional provisions cannot be adequately quantified beyond a determination that they will add to the protection provided by the lower PEL alone. OSHA has determined that employers who fulfill all the provisions of the final rule will provide that protection for their employees from the hazards presented by occupational exposure to EtO beyond that which would be provided solely by reduction of the PEL.

VII. Summary of Regulatory Impact and Regulatory Flexibility Analysis

Introduction

Executive Order (E.O.) 12291 (46 FR 13197, February 19, 1981) requires that regulatory agencies develop a regulatory analysis for any rule having major economic consequences on the national economy, individual industries, geographic regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) similarly requires regulatory agencies, including OSHA, to consider the impact of regulatory actions on any small entities that will be affected by the regulation.

In accordance with these requirements, OSHA prepared a Preliminary Regulatory Impact and Regulatory Flexibility Analysis (Ex. 6–22) to accompany the proposed standard for EtO. The Agency has also developed a combined Regulatory Impact and Regulatory Flexibility Analysis for the final EtO standard. Rulemaking comments received on the Preliminary Regulatory Impact Analysis and on the economic and technological feasibility of the standard are addressed in the summary sections below. The principal findings of each of the chapters of the final Regulatory Impact Analysis, and any differences between the Agency's preliminary and final analyses, are also discussed in the following sections. The Regulatory Impact and Regulatory Flexibility Analysis is available in the rulemaking docket for inspection and copying.

The Secretary has determined that this regulation does not constitute a major regulatory action, as defined by the criteria of section 1(b) of E.O. 12291. The Secretary also certifies that this action will not have a significant impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

Summary of Industry and Exposure Profiles

Information received from the Health Industry Manufacturers Association (HIMA) (Ex. 89, Tr. 240) has caused OSHA to reevaluate its original estimates of the numbers of directly and incidentally exposed employees potentially affected by this standard. OSHA estimates that the EtO standard covers approximately 71,196 directly exposed employees and 69,175 incidentally exposed workers in five industry sectors. Directly exposed workers are defined as those exposed to EtO as part of their regular work assignments. Incidentally exposed employees are defined as those exposed on a non-routine basis, such as might occur if an employee walked through an area where EtO was present. For example, an incidental exposure occurs when an employee inhales airborne EtO that is off-gassing from a product previously sterilized with EtO, or when a poorly functioning ventilation system permits EtO to accumulate in an area normally free of EtO.

The majority of employees covered by the standard work in five industry sectors: EtO producers, ethoxylators (firms using EtO to manufacture other chemical products), health care providers (hospitals that use EtO as a sterilant), manufacturers and sterilizers of medical products (hereafter termed medical products manufacturers), and spice manufacturers. The producer industry is comprised of 13 large firms, only 3 of which had annual sales under $1 billion in 1979. OSHA has identified 38 of the 50 firms that were estimated by the Ethylene Oxide Industry Council (EOIC) to comprise the ethoxylator industry. The 38 ethoxylator firms and the 13 producers identified use approximately 98 percent of all EtO produced in the United States to synthesize other chemicals, such as the ethylene glycol used in antifreeze, and polyester resins and fibers. The smallest ethoxylator firm by revenue (of the firms that were identified) had annual sales of $15 million and employed 350 workers in 1981. A total of 3,676 employees are currently estimated to be directly exposed in the producer and ethoxylator sectors.

Three of the industries affected by the standard—hospitals, medical products manufacturers, and spice manufacturers—use EtO to sterilize other products. Although the sterilant uses of EtO consume only 2 percent of all EtO produced in the United States, these applications are responsible for most occupational exposures to EtO. OSHA estimates that EtO is used as a sterilant in 7,700 sterilizers in 6,237 hospitals. In all U.S. hospitals, approximately 62,370 employees are estimated to be directly exposed, and 25,000 are estimated to be incidentally exposed.

In addition, 5,000 and 41,750 employees are directly and incidentally exposed to EtO, respectively, in the 125 medical products manufacturing firms that are estimated to use EtO. In the Preliminary Regulatory Impact Analysis, OSHA estimated that 300–400 firms in this sector sterilized with EtO and that 14,000 and 116,900 employees were directly and incidentally exposed, respectively, in this sector. However, HIMA reported (Ex. 89, Tr. 240) that fewer firms in this sector are currently using EtO to sterilize medical products. Among the firms identified by OSHA in this industry were very large companies such as Johnson & Johnson (with sales of $4.8 billion and employment of 42,000) and relatively small firms such as Edward Weck and Company, Inc., with 400 employees and annual sales of $30 million.

An estimated 25 spice manufacturing firms use EtO to sterilize spices. These firms have a total of 150 directly exposed employees. OSHA revised its estimate of the number of EtO-using firms and exposed employees in this sector based on information submitted to OSHA's rulemaking docket by the American Spice Trade Association (ASTA) (Ex. 11–130). The Preliminary Regulatory Impact Assessment estimated that there were 27 EtO-using firms and 162 directly exposed employees in this sector. Fifty-seven percent of the firms identified in this industry sector have more than 1,000 employees. The two smallest firms identified have 28 and 95 employees and annual sales of $20 and $14 million, respectively.

Summary of Costs

OSHA examined both the annualized and present value costs (in 1982 dollars) of compliance with a 1 ppm TWA and a 10 ppm.

These costs were determined for each of the affected industry sectors and represent the annualized and present value costs that would be incurred assuming that the start-up dates of the engineering provisions in the standard are 1 year from the effective date of the rule. The present value of the costs was estimated using a 10 percent discount rate and a 50-year time period. Costs are presented in this regulatory analysis for the engineering controls necessary to achieve exposure levels of 1 ppm as an 8-hour TWA, and for other provisions of the standard, such as medical surveillance, exposure monitoring, training, and hazard communication.

OSHA estimates that total annualized costs, which include capital costs as well as annual operating costs, are $35.45 million for all affected sectors. The total annualized costs for the five industry sectors are: producers, $1.27 million; ethoxylators, $0.97 million; health care providers, $16.68 million; manufacturers of medical products, $16.38 million, and spice manufacturers, $0.15 million. The present value of the costs of the final standard over the next 50 years, assuming a 10-percent discount rate, is estimated to be $351.52 million for the five affected industry sectors.

OSHA's Preliminary Regulatory Impact Assessment reported higher costs than those presented here. OSHA estimated that the total annualized costs for all sectors for the proposed standard would be $72.4 million, distributed by industry sector as follows: producers, $1.56 million, ethoxylators, $1.03 million; health care providers, $23.65 million; manufacturers of medical products, $45.99 million; and spice manufacturers, $0.17 million. OSHA has revised the estimated compliance costs for the producers sector based on submissions suggesting that two companies had already achieved compliance with a 1.0 ppm TWA (Exs. 4–40, 11–68) and, therefore, would incur no costs for engineering controls. Costs in the health care providers sector were revised based on information submitted to OSHA by the American Hospital Association (AHA) (Ex. 11–115) showing that 40 percent of the hospitals participating in the AHA's survey reported that they had already achieved a 1.0 ppm TWA and, therefore, would incur no costs for engineering controls. Costs in the manufacturers of medical products and spice manufacturers industry sectors have also been changed based on revised estimates of the number of firms using EtO and the number of exposed employees (Exs. 11–130, 89).

Summary of Economic Impacts

In the EtO producer and ethoxylator sectors, OSHA estimates that the annualized compliance costs of the final standard are approximately 0.2 and 0.1 percent of total annual sales for these sectors, respectively. Costs of this size will not have a substantial impact on the firms in these two sectors, since these firms are large, multi-product, multi-facility, and financially sound companies.

In the sectors using EtO as a sterilant (medical equipment manufacturers, hospitals, and spice manufacturers), the

estimated annualized compliance costs per firm ranged from $1,475 to $131,040. The estimated cost of the standard per directly exposed employee in the spice manufacturing , hospital, and medical equipment manufacturing sectors is $1,000, $267, and $3,276, respectively. OSHA believes that, since the demand for the products produced by these sectors is relatively price inelastic, firms in these sectors will be able to pass these costs forward to their customers.

In the medical equipment manufacturing sector, where an additional 41,000 employees are believed to be incidentally exposed to EtO, firms will probably be able to pass a part of their costs forward to their customers in the hospital sector. As described above, OSHA believes that the hospitals, in turn, will pass these costs through to the consumers of hospital services.

In conclusion, OSHA has determined that the compliance costs associated with the final EtO standard will not have a significant impact on the market structure of any of the affected industries. In addition, the impact of the rule on inflation will be negligible, accounting only for approximately 0.001 percent of the GNP for 1982. Further, since OSHA has found that few if any firms will be forced to cease doing business because of the standard, no impacts on employment or regional concentration are anticipated. Finally, the permanent standard for EtO should not have a discernible impact on the balance of payments, since the U.S. producers of EtO who compete with foreign producers are clearly capable of absorbing the costs of the standard.

Summary of Benefits

The illnesses and premature deaths prevented by the implementation of the final EtO standard represent some of the expected benefits of this standard. Some aspects of these benefits can be quantified, such as the excess risk of cancer due to direct exposure to EtO. Other EtO-related health impacts, such as chromosome damage and neurotoxic effects, have not been quantified due to data limitations.

Among the non-quantifiable health effects attributable to EtO exposure are several types of chromosome damage including increased frequency of sister chromatid exchanges (faulty exchanges of genetic material among chromosomes), chemical alteration of the DNA, failure of the DNA repair mechanism, and quadriradials (a visually detectable, rare, and complex chromosome aberration). Mutagenic and reproductive effects of EtO exposure have been observed in experimental animal studies involving increases in the frequency of fetal resorption, teratogenic effects, and dominant-lethal effects. In addition, increases in the number of spontaneous abortions were observed in an epidemiological study of exposed hospital sterilizer technicians in Finland. Exposure to EtO can also have serious neurotoxic and sensitization effects. The neurotoxic effects of EtO can range from centrally mediated nausea and dizziness to peripheral paralysis. Employees who become sensitized to EtO often have to avoid all subsequent contact with the chemical.

Using a quantitative risk assessment based on the Bushy Run experiments, OSHA has estimated the number of excess cancer cases that are expected to occur among directly exposed workers during the next 50 years. The risk assessment model assumed that workers are exposed to EtO 8 hours per day, 5 days per week, 46 weeks per year, for 45 years. The 50-year time period represents the remaining life expectance of a worker whose first exposure occurs at the age of 25 years. The directly exposed population accounts for approximately 71,196 of the estimated 140,371 employees exposed to EtO. Based on current exposure levels, OSHA estimates that compliance with the 1 ppm TWA will reduce the number of excess EtO-related cancers over the next 50 years from a range of 532 to 1,017 to a range of 75 to 146, an 86 percent reduction.

Summary of Technological Feasibility

Several issues were raised and discussed at length as to the technological feasibility of certain provisions of the EtO standard. These included: the feasibility of achieving compliance with the 1 ppm 8-hour TWA and the ability of available monitoring methods to measure 8-hour TWA EtO concentrations accurately and reliably. The record evidence on each of these issues is summarized below.

Feasibility of the 1 ppm TWA

OSHA concludes that compliance with the 1 ppm TWA is technologically feasible for each of the five industry sectors principally affected. The methods that can be used to reduce employee exposure to EtO in the EtO producer and ethoxylator industry sectors involve conventional technology. Examples include the increased use of exhaust ventilation, double mechanical pump seals, leak detection and repair, and the supplemental use of respiratory protection for selected short-term operations and maintenance activities. This technology is commonly known and presently used by firms in these affected industry sectors. The following sections present evidence and testimony from the record that demonstrate the feasibility of compliance with the 1 ppm TWA, not only in the producer and ethoxylator sectors, but in the medical products manufacturers sector, the spice manufacturers sector, and the health care providers sector.

Processes in which EtO is manufactured or used as a chemical feedstock primarily involve closed systems. Emissions that are of concern from the viewpoint of occupational exposure arise from pump and compressor seals, valves, and flanged joints. According to the JRB, Associates (Ex. 6–22) study of the EtO industry, these exposures can be controlled by the increased use of mechanical seals on pumps and compressors; leak detection and repair, rupture disks for minimizing low-level leakage from pressure relief devices; closed sampling devices at process sampling locations; and vapor-tight unloading connections, magnetic level gauges, and nitrogen purge systems on tank car loading facilities. Based on visits to producer and ethoxylator sites where these controls were being used, JRB concluded that a 1 ppm TWA was technologically feasible if respiratory protection was used for short periods of time during hose-disconnect operations at tank car loading and unloading stations (Ex. 6–22).

Many producers and ethoxylators submitted information supporting JRB's conclusion. For example, Celanese Corporation (Ex. 4–40) adopted a 1 ppm internal 8-hour TWA exposure limit in 1980 and is currently achieving this level at all job locations. Texaco (Ex. 4–47) reported that it is currently "fairly close" to achieving a 1 ppm 8-hour TWA and is preparing to implement additional controls to achieve a 1 ppm standard. The controls used by Texaco include "* * * recovery systems, closed-loop sampling systems, and magnetic level gauges for loading EtO tank cars" (Ex. 4–47).

The EOIC surveyed its member companies on the issue of the feasibility of a 1 ppm TWA (Ex. 4–33). Although the EOIC agrees with OSHA that a TWA of 1 ppm is feasible for the EtO producers and non-producer ethoxylators, they expressed concern that certain non-producer ethoxylators would not be able to achieve the 1 ppm TWA:

> * * * With respect to the non-producer* * * [ethoxylators], * * * it must be emphasized that the EOIC survey response constitutes a relatively small sample of a diverse industry and that 1 ppm

may not be technologically feasible for some members of that industry. (Ex. 4–33)

However, a supplemental submission by the EOIC (Exs. 4–33A, 4–33B) noted that 19 of 26 non-producer ethoxylator firms contacted by EOIC had already achieved 8-hour TWA's of 1 ppm or below. Neither the EOIC nor individual non-producer ethoxylator firms presented evidence to the record to suggest why firms in this sub-sector might have difficulty achieving a 1 ppm PEL. OSHA believes that the processes involved in ethoxylation, the types of equipment used, and the engineering controls employed to reduce emissions from these processes are substantially similar for both EtO producers and producer and non-producer ethoxylators. OSHA concludes, therefore, that compliance with a 1 ppm TWA is feasible for producers and for ethoxylators.

Several commenters (Exs. 11–57, 11–133, 70, Tr. 828, 837) stated that, while a 1 ppm TWA is feasible, respirators might be required for some short-term operations. For example, the EIOC commented that:

> In order for industry to meet a PEL of 1 ppm (TWA), use of respirators in certain circumstances, in addition to maintenance and repair, will be necessary. Producers and * * * (ethoxylators) may need to use respirators during loading and unloading operations. (Ex. 11–57)

Howard L. Kusnetz, Manager of Safety and Industrial Hygiene, Shell Oil Company (Ex. 70, Tr 878), stated that workers in 14 of 16 job categories at Shell were exposed to 8-hour TWA EtO concentrations of less than 1 ppm; in the 2 categories where exposures exceeded 1 ppm, respirators were used for short-term operations. Donald E. Rapp, a Certified Industrial Hygienist with the Dow Chemical Company, also confirmed that 1 ppm can be achieved if respirators are used during tank car loading and unloading and during vessel cleaning (Tr. 837). A submittal by Union Carbide Corporation stated that a 1 ppm level "* * * may be feasible *only* with the extensive use of negative pressure respirators, supplied air equipment, and with a sufficient phased-in compliance period" (Ex. 11–133). Union Carbide goes on to comment that respirators would be required in operations such as "* * * breaking connections, changing filters, cleaning railcars and tank trucks, clearing lines and quality control sampling * * *" (Ex. 11–133).

OSHA agrees with Union Carbide's assessment that a 1 ppm TWA may require the use of respirators in some maintenance operations and tank car loading and unloading. Such operations will need to be evaluated by individual employers on a case-by-case basis to determine whether engineering and work practice controls are feasible. However, OSHA does not agree that respiratory protection will be necessary during process (quality control) sampling. As reported by JRB (Ex. 6–22), Texaco (Ex. 4–47), the EOIC (Ex. 4–33), and the Dow Chemical Company (Tr. 837), employee exposures during process sampling can be controlled effectively by enclosing and ventilating the sampling points.

There was general agreement in the record that a 1 ppm 8-hour TWA exposure limit is achievable for operators of large industrial sterilizers (Exs. 6–22, 11–74; 11–113; 91; 146; Tr. 213, 1068, 1042). In the feasibility study conducted by JRB (Ex. 6–22), a number of engineering controls and work practices were identified that are currently being used in the industry to reduce occupational exposure to EtO. These include chamber evacuation systems, liquid/gas separation units to prevent excessive EtO emissions during chamber evacuation, local exhaust hoods installed over the sterilizer door, local ventilation of aeration chambers, and allowing the sterilizer to aerate for a short period of time after opening the sterilizer door. Because the equipment described by JRB is readily available on new sterilizers or can be retrofitted onto old equipment, JRB concluded that a 1 ppm TWA is feasible for sterilizer operations (Ex. 6–22). Ronald H. Abrahams, Director of the Regulatory Compliance Division of the American Hospital Supply Corporation (Ex. 4–45), commented as follows:

> For us to achieve a 1 ppm or lower level by engineering means, it is our opinion that we would have to construct new facilities with remote material handling capabilities, sterilization cycle modifications, [and] conveyor systems to transport products from the sterilizer area to specially designed degassing areas * * *.

Abrahams also stated that in order to achieve a 5 ppm TWA, chamber purge systems and additional air ventilation would be required (Ex. 4–45). However, OSHA believes, based on the evidence submitted by several medical products manufacturers (discussed above), by Peter Roy (Ex. 36), and by Robert Kramer (Ex. 35), that chamber purge systems and ventilation systems, if properly designed, can reduce 8-hour TWA exposures to 1 ppm and that the extensive use of automation described by Abrahams will not be necessary to achieve a 1 ppm TWA in this sector.

In his written submission to the docket, Peter A. Roy, Assistant Professor of Industrial Hygiene at the University of Minnesota, commented as follows:

> In my opinion, the measures necessary for EtO exposure control * * * to * * * 1 ppm PEL * * * are in fact nothing more than the application of good industrial hygiene practices, which have been well established and proven * * * These control measures include both local exhaust and general ventilation, process isolation, work practice control, equipment modification, and personal protection. (Ex. 36).

Comments submitted by the 3M Company also indicate that a 1 ppm TWA is attainable using new equipment or by retrofitting older equipment. In this regard, 3M stated:

> We believe that both new STERI–VAC equipment and retrofit modifications available for older 3M sterilizers make it feasible for 3M customers to meet the proposed PEL of 1.0 ppm reliably. (Ex. 146).

In addition, in 1981 3M adopted an internal guideline of 1 ppm as an 8-hour TWA in for its own sterilization facilities (Ex. 146).

Like 3M, Johnson & Johnson has already adopted an internal standard of 1 ppm as an 8-hour TWA (Ex. 11–113). In their written submission, they commented as follows:

> Johnson & Johnson adopted internal EtO exposure guidelines of 1 ppm (8 hr. TWA) and 10 ppm (15 min. STEL) in May of 1980 and thus has three years experience in implementing this guideline for exposure. This experience indicates that a PEL of 1 ppm * * * is feasible when coupled with the limited use of respirators * * * (Ex. 11–113).

Frank P. Wilton, President of Ethox Corporation, commented in his written testimony that, after installing new ventilation equipment and constructing a dedicated aeration facility, Ethox "* * * achieved an operating environment with a TWA below 10 ppm" and believes that it "will be able to achieve a TWA of 1 ppm" after installing additional control measures (Ex. 91).

On the issue of when respirators were needed to meet the 1 ppm TWA, commenters generally agreed that limited use of respirators would be required during certain operations (Exs. 11–74, 11–113, Tr. 285, 302, 1042, 1068). For example, G. Briggs Phillips, Vice President of Scientific Affairs for HIMA, testified that:

> HIMA supports OSHA's proposal of the one part per million PEL and believes that compliance is feasible * * * [if] limited use of respirators [is permitted] for short periods. (Tr. 1041).

In its written submission HIMA described the areas in which respirators

may be required to achieve a 1 ppm TWA:

> In addition to chamber unloading, respirator protection is essential in degassing rooms, for example, removal of biological indicators from sterilized products, requires the employee to enter the degassing room, where ambient levels from the off-gassing product, even with ventilation, are likely to be above 1 ppm. (Ex. 11-74).

In his testimony, Roy agreed that respirator use may be necessary in the sterilizer chamber and aeration facility:

> Based upon my experience even with the engineering controls and ventilation and chamber aeration * * * unloading the pallets from a large sterilizer * * * would require respiratory protection.
>
> [T]ransferring into and entering the heated aeration tunnel or aeration room, depending on the size of the facility * * * would routinely require respiratory protection * * *
>
> [R]emoval of biological indicators in industrial settings, since the indicators were often buried in the pallets somewhere, * * * quality assurance technicians would put a gasmask on * * * (Tr. 302).

OSHA concludes, based on the evidence discussed above, that achievement of the 1 ppm TWA is technologically feasible during the sterilization of medical products, with the limited use of respirators. As is the case with EtO producers and ethoxylators, the employer who sterilizes medical products will have to evaluate his or her operation on a case-by-case basis to determine the feasibility of control technology and the need, if any, for respiratory protection.

The process for sterilizing spices is essentially the same as that for sterilizing medical products. Materials to be sterilized are placed in gas-permeable bags, bales, or containers before being loaded into the chamber. After sterilization, the product is removed from the chamber and stored in a holding area for at least 48 hours. Because the process and sterilization equipment and the available control equipment used in this sector are similar to those used for sterilizing medical products, the JRB study concluded that compliance with a 1 ppm TWA was feasible for spice manufacturers (Ex. 6-22).

Five spice manufacturers (Exs. 4-34, 11-47, 11-49, 11-101, 11-141) and the American Spice Trade Association (ASTA) (Ex. 11-130) submitted comments to OSHA. Only the ASTA submittal commented on the feasibility of a 1 ppm TWA.

> Only six [spice manufacturing] firms were contacted by JRB [in its feasibility study of the EtO industry], and only 20 percent of the six can meet a 1 part per million level. It would appear, therefore, that this is a totally unsound basis for judging the industry, as * * * to its ability to comply with the proposed regulation (Ex. 11-130).

However, the JRB study stated that:

> All 8-hour TWA levels reported by * * * (the six responding spice manufacturing firms) were below 5 ppm, and 20 percent (of the exposure samples) were less than 1 ppm (Ex. 6-22).

Thus, the information presented by ASTA (Ex. 11-130) from the JRB report does not refer to the ability of spice manufacturing firms to meet the 1 ppm TWA, but instead refers to current EtO exposure levels in spice manufacturing firms, as reported by the firms themselves to JRB. Two spice manufacturing firms submitted cost estimates to the docket for achieving a 1 ppm TWA (Exs. 11-49, 11-141). OSHA believes that a 1 ppm TWA PEL is feasible in the spice manufacturing industry sector since these firms were limiting exposure by using engineering and work practice controls. In addition, the similarity between the sterilizing processes in the spice manufacturing and the medical product manufacturing industry sectors, where evidence shows that 1 ppm is feasible, strongly suggests that 1 ppm is feasible in the spice manufacturing industry sector. OSHA therefore concludes that the 1 ppm TWA is technologically feasible in the spice manufacturing industry sector with the use of engineering controls and the limited use of respirators.

Although the EtO sterilizers used in hospitals are smaller than the industrial sterilizers used by medical products manufacturers and spice manufacturers, the control of EtO exposures in hospitals involves the same principles and types of equipment used for industrial sterilizers. However, as Roy testified, the smaller size of hospital sterilizers makes controlling EtO exposures in hospitals generally easier than in industries using large sterilizers:

> In my work [with] sterilizers, ranging from tabletop size to industrial size, I have found the process * * * [and] [t]he exposure patterns are basically the same.
>
> The size and scope of the problem, of course, varies with the size and scope of the operation—more gas, bigger sterilizers, bigger problems; less gas, smaller sterilizers, generally a smaller problem in terms of total exposure (Tr. 240).

In addition, Robert Kramer stated that "* * * [u]sing a continuous purge cycle or a post-vacuum continuous purge * * * [hospitals] can readily achieve a 1 ppm standard" (Tr. 201).

Several hospitals submitted exposure data indicating that they are currently achieving the 1 ppm TWA (Exs. 4-6, 11-5, 11-20, 11-35, 11-37, 11-38, 11-40, 11-60, 11-77, 11-85, 11-87, 11-97, 11-100, 11-132, 11-156, 99). A hospital survey report submitted by the Council Shared Services, Hospital Council of Southern California (HCSC) (Ex. 11-122), showed that 62.9 percent of 426 EtO site surveys conducted in 123 hospitals (August 1978 through March 1983) showed EtO exposure lower than an 8-hour TWA of 1 ppm. In a second set of surveys taken by the Council from March 1982 through March 1983, 75 percent of 148 site surveys taken in 86 hospitals showed EtO exposures below 1 ppm (Ex. 11-122). Malcolm Ridgeway, Director of HCSC, further testified that 50 site surveys conducted using passive dosimeters showed that "* * * 88 percent of sites that we now survey show levels below one part per million * * *" (Tr. 1336).

The results of a survey conducted by the American Hospital Association (AHA) (Ex. 11-115) indicated that 40 percent of 451 hospitals contacted to provide exposure data reported EtO exposures of 1 ppm or less as an 8-hour TWA.

Despite the fact that many hospitals report that they are currently meeting a 1 ppm TWA, some commenters state that extensive facility modifications would be required to achieve 1 ppm (Exs. 4-45, 11-111, 11-127). Gordon E. Whitaker and Collette Keyser, co-chairpersons of the Association for the Advancement of Medical Instrumentation (AAMI), commented that:

> Compliance will be difficult for most hospitals, but especially for the smaller, older and not-for-profit institutions. Older institutions may require major modifications in area ventilation and the installation of dedicated exhaust systems. Even the more modern institutions will need time to * * * formulate plans for needed ventilation changes and then to implement these plans to comply with a 1 ppm PEL. (Ex. 11-127).

Although the installation of new and retrofitted ventilation systems may be required to achieve the 1 ppm TWA in some older hospitals, OSHA believes that such modifications can be made without renovation or restructuring of existing facilities. On this point, Peter Roy testified as follows:

> * * * Those that argue against the feasibility or practicality of the installation of local exhaust systems in hospitals are * * * (thinking of) facilities where there are "remote" sterilizers * * * (e.g.) far from the roof or from an outside wall * * *.
>
> Although * * * so-called * * * remote locations may be inconvenient, they are certainly not impossible (for the purposes of EtO control). Sterilization equipment in a "remote" central service area is not in a concrete box all by itself * * *. Certainly,

you can drill a hole through a concrete wall and put in a duct. It's done all the time. (Tr. 223).

After reviewing the available evidence in the entire record OSHA believes that a TWA of 1 ppm is technologically feasible in the sectors that will be principally affected by the final rule for EtO. The technologies to achieve this level of control consist of conventional equipment, such as forced ventilation, closed-loop sampling systems, pump seals, local exhaust, and chamber purges, and widely accepted work practices, such as leak detection, delaying sterilizer unloading after opening the door to permit off-gassing of EtO, and training employees to stand upwind during tank car pulling, rather than pushing the cart loaded with sterilized goods. As discussed above, these technologies and work practices are already in use by firms in each of the sectors studied, and have permitted many facilities to achieve compliance with the 1 ppm TWA mandated by the final rule.

Feasibility of Monitoring a 1 ppm TWA and 0.5 ppm Action Level

Many commenters addressed the availability and accuracy of feasible methods to measure employee exposures to EtO (Exs. 4–20, 4–24, 4–28, 11–54, 11–65, 11–74, 11–76, 11–101, 11–127, 11–133, 11–141, 11–147, 37, 75, 109, 142, 146, 151). These commenters raised five issues regarding monitoring:

- Ability to measure concentrations of 1 ppm as an 8-hour TWA.
- Accuracy of monitoring methods.
- Field validation of monitoring methods.
- Inability to measure concentrations below 1.0 ppm accurately.
- Length of time to obtain monitoring results.

Each of these issues is discussed below.

Several commenters stated that the currently available methods for monitoring employee exposures to EtO were not capable of detecting concentrations of EtO at 1 ppm (Exs. 4–35, 11–18, 11–21). For example, Robert R. Everett, Executive Vice President of Louise Obici Memorial Hospital in Suffolk, Virginia (Ex. 11–21), stated:

> We know of no way of determining compliance at the 0.5 and 1 part per million standard. Our monitoring equipment will not detect that small an amount, nor will (other) equipment that we have been able to find on the market.

However, information submitted to the docket shows that there are at least six sampling and analytical methods that have limits of detection sufficiently low to measure 8-hour TWA exposure and action levels. Of the six methods listed below, three are reported to be able to detect 1 ppm as an 8-hour TWA within the ±25 percent and 0.5 ppm as an 8-hour TWA within the ±35 percent accuracy limits specified by the standard: the OSHA method, the Qazi/Ketcham method, and the DuPont Protek passive dosimeter.

OSHA's method 30 has a limit of detection of 0.01 ppm and a reliable detection limit of 0.05 ppm (Tr. 222).

The NIOSH method is a modification of the OSHA method and has a limit of detection of 0.027 ppm (Tr. 325).

The Qazi/Ketcham method has a limit of detection of 0.25 ppm, has been validated over the range of 0.5 ppm to 50 ppm (Ex. 11–133), and is used routinely to measure 1 ppm (Exs. 4–24, 4–28, 11–54, 11–76).

The Miran infrared spectrophotometer, a direct reading instrument, is capable of detecting 1 ppm (Exs. 11–73, 11–79).

The 3M model 3550 passive dosimeter has a limit of detection of 0.25 ppm (Exs. 4–20, 136).

The DuPont ProTek passive dosimeter has a limit of detection of 0.25 ppm (Exs. 11–65, 11–65A, 109).

Each of the above methods is capable of measuring the 1 ppm TWA. All of the methods except the Miran infrared spectrophotometer are capable of measuring the 0.5 ppm action level. The Qazi-Ketcham method, for example, is capable of detecting 0.25 ppm when used to measure an 8-hour TWA. This method has been validated at a flowrate of 20 cc per minute for 6 hours, 40 minutes samples and 500 cc per minute for 15 minute samples (Ex. 11–133).

Several commenters (Exs. 11–76, 11–127, 11–133) noted that the standard OSHA method is inconvenient to use because it requires frequent changing of charcoal tubes during an 8-hour sampling period. For example, William F. Kirchoff, senior attorney for Warner Lambert Company (Ex. 11–76), stated that:

> Since the recommended total air volume (that must be collected) is 1.0 liter at a flow rate of 0.05 liter per minute, sampling tubes would have to be changed every 20 minutes. This would greatly increase the number of samples taken per operator during the course of full shift sampling.

However, to overcome this problem, the NIOSH method uses a larger charcoal tube than the OSHA method, and the NIOSH method has also been validated to 1 ppm (Tr. 219, 325). In addition, the Qazi/Ketcham method, the DuPont ProTek badge, and the 3M passive dosimeter are reported to be able to measure concentrations at the 1 ppm TWA and 0.5 ppm action level (Exs. 4–20, 11–65, 11–65A, 11–113, 109, 146).

Several commenters (Exs. 4–28, 11–54, 11–65, 11–74, 75) questioned the ability of available monitoring methods to achieve the accuracy requirements specified by the standard (± 25 percent at the 95 percent confidence level for the 0.5 ppm action level). Referring to OSHA's proposed accuracy requirements, HIMA (Ex. 11–74) states that "Such levels of accuracy cannot be achieved in practice* * *." However, OSHA received much information showing that the required level of accuracy can be achieved with several of these monitoring methods (Exs. 11–65, 11–105, 11–133, 37, 109, Tr. 222). Information submitted by DuPont (Ex. 11–65) shows that the DuPont ProTek passive dosimeter had an overall system accuracy of ±13.5 percent. The OSHA method 30 has been validated at a concentration of 1 ppm and has been shown to be accurate to ±13 percent (Ex. 37, Tr. 222). Charles P. Blahaus, Vice President, of Environmental, Health and Safety for PPG Industries, states that "laboratory evaluations of charcoal tube samples have reported accuracies at 1 ppm of ±25% and 0.5 ppm ±35% under optimal conditions" (Ex. 11–105).

Union Carbide (11–133) has performed tests to determine the accuracy of the Qazi/Ketcham method and concluded: "OSHA has specified that the EtO sampling and analytical methods must meet the following accuracy requirements at the 95% confidence level: ±25% at the PEL and ±35% at the action level. Under controlled laboratory conditions, the Qazi/Ketcham method appears to meet (OSHA's) accuracy requirements". DuPont has also tested the Qazi/Ketcham method (Ex. 11–65, 109) and found an accuracy of ±25.9 percent for the method in one validation test and ±79.2 percent in another validation test. The first validation test included results of 21 samples of airborne concentrations ranging from 4 to 8 ppm. The second validation test involved results from unreplicated samples taken at each of six concentrations ranging from 0.25 ppm to 10.7 ppm. However, the results of the second validation test are likely to have been compromised by the inclusion of two samples that were at or near the lower limit of detection for the Qazi/Ketcham method. OSHA therefore believes that DuPont's estimate of an accuracy of 25.9 percent for the Qazi/Ketcham method is a more reasonable assessment of the method's performance.

Union Carbide's comments (Ex. 11–133) were typical of those of several commenters (Exs. 4–28, 11–49, 11–54, 11–

65, 11–74, 11–101, 11–130, 11–141, 11–147, 75) who expressed doubt that monitoring methods could achieve their rated accuracies under actual field conditions. Union Carbide (Ex. 11–133) stated that:

> * * *Considerable analytical experience and expertise is required to perform the (Qazi/Ketcham) method. Even within Union Carbide, only industrial hygiene laboratories with considerable experience have been able to duplicate the validation data* * *. Thus, while the method is the best we know of, it may be difficult to meet the accuracy requirements of OSHA under field conditions and in inexperienced laboratories.

However, evidence (Ex. 11–133) that some industrial laboratories within Union Carbide have been able to train their personnel to achieve the required accuracy indicates that the skills necessary for accurate determination of EtO concentrations can be learned. Although the method is difficult to use, OSHA is confident that with strict adherence to the published methods and adequate training of laboratory and industrial hygiene technicians, the skills enabling technicians to measure EtO concentrations accurately will be acquired following promulgation of the final standard.

Many commenters (Exs. 11–54, 11–74, 11–101, 11–133, 11–141, 74, 153) stated that none of the currently available sampling and analytical methods for measuring employee exposures to EtO have been field validated. In addition, specific questions regarding field validation of the OSHA and NIOSH methods were raised during the hearing (Tr. 216, 327). DuPont (Ex. 109) provided a definition of field validation procedures:

> A new analytical and sampling method* * * (is) field tested and validated against the most commonly used independent monitoring method once that method has been validated in the laboratory under expected field conditions and shown to be precise and accurate. Few methods have been tested in this manner.

Samuel Tucker, Research Chemist from NIOSH (Tr. 330) confirmed that "* * *for (field) validation, one must have an independent method of analysis." At the present time, OSHA knows of no independent EtO monitoring method that has been tested under field conditions that could be used as a reference method against which new sampling and analytical methods for EtO could be validated. Until a method is tested and accepted by an independent organization such as the American Society of Testing Materials (ASTM) Committee D22, new methods cannot be field validated.

However, as Ronald Freking, Director of the Organic Division of OSHA's Analytical Laboratory in Salt Lake City emphasized, the sampling and analytical methods used for most OSHA-regulated chemical substances have not been field validated (Tr. 229). Further, Mathew Gillen, Industrial Hygiene Consultant for the Workers Institute for Safety and Health, observed that "field validation is something that's desirable but isn't absolutely necessary for enforcement purposes" (Tr. 230).

Commenters (Exs. 11–49, 11–101, 11–130, 11–141, 11–147) from the spice manufacturing industry sector indicated that they believed field validation was especially necessary in their industry because of the number of chemicals in their workplaces that might interfere with the validity of monitoring results. For example, ASTA (Ex. 11–130) stated that:

> Since our primary reason for existence as an industry hinges on the presence of numerous volatile components and the very atmosphere of our production facilities can contain many of these chemicals, we submit that the possibility of interference by volatile chemicals in current measurement capabilities can be substantial.

However, OSHA has determined that the currently available and commonly used EtO sampling and analytical methods have been tested for interferences. For example, Union Carbide reported that a wide variety of chemical substances do not interfere with the (Qazi-Ketcham) analytical procedure (Ex. 11–133). These chemicals are different from EtO in terms of molecular weight, polarity, and other chemical characteristics, which means that they also have different residence times in the chromatographic columns used to analyze them. OSHA believes that the high molecular weight aromatic compounds that lend flavor and odor to spices are also likely to have residence times that are readily distinguishable from that of EtO.

Although several commenters (Exs. 11–65, 11–133, 37, 109, Tr. 222) provided laboratory validation data demonstrating the accuracy of some of these analytic methods at 1 ppm, no commenters provided data demonstrating the ability of these methods to measure the 0.5 ppm level with an accuracy of ±25 percent at the 95 percent confidence level. Therefore, OSHA cannot demonstrate the feasibility of monitoring alternative TWAs of 0.5 ppm or lower within an accuracy of ±25 percent. Howard Kusnetz, Manager of Safety and Industrial Hygiene for the Shell Oil Company (Ex. 4–28), stated:

> Standard analytical methods are available for monitoring EO concentrations in the 1- to 20-ppm range. Should OSHA consider reducing the permissible exposure level below 1.0 ppm, the analytical methods would require modification to provide the necessary sensitivity.

Based on a careful review of the evidence in the record of this rulemaking, OSHA has determined that it is feasible to measure airborne concentrations of EtO at the 8-hour TWA level with the accuracy required by the standard's 8-hour TWA provision. Further, the record indicates that it is possible to measure the 0.5 ppm action level within the accuracy range required by the standard. However, the evidence indicates, and OSHA finds, that it is not feasible to measure EtO concentrations under field conditions, within the limits of error specified in this standard, at levels below the 1 ppm TWA and the 0.5 ppm action level.

Notification of Monitoring Results

The proposals requirement to notify employees of monitoring results within 10 days from the employee's receipt of monitoring results was questioned by some commenters (Exs. 11–25, 11–74, 142). For example, John Kuchta, Vice President and General Counsel of the Kendall Company (Ex. 142) stated that:

> * * * the proposed regulation requires that employers provide employees with the results of all EtO personal monitoring within 10 days. This proposal is unreasonable and unrealistic in light of the fact, that in order to comply with other provisions of this standard requiring accurate testing, the samples must often be forwarded to outside laboratories for evaluation and analysis. Experience has shown that this testing requires, at a minimum, three to four weeks.

OSHA did not intend the 10-day period specified in the proposal's notification of monitoring results provision to apply to the interval between monitoring and notification, but to the period between the receipt of monitoring results by the employer and notification of the employee. As written, this requirement would permit employers to send their monitoring results to outside laboratories for analysis. OSHA believes that clarifying the intent of this provision will prevent misinterpretation of this provision in the future.

Another commenter objected that the 10-day interval between the employer's receipt of results and notification of employees was too short. For example, Charles P. Blahaus, of PPG Industries, Inc. (Ex. 11–105), stated that additional time for employee notification of monitoring results would be required to

"allow the employee's work shift to be rotated to where he could be contacted by day supervision and medical personnel * * *."

OSHA agrees with this argument, and has therefore extended the time for employee notification of monitoring results to 15 days after receipt of monitoring results. OSHA believes that 15 days will allow sufficient time for an employee who is monitored on the day shift to be rotated back to the day shift.

Based on the evidence in the entire record, OSHA has determined that a 1 ppm TWA is technologically feasible. The technologies, methods, and work practices are commonly known and presently used by firms in the affected industry sectors. OSHA has also determined that it is technologically feasible to accurately monitor a 1 ppm TWA and a 0.5 ppm action level within the parameters set forth in the standard.

Although the record in this rulemaking does demonstrate that most operations in most facilities can be expected to achieve 8-hour exposure levels of 1 ppm, OSHA cannot demonstrate that most facilities could reliably achieve compliance with an 8-hour TWA (and its accompanying action level) set at a level below 1 ppm.

Environmental Assessment—Finding of No Significant Impact

On April 21, 1983, OSHA published a notice of proposed rulemaking (NPRM) for occupational exposure to ethylene oxide (EtO) (45 FR 17284–17319). At that time, OSHA also published an environmental finding of no significant impact. OSHA has reviewed the docket and has received no additional information on any potential environmental effects of the standard as a result of the public hearing, or as part of the posthearing comments. In addition, OSHA has reviewed the final EtO standard in accordance with requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the provisions of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Compliance Procedures (29 CFR 11). As a result of the Agency's review, and based on the information contained in the preamble of this notice, the Assistant Secretary has determined that the promulgation of the rule will have no significant effect on the quality of the human environment external to the workplace in terms of air, water or soil quality, plant or animal life, or land or energy use..

VIII. Summary and Explanation

The following sections discuss the individual requirements of the EtO standard. The sections include an analysis of the record evidence and the reasons underlying the adoption of the various provisions of the standard. The final standard contains a permissible exposure limit for EtO of 1 ppm as an 8-hour TWA. Engineering controls, work practices, and respirators are required where necessary to reach the PEL's, and written compliance plans must be developed. Engineering controls must be completed within 12 months from the effective date of the standard. Several provisions of the standard, including those on exposure limits, respirators, emergencies, medical surveillance, labels and signs and recordkeeping have been revised and clarified as described in detail below.

The language of the standard and the order of the various provisions are consistent with the drafting in other recent OSHA health standards, such as the arsenic final standard (43 FR 19584), and the acrylonitrile final standard (43 FR 45762). OSHA believes that a similar style should be followed from standard to standard to facilitate uniformity of interpretation of similar provisions. Section 6(b)(5) of the Act states that health standards shall also be based on "experience gained under this and other health and safety laws."

Paragraph (a) Scope and Application

The standard applies generally to all occupational exposures to EtO. However, depending on the nature and the extent of the exposure, certain provisions of the final standard may become inapplicable or may have limited applicability.

The standard applies to any workplace where exposures to EtO may be found except those workplaces exempted by paragraph (a)(2). The applicability of several of the provisions of the standard is based on the results of the initial monitoring conducted by the employer or on the availability of other objective data concerning employee exposures or product characteristics.

The final standard contains the same exemption as proposed. Paragraph (a)(2) excludes workplaces that process, handle or use products containing EtO where objective data show that the product cannot release EtO at or above the action level. The criterion for exemption under paragraph (a)(2) requires objective data that show that the material is incapable of releasing airborne EtO at or above the action level under the expected conditions of processing, handling or use that would cause the greatest possible EtO release. OSHA anticipates that the primary producers and intermediate processors of EtO-containing products will be in the best position to test their products and to supply the necessary objective data on the levels of EtO likely to be released by the product to downstream users of the EtO containing material. The final standard does not require downstream employers to generate their own objective data on the EtO levels likely to be released from a product if they can obtain it from producers or other processors. However, as required by paragraph (k)(1) of the standard, the employer must document that this information appropriately supports the exemption, and the employer must maintain a record of this information.

In addition, employers may demonstrate that their employees' exposures are below the action level by using historical monitoring data, i.e., monitoring results for these employees obtained within a one-year period preceding publication of this final rule. When employee exposures can be demonstrated, by means of such objective data, to fall below the action level trigger for many provisions of the standard, employers can use these data to satisfy the initial monitoring requirements of paragraph (d)(2)(ii) of the standard. This alternative to initial monitoring is discussed in greater detail in the monitoring section below.

Some participants suggested specific exemptions for their industries. For example, representatives of an airline company (Ex. 11–117) performing infrequent fumigation of aircraft and representatives of the construction industry (Exs. 11–2, 11–7, 11–11) who claimed EtO is not found in construction operations asked for special exemption. OSHA believes, however, that employees should be protected even where EtO is used very infrequently, especially given the adverse health effects potentially associated with intermittent EtO exposure. For example, it is possible that construction workers could be exposed to EtO during construction activities in or around medical facilities.

Moreover, OSHA notes that the final rule has been structured so that any compliance burden imposed by the standard is related to the extent and duration of the employee exposures in an employer's workplace. One provision (medical surveillance) applies only to workplaces having EtO levels at or above the action level for more than 30 days per year, while other requirements, such as periodic monitoring, annual medical examinations, and labeling,

apply only to workplaces having exposures at or above the action level. OSHA therefore does not believe that any significant compliance burden is placed on employers who either do not use EtO or who have workplaces where employee exposures are below the action level. OSHA also notes that the Construction Advisory Committee on Occupational Safety and Health (CACOSH) voted at its meeting on May 23 and 24, 1983, to have the construction industry covered by the EtO standard.

Paragraph (b) Definitions

In the final standard, the definitions of "Director," "Authorized person," "Assistant Secretary," and "Ethylene oxide" remain unchanged from the proposal.

The definition of an "action level" as an airborne concentration of 0.5 ppm (8-hour time-weighted average) also remains unchanged from the proposal. An action level is an exposure limit above which some provisions, such as monitoring and medical surveillance, apply, and below which fewer provisions apply. The action level may have the effect of providing an incentive for employers voluntarily to reduce exposures to below the action level where possible. However, employers are not required to achieve this exposure level.

Many participants supported the action level concept and suggested that a 0.5 ppm action level would be an appropriate level, given a 1.0 ppm TWA (Exs. 11–25, 11–77, 11–90, 11–143, 129). For example, Vicki L. Martin, Environmental Attorney for Dow Corning Corporation, stated that:

> Dow Corning strongly supports the concept of an "action level" as a means to focus surveillance and monitoring efforts to those work situations where significant exposure is likely to occur; and to relieve those employers of these more burdensome obligations if actual monitoring data shows they are unnecessary. The 0.5 ppm actions level appears appropriate (Ex. 11–143).

As noted by Martin, one purpose of the action level is to lessen any burden on employers by providing a cut-off point for many of the compliance activities required by the standard. If, on the basis of initial monitoring results or other objective data, employee exposures are found to be below the action level, the employer would be permitted to discontinue monitoring (as specified by paragraph (d)). Periodic medical examinations would also not be required for these employees. The action level thus provides an objective means for an employer to determine what provisions of the standard apply.

Use of an action level also improves workers protection while increasing the cost-effectiveness and performance orientation of the standard. Employers able to achieve exposure conditions below the action level will be encouraged to maintain this status to reduce their monitoring and medical surveillance expenses. At the same time their employees will be further protected because their exposures will be less than half of the TWA. Where it is not feasible to reduce exposures below the action level, employees will continue to receive the protection afforded by regular exposure monitoring and periodic medical surveillance.

Some commenters (Exs. 11–5, 11–83, 11–125) argued that achieving the action level should not be reason for allowing employers to discontinue routine monitoring of employees. For example, Merry K. Holthof, Central Service Supervisor for the Grand Rapids Osteopathic Hospitals, observed:

> * * * [I]t is necessary for some type of periodic monitoring to be conducted to insure that the levels of Ethylene Oxide are remaining at the action level. There are variable factors * * * that may have an effect on the levels of Ethylene Oxide (including) equipment breakdown or new employees * * * OSHA (should) set down a recommendation for periodic monitoring to insure that the level of EtO remains at the action level (Ex. 11–125).

The rationale for setting an action level has been discussed in connection with several other OSHA health standards. (See, for example, inorganic arsenic, 1910.1018(b); vinyl chloride, 1910.1017(b); and acrylonitrile, 1910.1045(b)). In brief, although all employee exposure measurements on a given day may be below the TWA, it is possible that on days when no measurements are taken, an employee's actual exposure may unknowingly exceed the TWA. Similarly, where employee exposure measurements are above one-half of the TWA (i.e., the action level), the employer cannot be confident that his employees may not, at some time, be exposed above the TWA (Ex. 6–26). However, requiring periodic exposure monitoring when exposures are above the action level does permit the employer to have confidence that employee exposures are in fact below the TWA when monitoring data so indicate.

It is noted here, however, that even if the employer has controlled exposures to below the action level, paragraph (d)(5) of the final rule requires reinstitution of exposure monitoring "when there has been a change in the production process, control equipment, personnel or work practices that may result in new or additional exposures to EtO or when the employer has any reason to suspect that a change may result in new or additional exposures."

The definition of "employee exposure" incorporates the proposed language which specified that employee exposure means that exposure which would occur if the employee were not using a respirator and that employee exposure measurements are to be made without regard to the use of respiratory protection. Several commenters took issue with this definition, contending that breathing zone sampling does not reflect the actual exposure of an employee who is being protected by a respirator. Although this statement may apply in certain circumstances, it overlooks the fact that exposure monitoring is not a single-purpose activity. It is necessary to know employee exposure levels without the use of respiratory protection to evaluate the effectiveness of the required engineering and work practice controls and to determine whether additional controls must be instituted. In addition, monitoring is necessary to determine which respirator, if any, must be used by the employee, and it is also necessary for compliance purposes.

The potential health effects associated with high EtO exposures have necessitated the adoption of provisions dealing with emergency situations where unexpected significant releases of EtO may occur. The proposal defined "Emergency" as "* * * an unexpected massive release of EtO." However, the meaning of the term "massive" could be confusing and might be difficult to define for enforcement purposes, as pointed out by several commenters (Exs. 11–145, 44, 103, 142, Tr. 364). This is particularly true since EtO is a gas, which means that even "massive" releases would not cause visible leaks or spills. In addition, EtO's warning properties are poor, since levels as high as 700 ppm are required before it has a noticeable odor.

The industrial uses of EtO could give rise to several types of emergencies, but many of these are already covered by existing OSHA standards. For example, emergency situations that could result in an explosive mixture of EtO are addressed in 29 CFR 1910.106, and those that could result in skin burns are regulated under 29 CFR 1910.132. Situations that cause chronic health effects are covered by the PEL provision of the final EtO rule. The emergency situations that OSHA is concerned about preventing with this emergency situation provision are those having the potential to produce acute toxic effects

among inadvertently exposed employees. The acute toxic effects of concern are short-term and reversible effects such as eye or respiratory irritation, skin rashes, headache, nausea and dizziness.

To clarify that the intent of this provision is to protect employees from unexpected and substantial releases of EtO, OSHA has defined "Emergency Situations" as "an occurrence such as but not limited to equipment failure, rupture of containers, or failure of control equipment that may result in an unexpected significant release of EtO." Quantities of EtO sufficient to produce acute toxic effects in exposed employees would constitute such an emergency. Although individual variability among workers makes it difficult to quantify with precision what EtO levels may cause acute toxic effects, acute effects may be expected to occur from exposures resulting from the rupture of a flange, valve or pump seal, failure of a check valve on an EtO tank, or failure of a ventilation system over a sterilization chamber or liquid sampling station.

Paragraph (c) Exposure Limits

In the final rule for EtO, OSHA has revised the permissible exposure limit for EtO by amending the current 50 ppm standard contained in 29 CFR 1910.1000, Table Z–1, for all affected industry sectors. The final standard sets an 8-hour time-weighted average (TWA) limit of 1 ppm in paragraph (c) of § 1910.1047. The basis for promulgating this exposure limits is discussed below.

Permissible Exposure Limit

As discussed in the risk assessment section above, OSHA concludes that occupational exposure to EtO presents an excess cancer risk of 634 to 1,093 deaths per 10,000 employees exposed at the current OSHA limit of 50 ppm (TWA). The final rule, which sets an 8-hour TWA of 1 ppm, will achieve a 98 percent reduction in cancer mortality risk, for an excess of 12 to 23 deaths per 10,000 employees. OSHA believes that the remaining risk at the 1 ppm limit is still significant, but that the 1 ppm limit reduces the risk to the extent feasible. Most rulemaking participants commenting on the PEL agreed that revision of the current PEL was necessary, and many commenters agreed that a 1 ppm PEL was appropriate (Exs. 2–11, 4–21, 4–26, 4–41, 11–25, 11–38, 11–47, 11–57, 11–69, 11–71, 11–74, 11–77, 11–98, 36, 89). The significance of the risk associated with the existing EtO standard has been acknowledged by employers, who have reacted to information regarding the potential health effects of EtO by voluntarily reducing exposure among their employees, as noted above in the Summary of Technological Feasibility.

As discussed in other sections of this preamble, OSHA is confident that an 8-hour TWA of 1 ppm is technologically feasible in the sectors that will be principally affected by the final rule for EtO. The technologies necessary to achieve this level of control consist of conventional equipment and widely accepted work practices. These technologies and practices are already in use by firms in each of the affected sectors, and have permitted many facilities to achieve the 1 ppm level mandated by the final rule. In addition, OSHA has determined that sampling and analytical methods are available to detect an airborne concentration of 1 ppm EtO (8-hour TWA) within the ±25 percent accuracy requirement set forth by paragraph (d)(6) of the final rule.

The final rule also includes an action level of 0.5 ppm (8-hour TWA) with less stringent accuracy requirements for sampling and monitoring. Where it is feasible to do so, OSHA believes that many employers will choose to achieve the action level with engineering and work practice controls, in order to provide additional employee protection and to reduce their compliance expenditures.

OSHA is reserving decision today on the question of whether the standard should contain a STEL. OSHA takes this action largely in response to reservations expressed by the Office of Management and Budget (OMB) to STEL provisions in the draft final standard delivered by OSHA to OMB pursuant to Executive Order 12291. OSHA concurs that these matters are important and merit further consideration. OMB's comments have been entered into the docket of this rulemaking. Ex. 162 OMB has raised questions concerning:

—Quantification of the risk avoided by issuance of the STEL;
—The appropriateness of relying on studies by Hemminki, Yager, and Johnson & Johnson as partial support for the issuance of a STEL;
—A decision by ACGIH not to recommend a STEL for EtO; and
—The economic and technical feasibility of a STEL without the use of respirators.

To develop the fullest possible administrative record, both OSHA's draft final standard and OMB's comments will be submitted to a number of scientifically qualified peer reviewers for comment, analysis, and criticism. The peer reviewers will file statements to be placed in the public docket.

Public comment on the statements filed by the peer reviewers and the issues raised by OMB will be solicited in a **Federal Register** Notice to be published in approximately 30 days. A reasoned decision by OSHA on the STEL will be published by OSHA in the **Federal Register** in about six months.

OSHA notes that the standard does not require installation of engineering controls until one year from the effective date of this rule. A decision on these STEL issues will be made well in advance of that compliance deadline.

OSHA anticipates that, if the process described above results in adoption of a STEL with a feasible engineering control compliance requirement, the deadline for installation of the engineering controls required by the STEL will be a year from the effective date of this standard—the date by which feasible engineering controls must be installed to reduce exposure to 1 ppm 8 hour TWA.

The PEL for EtO has been set at 1 ppm because OSHA believes that this new exposure limit will substantially reduce the significant risk associated with current EtO exposures and that the 1 ppm level is feasible for most operations in most workplaces that use EtO.

Paragraph (d) Exposure Monitoring

Section 6(b)(7) of the Act (29 U.S.C. 665) madates that any standard promulgated under section 6(b) shall, where appropriate, "provide for monitoring or measuring of employee exposures at such locations and intervals, and in such a manner as may be necessary for the protection of employees." The primary purpose of monitoring is to determine the extent of employee exposures to EtO.

Exposure monitoring informs the employer whether the employer meets the obligation to keep employee exposures below the 8-hour TWA exposure limit. Exposure monitoring also permits the employer to evaluate the effectiveness of engineering and work practice controls and informs the employer whether additional controls need to be installed. In addition, Section 8(c)(3) of the Act (29 U.S.C. 657(c)(3)) requires employers to notify promptly any employee who has been or is being exposed to toxic materials or harmful physical agents at levels that exceed those prescribed by an applicable occupational safety or health standard. Finally, the results of exposure monitoring are part of the information that must be supplied to the physician, and these results may contribute information on the causes and prevention of occupational illness.

Paragraph (d) of the final rule contains the standard's requirements related to the monitoring of employee exposure. These provisions are essentially unchanged from the proposal, with one exception. The language of paragraph (d)(1)(ii) concerning the term "representative monitoring" has been simplified in response to comments received into the record.

The final rule contains an 8-hour TWA permissible exposure limit and an action level that acts to alert employers of cases where existing exposures are approaching the PEL. The interrelationship among these three exposure levels determines the frequency at which employers are obligated to monitor employee exposures. There are three possible exposure scenarios that will determine the frequency of monitoring required. The table below lists these three exposure scenarios, along with the monitoring frequency for each.

Exposure scenario	Required monitoring activity
Below the action level	No monitoring required.
At or above the action level, but at or below the TWA.	Monitor exposures 2 times per year.
Above the TWA	Monitor exposures 4 times per year.

As is shown by the table above, the action level trigger largely determines whether employers must monitor employee exposure to EtO.

Under the two possible scenarios where the action level is exceeded, the employer must monitor employee exposures. The frequency required for monitoring such exposures is determined by whether the action level or PEL is exceeded.

The monitoring provisions contained in the proposed standard were addressed by a large number of commenters; two major issues were discussed. First, many participants commented that sampling and analytical methods were not available for measuring EtO with the accuracy and precision required by the proposal (Exs. 4–20, 4–24, 4–28, 11–27, 11–54, 11–65, 11–74, 11–76, 11–133, 11–141, 11–142, 11–146, 11–147, 11–151, 37, 109). Second, commenters addressed the specifications for monitoring frequency contained in the proposed standard (Exs. 11–25, 11–38, 11–48, 11–57, 11–74, 11–125, 11–133).

The availability and feasibility of monitoring methods to measure exposures to EtO accurately and precisely were demonstrated by evidence in the record, which is discussed in the Summary of Economic Impact and Regulatory Flexibility Analysis section of the preamble. In that section, OSHA concluded that there are at least three currently available methods that have sufficiently low limits of detection to measure EtO with the accuracy specified by the standard (at the 95 percent confidence level, ±25 percent at the 1 ppm TWA, and ± 35 percent at the 0.5 ppm action level).

Several commenters requested that OSHA not specify a frequency for monitoring employee exposure levels (Exs. 11–25, 11–57, 11–74, 11–133, 11–141). For example, G.J. O'Rourke, Engineering and Technical Manager for SunOlin Chemical Company, stated:

> We believe there is no need to have a rigid schedule for monitoring. The schedule should merely require employers to monitor according to a plan, which [when] implemented, shows compliance (Exs. 11–25).

The EOIC also addressed this point:

> The EOIC believes that the precise frequency of monitoring should not be specified by OSHA. Instead, OSHA should leave the frequency of monitoring to the judgment of industrial hygiene experts and should only require that monitoring be done according to a written plan that, if implemented will adequately demonstrate that the employer is in compliance with the PEL (Ex. 11–57).

However, OSHA believes that the monitoring frequency specified in the final standard is a minimal requirement, and that many employers will wish to conduct more frequent monitoring to ensure employee protection and compliance with the standard. Clearly, the more frequent the measurements, the greater the reliability of the resulting employee exposure profile. In addition, periodic measurement is appropriate when employee exposures are at or above the action level, because relatively minor changes in the process, materials or environmental conditions might increase the airborne concentration of EtO to levels above the standard's PEL.

Several commenters who submitted information to the docket supported OSHA's requirement for monitoring every 6 months if EtO levels were at or below the TWA and every 3 months if the TWA was exceeded (Exs. 11–38, 11–125). For example, Brian J. Kuske and Deloa Pitt, of St. Mark's Hospital in Salt Lake City, stated:

> St. Mark's Hospital has concluded that * * * (m)onitoring of the environment can be accomplished on a regular basis and recommends a minimum of twice a year * * *. (Ex. 11–38).

Merry K. Holthof, Central Service Supervisor for the Grand Rapids Osteopathic Hospital, commented:

> I feel that OSHA needs to * * * set down a recommendation for periodic monitoring to ensure that the level of EtO remains at the action level. I personally feel that monitoring should take place every six months for this purpose. This would also help avoid employer complacency regarding this issue. It is unfortunate, but also realistic, that rules and regulations are necessary to keep standards high (Ex. 11–125).

The final rule does not require periodic monitoring and measurement for the TWA when initial monitoring data reveal exposures below the 0.5 ppm action level because exposures below the action level provide a margin that makes it unlikely that minor changes in processes, materials or environmental conditions will result in exposures above the PEL.

However, the standard requires that whenever there has been a production, process, or control change that may result in new or additional exposures to EtO, or whenever the employer has any other reason to suspect an increase in employee exposures, the employer shall again initiate the required monitoring for those employees affected by such a change or increase.

The final standard also provides that an employer may discontinue periodic monitoring for those employees for whom two consecutive measurements, taken at least 7 days apart, show exposures to be below the action level. Where employee exposure measurements are at or below the PEL but are at or above the action level, the employer may alter the monitoring schedule for those employees from quarterly to semiannually if two consecutive measurements, taken at least 7 days apart, confirm this reduction in levels.

As previously discussed, Section 8(c)(3) of the Act (29 U.S.C. 657(c)(3)) requires employers to notify promptly any employee who is exposed to levels in excess of the PEL. The final EtO standard requires the employer to notify each employee in writing of that employee's measurement within 15 working days after receipt of the results of any measurements required under paragraph (d) of the standard, whether exposure measurements were above or below the PEL.

The final standard, like the proposal, does not require a specific monitoring procedure to be used but does include a performance requirement for the method chosen. OSHA recognizes that the accuracy of monitoring and measurement will decrease as EtO concentration levels decrease below 1 ppm and that breathing zone (BZ) samples provide the most representative indication of an employee's exposure. The final standard, therefore, requires

BZ samples to be taken to determine exposures for comparison with the PEL. Additionally, the final standard requires an accuracy of plus or minus 35% for measurements of employee exposures at the action level, and plus or minus 25% for measurements of exposures at the 1 ppm TWA.

These accuracy requirements are feasible, as shown in the Summary of the Regulatory Impact and Regulatory Flexibility Analysis section of the preamble, and are intended to provide the employer with a degree of confidence in his or her sampling results. As noted earlier, monitoring is carried out for the purpose of determining what measures are necessary to ensure employee protection in a given operation. OSHA anticipates that the standard's flexible criteria for sampling methodology will enable employers to perform the required monitoring without difficulties. The monitoring requirements in this standard are similar to those found in other toxic substance standards promulgated by OSHA (see vinyl chloride, acrylonitrile, coke oven emissions, asbestos, arsenic) and the Agency believes that these standards have been met without difficulty, thus indicating that compliance with the EtO rule should also be feasible.

Finally, several commenters requested clarification of the meaning of the phrase "representative monitoring" as used in paragraph (d)(1)(ii) of the proposed standard (Exs. 11–57, 11–133, 11–137). For example, the EOIC stated:

> In the preamble * * * to the proposed regulation, OSHA makes clear that it intends to allow companies to use representative monitoring for groups of employees where their work exposures to EO are similar. The proposed regulation itself is somewhat ambiguous in this regard. OSHA should make clear in the text of the final regulation that representative monitoring is appropriate and that terms such as "each employee" or "each such employee" refer to each employee or to a representative of a group of employees (Ex. 11–57).

The exposure monitoring provisions require the employer to determine the exposure for each employee exposed to EtO. This does not require separate measurements for each employee. If a number of employees perform essentially the same job under the same conditions, it may be sufficient to monitor a fraction of such employees to obtain data that are representative of the remaining employees. Representative personal sampling for employees engaged in similar work and exposed to similar EtO levels can be achieved by measuring that member of the exposed group who can reasonably be expected to have the highest exposure. This result would then be attributed to the remaining employees of the group.

In many specific work situations, the representative monitoring approach can be more cost-effective in identifying the exposures of affected employees. However, employers may use any monitoring strategy that correctly identifies the extent to which their employees are exposed.

OSHA has rewritten paragraph (d)(1)(ii) of the proposal to clarify, as discussed above, the requirement for representative monitoring. However, the intent of the provision is identical to that of the proposal.

Paragraph (d)(2)(ii) contains a provision designed to eliminate unnecessary and redundant exposure monitoring. It permits employers who have monitored employee exposures to EtO within the one-year period immediately preceding publication of this final rule in the **Federal Register** to forego the initial monitoring required by paragraph (d)(2)(i) if the results of monitoring within this period have shown that their employees are not exposed to EtO levels at or above the action level. OSHA is aware that most workplaces in many EtO-using industries have already monitored employee exposures. For example, OSHA estimated that all facilities in the EtO producer sector had already performed initial monitoring, and that 87 percent of all hospitals had also done so (Ex. 6–22).

The (d)(2)(ii) provision simply makes clear that OSHA does not intend employers who have voluntarily performed employee monitoring to be required to repeat such monitoring if they have reliable and objective data showing that their employees are not exposed to EtO at the action level, which triggers several of the standard's provisions, e.g., medical surveillance, periodic monitoring, training. Thus, OSHA believes that paragraph (d)(2)(ii) will enhance the cost effectiveness of the standard's monitoring requirements without compromising employee protection.

Paragraph (e) Regulated Areas

This paragraph of the final standard requires employers to identify as regulated areas any locations in their workplaces where there may be occupational exposures to airborne concentrations of EtO above the PEL. In addition, only authorized persons may enter regulated areas, which are required to be clearly marked to ensure that employees are aware of these locations. Taken together, these provisions are intended to increase the standard's effectiveness by limiting the number of employees exposed above the PEL.

Rulemaking participants commented on two aspects of the regulated areas paragraph of the proposal: the language used to describe the conditions that would trigger designation of an area as regulated and the degree of specification versus performance language embodied in the requirements in this paragraph. These issues are discussed below.

Several representatives of industry objected to the wording of the proposal's regulated area requirement (Exs. 11–48, 11–74, 11–125, 142), which specified that employers must establish regulated areas "wherever the airborne concentration of EtO is above 1 ppm." They argued that, as written, the proposed language could be interpreted to mean that a regulated area was required to be established in "an area of a facility where the ambient level of EtO is greater than 1 ppm but which, if the employees were personally monitored, would result in an eight-hour TWA which is likely to be far below even the action level" (Ex. 142).

In a similar vein, the Health Industry Manufacturers Association stated:

> The proposal is ambiguous because it might be said to require regulated areas wherever [the] ambient EtO concentration exceeds 1 ppm (TWA) rather than where actual employee exposures are above 1 ppm (Ex. 11–74).

Some of these commenters (Exs. 11–48, 11–74) also inquired whether the standard would require area monitoring to establish the location of regulated areas.

In response to these commenters, OSHA has changed this provision to clarify its intent. The final rule requires employers to establish regulated areas "whenever there may be occupational exposures" in excess of the PEL. This language better communicates OSHA's purpose—to enhance employee protection by alerting employees about the location of workplace areas that might increase their exposures to levels above the PEL. The final standard therefore requires establishment of regulated areas only where potential occupational exposures above the PEL may occur, thus clarifying the link between employee exposures and regulated areas. This change will also eliminate any confusion about ara monitoring to establish the location of regulated areas. The final rule's identification of employee exposures rather than area EtO concentrations as the basis for establishing a regulated

area makes it clear that employee rather than area monitoring is required.

The second issue raised by commenters in relation to this paragraph of the proposal concerned the degree of specification that should be included in the requirements of the final standard's regulated areas provision. The proposal specifically stated that employers could demarcate regulated areas in any manner that would serve to limit the number of employees entering such areas. Permitting employers to choose how best to identify and limit access to regulated areas is consonant with OSHA's belief that employers are in the best position to make such a determination based on the physical configuration and other aspects of their particular workplaces.

Some rulemaking participants, however, commented that the standard should specifically identify the workplace locations to be designated as regulated areas (Exs. 4–25, 44). For example, the testimony of the American Federation of State, County and Municipal Employees (AFSCME) states

> Regulated areas should be established *wherever* EtO storage, EtO sterilization or aeration expose workers to any amount of EtO, or could expose them in the event of a malfunction, leak or other mishap (Ex. 44).

In contrast to AFSCME's views were those of several commenters who argued that the language of the proposed provision was too specification-oriented (Exs. 4–15, 4–47, 4–51, 4–55). For example, R. Parlante, Director of Lederle Laboratories' Safety and Environmental Services Division, stated

> It is not necessary to establish provisions * * * as part of the EtO standard for * * * regulated areas * * * Once an EtO performance standard is established, the methodology used [by the employer] to achieve compliance should be flexible * * * (Ex. 4–55).

OSHA believes that, as written, the requirements of paragraph (e) strike the right balance between specification and performance language. If, as AFSCME suggested, OSHA required employers to establish regulated areas wherever workers could be exposed to EtO in the event of a leak or malfunction, many areas of the plant that actually have low or non-existent EtO concentrations under normal operating conditions would have to be designated as regulated. OSHA believes that the final rule clearly sets forth the employer's obligation to maximize employee protection by informing employees of the location of workplace areas having EtO concentrations that will increase their exposures above the PEL. At the same time, this paragraph permits employers to determine where employees might be overexposed in any particular workplace.

At the same time, employers are free to choose whether to use, for example, ropes, markings, temporary barricades, gates, or more permanent enclosures to demarcate and limit access to these areas. Factors that employers might consider in determining the type of identification system used to demarcate regulated areas include the configuration of the area in question, whether the regulated area is permanent, the airborne EtO concentration, the number of employees in areas adjacent to the regulated area, and the period of time the area is expected to have exposure levels above the PEL.

Paragraph (f) Methods of Compliance

The final standard, like the proposed standard, requires employees to institute engineering and work practice controls to reduce the exposures of employees to or below the permissible exposure limit, to the extent feasible. If engineering and work practice controls have been implemented but have not been sufficient to reduce exposures to the permissible limit, respirators selected in accordance with paragraph (g) shall be used to suppplement the engineering and work practice controls.

OSHA has identified several operations where engineering controls generally are not feasible and has listed them in paragraph (f)(1)(iii). In addition, in situations where engineering controls and work practices are demonstrated as not being feasible, respirators appropriate for the airborne EtO concentration and selected in accordance with Table 1 of paragraph (g) must be used to reduce employee exposures.

These requirements are consistent with OSHA's traditional policy regarding the hierarchy of controls. This hierarchy specifies that engineering and work practice controls be used in preference to personal protective equipment; personal protective equipment may only be used in emergencies or where other methods are not feasible, not adequate, or have not yet been installed. Engineering controls involve the installation of equipment, such as forced ventilation, or the modification of a process, for example by enclosing it. Work practice controls reduce worker exposures by altering the manner in which a task is performed. An example of a work practice control would be to train a tank car loader to stand up-wind rather than down-wind of the tank car's hatch when loading a hazardous substance.

Respirators have traditionally been accorded the least preferred position in the hierarchy of controls because of the many problems associated with their use. For example, the effective use of respirators requires that they be individually selected and fitted, conscientiously worn, carefully maintained, and replaced when necessary; these conditions may be difficult to achieve and to maintain consistently in many workplace environments.

At present, the Agency is reviewing the health benefits, appropriateness, and cost-effectiveness of the hierarchy of controls concept, and has recently published two Advance Notices of Proposed Rulemaking relevant to this subject (47 FR 20803, May 14, 1982, Respirators; 48 FR 7473, February 22, 1983, Methods of Compliance). Because OSHA is interested in determining whether and in what situations greater reliance might be placed on the use of respirators, the EtO proposal requested comments on the use of respirators for EtO exposure. Many participants in the EtO rulemaking submitted information to the record on the general subject of control strategy and on the appropriate use of respirators in the handling, storage, and use of EtO in the workplace. The record evidence on these issues is summarized below.

Many commenters reported that they preferred to rely on engineering and work practice controls to reduce employee exposure to EtO (Exs. 11–38, 11–40, 11–45, 11–70, 11–87). For example, Donna Swenson, Central Service Supervisor and Chairman of the EtO Committee of Rockford Memorial Hospital (RMH), stated:

> At RMH we feel that it is possible with the use of appropriate engineering and workplace controls to comply with the proposed standard. Respirators should not be needed except during emergency situations, such as leakage of a tank or canister (Ex. 11–81).

Similarly, Brian J. Kuske, Assistant Administrator of St. Mark's Hospital in Salt Lake City, commented:

> After review of the exposure levels recommended by OSHA (in the proposal), St. Mark's Hospital has concluded that * * * respirators are not essential (to meet the 1 ppm requirement) (Ex. 11–38).

The views of these and other commenters generally provided support for the determination made by OSHA at the time of the proposal:

> The (control) methods that can be used to reduce employee exposure to EtO are conventional technology such as * * * exhaust ventilation, double mechanical seals, leak detection and use of respiratory

protection for intermittent exposures (48 FR 17298).

Evidence submitted at the hearing and in post-hearing comments has identified a number of intermittent exposure situations in EtO-using facilities where respiratory protection may be needed to protect workers from hazardous exposures. For example, in the EtO production sectors, several commenters stated that respirators would be needed for maintenance and repair activities and during the loading/unloading of tank cars (Exs. 11–110, 11–131, 11–133, Tr. 863).

Edward J. Kerfoot, Director, Toxicology and Industrial Hygiene for BASF Wyandotte Corporation, stated that, "Respirators should be allowed in other operations in addition to maintenance and repair. In industry, examples would be bulk loading and unloading operations" (Ex. 11–131). Two ethoxylator firms, Nalco Chemical Company and PPG Industries, Inc., also stated that in loading/unloading operations respirators would be required to achieve compliance with the standard (Exs. 11–69, 11–105).

The EOIC also indicated that the use of respirators would be necessary during maintenance, repair, and tank car loading/unloading activities (Ex. 11–57). In addition, the EOIC suggested that "* * * companies may need to use respirators during start-up and shut-down and during certain laboratory operations" (Ex. 11–57). OSHA also recognizes that unexpected release of EtO might occur during shut-down and start-up because processes are not operating in steady-state conditions, and the use of respirators may be appropriate in such situations.

OSHA agrees that some EtO operations do not lend themselves to control through engineering means. Respirators are permitted for the operations cited by commenters above, if other methods of control are demonstrated by the employer to be infeasible.

A number of commenters addressed the need for the limited use of respirators in the industry sectors that use EtO for sterilization (Exs. 11–47, 11–54, 11–57, 11–74, 11–94, 11–109, 11–112, 11–113, 11–136, 11–139, Tr. 873). Deborah M. Badger, Senior Counsel for the American Hospital Supply Corporation, proposed a list of activities where respirators might have to be worn during the sterilization of medical products:

> * * * employees using EtO as a sterilant are primarily exposed in an intermittent or episodic fashion. Thus, critical work tasks can be identified which, although short in duration, constitute the critical opportunity, for exposures to levels higher than a reasonable PEL. American [Hospital Supply Corporation] proposes that OSHA permit the limited use of respiratory protection equipment during the following work tasks:
>
> • Opening sterilization chamber doors.
> • Unloading sterilization chamber contents.
> • Delivering freshly sterilized goods to the outgassing area.
> • Entering outgassing areas to collect quality control samples.
> • Performing maintenance and repair work on sterilization equipment
> • Changing EtO cylinders (Ex. 11–47).

OSHA agrees that, depending on workplace conditions, respirators may be necessary when employees enter a sterilization chamber for unloading and when they enter heated off-gassing rooms to collect quality control samples. However, as discussed previously in the section dealing with feasibility, evidence indicates that most EtO sterilizing operations can be controlled by currently available engineering controls. Thus, OSHA does not feel that it is appropriate to provide a general allowance for the use of respirators for all short-term EtO operations.

Based upon evidence in the rulemaking record and the Regulatory Analyses, OSHA has found that the use of engineering and work practice controls will reduce employee exposure to or below the PEL for practically all situations. OSHA recognizes that there are some situations where engineering controls are not generally feasible. Rather than continuing to enforce the engineering control provisions in these cases, OSHA has indicated in the regulatory text, paragraph (f)(1)(iii), those operations where engineering controls are generally not feasible. For these situations, OSHA will have to bear the burden of proof, in the enforcement context, to show that engineering and work practice controls are feasible for that specific condition. In addition, OSHA recognizes that there will be other situations where engineering controls may not be feasible due to a unique feature or condition. For example, work involving repair of leaks may not lend itself to engineering controls. These situations are recognized in paragraph (f)(1) of the final rule, which permits the use of approved respiratory protection where employers can demonstrate that engineering and work practice controls are not feasible. In such situations, the burden of proof of infeasibility is appropriately placed on the employer, because the employer is familiar with operations in the workplace and is therefore in the best position to evaluate various types of controls as they apply to that particular workplace. It is noted here, however, that employers may raise the issue of feasibility in an enforcement action. As noted in a decision on OSHA's lead standard, the court in United Steelworkers of America v. Marshall, 647 F. 2d 1189 (D.C. Cir. 1980):

> * * * An employer who is cited for failing to meet the standard in a particular operation, and who believes the standard has proved technologically infeasible for that operation, can claim this "specific" infeasibility as a defense in an enforcement proceeding * * * Thus an OSHA standard remains subject to a * * * test of feasibility with respect to special difficulties in certain operations.

However, in the great majority of workplaces affected by the final standard, OSHA believes that engineering and work practice controls will limit worker exposures to levels below the PEL. The technology needed to control employee exposures to these levels represents generally available and traditional technology, such as general and local ventilation, pump seals, and aeration chambers. This technology is discussed in detail in the Technological Feasibility section of this preamble.

The requirements contained in paragraph (f)(2) of the permanent standard describe the employer's written compliance program. The requirement for a written compliance program to reduce exposure by means of engineering and work practice controls, contained in paragraph (f)(2)(i), applies where employee exposures are at or above the PEL.

Few commenters objected to the provisions of the proposed standard requiring employers to develop a written compliance program. One commenter, Thomas F. Evans, Director of Regulatory Management-OSHA for the Monsanto Company, objected to the inclusion of a schedule of leak detection in the required compliance program, as required by paragraph (f)(2)(ii) (Ex. 11–98). Mr. Evans objected that "Such a requirement is not performance oriented" (Ex. 11–98). Although the final rule does not mandate a frequency for leak detection, OSHA believes that leak detection should be included in any effective program for controlling employee exposures to EtO because early and prompt leak detection helps to eliminate emissions of EtO at their source. This is particularly true where fugitive emissions are a potential source of exposure.

Many commenters endorsed the idea of including a compliance program provision in the standard (Exs. 11–68, 21–8, 44). For example, Howard L.

Kusnetz, Manager of Safety and Industrial Hygiene for Shell Oil Company, stated:

> Shell Oil Company endorses the concept of written control programs prepared by the employer if employee exposure exceeds the PEL. A requirement for a written control program ensures affirmative action by the employer and communication with employees (Ex. 11–68).

Peter Roy described some of the reasons for and elements of a compliance program:

> I endorse the necessity for employers to develop written compliance plans * * *. Written programs and procedures should be established regardless of the number of exposed employees. The development of documented programs and procedures is already a well established and common practice in both hospitals and the medical device industry. These policies and procedures are important for the employee communication and training programs necessary to ensure the "human element" of the EtO exposure control system. Written plans should be reviewed annually, and might vary from fairly simple to quite complicated depending on the size and scope of the EtO process, and number of employees in a given facility (Ex. 21–8).

OSHA believes that the written plan is an essential element of the compliance program since it will encourage employers to implement the necessary controls to reduce employee exposure. It also provides the information to allow OSHA, the employer and employees to examine the control methods chosen and to evaluate the extent to which these planned controls are being implemented in the workplace. As with other OSHA rulemakings, the written compliance plan is to be accessible to the individuals designated in paragraph (f)(2)(iii) for inspection and copying. This implements section 8(c)(3) of the OSH Act, which provides for the employer to inform employees of correction actions being taken to lower exposure to the PEL.

Paragraph (f)(2)(iv) prohibits the use of employee rotation as a method of reducing exposure to EtO. On the other hand administrative controls, which utilize methods such as scheduling to reduce a particular employee's total exposure, is an acceptable compliance strategy. An example of acceptable use of scheduling is performing an operation where EtO exposure occurs on the work shift with the fewest employees present. Worker rotation, however, has been determined by OSHA to be inappropriate in workplaces involving exposures to potential human carcinogens. Although administrative controls may reduce the cumulative risk of cancer among a particular group of workers, their use places a larger total number of workers at risk. Paragraph (f)(2)(iv) specifically prohibits the use of worker rotation in situations involving exposure to EtO. As noted in the preamble to OSHA's proposed rule for ethylene dibromide (48 FR 45984):

> Administrative controls * * * are not permitted in lieu of engineering controls or limited respirator usage. The use of this control practice (worker rotation) increases the population of employees at risk from exposure * * *.

Industry representatives generally condemned the practice of employee rotation as a method of reducing exposure to EtO (Tr. 971, 1041). For example, G. Briggs Phillips, HIMA's Senior Vice President for Scientific Affairs, stated, "* * * HIMA does not support and our companies do not intend to use, worker rotation practices" (Tr. 1041). Although Duane Amato, the Corporate Manager of Occupational Health Services and Safety at Travenol Laboratories, testified that worker rotation is an acceptable method of reducing 8-hour TWA exposures (Ex. 75, Tr. 871), Lawrence Rampy, testifying on behalf of the EOIC, strongly disagreed:

> Structuring jobs simply to reduce exposure and to avoid other means of controlling exposure is simply not acceptable. In other words, the exposure of each job must be evaluated and structured to achieve acceptable exposure by a variety of means but not by rotation of different people through a high exposure task in order to achieve a net average exposure below some limit. (Tr. 971).

The prohibition against worker scheduling or rotation contained in the final standard for EtO is, therefore, consistent with OSHA's view that this control strategy is not appropriate in occupational environments involving exposure to potential carcinogens.

Paragraph (g) Respiratory Protection

The final standard provides that respirators be used to limit employee exposure to EtO in the following circumstances:

(i) During the interval necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations such as maintenance and repair activities or vessel cleaning or other activities for which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the TWA or STEL; and

(iv) In emergencies.

The final standard also requires that the employer provide respirators at no cost to employees and ensure that employees use them.

Comments regarding the appropriate use of respirators were addressed above in Section 6, Paragraph (f) *Method of Compliance*, and will not be discussed further in this section. However, numerous commenters addressed the issue of apprbpriate respirator selection (Exs. 4–15, 4–19, 4–22, 4–25, 2–40, 4–45, 4–55, 11–57, 11–74, 11–76, 11–94, 11–99, 11–111, 11–113, 11–133, 11–136, 11–152, Tr. 857, 893). These commenters provided information on two types of respirators that were specified in Table 1 of the proposed EtO standard:

- Full-facepiece respirators with organic vapor gas mask canisters.
- Positive-pressure, supplied-air respirators with full-facepieces.

Addressing OSHA's specification for organic vapor canister respirators for EtO concentrations of 50 ppm or less, most commenters argued that this type of respirator provided inadequate protection against EtO exposure (Exs. 4–25, 11–57, 11–74, 11–99, 11–111, 11–136, 11–152, Tr. 857). The inadequacies of chemical cartridge respirators were documented by Matthew Gillen, representing the Amalgamated Clothing and Textile Workers Union (ACTWU):

> * * * The chemical cartridge respirator has not been certified (for EtO) by NIOSH * * * because EtO lacks adequate warning properties and is not generally detectable by smell until levels of 250–700 ppm are reached * * *. The other major problem with chemical cartridge respirators is migration. In testing performed on the canister, it was demonstrated that the cartridge could withstand several hours of exposure without penetration. However, after setting several hours, the EtO "migrated" within the canister, so that penetration was observed upon re-use (Ex. 4–25).

Frederick G. Giel, Senior Attorney for Miles Laboratories, Inc., agreed:

> The standard specifies that NIOSH/MSHA full facepiece respirators approved for organic vapors can be used in certain instances where EtO vapors remain below 50 ppm. Miles (Laboratories) understands that studies exist which show that these respirators purify breathing air for only a matter of minutes before significant EtO breakthrough occurs (Ex. 11–111).

Anthony J. Vetrano, Attorney for Abbott Laboratories, stated:

> * * * Because various companies have tested full facepiece respirators with organic vapor gas mask canisters and found them unsuitable for use with EO, Abbott believes that Table 1 (of the EtO standard) should specify only canisters with specially impregnated charcoal that are designed for use with EO (Ex. 11–136).

A number of companies, including Dow Chemical Company (Ex. 4–31), A.E. Staley Manufacturing Company (Ex. 4–22), De Soto, Inc. (Ex. 4–15), and others (Exs. 4–45, 11–94, 11–113,), stated that they use air-supplied respirators rather than air-purifying respirators in operations that require respiratory protection.

Based on this evidence, OSHA has revised Table 1, referenced in paragraph (g)(2), to permit the use of NIOSH/MSHA-approved air-purifying respirators with canisters containing sorbents especially designed for EtO removal if such equipment is approved in the future. OSHA is aware that no air-purifying respirators for EtO have been approved by NIOSH or MSHA. However, one respirator manufacturer has applied to NIOSH for certification of an EtO-specific canister respirator (Exs. 6–27, 11–112, Tr. 891). This provision of the final rule is intended to allow the use of this or similar products when and if they are granted NIOSH/MSHA approval.

A number of commenters requested that half-mask respirators be allowed in lieu of the full-facepiece respirators that were proposed for airborne EtO levels of 2,000 ppm or lower (Exs. 11–57, 11–133, 11–98, 11–136, 76). The following comments were submitted by the EOIC:

> The EOIC industrial hygiene task force believes that the respiratory protection table contained in the proposed standard should be revised so as to allow the use of half-face supplied air respirators at or below 1,000 ppm. At those levels, a half-face positive pressure respirator will provide adequate protection. Contact with EO at that level would not cause eye irritation, so there is no reason to prohibit such respirators (Ex. 11–57).

However, these commenters provided no objective data to show that EtO is not an eye irritant at concentrations of 1,000 ppm or less. OSHA has identified two references that note that EtO is an eye irritant. For example, a 1977 publication by NIOSH, entitled *Occupational Diseases: A Guide to Their Recognition*, states: "Exposure to the (EtO) vapor in high concentrations leads to irritation of the eyes." An article in *Industrial Hygiene and Toxicology*, Volume 3, edited by Frank A. Patty (1981), states that:

> Vapors of ethylene oxide in high concentrations are known to be irritating to the eyes of animals and man * * * the eyes should therefore be protected from ethylene oxide and its solutions.

This reference also states that the "threshold for vapor irritation (to eyes) is 500 ppm" (Patty, 1981). The information in these references was confirmed by Peter Roy (Ex. 21–6, Tr. 215), who stated that he had observed irritation resulting from exposures to concentrations of EtO below the current PEL of 50 ppm.

James T. Marrinan, Director, Federal Agency Affairs for the American Hospital Association, stated:

> EtO acts as a tissue irritant, having effects similar to those of ammonia gas. Exposure can cause inflammation of mucous membranes, especially those of the eyes and respiratory passages, possibly resulting in conjunctivitis, scleritis, or bronchitis (Ex. 104).

The record reflects that high exposures to EtO have been shown to cause eye irritation and that such effects may occur at exposures that may be reached for short periods. Therefore, OSHA has chosen to retain the requirement for full-facepiece respirators in the final rule.

Some commenters (Exs. 11–131, 11–137) suggested that no respirator protection provision was needed because requirements for respirator use are contained in 29 CFR 1910.134, *Respiratory Protection*. For example, Edward J. Kerfoot, Director of Toxicology and Industrial Hygiene for BASF Wyandotte Corporation, stated:

> Regarding the selection of the type of respirator used, the requirement that companies provide adequate respiratory protection is already specified in 29 CFR 1910.134. Therefore, proposing detailed requirements in the EO standard is unnecessary. In keeping with the need for a performance based standard, 29 CFR 1910.134 should be referenced as the guide for respiratory protection, and companies should be allowed to choose the respirators that are adequate for individual circumstances, rather than be limited to the choices in Table 1, as referenced in 1910.1047 paragraph (g)(2)(i) (Ex. 11–131).

Table 1 is OSHA's application of the requirements for respirator selection contained in 29 CFR 1910.134, as they relate to EtO and its characteristics. In addition, these requirements are consistent with those in the American National Standards Institute's Z88.2–1969 standard.

From past experience, OSHA is aware of the problems of respirator use as the primary means of exposure control. Proper facial fit is essential, but variations in individual facial dimensions, as well as facial hair, scars or growths, make it difficult to maintain this facial fit. Fatigue and reduced efficiency may occur because of increased breathing resistance when negative-pressure respirators are used. Thus, a medical examination requirement that the physician's written opinion include recommended limitations on the employee's use of respirators was proposed and is maintained in the final standard. Additionally, heat stress, reduced vision, and other safety problems presented by respirators should be considered by the employer. Visual impairment could pose a significant problem where physical hazards exist and the ability to see is important. Speech is also limited by respirator use. Voice transmission through a respirator can be difficult, annoying, and fatiguing, and communication may make the difference between a safe and efficient operation and a hazardous operation, especially in dangerous jobs. Entanglement of air respirator hoses as well as limited mobility due to hose length is a problem in heavy industrial environments where airline respirators are used. Air hoses can also present serious safety hazards if used in restrictive work environments, such as a sterilization room in a health care facility. A self-contained breathing apparatus is burdensome and limits freedom of movement.

OSHA does not presently believe that respirators should be considered the primary means of employee health protection against exposure to EtO for activities where engineering controls are feasible. However, despite these problems OSHA has concluded that if the permissible exposure levels for EtO are exceeded, employers must provide respirators as a secondary means of protection. However, the goal of the standard is the control of emissions at the source, which will minimize the need for routine use of respirators.

The employee must be properly trained to wear the respirator, to know why the respirator is needed, and to understand the limitations of the respirator. An understanding of the hazards involved is necessary to enable the employee to take steps for his or her own protection. The respiratory protection program implemented by the employer must conform to that set forth in 29 CFR 1910.134. That section contains basic requirements for proper selection, fit, use, cleaning, and maintenance of respirators.

Emergencies are situations where respirators must be used to protect employees. Since it is unrealistic to expect accurate prediction of the expected contaminant concentrations to which an employee might be exposed in all emergencies, OSHA requires the use of respirators of the type approved for protection against unknown concentrations. If an employee is working in an area and using an approved respirator of the type appropriate for the existing concentration, and an emergency

occurs, the employee should continue using the respirator during his or her escape. Paragraph (g)(1)(iv) is designed to provide proper protection for emergency personnel assigned to enter vessels or workplaces containing an unknown concentration to rescue workers or to control the release of the contaminant or perform any necessary repairs. In addition, this paragraph will ensure that employers identify operations in which emergencies are apt to occur and make appropriate respirators available to employees in these operations.

Paragraph (g)(3) references § 1910.134 (b), (d), (e), and (f), which stipulate the minimum acceptable respirator program, the air quality required for air-supplied respirators, standard respirator use procedures, and maintenance and care procedures for respiratory protection, respectively. For example, paragraph (e)(5)(i) of § 1910.134 states: * * * "To assure proper protection, the facepiece fit shall be checked by the wearer each time he puts on the respirator * * *." Section 1910.134(e)(5) further requires that the respirator be worn in a "test atmosphere," i.e. an irritant smoke or isoamyl acetate atmosphere, as part of the training for respirator wearers. A requirement to comply with § 1910.134(e) is contained in paragraph (g)(3) of the final rule.

Several commenters requested that a requirement for quantitative fit testing be included in the final rule (Exs. 44, 100, 103). OSHA does not believe that such a requirement is warranted at this time, in part because the only approved respirators currently available for EtO are positive-pressure respirators. Such respirators do not allow contaminated air to leak into the respirator facepiece since it is pressurized when compared to the ambient environment. Thus, leakage is restricted to clean air escaping from the inside of the facepiece rather than contaminated air leaking into the respirator. Moreover, issues of quantitative fit testing will be dealt with generically in the respiratory protection standard revision discussion above.

Finally, the standard requires that respirators required for protection from exposure to EtO shall be provided at no cost to the employee. OSHA views this allocation of costs to control employee exposure to EtO as being necessary to effectuate the purposes of the Act. The requirement makes explicit an Agency position which has long been implicit in health standards proceedings under section 6(b) of the Act.

Protective Clothing

The final standard for EtO explicitly references general provisions in sections 1910.132 and 1910.133 pertaining to protective clothing and devices. This cross-reference highlights for the employer the need to comply with all applicable standards to prevent employee exposure through contact with liquid EtO.

In the proposal, OSHA made no reference to provisions for protective clothing for EtO workers. However, the following questions were raised for general discussion: "Is reliance on these two general provisions (sections 1910.132 and 1910.133) sufficient for protecting against potential dermal and eye hazards for liquid EtO? If not, explain and specify what additional provisions are necessary." Based on information submitted to the docket, OSHA now believes that these two sections do provide adequate regulation to prevent employees from having eye and skin contact with liquid EtO or EtO solutions, and separate provisions specific to EtO are unnecessary.

A number of commenters replied, either in written comment or testimony, to the proposal's questions about personal protective equipment and clothing. Several commenters agreed with OSHA's assessment that reliance on the requirements of sections 1910.132 and 1910.133 was adequate (Exs. 11–25, 11–47, 11–57, 11–67, 11–69, 11–74, 11–110, 11–133, 21–8).

For example, HIMA stated:

> The general provisions in 29 CFR 1910.132 and 1910.133 are adequate to provide employee protection for skin and eyes against contact with liquid EtO. The protective equipment and other provisions of these requirements would apply to EtO. Because they have proved satisfactory with other hazardous liquids, they will provide adequate protection in this case. HIMA is not aware of any specific provisions that would provide greater employee protection than is already required by OSHA's general regulations. (Ex. 11–74).

In contrast to these views, several commenters raised questions regarding the acute effects of skin and eye contact with liquid EtO and concluded that reliance on the general provisions contained in sections 1910.132 and 1910.133 would not provide adequate protection (Exs. 11–46, 11–88, 11–99, 42, 44, 100, 103, 152, Tr. 1200, 1253, 1589).

In explaining the Institute's position that general requirements for skin and eye protection will not provide the necessary protection to EtO-exposed workers, NIOSH commented that:

> The standards concerning protective equipment * * * and eye and face protection * * * provide only general guidelines and do not address substance specific issues particularly as they relate to the serious hazards presented by liquid ethylene oxide or EtO solutions. Therefore sections 132 and 133 cannot be viewed as prescribing "* * * suitable protective equipment * * *" because they do not consider the particular hazards presented by liquid ethylene oxide or EtO solutions, spills and splashes. Neither sections 132 nor 133 specify how the equipment is to be used nor how it is to be selected to protect the worker from exposure to (ethylene oxide) (Ex. 11–146).

Several respondents pointed out that EtO readily penetrates rubber where, as in leather, it is retained for long periods of time and cannot be washed out (Exs. 11–99, 11–146; Tr. 1200, 1253). This raised the issue, as expressed by William Borwegen of the Food and Beverage Trade Department, AFL–CIO (Tr. 1253), that some employers whose workplaces contain EtO would be unaware of the inadequacies of rubber and other common materials used for personal protective clothing (Tr. 1589).

To prevent the use of materials readily penetrated by EtO, several commenters felt that specific recommendations or statements on the types of materials that can be used were needed within the EtO standard (Exs. 11–88, 11–99, 11–146, 11–152, Tr. 1200). Several individuals or groups made specific material recommendations such as cloth or PVC coated materials (Tr. 1200) or polymer-coated cotton gloves (Tr. 391). However, of all the respondents, only NIOSH developed an in-depth assessment of the effectiveness of personal protective clothing in preventing contact with liquid EtO.

In a 1977 report, *Special Occupational Hazard Review with Control Recommendations for the Use of Ethylene Oxide as a Sterilant in Medical Facilities*, NIOSH stated that:

> Due to the extreme penetrating ability of EtO, and the consequent ineffectiveness of many types of clothing materials to prevent skin contact, the use of conventional 'impervious' clothing is not suggested. There are, however, certain special types of protective clothing which are effective when working with EtO. For example, one of the large manufacturers provides its workers with knitted gloves which have been coated with certain polymers, including polyvinyl chloride. (Ex. 2–4).

NIOSH went on to comment, however, that information now available indicates materials made of other substances will afford a greater measure of protection than that afforded by polyvinyl chloride.

> Permeation studies have shown that garments made of chlorinated polyethylene provide the greatest protection against pure, liquid EtO; breakthrough did not occur for at least one hour. Degradation studies have shown that garments made with nitrile and butyl rubber also have a lifetime of about 1 hour. (Guidelines for the Selection of

Chemical Protection Clothing, Vol. I Field Guide, U.S. EPA Contract No. C–87611, January 19, 1983. (Ex. 11–146).)

Even with proper selection of materials, NIOSH reported (Ex. 11–146), exposure can still occur "* * * by (1) bulk penetration through pinholes, rips, zippers, seams, etc., (2) material failure through chemical degradation, or (3) permeation through the material." Even where test data are available, NIOSH commented that the differences in use and manufacturing conditions are sufficiently great to necessitate actual field evaluations "under typical use conditions of mixtures, temperatures, and physical abuse." NIOSH recommended that methods such as those being summarized by the ASTM F23.20 Committee be used to determine suitable garment materials for use with EtO.

The NIOSH testimony provides OSHA with convincing evidence that it would be premature on the part of OSHA to mandate the use of only specific types of materials for personal protective clothing in the EtO standard. Too few materials have been tested for EtO breakthrough time or degradation, and even these results may have only partial applicability under actual field conditions. The alternative is to require a specific testing protocol within the standard before any clothing is considered "approved" for personal protection. This would trigger additional recordkeeping, and adequate permeation testing is likely to be well beyond the capabilities of the many EtO-using facilities where only a few employees are potentially exposed to EtO. In addition, the handling of materials for testing presents a hazard to a different group of employees.

After a thorough review of the expert testimony and other evidence in the record, OSHA has chosen not to add a specific requirement for protective clothing in the final standard for EtO. However, the final rule does contain, in paragraph (g), a cross-reference to §§ 1910.132 and 1910.133 that is intended to remind employers of their obligations under these provisions to provide appropriate clothing to protect against eye and dermal contact.

Showers and Changerooms

OSHA received three comments on the need for a provision requiring showers and changerooms. The American Federation of State, County, and Municipal Employees (AFSCME) stated:

> No provisions for chemical showers, eye wash stations, protective clothing, or lockers and change rooms have been incorporated into this [proposed] standard. These are all essential for a minimally effective standard, and as such should be incorporated into the EtO standard (Ex. 7–6)

In a post-hearing submittal, AFSCME reiterated:

> Because of the danger of any permeable clothing—including shoes—absorbing EtO and off-gassing, such clothing exposed to EtO must be removed upon cessation of exposure (Ex. 44)

In addition, William B. Dennis of Duke University Medical Center commented as follows:

> I think (emergency showers and eye wash stations) * * * should be in close proximity * * * in case there is a liquid spill (Tr. 1367).

OSHA shares the concern of these participants that employees should be protected from contact with EtO in liquid form. Hazardous exposures to liquid EtO or EtO-containing solutions will most likely occur only accidentally in the industry sectors covered by this final rule, because exposures in these sectors will usually be from the gaseous form of EtO. Section 1910.151(c) of the General Industry standards, however, specifically requires employers to provide changerooms and emergency showers "* * * where the eyes or body of any person may be exposed to injurious corrosive materials * * *." As discussed in the health effects section liquid EtO does pose a hazard to the skin upon contact. Therefore, employers who use EtO in liquid form that may come in contact with employees' eyes or bodies, must provide changerooms and emergency showers in accordance with § 1910.151(c).

Paragraph (h) Emergency Situations

Paragraph (h) of OSHA's final rule for EtO requires that employers develop written plans for emergency situations (see discussion of definition of "emergency") and that they develop methods of alerting employees of these situations and evacuating workers when necessary. The plan must contain a requirement that employees engaged in correcting an emergency situation be provided with appropriate respiratory protection. Employers must also be prepared to alert employees to evacuate the workplace in the event of an emergency. The performance language of the emergency situation paragraph of the final standard will give employers the flexibility to choose any effective method of alerting employees, including communications systems, voice communication, or a bell or other alarm.

These requirements are identical to the emergency situation requirements included in the EtO proposal (48 FR 17284, April 21, 1983). The purpose of this provision is to protect workers from unexpected significant releases of EtO that pose an acute or other health risk.

There is considerable evidence in the record that the use of written emergency plans is widespread throughout industry (Exs. 21–8, 6–22), and many commenters supported the inclusion of such a requirement in the final rule (Exs. 4–26, 11–81, 21–8, 104, Tr. 1349). In addition, other OSHA health standards (Vinyl Chloride, 43 FR 45762, October 3, 1978; DBCP, 43 FR 11514, March 17, 1978) contain such a provision.

Several commenters suggested specific procedures to be followed in the event of an emergency (Ex. 11–125, 104). For example, Merry K. Hollhof, Central Service Supervisor of the Grand Rapids Osteopathic Hospital, suggested that the emergency provision of the standard require: (1) That local fire departments be provided with a copy of the standard in order to better respond to EtO emergencies, and (2) that hospitals require a practice emergency drill (for EtO) at least once a year (Ex. 11–125). Although OSHA agrees that these are good suggestions, it believes that the measures necessary to control emergency situations should be specific to particular workplaces. The Agency is not convinced that local fire departments, in general, will be able to respond adequately to EtO emergencies in the majority of workplace settings. Further, although practice emergency drills might be an effective means of teaching employees how to respond to emergency situations in many hospitals, such drills might be unnecessary for some facilities, such as small hospitals with only one EtO sterilizer. The Agency will therefore not require such specific measures in the emergency situations paragraph of the final EtO standard.

The proposed rule required the development of a written plan for each workplace where there is a possibility of an emergency and required that employees be informed of the emergency procedures at the time of initial assignment (or upon institution of the program), and at least annually thereafter.

There was general agreement by participants that effective emergency plans are essential and being in a standard for EtO (Exs. 11–17, 11–45, 11–77, 11–125, 17, 18–17, 103, 104, 142, Tr. 357, 364, 1305, 1349). For example, William Dennis, Director of Sterile Processing at Duke University Medical Center, testified that:

> * * * a plan in the event of a leak or spill is of absolute importance. With any type of mechanical equipment * * *, accidents are going to occur. We need to make sure that if a spill does occur, that our employees * * *

know that they need to evaluate the area immediately. They need to notify the appropriate health and safety personnel (Tr. 1349).

Gerald McEntee, International President of the American Federation of State, County and Municipal Employees (AFSCME) stated that "because of the constant potential for leaks or high EtO exposure due to equipment failure, a clearly drawn requirement for emergency procedures will be an essential fact of a new EtO standard" (Tr. 364).

Few respondents specifically addressed the issue of whether the requirement should be limited in coverage. However, these respondents expressed clearly the opinion that a written plan should be required for all employers regardless of their firm's size or the number of their employees potentially exposed (Exs. 11–17, 11–45). One comment noted that OSHA has already adopted general language for emergency plans in section 29 CFR 1910.38(a). Employee emergency plans and fire prevention plans. A cross-reference to the general language has been added to paragraph (h)(1)(ii) to highlight the employer's obligation to comply with all applicable standards.

Several respondents observed that any emergency plan for EtO should be incorporated into the facility's overall disaster plan (Exs. 104, 125). There are considerable advantages to such an approach and, as suggested by the commenters, this practice would encourage periodic drills for EtO emergencies as well as inservice training programs. However, it should be noted that OSHA is not requiring employers to develop general disaster plan under this final EtO standard. One respondent (Ex. 125) commented that many health care facilities' emergency plans require notification of the local fire department, and that fire department personnel are often uninformed of the hazards of EtO. OSHA expects that employees will provide non-employees such as fire department staff with a copy of the written emergency plan as well as this standard (including Appendices A, B, and C) when arranging for such non-employees to assist in an emergency.

Several respondents felt that the term "emergency" was inadequately defined (Exs. 7–1, 11–145, 103, 142), and some proposed alternative definitions for "emergency." For example, McEntee of AFSCME and Hill of the International Union of Operating Engineers (IUOE) testified that an emergency should be defined as any situation that might result in worker exposure to concentrations of EtO that are immediately dangerous to life or health (IDLH) (Tr. 103, 364.) Although OSHA agrees that such situations would certainly constitute an emergency, the Agency does not believe that the information on human health effects is adequate to define a precise numerical IDLH (Hill recommends 800 ppm). In addition, the health effects data suggest that evacuation based on an IDLH level alone would not provide adequate employee protection against such effects as irritation and sensitization. McEntee and Hill also suggested evacuation of the work area immediately if employees smelled EtO (Tr. 364). Since EtO's odor warning the threshold is about 700 ppm. and since this level is substantially above levels identified as having adverse health impacts, OSHA has chosen not to use odor threshold to define an EtO-related emergency. In addition, as Hill points out, many employees may not be particularly sensitive to the smell of EtO (Tr. 103). As defined in the final rule (see definitions section of summary and explanation above), the term emergency covers those unexpected occurrences, such as a failure of control equipment, that might produce a release of EtO of sufficient size to produce significant acute effects, including eye or respiratory irritation.

Paragraph (i) Medical Surveillance

The final standard requires each employer to institute a medical surveillance program to be performed by or under the supervision of a licensed physician. Employees would be offered medical examinations upon initial assignment and annually thereafter where EtO exposure is known or is likely to be at or above the action level for a total of at least 30 days in a year. Medical surveillance is provided also to employees exposed in an emergency situation and to those who are terminating employment in the EtO area. Consultations and appropriate examinations are to be made available to employees who believe they are experiencing signs or symptoms of overexposure to EtO or who are concerned about the effects of EtO on their ability to conceive a healthy child.

The physician is given broad discretion in selecting appropriate tests for medical surveillance. This is necessary to provide flexibility to the physician should new procedures become available that would help to identify situations where an employee has been placed at risk of chronic EtO-related disease while the effects are still reversible. Certain elements of medical surveillance, including comprehensive medical and work histories, a comprehensive physical examination, and a complete blood count may be useful to detect otherwise unrecognized overexposure, and these procedures are therefore required under the standard. Additional elements of the medical surveillance section ensure adequate communication among the employer, the employee, and the physician. These elements and the rationale for their inclusions remain as stated in the proposal.

Two substantial changes in medical surveillance requirements were made as the result of OSHA's review of extensive public comment and testimony. First, the suggested test for chromosome damage, included in proposed Appendix C, was deleted because the results of such tests, as applied to an individual rather than a group, cannot be interpreted. Second, to ensure uniformity of medical surveillance for all EtO workers, the standard mandates certain elements for all examinations. In the proposal, OSHA had not specified the type of surveillance to be made available to EtO-exposed employees. Instead, the physician was referred to a nonmandatory appendix, Medical Surveillance Guidelines for Ethylene Oxide. OSHA's analysis of comments received on medical surveillance, including responses to the supplemental questions raised in the proposal, is given below.

Medical surveillance programs are considered by OSHA to be a proper means of monitoring the adequacy of the permissible exposure limits. To that end, OSHA requested specific comment from the public on the adequacy of the proposed medical surveillance requirements. Two important elements to be considered were whether a proper balance had been struck between requirements and nonmandatory guidelines and whether the tests specified were appropriate.

Among the respondents, there was little agreement on a proper medical surveillance program. A few concurred with the proposed plan (Exs. 11–45, 11–61, 11–73, 11–76, 85) and some felt that medical surveillance, as provided, was irrelevant to employee health concerns (Exs. 11–64, 11–90, 11–92, 11–123, Tr. 316, Tr. 1537). Many commenters stated that a specific medical surveillance plan should be mandatory and a part of the standard language (Exs. 11–34, 11–42, 11–50, 11–81, 11–91, 11–125, Tr. 1253, Tr. 1284, Tr. 1586). Those supporting this view generally felt that without mandatory tests, no uniformity of results could be ensured. They considered this to be a more important factor than the

current lack of knowledge about what constitutes adequate medical surveillance for EtO-exposed individuals. Others felt that medical surveillance requirements should be left to the discretion of the physician. These groups argued that test recommendations should not be mandatory (Exs. 11–56, 11–71, 11–74, 11–105, 11–110, 11–124, 11–133, 11–137, 11–138, 118, 141–H, 142, Tr. 993, Tr. 997). In general, larger companies with existing comprehensive surveillance plans favored a performance-oriented standard permitting broad latitude to the examining physician. Smaller facilities, with few affected workers and no existing program in occupational medicine, tended to prefer mandatory requirements.

The preamble to the proposed standard indicated that information then available to OSHA was insufficient to justify specification of the precise tests to be administered. The belief was expressed that the examining physician is best qualified to make this judgment. The advantage to this approach is that it permits the examining physician flexibility to modify the medical surveillance program as new methodology and new information on the toxic effects of EtO become available. The disadvantage to this approach is the potential for failure to provide meaningful surveillance to EtO-exposed workers. For example, one Regional Administrator for OSHA commented that "If the agency, with all these resources available, is unable to recommend a specific medical protocol, how is an ordinary practicing physician going to do any better? * * * If the employers provide unfocused medical examinations and have no guidance on interpreting or using the results, then the employees concerned will gain no health benefit" (Ex. 11–145).

In comments (Ex. 11–146) and testimony (Tr. 320), NIOSH stated its belief that the proposed medical surveillance would not provide additional protection to EtO-exposed workers. They commented that:

> * * * the phrase "protective medical monitoring of affected employees" implies that we understand the mechanism of the disease process and that as long as physiological changes are detected at an early stage they may possibly be reversed. Unfortunately, the mechanism of the disease process is not completely understood * * * Specifically, the medical history solicits information concerning symptoms related to the eyes, blood forming organs, lungs, nervous system, reproductive system and skin. Knowledge obtained by acquisition of this information will not contribute to an understanding of the long-term effects of EtO exposure, nor is such information likely to contribute to the protection of the individual worker.

In response to questioning at the OSHA hearings, Phillip Landrigan, a NIOSH physician, stated:

> * * * we are certainly not opposed in general to the principle that physical examinations are good for workers and probably convey general benefits to the improvement of worker health. However, in the case of specific examinations in order to protect against disease or against hazardous health effects which result from exposure to a particular toxic agent, it's our considered opinion that the tests that are done to screen for adverse effects have to be worthwhile to us or they shouldn't be here (Tr. 319–321).

Now, we have reviewed the proposals that OSHA has put forth, including the latest revision by Dr. Yodaikan for the medical screening of workers exposed to EtO, and it's our opinion that none of those tests are worthwhile. None of those tests are likely to detect the presence of cancer. None of those tests are likely to detect the presence of adverse reproductive effects in workers at some early stage in which medical intervention would be worthwhile. And consequently, we cannot support the inclusion of hematological tests, tests of the immune function, tests of liver function in the proposed standard.

This testimony represents a shift from NIOSH's stated position in 1981. In a Current Intelligence Bulletin sent to OSHA by NIOSH as an attachment to the Institute's comments (Ex. 11–146), the following position was taken on medical surveillance for EtO workers.

> A medical surveillance program should * * * be made available that can evaluate both the acute and chronic effects of EtO exposure. Effects such as upper respiratory irritation, dermatitis, or other forms of sensitization and irritation should alert management that unacceptable acute exposure to EtO may be occurring. A careful history with emphasis on the reproductive history should be done initially and updated yearly. In addition, an evaluation of chronic effects would require that an examination give particular attention to the hematological, neurological, and reproductive systems. Unusual findings for a worker should prompt medical personnel to consider specific test (eg. cytogenetic analysis) for the individual.

Comments that specific medical tests now available are not adequate to identify potential long-term effects of exposure to EtO must be given serious consideration. For example, the increased incidence of cancer in animals exposed to EtO, coupled with several reports of cases of leukemia in workers exposed to EtO, is sufficient to conclude that humans exposed to excessive concentrations of EtO are at risk of developing cancer, in particular leukemia. This information alone is inadequate to give any assurance that humans are at risk only with respect to leukemia or even to leukemia plus the other types of cancer seen in animals. Even if all cancer sites were known, clinical tests now available would be inadequate screening tools for cancer. As NIOSH stated:

> * * * these findings (from medical monitoring) could not be used * * * to predict the likelihood of development of cancer or adverse reproductive effects or to protect the worker from the development of those effects. On the other hand, in the event of an exposure to a high concentration of EtO, the immediate exam might include the elements described by OSHA (Ex. 11–146).

However, based on the entire record, OSHA is convinced that, to the extent possible, medical surveillance requirements for EtO should be mandatory. This will ensure that EtO workers exposed for 30 or more days a year at or above the action level receive reasonably uniform protection. Thus, the medical surveillance requirements described below focus not on cancer, but on treatment of EtO emergencies and identification of persons who appear, medically, to have been overexposed to EtO.

Although views were divided on whether specific exams should be mandatory elements of the standard or be included in the appendices, several groups presented written testimony on what they considered appropriate testing for EtO workers. For example, the American Hospital Association, while in favor of nonmandatory tests (Ex. 154), stated that annual medical exams should be available and should include a complete physical, blood cell counts, and urinalysis. Chest X-rays every 5 years were recommended and the essential nature of a medical exam for EtO workers if they received accidential excess exposure was stressed (Ex. 104). John Venable, testifying for the Ethylene Oxide Industry Council, recommended biannual health histories and blood chemistries and annual hematology in establishing an EtO medical surveillance program (Tr. 997–998). The 3–M Corporation also stated a preference for a performance-oriented medical surveillance program, but felt that appropriate testing should include a general history, physical exam, and routine hematology and blood chemistry (Ex. 146).

In testimony for the Ethylene Oxide Industry Council, Lawayne Stromberg made recommendations based on a Canadian Task Force report (Ex. 85, Tr. 985–995). He concluded that annual exams would be inappropriate for monitoring illnesses with a long latent period in persons early in their work

history. For younger workers he recommended exams every 5 years. Exams for EtO workers would include a history oriented to the exposure situation, follow-up with appropriate tests if the physician discovered any problems, and a complete blood count (CBC) based on the risk of the particular occupation.

Several groups recommended that mandatory testing be made part of the standard. Among the several recommendations were those of the Amalgamated Clothing and Textile Workers Union (ACTWU) and the American Federation of State, County and Municipal Employees (AFSCME) which testified that hematologic exams should be patterned after those in the benzene standard and that employees exposed to EtO in the past should continue to be offered medical surveillance (Exs. 44, 101, Tr. 1285). Jeanne Stellman, a physician from the Women's Occupational Health Center, testified in favor of making a complete physical and blood cell counts mandatory and leaving additional clinical procedures to the discretion of the physician (Ex. 117).

The AFL–CIO requested that specific and uniform medical requirements include a complete medical and work history with specific emphasis directed to symptoms relating to the eyes, the blood-forming organs, the lungs, the neurological and reproductive systems, and the skin; a reproductive history; a physical exam emphasizing the same elements as the history; and a CBC with white cell count, differential, hemoglobin and hematocrit (Ex. 112). Although Dr. Landrigan of NIOSH opposed most testing for EtO on the grounds that it would not detect adverse effects at an early stage permitting medical intervention, he testified in favor of including examination of the neurological system on the basis that diseases of this system are only slowly progressive (Tr. 321). The AFSCME believed that Appendix C should include not only information on neurotoxicity but on delayed effects, sensitization, and cataractogenesis as well (Ex. 44).

OSHA's Office of Occupational Medicine also testified at the hearings in support of mandatory medical surveillance. Dr. Ralph Yodaiken, the physician who heads that office, stated that EtO-related exams should include a CBC, an annual comprehensive medical and occupational history, and an annual comprehensive physical examination. He also asked that other elements relating to respirator use be included (Tr. 801).

Although they did not provide testimony supporting mandatory testing for EtO workers in general, the American Hospital Supply Corporation conducts an extensive medical surveillance program for its employees who work with EtO (Ex. 145). Their recommendations involve medical evaluation, including elicitation of a careful family history, reproductive history and past medical events and laboratory assessment of possible documentable effects on health, including possible effects on the blood, liver, reproductive organs, respiratory tract and basic cellular structure. They have also considered conducting a cytogenetic monitoring program and have on occasion medically removed employees from further EtO exposure on the basis of such tests (Ex. 145).

Based on a review of the total record, OSHA concludes that specific tests should be mandated as part of the standard's medical surveillance program. These tests are designed to detect and consequently to prevent inadvertent or otherwise unrecognized excessive exposure to EtO. Alone, the tests will not prevent or even detect all potential adverse consequences of EtO overexposure. However, coupled with employer action to eliminate exposure situations identified through the medical examinations, they will, despite these limitations, greatly reduce the risk of chronic effects.

One basic element of any medical surveillance plan for EtO workers is a medical and work history. These histories should focus on the collection of information that would indicate the worker is being overexposed to EtO. Episodes of nausea, vomiting and headaches, or a "peculiar taste" may suggest that acute exposure has occurred. Delayed effects might include pulmonary edema, drowsiness, weakness and incoordination. A history of burns or blistering of the skin, brown pigmentation, or irritation of the eye may also be an indication of overexposure to EtO (Ex. 2–5). A thorough reproductive history for employees of childbearing age, updated regularly, is essential given the data on EtO's adverse effects on both male and female reproduction. This history should elicit information on stillbirths, miscarriages, past attempts at conception, and present reproductive status.

To complement the medical and work histories the attending physician must perform a comprehensive physical with special emphasis on the same organ systems. To accomplish this task, the physician must be knowledgeable of the signs and symptoms of EtO overexposure. In addition, the physician must be capable of counselling employees who wish to conceive on the risks of exposure to EtO. For reasons discussed in a later section, the physician must make available tests for fertility and pregnancy, as needed, if requested by a potentially affected employee. The advantages to offering these tests if the employee is sufficiently concerned far outweigh the criticisms of these tests received by OSHA.

Review of the record indicates several reasons for inclusion of a complete blood count (CBC) as a routine requirement for EtO-exposed workers. The study of Ehrenberg and Hallstrom (Ex. 2–38) shows a number of hematologic changes in active employees exposed to EtO. It also gives evidence to suggest that these effects may occur even when exposure is brief but intense. Inclusion of the CBC as a requirement is virtually noncontroversial. As stated by Stromberg of the Ethylene Oxide Industry Council, "a CBC is clearly justified by the risk of the particular occupation" (Ex. 85).

Some employees not ordinarily exposed to EtO may briefly encounter exposure to EtO unrelated to their assigned work. A cut-off point is needed for the required medical surveillance program, since it would not be practical to require medical surveillance for every employee regardless of duration of exposure. The surveillance period selected must be sufficiently inclusive but not administratively impractical. From OSHA's experience in the inorganic arsenic and coke oven proceedings and from testimony and public comment on the EtO proposal, the Agency has determined that 30 exposure days per year is an appropriate point for including employees in the medical surveillance program. However, worker rotation shall not be used as an administrative convenience to deprive workers of medical surveillance or of the protection afforded by any other provisions of the standard.

The standard requires the employer to provide examinations to any employee exposed to high EtO concentrations under emergency conditions. Although there is little uncertainty about the long-term effects of high short-term exposures, it appears prudent to monitor such affected employees in light of existing health data.

On the basis of OSHA's evaluation of public response to specific questions raised in the proposal, medical surveillance is also being made available to employees when they

terminate their employment or transfer to another job assignment not involving EtO exposure. The scope of this examination is determined by the physician. For the same reason, employees who believe they are suffering from signs or symptoms of overexposure to EtO may request an interim evaluation by a physician.

The final standard requires that a medical surveillance program provide each covered employee with an opportunity for a medical examination. All examinations and procedures are to be performed by or under the supervision of a licensed physician and be provided without cost to the employee. Clearly, a licensed physician is the appropriate person to be supervising and evaluating a medical examination. However, certain parts of the required examination do not necessarily require the physician's expertise and may be conducted by another person under the supervision of the physician.

Several commenters raised questions concerning the adequacy of the coverage of medical surveillance. AFSCME, in noting that medical surveillance ignores past exposure, recommended changes in the language to provide for continued medical surveillance if workers have been exposed in the past but become reassigned to other work by the same employer (Ex. 44). Cited as precedence were § 1910.1018(1)(i)(B) of the arsenic standard and § 1910.1029(j)(3)(iii) of the coke ovens emissions final rule. In arguing for extended coverage for medical surveillance, the ACTWU pointed out that at one plant only 24 of its members were currently exposed to EtO but that 84 union members and 24 management personnel had received previous EtO exposure (Ex. 101, Tr. 1284). The AFL–CIO also expressed the opinion that specific medical surveillance should be provided to all formerly exposed as well as presently exposed employees (Ex. 112).

Although the concerns expressed by these commenters are realistic, the present state of knowledge about EtO's long-term effects on humans is insufficient to warrant a requirement for medical surveillance of previously exposed employees. The evidence suggests that EtO may cause leukemia, as well as cancer in other organs. However, present knowledge is inadequate to identify an EtO-related preleukemic state in employees and former employees. Thus, medical intervention would occur at a late stage in the development of the disease. In addition, cancer in animals was not limited to leukemia, and available information at this time does not even begin to address whether other tumors seen in animals or even unrelated tumors are also likely outcomes of EtO exposure in humans. Thus, a meaningful medical surveillance program directed at detecting chronic effects, as would be needed for formerly exposed employees, cannot be devised at this time.

The employer is required, in paragraph (i)(3), to provide the physician with the following information: a copy of this standard and its appendices; a description of the affected employee's duties as they relate to the employee's exposure level; the employee's representative exposure level or anticipated exposure level; a description of any personal protective equipment and respiratory equipment used or to be used; and information from the employee's previous medical examinations which is not readily available to the examining physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to his or her assigned duties and fitness to wear personal protective equipment when required.

The employer is required to obtain a written opinion from the examining physician containing the results of the medical examinations; the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material health impairment from exposure to EtO; any recommended restrictions upon the employee's exposure to EtO or upon the use of protective clothing or equipment such as respirators; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions which require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure to EtO, and a copy of the opinion must be provided to the affected employee.

The purpose in requiring the examining physician to supply the employer with a written opinion is to provide the employer with a medical basis to aid in the initial placement of employees and to assess the employee's ability to use protective clothing and equipment. The requirement that an employee be provided with a copy of the physician's written opinion will ensure that the employee is informed of the results of the medical examination. The purpose in requiring that specific findings or diagnoses unrelated to occupational exposure to EtO not be included in the written opinion is to encourage employees to take the medical examination by removing any concern that the employer will obtain information about their physical condition that is unrelated to present occupational exposures.

In addition to raising the question about the adequacy of the medical surveillance requirements, OSHA requested public response on a number of related issues. Specifically, OSHA asked for comment on the appropriateness of the inclusion of genetic screening, chromosome analysis, male fertility testing and pregnancy testing for some employees. The possibility of providing medical removal protection for employees wishing to procreate was also raised. OSHA also sought public comment on whether the coverage of employees under medical surveillance should be expanded to include exams following emergencies, at termination of employment, and for employees who believe they are suffering from symptoms associated with EtO overexposure. In view of OSHA's uncertainty as to what constitutes an appropriate physical examination, the possibility of including a multiphysician review mechanism in the EtO standard was also addressed in the questions to the public.

As part of the proposed nonmandatory Appendix C—Medical Surveillance Guidelines for Ethylene Oxide, OSHA recommended screening for chromosomal damage. Almost all public comments including those from trade associations, unions, manufacturers, suppliers, users, and government agencies agreed that routine chromosome screening is inappropriate and should not be mandated by the standard (Exs. 11–19, 11–48, 11–54, 11–56, 11–64, 11–67, 11–68, 11–74, 11–76, 11–88, 11–93, 11–102, 11–105, 11–110, 11–111, 11–128, 11–131, 11–133, 11–136 to 11–139, 11–142, 11–143, 11–146, 11–157, 85, 90, 101, 112, 135, 152, Tr. 1285, 1049, 453, 464, 998, 1586). The Office of Occupational Medicine at OSHA also testified against the use of chromosomal screening in the medical surveillance programs for EtO (Tr. 801).

In a review of the EtO proposal submitted to OSHA, NIOSH stated:

Exposure to EtO can result in chromosomal abnormalities and increased frequencies of sister chromatid exchanges; however, as of yet NIOSH knows of no data that correlates these effects to the manifestation of cancer or adverse reproductive effects in an individual. The chromosome studies of an individual suggested by OSHA are not likely to provided this information. Ability to detect such damage is limited and the disease can be manifested in the absence of detectable

chromosomal damage. Conversely, the presence of detectable chormosomal damage does not appear to provide a firm basis for predicting the likelihood of an individual demonstrating a tumorigenic response. Despite this uncertainty we believe that the identification of such changes in groups of workers is cause for concern about their continued well being, but is not appropriate for inclusion in a standard for EtO (Ex. 11–146).

In a letter to R.C. Barnard of the Ethylene Oxide Industry Council (Ex. 49), J.W. Grisham of the University of North Carolina stated that:

> * * * information from chromosomal analysis on a population of workers exposed to ethylene oxide could not be used to predict future risk of chronic disease. Chromosomal aberrations are not now a scientifically valid, cost effective means to screen populations of workers for extent of exposure to EtO or for assessment of risk of future development of chronic disease. Evaluation of SCE technically is less demanding and cheaper to perform but not correlated with any disease outcome.

Patterson, in testimony for the Health Industry Manufacturers Association (Ex. 90) and Stromberg for the Ethylene Oxide Industry Council (Ex. 85, Tr. 993) stressed the still experimental nature of cytogenetic testing. Patterson stated, "Cytogenetic testing is a complex research tool. In its present state of development, it is not an accepted clinical test for evaluating individual EtO exposures" (Ex. 90). Stromberg stated that there is "no basis for assuming that cytogenetic testing could assist us in identifying workers who as individuals would have predilection for developing malignant disease. Cytologic testing would not allow us to classify or segregate workers in this way and therefore would serve no useful purpose" (Ex. 85).

Although the Health Industry Manufacturers Association stressed that the foremost reason for rejecting cytogenetic screening is that the findings cannot be used to predict individual risk of adverse health effects, the Association gave several other reasons to support its position (Ex. 152). These included the need carefully to control cytogenecity studies with large and well-matched populations, the expense of the test, and the limited number of laboratories presently capable of doing acceptable work.

The AFL–CIO concurred in not recommending chromosomal tests for routine surveillance. They commented that "from our understanding of genetic monitoring for chromosomal abnormalities, it does not appear that such test conditions and analyses on an individual basis provide any information on the effects of exposure that can be meaningfully interpreted" (Ex. 112). The United Steelworkers of America (USWA) without taking a direct position on chromosomal screening suggested that such testing might be used to screen out workers at preemployment and periodic surveillance examinations (Ex. 11–46).

On the basis of the complete record, OSHA finds that exposure to EtO has caused an increase in chromosome damage in groups of workers exposed to this substance. However, there is no quantitative basis to compare chromosome damage with exposure, so that such measurements would not provide an index of exposure for the individual worker. Furthermore, it is presently not possible to determine on the basis of preemployment examination of chromosomes those employees who will be at highest risk of subsequent health effects if exposed to EtO. Finally, it is not possible to determine in an individual the increased risk of developing cancer or reproductive problems on the basis of a series of test results of chromosomal screening taken over a period of time. Therefore, OSHA has imposed no requirement for cytogenetic testing and has deleted reference to testing for chromosomal damage from the nonmandatory Appendix C. The possible usefulness of this test as followup to an emergency exposure was not explored in the rulemaking and consequently no position is taken in the standard on this issue.

In the general questions supplementary to the proposed rule, OSHA asked for comments on whether medical removal protection (MRP) including maintenance of earnings, seniority, and other benefits and employment rights should be provided for employees removed from exposure to EtO because they wish to procreate and, if so, under what circumstances. This question received considerable public response, with employee representatives supporting MRP, generally in the broadest sense (Exs. 11–152, 44, 101, 112, Tr. 1254, 1588). With some exceptions (Exs. 11–34, 11–88, 11–102, 11–107), employers and industry associations were opposed to mandating any form of MRP (Exs. 11–25, 11–47, 11–57, 11–108, 11–110, 11–131, 11–133, 90, 142, 152, 154, Tr. 452).

The most far reaching position taken in support of MRP was that of AFSCME, which recommended up to 15 months of medical removal every three years for men and women wishing to procreate and additional removal benefits for pregnancy. AFSCME based its position on an evaluation of adverse effects, which caused this union to take the position that EtO levels as low as 0.5 ppm present a probable reproductive danger for both men and women. AFSCME also noted that emergency exposures would remain possible under any standard (Ex. 44). AFSCME did not address the potential economic consequences associated with implementation of its recommendations.

The AFL–CIO did not support a 1 ppm TWA, and consequently took the position that "there are situations when temporary removal of workers will be advisable to protect against reproductive risk, particularly if the final standard sets a 1 ppm PEL" (Ex. 112). However, the AFL–CIO also observed that at present no clear-cut determination can be made as to which situations warrant removal from exposure, and the union recommended that MRP be based on a medical determination. Although the AFL–CIO provided no detailed analyses, it stated that, based on experience with the much broader removal requirements under the lead standard, a limited voluntary removal program for EtO-exposed workers would be feasible (Ex. 112).

The public responses received do not provide OSHA with arguments sufficient either to support or refute the need for MRP in an EtO standard. There is no evidence in the EtO record that a wage guarantee requirement for EtO would be reasonably necessary for the achievement of a safe and healthful work environment. Furthermore, the effects of exposure to EtO are not highly reversible, as evidenced by the persistence of chromosomal aberrations after the cessation of exposure, and the record contains insufficient evidence to indicate that temporary removal would provide long-term employee health benefits. For these reasons, OSHA is not including mandatory MRP in the final standard.

In view of the uncertainty as to what constitutes an appropriate physical examination, OSHA requested public comment on whether a multiphysician review should be required. In the lead standard, where a three-stage review process is mandated, multiphysician review was justified on the basis of the increased probability that such a review would facilitate the correct diagnosis of lead-related disease. This was so because the inherent biological variability of lead disease meant that no one medical specialty was uniquely suited to diagnose it and that many company physicians had difficulty recognizing it.

OSHA received comment that multiphysician review is essential to ensure employee cooperation and

confidence, but evidence given to support this position was testimony from the record of the lead standard, where an extremely different picture emerged in the record as compared to that for EtO (Ex. 101, Tr. 285). In the EtO rulemaking, employers and their associations overwhelmingly considered multiphysician review inappropriate (Exs. 11–25, 11–47, 11–48, 11–57, 11–67, 11–68, 11–71, 11–88, 11–105, 11–110, 11–131, 11–133, 11–148, 152, 154). For example, the American Hospital Association stated that "there is no evidence to support a finding that company physicians lack medical sophistication to detect the subtle and illusive signs of diseases in health impairments associated with exposure to EtO" (Ex. 154). However, NIOSH presents the most convincing argument against mandatory multiphysician review: "NIOSH does not believe that the uncertainty described by OSHA can be resolved by a multiphysician review since the uncertainty arises from the interpretation and not the performance of such tests" (Ex. 11–146). OSHA agrees that multiphysician review cannot compensate for the underlying problem, i.e., the lack of medical tests that give an early warning of most EtO-related chronic diseases, and multiphysician review is not included in the final standard.

Two questions raised by OSHA proved to be noncontroversial. One question addressed the issue of offering interim medical examinations to employees who believe they are suffering from symptoms associated with EtO exposure. The other question asked if it would be appropriate for the standard to require that employers offer medical examinations at the termination of employment. Of the few responses received, support for the provision of exams at termination greatly outweighed any negative replies (Exs. 11–25, 11–28, 11–34, 11–47, 11–48, 11–68, 11–102, 85, Tr. 999). Several respondents affirmatively addressed the question of providing interim exams upon employee request (Exs. 11–34, 11–67, 11–68, 11–102, 11–146). NIOSH, however, also stated that:

> * * * the employee should be informed that such an examination cannot with any certainty predict the likelihood of a carcinogenic or adverse reproductive response and that workers should also be informed that the results will not provide a basis for medical intervention that will protect the worker's health (Ex. 11–146).

However, OSHA believes that the interim examination will serve purposes other than that noted by NIOSH. For example, an examination may be needed to assess and alleviate the acute effects of EtO exposure. This may, in turn, indicate that a leak or some other source of high transient EtO levels needs to be repaired or corrected.

In the final standard, OSHA has incorporated provisions for interim medical exams and for examinations at termination of employment. After the employee has terminated his or her job in an EtO exposure area, the employer has no further obligation under this standard to provide medical surveillance.

Interim exams are required to ensure that employees have access to a physician if a hazardous situation has been recognized. This obligation parallels the requirement that employers provide medical services for employees potentially overexposed in an emergency. Through training required in other sections of the standard, employees should become competent in recognizing the signs and symptoms associated with overexposure to EtO. Thus, medical intervention may be needed when the employee believes that a problem is occurring. The cost-effectiveness of the standard's approach is ensured because the physician performs only those tests he or she deems necessary based on the employee's complaints.

OSHA asked for public comment on whether fertility testing and pregnancy testing should be provided as a part of routine physical examination for employees exposed in emergency situations, and for persons wishing to procreate. Evidence available from both human and animal studies gave strong indication of both male and female reproductive effects. Despite this evidence, many commenters were opposed to providing fertility tests or pregnancy tests particularly as part of the routine physical examination (Exs. 11–25, 11–64, 11–71, 11–88, 11–110, 11–124, 11–128, 11–131, 11–133, 152). Reasons for rejecting these two tests generally fell into two categories. Some participants contended that evidence of EtO's effects on reproduction, at least at the proposed PEL, was inadequate, making medical surveillance meaningless. Others found the proposed tests i.e., for male fertility, to be too unreliable. In rejecting the inclusion of these tests in the standard, NIOSH stated "we do not believe that sperm or pregnancy test results obtained from individual workers will provide meaningful diagnostic information. As with genetic screening, we believe that sperm test results are currently only of value for interpreting effects of EtO exposure on an entire population" (Ex. 11–146).

Consideration of the interests of the individual employee leads OSHA to disagree with NIOSH's position, at least in part. Certainly, pregnancy test results are not unreliable. For a female employee, knowledge of her pregnancy can lead to careful medical maintenance and precautions on the part of the employee and management to minimize exposure throughout her pregnancy. For men and women, results of fertility tests may not be conclusive and even indication of a problem would not necessarily implicate EtO as the sole cause. However, repeated reproductive failure coupled, for example, with a low sperm count, sperm morphology and sperm motility in the male might serve as indicators to decrease exposure to EtO as much as possible, especially if other signs or symptoms of overexposure to EtO are evident. Thus, to be consistent with the Agency's position in the lead standard (§ 1910.1025), and in response to the record evidence in support of this option, OSHA is requiring that fertility tests and pregnancy tests be made available to potentially affected employees who specifically request them when the physician concurs in the need for the testing. Abusive of frivolous application of this section will be avoided by requiring the physician to approve requests for fertility and pregnancy tests.

Paragraph (j) Communication of EtO Hazards to Employees

OSHA has combined the requirements from several proposed paragraphs into a new paragraph (j) in the final rule entitled "Communication of EtO Hazards to Employees." These requirements ensure that information about the hazards of EtO will be transmitted to employees through the use of: (1) Signs and labels, (2) material safety data sheets, and (3) information and training. The proposed standard for EtO included requirements addressing signs and labels and information and training in two separate paragraphs.

Since OSHA's proposed rule for EtO was published on April 21, 1983, OSHA promulgated a final rule on Hazard Communication (48 FR 53280, November 25, 1983) (29 CFR 1910.1200). That standard requires that chemical manufacturers and importers assess the hazards of the chemicals they produce or import. Employers having workplaces in the manufacturing industry sectors (Standard Industrial Classification (SIC) codes 20 through 39) are required to provide information to their employees concerning the hazards of chemicals used in the workplace. Chemical hazard

information is to be transmitted to employees "* * * by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training" (§ 1910.1200(a)(1)).

The purpose of reformatting paragraph (j) in this final EtO standard is to avoid repeating the requirement in § 1910.1200 and to ensure consistency with that standard. OSHA wishes to point out, however, that the Hazard Communication standard only applies to employers with workplaces in the manufacturing industry sectors (SIC codes 20 through 39). For these and other sectors, however, paragraph (j) of OSHA's final rule for EtO provides that EtO labels must meet the criteria set forth in § 1910.1200 all facilities covered by the EtO standard.

Signs and Labels. The final rule for EtO requires that regulated areas be demarcated by posting legible signs that bear the following legend:

DANGER
ETHYLENE OXIDE
CANCER HAZARD AND REPRODUCTIVE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING MAY BE
REQUIRED TO BE WORN IN THIS AREA

OSHA intends the posting of these signs to serve as a warning to employees who may otherwise not know they are entering a regulated area. Such warning signs are required to be posted whenever a regulated area exists, that is, whenever occupational exposures are likely to exceed the PEL. For some work sites, regulated areas are permanent, for example, in areas where engineering controls cannot reduce exposures to or below the PEL. In such situations, signs are necessary to warn employees not to enter the area without adequate respiratory protection and unless authorized to do so.

Warning signs are also required to designate temporary regulated areas, e.g., when maintenance or repair activities create a situation where occupational exposures could exceed the PEL. Warning signs are important in this situation because they will help to prevent the unnecessary exposure of employees who may not be aware that an area temporarily contains high levels of EtO.

The standard also requires that containers of EtO be labeled with the legend:

CAUTION
CONTAINS ETHYLENE OXIDE
CANCER AND REPRODUCTIVE HAZARD

and with a statement warning against breathing airborne concentrations of EtO.

The signs and labels requirements discussed above are consistent both with Section 6(b)(7) of the OSH Act, which prescribes the use of labels or other appropriate forms of warning to apprise employees of the hazards to which they are exposed, and with the requirements of OSHA's Hazard Communication rule, 1910.1200(f).

Employee representatives supported the inclusion of a requirement in OSHA's final EtO rule mandating that signs and labels warn workers of the health hazards of EtO (Exs. 4–19, 4–26, 4–52). Although industry representatives generally agreed that employees should be warned about the hazards of EtO, several commenters objected to including information about the reproductive hazards of EtO exposure on the signs and labels (Exs. 11–25, 11–57, 11–74, 11–101, 11–136). These participants also believed that the words "cancer and reproductive hazard" were alarming and inaccurate (Exs. 11–25, 11–57, 11–74, 11–101, 11–136).

The EOIC contended that "there is no sufficient basis upon which to require that signs and labels bear a warning regarding reproductive hazards and only a warning of potential cancer hazard should be required" (Ex. 11–57). The EOIC explained that "the only human study * * * that has linked exposure to EO with reproductive effects is the Hemminki study * * * that study has methodological shortcomings and does not establish that EO is in fact a reproductive hazard. At best, it suggests that further research may be warranted" (Ex. 11–57). The EOIC stated also that the animal studies submitted to OSHA's rulemaking docket for EtO are "* * * insufficient (evidence) to support the requirement of a reproductive effects warning" (Ex. 11–57). On the subject of EtO's carcinogenicity, the EOIC concluded that the evidence in man is uncertain and therefore "* * * the use of the word 'potential' provides a more accurate description of the scientific knowledge regarding the possible carcinogenic hazard posed by EO" (Ex. 11–57).

The purpose of signs demarcating regulated areas and of labels on containers warning employees of the hazards of chemicals is to alert workers, in clear and concise language, to the possible adverse effects of exposure to chemicals. Signs and labels are not meant to be judgments on the quality of the scientific evidence pertaining to the health effects of hazardous chemicals. OSHA believes that the scientific evidence discussed above in the Health Effects section of the preamble is sufficient to warrant a clear and strong warning on signs and labels designed to alert workers to EtO's reproductive and carcinogenic effects. In addition, the language on the signs and labels required by this standard is consistent with that used by the Agency in several other rulemakings involving carcinogens (Acrylonitrile, 29 CFR 1910.1045; Inorganic Arsenic, 29 CFR 1910.1018; Coke Oven Emissions, 29 CFR 1910.1029; Ethylene Dibromide, 48 FR 45956, October 7, 1983).

The proposal's labeling requirement did not apply "where EtO is used as a pesticide, as such term is defined in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136 et seq.) when * * * (EtO) is labeled pursuant to that Act and regulations issued under that Act by the Environmental Protection Agency" (48 FR 17312, April 21, 1983). At the time the proposal was published, there was concern that OSHA's labels might conflict with information required on labels of pesticide products regulated by the Environmental Protection Agency under FIFRA. OSHA has since determined that the label required by the final EtO standard does not conflict with EPA labels under FIFRA. OSHA and EPA will continue to coordinate their activities when regulating hazardous chemicals in an effort to avoid conflicts.

The EOIC (Ex. 11–57) requested that OSHA clarify whether or not tank cars are exempt from the container labeling requirement. The EOIC suggested that "if the word 'container' is construed to include tank cars, the OSHA requirements may conflict with regulations imposed by Department of Transportation" (Ex. 1–57).

Tank cars are not exempt from the final standard's container labeling

requirement. OSHA believes it is important that employees involved in the loading and unloading of tank cars are aware of the health hazards associated with EtO exposure to ensure that they take precautionary and protective measures. OSHA has examined its labeling requirements for EtO and has determined that they do not conflict with Department of Transportation regulations under the Hazardous Materials Transportation Act, 49 U.S.C. 1801 *et seq.*

Material Safety Data Sheets. Paragraph (j) of the final rule for EtO also requires that manufacturers or importers of EtO obtain or develop material safety sheets (MSDS's) for EtO and make them available to their employees, in accordance with OSHA's Hazard Communication standard (29 CFR 1910.1200(g)). The Hazard Communication rule establishes "uniform requirements for hazard communication in one segment of industry, the manufacturing division" (48 FR 53281, Nov. 25, 1983). Paragraph (g) of the Hazard Communication rule specifies what information must be included in MSDS's.

Although the Hazard Communication standard applies to most facilities that will be affected by the EtO standard (SIC's 20–39), many EtO-using workplaces (e.g., hospitals, museums, libraries) are not included in the scope of the Hazard Communication standard as it applies to the MSDS. However, most of the information contained in a MSDS is also included in the appendices to the EtO standard. Since paragraph (j) of the final rule for EtO requires all affected employers to provide copies of the EtO standard and its appendices to their employees, OSHA believes that all employees potentially exposed to EtO will, in fact, be adequately apprised of the hazard associated with EtO. Thus, OSHA does not explicitly require manufacturers to send MSDS's to downstream users outside SIC's 20–39.

Information and Training. The final EtO standard requires affected employers to provide a training program for all employees expected to be exposed to airborne EtO at or above the action level of 0.5 ppm. The training requirement in the standard is patterned after OSHA's Hazard Communication standard (29 CFR 1910.1200(h) (1) and (2)).

Information and training are to be provided at least annually to employees when they are initially assigned to a work station where there is a potential for exposure to EtO to be at or above the action level. Information required to be provided to potentially exposed employees includes an explanation of the requirements of the EtO standard; identification of operations in the work area that contain EtO; and the location and availability the EtO final rule. The required elements of the training program, as specified in 29 CFR 1910.1200(h)(2), include: methods and observations that may be used to detect the presence or release of EtO; the physical and health hazards of EtO; the measures employers must take to protect employees from EtO hazards; and the details of the hazard communication program developed by the employer. Employers covered by the scope of the final EtO standard must also provide their EtO-exposed employees with an explanation of the contents of the EtO standard and its appendices. In addition, the medical surveillance program required by the EtO standard must be described to affected employees.

Training and information requirements are routine components of OSHA health standards and are required by section 6(b)(7) of the Act, and their inclusion reflects the Agency's conviction that informed employees are essential to the operation of any effective occupational health program. OSHA believes that informing and training employees about the chemical hazards to which they are exposed will contribute substantially to reducing the incidence of occupational diseases caused by current exposure conditions. In addition, training serves to reinforce information presented to employees through the written media of labels and material safety data sheets required by the other communication provisions of this paragraph.

Many commenters strongly endorsed the inclusion of information and training provisions in the final rule (Exs. 4–32, 4–33a, 4–52, 4–54, 11–33, 11–34, 11–36, 11–38, 11–77, 104). Commenters representing hospitals particularly stressed the importance of training for sterilizer operators (Exs. 4–32, 11–36, 11–33, 11–34, 11–38, 11–77, 104). For example, Neil Danielson, Central Service Manager of the Wesley Medical Center, stated that:

> Part of our * * * education programs includes informing our personnel that EO is a toxic substance and that it has mutagenic effects * * * Training requirements for operators of sterilization equipment * * * includes competency in performance evaluation and review by the supervisor with the operators prior to assignment * * * to sterilization procedures (Ex. 11–36).

The American Hospital Association (AHA), a trade association representing several hundred hospitals, also reported that it has conducted an extensive educational program on the hazards of EtO in the hospital setting (Ex. 4–32). For example, the AHA held three training seminars in 1982 and developed training manuals for EtO users entitled, *Ethylene Oxide Use in Hospitals: A Manual for Health Care Personnel* (Ex. 4–32).

One commenter expressed concern about confidential information being disseminated via the training program mandated by the standard (Ex. 11–48). Michele Malloy, Attorney for Conoco, Inc., stated:

> The proposed standard does not address the issue of confidential information contained in training materials. * * * Training material may include information that describes plant processes, information considered confidential and proprietary. The proposed rule should contain a mechanism to maintain the confidentiality of this information (Ex. 11–48).

OSHA shares Conoco's concern but does not believe that the final standard will create problems concerning confidentiality. Employees are routinely in a position to have access to information about materials in use in their workplace and to observe production processes at first hand in the course of their work assignments. OSHA believes that training information is not likely to be sufficiently detailed to divulge trade secrets. In addition, as discussed in the preamble to the Hazard Communication standard (48 FR 53280, November 25, 1983), employers may take steps to protect the specific chemical identities of materials used in their production processes (see the discussion at 48 FR 53312 *et seq.*).

Considerable evidence was submitted to the record demonstrating that training and information programs are also common in EtO-using facilities in the non-hospital sectors of industry. For example, the Ethylene Oxide Industry Council (EOIC) conducted a survey among 18 of its non-producer ethoxylator members (Ex. 4–33a). Fifteen of the 18 companies responding stated that they had already established "formal training program[s] for employees, * * * both supervisors and workers potentially exposed to ethylene oxide" (Ex. 4–33a). In addition, a study prepared under contract to OSHA by JRB Associates (Ex. 6–22) reported that the overwhelming majority of EtO-using firms in the EtO producer, ethoxylator, and medical equipment manufacturing sectors have training programs in place.

In sum, the record evidence in regard to information and training reinforces OSHA's own convictions as to the importance of informed employees to the successful implementation of occupational health programs, and provides strong support for the inclusion of these requirements in the final rule.

Paragraph (k) Recordkeeping

Section 8(c)(3) of the Act provides for the promulgation of regulations requiring employers to maintain accurate records of employee exposures to potentially toxic or harmful physical agents which are required to be monitored or measured.

As proposed, the final standard requires that employers who rely on objective data to be exempted from the standard (paragraph (a)(2) and (d)(2)(ii)) shall maintain records of such information to demonstrate that their employees are not exposed to airborne EtO concentrations at or above the action level. In this respect, the objective data substitute for the initial monitoring requirements.

The final rule provides that records be kept to identify the employee monitored and to reflect the employee's exposure accurately. Specifically, records must include the following information: (a) The names and social security numbers of the employees sampled; (b) the number, duration, and results of each of the samples taken, including a description of the representative sampling procedure and equipment used to determine employee exposure where applicable; (c) a description of the operation involving exposure to EtO which is being monitored and the date on which monitoring is performed; (d) the type of respiratory protective devices, if any, worn by the employee: and (e) a description of the sampling and analytical methods used, and evidence of their accuracy.

The final standard also requires that the employer keep an accurate medical record for each employee subject to medical surveillance. Section 8(c) of the Act authorizes the promulgation of regulations requiring any employer to keep such records regarding the employer's activities relating to the Act as are necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational illnesses. OSHA believes that medical records, like exposure monitoring records, are necessary and appropriate both to the enforcement of the standard and the development of information regarding the causes and prevention of illness. In addition, medical records are necessary for the proper evaluation of the employee's health.

The final standard requires that all records required to be kept shall be made available upon request to the Assistant Secretary and the Director of NIOSH for examination and copying. Access to these records is necessary for the agencies to monitor compliance with the standard. These records may also contain essential information which is necessary for the agencies to carry out their other statutory responsibilities.

The final rule provides for employees, former employees, and their designated representatives to have access to mandated records upon request. Section 8(c)(3) of the Act explicitly provides that "employees or their representatives shall be provided with an opportunity to observe monitoring and to have access to the records of monitoring and exposures to toxic substances"; and several other provisions of the Act contemplate that employees and their representatives are entitled to have an active role in the enforcement of the Act. Employees and their representatives need to know relevant information concerning employee exposures to toxic substances and their health consequences if they are to benefit fully from these statutorily created rights.

In addition, the final rule specifies that access to exposure and medical records by employees, designated representatives, and OSHA shall be provided in accordance with 29 CFR 1910.20. Section 1910.20 is OSHA's recently promulgated generic rule for access to employee exposure and medical records (45 FR 35212). By its terms, it applies to records required by specific standards, such as this EtO standard, as well as records which are voluntarily created by employers. In general, it provides for unrestricted employee and designated representative access to exposure records. Access to medical records is also provided for employees and, if the employee has given specific written consent, for the employee's designated representatives. OSHA retains unrestricted access to both kinds of records, but its access to personally identifiable records is subject to rules of Agency practice and procedure concerning OSHA access to employee medical records, which have been published at 29 CFR 1913.10. An extensive discussion of the provisions and the rationale for § 1920.20 may be found at 45 FR 35312; the discussion of § 1913.10 may be found at 45 FR 35384. It is noted that revisions to the access to records standard are being developed in an ongoing rulemaking proceeding. The EtO standard may be affected by any changes which result from that rulemaking effort.

It is necessary to keep records for extended periods because of the long latency periods commonly observed for the induction of cancer caused by exposure to carcinogens. Cancer often cannot be detected until 20 or more years after onset of exposure. The extended record retention period is therefore needed for two purposes. First, diagnosis of disease in employees is assisted by having present and past exposure data as well as the results of the medical exams. In addition, retaining records for extended periods also makes it possible at some future date to review effectiveness and the adequacy of the standard.

The time periods required for retention of exposure records and medical records are thirty years, and period of employment plus thirty years, respectively. These retention periods are consistent with those in the OSHA records access standard.

The final standard requires employers to notify the Director of NIOSH in writing at least 3 months prior to the disposal of the records. Section 1910.20(h) also contains requirements regarding the transfer of records. The employer is required to comply with that provision and any other applicable requirements set forth in that standard.

Paragraph (l) Observation of Monitoring

Section 8(c) of the Act requires that employers provide employees and their representatives with the opportunity to observe monitoring of employee exposures to toxic substances or harmful physical agents. In accordance with this section, as proposed, the final rule contains provisions for such observation of monitoring of EtO exposures.

The observer, whether an employee or a designated representative, must be provided with, and is required to use, any personal protective equipment required to be worn by employees working in the area that is being monitored, and must comply with all other applicable safety and health procedures.

The record contains little objection to the requirements addressing observation of monitoring. One commenter did object, however, as noted below:

> * * * It is necessary that OSHA define "designated representative", and second, there must be clarification as to when an employer must provide affected employees an opportunity to observe monitoring. Clearly, an employer should not be obligated to let employees observe monitoring at any time the employee desires. The disruption this would cause in a working environment could be substantial. (Ex. 142.)

Experience gained from previous health standards containing these same observation provisions has indicated that the concerns expressed above are not warranted and that compliance with

this requirement has not been unduly burdensome.

This commenter's concern over the potential "substantial" disruption in the working environment caused by employees' observation of monitoring is also unsubstantiated by the record or OSHA's experience. Therefore, OSHA has determined that the final requirements for employee observation of monitoring are appropriate.

Paragraph (m) Dates

Effective Date

In the NPRM, OSHA proposed an effective date of thirty (30) days following publication in the **Federal Register** and invited comment on whether additional time should be provided. In addition, the Agency solicited information and supporting data on delayed implementation dates for compliance with various provisions of the standard.

After careful review of comments in response to the proposal, the hearing testimony, and post-hearing comments, the final rule shall become effective sixty (60) days following publication in the **Federal Register**. Providing a 60 day rather than 30 day effective date is believed by OSHA to be necessary for affected parties to familiarize themselves with this rather comprehensive document. In addition, because of the considerable range of estimates for time to come into compliance with the PEL among the affected industries, the Agency has decided to establish startup dates for specific provisions of the standard based on the affected industry. This is based on the record and on OSHA's experience with other standards as to the time required for employers to complete air monitoring and medical surveillance, to obtain necessary equipment, respirators, and protective clothing, to produce written compliance plans, and to design, procure, and install engineering controls. OSHA believes that the dates set in this standard should be adequate in all but unusual circumstances. If the time period for meeting any of these startup dates cannot be met because of technical difficulties, any employer is entitled to petition the Assistant Secretary for a temporary variance under § 6(b)(6)(A) of the Act. Based on its evaluation of the feasibility of the standard, however, OSHA does not anticipate that many employers will need to use this variance mechanism.

Startup Dates

Among producers/ethoxylators, comments on the estimated time to institute any necessary engineering controls and/or work practice controls ranged from companies whose facilities were already reported to be in compliance to those who suggested that up to two years were needed to install engineering controls. For example, U.V. Henderson, Associate Director of Environmental Affairs at Texaco, stated that while his company's manufacturing plant is currently achieving fairly close to 1 ppm, additional engineering controls are now planned or being placed in service to permit consistent compliance with the PEL (Ex. 11–71). In responding to the question OSHA raised in the proposal regarding time to compliance, Mr. Henderson stated:

> At our manufacturing plant, compliance with a 1 ppm PEL is already achievable. At other locations where to EtO is used, a 12 month period would probably be adequate to institute any necessary engineering and/or work practice controls.

Similarly, Howard Kusnetz, Manager of Safety and Industrial Hygiene at Shell Oil Co., stated that Shell had successfully reduced employee exposures through a combination of engineering controls, work practices, and respiratory protection (TR. 815). Moreover, he stated that "with few exceptions, employee exposures today are below 1 ppm as a work-shift time-weighted average without regard to the use of respirators" (Tr. 815). During cross-examination at the hearings, he indicated that while two job categories in the production section required the use of air-supplied respirators, compliance with the proposed PEL of 1 ppm had already been achieved in the ethoxylator section without regard to the use of respirators (Tr. 816, 829).

Among producers/ethoxylators not already in compliance with the PEL, PPG Industries, Inc. estimated several months to two years to meet the PEL (Ex. 11–105). SunOlin Chemical Company, the smallest of the EtO producing companies, stated that it would need 18–24 months to meet the PEL through engineering and work practice controls (Ex. 11–25), as did A.E. Staley Manufacturing Company (Ex. 11–124), and Dow Chemical Company (Ex. 11–110). Union Carbide Corporation, the largest producer/consumer of EtO, recommended a biphasic compliance plan, Phase I requiring 6 months to develop and design engineering controls, and Phase II requiring an additional 18 to 24 months to implement those engineering controls defined in Phase I (Ex. 11–133). During the hearings, Donald E. Rapp of Dow indicated that his company would need 12 or 18 months to comply with 1 ppm (Tr. 839), thereby decreasing his company's earlier estimate of time to compliance (Ex. 11–110) by six months. Eastman Kodak requested a minimum of two years (Ex. 11–67). Finally, BASP Wyandotte Corporation requested 12–36 months to install engineering controls.

Arlin G. Voress, Chairman of the EOIC, and Geraldine V. Cox, Vice President and Technical Director of the Chemical Manufacturers Association, stated that the PEL is generally achievable by industry if the use of respirators is permitted in certain operations as part of an integrated control strategy and if appropriate phase-in periods are provided (Ex. 11–57). They estimated that producers and ethoxylators would need up to two years to install engineering controls.

OSHA has determined that the record supports the adequacy of a twelve-month period for producers and ethoxylators to institute any necessary engineering and/or work practice controls. In this regard it is particularly notable that Shell Oil Company already has achieved compliance with the TWA in its ethoxylator section without regard to respirator usage, that only two job categories in Shell's producer section required periodic use of respirators, and that at Texaco, compliance with the PEL is already achievable. Therefore, producers and ethoxylators have one year from the effective date to achieve compliance with the PEL by means of engineering and work practice controls.

Among medical products manufacturers, including sterilizers, the estimated time to compliance using engineering and/or work practice controls ranged from 7 to 24 months. For example, in response to the proposed effective date, Harold O. Buzzell of HIMA stated that since nearly 60 percent of HIMA members using EtO are small entities, a 1 ppm TWA could not be widely met in any reasonable length of time using only engineering and work practice controls. He indicated that "allowing respiratory protective devices for limited specific and defined work tasks would result in compliance in approximately 7 months at significant savings" (Ex. 11–74). Testimony by G. Briggs Phillips, Senior Vice President for Scientific Affairs of HIMA, indicated his organization's support of a 1 ppm TWA and that compliance in 7 to 12 months would be possible with the limited use of respirators for short periods (Ex. 89). Frank P. Wilton, President of Ethox Corporation, testified on behalf of HIMA that his Corporation will need 7 to 12 months to achieve the PEL with respirator usage. Post-hearing comments by Phillips reiterated HIMA's

recommended time to compliance of 7 to 12 months (Ex. 135). Futhermore, in a post-hearing brief (Ex. 152), Phillips and Wilton indicated that Lawrence Hecker's statement at the hearings was representative of the position of HIMA members on the time needed for compliance.

> Sterilant user members of the EOIC believe that it will take about 7 months to achieve compliance with the PEL if respirators can be used as part of an integrated program (Tr. 451).

In summary, HIMA, a trade organization representing 285 medical device and diagnostic product manufacturers, proposed a phase-in time of 7 to 12 months with considerable respirator usage thereafter.

However, OSHA witness Peter A. Roy testified that in the vast majority of cases in health care facilities and industrial sterilizers of medical devices, a 12-month period would provide sufficient time for compliance by means of engineering and work practice controls (Ex. 21–8). More specifically, he stated:

> I base this opinion on the following facts: many industrial and hospital users of EtO have already taken significant steps in work practice and engineering controls to reduce exposures; the ACGIH TLV Committee has already adopted a 5 ppm TWA and has proposed 1 ppm to be effective in 1984; many industrial sterilization facilities and medical device manufacturers have gone on record as adopting in house levels at 10 or less ppm TWA and the feasibility and effectiveness of control measures has been proven.
>
> * * * * *
>
> In instances where individual facilities or institutions may be unable to comply within the 12 month period, I believe that employees may be adequtely protected in the interim through the use of proper respiratory protection. A 12 month lead time should be sufficient for the development or application of ventilation equipment work process controls for hospital and industrial sterilization facilities. Again, EtO control is merely the application, in most cases, of well established control technology and does not require the development of any new technology or new methods of control. Nevertheless, new methods of control, if proven effective, may of course be used. These could include new sterilizer designs, combination sterilizer aerators, and other technological advancements in equipment design and function. However even where existing equipment and facilities must be modified, a 12 month lead time should provide an ample period for the planning, development, design, implementation and testing of control measures.

Other comments regarding time to compliance in medical products firms and sterilizers ranged from 1 to 4 years. Sterile Products Technology conducted a survey of four small medical products manufacturers and indicated that one would use an alternate sterilization process, two would need 12 months to implement engineering controls, and the fourth would need two years (Ex. 11–126). Howmedica, Inc. (Ex. 11–54) and American Hospital Supply Corp. (Ex. 11–47) indicated that compliance could be achieved within 12–18 months allowing respiratory protection for limited specific and defined work tasks. In posthearing comments, John Kuchta, Vice President and General Counsel for Kendall Co., advocated a 24-month phase-in period to implement the PEL (Ex. 142) as did AAMI (Ex. 11–127) and Warner-Lambert Co. (Ex. 11–76). S. Richard Nusbaum felt that both hospital and industrial sterilizers needed 3 years to meet a 1 ppm TWA (Ex. 11–64). Midwest Sterilizing Corp., a small contract sterilizer, contended that 3 to 4 years were needed to implement the PEL.

In summary, there is a considerable range of estimates of the necessary time to compliance among medical products manufacturers and sterilizers. Based on the Agency's feasibility analysis and expert testimony, OSHA believes that one year after the effective date will provide sufficient time for the vast majority of medical products manufacturers and sterilizers to implement engineering controls and work practices which will meet the PEL. As mentioned above, if because of technical difficulties the startup date cannot be met, any employer may request a temporary variance under § 6(b)(6)(A) of the Act.

Among spice manufacturers, McCormick and Co. and R.T. French Co. submitted comments on the time frame needed to meet the PEL. Richard L. Hall, Vice President of Science and Technology at McCormick, stated that the use of respirators was necessary to achieve the 1 ppm TWA during maintenance and emergency operations as well as during re-engineering of facilities. Hall believes that a phase-in is needed and recommended a minimum of 18 months to compliance (Ex. 11–138). A.R. Hatfield, Vice President and Secretary at R.T. French, was in favor of a two-year evaluation and modification period. The first year would be spent developing analytical methodology and validation for monitoring, the second for emplementing engineering controls (Ex. 11–141). The above commenters provided no substantive evidence on engineering or economic problems which would support the need to extend the date of compliance to 2 years. In addition, as noted in the monitoring section of the preamble, OSHA believes that adequate exposure monitoring methods are presently available to all segments of the industry, including spice manufacturers. Because the equipment and methods for spice sterilization are very similar to those used for the sterilization of other items with EtO, OSHA is confident that spice manufacturers can comply with the EtO standard within the same time period as the other industry segments. Consequently, the spice manufacturing industry has one year to meet the PEL through engineering and work practice controls.

The great majority of comments regarding the effective date to compliance with the PEL were received from the health care industry. Estimated effective dates ranged from compliance within 24 hours to within 4 to 5 years. For example, Sara Beddow, Central Supply Supervisor at Memorial Hospital (Colorado Springs) stated that 24 hours were needed to reduce exposure to the PEL through engineering and work practice controls (Ex. 11–34). Brian J. Kuske, Assistant Administrator, and DeLoa Pitt, Central Processing, of St. Mark's Hospital (Salt Lake City) stated that while their present equipment can meet the 1 ppm TWA, a one year maximum compliance date for other hospitals was recommended (Ex. 11–38). Donna Swenson, Central Service Supervisor at Rockford Memorial Hospital (Illinois), stated that a relatively short period of time was needed to reduce employee exposures to the PEL, and that engineering controls for her facility would be completed by June 1, 1984 (Ex. 11–81).

Malcolm G. Ridgway *et al.* of Council Shared Services, an engineering consulting firm serving 230 hospitals in six Southern California counties, stated that engineering controls were usually installed within three months after that company's recommendations (Ex. 11–122). Ridgway reported the results of 148 EtO environmental safety site surveys performed during March 1982 through March 1983 at 95 sites in 86 member hospitals in which 95.3% of the surveys indicated EtO levels less than 5.0 ppm.

Mesa Luthern Hospital (Arizona) requested a minimum of 6 months for implementation of engineering controls (Ex. 11–31), as did St. Joseph Hospital Health Center (Syracuse) (Ex. 11–119). St. John's Regional Medical Center (Joplin, Missouri) and Petaluma Valley Hospital (California) requested 6 to 12 months to reduce exposures to the PEL (Exs. 11–17, 11–43). Michael L. Schneier, Director of Research, Development and Engineering of Castle Co., a manufacturer of EtO sterilizers used in hospitals, indicated that it would take

more than 30 days for sites not in compliance to obtain and install equipment. Schneier stated that 9 to 12 months is a more realistic time to compliance (Ex. 11–53).

A majority of hospitals and health care facilities indicated that one year was needed to reduce exposure to the PEL by means of engineering controls. Commenters included the Missouri Association for Hospital Central Service Personnel, Sid Peterson Memorial Hospital (Kerrville, Texas), Michigan Hospital Association, International Association for Hospital Central Service Management, Samaritan Health Service (Phoenix), University of Washington Hospital (Seattle), Missouri Hospital Association, Arizona Hospital Association Service Corporation, St. Mary's Hospital (Rochester, Minnesota), Grand Rapids Osteopathic Hospital, and University of Virginia Hospitals (Charlottesville) (Exs. 11–12, 11–16, 11–26, 11–44, 11–70, 11–85, 11–86, 11–103, 11–116, 125, 129).

In addition, there appeared to be a consensus among unions representing health care employees (AFGE, AFSCME, and SEIU) that while engineering controls should be installed as soon as possible, installation should occur no later than one year following the effective date (Exs. 11–99, 11–152, 44, Tr. 357, 365, 1201). For example, AFSCME recognized that a PEL that requires extensive retrofit of equipment to comply will necessarily require time to procure needed equipment from manufacturers.

> In the health care industry, we believe that a reasonable end point can be established that is less than one year from the effective date of this standard. (Ex. 44)

Furthermore, Neil Davis of AFGE testified:

> In terms of deadlines, we believe that adequate engineering controls should be installed as soon as possible. But no later than one year. (Tr. 1201).

Other estimates of time to compliance were for longer periods. For example, Harrison Memorial Hospital (Washington) and Great Plains Society Hospital Central Services personnel recommended one to two years depending upon the type of modifications needed. South Community Hospital (Oklahoma City) recommended an effective date for compliance within two years, Health Central System (Minneapolis) one to three years, Munson Medical Center (Traverse City, Michigan) one and one-half to three years, Methodist Hospital (Houston) two years, Department of the Army two to five years, and Henrietta D. Hoodall Hospital (Maine) and University of Minnesota Hospitals and Clinics (Minneapolis) three years (Exs. 11–107, 11–128, 29, 45, 51, 88, 90, 92, 143). Tacoma General Hospital (Washington) was in favor of the longest time to implement engineering controls, requesting four to five years (Ex. 11–73).

The remaining commenters among health care facilities were in favor of a realistic phased compliance schedule to afford hospitals time to implement the standard in a way that will protect both patients and employees. In response to OSHA's request for an estimate of time to compliance through engineering and work practice controls, the AHA recommended adoption of the following schedule for full implementation of the standard's provisions:

Where needed—

Major construction must be initiated within 23 months, and completed within 30 months of publication of the final standard.

Within 18 months of publication—

Other engineering controls and departmental modifications must be completed.

Respirator training, fit testing, and maintenance programs must be developed and implemented.

Within 12 months of publication—

New equipment must be purchased.

Within 6 months of publication—

Work practice modifications must be made.

Employee training programs must be in place.

Medical surveillance programs (exclusive of cytogenetic testing) must be initiated.

Within 3 months of publication—

Monitoring protocols must be developed and implemented. Emergency procedures must be developed and disseminated within sterilizer areas.

Recordkeeping, signs, and regulated area requirements must be implemented. [Ex. 11–115].

Other recommending "phase-in" periods of varying lengths included the Association of Operating Room Nurses, Wesley Medical Center (Wichita, Kansas), Harper Grace Hospitals (Detroit), and Medical Instrumentation Systems-Hospital Shared Services (Exs. 11–32, 11–36, 11–106, 77).

The information provided to OSHA clearly indicates that, with few exceptions, affected employers can be reasonably expected to be able to install engineering controls that would bring their workplaces into compliance with the final standard's PELs within one year from the effective date of this standard. Available engineering controls combined with good work practices, such as simply vacating the sterilizer area for 10–15 minutes after opening the sterilizer door after cycle completion, provide a readily available means for employers to comply with this standard in the time-frame specified.

Compliance with the other requirements of the standard within one-hundred and eighty (180) days of the effective date also is believed by OSHA to be appropriate. As discussed elsewhere in this document, many EtO employers have already instituted or are developing programs regarding training, compliance plans, respirators, medical surveillance, exposure monitoring and work practice. In addition, commenters specifically indicated that work practice modifications, training and medical surveillance programs, monitoring protocols, emergency procedures, recordkeeping, signs, and regulated areas requirements should be implemented within 6 months of the effective date of the final standard (Exs. 11–33, 11–115).

Paragraph (n) Appendices

Four appendices have been included in this final standard. These appendices have been included primarily for purposes of information. None of the statements contained herein should be construed as establishing a mandatory requirement not otherwise imposed by the standards or as detracting from an obligation which the standard does impose.

The information contained in Appendices A and B is designed to aid the employer in complying with requirements of the standard. Appendix A also contains workplace design and work practice recommended by EPA for hospital and health care facilities using EtO as a sterilant. The material in Appendix C primarily provides information needed by the physician to evaluate the results of the medical examination. It should be noted that paragraph (i) of the standard specifically requires that the information obtained in Appendix A and B be provided to employees as part of their information and training program.

Appendix D gives details of the OSHA sampling method for use in monitoring employee exposures to EtO, as well as information on other available methods.

Minor changes have been made in the Appendices in the final standard to reflect changes from the proposed rule, and in response to suggestions from commenters.

IX. State Plan Applicability

Twenty-four states and U.S. territories have their own OSHA-approved occupational safety and health plans. These states and territories are: Alaska, Arizona, California, Connecticut (for

state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. These states and territories are to adopt a standard comparable to that of OSHA's within 6 months of the effective date of the Federal rule.

X. Authority

This document was prepared under the direction of Patrick R. Tyson, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Ave., N.W., Washington, D.C. 20210.

Accordingly, pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599; 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 8–76 (41 FR 25059) and 29 CFR Part 1911, Part 1910 of Title 29, Code of Federal Regulations is hereby amended as set forth below.

List of Subjects in 29 CFR Part 1910

Ethylene oxide, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

(Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970, 84 Stat. 1593, 1597, 1599 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 9–83 (48 FR 35736); 29 CFR Part 1911)

Signed at Washington, D.C., this 15th day of June 1984.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of Title 29 of the Code of Federal Regulations is amended as follows:

1. By adding a new paragraph (h) to § 1910.19 to read as follows:

§ 1910.19 Special provisions for air contaminants.

* * * * *

(h) *Ethylene oxide.* Section 1910.1047 shall apply to the exposure of every employee to ethylene oxide in every employment and place of employment covered by section 1910.12, 1910.13, 1910.14, 1910.15, or 1910.16, in lieu of any different standard on exposure to ethylene oxide which would otherwise be applicable by virtue of those sections.

§ 1910.1000 [Amended]

2. By deleting the entry "Ethylene oxide * * * 50 ppm * * * 90 mg/m³" from Table Z–1 of Section 1910.1000.

3. By adding a new section 1910.1047 to read as follows:

§ 1910.1047 Ethylene oxide.

(a) *Scope and application.* (1) This section applies to all occupational exposures to ethylene oxide (EtO), Chemical Abstracts Service Registry No. 75–21–8, except as provided in paragraph (a)(2) of this section.

(2) This section does not apply to the processing, use, or handling of products containing EtO where objective data are reasonably relied upon that demonstrate that the product is not capable of releasing EtO in airborne concentrations at or above the action level under the expected conditions of processing, use, or handling that will cause the greatest possible release.

(3) Where products containing EtO are exempted under paragraph (a)(2) of this section, the employer shall maintain records of the objective data supporting that exemption and the basis for the employer's reliance on the data, as provided in paragraph (k)(1) of this section.

(b) *Definitions:* For the purpose of this section, the following definitions shall apply:

"Action level" means a concentration of airborne EtO of 0.5 ppm calculated as an eight (8)-hour time-weighted average.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Authorized person" means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (l) of this section, or any other person authorized by the Act or regulations issued under the Act.

"Director" means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

"Emergency" means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment that is likely to or does result in an unexpected significant release of EtO.

"Employee exposure" means exposure to airborne EtO which would occur if the employee were not using respiratory protective equipment.

"Ethylene oxide" or *"EtO"* means the three-membered ring organic compound with chemical formula C_2H_4O.

(c) *Permissible exposure limits (PEL). 8-hour time-weighted average (TWA).* The employer shall ensure that no employee is exposed to an airborne concentration of EtO in excess of one (1) part EtO per million parts of air (1 ppm) as an eight (8)-hour time-weighted average (8-hour TWA).

(d) *Exposure monitoring.* (1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA of each employee.

(ii) Representative 8-hour TWA employee exposure shall be determined on the basis of one or more samples representing full-shift exposure for each shift for each job classification in each work area.

(iii) Where the employer can document that exposure levels are equivalent for similar operations in different work shifts, the employer need only determine representative employee exposure for that operation during one shift.

(2) *Initial monitoring.* (i) Each employer who has a workplace or work operation covered by this standard, except as provided for in paragraph (a)(2) or (d)(2)(ii) of this section, shall perform initial monitoring to determine accurately the airborne concentrations of EtO to which employees may be exposed.

(ii) Where the employer has monitored after June 15, 1983 and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(3) *Monitoring frequency (periodic monitoring).* (i) If the monitoring required by paragraph (d)(2) of this section reveals employee exposure at or above the action level but at or below the 8-hour TWA, the employer shall repeat such monitoring for each such employee at least every 6 months.

(ii) If the monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure above the 8-hour TWA, the employer shall repeat such monitoring for each such employee at least every 3 months.

(iii) The employer may alter the monitoring schedule from quarterly to semiannually for any employee for whom two consecutive measurements taken at least 7 days apart indicate that the employee's exposure has decreased to or below the 8-hour TWA.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure to be below the

action level, the employer may discontinue the monitoring for those employees whose exposures are represented by the initial monitoring.

(ii) If the periodic monitoring required by paragraph (d)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level, the employer may discontinue the monitoring for those employees whose exposures are represented by such monitoring.

(5) *Additional monitoring.* Notwithstanding the provisions of paragraph (d)(4) of this section, the employer shall institute the exposure monitoring required under paragraphs (d)(2)(i) and (d)(3) of this section whenever there has been a change in the production, process, control equipment, personnel or work practices that may result in new or additional exposures to EtO or when the employer has any reason to suspect that a change may result in new or additional exposures.

(6) *Accuracy of monitoring.* Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of EtO at the 1 ppm TWA and to within plus or minus 35 percent for airborne concentrations of EtO at the action level of 0.5 ppm.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this standard, notify the affected employee of these results in writing either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) The written notification required by paragraph (d)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce employee exposure to or below the PEL, wherever monitoring results indicated that the PEL has been exceeded.

(e) *Regulated Areas.* (1) The employer shall establish a regulated area wherever occupational exposures to airborne concentrations of EtO may exceed the TWA.

(2) Access to regulated areas shall be limited to authorized persons.

(3) Regulated areas shall be demarcated in any manner that minimizes the number of employees within the regulated area.

(f) *Methods of compliance.* (1) *Engineering controls and work practices.* (i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to or below the TWA, except to the extent that such controls are not feasible.

(ii) Wherever the feasible engineering controls and work practices that can be instituted are not sufficient to reduce employee exposure to or below the TWA, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (g) of this section.

(iii) Engineering controls are generally infeasible for the following operations: collection of quality assurance sampling from sterilized materials removal of biological indicators from sterilized materials: loading and unloading of tank cars; changing of ethylene oxide tanks on sterilizers; and vessel cleaning. For these operations, engineering controls are required only where the Assistant Secretary demonstrates that such controls are feasible.

(2) *Compliance program.* (i) Where the TWA is exceeded, the employer shall establish and implement a written program to reduce employee exposure to or below the TWA by means of engineering and work practice controls, as required by paragraph (f)(1) of this section, and by the use of respiratory protection where required or permitted under this section.

(ii) The compliance program shall include a schedule for periodic leak detection surveys and a written plan for emergency situations, as specified in paragraph (h)(i) of this section.

(iii) Written plans for a program required in paragraph (f)(2) shall be developed and furnished upon request for examination and copying to the Assistant Secretary, the Director, affected employees and designated employee representatives. Such plans shall be reviewed at least every 12 months, and shall be updated as necessary to reflect significant changes in the status of the employer's compliance program.

(iv) The employer shall not implement a schedule of employee rotation as a means of compliance with the TWA.

(g) *Respiratory protection and personal protective equipment.* (1) *General.* The employer shall provide respirators, and ensure that they are used, where required by this section. Respirators shall be used in the following circumstances.

(i) During the interval necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations, such as maintenance and repair activities, vessel cleaning, or other activities for which engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the TWA; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1, and shall ensure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those jointly approved as being acceptable for protection against EtO by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(3) *Respirator program.* Where respiratory protection is required by this section, the employer shall institute a respirator program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f).

(4) *Protective clothing and equipment.* Where eye or skin contact with liquid EtO or EtO solutions may occur, the employer shall select and provide, at no cost to the employee, appropriate protective clothing or other equipment in accordance with 29 CFR 1901.132 and 1910.133 to protect any area of the body that may come in contact with liquid EtO or EtO in solution, and shall ensure that the employee wears the protective clothing and equipment provided.

(h) *Emergency situations.* (1) *Written plan.* (i) A written plan for emergency situations shall be developed for each workplace where there is a possibility of an emergency. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped with respiratory protection as required by paragraph (g) of this section until the emergency is abated.

(iii) The plan shall include the elements prescribed in 29 CFR 1910.38, "Employee emergency plans and fire prevention plans."

(2) *Alerting employees.* Where there is the possibility of employee exposure to EtO due to an emergency, means shall be developed to alert potentially affected employees of such occurrences promptly. Affected employees shall be immediately evacuated from the area in the event that an emergency occurs.

TABLE 1.—MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION FOR AIRBORNE EtO

Condition of use or concentration of airborne EtO (ppm)	Minimum required respirator
Equal to or less than 10	(a) Full facepiece respirator with EtO approved canister, front-or back-mounted.
Equal to or less than 2,000.	(a) Positive-pressure supplied air respirator, equipped with full facepiece, hood, or helmet, or (b) Continuous-flow supplied air respirator [positive pressure] equipped with hood, helmet or suit.
Concentration above 2,000 or unknown concentration (such as in emergencies).	(a) Positive-pressure self-contained breathing apparatus (SCBA), equipped with full facepiece, or (b) Positive-pressure full facepiece supplied air respirator equipped with an auxiliary positive-pressure self-contained breathing apparatus.
Firefighting	(a) Positive pressure self-contained breathing apparatus equipped with full facepiece.
Escape	(a) Any respirator described above.

Note.—Respirators approved for use in higher concentrations are permitted to be used in lower concentrations.

(i) *Medical Surveillance.* (1) *General.* (i) *Employees covered.* (A) The employer shall institute a medical surveillance program for all employees who are or may be exposed to EtO at or above the action level, without regard to the use of respirators, for at least 30 days a year.

(B) The employer shall make available medical examinations and consultations to all employees who have been exposed to EtO in an emergency situation.

(ii) *Examination by a physician.* The employer shall ensure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and are provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(2) *Medical examinations and consultations.* (i) Frequency. The employer shall make available medical examinations and consultations to each employee covered under paragraph (i)(1)(i) of this section on the following schedules:

(A) Prior to assignment of the employee to an area where exposure may be at or above the action level for at least 30 days a year.

(B) At least annually each employee exposed at or above the action level for at least 30 days in the past year.

(C) At termination of employment or reassignment to an area where exposure to EtO is not at or above the action level for at least 30 days a year.

(D) As medically appropriate for any employee exposed during an emergency.

(E) As soon as possible, upon notification by an employee either (1) that the employee has developed signs or symptoms indicating possible overexposure to EtO, or (2) that the employee desires medical advice concerning the effects of current or past exposure to EtO on the employee's ability to produce a healthy child.

(F) If the examining physician determines that any of the examinations should be provided more frequently than specified, the employer shall provide such examinations to affected employees at the frequencies recommended by the physician.

(ii) *Content.* (A) Medical examinations made available pursuant to paragraphs (i)(2)(i)(A)–(D) of this section shall include:

(*1*) A medical and work history with special emphasis directed to symptoms related to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(*2*) A physical examination with particular emphasis given to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(*3*) A complete blood count to include at least a white cell count (including differential cell count), red cell count, hematocrit, and hemoglobin.

(*4*) Any laboratory or other test which the examining physician deems necessary by sound medical practice.

(B) The content of medical examinations or consultation made available pursuant to paragraph (i)(2)(i)(E) of this section shall be determined by the examining physician, and shall include pregnancy testing or laboratory evaluation of fertility, if requested by the employee and deemed appropriate by the physician.

(3) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and Appendices A, B, and C.

(ii) A description of the affected employee's duties as they relate to the employee's exposure.

(iii) The employee's representative exposure level or anticipated exposure level.

(iv) A description of any personal protective and respiratory equipment used or to be used.

(v) Information from previous medical examinations of the affected employee that is not otherwise available to the examining physician.

(4) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician. This written opinion shall contain the results of the medical examination and shall include:

(A) The physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of material health impairment from exposure to EtO;

(B) Any recommended limitations on the employee or upon the use of personal protective equipment such as clothing or respirators; and

(C) A statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions resulting from EtO exposure that require further explanation or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to EtO.

(iii) The employer shall provide a copy of the physician's written opinion to the affected employee within 15 days from its receipt.

(j) *Communication of EtO hazards to employees.* (1) *Signs and labels.* (i) The employer shall post and maintain legible signs demarcating regulated areas and entrances or accessways to regulated areas that bear the following legend:

DANGER
ETHYLENE OXIDE
CANCER HAZARD AND REPRODUCTIVE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING MAY BE REQUIRED
TO BE WORN IN THIS AREA

(ii) The employer shall ensure that precautionary labels are affixed to all containers of EtO whose contents are capable of causing employee exposure at or above the action level, and that the labels remain affixed when the containers of EtO leave the workplace. For the purposes of this paragraph, reaction vessels, storage tanks, and pipes or piping systems are not considered to be containers. The labels shall comply with the requirements of 29 CFR 1910.1200(f) of OSHA's Hazard Communication standard, and shall include the following legend:

(A) CAUTION
CONTAINS ETHYLENE OXIDE
CANCER AND REPRODUCTIVE HAZARD;

and

(B) A warning statement against breathing airborne concentrations of EtO.

(2) *Material safety data sheets.* Employers who are manufacturers or importers of EtO shall comply with the requirements regarding development of material safety data sheets as specified in 29 CFR 1910.1200(g) of OSHA's Hazard Communication standard.

(3) *Information and training.* (i) The employer shall provide employees who are potentially exposed to EtO at or above the action level with information and training on EtO at the time of initial assignment and at least annually thereafter.

(ii) Employees shall be informed of the following:

(A) The requirements of this section with an explanation of its contents, including Appendices A and B;

(B) Any operations in their work area where EtO is present;

(C) The location and availability of the written EtO final rule; and

(D) The medical surveillance program required by paragraph (i) of this section with an explanation of the information in Appendix C.

(iii) Employee training shall include at least:

(A) Methods and observations that may be used to detect the presence or release of EtO in the work area (such as monitoring conducted by the employer, continuous monitoring devices, etc.);

(B) The physical and health hazards of EtO;

(C) The measures employees can take to protect themselves from hazards associated with EtO exposure, including specific procedures the employer has implemented to protect employees from exposure to EtO, such as work practices, emergency procedures, and personal protective equipment to be used; and

(D) The details of the hazard communication program developed by the employer, including an explanation of the labeling system and how employees can obtain and use the appropriate hazard information.

(k) *Recordkeeping.* (1) *Objective data for exempted operations.*

(i) Where the processing, use, or handling of products made from or containing EtO are exempted from other requirements of this section under paragraph (a)(2) of this section, or where objective data have been relied on in lieu of initial monitoring under paragraph (d)(2)(ii) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

(ii) This record shall include at least the following information:

(A) The product qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of EtO;

(D) A description of the operation exempted and how the data support the exemption; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Exposure measurements.* (i) The employer shall keep an accurate record of all measurements taken to monitor employee exposure to EtO as prescribed in paragraph (d) of this section.

(ii) This record shall include at least the following information:

(A) The date of measurement;

(B) The operation involving exposure to EtO which is being monitored;

(C) Sampling and analytical methods used and evidence of their accuracy;

(D) Number, duration, and results of samples taken;

(E) Type of protective devices worn, if any; and

(F) Name, social security number and exposure of the employees whose exposures are represented.

(iii) The employer shall maintain this record for at least thirty (30) years, in accordance with 29 CFR 1910.20.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance by paragraph (i)(1)(i) of this section, in accordance with 29 CFR 1910.20.

(ii) The record shall include at least the following information:

(A) The name and social security number of the employee;

(B) Physicians' written opinions;

(C) Any employee medical complaints related to exposure to EtO; and

(D) A copy of the information provided to the physician as required by paragraph (i)(3) of this section.

(iii) The employer shall ensure that this record is maintained for the duration of employment plus thirty (30) years, in accordance with 29 CFR 1910.20.

(4) *Availability.* (i) The employer, upon written request, shall make all records required to be maintained by this section available to the Assistant Secretary and the Director for examination and copying.

(ii) The employer, upon request, shall make any exemption and exposure records required by paragraphs (1)(1) and (1)(2) of this section available for examination and copying to affected employees, former employees, designated representatives and the Assistant Secretary, in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i).

(iii) The employer, upon request, shall make employee medical records required by paragraph (k)(3) of this section available for examination and copying to the subject employee, anyone having the specific written consent of the subject employee, and the Assistant Secretary, in accordance with 29 CFR 1910.20.

(5) *Transfer of records.* (i) The employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1910.20(h).

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director at least 90 days prior to disposal and transmit them to the Director.

(l) *Observation of monitoring.* (1) *Employee observation.*

The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to EtO conducted in accordance with paragraph (d) of this section.

(2) *Observation procedures.* When observation of the monitoring of employee exposure to EtO requires entry into an area where the use of protective clothing or equipment is required, the observer shall be provided with and be required to use such clothing and equipment and shall comply with all other applicable safety and health procedures.

(m) *Dates* (1) *Effective date.* This section shall become effective August 21, 1984.

(2) *Start-up dates.* (i) The requirements of paragraphs (c) through (l) of this section, including feasible work practice controls but not including engineering controls specified in paragraph (f)(1), shall be complied with within one-hundred and eighty (180) days after the effective date of this section.

(ii) Engineering controls specified by paragraph (f)(1) of this section shall be implemented within one (1) year after the effective date of this section.

(n) *Appendices.* The information contained in the appendices is not intended by itself to create any additional obligations not otherwise imposed or to detract from any existing obligation.

Appendix A—Substance Safety Data Sheet for Ethylene Oxide

I. Substance Identification

A. Substance: Ethylene oxide (C_2H_4O).

B. Synonyms: dihydrooxirene, dimethylene oxide, EO, 1,2-epoxyethane, EtO, ETO, oxacyclopropane, oxane, oxidoethane, alpha/beta-oxidoethane, oxiran, oxirane.

C. Ethylene oxide can be found as a liquid or vapor.

D. EtO is used in the manufacture of ethylene glycol, surfactants, ethanolamines, glycol ethers, and other organic chemicals. EtO is also used as a sterilant and fumigant.

E. Appearance and odor: Colorless liquid below 10.7 °C (51.3 °F) or colorless gas with ether-like odor detected at approximately 700 parts EtO per million parts of air (700 ppm).

F. Permissible exposure: Exposure may not exceed 1 part EtO per million parts of air averaged over the 8-hour work day, nor may short-term exposure exceed 10 parts of EtO per million parts of air averaged over a 15 minute period.

II. Health Hazard Data

A. Ethylene oxide can cause bodily harm if you inhale the vapor, if it comes into contact with your eyes or skin, or if you swallow it.

B. Effects of overexposure:

1. Ethylene oxide in liquid form can cause eye irritation and injury to the cornea, frostbite, and severe irritation and blistering of the skin upon prolonged or confined contact. Ingestion of EtO can cause gastric irritation and liver injury. Acute effects from inhalation of EtO vapors include respiratory irritation and lung injury, headache, nausea, vomiting, diarrhea, shortness of breath, and cyanosis (blue or purple coloring of skin). Exposure has also been associated with the occurrence of cancer, reproductive effects, mutagenic changes, neurotoxicity, and sensitization.

1. EtO has been shown to cause cancer in laboratory animals and has been associated with higher incidences of cancer in humans. Adverse reproductive effects and chromosome damage may also occur from EtO exposure.

a. Reporting signs and symptoms: You should inform your employer if you develop any signs or symptoms and suspect that they are caused by exposure to EtO.

III. Emergency First Aid Procedures

A. Eye exposure: If EtO gets into your eyes, wash your eyes immediately with large amounts of water, lifting the lower and upper eyelids. Get medical attention immediately. Contact lenses should not be worn when working with this chemical.

B. Skin exposure: If EtO gets on your skin, immediately wash the contaminated skin with water. If EtO soaks through your clothing, especially your shoes, remove the clothing immediately and wash the skin with water using an emergency deluge shower. Get medical attention immediately. Thoroughly wash contaminated clothing before reusing. Contaminated leather shoes or other leather articles should not be reused and should be discarded.

C. Inhalation: If large amounts of EtO are inhaled, the exposed person must be moved to fresh air at once. If breathing has stopped, perform cardiopulmonary resuscitation. Keep the affected person warm and at rest. Get medical attention immediately.

D. Swallowing: When EtO has been swallowed, give the person large quantities of water immediately. After the water has been swallowed, try to get the person to vomit by having him or her touch the back of the throat with his or her finger. Do not make an unconscious person vomit. Get medical attention immediately.

E. Rescue: Move the affected person from the hazardous exposure. If the exposed person has been overcome, attempt rescue only after notifying at least one other person of the emergency and putting into effect established emergency procedures. Do not become a casualty yourself. Understand your emergency rescue procedures and know the location of the emergency equipment before the need arises.

IV. Respirators and Protective Clothing

A. Respirators: You may be required to wear a respirator for nonroutine activities, in emergencies, while your employer is in the process of reducing EtO exposures through engineering controls, and where engineering controls are not feasible. As of the effective date of the standard, only air supplied positive-pressure, full-facepiece respirators are approved for protection against EtO. If air-purifying respirators are worn in the future, they must have a joint Mine Safety and Health Administration (MSHA) and National Institute for Occupational Safety and Health (NIOSH) label of approval for use with ethylene oxide. For effective protection, respirators must fit your face and head snugly. Respirators should not be loosened or removed in work situations where their use is required.

EtO does not have a detectable odor except at levels well above the permissible exposure limits. If you can smell EtO while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. Protective clothing: You may be required to wear impermeable clothing, gloves, a face shield, or other appropriate protective clothing to prevent skin contact with liquid EtO or EtO-containing solutions. Where protective clothing is required, your employer must provide clean garments to you as necessary to assure that the clothing protects you adequately.

Replace or repair protective clothing that has become torn or otherwise damaged.

EtO must never be allowed to remain on the skin. Clothing and shoes which are not impermeable to EtO should not be allowed to become contaminated with EtO, and if they do, the clothing should be promptly removed and decontaminated. Contaminated leather shoes should be discarded. Once EtO penetrates shoes or other leather articles, they should not be worn again.

C. Eye protection: You must wear splashproof safety goggles in areas where liquid EtO or EtO-containing solutions may contact your eyes. In addition, contact lenses should not be worn in areas where eye contact with EtO can occur.

V. Precautions for Safe Use, Handling, and Storage

A. EtO is a flammable liquid, and its vapors can easily form explosive mixtures in air.

B. EtO must be stored in tighly closed containers in a cool, well-ventilated area, away from heat, sparks, flames, strong oxidizers, alkalines, and acids, strong bases, acetylide-forming metals such as cooper, silver, mercury and their alloys.

C. Sources of ignition such as smoking material, open flames and some electrical devices are prohibited wherever EtO is handled, used, or stored in a manner that could create a potential fire or explosion hazard.

D. You should use non-sparking tools when opening or closing metal containers of EtO, and containers must be bonded and grounded in the rare

instances in which liquid EtO is poured or transferred.

E. Impermeable clothing wet with liquid EtO or EtO-containing solutions may be easily ignited. If your are wearing impermeable clothing and are splashed with liquid EtO or EtO-containing solution, you should immediately remove the clothing while under an emergency deluge shower.

F. If your skin comes into contact with liquid EtO or EtO-containing solutions, you should immediately remove the EtO using an emergency deluge shower.

G. You should not keep food, beverages, or smoking materials in regulated areas where employee exposures are above the permissible exposure limits.

H. Fire extinguishers and emergency deluge showers for quick drenching should be readily available, and you should know where they are and how to operate them.

I. Ask your supervisor where EtO is used in your work area and for any additional plant safety and health rules.

VI. Access to Information

A. Each year, your employer is required to inform you of the information contained in this standard and appendices for EtO. In addition, your employer must instruct you in the proper work practices for using EtO emergency procedures, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to EtO. You or your representative has the right to observe employee measurements and to record the results obtained. Your employer is required to inform you of your exposure. If your employer determine that you are being overexposed, he or she is required to inform you of the actions which are being taken to reduce your exposure to within permissible exposure limits.

C. Your employer is required to keep records of your exposures and medical examinations. These exposure records must be kept by the employer for at least thirty (30) years. Medical records must be kept for the period of your employment plus thirty (30) years.

D. Your employer is required to release your exposure and medical records to your physician or designated representative upon your written request.

VII. Sterilant Use of EtO in Hospitals and Health Care Facilities

This section of Appendix A, for informational purposes, sets forth EPA's recommendations for modifications in workplace design and practice in hospitals and health care facilities for which the Environmental Protection Agency has registered EtO for uses as a sterilant or fumigant under the Federal Insecticide, Funigicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.* These new recommendations, published in the **Federal Register** by EPA at 49 FR 15268, as modified in today's **Register**, are intended to help reduce the exposure of hospital and health care workers to EtO to 1 ppm. EPA's recommended workplace design and workplace practice are as follows:

1. Workplace Design

a. *Installation of gas line hand valves.* Hand valves must be installed on the gas supply line at the connection to the supply cylinders to minimize leakage during cylinder change.

b. *Installation of capture boxes.* Sterilizer operations result in a gas/water discharge at the completion of the process. This discharge is routinely piped to a floor drain which is generally located in an equipment or an adjacent room. When the floor drain is not in the same room as the sterilizer and workers are not normally present, all that is necessary is that the room be well ventilated.

The installation of a "capture box" will be required for those work place layouts where the floor drain is located in the same room as the sterilizer or in a room where workers are normally present. A "capture box" is a piece of equipment that totally encloses the floor drain where the discharge from the sterilizer is pumped. The "capture box" is to be vented directly to a non-recirculating or dedicated ventilation system. Sufficient air intake should be allowed at the bottom of the box to handle the volume of air that is ventilated from the top of the box. The "capture box" can be made of metal, plastic, wood or other equivalent material. The box is intended to reduce levels of EtO discharged into the work room atmosphere. The use of a "capture box" is not required if: (1) The vacuum pump discharge floor drain is located in a well ventilated equipment or other room where workers are not normally present or (2) the water sealed vacuum pump discharges directly to a closed sealed sewer line (check local plumbing codes).

If it is impractical to install a vented "capture box" and a well ventilated equipment or other room is not feasible, a box that can be sealed over the floor drain may be used if: (1) The floor drain is located in a room where workers are not normally present and EtO cannot leak into an occupied area, and (2) the sterilizer in use is less than 12 cubic feet in capacity (check local plumbing codes).

c. *Ventilation of aeration units* i. *Existing aeration units.* Existing units must be vented to a non-recirculating or dedicated system or vented to an equipment or other room where workers are not normally present and which is well ventilated. Aerator units must be positioned as close as possible to the sterilizer to minimize the exposure from the off-gassing of sterilized items.

ii. *Installation of new aerator units (where none exist).* New aerator units must be vented as described above for existing aerators. Aerators must be in place by July 1, 1986.

d. *Ventilation during cylinder change.* Workers may be exposed to short but relatively high levels of EtO during the change of gas cylinders. To reduce exposure from this route, users must select one of three alternatives designed to draw off gas that may be released when the line from the sterilizer to the cylinder is disconnected:

i. Location of cylinders in a well ventilated equipment room or other room where workers are not normally present.

ii. Installation of a flexible hose (at least 4" in diameter) to a non-recirculating or dedicated ventilation system and located in the area of cylinder change in such a way that the hose can be positioned at the point where the sterilizer gas line is disconnected from the cylinder.

iii. Installation of a hood that is part of a non-recirculating or dedicated system and positioned no more than one foot above the point where the change of cylinders takes place.

e. *Ventilation of sterilizer door area.* One of the major sources of exposure to EtO occurs when the sterilizer door is opened following the completion of the sterilization process. In order to reduce this avenue of exposure, a hood or metal canopy closed on each end must be installed over the sterilizer door. The hood or metal canopy must be connected to a non-recirculating or dedicated ventilation system or one that exhausts gases to a well ventilated equipment or other room where workers are not normally present. A hood or canopy over the sterilizer door is required for use even with those sterilizers that have a purge cycle and must be in place by July 1, 1986.

f. *Ventilation of sterilizer relief valve.* Sterilizers are typically equipped with a safety relief device to release gas in case of increased pressure in the sterilizer. Generally, such relief devices are used on pressure vessels. Although these pressure relief devices are rarely

opened for hospital and health care sterilizers, it is suggested that they be designed to exhaust vapor from the sterilizer by one of the following methods:

i. Through a pipe connected to the outlet of the relief valve ventilated directly outdoors at a point high enough to be away from passers by, and not near any windows that open, or near any air conditioning or ventilation air intakes.

ii. Through a connection to an existing or new non-recirculating or dedicated ventilation system.

iii. Through a connection to a well ventilated equipment or other room where workers are not normally present.

g. *Ventilation systems.* Each hospital and health care facility affected by this notice that uses EtO for the sterilization of equipment and supplies must have a ventilation system which enables compliance with the requirements of section (b) through (f) in the manner described in these sections and within the timeframes allowed. Thus, each affected hospital and health care facility must have or install a non-recirculating or dedicated ventilation equipment or other room where workers are not normally present in which to vent EtO.

h. *Installation of alarm systems.* An audible and visual indicator alarm system must be installed to alert personnel of ventilation system failures, i.e., when the ventilation fan motor is not working.

2. Workplace Practices

All the workplace practices discussed in this unit must be permanently posted near the door of each sterilizer prior to use by any operator.

a. *Changing of supply line filters.* Filters in the sterilizer liquid line must be changed when necessary, by the following procedure:

i. Close the cylinder valve and the hose valve.

ii. Disconnect the cylinder hose (piping) from the cylinder.

iii. Open the hose valve and bleed slowly into a proper ventilating system at or near the in-use supply cylinders.

iv. Vacate the area until the line is empty.

v. Change the filter.

vi. Reconnect the lines and reverse the value position.

vii. Check hoses, filters, and valves for leaks with a fluorocarbon leak detector (for those sterilizers using the 88 percent chlorofluorocarbon, 12 percent ethylene oxide mixture (12/88)).

b. *Restricted access area.* i. Areas involving use of EtO must be designated as restricted access areas. They must be identified with signs or floor marks near the sterilizer door, aerator, vacuum pump floor drain discharge, and in-use cylinder storage.

ii. All personnel must be excluded from the restricted area when certain operations are in progress, such as discharging a vacuum pump, emptying a sterilizer liquid line, or venting a non-purge sterilizer with the door ajar or other operations where EtO might be released directly into the face of workers.

c. *Door opening procedures.* i. *Sterilizers with purge cycles.* A load treated in a sterilizer equipped with a purge cycle should be removed immediately upon completion of the cycle (provided no time is lost opening the door after cycle is completed). If this is not done, the purge cycle should be repeated before opening door.

ii. *Sterilizers without purge cycles.* For a load treated in a sterilizer not equipped with a purge cycle, the sterilizer door must be ajar 6" for 15 minutes, and then fully opened for at least another 15 minutes before removing the treated load. The length of time of the second period should be established by peak monitoring for one hour after the two 15-minute periods suggested. If the level is above 10 ppm time-weighted average for 8 hours, more time should be added to the second waiting period (door wide open). However, in no case may the second period be shortened to less than 15 minutes.

d. *Chamber unloading procedures.* i. Procedures for unloading the chamber must include the use of baskets or rolling carts, or baskets and rolling tables to transfer treated loads quickly, thus avoiding excessive contact with treated articles, and reducing the duration of exposures.

ii. If rolling carts are used, they should be pulled not pushed by the sterilizer operators to avoid offgassing exposure.

e. *Maintenance.* A written log should be instituted and maintained documenting the date of each leak detection and any maintenance procedures undertaken. This is a suggested use practice and is not required.

i. *Leak detection.* Sterilizer door gaskets, cylinder and vacuum piping, hoses, filters, and valves must be checked for leaks under full pressure with a Fluorocarbon leak detector (for 12/88 systems only) every two weeks by maintenance personnel. Also, the cylinder piping connections must be checked after changing cylinders. Particular attention in leak detection should be given to the automatic solenoid valves that control the flow of EtO to the sterilizer. Specifically, a check should be made at the EtO gasline entrance port to the sterilizer, while the sterilizer door is open and the solenoid valves are in a closed position.

ii. *Maintenance procedures.* Sterilizer/areator door gaskets, valves, and fittings must be replaced when necessary as determined by maintenance personnel in their bi-weekly checks; in addition, visual inspection of the door gaskets for cracks, debris, and other foreign substances should be conducted daily by the operator.

Appendix B—Substance Technical Guidelines for Ethylene Oxide

I. Physical and Chemical Data

A. Substance identification:

1. Synonyms: dihydrooxirene, dimethylene oxide, EO, 1,2-epoxyethane, EtO ETO oxacyclopropane, oxane, oxidoethane, alpha/beta-oxidoethane, oxiran, oxirane.

2. Formula: (C_2H_4O).

3. Molecular weight: 44.06

B. Physical data:

1. Boiling point (760 mm Hg): 10.70°C (51.3°F);

2. Specific gravity (water = 1): 0.87 (at 20°C or 68°F)

3. Vapor density (air = 1): 1.49;

4. Vapor pressure (at 20°C): 1,095 mm Hg;

5. Solubility in water: complete;

6. Appearance and odor: colorless liquid; gas at temperature above 10.7°F or 51.3°C with ether-like odor above 700 ppm.

II. Fire, Explosion, and Reactivity Hazard Data

A. Fire:

1. Flash point: less than 0°F (open cup);

2. Stability: decomposes violently at temperatures above 800°F;

3. Flammable limits in air, percent by volume: Lower: 3, Upper: 100;

4. Extinguishing media: Carbon dioxide for small fires, polymer or alcohol foams for large fires;

5. Special fire fighting procedures: Dilution of ethylene oxide with 23 volumes of water renders it non-flammable;

6. Unusual fire and explosion hazards: Vapors of EtO will burn without the presence of air or other oxidizers. EtO vapors are heavier than air and may travel along the ground and be ignited by open flames or sparks at locations remote from the site at which EtO is being used.

7. For purposes of compliance with the requirements of 29 CFR 1910.106, EtO is classified as a flammable gas. For

example, 7,500 ppm, approximately one-fourth of the lower flammable limit, would be considered to pose a potential fire and explosion hazard.

8. For purposes of compliance with 29 CFR 1910.155, EtO is classified as a Class B fire hazard.

9. For purpose of compliance with 29 CFR 1919.307, locations classified as hazardous due to the presence of EtO shall be Class I.

B. Reactivity:

1. Conditions contributing to instability: EtO will polymerize violently if contaminated with aqueous alkalies, amines, mineral acids, metal chlorides, or metal oxides. Violent decomposition will also occur at temperatures above 800 °F;

2. Incompatabilities: Alkalines and acids;

3. Hazardous decomposition products: Carbon monoxide and carbon dioxide.

III. Spill, Leak, and Disposal Procedures

A. If EtO is spilled or leaked, the following steps should be taken:

1. Remove all ignition sources.

2. The area should be evacuated at once and re-entered only after the area has been thoroughly ventilated and washed down with water.

B. Persons not wearing appropriate protective equipment must be restricted from areas of spills or leaks until cleanup has been completed.

C. Waste disposal methods: Waste material shall be disposed of in a manner that is not hazardous to employees or to the general population. In selecting the method of waste disposal, applicable local, State, and Federal regulations should be consulted.

IV. Monitoring and Measurement Procedures

A. Exposure above the Permissible Exposure Limit:

1. Eight-hour exposure evaluation: Measurements taken for the purpose of determining employee exposure under this section are best taken with consecutive samples covering the full shift. Air samples must be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee.)

2. Monitoring techniques: The sampling and analysis under this section may be performed by collection of the EtO vapor on charcoal adsorption tubes or other composition adsorption tubes, with subsequent chemical analysis. Sampling and analysis may also be performed by instruments such as real-time continuous monitoring systems, portable direct reading instruments, or passive dosimeters as long as measurements taken using these methods accurately evaluate the concentration of EtO in employees' breathing zones.

Appendix D describes the validated method of sampling and analysis which has been tested by OSHA for use with EtO. Other available methods are also described in Appendix D. The employer has the obligation of selecting a monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that the method of monitoring must be accurate, to a 95 percent confidence level, to plus or minus 25 percent for concentrations of EtO at 1 ppm, and to plus or minus 35 percent for concentrations at 0.5 ppm. In addition to the method described in Appendix D, there are numerous other methods available for monitoring for EtO in the workplace. Details on these other methods have been submitted by various companies to the rulemaking record, and are available at the OSHA Docket Office.

B. Since many of the duties relating to employee exposure are dependent on the results of measurement procedures, employers must assure that the evaluation of employee exposures is performed by a technically qualified person.

V. Protective Clothing and Equipment

Employees shall be provided with and be required to wear appropriate protective clothing wherever there is significant potential for skin contact with liquid EtO or EtO-containing solutions. Protective clothing shall include impermeable coveralls or similar full-body work clothing, gloves, and head coverings, as appropriate to protect areas of the body which may come in contact with liquid EtO or EtO-containing solutions.

Employers must ascertain that the protective garments are impermeable to EtO. Permeable clothing, including items made of rubber, and leather shoes should not be allowed to become contaminated with liquid EtO. If permeable clothing does become contaminated, it should be immediately removed, while the employer is under an emergency deluge shower. If leather footwear or other leather garments become wet from EtO they should be discarded and not be worn again, because leather absorbs EtO and holds it against the skin.

Any protective clothing that has been damaged or is otherwise found to be defective should be repaired or replaced. Clean protective clothing should be provided to the employee as necessary to assure employee protection. Whenever impermeable clothing becomes wet with liquid EtO, it should be washed down with water before being removed by the employee. Employees are also required to wear splash-proof safety goggles where there is any possibility of EtO contacting the eyes.

VI. Miscellaneous Precautions

A. Store EtO in tightly closed containers in a cool, well-ventilated area and take all necessary precautions to avoid any explosion hazard.

B. Non-sparking tools must be used to open and close metal containers. These containers must be effectively grounded and bonded.

C. Do not incinerate EtO cartridges, tanks or other containers.

D. Employers shall advise employees of all areas and operations where exposure to EtO occur.

VII. Common Operations

Common operations in which exposure to EtO is likely to occur include the following: Manufacture of EtO, surfactants, ethanolamines, glycol ethers, and specialty chemicals, and use as a sterilant in the hospital, health product and spice industries.

Appendix C-Medical Surveillance Guidelines for Ethylene Oxide

I. Route of Entry

Inhalation.

II. Toxicology

Clinical evidence of adverse effects associated with the exposure to EtO is present in the form of increased incidence of cancer in laboratory animals (leukemia, stomach, brain), mutation in offspring in animals, and resorptions and spontaneous abortions in animals and human populations respectively. Findings in humans and experimental animals exposed to airborne concentrations of EtO also indicate damage to the genetic material (DNA). These include hemoglobin alkylation, unsecheduled DNA synthesis, sister chromatid exchange chromosomal aberration, and functional sperm abnormalities.

Ethylene oxide in liquid form can cause eye irritation and injury to the cornea, frostbite, severe irritation, and blistering of the skin upon prolonged or confined contact. Ingestion of EtO can cause gastric irritation and liver injury. Other effects from inhalation of EtO vapors include respiratory irritation and lung injury, headache, nausea, vomiting, diarrhea, dyspnea and cyanosis.

III. Signs and Symptoms of Acute Overexposure

The early effects of acute overexposure to EtO are nausea and vomiting, headache, and irritation of the eyes and respiratory passages. The patient may notice a "peculiar taste" in the mouth. Delayed effects can include pulmonary edema, drowsiness, weakness, and incoordination. Studies suggest that blood cell changes, an increase in chromosomal aberrations, and spontaneous abortion may also be causally related to acute overexposure to EtO.

Skin contact with liquid or gaseous EtO causes characteristic burns and possibly even an allergic-type sensitization. The edema and erythema occurring from skin contact with EtO progress to vesiculation with a tendency to coalesce into blebs with desquamation. Healing occurs within three weeks, but there may be a residual brown pigmentation. A 40–80% solution is extremely dangerous, causing extensive blistering after only brief contact. Pure liquid EtO causes frostbite because of rapid evaporation. In contrast, the eye is relatively insensitive to EtO, but there may be some irritation of the cornea.

Most reported acute effects of occupational exposure to EtO are due to contact with EtO in liquid phase. The liquid readily penetrates rubber and leather, and will produce blistering if clothing or footwear contaminated with EtO are not removed.

IV. Surveillance and Preventive Considerations

As noted above, exposure to EtO has been linked to an increased risk of cancer and reproductive effects including decreased male fertility, fetotoxicity, and spontaneous abortion. EtO workers are more likely to have chromosomal damage than similar groups not exposed to EtO. At the present, limited studies of chronic effects in humans resulting from exposure to EtO suggest a causal association with leukemia. Animal studies indicate leukemia and cancers at other sites (brain, stomach) as well. The physician should be aware of the findings of these studies in evaluating the health of employees exposed to EtO.

Adequate screening tests to determine an employee's potential for developing serious chronic diseases, such as cancer, from exposure to EtO do not presently exist. Laboratory tests may, however, give evidence to suggest that an employee is potentially overexposed to EtO. It is important for the physician to become familiar with the operating conditions in which exposure to EtO is likely to occur. The physician also must become familiar with the signs and symptoms that indicate a worker is receiving otherwise unrecognized and unacceptable exposure to EtO. These elements are especially important in evaluating the medical and work histories and in conducting the physical exam. When an unacceptable exposure in an active employee is identified by the physician, measures taken by the employer to lower exposure should also lower the risk of serious long-term consequences.

The employer is required to institute a medical surveillance program for all employees who are or will be exposed to EtO at or above the action level (0.5 ppm) for at least 30 days per year, without regard to respirator use. All examinations and procedures must be performed by or under the supervision of a licensed physician at a reasonable time and place for the employee and at no cost to the employee.

Although broad latitude in prescribing specific tests to be included in the medical surveillance program is extended to the examining physician, OSHA requires inclusion of the following elements in the routine examination:

(i) Medical and work histories with special emphasis directed to symptoms related to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(ii) Physical examination with particular emphasis given to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(iii) Complete blood count to include at least a white cell count (including differential cell count), red cell count, hematocrit, and hemoglobin.

(iv) Any laboratory or other test which the examining physician deems necessary by sound medical practice.

If requested by the employee, the medical examinations shall include pregnancy testing or laboratory evaluation of fertility as deemed appropriate by the physician.

In certain cases, to provide sound medical advice to the employer and the employee, the physician must evaluate situations not directly related to EtO. For example, employees with skin diseases may be unable to tolerate wearing protective clothing. In addition those with chronic respiratory diseases may not tolerate the wearing of negative pressure (air purifying) respirators. Additional tests and procedures that will help the physician determine which employees are medically unable to wear such respirators should include: An evaluation of cardiovascular function, a baseline chest x-ray to be repeated at five year intervals, and a pulmonary function test to be repeated every three years. The pulmonary function test should include measurement of the employee's forced vital capacity (FVC), forced expiratory volume at one second (FEV1), as well as calculation of the ratios of FEV1 to FVC, and measured FVC and measured FEV1 to expected values corrected for variation due to age, sex, race, and height.

The employer is required to make the prescribed tests available at least annually to employees who are or will be exposed at or above the action level, for 30 or more days per year; more often than specified if recommended by the examining physician; and upon the employee's termination of employment or reassignment to another work area. While little is known about the long term consequences of high short-term exposures, it appears prudent to monitor such affected employees closely in light of existing health data. The employer shall provide physician recommended examinations to any employee exposed to EtO in emergency conditions. Likewise, the employer shall make available medical consultations including physician recommended exams to employees who believe they are suffering signs or symptoms of exposure to EtO.

The employer is required to provide the physician with the following informatin: a copy of this standard and its appendices; a description of the affected employee's duties as they relate to the employee exposure level; and information from the employee's previous medical examinations which is not readily available to the examining physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment, when required.

The employer is required to obtain a written opinion from the examining physician containing the results of the medical examinations; the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of his or her health from exposure to EtO; any recommended restrictions upon the employee's exposure to EtO, or upon the use of protective clothing or equipment such as respirators; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions which require further

explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure to EtO, and a copy of the opinion must be provided to the affected employee.

The purpose in requiring the examining physician to supply the employer with a written opinion is to provide the employer with a medical basis to aid in the determination of initial placement of employees and to assess the employee's ability to use protective clothing and equipment.

Appendix D—Sampling and Analytical Methods for Ethylene Oxide

A number of methods are available for monitoring employee exposures to EtO. Most of these involve the use of charcoal tubes and sampling pumps, followed by analysis of the samples by gas chromatograph. The essential differences between the charcoal tube methods include, among others, the use of different desorbing solvents, the use of different lots of charcoal, and the use of different equipment for analysis of the samples.

Besides charcoal, methods using passive dosimeters, gas sampling bags, impingers, and detector tubes have been utilized for determination of EtO exposure. In addition, there are several commercially available portable gas analyzers and monitoring units.

This appendix contains details for the method which has been tested at the OSHA Analytical Laboratory in Salt Lake City. Inclusion of this method in the appendix does not mean that this method is the only one which will be satisfactory. Copies of descriptions of other methods available are available in the rulemaking record, and may be obtained from the OSHA Docket Office. These include the Union Carbide, Dow Chemical, 3M, and DuPont methods, as well as NIOSH Method S–286. These methods are briefly described at the end of this appendix.

Employers who note problems with sample breakthrough using the OSHA or other charcoal methods should try larger charcoal tubes. Tubes of larger capacity are available. In addition, lower flow rates and shorter sampling times should be beneficial in minimizing breakthrough problems. Whatever method the employer chooses, he must assure himself of the method's accuracy and precision under the unique conditions present in his workplace.

Ethylene Oxide

Method No.: 30.
Matrix: Air.
Target Concentration: 1.0 ppm (1.8 mg/m³).

Procedure: Samples are collected on two charcoal tubes in series and desorbed with 1% CS_2 in benzene. The samples are derivatized with HBr and treated with sodium carbonate. Analysis is done by gas chromatography with an electron capture detector.

Recommended Air Volume and Sampling Rate: 1 liter and 0.05 Lpm.

Detection Limit of the Overall Procedure: 13.3 ppb (0.024 mg/m³) (Based on 1.0 liter air sample).

Reliable Quantitation Limit: 52.2 ppb (0.094 mg/m³) (Based on 1.0 liter air sample).

Standard Error of Estimate: 6.59% (See Backup Section 4.6).

Special Requirements: Samples must be analyzed within 15 days of sampling date.

Status of Method: The sampling and analytical method has been subjected to the established evaluation procedures of the Organic Method Evaluations Branch.

Date: August 1981.
Chemist: Wayne D. Potter.

Organic Solvents Branch, OSHA Analytical Laboratory, Salt Lake City, Utah

1. General Discussion.
1.1 Background.
1.1.1 History of Procedure.

Ethylene oxide samples analyzed at the OSHA Laboratory have normally been collected on activated charcoal and desorbed with carbon disulfide. The analysis is performed with a gas chromatograph equipped with a FID (Flame ionization detector) as described in NIOSH Method S286 (Ref. 5.1). This method is based on a PEL of 50 ppm and has a detection limit of about 1 ppm.

Recent studies have prompted the need for a method to analyze and detect ethylene oxide at very low concentrations.

Several attempts were made to form an ultraviolet (UV) sensitive derivative with ethylene oxide for analysis with HPLC. Among those tested that gave no detectable product were: p-anisidine, methylimidazole, aniline, and 2,3,6-trichlorobenzoic acid. Each was tested with catalysts such as triethylamine, aluminum chloride, methylene chloride and sulfuric acid but no detectable derivative was produced.

The next derivatization attempt was to react ethylene oxide with HBr to form 2-bromoethanol. This reaction was successful. An ECD (electron capture detector) gave a very good response for 2-bromoethanol due to the presence of bromine. The use of carbon disulfide as the desorbing solvent gave too large a response and masked the 2-bromoethanol. Several other solvents were tested for both their response on the ECD and their ability to desorb ethylene oxide from the charcoal. Among those tested were toluene, xylene, ethyl benzene, hexane, cyclohexane and benzene. Benzene was the only solvent tested that gave a suitable response on the ECD and a high desorption. It was found that the desorption efficiency was improved by using 1% CS_2 with the benzene. The carbon disulfide did not significantly improve the recovery with the other solvents. SKC Lot 120 was used in all tests done with activated charcoal.

1.1.2 Physical Properties (Ref. 5.2–5.4).

Synonyms: Oxirane; dimethylene oxide, 1,2-epoxy-ethane; oxane; C_2H_4O; ETO;
Molecular Weight: 44.06
Boiling Point: 10.7 °C (51.3°)
Melting Point: −111 °C
Description: Colorless, flammable gas
Vapor Pressure: 1095 mm. at 20 °C
Odor: Ether-like odor
Lower Explosive Limits: 3.0% (by volume)
Flash Point (TOC): Below 0 °F
Molecular Structure: $CH_2—CH_2$

1.2 Limit Defining Parameters.

1.2.1 Detection Limit of the Analytical Procedure.

The detection limit of the analytical procedure is 12.0 picograms of ethylene oxide per injection. This is the amount of analyte which will give a peak whose height is five times the height of the baseline noise. (See Backup Data Section 4.1).

1.2.2 Detection Limit of the Overall Procedure.

The detection limit of the overall procedure is 24.0 ng of ethylene oxide per sample.

This is the amount of analyte spiked on the sampling device which allows recovery of an amount of analyte equivalent to the detection limit of the analytical procedure. (See Backup Data Section 4.2).

1.2.3 Reliable Quantitation Limit.

The reliable quantitation limit is 94.0 nanograms of ethylene oxide per sample. This is the smallest amount of analyte which can be quantitated within the requirements of 75% recovery and 95% confidence limits. (See Backup Data Section 4.2).

It must be recognized that the reliable quantitation limit and detection limits reported in the method are based upon optimization of the instrument for the smallest possible amount of analyte. When the target concentration of an

analyte is exceptionally higher than these limits, they may not be attainable at the routine operating parameters. In this case, the limits reported on analysis reports will be based on the operating parameters used during the analysis of the samples.

1.2.4 Sensitivity.

The sensitivity of the analytical procedure over a concentration range representing 0.5 to 2 times the target concentration based on the recommended air volume is 84105 area units per μg/mL. The sensitivity is determined by the slope of the calibration curve (See Backup Data Section 4.3).

The sensitivity will vary somewhat with the particular instrument used in the analysis.

1.2.5 Recovery.

The recovery of analyte from the collection medium must be 75% or greater. The average recovery from spiked samples over the range of 0.5 to 2 times the target concentration is 88.0% (See Backup Section 4.4). At lower concentrations the recovery appears to be non-linear.

1.2.6 Precision (Analytical Method Only).

The pooled coefficient of variation obtained from replicate determination of analytical standards at 0.5X, 1X and 2X the target concentration is 0.036 (See Backup Data Section 4.5).

1.2.7 Precision (Overall Procedure).

The overall procedure must provide results at the target concentration that are 25% of better at the 95% confidence level. The precision at the 95% confidence level for the 15 day storage test is plus or minus 12.9% (See Backup Data Section 4.6).

This includes an additional plus or minus 5% for sampling error.

1.3 Advantages.

1.3.1 The sampling procedure is convenient.

1.3.2 The analytical procedure is very sensitive and reproducible.

1.3.3 Reanalysis of samples is possible.

1.3.4 Samples are stable for at least 15 days at room temperature.

1.3.5 Interferences are reduced by the longer GC retention time of the new derivative.

1.4 Disadvantages.

1.4.1 Two tubes in series must be used because of possible breakthrough and migration.

1.4.2 The precision of the sampling rate may be limited by the reproducibility of the pressure drop across the tubes. The pumps are usually calibrated for one tube only.

1.4.3 The use of benzene as the desorption solvent increases the hazards of analysis because of the potential carcinogenic effects of benzene.

1.4.4 After repeated injections there can be a buildup of residue formed on the electron capture detector which decreases sensitivity.

1.4.5 Recovery from the charcoal tubes appears to be nonlinear at low concentrations.

2. Sampling Procedure.

2.1 Apparatus.

2.1.1 A calibrated personal sampling pump whose flow can be determined within plus or minus 5% of the recommended flow.

2.1.2 SKC Lot 120 Charcoal tubes: glass tube with both ends flame sealed, 7 cm long with a 6 mm O.D. and a 4-mm I.D., containing 2 sections of coconut shell charcoal separated by a 2-mm portion of urethane foam. The adsorbing section contains 100 mg of charcoal, the backup section 50 mg. A 3-mm portion of urethane foam is placed between the outlet end of the tube and the backup section. A plug of silylated glass wool is placed in front of the adsorbing section.

2.2 Reagents.

2.2.1 None required.

2.3 Sampling Technique.

2.3.1 Immediately before sampling, break the ends of the charcoal tubes. All tubes must be from the same lot.

2.3.2 Connect two tubes in series to the sampling pump with a short section of flexible tubing. A minimum amount of tubing is used to connect the two sampling tubes together. The tube closer to the pump is used as a backup. This tube should be identified as the backup tube.

2.3.3 The tubes should be placed in a vertical position during sampling to minimize channeling.

2.3.4 Air being sampled should not pass through any hose or tubing before entering the charcoal tubes.

2.3.5 Seal the charcoal tubes with plastic caps immediately after sampling. Also, seal each sample with OSHA seals lengthwise.

2.3.6 With each batch of samples, submit at least one blank tube from the same lot used for samples. This tube should be subjected to exactly the same handling as the samples (break, seal, transport) except that no air is drawn through it.

2.3.7 Transport the samples (and corresponding paperwork) to the lab for analysis.

2.3.8 If bulk samples are submitted for analysis, they shoud be transported in glass containers with Teflon-lined caps. These samples must be mailed separately from the container used for the charcoal tubes.

2.4 Breakthrough.

2.4.1 The breakthrough (5% breakthrough) volume for a 3.0 mg/m ethylene oxide sample stream at approximately 85% relative humidity, 22°C and 633 mm is 2.6 liters sampled at 0.05 liters per minute. This is equivalent to 7.8 μg of ethylene oxide. Upon saturation of the tube it appeared that the water may be displacing ethylene oxide during sampling.

2.5 Desorption Efficiency.

2.5.1 The desorption efficiency, from liquid injection onto charcoal tubes, averaged 88.0% from 0.5 to 2.0 x the target concentration for a 1.0 liter air sample. At lower ranges it appears that the desorption efficiency is non-linear (See Backup Data Section 4.2).

2.5.2 The desorption efficiency may vary from one laboratory to another and also from one lot of charcoal to another. Thus, it is necessary to determine the desorption efficiency for a particular lot of charcoal.

2.6 Recommended Air Volume and Sampling Rate.

2.6.1 The recommended air volume is 1.0 liter.

2.6.2 The recommended maximum sampling rate is 0.05 Lpm.

2.7 Interferences.

2.7.1 Ethylene glycol and Freon 12 at target concentration levels did not interfere with the collection of ethylene oxide.

2.7.2 Suspected interferences should be listed on the sample data sheets.

2.7.3 The relative humidity may affect the sampling procedure.

2.8 Safety Precautions.

2.8.1 Attach the sampling equipment to the employee so that it does not interfere with work performance.

2.8.2 Wear safety glasses when breaking the ends of the sampling tubes.

2.8.3 If possible, place the sampling tubes in a holder so the sharp end is not exposed while sampling.

3. Analytical Method.

3.1 Apparatus.

3.1.1 Gas chromatograph equipped with a linearized electron capture detector.

3.1.2 GC column capable of separating the derivative of ethylene oxide (2-bromoethanol) from any interferences and the 1% CS_2 in benzene solvent. The column used for validation studies was: 10 ft x ⅛ inch stainless steel 20% SP–2100, .1% Carbowax 1500 on 100/120 Supelcoport.

3.1.3 An electronic integrator or some other suitable method of measuring peak areas.

3.1.4 Two milliliter vials with Teflon-lined caps.

3.1.5 Gas tight syringe—500 μL or other convenient sizes for preparing standards.

3.1.6 Microliter syringes—10 μL or other convenient sizes for diluting standards and 1 μL for sample injections.

3.1.7 Pipets for dispensing the 1% CS_2 in benzene solvent. The Glenco 1 mL dispenser is adequate and convenient.

3.1.8 Volumetric flasks—5 mL and other convenient sizes for preparing standards.

3.1.9 Disposable Pasteur pipets.

3.2 Reagents.

3.2.1 Benzene, reagent grade.

3.2.2 Carbon Disulfide, reagent grade.

3.2.3 Ethylene oxide, 99.7% pure.

3.2.4 Hydrobromic Acid, 48% reagent grade.

3.2.5 Sodium Carbonate, anhydrous, reagent grade.

3.2.6 Desorbing reagent, 99% Benzene/1% CS_2.

3.3 Sample Preparation.

3.3.1 The front and back sections of each sample are transferred to separate 2-mL vials.

3.3.2 Each sample is desorbed with 1.0 mL of desorbing reagent.

3.3.3 The vials are sealed immediately and allowed to desorb for one hour with occasional shaking.

3.3.4 Desorbing reagent is drawn off the charcoal with a disposable pipet and put into clean 2-mL vials.

3.3.5 One drop of HBr is added to each vial. Vials are resealed and HBr is mixed well with the desorbing reagent.

3.3.6 About 0.15 gram of sodium carbonate is carefully added to each vial. Vials are again resealed and mixed well.

3.4 Standard Preparation.

3.4.1 Standards are prepared by injecting the pure ethylene oxide gas into the desorbing reagent.

3.4.2 A range of standards are prepared to make a calibration curve. A concentration of 1.0 μL of ethylene oxide gas per 1 mL desorbing reagent is equivalent to 1.0 ppm air concentration (all gas volumes at 25°C and 760 mm) for the recommended 1 liter air sample. This amount is uncorrected for desorption efficiency (See Backup Data Section 4.2. for desorption efficiency corrections).

3.4.3 One drop of HBr per mL of standard is added and mixed well.

3.4.4 About 0.15 grams of sodium carbonate is carefully added for each drop of HBr (A small reaction will occur).

3.5 Analysis.

3.5.1 GC Conditions.

Nitrogen flow rate—10mL/min.
Injector Temperature—250°C
Detector Temperature—300°C
Column Temperature—100°C
Injection size—0.8 μL
Elution time—3.9 minutes

3.5.2 Peak areas are measured by an integrator or other suitable means.

3.5.3 The integrator results are in area units and a calibration curve is set up with concentration vs. area units.

3.6 Interferences.

3.6.1 Any compound having the same retention time of 2-bromoethanol is a potential interference. Possible interferences should be listed on the sample data sheets.

3.6.2 GC parameters may be changed to circumvent interferences.

3.6.3 There are usually trace contaminants in benzene. These contaminants, however, posed no problem of interference.

3.6.4 Retention time data on a single column is not considered proof of chemical identity. Samples over the 1.0 ppm target level should be confirmed by GC/Mass Spec or other suitable means.

3.7 Calculations

3.7.1 The concentration in μg/mL for a sample is determined by comparing the area of a particular sample to the calibration curve, which has been prepared from analytical standards.

3.7.2 The amount of analyte in each sample is corrected for desorption efficiency by use of a desorption curve.

3.7.3 Analytical results (A) from the two tubes that compose a particular air sample are added together.

3.7.4 The concentration for a sample is calculated by the following equation:

$$\text{ETO, mg/ m}^3 = \frac{AXB}{C}$$

where:
A = μg/mL
B = desorption volume in milliliters
C = air volume in liters.

3.7.5 To convert mg/m³ to parts per million (ppm) the following relationship is used:

$$\text{ETO, ppm} = \frac{\text{mg/ m}^3 \times 24.45}{44.05}$$

where:
mg/m³ = results from 3.7.4
24.45 = molar volume at 25 °C and 760mm Hg
44.05 = molecular weight of ETO.

3.8 Safety Precautions

3.8.1 Ethylene oxide and benzene are potential carcinogens and care must be exercised when working with these compounds.

3.8.2 All work done with the solvents (preparation of standards, desorption of samples, etc.) should be done in a hood.

3.8.3 Avoid any skin contact with all of the solvents.

3.8.4 Wear safety glasses at all times.

3.8.5 Avoid skin contact with HBr because it is highly toxic and a strong irritant to eyes and skin.

4. Backup Data.

4.1 Detection Limit Data.

The detection limit was determined by injecting 0.8 μL of a 0.015 μg/mL standard of ethylene oxide into 1% CS_2 in benzene. The detection limit of the analytical procedure is taken to be 1.20×10^{-5} μg per injection. This is equivalent to 8.3 ppb (0.015 mg/m³) for the recommended air volume.

4.2 Desorption Efficiency.

Ethylene oxide was spiked onto charcoal tubes and the following recovery data was obtained.

Amount spiked (μg)	Amount recovered (μg)	Percent recovery
4.5	4.32	96.0
3.0	2.61	87.0
2.25	2.025	90.0
1.5	1.365	91.0
1.5	1.38	92.0
.75	.6525	87.0
.375	.315	84.0
.375	.312	83.2
.1875	.151	80.5
.094	.070	74.5

At lower amounts the recovery appears to be non-linear.

4.3 Sensitivity Data.

The following data was used to determine the calibration curve.

Injection	0.5×.75 μg/mL	1×1.5 μg/mL	2×3.0 μg/mL
1	30904	59587	111778
2	30987	62914	106018
3	32555	58578	106122
4	32242	57173	109716
X	31672	59558	108409

Slope = 34.105.

4.4 Recovery.

The recovery was determined by spiking ethylene oxide onto lot 120 charcoal tubes and desorbing with 1% CS_2 in Benzene. Recoveries were done at 0.5, 1.0, and 2.0 X the target concentration (1 ppm) for the recommended air volume.

PERCENT RECOVERY

Sample	0.5x	1.0x	2.0x
1	88.7	95.0	91.7
2	83.8	95.0	87.3
3	84.2	91.0	86.0
4	88.0	91.0	93.0
5	86.0	96.0	85.0
X	80.5	93.5	87.0

Weighted Average = 88.2.

4.5 Precision of the Analytical Procedure.

The following data was used to determine the precision of the analytical method:

Concentration	0.5x.75 µg/mL	1X1.5 µg/mL	2X3.0 µg/mL
Injection	.7421	[illegible]	3.1184
	.7441	1.5826	3.0447
	.7831	1.4628	[illegible]
	.7753	1.4244	2.9185
Average	.7612	1.4895	2.9991
Standard Deviation	.0211	.0674	[illegible]
CV	.0277	.0452	[illegible]

$$CV = \frac{3(.0277)^2+3(.0452)^2+3(.0333)^2}{3+3+3}$$

CV+0.036

4.6 Storage Data.

Samples were generated at 3.5 mg/m³ ethylene oxide at 85% relative humidity, 22°C and 633 mm. All samples were taken for 20 minutes at 0.05 Lpm. Six samples were analyzed as soon as possible and fifteen samples were stored at refrigerated temperature (5°C) and fifteen samples were stored at ambient temperature (23°C). These stored samples were analyzed over a period of nineteen days.

PERCENT RECOVERY

Day analyzed	Refrigerated	Ambient
1	87.0	87.0
1	93.0	93.0
1	94.0	94.0
1	92.0	92.0
4	92.0	91.0
4	93.0	88.0
4	91.0	89.0
6	93.0	
6	92.0	
8		92.0
8		86.0
10	91.7	
10	95.5	
10	95.7	
11		90.0
11		82.0
13	78.0	
13	81.4	
13	82.4	
14		78.5
14		72.1
18	86.0	
18	84.0	
19		64.0
19		77.0

4.7 Breakthrough Data.

Breakthrough studies were done at 2 ppm (3.6 mg/m³) at approximately 85% relative humidity at 22°C (ambient temperature). Two charcoal tubes were used in series. The backup tube was changed every 10 minutes and analyzed for breakthrough. The flow rate was 0.050 Lpm.

Tube No.	Time (minutes)	Percent breakthrough
1	10	(1)
2	20	(1)
3	30	(1)
4	40	1.23
5	50	[illegible]
6	60	18.71
7	70	[illegible]
8	80	[illegible]
9	90	72.0
10	100	[illegible]
11	110	113.0
12	120	133.9

[1] None.

The 5% breakthrough volume was reached when 2.6 liters of test atmosphere were drawn through the charcoal tubes.

5. References.

5.1 "NIOSH Manual of Analytical Methods," 2nd ed. NIOSH: Cincinnati, 1977; Method S286.

5.2 "IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Man," International Agency for Research on Cancer: Lyon, 1976; Vol. II, p. 157.

5.3 Sax., N.I. "Dangerous Properties of Industrial Materials," 4th ed.; Van Nostrand Reinhold Company. New York, 1975; p. 741.

5.4 "The Condensed Chemical Dictionary", 9th ed.; Hawley, G.G., ed.; Van Nostrand Reinhold Company, New York, 1977; p. 361.

Summary of Other Sampling Procedures

OSHA believes that served other types of monitoring equipment and techniques exist for monitoring time-weighted averages. Considerable research and method development is currently being performed, which will lead to improvements and a wider variety of monitoring techniques. A combination of monitoring procedures can be used. There probably is no one best method for monitoring personal exposure to ethylene oxide in all cases. There are advantages, disadvantages, and limitations to each method. The method of choice will depend on the need and requirements. Some commonly used methods include the use of charcoal tubes, passive dosimeters, Tedler gas sampling bags, detector tubes, photoionization detection units, infrared detection units and gas chromatographs. A number of these methods are described below.

A. Charcoal Tube Sampling Procedures

Qazi-Ketcham method (Ex. 11–133)—This method consists of collecting EtO on Columbia JXC activated carbon, desorbing the EtO with carbon disulfide and analyzing by gas chromatography with flame ionization detection. Union Carbide has recently updated and revalidated this monitoring procedures. This method is capable of determining both eight-hour time-weighted average exposures and short-term exposures. The method was validated to 0.5 ppm. Like other charcoal collecting procedures, the method requires considerable analytical expertise.

ASTM-proposed method—The Ethylene Oxide Industry Council (EOIC) has contracted with Clayton Environmental Consultants, Inc. to conduct a collaborative study for the proposed method. The ASTM-Proposed method is similar to the method published by Qazi and Ketcham is the November 1977 American Industrial Hygiene Association Journal, and to the method of Pilney and Coyne, presented at the 1979 American Industrial Hygiene Conference. After the air to be sampled is drawn through an activated charcoal tube, the ethylene oxide is desorbed from the tube using carbon disulfide and is quantitated by gas chromatography utilizing a flame ionization detector. The ASTM-proposed method specifies a large two-section charcoal tube, shipment in dry ice, storage at less than −5°C, and analysis within three weeks to prevent migration and sample loss. Two types of charcoal tubes are being tested—Pittsburgh Coconut-Based (PCB) and Columbia JXC charcoal. This collaborative study will give an indication of the inter- and intralaboratory precision and accuracy of the ASTM-proposed method. Several laboratories have considerable expertise using the Qazi-Ketcham and Dow methods.

B. Passive Monitors—Ethylene oxide diffuses into the monitor and is collected in the sampling media. The DuPont Pro-Tek badge collects EtO in an absorbing solution, which is analyzed colorimetrically to determine the amount of EtO present. The 3M 350 badge collects the EtO on chemically treated charcoal. Other passive monitors are currently being developed and tested. Both 3M and DuPont have submitted data indicating their dosimeters meet the precision and accuracy requirements of the proposed ethylene oxide standard. Both presented laboratory validation data to 0.2 ppm (Exs. 11–65, 4–20, 108, 109, 130).

C. Tedlar Gas Sampling Bags-Samples are collected by drawing a known volume of air into a Tedlar gas sampling bag. The ethylene oxide concentration is often determined on-site using a portable gas chromatograph or portable infrared spectometer.

D. Detector tubes—A known volume of air is drawn through a detector tube using a small hand pump. The concentration of EtO is related to the length of stain developed in the tube. Detector tubes are economical, easy to use, and give an immediate readout. Unfortunately, partly because they are nonspecific, their accuracy is often questionable. Since the sample is taken over a short period of time, they may be useful for determining the source of leaks.

E. Direct Reading Instruments—There are numerous types of direct reading instruments, each having its own strengths and weaknesses (Exs. 135B, 135C, 107, 11–78, 11–153). Many are relatively new, offering greater sensitivity and specificity. Popular ethylene oxide direct reading instruments include infrared detection units, photoionization detection units, and gas chromatographs.

Portable infrared analyzers provide an immediate, continuous indication of a concentration value; making them particularly useful for locating high concentration pockets, in leak detection and in ambient air monitoring. In infrared detection units, the amount of infrared light absorbed by the gas being analyzed at selected infrared wavelengths is related to the concentration of a particular component. Various models have either fixed or variable infrared filters, differing cell pathlengths, and microcomputer controls for greater sensitivity, automation, and interference elimination.

A fairly recent detection system is photoionization detection. The molecules are ionized by high energy ultraviolet light. The resulting current is measured. Since different substances have different ionization potentials, other organic compounds may be ionized. The lower the lamp energy, the better the selectivity. As a continuous monitor, photoionization detection can be useful for locating high concentration pockets, in leak detection, and continuous ambient air monitoring. Both portable and stationary gas chromatographs are available with various types of detectors, including photoionization detectors. A gas chromatograph with a photoionization detector retains the photionization sensitivity, but minimizes or eliminates interferences. For several GC/PID units, the sensitivity is in the 0.1–0.2 ppm EtO range. The GC/PID with microprocessors can sample up to 20 sample points sequentially, calculate and record data, and activate alarms or ventilation systems. Many are quite flexible and can be configured to meet the specific analysis needs for the workplace.

DuPont presented their laboratory validation data of the accuracy of the Qazi-Ketcham charcoal tube, the PCB charcoal tube, Miran 103 IR analyzer, 3M #3550 monitor and the Du Pont C–70 badge. Quoting Elbert V. Kring:

> We also beleive that OSHA's proposed accuracy in this standard is appropriate. At plus or minus 25 percent at one part per million, and plus or minus 35 percent below that. And, our data indicates there's only one monitoring method, right now, that we've tested thoroughly, that meets that accuracy requirements. That is the Du Pont Pro-Tek badge* * *. We also believe that this kind of data should be confirmed by another independent laboratory, using the same type dynamic chamber testing (Tr. 1470)

Additional data by an independent laboratory following their exact protocol was not submitted. However, information was submitted on comparisons and precision and accuracy of those monitoring procedures which indicate far better precision and accuracy of those monitoring procedures than that obtained by Du Pont (Ex. 4–20, 130, 11–68, 11–133, 130, 135A).

The accuracy of any method depends to a large degree upon the skills and experience of those who not only collect the samples but also those who analyze the samples. Even for methods that are collaboratively tested, some laboratories are closer to the true values than others. Some laboratories may meet the precision and accuracy requirements of the method; others may consistently far exceed them for the same method.

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June 22, 1984

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally-Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arkansas: AR84–4092	Jan. 13, 1984.
California: CA84–5007	May 18, 1984.
Iowa: IA84–4043	June 15, 1984.
Kansas: KS83–4065	Sept. 2, 1983.
Massachusetts:	
MA84–3007	Apr. 6, 1984.
MA84–3008	Mar. 30, 1984.
MA84–3010	Apr. 6, 1984.
Maryland: MD84–3047	Aug. 29, 1980.
Mississippi:	
MS83–1014	Mar. 3, 1983.
MS84–1015	Apr. 1, 1983.
Montana: MT83–5101	Feb. 18, 1983.
New York:	
NY84–3030	May 1, 1983.
NY81–3039	Apr 4, 1981.
Oklahoma:	
OK84–4033	May 18, 1984.
OK84–4034	Do.
Pennsylvania: PA84–3000	Jan. 13, 1984.
Texas:	
TX82–4045	Sept. 24, 1982.
TX84–4015	Mar. 16, 1984.
TX84–4020	Apr. 13, 1984.
Virginia:	
VA82–3034	Dec. 3, 1982.
VA82–3035	Do.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Alabama:	
AL82–1023 (AL84–1016)	Apr. 2, 1982.
AL82–1022 (AL84–1015)	Do.
Florida: FL82–1015 (FL84–1020)	Mar. 5 1982.
Kentucky: KY81–1274 (KY84–1017)	July 31, 1981.
Mississippi: MS81–1261 (MS84–1014)	July 6, 1981.
Oregon: OR83–5100 (OR84–5020)	Feb. 18, 1983.
South Carolina: SC83–1069 (SC84–1018)	Nov. 25, 1983.
Wisconsin: WI83–2012 (WI84–5016)	Feb. 18, 1983.

Signed at Washington, D.C. this 15th day of June 1984.

James L. Valin,

Assistant Administrator.

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DECISION #AR84-4092-MOD.#3 (49 FR 1846-Jan. 13, 1984)	Basic Hourly Rates	Fringe Benefits
Sebastian, Crawford, and Washington Cos., Arkansas		
CHANGE:		
Sebastian & Crawford Cos., Arkansas		
Bricklayers, Stonemasons	$12.50	$ .70
Marble Masons, Tile Layers and Terrazzo Workers	12.50	.70
Asbestos Workers	17.76	2.33

DECISION #KS83-4065-MOD.#5 (48 FR 40089-Sept. 2, 1983)		
Leavenworth County, Kansas		
CHANGE:		
Sheet Metal Workers	$16.75	$2.78
Soft Floor Layers	12.44	1% + 3.34

DECISION NO. IA84-4043 - MOD. #1 (49 FR - 6/15/84)	Basic Hourly Rates	Fringe Benefits
Black Hawk, Carro Gordo, Clinton, Des Moines, Dubuque, Johnson, Linn & Polk Cos., Iowa		
CHANGE:		
Carpenters:		
All other construction:		
Zone 4:		
Carpenters	$14.00	1.08
Millwrights & pile-drivermen	14.70	1.08

DECISION #OK84-4033-MOD.#2 (49 FR 21257-May 18, 1984)	Basic Hourly Rates	Fringe Benefits
Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Tulsa, Sequoyah, Wagoner, and Washington Cos., Oklahoma		
CHANGE:		
Tile Layers, Terrazzo Workers, and Marble Masons	$15.09	$3.10
Asbestos Workers: Area 2	17.76	2.33
Electricians: Area 2	14.90	3.5% + 2.20
Cable Splicers: Area 2	15.15	3.5% + 2.20
Ironworkers: Area 2	14.60	2.67
Cement Masons: Area 2	13.83	.85
Power Tool Operators: Area 2	14.08	.85

DECISION NO. CA84-5007 - Mod. #3
(49 FR 21245 - May 18, 1984)
Imperial, Inyo, Kern, etc.,... Counties, California

Add:
Truck Drivers:
Group 6: Dump, or less than 16 yds.
Group 7: Transit-mix, under 3 yds.; Dumpcrete, less than 6½ yds.
Group 8: Truck repairman helper
Group 9: Water truck, 3 or more axles
Group 10: PB and similar type truck when performing within the Teamsters' jurisdiction; Pipeline and utility working truck including winch, but limited to truck applicable to pipeline and utility work, where a composite crew is used; Slurry driver; Truck greaser and tireman (50¢ per hour addition for tireman)
Group 11: Transit-mix, 3 yds. or more; Dumpcrete, 6½ yds. and over
Group 12-A: Driver or vehicle or combination of vehicles of 4 or more axles
Group 12-B: Driver of oil spreader truck
Group 13: Dump, 16 yds. but less than 25 yds.
Group 14: A-frame or Swedish crane, or similar type of equipment driver; Fork lift driver; Ross carrier, highway
Group 15: All off-highway equipment within Teamsters' jurisdiction (off-highway combination of vehicles or equipment with multiple power source, $1.00 per hour additional); Dump, 25 yds. or more; Truck repairman
Group 16: Truck repairman welder
Group 17: Low bed driver, 9 axle or over
Group 18: Water pull, single engine with attachments
Group 19: Water pull, twin engine with attachments

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

DECISION NO. MA84-3007 - MOD. #1 (49 FR 13804 - April 6, 1984) Berkshire, Franklin, Hampden, and Hampshire Counties, Massachusetts	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS; CEMENT MASONS; PLASTERERS; STONE MASONS; MARBLE, TILE & TERRAZZO WORKERS; POINTERS; CLEANERS; CAULKERS:		
Area 1	14.25	4.34
Area 2	18.38	
Area 3	15.23	2.92
CARPENTERS; SOFT FLOOR LAYERS; DRYWALL CARPENTERS:		
Area 1	15.40	3.07
Area 2	15.86	4.07
Area 3	15.40	3.02
Area 4	15.23	2.97
ELECTRICIANS:		
Area 2		
Electrical Contracts $125,000 and over	15.41	3.92+ 3%
Electrical Contracts under $125,000	13.41	3.92+ 3%
Area 3	16.33	3.78+3%
LABORERS (BUILDING)		
Group 1	12.90	2.80
Group 2	13.15	2.80
Group 3	13.65	2.80
Group 4	13.65	2.80
Group 5	13.90	2.80
HEAVY & HIGHWAY		
Area 1:		
Class I	12.90	2.80
Class II	13.15	2.80
Class III	13.65	2.80
Class IV	13.90	2.80
Area 2:		
Class I	13.75	2.80
Class II	14.00	2.80
Class III	14.50	2.80
Class IV	14.75	2.80
MILLWRIGHTS	17.10	4.85
PILEDRIVERMEN	17.40	3.20

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION		
Class I	15.83	2.40+d
Class II	15.63	2.40+d
Class III	15.43	2.40+d
Class IIIA	15.06	2.40+d
Class IV	13.53	2.40+d
Class V	12.83	2.40+d
Class VI	11.68	2.40+d
Class VII	16.58	2.40+d
Class VIII	12.85	2.40+d
Class IX	16.41	2.40+d
Class X	16.33	2.40+d
Class XI	16.83	2.40+d
POWER EQUIPMENT OPERATORS HEAVY AND HIGHWAY CONSTRUCTION:		
Class I	15.98	2.40+e
Class II	15.78	2.40+e
Class III	15.58	2.40+e
Class IIIA	15.21	2.40+e
Class IV	13.68	2.40+e
Class V	12.98	2.40+e
Class VI	11.83	2.40+e
Class VII	16.73	2.40+e
Class VIII	13.05	2.40+e
Class IX	16.56	2.40+e
Class X	16.48	2.40+e
Class XI	16.98	2.40+e

DECISION NO. MA84-3008 - MOD. #1 (49 FR 12889 - March 30, 1984) Worcester County, Massachusetts	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS; CEMENT MASONS PLASTERERS; and STONE-MASONS:		
Area 1	14.25	4.34
CARPENTERS, LATHERS; SOFT FLOOR LAYERS:		
Area 1	15.40	3.07
Area 2	15.86	4.07
ELECTRICIANS:		
Area 1	16.33	3.78+ 3%
LABORERS:		
BUILDING CONSTRUCTION:		
Group 1	13.75	2.80
Group 2	14.00	2.80
Group 3	14.25	2.80
Group 4	14.50	2.80
Group 5	15.00	2.80
HEAVY & HIGHWAY CONSTRUCTION		
Group 1	13.75	2.80
Group 2	14.00	2.80
Group 3	14.50	2.80
Group 4	14.75	2.80
Tunnels, Caisson and Cylinder Work in Compressed Air:		
Group 5-A	19.43	2.80
Group 5-B	20.93	2.80
Group 5-C	21.10	2.80
Group 5-D	21.17	2.80
Group 5-E	21.67	2.80
Free Air Operation: Shield driven and Liner Plate in Free Air;		
Group 6-A	15.05	2.80
Group 6-B	14.10	2.80
Cleaning Concrete and Caulking Tunnel (both new and existing):		
Group 6-C	14.20	2.80
Group 6-D	14.525	2.80
Rock shaft, Concrete Lining of same and Tunnel in Free Air:		
Group 6-E	13.95	2.80
Group 6-F	14.10	2.80
Group 6-G	14.20	2.80
Group 6-H	15.05	2.80

OPEN AIR CAISSON UNDERPINNING and TEST BORING INDUSTRIES	Basic Hourly Rates	Fringe Benefits
Open Air Caisson, Underpinning and Test Boring Crew:		
Group 1-A	13.75	2.80
Group 1-B	14.50	2.80
Test Boring:		
Group 2-A	13.75	2.80
Group 2-B	14.62	2.80
MARBLE, TILE & TERRAZZO WORKERS		
Area 1	17.15	3.45
MILLWRIGHTS	17.10	4.85
PILEDRIVERMEN	17.40	3.20
PLUMBERS		
Area 3	17.63	3.55
ROOFERS	17.26	4.75
POWER EQUIPMENT OPERATORS:		
Area 1:		
BUILDING CONSTRUCTION:		
Group 1	15.83	2.40+e
Group 2	15.63	2.40+e
Group 3	15.43	2.40+e
Group 3-A	15.06	2.40+e
Group 4	13.53	2.40+e
Group 5	12.83	2.40+e
Group 6	11.68	2.40+e
Group 7	16.58	2.40+e
Group 8	12.85	2.40+e
Group 9	16.41	2.40+e
Group 10	16.33	2.40+e
Group 11	16.83	2.40+e
HEAVY & HIGHWAY CONSTRUCTION:		
Group 1	15.98	2.40+e
Group 2	15.78	2.40+e
Group 3	15.58	2.40+e
Group 3-A	15.21	2.40+e
Group 4	13.68	2.40+e
Group 5	12.98	2.40+e
Group 6	11.83	2.40+e
Group 7	16.73	2.40+e
Group 8	13.005	2.40+e
Group 9	16.56	2.40+e
Group 10	16.48	2.40+e
Group 11	16.98	2.40+e
Area 2:		
BUILDING, HEAVY, HIGHWAY and MARINE CONSTRUCTION		
Group 1:	18.41	3.68+e
Hourly Premium for boom lengths including jib:		
Over 150 ft.: + 0.64		
Over 185 ft.: + 1.14		

MODIFICATIONS P. 5

DECISION NO. MA84-3008	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS BUILDING, HEAVY, HIGHWAY and MARINE CONSTRUCTION: (CONT'D)		
Over 210 ft.: + 1.59		
Over 250 ft.: + 2.41		
Over 295 ft.: + 3.35		
Group 2	18.29	3.68+f
Group 3	15.35	3.68+f
Group 4	16.75	3.68+f
Group 5	13.58	3.68+f
Group 6	14.43	3.68+f

	Basic Hourly Rates	Fringe Benefits

MODIFICATIONS P. 6

DECISION NO. MA84-3010 - MOD. #1 (49 FR 13809 - April 6, 1984) Essex, Suffolk, Middlesex, Norfolk, Bristol, Plymouth, Barnstable, Dukes, Nantucket Counties Massachussetts .	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS		
Area 1	15.38	4.07
Area 2	15.86	3.85
Area 3	15.86	4.07
Area 5	15.73	2.97
Area 5-A	15.43	3.27
CEMENT MASONS		
Area 2	17.85	3.53
ELECTRICIANS:		
Area 10	16.05	28%+10
LABORERS (BUILDING):		
Class I	13.75	2.80
Class II	14.00	2.80
Class III	14.25	2.80
Class IV	14.50	2.80
Class V	15.00	2.80
LABORERS (HEAVY & HIGHWAY):		
Class I	13.75	2.80
Class II	14.00	2.80
Class III	14.50	2.80
Class IV	14.75	2.80
Tunnels, caisson and Cylinder Work in Compressed Air:		
Class V-A	19.43	2.80
Class V-B	20.93	2.80
Class V-C	21.10	2.80
Class V-D	21.17	2.80
Class V-E	21.67	2.80
Free Air Operation:		
Shield driven and liner plate in free air:		
Class VI-A	15.05	2.80
Class VI-B	14.20	2.80
Cleaning concrete and caulking tunnel (both new and existing):		
Class VI-C	14.20	2.80
Class VI-D	14.525	2.80
Rock shaft, concrete lining of same and tunnel in free air:		
Class VI-E	13.95	2.80
Class VI-F	14.10	2.80
Class VI-G	14.20	2.80
Class VI-H	15.05	2.80
Laborers (Open Air Caissons, Underpinning & Test Boring Industries):		
Open Air Caisson, Underpinning Work and Boring Crew:		
Class I-A	13.75	2.80
Class I-B	14.50	2.80
Test Boring:		
Class II-A	13.75	2.80
Class II-B	14.62	2.80
MARBLE, TILE & TERRAZZO WORKERS	17.15	3.45
MILLWRIGHTS	17.10	4.85
PAINTERS:		
Area 1:		
New Construction:		
Brush; Taper	17.45	4.77
Spray; Sandblast	18.45	4.77
Steel	20.50	4.77
Repaint:		
Brush; Taper	15.72	4.77
Spray; Sandblast	16.72	4.77
Steel	20.50	4.77
Area 2:		
Brush; Taper; Paperhanging	17.31	4.28
Sandblasting; swing stage	18.31	4.28
Spray; Steel	18.81	4.28
Repaint up to 3 stories (including basements and sub-basements) and new housing 2 stories and less:		
Brush; Taper; Paperhanging	14.71	4.28
Sandblasting; Swing stage	15.56	4.28
Spray; Sandblast; Steel	15.99	4.28
Area 5:		
Brush; Roller	14.13	3.33
Taping	14.23	3.33
Paperhangers; Vinyl installers	14.63	3.33
Spray	15.63	3.33
Sandblast; chipping hammer; power brush	15.88	3.33

MODIFICATIONS P. 7

DECISION NO. MA84-3010	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D)		
Steel	17.38	3.33
Steel spray	18.88	3.33
Steel: sandblast; chipping; hammers; power tools	19.38	3.33
Interior repaint (except power plants):		
Brush; Roller	12.72	3.33
Sprayers	14.07	3.33
Sandblasters; chipping hammers; power tools	14.27	3.33
PILEDRIVERMEN	17.40	3.00
PLASTERERS TENDERS Area 1	14.00	2.90
PIPEFITTERS Area 7	18.95	4.50
PLUMBERS & PIPEFITTERS	19.03	2.97
POWER EQUIPMENT OPERATORS (BUILDING, HEAVY & HIGHWAY, & MARINE CONSTRUCTION)		
Class I	18.41	3.68+e
Hourly premium for boom lengths including jib:		
Over 150 ft. + .64		
Over 185 ft. + 1.14		
Over 210 ft. + 1.59		
Over 250 ft. + 2.41		
Over 295 ft. + 3.35		
Class II	18.29	3.68+e
Class III	15.35	3.68+e
Class IV	16.75	3.68+e
Class V	13.58	3.68+e
Class VI	14.43	3.68+e
ROOFERS:		
Area 1:		
Roofers	17.26	4.75
Slaters	17.51	4.75
Hot pitch	18.26	4.75
SPRINKLER FITTERS Area 2	16.37	3.23
ADD:		
ELECTRICIANS:		
Area		
Residential (Single-Family Housing)	12.00	3%+ 2.50

MODIFICATIONS P. 8

DECISION No. MS83-1015 Mod # 4 (48 FR 14312 - April 1, 1983) Hinds County, Mississippi	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	$14.19	1.80
BOILERMAKERS	16.20	3.375
ELECTRICIANS:		
Electricians	12.00	3% + 1.39
Cable Splicers	12.25	3% + 1.39
SHEET METAL WORKERS:		
Light Commercial*(See definition below)	9.43	3% + 1.32
All other bldg construction	13.54	3% + 1.32

DEFINITION:
SHEET METAL WORKERS:
LIGHT COMMERCIAL :
Defined as any commercial building single or two story with a total of 10,000 sq. ft. or less. Work under this category is as follows:
1)Any heating, air conditioning, or ventilation systems
2)All work on service stations, convenience stores, & nursing homes
3)Erection of solar panels
4)Erection of any kitchen equip. or hoods on new construction only
5)Any metal roof decking or metal singles not to exceed 100 squares on bldgs not exceeding 10,000 sq. ft.
6)Any metal ceilings on bldgs of less than 10,000 sq. ft.

DECISION No. MS83-1014 Mod # 2 (48 FR 12646 - March 3, 1983) Warren County, Mississippi	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	$14.19	1.80
BOILERMAKERS	16.20	3.375
ELECTRICIANS:		
Electricians	12.00	3% + 1.39
Cable Splicers	12.25	3% + 1.39
SHEET METAL WORKERS:		
Light Commercial *(See definition below)	9.43	3% + 1.32
All other building construction	13.54	3% + 1.32

DEFINITION:
SHEET METAL WORKERS:
LIGHT COMMERCIAL :
Defined as any commercial building single or two story with a total of 10,000 sq. ft. or less. Work under this category is as follows:
1)Any heating, air conditioning, or ventilation systems
2)All work on service stations, convenience stores, & nursing homes
3)Erection of solar panels
4)Erection of any kitchen equip. or hoods on new construction only
5)Any metal roof decking or metal singles not to exceed 100 squares on bldgs not exceeding 10,000 sq. ft.
6)Any metal ceilings on bldgs of less than 10,000 sq. ft.

MODIFICATIONS P. 9

MODIFICATIONS P. 10

DECISION NO. MD80-3047-MOD. #16 (45 FR 57922-August 29, 1980)	Basic Hourly Rates	Fringe Benefits
ALLEGANY & GARRETT CTYS, MD		
DELETE:		
TRUCK DRIVERS		
GROUP 1-Flagmen		

Decision No. MT83-5101 - Mod. #6 (48 FR 7370 - February 18, 1983) Statewide, Montana	Basic Hourly Rates	Fringe Benefits
Change:		
Modification No. 4 published in Vol. 49 page 3565, January 27, 1984, to read modification No. 5		
Laborers:		
In modification No. 4 to read Laborers, Area 8 only.		

DECISION NO. NY84-3030 - MOD. #14 (46 FR 24850 - May 1, 1981) Cattaraugus, Chautauqua; Erie Counties, New York	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	18.75	4.54

DECISION NO. NY81-3039 - MOD. #10 (45 FR 23265 - April 4, 1981) Monroe County, New York	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS & PILEDRIVERMEN (Heavy & Highway) Piledrivermen	12.74	4.405 +a

DECISION NO. TX82-4045 - MOD. #3 (47 FR 42257 - 9/24/82) Taylor County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters	$12.39	2.11

DECISION NO. TX84-4015 - MOD. #1 (49 FR 10008 - 3/16/84) Wichita County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters:		
Carpenters	13.45	2.28
Millwrights	13.95	2.28

DECISION NO. TX84-4028 - MOD. #1 (49 FR 14839 - 4/13/84) Galveston & Harris Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Cement masons:		
Galveston County	13.47	3.85

DECISION #OK84-4034-MOD #2 (49 FR 21357-May 18, 1984)	Basic Hourly Rates	Fringe Benefits
Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods, and Woodward Cos., Oklahoma		
CHANGE:		
Asbestos Workers	$17.76	$2.33
Electricians:		
Area 2	14.90	3.5% + 2.20
Cable Splicers:		
Area 2	15.15	3.5% + 2.20
Ironworkers:		
Area 1	14.60	2.67
Cement Masons: Area 3		
Cement Masons	13.80	.85
Power Tool Operator	14.00	.85

DECISION NO. PA84-3000 MOD. NO. 4 (49 FR 1851 - January 13, 1984) Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Mercer, Lawrence, McKean, Mifflin, Potter, Somerset, Venango, Warren, Washington, & Westmoreland Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS:		
Reinforcing		
Zone 1		
To read (Highway and bridge only)	$11.31	3.19
Zone 3	16.37	6.50
ADD:		
IRONWORKERS:		
Zone 4		
Structural, Ornamental & Reinforcing	14.59	5.38
AREA COVERED BY IRONWORKERS		
Zone - 4 - Clearfield, Blair, Cameron, Centre, Elk, Jefferson, McKean, Clinton & Potter		

MODIFICATIONS P. 11

NEW DECISION

STATE: ALABAMA

COUNTIES: CHAMBERS, CLAY, LEE, MACON, RANDOLPH, RUSSELL & TALLAPOOSA

DECISION NUMBER: AL84-1019

DATE: Date of Publication

DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS consisting of single family homes and apartments up to and including four (4) stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$6.74	
BRICKLAYERS	8.00	
CARPENTERS	6.17	
CEMENT MASONS/CONCRETE FINISHERS	6.05	
DRYWALL FINISHERS	6.66	
DRYWALL HANGERS	6.59	
ELECTRICIANS	7.46	
GLAZIERS	7.50	
INSULATORS	4.83	
LABORERS:		
Unskilled	4.06	
Mason Tenders	4.84	
Asphalt Rakers	5.00	
PAINTERS	6.01	
PLASTERERS	6.00	
PLUMBERS & PIPEFITTERS	7.10	
ROOFERS	6.14	

DECISION No. AL84-1019 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS	$6.48	
SOFT FLOOR LAYERS	7.65	
TILE SETTERS	8.88	
TRUCK DRIVERS	5.00	
POWER EQUIPMENT OPERATORS:		
Backhoe	7.50	
Bulldozer	6.00	
Grader	6.48	
Loader Operator	6.53	
Roller	5.74	
Spreader	6.27	
WELDERS - Receive rate for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii)(A)).

DECISION NO. VA82-3034-MOD. #5 (47 FR 54746-December 3, 1982) The Cities of CHESAPEAKE, PORTSMOUTH, & VIRGINIA BEACH CHANGE:	Basic Hourly Rates	Fringe Benefits
IRONWORKERS: Reinforcing, Ornamental, Structural, Riggers, Fence Erectors, Machinery Mover	$11.25	2.40
ELEVATOR CONSTRUCTORS	11.74	3.00+a+b
ELEVATOR CONSTRUCTORS HELPERS	8.22	3.00+a+b
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	5.87	

DECISION NO. VA82-3035-MOD. #6 (47 FR 54747-December 3, 1982) YORK COUNTY, & THE CITIES OF HAMPTON & NEWPORT NEWS (INCLUDING LANGLEY AFB, FORT EUSTIS & FORT MONROE) CHANGE:	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS	11.74	3.00+a+b
ELEVATOR CONSTRUCTORS HELPERS	8.22	3.00+a+b

VA82-3035 (Con't)

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	5.87	

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving; F-Christmas Day.

FOOTNOTES:

a. Holidays: A through F, Day after Thanksgiving.

b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacatoin pay credit.

SUPERSEDES DECISION

SUPERSEDEAS DECISION

STATE: ALABAMA

COUNTIES: CULLMAN, JACKSON, LIMESTONE, MADISON, MARSHALL & MORGAN

DECISION NUMBER: AL84-1016

DATE: Date of Publication

Supersedes Decision No. AL82-1023 dated April 2, 1982 in 47 FR 14340.

DESCRIPTION OF WORK: Residential Construction consisting of single family homes and apartments up to and including four (4) stories

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$7.40	
BRICKLAYERS	7.20	
CARPENTERS	6.56	
CEMENT MASONS/CONCRETE FINISHERS	6.86	
DRYWALL FINISHERS	7.00	
DRYWALL HANGERS	6.41	
ELECTRICIANS	6.62	
ELEVATOR MECHANICS	13.84	
GLAZIERS	7.00	
INSULATORS	5.18	
IRONWORKERS	5.57	
LABORERS:		
Unskilled	4.57	
Pipelayers	7.50	
PAINTERS	6.43	

DECISION No. AL84-1016 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Asphalt Spreader Op.	$6.09	
Backhoe	7.19	
Bulldozer	8.00	
Front End Loader	8.00	
Motor Patrol	8.00	
Roller	6.17	
Tractor Operator	6.64	
PLUMBERS & PIPEFITTERS	6.50	
ROOFERS	5.00	
SHEET METAL WORKERS	5.81	
TRUCK DRIVERS	4.78	
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii)(A)).

SUPERSEDEAS DECISION

STATE: ALABAMA

COUNTIES: Blount, Jefferson, Shelby, Talladega, St. Clair, & Walker

DECISION NUMBER: AL84-1015

DATE: Date of Publication

Supersedes Decision No.: AL82-1022, dated April 2, 1982 in 47 FR 14340.

DESCRIPTION OF WORK: Residential construction projects consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING & HEATING MECHANIC	$ 7.10	
BRICKLAYER	8.80	
CARPENTER	6.66	
CEMENT MASON/CONCRETE FINISHER	8.53	
DRYWALL FINISHER	6.42	
DRYWALL HANGER	6.00	
ELECTRICIAN	7.15	
LABORERS:		
Asphalt Raker	6.12	
Unskilled	4.51	
PAINTER	6.59	
PLUMBER & PIPEFITTER	8.20	
ROOFER	6.50	
SHEET METAL WORKER	6.18	
SOFT FLOOR LAYER	$ 6.61	
TILE SETTER	7.43	
TRUCK DRIVER	5.59	
POWER EQUIPMENT OPERATORS:		
Asphalt Spreader Op.	7.50	
Backhoe	7.19	
Bulldozer	6.63	
Front End Loader	6.91	
Motor Grader	8.00	
Roller	6.00	
Tractor	6.13	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Florida
DECISION NUMBER: FL84-1020
COUNTY: Orange
DATE: Date of Publication
Supersedes Decision Number FL82-1015, dated March 5, 1982 in 47 FR 9654
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (Does not include single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING AND HEATING MECHANICS	$ 7.65	
BRICK AND BLOCK LAYERS	9.74	
CARPENTERS	9.83	1.50
CEMENT MASONS	9.52	1.00
ELECTRICIANS	12.12	1.28
ELEVATOR MECHANICS	10.02	
GLAZIERS	9.52	
IRONWORKERS	11.97	3.10
LABORERS	6.21	
LATHERS	11.60	1.00
MECHANICAL INSUALTORS	11.61	
PAINTERS, Paperhangers, and Tapers	9.77	1.18
PLASTERERS	10.12	
PLUMBERS, PIPEFITTERS, AND STEAMFITTERS	12.43	1.49
ROOFERS	10.19	.90
SHEET METAL WORKERS	8.74	
SOFT FLOOR LAYERS	8.88	
SPRINKLER FITTERS	8.88	
TILE SETTERS	9.72	
TRUCK DRIVERS	6.35	
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		
POWER EQUIPMENT OPERATORS:		
Backhoe	10.26	1.10
Bulldozer	10.69	1.10
Crane	11.69	1.10
Grader	7.31	
Loader	7.91	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: BELL, CASEY, CLAY, HARLAN, KNOX, LAUREL, LESLIE, McCREARY, PULASKI, ROCKCASTLE, RUSSEL, WAYNE & WHITLEY
DECISION NUMBER: KY84-1017
DATE: Date of Publication
Supersedes Decision No. KY81-1274 dated July 31, 1981 in 46 FR 39385.
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - includes single family homes and apartments up to and including four (4) stories.

	Basic Hourly Rates	Fringe Benefits
A/C & HEATING MECHANICS	$6.00	
BRICKLAYERS	7.90	
CARPENTERS	6.60	
CEMENT MASONS	7.22	
DRYWALL HANGERS	8.65	
DRYWALL FINISHERS	6.25	
ELECTRICIANS	7.05	
INSULATION INSTALLERS	5.30	
IRONWORKERS	5.53	
LABORERS:		
Unskilled	4.77	
Mason Tenders, Mortar Mixers & Pipelayers	6.05	
Asphalt Rakers	6.98	
PAINTERS	6.22	

DECISION NO. KY84-1017 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
PLUMBERS & PIPEFITTERS	$8.21	
ROOFERS	6.32	
SHEET METAL WORKERS	7.07	
SOFT FLOOR/CARPET LAYERS	7.40	
TRUCK DRIVERS	5.64	
TILE SETTERS	8.00	
POWER EQUIPMENT OPERATORS:		
Backhoe	8.14	
Bulldozer	8.27	
Front End Loader	7.62	
Grader	8.52	
Paver	8.01	
Roller	7.55	
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii)(A)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: Claiborne, Copiah, Hinds, Issaquena, Madison, Rankin, Sharkey, Simpson, Warren & Yazoo

DECISION NUMBER: MS84-1014

DATE: Date of Publication

Supersedes Decison No. MS81-1262 dated July 6, 1981 in 46 FR 35004

DESCRIPTION OF WORK: Residential Construction consisting of single family homes and apartments up to and including four (4) stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$6.78	
BRICKLAYERS	9.40	
CARPENTERS	7.09	
DRYWALL FINISHERS	7.86	
DRYWALL HANGERS	9.22	
CEMENT MASONS	9.07	
ELECTRICIANS	7.89	
ELEVATOR MECHANIC	11.41	
ELEVATOR MECHANIC HELPER	6.82	
INSULATORS	5.50	
LABORERS:		
General	4.95	
Mason Tenders	5.30	
Mortar Mixers	5.43	
PAINTERS	7.73	
PLASTERERS	9.25	
PLUMBERS & PIPEFITTERS	8.03	

DECISION NO. MS84-1014 (Cont'd)	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Asphalt Spreader	$5.68	
Backhoe	7.40	
Bulldozer	7.12	
Front End Loader	7.13	
Concrete Pump	9.73	
Motor Grader	6.75	
Roller	5.69	
Trenching Machine	8.08	
ROOFERS	6.35	
SHEET METAL WORKERS	6.49	
SOFT FLOOR LAYERS	6.05	
TILE SETTERS	8.88	
TRUCK DRIVERS	6.80	
WELDERS - Receive rate for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses 29 CFR 5.5 (a)(1)(ii)(A)).

SUPERSEDEAS DECISION

STATE: Oregon

COUNTIES: Statewide

DECISION NUMBER OR84-5020

DATE: Date of Publication

Supersedes Decision No. OR83-5100 dated February 18, 1983, in 48 FR 7379

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Projects and Dredging.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	19.52	3.51
BOILERMAKERS:		
Work on Storage Tanks:		
Erection	17.25	4.00
Repair	16.05	4.00
All other work	19.67	4.00
BRICKLAYERS; STONEMASONS:		
Area 1	17.28	3.80
Area 2:		
Projects under $1 million	13.63	3.02
Projects over $1 million	16.35	3.27
CARPENTERS:		
All projects involving the construction, alteration, or repair of buildings, bridges, or other structures under $1.5 million not including the cost of utilities; and all projects other than the above, under $1 million excluding the cost of utilities		
Group 1	12.95	4.02
Group 2	13.07	4.02
Group 3	13.15	4.02
Group 4	13.27	4.02
Group 5	13.03	4.02
Group 6	13.11	4.02
All projects over the amounts stated above:		
Group 1	16.31	4.02
Group 2	16.46	4.02
Group 3	16.56	4.02
Group 4	16.71	4.02
Group 5	16.41	4.02
Group 6	16.51	4.02
CEMENT MASONS:		
Cement Masons	15.49	3.72
Composition Workers and Power Machinery Operators	15.88	3.72
ELECTRICIANS:		
Area 1:		
Electricians	15.85	2.00+4%
Cable Splicers	16.56	2.00+4%
Area 2:		
Electricians	20.87	4.80+3%
Cable Splicers	21.91	4.80+3%
Area 3:		
Electricians	19.05	4.35+3%
Cable Splicers	20.95	4.35+3%
Area 4:		
Electrical contracts under $100,000:		
Electricians	15.00	2.42+3%
Cable Splicers	110%JR	2.42+3%
Electrical contracts over $100,000:		
Electricians	18.00	2.42+3%
Cable Splicers	110%JR	2.42+3%
Area 5:		
Electricians	18.80	3.50+3%
Cable Splicers	19.55	3.50+3%
Area 6:		
Electricians	15.00	3.75+3%
Cable Splicers	16.50	3.75+3%
ELEVATOR CONSTRUCTORS		
Mechanics	19.445	3.00+a
Helpers	70%JR	3.00+a
Probationary Helpers	50%JR	
GLAZIERS	16.34	2.09
IRONWORKERS:		
Structural; Reinforcing; Ornamental; Riggers; Fence Erectors; Signal Men	18.04	4.15
LATHERS:		
Area 1	15.87	3.16

DECISION NO. OR84-5-025	Basic Hourly Rates	Fringe Benefits
MARBLE SETTERS:		
Area 1	17.11	2.85
MASON TENDERS:		
(including tenders or Plasterers, Bricklayers, Tile Setters, Marble Setters and Terrazzo Worker; Topping for Cement Finishers and Mortar Mixer)	14.31	3.75
PAINTERS:		
Area 1:		
Painters and tapers	12.25	1.71
Area 2:		
Brush	15.59	3.09
Spray	16.24	3.09
Bridges, High work over 50' (brush)	17.14	3.09
Bridges, High Work over 50' (spray)	17.79	3.09
Drywall Tapers	15.48	2.11
Area 3:		
Highway & Parking Lot painter	17.64	1.05
PLASTERERS:		
Area 1	14.63	3.82
Area 2	15.23	3.11
PLUMBERS:		
Area 1	16.30	4.01
Area 2	19.43	6.98
Area 3	15.50	6.22
Area 4	20.48	3.70
Area 5	20.26	3.65
Area 6	19.58	4.15
Area 7	21.19	3.10
Area 8	16.51	4.05
ROOFERS:		
Area 1:		
Roofers	14.90	3.60
Handling coal tar pitch	16.10	3.60
Area 2:		
Roofers	14.75	1.72
Spray and/or application of irritating materials in a confined area	15.75	1.72
Area 3	13.46	2.05
Area 4	14.56	4.10
SHEET METAL WORKERS:		
Area 1	17.89	4.54
Area 2	16.72	2.21+ 3%
Area 3	18.76	3.10+ 3%
Area 4	15.50	2.58

	Basic Hourly Rates	Fringe Benefits
SOFT FLOOR LAYERS:		
Area 1	14.022	2.38+b
Area 2	13.66	1.19
SPRINKLER FITTERS	17.92	3.23
STEAMFITTERS:		
Area 1	21.27	3.60
TILE SETTERS:		
Area 1	17.01	3.57
Area 2	15.43	2.15
TILE & TERRAZZO HELPERS:		
Area 1	13.27	2.20
LINE CONSTRUCTION:		
Area 1:		
Zone 1 - (Base Rate):		
Group 1	20.03	1.00+ 3 1/2%
Group 2	18.11	3.00+ 3 1/2%
Group 3*	16.35	3.00+ 3 1/2%
Group 4	15.61	2.30+ 3 1/2%
Group 5	13.66	2.30+ 3 1/2%
Group 6*	13.66	2.30+ 3 1/2%
Group 7	18.84	2.30+ 3 1/2%
Zone Differential - (Add to Zone 1 Rate):		
Zone 2 - 2.40		
Zone 3 - 3.15		
Zone 4 - 3.90		
Zone 5 - 5.15		
*Groups 3 and 6 receive Zone 1 Rates ONLY (No Zone Differential)		
Area 2:		
Cable Splicers	17.56	1.20+ 3 1/2%
Journeyman Lineman	15.92	1.20+ 3 1/2%
Line Equipment Mechanic (right-of-way)	15.05	1.20+ 3 1/2%
Line Equipment Mechanic (base shop)	14.07	1.20+ 3 1/2%
Line Equipment Serviceman	14.07	1.20+ 3 1/2%
Line Equipment Operator	14.31	1.20+ 3 1/2%
Groundman	11.40	1.20+ 3 1/2%

DECISION NO. OR84-5-020	Basic Hourly Rates	Fringe Benefits
DREDGING:		
Leverman, Hydraulic	16.97	3.87
Leverman, Dipper	17.68	3.87
Assistant Engineer (including Watch Engineer, Welder, Mechanic and Machinist); Mate	16.43	3.87
Tenderman (Boatman, attending Dredge Plant); Fireman	16.02	3.87
Assistant Mate (Deckhand); Oiler	15.67	3.87
TIMBER SALES ROADS:		
Operating Engineer	10.37	4.15
Teamster	9.74	3.74
Laborer	8.35	4.30
Power Saw, Driller, Powderman	9.12	8.30
LABORERS:		
All projects involving the construction, alteration, or repair of buildings, bridges, or other structures under $1.5 million not including the cost of utilities; and all projects other than the above, under $1 million excluding the cost of utilities		
Zone 1 - (Base Rate):		
Group 1	10.27	5.01
Group 2	10.55	5.01
Group 3	10.79	5.01
Group 4	10.99	5.01
Group 5	8.00	5.01
Zone Differential (Add to Base Rate)		
Zone 2 - $0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.75		
All other projects:		
Zone 1 - (Base Rate):		
Group 1	12.84	5.01
Group 2	13.19	5.01
Group 3	13.49	5.01
Group 4	13.74	5.01
Group 5	8.00	5.01
Zone Differential - (Add to Base Rate):		
Zone 2 - $0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.75		

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits
All projects involving the construction, alteration, or repair of buildings, bridges, or other structures under $1.5 million not including the cost of utilities; and all projects other than the above, under $1 million excluding the cost of utilities		
Zone 1 - (Base Rate)		
Group 1	12.00	4.60
Group 2	12.14	4.60
Group 3	12.26	4.60
Group 4	12.42	4.60
Group 5	12.45	4.60
Group 6	12.54	4.60
Group 7	12.59	4.60
Group 8	12.70	4.60
Group 9	12.77	4.60
Group 10	12.83	4.60
Group 11	12.85	4.60
Group 12	12.92	4.60
Group 13	13.00	4.60
Group 14	13.18	4.60
Group 15	13.34	4.60
Group 16	13.53	4.60
Group 17	13.68	4.60
Group 18	13.87	4.60
Group 19	14.02	4.60
Zone Differential - (Add to Base Rate):		
Zone 2 - $0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.75		
All Other Projects		
Zone 1 - (Base Rate):		
Group 1	15.00	4.60
Group 2	15.18	4.60
Group 3	15.33	4.60
Group 4	15.53	4.60
Group 5	15.56	4.60
Group 6	15.67	4.60
Group 7	15.74	4.60
Group 8	15.87	4.60
Group 9	15.96	4.60
Group 10	16.04	4.60
Group 11	16.06	4.60
Group 12	16.15	4.60
Group 13	16.25	4.60

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONTINUED)		
Group 14	16.48	4.60
Group 15	16.67	4.60
Group 16	16.91	4.60
Group 17	17.10	4.60
Group 18	17.34	4.60
Group 19	17.52	4.60
Zone Differential - (Add to Base Rate):		
Zone 2 - $0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.75		
TRUCK DRIVERS:		
All projects involving the construction, alteration, or repair of buildings, bridges, or other structures under $1.5 million not including the cost of utilities; and all projects other than the above, under $1 million excluding the cost of utilities		
Group 1	11.75	4.19
Group 2	11.79	4.19
Group 3	11.83	4.19
Group 4	11.87	4.19
Group 5	11.91	4.19
Group 6	11.99	4.19
Group 7	12.07	4.19
Group 8	12.15	4.19
Group 9	12.23	4.19
Group 10	12.37	4.19
Group 11	12.45	4.19
Group 12	12.53	4.19
Group 13	12.61	4.19
Group 14	12.69	4.19
Zone Differential - (Add to Base Rate):		
Zone 2 - $0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.70		
All Other Projects Zone 1 - (Base Rate):		
Group 1	14.69	4.19
Group 2	14.74	4.19
Group 3	14.79	4.19
Group 4	14.84	4.19
Group 5	14.89	4.19
Group 6	14.99	4.19
Group 7	15.09	4.19
Group 8	15.19	4.19
Group 9	15.29	4.19
Group 10	15.46	4.19
Group 11	15.56	4.19
Group 12	15.66	4.19
Group 13	15.76	4.19
Group 14	15.86	4.19
Zone Differential - (Add to Base Rate):		
Zone 2 - $0.65		
Zone 3 - 1.15		
Zone 4 - 1.70		
Zone 5 - 2.70		

DECISION NO. OR84-5020

FOOTNOTE:

a. Employer credits 8% of basic hourly rate for employees with more than 5 years' service; 6% basic hourly rate for 6 months' to 5 years' service to Vacation Plant. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; and Christmas Day

b. 4% of all gross wages to be credited to employees with less than one year of service, 6% with more than one year of service. Seven paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Friday after, and Christmas Day.

AREA and GROUP DESCRIPTIONS

BRICKLAYERS; Stonemasons:
Area 1: Baker, Clackamas, Clatsop, Columbia, Gilliam, and Hood River; Malheur County (north half); Marion, Morrow, Multnomah, Polk, Sherman, and Tillamook Counties; Umatilla, Union, Wallowa, and Wasco Counties (north of the City of Maupin); Washington and Yamhill Counties
Area 2: Benton, Crook, Coos, Curry, Deschutes, Douglas, Grant, Harney, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, and Linn Counties; Malheur County (south half); Wasco County (including the City of Maupin and south thereof); Wheeler County

CARPENTERS:
Group 1: Acoustical and Drywall Applicator; Automatic Nailing Machine; Carpenters; Form Strippers; Manhole Builders
Group 2: Floor Layers and Finishers; Stationary Power Saw Operators
Group 3: Millwrights and Machine Erectors
Group 4: Certified Welders
Group 5: Piledrivermen; Bridge, Dock and Wharf Builders
Group 6: Boom Men

ELECTRICIANS:
Area 1: Malheur County
Area 2: Baker, Gilliam, Grant, Morrow, Umatilla, Union, Wallowa, and Wheeler Counties
Area 3: Coos, Curry, and Lincoln Counties; Douglas and Lane Counties (those portions lying west of a line north and south from the NW corner or Coos County to the SE corner of Lincoln County)
Area 4: Benton, Crook, Deschutes, and Jefferson Counties; Lane County (eastern portion); Linn, Marion, and Polk Counties; Yamhill County (south half)
Area 5: Clackamas, Clatsop, Columbia, Hood River, Multnomah, Sherman, Tillamook, Wasco, and Washington Counties; Yamhill County (north half)
Area 6: Harney, Jackson, Josephine, Klamath, and Lake Counties; Douglas County (that portion lying east of a line running north and south from the NE corner of Coos County to the SE corner of Lincoln County)

AREA DESCRIPTIONS (Cont'd)

LATHERS:
Area 1: Clackamas, Clatsop, Columbia, Gilliam, Harney, Hood River, Morrow, Multnomah, Sherman, and Yamhill Counties

MARBLE SETTERS:
Area 1: Baker, Clackamas, Clatsop, Columbia, Gilliam, and Hood River Counties; Malheur County (north half); Multnomah, Morrow, Sherman, and Tillamook Counties; Union, Umatilla, and Wallowa Counties; Wasco County (north of the City of Maupin); Washington County; Yamhill County (north half)

PAINTERS:
Area 1: Malheur County
Area 2: Remaining Counties
Area 3: Statewide

PLASTERERS:
Area 1: Benton, Coos, Crook, Curry, Douglas, Deschutes, Harney, and Jefferson Counties; Klamath County (northern one-third); Lane County; Lincoln, Linn, Wasco, and Wheeler Counties (south half)
Area 2: Remaining Counties

PLUMBERS:
Area 1: Baker County; Harney (except NW portion); Malheur County
Area 2: Grant County (except SW corner); Morrow, Umatilla, Wallowa, and Union Counties
Area 3: Benton, Lincoln, and Linn Counties (north half); Marion and Polk Counties; Tillamook and Yamhill Counties (south half)
Area 4: Clackamas, Clatsop, Columbia, Gilliam, Hood River, Jefferson, Multnomah, Sherman, Wasco, Wheeler, and Washington Counties; Tillamook and Yamhill Counties (north half)
Area 5: Coos and Curry Counties; Douglas County (West Coast portion); Lann County (including the City of Florence)
Area 6: Benton County (south half); Crook and Deschutes Counties; Douglas County (except Coast portion); Grant County (SW corner); Harney County (NW portion); Jefferson County (south half); Klamath and Lake Counties (northern portion); Lane County (except the City of Florence); Lincoln and Linn Counties (south half)
Area 7: Remainder of Klamath and Lake Counties
Area 8: Jackson and Josephine Counties

ROOFERS:
Area 1: Baker, Clackamas, Clatsop, Columbia, Grant, Gillian, Hood River, Morrow, Multnomah, Sherman, Tillamook, Wasco, Washington, and Wheeler Counties
Area 2: Benton, Coos, Crook, Curry, Deschutes, Douglas, Harney, Jackson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Polk, and Yamhill Counties
Area 3: Malheur County
Area 4: Umatilla, Union, and Wallowa Counties

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AREA AND GROUP DESCRIPTIONS (CONT'D)

SHEET METAL WORKERS:
Area 1: Benton, Clackamas, Clatsop, Columbia, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Lincoln, Linn, Marion, Multnomah, Polk, Sherman, Tillamook, Wasco, Washington, Wheeler, and Yamhill Counties
Area 2: Baker and Malheur Counties
Area 3: Morrow, Umatilla, Union, and Wallowa Counties
Area 4: Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lake, Line

SOFT FLOOR LAYERS:
Area 1: All Counties except Malheur County
Area 2: Malheur County

STEAMFITTERS
Area 1: Clackamas, Clatsop, Columbia, Gilliam, Hood River, Jefferson Multnomah, Sherman, Wasco, Wheeler, and Washington Counties; Tillamook and Yamhill Counties (north half)

TILE SETTERS:
Area 1: Baker, Clackamas, Clatsop, Columbia, Gilliam, and Hood River Counties, Malheur County (north half); Morrow, Multnomach, Sherman, Tillamook, Umatilla, Union, and Wallow Counties; Wasco County (north of Maupin); Washington County; Yamhill County (north half)
Area 2: Benton, Coos, Crook, Curry, Deschutes, Douglas, Grant, Harney, Jackson, Josephine, Klamath, Lake, Lane, Lincoln, and Linn Counties; Malheur County (south half); Wasco County (Maupin and south thereof); Wheeler County (south half)

TILE and TERRAZZO HELPERS:
Area 1: Baker, Clackamas, Clatsop, Columbia, Gilliam, and Hood River Counties; Malheur County (north half); Morrow, Multnomach, Sherman, Tillamook, Umatilla, Union, and Wallow Counties; Wasco County (north of Maupin); Washington County; Yamhill County (north half)

LINE CONSTRUCTION:
Area 1: All Counties Except Malheur County
Group 1: Cable Splicer, Leadman Pole Sprayer
Group 2: Lineman, Pole Sprayer, Heavy Line equipment Man, Certified Lineman Welder
Group 3: Tree Trimmer
Group 4: Line Equipment Man
Group 5: Head Groundman, Powderman, Jackhammer Man
Group 6: Head Groundman (Clipper)
Group 7: Groundman

ZONE DEFINITIONS - LINE CONSTRUCTION ONLY

Zone 1 - 0 to 3 miles radius from the geographical center of Seattle, Tacoma, Portland, Medford.
Zone 2 - 3 to 20 miles radius from Seattle, Tacoma, Portland, Medford; and 0 to 20 miles radius from the Cities listed below

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ZONE DEFINITIONS - LINE CONSTRUCTION ONLY (CONT'D)

Zone 3 - 20 to 35 miles radius from all Cities
Zone 4 - 35 to 50 miles radius from all Cities
Zone 5 - More than 50 miles radius from all Cities

BASE POINTS

Washington	Oregon	Idaho
Bellingham	Astoria	Coeur D'Alene
Ellensburg	Baker	Kellogg
Ephrata	Burns	Lewiston
Everett	Bend	Oro Fino
Kennewick	Corvallis	Sandpoint
Longview	Eugene	
Olympia	Klamath Falls	
Spokane	Lakeview	
Walla Walla	Pendleton	
Wenatchee	Salem	
Wilbur	Roseburg	
Yakima	The Dalles	
	Umtilla	

ZONE DESCRIPTIONS FOR LABORERS, POWER EQUIPMENT OPERATORS AND TRUCK DRIVERS

CITIES		
Albany	Grants Pass	Oregon City
Astoria	Hermiston	Newport
Baker	Hood River	Ontario
Bend	Klamath Falls	Pendleton
Bingen	La Grande	Portland
Brookings	Lakeview	Port Orford
Burns	Longview	Reedsport
Coos Bay	Madras	Roseburg
Corvallis	Medford	Salem
Eugene	McMinnville	The Dalles
Goldendale	Vancouver	Tillamook

Zone 1 - All jobs or projects located within 30 miles of the respective City Hall
Zone 2 - More than 30 miles but less than 40 miles from the respective City Hall
Zone 3 - More than 40 miles but less than 50 miles from the respective City Hall
Zone 4 - More than 50 miles but less than 80 miles from the respective City Hall
Zone 5 - More than 80 miles from the respective City Hall

LABORERS

Group 1: Asphalt Plant Laborers; Asphalt Spreaders; Batch Weighman; Broomers; Brush Burners and Cutters; Car and Truck Loaders; Carpenter Tender; Change-house Man or Dry Shack Man; Choke Setter; Clean-up Laborers; Concrete Laborers; Culvert hand labor; Curing concrete; Demplition, wrecking, and moving laborers; Driller Tenders; Dumpers, road oiling crew; Dumpmen (for grading crew); Elevator Feeders; Guard Rail, Median Rail, Reference Post, Right-of-way Marker); Fine Graders; Form Strippers (not swinging stages); General Laborers; Leverman or Aggregate Spreader (Flaherty and Loading Spotters and similar types); Material Yard Man (including electrical); Powderman Tender; Pittsburgh Chipper Operator of similar types; Ribbon Setters (including Steel Forms); Rip Rap Man (hand placed); Road Pump Tender; Sewer Labor; Signalman; Skipman; Slopers; Spraymen; Stake Chaser; Stockpile; Timber Faller and Bucker (hand labor); Tool-room Man (at job site); Tunnel Bullgang (above ground); Weightman, Crusher (aggregate when used); Railroad Track Laborers

Group 2: Applicator (including Pot Tender for same), applying protective material by hand or nozzle on utility lines or storage tanks on project; Brush Cutters (power saw); Burners; Choker Splicer; Clary Power Spreader and similar types; Clean-up Nozzleman; Green Cutter (concrete, rock, etc.); Concrete Power Buggyman; Crusher Feeder; Demolition and wrecking charred materials; Grade Checker; Granite Nozzleman Tender; Gunite or Pot Tender; Handlers or Mixers of all materials of an irritating nature (including cement and lime); Power Tool Operators, includes but not limited to: Dry Pack Machine; Jackhammer; Chipping Guns; Paving Breakers; Vibrators (less than 4" in diameter); Post Hole Digger, air, gas or electric; Vibrating Screed; Tampers; Sand Blasting (wet); Stake-setter; Tunnel - Muckers, Brakemen, Concrete Crew, Bull Gang (underground)

Group 3: Asphalt Rakers; Bit Grinder; Drill Doctor; Drill Operators, Air Tracks, Cat Drills, Wagon Drills, Rubber-mounted Drills, and other similar types; Concrete Saw Operator; Gunite Nozzleman; High Scalers, Strippers and Drillers (covers work in Swinging Stages, chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down, or sloping and stripping); Laser Beam (pipe laying)(applicable when employee assigned to move, set up, align Laser Beam); Manhole Builder; Powdermen; Power Saw Operators (bucking and falling); Pumpcrete Nozzlemen; Sand Blasting (dry); Sewer Pipe Layers; Sewer Timberman; Track Liners, Anchor Machines, Ballast Regulators, Multiple Tampers, Power Jacks; Tugger Operator; Tunnel - Chuck Tenders, Nippers, and Timbermen; Vibrator (4" and larger); Water Blaster; Welder

Group 4: Laser Beam (tunnel) - applicable when employee assigned to move, set up, align Laser Beam; Tunnel Miners; Tunnel Powderman

Group 5: Landscaping or Planting Laborer; fence builders

POWER EQUIPMENT OPERATORS

Group 1: Oiler, including Plant, Crane, Crusher, Guardrail equipment, and Trenching Machine; Assistant Conveyor Operator; Crusher Feederman; Deckhand; Self-propelled Scaffolding Operator; Guardrail Punch Oiler; Pump Operator, under 4"; Brakeman; Switchman; Parts Man (tool room)

Group 2: Blade Operator, pulled type; Truck Crane Oiler - Driver, 25 ton capacity or over; Crane Fireman (all equipment except floating); A-Frame Truck Operator, single drum; Tugger or Coffin type Hoist Operator; Driller Tender; Auger; Oiler; Boatman; Fork Lift or Lumber Stacker Operator (on job site); Oiler, combination Guardrail Machines; Temporary Heating Plant Operator; Grade Oiler, required to check grade; Grade Checker; Tar Pot Fireman; Tar Pot Fireman (power agitated); H.D. Repairman Tender; Welder's Tender; Helicopter Radioman (ground); Roller Operator, grading of base rock (not asphalt)

Group 3: Aspahlt Plant Fireman; Pugmill Operator (any type); Truck mounted Asphalt Spreader, with Screed; Compressor Operator (any power), under 1,250 cu. ft. total capacity; Conveyor Operator; Mixer Box Operator (C.T.B., Dry Batch, etc.); Cement Hog; Concrete Saw; Concrete Curing Machine (riding type); Wire Mat or Brooming Machine; Ross Carrier Operator (on job site); Bucket Elevator Loader, Barber Greene and similar types; Hydraulic Pipe Press; Pump Operator (any power), 4" and over; Hydrostatic Pump; Motorman; Ballast Jack Tamper; Bell Boy, phones, etc; Tamping Machine, mechanical self-propelled; Hydrographic Seeder Machine, straw, pulp or seed; Broom Operator, self-propelled (on job site); Air Filtration Equipment; Welding Machine Operator

Group 4: Screed Operator; Compactor, including Vibratory; Compressor (any power) over 1,250 cu. ft. total capacity; Combination Mixer and Compressor, Gunnite Work; Concrete Mixer Operator, single drum, under five bag capacity; Helicopter Hoist Operator; Floating Equipment Fireman; Lull Hi-lift Operator or similar type; Fork Lift, over 5 ton; Service Oiler (Greaser); Hydra Hammer or similar types; Pavement Breaker; Pump Operator, more than 5 (any size); Locomotive, under 40 tons; Roller Operator, Oiling, C.T.B.

Group 5: Extrusion Machine; Wagner Pactor or similar type (without blade); Concrete Batch Plant Quality Control Operator; Power Jumbo, Setting Slip Forms, etc. in tunnels; Slip Form Pumps, Power driven Hydraulic Lifting Device for concrete forms; Hoist, single drum; Elevator Operator; Pulva-mixer or similar types; Chip Spreading Machine Operator; Lime Spreading (on job site); Sweeper (Wayne type) Self-propelled (on job site); Tractor, rubber-tired 50 H.P. flywheel and under; Trenching Machine, maximum digging capacity 3 ft. depth

POWER EQUIPMENT OPERATORS (Cont'd)

Group 6: Asphalt Burner and Reconditioner; Pavement Grinder and/or Grooving Machine (riding type); Cast-in-place Pipe Laying Machine; Maginnis Internal Full Slab Vibrator; Concrete Finishing Machine, Clary, Johnson, Bidwell, Burgess Bridge Deck or similar type; Curb Machine, Mechanical Berm, Curb and/or Curb and Gutter; Concrete Joint Machine; Concrete Planer; Concete Paving Machine; Concrete Spreader; Loaders, rubber-tired type, 2¼ cu. yds. and under; Rock Spreaders, self-propelled

Group 7: Roller (any asphalt mix); Beltcrete; Pumpcrete Operator (any type); Fuller-Kenyon and similar; Concrete Pump; Grouting machine; Concrete Mixer, single drum, five bag capacity and over; Tower Mobile Operator; A-Frame Truck, double drum; Boom Truck; Churn Drill and Earth Boring Machine; Hydraulic Backhoe, Wheel type 3/8 cu. yds. and under with or without Front End attachments 2¼ cu. yds. and under (Ford, John Deer, Case type); Elevating Grader, Tractor towed requiring Operator or Grader; Pot Rammer; Ballast Regulator; Ballast Tamper, Multiple-purpose; Track Liner; Tie Spacer; Shuttle Car; Locomotive, 40 tons and over

Group 8: Diesel-electric Engineer, Plant, Crusher, Generator, Floating; Batch Plant and/or wet mix, one and two drum; Generator Operator; Belt Loader, Kolman and Ko Cal types; Asphalt Paver Operator

Group 9: Bulldozer; Drill Cat Operator; Side-boom Cat; Compactor, with blade; Concrete Cooling Machine; Chicago Boom and similar types; Lift Slab Machine; Boom type lifting device, 5 ton capacity or less; Cherry Picker or similar type Crane-hoist, 5 ton capacity or less; Grizzley Crusher; Crusher Plant; Drill Doctor; Boring Machine; Guardrail Punch and Auger (all types); Surface Heater and Planer; Hydraulic Backhoe, track type 3/8 cu. yds.; Loader, Front End and Overhead, 2¼ cu. yds. and under 4 cu. yds.; Hammer Operator; Pipe Cleaning, Doping, Bending and Wrapping Machines; Bolt-threading Machine; Drill Doctor (Bit Grinder); H.D. Mechanic and Welder; Machine Tool Operator; Stationary Drag Scraper; Tractor, rubber-tired over 50 H.P. flywheel; Tractor with boom attachment; Trench Machine, maximum digging capacity over 3 ft. depth; Asphalt Plant Operator

Group 10: Bulldozer, twin engine (TC 12 and similar); Cable Plow (any type); Compactor, multi-engine; Jack Operator, Elevating Barges; Barge Operator, self-unloading; Combination H.D. Mechanic - Welder, with dispatcher and/or when required to do both; Rubber-tired Dozers and Pushers (Michigan, Cat, Hough type); Driller - Percussion, Diamond, Core, Cable, Rotary and similar type

Group 11: Mixer Mobile; Concrete Breaker; Crane Operator, 25 tons and under; Combination Guardrail Machines, i.e., Punch, Auger, etc.; Shovel; Dragline; Clamshell, Hoe, etc., under 1 cu. yd.; Grade-alls, under 1 cu. yd.; Mucking Machine (tunnel)

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POWER EQUIPMENT OPERATORS (Cont'd)

Group 12: Blade Operator; Batch Plant and/or Wet Mix, 3 units or more; Reinforced Tank Banding Machine (K-17 or similar); Hoist, two or more drums; Elevating Loader, Athey and similar; Piledriver (not crane type); Rubber-tired Scraper, single and twin engine; Single Scraper, with Push-pull attachments, self-loader; Paddle Wheel, auger type; Blade mounted Spreaders, Ulrich and similar types; Shield Operator

Group 13: Blade Operator, finish; Blade, externally controlled by electronic, mechanical hydraulic means; Blade, multi-engine; Concrete Paving Road Mixer; Derrick, under 100 tons; Hoist, Stiff Leg, Guy Derrick or similar, 50 tons and over; Cableway Operator 25 ton and over; Crane, over 25 ton and including 40 tons; Pile-driver Operator; Floating Clamshell, etc., under 3 cu .yds.; Floating Crane (Derrick Barge), less than 30 ton; Elevating Grader, operated by Tractor Operator, Sierra, Euclid, or similar; Back Filling Machine; Shovel, etc. 1 cu. yd. and less than 3 cu. yds.; Grade-all, 1 cu. yd. and over; Bridge Crane Operator, Locomotive Crane, Gantry and Overhead

Group 14: Tower Crane Operator; Rubber-tired Scraper, with Tandem Scrapers, self-loading, Paddle Wheel, auger type, finish and/or 2 or more units

Group 15: Rock Hound Operator; Loader, 4 cu. yds., but less than 6 cu. yds.

Group 16: Autograder or "Trimmer"; Tandem Bulldozer, Quad-nine and similar; Automatic Concrete Slip Form Paver; Concrete Canal Line; Cableway, 25 ton and over; Crane, over 40 ton and including 100 ton; Whirley, 80 ton and under; Floating Clamshell, etc., 3 cu. yds. and over; Floating Crane (Derrick Barge) 30 ton but less than 80 ton; Loader, 6 cu. yds., but less than 12 cu. yds.; Rubber-tired Scraper, with Tandem Scrapers, multi-engine; Shovel, etc., 3 cu. yds. but less than 5 cu. yds.; Wheel Excavator, under 750 cu. yds. per hour

Group 17: Crane over 100 ton and including 200 ton; Whirley, over 80 ton and including 150 ton; Floating Crane (Derrick Barge), 80 ton, but less than 150 ton; Loader, 12 cu. yds. and over; Shovel, etc., 5 cu. yds. and over; Canal Trimmer

Group 18: Crane, over 200 ton; Whirley, 150 ton and over; Floating Crane, 150 ton but less than 250 ton; Wheel Excavator, over 750 cu. yds. per hour; Band Wagons, in conjunction with Wheel Excavator

Group 19: Helicopter, when used in erecting work; Floating Crane, 250 ton and over; Remote controlled earth moving equipment; Underwater equipment, remote or otherwise

TRUCK DRIVERS

Group 1: Battery Rebuilders; Bus or Manhaul Driver; Concrete Buggies (power operated); Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: 6 cu. yds. and under; Lift Jitneys, Fork Lifts (all sizes in loading, unloading and transporting material on job site); Loader and/or Leverman on Concrete Dry Batch Plant (manually operated); Pilot Car; Solo Flat Bed and misc. Body Trucks, 0-10 tons; Truck Tender; Truck Mechanic Tender; Water Wagons (rated capacity) - up to 1,600 gallons

Group 2: "A" Frame or Hydra-lift Truck with load bearing surface; Lubrication Man, Fuel Truck Driver, Tireman, Wash Rack, Steam Cleaner or combinations; Team Drivers

Group 3: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 6 cu. yds. and including 10 cu. yds.; Slurry Truck Driver or Leverman; Transit Mix, and Wet or Dry Mix Trucks: 5 cu. yds. and under; Tireman Water Wagons (rated capacity) - 1,600 to 3,000 gallons

Group 4: Flaherty Spreader Driver or Leverman; Lowbed Equipment, Flat Bed Semi-trailer, Truck and Trailers or doubles transporting equipment or wet or dry materials; Lumber Carrier Driver - Stadddle Carrier (used in loading, unloading and transporting of materials on job site); Oil Distributor Driver or Leverman; Water Wagons (rated capacity) - 3,000 to 5,000 gallons

Group 5: Dumpsters or similar equipment, all sizes; Transit Mix and Wet or Dry Trucks, over 5 cu. yds. and including 7 cu. yds.

Group 6: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 10 cu. yds. and including 20 cu. yds.; Transit Mix and Wet or Dry Mix Truck, over 7 cu. yds. and including 9 cu. yds.; Truck Mechanic - Welder - Body Repairman; Water Wagons (rated capacity) -5,000 to 7,000 gallons

Group 7: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains of combinations thereof: over 20 cu. yds. and including 30 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 9 cu. yds. and including 11 cu. yds.; Water Wagons (rated capacity) over 7,000 gallons to 10,000 gallons

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TRUCK DRIVERS (Cont'd)

Group 8: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 30 cu. yds. and including 40 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 11 cu. yds. and including 15 cu. yds.; Water Wagon (rated capacity) over 10,000 gallons to 15,000 gallons

Group 9: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: Over 40 cu. yds. and including 50 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 13 cu. yds. and including 15 cu. yds.

Group 10: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 50 cu. yds. and including 60 cu. yds.

Group 11: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trians or combinations thereof: over 60 cu. yds. and including 70 cu. yds.

Group 12: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 70 cu. yds. and including 80 cu. yds.

Group 13: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 80 cu. yds. and including 90 cu. yds.

Group 14: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 90 cu. yds. and including 100 cu. yds.

Drivers and Tenders (handling Sacked cement - add $0.15 per hour)

Winch Truck - takes classification of Truck on which Winch is mounted.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses 29 CFR, 5.5 (a)(1)(ii))

WELDERS; RIGGERS: Rate for craft to which welding and rigging are incidental.

SUPERSEDEAS DECISION

STATE: South Carolina COUNTIES: Statewide
DECISION NUMBER: SC84-1018 DATE: Date of Publication
Supersedes Decision Number SC83-1089, dated November 25, 1983 in 48 FR 53268.
DESCRIPTION OF WORK: HEAVY AND SEWER & WATER LINES CONSTRUCTION PROJECTS (excluding Dam Construction Projects).

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS (TANK WORK)	$16.20	3.175
BRICKLAYERS	6.40	
CARPENTERS	7.42	
~~CEMENT MASONS/CONCRETE~~		
FINISHERS	6.93	
ELECTRICIANS/LINEMEN	10.08	
IRONWORKERS	10.98	
LABORERS:		
Unskilled	4.25	
Pipelayer	4.94	
Chain saw	4.63	
MANHOLE BUILDERS	4.75	
PIPEFITTERS:		
Berkeley County	12.48	1.73
Remaining Counties	9.09	

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT		
OPERATORS:		
Backhoe	$ 6.40	
~~Bulldozer~~	~~5.90~~	
Crane	7.98	
Dragline	6.06	
Front End Loader	5.79	
Mechanic	7.09	
Motor Grader	7.15	
Scraper-Pan	5.48	
TRUCK DRIVERS	4.80	

WELDERS: RECEIVE RATE PRESCRIBED FOR CRAFT PERFORMING OPERATION TO WHICH WELDING IS INCIDENTAL.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION DECISION NO. WI84-5016 PAGE 2

SUPERSEDEAS DECISION

STATE: Wisconsin
DECISION NUMBER: WI84-5016
COUNTIES: Statewide
DATE: Date of Publication
Supersedes Decision Number WI83-2012 dated February 18, 1983 in 48 FR 7386
DESCRIPTION OF WORK: Highway and Airport Runway and Taxiway Construction (does not include bridges over navigable waters; tunnels; buildings in highway rest areas; and railroad construction)

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS; STONEMASONS:		
Zone 1	$15.35	2.05
Zone 2	12.87	2.40
Zone 3	12.70	2.42
Zone 4	13.73	2.50
Zone 5	14.30	2.35
Zone 6	13.87	3.50
Zone 7	13.39	3.10
Zone 8	15.18	3.95
Zone 9	13.89	2.60
Zone 10	14.88	2.30
Zone 11	13.00	2.70
CARPENTERS; PILEDRIVERMEN:		
Zone 1:		
Carpenters	13.90	2.65
Piledrivermen	13.16	2.65
Zone 2:		
Carpenters	13.61	2.21
Piledrivermen	14.01	2.21
Zone 3:		
Carpenters	13.61	2.21
Piledrivermen	14.01	2.21
Zone 4:		
Carpenters	15.29	2.51
Piledrivermen	15.44	2.51
Zone 5:		
Carpenters	14.41	2.26
Piledrivermen	14.50	2.26
Zone 6:		
Carpenters	13.61	2.21
Piledrivermen	14.01	2.21
Zone 7:		
Carpenters	13.61	2.21
Piledrivermen	14.01	2.21
Zone 8:		
Carpenters; Piledrivermen	14.09	2.20
Zone 9:		
Carpenters	14.65	4.03
Piledrivermen	15.82	4.16
Zone 10:		
Carpenters	14.71	1.96
Piledrivermen	14.80	1.96

	Basic Hourly Rates	Fringe Benefits
CARPENTERS; PILEDRIVERMEN (Cont'd)		
Zone 11:		
Carpenters	13.75	3.05
Piledrivermen	13.75	3.05
Zone 12:		
Carpenters	13.61	2.21
Piledrivermen	14.01	2.21
CEMENT MASONS:		
Zone 1	17.58	.70
Zone 2	13.65	2.20
Zone 3	13.35	2.50
Zone 4	13.65	2.20
Zone 5	12.68	2.42
Zone 6	14.18	2.20
Zone 7	12.85	2.90
Zone 8	13.65	2.20
Zone 9	13.65	2.20
Zone 10	12.78	4.26
Zone 11	14.35	2.85
Zone 12	15.85	
Zone 13	12.70	3.15
Zone 14	13.65	2.20
Zone 15	13.00	.75
Zone 16	13.65	.75
ELECTRICIANS:		
Zone 1	15.78	1.55 +6%
Zone 2	15.48	15%
Zone 3	15.85	.90 +9½%
Zone 4	15.13	.75+ 11½
Zone 5	17.50	.71+ 3 3/4%
Zone 6	15.79	1.55 + 3%
Zone 7	15.92	.87+ 13 ½%
Zone 8	15.54	1.54+ 12-3/4%
Zone 9	15.02	2.04+ 14%
Zone 10	15.75	27½%
Zone 11	17.50	.85+ 3½%
Zone 12	16.67	2.04 + 14%
Zone 13	14.68	2.10 + 4%

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	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
Zone 1	12.83	1.90
Zone 2	15.22	3.85
Zone 3	14.08	3.00
Zone 4	14.81	7.01
Zone 5	17.10	3.64
LINE CONSTRUCTION:		
Statewide:		
Linemen	15.47	1.00+ 9 ½%
Heavy Equipment Operators	13.92	1.00+ 9 ½%
Light Equipment Operators	12.38	1.00+ 9 ½%
Heavy Truck Drivers and Groundman	10.83	1.00+ 9 ½%
Light Truck Drivers and Groundman	10.06	1.00+ 9 ½%
Groundman	8.51	1.00+ 9 ½%
PAINTERS:		
Zone 1:		
Brush	14.85	.50
Spray and Sandblasting	15.60	.50
Zone 2:		
Brush	14.80	5%+.15
Spray and Sandblasting	13.80	5%+.15
Zone 3:		
Brush; Spray and Sandblasting	14.43	1.00
Zone 4:		
Brush	12.32½	2.45
Spray and Sandblasting	12.92½	2.45
Zone 5:		
Brush	13.95	1.00
Spray and Sandblasting	14.37	1.00
Zone 6:		
Brush; Spray and Sandblasting	15.21	1.78
Zone 7:		
Brush	13.08	1.77
Spray	14.08	1.77
Sandblasting	13.33	1.77
Zone 8:		
Brush and Spray	13.75	
Sandblasting	13.75	
Zone 9:		
Brush	14.00	
Spray and Sandblasting	14.00	

	Basic Hourly Rates	Fringe Benefits
PAINTERS (CONT'D):		
Zone 10:		
Brush	13.45	3.76
Spray	13.60	3.76
Sandblasting	13.85	3.76
Zone 11:		
Brush	13.35	1.55
Spray and Sandblasting	14.85	1.55
Zone 12:		
Brush	13.75	2.15
Spray and Sandblasting	14.35	2.15
Zone 13:		
Brush and Sandblasting	10.40	1.60
Spray	10.90	1.60
LABORERS:		
Zone 1:		
Group 1	11.18	3.59
Group 2	11.28	3.59
Group 3	11.33	3.59
Group 4	11.38	3.59
Group 5	11.43	3.59
Group 6	11.53	3.59
Group 7	11.58	3.59
Group 8	11.83	3.59
Zone 2:		
Group 1	11.20	2.63
Group 2	11.30	2.63
Group 3	11.35	2.63
Group 4	11.40	2.63
Group 5	11.45	2.63
Group 6	11.55	2.63
Group 7	11.60	2.63
Group 8	11.85	2.63
Zone 3:		
Group 1	10.25	3.58
Group 2	10.35	3.58
Group 3	10.40	3.58
Group 4	10.45	3.58
Group 5	10.50	3.58
Group 6	10.60	3.58
Group 7	10.65	3.58
Group 8	10.90	3.58
Zone 4:		
Group 1	11.35	1.88
Group 2	11.40	1.88
Group 3	11.45	1.88
Group 4	11.50	1.88
Group 5	11.55	1.88
Group 6	11.60	1.88

	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D)		
Zone 5:		
Group 1	10.43	3.59
Group 2	10.48	3.59
Group 3	10.53	3.59
Group 4	10.58	3.59
Group 5	10.63	3.59
Group 6	10.68	3.59
Zone 6:		
Group 1	11.07	1.88
Group 2	11.12	1.88
Group 3	11.17	1.88
Group 4	11.22	1.88
Group 5	11.27	1.88
Group 6	11.32	1.88
POWER EQUIPMENT OPERATORS:		
Group 1	15.65	3.42
Group 2	15.39	3.42
Group 3	15.30	3.42
Group 4	15.22	3.42
Group 5	15.14	3.42
Group 6	15.10	3.42
Group 7	15.01	3.42
Group 8	14.89	3.42
LABORERS (Sewer & Water)		
Zones 1 and 5:		
Bottomman	13.03	3.69
Pipelayer	13.52	3.69
Topman	12.61	3.69
Zone 2:		
Bottomman	11.55	2.63
Pipelayer	11.95	2.63
Topman	11.35	2.63
Zone 3:		
Bottomman	10.60	3.58
Pipelayer	11.00	3.58
Topman	10.40	3.58
Zone 4:		
Bottomman	11.60	1.88
Pipelayer	11.80	1.88
Topman	11.45	1.88
Zone 6:		
Bottomman	11.32	1.88
Pipelayer	11.52	1.88
Topman	11.17	1.88

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Zone 1:		
Group 1	12.35	.35+a
Group 2	12.50	.35+a
Zone 2:		
Group 1	12.35	.35+b
Group 2	12.50	.35+b
Zone 3:		
Group 1	12.35	.35+c
Group 2	12.50	.35+c
WELL DRILLERS	13.47	2.45
Well Drillers Helpers	10.50	2.45

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

FOOTNOTES:
a. Per week per employee on payroll 30 days or longer, $95.87 Per week - Health, Welfare and Pension
b. Per week per employee on payroll 30 days or longer, $105.12 per week - Health, Welfare and Pension
c. Per week per employee on payroll 30 days or longer, $87.30 per week - Health, Welfare and Pension

ZONE DESCRIPTIONS

BRICKLAYERS; STONEMASONS:
Zone 1: Barron, Burnett, Chippewa, Dunn, Eau Claire, Pepin, Pierce, Polk, Rusk, St. Croix, Sawyer, and Washburn Counties
Zone 2: Adams, Clark, Forest, Langlade, Lincoln, Marathon, Menominee, Oneida, Portage, Price, Taylor, Vilas, and Wood Counties
Zone 3: Brown, Calumet, Door, Florence, Fond Du Lac, Green Lake, Kewaunee, Manitowoc, Marinette, Marquette, Oconto, Outagamie, Shawano, Sheboygan, Waupaca, Washara, and Winnebago Counties
Zone 4: Green, Lafayette, and Rock Counties
Zone 5: Buffalo, Crawford, Jackson, Juneau, La Crosse, Monroe, Trempealeau, and Vernon Counties
Zone 6: Kenosha, Racine, and Walworth Counties
Zone 7: Dane, Grant, Iowa, and Richland Counties
Zone 8: Milwaukee, Ozaukee, Washington, and Waukesha Counties
Zone 9: Columbia and Sauk Counties
Zone 10: Ashland, Bayfield, Douglas, and Iron Counties
Zone 11: Dodge and Jefferson Counties

CARPENTERS; PILEDRIVERMEN:
Zone 1: Ashland, Bayfield, and Iron Counties
Zone 2: Barron, Burnett, Buffalo, Chippewa, Clark, Dunn, Eau Claire, Pepin, Pierce, Polk, Rusk, St. Croix, Sawyer, Taylor, and Washburn Counties
Zone 3: Brown, Calumet, Door, Fond Du Lac, Green Lake, Kewaunee, Manitowoc, Marinette, Marquette, Menominee, Oconto, Outagamie, Shawano, Sheboygan, Waupaca, Waushara, and Winnebago Counties
Zone 4: Green, Rock, and Walworth Counties
Zone 5: Kenosha County
Zone 6: Jackson, La Crosse, Monroe, Trempealeau, and Vernon Counties
Zone 7: Adams, Columbia, Crawford, Dane, Dodge, Grant, Iowa, Jefferson, Juneau, Lafayette, Richland, and Sauk Counties
Zone 8: Florence County
Zone 9: Milwaukee, Ozaukee, Washington, and Waukesha Counties
Zone 10: Racine County
Zone 11: Douglas County
Zone 12: Forest, Langlade, Lincoln, Marathon, Oneida, Portage, Price, Vilas, and Wood Counties

ZONE DESCRIPTIONS (Cont'd)

CEMENT MASONS:
Zone 1: Bayfield, Douglas, Price, Sawyer, and Washburn Counties
Zone 2: Barron, Burnett, Chippewa, Dunn, Polk, Rusk, and St. Croix Counties
Zone 3: Adams, Clark, Forest, Langlade, Lincoln, Marathon, Menominee, Oneida, Portage, Taylor, Vilas, and Wood Counties
Zone 4: Eau Claire, Pepin, and Pierce Counties
Zone 5: Brown, Calumet, Door, Florence, Fond Du Lac, Green Lake, Kewaunee, Manitowoc, Marinette, Marquette, Oconto, Outagamie, Shawano, Sheboygan, Waupaca, Waushara, and Winnebago Counties
Zone 6: La Crosse County
Zone 7: Racine and Kenosha Counties
Zone 8: Dodge and Jefferson Counties
Zone 9: Columbia and Sauk Counties
Zone 10: Milwaukee, Ozaukee, Washington, and Waukesha Counties
Zone 11: Dane, and Rock Counties
Zone 12: Grant County
Zone 13: Walworth County
Zone 14: Ashland and Iron Counties
Zone 15: Green, Iowa, and Lafayette Counties
Zone 16: Buffalo, Crawford, Jackson, Juneau, Monroe, Richland, Trempealeau, & Vernon Counties

ELECTRICIANS:
Zone 1: Calumet, Green Lake, Marquette, Outagamie, Waupaca, Waushara, and Winnebago Counties
Zone 2: Barron, Buffalo, Burnett, Chippewa, Clark, Dunn, Eau Claire, Jackson, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempealeau, and Washburn Counties
Zone 3: Brown, Door, Kewaunee, Manitowoc, and Oconto Counties
Zone 4: Adams, Florence, Forest, Juneau, Langlade, Lincoln, Marathon, Marinette, Menominee, Oneida, Portage, Shawano, Vilas, and Wood Counties
Zone 5: Kenosha County
Zone 6: Crawford, Grant, La Crosse, Monroe, Richland, and Vernon Counties
Zone 7: Green, Jefferson, Lafayette, Rock, and Walworth Counties
Zone 8: Columbia, Dane, Dodge, Iowa, and Sauk Counties
Zone 9: Fond Du Lac and Sheboygan Counties
Zone 10: Ashland, Bayfield, Douglas, and Iron Counties
Zone 11: Racine County
Zone 12: Milwaukee, Ozaukee, Washington, and Waukesha Counties

IRONWORKERS:
Zone 1: Grant County
Zone 2: Ashland, Barron, Bayfield, Burnett, Douglas, Iron, Price, Rusk, Sawyer, Vilas, and Washburn Counties
Zone 3: Adams, Clark, Columbia, Crawford, Dane, Dodge, Florence, Fond Du Lac, Forest, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Langlade, Lincoln, Marquette, Marathon, Menominee, Monroe, Oconto, Oneida, Outagamie, Portage, Richland, Rock, Sauk, Shawano, Taylor, Vernon, Walworth, Waupaca, Waushara, Winnebago, and Wood Counties
Zone 4: Brown, Calumet, Door, Kenosha, Kewanee, Marinette, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha Counties
Zone 5: Buffalo, Chippewa, Dunn, Eau Claire, Pepin, Pierce, Polk, St. Croix, and Trempealeau Counties

ZONE DESCRIPTIONS (Cont'd)

PAINTERS:
Zone 1: Florence, Forest, Iron, Langlade, Lincoln, Marathon, Menominee, Oneida, and Vilas Counties
Zone 2: Barron, Buffalo, Chippewa, Dunn, Eau Claire, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Trempealeau, and Washburn Counties
Zone 3: Brown, Door, Kewaunee, and Oconto Counties
Zone 4: Kenosha and Walworth Counties
Zone 5: Adams, Clark, Crawford, Jackson, Juneau, La Crosse, Monroe, Portage, Vernon, Taylor, and Wood Counties
Zone 6: Ashland, Bayfield, Burnett, and Douglas Counties
Zone 7: Columbia, Dane, Dodge, Grant, Green, Iowa, Layafette, Richland, Rock, and Sauk Counties
Zone 8: Calumet and Manitowoc Counties
Zone 9: Marinette County
Zone 10: Jefferson, Milwaukee, Ozaukee, Washington, and Waukesha Counties
Zone 11: Fond Du Lac, Green Lake, Marquette, Outagamie, Shawano, Waushara, Waupaca, and Winnebago Counties
Zone 12: Racine County
Zone 13: Sheboygan County

LABORERS:
Zone 1: Milwaukee and Waukesha Counties
Zone 2: Racine County
Zone 3: Kenosha County
Zone 4: Dane County
Zone 5: Washington and Ozaukee Counties
Zone 6: Remainder of State

TRUCK DRIVERS:
Zone 1: Entire State except those Counties in Zones 2 and 3
Zone 2: Milwaukee, Ozaukee, Washington, and Waukesha Counties
Zone 3: Racine and Kenosha Counties

LABORERS CLASSIFICATIONS
ZONES 1, 2, and 3

Group 1: Bituminous Workers (Shoveler, Loader, Utility Man); Demolition and Wrecking Laborer; Guard Rail Builder; Reinforcing Steel Setter (pavement); Stone Handler; Tree Trimmer; Landscaper; Multiplate Culvert Assembler; Conduit Layer; Unskilled Laborer

Group 2: Bituminous Workers (Dumper, Ironer, Smoother, Tamper); Batch Truck Dumper or Cement Handler; Concrete Handler

Group 3: Chain Saw Operator; Demolition Burning Torch Laborer; Joint Sawer and Filler (pavement); Vibrator or Tamper Operator (mechanical, hand operated)

LABORERS CLASSIFICATIONS - ZONES 1, 2, and 3 (Cont'd)

Group 4: Air Tool Operator (hand operated)

Group 5: Strike Off Man

Group 6: Form Setter (curb, walk and pavement)

Group 7: Bituminous Worker (Raker and Luteman)

Group 8: Powderman, Blaster

ZONES 4 and 6

Group 1: Bituminous Workers (Dumper, Ironer, Smoother, Tamper, Shoveler, Loader, Utility Man); Strike Off Man; Joint Sawer and Filler (pavement); Concrete Handler; Demolition and Wrecking Laborer; Guard Rail Builder; Reinforcing Steel Setter (pavement); Stone Handler; Landscaper; Multiplate Culvert Assembler; Conduit Layer; Unskilled Laborer

Group 2: Tree Trimmer

Group 3: Air Tool Operator (Hand Operated); Vibrator or Tamper Operator, Mechanical (Hand Operated); Batch Truck Dumper or Cement Handler

Group 4: Chain Saw Operator; Demolition Burning Torch Laborer; Form Setter (curb, walk and pavement)

Group 5: Powderman, Blaster

Group 6: Bituminous Worker (Raker, Luteman)

ZONE 5

Group 1: Bituminous Workers (Dumper, Ironer, Smoother, Tamper, Shoveler, Loader, Utility Man); Concrete Handler; Conduit Layer; Demolition and Wrecking Laborer; Guard Rail Builder; Joint Sawer and Filler (pavement); Landscaper; Multiplate Culvert Assembler; Reinforcing Steel Setter (pavement); Stone Handler; Strike Off Man; Unskilled Laborer

Group 2: Tree Trimmer

Group 3: Air Tool Operator (hand operated); Batch Truck Dumper or Cement Handler; Vibrator or Tamper Operator, mechanical (hand operated)

Group 4: Chain Saw Operator; Demolition Burning Torch Laborer; Formsetter (curb, walk and pavement)

Group 5: Blaster, Powderman

Group 6: Bituminous Workers (Raker, Lutsman)

POWER EQUIPMENT OPERATORS

Group 1: Automatic Subgrader; Bituminous Paver or Plant; Central Concrete Plant; Concrete Breaker (heavy); Concrete Mixer-Paver; Crane; Derrick; Dragline; Dredge; Excavator (Side Boom); Grader; Loading Machine (Conveyor); Mechanic or Welder (heavy duty equipment); Milling Machine; Percussion or Rotary Drilling Machine; Pile Driver; Placer-Spreader; Power Shovel; Screed (Bituminous Paver); Slipform Paver; Stabilizing Mixer (self-propelled); Steel Roller (over 5 tons); Tractor (Scraper, Dozer, Pusher, Loader, Endloader, Backhoe); Trench Machine Tube Finisher

Group 2: Concrete Mixer (less than 21 C.F.); Concrete Pump; Steel Roller (5 tons or less)

Group 3: Shouldering Machine

Group 4: Concrete Breaker (light); Concrete Spreader; Curing Machine; Finishing Machine; Launch; Mechanical Float; Roller (Pneumatic tired self-propelled); Subgrader (Form Paving); Tractor (light equipment); Tractor (towing Compactors and light equipment)

Group 5: Fireman; Environmental Burner

Group 6: Air Compressor; Curb Machine; Drilling or Boring Machine (heavy); Generator; Greaser (Heavy equipment); Stump Chipper; Tank Car Heater

Group 7: Crusher or Screening Plant; Screed (Milling Machine)

Group 8: Oiler; Percussion or Rotary Drilling Machine Helper; Pump (over 3 inches)

TRUCK DRIVERS

Group 1: Truck Drivers, 2 axle; Mechanics Helper, Truck

Group 2: Truck Drivers 3 or more axles; Euclids or Dumptor units; Mechanics

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

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New Hampshire Wilderness Act of 1984. (June 19, 1984; 98 Stat. 259) Price: $1.50

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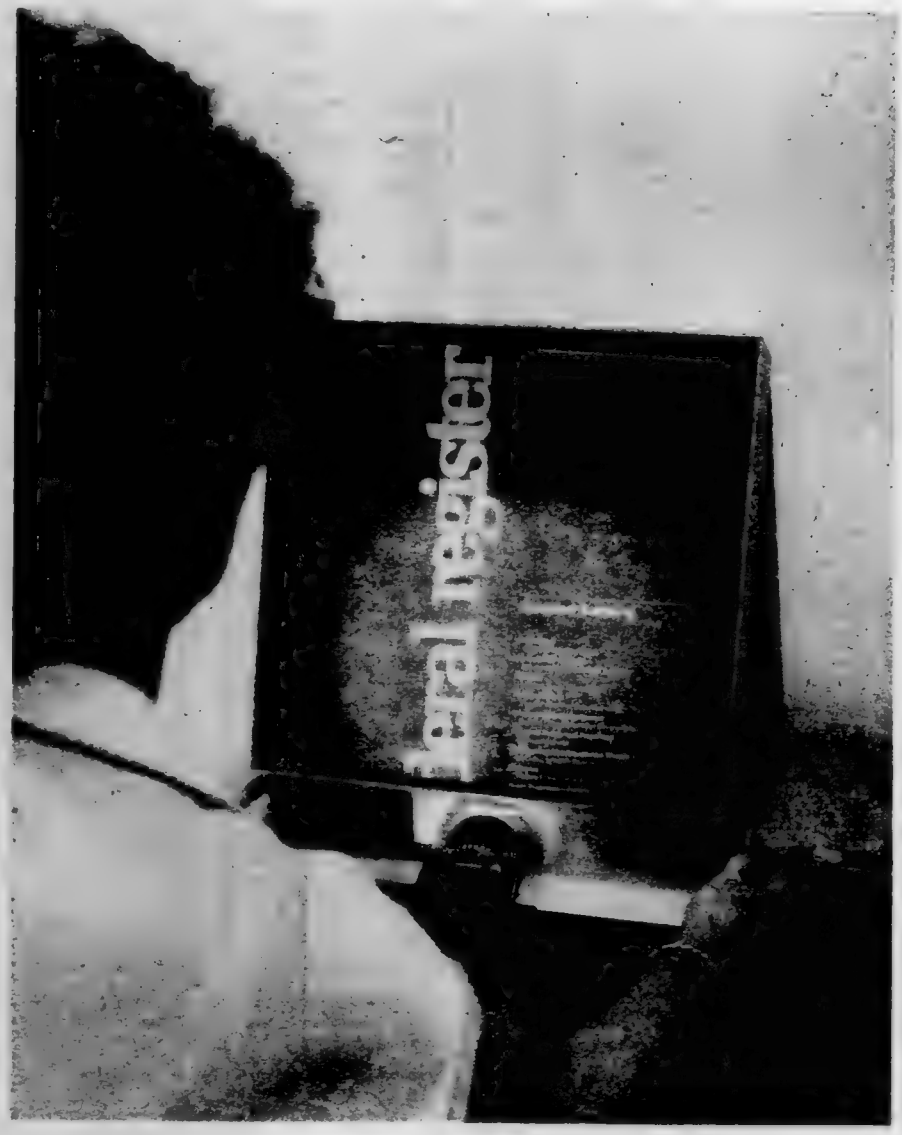
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Rules and Regulations

Federal Register
Vol. 49, No. 123
Monday, June 25, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2, Amdt. 37]

Delegations of Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Administrator has approved an increase of the dollar amount limitation of authority delegated the Small Business Administration's District and Regional Office Claims Review Committees. Compromise settlements by these committees is an Agency method of recovering funds still owed by borrowers even after liquidation of their loan. The delegated authority, which includes the determination of committee membership and dollar amount limitations which can be settled, differ at district, region, and Central Office levels. Consequently, debt amounts exceeding each committee's authority level are passed on to the next highest committee for action.

The Agency has experienced increased claims compromise activity in recent years involving greater recoverable debt amounts. More cases are being received in the Central Office after having been reviewed and commented upon by District and Regional Claims Review Committees.

The delegation of authority increase to field Claims Review Committees will allow an increased number of settlement procedures in those offices and, correspondingly, reduce the time and manpower loss of cases formerly reviewed but not settled by these offices.

EFFECTIVE DATE: June 25, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald Allen, Information Resources Management Branch, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Telephone No. (202) 653-8538.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 are not required and this amendment to Part 101 is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedures, Organization and functions (Government agencies).

PART 101—[AMENDED]

For the reasons set forth in the preamble and pursuant to authority in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 101, 13 CFR 101.3–2 is amended as set forth below:

§ 101.3–2 [Amended]

1. Part V, Section A, paragraph 1, subparagraphs a through d are revised as follows:

a. Claims not in excess of $100,000 (excluding interest) upon *majority* vote of the Committee.

b. Claims not in excess of $150,000 (excluding interest) upon *unanimous* vote of the Committee.

c. Claims in excess of $150,000 (excluding interest) when the amount offered represents the full principal balance due thereby forgiving only the interest upon *unanimous* vote of the Committee.

d. Settlement offers on claims of any size may be declined upon majority vote of the Committee.

2. Part V, Section A, paragraph 2, subparagraphs a through c are revised as follows:

a. Claims not in excess of $200,000 (excluding interest) upon *majority* vote of the Committee.

b. Claims in excess of $200,000 but not exceeding $300,000 (excluding interest) upon *unanimous* vote of the Committee.

c. Settlement offers on claims of any size may be declined upon majority vote of the Committee.

Dated: June 19, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-16678 Filed 6-22-84; 8:45 am]
BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9155]

Great Lakes Chemical Corp., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: This consent order requires the leading producer of elemental bromine and brominated flame retardents in the U.S., to grant PPG Industries, Inc. (PPG), according to a prescribed non-exclusive licensing agreement, all the latest technology and know-how on brominated flame retardents acquired from Velsicol Chemical Corp. The order requires Great Lakes to enter into other agreements that would govern the operation and ownership rights of Arkansas Chemicals, Inc. (ACI), a joint bromine production venture between Great Lakes and PPG. The agreements would, among other things, eliminate certain restrictions on PPG's use of bromine purchased from ACI; permit PPG to sell elemental bromine in the merchant market; allow PPG to use ACI bromine in the production of all brominated compounds, including flame retardents; and require Great Lakes to purchase a specified amount of bromine from ACI annually. In addition to specific record keeping and reporting requirements, the order prohibits Great Lakes from acquiring any concern engaged in the production of elemental bromine or brominated flame retardents without prior Commission approval for a period of 10 years.

The Commission, under separate order dismissed the proceedings against Northwest Industries, Inc. and Velsicol Chemical Corp.

DATE: Complaint issued June 23, 1981. Decision and Order issued May 23, 1984.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS–2, John V. Lacci, Washington, D.C. 20580. (202) 254–8644.

SUPPLEMENTARY INFORMATION: On Monday, March 12,, 1984, there was published in the **Federal Register**, 49 FR

[1] Copies of the Complaint and the Decision and Order filed with the original document.

9220, a proposed consent agreement with analysis In the Matter of Great Lakes Chemical Corporation, a corporation, Northwest Industries Inc., a corporation, and Velsicol Chemical Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5–20 Federal Trade Commission Act. Subpart—Correction Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–43 Grant license(s); § 13.533–45 Maintain records; § 13.533–60 Release of general, specific, or contractual constrictions, requirements, or retraints.

List of Subjects in 16 CFR Part 13

Flame retardents, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 84–16655 Filed 6–22–84; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 31

Fees for Leverage Commodity Registration

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission recently proposed to establish a $7,500 fee for leverage commodity registration applications. 49 FR 3878 (Jan. 31, 1984). After further reviewing its projected costs in light of the actual or anticipated applications for registration, and upon considering the concerns expressed by several commenters, the Commission is now adopting the fee in final form at a level of $3,500 per application. It is anticipated that this fee will recover a substantial portion of the actual costs to the Commission in reviewing applications for registration of leverage commodities.

EFFECTIVE DATE: July 25, 1984.

FOR FURTHER INFORMATION CONTACT: Daniel S. Goodman, Esquire, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION:

I. Introduction

Commission rule 31.6, 17 CFR 31.6 (1984), provides that the Commission must register each leverage commodity upon which a leverage transaction merchant offers a leverage contract for sale. The Commission's staff will spend a substantial amount of time analyzing each application to register a leverage commodity. This analysis will include both studying the underlying cash market for the commodity and scrutinizing the terms and conditions of the proposed contract.

On January 31, 1984, the Commission published for comment in the **Federal Register** a proposed fee of $7,500 for each application for registration of a leverage commodity. 49 FR 3878. The $7,500 figure was based on an estimate that, on average, it would take at least three-fourths as much staff time to process an application for a leverage commodity registration as it takes to process an application for designation as a futures contract market, for which the Commission currently charges a $10,000 fee. *See* 17 CFR Part 5, Appendix B (1984); 48 FR 38214 (Aug. 23, 1983) (final schedule of fees).

After reviewing the comments submitted by five firms, at least four of which have applied or intend to apply for registration as a leverage transaction merchant,[1] and the list of proposed commodities for which the firms have filed or intend to file registration applications, the Commission developed a more precise estimate of the costs involved in analyzing each application for a leverage commodity registration. The revised estimate, $3,750 per application, was based upon the Commission's knowledge of how many and what kinds of leverage commodity registration applications it had received or was likely to receive in the near future.

[1] The five commenters were: First National Monetary Corporation (comments submitted by its general counsel, Simon, Deitch, Siefman, Tucker and Friedman), Monex International, Ltd., American Coin Exchange, Investment Metals International, Inc., and International Precious Metals Corporation.

II. Comments on Proposed Fee

The great bulk of the comments received on the proposed $7,500 fee dealt with its size and the way in which it was computed. Without exception, the commenters thought that the proposed fee was excessive. Some felt that the proposed fee was so high as to be anticompetitive. Other commenters suggested that it was improper to compare the proposed fee to the Commission's fee for contract market designation applications.

The Commission believes that all of these comments have largely been answered by its decision to slice the proposed fee by more than half. The $3,500 figure includes compensation and benefit costs of the staff and supervisory time devoted to scrutiny of the terms and conditions of the proposed leverage commodity contracts and analysis of the underlying cash markets. It also includes travel costs, the costs of support personnel, and a 32% overhead figure, which represents the Commission's actual overhead percentage for space, supplies, utilities, etc. The Commission feels confident that its estimated cost of $3,750 per leverage commodity registration application, which was rounded down to $3,500, is a very conservative figure.

Some commenters noted that they would be submitting applications for registration of several similar leverage commodities. For instance, a firm might submit one application for registration of a 2,000 oz. silver bullion contract and another application for registration of a 1,000 oz. silver bullion contract. These commenters thought it would be inequitable to charge the same fee for several similar leverage commodity registration applications.

The Commission agrees that there are economies of scale in analyzing similar applications submitted by the same firm. There are also economies involved in considering applications submitted by different firms for the registration of similar or identical leverage commodities. The Commission took these economies of scale into account in arriving at its $3,500 fee. The $3,500 figure represents a conservative estimate of the average cost of considering an application for registration of a leverage commodity. In this regard, the Commission believes that it is far more equitable to charge every firm the same fee than, for example, to charge the first firm submitting a gold coin application a very high fee and all subsequent firms submitting gold coin applications a much lower fee.

One commenter expressed its belief that the Commission lacks statutory authority to compel the registration of leverage commodities and argued that, *a fortiori*, the Commission lacks authority to impose fees on applications for leverage commodity registration. The Commission finds no support for that position. In 1982, Congress added language to Section 19 of the Commodity Exchange Act requiring the Commission to regulate leverage transactions "under such terms and conditions as the commission shall prescribe * * *." 7 U.S.C. 23(c). The registration of leverage commodities is a vital part of the Commission's regulatory scheme for the leverage industry and is clearly within the scope of the Commission's broad Congressional mandate.

Another commenter stated that the Independent Offices Appropriation Act of 1952 ("IOAA"), *see* 31 USCA 9701, requires that fees be charged only for a service which benefits the recipient of the service. The commenter contended that the Commission's registration of leverage commodities will not benefit leverage transaction merchants. This argument is contradicted by the case law interpreting the IOAA. *See National Cable Television Association* v. *FCC*, 554 F.2d 1094 (D.C. Cir. 1976) ("*NCTA*") (annual cable television authorization fee); *Mississippi Power and Light Co.* v. *United States Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980) (application, permit, and license fees for nuclear power facilities); *Nevada Power Co.* v. *Watt*, 711 F.2d 913 (10th Cir. 1983) (application fees for rights of way under the Federal Land Policy and Management act of 1976). The discussion in *NCTA* is particularly appropriate:

> In arguing that there is no justification for an annual fee against any cable operator, petitioners attempt to make much of the fact that it was not nessessary * * * for the Commission to assume this regulatory authority * * * and thus that the agency in truth renders no "service" or "benefit" to them. Unlike * * * other industries, it is argued, the cable television industry could have developed better without FCC regulation * * *. All that may be true, but * * * [t]he fact is that the FCC has undertaken to regulate this industry * * * with the result that a certificate of compliance *has* become a necessary and therefore valuable license.

554 F.2d at 1101–02 (footnotes omitted). In any event, it should be noted that in addition to its reliance upon the IOAA in promulgating this fee, the commission also bases its legal authority on the relevant portions of the commodity exchange Act, as amended, and the Futures Trading Act of 1978, as amended.

The same commenter expressed the view that it would be inappropriate for the commission to charge a fee for leverage commodity registration applications based upon only an estimate of the costs involved in considering such applications. The Commission is mindful of its statutory obligation not to charge fees for an activity which exceed the actual cost thereof. 7 U.S.C. 16a(c). Therefore, the commission believes that it is fully appropriate to set a leverage commodity registration fee initially at a figure based upon a conservative estimate of the costs to be incurred. Of course, the commission will review the $3,500 figure in subsequent fiscal years, when actual Commission cost data become available, to be sure that the fee does not exceed the Commission's actual costs.

When it published the proposed leverage commodity registration fee in January, the Commision stated that it had "determined that should it decide to adopt the proposed fee schedule as a final fee schedule, good cause would exist for making the fee schedule effective prior to the registration of any leverage commodity under [17 CFR] 31.6. *See* 5 U.S.C. 553(d)(3)." 49 FR 3879. The Commission received no comments on this aspect of its proposal and reaffirms its decision to make the fee applicable to all pending applications for leverage commodity registration. In order to avoid subjecting any firm to the fee involuntarily, however, the Commission has determined to provide a firm with a pending application an opportunity to withdraw that application without prejudice. Accordingly, any application for leverage commodity registration will be considered withdrawn without prejudice if the Commission does not receive the $3,500 fee within 10 days of the effective date of this fee schedule. Any application for leverage commodity registration received after this fee schedule takes effect will be returned if not accompanied by the $3,500 fee. The Commission will not refund any fees which it receives.

III. Regulatory Flexibility Act

The Commission has previously determined that leverage transaction merchants are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, 49 FR 20646 (May 16, 1984). Thus, the requirements of the Regulatory Flexibility Act do not apply to leverage transaction merchants. While one commenter expressed disagreement with this determination, it is difficult to see how a firm which must by regulation maintain a minimum base adjusted net capitalization of $2,500,000 can be considered small. *See* 17 CFR 31.9 (1984). Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule promulgated herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 31

Applications for leverage commodity registration, Fees, Commodity futures.

Adding Appendix A to Part 31 of Title 17 CFR

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular in Sections 5, 5a, 8a(5), and 19, 7 U.S.C. 7, 7a, 12a(5), and 23; in Section 26 of the Futures Trading Act of 1978, as amended by Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a; and in the Independent Offices Appropriation Act of 1952, as amended by Pub. L. 97–258, 96 Stat. 1051 (Sept. 13, 1982) (*see* 31 USCA 9701), the Commission hereby amends Part 31 of Chapter 1 of Title 17 of the Code of Federal Regulations by adding Appendix A. In taking this action, the Commission has considered the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Commodity Exchange Act.

PART 31—REGULATION OF LEVERAGE TRANSACTIONS

Appendix A is added to Part 31 to read as follows:

Appendix A—Schedule of Fees for Registration of Leverage Commodities

(a) Each application for registration of a leverage commodity must be accompanied by a check or money order in the amount of $3,500 made payable to the Commodity Futures Trading Commission.

(b) Checks or money orders should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. No checks or money orders may be accepted by personnel other than those in the Office of the Secretariat.

(c) Failure to submit the fee with an application for registration of a leverage commodity will result in the return of the application. Fees will not be returned after receipt.

(d) Any firm with an application for registration of a leverage commodity pending on the date that this fee schedule becomes effective must submit its application fee within 10 days of that date. Otherwise, the application shall be deemed withdrawn without prejudice and shall be returned to the applicant.

Issued in Washington, D.C., on June 19, 1984, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-16811 Filed 6-22-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

[T.D. 84-130]

Amorphous Silicas: Change of Tariff Classification

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document gives notice that Customs is changing its current established and uniform practice of classifying imported synthetically produced amorphous silicas as "silica", free of duty. After reviewing comments received in response to the notice proposing this change, Customs will now classify that merchandise under the tariff provision for "other inorganic compounds", at the appropriate rate of duty.

EFFECTIVE DATE: This change of practice will be effective as to merchandise entered for consumption, or withdrawn from warehouse for consumption, on or after September 24, 1984.

FOR FURTHER INFORMATION CONTACT: John G. Hurley, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to an established and uniform practice, based on Treasury Decision 68-29(14) and subsequent importations, Customs has classified highly dispersed, synthetically produced amorphous silicas, including silica gel, under the provision for silica, not specially provided for, in item 523.11, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202).

However, information has been developed by Customs to indicate that the merchandise in question, being synthetically produced, has significantly different physical and chemical properties from mineral silica and does not have the same use(s) as the natural substance. In addition, it appears that synthetic amorphous silicas are not used in the trade or commerce as substitutes for the mineral silica.

Change of Practice

On the basis of the above information, Customs has determined that the established and uniform practice of classifying synthetically produced amorphous silicas as (mineral) silica, in item 523.11, TSUS, is clearly wrong. It is Customs position that synthetic amorphous silicas, including the silica gel in question, a highly dispersed silica produced by the pyrogenic method from silicon tetrachloride, which is an anhydride of silicic acid, is properly classifiable under the provision for other inorganic compounds, in item 423.00, TSUS, and is dutiable. A notice proposing this change of practice was published in the **Federal Register** on April 29, 1983 (48 FR 19395).

Discussion of Comments

Four comments were received in response to the notice, all opposed. It was the commenters' contention that synthetic amorphous silicas, including silica gel, are a form of the mineral silica. Silica gel is said to be a polymerized colloidal silica. Synthetic amorphous silicas are said to be technically described as substantially dehydrated polymerized silica. It is argued that item 523.11, TSUS, silica, not specially provided for, is an *eo nomine* provision, and, therefore, includes the synthetic forms. In support of their position the commenters submitted several brochures in which synthetic amorphous silicas and silica gel were referred to as forms of silica.

A common definition of a synthetic mineral is a substance having the same chemical composition, crystalline form and other physical properties of the naturally occurring mineral. In other cases concerning the identification of the synthetic material as the natural for tariff purposes, the court has said that the term "rubber" as used in the tariff schedules includes rubber produced by artificial means, provided it is the same substance or possesses the essential characteristics and qualities of the material known as rubber. Synthetic rubber tires were known in the trade as rubber tires and there was no difference between the natural rubber tire and the synthetic rubber tire. *A. M. Deringer* v. *United States,* (C.D. 1882). The court also stated that synthetic diamond particles possess many of the chemical, mineralogical and physical properties of natural diamonds and are considered by scientists and the industrial diamond trade to be diamonds, and have the same end uses. *Christensen Diamond Product* v. *United States* (C.D. 2537).

Thus, the criteria to be met in order to identify the synthetic material as the natural for tariff purposes is whether the synthetic material has the same chemical, mineralogical and physical properties as the natural, considered by scientists and the trade to be the same, and has the same end uses.

In this case, as to the synthetic amorphous silicas, the physical and chemical properties are different from the mineral silica. The mineral is crystalline in structure, while the synthetic amorphous form is described as a form of dehydrated polymerized silica. While the mineral silica is an abrasive and toxic, the synthetic amorphous silicas are not abrasive and not toxic, to the extent that many forms are used in foods.

Thus, the principal thing that the mineral and synthetic amorphous silicas have in common is that they are called "silica," apparently because they contain the element silicon. However, the synthetic amorphous form is not a substitute for the mineral, since it is not used for the same purposes as is the mineral form. Although it may be referred to as silica, it is not identified with the mineral by technical experts.

Rather than being a synthetic form of the mineral, synthetic amorphous silicas are manufactured items which bear little similarity to the mineral, having separate and distinct properties and uses totally different from the mineral form.

Change of Practice

After careful analysis of the comments and further review of the matter, synthetically produced amorphous silicas, including "silica gel", will be classifiable under the provision for other inorganic compounds in item 423.00, TSUS, subject to the appropriate rate of duty.

This change of practice revokes T.D. 68-29(14) and any other existing Treasury or Customs Decisions, or other administrative rulings, to the extent that they are inconsistent with the new practice.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 177

Administrative practice and procedure, Customs duties and inspection, Government procurement.

Dated: June 19, 1984.

William von Raab,

Commissioner of Customs.

[FR Doc. 84-16621 Filed 6-22-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 621

[General Administration Letters Nos. 5-84 and 10-84]

Procedures for Processing Applications for Certification of Temporary Employment in Nonagricultural Occupations in the United States

AGENCY: Employment and Training Administration, Labor.

ACTION: Rule-related notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) has issued two directives explaining the procedures for processing applications for certification of the temporary employment of nonimmigrant aliens in nonagricultural occupations in the United States. They are being published in the **Federal Register** for the information of the general public.

DATES: General Administration Letter (GAL) No. 5-84 was issued on December 1, 1983, and GAL No. 10-84 was issued on April 23, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening. Telephone: 202-376-6728.

SUPPLEMENTARY INFORMATION: Whether to grant or deny an employer's petition to import a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, the Commissioner of the Immigration and Naturalization Service (INS). 8 U.S.C. 1101(a)(15)(H)(ii) and 1184 (a) and (c). Pursuant to the requirement that the Attorney General consult with appropriate agencies of the government concerning the importation of nonimmigrant (so-called "H-2") workers, INS has determined that prior to granting or denying such petitions it first will request DOL to advise INS on the availability of qualified U.S. workers for the jobs offered to the H-2 aliens, and whether the wages and working conditions attached to such job offers will adversely affect similarly employed U.S. workers. 8 U.S.C. 1184(c); 8 CFR 214.2(h)(3)(i).

Pursuant to the INS regulations, DOL has published regulations at 20 CFR Part 621 for the certification of temporary employment of nonimmigrant aliens in nonagricultural employment in the United States. The Employment and Training Administration (ETA) of DOL administers those regulations and has issued two directives to ETA regional offices and State employment security agencies outlining general processing standards for temporary alien nonagricultural labor certification applications. General Administration Letter (GAL) No. 5-84 (December 1, 1983) sets forth procedures for temporary alien labor certification applications for employment in the entertainment industry. GAL No. 10-84 (April 23, 1984) sets forth the procedures for processing applications for temporary alien labor certifications in other nonagricultural occupations.

GAL Nos. 5-84 and 10-84 are reprinted below for the information of the general public.

Signed at Washington, D.C., this 19th day of June, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary for Employment and Training.

Dated: December 1, 1983.

Directive: General Administration Letter No. 5-84

To: All State Employment Security Agencies

From: Royal S. Dellinger, Acting Assistant Secretary of Labor

Subject: Procedures for Temporary Labor Certifications in the Entertainment Industry

1. *Purpose.* To transmit subject procedure.

2. *Reference.* 20 CFR Parts 621 and 655.

3. *Background.* On May 6, 1983, all regions were provided interim processing and recruitment procedures for temporary applications in the entertainment industry. The attached procedures replace those interim procedures.

4. *Action Required.* Administrators are requested to:

a. Provide attached procedures to appropriate staff.

b. Instruct staff to provide application forms and advise employers of procedures for filing temporary labor certification applications in the entertainment industry.

5. *Inquires.* Direct questions to the appropriate regional office.

6. *Attachments.*

a. Procedures for temporary labor certification in the entertainment industry.

b. List of responsible regional and State Job Service Offices.

c. Map of OSEs and areas covered.

d. List of unions in the entertainment industry.

Expiration date: December 31, 1984.

Procedures for Temporary Labor Certifications in the Entertainment Industry

I. Background.

The Department has been addressing the issue of nonimmigrant aliens coming to the United States for temporary employment in the entertainment industry while high levels of unemployment among U.S. workers in the industry still persist.

The following procedures completely centralize temporary labor certification authority in the entertainment industry in three regions; clarify processing requirements; and ensure uniformity among the responsible regions.

II. Operating Guidelines

A. Decisions on applications by employers seeking temporary admission of nonimmigrant aliens for temporary employment in entertainment occupations require special considerations, such as:

1. An assessment of requirements of the role or the act to be performed.

2. The need to keep the unity of a group or company and support personnel.

3. The role of labor unions in this highly unionized field and their impact on employment opportunities.

4. The willingness of available U.S. workers to fulfill the employer's prescribed itinerary.

B. Based on factors, such as the need to develop expertise, the concentration of activities for requests for aliens in entertainment, and the proximity to sources that know about the availability of U.S. performers in various entertainment fields, regional certifying officers in New York City, Dallas, and San Francisco are designated as the appropriate officials for issuing determinations on applications for temporary employment of aliens in the entertainment industry.

C. Offices of the State job services in New York City, Austin and Los Angeles are designated as Offices Specializing in Entertainment (OSEs). These offices shall receive temporary applications in the entertainment industry directly from employers within their jurisdiction for processing. Permanent applications in the entertainment industry, however, are processed by each State agency and the 10 regional offices.

The jurisdictional breakdown is as follows (Also see attached map):

Region	DEE	States served by
New York	New York City Alien Employment Certification Office.	Region I. Region II. Region III. Region IV.
Dallas	Texas Employment Commission. Austin Alien Labor Certification Unit.	Region V. Region VI. Region VII.
San Francisco	Los Angeles Alien Certification Office	Region VIII Region IX. Region X.

D. Canadian musicians who enter the U.S. to perform within a 50-mile area adjacent to the Canadian border for a period of 30 days or less are precertified and not subject to these procedures.

E. Pub. L. 97-271 limits temporary employment of entertainers in the Virgin Islands to periods not to exceed 45 days. Therefore, the period of labor certification for such applications may not exceed 45 days.

F. Occupations in the entertainment industry shall include performers and all technical and support personnel involved with a performance.

G. When a job offer contains requirements or conditions which preclude effective recruitment of U.S. workers, i.e., there is no employer in the U.S., the OSE shall disregard recruitment procedures below and shall immediately send the application to the certifying officer for determination.

III. Procedures

A. Temporary Labor Certification Applications for Aliens in the entertainment industry shall be filed by employers with the OSE serving the area of intended employment (see map of OSE jurisdictions). Note: When the job opportunity requires the work to be performed in more than one OSE jurisdiction, the application should be filed with the OSE having jurisdiction over the area where the employment will begin.

B. To allow for enough recruitment of U.S. workers and to give OSEs and regional offices enough processing time, employers should be advised to file their applications at least 45 calendar days before the labor certification is needed. The Department of Labor cannot assure a timely determination if the employers provides less time.

C. When filed, the temporary application should include:

1. A completed ETA-750, Part A, the offer of employment portion of the application for Alien Employment Certification form signed by the employer.

2. An itinerary of locations and duration of work in each location when there is more than one worksite.

3. Documentation of the employer's efforts, if any, to recruit U.S. workers, and the results.

D. The OSE shall review the application for completeness and determine the prevailing wage, guided by standards in regulations at 20 CFR Part 656.40. The wage survey should be done by telephone contact with unions, associations, or any other appropriate sources and the prevailing wage should be computed on a daily or weekly basis.

E. The employer must specify a wage which meets or exceeds the daily or weekly rate and covers each day of the work week that the alien is in the United States for the duration of the employment regardless of hours worked.

F. The employer shall advertise the job opportunity before or after filing the application in a national publication that is likely to bring responses from U.S. workers. The advertisement shall:

1. Identify the employer's name, address, and the location of the employment, if other than the employer's location;

2. Describe the job opportunity in detail,

3. State the rate of pay, which shall not be below the prevailing wage for the occupation;

4. Offer prevailing working conditions,

5. State the employer's minimum job requirements;

6. Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien.

G. The OSE shall write to the appropriate national union(s) (listing enclosed) for availability information and confirmation of the prevailing wage. The following procedures and conditions shall apply to union contacts:

1. The letter to the union shall not identify the employer, but shall describe the type of establishment, the job duties, location and dates of employment, hours of work, wages, and working conditions.

2. From the date the letter to the union is mailed, 10 working days should be allowed to receive a written response. If no response is received after 10 working days, the union should be contacted by telephone to verify if the request was received. If there is availability, 5 additional work days should be allowed for a written response before making a determination based on available information in the application file.

3. Acceptable availability information from unions shall include names, addresses, and telephone numbers of U.S. workers who meet the employer's requirements for the job opportunity.

4. If the union(s) provide names of qualified U.S. workers, the OSE shall refer the list to the employer for direct contact with the applicants.

5. The name of the union, the union representative contacted, and the date of contact must be included on the transmittal form to the regional office for each application.

H. The employer may be required to recruit through other sources which are appropriate for the occupation and customary in the industry, such as talent agencies, agents, and casting directors.

I. A recruitment or information source which asserts the availability of qualified U.S. workers must provide specific information on the U.S. workers, including their names, addresses, and telephone numbers so that the employer may contact them.

J. If the certifying officer finds that the employer has adequately recruited U.S. workers in the previous six weeks before filing the application, the prescribed recruitment through the OSE may be waived. The employer may make a written request for a waiver of recruitment through the OSE. The OSE will send the request along with the application to the certifying officer for evaluation.

K. The employer must provide the OSE a copy of the advertisement showing the name of the publication and the dates published and written results of all recruitment which must:

1. Identify each recruitment source by name;

2. State the name, address, and telephone number of each U.S. worker who applied for the job; and

3. Explain the lawful job-related reasons for not hiring each U.S. worker.

L. When recruitment through all sources is completed, the OSE shall send the application, together with all pertinent information, to the appropriate regional certifying officer in New York, Dallas, or San Francisco.

IV. Determinations

A. The certifying officer shall consider circumstances unique to the entertainment industry and determine whether to grant or to deny the temporary labor certification, or to issue a notice that the required determination cannot be made based on whether or not:

1. U.S. workers are available for the temporary employment opportunity:

a. The certifying officer, in judging if a U.S. worker is available for the temporary employment opportunity, shall determine from documented results of the employer and local office recruitment efforts if there are other

appropriate sources of workers, where the employer should have recruited or may recruit U.S. workers. If further recruitment is required, the application should be returned to the OSE with specific instructions for the additional recruitment.

b. To determine if a U.S. worker is available, the certifying officer shall consider U.S. workers living or working in the area of intended employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expense, or at the employer's expense if the prevailing practice among employers who employ workers in the occupation is to pay such relocation expenses.

c. To determine if U.S. workers are available for job opportunities that will be performed in more than one location, workers must be available in each location on dates specified by the employer.

2. The employment of the alien will adversely affect wages and working conditions of U.S. workers similarly employed. To determine this, the certifying officer shall consider such things as labor market information, special circumstances of the industry, organization, and/or occupation, the prevailing wage rate for the occupation in the area of intended employment, and prevailing working conditions, such as hours in the occupation.

3. The job opportunity contains requirements or conditions which preclude consideration of U.S. workers or which otherwise prevent their effective recruitment, e.g., there is no employer in the U.S. Such applications shall be denied on the basis that U.S. workers are generally available for employment in the entertainment industry and it was not shown that the employer made reasonable efforts to obtain U.S. workers for the job. Under these circumstances, the Department must assume that U.S. workers are available.

B. Dates on the temporary labor certification shall be the beginning and ending dates of the actual employment not to exceed 12 months, and the date certification was granted. The beginning date of certified employment may not be earlier than the date certification was granted.

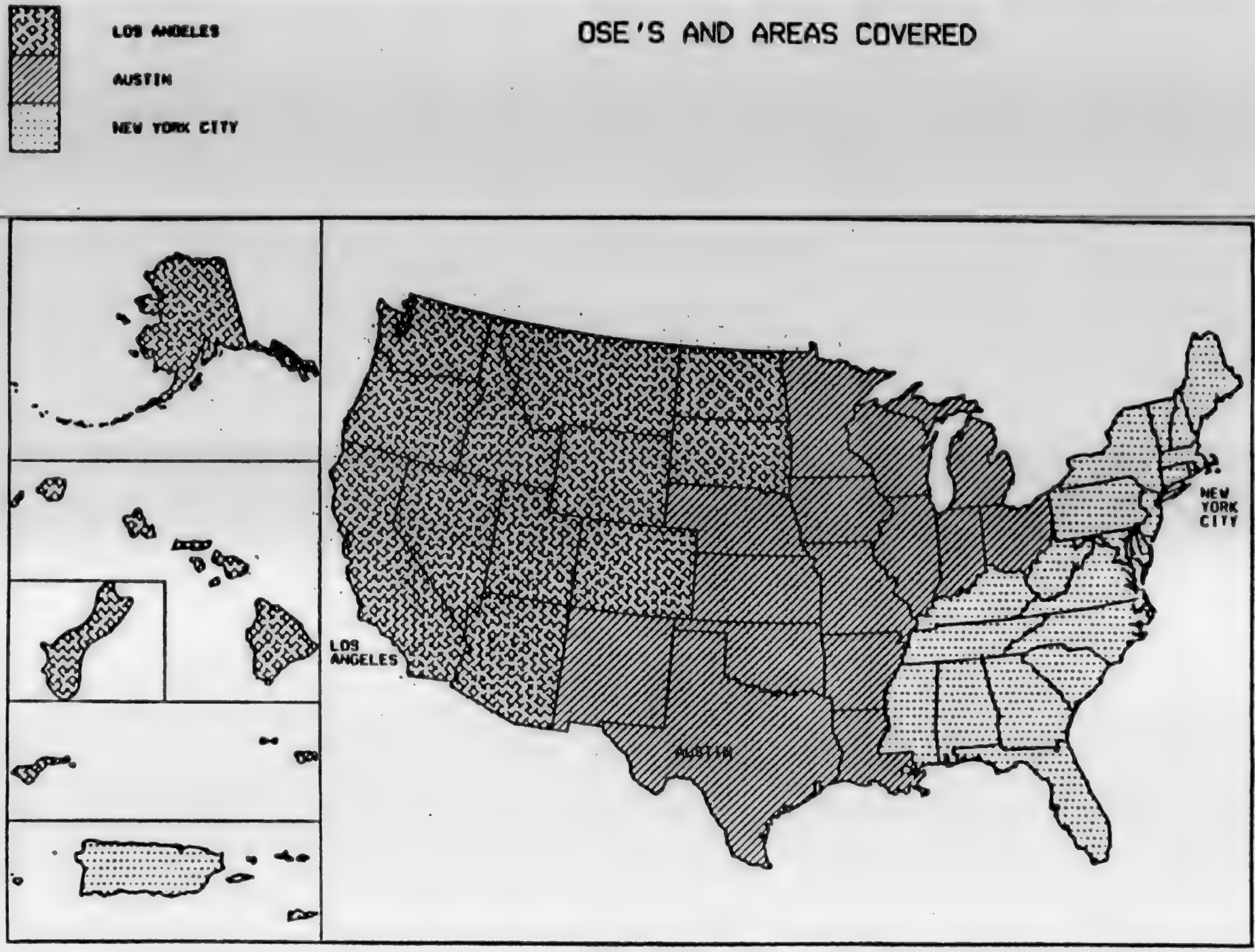
C. A denial of certification or a notice that certification cannot be made shall not be reviewed by the Department of Labor, but may be appealed to the Immigration and Naturalization Service (INS). The petitioner may attach the decision to the nonimmigrant visa petition and present countervailing evidence that qualified persons in the United States are not available and that the employment policies of the Department of Labor were observed. The INS will consider all such evidence in adjudicating the petition.

TEMPORARY LABOR CERTIFICATION APPLICATIONS IN THE ENTERTAINMENT INDUSTRY

Regional offices that make determinations	Offices specializing in entertainment (OSE)	States served
Bette Roy, Certifying Officer, Labor Certification Unit, Employment and Training Administration, 1515 Broadway, New York, New York 10036, Tel: (FTS) 265-3265, (212) 944-3265 (outside).	Joanne Palmeiri, Supervisor, Alien Employment Certification Office, N.Y. State Department of Labor, 2 World Trade Center, Rm. 51-75, New York, New York 10047, Tel: (212) 488-2394.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Alabama, Florida, Georgia, Kentucky, New York, New Jersey, Puerto Rico, Virgin Islands, South Carolina, Tennessee, Mississippi, North Carolina, Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
Max Loveland, Certifying Officer, U.S. Department of Labor, ETA, 555 Griffin Square Building, Griffin and Young Streets, Dallas, Texas 75202, Tel: (FTS) 729-4975, (214) 767-4975 (outside).	Richard Hatton, Supervisor, Alien Labor Certification Unit, Texas Employment Commission, TEC Building, Austin, Texas 78778, Tel: (512) 397-4814.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Iowa, Kansas, Missouri, Nebraska.
Certifying Officer, Labor Certification Unit, Employment and Training Administration, 450 Golden Gate Avenue, San Francisco, California 94102, Tel: (FTS) 556-5994, (415) 556-5994 (outside).	Manager, Los Angeles Alien Certification Office, California Employment Development Department, 156 West 14th Street, Los Angeles, California 90015, Tel: (213) 744-2105, 744-2085.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, Arizona, California, Guam, Hawaii, Nevada, Alaska, Idaho, Oregon, Washington.

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OSE'S AND AREAS COVERED



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Unions With Substantial Membership in the Arts, Entertainment and Media Industry

Actors Equity Association
Alan Eisenberg, Executive Secretary, 165 West 46th Street, New York, New York 10036, PH: (212) 869–8530
Approx. Membership: 30,000

Performers (other than musicians), stagemanagers, assistant stage managers employed in the "live", dramatic and musical theater.

American Federation of Musicians
Victor Fuentealba, President, 1500 Broadway, New York, New York 10036, PH: (212) 869–1330
Approx. Membership: 299,133

Musicians, conductors, music librarians, arrangers, copyists, singers (night club and cabarets).

American Federation of Television and Radio Artists
Sanford I. Wolff, Executive Secretary, 1350 Avenue of the Americas, New York, New York 10019, PH: (212) 265–700
Approx. Membership: 51,000

Performers other than musicians who are employed by the broadcasting, cable and/or recorded media including disc and videoaudio tapes.

American Guild of Musical Artists
Gene Boucher, Executive Secretary, 1841 Broadway, New York, New York 10023, PH: (212) 265–3687
Approx. Membership: 5,000

All performers (except musicians), stage managers and choreographers employed in opera, ballet and dance, also, concert (solo) artists including musicians.

American Guild of Variety Artists
Alan Jan Nelson, Executive President, Vincent Griesi, Asst. to the President, Comptroller, 184 Fifth Avenue, New York, New York 10010, PH: (212) 675–1003
Approx. Membership: 4,865

Performers (except musicians) in ice shows and circuses and performing in hotels and cabarets as part of a variety show.

Association of Theatrical Press Agents and Managers
Dick Weaver, Secretary-Treasurer, 165 West 46th Street, #1200, New York, New York 10036, PH: (212) 719–3666
Approx. Membership: 600

Theatre and concert hall managers, company managers and press agents.

Director's Guild of America
Michael Franklin, Executive Secretary, 7950 Sunset Blvd., Hollywood, California 90046, PH: (213) 656–1220 (212) 581–0370 (New York Office)
Approx. Membership: 6,500

In film, directors, production managers, and first and second assistant directors. In tape, directors, associate directors, stage managers, and production assistants.

Hebrew Actors Union
Jack Rechtzeit, President, 31 E. 7th Street, New York, New York 10003, PH: (212) 674–1923
Approx. Membership: 200

Performers (except musicians) who are engaged in the field of Hebrew or Yiddish language theatre.

International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada
Walter F. Diehl, President, 1515 Broadway, New York, New York 10036, PH: (212) 730–1770
Approx. Membership: 65,000

All craft and technical occupations associated with motion picture production, television broadcasting, sound and video recording, cable, legitimate theatre and audio visual materials.

International Brotherhood of Electrical Workers
Jack Kain, Director, Broadcasting & Recording Dept., 1125 15th Street, NW., Washington, D.C. 20005, PH: (202) 833–7000
Approx. Membership: 1,041,408

Technical and craft personnel employed in broadcasting, television, cable operations, sound and video recording, and program production.

Italian Actors Union
Sal Carollo, Executive Secretary, 1540 Broadway, New York, New York 10036, PH: (212) 765–0800
Approx. Membership: 43

Performers (except musicians) who are engaged in the field of Italian language theater.

National Association of Broadcast Employees and Technicians
Edward Lynch, President, 7101 Wisconsin Avenue, N.W., Bethesda, Maryland 20814, PH: (301) 657–8420
Approx. Membership: 9,900

Technical and craft personnel employed in broadcasting, telecasting, recording, filming and allied industries.

Screen Actors Guild
Ken Orsatti, National Executive Secretary, 7750 Sunset Blvd., Hollywood, California 90046, PH: (213) 876–3030
Approx. Membership: 47,123

Performers (other than musicians) employed in the production of motion pictures, television, videotape or video disc.

Screen Extras Guild
Leonard Chassman, National Executive Secretary, 3629 Chauenga Blvd., West, Hollywod, California 90029, PH (213) 851–4301
Approx. Membership: 4,800

Performers (except musicians) employed in the production of motion pictures, television, videotape or video disc as "extras" (non-speaking).

Society of Stage Directors and Choreographers
A Harrison Cramer, Executive Secretary, 1501 Broadway, New York, New York 10036, PH: (212) 391–1070
Approx. Membership: 350

Directors and Choreographers in the professional theatre.

United Scenic Artists
John VanEyck, Bus. Rep., 1540 Broadway, New York, New York 10036, PH: (212) 575–5120
Approx. Membership: 1,200

Professional scenic designers, scenic artists, costume and lighting designers, diarama and display workers, and mural artists employed by television, theatre, commercial producers, and motion picture studios.

Writers Guild of America, West
Naomi Gurian, Exec. Director, 8955 Beverly Blvd., Los Angeles, California 90048, PH: (213) 550–1000
Approx. Membership: 5,900

Writers in the fields of motion pictures, television, and radio in areas west of the Mississippi.

Writers Guild, East
Leonard Wasser, Exec. Dir., 55 West 5th Street, New York, New York 10019, PH: (212) 245–6180
Approx. Membership: 2,400

Writers in the field of motion picture, television and radio in areas east of the Mississippi.

Dated: April 23, 1984.

Directive: General Administration Letter No. 10–84
To: All State Employment Security Agencies
From: Bert Lewis, Administrator for Regional Management
Subject: Procedures for Temporary Labor Certifications in Nonagricultural Occupations

1. *Purpose.* To transmit procedures for processing temporary labor certification applications in nonagricultural occupations.

2. *References.* 20 CFR Parts 621, 652 and 655.

3. *Background.* The attached procedures are designed to clarify processing requirements and to achieve uniform processing for applications under 20 CFR Part 621. They help to fill in the broad outline in those regulations and to direct agency staff to appropriate labor certification and Job Service policies.

4. *Action Required.* Administrators are requested to:

a. Provide attached procedures to appropriate staff.

b. Instruct staff to follow these procedures in processing temporary labor certification requests in nonagricultural occupations, except those in the entertainment industry and professional team sports.

c. Advise staff that attached procedures remain in effect after the expiration of this transmittal memorandum.

5. *Inquiries.* Direct questions to the appropriate regional office.

6. *Attachments*

a. Procedures for temporary labor certifications in nonagricultural occupations.

b. Final determination Form, ETA 7145T

Rescissions: GAL 23–82.

Expiration date: April 30, 1985.

Procedures for Temporary Labor Certifications in Nonagricultural Occupations

I. Background

The regulations at 20 CFR Part 621 govern the labor certification process for the temporary employment of nonimmigrant aliens in the United States in occupations other than in agriculture and logging. Occupations on Guam are treated separately under other regulations. The policies in Part 655—Labor Certification Process for the Temporary Employment of Aliens in the United States, and Part 652—Establishment and Functioning of State Employment Services are followed in processing and making determinations on temporary nonagricultural applications.

This document replaces all previous instructions and outlines general processing standards for temporary nonagricultural applications, except for professional athletes in team sports and employment in the entertainment industry.

Professional sports applications are processed by the National Office according to policies and procedures which evolved from negotiations with the INS, major and minor leagues, player organizations, and exports in the industry. Procedures for temporary applications in the entertainment industry are included in General Administration Letter No. 5–84.

II. Guidelines for Determining the Temporary or Permanent Nature of a Job Offer

To determine an alien's eligibility for admission on an H–2 visa, INS requires a Department of Labor certification based on adverse effect as well as availability *before* they rule on the temporary or permanent nature of the employment.

Because the availability test of U.S. workers in a given occupation can vary considerably depending on whether a job is permanent or temporary, the Department of Labor must consider whether in its judgment the job offered to an alien is, in fact, temporary or not. The guidelines below will help staff make this judgment:

A. Tests for determining the temporary or permanent nature of the employment are related to the job and job duties to be performed—not the person who will perform the duties; in other words, whether specific duties which the alien(s) will perform are needed for a temporary period or on a continuing basis—regardless of who will perform them.

The work must be above and beyond the employer's normal level of operation and not expected to become a part of the employer's future operations. Staff can consider the employer's "peakload" requirements, when temporary additions to permanent staff in an occupation are required due to seasonal or short-term demand, e.g., in resort establishments.

B. Answers to the following questions will help to determine the temporary or permanent nature of the job offered the alien(s):

1. Is the job included in the employer's regular business operation? If yes, are duties to be performed significantly different from the normal or regular operation? Is the equipment similar? Is the work of the same general skill and knowledge level?

2. Is the period for which the alien is requested reasonable in terms of the job to be done?

3. Are the number of aliens requested reasonable in terms of the job to be done and the time requested? Sometimes employers give "ball park" estimates which can be made more precise to avoid situations which would lead to less than full-time employment for U.S. workers and aliens alike.

4. Is this a request for an extension or does the employer often or repeatedly request temporary aliens? If yes, refer to item F.

5. Is there another way that the employer might reasonably be expected to meet his/her needs?

C. Temporary employment should not be confused with part-time employment which does not qualify for temporary labor certification. Part-time concerns work hours, days, and weeks less than those normal for the occupation in the employment area.

D. INS has the ultimate authority to reject the Department of Labor's advice on temporary alien employment. However, if the Department of Labor is convinced that a job is not temporary and INS plans to or does admit the aliens as nonimmigrants, DOL will still not issue a certification.

E. If the Department of Labor learns that an employer for whom a permanent certification was issued, also applies for a temporary certification for the same job (generally because of visa problems), a notice should be issued to the employer that certification cannot be made and an appropriate explanation of the reasons.

F. Some employers request extensions, sometimes several, for jobs represented as temporary. Others repeatedly request approval to bring in temporary workers. In such cases, State agencies and regional offices will assure that the employer is not evading its responsibility to obtain an adequate domestic work force; or—as stated earlier—an effort to substitute nonimmigrants when visa quotas cause delays in admitting immigrants. To help staff decide, they should consider the following:

1. Were previous extensions granted, and if so does the period covered exceed reasonable grounds for temporary work?

2. What reason does the employer give for incorrect time estimate(s)?

3. Has the availability picture or the prevailing wage changed?

4. Depending on the skill level and training time for the occupation and the industry practice on training, is it possible to train available workers?

5. If it is a higher skilled job, what, consistent with industry practice, is being done to upgrade current employed lower skilled workers and fill in behind them from the local work force?

6. What, consistent with industry practice, is being done to cross-train the present work force to handle peak demands?

7. If an apprenticable trade is involved, does the employer have, consistent with industry practice, the accepted ratio of apprentices to journeymen?

G. Repeated applications from the same employer should be subject to very close scrutiny and satisfactory answers to the same type of questioning as listed above. Also, the employer should be asked to document or explain in writing what is being done to overcome reliance on alien workers before a new certification is issued.

H. If a job for which a temporary alien worker is sought is not *truly* temporary in nature, decline to issue a certification even though U.S. workers are not available and wages being offered are prevailing.

III. Filing Instructions

A. An employer who wants to use foreign workers for temporary employment must file a temporary labor certification application (OMB Approval No. 1205–0015) with a local office of the State job service.

B. Every temporary application should include:

1. ETA 750, Part A, the offer of employment portion of the Application for Alien Employment Certification form signed by the employer. Note: Part B, Statement of Qualifications of Alien is not required.

2. Documentation clearly showing the employer's efforts to recruit U.S. workers.

3. A statement explaining why the job opportunity cannot be performed by a permanent worker on a continuing basis.

C. To allow for enough recruitment of U.S. workers and enough processing time by State and regional offices, the local office shall advise employers to file requests for temporary labor certification at least 45 days before the labor certification is needed in order to receive a timely determination.

D. Unless the Certifying Officer specifies otherwise, the local office should return to employers' requests for temporary labor certification filed more than 120 days before the worker is needed and advise them to refile the application no more than 120 days before the worker is needed. This is necessary since the supply and availability of temporary U.S. workers change over short periods of time and an adequate test of the labor market cannot be made for a longer period.

E. More than one alien may be requested on an application if they are to do the same type of services in the same occupation, in the same area of employment during the same period. However, the number requested may not exceed the actual number of job openings.

F. If the employer's agent files the application, the employer must sign the statement on the Application for Alien Employment Certification which authorizes the agent to act on the employer's behalf. The employer is fully responsible for the accuracy of all representations made by the agent on the employer's behalf. An attorney must file a Notice of Appearance (Form G–28) naming the attorney's client(s).

G. Requests for temporary labor certification may be filed for employment up to, but not exceeding 12 months. If the original intended duration of the temporary employment requires nonimmigrant aliens for a finite period not exceeding 3 years, or if unforeseen circumstances require an extension of an approved certification, a new application must be submitted each period beyond 1 year. This allows the Department of Labor to make a current determination of the availability of and adverse effect on U.S. workers. The period (including extensions) for which a particular job may be certified for temporary alien(s) employment may not exceed 3 consecutive years, except for recurring peakload or seasonal employment.

H. When the job opportunity requires the work to be done in more than one area of employment, the application must include the itinerary or locations and duration of work in each location. Such applications will be filed with the local State Job Service office having jurisdiction over the area where the employment will begin.

IV. State Job Service Processing

A. Upon receiving a request for temporary labor certification, the local office shall review the job offer for completeness. A job offer containing a wage below the prevailing wage for such employment in the local area is inappropriate and would adversely affect the wages of similarly employed U.S. workers. The local office shall determine the prevailing wage, guided by the regulations at 20 CFR 656.40.

B. If qualified U.S workers are registered with the local office, a job order should be prepared, using the information on the application, and placed into the regular ES system for 10 days. During this period, the local office should refer qualified applicants who walk-in and those in its active files.

C. The employer shall advertise the job opportunity, before or after filing the application, in a newspaper of general circulation for 3 consecutive days or in a professional, trade, or ethnic publication, whichever is most appropriate for the occupation and most likely to bring responses from U.S. workers. The advertisement shall:

1. Identify the employer's name, address, and location of the employment (except ads for aerospace engineers which shall be placed over the name of the local Job Service office) if other than the employer's location;

2. Describe the job opportunity with particularity;

3. State the rate of pay, which shall not be below the prevailing wage for the occupation;

4. Offer prevailing working conditions;

5. State the employer's minimum job requirements;

6. Offer wages, terms, and conditions of employment which are not less favorable than those offered to the alien.

D. The employer shall document that unions and other recruitment sources, appropriate for the occupation and customary in the industry, were unable to refer qualified U.S. workers.

E. The employer must provide the local office a copy of the advertisement showing the name of the publication and the dates published and written results of all recruitment which must:

1. Identify each recruitment source by name;

2. State the name, address, and telephone number and provide resumes (if submitted to the employer) of each U.S. worker who applied for the job; and

3. Explain the lawful job-related reasons for not hiring each U.S. worker.

F. After the recruitment period, the local office shall send the application, results of recruitment, prevailing wage findings, and other appropriate information to the State office for additional data and comments and transmission to the regional office.

V. Temporary Labor Certification Determinations

A. The certifying officer shall determine whether to grant or to deny the temporary labor certification, or to issue a notice that the required determination cannot be made based on whether or not:

1. U.S. workers are available for the temporary employment opportunity:

a. The certifying officer, in judging if a U.S. worker is available for the temporary employment opportunity, shall determine from documented results of the employer and local office recruitment efforts if there are other appropriate sources of workers, where the employer shall have recruited or may recruit U.S. workers. If further recruitment is required, the application should be returned to the State Job Service Office with specific instructions for the additional recruitment.

b. To determine if a U.S. worker is available, the certifying officer shall consider U.S. workers living or working in the area of intended employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expense, or at the employer's expense, if the prevailing practice among employers who employ workers in the occupation is to pay such relocation expenses.

c. The certifying officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, can perform the duties involved in the occupation as customarily performed by other U.S. workers similarly employed and is willing to accept the specific job opportunity.

d. To determine if U.S. workers are available for job opportunities that will be performed in more than one location, workers must be available in each location on dates specified by the employer.

2. The employment of the alien will adversely affect wages and working conditions of U.S. workers similarly employed. To determine this, the certifying officer shall consider such things as labor market information, special circumstances of the industry, organization, and/or occupation, the

prevailing wage rate for the occupation in the area of intended employment, and prevailing working conditions, such as hours in the occupation.

3. The job opportunity contains requirement on conditions which preclude consideration of U.S. workers or which otherwise prevent their effective recruitment, such as:

a. The employment opportunity is represented as temporary and the Department of Labor believes it can and should be offered to U.S. workers on a permanent basis.

b. The job opportunity is vacant because the former occupant is on strike or locked out in the course of a labor dispute involving a work stoppage or the job is at issue in a labor dispute involving a work stoppage.

c. The job opportunity's terms, conditions, and/or occupational environment are contrary to Federal, State, or local law.

d. The employer has no location within the United States to which U.S. workers can be referred and hired for employment.

e. The employer will not pay a wage or salary for the job to be performed.

f. The job's requirements are unduly restrictive.

g. The employer refuses to recruit U.S. workers according to DOL policies and procedures.

Such applications shall be denied on the basis that U.S. workers may be available for employment in the occupation and it was not shown that the employer made reasonable efforts to obtain U.S. workers for the job.

B. A temporary labor certification may be issued for the duration of the temporary employment opportunity, not to exceed twelve (12) months. If the temporary job opportunity extends beyond 12 months, the employer must file a new application; however, temporary certifications may not be granted for the same job opportunity for a total period (including extensions) of more than 3 years, except in applications for recurring seasonal employment.

C. Dates on the temporary labor certification shall be the beginning and ending dates of certified employment and the date certification was granted. The beginning date of certified employment may not be earlier than the date certification was granted.

VI. Document Transmittal

A. After making a temporary labor certification determination, the certifying officer shall notify the employer, in writing, of the determination.

B. If the labor certification is granted, the certifying officer shall send the certified application containing the official temporary labor certification stamp, supporting documents, and completed Temporary Determination Form to the employer or, if appropriate, the employer's agent or attorney. The Temporary Determination Form shall indicate that the employer should submit all documents together with the employer's petition to the appropriate INS office.

C. If the labor certification is denied or a notice is issued that certification cannot be made, the certifying officer shall return one copy of the Application for Alien Employment Certification form, supporting documents, and completed Temporary Determination Form to the employer, or, if appropriate, to the employer's agent or attorney. The Temporary Determination Form shall indicate specific bases on which the decision was made not to issue a temporary labor certification, and shall advise the employer of the right to appeal to the INS.

VII. Appeal of a Denial or Notice That a Certification Cannot Be Made

A. The granting or denial of a temporary labor certification by the certifying officer, or a finding that a certification cannot be made, is the final decision of the Secretary of Labor. Administrative appeal is made to INS, as set forth below.

B. Under the Act and regulations of the Immigration and Naturalization Service, the Department of Labor's role is only advisory. The Attorney General has the sole authority for the final approval or denial of a petition for temporary alien employment. The employer can submit countervailing evidence to the Immigration and Naturalization Service, according to 8 CFR 214.2(h)(3)(i), that qualified persons in the United States are not available, that wages and working conditions of U.S. workers will not be adversely affected, and that the Department of Labor's employment policies were observed.

VIII. Validity of Temporary Labor Certifications

A. A temporary labor certification is valid only for the number of alien workers, the occupation, the area of employment, the specific activity, the period of time, and the employer specified in the certification.

B. A temporary labor certification is limited to one employer's specific job opportunity; it may not be transferred from one employer to another.

IX. Applications Requiring Special Processing

A. *Aerospace Engineers*

1. Take a job order on all aerospace engineer certification requests.

2. Ensure that the employer advertises in a newspaper or appropriate engineering publication. Advertisements shall describe wages, terms, and conditions of employment, and shall not identify the employer, but shall direct applicants to send resumes to the local Job Service for referral to the employer. Results of ads must be documented. Advertising copy should indicate the same wages, education, working conditions, and location of work as that in the application for alien employment and on the order taken by the local office.

3. Require employers to offer laid-off engineers reemployment before applying for labor certification.

4. Ensure that all ETA 750, Part A from contract engineering firms identify the user aerospace company and specify where the alien will work.

Certification requests for temporary engineer jobs from contract engineering firms may be accepted without aliens' names. The application, however, must be accompanied by a letter from the user aerospace company. The letter will authorize a request for an unnamed alien, state the number and type of employees required, and specify where the alien will work.

5. Ensure that a copy of the contract for negotiation with alien accompanies all contract engineering firm certification requests.

6. Place into interstate clearance all alien certification job orders for aerospace engineers and related occupations.

Use procedures for placing alien certification job orders in nonagricultural interstate clearance.

7. Process the application according to Parts II, III and IV of these procedures, as appropriate.

B. Construction Workers

1. *General.* a. Unions representing construction workers in the same or substantially equivalent job classification as those for which labor certification is requested shall be contacted to determine availability of U.S. workers when local offices receive requests for 10 or more workers in the same occupation for the same employer at any one time or within a 6-month period.

The Human Resources Development Institute (HRDI) is the employment and training arm of the AFL–CIO; it serves as a centralized liaison between the Department of Labor and individual

unions in providing labor market information in skilled trades in order to make an informed labor certification determination.

2. *Procedures.* a. The local office should process the application according to Parts II, III and IV of these procedures.

b. The local office shall advise the employer to obtain, from the union local, a letter describing the availability of qualified U.S. workers for the position offered to aliens.

c. Before making a determination, certifying officers should contact, in writing the Executive Director, Human Resources Development, 815 16th Street, NW., Washington, D.C. 20006, and send the following information for each application:

(1) Name and address of company requesting certification;

(2) Location of work site;

(3) Local number and name of the union, if known;

(4) Dates of any prior certifications requested by company;

(5) Total number of aliens requested;

(6) Duration of employment of aliens;

(7) Job classification, special qualifications and wage offered;

(8) Assistance offered to aliens (subsistence, housing, other); and

(9) Reasons for requesting alien labor.

If HRDI knows of available U.S. workers, they will provide this information to the certifying officer, along with the name of the appropriate local for the employer to contact. If no response is received within three weeks of the request, a determination will be made on information in the file.

C. Machinists and Aerospace Workers

1. The local office should process the application according to Parts II, III and IV of these procedures.

2. Before making a determination, the certifying officer should send to the Executive Director of the International Association of Machinists and Aerospace Workers, Machinists Building, Room 911, 1200 Connecticut Avenue, NW., Washington, D.C. 20036, the following information for each application:

a. Name and address of company requesting certification;

b. Location of work site;

c. Local number of IAM union, if known;

d. Total number of aliens requested;

e. Duration of employment of alien;

f. Job classification, including information on wages and special qualifications;

g. Assistance offered to aliens (subsistence, housing, other); and

h. Reason for requesting alien labor.

If the IAM knows of qualified U.S. workers, available for the position, they will give the certifying officer the name of the appropriate local for the employer to contact. If the IAM does not respond within 3 weeks, a determination should be made from the information provided by the local office.

U.S. DEPARTMENT OF LABOR

Employment and Training Administration

Final Determination

No. of Aliens and Occupation _____

Period of Certification

From: _____

To: _____

The Department of Labor has made a determination on your temporary application for alien employment certification pursuant to Title 20, Code of Federal Regulations, Part 621. Final action has been taken as follows:

☐ 1. Form ETA 750 has been certified and is enclosed with the supporting documents. All enclosures should be submitted to the Immigration and Naturalization Service District Office for consideration with your petition (Form I–129B).

☐ 2. Form ETA 750 has not been certified and is being returned. A certification cannot be issued as required by Immigration and Naturalization Service regulations at 8 CFR 214.2(h)(3)(i) on the basis of information available for the following reasons (See details below):

☐ a. There are qualified U.S. workers who are available for the job.

☐ b. The employment of aliens would have an adverse effect on wages and/or working conditions of U.S. workers similarly employed.

☐ c. A certification cannot be made under Department of Labor policies and procedures.

Details:

Certifying Officer

cc: State ES Agency

A denial of certification or a notice that certification cannot be made is not reviewable by the Department of Labor, but may be appealed to the Immigration and Naturalization Service (INS). The petitioner may attach the decision to the nonimmigrant visa petition and present countervailing evidence that qualified persons in the United States are not available and that the employment policies of the Department of Labor have been observed. The INS will consider all such evidence in adjudicating the petition.

[FR Doc. 84–16865 Filed 6–22–84; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 442

[Docket No. 84N–0162]

Antibiotic Drugs; Ceforanide for Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, ceforanide for injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective June 25, 1984; comments, notice of participation, and request for hearing by July 25, 1984; data, information, and analyses to justify a hearing by August 24, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics (HFN–140)) (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, ceforanide for injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 442 (21 CFR Parts 430, 436, and 442) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or culmulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 442

Antibiotics, cepha.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701(f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371(f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 430, 436, and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:

a. In § 430.5 by adding new paragraphs (a)(81) and (b)(83) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(81) *Ceforanide.* The term "ceforanide master standard" means a specific lot of ceforanide that is designated by the Commissioner as the standard of comparison in determining the potency of the ceforanide working standard.

(b) * * *

(83) *Ceforanide.* The term "ceforanide working standard" means a specific lot of a homogeneous preparation of ceforanide.

b. In § 430.6 by adding new paragraph (b)(83) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(83) *Ceforanide.* The term "microgram" applied to ceforanide means the ceforanide activity (potency) contained in 1.005 micrograms of the ceforanide master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended:

a. In § 436.20 by adding new paragraph (d)(7) to read as follows:

§ 436.20 Sterility test methods and procedures.

* * * * *

(d) * * *

(7) *Diluting fluid G.* To each liter of sterile diluting fluid A and 10 grams of sterile *L*-lysine.

* * * * *

b. By adding new § 436.348 to read as follows:

§ 436.348 High-pressure liquid chromatographic assay for ceforanide.

(a) *Equipment.* A suitable high-pressure liquid chromatograph equipped with:

(1) A low dead volume cell 8 to 20 microliters;

(2) A light path length of 1 centimeter;

(3) A suitable ultraviolet detection system operating at a wavelength of 254 nanometers;

(4) A suitable recorder of at least 25.4-centimeter deflection;

(5) A suitable integrator; and

(6) A 30-centimeter column having an inside diameter of 4.0 millimeters and packed wth octadecyl silane chemically bonded to porous silica or ceramic microparticles, 5 micrometers to 10 micrometers in diameter, U.S.P. XX. A particular column used for analysis of ceforanide should not be used for the analysis of other drugs.

(b) *Mobile phase.* Mix 18.0 milliliters of 10 percent aqueous tetrabutylammonium hydroxide and 8.56 milliliters of concentrated potassium hydroxide. Add the mixture to approximately 700 milliliters of distilled water. Add 200 milliliters of reagent grade methanol. Adjust the pH of the mixture to pH 7.0 with concentrated phosphoric acid and dilute to 1,000 milliliters with distilled water. Prepare fresh daily. Filter the mobile phase through a suitable glass fiber filter or equivalent which is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph pumping system.

(c) *Operating conditions.* Perform the assay at ambient temperature with a typical flow rate of 1 milliliter per minute. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 50 percent of scale.

(d) *Preparation of working standard and sample solutions)*—(1) *Preparation of working standard solution.* Prepare a solution containing 1,000 micrograms of ceforanide activity per milliliter in mobile phase. Inject working standard solution within 5 minutes after dissolution.

(2) *Preparation of sample solution.* Prepare the sample solution as directed in the individual monograph for the drug being tested. Inject sample solution within 5 minutes after dissolution.

(e) *Procedure.* Use the equipment, mobile phase, operating conditions, and working standard and sample solutions described in paragraphs (a), (b), (c), and (d) of this section, and proceed as directed in paragraph (e)(1) of this section.

(1) *System suitability test.* Equilibrate and condition the column by passage of about 10 to 15 void volumes of mobile phase followed by three replicate injections of 10 microliters each of the working standard solution. Allow an elution time sufficient to obtain satisfactory separation of expected components after each injection. Record the peak responses and calculate the tailing factor, efficiency of the column, coefficient of variation, and capacity factor as described for system suitability tests in the U.S.P. XX General Chapter 621 chromatography. Proceed as directed in paragraph (e)(2) of this section if the following minimum performance requirements have been met:

(i) *Tailing factor.* The tailing factor is satisfactory if it is not more than 1.2;

(ii) *Efficiency of the column.* The efficiency of the column is satisfactory if it is greater than 1,900 theoretical plates;

(iii) *Coefficient of variation.* The coefficient of variation of at least three replicate injections is satisfactory if it is not more than 1.5 percent; and

(iv) *Capacity factor.* The capacity factor is satisfactory if it is not less than 1.8 and not more than 5.

If the minimum performance requirements are not met, adjustments must be made to the system to obtain satisfactory operation before proceeding as described in paragraph (e)(2) of this section.

(2) *Determination of the chromatogram.* Inject 10 microliters of the working standard solution into the chromatograph. Allow an elution time sufficient to obtain satisfactory separation of the expected components. After separation of the working standard solution has been completed, inject 10 microliters of the sample solution into the chromatograph and repeat the procedure described for the working standard solution.

(f) *Calculations.* Calculate the ceforanide content as directed in the individual monograph for the drug being tested.

c. By adding new §436.349 to read as follows:

§436.349 High-pressure liquid chromatographic assay for L-lysine in ceforanide for injection.

(a) *Equipment.* A suitable high-pressure liquid chromatograph equipped with:

(1) A suitable pump capable of reproducibly delivering a liquid to a pressure of 5,000 pounds per square inch;

(2) A suitable ultraviolet detection system operating at a wavelength of 254 nanometers;

(3) A suitable recorder;

(4) A suitable integrator; and

(5) A 25-centimeter column having an inside diameter of 4.6 millimeters and packed with octadecyl silane chemically bonded to porous silica or ceramic microparticles, 5 micrometers to 10 micrometers in diameter, U.S.P. XX.

(b) *Reagents*—(1) 2,4-Dinitrofluorobenzene solution. Weigh accurately approximately 760 milligrams of 2,4-dinitrofluorobenzene into a 50-milliliter volumetric flask. Dissolve and dilute to volume with absolute ethyl alcohol.

(2) Tris (hydroxymethyl) aminomethane (THAM) solution. Weigh accurately approximately 1.44 grams of THAM into a 100-milliliter volumetric flask. Dissolve and dilute to volume with distilled water.

(c) *Mobile phase.* Mix methanol and water (62:38), and adjust to pH 3.0 with glacial acetic acid.

(d) *Operating conditions.* Perform the assay at ambient temperature with a typical flow rate of 1.5 milliliters per minute. Use a detector sensitivity setting that gives a peak height for the standard that is at least 50 percent of scale with a typical chart speed of 0.2 inch per minute.

(e) *Preparation of standard and sample solutions*—(1) *Preparation of standard solution.* Weigh accurately approximately 36 milligrams of *L*-lysine used as the standard into a 100-milliliter volumetric flask. Dissolve and dilute to volume with distilled water. Transfer 2.0 milliliters of the *L*-lysine solution into a 10-milliliter volumetric flask, add 2.0 milliliters of THAM solution and 3.0 milliliters of 2,4-dinitrofluorobenzene solution. Cap tightly and mix well. Place the flask in a 50° C water bath for 30 minutes. Remove from water bath, allow the flask to cool to room temperature, and dilute to volume with methanol. Mix well.

(2) *Preparation of sample solution.* Weigh accurately approximately 150 milligrams of the sample, ceforanide for injection, into a 100-milliliter volumetric flask. Dissolve and dilute to volume with distilled water. Transfer 2.0 milliliters of the sample solution into a 10-milliliter volumetric flask, add 2.0 milliliters of THAM solution and 3.0 milliliters of 2,4-dinitrofluorobenzene solution. Cap tightly and mix well. Place the flask in a 50° water bath for 30 minutes. Remove from water bath, allow the flask to cool to room temperature, and dilute to volume with methanol. Mix well.

(f) *Procedure.* Use the equipment, reagents, mobile phase, operating conditions, and standard and sample solutions described in paragraphs (a), (b), (c), (d), and (e) of this section, and proceed as directed in paragraph (f)(1) of this section.

(1) *System suitability test.* Equilibrate and condition the column by passage of about 10 to 15 void volumes of mobile phase followed by three replicate injections of 20 microliters each of the standard solution. Allow an elution time sufficient to obtain satisfactory separation of the expected components after each injection. Record the peak responses and calculate the resolution factor, tailing factor, efficiency of the column, coefficient of variation, and capacity factor as described for system suitability tests in the U.S.P. XX General Chapter 621 chromatography. Proceed as directed in paragraph (f)(2) of this section if the following minimum performance requirements have been met:

(i) *Resolution factor.* The resolution factor between the peak for derivatized *L*-lysine and from the peak for the dinitrofluorobenzene derivatizing reagent is satisfactory if it is not less than 4.5;

(ii) *Tailing factor.* The tailing factor is satisfactory if it is not more than 1.3;

(iii) *Efficiency of the column.* The efficiency of the column is satisfactory if it is greater than 1,500 theoretical plates;

(iv) *Coefficient of variation.* The coefficient of variation of at least three replicate injections is satisfactory if it is not more than 1.5 percent; and

(v) *Capacity factor.* The capacity factor is satisfactory if it is not less than 4 and not more than 6.

If the minimum performance requirements are not met, adjustments must be made to the system to obtain satisfactory operation before proceeding as described in paragraph (f)(2) of this section.

(2) *Determination of the chromatogram.* Inject 20 microliters of the standard solution into the chromatograph. Allow an elution time sufficient to obtain satisfactory separation of the expected components. After separation of the standard solution is completed, inject 20 microliters of the sample solution into the chromatograph and repeat the procedure described for the standard solution.

(g) *Calculations.* Calculate the micrograms of *L*-lysine per milligram of ceforanide for injection as follows:

$$\text{Percent of } L\text{-lysine} = \frac{A_u \times P_s}{A_s \times C_u \times 10}$$

A_u = Area of the *L*-lysine peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the *L*-lysine peak in the chromatogram of the *L*-lysine standard;

P_s = *L*-lysine content in the *L*-lysine standard solution in micrograms per milliliter; and

C_u = Milligrams of sample per millilter of sample solution.

PART 442—CEPHA ANTIBIOTIC DRUGS

3. Part 442 is amended:

a. By adding new § 442.50a to read as follows:

§ 442.50a Sterile ceforanide.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Ceforanide is 5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid, 7-[[[2-(amino-methyl)phenyl]acetyl]amino]-3-[[[1-(carboxymethyl-1*H*-tetrazol-5-yl]-thio]methyl]-8-oxo-,(6*R*-*trans*),-. It is a white to off-white powder. It is so purified and dried that:

(i) Its ceforanide content is not less than 900 micrograms and not more than 1,050 micrograms of ceforanide per milligram.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its moisture content is not more than 5.0 percent.

(v) Its pH in an aqueous suspension containing 50 milligrams per milliliter is not less than 2.5 and not more than 4.5.

(vi) It passes the identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for ceforanide content, sterility, pyrogens, moisture, pH, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) For all tests except sterility: 10 packages, each containing approximately 500 milligrams.

(*b*) For sterility testing: One package containing approximately 6 grams of a composite sample.

(b) *Tests and methods of assay*—(1) *Ceforanide content.* Proceed as directed in § 436.348 of this chapter, preparing the sample and calculating the ceforanide content as follows:

(i) *Preparation of sample solution.* Prepare a solution containing 1.0 milligram per milliliter in mobile phase. Inject each sample within 5 minutes after dissolution.

(ii) *Calculations.* Calculate the micrograms of ceforanide per milligram of sample as follows:

$$\text{Micrograms of ceforanide per milligram} = \frac{A_u \times P_s \times 100}{A_s \times C_u \times (100\text{-}L)}$$

where:

A_u = Area of the ceforanide peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceforanide peak in the chromatogram of the ceforanide working standard;

P_s = Ceforanide activity in the ceforanide working standard solution in micrograms per milliliter; and

C_u = Milligrams of sample per milliliter of sample solution.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except:

(i) In paragraph (e)(1)(i)(*a*) of that section, use diluting fluid G in lieu of diluting fluid A; and

(ii) In lieu of three 100-milliliter quantities of diluting fluid A in paragraph (e)(2) of that section, filter three 100-milliliter quantities of diluting fluid D followed by a 100-milliliter quantity of diluting fluid A.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, except suspend 1 gram of sterile ceforanide in 12.5 milliliters of pyrogen-free water (diluent 1). Add 320 milligrams of pyrogen-free *L*-lysine base, shake to dissolve the mixture. If the mixture is not dissolved, add an amount of *L*-lysine necessary to obtain a solution. The test sample should contain not more than a total of 340 milligrams of *L*-lysine. Dilute the resulting solution to 20 milliliters. Use a test dose of 1 milliliter of the 50 milligrams per milliliter test solution per kilogram of rabbit weight.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous suspension containing 50 milligrams per milliliter.

(6) *Identity.* Proceed as directed in § 436.211 of this chapter, using the sample preparation as described in paragraph (b)(2) of that section.

b. By adding new § 442.250 to read as follows:

§ 442.250 Ceforanide for injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Ceforanide for injection is a dry mixture of ceforanide and *L*-lysine. Each milligram of ceforanide for injection contains not less than 900 micrograms and not more than 1,050 micrograms of ceforanide when corrected for *L*-lysine content. Its ceforanide content is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of ceforanide that it is represented to contain. It is sterile. It is nonpyrogenic. Its moisture content is not more than 3.0 percent. When reconstituted as directed in the labeling, its pH is not less than 5.5 and not more than 8.5. The ceforanide used conforms to the standards prescribed by § 442.50a(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The sterile ceforanide used in making the batch for ceforanide content, moisture, pH, and identity.

(*b*) The batch for ceforanide content, sterility, pyrogens, moisture, and pH.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The ceforanide used in making the batch: 10 packages, each containing approximately 500 milligrams:

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Ceforanide content.* Determine both micrograms of ceforanide per milligram of sample and milligrams of ceforanide per container. Proceed as directed in § 436.348 of this chapter, preparing the sample solution and calculating the ceforanide content as follows:

(i) *Preparation of sample solution.* Use separate containers for preparation of each sample solution as described in paragraph (b)(1)(i) (*a*) and (*b*) of this section.

(*a*) *Micrograms of ceforanide per milligram.* Prepare a solution containing 1.25 milligrams per milliliter in mobile phase. Inject each sample within 5 minutes after dissolution.

(*b*) *Milligrams of ceforanide per container.* Reconstitute the sample with distilled water as directed in the labeling. Using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the amount of ceforanide content in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute with mobile phase to obtain a stock solution containing 10.0 milligrams per milliliter (estimated). Immediately dilute an aliquot of the stock solution with mobile phase to a concentration of 1.25 milligrams of ceforanide per milliliter (estimated). Inject within 5 minutes, after preparation.

(ii) *Calculations*—(*a*) *Micrograms of ceforanide per milligram.* Calculate the micrograms of ceforanide per milligram of sample as follows:

$$\text{Micrograms of ceforanide per milligram} = \frac{A_u \times P_s}{A_s \times C_u}$$

where:

A_u = Area of the ceforanide sample peak (at a retention time equal to that observed for the standard);

A_s = Area of the ceforanide peak in the chromatogram of the ceforamide working standard;

P_s = Ceforanide activity in the ceforanide working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution; and

L = Percent lysine content of the sample. (Determined as described in § 436.349 of this chapter.)

(*b*) *Milligrams of ceforanide per vial.* Calculate the ceforanide content of the vial as follows:

$$\text{Milligrams of ceforanide per vial} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the ceforanide sample peak (at a retention time equal to that observed for the standard);

A_s = Area of the ceforanide peak in the chromatogram of the ceforamide working standard;

P_s = Ceforanide activity in the ceforanide working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except reconstitute the vials with approximately 3.0 milliliters of diluting fluid A per each gram of antibiotic activity. Transfer approximately 1 milliliter from each of 20 vials into a sterile 500-milliliter Erlenmeyer flask containing 200 milliliters of diluting fluid A. Filter as described in paragraph (e)(1)(ii) of this section, except in lieu of filtering with three 100-milliliter quantities of diluting fluid A, rinse the filter membrane with three 100-milliliter portions of diluting fluid D followed by a final rinse with 100-milliliters of diluting fluid A.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 50 milligrams of ceforanide per milliliter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using the solution obtained when the product is reconstituted as directed in the labeling.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective June 25, 1984. Interested persons may, however, on or before July 25, 1984, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before July 25, 1984, a written notice of participation and request for hearing, and (2) on or before August 24, 1984, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective June 25, 1984.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: June 13, 1984.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 84-16788 Filed 6-22-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Alfentanil in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This is a final rule issued by the Administrator of the Drug Enforcement Administration placing alfentanil into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action is required in order for the United States to discharge its obligations under the Single Convention on Narcotic Drugs, 1961.

EFFECTIVE DATE: August 24, 1984 except as otherwise provided in the **SUPPLEMENTARY INFORMATION** Section of this Rule.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: 202–633–1366.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

By a letter dated March 27, 1984, the Secretary-General of the United Nations advised the Secretary of State of the United States that the Commission on Narcotic Drugs has decided that the narcotic drug, alfentanil, be added to Schedule I of the Single Convention on Narcotic Drugs, 1961.

Section 201(d)(1) of the CSA (21 U.S.C. 811(d)) states that, if control of a substance is required by United States obligations under the Single Convention on Narcotic Drugs, 1961, "the Attorney General shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings and procedures required by section 201 (a) and (b) (21 U.S.C. 811 (a) and (b)) and section 202(b) (21 U.S.C. 812(b)) of the Act." This responsibility has been delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR 0.100).

In order to meet the obligations of the United States as a Party to the Single Convention on Narcotic Drugs, 1961, and because alfentanil has no currently accepted medical use in the United

States, the Administrator of the Drug Enforcement Administration has determined that alfentanil should be placed into Schedule I of the CSA.

Effective Dates

1. *Registration.* Any person who manufactures, distributes, imports, exports, engages in research, or conducts instructional activities with respect to alfentanil, or who proposes to engage in such activities, shall submit an application for registration to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations on or before August 24, 1984.

2. *Security.* Alfentanil must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations on or before September 24, 1984. In the event that the effective date should pose special hardships, the Drug Enforcement Administration will entertain any justified requests for extensions of time submitted to it on or before the required date of compliance.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of alfentanil, packaged after August 24, 1984, shall comply with the requirements of §§ 1302.03–1302.05 and 1302.07–1302.08 of Title 21 of the Code of Federal Regulations. In the event this effective date imposes special hardships on any "manufacturer," as defined in section 102(14) of the CSA (21 U.S.C. 802(14)), the Drug Enforcement Administration will entertain any justified requests for extensions of time submitted to it on or before the required date of compliance.

4. *Quotas.* All persons required to obtain quotas for alfentanil shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations on or before August 24, 1984.

5. *Inventory.* Every registrant required to keep records, who possesses any quantity of alfentanil, shall take an inventory, pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations, of all stocks of alfentanil on hand on August 24, 1984.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations shall maintain such records on alfentanil commencing on the date on which the inventories of these substances are taken.

7. *Reports.* All registrants required to submit reports on alfentanil to the Drug Enforcement Administration pursuant to §§ 1304.37–1304.41 of Title 21 of the Code of Federal Regulations shall report on the inventory taken under paragraph 5 above and on all subsequent transactions.

8. *Order Forms.* Each distribution of alfentanil on or after August 24, 1984, shall utilize an order form pursuant to Part 1305 of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of alfentanil on and after August 24, 1984, shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* The Administrator, Drug Enforcement Administration, hereby orders that any activity with respect to alfentanil not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act, conducted August 24, 1984, shall be unlawful, except that any person who is not now registered to handle alfentanil but who is entitled to registration under such Acts may continue to conduct normal business or professional practice with alfentanil between the date on which this rule is published and the date which he (she) obtains or is denied registration; provided, that the application for such registration is submitted on or before August 24, 1984.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the placement of alfentanil into Schedule I of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the initial control of a substance with no legitimate medical use in the United States and must be carried out in order to fulfill United States international treaty obligations, in any event.

In accordance with the provisions of 21 U.S.C. 812(d)(1), this scheduling action is a formal rulemaking that is required by United States obligations under international convention, that is, the Single Convention on Narcotic Drugs, 1961. Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557, and as such, have been exempted from the consultation requirements of Executive Order 12991 (46 FR 13193).

Dated: June 15, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

PART 1308—[AMENDED]

Therefore, under the authority vested in the Attorney General by Section 201(d)(1) of the CSA (21 U.S.C. 812(d)) and delegated to the Administrator of the Drug Enforcement Administration pursuant to 28 CFR 0.100, the Administrator hereby orders that:

(1) 21 CFR 1308.11(b)(2)–(45) is redesignated as 21 CFR 1308.11(b)(3)–(46); and

(2) A new § 1308.11(b)(2) is added to read as follows:

§1308.11 Schedule I.

* * * * *

(b) * * *

(2) Alfentanil	9737

* * * * *

[FR Doc. 84–16835 Filed 6–22–84; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R–84–1137; FR–1864]

Section 8—Fair Market Rents for New Construction and Substantial Rehabilitation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Section 8 Fair Market Rents (FMRs) applicable to New Construction and Substantial Rehabilitation for the State of Georgia, as well as for market areas within the States of New York, Ohio, and Texas. Section 8(c)(1) of the U.S. Housing Act of 1937 requires HUD to publish revised FMRs annually in the **Federal Register**. HUD published the last annual revision of the FMRs for New Construction and Substantial Rehabilitation on February 8, 1984 as an Interim Rule for effect on March 21, 1984. Many of the changes made in this rule are in response to comments submitted with respect to that annual revision. This rule revises FMR schedules for several of the nine market areas in the State of Georgia; it consolidates two market areas into one in the State of Texas; and it provides FMRs for efficiency (zero bedroom) units in eight other market areas in the States of New York and Ohio.

EFFECTIVE DATE: September 13, 1984.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support

Division, Office of Insured Multifamily Housing Development, 451 7th Street, SW., Washington, D.C. 20410, (202) 755–5743. (This is not a toll free number)

SUPPLEMENTARY INFORMATION: On February 8, 1984 HUD published in the **Federal Register** (49 FR 4892) an interim rule constituting its latest annual revision of the Section 8 Fair Market Rents (FMRs) applicable to New Construction and Substantial Rehabilitation for all market areas, as required by Section 8(c)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(c)(1)). The interim rule solicited public comments on the FMR schedules for a 30-day period ending March 9, 1984. HUD received 12 comments from the public and 4 comments from HUD Field Offices during the comment period.

Since HUD wished to make the revised FMRs effective as soon as possible after the close of the comment period, it made the rule effective for all market areas on March 21, 1984, stating its intention to continue its evaluation of all comments received and to publish any needed revisions of the FMR schedules for particular market areas at a future date. Each public comment was forwarded to the appropriate Field Office for review. These Offices determined that the documentation submitted did not warrant any changes in the Fair Market Rent.

This rule also makes some additions to the FMR schedules which have been suggested by four HUD Field Offices. First, since any proposal for housing for the elderly includes a requirement for at least 25 percent efficiency units, efficiency (zero bedroom) unit FMRs have been added to the schedules for eight market areas which did not previously contain them. Second, the FMR schedules for two market areas in Texas have been consolidated into one market area. This rule reflects rents for the consolidated Dallas/Fort Worth market area which are the same as those rents proviously identified for the Dallas market area. Third, in order to correct an imbalance in the FMRs for the State of Georgia market areas that were below those of other states within HUD's Region IV, selected FMR schedules for the State of Georgia were raised to permit processing of proposals in these areas.

In total, this Final Rule modifies the FMR schedules for 18 market areas: Texas, Dallas/Fort Worth market area; Georgia, market areas of Atlanta, Albany, Augusta, Brunswick, Columbus, Macon, Rome, Savannah, and Valdosta; Ohio, market areas of Cleveland, Akron, Findlay, Lorain, Mansfield, Toledo, and Youngstown; New York, market area of Poughkeepsie.

Proposals involving combinations of structural types and unit sizes by bedroom count for which Fair Market Rent are not provided or are not in effect may not be approved until the applicable Fair Market Rents have been published and have become effective.

Fair Market Rent schedules in effect on the date that the proposal or application for Section 202/Section 8 assistance is accepted for processing by HUD (by FmHA in the case of assistance under Part 884 (by the State Agency in the case of assistance under Part 883) shall apply, except as follows:

1. For all projects where the Fair Market Rents are revised upward after the date that a processing stage is completed, the revised Fair Market Rents shall apply to all subsequent processing in reviewing contract rents and utilities.

2. For all projects where the Fair Market Rents are revised downward after the completion date of a processing stage, the applicable Fair Market Rent shall be the higher of:

(a) the Fair Market Rent set forth in Schedule A of Part 888 as revised or added by this rule, or

(b) the Fair Market Rent set forth in the schedule published on April 15, 1983 (48 FR 16424) or any interim revision of that schedule.

An explanatory note to Schedule A of Part 888 was published with the last annual revision of the Fair Market Rents (49 FR 4892), and this note remains in effect. This note applies both to the Fair Market Rents revised or added by this rule, as well as to the rents contained in the last annual revision.

HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, provide for categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusion set forth in paragraph (l) of § 50.20, no environmental finding is needed for this rule and none has been prepared.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule is not listed in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the changes made by this rule will have an effect on developers of Section 8 projects, some of whom may constitute small entities, it is not expected that the economic impact on them will be substantial.

The Catalog of Federal Domestic Assistance Program number and title is 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 888

Rent subsidies.

PART 24—[AMENDED]

Accordingly, Schedule A of Part 888 is amended by revising the rent schedules for the 18 market areas indicated below in Regions 2, 4, 5, and 6, so that the rent schedules for those market areas will read as set forth below.

Authority: Sec. 8(c)(1) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(c)(1); sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: June 15, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)

Structure type	Number of bedrooms				
	0	1	2	3	4+
Region 2—New York, New York Area Office					
MARKET: POUGHKEEPSIE					
Detached			645	753	[illegible]
Semidetached/row	[illegible]	471	[illegible]	[illegible]	706
Walkup	376	[illegible]	559	[illegible]	665
Elevator 2–4 story	571	667	708		
Elevator 5+ story	[illegible]	663	[illegible]		
Manufactured home					

Effective date: Oct. 1, 1983.
Trended date: Oct. 1, 1985.
Prepared on May 2, 1984.

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)—Continued

Structure type	Number of bedrooms				
	0	1	2	3	4+
Region 4—Atlanta, Ga., Area Office					
MARKET: ATLANTA					
Detached			531	618	663
Semidetached/row	432	471			
Walkup	421	460			652
Elevator 2–4 story	445	484	545		
Elevator 5+ story	504	542			
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: ALBANY					
Detached					555
Semidetached/row	303	341			
Walkup	292	330	391	464	
Elevator 2–4 story	317	356	416		
Elevator 5+ story	397	405	466		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: AUGUSTA					
Detached			485	562	585
Semidetached/row	331	370	432	514	
Walkup	320	359	421		536
Elevator 2–4 story	348	388			
Elevator 5+ story	403	441	504		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: BRUNSWICK					
Detached			458	563	596
Semidetached/row	323				
Walkup	312	347	402	497	
Elevator 2–4 story		373			
Elevator 5+ story	395	434			
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: COLUMBUS					
Detached					
Semidetached/row			374	479	515
Walkup					
Elevator 2–4 story	313				
Elevator 5+ story	365	401	437		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: MACON					
Detached				576	611
Semidetached/row					
Walkup	330				
Elevator 2–4 story	355	391	419		
Elevator 5+ story	413				
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: ROME					
Detached					
Semidetached/row	250				
Walkup					429
Elevator 2–4 story					
Elevator 5+ story	314	352	404		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)—Continued

Structure type	Number of bedrooms				
	0	1	2	3	4+
MARKET: SAVANNAH					
Detached			473	549	586
Semidetached/row	332			499	545
Walkup	320	354			535
Elevator 2–4 story	347	383			
Elevator 5+ story	405				
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: VALDOSTA					
Detached			452	514	547
Semidetached/row			397		511
Walkup	279	319			
Elevator 2–4 story	305		411		
Elevator 5+ story	362	402	481		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985. Prepared on May 2, 1984.					
Region 5—Cleveland, OH, Service Office					
MARKET: CLEVELAND					
Detached			723	783	845
Semidetached/row	422		550	621	667
Walkup	345	415	482		606
Elevator 2–4 story	354	420	527		
Elevator 5+ story	417	428	536		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: AKRON					
Detached			700	774	829
Semidetached/row	416	471	546	624	657
Walkup	340	392	477	559	602
Elevator 2–4 story	342	397	530		
Elevator 5+ story	345	405	539		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: FINDLAY					
Detached			602	658	753
Semidetached/row	379	431	487	559	633
Walkup	331	364	429	532	574
Elevator 2–4 story	344	391	481		
Elevator 5+ story	356	411	515		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: LORAIN					
Detached			614	702	766
Semidetached/row	359	416	494	568	631
Walkup		340	407	500	540
Elevator 2–4 story	328	345	410		
Elevator 5+ story	345	380	427		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: MANSFIELD					
Detached				600	726
Semidetached/row	365	419	476	551	613
Walkup	325	358		503	535
Elevator 2–4 story	335	368	441		
Elevator 5+ story	341	392	450		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAMS)—Continued

Structure type	Number of bedrooms				
	0	1	2	3	4+
MARKET: TOLEDO					
Detached			644	728	782
Semidetached/row	408	467	523	599	661
Walkup	355	389	438	533	583
Elevator 2–4 story	361	393	454		
Elevator 5+ story	398	401	463		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985.					
MARKET: YOUNGSTOWN					
Detached			618	698	745
Semidetached/row	407	463	484	569	604
Walkup	340	370	426	510	552
Elevator 2–4 story	355	374	442		
Elevator 5+ story	383	382	451		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985. Prepared on May 2, 1984.					
Region 6—Dallas, TX, Area Office					
MARKET: DALLAS/FORT WORTH					
Detached			551	643	688
Semidetached/row	364	401	507	599	649
Walkup	313	376	482	556	632
Elevator 2–4 story	330	415	523		
Elevator 5+ story	463	525	675		
Manufactured home					
Effective date: Oct. 1, 1983. Trended date: Oct. 1, 1985. Prepared on May 2, 1984.					

[FR Doc. 84-16787 Filed 6-22-84; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Rocky Mountain National Park, Colorado; Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule designates locations in Rocky Mountain National Park where snowmobiles may be used for recreational purposes to provide the public the opportunity for snowmobile access to certain areas of the park and the adjacent Arapaho National Forest. These regulations have been designed to provide for increased recreational use and enjoyment of park resources as well as to provide for the preservation of the park in a way that is consistent with the general snowmobile policy of the

National Park Service and the off-road vehicle policy of the Department of the Interior.

EFFECTIVE DATE: July 25, 1984.

FOR FURTHER INFORMATION CONTACT: David J. Essex, Chief Park Ranger, Rocky Mountain National Park, Estes Park, Colorado 80517, Telephone: (303) 586–2371.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (use of Off-Road Vehicles on the Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harrassment of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural and aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated regulations on April 1, 1974, currently codified at Title 36, Code of Federal Regulations (CFR), § 2.18, that closed all National Park System areas to snowmobile use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR regulations, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1979, (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. Snowmobiling must be consistent with a park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives and protection of wildlife and other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the Code of Federal Regulations. This regulation is necessary to comply with Servicewide policy.

The Superintendent of Rocky Mountain National Park, in response to Executive Order 11644, prepared an environmental assessment of snowmobile use. Public meetings were held at Grand Lake, Colorado on October 24, 1973, and February 28, 1974, to discuss routes and areas of proposed snowmobile use on lands administered by the National Park Service, including the former Shadow Mountain Recreation Area. On April 12, 1975, a meeting attended by the Grand County commissioners, Grand Lake Chamber of Commerce directors and snowmobile club officers was held to hear proposals to open routes in addition to those proposed in a **Federal Register** notice of February 14, 1975 (40 FR 6797). The final notice was published in the **Federal Register** of January 13, 1976 (41 FR 1933) adopting the proposed routes plus an additional access trail to United States Forest Service land. The route designations were: (a) Green Ridge Snowmobile Trail (now under U.S. Forest Service jurisdiction), (b) Summerland Park Snowmobile Trail, (c) Supply Creek Access Snowmobile Trail, (d) Trail Ridge Road (partial), and (e) Bowen Gulch Access Trail.

This regulation, designating routes is necessary to comply with Servicewide policy and regulations codified at 36 CFR 2.18(c). These routes are as follows: (1) Summerland Park Route, a .5 mile unplowed roadway lying in Sections 32 and 33, T4N, R75W, just north of Grand Lake. The route is a continuation of a public road maintained by the Town of Grand Lake to service its water system, designated as a town snowmobile route. (2) Supply Creek Access Route, consisting of two spur access routes of about 2.2 miles connecting Grand Lake to "Supply Creek Road," for access to U.S. Forest Service trails designated as snowmobile routes. (3) Trail Ridge Road, specifically the 17 mile stretch from the West Unit Visitor Center to Milner Pass, of which the lower 9.7 miles from Timber Lake Trailhead to the visitor center would be plowed and open to dual-use with other motorized vehicles. (4) Bowen Creek Access Trail, a .8 mile unplowed roadway leading from Trail Ridge Road to the Bowen Gulch Trail on Forest Service lands.

With the exception of the Trail Ridge Road route, the designated snowmobile routes are short-distance corridors or spurs leading to primary snowmobile use outside park boundaries. The 9.7 miles of dual-use on the Trail Ridge Road route, as well as a portion of the Supply Creek Access route, represent a significant exception to the National Park Service's snowmobile policy by allowing snowmobilers on roads simultaneously with other motorized vehicles. The final regulations include operating restrictions to ensure snowmobile safety on dual-use roads. Brief stretches of abandoned roadway and open land are used in the Supply Creek Access route to permit snowmobiles to reach routes on adjacent U.S. Forest Service lands. These, too, represent an exception to the Servicewide snowmobile policy.

The Act of October 11, 1978 (Pub. L. 95–450; 92 Stat. 1095), created the Arapaho National Recreation Area, transferring the former Shadow Mountain Recreation Area to the U.S. Forest Service. Certain National Park Service designated snowmobile routes were, therefore, transferred to the U.S. Forest Service to manage. House Report 95–1460, accompanying Pub. L. 95–450, instructed the National Park Service to address the possibility of designating a snowmobile route along the east shore of Shadow Mountain Lake, located in Rocky Mountain National Park, to connect with the Arapaho National Recreation Area.

Subsequently, the Act of December 22, 1980, (Pub. L. 95–560; 94 Stat. 3265), revising the boundaries of Rocky Mountain National Park, authorized the East Shore Trail along Shadow Mountain Lake for snowmobile use, provided that studies show there will be no significant adverse impact on wildlife. Present information, based on incomplete studies, indicates that snowmobile activity along open water feeding areas, could adversely affect the bald eagle's wintering on Shadow Mountain Reservoir. Until more conclusive evidence is available, the East Shore Trail will not be proposed as a designated route.

Public Participation

The Superintendent initiated action to prepare another environmental assessment in the winter of 1979–1980. The purpose of this environmental assessment was to re-analyze permitted snowmobile use in Rocky Mountain National Park (West Unit), along with environmental impacts expected to be associated with alternative courses of action addressed, prior to promulgation of special regulations. This second environmental assessment involved continued public involvement through written responses, telephone contact, and re-contacting representatives from most all agencies and organizations contacted in the past and listed below:

U.S. Bureau of Reclamation
U.S. Forest Service

Colorado Division of Wildlife
Grand County Commissioners
Grand County Sheriff's Department
Town of Grand Lake (Mayor, Marshal, Town Council)
Grand Lake Metropolitan Recreation District
Grand Lake Chamber of Commerce
Trailblazers Snowmobile Club

In reviewing the old assessment, addressing new proposals, and identifying other environmental concerns, additional contacts were made with representatives from U.S. Fish and Wildlife Service, National Wildlife Federation (Boulder) and Sierra Club (Denver).

Separate contact was made with private inholders and "use and occupancy" residents on the question of plowing the lower portion of Trail Ridge Road which has been open to dual use of snowmobiles and wheeled vehicles since 1973.

The Environmental Assessment was completed and approved by the Acting Regional Director on April 4, 1980. Two public meetings were held on May 20 and 21, 1980, at Denver and Granby, Colorado, respectively. Written comments were received on the assessment until June 30, 1980.

A "Record of Decision" on the alternatives was prepared on September 16, 1980, along with a "Finding of No Significant Impact", for the purposes of the National Environmental Policy Act (42 U.S.C. 4332). Both documents are available from the Superintendent, Rocky Mountain National Park.

This final rule, with the exception of a few minor editorial changes, remains unchanged from the proposed rule published June 16, 1983, in the **Federal Register** (48 FR 27553). The public comment period was open for 30 days, closing on July 18, 1983. Public comment was received in the form of one written letter from an organization expressing approval of the proposed rule.

Drafting Information

The following persons participated in the writing of these regulations: David J. Essex, Chief Park Ranger; Darrell C. Grossman, Supervisory Park Ranger, both of Rocky Mountain National Park.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

As required by the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), the Service has prepared an environmental assessment and a finding of no significant impact on this final regulation which are available at the address noted above.

The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexiblity Act (5 U.S.C. 601 *et seq.*), nor does this rulemaking require the preparation of a regulatory analysis. This conclusion is based on the finding that snowmobile use of the park now ranges from 2,500–3,000 snowmobilers annually. While most snowmobiling occurs on adjacent lands outside the park, the proposed rule will contribute to the local tourism economy of Grand Lake, Colorado, by ensuring the continued availability of snowmobiling opportunities in Rocky Mountain National Park.

List of Subjects in 36 CFR Part 7

National parks.

Authority

The Service's authority for promulgating this regulation is 16 U.S.C. 1 and 3.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

In consideration of the foregoing, 36 CFR Chapter 1 is amended as follows:

1. In § 7.7 add a new paragraph (i) as follows:

§ 7.7 Rocky Mountain National Park.

* * * * *

(i) *Snowmobiles.* (1) Designated routes open to snowmobile use: The Summerland Park Snowmobile Trail, the Supply Creek Access Snowmobile Trail, the plowed portion of the Trail Ridge Road between the West Unit Visitor Center and the Timber Lake Trailhead, the unplowed portion and the Trail Ridge Road between the Timber Lake Trailhead and Milner Pass, and the Bowen Gulch Access Trail. These routes will be marked by signs, snow poles or other appropriate means.

(2) Detailed descriptions of designated routes and appropriate maps are available at Park Headquarters, the West Unit Office and the Grand Lake Entrance Station.

(3) The maximum speed limit is 35 m.p.h. unless changed by the posting of appropriate signs. On routes open to dual use of both motor vehicles and snowmobiles, the maximum snowmobile speed limit is 25 m.p.h. All posted speed limits are subject to further limitation as required under § 4.14 of this chapter. No person shall operate a snowmobile at a speed in excess of the maximum limits so posted.

(4) On roads designated for snowmobile use, only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when the designated road or parking area is closed to all other motor vehicle use by the public except on the dual use routes described in paragraph (i)(5).

(5) Routes open to dual use of both motor vehicles and snowmobiles: that portion of the Supply Creek Access Snowmobile Trail which extends along the plowed Trail Ridge Road from the Grand Lake Lodge Road junction to the Sun Valley Road junction, then along the plowed Sun Valley Road to the park boundary where it intersects with a plowed Grand County road; that portion of the plowed Trail Ridge Road between the West Unit Visitor Center and the Timber Lake Trailhead. On such dual use routes, the operation of snowmobiles is permitted only along the far right portion of the plowed roadway and in single-file manner. Dual use routes will be marked with appropriate signs and snow poles. The maximum snowmobile speed limit on such dual use routes is 25 m.p.h.

(6) The Superintendent shall determine the opening and closing dates for use of designated snowmobile routes each year, taking into consideration the location of wintering wildlife, road plowing schedules and other factors that may relate to public safety. The Superintendent shall notify the public of such dates through normal news media channels. Temporary closure of dual-use routes for public safety reasons will be initiated through the posting of appropriate signs and/or barriers when road plowing operations are taking place. Routes will be open to snowmobile travel when they are considered to be safe for travel but not necessarily free of safety hazards. Snowmobilers may travel these routes with the permission of the Superintendent, but at their own risk.

Dated: May 25, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-16824 Filed 6-22-84; 8:45 am]
BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[OSWER-FRL-2614-2]

Maryland; Phase II, Components B and C, Interim Authorization of the State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA) provisions, the State of Maryland has applied for Interim Authorization Phase II, Components B and C. The Environmental Protection Agency (EPA) has reviewed Maryland's application for Phase II, Components B and C, Interim Authorization, and has determined that Maryland's hazardous waste program is substantially equivalent to the Federal program.

The State of Maryland is hereby granted Interim Authorization for Phase II, Components B and C to operate the State's hazardous waste program in lieu of the Federal program for facilities which incinerate hazardous wastes or dispose of hazardous wastes on land.

DATES: These regulations shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on July 9, 1984. These regulations shall become effective on July 9, 1984.

FOR FURTHER INFORMATION CONTACT: Anthony J. Donatoni, Chief, State Programs Section, Waste Management Branch, U.S. EPA Region III, 6th and Walnut Streets, Philadelphia, PA 19106 (215) 597–7937.

SUPPLEMENTARY INFORMATION:

Background

In the May 19, 1980 **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, to protect human health and the environment from the improper management of hazardous waste. Included in these regulations, which became effective November 19, 1980 were provisions for a transitional stage in which States would be granted Interim Authorization. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program has taken effect. Phase I of the Federal program, published in the May 19, 1980 **Federal Register** (45 FR 33063), includes regulations pertaining to the identification and listing of hazardous wastes; standards applicable to generators and transporters of hazardous waste, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities. The State of Maryland received Interim Authorization for Phase I on July 8, 1981.

In the January 26, 1981 **Federal Register** (46 FR 7965), the Environmental Protection Agency announced the availability of portions of the second phase of Interim Authorization. Phase II of the Federal program includes permitting procedures and standards for hazardous waste management facilities. EPA made the second phase of Interim Authorization available in components in order to authorize State programs as expeditiously as possible and because some of the standards for hazardous waste treatment, storage, and disposal facilities (40 CFR Part 264) have been promulgated at different times. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802), contains standards for permitting containers, tanks, surface impoundments, and waste piles. The State of Maryland received Interim Authorization of Phase II, Component A, on November 23, 1983.

Component B, published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators. Component C, published in the **Federal Register** July 26, 1982 (47 FR 32274), contains standards for permitting surface impoundments, waste piles, land treatment facilities and landfills. These Component C standards for permitting surface impoundments and waste piles superseded the Component A standards for permitting storage and treatment in surface impoundments and waste piles published on January 12, 1981. The State of Maryland applied for Phase II, Components B and C, Interim Authorization to enable the State to permit the incineration and land disposal of hazardous wastes in lieu of the Federal program.

On February 10, 1984, EPA published a notice in the **Federal Register** inviting the public to comment on Maryland's application for Interim Authorization, Phase II, Components B and C, at a public hearing on March 12, 1984. This notice also invited the public to submit written comments on Maryland's application to Region III by March 19, 1984. Notice was also published in seven major daily newspapers in Maryland and mailed to persons on both the State and EPA mailing lists.

Discussion

The State of Maryland submitted its complete application for Phase II, Components B and C, Interim Authorization on January 30, 1984. EPA reviewed the State's application and prepared comments. The issues which EPA identified for the State to address included: (1) Discussions in the Program Description to clarify a difference between EPA's and the State's correction factor for measuring particulate emissions from incinerators, and the applicability of groundwater monitoring requirements to *all* disposal facilities; (2) commitments in the Memorandum of Agreement so the State requests certain permit information from permit applicants, so State reporting to EPA is consistent with RCRA grant guidance, and to insert two, more current procedural provisions; (3) a certification from the Attorney General regarding the State's adoption of federal regulations by reference, and (4) a commitment in the Authorization Plan to correct numerous regulatory inaccuracies.

In a letter dated April 25, 1984 and through subsequent responses, the State of Maryland submitted amendments to its application for Phase II, Components B and C, Interim Authorization and satisfactorily responded to the issues raised by EPA. In those responses, the State provided amendments to the Program Description which described that the State's correction factor that is applied when measuring particulate emissions from hazardous waste incinerators is at least as stringent as EPA's especially when considering the State's emission standard itself is more stringent than EPA's. Thirdly, Maryland explains it is utilizing State permit provisions to impose groundwater monitoring programs at facilities where regulatory applicability is unclear.

The Memorandum of Agreement has been modified as requested by EPA and certain permit application information will be required by the State in order to properly process permit applications. Additionally, procedural provisions were added as EPA requested, including State reporting requirements that are consistent with RCRA grant guidance.

An amendment to the Attorney General's Statement certifies that unless specifically noted, when federal regulations are referenced in Maryland's regulations, the State is only adopting the text of the federal regulations in existence on the date Maryland proposes its regulations.

Lastly, the Authorization Plan was amended describing a procedure by

which EPA regulatory comments would be addressed by the State for Final Authorization. A specific schedule for a State regulation proposal and adoption procedure to make the necessary regulatory amendments is presented. Minor regulatory errors will be corrected through an errata.

The State of Maryland has provided the necessary amendments to its application and has adequately addressed EPA's comments. The State's program is substantially equivalent to the Federal program.

Responsiveness Summary

Region III held a public hearing on Maryland's application for Phase II, Components B and C, Interim Authorization on March 12, 1984, in Baltimore, MD. Six (6) members of the public attended, in addition to Region III and State agency representatives. No testimony was provided at the public hearing on the State's application and no written comments were received by the Agency. The public comment period closed March 19, 1984.

Decision

I have determined that the State of Maryland's program is substantially equivalent to the Federal program for Phase II, Components B and C, Interim Authorization, as defined in 40 CFR Part 271, Subpart B. In accordance with Section 3006(c) of RCRA, the State of Maryland is hereby granted Interim Authorization to operate its hazardous waste program in lieu of Phase II, Components B and C of the Federal hazardous waste program.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Maryland's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental regulations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 31, 1984.

Thomas P. Eichler,

Regional Administrator.

[FR Doc. 84-16818 Filed 6-22-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 712

[OPTS-82004Q; FRL TSH-2595-4]

Amendment Adding Chemicals Recommended by the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule adds 17 chemical substances to the list of chemicals subject to the Preliminary Assessment Information Rule—Manufacturer Reporting (PAI Rule) (40 CFR Part 712), under the authority of section 8(a) of the Toxic Substances Control Act (TSCA). These chemicals were recommended for testing consideration in the Eleventh Report of the Interagency Testing Committee (ITC), as published in the **Federal Register** of December 2, 1982 (47 FR 54624). Manufacturing firms which produce these subject chemicals are required to submit production, use, and exposure data to EPA, in a manner specified in the PAI Rule. The Agency will use the reported data to evaluate risks associated with the chemicals. EPA also will use the information to determine whether the chemicals should be subject to testing under section 4 of TSCA, or to verify test/no test decisions which already have been made.

DATES: This regulation shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on July 9, 1984. This regulation becomes effective on August 8, 1984.

FOR FURTHER INFORMATION CONTACT: For further information on this rule or to obtain copies of the Manufacturer's Report Form, contact: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the U.S.A.: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number: 2000-0420.

I. Background

Under the authority of TSCA section 4(e), the ITC issues reports which recommend certain chemicals for priority testing consideration by EPA. The ITC recommendations may take one of two forms:

1. The ITC may designate a chemical for consideration and response by EPA within 12 months of the date of recommendation. This type of recommendation requires EPA to initiate work on a section 4 test rule (or equivalent action) before the 12-month deadline, or issue a notice for publication in the **Federal Register** explaining why such action is not being taken. For convenience, this rule will refer to chemicals subject to this type of recommendation as designated chemicals.

2. The ITC may recommend a chemical for testing consideration, but not designate a deadline for Agency response. For convenience, this rule will refer to chemicals subject to this type of recommendation as non-designated chemicals.

EPA must evaluate all chemicals that the ITC recommends for testing consideration, regardless of whether they are designated or non-designated.

The PAI Rule (40 CFR Part 712), issued under the authority of TSCA section 8(a), requires manufacturers of certain chemicals to report general production, use, and exposure information using the Preliminary Assessment Information Manufacturer's Report Form (EPA Form 7710-35). The EPA Administrator has the authority to amend the list of chemicals subject to the rule when necessary to collect information on additional chemicals. The Administrator has delegated this authority to the Assistant Administrator for Pesticides and Toxic Substances (for amendments involving ITC-recommended chemicals only). The Assistant Administrator has redelegated this authority to the Director of the Office of Toxic Substances..

II. Content of the Rule

This rule amends the list of chemicals subject to the PAI Rule by adding the 17 chemicals recommended in the ITC's Eleventh Report to the list of subject chemicals. Eleven of these chemicals are designated and six are non-designated. Manufacturers (including importers) of all 17 of the chemical substances listed in this rule are subject to the reporting requirements of the PAI Rule. This addition to the PAI Rule was proposed for public comment in the **Federal Register** of May 19, 1983 (48 FR 22697).

The 11 designated chemical substances recommended in the ITC's Eleventh Report are listed by CAS number below:

77–58–7 Stannane, dibutylbis [(1-oxododecyl)oxy]-
140–66–9 Phenol, 4-(1,1,3,3-tetramethylbutyl)-
646–06–0 1,3-Dioxolane
1185–81–5 Stannane, dibutylbis(dodecylthio)-
3319–31–1 1,2,4-Benzenetricarboxylic acid, tris(2-ethylhexyl) ester
6422–86–2 1,4-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
25168–21–2 2-Butenoic acid, 4,4'-[(dibutylstannylene)=bis(oxy)]bis[(4-oxo-, diisooctyl ester, (Z,Z)-
25168–24–5 Acetic acid, 2,2',-[(dibutylstannylene)bis(thio)]bis-, diisooctyl ester
25852–70–4 Acetic acid, 2,2'-[(butylstannylidyne)-tris(thio)]tris-, triisooctyl ester
26636–01–1 Acetic acid, 2,2'-[(dimethylstannylene)bis(thio)]bis-, diisooctyl ester
54849–38–6 Acetic acid, 2,2',2''-[(methylstannylidyne)-tris(thio)]tris-, triisooctyl ester

Three of the non-designated chemical substances listed in the ITC's Eleventh Report are known as carbofuran intermediates. This rule refers to these chemicals by their CAS preferred names:

13414–54–5 Benzene, 1-[(2-methyl-2-propenyl)oxy]-2-nitro-
13414–55–6 Benzofuran, 2,3-dihydro-2,2-dimethyl-7-nitro-
68298–46–4 7-Benzofuranamine, 2,3-dihydro-2,2-dimethyl-

This rule also requires reporting on three additional nondesignated chemicals which were recommended for testing consideration in the Eleventh Report. These chemicals are known as trimethylbenzenes, and are listed by CAS number below:

108–67–8 Benzene, 1,3,5-trimethyl-
526–73–8 Benzene, 1,2,3-trimethyl-
25551–13–7 Benzene, trimethyl-

(Another member of the group, 1,2,4-Trimethylbenzene (CAS No. 95–63–6), was recommended in the Tenth Report and designated for consideration and response within 12 months. This chemical is not dealt with in this rule because it was included on the list of chemicals subject to the original PAI Rule.)

EPA will use the data obtained with this rule to evaluate risks associated with the subject chemicals, and to determine whether certain of these chemicals should be included in future test rules promulgated under the authority of TSCA section 4. In those cases where EPA already has decided not to require testing, the Agency will use the information reported under this rule to verify the data on which the earlier testing decisions were made.

III. Who Must Report

All persons who manufacture or import chemicals listed in this rule are subject to the requirements of the PAI Rule with regard to those chemicals, unless they are specifically exempted from those requirements. The types of persons subject to the PAI Rule are specified at 40 CFR 712.20 and 712.25. Potential respondents to this rule should refer to the **Federal Register** of June 22, 1982 (47 FR 26992) for a complete description of the type of person who must report data on the chemicals listed in this rule.

Generally, manufacturers (including importers) must submit a Preliminary Assessment Information Manufacturer's Report Form for each chemical listed in this rule that they produce (or import). If a manufacturing firm produces a subject chemical at more than one plant site, the firm would submit a separate form for each site.

EPA received two public comments on the proposed version of this rule; both comments dealt with the question of who must report. The two commenters are chemical manufacturers, and their comments were limited to specific chemicals that they produce.

One commenter objected to the inclusion of carbofuran intermediates in the rule. The firm based its objection on the fact that it has already submitted Preliminary Assessment Information Manufacturer's Report Forms, on a voluntary basis, for those compounds.

EPA has verified this fact, and agrees that the commenter does not have to report for this rule. This response conforms with conditions described in the PAI Rule (40 CFR 712.30(a)(3)(i)), and summarized as follows: If, prior to the effective date of this rule, a company has complied fully and voluntarily with the reporting requirements of the rule (i.e., the company has correctly completed a Report Form for a chemical subject to the rule), that company need not submit any additional data to the Agency. Note that compliance is dependent upon the company's full completion of an official Report Form. Note also that the company is required to provide the Agency with written notification, during the reporting period, of the earlier submission. The notification letter should certify under oath that the data on the Report Form are current (no more than three years old), accurate, and complete. The letter should state that there have been no major changes in the production volume of the subject chemical or in the chemical production process for the chemical.

If a firm has not provided information previously to EPA with regard to its production of a subject chemical at a particular plant site, or has provided data in a manner other than on a Manufacturer's Report Form, the firm must comply with this rule for that chemical and site. The Agency is maintaining this requirement to ensure that its exposure-related data on the 17 subject chemicals will be reported in a uniform manner, to facilitate EPA's processing and analysis of the data. Moreover, the information submitted in response to this rule will be used to support the Agency's overall risk assessment program for these chemicals. EPA therefore wishes to ensure that it will receive complete data on a plant site and industry-wide basis; the Agency then can be sure that it has a comprehensive measure of the potential exposure risk posed by each of the 17 subject chemicals.

EPA continues to encourage voluntary reporting, with or without the use of a Report Form. However, the Form must be used in order for a voluntary submission to satisfy any subsequent section 8(a) reporting requirements.

With regard to the first commenter's broader request that carbofuran intermediates be removed from the list of chemicals subject to this rule, the Agency responds that these compounds are ITC-recommended chemicals which may be produced by other firms for commercial use. EPA wishes to have comprehensive information, covering the entire chemical industry, on each ITC chemical, in order to be able to perform a complete assessment of its potential risk. Thus, the Agency is seeking data on the production activities of any other firms which manufacture or import carbofuran intermediates.

The second commenter on the proposed rule is a manufacturer of trimethylbenzenes as components of gasoline. The company does not separate these compounds from the petroleum product for commercial sale or use. With regard to its production activities and reporting obligations under this amendment of the PAI Rule, the firm interpreted that rule as follows: Reporting is not required on chemicals which are not marketed for commercial sale as section 8(a) subject chemicals, but simply are part of a larger product stream. EPA agrees with this interpretation of the PAI Rule; for the purposes of this amendment to the PAI

rule, the company is a non-reporting manufacturer of trimethylbenzenes. See the **Federal Register** of June 22, 1982 (47 FR 26993, 26999).

IV. Exemptions From Reporting

Under the terms of the PAI Rule, a manufacturer of any chemical listed in this amendment is exempt from reporting on the production of that chemical at an individual plant site if the site produced less than 500 kilograms of the listed substance during the reporting period.

A manufacturing firm also is exempt from reporting under this rule if it qualifies as a small manufacturer, as defined by EPA in the PAI Rule at 40 CFR 712.25. The small manufacturer definition is as follows: A manufacturer of a chemical listed in this rule will be exempt from reporting on that chemical if the total annual sales revenue of all plant sites that it owns or controls (or which are owned or controlled by its foreign or domestic parent company, if any) is less than $30 million. However, if a manufacturer with total annual sales of less than $30 million produces (annually) over 45,400 kilograms (100,000 pounds) of a listed chemical at a particular plant site, then that manufacturer will not qualify as small with regard to that chemical at that site. Manufacturers must use records from their latest complete corporate fiscal year as of the effective date of this rule when determining their exemption status under this definition.

V. Reporting Deadline

This rule requires manufacturers of the 17 subject chemicals to submit reports within 60 days of the effective date of the rule (i.e., within 104 days of the date publication of the rule in the **Federal Register**. EPA believes this to be a reasonable amount of time for compliance with the rule. The Agency estimates that no plant site will be required to submit more than five reports, with most firms submitting one or two reports per site.

VI. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a Rule Related Notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). Included in the Notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than 60 days after the effective date of this rule.

VII. Economic Impact

The estimated costs of manufacturer compliance with this rule are based on estimates used in the final PAI Rule. However, in order to account for price inflation that has occurred since the development of the original rule, EPA has increased its cost estimates for this rule by 23.3 percent over those contained in the PAI Rule.

The cost estimates in this analysis are current as of the fourth quarter of 1982. Although EPA does not expect the reporting requirements of this rule to be in effect until mid-1984, the Agency is utilizing the 1982 economic data because of a moderation in the rate of inflation during the past year and a half. The Agency does not expect the actual compliance costs of this rule to be significantly different from the 1982 values for per-chemical reporting costs.

EPA has identified the following categories of compliance costs per company for this rule:

1. A fixed cost of $590 for a site to become familiar with the regulation and identify the chemicals on which to report.

2. A variable cost of $520 per report for a site to determine whether information should be claimed as confidential and to complete the form and certification requirements.

EPA estimates that 26 plant sites operated by 22 companies will submit 43 reports under this rule. This figure excludes plant sites which are exempted by the small business cutoff. Total reporting costs for the 17 chemicals listed in this amendment are estimated to be $37,700. (For a discussion of reporting costs, see Economic Impact and Small Business Definition Analysis for the final TSCA Section 8(a) Preliminary Assessment Information Rule, prepared by ICF, Inc., 1981. This document is contained in the public record for the PAI Rule.)

VIII. Public Record

The public record for this rulemaking is a continuation of the record for the PAI Rule published in the **Federal Register** of June 22, 1982 (47 FR 26992). All documents, including the index to this public record, are available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m. on working days (Rm. E-107, 401 M Street, SW., Washington, D.C., 20460). This record includes the following types of basic information considered by the Agency in developing this rule:

1. The Proposed Rule (48 FR 22697, May 19, 1983).

2. Written comments received in response to the Proposed Rule.

3. All relevant support documents and studies.

4. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

5. Minutes, summaries, or transcripts of any public meetings held to develop this rule.

6. Any factual information considered by the Agency in developing the rule.

EPA requests that, between the date of this notice and the effective date of this rule, persons identify any perceived errors or omissions in the record.

IX. Regulatory Assessment Requirements

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of the Office of Management and Budget to review certain information collection requests by Federal agencies. OMB approved the reporting provisions contained in this request and issued OMB control number 2000-0420 for this rule.

The rule requires manufacturers of the 17 chemicals to complete the Preliminary Assessment Information Manufacturer's Report Form. The information to be submitted will be used by EPA to evaluate risks associated with the chemicals, as well as to determine whether the chemicals should be subject to TSCA section 4 testing.

B. Regulatory Flexibility Act

This amendment is consistent with the objectives of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it will not have a significant economic impact on a substantial number of small entities. EPA's determination of the probable economic impact of this rule takes into account the fact that the rule contains a reporting exemption for small chemical manufacturers.

C. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it does not have an effect of $100 million or more on the economy. It is expected to have a one time cost of about $37,700. It will not have a significant effect on competition, costs, or prices.

The reporting provisions in this regulation have been submitted to the

Office of Management and Budget as required by Executive Order 12291.

XII. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in "DATES" in this notice. The effective date has, in turn, been calculated from the promulgation date.

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Reporting and recordkeeping requirements.

(Sec. 8(a), Pub. L. 94-469, 90 Stat. 2027, (15 U.S.C. 2607(a)))

Dated: May 8, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

PART 712—[AMENDED]

Therefore, Part 712 of Chapter 1 of 40 CFR is amended by adding paragraph (g) to § 712.30 to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(g) A Preliminary Assessment Information Manufacturer's Report must be submitted by October 8, 1984, for each chemical substance listed below.

CAS No. and Chemical Name

77-58-7 Stannane, dibutylbis[(1-oxododecyl)oxy]-
108-67-8 Benzene, 1,3,5-trimethyl-
140-66-9 Phenol, 4-(1,1,3,3-tetramethylbutyl)-
526-73-8 Benzene, 1,2,3-trimethyl-
646-06-0 1,3-Dioxolane
1185-81-5 Stannane, dibutylbis(dodecylthio)-
3319-31-1 1,2,4-Benzenetricarboxylic acid, tris (2-ethylhexyl) ester
6422-86-2 1,4-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
13414-54-5 Benzene, 1-[(2-methyl-2-propenyl)oxy]-2-nitro-
13414-55-6 Benzofuran, 2,3-dihydro-2,2-dimethyl-7-nitro-
25168-21-2 2-Butenoic acid, 4,4'-[(dibutylstannylene)=bis(oxy)] bis [(4-oxo-, diisooctyl ester, (Z,Z)-
25168-24-5 Acetic acid, 2,2'-[(dibutylstannylene)bis(thio)]bis-,diisooctyl ester
25551-13-7 Benzene, trimethyl-
25852-70-4 Acetic acid, 2,2',2"-[(butylstannylidyne)=tris(thio)]tris-, triisooctyl ester
26636-01-1 Acetic acid, 2,2'-[(dimethylstannylene)bis(thio)]bis-,diisooctyl ester
54849-38-6 Acetic acid, 2,2',2"-[(methylstannylidyne)=tris(thio)]tris-, triisooctyl ester
68298-46-4 7-Benzofuranamine, 2,3-dihydro-2,2-dimethyl-

(Approved by the Office of Management and Budget under Control Number 2000-0420)

* * * * *

[FR Doc. 84-16939 Filed 6-22-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 712

[OPTS-82004R; TSH FRL 2595-5]

Amendment Adding Mesityl Oxide to List of Chemicals Subject to Preliminary Assessment Information Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule adds mesityl oxide to the list of chemicals subject to the Preliminary Assessment Information Rule—Manufacturer Reporting (40 CFR Part 712), under the authority of section 8(a) of the Toxic Substances Control Act (TSCA). The Interagency Testing Committee (ITC) has recommended this chemical as a candidate for testing under TSCA section 4. EPA did not include the chemical in the initial Preliminary assessment Information Rule (PAI Rule), but is adding it to the list of subject chemicals at this time. Manufacturing firms which produce mesityl oxide are required to provide EPA with production, use, and exposure data on the chemical, in a manner specified in the AI Rule. The Agency will use the reported data to evaluate potential risks associated with mesityl oxide, and to further support its final test rule decision concerning that chemical.

DATES: This regulation shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on July 9, 1984. This regulation becomes effective on August 8, 1984.

FOR FURTHER INFORMATION CONTACT: For further information on this rule or to obtain copies of the Manufacturer's Report Form, contact: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number: 2000-0420.

I. Legal Authority

The PAI Rule, issued under the authority of section 8(a) of TSCA, established standardized reporting requirements for all manufacturers of chemicals listed in the rule. It required manufacturers of approximately 250 chemicals to report general production, use, and exposure information using the Preliminary Assessment Information Manufacturer's Report Form (EPA Form 7710-35). EPA has the authority to add chemical substances to the list of chemicals subject to the rule in order to gather exposure-related data for use in assessing the potential risks posed by those chemicals.

II. Reporting Requirements

This rule amends the PAI rule by adding mesityl oxide (CAS No. 141-79-7) to the list of chemicals subject to that model rule. This amendment of the PAI Rule was proposed for public comment in the **Federal Register** of January 12, 1984 (49 FR 1536). The Agency did not receive any comments.

The effect of this rule is to require manufacturers (including importers) of mesityl oxide to provide EPA with Preliminary Assessment Information Reports on that chemical, unless they are specifically exempted from doing so. A manufacturing firm must submit a separate Manufacturer's Report Form for each plant site at which mesityl oxide is produced (or imported). Manufacturers of mesityl oxide are required to submit their completed Report Forms within 60 days of the effective date of this final rule (i.e., within 104 days of the date of publication of the rule in the **Federal Register**). Any firm submitting data under this rule can, at its discretion, specify that EPA is to treat the data as Confidential Business Information (CBI).

Additional details of the reporting requirements, including the types of persons subject to the reporting requirements and exemptions of the PAI Rule, are described in that rule at 40 CFR Part 712. "Small" manufacturers of mesityl oxide, as defined in 40 CFR 712.25, are exempt from the requirements of the PAI Rule. A more detailed description of the reporting requirements is set forth in the preamble to the PAI Rule, which was published in the **Federal Register** of June 22, 1982 (47 FR 26992).

EPA wishes to clarify a possible point of confusion concerning the identification of manufacturers subject to this rule. Manufacturers of mesityl oxide are subject to the PAI rule if they produce that chemical for commercial purposes (as defined at 40 CFR 712.3(h)), and if their production of the chemical qualifies as a TSCA-regulable activity (involving a chemical substance as defined in TSCA section 3(2)). If the mesityl oxide is used as an intermediate in the manufacture of a pesticide, or if the chemical is an inert component of the pesticide, the production of the mesityl oxide is a TSCA-regulable act. In such a case, the mesityl oxide itself is not a pesticide as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136), but rather is a non-active ingredient in the production of the pesticide. As such, the mesityl oxide is a chemical substance produced for commercial purposes and is subject to TSCA regulations, including this section 8(a) rule.

III. Agency Rationale and Objectives

The ITC included mesityl oxide in its Fourth Report of chemical substances recommended for test rule consideration under TSCA section 4(a), which was published in the **Federal Register** of June 1, 1979 (44 FR 31866). In response to that recommendation, EPA has issued a rule proposing the establishment of testing requirements for mesityl oxide. That proposed rule was published in the **Federl Register** of July 5, 1983 (48 FR 30699).

EPA did not include mesityl oxide in the initial list of chemicals subject to the section 8(a) PAI Rule. However, the Agency now is adding mesityl oxide to that list of subject chemicals in order to obtain production, use, and exposure data on the chemical. Although EPA already has made a tentative decision to require testing on mesityl oxide, the Agency is seeking exposure-related information on the chemical at this time to support its final testing decision. In addition, EPA will use the reported data to determine, in a definitive manner, the identity of all current manufacturers and importers of mesityl oxide, and the current volume of production or importation. This information will enable the Agency to better analyze the potential risks posed by that chemical, as part of EPA's ongoing risk assessment program.

IV. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a Rule Related Notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). Included in the Notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than 60 days after the effective date of the final rule.

V. Economic Impact

EPA's cost estimates for manufacturer compliance with the requirements of this rule are based on estimates used in the PAI Rule. These cost estimates were updated to reflect inflationary trends through the latter part of 1982. Although EPA does not expect the reporting requirements of this rule to be in effect until mid-1984, the Agency is utilizing the 1982 economic data in estimating the cost of manufacturer reporting on mesityl oxide. With the recent moderation in the inflation rate, EPA does not expect the compliance costs of this rule to be significantly different from the 1982 values for per-chemical reporting costs.

EPA has identified the following categories of compliance costs for this rule:

1. A fixed cost of approximately $590 for a manufacturing plant site to become familiar with the regulation and to determine whether it is required to report on its production of mesityl oxide.

2. A variable cost of approximately $520 per report for the plant site to complete the Manufacturer's Report Form, meet all certification requirements, and determine whether reported information should be claimed confidential.

Based on non-confidential data at EPA's disposal, the Agency estimates that four plant sites operated by four companies will submit reports under this rule. Each of these sites will submit a single report on mesityl oxide. This estimate excludes manufacturers of mesityl oxide that need not report because they qualify for the small manufacturer exemption. The total reporting cost of the mesityl oxide amendment is estimated by EPA to be $4,440.

For a more detailed discussion of reporting costs, see the Economic Impact and Small Business Definition Analysis For the Final TSCA Section 8(a) Preliminary Assessment Information Rule, prepared in 1981 by ICF, Inc. This document is contained in the public record for the PAI Rule (OPTS–82004).

VI. Rulemaking Record

The public record for this rule is a continuation of the record for the PAI Rule and is identified with document control number OPTS–82004R. All documents, including the index to this public record, are available for inspection in the OTS Reading Room from 8:00 a.m. to 4:00 p.m. on work days (Rm. E–107, 401 M St., SW., Washington, D.C. 20460). This record includes the following types of information considered by the Agency in developing this rule:

1. The Proposed Rule (49 FR 1536, January 12, 1984).

2. All relevant support documents and studies.

3. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)

4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.

5. Any factual information considered by the Agency in developing the rule.

EPA requests that, between the date of this notice and the effective date of this rule, persons identify any perceived errors or omissions in the record.

VII. Regulatory Assessment Requirements—Paperwork Reduction Act, Regulatory Flexibility Act, Executive Order 12291

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, authorizes the Director of the Office of Management and Budget (OMB) to review certain information collection requests by Federal agencies. The final section 8(a) PAI Rule has been reviewed and approved by OMB. The OMB control number for that rule is 2000–0420.

EPA also has determined that, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the addition of mesityl oxide to the list of chemicals subject to the PAI Rule will not have a significant economic impact on a substantial number of small entities. EPA expects only four companies to report under this rule, well within Regulatory Flexibility Act guidelines. In addition, "small" manufacturers (as defined in 40 CFR 712.25) will be exempt from reporting on mesityl oxide.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and should be subject to a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it is not expected to have a compliance cost of $100 million or more. Rather, as noted above, this rule is expected to have a one-time cost of approximately $4,440. The rule therefore

will not have a significant effect on competition, costs, or prices.

The reporting provisions in this regulation have been submitted to OMB as required by Executive Order 12291.

Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in "DATES" in this notice. The effective date has, in turn, been calculated from the promulgation date.

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Recordkeeping and reporting requirements.

(Sec. 8(a), Pub. L. 94–469, 90 Stat. 2003 (15 U.S.C. 2607(a)))

Dated: May 6, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

PART 712—[AMENDED]

Therefore, 40 CFR 712.30 is amended by adding paragraph (i) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(i) Manufacturers of the chemical substance listed below must submit a Preliminary Assessment Information Manufacturer's Report on that chemical substance by October 8, 1984:

Mesityl Oxide, CAS No. 141–79–7

(Approved by the Office of Management and Budget under Control Number 2000–0420.)

* * * * *

[FR Doc. 84–16940 Filed 6–22–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; Arizona, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brain R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood–prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Federal Insurance Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 1229, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67.

Flood Insurance, Flood Plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
Arizona	Cochise County (unincorporated areas) (FEMA–6592)	Babocomari River	150 feet downstream of State Highway 90	*4,266
		Greenbrush Draw	75 feet upstream of Bisbee Naco Highway	*4,567
		Line 1	80 feet upstream of confluence with Greenbush Draw	*4,555
		Line 2	40 feet upstream of 4th Street	*4,591
		Line 3	10 feet upstream of Southern Pacific Railroad	*4,578
		Palm Groove Wash	120 feet upstream of Southern Pacific Railroad	*3,960
		Whitewater Draw	100 feet upstream of U.S. Highway 80	*3,919
		Stream 1	10 feet upstream of U.S. Highway 666	*3,942
		San Pedro River	Intersection of San Pedro River and center of Interstate 10.	*3,510
		Stream E	50 feet upstream of El Camino Rancho	*4,548
		Stream E Tributary	50 feet upstream of El Camino Rancho	*4,570
		Stream J	20 feet upstream of State Highway 92	*4,598
		Stream J Tributary	350 feet upstream of confluence with Stream J	*4,607

State		City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
Maps available for inspection at County Engineering Department, Cochise County Courthouse, Bisbee, Arizona.					
Arizona		Graham County (unincorporated areas) (FEMA-6592)	Black Rock Wash	50 feet upstream of Southern Pacific Railroad	*2,718
			Cottonwood Wash	50 feet upstream of Southern Pacific Railroad	*2,854
			Mud Hollow Creek	At intersection with Cluff Ranch Road	#2
			Ash Creek	At intersection with Dodge-Nevada Canal	#1
			Gila River	100 feet downstream of North Eighth Avenue	*2,895
			Frye Creek	300 feet downstream of confluence with Frye Creek Tributary.	*3,070
			Frye Creek Tributary	1,500 feet upstream of confluence with Frye Creek	*3,089
			Cactus Flat	100 feet upstream of U.S. Highway 666	*3,110
			San Simon River	At intersection with upper Solomonville Road	*2,980
			Jacobson Creek Tributary	100 feet downward of intersection with Mohawk Drive	*3,274
			Jacobson Creek	600 feet upstream of confluence with Marijilda Wash	*3,098
			Marijilda Wash	At intersection with Roadrunner Street	*3,155
Maps available for inspection at the Engineering Department, Graham County, Courthouse, Safford, Arizona.					
Colorado		Florence (town), Fremont County (FEMA-6592)	Arkansas River	Intersection of Santa Fe Avenue and West Seventh Street.	*5,150
			Coal Creek	Intersection of East Fourth Street and Petroleum Avenue.	*5,161
			Coal Creek East Overflow	Intersection of East Main Street (Colorado Highway 115) and Robinson Avenue.	*5,173
			Coal Creek West Overflow	Intersection of Santa Fe Avenue and West Main Street.	*5,175
			Oak Creek	Intersection of Houston Avenue and West Second Street.	*5,190
Maps available for inspection at Town Hall, 300 W. Main, Florence, Colorado.					
Colorado		Limon (Town), Lincoln County (FEMA-6586)	Main Tributary	At the center of U.S. Highway 40 crossing	*5,353
			East Tributary	50 feet upstream from the center of 7th Street	*5,355
			Middle Tributary	60 feet upstream from the center of 8th Street	*5,357
			West Tributary	50 feet upstream from the center of E Avenue	*5,357
			Big Sandy Creek	At center of Chicago-Rock Island and Pacific Railroad (Abandoned) crossing.	*5,352
Maps are available for inspection at Town Manager's Office, Town Hall, 2nd & F Avenue, Limon, Colorado.					
Connecticut		Danielson, Borough, Windham County (FEMA Docket No. 6592).	Quinebaug River	Downstream corporate limits	*169
				Upstream of dam	*194
				Upstream corporate limits	*196
			Five Mile River	Confluence with Quinebaug River	*183
				Upstream of dam	*224
				Upstream corporate limits	*224
Maps available for inspection at the Community Development Office, 13 Center Street, Danielson, Connecticut.					
Connecticut		Putnam, City, Windham County (FEMA Docket No. 6592).	Little River	Confluence with Quinebaug River	*231
				Upstream of dam	*243
				Approximately 1,000 feet upstream of corporate limits	*271
			Quinebaug River	Downstream corporate limits	*226
				Upstream of dam located approximately 450 feet downstream of Providence Street.	*278
				Upstream corporate limits	*293
Maps available for inspection at the Office of the City Clerk, City Hall, Hall, Putnam, Connecticut.					
Connecticut		Thompson, Town, Windham County (FEMA Docket No. 6586).	French River	Confluence with Quinebaug River	*295
				Upstream State Route 193	*310
				Downstream Blain Road	*326
				Approximately 1,400 feet upstream of Buckley Hill Road.	*358
			Quinebaug River	Downstream corporate limits	*293
				Confluence of French River	*295
				Just upstream of Fabyan Road	*346
				Approximately 150 feet upstream of upstream corporate limits.	*357
			North Grosvenordale Pond	Entire shoreline within community	*374
			Langers Pond	Entire shoreline within community	*385
			Quaddick Reservoir	Entire shoreline within community	*406
Maps available for inspection at the Office of the Building Official, Town Hall, Thompson, Connecticut.					
Connecticut		Woodstock, Town, Windham County (FEMA Docket No. 6592).	English Neighborhood Brook	Approximately 260 feet upstream of State Route 197 (downstream crossing).	*356
				Upstream State Route 169	*391
				Upstream of dam	*459
				Approximately .7 mile upstream of upstream crossing of State Route 197.	*471
			Mill Brook	Upstream of New Sweden Road	*571
				Confluence with Mascraft Brook	*571
			Mascraft Brook	Confluence with Mill Brook	*571
				Confluence with Taylor Brook	*582
			Taylor Brook	Confluence with Mascraft Brook	*582
				Approximately .3 mile upstream of State Route 171	*583
			Bungee Brook	Brockway Road (extended)	*535
				Downstream of State Route 171	*557
			Little River	Downstream corporate limits	*266
				Upstream of dam	*290
				Upstream State Route 171	*294
				Downstream of Stone Bridge Road	*294

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
		Peake Brook	Confluence with Little River	*294
			Upstream of Peake Brook Road	*296
			Downstream of Butts Road	*325
Maps available for inspection at the Office of the First Selectmen, Town Hall, Woodstock, Connecticut.				
Florida	City of Mascotte, Lake County (FEMA-6592)	Little Bluff Lake	Entire Shoreline	*100
		Dukes Lake	Entire Shoreline	*100
		Gallows Lake	Entire Shoreline	*105
Maps available for inspection at City Hall, 122 North Sunset Avenue, Mascotte, Florida 32753.				
Florida	Town of Montverde, Lake County (FEMA-6592)	Lake Apopka	Entire Shoreline	*69
		Lake Apopka Area (J-1-1)	Entire Shoreline	*75
		Lake Florence	Entire Shoreline	*85
Maps available for inspection at Town Hall, 904 Seventh Street, Montverde, Florida 32756.				
Georgia	City of Toccoa, Stephens County (FEMA-6586)	Eastanollee Creek	Just downstream of Davis Avenue	*940
			Just upstream of Collins Road	*951
		Tributary A	Just downstream of Morgan Road	*954
		Toccoa Creek	Approximately 50 feet downstream of Scenic Drive	*768
Maps available for inspection at City Hall, 203 North Alexander Street, Toccoa, Georgia 30577.				
Idaho	Horseshoe Bend (city), Boise County (FEMA-6592)	Payette River	50 feet upstream from the center of State Highway 55.	*2597
		Shafer Creek	200 feet east of the center of intersection of Main Street and Fourth Street.	*2611
Maps available for inspection at City Hall, Horseshoe Bend, Idaho.				
Idaho	Salmon (city), Lemhi County (FEMA-6592)	Lemhi River	Intersection of Confederate Drive and North Charles Street.	*3629
		Salmon River	Intersection of Salmon River and center of U.S. Highway 93.	*3603
Maps available for inspection at City Hall, Salmon, Idaho.				
Idaho	Twin Falls (city), Twin Falls County (FEMA-6586)	Rock Creek	200 feet upstream from the center of Addison Avenue West.	*3632
			150 feet downstream from the center of Orchard Drive	*3727
		Perrine Coulee	50 feet upstream from center of Pole Line Road	*3691
			At the intersection of Heyburn Avenue and Madrone Street.	*3715
			Area 500 feet northwest of the intersection of Grant Avenue and Fillmore Street.	#2
Maps available for inspection at City Engineer's Office, 321 2nd Avenue East, Twin Falls, Idaho.				
Illinois	Unincorporated Areas of Bureau County (Docket No. FEMA-6592).	Illinois River	About 1.7 miles downstream of State Route 26	*463
			About 2.0 miles upstream of State Route 89	*488
		Walnut Creek	About 3,700 feet downstream of Main Street	*672
			Just downstream of County Route 8	*705
Maps available for inspection at the County Highway Building, Rt. 34 E., Princeton, Illinois.				
Illinois	City of Byron, Ogle County (Docket No. FEMA-6592)	Rock River	About 1 mile downstream of State Route 72	*724
			Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*728
Maps available for inspection at the Clerk's Office, City Hall, 120 N. Union Street, Byron, Illinois.				
Illinois	Village of Dalton City, Moultrie County (Docket No. FEMA-6586).	Dalton City Drain	About 700 feet downstream of Old Route 121	*980
				#2
		Lateral B	Just downstream of State Route 128	*987
			Mouth at Dalton City Drain	*983
			About 450 feet upstream of State Route 128	*994
Maps available for inspection at the Village Hall, Dalton City, Illinois.				
Illinois	Unincorporated Areas of Macon County (Docket No. FEMA-6599).	Spring Creek	At mouth	*630
			About 500 feet downstream of Neeley Avenue	*645
			Just upstream of Hickory Point Road	*667
			Just downstream of Forsyth-Oreana Road	*680
		South Spring Creek	At mouth	*608
			Just downstream of Moorwood Drive	*624
			About 100 feet upstream of Heritage Road	*660
			Just downstream of County Highway 30	*668
		Stevens Creek	At mouth	*664
			About 300 feet downstream of Mound Road	*629
			Just upstream of Warrensburg-Forsyth Road	*659
			Just downstream of Hampshire Road	*687
		Friends Creek	At confluence with Sangamon River	*625
			Just upstream of State Routes 47 and 48	*645
			About 3300 feet upstream of Washington Street Road	*678
		Sangamon River	At downstream County Boundary	*574
			About 1100 feet upstream of River Drive	*595
			About 1200 feet upstream of State Route 48	*606
			About 2.4 miles upstream of confluence of Friends Creek.	*638
		Long Creek (East of Big Creek)	At mouth	*630
			Just downstream of U.S. Route 36	*647
			Just downstream of Ocean Trail Road	*657

State		City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
			Friends Creek Ditch	Just downstream of State Route 105	*877
				At confluence with Friends Creek	*881
			Independence Branch	Just downstream of Briggs Road	*675
				At confluence with Spring Creek	*670
			Long Creek	Just downstream of Forsyth-Oreana Road	*675
				Just upstream of Baltimore Avenue	*819
			Big Creek	Just upstream of Twin Bridge Road	*630
				Just upstream of Twin Bridge Road	*630
				Just upstream of Salem School Road	*645
			Long Creek Tributary	Just upstream of County Route 60	*675
				About 1200 feet upstream of mouth	*521
			Stevens Creek Tributary A	About 5700 feet upstream of mouth	*536
				At confluence with Stevens Creek	*520
			Stevens Creek Tributary B	About 5500 feet upstream of confluence with Stevens Creek.	*534
				At mouth	*631
			Spring Creek Tributary	About 2040 feet upstream of mouth	*640
				About 190 feet upstream of mouth	*656
				About 1600 feet upstream of mouth	*660
Maps available for inspection at Macon County Board Office, Macon County Building, Decatur, Illinois.					
Illinois	Village of Pulaski, Pulaski County (Docket No. FEMA-6592).		Mississippi River	Within community	*337
Maps available for inspection at the Heilig Fertilizer Service, Pulaski, Illinois.					
Illinois	Unincorporated Areas of Putnam County (Docket No. FEMA-6592).		Illinois River	About 0.5 mile downstream of State Route 18	*461
				About 1.9 mile upstream of State Route 89	*466
Maps available for inspection at the Zoning Office, County Courthouse, Hennepin, Illinois.					
Indiana	Town of Brookville, Franklin County (Docket No. FEMA-6592).		Whitewater River	About 0.75 mile downstream of Seventh Street	*622
				About 0.42 mile upstream of Seventh Street	*630
			East Fork Whitewater River	Just downstream of U.S. Route 52	*622
				Just downstream of State Route 101	*624
Maps available for inspection at the Municipal Building, 634 Main Street, Brookville, Indiana.					
Indiana	Town of Geneva, Adams County (Docket No. FEMA-6592).		Wabash River	About 1.2 miles downstream of confluence of Loblolly Creek.	*831
			Loblolly Creek	At confluence Loblolly Creek	*832
				Just downstream of Conrail	*832
				About 2000 feet upstream of U.S. Route 27	*833
Maps available for inspection at the Town Hall, Geneva, Indiana.					
Kansas	City of Greeley, Anderson County (Docket No. FEMA-6592.		South Fork Pottawatomie Creek	About 1.1 mile downstream of Missouri Pacific Railroad.	*886
				Just downstream of Missouri Pacific Railroad	*889
				Just upstream of Missoun Pacific Railroad	*894
				Just downstream of U.S. Route 169	*895
Maps available for inspection at City Hall, Greeley, Kansas.					
Maine	Yarmounth, Town, Cumberland County (FEMA Docket No. 6592).		Royal River	At confluence with Casco Bay	*10
				East Main Street (upstream side)	*14
				At U.S. Route 1	*43
				Downstream of dam immediately downstream of North Elm Street.	*65
				Approximately .22 mile upstream of Maine Central Railroad.	*82
			Casco By	Entire shoreline of Cousins River	*10
				Shoreline at Vails Road extended	*12
				Shoreline at Blaney Point on Cousins Island	*12
				Shoreline at Sunset Point Road extended	*10
				Shoreline at Sea Spray Reach extended	*13
				Shoreline at Hillcrest Avenue extended (Cousins Island).	*10
				Shoreline at Wharf Road (Cousins Island)	*15
				Shoreline at northern tip of Lanes Island	*13
Maps available for inspection at the Office of Harold Hutchinson, Town Engineer, Yarmouth, Maine.					
Maryland	Chesapeake Beach, Town, Calvert County (FEMA Docket No. 6592).		Chesapeake Bay	Entire shoreline within community	*9
Maps available for inspection at the Town Hall, Chesapeake Beach, Maryland.					
Maryland	St. Michael's, Town, Talbot County (FEMA Docket No. 6586).		Miles River	Entire shoreline within community	*6
			San Domingo Creek	Entire shoreline within community	*6
Maps available for inspection at the Town Hall, St. Michael's, Maryland.					
Massachusetts	Sandisfield, Town, Berkshire County (Docket No. FEMA-6527).		West Branch of the Farmington River.	Downstream corporate limits	*725
				Upstream Old Route 8	*750
				Downstream Private Drive	*774
				Downstream Routes 57 & 8	*838
				Approximately 5,000 feet upstream Routes 57 & 8	*910
				Approximately 6,600 feet downstream of Alan Road	*980
				Approximately 2,460 feet downstream Alan Road	*1,045
				Upstream Alan Road	*1,095
				Upstream corporate limits	*1,110
			Clam River	Confluence with West Branch of the Farmington River	*786
				Downstream Route 57	*838

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
			Upstream Beech Plain Road	*854
			Approximately 1,740 feet upstream confluence of the Buck River.	*913
		Buck River	Confluence with Clam River	*891
			Approximately 1,350 feet downstream first upstream crossing of Route 57.	*940
			Upstream Route 57	*976
			Second upstream footbridge	*1,034
			Approximately 1,220 feet downstream third upstream footbridge.	*1,090
			Upstream third upstream footbridge	*1,120
			Upstream second upstream crossing Route 57	*1,178
			Approximately 960 feet upstream Route 57	*1,210
			Approximately 2,090 feet upstream Route 57	*1,241
Maps available for inspection at the Town Office, Sandisfield, Massachusetts.				
Michigan	Township of Eureka, Montcalm County (Docket No. FEMA–6592).	Flat River	Just upstream of county boundary	*778
			Just downstream of River Road	*791
			Just downstream of Wise Road	*821
Maps available for inspection at the Town Hall, 9322 Greenville Road, Greenville, Michigan.				
Michigan	Village of Holly, Oakland County (Docket No. FEMA–6599).	Holly-Patterson Drain	About 150 feet downstream of Marion Street	*912
			At Bush Lake outlet	*915
		Shiawassee River	About 1250 feet downstream of Grand Trunk Western Railroad	*916
			About 1700 feet upstream of Le Grand Road	*927
		Bevins Lake	At shoreline	*912
		Bush Lake	At shoreline	*915
		Mill Pond	At shoreline	*927
Maps available for inspection at the Village Offices, 201 Elm Street, Holly, Michigan.				
Michigan	City of Hudsonville, Ottawa County (Docket No. FEMA–6592).	Rush Creek	Just upstream of Chessie System	*610
			At confluence of Buttermilk Creek	*616
		Buttermilk Creek	Just downstream of Van Buren Street	*635
			About 2150 feet upstream of New Holland Street	*651
Maps available for inspection at City Hall, 5713 Balson Drive, Hudsonville, Michigan.				
Missouri	City of Chamois, Osage County (Docket No. FEMA–6592).	Missouri River	Within Community	*534
Maps available for inspection at City Hall, Chamois, Missouri.				
Missouri	City of Ironton, Iron County (Docket No. FEMA–6592)	Knob Creek	At confluence with Stouts Creek	*902
			Just upstream of Polk Street	*922
			At confluence of West Branch Knob Creek	*934
		West Branch Knob Creek	Within corporate limits	*934
		Lateral B	About 320 feet downstream of Lake Drive	*944
			About 925 feet upstream of Lake Drive (at Gravel Road).	*970
		Stouts Creek	At confluence of Knob Creek	*902
			About 800 feet upstream of Main Street	*920
			At confluence of Shepherds Mountain Lake Outflow	*925
			About 0.4 mile upstream of confluence of Shepherds Mountain Lake Outflow (at western corporate limits).	*947
Maps available for inspection at City Hall, 123 N. Main, Ironton, Missouri.				
Missouri	City of Miami, Saline County (Docket No. FEMA–6599).	Missouri River	At M 262.2	*655
			At M 263.35	*658
Maps available for inspection at P.O. Box 37, Miami, Missouri.				
Missouri	Village of Wooldridge, Copper County (Docket No. FEMA–6599).	Missouri River	Within Corporate limits	*587
Maps available for inspection at the Community Center, Wooldridge, Missouri.				
New Jersey	Garfield, City, Bergen County (FEMA Docket No. 6592).	Passaic River	Confluence with Saddle River	*19
			Monroe Street (upstream side)	*20
			Downstream of Outwater Lane	*21
			Downstream of Dundee dam	*22
			Upstream corporate limits	*33
		Saddle River	Midland Avenue	*19
			Upstream corporate limits	*21
Maps available for inspection at the City Administrator's Office, City Hall, Outwater Lane, Garfield, New Jersey.				
New Jersey	Lodi, Borough, Bergen County (Docket No. FEMA–6592).	Saddle River	Downstream corporate limits	*20
			Passaic Avenue (upstream side)	*26
			U.S. Route 46 (upstream side)	*31
			Upstream corporate limits	*40
Maps available for inspection at the Borough Hall, 1 Memorial Drive, Lodi, New Jersey.				
New York	Castleton-on-Hudson, Village, Rensselaer County (FEMA Docket No 6576).	Hudson River	Downstream corporate limits	*18
			Upstream corporate limits	*19
		Moordener Kill	Downstream corporate limits	*19
			Downstream dam (upstream side)	*138
			Upstream dam (upstream side) located upstream of State Route 150.	*143

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
		Vlockie Kill	Upstream corporate limits	*149
			Entire length within corporate limits	*18
Maps available for inspection at the Village Hall, Castleton, New York.				
New York	Elmira, City, Chemung County (Docket No. FEMA-6592).	Chemung River	Downstream corporate limits	*847
			Madison Avenue upstream	*852
			Upstream corporate limits	*859
		Left Bank: Newtown Creek (before levee overtopping).	Confluence with Chemung River	*849
			East Avenue upstream	*856
			Industrial Park Boulevard upstream	*863
			Upstream corporate limits	[redacted]
		Right Bank: Newton, Creek (after levee overtopping).	Confluence with Chemung River	*849
			East Avenue upstream	*855
			Industrial Park Boulevard	*861
			Upstream corporate limits	*861
		Diven Creek	Entire stream within community	*863
		McCann's Tributary	Entire stream within community	*863
Maps available for inspection at City Hall, Church Street, Elmira, New York.				
New York	Norwich, Town, Chenango County (FEMA Docket No. 6586).	Chenango River	Downstream corporate limits	*984
			Thompson Road (upstream side)	*995
			State Route 23 (upstream side)	*1,001
			Upstream corporate limits	*1,010
		Unadilla River	Downstream corporate limits	*1,037
			Upstream corporate limits	*1,050
		Canasawacta Creek	Confluence with Chenango River	*992
			West Main Street (upstream side)	*1,018
			State Route 23 (upstream side)	*1,039
			Upstream corporate limits	*1,069
Maps available for inspection at the Town Hall, Norwich, New York.				
New York	Olive, Town, Ulster County (FEMA Docket No. 6592)	Esopus Creek	Approximately 535 feet downstream of Conrail	*614
			Upstream of State Route 28A bridge	*638
			Approximately .29 mile upstream of Nissen Road bridge.	*662
Maps available for inspection at the Town Clerk's Office, Supervisor's Office, and the Town Library, Olive, New York.				
North Carolina	City of Bryson City, Swain County (Docket No. FEMA-6599).	Tuckasegee River	About 0.5 mile downstream of Southern Railway	*1,718
			About 1.5 miles upstream of Everett Street	*1,753
		Deep Creek	Mouth at Tuckasegee River	*1,741
			About 0.36 miles upstream of Deep Creek Road	*1,744
Maps available for inspection at City Hall, Bryson City, North Carolina.				
North Carolina	Town of Newland, Avery County (Docket No. FEMA-[redacted]	North Toe River	About 0.75 mile downstream of State Highway 194	*3,576
			Just upstream of State Highway 181	*3,589
			About 0.07 mile downstream of Watauga Street	*3,603
			About 0.01 mile upstream of Watauga Street	*3,621
		Kentucky Creek	Just upstream of confluence with North Toe River	*3,586
			About 0.08 mile upstream of Private Drive	*3,596
Maps available for inspection at the Town Hall, Newland, North Carolina.				
Ohio	City of Findlay, Hancock County (Docket No. FEMA-6586).	Blanchard River	About 0.36 mile downstream of Interstate 75	*744
			About 0.04 mile upstream of the confluence of Rush Creek.	*783
		Howard Run	At mouth	*775
			About 0.5 mile upstream of Conrail	*795
		Lyle Creek	Within community	*780
		Rush Creek	At mouth	*783
			About 0.21 mile upstream of Greendale Avenue	*789
		Eagle Creek	At mouth	*780
			About 0.16 mile upstream of U.S. Route 68 Bypass	*795
Maps available for inspection at the City Engineer's Office, Municipal Building, 119 Court Place, Findlay, Ohio.				
Ohio	Village of Harrison, Hamilton County (Docket No. FEMA-6592).	Whitewater River	About 10,400 feet downstream of Indiana-Ohio State boundary.	*503
			About 9,200 feet upstream of Indiana-Ohio State boundary.	*517
		Dry Fork of Whitewater River	Within community	*544
Maps available for inspection at the Building Commissioner's Office, Harrison, Ohio.				
Oregon	Coos County (unincorporated areas) (FEMA-6592)	Coquille River at Coquille	Intersection of Coquille River and center of State Highway 425.	*21
		Coquille River at Riverton	400 feet upstream of confluence Coquille River and Iowa Slough.	*19
		Coquille River at Arago	Intersection of Hall Creek and River Road	*28
		South Fork Coquille River at Myrtle Point.	225 feet upstream of Spruce St. Bridge	*40
		Millicoma River	Confluence of Woodruff Creek and Millicoma River	*33
		East Fork Millicoma River	Confluence of East Fork Millicoma River and Marlow Creek.	*34
		West Fork Millicoma River	Intersection of West Fork Millicoma River and center of Coos River Highway 241.	*34
		Tenmile Creek	50 feet upstream of U.S. Highway 101	*18
		Pacific Ocean South of Coos Bay Entrance.	Pacific Ocean at the mouth of Coos Bay	*13

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
		Coos Bay	At Cape Arago Highway	*8
			Intersection of Horsefall Road and U.S. Highway 101 and State Highway 9.	*9
			Intersection of Catching Slough Road and U.S. Highway 241.	*9
Maps available for inspection at Planning Department, Coos County Courthouse, Coquille, Oregon.				
Pennsylvania	Atglen, Borough, Chester County (Docket No. FEMA-6592).	Valley Creek	Downstream corporate limits	*455
			Newport Pike (upstream side)	*454
			Upstream corporate limits	*461
		Officers Run	Confluence with Valley Creek	*455
			State Route 41 (upstream side)	*461
			Conrail (upstream side)	*482
			Upstream corporate limits	*516
Maps available for inspection at the Borough Building, Atglen, Pennsylvania.				
Pennsylvania	Charlestown, Township, Chester County (Docket No. FEMA-6592).	Pickering Creek	Downstream corporate limits	*133
			Upstream of Phoenixville Pike (State Route 29)	*153
			Approximately 200' downstream of Charlestown Road	*186
Maps available for inspection at the Secretary's Office, Charlestown Elementary School, Charlestown, Pennsylvania.				
Rhode Island	Cranston, City, Providence County (FEMA Docket No. 6333).	Pawtuxet River	Broad Street (upstream side)	*16
			AMTRAK (downstream side)	*18
			Approximately 75 feet upstream of Elmwood Avenue	*21
			At confluence of Pocasset River	*23
			State Route 37 (eastbound)	*24
			Approximately 3,500 feet upstream State Route 37 (eastbound).	*26
			Upstream corporate limits	*28
		Furnace Hill Brook	At confluence with Meshanticut Brook	*55
			Furnace Hill Road (upstream side)	*72
			Phenix Avenue (upstream side)	*147
			Private Drive (upstream side)	*263
			Pippin Orchard Road (downstream side)	*322
		Furnace Hill Brook Tributary	At confluence with Furnace Hill Brook	*147
			Approximately 3,700 feet upstream of confluence with Furnace Hill Brook.	*247
		Pocasset River	At confluence with Pawtuxet River	*23
			Approximately 150 feet upstream of Reservoir Avenue	*35
			Approximately 100 feet upstream of Park Avenue	*48
			Print Works Pond Dam (upstream side)	*72
			Access Road (upstream side)	*74
			At upstream corporate limits	*81
		Meshanticut Brook	At downstream corporate limits	*40
			AMTRAK bridge (upstream side)	*45
			Wilbur Avenue	*51
			Lakeview Drive dam (upstream side)	*62
			Scituate Avenue (upstream side)	*123
Maps available for inspection at the Office of the City Planner, Cranston, Rhode Island.				
Rhode Island	Narragansett, Town, Washington County (FEMA Docket No. 6592).	Narragansett Bay	Shoreline at northern corporate limits	*15
			Shoreline at Nassau Avenue (extended)	*17
			Shoreline at Namcock Road (extended)	*23
			Shoreline at Bonnet Point Road (extended)	*27
			Shoreline at Bonnet Point	*20
			Shoreline at Anawan Drive (extended)	*19
			Shoreline at Whale Rock Road (extended)	*23
		Rhode Island Sound	Shoreline at Cormorant Point	*19
			Shoreline at Wood Avenue (extended)	*18
			Shoreline at Narragansett Avenue (extended)	*20
			Shoreline at Hazard Avenue (extended)	*32
			Shoreline at Newton Avenue (extended)	*21
			Shoreline at Pennsylvania Avenue (extended)	*23
			Shoreline at Point Judith	*19
		Block Island Sound	Shoreline at Ocean Road (extended)	*18
			Shoreline at Jupeter Street (extended)	*26
			Shoreline at western corporate limits	*17
		Pettaquamscutt River	Shoreline at Middle Bridge Road	*11
			Shoreline at Star Drive West (extended)	*16
		Point Judith Pond	Shoreline at Harbour Island Road (extended)	*12
			Shoreline at Barnacle Road (extended)	*11
Maps available for inspection at the Town Hall, 5th Avenue, Narragansett, Rhode Island.				
Texas	Fort Bend County, Municipal Utility District No. 2 (FEMA-6592).	Keegans Bayou	At Harris-Fort Bend County Line (Approximately 600 feet downstream of Belknap Road).	*84
Maps available for inspection at Vinson and Elkins, Law Firm, 2837 First City Tower, Houston, Texas 77002-6760.				
Texas	Kennedale, City, Tarrant County (FEMA Docket No. 6586).	Village Creek	Downstream corporate limits	*567
			Upstream of Mansfield Highway	*573
			Upstream of New Orleans (Southern Pacific) Railroad	*577
		Stream VC-3	Confluence with Village Creek	[illegible]
			Downstream of Kennedale-Bowan Springs Road	*570
			Downstream of Kennedale-Sublett Road	*617
		Stream VC-4	Confluence with Village Creek	*571
			Upstream of New Orleans (Southern Pacific) Railroad	*584
			Upstream of Averett Road	[illegible]

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
		Stream VC-4A	Upstream corporate limits	*613
			Confluence with Stream VC-4	*611
			Approximately .3 mile upstream of Kennedale-New Hope Road.	*620
Maps available for inspection at the Kennedale City Hall, Kennedale, Texas.				
West Virginia	Beckley, City, Raleigh County (FEMA Docket No. [illegible]).	Whitestick Creek	Downstream corporate limits	*2,220
			Just downstream 1st crossing Chessie System	*2,263
			Upstream 3rd crossing Chessie System	*2,273
			Upstream City Avenue	*2,284
		Tributary to Whitestick Creek	Approximately 1,500 feet upstream confluence with Whitestick Creek.	*2,294
			Approximately 4,100 feet upstream confluence with Whitestick Creek.	*2,324
Maps available for inspection at the Building Inspector's Office, Beckley, West Virginia.				
West Virginia	Mingo County (FEMA Docket No. 6592)	Tug Fork	Downstream County boundary	*622
			Upstream Norfolk and Western Railway, 2nd crossing	*629
			Confluence of Parsley Big Branch	*635
			Confluence of Pigeon Creek	*641
			Confluence of Road Branch	*648
			Upstream County Route 52/19	*653
			Confluence of Buffalo Creek	*660
			Approximately 1.5 miles upstream of confluence of Sugartree Creek at County boundary.	*664
			Approximately .8 mile downstream of confluence of Lick Creek at County boundary.	*674
			Confluence of Murphy Branch	*678
			Upstream Norfolk and Western Railway, 4the crossing	*687
			Upstream of confluence of Ferrell Branch	*692
			Confluence of Little Blackberry Creek	*705
			Confluence of Thacker Creek	*712
			Upstream State Route 49	*723
			Confluence of Sand Branch	*733
			Confluence of Scarberry Branch	*742
			At upstream Norfolk and Western Railway, 9th crossing.	*759
			Confluence of Grant Branch	*772
			Downstream of confluence of Laurel Branch	*781
			Confluence of Alum Creek	*797
			Confluence of Ben Creek	*822
			Approximately 1.5 miles upstream of confluence of Ben Creek.	*846
			Confluence of Turkey Creek	*876
			Approximately 1.7 miles upstream of confluence of Turkey Creek.	*900
			At upstream County boundary	*920
		Marrowbone Creek	At downstream County boundary	*623
			Upstream of Private Road and confluence of Cane Branch.	*637
			At confluence of Pickletwo Branch	*649
			At confluence of Barkcamp Branch	*678
			Upstream of County Route 2/2	*705
			Approximately .8 mile upstream of confluence of Little Laurel Branch.	*749
		Pigeon Creek	At confluence with Tug Fork	*641
			At confluence of Old House Branch	*642
			Upstream State Route 65, 2nd crossing	*656
			Upstream Norfolk and Western Railway, 3rd crossing	*661
			Upstream County Route 65/16	*673
			Confluence of Hell Creek	*689
			Downstream of confluence of Elk Creek	*716
			Approximately .8 mile upstream of confluence of Pigeonroost Creek.	*740
			Approximately 0.1 mile downstream of County Route 49/1.	*777
			Confluence of Evans Ferrell Branch	*826
			Upstream County Route 9	*862
			Approximately 1.0 mile upstream of County Route 9	*890
			Approximately 1.7 miles upstream of County Route 9	*922
			upstream County Route 52/24	*952
			Upstream County Route 52/25	*986
			Approximately 0.9 mile upstream of County Route 52/25.	*1,021
			Approximately 0.2 mile upstream of confluence of Spice Branch.	*1,055
			Confluence of Longtail Lick Branch	*1,094
			Approximately 0.1 mile downstream of confluence of Rover Branch.	*1,127
			Upstream County Route 52/26	*1,158
			Confluence of Little Muncy Branch	*1,192
			Approximately 200 feet upstream of confluence of Grant Branch.	*1,232
		Laurel Fork	Confluence of Pigeon Creek	*641
			Confluence of Right Fork	*646
			Upstream of sixth crossing of County Route 3/5	*676
			Confluence of Toms Branch	*700
			Upstream of County Route 3	*723

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
			Approximately 0.2 mile upstream of confluence of Lick Branch.	*756
			Upstream of Laurel Lake Dam	*789
			Confluence of Laurel Branch	[illegible]
			Approximately 0.1 mile upstream of confluence of Paw Paw Branch.	[illegible]
			Approximately 0.8 mile upstream of confluence of Paw Paw Branch.	*857
		Trace Fork	Confluence with Pigeon Creek	[illegible]
			Upstream State Route 65, 2nd crossing	*716
			Approximately 0.1 mile upstream of confluence of Duncan Fork.	*731
		Rockhouse Fork	Approximately 0.1 mile downstream of County boundary.	*764
			Upstream County Route 65/5, 2nd crossing	*794
			Confluence of Upper Curry Branch	[illegible]
			Approximately 0.7 mile downstream of County Route 65/15.	[illegible]
			Upstream County Route 65/15	[illegible]
			Approximately 0.1 mile upstream of most upstream private road.	[illegible]
		Buffalo Creek	Confluence with Tug Fork	[illegible]
			Approximately 50 feet upstream of County Route 14/2	[illegible]
		Mate Creek	Upstream County boundary at Matewan	[illegible]
			Approximately 0.2 mile upstream of County Route 9 second crossing.	*739
			Upstream of County Route 9/11	*770
			Upstream of County Route 6, third crossing	*811
			Approximately 0.8 mile upstream of County Route 6, 3rd crossing.	[illegible]
			Approximately 1.4 miles upstream of County Route 6, 3rd crossing.	[illegible]
			Confluence of Chafin Branch	[illegible]
			Approximately 0.2 mile upstream of County Route 6, 4th crossing.	[illegible]
			Approximately 0.6 mile upstream of County Route 6, 4th crossing.	[illegible]
			Confluence of Marks Branch	*1,008
			Approximately 160 feet upstream of confluence of Double Camp Fork.	*1,032
		Guyandotte River	Downstream County boundary	*759
			Confluence of Harrys Branch	[illegible]
			Upstream County Route 52/4	[illegible]
			Upstream of abandoned railroad bridge	[illegible]
			At most upstream County boundary	[illegible]
		Gilbert Creek	Downstream County boundary	*872
			Confluence of Axe Branch	[illegible]
			Upstream of footbridge and confluence of Big Fork	*937
			Approximately 0.4 mile upstream of Norfolk and Western Railway.	*972
			Approximately 0.6 mile downstream of confluence of Old House Branch.	*1,007
			Confluence of Old House Branch	*1,042
			Approximately 106 feet upstream of County Route 13/2.	*1,150
		Horsepen Creek	Confluence with Gilbert Creek	[illegible]
			Approximately 0.8 mile upstream of County Route 13	[illegible]
			Confluence of Browning Fork	*932
			Approximately 0.7 mile upstream of confluence of Browning Fork.	*973
			Confluence of Smith Branch	*1,016
			Approximately 320 feet upstream of confluence of Coon Branch.	*1,106
		West Fork Twelvepole Creek	Approximately 0.1 mile downstream of confluence of Short Branch.	*925
			Confluence of Camp Branch	[illegible]
			Approximately 0.5 mile upstream County Route 3/2, 1st crossing.	[illegible]
			Approximately 85 feet upstream of most upstream crossing of County Route 3/2.	*1,028
		Moses Fork	Confluence with West Fork Twelvepole Creek	*1,028
			Approximately 300 feet upstream of County Route 3/2	*1,063
			Approximately 0.3 mile upstream of County Route 3/2, 2nd crossing.	*1,093
			Approximately 1.1 miles upstream of confluence with West Fork Twelvepole Creek.	*1,129

Maps available for inspection in the basement of the Mingo County Courthouse, East 2nd Avenue, Williamson, West Virginia.

Wisconsin	City of Hartford, Washington County (Docket No. FEMA-6586).	Rubicon River	At western corporate limit (about 2,500 feet downstream of Treatment Plant Road).	[illegible]
			About 100 feet downstream of Rural Street	[illegible]
			About 100 feet downstream of Mill Pond Dam	*974
			Just upstream of Mill Pond Dam	[illegible]
			About 4,800 feet upstream of Wisconsin Southern Railroad.	[illegible]

Maps available for inspection at the City Engineer's Office, City Hall, 109 N. Main Street, Hartford, Wisconsin.

Wisconsin	City of Lodi, Columbia County (Docket No. FEMA-6592).	Spring Creek	About 0.6 mile downstream of Fair Street	[illegible]
			Just downstream of Portage Street	*816

State		City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)
				Just upstream of Main Street	*823
				Just upstream of Riddle Road	*833

Maps available for inspection at the Mayor's Office, City Hall, 113 S. Main Street, Lodi, Wisconsin.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Appeals of the proposed base flood elevations were received and have been resolved by the Agency.

State		City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Scottsdale, City,	Maricopa County (Docket No. FEMA-6492).	Indian Bend Wash	At downstream corporate limits	*1,189
				Upstream of Thomas Road	*1,226
				Upstream of Camelback Road	*1,244
				Upstream of Indian Bend Road	*1,284
				At upstream corporate limits	*1,299
				Approximately 700 feet upstream of upstream corporate limits.	*1,302
			Granite Reef Wash	At downstream corporate limits	*1,194
				Upstream of McDowell Road	*1,213
				At upstream corporate limits	*1,227
			Wash B	Approximately 6,100 feet downstream of 124th Street	*1,446
				Just downstream of Granite Reef Aqueduct (approximately 1,100 feet downstream of 124th Street).	*1,506

Maps available for inspection at the Office of the Director of Engineering Services, City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona.

Connecticut	Westport, Town,	Fairfield County (Docket No. FEMA-6553).	Saugatuck River	At dam 1,125 feet upstream of Canal Street	*11
				Downstream of Merritt Parkway	*26
				Upstream corporate limits	*45
			West Branch Saugatuck River	At confluence with Saugatuck River	*31
				Upstream of Cavalry Road	*67
				Upstream corporate limits	*91
			Aspetuck River	At confluence with Saugatuck River	*10
				Upstream of North Avenue	*70
				Upstream of Bayberry Lane	*91
				Upstram corporate limits	*120
			Stony Brook	750 feet upstream of confluence with Saugatuck River	*11
				Upstream of Nash Pond Dam	*61
				Upstream corporate limits	*94
			Dead Man's Brook	300 feet downstream of Post Road East	*11
				Upstream side of Evergreen Avenue	*34
				Upstream side of Lost Lodge Road	*94
				Upstream side of Pumpkin Hill Road	*166
				1,450 feet upstream of Highland Road	*219
			Muddy Brook	Upstream of Sherwood Island Connector	*14
				Upstream of Long Lots Road	*56
			Sasco Creek	6,900 feet upstream of Highpoint Road	*145
				200 feet downstream of Post Road East	*11
				Upstream of Old Road	*42
			Poplar Plains Brook	At Long Lots Road	*62
				At confluence with Saugatuck River	*26
			Willow Brook	Downstream side of Wilton Road	*50
				At confluence with Saugatuck River	*12
			Long Island Sound	860 feet upstream of Carriage Lane	*25
				At Saymour Point	*17
				At Harbour Road extended	*14
				At Stony Point	*14
				At Hendricks Point	*17
				At Sherwood Point	*17
				At Frost Point	*17

Maps available for inspection at the Town Hall, Westport, Connecticut.

Florida	Gulfport (city), Pinellas County (FEMA-6333)	Boca Ciega Bay	Intersection of 31st Avenue South and 58th Street South.	*11

Maps available for inspection at Engineering Department, 2401 53rd Street, South, Gulfport, Florida.

Florida	South Pasadena (city), Pinellas County (FEMA-6333)	Boca Ciega Bay	Intersection of Shore Drive and Pasadena Avenue (State Highway 690).	*12

Maps available for inspection at Building Department, 7047 Sunset Drive, South Pasadena, Florida.

New Jersey	Princeton, Township, Mercer County (Docket No. (FEMA-6550).	Millstone River	Downstream corporate limits	*54
			Upstream side of Carnegie Lake Dam	*57
			Confluence of Stony Brook (upstream corporate limits)	*58
		Stony Brook	Confluence with Millstone River	*58
			Upstream side of Alexander Road	*61
			Upstream side of Princeton Pike	*75
			Upstream of Rosedale Road	[illegible]
			Upstream corporate limits	*115
		Mountain Brook	Confluence with Stony Brook	*88
			Upstream side of Great Road East	*99

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Mountain Lake—entire shoreline	*124
			100 feet upstream of upstream crossing of Gread Road East culvert.	*198
		Mountain Brook Branch 2	Confluence with Mountain Brook	*105
			Upstream side of Private Road located approximately 1,300 feet upstream of confluence with Mountain Brook.	*117
			Approximately 350 feet downstream of Cherry Hill Road.	*132
		Van Horn Brook	Downstream corporate limits	*134
			Upstream side of U.S. Route 206	*175
			100 feet upstream of Arrenton Road	*204
		Cherry Run	Downstream corporate limits	*194
			Upstream side of Cherry Hill Road	*221
		Tributary to Van Horn Brook	Downstream corporate limits	*138
			Upstream side of Herrontown Road	*172
		Harrys Brook	Confluence with Millstone River	*57
			Upstream side of Roper Road	*79
			Upstream side of dam just upstream of Locust Lane	*87
			Upstream side of Snowden Lane	*105
		Harrys Brook Branch 1	Confluence with Harrys Brook	*60
			Upstream side of Shadybrook Lane	*81
			Approximately 70 feet upstream side of Bertrand Drive	*113
		Harrys Brook Branch 2	Confluence with Harrys Brook	*68
			Upstream side of Shadybrook Lane	*87
			Upstream side of Snowden Lane	*106
			Upstream side of Terhune Road	*129
			Upstream side of Thanet Road	*155
			Upstream side of Harrison Street	*171
		Harrys Brook Branch 2-1	Confluence with Harrys Brook Branch 2	*108
			Upstream side of Van Dyke Road	*126
		Harrys Brook Branch 2-2	Confluence with Harrys Brook Branch 2	*115
			Upstream side of Grover Avenue	*142

Maps available for inspection at the Municipal Building, 389 Witherspoon Street, Princeton, New Jersey.

South Carolina	Unincorporated Areas of Beaufort County (FEMA-6581).	Atlantic Ocean/Broad River	Intersection of State Highway 3 and Interstate Highway 17.	*8
		Atlantic Ocean/Beaufort River	Intersection of Central Drive and Brickyard Road	*11
		Atlantic Ocean/New River	At Seaboard Coast Line Railroad	*11
		Atlantic Ocean/St. Helena Sound	Intersection of State Highway 77 and Interstate Highway 21.	*12
		Atlantic Ocean	Intersection of State Highway 195 and Seaside Road	*14
			Intersection of South Sea Pines and Gulf Point Road	*14
			Intersection of Queens Folly Road and Sea Lane	*15
			Intersection of State Highway 335 and State Highway 434.	*15
			Intersection of Piper Street and North Forest Beach Drive.	*16
			Porpoise Drive extended to Atlantic Ocean	*19
			Pope Avenue extended to Atlantic Ocean	*20
		Atlantic Ocean/Cooper River	Confluence of Bull Creek & Hoophole Creek	*13
		Atlantic Ocean/Calibogue Sound	Intersection of South Calibogue Cay Road and North Calibogue Cay Road.	*14
		Atlantic Ocean/May River	Confluence of Rose Dew Creek and May River	*11
		Atlantic Ocean/Colleton River	Confluence of Colleton River and Okatee River	*16
		Atlantic Ocean/Skull Creek	Intersection of Gumtree Road and Squire Pope Road	*12
		Atlantic Ocean/Port Royal Sound	Intersection of North Port Royal Drive and Fort Walker Drive.	*13
		Atlantic Ocean/Coosaw River	Confluence with Morgan Back Creek	*16
		Atlantic Ocean/Combahee River	Confluence of Briars Creek and Wimbee Creek	*11

Maps available for inspection at the Arthur Horne Building, 999 Ribaut Road, Beaufort, South Carolina 29902 and at the County Courthouse Annex, Hiltonhead Island, South Carolina 29925.

Texas	City of Beaumont, Jefferson County (FEMA-6278)	Jones Gully	Just downstream of Langham Road	*16
			Just upstream of Montrose Street	*20
			Just downstream of U.S. Highway 90 (College Street)	*27
		Hillebrandt Bayou	Just upstream of Atchison Topeka and Santa Fe Railway.	*14
			Just downstream of Washington Boulevard	*15
			Just upstream of Calder Avenue	*20
			Just downstream of Folsom Drive	*26
		Hillebrandt Oxbow	Just upstream of 23rd Street	*16
		Walker Branch	Just downstream of Tram Road	*24
			Just downstream of LNVA Canal	*25
		Walker Branch Tributary	Approximately 200 feet downstream of Tram Road	*22
		Neches River	Just upstream of Kansas City Southern Railroad	*10
			Just upstream of Interstate 10 and U.S. Highway 90	*11
		Pine Island Bayou	Just downstream of Atchison Topeka and Santa Fe Railroad.	*16
			Just downstream of U.S. Highway 80, 96 and 287	*17
		Willow Marsh Bayou	Just downstream of Tyrrell Park Road	*13
			Approximately 1200 feet upstream of Interstate Highway 10.	*17
		Keith Ditch	Just upstream of Dowlen Road	*23
			Just downstream of Evangeline Lane	*27
		Amelia Cut-Off	Approximately 400 feet downstream of Port Arthur Fresh Water Canal.	*20
			Just upstream of Southern Pacific Railroad	*22
		Walker Branch Relief Ditch	Approximately 200 feet downstream of FM 3120	*24

State		City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at City Hall, 801 Main Street, Beaumont, Texas 77704.					
Texas	Brookside Village, City, Brazoria County (FEMA Docket No. [illegible])		Clear Creek	Upstream of Mykawa Road	*48
				At upstream corporate limits	*51
Maps available for inspection at the City Hall, Brookside Village, Texas.					
Texas	City of Rosenberg, Fort Bend County (FEMA-6122)		North Branch of Dry Creek	Just downstream of Laurel Avenue	*95
				Just upstream of Laurel Avenue	*99
			Dry Creek	Approximately 250 feet upstream of Louise Avenue	*98
				Approximately 200 feet downstream of Fourth Street	*93
				Just downstream of State Highway 36	*92
			Seabourne Creek	Just downstream of Bernard Avenue extended	*97
			Brazos River	Just upstream of 6th Street extended	*93
Maps available for inseption at City Hall, 2110 South Fourth Street, Rosenberg, Texas 77471.					

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: June 13, 1984.

Jeffrey S. Bragg,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 84–16080 Filed 6–22–84; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[GSAR AC–84–2]

Implementation of the Department of Labor's (DOL) Revised Regulations on Labor Standards for Federal Service Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This General Services Administration Acquisition Regulation (GSAR) Acquisition Circular (AC) temporarily implements and supplements the guidance contained in Federal Acquisition Circular (FAC) 84–1, April 1, 1984, of the Federal Acquisition Regulation (FAR) concerning the Department of Labor's revised Service Contract Act (SCA) regulations. This Circular highlights the significant changes in the DOL regulations and amends the GSAR Subpart 522.10 and 552.222 consistent with the revised DOL regulations and FAC 84–1.

EFFECTIVE DATE: June 14, 1984.

FOR FURTHER INFORMATION CONTACT: Edward J. McAndrew, Office of GSA Acquisition Policy and Regulations, Office of Acquisition Policy, GSA (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget, (OMB) by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Services Administration (GSA) certifies, under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), that this document implementing the revised DOL Service Contract Act regulations in GSA procurements of services will have a significant beneficial economic impact on many small entities. The GSA certification is based on DOL's final regulatory impact and flexibility analysis on its revised regulations at 48 FR 49758, October 27, 1983. All of the information collection requirements contained in the Acquisition Circular stem from DOL requirements which have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

Authority: 40 U.S.C. 486(c).

In 48 CFR Chapter 5, the following Acquisition Circular is added to Appendix C at the end of the Chapter to read as follows:

GSAR AC–84–2

To: All GSA contracting activities

Subject: Implementation of the Department of Labor's (DOL) Revised Regulations on Labor Standards for Federal Service Contracts

1. *Purpose.* This Acquisition Circular (AC) temporarily implements and supplements Item VII, Service Contract Act of 1965, in the Federal Acquisition Circular (FAC) 84–1 and Subpart 22.10 of the Federal Acquisition Regulation.

2. *Effective date.* June 14, 1984.

3. *Expiration date.* This Acquisition Circular expires 6 months after issuance unless canceled earlier.

4. *Background.* The Department of Labor (DOL) by regulations (29 CFR Part 4) dated October 19, 1983, (48 FR 49736–49805, October 27, 1983), revised the labor standards on Federal service contracts issued under the Service Contract Act of 1965, as amended. The effective date of the revised DOL regulations was January 27, 1984. General Services Administration's (GSA) Heads of Services and Regional Administrators, by letter of February 7, 1984, from the Assistant Administrator for Acquisition Policy, were advised of the effective date and the necessary actions required to implement the revised DOL regulations. FAC 84–1 removes the current coverage in FAR Subpart 22.10 and the related clauses and prescribes that civilian agencies, other than NASA, continue to follow the Federal Procurement Regulations (FPR) Temporary Regulation 76, February 23, 1984 (49 FR 6726, Feb. 23, 1984) and agency procedures instituted thereunder. This Acquisition Circular contains the essential elements in the FPR Temporary Regulation 76, highlights the major changes in the DOL regulations, and amends Parts 522 and 552 of the GSAR to be consistent with the revised DOL regulations and FAC 84–1.

5. *Applicability.* This Acquisition Circular applies to all GSA procurements for services subject to the Service Contract Act of 1965, as amended, for which solicitations were

issued on or after April 1, 1984, pending issuance of revised FAR Subpart 22.10 and FAR 52.222–40 through 52.222–44.

6. *Reference to regulation.* FAR Subpart 22.10, Service Contract Act of 1965, and the clauses at FAR 52.222–40 through 52.222–44 were removed by Federal Acquisition Circular 84–1, April 1, 1984, (49 FR 12972, March 30, 1984). GSAR Subpart 522.10 and 552.222–43 are amended by this Acquisition Circular and 552.222–83 through 552.222–86 are added by this Acquisition Circular.

7. *Supplementary information.* This Acquisition Circular, in addition to amending the GSAR to conform with the revised DOL regulations and FAC–84–1, highlights the signficant changes in the DOL regulation. The significant changes to the DOL regulations (29 CFR Part 4) are:

(a) Section 4.1b(b)—Limitation on section 4(c) of the Service Contract Act of 1965.

This section has been revised to provide that the rates contained in new or changed collective bargaining agreements (CBAs) consummated during the period of performance of the predecessor contract will not be effective for purposes of the successorship requirements of section 4(c) of the Act, if notification of the terms of the new CBA is received by the contracting agency: (1) in the case of a competitively advertised procurement, less than 10 days before the date of bid opening, provided the agency makes an affirmative finding that there is not a reasonable time still available to notify bidders; or (2) in the case of a negotiated procurement or execution of a renewal option or extension, after award, provided contract start of performance is written 30 days after the award, option, or extension—otherwise, the former "10 days before commencement" rule would apply.

(b) Sections 4.3, 4.4, and 4.53—Locality Basis of Wage Determinations When Place of Contract Performance is Unknown at Time of Bid Solicitation.

These sections have been revised to establish a new "two-step" procurement procedure for issuing separate wage determinations, to the extent feasible, for each of the various localities where the particular contract work might be performed in instances when the place of contract performance cannot be determined at the time of bid solicitation.

(c) Section 4.4(a)—Notice of Intention to Make a Service Contract (SF–98).

This revised section provides that contracting agencies must file SF–98's not less than 60 days (nor more than 120 days without approval) prior to invitations for bids, requests for proposals, commencement of negotiations, exercise of options or extensions, etc., in the case of recurring, known procurements; and not later than 30 days prior to such contracting actions for unplanned and/or emergency procurement actions.

(d) Section 4.5(a)(2)—Incorporation of Revised Wage Determinations.

This section provides that revisions of a wage determination received by the contracting agency later than 10 days prior to the date of bid opening (in the case of competitively advertised procurements) are not effective if the agency makes an affirmative finding that there is not reasonable time still available to notify bidders of the revision. In the case of negotiated procurements (or options or extensions of the initial contract term), revisions received after award (or execution, as appropriate) are not effective *provided* that contract start of performance is within 30 days of the award (or option or extension); if the contract does not specify a start of performance within 30 days and/or performance does not commence within the 30-day period, DOL is to be notified by the agency and any subsequent notice of a revision received by the agency not less than 10 days before commencement of the contract will be effective.

(e) Section 4.5(c)(2)—Erroneous Contracting Agency Determinations of Noncoverage.

This new subsection requires that when DOL finds that the contracting agency made an erroneous determination that the Service Contract Act of 1965 (SCA) did not apply and/or failed to include an appropriate wage determination in a covered contract, the agency must include the SCA contract stipulations and any applicable wage determination in such contract within 30 days of notification by DOL.

(f) Sections 4.6 and 4.7—Labor Standards Clauses for Federal Service Contracts.

These sections set forth the revised contract clauses discussed in paragraph 8(c) below.

(g) Section 4.6(b)(2)—Conformance of Wage Rates for Classifications of Employees Not Listed in a Wage Determination.

Revisions in the conformance procedures in this contract clause provide for an "indexing" procedure which allows a contractor to apply a specified mathematical formula to a previously conformed rate in establishing a new conformed rate, without requiring DOL approval. The indexed conformance is based upon the average percentage change between the rates listed in the current wage determination for all classifications to be used on the contract and those rates specified for the corresponding classifications in the previously applicable wage determination.

In addition, the revised procedures require that a contractor initiate the conformance action before an unlisted class of employee performs any contract work. Furthermore, except where the indexing procedure is utilized, the revised regulations require that the contractor submit information regarding the agreement or disagreement of the affected employees to the conformed rate and also require the contracting officer to promptly submit all conformance actions to DOL for review and approval. Conformed wage rates and/or fringe benefits must be paid to all employees in the conformed classification retroactive to the date such class of employees commenced any contract work.

(h) Section 4.6(l)(2)—Seniority List.

In cases of a contract performed at a Federal facility where employees may be hired/retained by a succeeding contractor, this new subsection requires the incumbent prime contractor to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion.

(i) Section 4.6(n) Certification of Eligibility.

This section provides a new requirement that the contractor certifies it is not a debarred person or firm and thus not ineligible to be awarded the contract, and also prohibits subcontracting to debarred persons.

(j) Sections 4.6(r) and 4.187—Disputes Concerning Labor Standards.

For clarification, a new paragraph (r) has been added to the contract clauses in 4.6 specifying that disputes involving the labor standards provisions of the contract are resolved by DOL under its regulations (29 CFR Parts 4, 6, and 8) and are not subject to the general disputes clause of the contract.

(k) Section 4.8—Notice of Awards.

Section 4.8 provides that a Standard Form 99 need not be submitted to DOL for contract awards exceeding $10,000 that are subject to the SCA if the contracting agency submits Standard Form 279, FPDS Individual Contract Action Report (or its equivalent), to the FPDS or if the contracting agency makes other arrangements with the Wage and Hour Division for notification of such contract awards. However, this action does not alter the statutory requirement

that contracting agencies incorporate the proper stipulations in all contracts exceeding $2,500.

(l) Section 4.10—Substantial Variance Proceedings Under section 4(c) of the Act.

This section provides revised procedures relative to requests for hearings under section 4(c) of the Act to determine whether the collectively bargained wages and/or fringe benefits otherwise required to be paid are "substantially at variance" with those which prevail for similar services in the locality.

(m) Section 4.11—Arm's Length Proceedings.

This section, in conjunction with revised 29 CFR Part 6, provides new hearing procedures relative to questions as to whether the wages and fringe benefits contained in a predecessor contractor's collective bargaining agreement were reached as a result of "arm's length negotiations".

(n) Section 4.12—Substantial Interest Proceedings.

This section, in conjunction with revised 29 CFR Part 6, provides new hearing procedures relative to determinations of whether persons or firms whose names appear on the ineligible bidders list pursuant to section 5 of the act have a "substantial interest" in any firm, corporation, partnership, or association other than those appearing on the ineligible list.

(o) Subpart B—Wage Determination Procedures.

This new Subpart explains DOL's overall policies and procedures concerning the issuance and review of wage determinations.

(p) Section 4.55—Review and Reconsideration of Wage Determinations.

This section provides that interested parties affected by a wage determination may obtain review and reconsideration by the Wage and Hour Administrator of the wage determination upon request.

(q) Section 4.114(b)—Liability of Prime Contractor for Violations by Subcontractors.

This section provides that the prime contractor is liable in the event its subcontractors violate the Act by failing to pay the wages and fringe benefits required under the provisions of the prime contract.

(r) Section 4.116(b) and 4.131(f)—Coverage of Contracts For Property Demolition, Dismantling, and Removal.

As provided in these revised sections, where the facts show the principal purpose of a demolition contract is the furnishing of dismantling and removal services, and no further construction is contemplated (in which case the contract would be subject to the Davis-Bacon Act), such a contract is covered by the SCA even though the contractor received salvaged materials.

(s) Section 4.117—Work Subject to the Walsh-Healey Act: Overhaul and Modification of Equipment.

This new section provides detailed guidelines for delineating when contracts for major overhaul of equipment would be considered "remanufacturing" subject to the Walsh-Healey Public Contracts Act (PCA) rather than the SCA. Contracting agencies are required to initially determine whether work to be performed under a proposed contract would involve principally "remanufacturing" work based on the guidelines, and incorporate the appropriate labor standards clauses (SCA *or* PCA) into the contract prior to soliciting bids.

(t) Sections 4.118—Contracts for Carriage Subject to Published Tariff Rates.

This section discusses application of the statutory exemption in section 7(3) of the SCA for contracts for carriage of freight or personnel subject to published tariff rates, as well as the administrative exemption provided for certain contracts where such carriage is subject to and in accordance with applicable regulations governing rates covered by section 10721 of the Interstate Commerce Act (see revised section 4.123(d)(3) of the regulation).

(u) Section 4.123(e)—Exemptions from Coverage for Contracts for Maintenance and Repair of Certain ADP, Scientific and Medical, and Office/Business Equipment.

An administrative exemption from the provisions of the Act has been granted for certain contracts for the maintenance, calibration and/or repair of: (1) Automated data processing equipment and office information/word processing systems, (2) scientific equipment and medical apparatus or equipment where the application of microelectronic circuitry or similar technology is an essential element, and (3) office/business machines where the work is performed by the manufacturer or supplier of the equipment.

(v) Section 4.130(a) and 4.131(f)—Coverage of Contracts for the Sale of Timber.

The DOL has reexamined the issue of the applicability of the SCA to timber sales contracts and has concluded that the services provided under these contracts are only incidental to the principal purpose of the contracts, which is the sale of timber. Certain contracts which in fact are principally for some purpose other than the sale of timber, such as clearing land or removal of diseased or dead timber, will continue to be subject to the SCA.

(w) Section 4.132—Coverage of Separate Contract Specifications.

Section 4.132 (and other appropriate sections) has been modified to eliminate coverage of separate bid specifications (i.e., line items for specific work in a contract) principally for services when the principal purpose of the entire contract is not for services.

(x) Section 4.133—Beneficiary of Contract Services.

This revised section provides that where the principal purpose of a Government contract is to provide services through the use of service employees, the contract is covered by the Act, regardless of the direct beneficiary of the services. However, an exemption is provided for certain kinds of concession contracts, but visitor information center services have been deleted from the terms of the exemption.

(y) Section 4.145—Extended Term Contracts.

This section has been revised to clarify that for purposes of the SCA, where such contracts are subject to annual appropriations, they are deemed newly entered into upon the contract anniversary date which occurs in each new fiscal year, rather than at the beginning of each fiscal year, if those two dates are different.

(z) Section 4.152(c)—Trainee Classifications.

This section emphasizes that conformance procedures may not be used to artificially subdivide classifications listed in the wage determination. Where the wage determination lists a series of classes within a job classification family, the lowest level listed is considered to be the entry level and establishment of lower (or intermediate) levels through conformance is not permissible. Further, conformance procedures may only be used if the work which an employee is to perform under the contract is not within the scope of any classification listed in the wage determination.

(aa) Subpart D—Compensation Standards (§§ 4.159 through 4.185).

These sections incorporate additional, updated policies regarding a contractor's compliance with the Act's minimum monetary wage and fringe benefit requirements.

(bb) Section 4.163—section 4(c) of the Act.

As set forth in revised § 4.163(i), this successorship provision applies only to successor contracts which are performed *in the same locality* as the

predecessor contract. However, wage determinations issued pursuant to section 4(c) and included in a contract will continue to apply if the successor prime contractor subsequently changes the place(s) of contract performance or subcontracts any part of the contract work to a firm in a different locality.

(cc) Subpart E—Enforcement (§§ 4.187 through 4.191).

These sections provide additional information and guidance regarding enforcement procedures for the recovery of underpayments in debarment cases.

8. *Explanation of changes to the GSAR.*

a. Section 522.1003 is revised as follows:

522.1003 Applicability.

(a) *General.* Pending the issuance of the revised Federal Acquisition Regulation (FAR) coverge of the Service Contract Act of 1965, the policies and procedures in the Federal Procurement Regulations (FPR) Subpart 1–12.9 Service Contract Act of 1965, as amended by the FPR Temporary Regulation 76, revision of labor standards for Federal service contracts, February 23, 1984, must be followed. This Subpart 522.10 contains the essential elements of the FPR Temporary Regulation 76 and includes the major changes to the Department of Labor (DOL) regulations, dated October 19, 1983.

(b) *Request for determinations and exemptions.* Request for determinations regarding the applicability of the Service Contract Act and requests for exemptions from the Act must be submitted to the Wage and Hour Administrator by the head of the contracting activity.

b. Subpart 522.10 is amended by adding a new § 522.1005, reading as follows:

522.1005 Clause for contracts of $2,500 or less.

The contracting officer must insert the clause at 552.222–83, Service Contract Act of 1965—Contracts of $2,500 or Less, in solicitations and contracts when the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 is applicable. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

c. Section 522.1006 is revised to read as follows:

522.1006 Clauses for contracts over $2,500.

(a) The contracting officer must insert the clause at 522.222–84, Service Contract Act of 1965 (as amended), in solicitations and contracts when the contract is subject to the Service Contract Act of 1965 and is (i) for over $2,500 or (ii) for an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

(b) Price-adjustment clauses.

(1) Except as required by paragraph (b)(2) below, the contracting officer must insert the clause at 552.222–86 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts), in solicitations and contracts when the contract is expected to be a fixed-price service contract containing the clause at 552.222–84, Service Contract Act of 1965 (as amended), and is a multiyear contract or is a contract with options to renew.

(2) The contracting officer must insert one of the clauses at 552.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Option Contract/Multiyear Contract) as appropriate, in solicitations and contracts for building services when the contract is expected to be a fixed price service contract containing the clause at GSAR 552.222–83 or 552.222–84, Service Contract Act of 1965, and is a multiyear contract or is a contract with options to renew. The clauses at 552.222–43, must be used in building service contracts in lieu of the clause at 552.222–86 except when the contract is negotiated based on certified cost and pricing data.

(3) The contracting officer must insert the clause at 552.222–85, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts when the contract is expected to be a fixed price service contract containing the clause at 552.222–84, Service Contract Act of 1965 (as amended), and is not a multiyear contract or is not a contract with options to renew.

(4) The clauses prescribed in this paragraph (b) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination before (i) exercise of a contract option or (ii) extension of a multiyear contract into a new program year. The clauses do not cover situations in which the economic price adjustment clauses prescribed in FAR 16.203(d) are used. When the coverage authorized by FAR 16.203(d) is desired, it must not conflict with, or overlap, the clauses prescribed in this paragraph (b).

d. Section 522.1007 is revised to read as follows:

522.1007 Notice of intention to make a service contract.

Requests to expedite wage determinations or to check the status of a particular request may be made by the contracting officer directly to the Wage and Hour Administrator.

e. Section 522.1008 is unchanged and is presently in the GSAR as follows:

522.1008 Wage determinations and collective bargaining agreements.

For the purposes of this subpart, the agency labor advisor will be legal counsel.

f. Section 522.1011 is revised to read as follows:

522.1011 Hearings.

Requests for hearings under 29 CFR 4.11 will be made by the contracting officer through the head of the contracting activity to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. All such requests must be coordinated with the appropriate legal counsel.

g. Section 522.222–43 is amended by revising paragraphs (a) and (b) to read as follows:

522.222–43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts).

(a) As prescribed in § 522.1006(b)(2), insert the following clause in solicitations and contracts for building services unless the contract is being negotiated based on certified cost and pricing data.

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Option Contract) (May 1984)

* * * * *

(b) As prescribed in 522.1006(b)(2), insert the following clause in solicitations and contracts for building services unless the contract is being negotiated based on certified cost and pricing data.

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear Contract) (May 1984)

* * * * *

h. Subpart 552.2 is amended by adding four new sections as follows:

552-222-83 Labor Standards Clause for Federal Service Contracts Not Exceeding $2,500.

As prescribed in 522.1005, insert the following clause in solicitations and contracts when the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 is applicable. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

Service Contract Act (May 1984)

Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder must pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

(End of Clause)

552.222-84 Service Contract Act of 1965 (as amended)

As prescribed in § 522.1006(a), insert the Service Contract Act of 1965 clause contained on the April 1984 edition of the GSA Form 2166 (copy attached), in solicitations and contracts when the contract is subject to the Service Contract Act of 1965 and is (a) for over $2,500 or (b) for an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period. The GSA Form 2166 may be used or its contents repeated verbatim in solicitations and contracts. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

552.222-85 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in 522.1006(b)(3) insert the following clause in solicitations and contracts when the contract is expected to be fixed-price service contract containing the clause at 552.222-84, Service Contract Act of 1965 (as amended), and is not a multiyear contract or is not a contract with options to renew:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (May 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with:

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (b) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it must not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor must notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor must promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause must preclude the Government from asserting a claim within the period permitted by law. The notice must contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates must be modified in writing. The Contractor must continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative must, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

552.222-86 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts).

As prescribed in 522.1006(b)(1) insert the following clause in solicitations and contracts when the contract is expected to be a fixed-price service contract containing the clause at 552.222-84 Service Contract Act of 1965 (as amended), and is a multiyear contract or is a contract with options to renew (note that the adjustments under subparagraphs (c) (2) and (3) of the clause may apply to the base period as well as to subsequent periods):

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts) (May 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 (41 U.S.C. 351-358), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current at the beginning of each renewal option period, must apply to any renewal of this contract. When no such determination has been made applicable to this contract, then the current Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) must apply to any renewal of this contract.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with:

(1) The Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (c) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it must not otherwise include any amount for general and administrative costs, overhead, or profits.

(e) The Contractor must notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor must promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause must preclude the Government from asserting a claim within the period permitted by law. The notice must contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates must be modified in writing. The Contractor must continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative must, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor.

(End of clause)

i. Section 552.300 is amended by adding the following to the matrix for Fixed Price Service and the Matrix for Small Purchases under the Contract

Clauses, Required-When-Applicable section:

Uniform contract format section	Provision of clause number	GSAR text reference	Title
I	552.222-83	522.1005	Service Contract Act of 1965 Contracts of $2,500 or less.
I	552.222-84	522.1006(a)	Service Contract Act of 1965 (as amended).
I	552.222-85	522.1006(b)(3)	Fair Labor Standards Act and Service Contract Act—Price adjustment.
I	552.222-86	522.1006(b)(1)	Fair Labor Standards Act and Service Contract Act—Price adjustment (multi-year and option contracts).

j. The Matrix for Fixed-Price Service in 552.300 is revised to correct the entry for clause number 552.222–43, Fair Labor Standards and Service Contract Act—Price Adjustment (Multi-year and Option Contracts), on page 5299.19. The reference to the Uniform Contract Format section is changed from "B" to "I" and the GSAR text reference is changed from 552.1006 to 522.1006(b)(2).

Dated: June 14, 1984.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 84–16786 Filed 6–22–84; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

[Docket No. 40673–4073]

Fraser River Sockeye and Pink Salmon Regulations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: NOAA issues this notice of final rule to reprint in the **Federal Register** the International Pacific Salmon Fisheries Commission's 1984 regulations, which implement the Convention for Protection, Preservation, and Extension of the Sockeye Salmon and Pink Salmon Fisheries of the Fraser River System between the United States and Canada (Convention). This notice and reprinting discharges a foreign affairs obligation of the United States. These regulations are necessary to achieve the objectives of the Convention in 1984. The intended effect of the regulations is to ensure adequate escapement of each spawning unit and the equitable division of catch between U.S. and Canadian fishermen in Convention waters. These rules do not apply to treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places, when they are fishing in accord with regulations promulgated by the Department of the Interior.

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. T. E. Kruse, Acting Regional Director, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115; telephone: 206–526–6150.

SUPPLEMENTARY INFORMATION: On February 24, 1984, the International Pacific Salmon Fisheries Commission (the Commission) forwarded proposed regulations for the 1984 commercial fishing season for sockeye in Convention Waters to the Government of the United States for approval, as required by Article VI of the Convention between the United States and Canada. The United States has provisionally approved those regulations, with the exception that the regulations would not apply to treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places. Treaty Indian fisheries are regulated by 25 CFR Part 249, published by the Department of the Interior.

Regulations for 1984 are similar to regulations adopted by the Commission in previous years to implement the Convention. The regulations for 1983 were published at 48 FR 24902 on June 3, 1983. The 1984 regulations amend the 1983 schedules of fishing by gillnets, purse seines and reef nets to 1984 calendar dates.

The 1984 regulations for sockeye salmon fishing provide for a 5-week season with one day of fishing per week for the all-citizen, or non-Indian, fishery. This pre-season schedule will undoubtedly be adjusted during the season by the Commission to meet the following paramount objectives of the Convention with Canada: (1) Conservation, i.e., properly-timed escapement through all fisheries, of adequate numbers of the various races of salmon for scheduled fisheries in Canada and for spawning purposes, and (2) equal division of Convention Waters catches between fishermen of the two nations. Such changes in the fishing schedule often occur as the season progresses because pre-season estimates of run size, catches, racial compositions of the salmon runs, migration routes (sockeye salmon may reach the mouth of the Fraser River by passing through the Straits of Juan de Fuca or through Johnstone Straits at the north end of Vancouver Island), and timing of the runs may vary substantially from actual events during the season.

These regulations for all-citizen fisheries will be effective in High Seas Convention Waters as well as in Convention Waters inside the Bonilla Point-Tatoosh Island line. These regulations are necessary to achieve the objectives of the Convention and provide for a rational fishery by U.S. fishermen.

50 CFR Part 371 gives notice of the content of regulations adopted by an international commission that are in force for the United States and its citizens under the agreements in the Convention. Reprinting the Commission's regulations in the **Federal Register** helps fulfill the United States Convention obligation to make the Commission's regulations effective and, as such, involves a foreign affairs function not subject to the requirements of 5 U.S.C. 553 (Administrative Procedure Act), E.O. 12291, or the Regulatory Flexibility Act.

List of Subjects in 50 CFR Part 371

Fish, Fishing, Fisheries, International organizations, Reporting and recordkeeping requirements.

Dated: June 18, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 371—FRASER RIVER SOCKEYE AND PINK SALMON REGULATIONS

50 CFR Part 371 is amended as follows:

1. The authority citation for Part 371 reads as follows:

Authority: Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776–776f.

2. Section 371.9 and Appendix A are revised to read as follows:

§ 371.9 Commission regulations.

Appendix A sets forth regulations of the Commission for the 1984 fishing season. These regulations, as may be modified from time to time by emergency orders of the Commission and disseminated under § 371.6 of this part, are the "Regulations of the Commission," violation of which is unlawful under the Act.

Appendix A—International Pacific Salmon Fisheries Commission Regulations

1. No person shall fish for sockeye or pink salmon with nets in Puget Sound Salmon Management and Catch Reporting Areas 4B, 5, 6, 6A, 6C, 7, 7A, and 7D from the 24th day of June, 1984, to the 21st day of July, 1984, both dates inclusive.

2. (1) No person shall fish for sockeye or pink salmon with purse seines in Puget Sound Salmon Management and Catch Reporting Areas 4B, 5, 6, 6A, 6C, 7, and 7A:

(a) From the 22nd day of July, 1984, to the 18th day of August, 1984, both dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Monday of each week; and

(b) From the 19th day of August, 1984, to the 25th day of August, 1984, both dates inclusive, except from five o'clock in the forenoon to nine o'clock in the afternoon of Monday.

(2) No person shall fish for sockeye or pink salmon with gill nets in the waters described in subsection (1) of this section:

(a) From the 22nd day of July, 1984, to the 28th day of July, 1984, and from the 5th day of August, 1984, to the 11th day of August, 1984, all dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday of each week; and

(b) From the 29th day of July, 1984, to the 4th day of August, 1984, and from the 12th day of August, 1984, to the 18th day of August, 1984, all dates inclusive, except from seven o'clock in the afternoon of Sunday to half past nine o'clock in the forenoon of Monday of each week; and

(c) From the 19th day of August, 1984, to the 25th day of August, 1984, both dates inclusive, except from six o'clock in the afternoon of Monday to nine o'clock in the forenoon of Tuesday.

(3) No person shall fish for sockeye or pink salmon with reef nets in the waters described in subsection (1) of this section:

(a) From the 22nd day of July, 1984, to the 28th day of July, 1984, and from the 5th day of August, 1984, to the 11th day of August, 1984, all dates inclusive, except from six o'clock in the forenoon to half past nine o'clock in the afternoon of Sunday of each week; and

(b) From the 29th day of July, 1984, to the 4th day of August, 1984, and from the 12th day of August, 1984, to the 18th day of August, 1984, all dates inclusive, except from half past nine o'clock in the forenoon to half past nine o'clock in the afternoon of Sunday of each week; and

(c) From the 19th day of August, 1984, to the 25th day of August, 1984, both dates inclusive, except from six o'clock in the forenoon to nine o'clock in the afternoon of Sunday.

3. No person shall fish for sockeye or pink salmon with nets in Puget Sound Salmon Management and Catch Reporting Areas 6, 6A, 7, and 7A from the 26th day of August, 1984, to the 8th day of September, 1984, both dates inclusive.

4. No person shall fish for sockeye or pink salmon in Puget Sound Salmon Management and Catch Reporting Area 7B, except for those sockeye or pink salmon taken in nets having mesh not less than 7 inches as authorized for the taking of chinook salmon by the Director of Fisheries of the State of Washington, from the 24th day of June, 1984, to the 18th day of August, 1984, both dates inclusive.

5. No person shall fish for sockeye or pink salmon with nets in that portion of the waters described in section 3 lying westerly of a straight line drawn from the low-water range-marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia from the 9th day of September, 1984, to the 29th day of September 1984, both dates inclusive.

6. The following Convention Waters are excluded:

(1) High Seas westerly of the Bonilla Point-Tatoosh Island Lighthouse Line.

(2) Puget Sound Salmon Management and Catch Reporting Areas 6B, 6D, and 7C.

(3) Preserves previously established by the Director of Fisheries of the State of Washington for the protection of other species of food fish..

All times hereinbefore mentioned shall be Pacific Daylight Saving Time.

[FR Doc. 84-16793 Filed 6-20-84; 11:47 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 123
Monday, June 25, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1093, and 1094

Milk in the Georgia, Alabama-West Florida and New Orleans-Mississippi Marketing Areas; Notice of Proposed Suspension of Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain pooling provisions of the Georgia, Alabama-West Florida, and New Orleans-Mississippi Federal milk orders. The action was requested by Dairymen, Inc., which operates a fully regulated plant at Savannah, Georgia, where only aseptically processed fluid milk products are packaged for domestic distribution and for export. The cooperative claims that this action will provide partial regulation, rather than full regulation, of the Savannah plant and is necessary to enable Dairymen, Inc. to compete on an equitable basis with a Visalia, California, plant for sales of aseptically processed fluid milk products.

DATE: Comments are due not later than July 2, 1984.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would tend to ensure that Dairymen, Inc., a cooperative association of dairy farmers, would be able to compete on an equitable basis for sales of aseptically processed fluid milk products. Otherwise, disorderly marketing conditions might result.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the orders regulating the handling of milk in the Georgia, Alabama-West Florida and New Orleans-Mississippi marketing areas is being considered as early as possible through December 1985:

1. In the first sentence of § 1007.7(a), the words "other than a plant specified in paragraph (d) of this section".

2. Section 1007.7(d) in its entirety.

3. In the first sentence of § 1093.7(a)(2), the words "the lesser of a daily average of 1500 pounds or".

4. In the first sentence of § 1094.7(a)(1), the words "the lesser of a daily average of 1500 pounds or".

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because of proponent's request for immediate relief.

The comments that are received will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

This proposed action would make inoperative through December 1985 the pooling provisions applicable to a distributing plant at Savannah, Georgia, which packages aseptically processed fluid milk products only. Presently, the plant is a fully regulated plant under the Georgia order. The effect of the proposed suspension would be to provide partial regulation for the plant under the Georgia order, and also under the Alabama-West Florida and New Orleans-Mississippi milk orders, under which the plant could become fully regulated if only the Georgia order provisions were suspended.

The proposed suspension was requested by Dairymen, Inc., a cooperative association of dairy farmers which supplies much of the milk needs of the area covered by this proposed action.

The cooperative said that a plant at Visalia, California, packages aseptically processed fluid milk products for sale in competition with similar products from the Dairymen, Inc., plant at Savannah, Georgia. Milk that is used in the product and distributed by the Visalia plant in the 47 contiguous States outside California is being priced, according to Dairymen, Inc., at the California regulated Class II price. The cooperative said that for March 1984, the applicable price was $12.17 per hundredweight. Dairymen, Inc., also stated that milk that is used in the product and sold by the Visalia plant outside the continental United States is priced at the California Class IV price. The cooperative said that for March 1984, the applicable price was $11.69 per hundredweight.

In contrast, Dairymen, Inc., must pay the Georgia order Class I price for milk used in aseptically processed fluid milk products that are distributed in the United States or exported overseas. The Georgia Class I price for March 1984 was $14.35 per hundredweight.

Dairymen, Inc., claims that on this basis the cooperative is at a substandial disadvantage in competing with the Visalie plant for sales of aseptically processed fluid milk products in unregulated areas or in the export market. The cooperative indicated that in the case of such sales in the continental United States, the California pricing will apply through December 1985, when such products will then be priced at the California Class I price. The cooperative stated that partial regulation, rather than full regulation, for its Savannah plant is needed to enable it to compete with the visalia plant on a more equitable basis for sales of aseptically processed milk in the unregulated areas of the United States and for export.

The cooperative said that the proposed suspension requested for the Alabama-West Florida and New

Orleans-Mississippi milk orders is necessary to preclude the possible full regulation of the Savannah plant under either of the orders. The proposed suspension for the two orders would make inoperative the 1,500-pound alternative minimum daily in-area sales provisions for pooling a distributing plant. The 10-percent in-area distribution requirement for pooling a distributing plant would remain operative in the two orders. The cooperative said that no pool plant under either order would be affected by the proposed suspension.

List of Subjects in 7 CFR Parts 1007, 1093 and 1094

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on: June 20, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-16837 Filed 6-22-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-84-6]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before August 25, 1984.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204). Petition Docket No.———, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB–10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on June 18th, 1984.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
23917	Flight Resources, Inc.	*Description of Petition:* To add a new paragraph to § 11.29(a) as follows; "A statement as to the differences, if any, in any provision(s) of the proposed and any current rule, from the standards or recommended practices recognized by any Convention, Treaty, Agreement, or applicable laws and requirements of foreign countries. *Regulations Affected:* 14 CFR 11.29(a). *Petitioner's Reason for rule:* Differing from internationally recognized standards and recommended practices is clearly "substantive" rulemaking envisioned by the Administrative Procedures Act, and thus requires specific public Notice. Thus, we petition for the amendment to 14 CFR 11.29 as a matter of law and equitable democratic process.
NOTE: This petition was previously published, however, the published wording of the proposed Rule was not completely consistant with the petitioners suggested wording. The correct wording is included in this document, however, the comment close date for this proposal remains June 25, 1984.		
24072	Aerovias Colombianas, LTDA (ARCA), & Aerolineas Nationales Del Ecuador (Anded).	*Description of Petitions:* To permit the operation of four-engine noise level Stage 1 aircraft at Miami Int'l. Airport in foreign (international) air transportation up to and including December 31, 1987. *Regulation Affected:* 14 CFR 91.303. *Petitioner's Reason for Rule:* To amend § 91.303 to permit the continued operations of airlines which operate such aircraft for which there is, as yet, no adequate modification or replacement aircraft, and to prevent a serious shortage of capacity, particularly in cargo. It is also required by the public interest, the national defense, and the treaty obligations of the United States.
24070	Ass'n. of Flight Attendants.	*Description of Petition:* To amend § 121.285(c) to place the cargo in passenger seats immediately aft of a crashworthy bulkhead or divider, instead of being placed throughout the passenger cabin as now permitted. *Regulations Affected:* 14 CFR 121.285. *Petitioner's Reason for Rule:* By so limiting the placement of cargo, the FAA would minimize the risk that cargo in crashes will break loose and block exits or strike passengers and crew. Under the amendment, any cargo that breaks loose would tend to simply strike the crashworthy bulkhead or divider and come to rest.

24045	Caribbean Air Cargo, Co., Ltd., Surinam Airways, Ltd., Air Haiti, S.A., Lineas Aereas Del Caribe (LAC Airlines), & Florida West Airlines, Inc.	*Description of Petition:* To amend § 91.303 to permit the operation of four-engine noise level Stage 1 aircraft at Miami Int'l. Airport in foreign (international) air transportation up to and including December 31, 1987. *Regulations Affected:* 14 CFR 91.303. *Petitioner's Reason for Rule:* To amend § 91.303 to permit the continued operations of airlines which operate such aircraft for which there is, as yet, no adequate modification or replacement aircraft, and to prevent a serious shortage of capacity, particularly in cargo. It is also required by the public interest, the national defense, and the treaty obligations of the United States.
23910	Washington Legal Foundation.	*Description of Petition:* To promulgate a rule or rules promoting a zero-illicit drug use policy for airmen. Specifically, that the rule include a requirement that (1) present airmen provide written acknowledgment under oath that they do not and will not use illegal drugs on or off duty; (2) stricter medical and security reviews of newly hired airmen; (3) a program of mandatory random urinalysis and blood testing of airmen to detect illict drug use; and (4) a rigid dismissal policy or revocation of the airman certificate, as the case may be, for those airmen detected as illicit drug users. *Regulations Affected:* 14 CFR 11.25. *Petitioner's Reason for Rule:* Petitioner states that the public interest of safety and integrity in air transportation dictates the need for a strict and thorough policy of zero-illicit drug use by the FAA. Petitioner states that recent reports concerning abuse by air traffic control tower operators indicate an urgent need for a formal illicit drug use detection program given the grave dangers an airman under the influence of an illicit drug presents to the flying public, pilots and crew, and those on the ground where an accident may occur.

PETITIONS FOR RULEMAKING: WITHDRAWN OR DENIED

Docket No.	Petitioner	Description and disposition of the rule requested
23651	H. L. Goldstock	To amend § 91.79(d) so as to require that helicopters be operated at the same higher minimum safe altitude over congested areas as other aircraft. *Denied 5/11/84.*

[FR Doc. 84-16782 Filed 6-22-84; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9155]

Great Lakes Chemical Corp., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Dismissal order.

SUMMARY: The Federal Trade Commission has dismissed the proceedings against Northwest Industries, Inc. and Velsicol Chemical Corp., after determing that no action is necessary against respondents who are no longer a part of the transaction.

DATE: Complaint issued June 23, 1981. Decision and Order issued May 23, 1984.*

FOR FURTHER INFORMATION CONTACT: FTC/CS–2, John V. Lacci, Washington, D.C. 20580. (202) 254–8644.

SUPPLEMENTARY INFORMATION: On Monday, March 12, 1984, there was published in the **Federal Register**, 49 FR 9220, a proposed consent agreement with analysis in the Matter of Great Lakes Chemical Corporation, a corporation, Northwest Industries, Inc., a corporation, and Velsicol Chemical Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form on order.

No comments were filed.

List of Subjects in 16 CFR Part 13

Flame retardents, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply Sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 84-16672 Filed 6-22-84; 8:45 am]
BILLING CODE 6750-01-M

*Copies of the Complaint and the Decision and Order filed with original document.

16 CFR Part 13

[Docket No. 9172]

David Porter; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Springfield, Missouri operator of retail grocery stores, among other things, to cease engaging in any concerted action to impede the collection or dissemination of comparative price information. For a period of 5 years, David Porter would be prohibited from requiring price checkers to purchase items to be priced as a condition of allowing them to price check; denying price checkers the same access to its stores as is provided to customers; or coercing any price checker, publisher or broadcaster to refrain from collecting or reporting comparative price information. Additionally the order would require David Porter to offer to reimburse TeleCable up to $1,000 for the broadcast of a comparative grocery price information program. Should the station elect to broadcast such a program, David Porter would be further required to post signs and place newspaper ads notifying the public that such a program is being broadcast.

DATE: Comments must be directed on or before August 24, 1984.

ADDRESS: Comments should be received to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Patricia Ann Bremer, PA/752–4, Washington, D.C. 20580 (202) 724–1256.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25 of the Commission's Rules of Practice (16 CFR 3.25) notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be conducted by the Commission and will be available for inspection and copying at its principal office in accordance with

§ 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Comparative price information, Trade practices.

Before Federal Trade Commission

[Docket No. 9172]

Agreement Containing Consent Order To Cease and Desist

In the Matter of David Porter, an individual, trading and doing business as Porter's So-Lo Markets.

The Agreement herein, by and between David Porter, an individual trading and doing business as Porter's So-Lo Markets, by David Porter and his attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. David Porter, hereinafter sometimes referred to as "Porter", is an individual trading and doing business as Porter's So-Lo Markets, with his principal business office at 1475 North National, Springfield, Missouri.

2. Porter has been served with a copy of the complaint issued by the Federal Trade Commission charging him with violation Section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Porter admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Porter waives:

a. Any further procedural steps;

b. The requirement that the Federal Trade Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement is for settlement purposes only and does not constitute an admission by Porter that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Federal Trade Commission. If this agreement is accepted by the Federal Trade Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Porter, in which event it will take such action as it may consider appropriate, or without further notice to Porter issue and serve its decision containing the following Order in disposition of the proceeding and make information public in respect thereto. When so issued, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time as provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agree-to Order to Porter's address as stated in this agreement shall constitute service. Porter waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

7. David Porter has read the complaint and the Order contemplated hereby. Porter understands that once the Order has been issued, Porter will be required to file one or more compliance reports showing that he has fully complied with the Order. Porter further understands that he will be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For the purpose of this Order, the following definitions shall apply:

A. "Porter" means David Porter, individually and through Porter's So-Lo Markets or any other entity or corporate device, and his representatives, agents, employees, successors and assigns.

B. "Price check" or "price checking" means the collecting, from information available to customers, of retail prices of items offered for sale by any retail grocery store (SIC 5411), which is done neither by nor on behalf of a person engaged in the sale of groceries, and which information is used in price reporting.

C. "Price checker" means any person engaged in price checking.

D. "Price reporting" or "price report" means the dissemination to the public of price checking information through any medium by any person not engaged in the sale of groceries.

E. "Springfield" means the counties of Christian and Greene, Missouri.

F. "Customer" means any individual who enters a retail grocery store for the purpose of grocery shopping, whether or not that individual actually makes a purchase.

G. "Person" means individuals, corporations, partnerships, unincorporated associations, and any other business entity.

H. "Geographic area" means: (1) a Standard Metropolitan Statistical Area as defined by the Bureau of the Census, U.S. Department of Commerce, as of October 1, 1982; or (2) a county.

I. "Supermarket" means any retail grocery store (SIC 5411) with annual sales of more than one million dollars ($1,000,000.00).

II

It is further ordered that:

A. Porter shall forthwith cease and desist from taking any action in concert with any other person engaged in the sale of grocery products which has the purpose or effect of restricting, impeding, interfering with or preventing price checking or price reporting.

B. Except as provided in paragraph II.C., for five (5) years following the date on which this Order becomes final, Porter shall cease and desist from taking or threatening to take any unilateral action that would:

1. Require checkers to purchase items to be price checked as a condition of allowing them to price check; or

2. Deny price checkers the same access to Porter's supermarkets as is provided to customers; or

3. Coerce or attempt to coerce, any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting.

C. 1. Nothing in paragraph II.B. shall prevent Porter from adopting reasonable, non-discriminatory rules governing the number of price checkers in his supermarkets at any one time for the purpose of preventing disruption of Porter's normal business operations.

2. Nothing in subparagraph II.B.3. shall prevent Porter from publicly commenting upon or objecting to any price report in which his prices are compared to those of any other grocery retailer.

3. Whenever Porter believes that conditions exist that justify the exclusion of a price checker, he may submit to the Federal Trade Commission a sworn statement setting forth with particularity the facts that Porter believes meet such conditions. For purposes of this Order, the only conditions justifying the exclusion of a price checker are that another supermarket operator with whose prices

Porter's supermarket prices are compared in a price report has knowingly tampered with or manipulated the results of such price report for its own competitive gain either (a) by the use of information wrongfully obtained and not available to all supermarket operators whose prices are being compared, or (b) by inducing any price reporter or price checker to cause false information to be published or broadcast. Following the Federal Trade Commission's actual receipt of such statement, Porter may exclude the price checkers from his supermarkets in the geographic area(s) covered by the affected price report for so long as the conditions set forth in Porter's statement shall exist. In any civil penalty action against Porter for a violation of subparagraph II.B.2. occurring after notice to the Federal Trade Commission was given by Porter as provided in this subparagraph, Porter shall have the burden of proving, by a preponderance of the evidence, that the conditions justifying the exclusion of a price checker as set forth in this subparagraph have been met. In meeting his burden, Porter may offer evidence only for the purpose of proving the facts set forth in his statement to the Federal Trade Commission. Nothing in this subparagraph shall be construed to be an exception to the prohibitions of paragraph II.A. of this Order.

III

It is further ordered that, upon the resumption of price reporting by TeleCable of Springfield that is similar in quality and coverage to that broadcast by it prior to October 14, 1981, and that includes any Porter supermarket, and upon receipt by Porter of written request for payment from TeleCable, Porter shall reimburse TeleCable for its actual cost of obtaining a price reporting program up to the amount of two hundred fifty dollars ($250.00) per week. Porter's obligation under this Part (III) shall terminate either when he has reimbursed TeleCable in the total amount of one thousand dollars ($1,000.00) or three (3) years following the date on which this Order becomes final, whichever occurs first. Porter shall not reimburse TeleCable for costs incurred by TeleCable during any weeks for which TeleCable's costs are reimbursed by any other person.

IV

It is further ordered that, within seven (7) days following the date on which this Order becomes final, Porter shall send a letter, a copy of which is attached here as Exhibit A, together with a copy of this Order, to TeleCable of Springfield, informing TeleCable of Porter's obligations under Parts II and V of this Order, TeleCable's rights under Part III, and the notices that Porter must receive from TeleCable before certain Order provisions become binding upon Porter.

V.

It is further ordered that, if at any time during the two years following the date on which this Order becomes final, Porter is notified in writing by TeleCable of Springfield that price reporting that includes any of Porter's supermarkets has resumed in Springfield:

A. For a period of sixty (60) days following the receipt of such notice, Porter shall post signs no smaller than 30 inches by 40 inches in a front window in each of Porter's supermarkets in Springfield, stating:

Grocery Price Survey

A price survey comparing prices of selected grocery items at Porter's So-Lo Markets and other Springfield grocery supermarkets is being broadcast over cable television. This comparative price survey can be seen on channel ——— and is broadcast from ——— to ———.

B. For a period of sixty (60) days following the receipt of such notice, whenever Porter places food advertisements of one-half page or larger in any printed advertising medium with circulation of 15,000 or more copies in Springfield, which advertisements cover only his own stores, Porter shall publish an announcement as a part thereof in the same language provided in paragraph V.A. This announcement shall be no smaller than 3 inches high by 3 inches wide and shall be printed in conspicuous type. In each week in which Porter does not place a one-half page or larger food advertisement in such printed advertising medium covering only his own stores, Porter shall place this announcement as a display advertisement in those editions of any printed advertising medium with circulation of 15,000 or more copies in those areas of Springfield in which Porter's stores are located.

VI

It is further ordered that Porter shall, within seven (7) days after the date on which this Order becomes final, and once a year thereafter for three years, provide a copy of this Order to each of his supermarket managers, and secure from each such individual a signed statement acknowledging receipt of this Order.

VII

It is further ordered that Porter shall, within sixty (60) days after the date on which this Order becomes final, file with the Commission a verified written report, setting forth in detail the manner and form in which Porter has complied with this Order. Additional reports shall be filed at such other times as the Commission may by written notice require. Each compliance report shall include all information and documentation as may be required by the Commission to show compliance with this Order.

VIII

It is further ordered that Porter shall notify the Federal Trade Commission at least thirty (30) days prior to the discontinuance of his present business or employment as an individual proprietorship in the sale of groceries, or at least thirty (30) days prior to his affiliation with a new business or employment, or of any similar change which may affect compliance obligations arising out of this Order. The notice provision of this Part shall include any change in the organizational status of Porter's present business, such as incorporation, assignment or sale, resulting in the emergence of a successor entity, or any other change in Porter's business or his retail grocery operations.

Exhibit A

TeleCable of Springfield,
1553 South Enterprise, Springfield, Missouri 65801

Dear Sir or Madam: This is to notify you that I, David Porter, the owner of Porter's So-Lo Markets in Springfield, Missouri, have entered into a consent order with the Federal Trade Commission in which I have agreed that I will not interfere with efforts by independent parties such as TeleCable of Springfield to engage in price reporting or price checking in my grocery stores in Springfield. I have agreed that I will not require price checkers to purchase the items being price checked, will not deny price checkers the same access to my supermarkets as is provided to customers, and will not attempt to coerce any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting. The terms of and limitations of the agreement are set forth in a consent order issued by the Federal Trade Commission, a copy of which is enclosed herewith.

If TeleCable of Springfield institutes a price reporting program similar or superior in quality and coverage to the one broadcast by TeleCable in 1981, and if the program includes any of my grocery stores in Springfield, Missouri, I will reimburse TeleCable for its actual costs of obtaining price reports, up to the amount of $250 per

week, and up to $1,000 in total. I will also place notices in my Springfield grocery stores and in weekly advertisements, informing consumers of TeleCable's price surveys. The precise terms of my obligations to place such notices, and to reimburse TeleCable for certain of its costs, are set forth in the enclosed consent order.

In order to receive any funds to which you may be entitled and to effect the placement of the notices described above, please notify me in writing, c/o Porter's So-Lo Markets, 1475 North National, Springfield, Missouri 65802, stating when the program began or is scheduled to begin, the time and channel on which the survey will be broadcast, and TeleCable's costs, if any, of obtaining the surevey information.

Very truly yours,

David Porter

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from David Porter, an individual, trading and doing business as Porter's So-Lo Markets.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

A complaint was issued against David Porter, an individual, trading and doing business as Porter's So-Lo Markets (Porter), and two other Springfield, Missouri, grocery retailers on December 16, 1983, charging them with a conspiracy to prevent an independent price checking firm from collecting comparative grocery price information from their stores for broadcast to the public over the local cable television station. A fourth retailer, Dillon Companies, Inc., had previously signed a consent agreement, which became final on October 13, 1983. The complaint against Porter charges that, by agreeing with others to prevent the collection and public dissemination of comparative grocery price information, Porter has engaged in conduct that constitutes a restraint on price competition and a group boycott, and that Porter's conduct constituted an unfair method of competition or an unfair act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act. The complaint alleges that this conduct had the following anticompetitive effects: (1) Price competition among Springfield grocery retailers has been suppressed; and (2) consumers in Springfield have been deprived of price information that can be used in the selection of a grocery store.

The proposed order provides that Porter must: (1) Refrain from engaging in concerted action to impede the collection or dissemination of comparative grocery price information; (2) refrain for five years from taking three specific types of actions to impede the collection or dissemination of comparative grocery price information; (3) reimburse the Springfield, Missouri, cable television station up to $1,000 for the broadcast of a comparative grocery price program, if the cable station elects to broadcast such a program; (4) if the cable station elects to broadcast such a program, to post signs and place advertisements for sixty (60) days notifying the public that such a program is being broadcast; (5) notify certain of his employees of the terms of the order; (6) file periodic verified written compliance reports setting forth his compliance with the provisions of the order; and (7) provide the Federal Trade Commission at least 30 days notice prior to effecting in Porter's business or his retail grocery operations that may affect his compliance obligations arising from the order.

The proposed order, by requiring Porter to refrain from concerted and individual action to impede the collection or dissemination of comparative grocery price information, should ameliorate the anticompetitive effects resulting from the concerted action. The proposed order is intended to permit the marketplace to determine whether a comparative price survey is broadcast in Springfield, and to ensure that the development of new forms of consumer price information is not inhibited.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 84-16902 Filed 6-22-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

Foreign Equipment Purchases by, and Repairs to, American-Flag Vessels

AGENCY: U.S. Customs Service, Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Customs Regulations provide procedures for the appeal of adverse decisions of the Customs Service concerning the remission or refund of duties assessed or paid on the cost of repairs made to American-flag vessels abroad, which repairs were necessitated by stress of weather or other casualty.

This document withdraws a notice which proposed to clarify the regulations by (1) stating that the protest procedures provided in the Customs Regulations are not applicable to matters involving relief sought due to circumstances involving stress of weather or other casualty, and (2) by stating that applications for relief in circumstances involving stress of weather or other casualty must be submitted within 2 years of the liquidation of a vessel repair entry.

After analysis of the comments received in response to the proposal and further review of the matter, Customs has determined that the proposal should not be adopted at this time. Any clarifying amendments will be included in a revision of the regulations relating to vessels.

DATE: Withdrawal effective June 25, 1984.

FOR FURTHER INFORMATION CONTACT: John A. Mathis, Carrier Rulings Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION: .

Background

The owners or masters of certain American vessels are required by section 466(a), Tariff Act of 1930, as amended (19 U.S.C. 1466(a)), to declare, enter, and pay a special 50 percent ad valorem duty on the cost of all repairs (including purchases of equipment, repair parts, or materials) made to the vessel outside the United States. If the owner or master disputes the decision of the appropriate Customs officer to classify an expenditure as dutiable, the owner or master may file a protest with Customs challenging the classification, rate, and amount of duties chargeable, in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514). Section 466(d), Tariff Act of 1930, as amended (19 U.S.C. 1466(d)), provides for remission or refund of the duty if: (1) The repairs or purchases were necessary to repair damage caused by stress of weather or other casualty while the vessel was in the regular course of its voyage and to secure the safety and seaworthiness of the vessel to enable it to reach its port of destination, (2) the

equipment, repair parts, or materials purchased were of American origin and installed by the vessel's crew or U.S. residents, or (3) the equipment, repair parts, or materials purchased, including the labor cost involved, were used as dunnage for cargo, or for the erection of temporary bulkheads or similar devices for the control of cargo.

The administrative procedure for remission or refund of duties when the master or vessel owner alleges that an expenditure covered by an entry is within the circumstances specified in section 466(d), is set forth in § 4.14, Customs Regulations (19 CFR 4.14).

The effect that liquidation of a vessel repair entry has on the right to appeal by the master or owner of a vessel depends on whether the appeal is based upon a question of classification (dutiability of the foreign expenditure) or remission or refund of duties due to certain circumstances. If the expenditure is alleged not to be dutiable under section 466(a), the owner of the vessel must file a protest in accord with section 514 within 90 days of liquidation of the entry to obtain further review of the claim. However, if the expenditure is alleged to warrant relief pursuant to section 466(d), because of circumstances such as stress of weather or other casualty, there is presently no specific time limit after liquidation of the entry within which a request for additional consideration of the claim must be filed. An appeal from that decision may be made at any time after liquidation of the entry.

Customs published a notice in the **Federal Register** on May 20, 1983 (48 FR 22746), proposing to amend § 4.14(f), Customs Regulations, to clarify the appeal procedures to be utilized for section 466(d) matters as opposed to those cases arising under section 466(a). The proposal stated that the normal protest procedures set forth in Part 174, Customs Regulations (19 CFR Part 174), are not applicable to relief sought under section 466(d). A two-year time limit was proposed for filing applications for relief submitted under section 466(d).

Interested parties were given until July 19, 1983, to submit written comments concerning the proposal. Only two comments were received in response to the notice, both expressing qualified support.

Action—Withdrawal of Proposal

Based upon analysis of the comments received, and upon further review of the proposal, Customs has determined that clarifying amendments such as those published in the notice are not really needed. Additionally, a complete revision of Part 4, Customs Regulations (19 CFR Part 4), is currently under consideration. Any clarifying amendments can be included in that revision. Accordingly, the notice published in the **Federal Register** on May 20, 1983 (48 FR 22746), is withdrawn.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William Raab,

Commissioner of Customs.

Approved: June 8, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-16822 Filed 6-22-84; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 144, 146, and 147

[OW-FRL-2613-7]

Underground Injection Control Program; Federally-Administered Programs; Cancellation of Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Cancellation notce.

SUMMARY: A public hearing for the Proposed Underground Injection Control Program in the State of South Carolina which was scheduled for June 26, 1984, at 1:00 p.m. and 7:30 p.m. at Midland Technical College, Building One, Conference Room 120, Airport Campus, Lexington Avenue, West Columbia, South Carolina, has been cancelled. This announcement appeared in the May 11, 1984 **Federal Register** (49 FR 20238).

FOR FURTHER INFORMATION CONTACT: David Peacock, Chief, Groundwater Section, EPA, Region IV, 345 Courtland Street, NE, Atlanta, Georgia—30365, (404) 881-3866.

Dated June 20, 1984.

John A. Little,

Acting Regional Administrator.

[FR Doc. 84-16817 Filed 6-22-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 264 and 265

[OSWER-FRL-2614-1]

Hazardous Waste Storage and Disposal Facilities; Availability of Information

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and request for comments.

SUMMARY: The Environmental Protection Agency today announces the availability of a draft Technical Resource Document for public comment. The document is *The Hydrologic Evaluation of Landfill Performance (HELP) Model.*

Technical Resource Documents provide state-of-the-art summaries of technologies and evaluation techniques determined by the Agency to constitute good engineering designs, practices, and procedures. The document may be used for information and guidance by owners and operators of facilities that treat, store, and dispose of hazardous or non-hazardous waste in landfills, surface impoundments, waste piles, and land treatment facilities. These Technical Resource Documents may therefore assist in the implementation of 40 CFR Parts 264 and 265 hazardous waste management regulations by helping owners/operators and permit officials to identify and evaluate technologies that can be used to prevent potential harm to human health and the environment and to comply with the regulations.

The Hydrologic Evaluation of Landfill Performance (HELP) Model was developed to facilitate rapid, economical estimation of the amounts of surface runoff, subsurface drainage, and leachate that may be expected to result from the operation of a wide variety of possible landfill designs. The model simulates hydrologic processes including precipitation, surface storage, run-off, infiltration, evapotranspiration, soil moisture storage, and lateral drainage using a quasi-two-dimensional approach. The Agency requests comments on the accuracy and completeness of the method.

DATES: Comments on the draft Technical Resource Document must be submitted on or before October 25, 1984.

ADDRESS: Comments should be addressed to Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. All communications should identify the document title and SW numbers; i.e., *The Hydrologic Evaluation of Landfill*

Performance (HELP) Model [EPA–530–SW–84–009 and EPA–530–SW–84–010].

Copies of the draft Technical Resource Document are available for reading at the EPA Library (Room 2904) and Subtitle C Docket Room (Room S212), both located at 401 M Street SW., Washington, D.C. 20460, as well as at all Regional Office Libraries, Monday through Friday during the hours of 9:00 a.m. to 4:30 p.m. A limited number of personal copies of the document may be obtained by calling the RCRA Hotline, at (800) 424–9346 (toll free) or at (202) 382–3000.

FOR FURTHER INFORMATIONA CONTACT: RCRA Hotline, at (800) 424–9346 (toll free) or at (202) 382–3000. For technical information contact Paul Cassidy, Office of Solid Waste (WH–565E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C., 20460, at (202) 382–4682.

SUPPLEMENTARY INFORMATION: Subtitle C of the Resource Conservation and Recovery Act (RCRA), Section 3004, requires the Environmental Protection Agency (EPA) to promulgate regulations setting performace standards for owners and operators of facilities that treat, store, and dispose of hazardous wastes. 40 CFR Part 265 contains the standards applicable to owners and operators of interim status facilities, while 40 CFR Part 264 contains permitting standards for new and existing facilities.

Both 40 CFR Parts 264 and 265 prescribe facility preformance standards. In order to facilitate implementation of these standards, the EPA has developed a series of guidance documents. There are three types of documents: Technical Guidance Documents, Permit Guidance Manuals and Technical Resource Documents. The first two types of manuals are intended to provide guidance for developing or evaluating designs that generally comply with the Subtitle C facility standards. The Technical Resource Documents present state-of-the-art technologies and evaluation techniques that the EPA views as good engineering designs, practices, and procedures. Their focus is normally broad in scope and they do not specifically interpret the design requirements as set forth in the regulations.

Hydrologic Evaluation of Landfill Performance (HELP) Model is a quasi-two-dimensional computer program that simulates water movement across, into, through, and out of landfills. The model accepts climatologic, soil, and design data and uses a solution technique that accounts for the effects of surface storage, run-off, infiltration, evapotranspiration, soil moisture storage, and lateral drainage. Different landfill systems including various combinations of vegegation, cover soils, waste cells, special drainage layers, and relatively impermeable barrier soils, as well as synthetic membrane covers and liners, may be modeled. The program was developed to facilitate rapid estimation of the amounts of run-off, drainage, and leachate that may be expected to result from the operation of a wide variety of landfill designs. The model, applicable to open, partially closed and fully closed sites, is a tool for both designers and permit writers.

The final version of this Technical Resource Document will replace SW–868, *Hydrologic Simulation on Solid Waste Disposal Sites*, because the HELP model is a much more complete hydrologic evaluation tool for landfill designers and permit reviewers. The Agency will announce in the **Federal Register** when the HELP model is isused in final form.

This document has two volumes: Volume I is the User's Guide that describes how to access and run the program, and Volume II is the documentation that describes the theories and assumptions of the model, solution techniques, and computer considerations.

The Agency requests comments on the accuracy and completeness of the information presented and encourages commenters to suggest remedies and alternatives should inaccuracy or incompleteness be identified.

List of Subjects

40 CFR Part 264

Hazardous materials, Packaging and containers Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: June 12, 1984.

Jack McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 84–16619 Filed 6–22–84; 8:45 am]
BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 49, No. 123
Monday, June 25, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Food and Agricultural Sciences National Needs Graduate Fellowships Grant Committee; Intent To Establish Committee

Notice is hereby given that the Secretary of Agriculture intends to establish the Food and Agricultural Sciences National Needs Graduate Fellowships Grant Committee. The purpose of the Committee is to evaluate grant proposals submitted to the office of Higher Education Programs of the Agricultural Research Service (ARS). The Committee will provide unbiased and expert advice on the relative merits of these proposals.

The ARS office of Higher Education Programs (formerly the USDA Office of Higher Education) is authorized pursuant to section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)), to administer a program of competitive grants to colleges and universities for graduate fellowship programs to meet regional and national objectives in the food and agricultural sciences.

The committee will meet at least once each year to evaluate proposals for competitive fellowship grants which have been submitted to the ARS Higher Education Programs office.

It has been determined that the establishment of this Committee is in the public interest in connection with the work of the U.S. Department of Agriculture.

Interested parties are invited to submit written comments, views, or data concerning this proposal to K. Jane Coulter, Director, Higher Education Programs, ARS, USDA, Washington, D.C. 20250, by July 10, 1984.

Done at Washington, D.C., this 19th day of June, 1984.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 84-16638 Filed 6-22-84; 8:45 am]

BILLING CODE 3410-03-M

DEPARTMENT OF COMMERCE

Office of the Secretary

President's Commission on Industrial Competitiveness; Meetings

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of meetings.

SUMMARY: This notice announces the forthcoming meetings of the President's Commission on Industrial Competitiveness (Commission). The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

Time and Place

On July 9, 1984 a meeting of the Capital Resource Committee, a subcommittee of the Commission, will be held at the Los Angeles Airport Hilton, 5711 West Century Boulevard, Los Angeles, California, from 9:00 a.m. to 5:00 p.m. The agenda for the meeting will include: (1) Review of stock option proposal as action item for the President's Commission on Industrial Competitiveness; and (2) testimony by Robert Hale on flat tax and review of paper on tax alternatives.

On July 10, 1984 a meeting of the Co-Chairmen of the subcommittees of the Commission will be held at the Chicago O'Hare Hilton, O'Hare International Airport, Chicago, Illinois, from 9:00 a.m. to 5:00 p.m. The agenda for the meeting will include: (1) Review of the Strategy Committee paper; (2) review strategic framework to provide a bridge from the strategy plan to individual action items; (3) discussion of external consensus building activities; and (4) discussion of the format for the final Commission report.

Public Participation

The meetings will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, NW., Washington, DC 20503, telephone: 202-395-4527.

Dated: June 20, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84-16630 Filed 6-22-84; 8:45 am]

BILLING CODE 3510-18-M

Bureau of the Census

Voting Rights Act Amendments of 1982, Determinations Under Title III

In 1982, Congress amended the Voting Rights Act of 1965, 42 U.S.C. 1973 et seq. Among other changes, the minority language assistance provision set forth in section 203 of the Act was extended until August 6, 1992. Congress also adopted an amendment to section 203(b) which states that "the extension made by this section shall apply only to determinations made by the Director of the Census under clause (i) of section 203(b) for members of a single language minority who do not speak or understand English adequately enough to participate in the electoral process where such a determination can be made by the Director of the Census based on the 1980 and subsequent census data."

The Director of the Census has concluded that 1980 census data can be used to determine the number of members of a single language minority who do not speak English well enough to participate in the electoral process. Therefore, the Census Bureau has used these data, and other relevant 1980 census data, to determine which political subdivisions are obligated to comply with the requirements of section 203 of the Act, as amended. Those political subdivisions are listed below.

Section 203(b) also provides that "determinations of the Director of the Census under this subsection shall be effective upon publication in the **Federal Register** and shall not be subject to review in any court." Therefore, as of

this date, those jurisdictions which are listed as covered by section 203 have a legal obligation to provide the minority language assistance prescribed by section 203 of the Act. Those jurisdictions which were subject to section 203 coverage under the 1975 Amendments to the Voting Rights Act but which are not subject to coverage under the 1982 Amendments and, therefore, do not appear on the following list, are no longer obligated to comply with Section 203. However, some jurisdictions that are not on this list are still subject to the minority language requirement of section 4(f)(4) of the Act. See appendix to 28 CFR Part 55 (1983).

Dated: June 20, 1984.

John G. Keane,

Director, Bureau of the Census.

Political subdivision	Single language minority
Alaska	
Bethel Census Area	Eskimo.
Dillingham Census Area	Do.
Kobuk Census Area	Do.
Nome Census Area	Do.
North Slope Borough	Do.
Wade Hampton Census Area	Do.
Yukon-Koyukuk Census Area	American Indian (Athapascan).
Arizona	
Apache County	American Indian (Navajo).
Cochise County	Spanish.
Coconino County	American Indian (Navajo).
Graham County	Spanish.
Greenlee County	Do.
Navajo County	American Indian (Navajo).
Pinal County	Spanish.
Santa Cruz County	Do.
Yuma County	Do.
California	
Fresno County	Do.
Imperial County	Do.
Kern County	Do.
Kings County	Do.
Madera County	Do.
San Benito County	Do.
Tulare County	Do.
Colorado	
Alamosa County	Do.
Archuleta County	Do.
Bent County	Do.
Conejos County	Do.
Costilla County	Do.
Huerfano County	Do.
Las Animas County	Do.
Otero County	Do.
Pueblo County	Do.
Rio Grande County	Do.
Saguache County	Do.
Connecticut	
Bridgeport Town (Fairfield County).	Do.
Hartford Town (Hartford County).	Do.
Florida	
Dade County	Do.
Hardee County	Do.
Hawaii	
Hawaii County	Japanese.
Kauai County	Do.
Maui County	Do.
Idaho	
Minidoka County	Spanish.
Massachusetts	
Lawrence City (Essex County)	Do.
Holyoke City (Hampden County).	Do.
Chelsea City (Suffolk County)	Do.
Michigan	
Clyde Township (Allegan County).	Do.
Fennville City (Allegan County).	Do.
Grant Township (Newaygo County).	Do.
Montana	
Rosebud County	American Indian (Cheyenne).
New Jersey	
Hudson County	Spanish.
Passaic County	Do.
New Mexico	
Bernalillo County	Do.
Chaves County	Do.
Cibola County	American Indian (Keres).
Cibola County	Spanish.
Colfax County	Do.
De Baca County	Do.
Dona Ana County	Do.
Eddy County	Do.
Grant County	Do.
Guadalupe County	Do.
Harding County	Do.
Hidalgo County	Do.
Lincoln County	Do.
Luna County	Do.
McKinley County	American Indian (Navajo).
Mora County	Spanish.
Quay County	Do.
Rio Arriba County	Do.
Roosevelt County	Do.
Sandoval County	American Indian (Keres).
Sandoval County	Spanish.
San Juan County	American Indian (Navajo).
San Miguel County	Spanish.
Santa Fe County	Do.
Socorro County	American Indian (Navajo).
Socorro County	Spanish.
Taos County	Do.
Torrance County	Do.
Valencia County	Do.
New York	
Bronx County	Do.
Kings County	Do.
New York County	Do.
North Dakota	
Rolette County	American Indian (Cree).
Sioux County	American Indian (Dakota).
Oklahoma	
Adair County	American Indian (Cherokee).
South Dakota	
Buffalo County	American Indian (Dakota).
Dewey County	Do.
Shannon County	Do.
Todd County	Do.
Texas	
Andrews County	Spanish.
Aransas County	Do.
Atascosa County	Do.
Bailey County	Do.
Bee County	Do.
Bexar County	Do.
Brewster County	Do.
Briscoe County	Do.
Brooks County	Do.
Caldwell County	Do.
Calhoun County	Do.
Cameron County	Do.
Castro County	Do.
Cochran County	Do.
Comal County	Do.
Concho County	Do.
Cottle County	Do.
Crane County	Do.
Crockett County	Do.
Crosby County	Do.
Culberson County	Do.
Dawson County	Do.
Deaf Smith County	Do.
De Witt County	Do.
Dickens County	Do.
Dimmit County	Do.
Duval County	Do.
Ector County	Do.
Edwards County	Do.
El Paso County	Do.
Fisher County	Do.
Floyd County	Do.
Fort Bend County	Do.
Frio County	Do.
Gaines County	Do.
Garza County	Do.
Goliad County	Do.
Gonzales County	Do.
Guadalupe County	Do.
Hale County	Do.
Hall County	Do.
Haskell County	Do.
Hays County	Do.
Hidalgo County	Do.
Hockley County	Do.
Howard County	Do.
Hudspeth County	Do.
Irion County	Do.
Jackson County	Do.
Jeff Davis County	Do.
Jim Hogg County	Do.
Jim Wells County	Do.
Jones County	Do.
Karnes County	Do.
Kenedy County	Do.
Kinney County	Do.
Kleberg County	Do.
Knox County	Do.
Lamb County	Do.
La Salle County	Do.
Live Oak County	Do.
Loving County	Do.
Lubbock County	Do.
Lynn County	Do.
McCulloch County	Do.
McMullen County	Do.
Martin County	Do.
Mason County	Do.
Matagorda County	Do.
Maverick County	Do.
Medina County	Do.
Menard County	Do.
Mitchell County	Do.
Nolan County	Do.
Nueces County	Do.
Parmer County	Do.
Pecos County	Do.
Presidio County	Do.
Reagan County	Do.
Real County	Do.
Reeves County	Do.
Refugio County	Do.
Runnels County	Do.
San Patricio County	Do.
Schleicher County	Do.
Scurry County	Do.
Starr County	Do.
Sterling County	Do.
Sutton County	Do.
Swisher County	Do.
Terrell County	Do.
Terry County	Do.
Tom Green County	Do.
Upton County	Do.
Uvalde County	Do.
Val Verde County	Do.
Victoria County	Do.
Ward County	Do.
Webb County	Do.
Wharton County	Do.
Willacy County	Do.
Wilson County	Do.
Winkler County	Do.
Yoakum County	Do.
Zapata County	Do.
Zavala County	Do.
Utah	
San Juan County	American Indian (Navajo)
Wisconsin	
Couderay Town (Sawyer County.	American Indian (Winnebago).
Komensky Town (Jackson County).	American Indian (Ojibwa).
Pine Grove Town (Portage County.	Spanish.

[FR Doc. 84-16840 Filed 6-22-84; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Export Trade Certificate of Review; Crosby Trading Co.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Crosby Trading Company. This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 84–00002."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202–377–0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595–10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–15940 (April 13, 1983).

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Crosby Trading Company on January 1, 1984. The application was deemed submitted on January 1, 1984. A summary of the application was published in the **Federal Register** on January 25, 1984 (49 FR 3107–3108). Based on analysis of the application and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Crosby Trading Company meet the four standards of the Act:

Crosby Trading Company (CTC)—Application No. 84–00002.

Export Trade

Sulphate naval stores (crude sulphate turpentine and crude tall oil and products derived from them) ("Products").

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

For the purpose of formulating an export trading arrangement with Producers which CTC later will submit for certification under the Act, CTC is certified:

1. To contact separately each producer of Products ("Producer") to ascertain whether the Producer is interested in offering Products to CTC for export;

2. To discuss separately with each Producer CTC's proposed methods of operation as an exclusive export agent for various Producers, including:

a. The proposed method of allocating exports among Producers, and

b. The proposed method of setting export prices;

3. To discuss separately with each interested Producer the amount of the Producer's Products which will be available for export through CTC (subject to subsequent agreement on price), and receive from each Producer commitments for the supply of Products for export by CTC over some time horizon;

4. To notify, without further discussion or negotiation, each Producer of (a) the joint export arrangement's projected total export amount for specific Products, and (b) the individual Producer's allocation of that total;

5. To formulate and present to interested Producers, a business plan that may include:

a. List of participants;

b. Total projected export quantities and sales revenues over some time horizon;

c. Method for determining each Producer's export allocation;

d. Method for setting export prices;

e. Method for compensating CTC;

f. General terms and conditions (including membership and withdrawal);

6. To conduct one or more meetings with Producers to discuss the items in paragraph 5(c-f) (subject to Term and Condition "(a)" below) as necessary to reach final agreement on the proposed export business plan. CTC may conduct such meetings over a period no longer than thirty days from the date of the first meeting. CTC may disclose to the Producers in attendance at any such meeting(s) the list of participants, as described in paragraph 5(a), without further discussion or negotiation. If such meeting or meetings is held, CTC will observe the following procedures:

a. Legal counsel will be present,

b. Legal counsel will maintain and sign an accurate and complete record of all matters dicussed at the meeting,

c. CTC will retain the records for two years from the date of the meeting and make them available to the Department of Commerce or the Department of Justice upon request, and

d. To the extent that any Producer operates separate domestic and export sales or marketing units, CTC will meet only with personnel from that Producer's export unit.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202–377–3031.

Dated: June 19, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84–16783 Filed 6–22–84; 8:45 am]

BILLING CODE 3510–DR–M

[A–588–403]

Stainless Steel Woven Wire Cloth From Japan; Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping investigation to determine whether stainless steel woven wire cloth from Japan is being, or is likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of the merchandise are materially injuring, or threatening to materially injure, a U.S. industry. If our investigation proceeds normally, the ITC will make its preliminary determination on or before July 16, 1984, and we will make ours on or before November 7, 1984.

EFFECTIVE DATE: June 25, 1984.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–5288.

SUPPLEMENTARY INFORMATION:

Petition

On May 31, 1984, we received a petition filed in proper form from counsel for the American Wire Cloth Institute (AWCI), on behalf of the U.S. industry producing stainless steel woven wire cloth. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring, or threatening to materially injure, a U.S. industry. Petitioner calculates United States price based on the F.A.S. prices for imports of several representative mesh sizes of the subject merchandise (derived from offer sheets, price quotations, and published price lists). Since the petitioner was unable to secure home market or third country prices for the merchandise subject to this investigation, AWCI based foreign market value on cost estimates from the U.S. Department of Commerce first-quarter 1984 trigger prices for stainless steel wire, Bank of Japan statistics of average Japanese industrial wage rates, and United States producers' costs for indirect labor and factory overhead adjusted for known cost differences in Japan. Using this comparison, petitioner showed dumping margins of approximately 35.4 to 108.8 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegation of sales at less than fair value. We have examined the petition on stainless steel woven wire cloth and we have found that the petition meets those requirements. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether stainless steel woven wire cloth from Japan is being, or is likely to be, sold at less than fair value in the United States. If our investigation proceeds normally, the ITC will make its preliminary determination by July 16, 1984, and we will make ours on or before November 7, 1984.

Scope of Investigation

The merchandise covered by this investigation is "Stainless Steel Woven Wire Cloth", provided for in items 642.5200, 642.6400 and 642.7400 of the Tariff Schedules of the United States, Annotated. For a further description of this product, see the Appendix of this notice.

Notification to ITC

Section 732(d) of the Act requires us to notify the U.S. International Trade Commission of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-confidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 16, 1984, whether there is a reasonable indication that imports of stainless steel woven wire cloth from Japan are materially injuring, or threatening to materially injure, a U.S. industry. If that determination is negative, the investigation will terminate; otherwise, the investigation will proceed according to the statutory procedures.

Dated: June 19, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

Appendix—Description of Products

For purposes of this investigation: the term *"stainless steel woven wire cloth"* covers stainless steel woven wire cloth, whether in rolls, in endless bands, or in lengths, not cut to shape; woven of simple warp and weft construction with (1) meshes not finer than 30 wires to the lineal inch in warp or filling, valued over 7.5 cents per square foot, (2) with meshes finer than 30 but not finer than 90

wires to the lineal inch in warp or filling, valued over 21.25 cents per square foot, or (3) with meshes finer than 90 wires to the lineal inch in warp or filling; as currently provided for in items 642.5200, 642.6400 and 642.7400 of the *TSUSA*. Stainless steel gauze, fabric, screen, netting or fencing are not covered by this investigation.

[FR Doc. 84-16860 Filed 6-22-84; 8:45 am]

BILLING CODE 3510-DS-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973, and rechartered on January 5, 1984, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and Place: July 12, 1984, at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. The meeting will continue to its conclusion on July 13, 1984, in Room 3708, Herbert C. Hoover Building.

Agenda: The Committee will begin with an open meeting to invite public comments with regard to existing commodity or technology controls. The commodities and technologies that fall under the responsibilities of the Committee are those relating to the following Commodity Control List (CCL) entries:

1510	1533	1568
1516	1534	1572
1522	1541	1584
1529	1560	1585
1529	1561	1587
1531	1564	6598

Invited comments will be restricted to these or substantially related items.

In particular the Committee would like to invite public evidence of foreign available equipment (or technology) falling within the above mentioned CCL entries. Information is desired relating to equipment (or technologies) produced or available in the following country groups:

a. Proscribed countries (East Bloc Countries)

b. Non-COCOM free world countries.

Specific information is needed on:

1. Manufactures and country of origin,
2. Product's capabilities and features,
3. Product availability and price,
4. Proof of delivery of products in sufficient quantity and quality, and
5. Location where the Electronic Instrumentation Technical Advisory Committee can obtain a sample for evaluation.

The Committee is generally concerned with future regulatory levels and changes needed to existing commodity and technology regulation levels. Public comments should be formulated to support changes in either commodity or technology control level. Request specifically oriented to individual license application should not be presented at this time.

If you wish to attend this open meeting of the Electronic Instrumentation Technical Advisory Committee, please call or write Margaret Cornejo at 377-2583, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, D.C. at least five working days in advance in order to reserve a seat as there is limited space available. With this advance notice, arrangement can be made for more space, should that be necessary.

Following the open session the Committee will meet in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meeting or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information contact Mrs. Margaret A. Cornejo, 202-377-2583.

Dated: June 20, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84-16864 Filed 6-22-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; U.S. Department of Agriculture

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-51. Applicant: U.S. Department of Agriculture, College Station, TX 77841. Instrument: Mass Spectrometer and Data System, Model MM 7250 HF and Accessories. Manufacturer: VG Analytical Ltd., United Kingdom. Intended Use: See notice at 49 FR 3503.

Comments: None received. Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (August 29, 1983). Reasons: The foreign instrument provides the needed mass range of 2600 atomic mass units (amu) at full accelerating voltage, 6000 electron volts. It is also capable of an overall mass range of 15600 amu at 1000 electron volts. The National Institutes of Health advises in its memorandum dated April 2, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purposes and (2) it knows of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purpose of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to the Nuclide Corporation (the only known domestic manufacturer of comparable mass spectrometers), it is apparent that the domestic manufacturer was either not able or not willing to produce an

instrument of equivalent scientific value to the foreign instrument. Accordingly, the Department of Commerce finds that no domestic manufacturer was both "able and willing" to manufacture a domestic instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-16882 Filed 6-22-84; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Louisiana State University

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 84-76. Applicant: Louisiana State University, Baton Rouge, LA 70803. Instrument: Pressuremeter with piezometric attachment, Model PAF 76. Manufacturer: Mazier et Cie, France. Intended Use: See notice at 49 FR 10138.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides measurements of: (1) Ground horizontal stress and ground response to a cylindrical horizontal expansion, yielding stress-strain curves of soils in the case of undrained loading; (2) horizontal stress in an anisotropic field; (3) ground response to a shaft friction loading; (4) permeability and consolidation characteristics; and (5) ground response to a cylindrical torsion. The National Bureau of Standards advises in its memorandum dated June 8, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 84-16881 Filed 6-22-84; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; Princeton University, et al.

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No.: 83-2. Applicant: Princeton University, Princeton, NJ 08544. Instrument: Excimer Laser EMG 102-E and Accessories. Date of Denial Without Prejudice to Resubmission: March 20, 1984.

Docket No.: 83-216. Applicant: Harvard University, Cambridge, MA 02138. Instrument: Apparatus for the Study of Condensable Gases at Ultra High Pressure and Low Temperatures with Accessories. Date of Denial Without Prejudice to Resubmission: March 1, 1984.

Docket No.: 83-292. Applicant: North Carolina State University, Raleigh, NC 27650. Instrument: Satellite Imagery Receiver and Data Processor. Date of Denial Without Prejudice to Resubmission: March 6, 1984.

Docket No.: 83-359. Applicant: U.S. Army Medical R & D Command, Frederick, MD 21701. Instrument: Automatic TLC Sampler I and Accessories. Date of Denial Without Prejudice to Resubmission: March 15, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-16883 Filed 6-22-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Washington Department of Game

On April 11, 1984, Notice was published in the **Federal Register** (49 FR 14415), that an application had been filed with the National Marine Fisheries Service by the Washington Department of Game to take 10,000 harbor seals (*Phoca vitulina*), 2,500 California sea lions (*Zalophus californianus*), and 2,500 northern sea lions (*Eumetopias jubatus*) by unintentional harassment during population assessment surveys; to take by capture 750 harbor seals for tagging, marking and blood sampling; and to attach radiotelemetry packages to selected harbor seals.

Notice is hereby given that on June 15, 1984, the National Marine Fisheries Service issued a Scientific Research Permit, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), to the Washington Department of Game subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices: Assistant Administrator for Fisheries, 3300 Whitehaven Street, NW., Washington, D.C.; and Regional Director, Northwest Region, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: June 18, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-16809 Filed 6-22-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals Permits; Receipt of Modification; Center for Maine Studies

Notice is hereby given that Dr. Daniel P. Costa, Center for Marine Studies, University of California at Santa Cruz, Santa Cruz, California, requested a modification to Permit No. 418 issued to him under the authority of the Marine Mammal Protection Act and the Regulations Governing the Taking and

Importing of Marine Mammals (50 CFR Part 216) on June 7, 1983 (48 FR 27121).

Dr. Costa requests to take an additional fifty (50) northern sea lions by marking over a two year period.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documentation pertaining to the above modification request is available for review in the following offices: Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: June 18, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-16810 Filed 6-22-84; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar and Cocoa Exchange, Inc.; Consumer Price Index for Wage Earners and Clerical Workers, Retail New Car Sales Index, Earnings Index and Housing Starts Index Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The Coffee, Sugar and Cocoa Exchange, Inc. ("CSCE") has applied for designation as a futures contract market in the Consumer Price Index for Wage Earners and Clerical Workers ("CPI-W"), Retail New Car Sales Index, CSCE Earnings Index and Housing Starts Index. The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contracts are of major economic significance and that, accordingly, making available the proposed contracts for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before August 24, 1984.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the particular CSCE application addressed in the comment.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7303.

Copies of the terms and conditions of each of the CSCE's proposed futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CSCE in support of its applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8. These submissions are subject to claims of copyright and requests for confidential treatment pursuant to 17 CFR 145.9.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by the CSCE in support of the applications, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by August 24, 1984. Such comment letters will be publicly available except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on June 19, 1984.

Jane K. Stuckey,

Secretary to the Commission.

[FR Doc. 84-16798 Filed 6-22-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Data Network (Defensive Systems Subgroup); Advisory Committee Meeting

The Defense Science Board Task Force on Defense Data Network (Defensive Systems Subgroup) will meet in closed session on 31 July-2 August 1984 in Colorado Springs, Colorado.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 31 July-2 August 1984, the Subgroup will discuss the application of technology to systems designed to improve future U.S. air defense capabilities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II (1976)), it has been determined that this DSB Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

Dated: June 19, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-16804 Filed 6-22-84; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, August 7, 1984; Tuesday, August 14, 1984; Tuesday, August 21, 1984; and Tuesday, August 28, 1984 at 10:00 a.m. in

Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC. 20301.

Dated: June 20, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–16805 Filed 6–22–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Changed Meeting

Change of place on meeting of the USAF Scientific Advisory Board Ad Hoc Committee on the Assessment of Hazardous Materials and Toxic Wastes Management Issues published in the **Federal Register** on 6 June 1984, 49 FR 23430. It will be held in Fort Worth, TX; Austin, TX; and San Antonio, TX. Everything else remains the same. (It was previously scheduled to be in Washington, DC)

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Dated: June 13, 1984.

Harry C. Waters,

Alternate Air Force, Federal Register, Liaison Officer.

[FR Doc. 84–16831 Filed 6–22–84; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Availability of Amendments to the 1983–84 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits

AGENCY: Department of Education.

ACTION: Notice of availability of amendments to the 1983–84 Directory of low-income schools for cancellation of loans for teaching service.

SUMMARY: Institutions and borrowers participating in the National Defense and National Direct Student Loan Programs and other interested persons are advised that they may obtain information regarding, or copies of, the amendments to the *1983–84 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits (Directory).* The amendments identify changes in the schools that qualify for teacher cancellation benefits under each of the loan programs.

DATE: A limited number of copies of the amendments to the *Directory* will be available upon request on or after June 25, 1984.

ADDRESS: Copies of the amendments to the *Directory* may be requested from the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations, Campus and State Grants Branch, 400 Maryland Avenue, SW., [Room 4613, ROB–3] Washington, D.C. 20202, Telephone (202) 245–9640.

FOR FURTHER INFORMATION: Inquiries concerning the amendments to the *Directory* may be made to: (1) The appropriate State educational agency, (2) individuals listed in the ten (10) regional offices of the Department of Education (see Appendix to this notice for the addresses of the regional offices), or (3) Ronald Allen, Campus and State Grants Branch, Division of Program Operations, U.S. Department of Education, 400 Maryland Avenue, SW., [Room 4613, ROB–3] Washington, D.C. 20202, Telephone (202) 245–9640.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the **Federal Register** on November 1, 1983 (48 FR 50389–50390), that the *1983–84 National Defense and Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits* was available. The Secretary has revised the *Directory* due to the openings and closings of schools, name changes, and other corrections. The amendments to the *Directory* make these changes.

The procedures for selecting schools for cancellation benefits are described in the National Defense and Direct Student Loan program regulations (34 CFR 674.53, 674.54). The Secretary has determined that for the 1983–84 academic year full-time teaching in the schools set forth in the amendments to the *Directory* qualifies for cancellation.

The Secretary is providing the amendments to the *Directory* to each institution participating in the National Direct Student Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, regional offices of the Department of Education, or the Office of Student Financial Assistance of the Department of Education concerning the identity of qualifying schools for the 1983–84 academic year. The Office of Student Financial Assistance has a limited number of copies of the amendments to the *Directory* that are available upon request.

(Catalog of Federal Domestic Assistance Number 84.037: National Defense/Direct Student Loan Cancellations)

Dated: June 20, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

Appendix to Notice of Availability of 1983–84 Directory of Low-Income Schools for Cancellation of Loans for Teaching Service

Department of Education Regional Offices

Mr. Ted Jones, Training and Dissemination Officer—Region I, Office of Student Financial Assistance, U.S. Department of Education, J.W. McCormack Post

Office and Court House, Boston, Massachusetts 02109, (617) 223–6895

Sister Bernadine Hayes, Training and Dissemination Officer—Region II, Office of Student Financial Assistance, U.S. Department of Education, 26 Federal Plaza, Room 3954, New York, New York 10278, (212) 264–4426

Ms. Beatrice Rosenfeld, Training and Dissemination Officer—Region III, Office of Student Financial Assistance, U.S. Department of Education, P.O. Box 13716, 3535 Market Street, Philadelphia, Pennsylvania 19101, (215) 596–0143

Ms. Judy Brantley, Assistant Regional Administrator—Region IV, Office of Student Financial Assistance, U.S. Department of Education, 101 Marietta Tower, 3rd Floor, Atlanta, Georgia 30323, (404) 221–4171

Dr. Morris Osburn, Assistant Regional Administrator—Region V, Office of Student Financial Assistance, U.S. Department of Education, 300 South Wacker Drive, 12th Floor, Chicago, Illinois 60606, (312) 353–6103

Mr. Lyndon Lee, Assistant Regional Administrator—Region VI, Office of Student Financial Assistance, U.S. Department of Education, 1200 Main Tower Building, Room 1645, Dallas, Texas 75202, (214) 767–3569

Mr. Jerry Craft, Training and Dissemination Officer—Region VII, Office of Student Financial Assistance, U.S. Department of Education, 324 East 11th Street, 9th Floor, Kansas City, Missouri 64106, (816) 374–3136

Mr. Paul Tone, Training and Dissemination Officer—Region VIII, Office of Student Financial Assistance, U.S. Department of Education, Room 398, Federal Office Building, 1961 Stout Street, 3rd Floor, Denver, Colorado 80294, (303) 837–3676

Ms. Mary Ann Faris, Training and Dissemination Officer—Region IX, Office of Student Financial Assistance, U.S. Department of Education, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–0137

Ms. Tammy Doherty, Training and Dissemination Officer—Region X, Office of Student Financial Assistance, U.S. Department of Education, 3rd and Broad Building, Mail Stop 102, 2901 3rd Avenue, Seattle, Washington 98121, (206) 442–0493

[FR Doc. 84–16850 Filed 6–22–84; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services

Educational Media Research, Production, Distribution, and Training

AGENCY: Department of Education.

ACTION: Notice of Final Annual Funding Priority.

SUMMARY: The Secretary announces a fiscal year 1984 annual funding priority for new awards under the Educational Media Research, Production, Distribution, and Training program. To ensure that educational media and technology is available, is of good quality, and is used effectively, and to foster mutual growth among entities involved in the educational advancement of handicapped persons, the Secretary establishes an annual priority related to research, dissemination, and training conducted by consortia of such entities.

EFFECTIVE DATE: This priority will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this final annual funding priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: James S. Johnson, Technology and Marketing Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3076), Washington, D.C. 20202. Telephone: (202) 732–1123.

SUPPLEMENTARY INFORMATION: Awards under the Educational Media Research, Production, Distribution, and Training program are authorized under sections 651(a)(2) and 652(b)(5) of Part F of the Education of the Handicapped Act. The purpose of this program is to promote the educational advancement of handicapped persons by providing assistance for projects which:

(a) Undertake research on the use of new, or improved advances in, educational media and technology for handicapped persons;

(b) Disseminate information about practices found effective in the use of educational media and technology; and

(c) Train persons in the use of educational media and technology for the advancement of handicapped persons.

A "Notice of Proposed Annual Funding Priority" was published in the **Federal Register** on April 4, 1984 (49 FR 13452) describing the proposed annual funding priority for the Educational Media, Research, Production, Distribution, and Training program. Two letters were received in response to the notice. These comments and the Secretary's response are summarized as follows:

Comment: One commenter felt that attention should be paid to giving teachers of the visually impaired a relatively intensive training course in the use of computers with the visually handicapped. The commenter also urged efforts to develop methods for adapting software for use by the visually handicapped.

Response: No change has been made. The priority as it is currently worded will support the type of activity proposed by the commenter. The Secretary believes that further specifying types of personnel or activities that could be included in projects proposed for these awards would be inconsistent with the purpose of this priority announcement in encouraging a broad scope of innovative activities.

Comment: The second commenter suggested that functionally illiterate black adults be included within the target population addressed by the grant projects on the premise that in some instances the psychological damage done to their sense of worth is an emotionally handicapping condition.

Response: No change has been made. Persons who are functionally illiterate may be served by projects meeting the priority if they are, in fact, handicapped as that term is used in the Education of the Handicapped Act.

Eligible applicant

Profit and nonprofit public and private agencies, organizations, and institutions are eligible to apply for awards under this program.

Priority

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(b)(2) and 75.105(c)(3)(i), the Secretary gives an absolute preference to each application which provides satisfactory assurance that the recipient will use funds made available under this program to conduct authorized activities as follows:

1. Eligible Applicants

Funds will be used to support cost-sharing projects under consortium arrangements entered into by a combination of eligible entities. A consortium arrangement is expected to foster mutual growth among parties who have interests in and complementary expertise in implementing educational media and technology innovations for

the educational advancement of handicapped persons. A consortium is also desirable since only a combination of eligible entities would have the requisite resources to accomplish the scope of the project. For guidance regarding group applications, the applicant is referred to EDGAR at 34 CFR 75.127—75.129.

Each recipient of a grant under this part must provide a share of the entire cost of the program or project. It is expected that the consortium will share the cost of the project through such means as partial funding and/or contributions and uncompensated services of individuals and organizations. A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the cost to be borne by the grantee is determined by the Secretary at the time of the grant award, and generally will be not less than 10 percent of the total project cost. Each application will be reviewed on its own merits and the adequacy of each proposed cost-sharing arrangement judged on the resources available to the applicant and the scope of the proposed project activities. The purpose of such cost-sharing arrangements is to encourage continuation of project activities beyond the grant period by providing for grantee investment of fiscal resources or personnel.

2. Activities

Funds will be used to support projects which: (a) Undertake research in the use of new, or improved advances in, educational media and technology that would contribute to the advancement and education of handicapped persons; (b) disseminate information about practices found effective in the use of educational media and technology; and (c) train persons in the use of educational media and technology for the educational advancement of handicapped persons. This statement of the final priority differs slightly from the language used in 34 CFR 332.10(a)(4), (d), and (e). This change is designed to ensure a broad scope of innovative proposals for activities in both educational media and technology.

Within this priority, the Secretary particularly invites two-year cost-sharing projects that will provide for.

a. Collaborative research between institutions of higher education, profit or nonprofit agencies and organizations, and State and local educational agencies on the implementation of technological advances for the purpose of improving the education of handicapped children;

b. Development of practicum sites in local educational agencies for use by institutions of higher education to train teachers in the use of educational media and technology and to strengthen faculty capacity to improve the training programs related to the use of educational media and technology in special education; and

c. Mechanisms for participating agencies and entities to synergistically integrate research, training, and dissemination activities related to the use of educational media and technology for educating handicapped persons.

Applications that meet these three invitational priorities will not, however, receive a competitive or absolute preference over other applications that describe projects consistent with the absolute preference for projects fulfilling the three objectives described in (a), (b), and (c) above.

It is anticipated that one or more of the following will occur as a result of this program: Increased delivery of services to handicapped individuals; increased practical application of technology in special education programs; the development of model sites; and improved integration of research, training, and dissemination of applications of technology.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's specific plans and actions for this program.

(20 U.S.C. 1451(a)(2), 1452(b)(5))

(Catalog of Federal Domestic Assistance No. 84.026; Handicapped Media Services and Captioned Films)

Dated: June 20, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-16666 Filed 6-22-84; 8:45 am]

BILLING CODE 4000-01-M

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Persons

AGENCY: Department of Education.

ACTION: Final funding priorities for Fiscal Year 1984.

SUMMARY: The Secretary announces final funding priorities for projects to be funded in Fiscal Year 1984 under the Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Persons program, authorized under section 311(a)(1) of the Rehabilitation Act of 1973, as amended. These final funding priorities inform potential applicants for grants and other persons interested in vocational rehabilitation services of the areas in which competition for grants will be held in Fiscal Year 1984. These funding priorities will ensure wide and effective use of Fiscal Year 1984 programs funds.

EFFECTIVE DATE: These priorities will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Wesley Geigel, Director, Special Projects Branch, Rehabilitation Services Administration, Office of Special Education and Rehabilitation Services, 400 Maryland Avenue, SW., Washington, D.C. 20202, Telephone: (202) 732-1335.

SUPPLEMENTARY INFORMATION: Grants for Special Projects and Demonstrations for Severely Disabled Persons (29 U.S.C. 777a(a)(1)) are authorized by section 311(a)(1) of the Rehabilitation Act of 1973, as amended. Program regulations are established at 34 CFR Part 373. The purpose of the Special Projects and Demonstrations for Severely Disabled Persons Program is to establish programs which hold promise of expanding or improving vocational rehabilitation and other rehabilitation services to disabled persons (especially those with the most severe disabilities), irrespective of age or vocational potential.

Three Fiscal Year 1984 priorities were proposed for public comment in the **Federal Register** on March 20, 1984 (49 FR 10331). In addition, the Secretary proposed at that time that funds be set aside to support a fourth category of applications which do not specifically respond to any of the priority categories being established. An application notice establishing May 8, 1984, as the closing date for new Fiscal Year 1984 applications was also published in the **Federal Register** on March 20, 1984 (49 FR 10332). Applicants were advised that

if any substantive changes were made in the funding priorities when they were published in final form, applicants would be given the opportunity to amend or resubmit their applications.

Four letters were received in response to the notice of proposed funding priorities for Fiscal Year 1984. No changes have been made in the final funding priorities or in the plan to use approximately 25 percent of available funds to support non-priority projects which do not fall under any of the three priorities. Fiscal Year 1984 funds are expected to be divided equally among each of the three priority categories and the non-priority category.

Summary of Comments and Responses to Notice of Proposed Funding Priorities Published in the Federal Register of March 20, 1984

The Comments received in response to the Notice of Proposed Funding Priorities published in the **Federal Register** on March 20, 1984 (49 FR 10331) and the Secretary's responses to these comments are summarized below:

Priority 2: Special Projects for Community-based Programs

Comment: A commenter suggested that the identification of certain disability groups under this priority was inconsistent with the other priorities being proposed as well as with the application notice published on March 20, 1984, for the Special Projects and Demonstrations grant program. It was recommended that these references to specific disability groups be removed.

Response: No change has been made. This priority is intended to promote a community-based vocational rehabilitation service system approach as well as to identify certain disability groups who might receive the most benefit from the types of community-based programs expected to be undertaken. As such, the priority is fully consistent with the section 311(a)(1) authority which provides for a broad range of service programs and which contemplates service programming designed to meet the special needs of certain individuals with the most severe handicaps.

Comment: A commenter requested that the priority be revised to eliminate any requirement that applicants provide documentation of formal linkages with cooperating agencies.

Response: No change has been made. In order to ensure that appropriate linkages are established by projects selected for funding, it is necessary for an applicant to describe those linkages in its application.

Priority 3: Transition From School or Institution to Work

Comment: A commenter requested that transition services be made available under this priority until the handicapped individual reaches the age of 25.

Response: No change has been made. No maximum age had been proposed for Priority 3 since it is anticipated that transition services will be made available for as long as is necessary for each handicapped individual to achieve full employment. The reliance on post-secondary educational institutions in achieving a goal of full employment for the handicapped individuals to be served further indicates the intent of Priority 2 that transition services will be available beyond the traditional secondary school age.

General Comments

Comment: A commenter suggested that special attention be directed to services for mentally ill individuals under both Priority 2 and Priority 3.

Response: No change has been made. Priority 2 is intended to support community-based projects which might be expected to have a special benefit for individuals with certain disabilities which present unusual and challenging rehabilitation problems. Priority 3 is intended to support unique transition projects which would appropriately include projects providing services to mentally ill individuals as well as to handicapped individuals with other types of disabilities. Since applications in the area of mental illness may be submitted under Priority 1 and Priority 3, as well as under the non-priority category, it apears that there is an adequately broad opportunity for projects serving mentally ill individuals to be developed under the Special Projects and Demonstrations Program.

The Secretary is establishing the following final funding priorities for the Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Persons Program for Fiscal Year 1984:

Priority 1: Advanced Technology

Developments in technology offer several avenues for improving vocational rehabilitation services to severely disabled persons.

Technological developments have created the potential for both new job areas, e.g., areas requiring computer or computer-related skills; and new methods of job preparation, e.g., training severely disabled persons in the use of computer-related sensory aids.

This priority is designed to stimulate and support innovative applications of technological developments in vocational rehabilitation methods or objectives. Applicants must propose a job preparation and training program that takes advantage of technological developments and will result in specific benefits for severely disabled individuals.

Priority 2: Special Projects for Community-based Programs

This priority is designed to foster development of innovative community-based vocational programs for severely disabled persons that are severely and profoundly mentally retarded, autistic, deaf-blind, severely learning disabled, and multiple handicapped.

These programs must include coordination between the State vocational rehabilitation agency and mental retardation or developmental disabilities agencies that typically support community-based services for these individuals. Priority will be given to programs that provide services in integrated settings, and that can be expected to result in significant incomes for disabled individuals. Projects must include appropriate linkages with school districts, local case management services, and other agencies.

Priority 3: Transition From School or Institution to Work

Programs supported under this priority must include effective strategies to support transition from school or institutional services to work. Priority will be given to proposals that involve use of integrated, generic community programs such as community colleges, non-profit vocational and technical schools, non-profit private schools, and other similar agencies or institutions. Programs must provide transitional vocational services leading to full employment for individuals leaving a school or an institution.

(29 U.S.C. 777a(a)(1))

(Catalog of Federal Domestic Assistance No. 128, Rehabilitation Service Projects—Special Projects)

Dated: June 21, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-16828 Filed 6-22-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP84-357-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

June 20, 1984.

Take notice that on April 19, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, WV 25314, filed in Docket No. CP84-357-000 a request, as supplemented May 2, 1984, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Sohio Chemical Company (Sohio Chemical) under its authorization issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport up to 8 billion Btu equivalent of natural gas per day for Sohio Chemical for a term of one year. Columbia states that the gas to be transported would be purchased from Sohio Petroleum Company (Sohio Petroleum) in Garvin County, Oklahoma, by Sohio Chemical and would be used as boiler fuel, feedstock, and process gas in Sohio Chemical's Lima, Ohio, plant.

Columbia states that it would receive the gas at an existing delivery point with ANR Pipeline Company in Paulding County, Ohio, and redeliver the gas to Columbia Gas of Ohio, Inc. (COH), the distribution company serving Sohio Chemical, near Lima, Ohio. Further, Columbia states that it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent, exclusive of company-use and unaccounted-for gas or (2) Columbia's average system-wide storage, transmission and gathering costs, currently 44.93¢ per dt equivalent, exclusive of company-use and unaccounted for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16841 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-458-000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

June 20, 1984.

Take notice that on June 1, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP84-458-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to transport natural gas on behalf of Mead Corporation (Mead) under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposed to transport up to 2.2 billion Btu of natural gas per day for Mead for a term of one year. Columbia states that the gas to be transported would be purchased from Ohio Gas Marketing Corporation (OGMC) by Mead and would be used as process gas in Mead's Chillicothe, Ohio plant.

Columbia states that it has released certain gas supplies which Mead has purchased from OGMC and that these supplies are subject to the ceiling price provisions of Sections 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is indicated that Columbia would receive up to 2.2 billion Btu of natural gas per day delivered into its pipeline system at existing interconnections in Coshocton, Meigs, Holmes, Muskingum, Gallia and Knox Counties, Ohio, and would redeliver such gas to Columbia Gas of Ohio, Inc., the distribution company serving Mead.

Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) its average system-wide storage and transmission charge, currently 40.11 cents per dt equivalent of gas, or (2) its average system-wide storage, transmission and gathering charge, currently 44.93 cents per dt, exclusive of company-use and unaccounted-for gas. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. Columbia also states that it is charging the Gas Research Institute Funding Unit.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16842 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER78-414-010]

Delmarva Power and Light Co.; Compliance Filing

June 20, 1984.

Take notice that on June 13, 1984, Delmarva Power and Light Company (Delmarva) submitted for filing its compliance report pursuant to Commission's letter order dated June 5, 1984.

Delmarva states that this compliance filing corrects three deficiencies in Delmarva's first revised compliance filing dated April 18, 1984. Item (1) Customer Information System Allocation, and Item (2) Accumulated Amortization for Transmission ROW, have been corrected and incorporated in the second revised Compliance COS. Delmarva further states that item (3) was correct in the April 18, 1984 filing.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or

before July 6, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plum,

Secretary.

[FR Doc. 84-76843 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA84-17-000]

East Tennessee Natural Gas Co.; Petition for Adjustment

June 20, 1984.

Take notice that on May 29, 1984, East Tennessee Natural Gas Company (Petitioner), P.O. Box 10245, Knoxville, Tennessee 37919, filed a petition in Docket No. SA84-17-000 for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978, wherein Petitioner seeks an exemption from the filing requirements of the essential agriculture use rule of Order No. 29, as amended (Docket No. RM79-15, issued May 2, 1979), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that the exemption is sought because the annual collection and review of essential agricultural requirements data and the annual update required by § 281.204(b)(2) of the Commission's Regulations requires substantial time and expense on the parties involved. Petitioner also states that it would be able to meet the full requirements of its customers in the near term as indicated in Petitioner's FERC Form 16 filed on April 30, 1984, and its FERC Form 15 for the year ended December 31, 1983. Therefore, Petitioner alleges that compliance with the filing requirements of section 281.204(b)(2) of the Commission's Regulations is currently unnecessary and would result in a special hardship and an unfair distribution of burdens to the Petitioner's customers, as well as to the Petitioner.

The procedures applicable to the conduct of this adjustment are found in Subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to participate in the adjustment proceeding shall file a motion to intervene in accordance with the provisions of such Subpart K. All petitions to intervene must be filed within 15 days after publication in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-76844 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-423-000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

June 20, 1984.

Take notice that on May 18, 1984, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP84-423-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that El Paso proposes to construct and operate a sales meter station to permit the delivery of natural gas to the City of Deming, New Mexico (Deming), for resale to the Deming Industrial Park (Industrial Park) in Luna County, New Mexico, under the authorization issued in Docket No. CP82-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request for authorization which is on file with the Commission and open for public inspection.

El Paso states that it presently sells and delivers natural gas to Deming for distribution and resale to customers located in and about the Deming, New Mexico, area pursuant to a service agreement dated January 6, 1981 (service agreement), between El Paso and Deming.

It is further stated that El Paso has received a written request from Deming for natural gas service at a point on El Paso's existing 26-inch California Line and the 30-inch California First Loop Line in Luna County, New Mexico. El Paso has been advised by Deming that the requested quantities of natural gas would be utilized to serve the commercial space heating and firm industrial requirements of the Industrial Park which is being developed near Deming. El Paso has been further advised that firm industrial volumes would be utilized to maintain flame stabilization during the processing of certain agricultural products at the Industrial Park.

In order to accommodate the subject request for natural gas service, El Paso proposes to install two 2⅜ inch tap and valve assemblies and one American 500B positive meter at a point on El Paso's existing 26-inch California Line and 30-inch California First Loop Line. It is indicated that volumes of natural gas to be sold to Deming at the proposed meter would be delivered at a pressure of 100 psig. It is further indicated that El Paso has been advised that Deming would install other related facilities as needed for ultimate distribution of the requested quantities of natural gas to the Industrial Park.

It is estimated that the annual and maximum peak day deliveries required to serve the Industrial Park during the third full year of service are 50,000 Mcf per year and 350 Mcf per day, respectively.

El Paso states that the requested authorization would not alter Deming's approved entitlements or contractual volumes provided for under the currently effective service agreement. It is asserted that the proposal would have a negligible effect upon El Paso's peak day and annual deliveries. In addition, it is averred that the sale of natural gas as proposed in the request for authorization is permitted by and consistent with the high priority load growth provisions set forth in the General Terms and Conditions contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that the estimated cost of the proposed facilities is $31,800, which would be financed by internally generated funds.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-10845 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80-66-001]

Moon Lake Electric Association; Application for Exemption

June 20, 1984.

Take notice that Moon Electric Association filed an application on April 12, 1984 for exemption from certain

requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1984 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D and E of Part 290.

Copies of the application for exemption are on file with FERC and are available for public inspection.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before 20 days following the date this notice is published in the **Federal Register**. Within that 20 day period, such person must also serve a copy of such comments on: Mr. Kenneth A. Winder, Moon Lake Electric Association, 188 West 2nd North, Roosevelt, Utah.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16846 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-465-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request Under Blanket Authorization

June 20, 1984.

Take notice that on June 5, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-465-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to construct and operate one new delivery point, 1.8 miles of 6-inch branchline and appurtenant facilities in Renville County, Minnesota, to accommodate natural gas deliveries to Great Plains Natural Gas Company (Great Plains) under the authorization issued in Docket No. CP82-401-000 pursuant Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct one new delivery point, 1.8 miles of 6-inch pipeline and appurtenant facilities for Great Plains in order to provide a more economical and convenient fuel for Southern Minnesota Sugar Beet Co-op, a sugar beet processing plant.

Northern states that the volumes delivered through the proposed facilities would be served from Great Plains existing excess firm entitlement and Northern's authorized overrun service, which is available through northern's CD-1 Rate Schedule. Estimated cost of the proposed facilities is $369,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16847 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-318-005]

Philadelphia Electric Power Co., and Susquehanna Electric Co.; Refund Report

June 20, 1984.

Take notice that on June 4, 1984, Philadelphia Electric Power Company and Susquehanna Electric Company (the Companies) submitted for filing its compliance refund report pursuant to Commission's opinion No. 197 issued November 3, 1983.

The Companies state that refunds and interest payments were made to Philadelphia Electric Company on May 31, 1984 in a manner consistent with the Commission's Opinion No. 197.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before July 5, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16848 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF84-4061-000]

Southwestern Power Administration; Filing

June 20, 1984.

The filing company submits the following:

Take notice that the Deputy Secretary, U.S. Department of Energy, on June 8, 1984, submitted to the Commission for confirmation, approval and placement in effect on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204-108, an extension of the present annual rate to Tex-La Electric Cooperative, Inc., under section 2 of Contract No. 14-02-001-864 (Tex-La Contract Rate) of $523,200 for the period April 1, 1984, through May 18, 1984 and the proposed increased annual Contract Rate of $816,500, for the period May 18, 1984, through June 30, 1987.

Included in the proposed revenue increase is a monthly adjustment charge of $4,457 to recover the revenue shortfall SWPA incurred from August 19, 1983, to April 1, 1984. The existing Contract has been in effect since April 1, 1979.

The Deputy Secretary confirmed, approved and placed in effect on an interim basis under Delegation Order No. 0204-108, both the extension and increased rates for the periods requested. The Deputy Secretary has stated that the Tex-La Rate Study shows the need for a 56% increase in annual revenues from Tex-La in order to meet the costs of servicing this contract through June 30, 1987.

Any person desiring to be heard or to protest this should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR ss 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16852 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-452-000]

Texas Eastern Transmission Corp.; Request Under Blanket Authorization

June 20, 1984.

Take notice that on May 31, 1984, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP84-452-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Texas Eastern proposes to construct and operate a new delivery point and appurtenant facilities to an existing distribution customer, National Gas and Oil Corporation (National), under the blanket authorization issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern states that it intends to construct a sales meter station (M&R Station No. 2344) on its 26-inch Line No. 1 at mile post 776.7 in Butler County, Ohio, for deliveries of natural gas to National's customer, Armco, Inc. It is explained that Texas Eastern and National are preparing to execute a new service agreement to supersede the existing February 5, 1981, agreement which would continue to provide for the delivery to National of quantities of natural gas pursuant to Texas Eastern's Rate Schedules DCQ-C and I-C and which would establish a maximum daily delivery obligation at M&R Station No. 2344 of 12,000 dt equivalent of gas. It is explained that the natural gas quantities delivered would be utilized by Armco, Inc., as a source of heating for various industrial processes at its Middletown plant. Texas Eastern states that it would be reimbursed by National for the cost of constructing M&R Station No. 2344. The cost of construction of such facility is estimated to be $234,600.

It is stated that sales of natural gas to National are performed pursuant to Texas Eastern's Rate Schedules DCQ-C and I-C, FERC Gas Tariff, Fourth Revised Volume No. 1. Texas Eastern states that its existing tariff does not prohibit the construction of M&R Station No. 2344 and that the construction of the new sales meter station would have no effect on Texas Eastern's presently authorized peak day or annual deliveries. It is indicated that total volumes covered under the current service agreement with National would not be changed. It is explained that to the extent natural gas volumes are delivered at M&R Station No. 2344 (Butler County), deliveries would be reduced at Texas Eastern's M&R Station No. 062 (Perry County). Further, Texas Eastern advises that the instant proposal would be accomplished without detriment or disadvantage to its other customers and that construction would not commence until the Ohio State Historic Preservation Officer has informed Texas Eastern that there are no environmentally sensitive listed properties in the project area.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16853 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-418-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

June 20, 1984.

Take notice that on May 17, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-288-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that United proposes to establish a new delivery point for the delivery of gas to an existing customer, Livingston Gas and Utility Company (Livingston), under the authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the new delivery point would be located on Transcontinental Gas Pipe Line Corporation's (Transco) existing pipeline located at Section 20, Township 8 South, Range 4 East, Livingston Parish, Louisiana, where Transco would deliver volumes of gas exchanged with United to Livingston. United also states that peak day deliveries would be approximately 350 Mcf and that the gas would be used to provide service to Livingston's existing residential customers. It is further stated that the proposal would not cause an increase is Livingston's contractual maximum daily quantity nor entitlements under United's effective curtailment plan.

The required facilities would be constructed, owned, and operated by Transco and are expected to cost approximately $40,000.00. United states that it would reimburse Transco for all costs incurred and that Livingston would reimburse United.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16854 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-334-000]

Placid Refining Co.; Application for Commission Certification of Qualifying Status of a Cogeneration

June 20, 1984.

On May 21, 1984, Placid Refining Company (Applicant), of 3900 Thanksgiving Tower, Dallas, Texas 75201 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cogeneration facility will be located at the Placid Refining Company's plant site (Port Allen) in

West Baton Rouge Parish, Louisiana. The primary energy source will be refinery process off gas and natural gas. The electric power production capacity will be 40 megawatts. The facility will utilize two 20 megawatts gas turbine generator units separately exhausting into two heat recovery steam boilers. The units can be operated in parallel or separately.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16849 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-339-000]

Simplot Leasing Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration

June 20, 1984.

On May 21, 1984, Simplot Leasing Corporation, (Applicant) of P.O. Box 27, Boise, Idaho 83707 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Power County at Don, Idaho. The primary energy source will be waste heat from chemical process reactions made available to the facility as high pressure steam. Steam extracted from the turbine generator will be used in fertilizer production processes. The electric power production capacity of the facility will be 12 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16850 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-353-000]

SNC Hydro Inc./West End Dam Associates; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 20, 1984.

On June 4, 1984, SNC Hydro Inc./West End Dam Associates (Applicant), Keith F. Corneau, Manager, of P.O. Box 786, Saratoga Springs, New York 12866, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulation. No determination has been made that the submittal constitutes a complete filing.

The 4,500 kW hydroelectric facility (P. 5800) will be located on the Black River, in the Village of Carthage, Jefferson County, New York.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16851 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-351-000]

Valley View Energy Corp.—Hansford County; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 20, 1984.

On June 4, 1984, Valley View Energy Corporation (Applicant) of 4100 InterFirst One, Dallas, Texas 75202, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located near Gruver, in Hansford County, Texas. The primary energy source will be biomass in the form of cattle manure. The electric power production capacity will be approximately 52 megawatts. Supplemental coal, oil or natural gas will only be used for boiler lightoff and as a standby fuel.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16855 Filed 6-22-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[TSH-FRL 2594-4; OPTS-41014]

Fourteenth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

Correction

In FR Doc. 84-14050 beginning on page 22389 in the issue of Tuesday, May 29, 1984, make the following corrections:

1. On page 22391, column three, line nine, "Taoxicology" should read "Toxicology"; lines eleven and twelve should read,

Committee Staff

Martin Grief, Executive Secretary

and in line nineteen, "Mational" should read "National".

2. On page 22405, column three, line fifteen, "ficient" should read "Coefficient".

BILLING CODE 1505-01-M

[OPP-240044; PH-FRL 2594-5]

State Registration of Pesticides

Correction

In FR Doc. 84-14186 beginning on page 22526 in the issue of Wednesday, May 30, 1984, make the following correction:

On page 22528, first column, Virginia line five, "(CUP)" should be removed.

BILLING CODE 1505-01-M

[PF-374; PH-FRL 2592-4]

Certain Companies; Pesticide Tolerance Petitions

Correction

In FR Doc. 84-13791 beginning on page 21795 in the issue of Wednesday, May 23, 1984, make the following correction:

On page 21796, third column, the table at the top of the page, fourth column, Parts per million (ppm), entry four, ".30" should read "0.3".

BILLING CODE 1505-01-M

[AMS-FRL-2607-2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Federal Certification Test Results for 1984 Model Year

Correction

In FR Doc. 84-15820 beginning on page 24443 in the issue of Wednesday, June 13, 1984, make the following correction:

On page 24443, third column, line 13 in the summary, "not available." should read "now available."

BILLING CODE 1505-01-M

[OPTS-140051; TSH-FRL-2613-6]

ICF Inc. and Springborn Management Consultants, Inc.; Transfer of Data to Contractor and Subcontractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will transfer to its contractor, ICF, Inc., and its subcontractor Springborn Management Consultants, Inc., information which has been or will be submitted to EPA under section 5 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed as confidential. These firms will review this information and use it to evaluate the potential economic impacts of regulatory actions taken under section 5 of TSCA.

DATE: The transfer of the confidential data submitted to EPA will occur no sooner than 10 working days after date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll-Free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: Provisions including Executive Order 12291, the Regulatory Flexibility Act, and section 2(b) of TSCA, the Act's general policy statement, require EPA to consider the economic impact of proposed regulatory actions under TSCA. In evaluating the necessity of regulatory actions under TSCA in a given instance, EPA considers economic factors like characteristics of a particular market, the availability of substitutes for a substance, and potential uses that could be made of the substance. In evaluating alternative courses of regulatory action, EPA considers factors like the relative cost effectiveness and availability of various control technologies and the practicality of other regulatory options.

Under EPA Contract No. 68-02-3935, ICF, Inc. (ICF), of Washington, D.C., and its subcontractor, Springborn Management, Inc. (Springborn), of Enfield, CT, will assist the Regulatory Impacts Branch (RIB) of the Office of Toxic Substances in performing regulatory and general economic impact analyses for TSCA regulatory programs.

In accordance with 40 CFR 2.306(j), EPA has determined that ICF and Springborn employees may require access to confidential business information (CBI) submitted to EPA under section 5 of TSCA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of information under section 5 of TSCA that EPA may tranfer to these firms, on a need-to-know basis, confidential business information on specific chemicals that are under review or are subjects of possible regulatory actions. Upon completing their review of materials submitted for a specific chemical, the firm receiving confidential business information will return all such materials to EPA.

ICF and Springborn have been authorized to have access to TSCA confidential business information under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved the security plans of these two firms and conducted the required inspections of the contractors' facilities and found them to be in compliance with the provisions of the manual. Personnel from these two firms will be required to sign a non-disclosure agreement and be briefed on appropriate security procedures before they are permitted access to confidential information in accordance with the "TSCA Confidential Business Information Security Manual" and the Contractor Requirements manual.

Dated: June 14, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-16815 Filed 6-22-84; 8:45 am]

BILLING CODE 6560-50-M

Availability of Section 321 Investigation; Draft Report

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of availability.

SUMMARY: On February 3, 1984, the Administrator of USEPA granted a request to conduct an investigation as authorized under Section 321 of the Clean Air Act. The purpose of the investigation is to determine what, if any, employment effects at the Peabody Coal Company, Sunnyhill Mine, in New Lexington, Ohio, are the direct result of air pollution regulations adopted pursuant to the Clean Air Act.

USEPA has completed this investigation and has prepared a draft report which is available to the public. Copies of the report can be obtained by writing or calling the contact person listed in the address section of this notice. EPA is providing 30 days to submit comments on this draft report.

DATE: Comments on the draft report are due on or before July 25, 1984.

ADDRESS: Copies of the draft report can be obtained by writing or calling: Bessie Tinsley, Regulatory Analysis Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 886–6069.

Written comments on the draft report should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604.

Dated: June 14, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–16833 Filed 6–22–84; 8:45 am]

BILLING CODE 6560-50-M

[OW–FRL–2614]

Pretreatment Implementation Review Task Force Open Meetings

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the full Pretreatment Implementation Review Task Force will be held on September 25 and 26, 1984 from 9:00 a.m. to 5:00 p.m. in Room 2409. Prior to the full Task Force meeting, there will be meetings of the three subcommittees: the Program Development and Approval Subcommittee on July 10, 1984 from 10:00 a.m. to 5:00 p.m. and July 11, 1984 from 9:00 a.m. to 4:00 p.m. in Room 3906; the Technical Implementation Subcommittee on July 31, 1984 from 9:30 a.m. to 5:00 p.m. and August 1, 1984 from 9:00 a.m. to 4:00 p.m. in Room 3906; and the Reporting and Monitoring Subcommittee on August 14, 1984 from 9:00 a.m. to 5:00 p.m. in Room 2123. All meetings will be held at Waterside Mall, 401 M Street, S.W., Washington, D.C.

The agenda for the full Task Force meeting in September involves a consideration of reports from the July and August subcommittee meetings. The Program Development and Approval Subcommittee will consider the following issues at its July 10–11 meeting: 50–50 matching grant, delegation of categorical determination, oversight guidance, state rulemaking prior to program delegation, fundamentally different factor (FDF) variance application, development and submission of National Pollutant Discharge Elimination System (NPDES) State pretreatment program, delegation of FDF and net/gross determinations, adequate funding and staffing for States, piecemeal approval of publicly owned treatment works (POTW) pretreatment programs, guidance on enforcement, and insuring adequate control of site-specific toxics of concern. The Technical Implementation Subcommittee will consider the following issues at its July 31, August 1 meeting: production-based vs. concentration-based standards, integrated facilities, examination of "50 POTW Study" and its conclusions, removal credits, examination of alternative pretreatment programs (i.e., local option, bubble), centralized waste treatment facilities, categorical standard updating (including examination of industries never assigned to receive categorical standards), changes to § 403.5, applicability of categorical pretreatment standards to research and development facilities, POTWs with non-biological treatment and the effect of the regulations on these types of facilities, and pretreatment/Resource Conservation and Recovery Act (RCRA) overlap. The Reporting and Monitoring Subcommittee will consider the following issues at its August 14 meeting: standardized and simplified reporting, guidance on enforcement, significant noncompliance, priority of guidance documents, data base requests, grab sample and slug loading definition, total toxic organics (TTO) listings, sampling (frequency/type/reason), pickle liquors, long-term averages (consistency/enforceability), need for FDF variances, program integration—RCRA and pretreatment, and 90-day periodic compliance reports.

Any member of the public wishing to make comments is invited to submit them in writing to Mr. Richard Kinch no later than October 1, 1984. All meetings will be open to the public. Any member of the public wishing additional information should contact Mr. Richard Kinch or Dr. Jerry Parker (EN–336), U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460, (202) 755–0750.

For further information contact: Dr. Jerry Parker, (202) 755–0750.

Dated: June 19, 1984.

Henry Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84–16822 Filed 6–22–84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

NCNB Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte, North Carolina; to engage *de novo* through its subsidiary, NCNB Financial Services, Inc. in making or acquiring loans or other extensions of credit such as would be made by a factoring or commercial finance company, including commerical loans secured by a borrower's inventory, accounts receivable or other accounts, and servicing such loans for others.

Board of Governors of the Federal Reserve System, June 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16784 Filed 6-22-84; 8:45 am]

BILLING CODE 6210-01-M

Tuscaloosa Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 16, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Tuscaloosa Bancshares, Inc.*, Denham Springs, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Tuscaloosa Commerce Bank, Denham Springs, Louisiana.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Indcorp*, Martinsville, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Indiana Bank and Trust Company, Martinsville, Indiana.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Klein Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Klein Bank, Spring, Texas.

Board of Governors of the Federal Reserve System, June 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16785 Filed 6-22-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Geriatrics Review Committee; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the National Institutes of Health announces the establishment by the Secretary of Health and Human Services, of the Geriatrics Review Committee, National Institute on Aging.

The Geriatrics Review Committee shall provide initial scientific merit and technical review of research and training grant applications in support of clinical research and research-related activities which require geriatric or other clinical expertise and involvement, as well as research contract proposals utilizing specialized patient populations for clinical studies of aging diseases and processes. The committee shall advise the Secretary; the Assistant Secretary for Health; the Director, National Institutes of Health; and the Director of the National Institute on Aging.

Authority for this committee shall terminate on May 31, 1985, unless the Secretary, HHS, formally determines that continuance is in the public interest.

Dated: June 19, 1984.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 84-16790 Filed 6-22-84; 8:45 am]

BILLING CODE 4140-01-M

Meeting of National Advisory Dental Research Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on July 27, 1984, in Conference Room 6, Building 31-C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 10:00 a.m. to 10:30 a.m. for general discussion and program presentations. Attendance by the public will be limited to space available.

This special meeting has been scheduled for the purpose of reviewing only those applications that have been received in response to program announcements.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on July 27 from 10:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Nancy Walsh, Council Secretary for the National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 503, Bethesda, Maryland 20205 (phone 301-496-7723) will furnish rosters of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Programs Nos. 13.840-Caries Research, 13.841-Periodontal Diseases Research, 13.842-Cranifacial Anomalies Research, 13.843-Restorative Materials Research, 13.844-Pain Control and Behavioral Studies, 13.845-Dental Research Institutes, 13.878-Soft Tissue Stomatology and Nutrition Research, National Institutes of Health)

Dated: June 15, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-16800 Filed 6-22-84; 8:45 am]

BILLING CODE 4140-01-M

Meeting of Environmental Health Sciences Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on July 30-31, 1984, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public from 9:00 a.m. to

approximately 10:30 a.m. on July 30, for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 10:30 a.m., July 30, to adjournment on July 31, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Carol Shreffler, Executive Secretary, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meeting, rosters of committee members, and substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 133.894, Resource and Manpower Development National Institutes of Health)

Dated: June 15, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–16802 Filed 6–22–84; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee, Division of Research Resources, July 16–17, 1984, at the National Institutes of Health. The meeting will be held in Conference Room 9, Building 31, 9000, Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public from 9:00 a.m. to approximately 1:30 p.m. on July 16, 1984, to discuss policy matters relating to the Minority Biomedical Research Support Program. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on July 16, 1984, from approximately 1:30 p.m. to 5:00 p.m. and on July 17, 1984 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications submitted to the Minority Biomedical Research Support Program. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B10, Bethesda, Maryland 20205, telephone (301) 486–5545, will provide summaries of meeting and rosters of committee members. Dr. Ethel B. Jackson, Executive Secretary of the General Research Support Review Committee, Building 31, Room 5B11, Bethesda, Maryland 20205, telephone (301) 496–4390 will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13,375, Minority Biomedical Research Support Program, National Institutes of Health)

Dated: June 15, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–16803 Filed 6–22–84; 8:45 am]

BILLING CODE 4140–01–M

Meeting of NIDR Special Grants Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Institute of Dental Research Special Grants Review Committee, July 17–18–19, 1984, in Conference Room 6, Building 31–C, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to 9:30 a.m. July 17 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeeting will be closed to the public from 9:30 a.m. July 17 to adjournment July 19 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. H. George Hausch, Executive Secretary, NIDR Special Grants Review Committee, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 507, Bethesda, MD 20205 (telephone 301–496–7658) will provide summaries of meeting, rosters of committee members, and substantive program information.

(Catalog of Federal Dometic Assistance Programs Nos. 13.840-Caries Research, 13.841-Periodontal Diseases Research, 13.842-Craniofacial Anomalies Research, 13.843-Restorative Materials Research, 13.844-Pain Control and Behavioral Studies, 13.845-Dental Research Institutes, 13.878-Soft Tissue Stomatology and Nutrition Research, National Institutes of Health)

Dated: June 15, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84–16801 Field 6–22–84; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Final Environmental Impact Statement on the Cache River Basin: a Waterfowl Habitat Preservation Proposal in Jackson, Monroe, Prairie and Woodruff Counties, Arkansas

AGENCY: Fish and Wildlife Service, Interior (FWS).

ACTION: Notice.

SUMMARY: This Notice advises the public that a Final Environmental Impact Statement (FEIS) on the Cache River Basin waterfowl habitat preservation proposal in Jackson, Monroe, Prairie, and Woodruff Counties, Arkansas, will be available for public review by July 6, 1984.

The FEIS considers environmental and socio-economic effects of protecting and preserving up to 92,000 acres of internationally significant waterfowl habitat within the 10-year floodplain of the lower and middle Cache River Basin. The FEIS evaluates impacts of eight alternative actions and determines the degree to which each would accomplish habitat preservation goals. Included in this alternative evaluation is the preferred alternative of the FWS (No. 1) which provides for a "team approach" to preservation involving the FWS, Arkansas Game and Fish Commission, other agencies, groups, and individuals.

The primary means of acquisition from willing sellers will be fee title and easements; however, other methods such as donations, land exchanges, and management agreements may be used.

Written comments are not required; however, they may be sent to the following address:

ADDRESS: Mr. James W. Pulliam, Jr., Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Butts, Chief, Branch of Planning, Division of Realty, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303. Telephone (Commercial) 404/221–3543, (FTS) 242–3543.

Dated: June 18, 1984.

David B. Allen,

Deputy Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 84–16795 Filed 6–22–84; 8:45 am]

BILLING CODE 4310–67–M

National Park Service

Mining Plan of Operations Death, Valley National Monument, California; Availability

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, American Borate Company has filed a plan of operations with the National Park Service in support of construction of a ventilation shaft, to service its underground Billie Mine, on its Billie No. 22 mining claim within Death Valley National Monument. The plan is available for public inspection during normal business hours at the Death Valley National Monument headquarters, Death Valley, California.

Dated: May 23, 1984.

Edwin L. Rothfuss,

Superintendent, Death Valley National Monument.

[FR Doc. 84–16825 Filed 6–22–84; 8:45 am]

BILLING CODE 4310–70–M

Mining Plan of Operations at Denali National Park and Preserve, Alaska; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9A, Kantishna Mining Company has filed a plan of operations in support of proposed mining operations on lands embracing a Mining Claim Group on Caribou Creek within the Denali National Park and Preserve. These plans are available for public inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert L. Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84–16827 Filed 6–22–84; 8:45 am]

BILLING CODE 4310–70–M

Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Denali National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. Review and approval of minutes.
2. Discuss resident zone boundaries.
3. Resident community population changes.
4. Trapline and their historical use.
5. ATV use policy review—historical and traditional use.

DATE: The meeting will begin at 8:00 a.m. on July 13, 1984, and conclude the afternoon of July 14, 1984.

ADDRESS: The meeting will be held in the Denali National Park, McKinley, Alaska.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Superintendent, Denali National Park, P.O. Box 9, McKinley Pårk, Alaska 99755, Phone (907) 683–2294.

SUPPLEMENTARY INFORMATION: The Denali National Park Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96–487.

Dated: June 13, 1984.

Robert L. Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84–16826 Filed 6–19–84; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–215 through 217 (Preliminary) and 731–TA–191 through 195 (Preliminary)]

Oil Country Tubular Goods From Argentina, Brazil, Korea, Mexico, and Spain

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping and countervailing duty investigations and scheduling of a conference to be held in connection with the investigations.

EFFECTIVE DATE: June 13, 1984.

SUMMARY: The Commission gives notice of the institution of preliminary countervailing duty investigations 701–TA–215 through 217 (Preliminary), under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports from Brazil, Korea, and Spain of oil country tubular goods as provided for in items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States (TSUS),[1] upon which bounties or grants are alleged to be paid.

The Commission also gives notice of the institution of preliminary antidumping investigations 731–TA–191 through 195 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina, Brazil, Korea, Mexico, and Spain of oil country tubular goods provided for in items 610.32, 610.37, 610.39, 610.40, 601.42, 610.43, 610.49, and 610.52 of the TSUS,[1] which are alleged to be sold at less than fair value.

FOR FURTHER INFORMATION CONTACT: Abigail Eltzroth, U.S. International

[1] In particular, API and nonAPI oil well tubing, casing, or drill pipes, which are identified in items 610.3216, 610.3219, 610.3233, 610.3234, 610.3249, 610.3252, 610.3256, 610.3258, 610.3294, 610.3721, 610.3722, 610.3741, 610.3742, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4957, 610.4958, 610.4959, 610.5221, 610.5222, 610.5228, 610.5240, 610.5242, 610.5243, 610.5244 of the TSUSA.

Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0289.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on June 13, 1984, by counsel for Lone Star Steel Co., and CF&I Steel Corp., U.S. producers of oil country tubular goods [1]. The Commission must make its determination in these investigations within 45 days after the date of the filing of the peititions, or by July 30, 1984 (19 CFR 207.17).

Participation

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service of Documents

The Secretary will compile a service list from the entries of appearance filed in these investigations. Any party submitting a document in connection with the investigations shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigations. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b)), as amended by 47 FR 33682, August 4, 1982).

Written Submissions

Any person may submit to the Commission on or before July 10, 1984, a written statement of information pertinent to the subject matter of these investigations (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on July 6, 1984, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact Abigail Eltzroth (202–523–0289), not later than 12:00 noon, July 5, 1984, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public Inspection

A copy of the petitions and all written submissions, except for confidential business data, will be available for public inspection during regular hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 710 E Street, NW., Washington, D.C.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207, as amended by 47 FR 33682, August 4, 1982), and Part 201, Subparts A through E (19 CFR Part 201 as amended by 47 FR 33682, August 4, 1982).

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: June 20, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–16791 Filed 6–22–84; 8:45 am]

BILLING CODE 7020-02-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Special Projects) to the National Council on the Arts will be held on July 10, 1984, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: June 19, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–16787 Filed 6–22–84; 8:45 am]

BILLING CODE 7537-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Proposed Amendments, Hearings, and Public Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of proposed amendments, hearings, and opportunity to comment.

SUMMARY: On April 27, 1983, the Council adopted a final Northwest Conservation and Elecric Power Plan (Power Plan). The Council is now proposing to amend two portions of that plan. This notice describes the proposed amendments, provides information on how to obtain additional information, and outlines the process for submitting written comments and participating in the hearings.

DATES AND ADDRESSES: The public comment period regarding the proposed amendments closes at 5 p.m. July 25, 1984. Public hearings on the proposed amendments will be held in:

- Portland, Oregon at 1 p.m., July 5, 1984 in the Council's auditorium at Suite 200, 700 SW. Taylor.
- Seattle, Washington at 9 a.m., July 11, 1984 in Room 204N of the University of Washington's Student Union Building.
- Boise, Idaho at 9 a.m., July 13, 1984 at the Red Lion Riverside Motor Inn, 29th and Chinden Blvd.
- Helena, Montana at 9 a.m., July 23, 1984 at the Council's Montana offices, Old Board of Health Building, Lockey and Roberts Streets.

Instructions for Oral Comment at Hearings

1. Requests for time slots must be made at least three days prior to the hearings to Ruth Curtis, Information Coordinator, at the Council's central office, 700 SW. Taylor, Suite 200, Portland, Oregon 97205 or (503) 222–5161 (toll free 1–800–222–3355 out of state or 1–800–452–2324 in Oregon).

2. Those who do not sign up for time slots will be permitted to testify as time permits.

3. Hearings should be used to summarize written comments. Comments should not be read.

4. Ten copies of written testimony should be submitted to the Council.

Commenters will have 15 minutes to summarize written testimony.

Instructions for Written Comment

1. Comments must be received in the Council's central office, 700 SW. Taylor Street, Suite 200, Portland, Oregon 97205 by 5 p.m. on July 25, 1984. Comments received after that date will not be considered.

2. Written comments should be marked "Power Plan Amendments Comment."

3. Provide ten copies of all comments.

FOR FURTHER INFORMATION CONTACT: Mark Cherniack, Conservation Analyst (regarding amendment of Program Design Principle 1E) or Jeff King, Resource Analyst (regarding amendment of Action Item 14.1), 700 SW. Taylor, Suite 200, Portland, Oregon 97205 (toll free 1–800–222–3355 in Montana, Idaho, and Washington; toll-free 1–800–452–2324 in Oregon; or 503–222–5161).

SUPPLEMENTARY INFORMATION: The Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), allows the Council to amend its Plan from time to time. At its meeting in Portland, Oregon on June 7, 1984 the Council voted to formally propose amending two portions of the plan's Two-Year Action Plan (Chapter 10).

Program Design Principle 1E (Low-Income Eligibility for Residential Weatherization Financing)

On page 10–7 of the Two-Year Action Plan, Program Design Principle 1E specifies a formula for determining eligibility for 100% financing through Bonneville Power Administration's (Bonneville) residential weatherization program. That design principle states that Bonneville's conservation program for existing residential buildings shall: Provide a program that pays 100% of the actual cost of all structurally feasible and regionally cost-effective conservation measures for low-income households, at a cost not to exceed 4.0 cents per kilowatt-hour saved. This program shall be made available to households with an annual income below that specified in the formula below.

Household size	Percentage of median city or county household income	Example based on regional median income [1]
1	54	$12,455
2	62	14,300
3	70	16,146
4	78	17,911
5	83	19,144
6	88	20,297
7	93	21,450
8+	98	22,504

[1] Shown for illustrative purposes only. Actual income will vary by city or county median income level.

During the development of the draft power plan, the Council recognized that residential conservation savings were essentially unavailable from low-income households through existing utility programs because low-income consumers could not make the financial contribution required. Also, it seemed inequitable that those same low-income consumers were paying for conservation programs through electric rates, but could not benefit directly through the programs. The Council believed that the most effective way to acquire those savings from low-income households was to provide full cost payment based on a formula linked to median income and household size. The Council also hoped to provide a guideline which was administratively practical and could be uniformly applied in the region. The Council chose to use city or county median income as the base-line using the Department of Housing and Urban Development's percentage multiplier for each household size from one to eight or more.

Recently, various parties have questioned the equity and administrative effectiveness of Program Design Principle 1E. It appears that, compared with the poverty guidelines set forth by the federal Office of Management and Budget, the existing formula unnecessarily restricts the number of low-income households eligible for 100% financing. Households with five or more persons in counties throughout the region are most affected. In addition, the use of county or city median incomes creates potentially serious administrative problems for utilities operating weatherization programs across multiple county or city jurisdictions. The Council is seeking to reduce the complex recordkeeping requirements which appear to result from the direction now specified in the Plan.

As a result, at its June 7 meeting, the Council voted to propose amending Program Design Principle 1E by deleting "median city or county" in the table and replacing it with "regional population weighted median." The Council has determined that the current regional population weighted median income for the region is $22,797 (1983 dollars). The Council believes that the proposed single regional median income guideline would ease most of the administrative concerns of the program operators. The proposed amendment would change the eligibility criteria for 100% residential weatherization financing. As amended, Program Design Principle 1E would read as follows: Provide a program that pays 100% of the actual cost of all structurally feasible and regionally cost-effective conservation measures for low-income households, at a cost not to exceed 4.0 cents per kilowatt-hour saved. This program shall be made available to households with an annual income below that specified in the formula below.

Household size	Eligibility level based on regional population weighted median income
1	$12,310
2	14,134
3	15,958
4	17,782
5	18,927
6	20,061
7	21,201
8+	22,341

Bonneville shall annually adjust the eligibility levels specified above based on the federal government's gross national product deflator for that year.

Action Item 14.1 (Hydropower Options)

On page 10–19 of the plan, Action Item 14.1 calls on Bonneville to:

Acquire options on the following six categories of hydropower facilities:

1. An existing dam, currently not generating electricity, with a capacity greater than 15 megawatts.

2. An existing dam, currently not generating electricity, with a capacity of between 5 and 15 megawatts.

3. A new facility with a capacity greater than 25 megawatts.

4. A new facility with a capacity between 10 and 15 megawatts.

5. A new facility with a capacity less than 10 megawatts.

6. A new facility with an exemption from the FERC licensing process.

In acquiring options on hydropower sites, Bonneville shall adhere to the provisions of Appendix E.

This action item was designed to test the feasibility of hydropower options in the context of the Federal Energy Regulatory Commission's (FERC) licensing process. Recently, the State Options Task Force and the Council's Hydropower Options Task Force and Options Steering Committee have indicated that state laws and regulations may pose potential restraints to the options process that are as significant as those posed by FERC's licensing requirements. Accordingly, the Council voted at its June 7, 1984 meeting to propose amending Action Item 14.1 to read:

> Acquire options on a minimum of six hydropower projects. The capacities, locations, and configurations of the projects on which options are to be acquired shall be chosen to best test the efficacy of the options concept for hydropower resources. In selecting the options to be acquired, consideration shall be given to identifying and resolving potential impediments to the optioning process including the FERC permitting and licensing process and the laws and regulations of the various states within the region. Bonneville shall consult with the Council on the development of a Request for Options and on the selection of projects to be optioned.
>
> In acquiring options on hydropower sites, Bonneville shall adhere to the provisions of Apendix E.

The proposed amendment would delete the list of specific project types for optioning and would replace it with a description of the objectives of hydropower options. In this way, the amendment would provide both Bonneville and the Council with flexibility to select projects for optioning that are best suited for testing the options concept. The proposal would call on Bonneville to consult with the Council, before preparing a Request for Options, regarding the specific types and locations of projects to be optioned.

(Sec. 4, Pub. L. 96-501, 16 U.S.C. 839b)

Edward Sheets,

Executive Director.

[FR Doc. 84-16796 Filed 6-22-84; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Officer of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549.

New

EDGAR

Form ID (No. 270-291)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance Form ID under the Securities Act of 1933 and the Securities Exchange Act of 1934 for use by registrants voluntarily participating in the EDGAR Pilot Porject. Form ID is a uniform application for identification numbers, passwords and personal identification numbers to be used by those registrants filing electronically.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Dated: June 19, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16797 Filed 6-22-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13998; File No. 812-5818]

Great-West Life & Annuity Insurance Company, et al.; Filing of Application Granting Exemptions

June 19, 1984.

Notice is hereby given that Great-West Life and Annuity Insurance Company ("GWL&A"), 1675 Broadway, Denver, Colorado 80202, Futurefunds Series Account ("Series Account"), a separate account of GWL&A registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and The Great-West Life Assurance Company ("Great-West") the principal underwriter of the Series Account (collectively, "Applicants"), filed an application on April 9, 1984 and an amendment thereto on June 11, 1984 for an order pursuant to section 6(c) of the Act granting exemptions from the above referenced provisions of the Act and regulations thereunder, to the extent necessary to permit transactions described in the application. All interested persons are referred to the application for the complete representations of the Applicants, which are summarized below, and are referred to the Act and Rules thereunder for a statement of the relevant provisions.

Applicants propose that they be granted an exemption from sections 26(a) and 27(c)(2) to allow as a deduction from the contract value: (1) A daily charge for mortality and expense risks equal on an annual basis to 1.25% of daily net assets (approximately .25% of expense risks and 1.00% for mortality risks); (2) an annual charge of $60 for contract maintenance; (3) a $10.00 charge for a transfer (apart from the first two in a calendar year) from or to the Variable Sub-Accounts; and (4) a charge for premium taxes.

With respect to (1) above, Applicants assert that the mortality and expense risk charge is consistent with the protection of investors standard set forth in section 6(c) as it is reasonable as determined by industry practice with respect to comparable annuity products. Applicants represent that they have reviewed publicly available information about similar industry practices, taking into account such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. They further represent that the data supporting and setting forth this conclusion will be maintained on file at GWL&A's administrative offices. Applicants acknowledge that some portion of the mortality and expense risk charge may be utilized to meet sales expenses which exceed the contingent deferred sales charge which may be imposed.

In this connection, GWL&A represents that it has concluded that there is a reasonable likelihood that the Series Account's distribution financing arrangement will benefit the Account and contractowners and that it will maintain and make available to the Commission upon request a memorandum setting forth the basis for this representation. The Series Account represents that it will invest only in open-end management companies which have undertaken to have a board of directors with a disinterested majority formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

With respect to (2) and (3) above, Applicants assert that these charges have been set at levels no higher than the estimated actual costs of administering the contracts and are not expected to exceed the actual expenses incurred. With respect to (4) Applicants represent that GWL&A will deduct any such tax when incurred.

Finally, Applicants request exemption from sections 26(a) and 27(c)(2) to the extent necessary to permit GWL&A to hold assets of the Series Account under an agreement that does not create a trust and to hold the securities of the Maxim Series Fund (of any other open-end management company underlying the Series Account) in open account in lieu of stock certificates. Applicants represent that the assets of the Series Account and the Maxim Series Fund

will be protected by the safeguards and conditions described in the application and that requiring the issuance of fund certificates would impose an unnecessary administrative burden.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 13, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Comission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16857 Filed 6-22-84; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7123]

Showboat, Inc. Common Stock, $1 Par Value; Application To Withdraw From Listing and Registration

June 18, 1984.

The Showboat Inc. has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of Showboat, Inc. is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on May 18, 1984, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration of the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before July 9, 1984 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16858 Filed 6-22-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirement Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the **Federal Register** that the agency has made such a submission.

DATE: Comments must be received on or before July 18, 1984. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible.

Copies: Copies of the proposed survey, the requests for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St., NW., Room 200, Washington, D.C. 20416, Telephone: (202) 653-8538.

OMB Reviewer: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-4814.

Survey Submitted for Review:

Title: Access to Capital by Subcategories of Small Business
Frequency: One-time, nonrecurring
Description of Respondents: Small business owners
Annual Responses: 2,000
Annual Burden Hours: 1,000
Type of Request: Resubmission

Dated: June 15, 1984.

Elizabeth M. Zaic,

Chief, Information Resources Management Branch.

[FR Doc. 84-16800 Filed 6-22-84; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The Small Business Administration, Region VI Advisory Council, located in the geographical area of New Orleans, will hold a public meeting at 10:00 a.m., on Monday, July 16, 1984, at the Small Business Administration office, 1661 Canal Street (second floor), New Orleans, Louisiana, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call T. A. Aboussie, District Director, U.S. Small Business Administration, 1661 Canal Street, New Orleans, Louisiana 70112, (504) 589-2744.

Dated: June 18, 1984.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 84-16807 Filed 6-22-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2149]

Connecticut; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the counties of Hartford, Middlesex, Fairfield, Litchfield, New Haven and Tolland Counties in the State of Connecticut constitute a disaster loan area because of damage from severe storms and flooding beginning on or about May 27, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on

August 17, 1984, and for economic injury until March 18, 1985, at: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410, or other locally announced locations.

Interest rates are: Homeowners with credit available elsewhere, 8.000%; homeowners without credit available elsewhere, 4.000%; businesses with credit available elsewhere, 8.000%; businesses without credit available elsewhere, 4.000%; businesses (EIDL) without credit available elsewhere, 4.000%; other (non-profit organizations including charitable and religious organizations), 10.500%.

The number assigned to this disaster is 214906 for physical damage and for economic injury the number is 618500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 19, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-16671 Filed 6-22-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2150]

Vermont; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the Counties of Caledonia, Franklin, Lamoille, Orange, and Washington in the State of Vermont constitute a disaster loan area because of damage from severe storms and flooding beginning on or about June 6, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on August 17, 1984, and for economic injury until March 18, 1985, at: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, NJ 07410, or other locally announced locations.

Interest rates are: Homeowners with credit available elsewhere, 8.000%; Homeowners without credit available elsewhere, 4.000%; Businesses with credit available elsewhere, 8.000%; Businesses without credit available elsewhere, 4.000%; Businesses (EIDL) without credit available elsewhere, 4.000%; Other (non-profit organizations including charitable and religious organizations), 10.500%.

The number assigned to this disaster is 215006 for physical damage and for economic injury the number is 618600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 19, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-16672 Filed 6-22-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2145]

Wisconsin; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the Counties of Iowa and Dane in the State of Wisconsin constitute a disaster loan area because of damage from severe storms and tornadoes which occurred on or about June 8, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on August 13, 1984, and for economic injury until March 12, 1985, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, George 30303, or other locally announced locations.

Interest rates are: Homeowners with credit available elsewhere, 8.000%; homeowners without credit available elsewhere, 4.000%; business with credit available elsewhere, 8.000%; businesses without credit available elsewhere, 4.000%; business (EIDL) without credit available elsewhere, 4.000%; other (non-profit organizations including charitable and religious organizations), 10.500%.

The number assigned to this disaster is 214512 for physical damage and for economic injury the number is 618100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 19, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-16674 Filed 6-22-84 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2147]

Wyoming; Declaration of Disaster Loan Area

Carbon County in the State of Wyoming constitutes a disaster area because of damage caused by a flooding which occurred May 14, 1984, through June 1, 1984. Applications for loans for physical damage may be filed until the close of business on August 20, 1984, and for economic injury until the close of business on March 20, 1985, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, CA 95825, of other locally announced locations.

Interest rates are: Homeowners with credit available elsewhere, 8.000%; homeowners without credit available elsewhere, 4.000%; businesses with credit available elsewhere, 8.000%; businesses without credit available elsewhere, 4.000%; businesses (EIDL) without credit available elsewhere, 4.000%; other (non-profit organizations including charitable and religious organizations), 10.500%.

The number assigned to this disaster is 214706 for physical damage and for economic injury the number is 618300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 20, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-16674 Filed 6-22-84 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0125]

Tyler Refrigeration Capital Corp.; License Surrender

Notice is hereby given that Tyler Refrigeration Capital Corporation, 2222 E. Michigan Boulevard, Michigan City, Indiana 46360, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Tyler Refrigeration Capital Corporation was licensed by the Small Business Administration on June 5, 1978.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on May 18, 1984, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 18, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-16670 Filed 6-22-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S–755, Sub. 1]

Equity Carriers I, Inc., et al.; Amended Application for Permission To Carry Dry Bulk Preference Cargoes Without Subsidy

Notice is hereby given that by letter dated June 7, 1984, Equity Carriers I, Inc., Asco-Falcon II Shipping Company and Equity Carriers III, Inc. (collectively Equity) amended its application of March 20, 1984 which requested an amendment to their Operating-Differential Subsidy (ODS) Agreement, Contract No. MA/MSB–439 in order to allwo their vessels to carry dry bulk preference cargoes with ODS and at fair and reasonable rates.

Notice of the March 20 application was published in the **Federal Register** on April 5, 1984 (49 FR 13620) Docket S–755. Protests, with demands for Hearing, were filed on behalf of Aeron Marine Shipping Company, *et al.*, Auto Bulk Corporation and the American Maritime Association. Equity challenged the standing of Auto Bulk Corporation.

Equity now amends their March 20, 1984 application to request, as a preferred alternative to the relief originaly requested, that Article I–2(a) of the subject ODS agreement be amended to permit their vessels to transport dry bulk cargo subject to the cargo preference statutes of the United States, including but not limited to 10 U.S.C. 2631, 46 U.S.C. 1241 and 15 U.S.C. 616a, at fair and reasonable rates for U.S. flag commercial vessels, without ODS. Equity adds that such an approach was recently adopted for all subsidized bulk operators in the application of Moore McCormack Bulk Transport, Inc., Docket S–754, with regard to Military Sealift Command charters. Should the Maritime Subsidy Board not grant this relief, Equity states that they will continue in their request as originally formulated in their March 20, 1984 application.

In amending their March 20, 1984 application, Equity specifically reserves their federal court challenge to the A–132 proceeding and its challenge in this docket (S–755) to the standing of Auto Bulk Corporation. Equity also reaffirms their position that their vessels are an existing service in the U.S. dry bulk preference trade.

Any person, firm or corporation having any interest in such application and desiring to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Room 7300A, 400 Seventh Street, SW., Washington, D.C. 20590 by 5:00 P.M. on July 6, 1984. The Maritime Subsidy Board will consider these views and comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS))

By order of the Maritime Subsidy Board.

Dated: June 19, 1984.

Georgia P. Stamas,

Secretary.

[FR Doc. 84–16781 Filed 6–22–84; 8:45 am]

BILLING CODE 4910–81–M

Urban Mass Transportation Administration

Solicitation of Proposals for Grants; Innovative Techniques and Methods Program

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: The Urban Mass Transportation Administration (UMTA) announces in this notice that it is soliciting proposals for grants under section 4(i), the Innovative Techniques and Methods Program of the Urban Mass Transportation Act of 1964, as amended, for fiscal year 1985 funding. UMTA will select from among the proposals received, contact the parties selected, and request complete grant applications from them.

Proposers are reminded that many projects funded under section 4(i) grants are also eligible for funding under section 9 of the Act. UMTA is encouraging potential proposers to use, to the maximum extent possible, the funding available under section 9. Details on the funding sources are available at the appropriate UMTA Regional Office.

DATES: Proposals are due for the 4(i) by September 24, 1984.

ADDRESSES: Proposals for section 4(i) grants should be sent to the appropriate UMTA Regional Office.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to the appropriate UMTA Regional Office.

Section 4(i): Innovative Techniques and Methods Program

The Innovative Techniques and Methods program was begun to further the national adoption of innovative techniques to reduce the cost of transportation. Section 4(i) of the UMT Act (49 U.S.C. 1603(i)) authorizes the Secretary to make grants to States and local public bodies for the deployment of innovative techniques and methods in the management and operation of public transportation services.

Experience with UMTA's Service and Methods Demonstration Program indicates that increased acceptance of an innovation requires application of the technique in many geographically dispersed areas. The section 4(i) program can encourage more widespread adoption of proven innovative techniques and methods in urban transportation. Innovative techniques and methods eligible for funding under the section 4(i) program include the following:

- Safety and security enhancements;
- Techniques to improve transit financing;
- Conventional transit innovations;
- Pricing and service innovations;
- Paratransit services; and
- Transit management improvements.

UMTA intends to publish a formal circular for the implementation of the section 4(i) program. Until then, proposals for the section 4(i) program should follow administrative procedures set forth in the December 1, 1980 **Federal Register** notice (45 FR 79669). A list of major categories of innovation that should be considered and selection criteria for the section 4(i) program are available at UMTA Headquarters and Regional Offices.

For purposes of evaluation, proposals should contain a detailed project description, including explanation of innovative features; budget; outline of benefits; indications of other support or participation; and plans for project continuation after 4(i) funds have been exhausted. A complete grant application is not needed at this time. Proposers are reminded that 4(i) project funding is now based on a 75 percent Federal and 25 percent local source of funds.

Proposers not selected for participation in earlier section 4(i) announcements, may, by submitting letters of interest in lieu of new proposals, revive earlier submittals for consideration in fiscal year 1985.

Issued on: June 4, 1984.

Ralph L. Stanley,

Urban Mass Transportation, Administrator.

[FR Doc. 84–16675 Filed 6–22–84; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Secret Service

Appointment of Performance Review Board (PRB) Members

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1983 and ending June 30, 1984. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title:

John W. Mangels—Director of Operations, Department of the Treasury
William R. Barton—Deputy Director, U.S. Secret Service
Jerry S. Parr—Assistant Director, Protective Research (USSS)
Edward J. Pollard—Assistant Director, Protective Operations (USSS)
Gerald W. Bechtle—Assistant Director, Inspection (USSS)
Larry B. Sheafe—Assistant Director, Investigations (USSS)
Stephen E. Garmon—Assistant Director, Administration (USSS)
Robert R. Snow—Assistant to the Director, Public Affairs (USSS)
Kevin R. Houlihan—Assistant to the Director, Training (USSS)
Edward P. Walsh—Deputy Assistant, Protective Research (USSS)
William R. Hoskyn—Deputy Assistant Director, Protective Operations (USSS)
Don A. Edwards—Deputy Assistant Director, Protective Operations (USSS)
Joseph R. Carlon—Deputy Assistant Director, Investigations (USSS)
John Kelleher—Legal Counsel, U.S. Secret Service

FOR FURTHER INFORMATION CONTACT: Wesley Bishop, Chief, Personnel Division, Room 912, 1800 G Street, NW., Washington, D.C. 20223, Telephone No. 202–535–5800.

John R. Simpson,

Director.

[FR Doc. 84–16632 Filed 6–22–84; 8:45 am]

BILLING CODE 4810–42–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 123
Monday, June 25, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

June 20, 1984.

FCC to hold open Commission meeting, Wednesday, June 27, 1984.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, June 27, 1984, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda Item No., and Subject

Private Radio—1—Title: *Report and Order* in the Matter of Amendment of Part 94 of the Commission's Rules to eliminate the developmental classification of the 13.2–13.25 GHz band. Summary: The FCC will consider the issues raised by the *Notice of Proposed Rule Making* in PR Docket 84–27, released January 1984, to allow private licensees to operate in the 13.2–13.25 GHz band on a regular basis.

Common Carrier—1—Title: Petitions for Reconsideration and Petitions for Clarification of the Commission's Memorandum Opinion, Order and Authorization in W–P–C–4955 (AT&T divestiture proceeding). Summary: The Commission will consider petitions filed by AT&T and the divested Bell Operating Companies and petitions for clarification by various other parties of its Order authorizing the transfers of various assets to implement the divestiture. The petitions relate to the conditions attached to the Order.

Common Carrier—2—Title: AT&T: Provision of Basic Services Via Resale by Separate Subsidiary, CC Docket No. 83–1375. Summary: The Commision will consider whether to adopt a Report and Order resolving the question of whether AT&T Information Systems should be permitted to provide basic services via resale of some or any services of common carriers (including AT&T Communications).

Common Carrier—3—Title: Amendment of the Commission's rules to allocate spectrum for the establishment of a radiodetermination satellite service, and to establish policies and procedures for the licensing of such systems. Summary: The Commission is considering action on the petition for rulemaking (RM–4428) filed by the Geostar Corporation to allocate spectrum for a radiodetermination satellite system, as well as policies and procedures for the processing of Geostar's applications for authority to construct, launch and operate such a satellite system.

Common Carrier—4—Title: In the Matter of American Technologies, Inc., BellSouth, and NYNEX, Interim Capitalization Plans for the Furnishing of Customer Premises Equipment and Enhanced Services. NYNEX Petition for Waiver of Section 64.702 of the Commission's Rules To Allow Marketing of Network Services by Separate Subsidiary. Summary: The Commission will decide whether or not to approve proposals by Ameritech, BellSouth and NYNEX to market basic network services through their *Computer II* subsidiaries.

Common Carrier—5—Title: Application for review, filed by AT&T, of the Common Carrier Bureau's Rejection of AT&T Tariff revisions providing for Audiographics Teleconference Service. Summary: The Commission will consider AT&T's application for review in which AT&T contends that the Common Carrier Bureau erred in rejecting AT&T's Audiographic Teleconference Service Rate Structure as unsupported by cost-support data.

Common Carrier—6—Title: Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase II. Summary: The Commission will consider tariffs for private line services proposed by AT&T and currently under investigation in Docket No. 83–1145 (Phase II, Part 2).

Common Carrier—7—Title: Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase II. Summary: The Commission will consider tariffs for MTS and WATS services proposed by AT&T and currently under investigation in Docket No. 83–1145 (Phase II, Part 2).

Mass Media—1— Title: Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Station. Summary: The Commission will consider whether to eliminate or modify its existing rules with respect to programming and commercialization policies, Ascertainment Requirements and Programming Log Requirements.

Mass Media—2—Title: Revision of Programming Policies and Reporting Requirement Related to Public Broadcasting Licensees. Summary: A Notice of Proposed Rule Making was issued proposing a series of options for changing the rules and policies in this area. The Report and Order discusses and resolves the issues which have been raised.

Mass Media—3—Title: Application for review filed by the National Black Media Coalition of a staff ruling dismissing a petition to prevent continuing violations of the Commission's EEO rule. Summary: The Commission considers the NBMC application for review to determine whether the staff properly dismissed the NBMC EEO petition.

Mass Media—4—Title: License Renewal Applications of Walt West Enterprises Inc. for Station WYEN–FM, Des Plaines, Illinois and WTMJ, Inc. for Stations WTMJ/WKTI–FM, Milwaukee, Wisconsin. Summary: The Commission considers a petition to deny filed by the National Black Media Coalition and others alleging that the licensees have not complied with the Commission's EEO rule.

Mass Media—5—Title: License Renewal Application of JACO, Inc., for renewal of license of Station WJRB, Madison, Tennessee. Summary: The Commission considers a petition to deny the WJRB renewal application filed by the National Black Media Coalition which alleges that the licensee has failed to comply with the Commission's EEO rule.

Mass Media—6—Title: License Renewal Applications of WPTW Radio Inc. for Stations WPTW/WPTW–FM, Piqua Ohio. Summary: The Commission considers a petition for reconsideration filed by the licensee regarding the imposition of EEO conditions.

Mass Media—7—Title: *Notice of Proposed Rulemaking* in MM Docket No. 83–1377. Summary: The Commission will consider a revision of Sections 73.3571, 73.3572 and 73.3573 of the Rules concerning the classification of major changes and amendments.

Mass Media—8—Title: Petitions for partial reconsideration filed by the National Radio Broadcasters Association and the National Broadcasters Association in MM Docket 83–373. Summary: The Commission will again consider the revision of its rules concerning the assignment of call letters to AM, FM and television broadcast stations.

Mass Media—9—Title: Amendment of Part 73 of the Commission's Rules and Regulations to Eliminate Objectionable Loudness of Commercial Announcements and Commercial Continuity over AM, FM and Television Broadcast Stations. Summary: The Commission will consider whether to 1) initiate a rulemaking action to impose new regulations to control loud commercials or 2) terminate the inquiry.

Mass Media—10—Title: Amendment of Parts 2 and 73 of the Commission's AM Broadcast Rules Concerning Use of the AM Carrier (MM Docket No. 83–1322). Summary: The Commission considers adopting a *Report and Order* that would allow any use for the AM carrier signal providing it does not create interference to originating or other stations.

Mass Media—11—Title: Allotment of UHF Television channels to the State of New Jersey. Summary: The Commission will consider whether to allot new UHF television channels to the State of New Jersey.

Mass Media—12—Title: Report and Order on "Providing optimum conditions for utilization of New Jersey television channel assignments." Summary: The Commission will consider the effect of present Commission policies concerning the network affiliation practices, low power operations and STV as they relate to the provision of televison service to New Jersey.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sally Lawrence, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–16943 Filed 6–21–84; 3:22 pm]

BILLING CODE 6712–01–M

2

FEDERAL COMMUNICATIONS COMMISSION

June 20, 1984.

FCC to hold a closed Commission meeting, Wednesday, June 27, 1984.

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Wednesday, June 27, 1984 following the Open Meeting, which is scheduled to commence at 9:30 A.M. in Room 856, at 1919 M Street, NW., Washington D.C.

Agenda, Item No., and Subject

Hearing—1—Petitions for Review and Rehearing filed by Beehive Telephone Co., Inc. and a request for approval of an agreement between Beehive Telephone Co., Inc. and the Common Carrier Bureau in the Western Utah, Common Carrier proceeding (Docket 78–240).

This item is closed to the public because it concerns Adjudicatory Matters (See 47 CFR 0.603(j)).

The following persons are expected to attend:

Commissioners and their assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission June 6, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sally Lawrence, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: June 20, 1984.

William J. Tricarico,

Secretary, Federal Communications Commmission.

[FR Doc. 84–16945 Filed 6–21–84; 3:22 pm]

BILLING CODE 6712–01–M

3

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 10, 1984.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of staff recommendation regarding the Used Car Rule.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 532–1892. Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 84–16903 Filed 6–21–84; 11:16 am]

BILLING CODE 6750–01–M

federal register

Monday
June 25, 1984

Part II

Department of the Interior

Fish and Wildlife Service

Oil and Gas Exploration Plans (Seismic), Arctic National Wildlife Refuge; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Oil and Gas Exploration Plans (Seismic), Arctic National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Publication of exploration plans and revision request; notice of public hearings; solicitation of public comments; State of Alaska review for consistency with the Alaska Coastal Management Program.

SUMMARY: This notice contains the complete texts of four proposed plans for oil and gas exploration on the coastal plain of the Arctic National Wildlife Refuge (ANWR), Alaska. A formal request to revise an exploration plan that was previously approved is also included in this notice. The notice announces the dates and locations of four public hearings that will be held to receive comments on the plans and the revision request. Written comments are solicited as well. The U.S. Fish and Wildlife Service (FWS) invites public comments relative to all aspects of the proposed activities. The State of Alaska is reviewing the activities for consistency with the Alaska Coastal Management Program (ACMP) pursuant to the Coastal Zone Management Act of 1972 as amended. This notice also solicits written comments, to be submitted to the State of Alaska, concerning ACMP consistency. The proposed activities were submitted to the FWS on June 4, 1984, by persons interested in conducting seismic exploration on the ANWR coastal plain. The proposals were accepted by the FWS in accordance with the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) as amended, and 50 CFR Part 37 as amended. ANILCA provides for oil and gas exploration within the coastal plain of ANWR in a manner that avoids significant adverse effects on the fish and wildlife, their habitats, or the environment. Data from the exploration on ANWR will be used to prepare a "Report to Congress" [ANILCA Section 1002(h)] which will, among other things, recommend whether further exploration, development and production of oil and gas should be permitted.

DATE: To be considered, written comments to the FWS must be submitted no later than August 10, 1984. Comments on consistency of these activities with the ACMP must be submitted to the State of Alaska no later than July 27, 1984. See Supplementary Information for dates of public hearings.

ADDRESSES: Written comments on all aspects of the proposed activities other than consistency with the ACMP should be submitted to: Regional Director, U.S. Fish and Wildlife Service, Attn: Oil, Gas, and Minerals Coordinator (AWR/PSS), 1011 East Tudor Road, Anchorage, Alaska 99503.

Written comments concerning consistency of the proposed activities with the ACMP should be submitted to: State of Alaska, Division of Governmental Coordination, Northern Regional Office, 675 Seventh Avenue, Station H, Fairbanks, Alaska 99701.

See Supplementary Information for locations of public hearings.

FOR FURTHER INFORMATION CONTACT:

Ted Heuer (oil, gas, and minerals coordinator), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 786–3584

Ann Rappoport (Oil, gas, and minerals specialist), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorge, Alaska 99503, (907) 786–3399

SUPPLEMENTARY INFORMATION: Final regulations for oil and gas exploration within the coastal plain of the ANWR, Alaska, were published in Part IV of the **Federal Register** (pages 16838–16872) on Tuesday, April 19, 1983. These regulations were amended in 49 FR 7569–7570, March 1, 1984. The regulations require that persons interested in exploring for oil and gas on the coastal plain of ANWR submit exploration plans to the Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska. The regulations, 50 CFR 37.22(b), also require that the texts of the exploration plans be published in the **Federal Register** and newspapers of general circulation in the State of Alaska.

The proposal from Geophysical Service Inc. (GSI) is not an exploration plan but a formal request to revise a previously approved plan. GSI's original exploration plan was conditionally approved by the Alaska Regional Director of the FWS on September 16, 1983. One condition placed on that plan was that the conventional shothole/explosive technique would be used rather than mechanical vibrators. The FWS felt that the shothole technique would allow more flexibility in avoiding sensitive wildlife habitats.

GSI used the shothole technique during the 1984 winter season. GSI believes that a change to vibrators would "reduce environmental impacts." They are now requesting that they be allowed to use mechanical vibrators during any subsequent season(s) in which the FWS permits seismic exploration. The FWS has determined that a change to mechanical vibrators would be a "major" revision of GSI's approved exploration plan [as defined in 50 CFR 37.25(a)]. Accordingly, the FWS is soliciting public input on the revision request.

Companies that submitted complete exploration plans (i.e., ARCO Alaska, Inc.; CGG American Services, Inc.; Chevron U.S.A. Inc.; and Western Geophysical Company of America) provided maps (1:250,000 scale) to the FWS that show their proposed seismic lines, travel routes to and within the refuge, fuel caches, and major support facilities. Persons wishing to examine these maps may do so at the FWS Regional Office, Anchorage, Alaska, or at the ANWR Office in Fairbanks, Alaska. Copies may also be obtained by calling the numbers listed above.

All of the proposals, printed herein, require the approval of the FWS Alaska Regional Director before any exploration can begin. The final decision whether or not to permit seismic exploration on ANWR during the winter of 1984–85 will not be made until the FWS has had an opportunity to: (1) Assess the impacts of last winter's seismic program and (2) review the exploration data that were collected by industry. The FWS will allow a second season of seismic work only if it is judged that additional data are necessary for the "Report to Congress", and that data can be collected without significant adverse effects to the fish and wildlife, their habitats, or the environment. All public comments will be considered before the Regional Director approves or disapproves of any proposal. Leasing, exploratory drilling, and other development leading to production of oil and gas is prohibited on ANWR by ANILCA Section 1003 and can only be authorized by legislative action. The FWS intends to approve, approve with modifications, or disapprove all exploration plans and the revision request by September 2, 1984 [90 days following plan submission as provided for in 50 CFR 37.22(b)]. Written comments on all seismic exploration plans must be received by the FWS no later than August 10, 1984.

The FWS is soliciting public comments on all aspects of the proposals, but particularly to the potential impacts that these actions, if approved, may have on fish, wildlife, their habitats or the environment. Another area of specific concern is the

potential effects of the proposed actions on subsistence uses and needs on the ANWR coastal plain. The FWS is soliciting comments as to these potential effects, the availability for exploration of alternate areas within the coastal plain, and alternatives to the proposed activities which would reduce or eliminate the use (by these proposed activities) of areas within the coastal plain needed for subsistence purposes. Public hearings will be used to gather testimony on the above concerns. These hearings will also be used to satisfy the requirement of ANILCA Section 810 (a)(2) to hold a public hearing in the vicinity of the area involved to gather testimony on the potential effect of the proposed actions on subsistence as noted above. Times and locations of these public hearings are noted below.

All of the applicants have certified that their activities will be conducted in a manner consistent with the standards of the ACMP as directed by Section 307(c) (3) of the Coastal Zone Management Act of 1972, Pub. L. 92–583. The State of Alaska is currently reviewing the proposals to determine if the activities are consistent with the ACMP standard, 6 AAC 80. Interested persons are requested to submit comments to the State of Alaska at the address given above. The deadline for submitting these comments is July 27, 1984.

Public Hearings

Monday, July 16, 1984

Anchorage, Alaska

Location: Regional Office, U.S. Fish and Wildlife Service, Room 1110, 1011 East Tudor Road
Time: 7:00 p.m.

Tuesday, July 17, 1984

Kaktovik, Alaska

Location: City Council Meeting Hall
Time: 7:00 p.m.

Wednesday, July 18, 1984

Fairbanks, Alaska

Location: Federal Building and Courthouse, Room 236, 101 12th Avenue
Time: 7:00 p.m.

Thursday, July 19, 1984

Arctic Village, Alaska

Location: Community Hall
Time: 7:00 p.m.

Proposed Activities

The texts of the exploration plans and the revision request submitted to the FWS in accordance with ANILCA Section 1002 and 50 CFR Part 37 are presented below:

Dated: June 25, 1984.

Harold J. O'Connor,

Acting Director, U.S. Fish and Wildlife Service.

Note.—Maps accompanying the following Plans filed with the original documents.

GEOPHYSICAL EXPLORATION PLAN FOR THE COASTAL PLAIN OF THE ARCTIC NATIONAL WILDLIFE REFUGE, ALASKA

Submitted by: ARCO Alaska, Inc.
Submitted to: Regional Director, Region 7, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, on June 4, 1984.

Arctic National Wildlife Refuge—Coastal Plain, ARCO Seismic Program

EXPLORATION PLAN

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Note.—Items 1 through 15 are references to the items required to be contained in an Exploration Plan by 50 CFR 37.21(d) (1) through (15) of the final rules governing geological and geophysical exploration of the coastal plain of the Arctic National Wildlife Refuge, as published in the **Federal Register**, April 19, 1983. The description of each of these 15 items in this Table of Contents is intended as a summary of the requirement of each of the 15 elements of 50 CFR 37.21(d) (1) through (15), and the text directly addresses those 15 elements in detail. It must be noted that 50 CFR 37.21(d) (15) requires an applicant to submit "such other pertinent information as the Regional Director may reasonably require". ARCO Alaska, Inc. delivered a letter dated February 2, 1984 to the Regional Director requesting that any additional information required for this Exploration Plan be specified in order to be included herein. The further information requested by the Regional Director in response to that letter is discussed in Item 15 of this Exploration Plan.

June 4, 1984.

Dr. Robert Putz,
Regional Director, U.S. Fish & Wildlife Service, 1011 Tudor Road, Anchorage, AK 99503.

Dear Dr. Putz:

Geophysical Exploration Plan for the Coastal Plain of the Arctic National Wildlife Refuge

ARCO Alaska, Inc., hereby submits the subject Exploration Plan pursuant to 50 CFR Part 37.

The proposed program is generally designed to infill and to complete the 1984 GSI ANWR group program in which ARCO is a participant. The preliminary results of that activity indicate that the subsurface geological structure of the coastal plain area is too complicated to be reasonably interpreted on the basis of the six-by-twelve mile grid approved last year.

ARCO will reconfigure its proposed 760 mile program in consultation with you as necessary to complement the newly acquired data base. Although this Plan addresses only the specifics of field activities proposed for the period of January through early May 1985, this Plan also extends to any similar activities that may be necessary for the period ending May 31, 1986. Specific details of 1986 activities would of course, depend upon the outcome of the 1984 and 1985 programs.

We appreciate your consideration of our proposed Exploration Plan.

Sincerely,

Stephen Gajewski

Item i

Alaska Coastal Management Program

ARCO Alaska, Inc. hereby certifies, to the best of our knowledge, that the proposed activity, as described in this Exploration Plan, complies with the State of Alaska's approved coastal management program and will be conducted in a manner consistent with such program.

Item 1

Responsible Official

The proposed activity described in this Exploration Plan will be conducted by ARCO Alaska, Inc. (hereinafter called "ARCO"), a wholly owned subsidiary of the Atlantic Richfield Company. The responsible official for conduct of this operation is Mr. G. T. Wilkinson, Executive Vice President, ARCO, P.O. Box 100360, Anchorage, AK 99510–0360.

Item 2

Participants

ARCO is submitting this plan on behalf of itself and of an unspecified group open to all interested parties in accordance with 50 CFR 37.13.

Item 3

Evidence of Technical and Financial Ability

ARCO is both technically and financially able to conduct the proposed activities described in this Exploration Plan. ARCO has in excess of two thousand employees in the State of Alaska and maintains a large and highly qualified staff of petroleum explorationists.

Financial Ability

As evidence of financial ability, ARCO submits the following table reflecting the Consolidated Balance Sheets for 1981, 1982, and the first three quarters of 1983 of its parent corporation, the Atlantic Richfield Company. These tables are excerpted from the Atlantic Richfield Company 1982 Annual Report and 1983 Third Quarter Report. Copies of these reports are available up request.

Table 1.—Consolidated Balance Sheet

[Millions of dollars]

Assets	1st 3 Quarters 1983	1982	1981
Current assets:			
Cash	$100	[illegible]	$114
Short-term investments	595	473	398
Accounts receivable	1,244	1,313	1,995
Inventories	1,377	1,572	1,753
Prepaid expenses and other current assets	224	122	189
Total	3,520	3,782	4,449
Investments and long-term receivables:			
Affiliated companies accounted for on the equity method	1,227	1,110	894
Other investment and long-term receivables, at cost	628	582	325
Total	1,855	1,692	1,219
Fixed assets:			
Property, plant and equipment, including capitalized leases	24,589	22,746	19,845
Less accumulated depreciation, depletion and amortization	7,884	6,975	6,169
Total	16,705	15,770	13,676
Deferred Charges	376	369	388
Grand total	22,456	21,633	19,732

Liabilities and Shareholders' Equity

Current liabilities:			
Notes payable	$121	$261	$327
Accounts payable	1,614	2,046	2,097
Taxes payable, including excise taxes collected from customers	305	117	341
Long term debt and capital leases obligations due within one year	275	319	463
Advances and production payments due within one year	77	25	58
Accrued interest	146	140	119
Other	372	367	381
Total	2,914	3,276	2,786
Long-term debt	3,654	3,501	3,239
Capital lease obligation	481	400	445
Advances and production payments	1,106	1,170	772
Deferred income taxes	2,994	2,704	2,302
Other deferred liabilities and credits	837	713	524
Shareholders' equity:			
Capital stock	668	655	641
Capital in excess of par value of stock	1,243	1,219	1,081
Retained earnings	8,701	8,025	6,943
Foreign currency translation	(54)	(30)	[illegible]
Total	10,548	9,869	8,665
Grand total	22,456	21,663	19,733

Technical Ability

ARCO has been active in Alaska for over twenty-five years and during this time has conducted extensive operations on the North Slope. ARCO has obtained and complied with the conditions of hundreds of permits for North Slope activities, ranging from geophysical exploration to development of the Prudhoe Bay and Kuparuk oil fields. ARCO maintains an Environmental Conservation Department and a Regulatory Compliance Engineering section to ensure that all operations are carried out in compliance with all permit conditions.

As further evidence of ARCO's technical ability to conduct the geophysical survey program outlined in this Exploration Plan and as a reference for verifying ARCO's past compliance with permit stipulations, the following three tables are submitted which list the twenty-five geophysical surveys which ARCO has operated from 1965 through 1983.

TABLE 2.—ARCO OPERATED GROUP GEOPHYSICAL PROGRAM

Year	Contractor	General area covered	Mileage acquired	Permit/agency No.
1974	Western Geophysical	Beaufort Sea ice	94	N/A
1975	GSI	North Slope-Beaufort Sea	200	N/A
1977	do	Beaufort Sea	396	OCS 76-73
1978	Western Geophysical	do	150	MLUP 78-145
1979	do	do	385	MLUP 78-144
1980-81	GSI	North Slope	1,289	MLUP 80-245
1983	do	Prodhoe Bay Unit	217	MLUP 82-199
Total ARCO Operated Group Seismic Survey Miles.			2,731	

MLUP—State of Alaska Permits.
TUP—Bureau of Land Managements Permits.
OCS—United States Geological Survey/Minerals Management Service Permits.
N/A—Permit number not available or assigned.

TABLE 3.—ARCO PROPRIETARY GEOPHYSICAL PROGRAMS

Year	Contractor	General area covered	Miles acquired	Permit/agency No.
1965	Ray-Flex	Southern North Slope	178	N/A
1969	GSI	Southeastern North Slope	17	N/A
1970	Digicon	N. Prudhoe Bay	62	N/A
1971	GSI	Flaxman Island, Pt. Thomson Area	61	N/A
1975	Western Geophysical	E. Prudhoe Bay Detail	72	N/A
1976	United Geophysical	Gull Is. Detail	10	N/A
1978	Western	Pt. Thomson Detail	300	MLUP 76-29
1981	GSI	NPRA Area	178	TUP F-72966

TABLE 3.—ARCO PROPRIETARY GEOPHYSICAL PROGRAMS—Continued

Year	Contractor	General area covered	Miles acquired	Permit/agency No.
1982	Norpac Exploration Co. Inc	NPRA Area	237	TUP AK 029-SPE-016
1983	Norpac Exploration Co. Inc	NPRA Area	370	TUP F-81236
Total Proprietary Seismic Survey Miles.			1,483	

MLUP—State of Alaska Permits.
TUP—Bureau of Land Management Permits.
OCS—United States Geological Survey/Minerals Management Service Permits.
N/A—Permit number not available or assigned.

TABLE 4.—ARCO JOINT GEOPHYSICAL VENTURES (ARCO OPERATED)

Year	Contractor	General area covered	Miles acquired	Permit/agency No.
1970	Seiscom Delta	Canning River	13	N/A
1979	Western	N. Prudhoe Detail	All	N/A
1981	GSI	Upper Kavik Detail	250	MLUP/NS 80-256, 326
1981–82	GSI Western	Canning Detail/Uplands Canning North Slope	232	MLUP 80-256, 304, 330
1982	Western	Arctic Slope, Franklin Bluffs	151	MLUP 81-178, 219
1982	Western	N. Prudhoe/Gwydyr	75	MLUP 81-216
1982	Western	Kuparuk Swath	233	MLUP 81-217
1983	Western	Milne Point	50	MLUP 83-22
Total ARCO Operated Joint Venture Seismic Survey Miles.			1,002	
Grand total of Tables 2, 3, and 4.			[1] 5,216	

MLUP—State of Alaska Permits.
TUP—Bureau of Land Management Permits.
OCS—United States Geological Survey/Minerals Management Service Permits.
N/A—Permit number not available or assigned.

[1] Seismic Survey Miles.

Item 4

Activity Map/Program Scope

A 1:250,000 scale and an 8½" x 11" one-page topographic program maps, attached to and made a part of this Exploration Plan, illustrate locations of existing and proposed geophysical profiles, general travel routes to program areas, and Special Areas and sites identified by the Regional Director as potentially being impacted by the proposed activity.

The program map depicts the 1984 GSI ANWR group survey as broken lines and the proposed 1985 ARCO group program as solid lines. Program proposed herein is generally designed to infill and to complete the 1984 GSI ANWR group program in which ARCO is a participant. The preliminary results of that activity indicate the subsurface geological structure of the coastal plain area is too complex to be reasonably interpreted on the basis of the six-by-twelve mile profile grid approved last year. While the approximately north-south east-west profile orientation proposed in the western coastal plain is appropriate for the structural configuration of that area, it may not represent the optimum orientation in the eastern coastal plain. Preliminary 1984 data from the eastern coastal plain are not available at this time and the preferred profile orientation in the area has yet to be determined. Any deviation from orientation depicted on the enclosed program map will be determined in cooperation with the Regional Director and identified in the Plan of Operation. Total program is not expected to exceed 760 miles requiring 85 to 100 days to complete.

Two seismic crews with supporting vehicles will enter the ANWR coastal plain near the mouth of the Canning River and/or from the sea ice along the coast. Crews will be deployed to geographically separated operational areas as determined by program priorities. Upon termination of the season's activities, all equipment will be removed to a location off the ANWR coastal plain.

If the additional information is deemed necessary by participants and by the FWS, concurrent gravity and shallow subsurfacee sampling programs will be provided. Personnel and equipment for these projects will be attached to the seismic field crews.

Fuel resupply will be by cat train along routes selected to minimize the potential for surface damage. Fuel storage sites along the coastline are being considered and, if utilized, will be identified following consultation with the Regional Director. These sites will be addressed in the Plan of Operation. travel from fuel storage sites to field crews will be restricted as much as possible to those routes traveled by the crews during daily conduct of exploratory activities.

Note that this Exploration Plan addresses only the specifices of exploratory field activities proposed for the period from January through early May 1985. This plan extends also to encompass any similar activities that may be necessary and proposed for the period ending May 31, 1986. Such activities will be essentially identical to those described herein, but can not be specifically described until assessments of the 1984 and 1985 programs are made and the need for a 1986 program established.

Item 5

Description of Exploratory Methods and Techniques

Five tracked Vibroseis® (®Registered Trademark of Conoco Inc.) units will be utilized on each of two crews to acquire reflection seismic data. This equipment allows operations to continue in more

adverse weather conditions than do drills and is independent of drilling conditions which, when difficult, slow production rate. Risk of injury to personnel is reduced by the use of Vibroseis® also. Each crew will include two tracked recording vehicles to maximize production rate. Provision of the fifth vibrator unit and the second recording unit allows system redundancy necessary to continue operations during short term equipment failures.

The Vibroseis® reflection seismic technique utilizes a closely spaced group of five vehicle-mounted vibrator units moving along a line of traverse. At established intervals (usually 15 to 25 feet), the units are halted and connected to the earth's surface by means of retractable plates. Controlled frequency energy impulses are then transmitted into the subsurface. These impulses reflect from the subsurface strata and are received by small geophones connected to a seismic cable laid along the line of traverse. The reflected impulses are electronically transmitted to a vehicle-mounted recording unit where they are recorded on magnetic tape for subsequent processing and analysis. Recorded reflection travel times and knowledge of the geophone configuration allow the user to map the subsurface geologic structure beneath the line of traverse. Six second records will be acquired. Deeper information is not required and is of questionable reliability. A 96 or 120 channel recording unit will be utilized allowing up to sixty fold multiplicity.

Two crews will be deployed to assigned areas of the coastal plain. Each will consist of approximately 28 to 31 vehicles, 15 support trailers, and 44 to 49 individuals, and will move almost daily to accompany current field operations.

Assigned to each seismic crew, should informational needs warrant, will be one vehicle-mounted drill rig and crew which will recover and collect samples from shallow test holes drilled at variable intervals along each seismic profile. Test hole spacing and depth will be determined from information needs and by equipment capabilities. Samples and cores from each test hole and driller's logs will be made available to the government, as will the results of any geotechnical, geological, and geochemical sample analyses performed for the group.

A substantial quantity of gravity data has been acquired across the coastal plain of the ANWR. If in the judgement of group participants and the USFWS these existing gravity data are inadequate, a two-person gravity party with vehicle and gravity meter will be attached to each seismic crew. Gravity values will be recorded at intervals of approximately one-quarter mile along each seismic profile.

Each crew will progress at a rate of 1.5 to 6 miles per day, depending upon topography, snow cover, weather conditions, and acquisition parameters. Survey markers will be removed behind each crew.

Travel routes adjacent to and within the coastal plain cannot be precisely defined but will be over ice when appropriate and through authorized corridors along and generally parallel to the seismic profiles, thus minimizing crossings of major rivers. Routes will be scouted and marked by Field Monitors when necessary and crew personnel will be provided appropriate instructions. Casual travel will be prohibited. Personnel will be provided pertinent information so as to avoid travel across Special Areas and protected sites.

Item 6

Application of Techniques To Avoid Duplication of Exploratory Work

Utilization of optimum acquisition and processing techniques and rigidly enforced quality control practices will maximize data quality, thereby minimizing the need to resurvey profiles and avoiding duplication of effort. Profile locations identified in this Exploration Plan are selected to complement data acquired by the 1984 GSI ANWR Exploration group. Locations are tentative, however, being based upon as yet incomplete results of that program. Final profile locations will be presented in November with the Plan of Operation by which time the 1984 data will have been analyzed in greater detail. The intent of the proposed program is to complete the 1984 program and to acquire additional data needed to evaluate areas of special interest.

Group participation also negates the need for duplicatory activity as competing interests share in the use of equipment, data, and information.

Some duplication of surface activity will be necessary where incomplete 1984 profiles will be continued by 1985 program. Depending upon the length of the recording offset, as much as three miles of surficial duplication may be necessary at each point of continuation to assure common subsurface coverage beneath that point. Seven such locations are proposed, but four are located along the Canning River where fish overwintering areas may preclude all activity.

Completion of the 1984 program in this area is desirable due to the area's proximity to well control and other seismic data on adjacent state lands. Consequently, we propose to duplicate approximately ten to fifteen miles of profiles ANV84–8 and AN84–8 which are now separated by a 3.75 mile gap due to proximity of fish overwintering areas. Such duplication, if allowed, might provide information about the relative effects of shothole and vibrator techniques. Evidence of surface activity in this area might be short lived, however, as a portion of the area is within the Canning River flood plain. Acquisition of this profile will be contingent upon an overwintering determination by the USFWS.

Item 7

Work Schedule

Upon approval of this Exploration Plan, ARCO, in cooperation with the Regional Director, will identify as accurately as possible all environmental, subsistence, cultural, and land title issues having any significant effect upon the proposed program. Technical specifications will be complied and submitted to prospective contractors with bids due approximately July 1, 1984. A contractor will then be selected and the Plan of Operation will be formulated. The USFWS will be offered the opportunity to participate in the contractor selection process if deemed necessary.

Following instrument tests, environmental briefings, and surface inspections personnel and equipment will enter the northwest coastal plain in early January 1985, or as soon as adequate snow cover exists and the Canning River can be safely traversed. Survey crews will disperse to operational areas, followed by field crews. Field data acquisition will commence in each area on or about January 10, 1985, and will continue until program completion or until deteriorating surface conditions require removal of personnel and of equipment to a summer storage site(s) west of the ANWR. Special areas subject to surface restrictions will be traversed in compliance with Title 50 CFR 37.32 in order to avoid interference with indigenous biological and cultural values.

Data processing will begin immediately upon data acquisition and will continue until approximately August 1, 1985, when all final processed results of the program will be available. Raw data and preliminary and final processed data will be submitted to the Regional Director at regular periodic intervals and as available throughout the course of the program. This is to

assure that as much information as possible can be included in the Secretary's Report prior to its submittal to Congress. Data interpretations will be available to the Regional Director in compliance with Title 50 CFR 37.53.

Item 8

Communication Network

A communications network will be designed by ARCO's telecommunications group in conjunction with the selected contractor(s). Commercially available satellite radio communication facilities, side-band radio channels between field crews and base camp, FM radio capabilities between field camps and vehicles, and VHF radio communication between all ground stations and supporting aircraft will be established and maintained. In addition, a radio-telephone link to provide additional direct communication between field crews, Deadhorse, and other locations outside of the program area will be established, if possible.

Item 9

Equipment, Facilities and Access

Approximately 28 to 31 tracked vehicles and 15 sled and/or track-mounted trailers will be assigned to each field crew. Trailers are towed in strings of two to eight units depending on weight and contents and are designed to provide subsistence, maintenance, and communication facilities for the approximately 44 to 49 individuals assigned to each crew. Each camp is self-sustaining for a period of ten to fourteen days and includes vehicles equipped with survival equipment. Additional accommodations and vehicles will be available for Field Monitors as deemed reasonable and necessary by the Regional Director. The following is a typical list of equipment used by each crew:

(A) Vehicles

Tracked Vibrator Units	5
Tracked Recording Units	2
Tracked Cable Vehicles (5-man cab)	5
Tracked Survey Vehicles	3
Tracked Party Manager Vehicle (5-man cab)	1
Tracked Client Representative Vehicle (5-man cab)	1
Tracked Utility Vehicle (with boom)	1
Tracked Diesel Tractors	5
Tracked Water Tank Vehicle	1
Tracked Shop Maintenance Vehicle	1
Tracked Vibrator Maintenance Vehicle	1
Snowmobiles (utility)	2-3
Tracked Drilling Rig (optional)	1
Tracked Gravity Vehicle (optional)	1
Total	28-31

Field crews will be supported by either one or two fuel trains, depending upon the resupply plan selected. It may prove more efficient to utilize one small fuel train per field crew than to support both crews with a single large train.

(B) Fuel Train(s)

Tracked Diesel Tractor(s)	1-2
Fuel Trailers	4-6
Survival Trailer(s)	1-2
Total	6-10

(C) Camp Equipment

Sleeper-Office Trailers	7
Kitchen-Diner Trailer	1
Wash Trailer	1
Snow Melter Trailer	1
Incinerator Trailer	1
Fuel Storage Trailers	3
Total	14

The major support facility will be located at Deadhorse where a field processing and administrative center will be established. Communication and air support will be controlled from this facility. Medical support will be available at established Prudhoe Bay facilities and a certified medical technician will be present on each crew.

Except for the seasonal mobilizaion and demobilization of crews, access will be primarily by light aircraft to temporary snow airstrips near each camp. Fuel resupply will be the major exception in that fuel will be hauled overland from depot sites along the coast or west of the coastal plain. This phase of the program will be addressed in greater detail in the Plan of Operation after consultation with the Regional Director.

Each field crew will consist of approximately 44 to 49 individuals and every key field employee will be required to have previous arctic experience and arctic survival training. The following is a list of a typical crew complement:

Field Crew

Client Representative	1
Project Biologist (serves 2 crews)	1
Party Manager	1
Clerk	1
Observers	2
Junior Observers	2
Surveyor	1
Assistant Surveyor	1
Survey Helpers	2
Vibrator Operators	5
Vibrator Mechanic	1
Cable Helpers	13
Cable Repairmen	2
Mechanic	1
Mechanic Helpers	2
Cook	1
Cook's Helper	1
Camp Attendant	1
Tractor Operators	5
Driller (optional)	1
Driller's Helper (optional)	1
Geological Engineer (optional)	1
Gravity Meter Operator (optional)	1
Gravity Party Chief (serves two crews, optional)	1
TOTAL	44-49

Item 10

Hazardous Substance Control and Contingency Plan

Fuel and petroleum-based products constitute the major hazardous substances to be utilized in performance of this Exploration Plan. Offloading, storage, handling, and transfer will be in accordance with the requirements of 50 CFR 37.31(e)(1), (3) and (5). Prevention of fuel spills and leaks will be emphasized to personnel. Vehicles and equipment will be inspected and maintained to minimize the occurrence of fuel and hydraulic system leakage.

A Plan of Operation will be written in accordance with all appropriate regulatory requirements governing contingency plan content. A detailed Hazardous Substances Control and Contingency Plan (HSCCP) will be developed and submitted with the Plan of Operation. The following is a general discussion of the contents of the HSCCP, hereinafter referred to as Plan.

The Plan will contain three major sections. A general information section (1) will contain background information on the operation, type and location of activities, time periods covered, and the permittee's environmental compliance policy and commitment to prevent and properly respond to any and all spills. The Plan will contain information concerning required spill response and prevention equipment (2) which is to be located at the various activity sites, design criteria for the camp facilities operating equipment fuel storage sites, proper operating procedures for fuel transfer, and a description of the training to be conducted to assure implementation of the Plan. The spill response and notification procedures section (3) will include a response organization list of required persons/agencies to be immediately notified, cleanup and disposal procedures, environmental/cultural considerations, restoration, and required written reports.

Item 11

Anticipated Environmental Impacts—Mitigating Measures

This Exploration Plan covers activities which will occur only during the winter months and it is anticipated that there will be minimal, if any, impact on the refuge's wildlife. by implementing the requirements of 50 CFR 37.31 as well as by utilizing the standard mitigating measures employed by the industry during many years of operating successfully on Alaska's North Slope it is anticipated that impacts on the

environment of the Arctic National Wildlife Refuge (ANWR) will also be minimal.

ARCO plans to use established measures for which environmentally sound operations have been developed. These measures comply with existing regulations and are described in general terms as follows:

- Use of low surface pressure vehicles, travel over snow covered ground, prohibition of casual vehicle use.
- Vibrator units will be arrayed on or off profile in a manner designed to maximize protection of vegetative mat.
- Travel routes will be scouted, marked, and traversed as required by Field Monitors.
- Use of snow melters for camp water where approved surface sources are not available.
- Use of Alaska Department of Environmental Conservation (ADEC) approved greywater treatment systems and incinerators.
- Provisions for fuel spill prevention, containment and cleanup and use of double wall bladders and/or tanks.
- Establishment of procedures for garbage and waste control.
- Prohibition of feeding, harassing or taking wildlife.
- Protection of fish overwintering areas.
- Adherence to aircraft overflight restrictions.

Title 50 CFR 37.32(a) and (d) are not applicable as the proposed exploratory activities will not occur during the caribou calving and snow goose staging seasons.

The Sadlerochit Spring and Creek areas will be avoided in accordance with the requirements of 50 CFR 37.32(g). Exploratory work proposed in this plan will be completed in the identified muskoxen calving areas prior to the onset of calving season or under guidance of the USFWS Field Monitors, in accordance with the requirements of 50 CFR 37.22(b).

Brown bear, polar bear, and other identified denning sites will be avoided by rerouting traffic and seismic traverses in accordance with the requirements of 50 CFR 37.31(b)(11) and 37.32(c).

The Regional Director shall be provided with opportunities to conduct environmental and other pertinent briefings of the project personnel. Camp accommodations and vehicles shall be furnished for designated Field Monitors and other authorized representatives in accordance with the requirements of 50 CFR 37.42.

Winter exploration activities are expected to minimize potential conflicts with subsistence use. additionally, potential conflicts of exploratory activities and subsistence will be minimized by project scheduling. ARCO will consult the Regional Director and others as necessary regarding winter subsistence activities.

The seismic survey lines, camps and fuel transfer sites will be located to avoid known archaeological sites identified by the Regional Director. Sites that could be impacted will be marked in advance if necessary. Sites discovered during exploration will be marked, reported and avoided. Since the vegetative mat will be frozen and snow cover adequate before vehicles are allowed on the coastal plain, impacts to undetected sites will be mitigated, as is consistent with the requirements of 50 CFR 37.31(d)(1) and 37.31(d)(2).

Item 12

Monitoring of Environmental Impacts

ARCO is fully committed to conducting the proposed operation in a manner which avoids significant adverse effects on the Refuge wildlife and habitat, and is satisfactory to the Regional Director. A number of steps will be taken to monitor the proposed activity to assure compliance with all regulatory and permit requirements.

ARCO will establish clear lines of authority to manage all aspects of contract work and services.

It will be the duty of every individual associated with the proposed activity to see that work is performed in an environmentally acceptable manner. It will be clearly understood by all company and contractor personnel that prudent operating and permit requirements must be observed.

ARCO will have overall responsibility for the proposed project and compliance monitoring. The actions of each individual crew will be directed and evaluated onsite by a Client Representative responsible to ARCO. Reporting to each of the Client Representatives will be a Party Manager whose major duties will include daily management and inspections. In addition, a Project Biologist knowledgeable of the area will be retained to review the Plan of Opeation and provide assistance to ARCO, Client Representatives, and Party Managers. All will work closely with Field Monitors to assure that activities are conducted in an environmentally acceptable manner.

The following is a description of duties of the above identified positions in terms of project monitoring and compliance with all regulatory and permit requirements. The individuals to be assigned to these positions will be designated in the Plan of Operation.

Client Representatives. The Client Representative will be an individual qualified as a senior geophysicist with arctic field experience. Each will report directly to ARCO and will be responsible for directing and monitoring the activities of the particular crew to which each is assigned. The Client Representative will be thoroughly knowledgeable of all regulatory requirements contained in 50 CFR Part 37, the Special Use Permit Conditions and other federal, state and local laws, regulations and permit conditions applicable to the project.

Party Manager. Each crew will have a Party Manager whose major duties will be to directly supervise camp and field operations. A formal checklist will be developed and submitted in the Plan of Operation indentifying potential problem areas associated with the camp, vehicles, fuel facilities, etc. This checklist will be completed, signed and submitted to the Client Representative daily. The Party Manager will monitor fueling and other fuel transfer operations to assure implementation of proper practices and procedures, and to assure that any spills are contained, cleaned up and reported to his Client Representative.

Project Biologist. The services of a Project Biologist knowledgeable of the area will be available to ARCO and the Client Representative of each crew on an as needed basis. The Project Biologist will coordinate with the Regional Director, his staff and Field Monitors and provide information and guidance to the project. As needed, the Project Biologist will monitor the project operations and bring to the attention of ARCO and the Client Representatives potential or existing problem areas. In addition, the Project Biologist will, upon completion of the program, survey the activity area and determine any necessary rehibilitation efforts required as a result of the program.

ARCO will assure, through monitoring procedures, that the operation's activities are in compliance with all regulatory and permit conditions. ARCO will:

(1) Assure compliance with regulatory and permit conditions applicable to the project by:

- Ensuring that all individuals are instructed as to ARCO's environmental compliance policy.
- Providing opportunities for the Regional Director to conduct environmental and other pertinent briefings to any and all personnel involved in field operations.

- Providing a copy of 50 CFR Part 37 to each employee involved with the proposed project in accordance with 50 CFR § 37.33.
- Furnishing lodging, food and reasonable use of communications and surface/air transportation systems to the Field Monitors and other representatives identified by the Regional Director.
- Preparing and submitting progress reports to the Regional Director as prescribed. A synopsis of actions taken to assure compliance with regulatory and permit conditions will be included in the reports.

(2) Assure protection of biological resources by:

- Planning operations to avoid disturbance of fish overwintering areas, riparian willow stands and other sensitive areas identified by the Regional Director.
- Designing project operations in a manner that will not unduly harass wildlife or impede passage and movements of large mammals.
- Planning and monitoring the project to be consistent with any identified Special Area provisions.
- Submitting plans for rehabilitation of disturbed surface areas for approval to the Regional Director.

(3) Assure protection of cultural resources by:

- Planning operations to avoid archaeological sites identified by the Regional Director.
- Making the necessary arrangements to have cultural sites marked as directed by the Regional Director.
- Reporting to the Regional Director any cultural resources or materials discovered during the course of the project and providing steps to be taken to protect that resource/material pending evaluation by the USFWS.

(4) Assure implementation of the HSCCP and obtain approval from the Regional Director for the location of all fuel storage areas and temporary structures.

Item 13

Statement of Intent To Comply

ARCO hereby certifies that, if authorized to conduct exploratory activities on the coastal plain of the Arctic National Wildlife Refuge, the activities shall be conducted in compliance with the requirements of 50 CFR Part 37, the Special Use Permit, the approved Exploration Plan, Plan of Operation, and all reasonable stipulations, demands, and orders issued by the Regional Director of the USFWS.

Item 14

Quality Control Program

ARCO and potential participants in the proposed program seek only to acquire quality data in a quantity and in a manner necessary to satisfy the requirements of the ANILCA. Under this proposal, the ARCO technical staff and participating companies will be responsible for designing and implementing the quality control program for data acquisition and processing. Primary responsiblity for all aspects of the proposed activity will reside with ARCO.

Quality Control standards and practices are well established by industry practice in the Arctic and little variance from the norm is anticipated. Arco's intent is to require all major field instrument components to be of identical manufacture with identical characteristics. A complete inventory of spare parts and supplies will be maintained by field crews at the Deadhorse facility.

The geophysical system (vibrators, geophones, and recording units) will be field tested and calibrated to assure response similarity between field crew units. The field-testing will use identical source, receiver, and recording parameters. The field recordings will be field-processed, displayed, and analyzed on-site and initial parameters will be identified by ARCO Operations Coordinators expert in data acquisition technology. Fjeld test records will then be transferred to a processing center for more detailed analyses and final acquisition parameters will be selected. ARCO Operations Coordinators and Geophysicists will regularly inspect all operations to ensure proper technical performance by contractor(s). Most importantly, ARCO personnel will supervise all significant field tests.

At the beginning of the season, crews will be deployed to areas of responsibility and, upon arrival, will conduct an independent systems check and field acquisition tests to verify that selected parameters are indeed appropriate for the operational area. This is to ensure that system performance remains within tolerances and that selected parameters are appropriate for local geological conditions. Should local geology require modification of selected parameters any parameter change will be documented relative to the initial systems test.

Diagnostic instrumentation tests will be recorded at specified intervals and analyzed and retained to monitor instrument performance. Complete and detailed records of system performance on a record-by-record basis will be maintained. Appropriate real time adjustments of the system components will be made to overcome the effects of wind, ice, and other deleterious influences.

The Client Representative assigned to each field crew will have primary responsibility to monitor data quality. He may require the crew to temporarily terminate data acquisition and to conduct recording and experimental tests to ensure that data quality remains acceptable and that system response remains within tolerances. Any variance exceeding established rigid tolerances at any test point will result in data acquisition shut-down until the problem is corrected.

Digital tapes containing raw data will be transferred regularly by aircraft to the Deadhorse support facility for quality control purposes and then transferred in three to seven day intervals to a processing center for final processing. The seismic data will be processed by the same contractor who conducts the seismic field survey to assure system and organizational compatability.

Processing geophysicists will critically analyze data quality throughout the processing phase in an attempt to produce the highest quality final product. Through testing procedures they will determine the processing parameters that respond best to the characteristics of the field-processed data. This will represent a second level of quality control.

All gravity data and geological samples acquired as a result of this program will be processed, analyzed, and interpreted by selected contractors other than the seismic contractor due to the unique characteristics of each discipline. Data and results will be distributed to program participants as requested and to the Regional Director pursuant to 50 CFR 37.53.

Finally, the raw data and processed and analyzed data and information will be transferred as appropriate to each participant for individual use. ARCO and participants may reprocess all or part of the data set through proprietary processing systems. These reprocessed data will be available to the USFWS under 50 CFR 37.53. This will represent a third level of quality control available to the Service.

The entire testing, acquisition, and processing quality control process will be carefully documented and this record will be available to the Secretary of the Interior pursuant to 50 CFR 37.52.

Item 15

Other Pertinent Information

This Exploration Plan also includes "other pertinent information" that the Regional Director, in a letter dated 24 February, 1984, referenced by the USFWS as "PSS," asked to be added. This letter, received by ARCO February 29, 1984, requires the following additional items which are submitted herewith.

(1) A one-page (8½" x 11") map, suitable for publication, that depicts the information in 50 CFR 37.21(d)(4).

(2) A transparency of the 1:250,000 scale program map.

(3) One double-spaced copy of the Exploration Plan in addition to the three single-spaced copies previously required.

(4) A statement of consistency with the State of Alaska's coastal management program.

(5) A check in favor of the USFWS in the amount necessary to cover expected Exploration Plan review costs.

These five items are the only additional items that the Regional Director has requested prior to submission of the Exploration Plan. ARCO is prepared to provide any "other pertinent information" relating to this Exploration Plan as the Regioinal Director may reasonably require.

CGG AMERICAN SERVICES, INC.

June 1, 1984.

Exploration Plan

Dr. Robert E. Putz,
Regional Director, Fish and Wildlife service, 1011 East Tudor Road, Anchorage, Alaska 99503.

Dear Dr. Putz: CGG American Services, Inc. (CGG) hereby applies for a special use permit to perform a group supported seismic survey during the time period between October 1, 1984 and May 31, 1986, on the Arctic National Wildlife Refuge (ANWR) coastal plain. We appreciate your consideration of our application and the attached exploration plan.

Sincerely,

Norbert Blot,
District Director, Pacific Coast and Alaska.

I. Purpose of Exploration Plan

CGG's submission of this exploration plan is based on the principle that the Public, the Fish and Wildlife Service (FWS), and the exploration industry will be best served by restoring competition between seismic contractors in the effort to evaluate the potential hydrocarbon reserves of the ANWR. Competition ensures exploration by highly motivated people using the best technology available in the most effective operations consistent with protecting the environment. It allows use alternate strategies whenever it is not possible to ascertain an optimum approach, and promotes a sense of fairness among all concerned with the project.

Simultaneous seismic surveys in the ANWR by different contractors raise three important issues: Data uniformity, duplication, and monitoring. Uniform data can (and must) be obtained by proper selection of recording and processing parameters. Duplication of survey lines is environmentally unacceptable and is simply not necessary. Monitoring more than one contractor will require increased effort by the FWS, but the extra cost is small compared with the benefits of competition.

Last year the FWS reviewed many exploration plans, several of which proposed similar survey grids, and approved, with revisions, one of those plans. The survey grid orientation is not established by the lines acquired. Additional reconnaissance data is needed for the required resource evaluation; maintaining the existing grid will conserve field effort and minimize the environmental impact.

II. Exploration Plan Application Requirements (50 CFR Part 37 Para. 37.21)

A. CGG has met with the Director, the former Regional Director, and other members of the FWS staff, discussing this and previous application

B. This plan is for the time period between October 1, 1984, and May 31, 1986

C. General Plan

Because last year's Record of Decision infers a possible rejection of all exploration plans which do not offer complete ANWR survey with a uniform grid, we have propose a complete infill survey. This is very similar to what we proposed last year, after adjusting for what had not been acquired. However, while CGG is fully capable of fielding two or thre crews for the ANWR, we urge that no single contractor again be awarded a monopoly over this important survey area.

Explorationists generally believe a two mile by two mile grid will eventually be necessary to reduce the risk of completely missing important subsurface structures. Uniformly infilling the current six by twelve mile grid will yield a three by six mile grid which cannot be efficiently change to a two by two mile grid. If a two by two mile grid is necessary, survey plans must accommodate it this year.

Final determination of the coming survey should await preliminary interpretation of the acquired data. Evidence of significant structure may require a small, detailed survey.

We suggest one 192-channel seismic recording crew for an infill survey of approximately 505 line-miles, and request 170–250 line miles in a designated area for the 1985 season. The remaining portion can be acquired by other contractors this season, or, if the FWS prefered, CGG would complete the survey in the 1986 season. We are able to provide two crews to complete the survey in the 1985 season but urge that no contractor have a monopoly. It is premature to propose a detailed survey because the data is not yet available for interpretation. It is not in either industrys' interest nor in the FWS's interest for CGG to propose an alternate grid. It is the responsibility of the FWS and/of the Interagency Review Pannel to determine what grid should be recorded this coming season. Offering to the industry two or more overlapping grids could result in inadequate support for any survey. The way to reintroduce competition into ANWR exploration at this time is to allocate areas. The evidence is plain that industry will support the competition that would result in lower exploration costs, and rduce the probability that North Slope exploration would ever again be dominated by a single seismic contractor.

Vibrators are the proposed seismic energy source, but CGG will use the shothole method if the FWS and/or Interagency Review Panel prefer. The environmental advantages of vibrators include eliminating blowouts, cratering, and the transportation and storage of explosives; fewer tracked vehicles (especially where wheel-mounted vibrators are useable); and localizing the crew personnel and activities. Operational advantages of vibrators include less sensitivity to adverse weather, easier and more localized logistics, ease of modifying the recording parameters when needed, and greater safety. While it is preferable to move the vibrators along the survey line, it is not always necessary. When recording 24-fold data with 192 channels, using 110′ station intervals, the vibrators could deviate off-line, without vibrating, for 330′ out of every 440′. It is easy to "make-up" skips or gaps with vibrators, and to increase the seismic energy input where doing so. Snow removal, where needed along the vibrators path, can be done using a scoop with a rubber skirt on the blade to protect the tundra. Large, double-wide wheels on buggy-mounted vibrators will reduce the need for snow removal and increase the tractive

ability, reducing the need for tracked vibrators. Because maneuvering wheel-mounted vibrators is much less damaging to the surface than maneuvering track-mounted vibrators, there is greater freedom to avoid obstacles and sensitive areas.

If vibrators are used, CGG would provide five Mertz buggy-mounted vibrators with double-wide wheels, and substitute tracked vibrators only if conditions required their use. The vibrators would be equipped with force control units which prevent decoupling. Decoupling damages the tundra and degrades the data. Last winter CGG provided the first test of the force control system on the Slope, and after extensive experiments we determined that the elimination of decoupling was the single most important variable in improving data quality.

An important data-quality advantage of vibrators over conventional dynamite is reduced sensitivity to "frost breaks" or "ice breaks." Because the vibrators seismic energy output is distributed over a controlled time and frequency, the sensitivity to any noise which is distributed over a short time and a wide frequency is greatly reduced. An analogy is the ability to recognize speech or music "through" the random noise of radio static. By contrast, it is far more difficult to recognize a single handclap sound "through" radio static.

The Record of Decision (September 15, 1983) opposed vibrator use, but the Regional Director approved an exploration plan revision permitting limited use of vibrators near the ANWR coast, setting a precedent for vibrators in the ANWR. If CGG is permitted to use vibrators, we will upon request provide subsurface sampling capability to assist the geological interpretation.

We propose to record with 192 channels, using a Sercel SN 348 telemetric, computer-controlled recorder, to reduce the environmental impact while obtaining high quality data. Higher multiplicity in recording allows each "shot" to be more effective. Obtaining more information about the subsurface structure from each "shot" allows the number of "shots" to be reduced without reducing the data quality. Depending on the needs indicated from the past survey, we could acquire 24-, 32-, 48-, or 96-fold data using 192 recording channels. We plan to use 110′ station intervals, as we proposed last year, and as were actually used for the ANWR data recorded. The maximum recording offset is approximately 10,000′, the same as CGG and most others have used for recent North Slope recording, and greater than the 6600′ used in the ANWR this past winter. All other parameters would be determined by extensive field tests and experiments prior to recording.

D. The following information requested by paragraph 37.21 (D), items 1–15:

1. The CGG officers responsible for these exploration activities are:

P. Benichou, Vice-President, 1475 Lawrence St., Denver, CO 80202
N. Blot, District Director, 699 Hampshire Rd., Westlake Vlg., CA 91361
R. Whitsett, Asst. Dist. Mgr., 699 Hampshire Rd., Westlake Vlg., CA 91361
H. Dickerson, ANWR Coordinator, 5630 Silverado Way, Anchorage, AK 99502

Pierre Benichou has 19 years with CGG. Norbert Blot did his Ph.D studies at ENSEEHT in Toulouse and has 15 years with CGG. Bob Whitsett completed his Ph.D. in geophysics at Oregon State; has 14 years teaching and research with oil companies and 3 years with CGG. Howard Dickerson has 25 years of wide-ranging business experience and 4 years with CGG. Our Field Supervisors and Party Chiefs have bachelor level engineering or geology degrees and 5 years with CGG in Alaska.

Our Anchorage facility has 2000 square feet of office space and warehouse. In Deadhorse at the South Lake Inn we have 5000 square feet for office, data processing center, electronic and mechanical repair facilities, and warehouse; plus two acres of parking.

2. We expect at least 15 participants will support continued ANWR exploration.

3. CGG has operated in Alaska for five years, and for the past three winter seasons on the North Slope. We have acquired data for six different groups and several exclusive clients. During this past seasons we served the Prudhoe Bay Unit (Shoio operating) with the most intensive 3-D survey ever conducted on the North Slope. An 85-man crew was needed for this operation, and all of the equipment utilized exceeded the environmental requirements. Eight-line swaths of 60 stations each were recorded, requiring 480 channels. Over 75 square miles of coverage was obtained. The SN 348 proved to be capable down to temperatures of −50 degrees F.

Our second crew worked for two groups on the Beaufort north of the ANWR. Thirteen participants were in the Infill Demarcation Group, and fourteen participants were in the Kaktovik Lagoons Group; these two groups of participants were largely overlapping, sixteen companies total were represented. Every participant in our Groups was also an ANWR participant, and we have been told that our data quality meets or exceeds that obtained by the ANWR vibrator crew.

Our success in gaining wide participation in these groups is an indication of industry's desire to maintain contractor competition in Alaska. The Infill Demarcation Group was formed in direct competition with another proposed group in the same area. Until the competing group was absorbed into the ANWR Group, at less than one-half of its originally proposed cost, the Infill Demarcation Group received twice as many commitments. We do not claim that CGG received this wide industry support because we are superior; if CGG had received the only ANWR permit, no doubt the competing group would have obtained twice as many commitments as the Infill Demaraction Group. However, it seems unfortunate that the decision to use a one contractor for a two-crew operation in the ANWR led directly to a three-crew operation, with the third crew operating mainly outside the ANWR.

There is ample evidence of CGG's operational responsibility and compliance throughout its history in the Arctic. This includes permits and completion reports for seismic surveys in both north and south Alaska submitted to federal, state, local agencies, and business organizations (the BLM, USGS, MMS, DMEM (State of Alaska), the North Slope Borough, and others).

4. The attached map shows the approximate location of the proposed survey lines. The map should be viewed as tentative, to be adjusted in accordance with FWS experience from this past season. Final determination of the survey lines will take into account exact location of the previous survey, as well as restricted areas, and will be based on advanced reconnaissance by CGG with FWS representatives.

Fuel will be transported by cat trains using double-wall fuel tanks. Offshore routes will be used from Deadhorse to the Refuge, ice permitting, and then along those trails known from last season to be least sensitive to environmental damage, unless less sensitive new accesses can be found. Trails may be changed periodically if the net environmental damage is thereby reduced.

The crew camp will move on a daily basis, and be refueled once each week. Weekly deliveries of food and spare parts will be made directly to the crew using light, fixed wing aircraft, landing on ice or heavy snow cover to minimize surface effect.

5. We propose vibrators, alternatively dynamite, as the seismic energy source. Please see II. C also.

6. This exploration plan is limited to seismic reflection. If requested, CGG will augment the exploration activities to include borehole sampling, gravity measurements, and transient electromagnetic measurement (TEM). These were proposed in our plan for last year; TEM assists in determining permafrost thickness.

7. We propose to mobilize in early January, commence field operations approximately January 5th and halt the operations when indicated approximately May 15th, during both 1985 and 1986.

8. Communications Equipment and Technique:

a. ALASCOM Mobil Earth Station Satellite telephone at crew camp.

b. Existing telephone links in both Kaktovik and Deadhorse.

c. SSB radios at crew and cat. camp, Kaktovik, Deadhorse, and fuel train.

d. One-hundred watt field radios for field to crew camp communications.

The primary communication link between the crew camp and our permanent Anchorage and Deadhorse offices will be via satellite telephone, which will handle either voice or data. Daily and weekly reports for both the FWS and group participants will utilize this channel, and it will be available to the Refuge Manager's Office to assist in monitoring, passing operational or progam status information, and for emergencies. SSB radios and multi-channel 100 watt radios will serve communication in the field, between the crew camp, cat camp, cat train, and field operations. and will also provide back-up communication for the satellite link.

9. Please see D. 4 above and Appendix "A" for description of personnel, equipment, facilities, and accesses.

10. Hazardous substance control will be provided by having absorbent materials present at all times when adding or changing fuel, lubricants, and hydraulic fluid. If an accidental discharge occurs, such as from a ruptured hydraulic hose, the residue will be scrapped up and incinerated. Should a major spill occur, such as an overturned fuel tank, malfunctioning valve, or major line rupture, a snow berm or dike will be put around the spill to contain if for recovery and clean-up. Education of the crew in the important procedures necessary for proper handling of hazardous substances is given highest priority. Crew management and fuel handlers are aware of the importance of following strict precautionary procedures, and the necessity of immediately reporting, both orally and in writing (on forms provided), all accidental discharges and spills.

11. Last year the Interagency Review Panel rated CGG's "Environmental Sensitivity" very low. While we understand how this occurred, we do not believe it reflects the actual facts. CGG is aware of the unusual sensitivity of the environment in the Arctic, and the importance of protecting it, especially in the Refuge. We will adhere scrupuluously to all of the regulations and requirements specified by the FWS to assure a minimum impact in the area. CGG will hire a contract environmentalist, selected by and reporting to the FWS. This person will assist the FWS monitors, and have the authority to direct CGG in preventing avoidable damage to the environment. We will scout the survey area with the FWS in advance, and will implement all of the protective procedures the FWS has found useful in reducing the risk of damage.

Prior to commencement of field operations, CGG will provide to the FWS a detailed description of all environmental regulations, requirements and anticipated problems, together with CGG's planned responses. After any additions or modifications made by the FWS, CGG field supervisory personnel will arrange a meeting with FWS personnel to discuss face-to-face the plans, modifications suggested in the planned actions to comply with each of the requirements and regulations, as well as to develop strategies for dealing with unexpected occurrences. While in the field, the crew will provide an environmental summary statement, on a line by line basis, reporting problems encountered, solutions utilized, and recommendations for future actions.

12. Please see 11 above.

13. CGG hereby promises to comply with all regulations and requirements now specified, or which may become specified, for conducting a seismic survey in the ANWR during the next two winter seasons. The proposed activity complies with the State of Alaska's approved coastal management program and will be conducted in a manner consistent with that program.

14. CGG's data quality assurance program provides monthly instrument tests, independant authority over the crew by a geophysical supervisor, highly motivated and experienced field engineers, experienced processors, and an elected representative from the group specifically charged with data quality control. The data quality results of CGG's group surveys speak for themselves.

It is not necessary to maintain a single contractor, or a single seismic energy source, to obtain uniform data. The change from dynamite to vibrators is a more significant change than from one contractor to another, and the source change has already been implemented in the ANWR on a limited basis. If there were a choice, certainly all of the interested parties would prefer data improvement to data uniformity.

Obtaining uniform data is relatively straightforward. CGG has frequently reprocessed seismic data from two or more different contractors; occasionally even data recorded with widely different equipment, at different times, and with different sources; and produced matched results. While it is true that two different seismic surveys of the same area may yield dissimilar results, even if performed by the same contractor, it is equally true that the recording and processing parameters can be selected to give matched results, and this is done frequently. CGG uses "combination" crews in the lower 48 states which can record a single line, using vibrators where possible, then deep hole dynamite, and then shallow hole dynamite where helicopter support is necessary. These lines are then processed as a single, matched line. It does require an extra effort, but a monopoly in the ANWR is not justified simply as a matter of convenience.

During the past three seasons CGG has served industry groups in winter surveys on the Beaufort ice north of the ANWR. The last two seasons there have been groups in the same area served by another contractor, and some of the participants have been in all surveys. Our processing center has been happy to hear that its processing has been generally quicker, with equal or superior quality. One respected, major oil company joined our proposed group this past winter primarily on the basis of our record of providing better, faster processing.

15. CGG will respond promptly to any requests by the FWS.

Conclusion

It may be asked why CGG is choosing this particular time to raise questions regarding the Record of Decision issued last September. We did appeal for a very limited 22.5 mile survey of the ANWR lagoons, but we did not take any action that could result in a delay in ANWR exploration. The process by which the ANWR became open to limited, carefully controlled exploration was long and arduous. Cooperation between various industry groups was important, and no one wanted to

jeopardize the entire survey. However, now is the proper time to offer constructive criticism of the Decision.

While the goals of environmental protection, uniformity of data, and ease of monitoring were met by using a single contractor, the price was high. With the experience gained during the past seasons, it is evident that these goals can also be achieved using more than one contractor. CGG believes that the strong industry support shown for our groups north of the ANWR gives ample evidence that we are a deserving contractor for a portion of the onshore 1002 survey area.

Appendix "A"

Arctic Crew Equipment and Personnel

1. Personnel
1.1 Supervisory Personnel
(A) In Anchorage
1 Alaska Projects Manager
1 Geophysical Supervisor
(B) In Deadhorse
1 Field Service Engineer
1 Expeditor
1.2 Basic Seismograph Party
1 Party Chief (Geophysicist)
1 Party Manager
2 Chief Surveyors
2 Surveyors
1 Observor
1 Junior Observor
4 Survey Helpers
1 Headlinesman
2 Chief Mechanics
12 Helpers (Recording Crew)
4 Line Drivers
4–5 Vibrator Operators
1 Service Manager
1 Camp Attendant
1 Cook
1 Cook's Helper
1 Cable Repairman
Dozer Crew (Subcontracted)

A minimum total of 40–41 men in the field at all times, plus dozer crew. At least one of CGG's key crew personnel is a trained paramedic.

II. Equipment
1 Sercel SN 348 telemetric recording system with 6250 BPI tape transport, 192 channels, 2 ms sample rate
1 Sercel CS 2502 real-time full precision (32 bit) correlator-stacker
300 Field Telemetry Units
300 Cables
5400 GSC 20D winter base geophones, 8 Hz digital grade, two 9-geophone strings/trace
1 SIE 64 channel camera
4 Mertz "Universal" Model 18 vibrators, double-wheel buggy-mounted OR 5 Mertz Model 22 track-mounted vibrators (depending on area needs)
6 TI VSC III sweep frequency electronics with force control system
1 Fully-equipped 54-man sleigh camp with 18,000 gal. fuel, 500 gal. water
1 Vibrator repair shop on sleigh (total controlled environment)
1 Satellite communication system (from Anchorage to crew headquarters)
1 Satellite Positioning System (Doppler)
6 Beacons
2 Survey instruments, Distomat or equivalent
1 Cable repair kit: cable tester, shaking table, geophone tester, etc.
1 Ice check drill
1 Mayhew 1000 drill or equivalent (if requested for geologic sampling) OR 10 Mayhew 1000 drills or equivalent for shotholes if vibrators not used
1 Incinerator mounted on sleigh
5 SSB Radios
1 Recorder carrier, crew cab track-mounted diesel Nodwell 110 or equivalent
1 Vibrator tender, track-mounted diesel Nodwell 110 or equivalent
2 Survey vehicles, track-mounted diesel Nodwell 110 or equivalent

The following vehicles are track- or wheel-mounted (depending on area needs):
1 Party Manager crew cab vehicle
1 Headlinesman crew cab vehicle
2 Spare vehicles, one for FWS and Group representative
5 Line vehicles
Subcontracted
6 D–7 Dozers
1 Cat train with double-wall fuel storage capacity and survival unit

Air support, fixed wing and/or helicopter

All vehicles are equipped with six-channel radios for intercrew communication.

Appendix "B"

Recording Parameters

Energy Source: 4 Mertz 18's (Min. 3 operating) or 5 Mertz 22's (Min. 4 operating) OR conventional dynamite in shotholes.

Cables and Geophones: Number of groups: 192, Group interval: 110', Geophones/group: 18, Receiver array length: 110', Geophones strings/group: 2, Geophone frequency: 8 Hz.

All other parameters to be determined by extensive field tests and experiments.

Surveying: Satellite navigation system and Distomat EDM; line ends and intersections marked by removable, tagged rods for location in following season.

Appendix "C"

Processing

I. Basic Processing Sequence (Field sampling: 2 ms; processing: 4 ms):

1. Preprocessing
A. Demultiplexing, editing
B. Surface statics
C. CDP Gather
D. Brute Stack displayed on non-reproducible paper to be delivered to participants within two weeks of receipt of all field tapes and support data
2. Analysis Sequence
A. Velocity analysis
B. Normal moveout application
3. Final Processing
A. Deconvolution before stack
B. Time Variant Filter
D. Film Display
4. Post stack processing
1. Post-stack deconvolution, coherency filter, and film display
2. Wave equation of FK migration as group prefers, film display

II. Items to be furnished to each participant by CGG (scales determined by group):
1. Brute stack on non-reproducible paper
2. Final stack with automatic statics
3. Final stack with post-stack deconvolution and coherency filter
4. Migrated stack
5. Post-plot: Final location map (Items 2 through 5 provided both on paper and reproducible mylar or sepia)
6. Copy of the 9-track navigation tape
7. Photocopy of the line-printer listing of the navigation tape file

Reproduction charges: At cost to each participant.

June 4, 1984.

CHEVRON

Exploration Plan For Geophysical Exploration Program

Arctic National Wildlife Refuge Coastal Plain

Chevron U.S.A. Inc., Exploration Plan, Arctic National Wildlife Refuge—Coastal Plain, Geophysical Exploration Program

Regulation and description

Introduction
Consistency Certification
50 CFR 37.21(d)(1), Officials Conducting the Proposed Exploratory Activities
50 CFR 37.21(d)(2), Names of Planned Participants
50 CFR 37.21(d)(3), Evidence of the Applicant's Technical/Financial Ability
50 CFR 37.21(d)(4), Map of Proposed Activity
50 CFR 37.21(d)(5), General Description of Type of Exploratory Activities Planned
50 CFR 37.21(d)(6), Integration of Techniques to Avoid Duplication
50 CFR 37.21(d)(7), Schedule for the Proposed Activities
50 CFR 37.21(d)(8), Proposed Communication Techniques
50 CFR 37.21(d)(9), Description of Equipment, Support Facilities, Methods of Access, and Personnel
50 CFR 37.21(d)(10), Hazardous Substance Control and Contingency Plan
50 CFR 37.21(d)(11), Anticipated Impacts of the Proposed Activities on Wildlife
50 CFR 37.21(d)(12), Proposed Procedures for Monitoring Environmental Impacts
50 CFR 37.21(d)(13), Statement of Compliance
50 CFR 37.21(d)(14), Proposed Data Quality Assurance and Control Program
50 CFR 37.21(d)(15), Other Required Information

Introduction

This Exploration Plan is submitted by Chevron U.S.A. Inc. ("Chevron") for the purpose of obtaining a special use permit to conduct seismic exploration of the Coastal Plain of the Arctic National Wildlife Refuge (ANWR), as defined by the Alaska National Interest Lands Conservation Act of 1980 (ANILCA).

This Exploration Plan will be the foundation of integrated exploratory activities which will accomplish the objectives of the United States Fish and

Wildlife Service regulations as set forth in 50 CFR 37.1. These objectives include the attainment of the best possible data for ascertainment of the potential for further exploration, development, and production of oil and gas within the subject lands, and the prevention of significant adverse effects on wildlife and the environment. Unnecessary duplication of exploratory activities will be avoided.

Chevron is currently a participant in the industry program for seismic exploration of the Coastal Plain of ANWR which has been performed by Geophysical Service, Inc. Chevron's information obtained under this Exploration Plan will supplement the information obtained from the industry seismic program. The program proposed under this Exploration Plan (see map attached under 50 CFR 37.21(d)(4)) will encompass the entire Coastal Plain. This area contains complex geological structures (surveyed under the Geophysical Service, Inc. program) which can be further delineated under this Exploration Plan. In particular, the North to Northeastern portion of the Refuge contains complex structures which need to be more accurately delineated. Information obtained under this Exploration Plan will thus enable Chevron to more fully determine the potential for oil and gas production within the subject lands.

This Exploration Plan provides for two seismic crews with ancillary support vehicles to work one or two winter seasons in the Refuge, collecting Vibroseis (R)[1] seismic and gravity data. The second season may be needed to in-fill certain areas depending on results of the first season's work. While this Exploration Plan provides for use of the Vibroseis (R) technique, Chevron will utilize the conventional shothole/explosive technique if so required by the United States Fish and Wildlife Service.

Numbered Paragraphs 1 through 15 in this Exploration Plan are referenced to the corresponding numbered requirements of 50 CFR 37.21(d) (1)–(15), published as part of the final rules governing geological and geophysical exploration of ANWR, at 48 FR 16838, *et seq.*, April 19, 1983.

The seismic data obtained under this plan will be processed by the contractor that conducts the seismic field survey. (See discussion under § 37.21(d)(1)).

Chevron further proposes under this Plan as part of its geophysical survey to obtain near-surface core samples (to a maximum depth of 100 feet) at one mile intervals along the proposed survey lines.

This Exploration Plan demonstrates (see discussion under § 37.21(d) (4)–(6)) that activities proposed under this initial Exploration Plan will be integrated with any subsequent plan which may be filed.

June 4, 1984.

Consistency Certification Exploration Plan for Geophysical Exploration Program: Coastal Plain of the Arctic National Wildlife Refuge

Dr. Robert E. Putz,
Regional Director, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Region 7, 1011 East Tudor Road, Anchorage, Alaska 99503

Dear Dr. Putz: Chevron U.S.A. Inc. ("Chevron") herewith submits an Exploration Plan for a Geophysical Exploration Program to be performed on the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) as defined by the Alaska National Interest Lands Act (ANILCA).

Chevron hereby certifies, to the best of Chevron's knowledge, that the proposed activities pursuant to this Exploration Plan comply with the State of Alaska's approved coastal management program and will be conducted in a manner consistent with that program.

Please advise if you need any further information relating to this certification.

Very truly yours,

J. J. Anders

Section 37.21(d)(1)

Section 37.21(d)(1) states as follows:

"The name and address of any person who will conduct the proposed exploratory activities, i.e., the applicant/permittee, and, if that person is an agency, firm, officials, or, if a partnership, the names and addresses of all partners";

The proposed exploratory activity will be conducted by CHEVRON U.S.A. INC., (hereinafter CHEVRON) a California corporation. CHEVRON's home office address is as follows:

CHEVRON U.S.A. INC., 2120 Diamond Boulevard, Concord, California 94520, Telephone: (415) 680–3333

CHEVRON's Alaska address is as follows:

CHEVRON U.S.A. INC., 3001 "C" Street, Anchorage, Alaska 99503, Telephone: (786) 786–6600

CHEVRON's officials responsible for the conducting of the proposed exploratory activity are as follows:

Mr. W. E. Crain, Exploration Manager, Western Region;

Mr. E. K. Espenschied, Exploration Manager, Alaska Division;

Mr. J. J. Anders, Land Manager, Alaska Division;

Mr. R. R. Stevens, Division Geophysicist, Alaska Division.

All of the above personnel are located at CHEVRON's Concord, California offices, the address of which is stated above.

Mr. Thomas Cook, Exploration Representative, Alaska Division

Mr. J. D. Bertino, Senior Land Attorney, Alaska Division

Messrs. Cook and Bertino are located in CHEVRON's Anchorage, Alaska office, the address of which is listed above.

CHEVRON will allow the United States Fish and Wildlife Service (USF&WS) to select the seismic contractor in order that the USF&WS will have control over the environmental aspects of the contractor's field operations. In the absence of selection by the USF&WS, CHEVRON will in all likelihood contract with one of the following two contractors to perform the seismic survey:

a. Geophysical Service Inc., Box 225621, M/S 3970, Dallas, Texas 75265; (Alaska Address), 5801 Silverado Way, Anchorage, Alaska 99502, Telephone: (907) 563–3070

b. Western Geophysical Company of America 10001 Richmond Avenue, Houston, Texas 77041, Telephone: (713) 781–9600; (Alaska Address), 351 East International Airport Road, Anchorage, Alaska 99502, Telephone: (907) 563–3511

CHEVRON will engage the following subcontractor to perform a gravity and magnetics survey:

International Technology Ltd., 723 West Sixth Street, Anchorage, Alaska 99501, Telephone: (907) 278–1571

In past years, International Technology Ltd. has performed operations in conjunction with the following subcontractor:

Photogravity, Inc., 10615 Shadow Wood Drive, Houston, Texas 77043, Telephone: (713) 467–5865

Section 37.21(d)(2)

Section 37.21(d)(2) states as follows:

"The names and addresses of all persons planning at the time of plan submittal to participate in the proposed exploratory activities or share in the data and information resulting therefrom through a cost-sharing or any other arrangement";

CHEVRON submits this Exploration Plan on its own behalf. However, it is recognized that the Regional Director, USF&WS may decide to include to include other interested parties in the terms of a special use permit, if granted.

[1] (R) Registered Trademark of Conoco Inc.

Section 37.21(d)(3)

Section 37.21(d)(3) states as follows:

"Evidence of the applicant's technical and financial ability to conduct an integrated and well designed exploratory activities in an arctic or subarctic environment and of the applicant's responsibility in complying with any exploration permits previously held by it";

CHEVRON has both the *technical* and *financial* ability to conduct integrated and well designed exploratory activities in an arctic or subarctic environment.

CHEVRON's technical capabilities are evidenced as follows: CHEVRON employs a total of 158 people in the State of Alaska. CHEVRON employs approximately 1,200 professional exploration personnel worldwide. CHEVRON'S technical staff has been long-recognized as a leader in geophysical and geological exploration. CHEVRON successfully completed geological studies in the Arctic National Wildlife Refuge to the satisfaction of Federal authorities in 1958, 1959, 1960, 1962, 1963, 1964, 1965, 1968, 1970, 1975, 1977, 1978, 1979. Additionally, Chevron has successfully and to the satisfaction of State and Federal authorities completed the following permitted geophysical programs in the State of Alaska:

CHEVRON RECENT PROPRIETARY GEOPHYSICAL PROGRAMS

Year	Contractor	Permit details	Location
1974/75	Western	ASRC	Central Artic Foothills.
1974/75	GSI		Do.
1975/76	Western	FO & GEP 75-5 Navy RH/ 3165.1.	Do.
1977/78	Western	AK-026-OE8-001.	Do.
1979	do	ASRC	Do.
1979	do	OCS-79-30	Beaufort Sea Ice.
1979/80	do	ASRC	Central Artic Foothills.
1980/81	do	ASRC	Do.
1981/82	do	MLUP/NS 81-221 F-79718.	Kavik Area.
1981/82	do	AK-026-N12-001.	Umiat Area.
1981/82	do	F-79718	Ivishak Area.
1982	do	MLUP/NS 82-84.	Milne Point.
1984	GSI	USF&WS/ 84-C4.	Kaktovic.

CHEVRON OPERATED RECENT JOINT VENTURE GEOPHYSICAL PROGRAMS

Year	Contractor	Permit details	Location
1974/75	Western	ASRC	Western Artic.
1975/76	do	do	Do.
1978	do	ASRC	Do.
1976	United	76-3e	Beaufort Sea Ice.
1979	Western	OCS 79-1 MLUP/NS 78-101.	Do.
1980	do	MLUP/NS 80-81.	Prudhoe Bay Unit Area.
1981	do	MLUP/NF 81-52.	Point Thomson Area.
1982	do	MLUP/NS 82-226.	Colville Delta.

CHEVRON OPERATED RECENT GROUP GEOPHYSICAL PROGRAMS

Year	Contractor	Permit details	Location
1981	GSI		State Uplands.
1982	Western	MLUP/NS 82-277.	Beaufort Sea Ice.
1983	CGG	OCS 83-01 MLUP/NS 82-173.	Camden Bay Ice.

CHEVRON further maintains an Environmental Affairs Department, a Public Affairs Department and employs various legislative and regulatory analysts to ensure consistant compliance with all State and Federal laws, regulations, and permit requirements.

CHEVRON's financial capabilities are evidenced by the following Consolidated Balance Sheet from the 1983 Annual Report of CHEVRON's parent company, Standard Oil Company of California.

Dollars in millions	1983
ASSETS	
Current assets	
Cash	$177
Marketable securities and cash investments	2,370
Accounts and notes receivable (includes amounts due from affiliated companies of $569 in 1982 and $1,040 in 1981)	3,067
Inventories	
Crude oil and products	[illegible]
Other merchandise	126
Materials and supplies	322
Prepaid expenses and other current assets	169
Total current assets	7,099
Long-term receivables	220
Investments and advances	2,319
Properties, plant and equipment, at cost	
Producing	13,527
Manufacturing	5044
Marketing	1,770
Marine	1,318
Pipeline	641
Motor transport	119
Other	1,141
Total	14,232
Less: Accumulated depreciation, depletion and amortization	8,326
Deferred charges	14
Total assets	

Dollars in millions	1983
LIABILITIES, DEFERRED CREDITS AND STOCKHOLDERS' EQUITY	
Current liabilities	
Accounts and notes payable (includes amounts due to affiliated companies of $208 in 1983 and $320 in 1982)	3,582
Current maturities of long-term debt	46
Current maturities of obligations under capital leases	56
Federal and other taxes on income	1,301
Other taxes payable	352
Total current liabilities	5,117
Long-term debt, less current maturities	1,006
Obligations under capital leases, less current maturities	866
Deferred income taxes	1,960
Deferred credits and other noncurrent obligations	852
Reserves—employees annuity plans	79
Total liabilities and deferred credits	9,904
Stockholder's equity	
Common stock—$3.00 par value Authorized—500,000,000 shares Issued—342,109,258 shares	1,026
Capital in excess of par value	871
Retained earnings	12,206
Total stockholder's equity	14,106
Total liabilities, deferred credits and stockholders' equity	24,010

Section 37.21(d)(4)

Section 37.21(d)(4) states as follows:

"A map at a scale of 1:250,000 of the geographic areas in which exploratory activities are proposed and of the approximate locations of the applicant's proposed geophysical survey lines, travel routes to and within the refuge, fuel caches, and major support facilities;"

The 1:250,000 scale map attached to and made a part of this Exploration plan illustrates the approximate locations of the proposed geophysical lines.

The Exploration Plan calls for two seismic crews with ancillary support vehicles to work one to two winter seasons in the Refuge collecting Vibroseis (R) reflection seismic and gravity data. The program anticipated to be recorded in the first winter season, starting in January 1985, is shown by the solid lines on the program map. The referenced second season may be needed to in-fill certain areas depending on the areas completed during the first season.

A program for the 1985–1986 winter season may be required, depending upon the results obtained this season.

During the first winter season the travel route for the crew to the Refuge will be from Deadhorse to the vicinity of Camden Bay. The crews will then enter the Refuge and commence operations within the northwest area of the Coastal Plain. Upon termination of each season's activities all crew personnel and

equipment will be removed to a location off the ANWR.

The fuel caches will be located at Camden Bay. Travel routes within the Refuge will be through restricted corridors adjacent and generally parallel to the geophysical program lines. Fuel caches will be identified after consultation with contractor(s) and the Regional Director and will be detailed in the Plan of Operations.

Major support facilities for the proposed program will be located outside of the refuge at Deadhorse.

The mobile camp will be initially located at Camden Bay, and will move offshore from a westerly to easterly directionas the work progresses.

Section 37.21(d)(5)

Section 37.21(d)(5) states as follows:

"A general description of the type of exploratory activities planned, including alternate exploratory methods and techniques if proposed, and the manner and sequence in which such activities will be conducted;"

Exploratory activities planned in the refuge involve the acquisition of Vibroseis (R) reflection seismic and gravity data utilizing tracked vehicles. A total of two seismic crew trains each consisting of approximately 23 vehicles, 15 support trailers and from 40-50 personnel will be utilized to acquire the proposed geophysical program. Each crew will be assigned to a separate area within the Coastal Plain and progress at an average rate of from 4 to 6 miles per day contingent on recording parameters, weathers, and topography.

The Vibroseis (R) seismic reflection techniques involves the use of 5 hydraulic vibrator units mounted on tracked vehicles. The units move in tandem along each geophysical survey line and are halted at established intervals (usually 110 feet to 220 feet) where they generate controlled frequency acoustic energy impulses. The energy impulses are transmitted into the earth's subsurface and then reflected back off the subsurface strata and recorded by geophones.

Electronic circuitry transmits the received reflection impulses through a seismic cable laid along the geophysical lines to a vehicle-mounted recorded unit where they are recorded on magnetic tape.

The magnetic tapes are then transmitted to a central processing center for subsequent processing and interpretation. Knowledge of the recorded travel times of the reflections and of the geometrical parameters of the geophone configuration allows the user to map the subsurface geologic structure beneath and adjacent to the line of traverse.

An advantage of the Vibroseis (R) technique is that the energy impulse from it is spread out over many seconds and will have a much lower amplitude level at the source then an impulse in which all the energy (i.e.—dynamite) is injected into the earth within a few milliseconds. This technique has been utilized successfully along the streets of large metropolitan areas in the United States and has been the standard of North Slope contractors since the mid 1970's.

Operating concurrently with each seismic crew (usually several miles behind it) will be a small 2 man gravity party supported by a single vehicle with survival equipment. A Lacoste-Romberg Arctic Gravity meter will be deployed at one sixth of a mile intervals along each seismic traverse and a reading of anomalies in the earth's local gravity field will be recorded. This gravity data together with the seismic data, when processed and interpreted, will assist the user in mapping the subsurface geologic structure and type of rock units beneath and adjacent to the line of traverse.

As stated in the Introduction to this Exploration Plan, Chevron requests permission hereunder to obtain near-surface core samples (to a maximum depth of 100 feet) at one mile intervals along the proposed survey lines.

In conjunction with geologic field studies which will be implemented independently, the program proposed in this Exploration Plan is considered sufficient to supplement the industry program and to provide the needed information to evaluate the hydrocarbon resource potential of the Coastal Plain.

Section 37.21(d)(6)

Section 37.21(d)(6) states as follows:

"A description of how various exploratory methods and techniques will be utilized in an integrated fashion to avoid unnecessary duplication of applicants own work;"

This Exploration Plan consists of an integrated approach involving field geologic, reflection seismic and gravimetric techniques to minimize duplication of work.

Contractor(s) selected to acquire geophysical data will (1) utilize industry accepted field instrumentation, (2) have demonstrated Arctic experience and technical ability to complete the proposed program and (3) have a history of responsibility in complying with previously held North Slope exploration permits. These requirements, in conjunction with the utilization of optimum acquisition parameters and rigidly enforced quality control procedures, will minimize acquisition of poor data and the need to duplicate or resurvey geophysical lines.

As stated in the Introduction to this Exploration Plan, the geophysical lines proposed hereunder will supplement the program previously shot by GSI. There will thus be no duplication of proposed activity in the Refuge. As further stated in the Introduction, the Coastal Plain contains complex geological structures which can be further identified under this Plan. Execution of this Plan will thus enable Chevron to ascertain the best possible data and information regarding oil and gas potential in the ANWR, without significantly affecting the ANWR environment.

Section 37.21(d)(7)

Section 37.21(d)(7) states as follows:

"A schedule for the exploratory activities proposed, including the approximate dates on which the various types of exploratory activities are proposed to be commenced and completed;"

Personnel and equipment for the seismic and gravity crew planned for the winter season will be mobilized in Deadhorse in late January, 1985. The crew will enter the Coastal Plain in the vicinity of Camden Bay in late January/early February, 1985, contingent on adequate protective cover. The crew will disperse to assigned areas of operation and commence work after completion of final instrument checks and noise analysis tests.

Recording during the first season will continue until mid-to-late April or until deteriorating protective cover requires removal of the crew from the refuge.

Commencement dates for the tentative subsequent winter's geophysical operations will be contingent on demobilization sites for the crews and development of adequate protective cover.

Processing of data acquired from the proposed exploratory activities will begin almost immediately after start-up operations. It is anticipated that final processed data from the program for the preceding season will be available by early July of each year. Weekly progress reports with respect to all operations and data processing activities will be furnished to the Regional Director.

Interpretations of the processed data will be made available to the Regional Director in compliance with applicable regulations.

Section 37.21(d)(8)

Section 37.21(d)(8) states as follows:

"A description of the applicant's proposed communication techniques;"

A variety of communication techniques will be utilized in the course of this activity. A communication network will be designed with the cooperation of the selected contractors and Chevron's telecommunication personnel.

Included in the communication techniques will be the following systems:

(1) FM radio communication between field camps and operating field vehicles;

(2) Single side-band radio communication between field crews and major support facilities;

(3) Commercially available satellite radio communication;

(4) Air-to-ground radios between all ground stations and support aircraft; and

(5) Provided permits can be obtained, radio phones will be operating via Kaktovik from the field crews to provide back-up and direct telephone communication.

Section 37.21(d)(9)

Section 37.21(d)(9) states as follows:

"A description of the equipment, support facilities, methods of access and personnel that will be used in carrying out exploratory activities;"

A seismic and gravity crew will consist of approximately 23 tracked vehicles, fifteen sled and/or track-mounted trailers (mobile camp) and a complement of 40–50 crew members. The crew train is entirely self-contained and capable of being moved every day. The crew is also capable of survival unsupported for up to two weeks in the event of isolation by weather. Every key employee will be required to have previous Arctic experience and Arctic survival training. As stated, the mobile camp will be initially located at Camden Bay, and will move along the offshore from a westerly to easterly direction as the work progresses.

A list of equipment and personnel comprising a typical field crew is given below:

Personnel List for Arctic Geophysical Crew

1 Party Manager
1 Administrator
1 Observer
1 Junior Observer
5 Vibrator Operators
4 Cable Truck Drivers
7 Recording helpers
1 Vibrator Mechanic
1 Chief Mechanic
2 Mechanic's helpers
2 Surveyors
3 Survey helpers
1 Camp Attendant
1 Gravity meter operator
1 Head Linesman
1 Cook
1 Cook's helper
6 Tractor Operators
2 Gravity Crew Personnel
1 Driller
1 Driller's Helper

Equipment List for Arctic Geophysical Crew

5 Track mounted vibrator units
1 Tracked recording vehicle
1 Vibrator tender
1 Gravity personnel vehicle
4 Cable and geophone carriers
3 Survey vehicles
1 Party Manager's vehicle
1 Vehicle repair Shop
1 Client Representative vehicle
1 Incinerator mounted on sled
1 Camp utility vehicle with crane
6 D–7 Caterpillars
1 Drill
1 120 trace digital recording system, complete with ancillary equipment such as radios, recording units, input panels, electrostatic camera, tape transports, monitoring equipment, spare parts and all other equipment necessary for CDP recording
1 Field computer
250 groups of 24 geophones each and necessary cables to serve all geophone groups at a group interval of 110, 165, or 220 feet. A geophone is to be mounted on each vibrator base plate
1 50-man camp on sled, fully equipped for North Slope operations and full storage
1 Survival trailes for fuel haul unit
All required survey equipment such as syledis, theodolites, chains, rods, electronic distance measuring equipment, and marking devices
Two-way radios, fire extinguishers, survival equipment, and first aid kits for all vehicles

The major support facility, and Chevron's base of operations, will be located at Deadhorse, where a field processing and administrative center will be established. A description of facilities at Deadhorse to be utilized is as follows:

Base camp which provides subsistence and lodging for permanent and transient personnel;
Warehouse for parts and expendable supplies;
Maintenance shop;
Food storage;
Weather reporting service;
Year-round State owned and maintained airstrip;
Aircraft handling facilities;
SSB radio for communication with field crew;
VHF and CB radio communication;
Satellite telephone unit with Anchorage;
Instrument field service shop and personnel;
Cable and geophone string repair and test shop;
(Both Western and GSI maintain full service support and expediting centers at Deadhorse).

Excluding initial mobilization and end of the season demobilization, access to the crew will be by aircraft at temporary airstrips adjacent to the mobile camp at Camden Bay and by helicopter directly to the crew. Fuel supply may be a major exception in that fuel may be hauled over land from offloading sites along the coast or from other sites selected in compliance with applicable regulations.

Section 37.21(d)(10)

Section 37.21(d)(10)) states as follows:

"A hazardous substances control and contingency plan describing actions to be taken to use, store, control, clean up, and dispose of these materials in the event of a spill or accident;"

This section will detail a hazardous substances control and contingency plan to be utilized in controlling, cleaning up, and disposing of hazardous substances in the event of spill or accident.

Both GSI and Western currently utilize extensive and proven hazardous substances control and contingency plans. Each company previously submitted a hazardous substances control and contingency plan for geophysical operations for the ANWR on May 20, 1983, as published at 48 FR 27944, *et seq.*, and 27974, *et seq.*, June 17, 1983, respectively.

Fuel and petroleum-based products will constitute the major hazardous substances to be utilized in performance of this Exploration Plan.

The crew will carry a total capacity of approximately 6,000 gallons of fuel in a sled-mounted tank. The crew will maintain a minimum of four days supply of fuel at all times.

If a tank has ruptured, all remaining fuel will be pumped into other fuel storage tanks. The contaminated area will be thoroughly contained and cleaned. In the event of a larger spill, or if an entire tank or tank car should overturn, ice and/or snow berms will immediately be constructed to contain any flow of fuel to the surrounding environment. Any contaminated snow, absorbent or loose material will be picked up and burned in an incinerator or an approved area.

The following is a typical industry daily check list for fuel storage facilities:

Daily Check List for Fuel Storage Facilities

A. Site location _____
B. Date _____
C. Site condition: —— Excellent —— Good —— Fair —— Poor
Remarks _____
D. Dike and Liner: —— Satisfactory —— Unsatisfactory
Remarks _____
E. Tank: —— Satisfactory —— Unsatisfactory
Remarks _____

If a spill occurs, the following procedure is instituted:

1. Crew Member: Detects spill, notifies party manager.
2. Party Manager: Initiates containment and clean-up effort; mobilizes all personnel and equipment required; notifies Deadhorse base of operations.
3. Deadhorse base of operations: Notifies State of Alaska, Department of Environmental Conservation, preparation of written spill report.
4. Submission of written spill report to State of Alaska, Department of Environmental Conservation and any other Federal, State or local agency as required by law. Provide for additional information as requested by any such agency.

A typical industry spill report form requires the following information:

1. Reporting Company
2. Incident Location
3. Time of Day and Date Spill Occurred
4. Material Spilled
5. Estimate of Spill Volume
6. Present Location of Spill (Describe any movement of spill)
7. Environmental Conditions
8. Barge/Vessel Data
9. Cause of Spill (i.e., mechnical, design defect, operator error, etc.)
10. Actions Taken to Combat Spill
11. Estimated Clean-up Costs
12. Federal, State or Local Agencies Notified
13. All Other Personnel Notified
14. Signature of Reporting Official

Section 37.21(d)(11)

Section 37.21(d)(11) states as follows:

"A general description of the anticipated impacts that the proposed exploratory activities may have on the refuge's wildlife, its habitat, the environment, subsistence uses and needs, and cultural resources, and a description of mitigating measures which will be implemented to minimize or avoid such impacts;"

The purpose of this section is to set forth a general description of the anticipated impacts that the proposed geophysical activities may have on the subject area's wildlife and environment.

The proposed contractors, Western and GSI, have extensive experience conducting geologic and geophysical activity in the arctic. Each company is acutely aware of the necessity to avoid, minimize, or mitigate any impacts to the environment from such activities, however small. Each company has submitted a detailed plan analyzing the potential effects of geophysical activities, and a description of all avoidance, minimizing, and mitigating measures, pursuant to section 1002 of the Alaska National Interest Lands Conservation Act (ANILCA) for exploration of the Coastal Plain of the Alaska National Wildlife Refuge ("ANWR"). (See 47 FR 27974–27984, 27944–27960, June 17, 1983, respectively.)

The foremost impacts to the environment within the subject area will be as follows: (1) Surface disturbance; (2) withdrawal of water; (3) human presence and noise; and (4) solid waste disposal. A discussion of each of these areas is as follows:

1. Surface Disturbance

Surface travel under this Plan of Operations will occur from February, 1985 to no later than May 1, 1985. The snow cover during this period is sufficient to prevent significant adverse harm to the environment. All surface travel will take place on snow covered trails and frozen ground. Deep snow may necessarily be removed to a depth of approximately six inches for the placing of geophones which may be placed near the ground surface. Insignificant compaction of tundra will occur because of the protection from snow cover.

Harm or damage to stream and lake banks will be avoided by close coordination of crossing with the State of Alaska Department of Fish & Game. This will further prevent erosion of stream bank or siltation of streams or lakes.

Damage to low shrubbery and other vegetation will be insignificant. Any such vegetation harmed by moving crew vehicles will naturally recover.

2. Withdrawal of Water

A camp snow melter will be available to provide camp water supply. Water will not be taken from streams or rivers. Lake water will only be taken from lakes without fish. There will thus be little or no impact on marine life as a result of operations performed under this Exploration Plan.

3. Human Presence

Slight impact to the environment may occur as a result of noise emanating from the mobile crews. Such noise will cause only minimal disturbances to birds, mammals, and other wildlife. Vehicle noises generally cause larger mammals such as caribou and musk oxen to move away short distances. Such noise will not affect the eating habits or migration of these animals. All seismic crews will avoid herds of animals whenever feasible.

Bird species such as snow owls and hawks may experience temporary disturbance. Again, any such disturbance will be minimal and for a very short duration. No lasting disturbance or harm to local bird species as a result of the existence of the crews is anticipated.

4. Solid Waste Disposal

All combustible waste products will be incinerated in approved receptacles such as burn baskets. Human wastes will be disposed of through use of electric incinerating toilets, which will reduce sewage to ash suitable for safe transportation to approved dump sites. waste water on Refuge lands will be collected, containerized and back-hauled to approved dumpsites. Solvents and other substances will be containerized and taken back to the base camp for ultimate disposal at approved dumpsites. No significant environmental harm is anticipated as a result of the disposal of solid waste pursuant to activities performed under this Exploration Plan.

In addition to the four basic concerns addressed above, the following precautions will be taken:

(1) To prevent disturbance of wildlife, concentrations of caribou, muskox, red birds, and any other wildlife will be avoided. Contact with or harassment of wildlife, even if unintentional, will be recorded.

(2) All field party members will take special care to minimize the disturbance when any wildlife is encountered. No hunting, fishing, trapping, or feeding of wildlife will take place under any circumstances.

(3) Polar bear and brown bear denning sites will be avoided by rerouting traffic and seismic traverses in accordance with the requirements of 50 CFR 37.21(b)(11) and 37.32(c).

(4) Cultural and archaeological sites, and other sensitive areas, will be identified prior to operations and avoided.

Section 37.21(d)(12)

Section 37.12(d)(12) states as follows:

"A description of the proposed procedures for monitoring the environmental impacts of its operation and its compliance with all regulatory and permit requirements;"

Chevron is committed to implementing and performing the proposed Exploration Plan in a manner which will result in negligible adverse impact on the Refuge wildlife and habitat. The proposed operation will be conducted in a manner satisfactory to the Regional Director. Monitoring of the proposed activity by both Chevron and the USF&WS Service will assure compliance with all applicable Federal/State laws, regulations and permit conditions. Chevron welcomes the USF&WS monitor or monitors for the program, and all accommodations for such monitor(s) will be provided.

It will be the duty of every individual associated with the proposed activity to see that the job is performed in an environmentally acceptable manner. It will be clearly understood by all company and contractor personnel that wanton or reckless disregard of regulatory, permit and/or operating requirements will not be tolerated.

Chevron will establish and maintain clear lines of authority and responsibility for management of all aspects of contract work and services. Monitoring the environmental compliance responsibilities will be key, accountable job elements of the job description of the employees assigned to the proposed project.

Chevron will maintain overall responsibilities of the proposed project and compliance monitoring. A general representative or Project Manager will be designated and will be the person primarily accountable for managing the proposed project (§ 37.12(b)). The actions of each individual crew member will be directed and evaluated onsite by a Client Representative who will report directly to the Project Manager.

Reporting to each of the Client Representatives will be a Party Manager whose major duties will include daily monitoring and inspections. In addition, a Project Biologist knowledgeable of the area will be retained to review the operations plan and provide assistance to the Project Manager and the Client Representatives.

Described below are the duties of the Project Manager, the Client Representatives, the Party Managers, and the Project Biologist in terms of project monitoring and compliance with all regulatory and permit requirements. The individuals to be assigned to these positions will be designated in the Plan of Operations.

Project Manager. The Project Manager will have overall authority for directing the proposed project. This person will have the responsibility to assure, through monitoring procedures, that the operation's activities are in compliance with all regulatory and permit conditions. The Project Manager will be the Regional Director's point of contact concerning project monitoring, compliance orders, notifications and service requests.

The Project Manager will:

1. Ensure that all individuals are instructed regarding Chevron's environmental compliance policy, and the regulatory and permit conditions applicable to the project.

2. Provide opportunities for the Regional Director to conduct environmental and other pertinent briefings for any and all personnel involved in the field operations.

3. Provide a copy of 50 CFR Part 37 to each employee involved with the proposed project.

4. Furnish lodging, food and use of communications and surface/air transportation systems to the Service Field Monitors and other representatives indentified by the Regional Director.

5. Plan operations so as to avoid movement of equipment through riparian willow stands.

6. With input from the Project Biologist, submit for approval to the Regional Director plans for rehabilitation of disturbed surface areas.

7. Assure that the project operations are being conducted so as not to harass wildlife.

8. Through consultation with the Project Biologist, assure that project operations are not unduly impeding passage and movements of large mammals or fish, or disrupting fish spawning, overwintering or nursery areas.

9. Plan operations to avoid restricted or prohibited archeological sites that have been identified by the Regional Director.

10. Report to the Regional Director any cultural resources or materials discovered during the course of the project and ensure that steps are taken to protect that resource/material pending evaluation by the USF&WS.

11. Make the necessary arrangements to have standing or substantial above-ground remains marked as directed by the Regional Director.

12. Ensure that all oil or hazardous subtance spills are contained, cleaned up and reported as prescribed by the approved hazardous substances control and contingency plan.

13. Obtain approval from the Regional Director for the location of all fuel storage areas and temporary structures (i.e. ice airstrips).

14. Plan and monitor the project to be consistent with Special Areas provisions.

15. Ensure that project activities are not planned or conducted within the prescribed distances of the Sadlerochit Spring and Creek area.

16. Prepare and submit every other week to the Regional Director progress reports as prescribed. A synopsis of monitoring actions taken to assure compliance with regulatory and permit conditions will be included in the reports.

17. Be thoroughly knowledgeable of all regulatory requirements contained in ANILCA, 50 CFR Part 37, the Special Use Permit conditions and other Federal, State and local laws, regulations and permit conditions applicable to the project (Chevron will prepare a reference document containing this information for use by the Project Manager, the Client Representatives, and the Party Managers).

Client Representatives. If the USF&WS selects a Client Representative, that decision will be followed by Chevron. If the USF&WS does not select a Client Representative, a Client Representative will be a Chevron employee qualified as a senior geophysicist with field experience. The Client Representative will report directly to the Project Manager and will be responsible for directing and monitoring the activities of the particular crew to which each is assigned. The Client Representative will be thoroughly knowledgeable of all regulatory requirements contained in ANILCA, 50 CFR Part 37, the Special Use Permit Conditions and other Federal, State and local laws, regulations and permit conditions applicable to the Project.

The Client Representative will:

1. Address and attempt to resolve all problems and potential problem areas brought to his attention concerning his crew's operations.

2. In conjunction with camp safety meetings, present appropriate topics and information so as to develop and maintain an environmental awareness within the field personnel.

3. Monitor vehicle operations to assure that the vegetative mat or soil is not significantly damaged or displaced. Should damage occur, the Client Representative will document location and assessment information for use by the Project Manager, the Project

Biologist and the USF&WS to identify possible rehabilitation needs.

4. Locate camp site locations and monitor proper housekeeping and clean up efforts.

5. Monitor gray water discharges to assure proper treatment.

6. Minimize wildlife harassment by assuring appropriate distances are maintained by vehicles and aircraft.

7. Properly manage garbage so as not to attract wildlife, and prohibit the feeding of wildlife by personnel.

8. Execute stream crossings so as to minimize effects on banks, fish migration, overwintering, spawning areas, etc.

9. Ensure that water is being obtained by approved methods.

10. Maintain vehicle and camp prohibitions through known cultural and archeological/resource sites and other sensitive areas.

11. Report to the Project Manager any cultural resources or materials discovered during the course of the project and ensure that steps are taken to protect that resource/material until it can be evaluated by the Service.

12. Ensure that previously marked standing or substantial above-ground remains are avoided by crew operations.

13. Make proper notification of all spills or leaks of hazardous substances, fires, injuries, fatalities, etc.

14. Properly dispose of all solid waste.

15. Contain, control and clean up spills of hazardous substances in accordance with approved hazardous substance control and countermeasure plans.

16. Properly locate fuel storage areas.

17. Take reasonable precautions to protect geodetic land survey monuments and report to the Project Manager any monuments disturbed.

18. Maintain the prescribed distance from the Sadlerochit Spring and Creek area.

19. Submit to the Project Manager every other week information required for the Progress Report including information regarding compliance monitoring actions. The Client Representative shall be thoroughly knowledgeable of all regulatory requirements contained in 50 CFR Part 37, the Special Use Permit Conditions and other Federal, State and local laws, regulations and permit conditions applicable to the Project. (Chevron will prepare a reference document containing this information for use by the Client Representatives.)

Party Manager. Each crew will have a Party Manager whose major duty will be routinely inspect camp and field operations. A formal checklist will be developed, and submitted in the Plan of Operations, identifying potential problem areas associated with the camp, vehicles, fuel caches, etc. This checklist will be completed, signed and submitted to the Client Representative daily. The Party Manager will monitor fueling and other fuel transfer operations to assure implementation of proper practices and procedures, and to assure that any spills are contained, cleaned up and reported to the Client Representative.

Project Biologist. The services of a Project Biologist Knowledgeable of the area will be available to the Project Manager and Client Representatives whenever needed. When directed, the Project Biologist will coordinate with the Regional Director, his staff and Field Monitors and will provide information and guidance to the project. As needed, the Project Biologist will monitor the project operations and bring to the attention of both the Project Manager and the Client Representative potential or existing problem areas.

In addition, the Project Biologist will perform the following specific services:

(1) Recommend routes through riparian willow stands that cannot be avoided.

(2) Inspect and document disturbed surface areas and recommend rehabilitation methods to the Project manager.

(3) Aid crews working in potential bear denning areas to assure that dens will not be disturbed.

Section 37.21(d)(13)

Section 37.21(d)(13) states as follows:

"A statement that, if authorized to conduct exploratory activities, the applicant shall comply with this part, its special use permit, its approved exploration plan, plan of operation and all reasonable stipulations and orders issued by the Regional Director."

CHEVRON hereby states that CHEVRON, if authorized to conduct exploratory activities, shall comply with all of the regulations under 50 CFR Part 37, the special use permit, the approved exploration plan, the plan or operations, and all reasonable stipulations, demands and orders issued by the Regional Director.

Section 37.21(d)(14)

Section 37.21(d)(14) states as follows:

"A description of the applicant's proposed data quality assurance and control program;"

A data quality assurance and control program will be ongoing throughout the exploratory activities proposed in this Exploration Plan. Rigid quality control standards and tolerances for Vibroseis (R) seismic reflection and gravity data acquisition (which are well established by industry practice in the Arctic) will be incorporated in any agreement with contractor(s) selected to acquire the proposed geophysical program.

Prior to the initiation of any field geophysical data acquisition the geophysical system (vibrators, geophones and recording units) will be field tested and calibrated to assure proper compatibility between field crew unit. A Chervon quality control engineer will also conduct an *independent system analysis* to insure that the data acquisition equipment meets all industry standards.

A Client Representative will be assigned to each seismic crew to assure adherence to quality control standards. On the basis of these standards the client representative may require the crew to temporarily terminate data acquisition, repair equipment and/or take other steps as necessary to insure that acquisition parameters remain acceptable and that system response remains within tolerances.

Selection of field recording paramters will be made following analysis of initial field recordings and noise analysis tests. Recording parameters are not expected to vary significantly from those used in recent years elsewhere on the North Slope; however, independent systems checks and noise tests will be conducted periodically through the season to verify that selected recording parameters are appropriate for each area of operation. This in conjunction with data processing analyses which will be completed in a central data processing center will determine if local geologic conditions warrant modification of selected recording parameters during the season.

Chevron's Geoscience Division will schedule initial and periodic tests of seismic instruments, survey and other field equipment to maintain high quality tolerance. Standardized instrument tests will be recorded on a daily, weekly and monthly basis and retained to assist in monitoring instrument performance and to assist in insuring that system performance remains within required tolerances.

Additional quality control will be accomplished by processing geophysicists when digital tapes containing raw data are transferred to a central processing center for final processing. A final phase of quality control will be accomplished by the interpreters who will utilize the data to prepare a subsurface geologic interpretation.

The parameters used to process the data will be similar to those set forth in

the state of the art processing sequence submitted by Geophysical Service, Inc. (GSI) as part of GSI's approved survey on the Refuge in 1984. These parameters are specifically delineated at 48 FR 27958, June 17, 1983.

The entire testing, acquisition, and processing quality control process is documented and this record will be available to the Secretary pursuant to applicable regulation.

Section 37.21(d)(15)

Section 37.21(d)(15) states as follows: "Such other pertinent information as the Regional Director may reasonably require."

CHEVRON will submit any further information required by the Regional Director.

Geophysical Service Inc., Revision Request

June 4, 1984

Regional Director,
U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska
ATTN: Oil, Gas and Minerals Specialists (AWR/PSS)

Dear Sir: As provided by 50 CFR 37.25(a), Geophysical Service Inc. (GSI) requests permission from the Regional Director to revise our approved exploration plan for the Section 1002 study area of the Arctic National Wildlife Refuge (ANWR). The revision requested is for permission to change the energy source from dynamite to vibrators.

This is a substantial change from the operations presently approved in the exploration plan. We held three meetings with our client group of twenty-three (23) companies to discuss the form and content of this revision request and would now approve of this request being published so that hearings can be held for public comment.

The decision to change from dynamite to vibrators is not an easy one to make. It can be simplified by considering it within the framework of the Regional Director's Record of Decision dated 15 September 1983 and GSI's experience this past winter season. The Record of Decision provides a summary of the goals and expectations for the exploration as well as initial concerns regarding the use of vibrators. GSI's experience this past winter season provides insights to improvements that may be implemented in the exploration next year.

Record of Decision

The Regional Director separates the objectives of this program into three distinct parts. Firstly, the best possible data should be acquired. Secondly, the data should be obtained without significantly adversely affecting the environment, and thirdly there should be no unnecessary duplication of activities. He states that the higher the level of activity on the coastal plain, the greater the chance that significant adverse effects might occur, noting that the higher the level of regulatory control, the smaller the chance that significant adverse effects might occur.

Appendix 3 of the Record of Decision discusses expected or typical operations for the dynamite crews. It mentions that the cat-trains (main camps) are generally considered to be the most "damaging" component of the crew's operation.

1984 GSI Experience

GSI operated two conevntional dynamite crews and one vibrator crew on the NWR this past winter season for a total of nine (9) crew months. There were 607 miles of conventional shothole sesmic data collected along with 153 miles of vibrator data. Forty (40) of the 153 miles of vibrator data duplicated dynamite traverses. Gravity data was collected along all the dynamite traverses. The exploration was done on a 6X12 mile grid that covered the entire 1002 study area. The survey and gravity data were tied into the network of data that was collected in 1983 by Itech and Photogravity in the execution of their exploration plan. The data collection was monitored by Fish and Wildlife Service (FWS) personnel that were on the crews throughout the season. *There were no significant adverse impacts to the environment as a result of our activity.*

Extensive testing of both data collection and data processing parameters was done by GSI and supervised by representatives of GSI's client group. Results of the testing were presented to the group, and parameters used in both the field and the processing center represent a consensus of opinion of the twenty-three (23) companies in the group.

Bottomhole samples were collected in the field at every shothole for the government's analysis. GSI's oil company clients have arranged for analysis of one fourth of these samples so that a detailed lithologic and paleontologic description of the surface of the area may be made.

The data collected this year will ensure that the Secretary of Interior has the best possible data to use in his report to Congress. This request for revision is made so that we can take advantage of the lessons we have learned during this first season of exploration.

Reducing Environmental Impacts

GSI proposes the use of vibrator crews rather than conventional shothole dynamite crews because vibrator crews substantially reduce environmental impacts by reducing the level of activity in all phases of the operation. Activity is reduced in the main camp, in the logistics and support activities associated with each crew, and along the seismic lines.

Attachments A and B provide a summary of the differences in equipment and personnel for both types of crew. More detailed equipment lists for these crews are provided for reference in Attachments C and D. There are six (6) fewer vehicles, seventeen (17) fewer people and five (5) fewer sleighs associated with each vibrator crew as compared to each dynamite crew.

With the use of vibrators, activities in the main camp are reduced significantly. The fewer sleighs reduce the actual size of the main camp by 29%. With fewer people in the camp, less water is consumed requiring less snow to be melted.

The logistics and support activities associated with a vibrator crew are much less than those needed for a dynamic crew. Fewer vehicles require less fuel. Fewer trips by fuel sleighs between main camps and cat camps have to be made. Fewer flights are made to the main camp to supply spare parts and groceries and to rotate personnel.

With the use of vibrators, the massive organization needed to support the use of explosives on a crew could be eliminated. To supply the crews with the almost 800,000 pounds of explosives detonated on the Refuge this year required overland supply trips every ten (10) days. When production rates improved as weather got warmer in April and May these supply trips were supplemented with supply flights by DeHaviland Twin Otter. This whole activity would be eliminated if vibrator crews were used.

The level of activity on the seismic line is reduced with a vibrator operation because there will be fewer vehicles and people working on the line. The whole difference in numbers of people and equipment results from the elimination of the drilling and shooting.

The level of activity on the Refuge associated with a vibrator crew would be less for reasons besides those that are associated with fewer people and less equipment. The tracked vibrators that are proposed for use on the Refuge can also be used on the ice. Therefore the activities of the third crew that was needed to make the ties to offshore data sets this year could be eliminated. This reduces the duplication of data collection efforts which this year amounted to approximately 40 miles of seismic line.

Data Quality Advantages

One important measure of the quality of a seismic survey must be the quantity of the data acquired in that survey. With the parameters that might typically be used in a vibrator survey such as are shown in Attachment E, a crew could be expected to collect data at the rate of 3.6 miles per day. During the 1983–84 season experience showed that an average data acquisition rate of 2.5 miles per day could be achieved with explosives as the energy source. Therefore in a fixed length season, much more data could be acquired using the vibrator technique.

The lateral diversity of near surface geology on the Refuge discourages confidence in predicting drilling production. On the other hand, the vibrator production of 3.6 miles per day is estimated with great confidence. Very reasonable estimates may be made when parameters and terrain are known. The typical parameters shown in Attachment E are not meant to be the final parameters that will be used next year. Before the final vibrator parameters are chosen testing would be performed in the field to determine optimal sweep lengths, drive levels and other parameters.

Noises that interfere with desired seismic information are normally either source generated or random. Troublesome source generated noise is usually more severe with the use of vibrator and other surface energy sources than with a deep-hole explosive source. However, because of the coherent

nature of most source generated noise, techniques are available with the use of vibrators to reduce significantly the impact of the noise on the desired signal.

One method of attacking such noise is to control the frequency band width of the sweep signal so that the most troubling components of the possible coherent noise trains are not generated, and another method, commonly used, is to adjust the source array in a manner that attenuates the noise trains that are generated. In general, dynamite crews as they are normally used on Alaska's North Slope do not employ extended source arrays for environmental, logistical, and economic reasons, so that the source induced, coherent nose trains that are generated are not attenuated at all by the source deployment technique.

The attenuation of random noises is also important in the production of high quality seismic information. In general, there are more techniques available for reducing the impact of random noise on the final results of a seismic survey conducted using vibrators than using dynamite.

This is, at least in part, because, normally, a vibrator survey that has an energy input that is equivalent to a dynamite survey will be higher CDP fold. Because of the higher fold, the effects of random noise will be significantly reduced in the CDP stacking process. In addition, higher fold data will yield better statistical information for the determination of accurate velocities and statics which in turn will help improve the signal to noise ratio even further. The high technology signal processing measures used in the computer handling of vibrator data, such as correlation, are powerful tools in the further attenuation of random noise, and some of these tools are not available in the normal course of work done using dynamite as an energy source.

It is common practice on Alaska's North Slope to equip vibrator source crews with sophisticated computers that are located in the cabin of the recording truck. The reason for this is that proper quality control of vibrator data requires that it be correlated with the imput sweep. GSI's field computer is called an FT–1, and dynamite crews do not normally use them. The FT–1 is also capable of complex data processing beyond the correlation stage, and this additional information is also available for making decisions about parameters with little delay between the time the data is acquired and the time the processed result is available.

It is standard procedure on crews using dynamite as the energy source for the drills to operate a significant distance in front of the recording crew. There are many reasons why this is necessary, not the least of which is that the drills are a source of undesirable noise. The lead distance may be as much as 10 miles. In a vibrator operation, the vibrators are an integral part of the recording operation and proceed along the line of traverse with and at the same time as the rest of the recording crew. If it is decided that a parameter change needs to the made on a dynamite crew, the place along the line to implement the change then needs to be chosen. If the current recording location is chosen, that probably will mean redrilling the amount of the line by which the drills lead the recording crew. If redrilling is sufficiently undesirable, as is normally the case, then parameters can not be changed at the recording location, and there is no guarantee that the desired change will be appropriate further down the line. A vibrator operation is not handicapped in this way, and parameters may be changed without duplicating effort.

During the 1983–84 season several lines were acquired on which comparisons can be made between vibrator data and dynamite data. A list of these lines is enclosed in Attachment F. Our observation is that the vibrator data is generally superior in the shallow section, whereas there are instances where the dynamite data is better in the deeper section. We attribute the superiority of the dynamite data where that phenomenon occurs to the fact that the level of effort with the dynamite source was greater in terms of energy imput per unit line length. We confidently predict that if the level of effort with vibrators is increased in 1984–85 over the level of effort with vibrators used in 1983–84, there will be a corresponding enhancement of data quality.

The greater source effort, as reflected in the typical parameters in Attachment C, is used to achieve greater penetration of energy. The amount of sedimentary section seen onshore is greater than what has been seen offshore and it is thus required that more energy be put in the ground to obtain adequate reflections.

Concerns About Vibrators

There were several concerns about the use of vibrators in the Record of Decision. These seemed to be that the vibrators were relatively inflexible in their travel routes, that snow had to be bladed for them to vibrate, and that there would be not uphole times or bottomhole geologic samples collected.

A crew using vibrators as an energy source has no less latitude than a crew using dynamite in choosing travel routes that avoid environmentally sensitive areas as found on preprogrammed seismic lines. This claim is supported by the history of seismic work in the oil field at Prudhoe Bay. In that area a crew commonly encounters numerous gathering lines, development structures, and roads. Thousands of miles of vibrator data have been collected on which it was required that the lines be adjusted and the vibrators detoured around many different kinds of obstacles.

The limitations in offsetting the source from the seismic line, either inline or crossline, are determined by spread geometry rather than source type. This year our spread geometry dictated that there could be no crossline offset greater than 880 feet.

This provided a corridor of 1760 feet in which the source could be placed. This corridor of 1760 feet applied to the vibrator crew as well as the dynamite crew. If this corridor was not enough to avoid environmentally sensitive areas then the seismic line was bent. A distinct and significant advantage that vibrators have is that they can cross areas that have overwintering fish and need no set back from potentially fish bearing waters as do the dynamite crews.

The only time that snow would be bladed for the vibrators would be when the snow was excessively deep and the actual transport of the vehicle was impeded. With the snow depths generally encountered this past year, 6–24 inches, there would be no need to blade snow for the vibrators.

It is true that uphole times and bottomhole samples are not collected in the course of most vibrator operations. Today's technology makes uphole times useful only in specialized situations. GSI did not encounter any of these situations this last year nor do we anticipate encountering any next year. The uphole times on the ANWR generally ranged from 4 to 8 milliseconds. Residual statics routines in the processing center commonly resolve statics problems on the order of 50 milliseconds and thus can handle any problems that may arise from not recording an uphole time.

GSI would recommend the addition of one drill with driller and helper to each vibrator crew if it is felt that bottomhole samples are needed for the exploration effort next year. This drill could produce samples from 75 foot holes at intervals ½ to 1 mile along the seismic lines. GSI's client group will make a recommendation to the Regional Director at a later date on whether or not the sampling program should continue. The recommendation will be based on results obtained from the geochemical analyses that will be performed on over 3,000 of more than 13,500 samples collected this year.

Summary

GSI successfully collected 760 miles of seismic data for the government and our ANWR group this year. This experience and the consequent lessons learned in the course of the exploration motivate GSI to propose to change the energy source on the seismic crews operating in the ANWR to vibrators rather than dynamite. This change will permit collecting the best possible data for inclusion in the report to Congress on the hydrocarbon potential of the area by the Secretary of Interior. At the same time it will reduce the environmental impacts of the exploration by reducing the level of activity on the Refuge and it will reduce unnecessary duplication. Vibrators provide additional flexibility in attacking data quality problems such as coherent and random noises. What have been previously perceived as limitations to vibrators may be resolved satisfactorily in the processing center and by placing a drill on each crew to collect bottomhole samples.

GSI and our 1984 Arctic National Wildlife Refuge Group are eager to effect this revision. We remain available to you for discussion regarding this request. If you have questions or comments please feel free to call me at 907/563–3070.

Sincerely yours,

George Buzan,

Geophysical Service Inc.

ATTACHMENT A—PERSONNEL COMPARISON

Vibrator crew	Dynamite crew
1 Party Manager	1 Party Manager.
1 Administrator	1 Administrator.
1 Instrument Engineer	1 Instrument Engineer.
1 Asst. Instrument Engineer	1 Asst. Instrument Engineer

ATTACHMENT A—PERSONNEL COMPARISON—Continued

Vibrator crew	Dynamite crew
4 Cable Truck Drivers	4 Cable Truck Drivers.
7 Recording Helpers	7 Recording Helpers.
2 Mechanics	2 Mechanics.
2 Surveyors	2 Surveyors.
3 Survey Helpers	3 Survey Helpers.
1 Gravity Meter Operator	1 Gravity Meter Operator.
1 Camp Attendant	1 Camp Attendant.
1 Cook	1 Cook.
1 Cook's Helper	2 Cook's Helper.
6 Tractor Operators	7 Tractor Operators.
10 Mechanic's Helpers	9 Drillers.
5 Vibrator Operators	9 Drill Helpers.
	2 Preloaders.
	1 Shooter.
38 Total	55 Total

ATTACHMENT B—EQUIPMENT COMPARISON

Vibrator crew	Dynamite crew
1 Recording vehicle	1 Recording vehicle.
4 Cable and geophone carriers.	4 Cable and geophone carriers.
3 Survey vehicles	3 Survey vehicles.
1 Party Manager's snowmobile.	1 Party Manager's snowmobile.
1 Client Rep snowmobile	1 Client Rep snowmobile.
1 FWS snowmobile	1 FWS snowmobile.
1 Gravity snowmobile	1 Gravity snowmobile.
1 Camp utility vehicle w/ crane.	1 Camp utility vehicle w/ crane.
6 Tractors	7 Tractors.
1 120 trace TI DFS V	1 120 trace TI DFS V.
260 groups of 24 geophones each.	260 groups of 24 geophones each.
260 groups of cables (12 trailers).	260 groups of cables (14 trailers).
1 Survival unit	1 Survival unit.
All required survey equipment.	All required survey equipment.
Two-way radios and other accessories.	Two-way radios and other accessories.
1 LaCoste-Romberg gravity meter.	1 LaCoste-Romberg gravity meter.
5 TI tracked vibrators	9 Mayhew 1000 drill rigs.
1 Vibrator tender	1 Preload vehicle.
1 TI FT-1	1 Shooter's snowmobile.
	3 Magazines for explosives.
	1 Magazine for detonators.

Attachment C—Equipment List Vibrator Crew

5 Texas Instruments tracked vibrator units (4.25 psi) equipped with Texas Instruments high frequency electronics to allow for operation up to at least 125 Hz. Amplitude ramping of sweeps is available so that high frequencies may be accentuated.

1 Foremost Chieftain tracked recording vehicle (3.52 psi).

1 vibrator tender (3.52 psi).

4 cable and geophone carriers (2.81 psi each carrier).

3 survey vehicles (1.3 psi each vehicle).

1 party manager's snowmobile (1.3 psi).

1 Fish and Wildlife Service snowmobile (1.3 psi).

1 gravity operator's snowmobile (1.3 psi).

1 client representative snowmobile (1.3 psi).

1 camp utility vehicle with crane (2.81 psi).

6 tractors (Caterpillar D–7 or equivalent) (10.5 psi each).

1 120 trace Texas Instruments DFS V digital recording system complete with 3 millisecond anti-alias filters and ancillary equipment such as radios, shooting units, input panels, electrostatic camera, tape transports, monitoring equipment, spare parts and all other equipment necessary for CDP recording.

1 Texas Instruments FT–1 Field TIMAP computer with a Gould record section plotter.

260 groups of 24 geophones each (Geospace 10 Hz., 20D digital grade) and necessary cables to serve all geophone groups at a group interval of 110, 165, or 220 feet. Geophones are mounted on arctic base plates.

1 ski-mounted camp for 50 persons complete with shop, kitchen-diner, washcar, snowmelter, bedding, utensils, tools, communications equipment, and fuel strorage for 18,000 gallons.

1 survival unit for remote deployment.

All required survey equipment such as theodolites, chains, rods, electronic distance measuring equipment, and marking devices.

Two-way radios, fire extinguishers, survival equipment, and first aid kits for all vehicles.

1 LaCoste-Romberg Model D arctic gravity meter.

Attachment D—Equipment List Dynamite Crew

9 Mayhew-1000 drills with air compressors mounted on tracked carriers (2.81 psi each vehicle).

1 Foremost Chieftain tracked recording vehicle (3.52 psi).

4 cable and geophone carriers (2.81 psi each carrier).

3 survey vehicles (1.3 psi each vehicle).

1 party manager's snowmobile (1.3 psi).

1 client representative snowmobile (1.3 psi).

1 Fish and Wildlife Service snowmobile (1.3 psi).

1 preload vehicle (2.81 psi).

1 gravity operator's snowmobile (1.3 psi).

shooter's snowmobile (1.3 psi).

1 camp utility vehicle with crane (2.81 psi).

7 tractors (Caterpillar D–7 or equivalent) (10.5 psi each).

1 120 trace Texas Instruments DFS V digital recording system complete with 2 millisecond anti-alias filters and ancillary equipment such as radios, shooting units, input panels, electrostatic camera, tape transports, monitoring equipment, spare parts and all other equipment necessary for CDP recording.

260 groups of 24 geophones each (Geospace 10 Hz., 20D digital grade) and necessary cables to serve all geophone groups at a group interval of 110, 165, or 220 feet. Geophones are mounted on arctic base plates.

1 ski-mounted camp for 65 persons (14 trailers, 6.0 psi each) complete with shop, kitchen-diner, washcar, snowmelter, bedding, utensils, tools, communications equipment, and double-walled fuel strorage for 18,000 gallons.

1 survival unit for remote deployment (6.0 psi each trailer).

Magazines to provide storage for 60,000 lbs of dynamite (8.0 psi).

1 magazine for detonators.

All required survey equipment such as theodolites, chains, rods, electronic distance measuring equipment, and marking devices.

Two-way radios, fire extinguishers, survival equipment, and first aid kits for all vehicles.

1 LaCoste-Romberg Model D arctic gravity meter.

Attachment E—Typical Virbrator Parameters

CDP Fold	60	60	30	30.
Number Groups	120	120	120	120.
Group Interval	110	165	110	165.
Geophones/Location	24	24	24	24.
Geophone Spacing	4.2 ft.	13.8 ft.	4.2 ft.	13.8 ft.
VP Interval	110	165	220	330.
Near Trace Offset	275 ft.	412.5 ft.	275 ft.	412.5 ft.
Sweeps/VP	4	6	6	10.
Sweep Length	12 sec.	12 sec.	12 sec.	12 sec.
Listen Time	8 sec.	8 sec.	8 sec.	8 sec.
Production Estimated in Miles/Day	3.6	3.6	4.5	4.15.

Attachment F—Lines for Data Comparison

Dynamite	*Vibrator*
AN84–1	ANV84–1
AN84–10	ANV84–10
AN84–12	ANV84–12
AN84–14	ANV84–14
AN84–16	ANV84–16
AN84–18	ANV84–18
AN84–3	ANV84–3
AN84–30	ANV84–30
AN84–32	ANV84–32
AN84–34	ANV84–34
AN84–7	ANV84–7

WESTERN GEOPHYSICAL CO. OF AMERICA

Exploration Plan for Proposed Oil and Gas Exploration within the Coastal Plain of the Arctic National Wildlife Refuge, Alaska

June, 1984

WESTERN GEOPHYSICAL COMPANY OF AMERICA (WESTERN) hereby submits this Exploration Plan for

Proposed Oil and Gas Exploration within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) in Alaska. This plan is submitted in accordance with the requirements of 43 CFR 37.1 et seq. and sets forth the information required by § 37.21 of the Regulations.

I. Introduction

Section 1002 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3142, requires the exploration of the ANWR with the objective of acquiring the best attainable data with which to evaluate the costs and benefits of developping the coastal plain's oil and gas reserves. In recognition of the fact that the area comprises a national wildlife refuge and contains unique natural attributes together with the potential for vast oil and gas reserves, ANILCA further requires that the necessary exploration be accomplished in a manner that avoids significant adverse effects on the environment and its fish and wildlife.

The first year of exploration under the mandated program has been completed. We understand that the resulting data contain strong evidence of the existence of highly prospective areas including one or more large, symmetrical anticlines at depths consistent with a reasonable probability of significant hydrocarbon content. Because of limitations imposed on the method of exploration during this initial period, it is unlikely that any significant lithologic information can be extracted from those data. It is probable therefore that it will not be possible to determine whether, in the prospective areas, there exist zones of porous rock that can form petroleum or natural gas reservoirs of significant extent. We are also informed that the data do not lend themselves to determinations of whether there are significant faults or facies changes within any potential reservoir zone. In order to make such a determination it would be necesary to survey the area with a procedure such as the one described in this plan that would obtain data of a substantially higher signal-to-noise ratio. Such data can then be used as input to WESTERN GEOPHYSICAL COMPANY's proprietary and exclusive SLIM process for lithologic modeling (See Exhibit E). That process can produce information as to the porosity, facies changes, and minor faulting that may be found within the prospect. If faulting or facies changes are indicated as being within potential reservoir rocks, it will be possible to determine which part of the structure offers the greatest potential.

We therefore propose the program described below to obtain the high quality data that will be needed to carry out the mandate of section 1002 of ANILCA, 16 U.S.C. 3142.

As set forth below, WESTERN is eminently qualified to meet both of these objectives. Today WESTERN is the acknowledged leader in the geophysical exploration industry. Since 1957, WESTERN has been involved continuously (though seasonally) in geophysical exploration in Alaska and in other Arctic regions. We are thoroughly familiar with the area's terrain and with the technicalities and operational difficulties associated with work in the Arctic. In the process of acquiring this experience, WESTERN has had numerous occasions to structure its exploration activities to conform with the environmental requirements mandated by the State of Alaska, local municipalities and Native groups, as well as by the Federal Government. Because the avoidance of significant adverse effects on the area's fish and wildlife and their habitat depends primarily on the permittee's working knowledge of those realities, WESTERN is a highly qualified candidate for exploration of the ANWR within the environmental guidelines mandated by ANILCA and set forth in the Regulations. Equally important, data recorded and processed by WESTERN is recognized by the Alaskan oil industry as being the highest quality to be obtained. Top quality data will be of major significance in aiding the Secretary to make his best evaluation of the area for his ultimate report to Congress.

In the half century that WESTERN has been in existence, it has grown until now it is the largest geophysical company in the world. Such growth would not be possible without the confidence and support of satisfied clients. WESTERN holds patents on over 150 items directly related to seismic exploration and has made sizeable contributions to the development of techniques that have brought the exploration for hydrocarbons to the advanced state it enjoys today.

WESTERN's processing and interpretation of data has constantly kept pace with the tempo set by its field acquisition methods. This combination of scientific research/development and practical know-how should qualify WESTERN for the important mission of fulfilling the provisions of section 1002 of ANILCA.

II. Responsible Personnel

WESTERN's supervisory personnel who would be directly responsible for the ANWR project include Herman Semeliss, Area Manager; Supervisors Roy I. Morris and Ron Bakke; Shop Supervisor Oliver Krein; Survey Supervisor William Sands; and Administrative Supervisor John Bowers. The total tenure with WESTERN of the key personnel now stationed in Alaska is over 130 years. More than 100 years of this time has been spent in the Arctic or sub-Arctic.

Mr. Semeliss will be in complete charge of all phases of the operation and will be assisted at the field level by Supervisors Morris and Bakke.

Mr. Krein will supervise all support functions related to mechanical equipment and will develop spcialized gear as required to complete the project. Mr. Sands will oversee all phases of survey work, including layout, control, and map making, using the most modern, state-of-the-art computerized equipment. Mr. Bowers will act as liaison between all governmental agencies and private organizations.

In Washington, D.C., WESTERN is represented by the law firm, Cotten, Day & Doyle.

III. Plan Requirements

This Plan sets forth the information specifically required by § 37.21 of the Regulations and in general describes the guidelines that WESTERN will observe in order to discharge its obligations under the letter and spirit of 43 CFR 37.1 et seq. Upon acceptance of this Plan and subsequent grant of a Special Use Permit pursuant to § 37.23, a detailed Plan of Operation will be submitted in accordance with § 37.24.

Period of Plan

This Plan anticipates the active involvement of WESTERN during all phases of the ANWR exploration process, through the 1984–85 winter season, and, in the event of a Congressional extension of the time period within which to accomplish such exploration, we could possibly have additional program to add to our basic grid.

The seismic program we are submitting for consideration consists of 750 miles of line in a pattern specifically designed to supplement the data obtained in the first year of exploration and to fill some of the gaps left in that survey. Departures, adjustments, and alterations from this basic grid pattern will be made as required to avoid significant impacts to the ecological, cultural, and archaeological resources of the area as further described in this plan. Based upon our estimate of the allowable working season, we compute that it would take two (2) crews working the entire season to complete the program. Since the opportunity to explore ANWR is limited, it is our opinion that data quality should not be sacrificed in order to achieve greater (faster) production. Hence, our program

is based on acquiring 48-fold data. If during the survey, the line orientations or a different multiplicity (fold) are required for parts of the area to optimize the geophysical data obtained, we are prepared to make the needed changes after we have received approval from all concerned authorities.

Therefore, our application consists of requesting permission to operate two (2) seismic crews for the winter season of 1984–85.

IV. Response to Items in Regulations

The following information is intended to respond directly to specific items enumerated in the Regulations as § 37.21(d) (1) through (14).

(1) Permittee

The name of the applicant is WESTERN GEOPHYSICAL COMPANY OF AMERICA, a wholly owned subsidiary of Litton Industries. Our headquarters are at 10,001 Richmond Avenue, Houston, Texas 77042, (713) 789–9600. WESTERN is organized and exists under the laws of the State of Delaware and was incorporated under its present name on May 23, 1955. WESTERN is duly licensed and authorized to carry on business in the State of Alaska.

WESTERN's principal officers include Mr. Howard Dingman (President) and Mr. Neal P. Cramer (Executive Vice President and Manager of Operations), both of whom are located at WESTERN's Houston headquarters and both of whom are familiar with operations in Alaska and the terms of this Plan. As indicated previously, WESTERN's officer in charge of all Alaska operations is Mr. Herman A. Semeliss, Area Manager for Alaska, located in WESTERN's Anchorage office at 351 East International Airport Road, Anchorage, Alaska 99502, (907) 563–3511.

In direct charge of Alaska field operations are Supervisors Roy I. Morris and Ron Bakke, domiciled at WESTERN's Anchorage office or at WESTERN's base camp in Deadhorse, Alaska, (907) 659–2509.

(2) Participants

WESTERN's application is based on our being granted a permit to conduct a speculative survey. The speculative survey is the most common method in use by industry today to acquire quality seismic data which is then sold to a broad spectrum of purchasers thereby reducing the cost to the individual buyer to a point where only a group with a very large number of participants can compete economically.

In the past decade, WESTERN alone has conducted over 500,000 miles of speculative surveys—over 100,000 miles have been acquired in Alaska alone. It is our evaluation, that, industry-wide, speculative coverage out-paces coverage acquired by group participation by a factor of about 10 to 1. Thus, it is quite apparent that speculative surveys provide a universally accepted source for low-cost seismic data.

Using the speculative approach, WESTERN would undertake the proposed exploration program using our own risk capital in the expectation that our program and the quality of our results would be such that the oil companies and other persons who would have interest in any lease sale would ultimately purchase our data.

There are several advantages to this approach:

(a) Companies do not have a commit fiscal resources in advance. They pay only upon delivery of data.

(b) Companies are not required to purchase all of our data. They are permitted to inspect the data before purchase and select only the data they wish to buy.

(c) A published price list will be available covering the price per mile for various quantities of data purchased.

(d) This price list is fixed with no penalty for late-comers. This factor, coupled with no requirements for up-front money, should encourage broader participation by industry and any other persons interested.

(e) The identification of WESTERN as a single permittee makes us exclusively responsible for compliance with applicable environmental safeguards and eases the Government's role in monitoring the permittee's discharge of its regulatory responsibilities. This results from the fact the WESTERN, the permittee, is the actual operator of the Plan rather than the supervisor of a contractor with derivative regulatory responsibilities. When the Regional Director or his authorized delegate indicates a need for immediate action or for the immediate cessation of activities to accommodate an unforeseen environmental contingency, WESTERN can comply instantaneously with no need to induce compliance by others.

(f) With regard to the quality of data, WESTERN commits itself to the acquisition of the highest quality data, free from the constraint of budgetary limitations resulting from the specific sums committed in advance by group participants. In the event of unforeseen obstacles that may arise for weather conditions, environmental contingencies or other hardships, WESTERN will not be forced to halt its data acquistion if those budgetary resources have been exhausted. Instead, WESTERN will continue its data acquisition until the program is completed.

We are confident that allowing WESTERN to conduct a speculative survey as outlined will accomplish the mandated goals of providing quality data for the Secretary's ultimate analysis and, concurrently, will best protect the environment by placing the onus for compliance on a single reputable company. In addition, industry will be served by having a good source of quality data at a competitive price.

(3) Technical and Financial Ability

WESTERN GEOPHYSICAL COMPANY has been active in Arctic and sub-Arctic seismic exploration for twenty-seven years. During this time, the COMPANY has amassed an abundance of technical knowledge, expertise, and experience in the unique features of the Arctic environment.

WESTERN GEOPHYSICAL's technical competence and reputation for professional excellence are unsurpassed in the geophysical contracting industry. With a research and development staff numbering 268, WESTERN is at the cutting edge of advanced geophysical exploration technology. Among other indicia of our level of technical achievement is the fact that we presently have more than 100 active U.S. patents covering every phase of geophysical recording, processing, and interpretation with some 50 patent applications still pending. No other geophysical contractor can approach even half this number. In addition, at technical conferences and meetings of professional geophysical societies and in professional journals, papers on WESTERN's research are invited, accepted, and published much more frequently than those of any other contracting organization. Many major oil companies select WESTERN to perform services for them on a preferential basis to the extent that WESTERN GEOPHYSICAL is now, and for some years has been, the largest geophysical contractor in the world, a world in which contractors are selected primarily on the basis of technical competence.

With regard to our ability to operate effectively while still observing close permit and environmental constraints, we cite some recent examples. In April 1981, WESTERN conducted a program in the vicinity of Itkillik Lake in the Gates of the Arctic National Park and Preserve. WESTERN was advised that there were 49 archaeological sites in an area of less than 12 square miles and that all of the sites were vulnerable to

damage from exploration activities. Because of the sensitive nature of the situation, a National Park Service Archaeologist was flown to the crew site and he, along with WESTERN's Party Manager, spotted the sites on the ground. As a result of this coordination there was absolutely no damage reported by the Park Service after a check trip when the area was free of snow. During the course of his visit, the archaeologist was able to instruct WESTERN personnel as to what to look for in an area of suspected archaeological importance.

WESTERN also obtained permits in the area at the west end of Harrison Bay and extending inland onto the National Petroleum Reserve-Alaska (NPR–A). For this particular prospect, permits were obtained from the State of Alaska, Department of Natural Resources (MLUP/NS 80–171), and the Bureau of Land Management (BLM) (TUP F72685) and the USDI, Geological Survey (OCD Permit No. 81–01). The portion of the prospect on NPR–A contained the withdrawal site of the Village of Nuiqsut Village Corporation, seven native allotments and 15 Cultural Resource Sites are indicated by the United States Bureau of Land Management (BLM). A small segment of one line crossed Nuiqsut lands, and a fee was paid to the Village upon completion of the survey. BLM maintained close surveillance during the progress of this program and found no objectionable conditions. Exhibits "B" and "C" hereto are the Permit Attachments indicating the Native withdrawals and Cultural Sites.

Regarding our financial capability to carry out the planned survey, we confirm that WESTERN is the largest geophysical company in the world, and we are maintaining a strong balance sheet, even in today's depressed times. We are a subsidiary of Litton Industries, a 5-billion dollar company. Should the need arise, we can certainly provide fiscal proof of our financial ability to undertake this mission. In any event, the proposed program will represent less than one percent of our company-wide activity, thus we shall have adequate reserve capacity to cope with any foreseeable contingency.

In Alaska at the present time WESTERN has new and modern equipment (used not more than two seasons) to operate six seismic crews. In addition, we have a cadre of experienced personnel to man these crews and provide excellent supervision of the activities. We own a large, well equipped facility in Deadhorse which is backed up by excellent logistic and technical support from our Alaskan Headquarters in Anchorage and our corporate facilities in Houston.

The Deadhorse base camp represents a unique attribute to the ANWR exploration program because the camp is equipped with a complete data processing center, including the recent addition of a Litton Resources Systems' LRS–3200 Seismic Data Processing System, that enables data from the field to be assimilated and processed within a matter of hours. The camp is capable of housing and feeding up to 40 people and has served as an excellent support facility for WESTERN's operations in Alaska since 1974. There is a complete radio maintenance shop, warehouse with complete replacement parts, and an instrument repair facility manned 24 hours a day by experienced technicians. SSB radio, telephone and FM communications are maintained at all times to support the field crews.

(4) Geographic Area of Proposed Activities

The attached map (Exhibit "A") at 1:250,000 scale indicates the proposed program to be conducted under the provisions of the Special Use Permit. It consists of 750 miles of seismic line in a grid adjusted designed to supplement and elucidate existing data.

Basic Supply Routes

Basic supply routes within the Refuge will follow existing trail, established vibrator lines or traditional routes when safe and practical.

Routes to and from supply points outside the Refuge and routes to the actual survey area will be over traditional winter trails or ice roads, as available.

Principal Fuel Caches

The primary source of fuel will be at a staging area outside of the Refuge and transport to the crew sites will be performed by rubber-tired buggies using existing trails.

Critical Areas

Critical areas have been tentatively identified by the FWS on 1:250,000 maps. However, WESTERN will consult with the FWS, local residents, and our private consultant prior to activity. WESTERN's efforts in this regard are described more fully in the section below addressing environmental impacts and the measures that will result in the prevention of significant adverse effects.

(5) General Description of Exploratory Activities

WESTERN will conduct the survey using the VIBROSEIS technique. Crews will be placed in the field and coordinated to utilize the maximum amount of logistic support without undue traffic. The program will start at a point near the northwest corner of the Refuge and will work to the southeast along vibrator shot lines. At the present time it is anticipated that vibrator energy will be introduced into the ground at 24 points within a given mile. While the program is laid out in straight lines, WESTERN will depart from those lines or use undershooting techiques as may be required to avoid environmental hazards, archaeological sites, or other obstacles. We have the required processing techniques and field recording methodologies to handle such deviations with no or a minimal impact on data quality. The Availability of the processing center located at the Deadhorse base camp referred to previously provides the ability to analyze the resulting data immediately and permits the readjustment of parameters. This enables WESTERN to avoid any unnecessary duplication of seismic work that might otherwise result if the Deadhorse data processing facility were not available.

In order to determine the optimum VIBROSEIS sweeps including frequency ranges, sweep length, and number of sweeps per vibra point, tests will be conducted at periodic intervals. WESTERN has developed an elaborate, proprietary procedure for conducting such tests and for analyzing the results. It is anticipated that tests will be conducted at the commencement of the survey and every time a change in surface or near-surface geophysical characteristics is encountered. WESTERN's Applied Technology/Land Department is staffed to supervise and conduct such tests and to analyze the results. Experts in field procedure and analysis are dispatched worldwide to supervise procedures for the selection of survey parameters and are available to advise by radiotelephone in the event an unexpected change in conditions is encountered. The full power of this unit and its procedures will be available to the ANWR survey at all times.

WESTERN is proposing that no explosives will be used in the carrying out of this Plan.

(6) Unnecessary Duplication

We recognize that FWS has the task of preventing over-laid effort by different permittees. The proposed program will not duplicate any existing survey line but will supply the needed information that is lacking in the existing survey. However, apart from this, there are other potentials for

duplication of effort. One of these would involve re-shooting caused by recording of unacceptable data. With our capability for immediate instrument checks and processing in our Deadhorse Facility, any re-shoot duplication should certainly be minimized. As explained on page 21 and referenced on page 3, our unique processing computer capability enables WESTERN to avoid the necessity of reshooting and hence duplicating unnecessarily any substantial portion of its survey if unexpected geological or geophysical situations are encountered that mandate a change in exploration techniques or routing.

Another possibility exists in having a line (lines) laid out and then discovering that it encroaches on an environmental feature. To minimize this risk WESTERN has retained the Alaska Biological Research Group (ABR) a member of which will be available to accompany WESTERN's crews. ABR is a recognized leader in expertise concerning the area's environmental features.

(7) Schedule

WESTERN GEOPHYSICAL COMPANY will begin work on the prospect in the 1984–85 winter season as soon as permits are issued and weather conditions allow movement with ground contact vehicles. No attempt will be made to move any equipment over ground where there is no adequate protective cover within the meaning of these Regulations. These conditions will be the basis for request for a clearance from the FWS, and moves will not be made until written notification is received from the Regional Director. Past experience has shown that these conditions usually occur in the time period between December 15 and January 1.

WESTERN will perform an aerial reconnaissance of the area, using helicopters to check on stream crossings and other possible conditions, and then will send the surveyors to find the most suitable trail for the move to the prospect area. Maintaining constant radio contact, the main body of the crew will depart the staging area following the trail established by surveyors. Data acquisition will begin shortly after arrival on site. The work plan will be scheduled so as to place all equipment in position near the staging area when breakup is imminent. This usually occurs between May 1 and May 15. In any case, the crews will plan their moves so as to be in a position to clear the ANWR in minimum time after written notification by the Regional Director.

(8) Communication Techniques.

WESTERN's communication network is the result of many years of experience in the Arctic. It starts at Anchorage with a telephone link to the Deadhorse Base Camp and extends to the field crews via both single side band radio and FM radio. Each field crew has both types of radio equipment in camp at all times and and WESTERN vehicles have some form of radio communications to allow constant contact with other vehicles and the base camp and/or the party headquarters. It is planned to establish direct radio links with all FWS field personnel to provide a constant line of communications with the Service for advice and progress reports.

The Deadhorse Base Camp has a completely equipped radio maintenance shop with a fully qualified technician available to service all types of radio gear.

Because of the crowded conditions on some FM channels it has become necessary to coordinate carefully the use of the band with other users. The Regional Director should be prepared to establish priorities for the use of the FM band in the event that multiple permits are issued to operate in contiguous areas.

(9) Equipment, Support Facilities, Methods of Access and Personnel

WESTERN GEOPHYSICAL COMPANY will field two crews each consisting of 40 men. The camps for these men are portable, completely self contained and meet all existing standards for housing pursuant to state statutory and regulatory requirements. Depending on the terrain, the camps will be sled-mounted or tracked. The sled types are used on the flat areas and the tracked ones are used in rougher terrain to avoid damage to the vegetation mat and the stream banks. The camps are moved by towing with the CAT tractor and in almost all cases the move route is along an existing vibrator line. If any surface damage results. WESTERN will take all necessary steps to rehabilitate and/or revegetate damaged areas. Gray water is filtered and sterilized before disposal and all solid waste is incinerated with residue, if any, backhauled to an approved disposal site. Personnel, supplies, and expendables will be delivered to camp sites either by aircraft or a Delta III all-terrain vehicle. If aircraft is used, it would maintain a minimum altitude of 1500' except during landing and takeoff. Vibrators can be either track or wheel mounted, depending on the terrain.

Fuel will be supplied to the crews by overland vehicles using program lines wherever possible to avoid duplicate tracks. Storage of fuel on the crew will be in metal tanks with all personnel involved in the transfer or storage of any fuel or hazardous materials thoroughly trained in the use of clean up procedures.

Travel to and from the program lines will be via the same routes, if possible, and operators will be instructed not to deviate from marked trails unless there is danger to human life.

Examples of all camp and vehicular equipment are available for immediate inspection at the Anchorage Headquarters of WESTERN GEOPHYSICAL COMPANY located at 351 E. International Airport Road.

The Anchorage installation is also the base for logistic, mechanical, technical, and personnel support for all North Slope activities. A warehouse facility and a five-bay shop furnish all the needed supplies and repair facilities so as to avoid any down time. The base camp at Deadhorse maintains a complete inventory of replacement parts up to and including engine assemblies for all WESTERN equipment. There is a complete radio and instrument repair and maintenance shop staffed by qualifed technicians at the base camp and the technicians travel to remote camp sites for periodic testing to prevent breakdowns and to maintain quality standards in the industry.

(10) Hazardous Substance Control and Contingency Plan

The WESTERN GEOPHYSICAL Oil and Hazardous Substances Contingency Plan is appended as Exhibit "D" and is the basis for intensive training before any WESTERN personnel are assigned to units working on or near the Refuge.

In addition to the Plan, WESTERN employs the services of specialists in oil control and clean up and constantly employs their expertise to further the scope of the COMPANY's operators' knowledge. If, during the course of the exploration, new methods or standards are evolved, WESTERN will immediately adopt them for field use.

(11) and (12) Anticipated Environmental Impacts and Procedures for Monitoring Same.

The environmental impacts from the activities proposed in the Plan will be minimized due to the measures WESTERN will undertake to avoid any adverse effects. As already indicated, WESTERN has retained the services of the Alaska Biological Research (ABR) group to assist in identifying specific locations in advance that may be vulnerable to particular activities. This

group consists of James Curatolo, Robert Ritchie, Martha Robus, and Steven Murphy, all of whom are experienced biologists with expertise in the Alaskan environment and are well known in the Alaskan environmental community. In addition, WESTERN will cooperate fully with all agencies and private groups in the matter of environmental impacts. In this regard, it is anticipated that FWS will have monitors on site regularly. Any concerns expressed by the monitors will be accommodated by necessary and appropriate adjustment in WESTERN's methods or schedule.

Copies of all Regulations, special stipulations and the Special Use Permit will be posted in the following locations at each camp: in the Party Manager's office: Mess Hall; Recreation Room; and each individual sleeper unit. Each employee will be required to certify that he has read and understands the terms of each item listed above. This certificate will be retained in the employee's file and will be available for inspection by the Regional Director or his authorized representative. Employees will be encouraged to report any sightings of potential environmental damage, no matter what the cause.

The primary environmental impact of WESTERN's proposed activities will result from the movement of WESTERN's men and equipment over the terrain. However, because there will be an adequate protective cover as determined by the Regional Director and communicated to WESTERN in writing, it is anticipated that WESTERN's activities will result in little or no damage to the terrain, and certainly no significant adverse effect within the meaning of the Regulations.

The trail left by the movement of men and equipment in most cases is clearly visible for the duration of the winter season. Further, we believe that upon certain infrequent occasions, the ground or vegetation may be reached by the plowing of snow. However, WESTERN can and does hereby state on the basis of its own experience (which is in keeping with the common knowledge of those persons familiar with these operations) that any effects of such a nature are reversible and will not be visible following the passage of a new season.

If, in the opinion of the Regional Director, any portion of the ground, vegetation, ecosystem or any aspect of the environment is affected in an adverse manner by WESTERN's activities, WESTERN hereby commits to expend such of its own resources as may be necessary and reasonable to ameliorate any such effects.

In addition to relying on the FWS Regional Archaeologist and appropriate local and Native representatives, WESTERN will utilize the services of ABR in addition to its own survey team to identify areas of archaeological and cultural importance. Any such areas, in addition to all standing structures or substantial above-ground surface remains, will be avoided and will remain untouched and undisturbed.

As indicated at the pre-application conference on April 26 and 27, 1983, the location of most of all tent rings has now been identified. It is therefore possible to proceed with no significant possibility of disturbance to such structures.

Under the supervision of the FWS Regional Archaeologist and with the assistance of ABR, the Alaska State Historic Preservation Officer and the Advisory Council on Historic Preservation, all standing structures and substantial above-ground surface remains will be clearly identified. These sites will be marked in a clearly visible fashion that will prevent any possibility of disturbance. These and any other known archaeological, cultural, geological or environmentally sensitive areas will be thoroughly discussed before proceeding. Photographs of such areas will be available for each crew member for the purpose of assisting in the positive identification. Markers placed in the field to signify such areas will be removed by WESTERN upon completion of operations, or at such other time as may be directed by the FWS.

WESTERN will immediately report to the FWS any cultural resource site or material discovered during the course of its work and will avoid any further contact at such sites until they can be evaluated by the FWS.

In respect to the effect of WESTERN's activities on fish and wildlife in the area, WESTERN submits that the ability of the permittee to avoid any significant adverse effect on such fish and wildlife is primarily related to the permittee's working familiarity in the area. During the 27 years that WESTERN has been operating in the Arctic and sub-arctic environment (Alaska particularly), the COMPANY has been at the forefront of efforts to study the effect of seismic activity on various forms of wildlife.

Following is a delineation of wildlife known by WESTERN to occur in the subject area together with a description of the seasonal occurrence and other characteristics of such wildlife based on WESTERN's studies and observations. WESTERN, of course, will defer to the Regional Director or his authorized representative in the event of any uncertainty concerning the possibility of significant adverse effect to any wildlife. In general, WESTERN's assessment of the impact, if any, of its activities on the area's wildlife is based on the seasonal occurrence of particular species, as indicated in the Yearly Cycle graph contained in the Initial Baseline Study. That graph is set out as Exhibit "E" hereto.

FISH

Twenty-nine species of fish are known to inhabit Arctic marine, estuarine and fresh-water environments on or adjacent to the proposed program area. Arctic char, grayling, cisco and whitefish seem to be the most important for subsistence use. All major streams are fished during the open water season. Lakes are uncommon in the proposed program area, with most of them being thaw lakes located along the coast. The coastal lakes less than 2 meters in depth usually freeze to the bottom or offer poor winter fish habitat because of the concentration of dissolved solids and low dissolved-oxygen levels. Coastal lakes may also be brackish due to saltwater intrusion of windblown spray from the ocean.

Several drainage areas originate in or transect the proposed program area. These streams range from small tundra streams with intermittent flow to the Canning River with an estimated 50-year flood discharge of 13,500 cubic feet per second (Childers and other 1977). Most of the water supply comes from precipitation, surface permafrost-thaw processes, deep lake drain, and spring or ground water. Peak flows occur with snowmelt in early summer or with rainfall during later summer or early fall. By October, most rivers cease to exhibit any measurable flow and as shallow areas freeze to the bottom, overwintering fish become isolated in deeper pools or spring areas. The ice accumulation usually reaches maximum thickness between late March and early May.

To mitigate any damage to overwintering sites, WESTERN GEOPHYSICAL COMPANY will avoid introducing any energy into the ground within 660 feet of any stream or river that has been designated as a possible overwintering site. No water will be drawn from any lake or stream designated as having a fish population. In addition, all seismic lines will be oriented so as to cross the water courses at as sharp and angle as possible and not to run parallel to the stream or river. Crossing of rivers will be completed in one trail, if safety permits, with no alteration to existing river banks. Any

snow used to create snow bridges will be removed upon completion of the line. Crossings will be oriented so as to avoid damage to willow stands at river banks.

Strict prohibitions regarding fishing or hunting during the proposed seismic exploration will be enforced with instant dismissal being the result of any violation by WESTERN GEOPHYSICAL COMPANY employees.

MARINE MAMMALS

In addition to the Polar Bear, the Bowhead and the Beluga whales utilize the waters of the Beaufort Sea along with ringed, bearded and spotted seals. All of these species inhabit the waters to the north of the ANWR, but there is some evidence that ringed seals may use the lagoon areas within the Refuge during the summer and fall. While this is outside the time frame of the proposed seismic activity, it is mentioned as a point of interest.

WESTERN GEOPHYSICAL COMPANY has been active in the study of the effect of seismic activity on the ringed seal population for the past two years and is currently doing contractual work for the National Marine Fisheries Service in the vicinity of Reindeer Island in which ringed seal habitat and pupping is correlated with seismic activity using vibrator energy sources.

No impact on the whale population is anticipated because of the time frame. Bowhead whale migration to the east takes place in early spring, following leads in the ice. The summer feeding grounds extend from the Canadian waters to just east of the village of Kaktovik. This range is occupied from mid-May through September. Migration out of this area may begin as early as mid-August and is nearly completed by mid-October.

Polar Bears

Pregnant females form snow dens in October and November and give birth in December and January. Females and cubs emerge from dens in late March and April. Factors necessary for continued successful denning in an area includ the ice movements which allow the bears to reach the area in the fall; occurrence of food (seals) in the area; topography, snowfall, wind and ambient temperatures, all of which provide for snowdrifts that do not thaw during the denning period. Dens consist of one or more chambers, connecting tunnels and exit-entrance tunnels. Alaska dens are found inland as far as 50 km from the coast, along the coast, on offshore islands, on shorefast ice and on drifting sea ice. In April 1957, a two-man team was hired from the village of Kaktovik to search the area in the Arctic National Wildlife Refuge between the Hulahula and Katakturuk Rivers and the Jago and Kongakut Rivers. No polar bear dens were found.

The number of bears coming to a specific coastal area may vary from year to year depending on the type of ice and the time it forms. Bears are more abundant along the coast in years when winds bring heavy ice to the coast early in the winter than in years when newly frozen ice drifts in or new ice is frozen in place for a considerable distance from shore.

The Beaufort Sea outer continental shelf and the coastal plain of Alaska has high potential for oil and gas. Extraction will likely be a major goal on State lands, on native lands, and may occur on the coastal plain on ANWR. A number of actions can be taken to protect bears and their habitat. For such protection, the ecosystem approach over large areas should be followed rather than a species by species approach in restricted zones. This will require the cooperation of federal, state and local governments with environmental groups, oil and gas lease holders and seismic exploration crews to create land and offshore management regulations. Specific development proposals, including plans to remove snow from drift areas for trails or the construction of airstrips, will be reviewed by the Regional Director to minimize negative impact on denning areas. "No Activity" zones will be created, by order of the Regional Director, around areas identified as polar bear dens as identified by the U.S. Fish & Wildlife Service.

Camps maintained to support seismic activites will be established inland rather than on or near routes bears normally travel along the coast. Garbage will be incinerated daily and state and federal regulations regarding the feeding of wild animals will be strictly enforced. All WESTERN personnel will be advised that any violation of any wildlife laws or regulations, state or federal, will be sufficient cause for immediate dismissal. All fuel will be stored in suitable containers surrounded by dike areas lined with impermeable material.

WESTERN GEOPHYSICAL COMPANY proposes that studies be initiated to delineate areas of critical polar bear habitat, especially denning areas. The relative importance of coastal areas as opposed to sea ice for denning is to be determined. Effects of disturbance on individual bears, particularly denning females will be quantified. This will require observations of disturbance effects, either artificial or actual, during the pre-denning, denning and post-denning periods. It is proposed that these studies be conducted, by personnel designated by the Regional Director, during the time actual seismic surveys are being conducted by WESTERN GEOPHYSICAL COMPANY. By doing this, the FWS will enjoy the full logistic support offered by WESTERN and can conduct the research under closely controlled conditions. Similar studies were conducted by Kelley and Burns in the winter season of 1981–82 relative to the effect of seismic activity on the ringed seal population. The data acquired in this proposed study will prove extremely useful to the U.S. Fish & Wildlife Service in future planning and habitat management and will afford WESTERN GEOPHYSICAL COMPANY personnel the opportunity to become proficient in the recognition of critical signs in the Arctic Wildlife Refuge or any other sector of the arctic.

THREATENED AND ENDANGERED SPECIES

Endangered species encountered in the proposed exploration area include the Bowhead and Gray whales and the Arctic peregrine falcon. The whales have been discussed in the paragraphs regarding marine mammals.

Peregrine falcons nesting habitat is not abundant north of the Brooks Range in ANWR. However, a limited number of peregrines have been reported nesting there in past years. The most recent survey of raptor habitat in ANWR found no nesting peregrines. This survey was conducted in August, however, and may have missed peregrines which attempted to nest but were unsuccessful. Amoung the eyries formerly or potentially occupied by peregrines within ANWR, only two are within the Arctic Coastal Plain study area—on bluffs or cliffs along the Sadlerochit and Jago Rivers.

Peregrine falcons are highly migratory and spend a relatively short period in Alaska. Arctic peregrines generally arrive at their North Slope eyries between April 21 and May 7; egg laying and incubation occur between May 15 and July 21; the young leave the nest during August.

There appears to be a significant movement of arctic peregrine falcons through the study area on the Arctic Coastal Plain from late August to mid-September. The number and timing of these observations suggest that at least some of the peregrines are following a coastal migration route.

The Office of Endangered Species of the FWS has provided a no jeopardy biological opinion, dated July 28, 1982 (see page C-4, Appendix C FEIS).

BIRDS

Review of Bird Studies

There are many bird populations within the proposed study area. Below is a summary of the important populations and species of birds:

Populations and Species

Seaducks: Oldsquaw (Clangula hyemalis); Eiders (Somateria spp., Polysticta stelleri); Scoters (Melanita spp.); Merganser (Mergus serrator).
Dabbling Ducks: Pintail (Anas acuta).
Geese: Brant (Branta bernicla); Snow goose (Chen caerulescens); White-fronted goose (Anser albifrons); Canada goose (Branta canadensis).
Gulls: Glaucous gull (Larus hyperboreuos); Ross' gull (Rhodostethea rosea).
Tern: Arctic tern (Sterna paradisaea).
Shorebirds: Red phalarope (Phalaropus fulicarius); Northern phalarope (Lobipes lobatus); Plovers (Pluviolis spp.); Sandpipers (Calidris spp.).
Songbirds: Lapland longspur (Calcarius lapponicus); Snow bunting (Plectrophenax nivalis).

Several large multi-disciplinary studies, which have included birds, have been conducted in nearshore estuaries in the Harrison Bay/Simpson Lagoon area (Hall 1975; Johnson and Richardson 1980 report the results of coastal bird surveys from Harrison Bay eastward to, and in some cases, including the coast of the Arctic National Wildlife Refuge). Martin (1980) and Spindler (1978a) summarize terrestrial studies of birds by the U.S. Fish & Wildlife Service in Canning/Staines River Delta region and in the Okilak River Delta, respectively. Spindler (1978b), Johnson and Richardson (1980), Schmidt (1978) and Gollop and Richardson (1974) conducted investigations in nearshore coastal waters along the coast of the Arctic National Wildlife Refuge.

In the east section of the coast, from the Canning/Staines River Delta eastward to the Alaska-Yukon border, there are few large river deltas. The barrier islands are like long, semi-continuous spits, and the lagoons are generally narrower and shallower than those to the west.

A summary of the seasonal uses birds make of the proposed study area follows:

Seasons-Locations-Bird Use

Spring breakup-Hulahula/Okpilak River-Migrating waterfowl:
—Delta and shorebirds
—Jago River Delta
—Aichilik/Egaksrak River
—Delta
—Kongakut River delta

Summer-Barrier Island-Lagoon-Molting and feeding:
—System from Arey Island-seaducks, staging and
—Eastward to Demarcation-feeding shorebirds
—Bay

Fall freeze-up-NA-NA

Winter-NA-NA

The two time period, Fall freeze-up and Winter, are the periods when seismic activities will occur under the terms of the proposed permit and no negative impact is anticipated. During the course of the proposed program, extreme care will be exercised to prevent any damage to the areas that will be used by the bird population in the spring and summer months.

TERRESTRIAL MAMMALS

Terrestrial mammals may be affected both directly and indirectly by seismic activity in the coastal plain area of the Arctic National Wildlife Refuge. With the knowledge WESTERN possesses concerning the ocurrence and characteristics of these species, the COMPANY will be able to avoid any signifiant adverse affect. Species which are ecologically and/or economically important are included in this discussion.

Arctic Fox

Although the arctic fox is economically important as a furbearer and biologically important as a predator of small mammals (Chesemore 1967), little demographic information is available for this species along most of the Beaufort Sea Coast. Boased on fur harvest returns, however, population numbers show three to four year cycles (Chesemore 1967).

Arctic foxes appear to undergo distinct seasonal movements although some in the Prudhoe Bay Region are year-round residents (Fine 1980). During the fall and early winter, Arctic foxes generally move seaward toward the coast and sea ice, presumably in search of better food supplies (Chesemore 1967). By late winter to early spring most have returned inland to mate and pup. Hunting may be extensive; Underwood (1975) estimated that Arctic foxes may actively hunt areas as large as 500 sq. km.

Dens are usually constructed on sand dunes, eskers, hilltops and river banks, wherever frost-free soil is available (Chesemore 1967; Eberhardt 1977; Fine 1980). Dens appear to be common along banks of most rivers on the coatal plain.

Adequate information on Arctic foxes is available only in areas. The location of large denning concentrations outside this area (if they exist), seasonal movements (particularly during the winter season), better estimates of population densities for the coastal plain area of ANWR, and demographic information on recruitment and natural mortality are the main data gaps that are necessary to fully evaluate the potential effect of exploration on the Arctic fox population.

Experience (twenty-six years in the Arctic evnrionment) has shown that Arctic foxes are attracted to man and studies indicate that the Prudhoe Bay area has the highest density of denning (1 den/15 sq. km.) recorded in contrast to other study areas. Foxes have been known to attach themselves to one of our camps and follow it for weeks before leaving.

The personnel who will be involved in the proposed exploration will be thoroughly briefed in the known data relative to Arctic foxes and will be warned as to the possibility of the foxes being rabid. The denning locations cited by Chesemore, Eberhardt and Fine all occur in terrain features that normally are avoided by seismic crews both because of the difficulty of operations and the special stipulations attached to Permits.

Musk Ox

In the 1800's muskox populations in the proposed study area were drastically reduced, and then exterminated (Bos 1967; Roseneau and Stern 1974a). Muskox were reintroduced to the Alaskan North Slope in 1969 as part of an Alaska Department of Fish and Game Program to re-establish muskox throughout their historical range (Jennings and Burris 1971; Alaska Department of Fish and Game 1977). In the spring of 1969, 52 muskox were transplanted from Nunivak Island to Barter Island. The following summer an additional 13 muskox were transplanted to the Kavik River.

The Arctic National Wildlife Refuge contains the only major concentration of muskox in the North Slope area. The size of the group was estimated to be 36 to 41 animals in 1972 (Roseneau and Stern 1974a) and had increased to an estimated 90 animals in 1977 (Bente 1977a). Presently, animals appear to be concentrated in three areas: The coastal area near the Canning River; the area between the Sadlerochit and Hulahula Rivers; and along the coast near Jago, Egaksrak and Aichilik Rivers (Roseneau and Stern 1974; and Bente 1977a). During the period of 1978 to 1979, the

Sadlerochit herd appeared to have split into one main herd and two satellite (possibly bull) herds (M. Spindler, U.S. Fish & Wildlife Service, pers. comm.). These areas have been noted and will be given to field crews as an overlay drawn to the same scale as the program map. Any proposed lines nearing these areas will be cause for WESTERN GEOPHYSICAL COMPANY to contract the Service for guidance and inspection before proceeding.

Muskox breed in late July and August, and give birth in late April to May (Tener 1965). Our seismic activity during this time frame will be non-existent with all movement in the muskox habitat ruled out because of weather and ground conditions. All crews will normally be stacked on summer storage sites outside the Refuge on or before May 15th of any given year.

Muskox appear to summer along the coastal plain and gradually move to upland areas to overwinter (Roseneau and Stern 1974a; Bente 1974a). Winter ranges appear to vary greatly between years (M. Spindler, U.S. Fish & Wildlife Service, pers. comm.). Within the muskox range, corridors along the major river drainages, particularly where the productivity of the riparian community is high, are presently considered critical habitat (M. Robus, Alaska Cooperative Wildlife Research Unit, pers. comm.; M. Spindler, U.S. Fish & Wildlife Service, pers. comm.). All WESTERN GEOPHYSICAL COMPANY crews will be alerted to these critical areas before any work begins in the Refuge.

Information on muskox distribution along the Alaskan Beaufort Sea coast is sufficient to delineate the area between the Canning River and the Alaska/Yukon border as the most important muskox range in the North Slope region. However, information on critical habitats (calving grounds, wintering areas, foraging areas), seasonal movements, and herd dynamics (numbers, natality, recruitment, natural mortality) is not adequate to identify specific geographic areas. Seasonal movements and critical habitats are very poorly understood and the opportunity for FWS to collect some much needed data is present during the course of the proposed seismic exploration by utilizing WESTERN GEOPHYSICAL COMPANY facilities and logistic support.

Caribou

Two caribou herds, the Porcupine and Central Arctic, are involved in the proposed study area. The Porcupine Herd (estimated at 110,000 animals in 1979) is one of the largest caribou herds in North America. The scope of its range covers some 250,000 square kilometers in northeastern Alaska and northwestern Canada. The spring migration usually begins in early April and arrival date of the pregnant cows on the traditional calving grounds seems to be dependent on the snow conditions and the location of the wintering site.

Caribou of the Porcupine Herd usually enter the calving area within the proposed study area during mid-late May (a time period when all seismic activity has been shut down). The first calves are born during the last week in May, with the peak of calving occurring between June 5 and 9. Although calving has been observed in a variety of terrains, most calves are born in snow-free areas of tussock uplands. Major calving concentrations of the Porcupine Herd have occurred in the study area between Camden Bay and the Sadlerochit Mountains (from the Canning River in the west to the Sadlerochit River). Concentrations of calving activity also occur within the ANWR study area along the foothills from the Sadlerochit River to the Aichilik River. Scattered reports of calving have been reported throughout the study area.

Following the calving period, maternal groups of the Porcupine Herd usually move northward and westward, gradually coalescing into aggregations. By late June it is common to find huge aggregations (80,000 or more animals) in the study area between Camden Bay and the Sadlerochit Mountains. In early July these great herds move to the east, usually reaching the Canadian border by mid-July.

The Central Arctic Caribou Herd currently numbers about 7,000 to 9,000 and has recently been increasing. It occupies a range which is entirely north of the Brooks Range continental divide from the Itkilik and Colville Rivers on the west to slightly east of the Canning River. The Trans-Alaska Pipeline (TAPS)-Dalton Highway corridor and the Prudhoe Bay-Kuparik oilfields lie within the herd's range. These intensive man-made activities have done nothing to deter the herd's natural cycle. No calving has been observed in the TAPS-Prudhoe Bay oilfield area since about 1973, but the fact that the herd is on the increase indicates that the caribou have adjusted and flourished. Caribou of the Central Arctic Herd use the ANWR study area (Canning River Delta and coastal habitats along Camden Bay) for post-calving activities and insect relief. Residents of Kaktovik harvest Central Arctic Herd Caribou from coastal areas during the summer. During some winters, scattered groups of caribou, believed to be of the Central Arctic Herd, range through the proposed study area and adjacent uplands to the south.

Any contact WESTERN GEOPHYSICAL COMPANY crews experienced with either the Porcupine or Central Arctic Herds would be with strays and would not occur during critical calving or post-calving time periods.

(13) Certification

By its submission of this document and the affixation of its officers' signatures thereto, WESTERN certifies that it will, if authorized to conduct exploratory activities, comply with all pertinent provisions of 50 CFR Part 37, its Approved Exploration Plan, its Plan of Operation, and all reasonable stipulations, demands, and orders issued by the Regional Representative or his authorized representative.

In addition, WESTERN will comply with all existing federal, state, and local laws and regulations as well as those that may become effective during the course of the proposed exploration. A certification to this effect is appended hereto as Exhibit "F".

(14) Data Quality Assurance and Control

Of the numerous qualifications possessed by WESTERN that render the COMPANY suited to lead the exploration effort in the ANWR, one of the most distinctive is the integrated and sophisticated data processing center located at the COMPANY's base camp in Deadhorse, Alaska. The capabilities of this system, which were already state-of-the-art prior to 1982, have now been increased by virtue of the recent addition of a Litton Resources System LRS–3200 Seismic Data Processing System. The LRS–3200 possesses a radically new structure with the capability of expanding many times over to accommodate the ever increasing volumes of data that result from advances by WESTERN in the technology of data acquisition. In its minimum configuration the LRS–3200 has twice the capacity of the most powerful mini-system on the market. Its maximum configuration competes with the largest "large" system available.

Because of recent expansions in the capabilities of seismic exploration, the quantity of data that must be processed is rapidly increasing to enormous levels. Thus, the concept of "data quality assurance and control" is one that is continually growing in sophistication. The seismic data processing system possessed by WESTERN at its Deadhorse Base Camp is now capable

of handling large computational and input/output loads.

Consequently, there are two compelling features that WESTERN offers in terms of its data quality assurance and control. First, the sophistication of the processing system employed by the COMPANY. Second, the proximity of the geographic location of the facility at Deadhorse. The combined result of these factors is that data that are collected in the field during the day are immediately processed at the Deadhorse facility with results obtained therefrom in a matter of hours. These results enable the crew operations to determine whether the parameters selected are achieving the desired data quality. As a direct result of the proximity of the Deadhorse facility and the sophistication of the seismic data processing system located there, WESTERN, is able to ascertain immediately whether deviations or corrections are necessary in the technical parameters of the field operations. This prevents unnecessary duplication of effort that could result if the field data had to be flown to a distant location or processed in a less sophisticated facility in order to determine the integrity of the results.

The survey data acquired during the course of a work day can be processed with the same speed and efficiency as the seismic data. In two hours basic field notes can be fed into a Hewlitt-Packard 85 computer located in the Deadhorse facility. A hard copy can be generated of a line map showing VP's, elevations, and the necessary reference points to indicate the accuracy of the survey. Any corrections can be applied immediately before further errors occurs which could introduce an unnecessary duplication of the line.

In addition to the timely data processing that takes place at the Deadhorse processing facility following each day's collection of data, daily similarity tests are taken before the crew begins the day's program. This is a method of ensuring that the vibrators are in sync and will produce the maximum usable energy. This test also allows a check of instrument functions as well as a sure check of the mechanical condition of the vibrator units.

To supplement the daily routine tests, all instruments are subjected to both monthly and semi-monthly tests that are performed in the field with the tapes being sent to our Quality Control Section in the Houston Main Office. The test data are compared to specifications of new equipment. The results of the tests are telexed to the Anchorage Office immediately and this information is relayed to the field crews via telephone and radio lines.

There are also two qualified technicians available at the Deadhorse base camp who are on call should any problem occur. Test gear and spare units are available. In case an instrument should malfunction, it is a matter of hours before the replacement unit is on the crew and operating.

These technicians maintain a routine schedule of visits to the crews and consult with the Observer as to the condition of the equipment thereby assuring that the quality of the data is always up to WESTERN's high standard.

To comply with the newly added requirement for an explicit provision for the independent checking of data quality, WESTERN GEOPHYSICAL COMPANY has retaind a highly qualified, independent, professional consultant, Dr. Norman Neidell, who, in the event that a permit is issued, will oversee WESTERN's procedures and processes in the taking and reduction of data. Dr. Neidell will advise WESTERN as to the status of its performance in the conduct of the survey and will report his observations and conclusions directly to the designated government representative. Dr. Neidell's curriculum vitae is appended as Exhibit "G".

Even though WESTERN is proposing a speculative survey it will, in the event a permit is granted, follow the customary procedure of accepting advance commitments to purchase the resulting data and will afford purchasers the opportunity to oversee the exploration program on a current basis.

V. Summary

WESTERN hereby requests that we be named as a single permittee to conduct a speculative seismic survey in ANWR using two crews each for one season to collect some 750 miles of data which would be available for sale to interested parties according to a published price list.

We have the equipment and manpower already in Alaska plus the fiscal capability to conduct this survey. WESTERN's reputation in the geophysical industry worldwide and particularly in Alaska is unparalleled. Our final processing of data from the North Slope is recognized as the industry standard. We will carry out a seismic survey of the highest quality which will be beneficial to the Secretary, to FWS, to the oil industry, and to any other interested parties.

We have demonstrated in the preceding pages our knowledge and appreciation for the environmental and wildlife aspects involved. You have our assurance of fullest cooperation in seeing that the goals of this project are met to the satisfaction of all concerned.

We further state that the proposed activity complies with the State of Alaska's approved Coastal Management Program and will be conducted in a manner consistent with that program.

WESTERN will be pleased to furnish any additional information that may be required in connection with this submission. Inquiries should be addressed to Mr. Semeliss or Mr. Cramer at the addresses or telephone numbers given on page 3.

We will appreciate your favorable consideration of this application.

Respectfully submitted,

WESTERN GEOPHYSICAL COMPANY OF AMERICA

Permit Attachment 2—Known Cultural Resources Within Project Area: Western Geophysical

Exhibit "B"

Map reference	Cultural resource [1] site in apparent conflict with seismic line
BLM 1	Native cemetery on Eskimo Island.
BLM 2	Native grave on Atigaru Point.
BLM 3	TLUI site NE of VABM "creek".
BLM 4	TLUI site NW of VABM "Thomas".
BLM 5	TLUI site NE of VABM "creek".
BLM 6	Niglik and sites in vicinity; sod house ruins and Native grave.
BLM 7	TLUI site; structural remains.
BLM 8	TLUI site; structural remains.
BLM 9	TLUI site; structural remains.
BLM 10	Numerous late prehistoric and historic sites, including sod house ruins and reindeer corral.
BLM 11	TLUI site; sod houses.
BLM 12	TLUI site; trading post, grave.
BLM 13	TLUI site.
BLM 14	TLUI site; cemetery.
BLM 15	TLUI site; graves.

[1] Cultural resources include archaeological, historical, and traditional land-use inventory (TLUI) sites.

Note.—These sites shall be avoided by all seismic equipment and field crews.

Permit Attachment 3—Native Allotments Located in the General Area of Proposed Seismic Programs

Exhibit "C"

WESTERN PROGRAM F-72685

Map Reference	Number	Name	Acres	Location
1	F-18134	Paul Ogroogak	160	Sec. 32, T. 9 N., R. 4 E., UM.
2	F-11943	Lydia Sovalik	80	Sec. 15, 16, 21, 22, T. 12 N., R. 4 E., UM.
3	F-11947	Nannie Woods	160	Sec. 15, 16, T. 12 N., R. 4 E., UM.

WESTERN PROGRAM F-72685—Continued

Map Reference	Number	Name	Acres	Location
4	F-14613	Edward Ilta	160	Sec. 16, T. 14 N., R. 4 W., UM.
5	F-14616A	Noah Ilta	40	Sec. 29, T. 15 N., R. 3 W., UM.
6	F-14645	Dorcus Watson	160	Sec. 29, T. 15 N., R. 3 W., UM.
				Sec. 7, T. 17 N., R. 1 W., UM.
7	F-14611	Brenda Ilta	160	Sec. 12, T. 17 N., R. 2 W., UM.

OIL AND HAZARDOUS SUBSTANCES CONTINGENCY PLAN

Exhibit D

Introduction
Objectives
Reporting
Prevention of oil Spills
Storage of Fuel
Spill Cleanup
Annex "A"—Initial Pollution Report
Annex "B"—Report Communication Net
Annex "C"—Daily Check List
Annex "D"—Safety Rules

Introduction

Federal laws, State regulations and WESTERN GEOPHYSICAL COMPANY's keen desire to protect the environment from the harmful effects of oil or other hazardous substances require a definite, meaningful plan.

The very nature of WESTERN's work creates problems not found in other types of operations. The almost constant moving of camps and supply points, the need for enormous quantities of fuel and the remote location of the prospects are all factors that create a high risk situation. We must therefore practice extreme care in the transportation, storage and ultimate use of any and all materials that, if allowed to escape containment, could upset the delicate balance of Alaska's ecosystem.

The prevention of oil spills or loss of hazarous substances involves many factors. Common sense is the number one deterrent to unfortunate incidents. Checking the joint between the tank and the discharge valve, scheduled visual inspections of the tanks and placing fuel barrels bung up are all simple items but any one of them could spell the difference between a satisfactory, productive operation and a serious, costly spill. Double check every phase of the operation to which you are assigned and are responsible for. Think.

Should a spill occur it becomes your legal responsibility to report it to the proper agencies as soon as possible. The Plan, with the annexes, will explain in detail how to so this. No attempt to conceal any spill, no matter how small, should ever be made by WESTERN employees or their contractual personnel. The reasons for this are many and varied. What may appear to you as a minor, harmless spill could become serious if no properly contained or dispersed. State and/or Federal agencies have the expertise to accurately analyze the situation and make recommendations for remedial action. In addition, Federal agencies have the power, under the provisions of Pub. L. 92-500 (86-Stat. 816), to call on any other Federal agency for assistance in case of a serious threat to life or property. It is doubtful if WESTERN's type of problem couid ever reach that magnitude, but it is comforting to know that this type of back-up is available.

After the report has been made and the proper agencies have investigated the incident, the spill must be cleaned up to the best of our ability. What appears to be the most expedient method of getting rid of spilled fuel, burning, might not really do the complete job. In fact, there may be harmful after effects if hasty judgment dictates our initial approach. Generally speaking, the proper sequence should be:

(1) Stop the flow of oil or hazardous substance at the source, and while doing this you should exercise extreme caution using good safety habits. We do not want personal injury added to the problem.

(2) Make every effort to contain the spill in an area as small as possible. While doing this, care should be taken to prevent damage to the environment by other methods.

(3) Report the spill, using the procedures described in the Plan. If conditions permit, the reporting of the spill should precede the other steps but this assumes that sufficient manpower is available and the location is such that prompt reporting is possible.

In summary, we, as WESTERN employees, must do everything in our power to prevent unfortunate incidents. Safe, careful work habits will do much to insure that we can continue to do our assigned jobs without the tremendous amount of extra labor involved in a spill. If one should occur we will do everything possible to minimize the harmful effects and promptly report to and cooperate with all regulatory agencies.

Objectives

(a) This plan, including the annexes, provides for a pattern of coordinated and integrated responses by WESTERN GEOPHYSICAL COMPANY employees. WESTERN's contractors and state and federal agencies to protect the environment from the damaging effects of pollution discharges. It promotes the coordingation of all systems and encourages the development of the capabilities of all involved units.

(b) The objectives of this plan are to provide for efficient, coordinated and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal and removal. The Plan, including annexes, provides for: (1) Assignment of duties and responsibilities among WESTERN GEOPHYSICAL COMPANY employees, WESTERN's contractors and state and federal agencies; (2) Identification, procurement, maintenance and storage of equipment and supplies; (3) Establishment or designation of response teams to provide the necessary services to carry out the Plan; (4) A system of surveillance and reporting designed to insure the earliest possible notice of discharge of oil and hazardous substances to appropriate agencies; (5) Procedure and techniques to be employed on idenitfying, containing, dispersing and removing oil and hazardous substances; (6) A schedule, prepared in cooperation with suitable agencies, identifying dispersants and other chemicals, if any, that may be used in carrying out the Plan.

Reporting

All reports of oil spills or discharge of hazardous substances should be completed as soon as possible after discovery. Prompt action is necessary to minimize the damage and relieve the problem of confusion that might arise if reports have to depend on memories for accurate facts after the incident is over. At this point, it might be well to mention that you are urged to report infractions by others as well as your own. There are recorded cases where WESTERN has been blamed for spills simply because we were in or near the area. We are not in the police business but it is our legal and moral duty to report all sightings and our responsibility as WESTERN employees to protect our COMPANY's interest.

The United States Coast Guard is the prime agency for reporting all sightings. They then relay, depending on the location and type of spill, the pertinent information to the appropriate agency.

such as the Department of Environmental Conservation, the Environmental Protection Agency or any other applicable group.

To insure a clear transfer of information you should familiarize yourself with ANNEX "A". It is a copy of the form that the Coast Guard uses to record all incoming reports. Plan your call so as to have the maximum information that would fill in the blank spaces. There is a 24 hour service at the CG office but, in some cases, you may get a tape service known as AUTOVON (Automated Voice Network) or the FAA duty officer. In any case, the traffic will be channeled to the proper agency for action. Be sure to record the time and date of your call in the Party Log and, if at all possible, the name and rank of the CG member who received your call.

When reporting the location of the spill try to be as definite as possible. If you have a map you should pin-point the spill by placing it in a certain part of a particular range and township and indicate the map you are referencing. Include ground features if any are available. River intersections, air strips or pipe line camps are very helpful. Remember, someone is going to try to find you and the point you are describing.

ANNEX "B" diagrams the normal channels for field crews to use in reporting in. Contact with Party Office, after initial sighting, should be done by radio or by messenger. All details should be as accurate as possible since the the message will have to be relayed several times in most cases. From the Party Office, the information will be forwarded to the most convenient WESTERN installation having telephone communications. At this point it is extremely important that the Supervisor be notified. From his office in Anchorage he will handle all further coordination with the CG and begin to take whatever steps are necessary to handle the situation. Field personnel will take any steps required to protest life and property and stand by for further instructions.

Any requests from the news media for information concerning the spill should be referred to the Supervisor. This is important so that there will not be any confusion or adverse publicity arising from distorted facts coming from sources that may not be aware of the entire picture. Inquiries from a governmental agency representative, after they have properly identified themselves, should be answered directly and honestly. Do not, repeat, do not try to give opinions, suggestions or theories about the cause or the effect of the spill to anyone until you have been briefed by the Supervisor or his agent.

Preventing Oil Spills

It shall be the direct responsibility of all Party Managers to do everything possible to prevent oil spills. All personnel under the Party Manager's supervision must be instructed in the basic fundamentals of fuel storage and transfer and crew members actually handling fuel will be required to read and be familiar with this Plan and all other applicable State and Federal regulations. This Plan will be the subject for discussion at a weekly Party Safety Meeting as soon as practical after the start-up crews.

The Party Manager, or his designated agent, shall supervise the erection of storage facilities, fuel transfer and on-site storage of fuel. In line with this surveillance, the Party Manager will maintain an accurate inventory of all petroleum products charged to his Party. This inventory will include quantity, type of fuel and its specific location. In the case of fuel in transit, the inventory will include the above, plus the point of origin and the destination.

Normally, the Party Response Team will be composed of Party Manager, the Field Clerk and the Chief Mechanic. Within this framework, the Party Manager will assign certain specific duties and responsibilities in the event of a spill. Adequate back-up will be assured by naming alternates for each primary man on the Team. Names and duties of the Response Team will be supplied to all key party personnel concerned, to all base camps, other Party Offices and the Anchorage Office. This is important in the event of a spill during the transportation of fuel charged to a particular Party but occurring near the site of another Party's camp. In any case, the primary responsibility rests with the Party to which the fuel is charged. If fuel is to be handled by contractual personnel, it shall be the Party Manager's duties to be sure that they are familiar with this Plan and have the names and location of the Response Team.

All equipment used in the transfer and transportation of petroleum products will be inspected on a regular schedule. The time, date and location of these inspections will be recorded in the Party Manager's log. Any defects or malfunctions will be noted along with the steps taken to repair or replace the defective components.

Storage of Fuel

In line with the provisions of state regulations all tanks will be installed in a dike that will form a holding area with 115% of the capacity of the tank. The dike, or its liner, must be impervious to the liquid to be stored therein and should be constructed in a neat and workmanlike manner. In no case will tanks be manifolded. If possible, thought should be given to drainage, access, future cleanup and general suitability when erecting any tank. All installation should be inspected on a scheduled time interval, never to exceed twenty-four (24) hours. The tank with its associated plumbing, the dike and surrounding area should receive close scrutiny. Check the contents of the repair kit to see if anything has been removed, and any shortages should be reported for immediate replacement. If snow and/or trash has accumulated, it should be removed. All warning signs should be in their proper place and in a good state of repair. During this daily inspection, this amount of fuel in the tank, as determined by visual monitoring device, will be recorded. Strict adherence to this procedure will help prevent the possibility of pollution from small leaks that if left undetected could become major sources of spills.

Spill Cleanup

If the source of a spill is readily ascertained and can be terminated, it should be done immediately. Accidentally opened values, faulty discharge lines or leaks in the tank itself should be repaired or corrected as quickly as possible. If assistance or extra equipment is needed it should be called for as soon as possible.

Make every effort to contain the spill to a small area but use good judgment by viewing the overall effect of the spill. It is extremely important that you report the spill, using the methods described earlier in this Plan. Major spills will, of course, require equipment and expertise not available in the field to affect the cleanup and recovery of the pollutant. Prompt, accurate reporting is the key to preventing further contamination.

Initial Pollution Report No.

Date/Time Report Received _____ Time FAA Duty Office Received _____

Report Received From:	Other Persons Involved in Sighting
Name: _____	_____
Company: _____	_____
Address: _____	_____
Phone: _____	_____

Time of Occurance _____ Length of Time Spill Occured _____

Location: Initial _____

_____

Follow Up _____

_____

Type and Quantity of Spill _____

Description of Slick (Ashore and Afloat) _____

_____

Apparent Hazard to Life and Property _____

_____

Damage _____ Injuries _____

_____ _____

WX (At Scene) Temp _____ Tide Condition _____

Wind Direction and Velocity _____ Next High/Low _____

Visibility _____

Initial Action Taken by Persons on Scene (To Stop Spill) _____

(To Clean Up) _____

_____

_____

Company Intended Action _____

_____

Coast Guard Action _____

_____

ANNEX A

Annex B, Exhibit D. Western Geophysical Company of America. Report communication net. This figure could not be reproduced legibly in this notice. It is filed as part of the original document. Copies are available from: Regional Director, U.S. Fish and Wildlife Service, Attn: Oil, gas and minerals coordinator (AWR/PSS), 1011 East Tudor Road, Anchorage, Alaska 99503 (Phone 907–786–3384 or 3398).

Western Geophysical Co.
of America

Fuel Storage Site
Daily Check List

Location _____ Date _____ 19 _____

	Satisfactory	Unsatisfactory	Remarks
A - Overall site condition	☐	☐	_____
B - Fittings and connections	☐	☐	_____
C - Sign placement	☐	☐	_____
D - Dike and liner	☐	☐	_____
E - Tank	☐	☐	_____

Fuel withdrawn last 24 hours _____ gals

Fuel gained last 24 hours _____ gals

General Remarks _____

Time _____ Date _____ Signed _____

ANNEX C

Western Geophysical Company Safety Rules for Fuel Storage and Transfer

1. Any and all personnel assigned to the operation of any WESTERN GEOPHYSICAL COMPANY fuel supply and/or transfer will be familiar with the Contingency Plan as developed for the procedures in case of a spill.

2. During the storage and/or transfer of fuel there will be at least one employee with a valid First Aid card on site. An adequate First Aid kit will be available at the site

3. There will be no smoking within 100 feet of any fuel storage area and visible signs will be posted in prominent locations to indicate this. During the transfer of fuel from any carrier to a tank or from the tank to a carrier, there is to be absolutely no smoking in the area. In addition, any specific rules imposed by carriers will be obeyed by all WESTERN personnel.

4. Each vehicle involved in fuel handling will be equipped with a fire extinguisher of the proper size and type so as to comply with current State and Federal regulations. All men will be trained in the operation of the extinguishers.

5. All discharge lines from any tank, either fixed or mobile, will be tagged so as to indicate the contents of the tank. No WESTERN personnel will use or allow the use of any fuel unless it comes from marked containers.

6. All installations will be kept in a state of good repair and any defects in the tank or fittings will be repaired as soon as possible. No trash or litter will be allowed to accumulate in the immediate storage area and excess snow will be removed from the tanks and dikes as soon as possible.

7. Emergency repair equipment and tools will be kept at the tank site and their location will be made known to all personnel involved in the fuel storage operation. Any shortages will be made known to the Party Manager as soon as possible. The use of any of this equipment for any use except emergency is strictly prohibited.

8. No fuel transfers will be made with any equipment that does not meet the requirements of the General Safety Code. If there is some question about compliance consult the Party Manager.

9. These regulations are for your safety and any infraction could be cause for disciplinary action or dismissal.

Summary

This Plan, with its Annexes, has been formulated to help WESTERN GEOPHYSICAL COMPANY employees prevent oil spills and to assist them in the event a spill should occur.

The three key points to remember if an oil spill should become your problem are:

1. Stop the Flow as Soon as Possible

Use any safe, practical means at your disposal. Remember to locate and check the operation of all valves daily. Check your tank emergency repair kit and know how and when to use it. Remember that every gallon you keep from leaking is one less to clean up later.

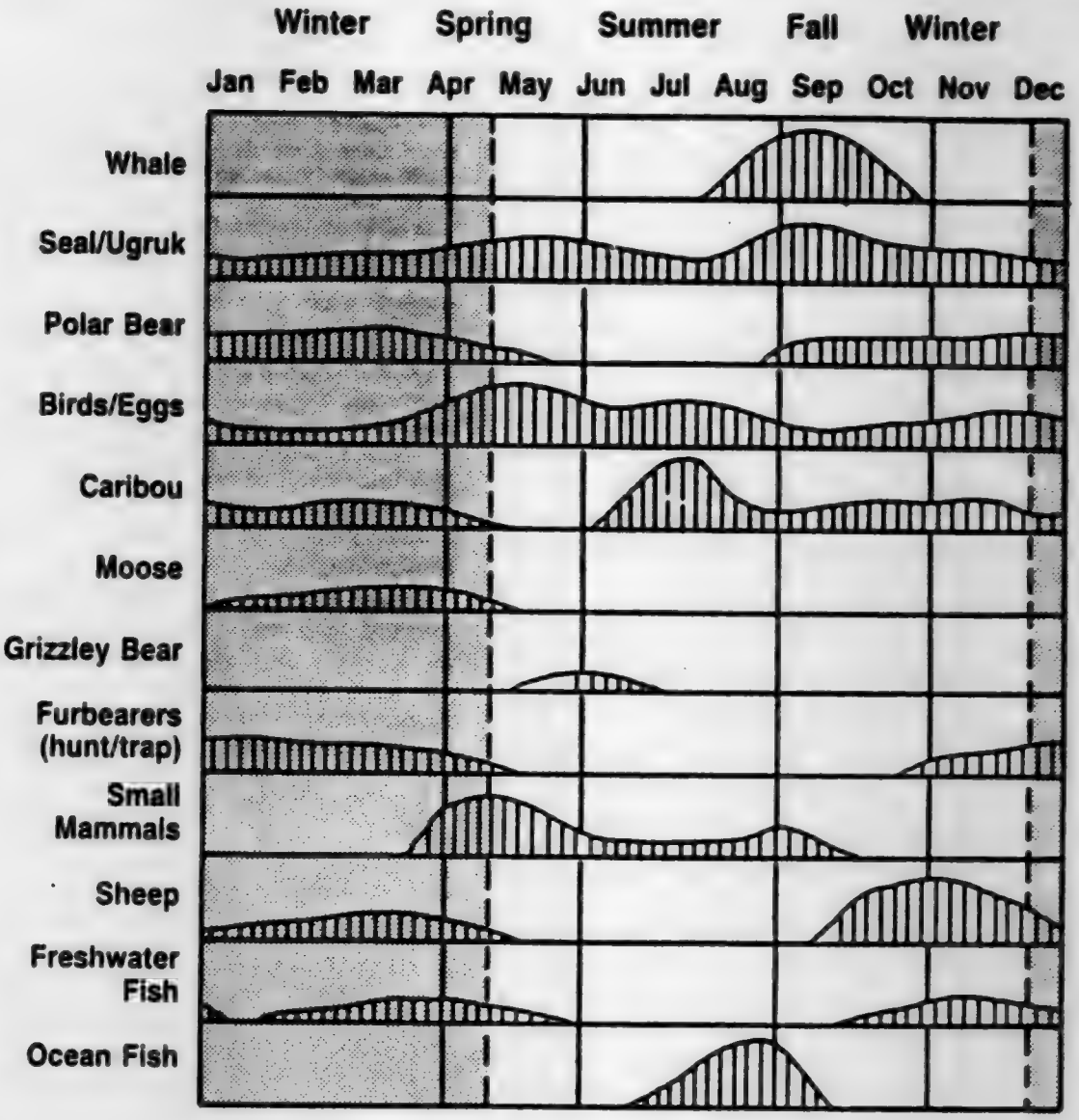
2. Contain the Spill in the Smallest Possible Area

Sound judgment is the key to good containment. Keep in mind that other regulatory agencies have very definite ideas about what you can or cannot do with the natural resources around the fuel site. If you use the material around the spill to create a secondary dike be sure that it can be restored to its original condition after clean up is completed. During tank installations you should always be thinking of the responsibility of a spill and note any material at or near the site that could be utilized.

3. Report the Spill Through the Proper Channels and Initiate Clean Up Procedures

Prompt, accurate reporting is imperative and should be done as soon as possible after discovery of the spill. If the spill is minor and the clean up is obvious you should go ahead but if a major spill occurs you should stand by for detailed instructions. Remember that disposal of waste created by clean up has to be taken care of properly and not left to create another problem. In some cases, this may require evacuation of the waste to a suitable site designated by the authorities.

In conclusion, you must do everything possible to prevent a spill but if one does happen you should STOP THE FLOW, CONTAIN THE MATERIAL and REPORT AND CLEAN UP.



Yearly cycle of subsistence use at Kaktovik, Alaska. Patterns indicate desired periods for pursuit of each species based upon the relationship between abundance, hunter access, seasonal needs, and desirability.

EXHIBIT E

Exhibit F. Western Geophysical Company of America. Material on seismic lithologic modeling. This material could not be reproduced legibly in this notice. It is filed as part of the original document. Copies are available from: Regional Director, U.S. Fish and Wildlife Service, Attn: Oil, gas, and minerals coordinator (AWR/PSS), 1011 East Tudor Road, Anchorage, Alaska 99503 (Phone 907–786–3384 or 3398).

Exhibit G—Norman S. Neidell

Norman S. Neidell received a B.A. Degree from New York University, a Post-Graduate Diploma in Applied Geophysics from Imperial College and a Ph.D. in Geodesy and Geophysics from Cambridge University. He acquired basic experience with Gulf Oil and Seiscom Delta, and undertook independent ventures in 1971.

In 1973, he joined in the founding of GeoQuest International Inc. an exploration consulting company and seismic contractor. During 1976, he co-founded Zenith Exploration Co., Inc. an operating oil and gas company. He currently serves as President and Chief Operating Officer. Late in 1979, he found Delphian Signals to exploit applications of his basic research on dolphin echolocation. Dr. Neidell's specific interests concern signals and waveforms ranging from stratigraphic seismic interpretation to target adaptive radars. He has authored numerous technical papers and patents and made presentations before many learned groups.

He is an Associate Professor in the Geology Department of the University of Houston and lectures in Continuing Education Programs and also for programs at the University of Tulsa, the Society of Exploration Geophysicists (SEG), American Association of Petroleum Geologists (AAPG), and the Society of Petroleum Engineers (SPE). Dr. Neidell is a Past President and Honorary Member of the Geophysical Society of Houston (GSH), a past Associate Editor of Geophysics and a member of several SEG committees. His other professional society memberships, besides those mentioned, include American Geophysical Union (AGU), European Association of Exploration Geophysicists (EAEG), Houston Geophysical Society (HGS), Institute of Electrical and Electronic Engineers (IEEE) and Society of Photo-optical Instrumentation Engineers (SPIE).

Exhibit H—Certificate

This is to certify that WESTERN Geophysical Company of America will, if authorized to conduct exploratory activities, comply with 50 CFR Part 37 Geological and Geophysical Exploration of the Coastal Plain, Arctic National Wildlife Refuge, Alaska, its Special Use Permit, its approved exploration Plan, Plan of Operation and all reasonable stipulations, demands and orders issued by the Regional Director or his authorized representatives.

In addition, Western Geophysical Company of America will comply with all existing Federal, State, and local laws and regulations as well as those that may become effective during the course of the proposed exploration.

I further certify that I am an officer of WESTERN Geophysical Company of America with the title of Executive Vice President, Manager of Operations and as such I am authorized to affix my signature to this document.

Dated: June 1, 1984.

Marilyn Wrigley.

Dated: June 1, 1984.

Neal P. Cramer, Sr.,

Executive Vice President, Manager of Operations.

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Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 2880

Rights-of-Way Under the Mineral Leasing Act; Procedures for Reimbursement of Cost; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

Rights-of-Way Under the Mineral Leasing Act; Procedures for Reimbursement of Cost

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend 43 CFR Part 2880 by inserting cost recovery provisions that are currently contained in 43 CFR Part 2800 and would update them to provide more adequately for the recovery by the United States of the costs of processing and monitoring rights-of-way and temporary use permits granted pursuant to authority provided by section 28 of the Mineral Leasing Act of 1920, as amended and supplemented.

DATE: Comments should be submitted by August 24, 1984. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:
Theodore G. Bingham (202) 343–5441
or
Robert C. Bruce (202) 343–8735

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending 43 CFR Part 2880 was published in the **Federal Register** on October 19, 1983 (43 FR 48483), which provided a 30-day comment period. The proposed rulemaking would move the cost recovery provisions of 43 CFR Part 2800, which had been made applicable to 43 CFR 2880 by a reference in § 2883.1 of 43 CFR Part 2880. The proposed rulemaking resulted from a decision of the United States Court of Appeals for the Tenth Circuit in a consolidated appeal of three cost recovery cases (*Nevada Power Company* v. *Watt* (81–1944); *Public Service of Colorado* v. *Watt* (81–2066) and (81–2143); and *Colorado Ute Electric Association* v. *Watt* (82–1304)) that held that the Department of the Interior must consider the factors listed in section 304(b) of the Federal Land Policy and Management Act (43 U.S.C. 1734(b)) in establishing costs for processing right-of-way applications under title V of the Federal Land Policy and Management Act. The Court further held that the existing regulations establishing the procedure for said processing did not provide for such consideration. Since the Mineral Leasing Act of 1920, as amended and supplemented (31 U.S.C. 181 et seq.), provides for cost reimbursement but does not require consideration of the specific factors listed in section 304(b) of the Federal Land Policy and Management Act, it was determined that the updated cost reimbursement provisions should be moved to 43 CFR Part 2880, which covers rights-of-way under the Mineral Leasing Act.

During the comment period on the proposed rulemaking of October 19, 1983, 15 comments were received, 13 from the oil and gas industry and 2 from Federal agencies. These comments have been reviewed and are incorporated in this proposed rulemaking. The comments are discussed below.

All of the industry comments objected to the proposed rulemaking for a variety of reasons. The objections fell into two general categories: (1) Questioning whether the Mineral Leasing Act provides authority for the cost recovery provisions in the proposed rulemaking; and (2) objecting to the administration of the category system, the dollar cost to applicants/holders and to the concept of cost recovery because it is not in the public interest.

A few comments expressed the view that the requirement of advance payment of processing and monitoring fees is not authorized by the Mineral Leasing Act and that section 28(1) of the Act indicates that reimbursement of costs may be required only after expenditure has been made by the United States. Advance payment is not prohibited by the Act. In addition, only limited funds are available for right-of-way processing from annual appropriations, making it very difficult for the Bureau of Land Management to expend its funds for processing rights-of-way and collect costs after completion of its work. If the Bureau is to process applications in a timely manner and be responsive to applicant needs and schedules, it must have advance payment. The alternative is a lengthy delay awaiting the appropriation of sufficient funds to pay the costs of processing right-of-way applications.

Other comments stated that the legislative history of the 1973 amendments to the Mineral Leasing Act, especially Senator Jackson's statement during the Senate debate on the amendments, indicates that costs recovered from an applicant/holder are subject to a "reasonable costs" test which the comments stated should be similar to that required by section 304(b) of the Federal Land Policy and Management Act. The Mineral Leasing Act, as amended, is clear and unambiguous in its requirement that an applicant/holder reimburse all processing and monitoring costs incurred by the United States. The clear language of the Act negates any incorrect understanding which may have been raised in the debate on the amendment. The applicable language of the Act reads:

> The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area. . .

Several comments expressed the view that any fee schedule should be incorporated into regulations, rather than being a part of the Bureau of Land Management Manual, thereby making any changes in the schedule subject to full review as required by the Administrative Procedures Act. As a result of careful review of the comments, the fee schedules have been incorporated into this proposed rulemaking.

A number of comments expressed the view that the proposed rulemaking contained an insufficient identification of the work to be accomplished for the specific benefit of the applicant/holder, as well as an insufficient definition of the costs to be recovered. The cost recovery process set forth in the rulemakings for rights-of-way that fall under Category VI, actual cost recovery, is a continuation of the process now being used by the Bureau of Land Management under existing regulations. The costs recovered are those which are the direct result of work incurred in processing and monitoring an application which provides a direct benefit to the applicant/holder; plus a small and normal percentage to cover items such as Federal contributions to employee retirement, health insurance and like costs. Management overhead is not included in this amount. In addition, a Category VI applicant/holder who questions whether the charges made are for his/her benefit may audit the Bureau's cost records. The costs for Categories I through V are determined by a similar process. No change has

been made in the proposed rulemaking in response to these comments.

Several comments suggested that a cost recovery system designed by the Bureau of Land Management for use on those lands under its direct management and jurisdiction is not appropriate for use on or applicable to Federal lands under the jurisdiction of other Federal agencies. The Bureau's experience under the existing cost recovery regulations in 43 CFR Part 2800, as they relate to Mineral Leasing Act rights-of-way, is that few of the applications involve lands other than those under the jurisdiction of the Bureau. However, the Mineral Leasing Act gives the Secretary of the Interior jurisdiction over rights-of-way issued pursuant to it that cover Federal lands under the jurisdiction of two or more Federal agencies. The Bureau's experience shows that there have been few problems with cost recovery for right-of-way applications that involve lands under the jurisdiction of Federal agencies other than the Bureau. No change has been made to this proposed rulemaking in response to these comments.

A couple of comments expressed the view that the collection of annual rental and reimbursement of processing/monitoring costs is an unauthorized double charge on the applicant/holder and recommended that this situation could be resolved by providing for an offset in one charge for payments made in the other. The Mineral Leasing Act is clear and unambiguous in its authorization to collect both the annual rental and cost reimbursement for rights-of-way. The language of the Act is as follows:

> (1) The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market value of the right-of-way or permit, as determined by the Secretary or agency head.

Since the authority to collect both the annual rental and cost reimbursement is clear, no change has been made in this final rulemaking as a result of these comments.

Another comment raised the point that section 28(1) of the Mineral leasing Act does not specifically cite preparation of environmental impact statements as a reimbursable cost and that compliance requirements of the National Environmental Policy Act of 1969 are not recoverable. A decision as to whether to grant or not grant a right-of-way or permit and the terms and conditions of such grant cannot be made without compliance with the requirements of the National Environmental Policy Act. Consequently, the cost of compliance with National Environmental Policy Act requirements clearly falls within the "administrative and other costs incurred in processing the application" for which section 28(1) of the Act requires cost reimbursement by the applicant/holder. The proposed rulemaking has not been changed as a result of this comment.

Several comments complained that the fees in the schedule contained in the proposed rulemaking are too high. As a result of these comments, the Bureau of Land Management carefully reexamined recorded time and costs studies and found that this was in fact the case and the fee schedules that are included in this proposed rulemaking are a revision of that contained in the **Federal Register** notice of January 17, 1983 (48 FR 2110). Another issue raised by the comments on fees was that there should be additional graduations within each of the categories in recognition that the longer the right-of-way, the more expensive it is to process and monitor. The fees now being collected were established in 1975 and were designed to cover only a small portion of the costs of the United States processing and monitoring costs. Processing and monitoring costs have increased substantially since the adoption in 1975 of the existing fees. The workload and expense studies done by the Bureau of Land Management show that the fee schedules made part of this proposed rulemaking for each category are the average costs incurred by the Bureau in processing/monitoring a right-of-way of the complexity described by the category. Further, the field data on which the fee schedules are based demonstrate that within any given category, there is no direct correlation or relationship between the length or size of the right-of-way and the costs of processing/monitoring for the category.

Several comments expressed the view that reimbursable costs for a right-of-way for a gas pipeline are included in the rate base and passed on to the consumer. The comment went on to question whether it was in the public interest for the Bureau of Land Management to recover processing/monitoring costs from the utlimate user rather than the appropriated funds. While agreeing that the costs recovered for processing/monitoring a gas pipeline right-of-way are passed on to the consumer, the consumers of gas from a pipeline should pay the costs of the facility rather than having such costs borne by all taxpayers, many of whom may never receive any benefit from the pipeline. The collection of reimbursable costs meets the public policy goal of having specific users of a service, either ultimately or intermediately, when the users can be identified, pay the costs of that service. This proposed rulemaking makes no change in the requirement for recovery of costs associated with a right-of-way.

A comment raised the argument that the imposition of cost reimbursement on certain pipelines might result in some low production wells not being utilized and asked if this was in the public interest.

It is highly unlikely that the small increase in total costs resulting from adding cost recovery to the overall costs of putting a low production gas well into production will be determinative of whether that well is put into production or abandoned.

A few comments suggested that additional standards and criteria should be added to the proposed rulemaking for each of the categories so that they can be more precisely identified, thereby eliminating the need for the authorized officer to exercise discretion in determining the category under which the application would fall. The workload and cost studies conducted by the Bureau of Land Management are the basis for the categories contained in the proposed rulemaking of October 19, 1983. This proposed rulemaking contains revisions of the category descriptions that appeared in the proposed rulemaking of October 19, 1983, that are designed to clarify the categories and will serve as the only basis for making category determinations. Additional criteria and standards would cause confusion. The purpose of establishing a category system is to provide a system of cost reimbursement where most of the applications are processed under a category other than Category VI (full cost recovery). The only other process would be one where all applications are processed under full cost recovery procedures, a process that would be expensive for both the applicant and the United States.

A comment made the point that the Bureau of Land Management is presently having problems with its rental appraisals for rights-of-way granted under the Mineral Leasing Act and that the whole issue of rental appraisals is being studied. The comment went on to make the point that the rental appraisal study might result in a recommendation that all applications be placed in Category IV. The possibility raised by this comment is a

"worst case" hypothesis, with a remote probability of occurring. Further, one of the issues being studied by the appraisal study team is the expanded use of abbreviated processes for appraising the rental value of all rights-of-way. The abbreviated processes, if adopted, will reduce the costs of making such appraisals.

A few comments complained that under the proposed rulemaking of October 19, 1983, the appeal of category determination can be realistically exercised only after the payment of the advance cost reimbursement fee because the Bureau of Land Management will not commence processing activity until the advance fee has been paid. The comment suggested that some alternate process for filing an appeal should be developed, one that will result in an expeditious decision on an appeal without the applicant having to pay the advance fee. The appeal question was carefully examined before the issuance of the proposed rulemaking of October 19, 1983. The process provided in the proposed rulemaking of October 19, 1983, which is continued in this proposed rulemaking, provides an equitable method for handling an appeal of the question of which category is applicable to an application. The process provided in both of the proposed rulemakings allows an applicant to pay the advance fee and file an appeal. The advance fee payment allows the Bureau to proceed with the work. Both of the proposed rulemakings provide for a refund of overpayments if the appeal results in a decision that the authorized officer's category determination was wrong. There is nothing to prevent an applicant who is dissatisfied with a category determination to appeal that decision before proceeding with action on the application.

A couple of comments complained that many of the comments that were submitted on the proposed rulemaking amending 43 CFR Part 2800, published in the **Federal Register** on January 17, 1983 (48 FR 2110), were not considered in the preparation of the October 19, 1983, proposed ruemaking. All of the comments and the action taken on them were discussed in the preamble to that proposed rulemaking. Those comments that either recommended the elimination of cost recovery or that the fees not be raised, both of which would be contrary to the statutory direction of the Mineral Leasing Act, were not adopted as part of these proposed rulemakings. The proposed rulemaking contains a number of changes that were a result of comments on the January 17, and October 19, 1983, proposed rulemaking.

A comment asked if cost recovery for supplementary temporary use permits or for grant amendments would be an additional separate category determination and charge. The issue will have to be resolved on a case-by-case basis. Significant factors that will have to be considered in making such a determination are the time when the application for the temporary use permit or grant amendment is filed and what additional processing/monitoring issues are raised by the applicant's proposed actions on Federal lands included in the temporary use permit application or grant amendment. If the temporary use permit is included in the right-of-way application or is filed at the same time the right-of-way application is filed, the determination of the category into which they fall will be made on the basis of the combined applications.

One comment requested that an audit system be established for all categories.The Bureau of Land Management presently has an audit system available under which an applicant/holder may audit actual expense records of any application where full costs are recovered, which is Category VI. Categories I through V are based on average workloads and costs. Some applications that fall under a given category will involve more work and expense than the average, while some will require less. If an audit system were provided for all of the categories, it would result in the establishment of a complete cost accounting system for each application. The cost of maintaining such a system would be so expensive that it would automatically require each application to fall under Category VI. This would defeat the purpose of establishing a category system, a system that passes part of the reduced costs of the United States for not having to maintain a complete cost accounting system for each application to the applicant. This proposed rulemaking does not provide for any change in the audit system.

A couple of comments suggested that the use of the category system provided in both of the proposed rulemakings would increase the cost of processing an application and delay the granting process. The use of the category system set forth in both of the proposed rulemakings will, at the beginning of its use, insignificantly increase the cost of processing an application and will delay slightly the granting of a right-of-way. However, as Bureau of Land Management personnel and applicants/holders become familiar with the category system, these slight increases will be eliminated.

The principal author of this proposed rulemaking is Sheldon Weil, Division of Rights-of-Way, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The changes made by this proposed rulemaking will not, when the payments for all right-of-way and temporary use applications are considered, substantially increase the payments made by right-of-way applicants/holders for processing and monitoring. The changes made by this proposed rulemaking would make the reimbursement of costs procedures used by the Bureau of Land Management more equitable and will recover for the United States a greater portion of the costs incurred in the processing and monitoring of right-of-way grants and temporary use permits.

The change made by this proposed rulemaking will be equally applicable to all entities that make application to the Bureau of Land Management for use of the Federal lands for oil or gas right-of-way grants or temporary use permits.

There are no additional information collection requirements in this proposed rulemaking requiring approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2880

Administrative practice and procedure, Common carriers, Oil and gas industry, Pipelines, Public lands—rights-of-way.

PART 2880—[AMENDED]

Under the authority of section 28 of the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.), it is proposed to amend Part 2880, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal

Regulations as set forth below:

§ 2882.1 [Amended]

1. Section 2882.1(c) is amended by removing the citation "§ 2803.1–1" and replacing it with the citation "§ 2883.1–1".

2. Subpart 2883 is amended by revising § 2883.1–1 to read:

§ 2883.1–1 Cost reimbursement.

(a)(1) An applicant for a right-of-way grant or a temporary use permit shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), prior to the United States having incurred such costs. All costs shall be paid before the right-of-way grant or temporary use permit shall be issued under the regulations of this title.

(2) The regulations contained in this subpart do not apply to State or local governments or agencies or instrumentalities thereof where the Federal lands are used for governmental purposes and such lands and resources continue to serve the general public, except as to right-of-way grants or temporary use permits issued to State or local governments or agencies or instrumentalities thereof or a municipal utility or cooperative whose principal source of revenue is derived from charges levied on customers for services rendered that are similar to services rendered by a profit making corporation or business enterprise.

(3) The applicant shall submit with each application a nonrefundable application processing fee in the amount required by a schedule of fees for this purpose contained in paragraph (c) of this section which shall be based on a review of the use of the Federal lands for which the application is made, the resources affected and the complexity and costs to the United States for processing required by an application for a right-of-way grant and shall be established according to the following general categories:

(i) *Category I.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and field examination of the lands affected by the application is required;

(ii) *Category II.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and one field examination of the lands affected by the application to verify the existing data is required;

(iii) *Category III.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and two field examinations of the lands affected by the application to verify the data are required;

(iv) *Category IV.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which some original data are required to be gathered to comply with the National Environmental Policy Act; and two or three field examinations of the lands affected by the application are required;

(v) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which original date are required to be gathered to comply with the National Environmental Policy Act and evaluation of these data require formation of an interdisciplinary team; and three or more field examinations of the lands affected by the application are required;

(vi) *Category VI.* An application for a right-of-way grant or temporary use permit to authorized a use of Federal lands for which processing activities will be in excess of those listed under paragraph (a)(3)(v) of this section.

(4)(i) The authorized officer shall determine the appropriate category and collect the required nonrefundable application processing fee prior to acceptance of an application. A record of the authorized officer's category determination shall be made and given to the applicant, and the decision is a final decision for purposes of appeal under § 2884.1 of this title. Notwithstanding the pendency of such appeal, an application shall not be accepted for processing without payment of the fee determined by the authorized officer, and where such payment is made, the application may be processed and, if proper, the grant or permit issued. The authorized officer shall make any refund directed by the appeal decision.

(ii) During the processing of an application, the authorized officer may change a category determination to place an application in Category VI at any time that it is determined that the application requires preparation of an environmental impact statement. A record of change in category determination under this paragraph shall be made, and the decision is appealable in the same manner as an original category determination made under paragraph (a)(4)(i) of this section.

(5)(i) An applicant whose application is determined to be in Category VI shall, in addition to the nonrefundable application processing fee, reimburse the United States for the full actual administrative and other costs of processing the application. The nonrefundable application processing fee required under the fee schedule shall be credited toward the total cost reimbursement obligation of such applicant. When such an application is filed, the authorized officer shall estimate the costs expected to be incurred in processing the application, inform the applicant of the estimated amount to be reimbursed and require the applicant to make periodic payments of such estimated reimbursable costs prior to such costs being incurred by the United States.

(ii) If the payments required by paragraph (a)(5)(i) of this section exceed the actual costs to the United States, the authorized officer may adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. An applicant may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(iii) Prior to issuance of a right-of-way grant or temporary use permit, an applicant subject to paragraph (a)(5)(i) of this section shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (a)(5)(i) of this section.

(iv) An applicant subject to paragraph (a)(5)(i) of this section whose application is denied is responsible for costs incurred by the United States in processing the application, and such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill from the authorized officer giving the amount due.

(v) An applicant subject to paragraph (a)(5)(i) of this section who withdraws an application before a decision is reached is responsible for costs incurred by the United States in processing the application up to the date the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred in terminating the application review process. Such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill

from the authorized officer giving the amount due.

(6) When 2 or more applications for right-of-way grants are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by paragraph (a)(3) of this section. If reimbursement of actual costs is required under paragraph (a)(5)(i) of this section, each applicant shall be responsible for the costs identifiable with his/her application. Costs that are not readily identifiable with one of the applications, such as costs for portions of an environmental impact statement that relate to all of the applications generally, shall be paid by each of the applicants in equal shares or such other proration as may be agreed to in writing by the applicants and authorized officer prior to the United States incurring such costs.

(7) When, through partnership joint venture or other business arrangement, more than one person partnership, corporation, association or other entity apply together for a righ-of-way grant or temporary use permit, each such applicant shall be jointly and severally liable for costs under this section.

(8) When 2 or more noncompeting applications for right-of-way grants are received for what, in the judgment of the authorized officer, is one right-of-way system, all of the applicants shall be jointly and severally liable for costs under this section for the entire system, subject, however, to the provisions of paragraph (a)(7) of this section.

(b)(1) After issuance of a right-of-way grant or temporary use permit for which a fee was assessed under paragraph (a) of this section, the holder thereof shall, prior to the United States having incurred such costs, reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved.

(2) The holder shall submit a monitoring cost fee along with the written acceptance of the terms and conditions of the grant or permit pursuant to § 2882.3(1) of this title. The amount of the required fee shall be determined by the schedule of fees described in paragraph (c) of this section. Acceptance of the terms and conditions of the grant or permit shall not be effective unless the required fee is paid.

(3) A holder whose application was determined to be in Category VI for application processing purposes shall reimburse the United States for the actual administrative costs and other costs of monitoring the grant or permit. When such a grant or permit is issued, the authorized officer shall estimate the costs expected to be incurred in monitoring the grant or permit, inform the holder of the estimated amount to be reimbursed and require the holder to make periodic payment of such estimated reimburseable costs prior to such costs being incurred by the United States.

(4) If the payments required by paragraph (b)(3) of this section exceed the actual costs to the United States, the authorized officer may adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. A holder may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(5) Following termination of a right-of-way grant or temporary use permit, any grantee or permittee that was determined to be in Category VI shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (b)(3) of this section.

(c) The schedules of nonfundable fees are as follows:

(1) For processing an application for a right-of-way and/or temporary use permit:

Category	Fee
I	$125
II	275
III	350
IV	500
V	1,000
VI	A minimum of 5,000

(2) For monitoring a right-of-way grant or temporary use permit:

Category	Fee
I	$25
II	50
III	75
IV	150
V	250
VI	As required

Dated: May 31, 1984.

Garrey E. Carruthers,

Secretary of the Interior.

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Monday
June 25, 1984

Part IV

Environmental Protection Agency

40 CFR Parts 122, 124 and 125
National Pollutant Discharge Elimination System; Compliance Extensions for Innovative Technologies; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 124 and 125

[OW-FRL-2523-2]

National Pollutant Discharge Elimination System; Compliance Extensions for Innovative Technologies

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Agency is promulgating requirements for granting compliance extensions for the installation of innovative technologies under section 301(k) of the Clean Water Act of 1977 (CWA). Under this regulation an industrial discharger that is subject to the requirement of achieving limitations reflecting the Best Available Technology Economically Achievable (BAT) under section 301(b)(2) of the CWA may request a compliance extension to no later than July 1, 1987, for the installation of an innovative technology. To qualify for an extension, the innovative technology must either produce a significantly greater effluent reduction than BAT or achieve the same level of effluent reduction as BAT at a significantly lower cost. The principal issues associated with this proposed regulation are discussed below.

DATES: In accordance with 40 CFR 100.01 (45 FR 26048) the regulations developed in this rulemaking shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern Time on July 9, 1984. These regulations shall become effective on August 8, 1984.

FOR FURTHER INFORMATION CONTACT: Marilyn Goode, Permits Division (EN-336), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, (202) 426-7010.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Water Act outlines a two-step process by which industrial dischargers are to achieve the national goal of eliminating the discharge of pollutants into the nation's navigable waters. The first step was meeting effluent limitations attainable by the application of Best Practicable Control Technology Currently Available (BPT) by July 1, 1977 (section 301(b)(1)(A) of the CWA). The second step involves meeting effluent limitations reflecting BAT by July 1, 1984 (section 301(b)(2) of the CWA).

The permits issued to industrial dischargers under the National Pollutant Discharge Elimination System (NPDES) incorporate the appropriate technology-based limitations and contain compliance schedules for achieving those limitations. Section 301(k) provides an industrial discharger subject to an NPDES permit with two options for qualifying for a compliance extension from the BAT deadline of July 1, 1984 to no later than July 1, 1987. (The extension need not necessarily be granted for the full 3-year period.) The first option is the installation of an innovative technology which produces an effluent reduction which is significantly greater than that required by BAT. The second option is the installation of an innovative technology which achieves the same level of effluent reduction as required by BAT with the potential for achieving that reduction at a significantly lower cost than estimated for BAT. In either case, the discharger must demonstrate that the proposed innovative technology has the potential for industry-wide application. The decision to grant a compliance extension will be made by EPA or by a State with an approved NPDES program in consultation with EPA.

The Agency published an Advanced Notice of Proposed Rulemaking (ANPR) on September 19, 1980 (45 FR 62509) which outlined the initial agency position on the implementation of section 301(k). The Agency then published a Notice of Proposed Rulemaking (NPR) on September 21, 1981 (46 FR 46597). The NPR solicited comment on a wide range of issues. The issues, the comments received, and the Agency response to those comments are described below.

II. Issues

A. Industry-Wide Applicability

The innovative technology must have the potential for "industry-wide application" before a compliance extension can be granted. The Agency suggested that this potential is demonstrated when an innovative technology can be applied in at least two facilities in an industrial category, or in one or more facilities in at least two industrial categories.

Many commenters supported our proposed policy. One commenter raised the possibility of a single facility which makes products in two industrial categories, with an innovative technology developed for the combined wastewater. In that situation only one facility would be involved, but the potential for industry-wide application would be satisfied if the technology were capable of application at another facility in either of the two categories. To clarify the requirement, EPA is now stating only that the innovative technology must be capable of application in at least two facilities which are in one or more industrial categories.

The same commenter suggested that the requirement should be fulfilled when the technology in question satisfied the 301(k) criteria in one category but had not been considered innovative by EPA when developing BAT guidelines in another industrial category. EPA cannot fully accept this suggestion. Although similar factors may be taken into account in many cases, the criteria used in developing BAT guidelines are not the same as those for determining whether a particular technology is innovative under section 301(k). The decision that a given system represents BAT for an industry therefore does not necessarily imply a judgment as to its innovative quality for another industry, or a judgment as to the innovative quality of alternative technologies. However, EPA will consider the use of the proposed innovative technology in other industrial categories in order to ascertain whether its application in the applicant's category represents a true innovation. If a demonstrated technology can be applied in another category with only minor adjustments, the new use would not ordinarily be considered innovative.

Another commenter requested that we specify that the requirement is satisfied if the two facilities in a given industrial category are owned by the same company. The legislative history of the Clean Water Act lends support to this position and the Agency agrees that the use of innovative technology in two or more plants of the same corporation is consistent with the definition of "industry-wide application".

B. Conventional Pollutants

Some dischargers have conventional, toxic and nonconventional pollutants present in the same waste stream and are subject to BCT and BAT limitations based on the same model treatment system. For these dischargers, Section 301(k) extensions are of limited utility if technology must be installed in any event to meet the 1984 BCT deadline.

Several commenters suggested that compliance extensions under Section 301(k) should be available for the conventional pollutants. After review of the statutory language and the legislative history, the Agency has concluded that Congress did not make 301(k) extensions directly applicable to BCT limitations. In our proposal, EPA suggested the use of Enforcement

Compliance Schedule Letters (ECSL's) on a case-by-case basis when the Agency decides that enforcement of the BCT deadline would be inappropriate. Those letters would have stated that EPA would, subject to certain conditions, refrain from instituting civil actions to enforce compliance with BCT requirements.

The Agency has subsequently reevaluated the use of ECSL's. As a result, we have concluded that the Agency may issue administrative orders under section 309(a)(5)(A) to facilities who qualify for 301(k) extensions whose technology for control of toxic pollutants is also the technology of choice for the control of conventional pollutants and who thus need relief from the 1984 BCT deadline. The orders would be issued where (1) the BAT pollutants constitute the major portion of the facility's discharge and (2) it is unreasonable to treat the BCT pollutants separately. The orders would set forth reasonable compliance schedules for compliance with BCT, which in no event would be later than July 1, 1987. The purpose of the order would be to allow permittees to install innovative technology which would achieve both BCT and BAT limitations for a single waste stream. The orders would be subject to public notice and comment at the same time as the draft permit. Such orders, unlike ECSL's, are explicitly authorized by the Clean Water Act. The practical effect of such an order, however, would be the same as that of an ECSL; the Agency would initiate an enforcement action only if the compliance schedule were violated. Administrative orders do not provide immunity from citizen suits if the BCT statutory deadline is not met; however, they may aid a court in determining the proper response to such a failure.

C. Non-Compliance Enforcement

Many commenters expressed concern about the risk of penalties if the innovative technology failed to meet BAT requirements by 1987. EPA considers the deadlines in section 301(k) permits to be fixed legal requirements, and will initiate enforcement actions if these deadlines are violated. However, the Agency wishes to encourage the use of 301(k) extensions by industrial dischargers. If the discharger made all good faith efforts to meet the deadline and failed because of substantial, unanticipated problems, EPA can elect not to seek penalties for the violation and may require only an expeditious compliance schedule. EPA intends to exercise enforcement discretion in a manner that recognizes and promotes good faith compliance.

D. Certification by a Professional Engineer

Many commenters stated that the requirement for certification of cost estimates by a professional engineer was unduly burdensome for small or newly established firms. EPA agrees, and the final regulation (40 CFR 125.25(c)) provides the Regional Administrator discretion to waive the certification requirement for these firms when the cost of certification is unreasonably high in relation to the amount generated in annual sales.

Other commenters objected that the certification of cost estimates of BAT and the innovative technology demanded an unreasonable degree of certainty about the accuracy of the estimates. The Agency agrees and will now require the professional engineer to certify that the estimates were made in accordance with good engineering practice and represent, in his judgment, the best information available.

E. Time Limits for Application

Several commenters stated that the requirement for application before the close of the public comment period for the NPDES permit was unrealistic, as opportunities for development of an innovative technology might be discovered later. The final regulation (40 CFR 125.27(a)) gives the Regional Administrator discretion to accept applications at a later time if the applicant can show that information necessary to the development of the innovation was not available at the time his BAT permit was written and that the innovative technology can be installed and operated in time to comply with the July 1, 1987 deadline. Later acceptance, however, would normally mean modifying the existing permit and subjecting the proposed extension to public notice and comment.

F. Review Procedures

Some commenters suggested that our use of a Headquarters technical review panel was unnecessary and that all reviews should be done by the State Director or the Regional Administrator. It should be noted that under 40 CFR 124.62(a) the Director or the Regional Administrator makes the final decision on 301(k) requests; however, EPA plans to retain the technical review panel. The Agency has provided in the final rule that all applications approved by the State Director or Regional Administrator shall be submitted to the panel for technical evaluation. The panel members (to be appointed by the Director of the Office of Water Enforcement and Permits) will consist of Headquarters, Regional, and State personnel familiar with the industrial category in question. They will review all applications which the State Director or Regional Administrator believe are worthy of consideration.

The panel serves the purpose of obtaining the valuable technical expertise of personnel from various EPA offices (Office of Research and Development, Effluent Guidelines Division, etc.) who will assist in making uniform determinations on whether a given technology is innovative, whether the projected performance improvement is significant and whether it has the potential for industry-wide application. Since these judgments must be made on an industry-wide basis, uniformity of determinations is important. In addition, such review will help to ensure that the technologies in question are viable, which should reduce the risk of failure to achieve the planned permit limitations by the required statutory deadlines. The review should thus ultimately benefit permit applicants. The panel's review will be carried out as expeditiously as possible after the Director determines that the 301(k) application is complete and worthy of review by the panel. More time may be needed when complicated judgments are involved.

G. Technical Appendix

Most commenters supported our proposal not to publish a technical appendix of technologies with potential for 301(k) application, although a few showed interest in such a list. The Agency has concluded that the list would be too costly and difficult to maintain, and might even serve to stifle incentive to pursue other options not yet "approved" by EPA.

H. Proprietary Information

Some commenters felt that certain innovative technology information should be treated confidentially. The provisions of 40 CFR 122.7 (which incorporate by reference 40 CFR Part 2) are available to all 301(k) applicants. These provisions contain procedures for deciding claims on the confidentiality of business information. If the applicant can substantiate his claim of confidentiality, the information will not be made available to the public.

I. New Source and Indirect Dischargers

Some commenters argued that the Clean Water Act should be interpreted to allow 301(k) compliance extensions to new sources and indirect dischargers (dischargers into publicly owned treatment works). Section 301(k) refers

to facilities subject to a permit under section 402. Indirect dischargers do not hold individual section 402 permits. Therefore we do not believe Congress intended 301(k) extensions to be available to indirect dischargers. Moreover, it would be difficult to enforce the provisions of a 301(k) extension against a facility which did not have a permit.

Section 301(k) also refers to facilities subject to the requirements of section 301(b)(2)(A). However, new sources are subject to section 306, rather than to the BAT requirements of section 301. Our analysis of the Act and its legislative history has led us to conclude that the Agency does not have the statutory authority to extend the coverage of section 301(k) beyond BAT limitations for direct dischargers.

J. "Significantly Greater" Effluent Reduction than BAT

Some commenters suggested that we issue more concrete guidelines to determine how much reduction is "significant". The proposed regulation involved comparing two increments: (1) The effluent reduction improvement over BPT produced by BAT and (2) the effluent reduction improvement over BAT produced by the innovative technology. The second increment must be significant when compared to the first. EPA has determined that the proposed regulation was sufficiently concrete, and that a more specific one (i.e., the use of a percentage improvement) would be arbitrary and might tend to discourage dischargers from using innovative technologies. One commenter raised the possibility of a situation where BAT was equivalent to BPT for a particular industry, and suggested a case-by-case approach to determining the significance of effluent reduction in such situations. The Agency agrees with this suggestion.

K. Signatory and Certification Requirements

Some commenters pointed out that the signatory requirements for 301(k) requests and the certification the signer must make (§ 125.25 (a) and (b)) are the same as those specified in 40 CFR 122.22 for signers of NPDES permit applications. The latter requirements are among the provisions which have been changed in a separate rulemaking. (See 48 *FR* 39619.) For consistency, the Agency will require that the relevant provisions of 40 CFR 122.22 be followed.

L. Whether Technology is Considered "Innovative"

Some commenters expressed concern that the length of time during which a technology might be considered sufficiently innovative to qualify for an extension would be unreasonably short. One commenter even suggested that a technology could still be considered innovative even though it had been commercially demonstrated in the applicant's industrial category for as long as three years.

EPA cannot accept the extreme argument that a commercially demonstrated technology could still be "innovative". However, it is true that a paper application or mere physical existence of the technology would not necessarily constitute a commercial demonstration. Therefore, recognition for one applicant does not immediately preclude recognition for others in the same category. The Agency also believes that a definite cut-off date for the length of time a technology might be considered innovative would be arbitrary. The test should be whether the technology had been successfully operated at full scale in a commercial plant for a full cycle of the plant's operations. In using the term "commercial demonstration", the Agency is distinguishing pilot plant or benchscale operations of the technology from reliance upon the technology in a commercial plant.

Another commenter suggested that commercial demonstration in one industrial category should not automatically preclude a technology's being considered innovative in another. The Agency agrees with this position.

M. Other Issues

Section 301(k) refers to compliance extensions for three kinds of technologies: (1) Innovative systems, (2) production process changes, and (3) control techniques. One commenter stated that a literal reading of the Clean Water Act would allow 301(k) extensions for cost savings only when innovative systems are used; compliance extensions for production process changes and new control techniques should be granted only for effluent reductions greater than BAT. EPA does not believe such a reading is contemplated by the Act. The Agency notes that the phrase "innovative systems" can be read to include both process changes and control techniques. The legislative history of the Act reveals the interchangeable use of all three terms when referring to 301(k) extensions. Furthermore, distinguishing between the different kinds of innovations could be administratively difficult and could lead to unavoidably arbitrary decisions about the proper category to which an innovation belonged. The Agency has concluded that the goal of furthering the development of innovative technology is best served by granting extensions for cost savings to all kinds of innovations.

One commenter suggested that the effectiveness of the innovative technology should be determined on the basis of concentration as well as mass loading. EPA agrees that this method of measurement may be used whenever the relevant effluent guideline limitation is expressed in terms of concentration.

Another commenter expressed concern about permit limitations more stringent than those required by BAT being imposed for all 301(k) extensions. We reiterate that such limitations would be imposed only when the innovative technology is expected to achieve a level of effluent reduction greater than BAT, not when the extension was granted on the basis of cost savings. The Director is authorized (40 CFR 125.24(b)) to include alternative BAT permit conditions which will come into play when the more stringent limitations are not attained. Enforcement actions for violations of BAT will generally result where the BAT limits are not attained, or where the permittee has not made a good-faith effort to comply with more stringent limits.

One commenter felt that the provision allowing the Director open-ended discretion to require reporting costs of installation, operation, and maintenance of the innovative technology might prove unduly burdensome. Most of the cost information will be submitted with the applicant's initial request, but the final regulation (40 CFR 125.24(a)) has been modified to allow the Director to require such reporting no more frequently than once a year.

III. Regulatory Analysis

Executive Order 12291 requires that a regulatory impact analysis be conducted if certain criteria are met, such as an annual economic impact of a regulation totaling $100 million. The section 301(k) program is a voluntary one and it is unlikely that a facility will request a compliance extension unless it is in its economic interest to do so. Facilities will balance the extra cost of demonstrating, installing and operating an innovative technology and the risk of failure of that technology against the financial value of the extension and the potential for savings from the innovative technology.

The section 301(k) program should result in net benefits for facilities, except in those few instances in which the innovative technology fails. EPA has already received applications for 301(k) extensions which contend that savings

of over eight million dollars will result, and that improved effluent treatment will occur. To the extent that the innovative technologies receive widespread application, the benefits of lower cost and more effective treatment will be spread to other segments of industry and society as a whole.

Because of the voluntary nature of the program and because of its expected positive economic benefits, the Agency has concluded that a regulatory impact analysis is not required for the section 301(k) program.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires an analysis of any significant economic impact of proposed and final regulations on small entities. Because the section 301(k) program is limited to industrial direct dischargers, it will not affect those small governmental jurisdictions or small businesses which are indirect dischargers. Because it is a voluntary program, only those small businesses for which there is a perceived economic benefit will participate in the program. In addition, the response to the proposal suggests that small business participation in the section 301(k) program will be moderate. For these reasons, the Agency has concluded that the section 301(k) program will not have a significant impact on a substantial number of small entities and that a regulatory flexibility analysis is not required, pursuant to section 605(b) of the RFA.

The Agency has reevaluated the impact of the program on small entities, with respect to the certification requirements, on the basis of the comments on the proposal. The provision now allows a waiver of that requirement under certain circumstances. The waiver should alleviate any impacts on small businesses.

V. Reports Impact Analysis

As was noted above, the section 301(k) program is a voluntary program. Because of its voluntary nature and judging by the response to the proposed rule, the reporting and record-keeping requirements of the program are likely to affect a small number of industrial direct dischargers. A firm participating in the program ordinarily will already have developed information on the performance of its innovative technology or will obtain the information from an equipment vendor selling the innovative technology. The only record-keeping requirement is that the firm retain the information on which its section 301(k) request is based for the life of the permit containing the compliance extension. The retention of this information will aid EPA in its evaluation of the performance of the program.

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S. 3501 *et. seq.* and have been assigned OMB control number 2040–0066.

List of Subjects

40 CFR Part 125

Water pollution control, Waste treatment and disposal.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indian lands.

40 CFR Part 122

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Waste pollution control, Water supply, Confidential business information.

Authority: These regulations are issued under authority of the Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: June 15, 1984.

William D. Ruckelshaus,

Administrator.

PART 122—[AMENDED]

1. In Section 122.62 paragraph (a)(5) is revised to read as follows:

§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs See § 123.25).

* * * * *

(a) * * *

(5) When the permittee has filed a request for a variance under CWA section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for "fundamentally different factors" within the time specified in §§ 122.21 or 125.27(a).]

* * * * *

PART 124—[AMENDED

2. Section 124.2 is revised to read as follows:

§124.2 Definitions.

Consultation with the Regional Administrator (§124.62(a)(2)) means review by the Regional Administrator following evaluation by a panel of the technical merits of all 301(k) applications approved by the Director. The panel (to be appointed by the Director of the Office of Water Enforcement and Permits) will consist of Headquarters, Regional, and State personnel familiar with the industrial category in question.

PART 125—[AMENDED]

3. Subpart C is added to 40 CFR Part 125 to read as follows:

Subpart C—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act

Sec.

125.20 Purpose and scope.
125.21 Statutory authority.
125.22 Definitions.
125.23 Request for compliance extension.
125.24 Permit conditions.
125.25 Signatories to request for compliance extension.
125.26 Supplementary information and recordkeeping.
125.27 Procedures.

Subpart C—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act

§ 125.20 Purpose and scope.

This subpart establishes the criteria and procedures to be used in determining whether an industrial discharger will be granted a compliance extension for the installation of an innovative technology.

§ 125.21 Statutory authority.

Section 301(k) provides that the Administrator (or a State with an approved NPDES program, in consultation with the Administrator) may grant a compliance extension for BAT limitations to a discharger which installs an innovative technology. The innovative technology must produce either a significantly greater effluent reduction than that achieved by the best available technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Administrator is authorized to grant compliance extensions to no later than July 1, 1987.

§ 125.22 Definitions.

(a) The term "innovative technology" means a production process, a pollution control technique, or a combination of the two which satisfies one of the criteria in § 125.23 and which has not been commercially demonstrated in the industry of which the requesting discharger is a part.

(b) The term "potential for industry-wide application" means that an innovative technology can be applied in

two or more facilities which are in one or more industrial categories.

(c) The term "Significantly greater effluent reduction than BAT" means that the effluent reduction over BAT produced by an innovative technology is significant when compared to the effluent reduction over best practicable control technology currently available (BPT) produced by BAT.

(d) The term "significantly lower cost" means that an innovative technology must produce a significant cost advantage when compared to the technology used to achieve BAT limitations in terms of annual capital costs and annual operation and maintenance expenses over the useful life of the technology.

§ 125.23 Request for compliance extension.

The Director shall grant a compliance extension to no later than July 1, 1987 to a discharger that demonstrates:

(a) That the installation and operation of its proposed innovative technology at its facility will result in a significantly greater effluent reduction than BAT and has the potential for industry-wide application; or

(b) That the installation and operation of its proposed innovative technology at its facility will result in the same effluent reduction as BAT at a significantly lower cost and has the potential for industry-wide application.

§ 125.24 Permit conditions.

The Director may include any of the following conditions in the permit of a discharger to which a compliance extension beyond July 1, 1987 is granted:

(a) A requirement that the discharger report annually on the installation, operation, and maintenance costs of the innovative technology;

(b) Alternative BAT limitations that the discharger must meet as soon as possible and no later than July 1, 1987 if the innovative technology limitations that are more stringent than BAT are not achievable.

§ 125.25 Signatories to request for compliance extension.

(a) All section 301(k) requests must be signed in accordance with the provisions of 40 CFR 122.22.

(b) Any person signing a request under paragraph (a) of this section shall make the following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(c) A professional engineer shall certify that the estimates by the applicant of the costs for the BAT control equipment and for the innovative technology are made in accordance with good engineering practice and represent, in his judgment, the best information available. The Director may waive the requirements for certification under this subsection if, in his opinion, the cost of such certification is unreasonable when compared to the annual sales of the applicant.

§ 125.26 Supplementary information and recordkeeping.

(a) In addition to the information submitted in support of the request, the applicant shall provide the Director, at his or her request, such other information as the Director may reasonably require to assess the performance of cost of the innovative technology.

(b) Applicants shall keep records of all data used to complete the request for a compliance extension for the life of the permit containing the compliance extension.

§ 125.27 Procedures.

(a) The procedure for requesting a section 301(k) compliance extension is contained in §§ 124.62 and 124.63. In addition, notwithstanding § 122.21(1)(4), the Director may accept applications for such extensions after the close of the public comment period on the permit if the applicant can show that information necessary to the development of the innovation was not available at the time the permit was written and that the innovative technology can be installed and operated in time to comply with the July 1, 1987, deadline.

(b) The procedure for appealing a decision on a request for a compliance extension is contained in §§ 124.60 and 124.64.

(Approved by the Office of Management and Budget under the control number 2040–0066.)

[FR Doc. 84–16820 Filed 6–22–84; 8:45]

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federal register

Monday
June 25, 1984

Part V

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 320

Recruitment and Information; Final Regulations

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 320

Recruitment and Information

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary publishes regulations under Section 633 of Part D of the Education of the Handicapped Act, as amended. These regulations implement a program to provide support to public or nonprofit private organizations and institutions for (a) a national clearinghouse on the education of the handicapped; (b) a national clearinghouse on postsecondary education for handicapped individuals; (c) the recruitment of individuals to the field of special education; and (d) support projects for information and recruitment activities. Contracts may also be made with profit-making organizations only when necessary for materials or media access.

These regulations, among other things, clarify application requirements and procedures, identify the types of activities which are considered for support, specify the selection criteria, and identify possible priorities for funding.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Helene Corradino, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4605), Washington, D.C. 20202. Telephone: (202) 732–1167.

SUPPLEMENTARY INFORMATION: The Recruitment and Information program was established under Public Law 91–230 on April 13, 1970 and is currently authorized by Section 633 of Part D of the Education of the Handicapped Act (20 U.S.C. 1433).

A notice of proposed rulemaking was published in the **Federal Register** on April 20, 1984 (49 FR 16970). The comments received in response to that notice and the Secretary's responses are summarized below:

Comment. One commenter recommended that the title of the program be changed to be more descriptive of the full range of activities supported under the program.

Response. No change has been made. The change in title was intended to provide a concise description of the major program activities. The statement of purpose (§ 320.1) in the regulations is intended as a description of the activities authorized under this program.

Comment. One commenter recommended that the purpose of the program as set forth in § 320.1 be revised to more appropriately reflect the language in 20 U.S.C. 1433(a)(2).

Response. A change has been made. Section 320.1(a)(2) has been changed to read, "encourages individuals to pursue careers and employment in the various fields relating to the education of handicapped children and youth."

Comment. One commenter suggested that § 320.1(a)(3) be modified to give priority to projects which would set guidelines for assessing not only the quality of postsecondary programs being offered but also for assessing the readiness of developmentally disabled youth for traditional post-secondary programs.

Response. No change has been made. This section of the regulations sets forth the general responsibilities of the national clearinghouse on the education of the handicapped. More specific information is provided under § 320.10(a). The qualifications of the applicant and the quality of the applications are addressed in the selection criteria under § 320.30. The requirement for a grantee to assess the readiness of handicapped youth for postsecondary programs is not within the provisions of the statute.

Comment. One commenter suggested that § 320.1(c) be revised to make it consistent with § 320.10(c) by indicating that these projects are to operate in conjunction with the clearinghouses.

Response. A change has been made. Section 320.1(c) has been changed to read, "Projects to carry out, in conjunction with any clearinghouse established under this part, specific recruitment and information activities."

Comment. One commenter recommended that § 320.2 be revised to reflect the statutory language regarding eligible applicants.

Response. A change has been made. Section 320.2 has been changed to specify that public agencies are eligible applicants under this program.

Comment. One commenter recommended that § 320.10(a)(1)(i) include clarification regarding the extent of federal laws to be included under the dissemination and technical assistance activities of the national clearinghouse.

Response. No change has been made. One of the functions of the clearinghouse will be to identify federal laws relevant to the education of the handicapped in order to make available appropriate information and technical assistance to beneficiaries of the program.

Comment. Two commenters expressed concern that the dissemination activities in § 320.10(a)(1) give implied priority to the activities listed. The commenters also suggested that some of the activities would be appropriately addressed by a postsecondary clearinghouse.

Response. A change has been made. Section 320.10(a)(1) has been revised to make it clear that the list of dissemination activities given is not exclusive. Since there is no restriction on the dissemination activities of the postsecondary education clearinghouse under paragraph (b), no change is necessary.

Comment. One commenter suggested that § 320.10(a)(1)(D) and § 320.10(a)(3) be modified to give high priority to projects which disseminate information about the more subtle manifestations of learning disabilities which affect successful postsecondary and employment performance.

Response. No change has been made. The regulations give general guidelines for the dissemination of information on the nature of various handicapping conditions and their educational and employment implications. They do not preclude the dissemination of information on any specific handicapping condition in response to requests for such information.

Comment. One commenter felt that § 320.10(a)(3) was unclear in its requirements. The commenter also recommended including professionals among the groups to be involved in the dissemination of information.

Response. A change has been made. The term "professionals" has been included. The Secretary believes, however, that the intent of consumer involvement in the development and provision of information dissemination and technical assistance activities can best be achieved by providing flexibility for grantees to determine the most appropriate ways of including those individuals.

Comment. Two commenters questioned the provisions for involvement of handicapped individuals, parents, and others under §§ 320.10(a)(3) and 320.40.

Response. No change has been made. Section 633(a)(1) of the Act provides for the dissemination of information and

provision of technical assistance on a national basis to parents, professionals and others. The Secretary believes that these regulations will ensure that the information and technical assistance provided to those parties will be of maximum utility if they are involved in the project activities

Comment. One commenter suggested that the Secretary should be given the right to veto a proposed project which meets all the other criteria under § 320.30 but yet is not cost effective.

Response. No change has been made. The Secretary feels that the selection criteria provided in the regulations allow for the comprehensive evaluation of applications, including the cost of proposed projects.

Comment. Two commenters asked that more weight be given in the selection criteria to experience and ability. In addition, the commenters objected to the use of annual priorities in this program on the ground that a clearinghouse should be national and comprehensive in scope.

Response. No change has been made. The weights provided are adequate for the selection of the most meritorious applications. Section 320.10 requires that the clearinghouses carry out all of the activities listed under 320.10(a). Priorities will be used primarily for the support of projects with respect to particular activities carried out by the clearinghouse.

Comment. One commenter questioned the necessity for § 320.31 which describes how priorities are selected for funding under this program.

Response. No change has been made. The Secretary anticipates that each of the activities listed in § 320.10 will be conducted by or in conjunction with the national clearinghouses. Section 320.31 allows the Secretary to target areas for special emphasis in order to respond to unmet needs for information and technical assistance.

Comment. One commenter suggested giving priority to projects which develop pre-vocational and self-advocacy skills in learning disabled individuals.

Response. No change has been made. The legislation does not provide for the funding of these types of projects.

These regulations implement Section 633 of the Act as recently amended by Pub. L. 98–199, the Education of the Handicapped Act Amendments of 1983, and incorporate the Education Department General Administrative Regulations (EDGAR) (34 CFR Part 74, 75, 77, 78, and 79). A summary of the regulations follows.

(a) Subpart A—General

Section 320.1 describes the program.

Section 320.2 identifies those parties eligible to apply for assistance under this program. It amends current regulations, in accordance with the revised statute, to limit eligibility to public agencies and nonprofit private organizations and institutions, except that contracts may be made with profit-making organizations only when necessary for materials or media access.

Section 320.3 lists the regulations that apply to this program including Parts 74, 75, 77, 78, and 79 of EDGAR.

Section 320.4 provides definitions that apply to the program. It incorporates EDGAR definitions as well as the definition of "parent" as used in the Assistance to States for Education of Handicapped Children program (34 CFR Part 300).

(b) *Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?*

Section 320.10 describes the activities supported under this program. This section delineates the types of activities authorized under the statute to assure greater depth and quality in the services provided.

Section 320.10(a)(1) provides greater direction to grantees with respect to the types of information and technical assistance to be provided concerning programs under the Education of the Handicapped Act and other Federal laws, including information and technical assistance concerning special educational programs, related services, and legal issues affecting the handicapped.

Section 320.10(a)(2) describes the recruitment responsibilities of a grantee, clarifying these responsibilities by providing an example of the development of material appropriate for recruitment purposes.

Section 320.10(a)(3) indicates that the involvement by parents, volunteers, and interested organizations is important in the provision of information concerning the handicapped.

Section 320.10(b) clarifies the role of a national clearinghouse on postsecondary education for handicapped individuals, indicating the varied information to be made available.

Section 320.10(c) provides for the awarding of support projects to assist a clearinghouse in completion of activities under § 320.10(a). This allows for the issuance of awards specifically focused on an information or dissemination function which, in the determination of the Secretary, warrants effort beyond that which is expected to be expended by a clearinghouse.

(c) Subpart C—[Reserved]

(d) Subpart D—How Does the Secretary Make a Grant?

Section 320.30 establishes weighted selection criteria to be used to evaluate applications. Specific, weighted criteria have been provided to ensure that more appropriate consideration is given in the application review process to the various component considered to be of greatest relevance. This will assist the government in assuring that the most promising projects are approved for funding.

Section 320.31 describes the possible annual priorities. The authority to use priorities is needed to ensure that the Secretary can address program needs as they change from year to year.

(e) Subpart E—What Conditions Must Be Met by a Grantee?

Section 320.40 requires grantees to ensure that materials they distribute have been evaluated by handicapped individuals, parents of handicapped children and youth, and by appropriate professionals. Evaluation of materials by parents and appropriate professionals will give assurance that any printed materials the grantee produces or disseminates are of high quality, are relevant to current needs in the field, and are appropriate for dissemination. This section also describes the coordination that must occur between grantees in the dissemination of materials and information activities supported under this part.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's specific plans and actions for this program.

Paperwork Reduction Act of 1980

The information collection requirement in these regulations are approved under OMB Control No. 1820–0028 under the Paperwork Reduction Act of 1980.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations clarify existing regulations and implement recent statutory amendments. Specific changes to the regulations are described in this preamble under supplementary information. These changes will not have a significant economic impact on small entites participating in the program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 320

Education, Education of handicapped, Education—research, Grants program—education, Teachers.

Citation of Legal Authority

A citation of statutory authority or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.030; Recruitment and Information)

Dated: June 20, 1984.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 320 of Title 34 of the Code of Federal Regulations to read as follows:

PART 320—RECRUITMENT AND INFORMATION

Subpart A—General

Sec.

320.1 What is the Recruitment and Information program?
320.2 Who is eligible to apply for assistance under this program?
320.3 What regulations apply to this program?
320.4 What definitions apply to this program?
320.5–320.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

320.10 What kinds of activities may be supported under this part?
320.11–320.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

320.30 What are the selection criteria used to award a grant?
320.31 What are the priorities for funding under this program?
320.32–320.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

320.40 What evaluation and coordination requirements must be met by a grantee?
320.41–320.49 [Reserved]

Authority: Sec. 633 of the Education of the Handicapped Act (20 U.S.C. 1433), unless otherwise noted.

Subpart A—General

§ 320.1 What is the Recruitment and Information program?

The Recruitment and Information program provides financial assistance for—

(a) A national clearinghouse on the education of the handicapped that—

(1) Disseminates information and provides technical assistance to parents, professional, and other interested parties;

(2) Encourages individuals to pursue careers and employment in the various fields relating to the education of handicapped children and youth; and

(3) Provides information on available services and programs in postsecondary education for the handicapped;

(b) A national clearinghouse on postsecondary education for handicapped individuals; and

(c) Projects to carry out, in conjunction with any clearinghouse established under this part, specific recruitment and information activities.

(20 U.S.C. 1433)

§ 320.2 Who is eligible to apply for assistance under this program?

Parties eligible to apply for assistance under this part are public agencies or nonprofit private organizations or institutions. In addition, contracts may be made with profit-making organizations under this section only when necessary for materials or media access.

(20 U.S.C. 1433)

§ 320.3 What regulations apply to this program?

The following regulations apply to grants awarded under this program:

(a) The regulations in this Part 320.

(b) The Education Department General Administrative Regulations (EDGAR) in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 1433; 20 U.S.C. 3474(a))

§ 320.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Contract
EDGAR
Grant
Nonprofit
Private
Project
Public
Secretary
State

(20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The term "parent" as used in this part is defined in 34 CFR 300.10.

(20 U.S.C. 1433)

§§ 320.5–320.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 320.10 What kinds of activities may be supported under this part?

The Secretary may provide funds under this part to—

(a) Establish and operate a national clearinghouse on the education of the handicapped that will—

(1) Disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties concerning, at least—

(i) Programs relating to the education of the handicapped under the Education of the Handicapped Act and under other Federal laws:

(ii)(A) Special educational programs, services, and resources;

(B) Related medical, health, social, and recreational services;

(C) Options for training and experience in daily living skills programs;

(D) The nature of various handicapping conditions and their educational and employment implications;

(E) Legal issues affecting the handicapped; and

(F) Information on available services and programs in postsecondary education for the handicapped; and

(iii) Participation in programs described in paragraphs (a)(1) (i) and (ii) of this section, including referral of individuals to appropriate national, State, and local agencies and organizations for further assistance;

(2) Encourage students and professional personnel to seek and obtain careers and employment in the various fields relating to the education of the handicapped. An applicant could propose, for example, to develop and distribute innovative materials to assist in recruiting personnel for such careers, or publicize existing quality programs in personnel preparation and forms of financial aid which might enable students to pursue such careers, including careers in rural, isolated, or culturally diverse areas; and

(3) Promote the involvement of handicapped individuals, parents, volunteers, professionals, and interested organizations in the provision of information to the general public concerning the handicapped;

(b) Establish and operate a national clearinghouse on postsecondary education for handicapped individuals that will collect and disseminate information on a national basis to handicapped individuals, professionals, and other interested individuals, concerning postsecondary services and programs for the handicapped, including specially designed programs of postsecondary, vocational, technical, and adult education for handicapped individuals; and

(c) Support projects to carry out, in conjunction with any clearinghouse established under this section, any of the activities described in paragraph (a).

(20 U.S.C. 1433)

§§ 320.11-320.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 320.30 What are the selection criteria used to award a grant?

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum score for all the criteria is 100 points. The maximum score for each complete criterion is indicated in parentheses.

(a) *Plan of operation.* [40 points]

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(20)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, *Evaluation by the grantee.*)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Experience and ability.* (10 points)

The Secretary looks for information that shows the applicant's—

(1) National experience relevant to performance of the functions supported by this program;

(2) Ability to conduct its proposed project;

(3) Ability to communicate with the intended consumers of information; and

(4) Ability to maintain the necessary communication with other agencies and organizations.

(g) *Cooperation and coordination with other agencies.* (10 points)

(1) The Secretary reviews each application for information that shows the activities funded under this section will be coordinated with—

(i) Similar activities funded from grants and contracts awarded under this part and under Part C of the Act; and

(ii) Other agencies and organizations conducting or eligible to conduct activities essential to the effective implementation of the proposed project.

(2) The Secretary looks for information that shows the nature and extent of, and timeline for, coordination which the applicant has had and proposes to have to facilitate implementation and continuation of the project activities after termination of Federal funding.

(20 U.S.C. 1433)

(Approved by the Office of Management and Budget under control number 1820–0028—Expires 2/28/87)

§ 320.31 What are the priorities for funding under this program?

The Secretary may select as annual priorities any of the activities listed in § 320.10 by publishing a notice in the **Federal Register.**

(20 U.S.C. 1433)

§§ 320.32–320.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 320.40 What evaluation and coordination requirements must be met by a grantee?

(a) Each grantee under this part shall ensure that any printed materials it produces or disseminates have been evaluated by handicapped individuals, parents of handicapped children and youth, and by appropriate professionals with respect to the quality, currency, and appropriateness of, and the need to develop or disseminate, the materials.

(b) Recipients of awards under § 320.10 (a) and (b) shall coordinate the dissemination of materials and information activities supported under this part.

(20 U.S.C. 1433)

§§ 320.41–320.49 [Reserved]

[FR Doc. 84–16866 Filed 6–22–84; 8:45 am]
BILLING CODE 4000–01–M

Federal Register

Monday
June 25, 1984

Part VI

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 338

Postsecondary Education Programs for Handicapped Persons; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 338

Postsecondary Education Programs for Handicapped Persons

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations under Section 625 of Part C of the Education of the Handicapped Act, as amended. Recent amendments to the Act and a review of the existing regulations necessitate the changes incorporated in these final regulations. The Postsecondary Education Programs for Handicapped Persons provide support, through competitive awards to State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies, to develop, operate, and disseminate specially designed model programs of postsecondary, vocational and technical, continuing, or adult education for handicapped persons. These regulations, among other things, describe funding priorities and specify numerical weightings for the modified selection criteria.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Rosenstein, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4084), Washington, D.C. 20202. Telephone: (202) 732–1176.

SUPPLEMENTARY INFORMATION: Authority for the Postsecondary Education Programs for Handicapped Persons was established under Pub. L. 93–380 on August 21, 1974. The program is currently authorized by section 625 of Part C of the Education of the Handicapped Act, as amended (20 U.S.C. 1424a).

A notice of proposed rulemaking was published in the **Federal Register** on April 30, 1984 (49 FR 18396). The comments received in response to this notice and the Secretary's responses are summarized below:

Comment. One commenter expressed concern that restriction of model program activities to a single handicapped group would not meet the needs of the divergent handicapped population in most postsecondary institutions.

Response. No change has been made. The regulations (§ 338.30(c)) provide that the Secretary may, for any fiscal year, identify one or more handicapping conditions as a priority for assistance, but do not *require* the Secretary to do so. The Secretary believes that it is important to be able to target funds to a handicapped group when evidence from the field indicates there is insufficient attention being given to the needs of that group.

Comment. One commenter expressed concern about the limitation of eligibility for funding under this program to nonprofit educational agencies.

Response. No change has been made. The statute governing this program specifies eligible parties.

Comment. Several commenters recommended adding State Vocational Rehabilitation agencies as eligible grantees at § 338.2.

Response. No change has been made. The statute specifies eligible parties who are listed in § 338.2.

Comment. Two commenters suggested that special attention be given to adult students who sustain injuries and related disabilities in mid-life and subsequently re-enter postsecondary settings.

Response. No change has been made. Applicants may propose projects that address the needs of those individuals if they are "handicapped individuals" as defined in § 338.4(c).

Comment. One commenter recommended that at § 338.10 the term "students" be changed to "youth," because the former term may be perceived as restricting participation by those not currently enrolled in educational institutions. Another commenter suggested that the term "handicapped students" be changed to "handicapped individuals" throughout the regulations.

Response. A change has been made. The wording in §§ 338.10 and 338.30 has been changed by replacing the term "students" with "individuals," the term used in the statute.

Comment. One commenter proposed expansion of the listing of authorized activities in § 338.10 to include the development and establishment of cooperative recruitment and service models for unskilled youth who have dropped out of school or college, particularly those who are unemployed or underemployed.

Response. No change has been made. Applicants may propose projects that include provision of services to school drop-outs under this program, and under the program authorized by section 626 of the Act, Secondary Education and Transitional Services for Handicapped Youth program.

Comment. One commenter recommended that § 338.10(a)(1) specify "four regional centers" as opposed to "centers."

Response. No change has been made. Section 338.10(a)(1) is simply a description of the two types of activities authorized under the Act. Section 338.30(a), however, specifies that the Secretary will make awards for the operation of "four regional centers for deaf individuals."

Comment. Several commenters proposed that "rehabilitation counselors" be added to the illustrative list of support services in § 338.10(b).

Response. No change has been made. The illustrative listing in § 338.10(b) does not preclude other services that may be proposed with justification in individual applications submitted for consideration for assistance under this program.

Comment. One commenter proposed expansion of the list of illustrative services under § 338.10(b) to include preservice training for personnel who will teach postsecondary handicapped individuals.

Response. No change has been made. Authority for preservice training exists under Section 631 of the Act. Parties interested in funding for preservice training may submit applications for projects to the Training Personnel for the Education of the Handicapped program under section 631 of the Act and 34 CFR Part 318.

Comment. One commenter recommended addition of "augmentative communication systems" as a supportive service in § 338.10(b).

Response. No change has been made. The Illustrative listing in § 338.10(b) does not preclude other services that may be proposed with justification in submissions for assistance under this program.

Comment. Several commenters proposed adding to § 338.20 a statement of coordination with State Vocational Rehabilitation agencies including the provision that all handicapped students will be registered with that agency within a given time frame.

Response. No change has been made. The Secretary has decided not to include any provision that would require registration of all handicapped individuals in postsecondary programs with State Vocational Rehabilitation agencies because not all handicapped persons are eligible to receive services from State Vocational Rehabilitation agencies.

Comment. One commenter proposed that one of the selection criteria include a plan for dissemination.

Response. No change has been made. The Secretary agrees that a dissemination plan is important to the projects supported under this part. For this reason, § 338.31(h)(2) provides for the evaluation of "the extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups."

These final regulations implement section 625 of Part C of the EHA, as recently amended by Pub. L. 98–199, the Education of the Handicapped Act Amendments of 1983; and incorporate the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79). These regulations also include:

(a) Subpart A—General

Section 338.1 of the regulations describes the scope and purpose of the program.

Section 338.2 identifies the parties eligible for assistance under this program. It amends the current regulations (§ 338.4) to expressly include State educational agencies.

Section 338.3 indicates what regulations apply to these programs, and includes regulations under this Part 338, and Parts 74, 75, 77, 78, and 79 of EDGAR.

Section 338.4 provides the definitions that apply to this program. It incorporates certain definitions under EDGAR and defines the terms "handicapped individuals" and "specific learning disability." Use of the latter definition, taken from regulations for the Assistance to States for Education of Handicapped Children program (34 CFR Part 300, § 300.5(b)(9)), is consistent with the statute.

(b) Subpart B—What Kinds of Projects Does the Secretary Assist Under These Programs?

Section 338.10 describes the development of demonstration, inservice training, outreach, research, and dissemination activities supported under this program.

Section 338.10(a) (1) and (2) reflects activities specifically authorized by the amended statute. The other provisions in this section provide guidance to applicants on the types of activities consistent with the statutory purposes that may be assisted under this part.

(c) Subpart C—How Does an Applicant Apply for a Grant?

The application requirements for awards are described in § 338.20. These added requirements are necessary to ensure that handicapped individuals receive the types of services that they require in postsecondary educational settings.

(d) Subpart D—How Does the Secretary Make a Grant?

Section 338.30 describes the priorities considered for support by the Secretary under this program. The final regulations include priorities in addition to those specified in the statute. The additional priorities further describe the kinds of activities to be supported by this program. These activities benefit the general public, educational institutions, and professionals working with handicapped students in the institutions of higher education specified in the statute. The selection criteria used to award a grant are contained in § 338.31. This section modifies and provides weights to the unweighted selection criteria listed in the current regulations (§ 338.18) and adds two new weighted criteria relating to importance and impact. These new criteria will ensure that projects selected through the competitive process account for appropriate participation of handicapped individuals and for effective use of Federal dollars.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Paperwork Reduction Act of 1980

The information collection requirements in these regulations are approved under OMB Control No. 1820–0028 under the Paperwork Reduction Act of 1980.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The application procedures in these regulations will not place undue burdens on small entities submitting applications under this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, published in the **Federal Register** on April 30, 1984, the Secretary requested comments on whether the proposed regulations would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Based on the absence of comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 338

Education, Education of handicapped, Education-research, Grants program-education, Postsecondary.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.078; Postsecondary Education Programs for Handicapped Persons)

Dated: June 20, 1984.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 338 of the Code of Federal Regulations as follows:

PART 338—POSTSECONDARY EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

Subpart A—General

Sec.

338.1 What are the Postsecondary Education Programs for Handicapped Persons?
338.2 Who is eligible to apply for an award under these programs?
338.3 What regulations apply to these programs?
338.4 What definitions apply to these programs?
338.5—338.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under These Programs?

338.10 What kinds of activities may be supported under this part?
338.11–338.19 [Reserved]

Subpart C—How Does an Applicant Apply for a Grant?

338.20 What are the application requirements under this part?
338.21–338.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

338.30 What are the priorities considered for support by the Secretary under this part?
338.31 What are the selection criteria used to make awards?
338.32–338.39 [Reserved]

Authority: Sec. 625 of the Education of the Handicapped Act (20 U.S.C. 1424a), unless otherwise noted.

Subpart A—General

§ 338.1 What are the Postsecondary Education Programs for Handicapped Persons?

The Postsecondary Education Programs for Handicapped Persons provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for handicapped individuals.

(20 U.S.C. 1424a)

§ 338.2 Who is eligible to apply for an award under these programs?

State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies are eligible to apply for awards under this part.

(20 U.S.C. 1424a)

§ 338.3 What regulations apply to these programs?

The following regulations apply to awards under the Postsecondary Education Programs for Handicapped Persons:

(a) The regulations in this Part 338.

(b) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);
(2) Part 75 (Direct Grant Programs);
(3) Part 77 (Definitions);
(4) Part 78 (Education Appeal Board); and
(5) Part 79 (Intergovernmental Review of the Department of Education Programs and Activities).

(20 U.S.C. 1424a; 20 U.S.C. 3474(a))

§ 338.4 What definitions apply to these programs?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Nonprofit
Project
Secretary
State educational agency.

(20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The following term used in this part is defined in 34 CFR 300.5(b)(9):

Specific learning disability

(20 U.S.C. 1401(a)(15))

(c) *Other definitions.* "Handicapped individuals" means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired individuals, or individuals with specific learning disabilities who by reason thereof require special education and related services.

(20 U.S.C. 1424a(b))

§§ 338.5–338.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under These Programs?

§ 338.10 What kinds of activities may be supported under this part?

(a) The Secretary may support projects and activities under this part including but not limited to—

(1) The operation of centers for deaf individuals, including models of comprehensive supportive services to those individuals;

(2) Model projects of supportive services to individuals with handicapping conditions other than deafness that focus on—

(i) Specially adapted or designed educational programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers;

(ii) Expansion of the educational resources and services available to handicapped individuals in postsecondary programs;

(iii) Establishment of outreach activities to provide technical assistance and program information concerning access and support services for handicapped individuals; or

(iv) Development and dissemination of strategies and materials for the inservice training of faculty and administrative personnel involved in the integration of handicapped individuals in postsecondary institutions in order to improve their understanding of, and attitudes toward, those individuals;

(3) Evaluation of the effectiveness of programs carried out under this part to increase access to postsecondary education for handicapped individuals;

(4) Establishment of projects to stimulate and develop model statewide, regional, and national programs to improve access for handicapped individuals including the fostering of cooperative and consortia arrangements; and

(5) Conducting research, innovation, training, or dissemination activities, consistent with the purposes of Section 624 of the Act and the requirements in 34 CFR Part 315.

(b) The following is an illustrative list of the types of supportive services which may be provided (in whole or in part) in model projects supported under this part:

(1) Interpreters.
(2) Tutors.
(3) Notetakers and readers.
(4) Wheelchair attendants.
(5) Guidance counselors.
(6) Speech and auditory training.
(7) Job placement and follow-up.
(8) Preparatory and orientation services.
(9) Supplementary learning experiences.
(10) Instructional media adaptations.
(11) Inservice training for teachers and other educational staff relating to the handicapped participants in the program.
(12) Administrative expenses, including employment of a director, administrator, or coordinator of the program.
(13) Planning and evaluation activities.

(c) Recipients may not use funds provided under this part for the payment of tuition or subsistence allowances.

(20 U.S.C. 1424a)

§§ 338.11–338.19 [Reserved]

Subpart C—How Does an Applicant Apply for a Grant?

§ 338.20 What are the application requirements under this part?

Applications for funds under this part must contain—

(a) A description of the handicapping condition(s) of the persons to be served; and

(b) The estimated number of handicapped individuals to be served annually in the program and specification of the resources and services needed to enable them to benefit from an educational program.

(20 U.S.C. 1424, 1424a)

(Approved by the Office of Management and Budget under Control Number 1820–0028—Expires 2/28/87)

§§ 338.21-338.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 338.30 What are the priorities considered for support by the Secretary under this part?

(a) For each fiscal year, the Secretary gives priority consideration to four regional centers for deaf individuals.

(b) For any fiscal year, the Secretary may select priorities from among those activities listed in § 338.10(a) (2)–(5).

(c) The Secretary may identify one or more handicapping conditions as a priority for assistance under this part by publishing a notice in the Federal Register.

(20 U.S.C. 1424a(a)(2))

§ 338.31 What are the selection criteria used to make awards?

The Secretary uses the weighted criteria in this section to evaluate applications for new awards. The maximum score for all the criteria is 100 points.

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(*See* 34 CFR 75.590, *Evaluation by the grantee.*)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Continuation of program.* (5 points)

(1) The Secretary reviews each application for information that shows that the activities to be supported are likely to be continued after Federal funding ends.

(2) The Secretary looks for information that shows the likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of Federal funding, as measured by evidence of financial and other commitment of the applicant to the program.

(g) *Importance.* (10 points)

(1) The Secretary reviews each application for information demonstrating that the proposed project is nationally important in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue; and in remediating or compensating for it;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(h) *Impact.* (15 points)

The Secretary reviews each application for information that shows the probable impact of the proposed research or demonstration activities in improving postsecondary education for handicapped individuals, including—

(1) The contribution that the research or demonstration findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(20 U.S.C. 1424a)

§§ 338.32-338.39 [Reserved]

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Part VII

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 305

Regional Resource Centers; Final Regulations

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 305

Regional Resource Centers

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to implement the provisions of section 621 of the Education of the Handicapped Act, as amended by the Education of the Handicapped Act Amendments of 1983. Section 621 supports Regional Resource Centers that assist State and local educational agencies in developing quality programs and services for handicapped children. These regulations include provisions relating to eligible applicants and the services to be provided by Regional Resource Centers.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Etta Waugh, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3628), Washington, D.C. 20202. Telephone: (202) 732–1052.

SUPPLEMENTARY INFORMATION: The Regional Resource Centers program was established under Pub. L. 91–230 on April 13, 1970 and is currently authorized by Section 621 of Part C of the Education of the Handicapped Act (20 U.S.C. 1421).

These final regulations implement the amendments to section 621 of the Act made by the Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199, which expanded eligibility to include private nonprofit organizations and amended the list of services to be provided by the Regional Resource Centers.

The Regional Resource Centers, through a variety of multistate activities, provide States with information regarding the most recent developments in special education research, technology, and practices to meet identified needs and link States experiencing similar needs for joint problem solving. This linking role is intended to broaden the range of expertise for all State educational agencies.

The description of the services to be provided by the Regional Resource Centers has been amended to reflect the recent statutory amendments. Services to State educational agencies such as information dissemination and training for professionals and parents of handicapped children were not previously required by the statute. Two selection criteria, in addition to the EDGAR selection criteria, have been added at § 305.31 to reflect new statutory requirements.

The Department of Education published a notice of proposed rulemaking in the **Federal Register** on April 30, 1984 (49 FR 18426). The Department of Education received some comments on the proposed regulations. Following is a summary of the comments and the Secretary's responses.

Comment. Two commenters questioned the need for a coordinating center.

Response. No change has been made. The coordination of information and dissemination activities with other Department programs and projects is required of the Regional Resource Centers by section 621(a)(3) of the Act. Establishment of a single coordinating center will ensure that this requirement is effectively carried out.

Comment. Two commenters suggested that the selection criteria in § 305.31 place more emphasis upon the applicant's ability to disseminate information.

Response. No change has been made. As required by section 621 of the Act, § 305.10(a)(4) makes dissemination an absolute requirement for all Regional Resource Centers funded under this part.

A summary of these regulations follows.

(a) *Subpart A—General*

The scope and purpose of the program are described under § 305.1. Section 305.2 includes a list of eligible applicants, including private nonprofit organizations.

Parts of the Education Department General Administrative Regulations (EDGAR) applicable to the Regional Resource Centers program are listed in § 305.3.

Definitions in EDGAR that are applicable to the Regional Resource Centers are contained in § 305.4. No additional terms are defined specifically for this part.

(b) *Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?*

Section 305.10 describes the kinds of services to be made available by each Regional Resource Center.

Section 305.11 describes the composition of the region to be served by each Center. This provision is necessary in order to notify prospective applicants and program beneficiaries of the number and composition of the regions to be established.

Section 305.12 authorizes the establishment of a Coordinating Center to ensure effective coordination of the Regional Resource Centers with each other and with other Departmental programs and projects.

(c) *Subpart C—[Reserved]*

(d) *Subpart D—How Does the Secretary Make a Grant?*

Section 305.30 permits the Secretary to require the Centers to give priority to one or more of the services listed in § 305.10.

The selection criteria used to award a grant are contained in § 305.31. The section incorporates the selection criteria from the Education Department General Administrative Regulations (EDGAR) and adds two criteria (need for the project and capability of applicant), in accordance with section 621(b) of the Act.

(e) *Subpart E—What Conditions Must Be Met by a Grantee?*

Section 305.40 describes the coordination and reporting requirements applicable to grantees.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The application procedures in the

regulations will not place undue burdens on small entities submitting applications under this program.

Assessment of Educational Impact

In the notice of proposed rulemaking published in the **Federal Register** on April 30, 1984, the Department requested comments on whether the proposed regulations required information that is already being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 305

Education, Education of handicapped, Grant programs-education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Number 84.028; Handicapped Regional Resource Centers.)

Dated: June 20, 1984.

T. H. Bell,

Secretary of Education.

The Secretary revises Part 305 of Title 34 of the Code of Federal Regulations to read as follows:

PART 305—REGIONAL RESOURCE CENTERS

Subpart A—General

Sec.

305.1 What is the Regional Resource Centers program?
305.2 Who is eligible to apply for an award under this program?
305.3 What regulations apply to this program?
305.4 What definitions apply to this program?
305.5–305.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

305.10 What kinds of services are required under this part?
305.11 What is the composition of the regions?
305.12 What is a Coordinating Center?
305.13–305.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

305.30 May the Secretary require the Centers to give priority to certain services?
305.31 What are the selection criteria for evaluating applications under the Regional Resource Centers program?
305.32–305.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

305.40 What additional activities must each Regional Resource Center perform?
305.41–305.49 [Reserved]

Authority: Sec. 621 of the Education of the Handicapped Act (20 U.S.C. 1421), unless otherwise noted.

Subpart A—General

§ 305.1 What is the Regional Resource Centers program?

This program supports the establishment and operation of Regional Resource Centers that assist State educational agencies and, through those State agencies, local educational agencies, in developing quality programs and services for all handicapped children, by providing consultation, technical assistance, and training.

(20 U.S.C. 1421)

§ 305.2 Who is eligible to apply for an award under this program?

The Secretary may provide assistance under this part through a grant to, or cooperative agreement or contract with—

(a) Institutions of higher education;

(b) Private nonprofit organizations;

(c) State educational agencies; or

(d) Combinations of those agencies and institutions. Such a combination may include one or more local educational agencies within particular regions of the United States.

(20 U.S.C. 1421)

§ 305.3 What regulations apply to this program?

The following regulations apply to grants and cooperative agreements under the Regional Resource Centers program:

(a) The regulations in this Part 305.

(b) The Education Department General Administration Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 1421; 20 U.S.C. 3474(a))

§ 305.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Contract
EDGAR
Fiscal Year
Grant
Grant period
Local educational agency
Nonprofit
Private
Project
Project period
Public
Secretary
State
State educational agency

(20 U.S.C. 1421; 20 U.S.C. 3474(a))

§§ 305.5–305.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 305.10 What kinds of services are required under this part?

(a) Each Regional Resource Center must—

(1) Assist States, through services such as consultation, technical assistance, and training, to provide more effectively special education and related services to handicapped children and youth;

(2) Assist in identifying and solving persistent problems in providing quality special education and related services to handicapped children and youth;

(3) Assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to handicapped children and youth and their families;

(4) Gather and disseminate information to all State educational agencies in the region and coordinate activities with other Regional Resource Centers and with other relevant projects conducted by the Department of Education; and

(5) Assist in the improvement of information dissemination to, and training activities for, professionals and parents of handicapped children.

(b) A Regional Resource Center may conduct research, innovation, training, or dissemination activities, consistent with the purposes of Section 624 of the Act and the requirements in 34 CFR Part 315.

(20 U.S.C. 1421)

§ 305.11 What is the composition of the regions?

The Secretary establishes the following regions:

(a) Region 1: Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey.

(b) Region 2: Maryland, Delaware, Virginia, West Virginia, Washington, D.C., Kentucky, Tennessee, North Carolina, and South Carolina.

(c) Region 3: Georgia, Alabama, Florida, Mississippi, Puerto Rico, the Virgin Islands, New Mexico, Texas, Oklahoma, Arkansas, and Louisiana.

(d) Region 4: Illinois, Ohio, Indiana, Pennsylvania, Wisconsin, Minnesota, and Michigan.

(e) Region 5: Montana, Wyoming, North Dakota, South Dakota, Utah, Colorado, Nebraska, Kansas, Iowa, Missouri, and the Bureau of Indian Affairs.

(f) Region 6: Oregon, Idaho, Washington, Alaska, California, Arizona, Nevada, the Trust Territory of the Pacific Islands, Guam, American Samoa, Hawaii, and the Northern Mariana Islands.

(20 U.S.C. 1421)

§ 305.12 What is a Coordinating Center?

(a) The Secretary may establish a Coordinating Center to ensure the coordination of activities and services of the Regional Resource Centers with—

(1) The other Regional Resource Centers; and

(2) Other relevant projects carried out or assisted by the Department of Education.

(b) The Coordinating Center may include any combination of the regions, States, or territories listed in § 305.11.

(20 U.S.C. 1421, 1424)

§§ 305.13–305.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 305.30 May the Secretary require the Centers to give priority to certain services?

For any fiscal year, the Secretary may, in the application notice, require the Centers to give priority to one or more of the services listed in § 305.10.

(20 U.S.C. 1421)

§ 305.31 What are the selection criteria for evaluating applications under the Regional Resource Centers program?

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum number of points for each criterion is stated in parentheses. The maximum score for all of the criteria is 100 points.

(a) *Need for the project.* (5 points)

(1) The Secretary reviews each application for information that shows the need for a Center in the region to be served by the applicant.

(2) In making this determination, the Secretary considers information that shows the support for the applicant's project by the agencies to be served by the project.

(b) *Capability of applicant.* (5 points)

(1) The Secretary reviews each application for information that shows the capability of the applicant to fulfill the responsibilities of a Center under this part.

(2) In making this determination, the Secretary considers evidence of relevant experience which demonstrates the capacity to provide technical assistance to State educational agencies, commitment to the accomplishment of the project, and timely completion of previous comparable work.

(c) *Plan of operation.* (40 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(d) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d) (1) and (2) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1421)

§§ 305.32-305.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 305.40 What additional activities must each Regional Resource Center perform?

Each Regional Resource Center must—

(a) Report a summary of materials produced or developed in the manner and at the time the Secretary may establish; and

(b) Assist in the evaluation of the effectiveness of Regional Resource Center activities through cooperation with other projects under this part and with other appropriate projects such as the program evaluations under section 627 of the Act.

(20 U.S.C. 1421(c))

§§ 305.41-305.49 [Reserved]

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Part VIII

Federal Reserve System

12 CFR Part 211

Regulation K; International Banking Operations; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Docket No. R-0520]

Regulation K; International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The International Banking Act of 1978 (Pub. L. 95-369) requires the board to review and revise its regulation governing the operation of Edge corporations every five years. As a result of its review under this provision, the Board is proposing for comment several changes to Subpart A of Regulation K. Comments are invited on several alternatives that would expand the ability of Edge corporations to provide services in the United States. Several changes are also proposed to the investment, capitalization, and lending limit sections of Subpart A. In addition, there are proposed several amendments to Subpart B concerning U.S. activities of foreign banking organizations.

DATE: Written comments must be submitted to the Board on or before September 12, 1984.

ADDRESS: All comments, which should refer to Docket No. R-0520, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to the C Street entrance, 20th and Constitution Avenue, NW., Washington, D.C., between the hours of 8:45 a.m. and 5:15 p.m. weekdays. All comments received will be available for inspection in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Frederick R. Dahl, Associate Director (202/452-2726); James S. Keller, Manager, International Banking Applications (202/452-2523), Division of Banking Supervision and Regulation; Nancy P. Jacklin, Assistant General Counsel (202/452-3428) or Kathleen M. O'Day, Senior Counsel (202/452-3786), Legal Division, Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: The International Banking Act of 1978 ("IBA") requires the Board to review and revise its rules issued under section 25(a) of the Federal Reserve Act (the Edge Act) at least once every five years to ensure that the purposes of the Edge Act are being served in the light of prevailing economic conditions and banking practices. Edge corporations are international banking and financial vehicles through which U.S. banking organizations offer international banking services and through which they compete with similar foreign-owned institutions in the United States and abroad. The purposes of the Act include affording U.S. commerce, industry and agriculture a means of financing international trade, especially U.S. exports, and stimulating competition in the provision of those international banking and financing services throughout the United States.

As a result of the review of the rules governing Edge corporations completed in 1979, Regulation K was extensively reorganized and revised. The changes included authorizing establishment of domestic branches, removal of some restrictions on funding activities, an expansion of an Edge corporation's ability to engage in activities abroad, and reduced administrative review of proposed investments. The objectives of the changes appear to have been satisfactorily met in view of the significant expansion in Edge operations since 1979. As a result of the current review, the Board has determined that there are four major areas that warrant some attention. These are: (1) Activities of Edge corporations in the United States; (2) prudential limitations on operations of Edge corporations; (3) investment approval procedures; and (4) change of control of Edge corporations.

Activities of Edge Corporations in the United States

An edge corporation is limited by statute to engaging only in such activities in the United States as are "incidental" to international or foreign business. The Board, however, has broad discretionary authority to determine what U.S. activities would be incidental to international or foreign business of an Edge corporation. The Board has interpreted this provision to require that all deposits of domestic residents must be related to or for the purpose of carrying out international transactions, and all credit transactions with domestic residents must be related to identifiable international transactions. This transaction-by-transaction approach serves as a constraint on the operations of Edge corporations, but is designed to assure that an Edge corporation cannot be used as a means to evade restrictions on full-service interstate banking in the United States.

In 1979, the Board considered modifying the transaction-by-transaction approach by proposing the qualified business entity ("QBE") concept. This proposal linked the requisite international or foreign business connection to the nature of the overall business activities of its customers. The standard proposed was that the qualified customer be "principally engaged in international or foreign commerce." To meet the test, a customer would be required to be so extensively involved in international commerce that its deposit or loan transactions with the Edge corporation would be presumed to be for an international purpose even if an individual transaction did not have a separate foreign nexus. For customers meeting the requirements of a QBE, an Edge corporation would be permitted to provide full banking services. However, business firms not so extensively involved in international commerce could continue to do business with the Edge corporation only on an approved transaction-by-transaction basis.

The Board did not adopt the proposal in 1979 due to the difficulty of devising a test that could accurately measure the amount of international business of a customer and also due to the difficulty in assessing the effectiveness of the proposal in terms of the number and character of the firms that would qualify. As a result of the current review, the Board has reconsidered the concept with several modifications designed to eliminate or reduce the previous difficulties, as well as several alternatives for expansion of the U.S. activities of Edge corporations.

QBE Concept

A difficulty with the previous QBE proposal was the lack of data on firms that might qualify and how to measure the international aspect of their business. In order to avoid this problem, the Board is proposing to identify certain categories of companies that, by the character of their business, may be considered qualifying business entities.

Instead of qualifying on the basis of a certain percentage of the company's business, qualifying companies would be those that by their charter or license are restricted to an international business. These companies would include foreign airlines, foreign shipping companies, Domestic International Sales Corporations ("DISCs") (26 U.S.C. 992), Western Hemisphere Trade Corporations (26 U.S.C. 921), and export trading companies owned by bank holding companies (12 U.S.C. 1843(c)(14)). As with the original qualifying business customer proposal, an Edge corporation would be able to provide full banking services—including deposits and loans—to this class of customer. Any domestic element in

those services would, of course, be very small due to the legal restrictions on the business of the customer. The Board requests particular comments on whether there are other companies that could qualify under this approach because their charter or license restricts their business to predominantly international business.

Another variant of the QBE concept would be to identify—as was proposed in 1979—certain businesses that are principally, although not exclusively, engaged in international business. Under this variant, an Edge corporation would then be able to offer qualifying customers a full range of credit services as long as 75 percent of the credit extensions of the Edge corporation meets the current transaction standards in Regulation K; the Edge could lend to qualified customers for domestic purposes in an aggregate amount not exceeding 25 percent of the total lending by the Edge corporation. Although this approach would not eliminate entirely the transaction-by-transaction requirement of the current regulation, it would permit Edge corporations to compete more effectively for the business of customers that engage primarily in foreign business by being able to offer domestic credits as well. The proposal should not raise some of the earlier concerns, however, since it does not permit expansion of an Edge corporation's deposit-taking capabilities.

The difficulty with the proposal is the same that was presented in the 1979 proposal, that is, how to measure the international business of the customer. As proposed in 1979, a QBE was required to derive two-thirds of its business from international commerce, measured by either costs or revenues (*e.g.*, "costs of materials, goods and services directly imported plus the direct costs of producing goods and services for export").

The Board requests specific comment on the feasibility of this proposal and on the appropriate measurement standards for the business of such customers. Data on the number of businesses that might qualify for designation as a QBE under the proposal would be useful to the Board's consideration.

Transactional Leeway

Another approach would be to allow an Edge corporation to provide credit to any customer for domestic purposes so long as the bulk of the credits extended to that customer (at least 75 percent) were for international purposes and met the transactions test. All deposit-taking would still be required to be related to international transactions.

This approach would maintain an essentially international linkage on the asset side of an Edge corporation's activities, since the bulk of its assets would remain exclusively international in character. At the same time, it would provide a margin of flexibility or leeway in accommodating the credit needs of each customer and thus enhance the ability of Edge corporations to compete with foreign banks and others. This approach would address the criticism that Edge corporations are hindered in their operations by the inability to provide some domestic financing when their relationship with a customer is primarily international. The argument presented is that a customer has a stream of financing requirements ranging from those that are purely domestic to those that are exclusively international in character and that the inability to provide services throughout this continuum acts as a handicap to an Edge corporation in seeking out and obtaining customers for international banking services.

Under this alternative, Edge corporations would have to maintain records sufficient to permit examiners to verify that 75 percent of the customer's borrowings met the transactions test. However, this would represent an improvement over the 100 percent verification requirement under the present rules, and the reduction in burden may be greater than that suggested by the arithmetic since inconsequential transactions frequently are the most difficult to verify.

"Limited Branch" Concept

A much broader approach to expanding the activities of Edge corporations would be to reduce substantially the limitations on domestic lending transactions while the deposit-taking activities that fund those credit transactions remain limited, as they have been, to international or foreign banking transactions. If this were done, it would have the result of making Edge corporations comparable to the limited branches of foreign banks that were authorized by the IBA. Under section 5 of the IBA (12 U.S.C. 3103), limited branches may extend credit to any person for any purpose; however, their deposit-taking capabilities are limited to those permitted Edge corporations.

This alternative would allow an Edge corporation to extend credit for domestic purposes to the extent that it was funded from international and foreign source deposits from individuals, partnerships, and corporations. Credit transactions with domestic residents in excess of the amount of such funding would continue to be justified, as now, on a transaction-by-transaction basis as internationally related. A basis for this approach is that the operations of the Edge corporation could be considered "incidental" to international business by reason of the link to international deposits.

The link of domestic lending to foreign source deposits is also made necessary by the ability of Edge corporations to raise funds in domestic money markets. Regulation K, as revised in 1979, permits Edge corporations to obtain funds from other banks through the Federal funds market and otherwise. Without some restriction on the source of funding for these domestic credits, it could be said that the Edge corporation was doing a full-scale domestic banking business.

The Board requests comment on the appropriateness of the limited branch approach as a means of making Edge corporations more competitive while retaining the international character of their business as required by statute.

Prudential limitations on Edge corporations

Section 211.6 of Regulation K contains the prudential limitations that have been established on the operations of Edge corporations—notably, limits on acceptances, lending limits, and capital requirements. Proposed amendments in these areas are designed to clarify these provisions and to update them in light of other related changes in supervision and regulation since 1979.

Bankers' acceptances

Two clarifying changes are proposed for the provision of Regulation K dealing with bankers' acceptances. The first clarifies that a separate lending limit applies to acceptances of the kinds described in section 13 of the Federal Reserve Act (so-called eligible acceptances); all other acceptance credits (so-called ineligible acceptance credits) are included in the general lending limit.

The other clarifying change is concerned with the treatment of acceptance participations. Under the present version, neither the single customer limit nor the aggregate limit applies if the Edge corporation is covered by participation agreements. However, the section does not describe what constitutes an adequate participation agreement for this purpose. In 1983, the Board defined a participation agreement in a bankers' acceptance (12 CFR 250.165) and established minimum criteria for member banks that would have to be met in order that the participated part of a bankers' acceptance not be included

in the acceptance limits of the issuing bank. The change would explicitly apply the same definition to acceptance participations by Edge corporations.

Lending limits

Under Regulation K, a limit of 10 percent of capital and surplus applies to loans to individual borrowers, subject to certain exceptions. Since the regulation was last revised, the National Bank Act has been amended to raise the basic lending limit of national banks from 10 to 15 percent of capital and surplus. Because the lending limits applicable to Edge corporations generally have been patterned after those applicable to national banks, the revision proposed for this section would parallel this change by increasing the lending limit for Edges to 15 percent of capital and surplus as well. No changes are proposed in the requirement of consolidation for purposes of the parent bank's lending limit.

Capitalization

When it revised Regulation K in 1979, the Board determned that Manking Edge corporations should have leveraging limits based on their own capital because these corporations have a separate corporate structure, their depositors are not insured, and not all Edge corporations are subsidiaries of insured U. S. banks. The Board also decided to base the limit on "risk assets," rather than total assets, because many Edge corporations engaged heavily in clearing activities for their parent bands and, consequently, had large amounts of float with domestic banks.

Since 1979, two developments have occurred that are relevant to the capital standards set for Edge corporations. First, the Board and the Comptroller of the Currency have established for national and state member banks specific capital requirements based on total assets. Second, same-day interbank settlement procedures have been adopted that substantially reduced the amount of float booked at Edge corporations. As a consequence, clearing activities no longer distort the financial ratios of Edge corporations, as they did in 1979.

Because of these developments, the Board proposes that the capitalization requirements of Edge corporations should conform to those set forth in the Board's Capital Adequacy Guidelines (12 CFR Part 225, Appendix A) and that the capital adequacy standard in Regulation K should be amended to require a banking Edge to maintain minimum capital at a level not less than that for multinational banking organizations under the Board's guidelines.[1] The change would be accomplished by cross-reference to the capital adequacy guidelines, which could then be changed without requiring amendments to Regulation K.

Investment procedures

Under Regulation K, investors (*i.e.*, Edge and Agreement corporations, member banks, and bank holding companies) may make investments in foreign organizations subject to certain limitations. These limitations are designed to ensure that investments that present significant financial or policy issues come to the attention of the Board through specific consent or receive thorough review by System staff through a prior notice procedure. General consent is available for certain investments that pose no issues.

As structured, the procedures have worked well, have simplified the administrative process and have reduced the regulatory burden on the industry. The current procedures and investment limitations have been reexamined to assure their continued appropriateness and certain changes are proposed.

Under the general consent procedures currently contained in Regulation K, an initial investment may be made in a company engaged in permissible activities if the amount to be invested is $2 million or five percent of the investor's capital and surplus, whichever is less.

The Board proposes to retain, for general consent, the current system that uses a combination of an absolute dollar amount and a percentage of capital. The Board believes that the 5 percent of capital standard continues to be appropriate. However, the Board believes that the dollar limitation is low relative to the size of the largest banking organizations and it is proposing that the absolute dollar amount that may be invested under general consent be raised to $15 million. The Board requests specific comment on this amount as the appropriate level for initial investments without some prior Board review.

The current regulation also permits additional investments to be made each year without prior Board consent provided that new investments are a fraction of the investor's existing investment in the company, based on historical cost.

This provision has been criticized on two counts. First, it is criticized as too restrictive on investments initially made under the general consent. This criticism is addressed by the proposed liberalization of the general consent as it affects new investments. Second, the additional investment limit is perceived to be unnecessarily complicated by the use of historical cost. Accordingly, the Board is proposing that the calculation of the amount of additional investment under general consent be based on book value. This change would also simplify the recordkeeping involved in supervising foreign subsidiaries and joint ventures.

The Board also proposes a change in the general consent procedures to address a situation that arises when a U.S. bank acquires a majority interest in an existing foreign company that may have some activities not permissible under Regulation K. At present, a U.S. banking organization cannot avail itself of the general consent to invest in such a company even where these activities are very small in relation to the totality of the company's business. It is proposed that the regulation provide a *de minimis* exception for such circumstances, where the impermissible activities amount to no more than 2 percent of the company's business as measured by assets or revenues. The Board requests comments on this proposal and the level of such impermissible activity.

Change in Control of Edge corporations

The growth in Edge corporations since 1979 has been substantial, partly as a result of the regulatory changes made then. At the end of 1983, Edge corporations engaged in banking in the United States numbered 90, an increase of 20 over 1979. The number of Edge corporation offices in the United States has shown even greater growth over this period, a reflection of the ability of Edge corporations to establish domestic branches, nearly tripling to reach a total of 203. Total assets of banking Edge corporations at the end of 1983 were $17.7 billion. Edge corporations also participate extensively in the interbank market, as a result of authority given in the 1979 revision of Regulation K.

Because of the growing importance of these corporations, the Board has determined that it is appropriate to propose adopting a procedure to govern a change in control of an Edge corporation. Because there is currently no procedure to review a change in

[1] In the proposal, capital has not been redefined to be equivalent to primary capital as used for member banks. However, as a practical matter, the definition of "capital and surplus" employed in Regulation K would not differ from primary capital since Edge corporations have not issued the type of debt instruments that would qualify as primary capital. Under the proposed revision, subordinated capital notes or debentures would no longer be included in capital for capital adequacy purposes. This kind of debt has only rarely been issued by Edge corporations.

ownership of an Edge corporation, the Board does not now have the ability to review the competitive, financial and managerial factors associated with a proposal by a company to acquire an Edge corporation, factors the Board routinely considers in proposals to form an Edge corporation. As a result, an Edge corporation could be transferred to a banking organization that does not have the financial strength or sufficient international expertise to support the operations of the corporation. This could result in harm to both the Edge corporation and the bank owner. In addition to concerns with respect to financial and managerial resources in such transfers, there are other issues that are presented where the acquiring company is a nonbank concern, in that the mingling of banking and commerce generally can result in adverse effects such as unsound banking practices, concentration of resources and conflicts of interest.

The Board has exclusive jurisdiction over chartering, supervising and examining Edge corporations. The governing statute and the Board's regulations establish a comprehensive scheme requiring the prior approval of the Board for the formation and establishment of Edges, extension of an Edge's corporate existence, changes to the Edge's articles of association, an Edge's investments in organizations and its engaging in new activities. Moreover, paragraph 4 of the Edge Act provides that and Edge corporation may prescribe "by-laws not inconsistent with law or with the regulations of the Board * * * regulating the manner in which its stock shall be transferred * * *." This framework provides authority for the Board to adopt a procedure for review of the transfer of ownership of an Edge corporation. In view of the Board's responsibility with respect to Edge corporations, it appears desirable and appropriate to put into place change in control provisions.

Accordingly, the Board proposes an amendment to Regulation K requiring that a person (individual or company) provide the Board with prior notice before acquiring 25 percent or more of the shares or otherwise acquiring control of an Edge corporation. The procedures would generally parallel those under the Change in Bank Control Act. In adopting such a procedure, it is proposed that the Board use the same standards for review of acquisitions of an Edge corporation that the Board has in place for establishment of an Edge corporation.

The proposed regulation reserves to the Board the authority to impose any conditions necessary to prevent adverse effects resulting from any change in ownership of an Edge corporation. Such conditions may be needed, for example, because a nonbank company is not subject to statutory prohibitions against tying of services as are banks and, by regulation, bank holding companies. Similarly, a nonbank owner of an Edge corporation is not subject to restraints on interaffiliate transactions that could adversely impact the condition of the Edge corporation. Thus, under the proposed regulation, if the acquisition of an Edge corporation could be shown to result in possible adverse effects, appropriate conditions could be imposed.

In summary, the recommended procedure is intended to permit the Board to consider the effects of a transfer on the acquiror, if it is a bank, and the Edge corporation itself, and to determine whether adverse effects could result from affiliation of an Edge corporation with a nonbanking concern. The Board requests comments on the procedures and the standards to be used in evaluating a proposed change in control of an Edge corporation.

Other Proposed Revisions

There are a number of other changes that are proposed in order to clarify the regulation.

Under current Regulation K, an organization is considered engaged in business or activities in the United States if it has in the United States either a subsidiary or an office, other than a representative office. Questions have arisen concerning the scope of activities that may be conducted through a representative office. The Board is of the opinion that only traditional representational functions may be exercised through a representative office, such as liaison between customers and head office. A representative office should not be transacting business for its own account (other than what is necessary to maintain its presence here and carry out its limited functions) or have authority to make credit or other business decisions for its head office. The Board is proposing a definition of representative office that incorporates this interpretation.

Under further powers of foreign branches of member banks, § 211.3(b)(2) relating to acceptances has been eliminated as no longer necessary. It should be noted, however, that since foreign branches are integral parts of member banks, any acceptances issued by foreign branches and outstanding that are of the type described in paragraphs 7 and 12 of section 13 of the FRA are subject to the limits contained therein. Any other type of acceptance issued by a foreign branch and outstanding is subject to the member bank's limit on loans to a single borrower.

The section dealing with acitivites of Edge corporations in the United States has been reorganized and includes several activities that represent modest expansion of the listed activities, such as providing personal banking services to officers and employees of an Edge corporation and its affiliates and offering merger and acquisition advice with respect to foreign transactions.

The provisions in §§ 211.5(c) and 211.23(f)(5) concerning prohibitions on securities activities in the United States have been restated to clarify that no part of the prohibited underwriting process may take place in the United States and that the prohibition on the activity does not depend on the activity being conducted through an office or subsidiary in the United States.

With respect to U.S. activities of foreign banking organizations under Subpart B, sections 2(h) and 4(c)(9) of the BHC Act afford certain exemptions from the nonbanking prohibitions of the Act to foreign banks that are principally engaged in banking outside the United States. The Board's regulations implementing these exemptions are designed to impose a stringent test for qualification for the exemptions in order to ensure that the foreign company is both foreign in nature and principally engaged in banking. The Board determined that a foreign institution must disregard its U.S. banking assets in meeting the numerical tests of the regulation that require that more than half of the foreign institution's worldwide business be in banking and more than half its banking business be outside the U.S. in order to be considered a qualifying foreign banking organization. This test was designed to limit the availability of the foreign nonbanking exemptions only to actual foreign banks whose overseas affiliations with other foreign institutions would be severely disrupted by strict application of the Act's nonbanking prohibitions. The test accordingly prevents an organization, which is not principally and substantially foreign, from bootstrapping itself into qualification on the basis of its banking assets subject to U.S. jurisdiction.

In order to clarify the rule so as to prevent such bootstrapping by companies that are not primarily foreign

banks, the first proposed change would include banking assets in Puerto Rico and U.S. territories as "in the United States" for purposes of qualifying for the nonbanking exemptions. The locations specified to be included as "in the United States" correspond to those specified in the definition of "bank" in section 2(b) of the BHC Act. The Act requires Board approval before a company may acquire a bank in "any territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands."

The change would prevent the unintended result, for example, of a shell holding company, which is not otherwise a "foreign bank," from taking advantage of the exemptions by acquiring a bank in Puerto Rico and engaging in nonbanking activities both in the United States and abroad up to 50 percent of its business. The Board requests comment on the appropriateness of this amendment.

The second proposed amendment relates to the nonbanking exemptions afforded by section 2(h) of the BHC Act. Section 2(h) permits foreign banks to own foreign companies that engage in nonbanking activities in the United States if the U.S. activities are in the same general line of business as the company's foreign activities. The exemption is intended to prevent disruptions in the foreign affiliations of foreign banks and foreign nonbanking companies that would occur if the foreign nonbank affiliates were completely barred from U.S. markets. However, the exemption was intended to be available to commercial and industrial companies and not to companies that engage in financial or financially-related activities.

The proposed amendment would prevent a foreign shell company from taking advantage of the exemption where it does not actually conduct an operating business. For example, a foreign company that engages only in acquiring noncontrolling interests in other companies could not use the section 2(h) exemption to engage in the United States in activities conducted by such companies. Under the amendment, a foreign company engaged, for example, in acquiring oil and gas properties abroad as investments could not rely on the section 2(h) exemption to engage in the oil and gas business in the United States or to engage generally in investing in such properties in the United States. Comment is also requested on this proposal.

The Board welcomes comment on all of these proposals, including those changes not noted above but set forth in the attached draft regulation.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 211

Banks—banking, Federal Reserve System, Foreign banking, Investments, Reporting and recordkeeping requirements, Export trading companies, Allocated transfer risk reserve.

For the reasons set out in the preamble, Part 211 of Chapter II of Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 211—[AMENDED]

1. By revising the table of contents for Part 211, and Subpart A to read as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS

Subpart A—International Operations of United States Banking Organizations

Sec.
211.1 Authority, purpose, and scope.
211.2 Definitions.
211.3 Foreign branches of U.S. banking organizations.
211.4 Edge and Agreement corporations.
211.5 Investments and activities abroad.
211.6 Lending limits and capital requirements.
211.7 Supervision and reporting.

Subpart B—Foreign Banking Organizations

211.21 Authority, purpose, and scope.
211.22 Interstate banking operations of foreign banking organizations.
211.23 Nonbanking activities of foreign banking organizations.

Subpart C—Export Trading Companies

211.31 Authority, purpose, and scope.
211.32 Definitions.
211.33 Investments and extensions of credit.
211.34 Procedures for filings and processing notices.

Subpart D—International Lending Supervision

211.41 Authority, purpose, and scope.
211.42 Definitions.
211.43 Allocated transfer risk reserve.
211.44 Reporting and disclosure of international assets.
211.45 Accounting for fees on international loans.

Interpretations

211.601 Status of certain offices for purposes of the International Banking Act restrictions on interstate banking operations.
211.602 Investments by United States banking organizations in foreign companies that transact businesss in the United States.

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*); International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*).

Subpart A—International Operations of United States Banking Organizations

§ 211.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Federal Reserve Act ("FRA") (12 U.S.C. 221 *et seq.*); the Bank Holding Company Act of 1956 ("BHC Act") (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 ("IBA") (92 Stat. 607; 12 U.S.C. 3101 *et seq.*).

(b) *Purpose.* This subpart sets out rules governing the international and foreign activities of U.S. banking organizations, including procedures for establishing foreign branches and Edge corporations to engage in international banking and for investments in foreign organizations, and specifies the activities they may undertake through foreign and domestic affiliates.

(c) *Scope.* This subpart applies to corporations organized under section 25(a) of the FRA (12 U.S.C. 611–631), "Edge corporations"; to corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 U.S.C. 601–604a), "Agreement corporations"; to member banks with respect to their foreign branches and investments in foriegn banks under section 25 of the FRA (12 U.S.C. 601–604a); [1] and to bank holding companies with respect to the exemption from the nonbanking prohibitions of the BHC Act afforded by section 4(c)(13) of the BHC Act (12 U.S.C. 1843(c)(13)).

§ 211.2 Definitions.

Unless otherwise specified, for the purposes of this subpart:

(a) An "affiliate" of an organization means (1) any entity of which the organization is a direct or indirect subsidiary; or (2) any direct or indirect subsidiary of the organization or such entity.

(b) "Capital and surplus" means paid-in and unimpaired capital and surplus, and includes undivided profits but does

[1] Section 25 of the FRA, which refers to national banking associations, also applies to state member banks of the Federal Reserve System by virtue of section 9 of the FRA (12 U.S.C. 321).

not include the proceeds of capital notes or debentures.

(c) "Directly or indirectly" when used in reference to activities or investments of an organization means activities or investments of the organization or of any subsidiary of the organization.

(d) An Edge corporation is "engaged in banking" if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons.

(e) "Engaged in business" or "engaged in activities" in the United States means maintaining and operating an office (other than a representative office) or subsidiary in the United States.

(f) "Foreign" or foreign country" refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonweath of Puerto Rico.

(g) "Foreign bank" means an organization that: is organized under the laws of a foreign country; engages in the business of banking; is recoganized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations; receives deposits to a substantial extent in the regular course of its business; and has the power to accept demand deposits.

(h) "Foreign branch" means an office of an institution that is located outside the country under the laws of which the institution is organized, at which a banking or financing businesss is conducted.

(i) "Investment" means the ownship or control of shares (including partnership interests or other interests evidencing ownership), binding commitments to acquire shares, contributions to the capital and surplus of an organization, and the holding of an organization's subordinated debt when shares of the organization are also held by the investor or the investor's affiliate.

(j) "Investor" means an Edge corporation, Agreement corporation, bank holding company, or member bank.

(k) "Joint venture" means an organization that has 20 percent or more of its voting shares held directly or indirectly by the investor or by an affiliate of the investor, but which is not a subsidiary of the investor.

(l) "Organization" means a corporation, government, partnership, association, or any other legal or commercial entity.

(m) "Person" means an individual or an organization.

(n) "Portfolio investment" means an investment in an organization other than a subsidiary or joint venture.

(o) "Representative office" means an office that engages solely in representational functions such as solicitation of new business for or liaison between the organization's head office and customers in the United States, and does not have authority to make business decisions for the account of the organization represented.

(p) "Subsidiary" means an organization more than 50 percent of the voting shares of which is held directly or indirectly by the investor, or which is otherwise controlled or capable of being controlled by the investor or an affiliate of the investor.

§ 211.3 Foreign branches of U.S. banking organizations.

(a) *Establishment of foreign branches*—(1) *Right to establish branches.* Foreign branches may be established by any member bank having capital and surplus of $1,000,000 or more, an Edge corporation, an Agreement corporation, or by a subsidiary of any of these or of a bank holding company. Unless otherwise provided in this section, the establishement of a foreign branch requires the specific prior approval of the Board.

(2) *Branching within a foreign country.* Unless the organization has been notified otherwise, no prior Board approval is required for an organization to establish additional branches in any foreign country where it operates one or more branches.[2]

(3) *Branching into additional foreign countries.* After giving the Board 45 days' prior written notice, an organization that operates branches in two or more foreign countries may establish a branch in an additional foreign country, unless notified otherwise by the Board.[2]

(4) *Expiration of branching authority.* Authority to establish branches through prior approval or prior notice shall expire one year from the date the authority is received, unless the Board extends the period.

(5) *Reporting.* Any organization that opens, close, or relocates a branch shall notify the Board within 30 days of the action and furnish the address of the branch.

(b) *Further powers of foreign branches of member banks.* In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities so far as usual in connection with the business of banking in the country where it transacts business:

(1) *Guarantees.* Guarantee customers' debts, or otherwise agree for their benefit to make payments on the occurrence of readily ascertainable events,[3] if the guarantee or agreement specifies a maximum monetary liability; but except to the extent that the member bank is fully secured, it may not have liabilities outstanding for any person on account of such guarantees or agreements which when aggregated with other unsecured obligations of the same person exceed the limit contained in paragraph (a)(1) of section 5200 of the Revised Statutes (12 U.S.C. 84);

(2) *Investments.* Invest in: (i) The securities of the central bank, clearing houses, governmental entities, and government-sponsored development banks of the country in which the foreign branch is located; (ii) other debt securities eligible to meet local reserve or similar requirements; and (iii) shares of professional societies, schools, and the like necessary to the business of the branch; however, the total investments of the bank's branches in that country under this paragraph (exclusive of securities held as required by the law of that country or as authorized under section 5136 of the Revised Statutes (12 U.S.C. 24)) may not exceed one percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or on the date of acquisition of the branch in the case of a branch that has not so reported);

(3) *Government obligations.* Underwrite, distribute, buy, and sell obligations of: (i) The national government of the country in which the branch is located; (ii) an agency or instrumentality of the national government; and (iii) a municipality or other local or regional governmental entity of the country; however, no member bank may hold, or be under commitment with respect to, such obligations for its own account in an aggregate amount exceeding 10 percent of its capital and surplus;

(4) *Credit extensions to bank's officers.* Extend credit to an officer of the bank residing in the country in which the foreign branch is located to finance the acquisition or construction of living quarters to be used as the officer's residence abroad, provided the

[2] For the purpose of this paragraph, a subsidiary other than a bank or an Edge or Agreement corporation is considered to be operating a branch in a foreign country if it has an affiliate that operates an office (other than a representative office) in that country.

[3] "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents.

credit extension is reported promptly to the branch's home office and any extension of credit exceeding $100,000 (or the equivalent in local currency) is reported also to the bank's board of directors;

(5) *Insurance.* Act as insurance agent or broker;

(6) *Employee benefits program.* Pay to an employee of the branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch;

(7) *Repurchase agreements.* Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit; and

(8) *Other activities.* With the Board's prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank's branches transact business.

(c) *Reserves of foreign branches of member banks.* Reserves shall be maintained against foreign branch deposits when required by Part 204 of this chapter (Regulation D).

§ 211.4 Edge and Agreement Corporations.

(a) *Organization*—(1) *Permit.* A proposed Edge corporation shall become a body corporate when the board issues a permit approving its proposed name, articles of association, and organization certificate.

(2) *Name.* The name shall include "international," "foreign," "overseas," or some similar word, but may not resemble the name of another organization to an extent that might mislead or deceive the public.

(3) *Articles of association.* In addition to the information required by section 25(a) of the FRA, the articles of association shall include the amount of capital stock and of surplus (excluding undivided profits) of the Edge corporation.

(4) *Federal Register notice.* The Board will publish in the **Federal Register** notice of any proposal to organize an Edge corporation and will give interested persons an opportunity to express their views on the proposal.

(5) *Factors considered by the Board.* The factors considered by the Board in acting on a proposal to organize an Edge corporation include:

(i) The financial condition and history of the applicant;

(ii) The general character of its management;

(iii) The convenience and needs of the community to be served with respect to international banking and financing services; and

(iv) The effects of the proposal on competition.

(6) *Authority to commence business.* After the Board issues a permit, the Edge corporation may elect officers and otherwise complete its organization, invest in obligations of the United States Government, and maintain deposits authorized by paragraph (e) of this section, but it may not exercise any other powers until at least 25 percent of the authorized capital stock specified in the articles of association has been paid in cash, and each shareholder has paid in cash at least 25 percent of that shareholder's stock subscription. Authority to commence business as an Edge corporation shall expire one year after issuance of the permit, unless the Board extends the period.

(7) *Amendments to articles of association.* No amendment to the articles of association shall become effective until approved by the board.

(b) *Nature and ownership of shares*—(1) *Shares.* Shares of stock in an Edge corporation may not include no-par value shares and shall be issued and transferred only on its books and in compliance with section 25(a) of the FRA and this subpart. The share certificates of an Edge corporation shall:

(i) Name and describe each class of shares indicating its character and any unusual attributes such as preferred status or lack of voting rights; and

(ii) Conspicuously set forth the substance of:

(A) Limitations upon the rights of ownership and transfer of shares, imposed by section 25(a) of the FRA and this subpart; and

(B) Rules that the Edge corporation prescribes in its bylaws to ensure compliance with this paragraph. Any change in status of a shareholder that causes a violation of section 25(a) of the FRA shall be reported to the Board as soon as possible, and the Edge corporation shall take such action as the Board may direct.

(2) *Ownership of Edge corporations by foreign institutions*—(i) *Prior Board approval.* One or more foreign or foreign-controlled domestic institutions referred to in paragraph 13 of section 25(a) of the FRA (12 U.S.C. 619) may apply for the Board's prior approval to acquire directly or indirectly a majority of the shares of the capital stock of an Edge corporation.

(ii) *Conditions and requirements.* A foreign institution shall:

(A) Provide the Board information related to its financial condition and activities and such other information as may be required by the Board;

(B) Ensure that any funding by its Edge corporation of an affiliate[4] is on an arm's-length basis and that the Edge corporation will not provide funding on a continual or substantial basis to any affiliate or office of the foreign institution through transactions that would be inconsistent with the international and foreign business purposes for which Edge corporations are organized;

(C) In the case of a foreign institution not subject to section 4 of the BHC Act: (i) Comply with any conditions that the Board may impose that are necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and (ii) give the Board 45 days' prior written notice, in a form to be prescribed by the Board, before engaging in any non-banking activity in the United States, or making any initial or additional investments in another organization, that would require prior Board approval or notice by an organization subject to section 4 of the BHC Act; in connection with such notice, the Board may impose conditions necessary to prevent adverse effects that may result from such activity or investment; and

(D) Invest in Edge corporations no more than 10 percent of its capital and surplus.

(3) *Change in control*—(i) *Prior notice.* Any person, other than a foreign or foreign-controlled domestic institution that applies under paragraph (b)(2) of this section, shall give the Board 60 days' prior written notice, in a form to be prescribed by the Board, before acquiring, directly or indirectly, 25 percent or more of the voting shares, or otherwise acquiring control, of an Edge corporation; the Board may extend the 60-day period for an additional 30 days by notifying the acquiring party; and

(ii) *Conditions.* In reviewing a notice filed under this paragraph, the Board shall consider the factors set forth in paragraph (a) of this section and may impose any conditions that it finds necessary to assure the safe and sound operation of the Edge corporation, to assure the international character of its operation, and to prevent adverse effects such as deceased or unfair competition, conflicts of interest, or undue concentration of resources.

(c) *Domestic branches.* An Edge corporation may establish branches in

[4] For purposes of this paragraph, "affiliate" means any organization that would be an "affiliate" under section 23A of the FRA (12 U.S.C. 371c) if the foreign institution were a member bank.

the United States 45 days after the Edge corporation has given notice to its Reserve Bank, unless the Edge corporation is notified to the contrary within that time. The notice to the Reserve Bank shall include a copy of the notice of the proposal published in a newspaper of general circulation in the communities to be served by the branch. The newspaper notice shall be placed in the classified advertising legal notices section of the newspaper and may appear no earlier than 90 calendar days prior to submission of notice of the proposal to the Reserve Bank. The newspaper notice must provide an opportunity for the public to give written comment on the proposal to the appropriate Federal Reserve Bank for at least 30 days after the date of publication. The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (a)(5) of this section. Authority to open a branch under prior notice shall expire one year from the earliest date on which it could have been opened, unless the Board extends the period.

(d) *Reserve requirements and interest rate limitations.* The deposits of an Edge or Agreement corporation are subject to Parts 204 and 217 of this chapter (Regulations D and Q) in the same manner and to the same extent as if the Edge or Agreement corporation were a member bank.

(e) *Permissible activities in the United States.* An Edge corporation may engage directly or indirectly in activities in the United States that are permitted by the sixth paragraph of section 25(a) of the FRA and are incidental to international or foreign business, and in such other activities as the Board determines are incidental to international or foreign business. The following activities will ordinarily be considered incidental to an Edge corporation's international or foreign business:

(1) *Deposit activities*—(i) *Deposits from foreign governments and foreign persons.* An Edge corporation may receive in the United States transaction accounts, savings, and time deposits (including negotiable certificates of deposits) from foreign governments and their agencies and instrumentalities; offices or establishments located abroad; and individuals residing abroad.

(ii) *Deposits from other persons.* An Edge corporation may receive from any other person in the United States transaction accounts, savings, and time deposits (including negotiable certificates of deposit) if such deposits:

(a) Are to be transmitted abroad;

(b) Consist of funds to be used for payment of obligations to the Edge corporation or collateral securing such obligations;

(c) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(d) Consist of the proceeds of extensions of credit by the Edge corporation; or

(e) Represent compensation to the Edge corporation for extensions of credit or services to the customer.

(2) *Liquid funds.* Funds of an Edge or Agreement corporation not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of cash, deposits with depository institutions, as described in Part 204 of this chapter (Regulation D), other Edge and Agreement corporations, and money market instruments such as bankers' acceptances, obligations of or fully guaranteed by federal, state, and local governments and their instrumentalities, repurchase agreements, federal funds sold, and commercial paper.

(3) *Borrowings.* (i) Borrow from domestic offices of other Edge and Agreement corporations, banks, and depository institutions (as described in Part 204 of this chapter) or issue obligations to the United States or any of its agencies;

(ii) Incur indebtedness from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the Edge corporation is obligated to repurchase;

(iii) Issue long-term subordinated debt that does not qualify as a "deposit" under Part 204 of this chapter (Regulation D).

(4) *Credit activities.* (i) Finance the following: (A) Contracts, projects, or activities performed substantially abroad; (B) the importation into or exportation from the United States of goods, whether direct or through brokers or other intermediaries; (C) the domestic shipment or temporary storage of goods being imported or exported (or accumulated for export); and (D) the assembly or repackaging of goods imported or to be exported;

(ii) Finance the costs of production of goods and services for which export orders have been received or which are identifiable as being directly for export;

(iii) Assume or acquire participations in extensions of credit, or acquire obligations arising from transactions the Edge corporation could have financed;

(iv) Guarantee a customer's debts, or otherwise agree for the customer's benefit to make payments on the occurrence of readily ascertainable events,[5] if the guarantee or agreement specifies the maximum monetary liability thereunder and is related to a type of transaction described in paragraphs (e)(4 (i) and (ii) of this section;

(v) Provide personal banking services to the officers and employees of the Edge corporation and its affiliates; however, loans to such persons shall be subject to the restrictions of Part 215 of this chapter (Regulation O) as if the Edge corporation were a member bank.

(5) *Payments and collections.* Receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other instruments for collection abroad, and collect such instruments in the United States for a customer abroad.

(6) *Foreign exchange.* Buy and sell spot and forward foreign exchange.

(7) *Fiduciary and investment advisory activities.* (i) Hold securities in safekeeping for, or buy and sell securities upon the order and for the account and risk of, a person, provided such services for U.S. persons shall be with respect to foreign securities only;

(ii) Act as paying agent for securities issued by foreign governments or other entities organized under foreign law;

(iii) Act as trustee, registrar, conversion agent, or paying agent with respect to any class of securities issued to finance foreign activities and distributed solely outside the United States;

(iv) Make private placements of participations in its investments and extensions of credit; however, except to the extent permissible for member banks under section 5136 of the Revised Statutes (12 U.S.C. 24), no Edge corporation may otherwise engage in the business of selling or distributing securities in the United States;

(v) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interests and other investment assets,[6] and advice on mergers and acquisitions, provided such services for U.S. persons shall be with respect to foreign assets only; and

(vi) Provide general economic information and advice, general

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[5] "Readily ascertainable events" include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or cost of transport and loss or nonconformance of shipping documents.

[6] For purposes of this section, management of an investment portfolio does not include operational management of real property, or industrial or commercial assets.

economic statistical forecasting services and industry studies, provided such services for U.S. persons shall be with respect to foreign economies and industries only.

(8) *Other activities.* With the Board's prior approval, engage in other activities in the United States that the Board determines are incidental to the international or foreign business of Edge corporations.

(f) *Agreement corporations.* With the prior approval of the Board, a member bank or bank holding company may invest in a federally- or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

§ 211.5 Investments and activities abroad.

(a) *General policy.* Activities of investors abroad, whether conducted directly or indirectly, shall be confined to those of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) *Investment requirements*—(1) *Eligible investments.* (i) An investor may directly or indirectly:

(A) Invest in a subsidiary that engages solely in activities listed in paragraph (d) of this section or in such other activities as the Board has determined in the circumstances of a particular case are permissible; except that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than two percent of either the subsidiary's consolidated assets or revenues;

(B) Invest in a joint venture provided that, unless otherwise permitted by the Board, not more than 10 percent of the joint venture's consolidated assets or revenues shall be attributable to activities not listed in paragraph (d) of this section; and

(C) Make portfolio investments (including securities held in trading or dealing accounts) in an organization if the total direct and indirect portfolio investments in organizations engaged in activities that are not permissible for joint ventures does not at any time exceed 100 percent of the investor's capital and surplus.[7]

(ii) A member bank's direct investments under section 25 of the FRA shall be limited to foreign banks and to foreign organizations formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank.

(2) *Investment limit.* In computing the amount that may be invested in any organization under this section, there shall be included any unpaid amount for which the investor is liable and any investments by affiliates.

(3) *Divestiture.* An investor shall dispose of an investment promptly (unless the Board authorizes retention) if:

(i) The organization invested in:

(A) Underwrites, sells, or distributes securities in the United States;

(B) Engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States;

(C) Engages directly or indirectly in business in the United States that is not permitted to an Edge corporation in the United States; or

(D) Engages in impermissible activities to an extent not permitted under paragraph (b)(1) of this section; or

(ii) After notice and opportunity for hearing, the investor is advised by the Board that its investment is inappropriate under the FRA, the BHC Act, or this subpart.

(c) *Investment procedures.*[8] Direct and indirect investments shall be made in accordance with the general consent, prior notice, or specific consent procedures contained in this paragraph. The Board may at any time, upon notice, suspend the general consent and prior notice procedures with respect to any investor or with respect to the acquisition of shares of organizations engaged in particular kinds of activities. An investor shall apply for and receive the prior specific consent of the Board for its first investment in a subsidiary or joint venture unless an affiliate has made such an investment. Authority to make investments under prior notice or specific consent shall expire one year from the date on which the authority is received, unless the Board extends the period.

(1) *General consent.* The Board grants its general consent for the following:

(i) Any investment in a joint venture or subsidiary, and any portfolio investment, if:

(A) The organization invested in is not engaged in business in the United States other than that which is permitted to an Edge corporation in the United States; and

(B) The total amount invested does not exceed the lesser of:

(*1*) $15 million; or

(*2*) 5 percent of the investor's capital and surplus in the case of a member bank, bank holding company, or Edge corporation engaged in banking, or 25 percent of the investor's capital and surplus in the case of an Edge corporation not engaged in banking;

(ii) Any additional investment in an organization in any calendar year so long as:

(A) The total amount invested in that calendar year does not exceed 10 percent of the investor's capital and surplus; and

(B) The total amount invested under this section in any calendar year does not exceed cash dividends reinvested under paragraph (c)(1)(iii) of this section plus 10 percent of the book value of the investment in the organization, which investment authority, to the extent unexercised, may be carried forward and accumulated for up to five consecutive years;

(iii) Any additional investment in an organization in an amount equal to cash dividends received from that organization during the preceding 12 calendar months; or

(iv) Any investment that is acquired from an affiliate at net asset value.

(2) *Prior notice.* An investment that does not qualify under the general consent procedure may be made after the investor has given 45 days' prior written notice to the Board if the total amount to be invested does not exceed 10 percent of the investor's capital and surplus. The Board may waive the 45-day period if it finds immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is accepted. The Board may suspend the period or act on the investment under the Board's specific consent procedures.

(3) *Specific consent.* Any investment that does not qualify for either the general consent or the prior notice procedure shall not be consummated without the specific consent of the Board.

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[7] For this purpose, a direct subsidiary of a member bank is deemed to be an investor.

[8] When necessary, the general consent and prior notice provisions of this section constitute the Board's approval under the eighth paragraph of section 25(a) of the FRA for investments in excess of the limitations therein based on capital and surplus.

(d) *Permissible activities.* The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad:

(1) Commercial banking;

(2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring;

(3) Leasing real or personal property, or acting as agent, broker, or advisor in leasing real or personal property, if the lease serves as the functional equivalent of an extension of credit to the lessee of the property;

(4) Acting as fiduciary;

(5) Underwriting credit life insurance and credit accident and health insurance;

(6) Performing services for other direct or indirect operations of a United States banking organization, including representative functions, sale of long-term debt, name saving, holding assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible domestically for a bank holding company under section 4(a)(2)(A) and 4(c)(1)(C) of the BHC Act;

(7) Holding the premises of a branch of an Edge corporation or member bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or subsidiary;

(8) Providing investment, financial, or economic advisory services;

(9) General insurance brokerage;

(10) Data processing;

(11) Managing a mutual fund if the fund's shares are not sold or distributed in the United States or to United States residents and the fund does not exercise managerial control over the firms in which it invests;

(12) Performing management consulting services provided that such services when rendered with respect to the United States market shall be restricted to the initial entry;

(13) Underwriting, distributing, and dealing in debt and equity securities outside the United States, provided that no underwriting commitment by a subsidiary of an investor for shares of an issuer may exceed $2 million or represent 20 percent of the capital and surplus or voting shares of an issuer unless the underwriter is covered by binding commitments from subunderwriters or other purchasers;

(14) Operating a travel agency provided that the travel agency is operated in connection with financial services offered abroad by the investor or others;

(15) Engaging in activities that the Board has determined by regulation in 12 CFR 225.25(b) are closely related to banking under section 4(c)(8) of the BHC Act; and

(16) With the Board's specific approval, engaging in other activities that the Board determines are usual in connection with the transaction of the business of banking or other financial operations abroad and are consistent with the FRA or the BHC Act.

(e) *Debts previously contracted.* Shares or other ownership interests acquired to prevent a loss upon a debt previously contracted in good faith shall not be subject to the limitations or procedures of this section; however, they shall be disposed of promptly but in no event later than two years after their acquisition, unless the Board authorizes retention for a longer period.

§ 211.6 Lending limits and capital requirements.

(a) *Acceptances of Edge corporations*—(1) *Limitations.* An Edge corporation shall be and remain fully secured for (i) all acceptances outstanding in excess of 200 percent of its capital and surplus; and (ii) all acceptances outstanding for any one person in excess of 10 percent of its capital and surplus. These limitations apply only to acceptances of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372).

(2) *Exceptions.* These limitations do not apply if the excess represents the international shipment of goods and the Edge corporation (i) is fully covered by primary obligations to reimburse it that are guaranteed by banks or bankers, or (ii) is covered by participation agreements from other banks, as such agreements are described in § 250.165 of this chapter.

(b) *Loans and extensions of credit to one person*—(1) *Limitations.* Except as the Board may otherwise specify:

(i) The total loans and extensions of credit outstanding to any person by an Edge corporation engaged in banking and its direct or indirect subsidiaries may not exceed 15 percent of the Edge corporation's capital and surplus; and

(ii) The total loans and extensions of credit to any person by a foreign bank or Edge corporation subsidiary of a member bank, and by majority-owned subsidiaries of a foreign bank or Edge corporation, when combined with the total loans and extensions of credit to the same person by the member bank and its majority-owned subsidiaries, may not exceed the member bank's limitation on loans and extensions of credit to one person.

(2) *"Loans and extensions of credit"* means all direct or indirect advances of funds to a person [9] made on the basis of any obligation of that person to repay the funds. These shall include acceptances outstanding not of the types described in section 13 of the FRA; any liability of the lender to advance funds to or on behalf of a person pursuant to a guarantee, standby letter of credit, or similar agreements; and any underwriting commitments to an issuer of securities where no binding commitments have been secured from subunderwriters or other purchasers.

(3) *Exceptions.* The limitations of paragraph (b)(1) of this section do not apply to:

(i) Deposits with banks and federal funds sold;

(ii) Any bankers' acceptance of the kind described in section 13 of the FRA that is issued and outstanding;

(iii) Obligations to the extent secured by cash collateral or by bonds, notes, certificates of indebtedness, or Treasury bills of the United States; or

(iv) Obligations to the extent supported by the full faith and credit of the following:

(A) The United States or any of its departments, agencies, establishments, or wholly-owned corporations (including obligations to the extent insured against foreign political and credit risks by the Export-Import Bank of the United States or the Foreign Credit Insurance Association), the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the Inter-American Development Bank, or the Asian Development Bank;

(B) Any organization if at least 25 percent of such an obligation or of the total credit is also supported by the full faith and credit of, or participated in by, any institution designated in paragraph (b)(3)(iv)(A) of this section in such manner that default to the lender will necessarily include default to that entity. The total loans and extensions of credit under paragraph (b)(3)(iv)(B) to any person shall at no time exceed 100 percent of the capital and surplus of the Edge corporation.

(c) *Capitalization.* An Edge corporation shall at all times be capitalized in an amount that is adequate in relation to the scope and character of its activities. In the case of an Edge corporation engaged in banking, its capital and surplus shall be not less than the minimum primary capital required for a multinational banking

[9] In the case of a foreign government, these include loans and extensions of credit to the foreign government's departments or agencies deriving their current funds principally from general tax revenues.

organization as established by the Board in its Capital Adequacy Guidelines (12 CFR Part 225, Appendix A).

§ 211.7 Supervision and Reporting.

(a) *Supervision*—(1) *Foreign branches and subsidiaries.* Investors shall supervise and administer their foreign branches and subsidiaries in such a manner as to ensure that their operations conform to high standards of banking and financial prudence. Effective systems of records, controls, and reports shall be maintained to keep management informed of their activities and condition. Such systems should provide, in particular, information on risk assets, liquidity management, and operations of controls and conformance to management policies. Reports on risk assets should be sufficient to permit an appraisal of credit quality and assessment of exposure to loss, and for this purpose provide full information on the condition of material borrowers. Reports on the operations of controls should include internal and external audits of the branch of subsidiary.

(2) *Joint ventures.* Investors shall maintain sufficient information with respect to joint ventures to keep informed of their activities and condition. Such information shall include audits and other reports on financial performance, risk exposure, management policies, and operations of controls. Complete information shall be maintained on all transactions with the joint venture by the investor and its affiliates.

(3) *Availablility of reports to examiners.* The reports and information specified in paragraphs (a)(1) and (2) of this section shall be made available to examiners of the appropriate bank supervisory agencies.

(b) *Examinations.* Examiners appointed by the Board shall examine each Edge corporation once a year. An Edge corporation shall make available to examiners sufficient information to assess its condition and operations and the condition and activities of any organization whose shares it holds.

(c) *Reports*—(1) *Reports of condition.* Each Edge corporation shall make at least two reports of condition annually to the Board at such times and in such form as the Board may prescribe. The Board may require that statements of condition or other reports be published or made available for public inspection.

(2) *Foreign operations.* Edge and Agreement corporations, member banks, and bank holding companies shall file such reports on their foreign operations as the Board may require.

(3) *Acquisition or disposition of shares.* A member bank, Edge or Agreement corporation or a bank holding company shall report in a manner prescribed by the Board within 30 days any acquisition or disposition of shares.

(d) *Filing procedures.* Unless otherwise directed by the Board, applications, notifications, and reports required by this part shall be filed with the Federal Reserve Bank of the district in which the parent bank or bank holding company is located, or if none, the Federal Reserve Bank of the district in which the applying or reporting institution is located. Instructions and forms for such applications, notifications and reports are available from the Federal Reserve Bank.

* * * * *

2. By revising § 211.23(b) of Subpart B to read as follows:

Subpart B—Foreign Banking Organizations

§ 211.23 Nonbanking Activities of Foreign Banking Organizations.

* * * * *

(b) *Qualifying foreign banking organizations.* Unless specifically made eligible for the exemptions by the Board, a foreign banking organization shall qualify for the exemptions afforded by this section only if, disregarding its United States banking, more than half of its worldwide business is banking; and more than half of its banking business is outside the United States.[1] In order to qualify, a foreign banking organization shall:

(1) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed total worldwide nonbanking assets;

(ii) Revenues derived from the business of banking outside the United States exceed total revenues derived from its worldwide nonbanking business; or

(iii) Net income derived from the business of banking outside the United States exceeds total net income derived from its worldwide nonbanking business; and

(2) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed banking assets held in the United States;

(ii) Revenues derived from the business of banking outside the United States exceed revenues derived from the business of banking in the United States; or

(iii) Net income derived from the business of banking outside the United States exceeds net income derived from the business of banking in the United States.

* * * * *

3. By revising § 211.23(f)(5)(i) through (f)(5)(iii) to read as follows. (The introductory text of (f) is shown for the convenience of the reader).

§ 211.23 [Amended]

* * * * *

(f) *Permissible activities and investments.* A foreign banking organization that qualifies under paragraph (b) of this section may:

* * * * *

(5) Own or control voting shares of a foreign company that is engaged directly or indirectly in business in the United States other than that which is incidental to its international or foreign business, subject to the following limitations:

(i) More than 50 percent of the foreign company's consolidated assets shall be located, and consolidated revenues derived from, outside the United States;

(ii) The foreign company shall not directly underwrite, sell, or distribute, nor own or control more than 5 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States except to the extent permitted bank holding companies;

(iii) If the foreign company is a subsidiary of the foreign banking organization, the foreign company must be an operating company and its direct or indirect activities in the United States shall be subject to the following limitations:

* * * * *

Board of Governors of the Federal Reserve System, June 15, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–16497 Filed 6–22–84; 8:45 am]

BILLING CODE 6210-01-M

[1] None of the assets, revenues, or net income, whether held or derived directly or indirectly, of a subsidiary bank, branch, agency, commercial lending company, or other company engaged in the business of banking in the United States (including any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands) shall be considered held or derived from the business of banking "outside the United States."

federal register

Monday
June 25, 1984

Part IX

Office of Management and Budget

Budget Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report three new deferrals of budget authority totaling $1,850,000 and five revised deferrals of budget authority which now total $98,533,000. The deferrals affect the Department of Energy.

The details of the deferrals are contained in the attached reports.

Ronald Reagan,

The White House,
June 20, 1984.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral #	Item	Budget Authority
	Department of Energy	
	Atomic Energy Defense Activities	
D84-62	Atomic energy defense activities.....	1,050
	Energy Programs	
D84-63	General science and research activities.....	700
D84-39A	Energy supply research and development activities.....	10,852
D84-21C	Fossil energy research and development.....	9,643
D84-40A	Naval petroleum and oil shale reserves.....	41,550
	Power Marketing Administration	
	Operation and maintenance, Southwestern	
D84-42A	Power Administration.....	7,060
	Construction, rehabilitation, operation and	
D84-64	maintenance, Western Area Power Administration	100
	Departmental Administration	
D84-43A	Departmental administration.....	29,428
	Total, deferrals.....	100,383

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SUMMARY OF SPECIAL MESSAGES
FOR FY 1984
(in thousands of dollars)

	Rescissions	Deferrals
Eleventh special message:		
New items.....	---	1,850
Revisions to previous special messages.....	---	1,435
Effects of eleventh special message.....	---	3,285
Amounts from previous special messages that are changed by this message (changes noted above).....	---	97,098
Subtotal, rescissions and deferrals.....	---	100,383
Amounts from previous special messages that are not changed by this message.....	636,411	7,317,837
Total amount proposed to date in all special messages.....	636,411	7,418,220

Deferral No: D84-62

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy
Bureau: Atomic Energy Defense Activities
Appropriation title & symbol: Atomic Energy Defense Activities 89X0220 1/
OMB identification code: 89-0220-0-1-053
Grant program: ☐ Yes ☒ No
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year

New budget authority (P.L. 98-50; 98-181) $7,554,875,000
Other budgetary resources 1,318,215,639
Total budgetary resources 7,873,090,639
Amount to be deferred: Part of year _____ Entire year 1,050,300
Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other _____
Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This account funds development of naval nuclear reactors, research and development on nuclear weapons, verification and control technology, production of nuclear materials, management of defense waste and byproducts, nuclear safeguards and security, and security investigations. The Department of Energy has prepared a program plan for these activities in accordance with the guidance contained in the Conference Report for the 1984 Energy/water appropriations bill. This deferral reflects savings resulting from management improvements in organization and staffing, planning for acquisition and utilization of ADP systems, and increased contracting out of activities to the private sector at a lower cost following A-76 studies. The funds deferred until 1985 will partially offset the 1985 appropriation request. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: There is no impact on 1984 and 1985 outlays since these savings were anticipated when the 1985 budget estimates were developed.

1/ This account was the subject of a deferral in 1983 (D83-70).

Deferral No: D84-63

D84-39A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 98-50): $638,250,000
Bureau: Energy Programs	Other budgetary resources: -2,294,793
Appropriation title & symbol: General Science and Research Activities 89X0222	Total budgetary resources: 635,955,207
	Amount to be deferred: Part of year: ____ Entire year: 700,000
OMB identification code: 89-0222-0-1-251	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date.) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: This account funds research in high energy and nuclear physics. The Department of Energy has prepared a program plan for these activities in accordance with the guidance contained in the Conference Report for the 1984 Energy/Water appropriations bill. This deferral reflects savings from improvements in automatic data processing utilization and management of government owned, contractor operated facilities which reduce procedural controls and heighten reliance on performance evaluations by the DOE operations offices. These funds are being deferred until 1985 and will be used to offset 1985 funding requirements. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: This deferral will have no programmatic effects in 1985 because management savings will result from the improved efficiency and effectiveness of Departmental management practices.

Outlay Effect: None. Current 1984 and 1985 outlay estimates reflect savings from this deferral.

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344.

This report updates Deferral No. D84-39 transmitted to Congress on February 1, 1984.

This increases by $800,000 the previous deferral of $10,052,000 in the Department of Energy's Energy supply research and development activities account, resulting in a total deferral of $10,852,000. The additional funds being deferred reflect savings from management improvements in administrative organization, administrative systems and administrative processes/field structure.

Deferral No: D84-39A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 98-181) $ 1,959,609,000
Bureau: Energy Programs	Other budgetary resources 586,457,989*
Appropriation title & symbol: Energy Supply Research and Development Activities 89X0224 1/	Total budgetary resources 2,546,066,989*
	Amount to be deferred: Part of year ____
	Entire year 10,052,000*
OMB identification code: 89-0224-0-1-271	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification:* This account funds a variety of R&D programs in nuclear fission, fusion and solar and renewables technologies. The Department of Energy has prepared a program plan for these activities in accordance with the guidance contained in the Conference Report for the 1984 Energy/Water appropriations bill. The deferral of $10,052,000 of unobligated prior year funds in solar and renewables R&D programs are in excess of 1984 program requirements. These funds are being deferred until 1985 to partially offset the 1985 appropriation request. The deferred funds include Solar Buildings ($400,000), Photovoltaics ($1,000,000), Solar Thermal ($700,000), Biofuels ($200,000), Wind Energy Systems ($3,000,000), Ocean Energy Systems ($250,000), International ($75,000), Solar Information ($200,000), Solar Program Direction ($1,500,000), Geothermal Technology Development ($273,000), Geothermal Program Direction ($250,000), Hydropower Program Direction ($300,000), Hydrothermal Industrialization ($75,000), Electric Energy Systems (Systems Technology, $886,000), and Thermal and Mechanical Storage ($943,000). The remaining deferral of $800,000 reflects savings from management initiatives on improving organization management, administrative systems and field structure. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect:* This deferral action will shift $10,052,000 of 1984 outlays to 1985. The increase of $800,000 will have no impact on 1984 and 1985 outlays since these savings were anticipated when the 1985 budget estimate was developed.

1/ This account was the subject of deferrals in 1983 (D83-72 and D83-46A).

* Revised from previous report.

D84-21C

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344.

This report updates Deferral No. D84-21B transmitted to Congress on February 1, 1984.

This increases by $150,000 the previous deferral of $9,493,000 in the Department of Energy's Fossil energy research and development account, resulting in a total deferral of $9,643,000. These funds are deferred because the fossil energy program is achieving savings from improved administrative and organization management. These will be used to help finance the 1985 Budget request.

Deferral No: D84-40A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 98-146;98-181) $ 260,214,000
Bureau: Energy Programs	Other budgetary resources 97,881,101*
Appropriation title & symbol: Fossil Energy Research and Development 89X0213 1/	Total budgetary resources 357,885,101*
	Amount to be deferred: Part of year —
	Entire year 9,643,000*
OMB identification code: 89-02-3-0-1-271	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification:* This account funds research and development activities in coal, petroleum and unconventional natural gas. The Department of Energy has prepared a program plan for these activities in accordance with the guidance contained in the Conference Report on the 1984 Interior appropriations bill. A savings of $150,000 results from improved administrative and organization management. The remaining $9,493,000 consisted of three major components: $2,750,000 of unobligated prior year funds; $2,000,000 appropriated in 1984 for geopressured methane research activities that duplicates work funded in the Department of Energy Geothermal Energy program; and $4,743,000 in reimbursements from the foreign contributions to the Solvent Refined Coal (SRC-II) demonstration project. These funds are not currently programmed for use in 1984 and are being deferred into 1985 to partially offset the 1985 appropriation request. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect:* This deferral will decrease 1984 outlays by $9,493,000 and will shift $8,993,000 to 1985.

1/ This account was the subject of deferrals in 1983 (D83-8A, D83-73, and D83-80).

* Revised from previous report.

D84-40A

Supplementary Report

Report Pursuant to Section 1014(a) of Public Law 93-344.

This report updates Deferral No. D84-40 transmitted to Congress on February 1, 1984.

This increases by $50,000 the previous deferral of $41,500,000 in the Department of Energy's Naval petroleum and oil shale reserves account, resulting in a total deferral of $41,550,000. The increase is due to improved administrative and organization management.

Deferral No: D84-40A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 98-146): $256,602,000
Bureau: Energy Programs	Other budgetary resources: 7,082,582*
Appropriation title & symbol: Naval Petroleum and Oil Shale Reserves 89X0219	Total budgetary resources: 263,682,582*
	Amount to be deferred: Part of year: ____ Entire year: $1,550,000*
OMB identification code: 89-0219-0-1-271	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification:* This account primarily funds activities necessary to operate, explore, conserve, develop and produce the naval petroleum reserves at the maximum efficient rate and to conserve the oil shale reserves. The remainder of this account includes funds from prior years for solar federal buildings and coal loan guarantee activities. The Department of Energy has prepared a program plan for these activities in accordance with the guidance contained in the Conference Report of the 1984 Interior appropriations bill. This deferral includes $39,050,000 under the Naval Petroleum and Oil Shale Reserve Program (NPOSR) and $2,500,000 of prior year unobligated funds from the coal loan guarantee program. Within the NPOSR program, $39,000,000 is being deferred as a result of changes in the primary development drilling program at NPR-1. Consequently, these funds are not required in 1984 and are being deferred until 1985 to partially offset the 1985 appropriation request. The remaining $50,000 of the total NPOSR deferral results from management initiatives in the area of administrative and organization management. The deferral of $2,500,000 until 1985 under the coal loan guarantee program is due to the fact that no qualified applicants were identified. These funds are proposed for transfer to the fossil energy R&D account to partially offset the 1985 appropriation request for that account. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect:* This deferral action will shift $41,500,000 of 1984 outlays to 1985 and 1986. The $50,000 associated with management initiatives savings has already been considered in reducing 1984 and 1985 outlays.

* Revised from previous report.

D84-42A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344.

This report updates Deferral No. D84-42 transmitted to Congress on February 1, 1984.

This increases by $60,000 the previous deferral of $7,000,000 in the Department of Energy's Operations and maintenance, Southwestern Power Administration account, resulting in a total deferral of $7,060,000. The increase is due to improved organization structure and maximum effective utilization of existing resources and staff.

Deferral No: D84-42A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 98-50) $ 36,229,000
Bureau: Power Marketing Administration	Other budgetary resources 13,099,647*
Appropriation title & symbol: Southwestern Power Administration Operations and Maintenance 89X0303	Total budgetary resources 49,328,647*
	Amount to be deferred: Part of year —
	Entire year 7,060,000*
OMB identification code: 89-0303-0-1-271	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	

Justification: This account funds the activities of the Southwestern Power Administration (SwPA), an agency which markets wholesale hydroelectric power produced at Corps of Engineers dams in six southwestern States. SWPA activities also include construction, operation and maintenance of approximately 1,660 miles of transmission lines over which the power is distributed to customers. The Department of Energy has prepared a program plan for these activities in accordance with the guidance contained in the Conference Report on the 1984 Energy/Water appropriations bill. The deferral includes a total of $7,000,000 of unobligated balances from prior year appropriations for various construction and operation and maintenance efforts that changes in original planning assumptions have made unnecessary at present. Because these projects and activities have been indefinitely postponed, the funds are not needed in 1984. Management initiatives during 1984 result in savings of $60,000 from improvements in the agency's organizational structure and assume maximum effective utilization of existing resources and staff. The funds are being deferred until 1985 to offset part of the 1985 appropriation request for the account. This deferral is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None. The deferral will have no programmatic effect because the funds deferred are in excess of the amount necessary for conduct of SWPA's normal power marketing and systems operation and maintenance activities.

Outlay Effect: None.

* Revised from previous report

Deferral No: D84-64

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 98-50) $ 194,630,000
Bureau: Power Marketing Administration	Other budgetary resources 84,045,169
Appropriation title & symbol: Western Area Power Administration Construction, Rehabilitation, Operation and Maintenance 89X5068	Total budgetary resources 278,675,169
	Amount to be deferred: Part of year —
	Entire year 100,000
OMB identification code: 89-5068-0-2-271	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	

Justification: The Western Area Power Administration markets power in fifteen western states from electrical generating projects operated by the Bureau of Reclamation and the Corps of Engineers. The Department of Energy has prepared a program plan for these activities in accordance with the guidance contained in the Conference Report for the 1984 Energy/Water appropriations bill. Management initiatives in the Western Area Power Administration during 1984 will result in savings of $100,000 from improving the agency's organizational structure and assuring maximum effective utilization of existing resources and staff. These savings are deferred until 1985 to partially offset the 1985 budget request. This deferral is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None.

D84-43A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344.

This report updates Deferral No. D84-43 transmitted to Congress on February 1, 1984.

This increases by $375,000 the previous deferral of $29,053,000 in the Department of Energy's Departmental administration account, resulting in a total deferral of $29,428,000. These funds are based on savings from several management initiatives recommended in various studies of Departmental operations.

Deferral No: D84-43A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 98-50): $ 366,056,000
Bureau: Departmental Administration	Other budgetary resources: 86,406,714*
Appropriation title & symbol: Departmental Administration 89X0228 1/	Total budgetary resources: 452,462,714*
	Amount to be deferred: Part of year: ____ Entire year: 29,428,000*
OMB identification code: 89-0228-0-1-276	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification:* This account funds a variety of Department of Energy administrative activities, including policy development and analysis activities, institutional and public liaison functions, and other program support requirements necessary to ensure effective departmental operations and management. The Department of Energy has prepared a program plan for these activities in accordance with the guidance contained in the Conference Report of the 1984 Energy/Water appropriations bill and as a result, a portion of the amount of prior year unobligated balances and recoveries of prior year obligations is not needed in 1984. Savings have also been achieved as the Department implemented management initiatives recommended by various studies of departmental operations. The excess is being deferred into 1985 to partially offset the 1985 appropriation request. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: This deferral will not have any identifiable programmatic effect since the funds deferred are in excess of the amount required to satisfy congressional directives.

Outlay Effect: None.

1/ This account was the subject of a deferral in 1983 (D83-51).

* Revised from previous report.

[FR Doc. 84-16918 Filed 6-22-84; 8:45 am]
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S. 2776 / Pub. L. 98–325

To continue the transition provisions of the Bankruptcy Act until June 27, 1984, and for other purposes. (June 20, 1984; 98 Stat. 268) Price: $1.50

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[1] No amendments to these volumes were promulgated during the period Apr. 1, 1982 to March 31, 1983. The CFR volumes issued as of Apr. 1, 1982 should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1983. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

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federal register

Tuesday
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Nuclear Power Plants and Reactors
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Federal Communications Commission

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Presidential Documents

Title 3—

The President

Executive Order 12482 of June 21, 1984

President's Advisory Committee on Women's Business Ownership

By the authority vested in me as President by the Constitution of the United States of America, and in order to extend the life of the President's Advisory Committee on Women's Business Ownership, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered that Executive Order No. 12426 of June 22, 1983, is amended as follows:

(a) Section 2(a) is amended by striking "foster" and inserting in lieu thereof "study methods of obtaining".

(b) Section 4(b) shall read: "The Committee shall terminate on December 31, 1984, unless sooner extended."

Ronald Reagan

THE WHITE HOUSE,
June 21, 1984.

[FR Doc. 84-17116
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Billing code 3195-01-M

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Proclamation 5214 of June 22, 1984

Helen Keller Deaf-Blind Awareness Week, 1984

By the President of the United States of America

A Proclamation

Our eyes and ears provide vital ways of interacting with the world around us. The lilt of laughter, the beat of a brass band, the smile of a friend, and the poetry of a landscape are but a few of the life blessings that our senses of sight and hearing help us to enjoy. But for some 40,000 Americans who can neither see nor hear, the world can be a prison of darkness and silence.

Inadequate education, training, and rehabilitation for those who are deaf and blind may prevent these Americans from becoming independent and self-sufficient, thereby greatly limiting their life potential and imposing a high economic and social cost on the Nation.

We must prevent such problems among our deaf-blind citizens by fostering their independence, creating employment opportunities, and encouraging their contributions to our society. Crucial to fulfilling this urgent national need is research on the disorders that cause deafness and blindness. Toward this end, the National Institute of Neurological and Communicative Disorders and Stroke and the National Eye Institute as well as a number of voluntary health agencies are supporting a wide range of investigative projects that one day may provide the clues to curing and preventing these devastating disorders.

On June 27 we commemorate the 104th anniversary of the birth of Helen Keller, America's most renowned and respected deaf-blind person. Her accomplishments serve as a beacon of courage and hope for our Nation, symbolizing what deaf-blind people can achieve.

In order to encourage public recognition of and compassion for the complex problems caused by deaf-blindness and to emphasize the potential contribution of deaf-blind persons to our Nation, the Congress, by Senate Joint Resolution 261, has authorized and requested the President to issue a proclamation designating the last week in June 1984 as "Helen Keller Deaf-Blind Awareness Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning June 24, 1984, as Helen Keller Deaf-Blind Awareness Week. I call upon all government agencies, health organizations, communications media, and people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

Verification of Eligibility for Free and Reduced Price Meals in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the Department's requirements for verification of eligibility for free and reduced price meals in schools for School Year 1984–85 and subsequent school years. This final rule: (1) Allows the use of an alternate verification method which utilizes a smaller sample of applications and focuses on those applications more likely to contain errors; (2) Simplifies the application process for schools and food stamp households by allowing such households to submit their Food Stamp Program case number in lieu of income information on the application; (3) Requires other households to submit additional income information on the application for free and reduced price meals; (4) Requires that households selected for verification receive written notice; (5) Requires that verification activity be completed by each School Food Authority by December 15 of each school year. This final rule is intended to facilitate the certification process, to reduce program abuse, and to result in an additional savings of Federal funds.

EFFECTIVE DATE: July 26, 1984.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291 and has been classified not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices for program participants, individual industries, Federal agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. This final rule will decrease administrative costs by providing States, School Food Authorities, and institutions more flexibility in administering the National School Lunch and School Breakfast Programs.

This final rule has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service (FNS) has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The Department believes that the provisions of this final rule will simplify the application process and will facilitate the verification process for State and local administrators of these programs. Discussions in the preamble will explain this in detail. This final rule imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

Background

In the report entitled, "National Statistical Sample of Program Participation for May 1980 and Verification of Free and Reduced Price Application Information," the Office of Inspector General (OIG) estimated that one of every four recipients of free and reduced price school meals was receiving these benefits improperly. In response to these findings, in August of 1981 Congress expressed its concern in three provisions of Pub. L. 97–35. Section 803(a)(2) of that legislation stated that "The Secretary, States, and local school food authorities may seek verification of the data contained in the application." Congress struck the previous restrictions which required a "*cause*" for verification.

Section 803(a)(2) also provided that "Local school food authorities shall undertake such verification of the information contained in these applications as the Secretary may by regulation prescribe. * * *" Therefore, the Department believed that it was necessary to establish a verification requirement as soon as was practicable to minimize quickly the misuse of Federal funds. The Department first established mandatory minimum verification requirements in an interim rule on verification published on March 25, 1983. This interim rule was developed in response to the increasing Congressional concern regarding abuse in federally-supported school meal programs. The interim rule encouraged School Food Authorities to verify a minimum of the lesser of three percent or 3,000 of the approved free and reduced price applications on file as of October 31 of School Year 1982–83. The interim rule also made this minimum verification requirement mandatory for subsequent school years.

Section 803(a)(3) of Pub. L. 97–35 further directed the Secretary to conduct a pilot study of verification procedures designed to reduce fraud and abuse in the federally-supported school nutrition programs. Phase II of the Income Verification Pilot Project (hereinafter called the verification study) involved a large-scale nationally representative test of a variety of quality assurance procedures conducted in 114 School Food Authorities during the 1982–83 School Year. Unless noted otherwise, page citations in this preamble to the "verification study" refer to the report entitled, "Income Verification Pilot Project, Phase II, Results of Quality Assurance Evaluation, 1982–83 School Year, April 1984."

Minimum verification requirements were therefore established for School Year 1983–84 by interim rule, rather than a final rule, to enable the Department to consider final changes based on the verification study and comments from administrators and households with experience. On March 30, 1984, the Department published a proposed rule (49 FR 12942) which would modify the verification requirements and offer School Food Authorities an alternate or

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"focused" method of verification. Those modifications and alternate method of verification were based on: (1) The comments received on the interim rule on verification published on March 25, 1983 (48 FR 12505); and (2) the results of the verification study. A 30-day comment period was provided during which time the Department received 268 comments. Commentors included State educational personnel, School Food Authority personnel, private citizens, advocacy groups, and professional organizations. The Department would like to thank all commentors who responded to the proposed rule.

Comment Analysis

The Department has made every effort to incorporate into this final rule all commentor suggestions which clarify or improve verification procedures and yet are consistent with the objectives of the verification requirement. The remainder of this preamble will discuss the significant changes that have been made in the Department's regulations on eligibility determinations and verification. Commentor concerns and suggestions are categorized by subject and addressed throughout this preamble.

General Comments on the Proposed Rule

Fifty-three commentors expressed concerns that verification has, in their experience, not proven to be cost-effective at the local level. These commentors believe that the increased costs of paperwork and staff resources devoted to verification exceed any consequent savings of Federal funds. While the Department recognizes that there are additional responsibilities associated with verification requirements, the Department believes that several provisions of this final rule offer School Food Authorities significant relief.

Most importantly, this final rule provides that households currently receiving food stamp benefits may substitute their food stamp case number for income information on the application. Since food stamp households constitute approximately one-half of those households which submit applications for school meal benefits, there should be a significant reduction in the time required to review and approve those applications. The most difficult and time-consuming aspect of application review and approval is associated with the income calculation necessary for each household. Now this process will not be necessary for applicants who substitute a food stamp case number for income information. Instead, School Food Authorities may rely on the certification previously performed by local food stamp offices for such applicants, thereby reducing the time needed for application approval.

Secondly, this final rule offers School Food Authorities an alternative method of application selection which permits fewer verifications. If applications to be verified are selected from those more likely to contain errors (focused sampling), School Food Authorities need verify less than half as many applications as required by the interim rule. This alternative should substantially reduce the administrative burden associated with verification. The Department's information on national program participation rates as applied to School Food Authorities categorized by enrollment size provides the following: For more than 50 percent of all School Food Authorities only an average of two applications containing income information and one application substituting a food stamp case number would need to be verified using the focused method. Although these average numbers will vary in individual School Food Authorities depending upon their free and reduced price participation rates, the Department wishes to emphasize that it believes that an average of three verifications for more than half of all School Food Authorities is a reasonable and proportionate requirement. Further, less than one percent of all School Food Authorities will be required to verify the maximum of 1,000 applications containing income information and 500 applications substituting a food stamp case number using the focused method of 3,000 applications using the random method.

Third, the Department believes that those commentors suggesting that verification costs exceed the cost savings directly achieved by verification efforts are not considering the deterrent effect to misreporting caused by verification when accompanied by an improved application form. The verification study suggests that significant and worthwhile improvements in overall program integrity are likely to occur even with a limited verification system which focuses on deterrence rather than detection. The Department believes that the maintenance of an improved verification system is essential given the degree of program abuse cited by OIG and by the verification study. Improvements identified by the verification study and contained in the proposed rule were an application form which requested income information by source and household member, a verification alternative which fo on those applications more likely contain errors. Both of these pro have been retained in this final r are discussed in detail later in th preamble.

Although the Department has attempted to reduce the cost of verification by the changes made final rule, the Department believe a minimal level of verification ac must be maintained. Many, if not administrative requirements asso with these programs place responsibilities directly on local Food Authorities. These requiren often result in no cost savings to School Food Authority nor is the specific reimbursement designate cover their cost. The Department believes that verification activity other required functions, is funda to the maintenance of program in In this final rule the Department attempted to strike a balance bet the concerns expressed by comm over increased cost and staff involvement needed for verificati the need to reduce program abus long-term consequence of failure correct clearly identified deficien diminished public support for the programs. Corrective actions, as provided by this final rule, will he preserve the base of good will ess to the continued operation of thes programs. Although the Departme emphasized a strategy of deterren program abuse based on an impro application, it must also maintain minimum degree of verification ac to maintain public awareness tha application could be selected for verification, thus preserving the deterrent effect over time. Therefo Department continues to require minimal verification activity in thi rule.

Nine commentors suggested tha application and verification activi made the responsibility of local fo stamp or welfare offices more fam with this type of activity. The Omn Budget Reconciliation Act of 1981 L. 97–35) specified that responsibil verification was to be assumed by States and School Food Authoritie Department has no legal authority place this responsibility elsewhere

Approximately 30 commentors suggested that households be requ submit income documentation at t time of application to expedite the verification process. The Departm has serious concerns regarding the potential barrier to eligible applica such a requirement. This barrier ef

was clearly identified by the verification study which found that a requirement that income documentation be submitted at the time of application constituted a barrier to eligible households while providing little improvement in the deterrent effect provided by the improved application alone. The Department believes that due to this barrier effect this final rule should not be changed to permit documentation at the time of application. Although the Department recognizes the need and desire of School Food Authorities to complete verification in a timely manner, the Department has a responsibility to ensure that eligible households not be discouraged from applying. Therefore, this final rule will not be modified to permit income documentation at the time of application. Since verification is defined as confirming the eligibility for free and reduced price benefits, it is necessary that eligibility be established prior to the initiation of verification activity. Therefore, this final rule precludes verification activity prior to the establishment of eligibility.

Two commentors suggested that the Department require that verification be performed for all households which reapply after termination due to verification. The Department wishes to emphasize that School Food Authorities may always elect to perform additional verification activity beyond that required by this final rule. The Department believes that the judgment of local School Food Authorities can best determine the necessity of additional verification activity on an individual basis when households reapply after termination. While the Department would support the judgment of a School Food Authority which decided to verify applications submitted under these circumstances, it will not impose this requirement on School Food Authorities in this final rule since there may be individual circumstances where the School Food Authority judges that such verification activity is not warranted.

Approximately 50 commentors objected to the date of October 15 specified in the proposed rule for determining the number of applications to be verified and over 25 commentors supported this date. The commentors objecting to this date believed that using October 15 as the date to determine the required number of verifications would require School Food Authorities to review all applications twice in October since School Food Authorities are required to provide the number of children eligible for free and reduced price meals at the end of October for a separate report. Therefore, the Department has, in this final rule, made October 31 of each school year the date to be used to determine the number of applications to be verified based on the number of applications on file on that date in each School Food Authority. Some commentors did not realize that schools may begin verification efforts prior to October 31 based on projected approvals.

Approximately 160 commentors objected to the date of November 15 specified in the proposed rule for completion of verification activity and over 25 commentors supported this date. Those opposing this date believed it to be unreasonable for several reasons. Such commentors believed that other required activities at the beginning of the school year would interfere with verification activity and that the process of verification itself was so time-consuming that completion by November 15 would be difficult, if not impossible. Many of these commentors apparently were among those who believed that School Food Authorities could not begin verification activity until the date specified (October 15 in the proposed rule) to determine the number of applications to be verified. The Department wishes to emphasize that verification activity may begin as soon as the School Food Authority deems appropriate. However, the Department recognizes that there are many obligations imposed on School Food Authorities at the beginning of each school year and has therefore changed the date by which verification activity is to be completed to December 15 of each school year.

Thirteen commentors believed that verification itself represented a barrier to participation by eligible households. While the Department recognizes that there may be some barrier to participation present in any method used to prevent program abuse, the Department also recognizes that the necessity to reduce abuse makes the minimal verification requirement imposed by this final rule reasonable and equitable. In this final rule, the Department offers School Food Authorities the option to conduct less than one-half the number of verifications previously required. This rule provides for minimal verification activity, coupled with the streamlined application process for food stamp households, which together should significantly reduce any barrier to participation for eligible households while maintaining an effective deterrent to misrepresentation of household income or circumstances.

Approximately 35 commentors supported the elimination of the Special Milk Program from the verification requirements of this final rule, while 4 commentors opposed this change as discriminatory. The Department continues to believe, along with the majority of commentors addressing this issue, that the low value of program benefits received in the Special Milk Program for Children (Part 215) does not justify the administrative costs associated with verification. Therefore, this final rule eliminates the Special Milk Program from the minimum verification requirements imposed by this rule.

Over 30 commentors suggested one or more of the following: Exempt certain types of School Food Authorities from verification requirements; reduce the verification requirement to less frequent than annually; make verification optional; or reduce the number of verifications required to a fraction of one percent of total applications on file. The Department is of the opinion that the verification activity required by this final rule is the minimum amount necessary to maintain an effective level of deterrence. The verification study found that the deterrent effect established by the improved application required by this final rule caused a significant reduction in misreporting. However, the verification study also suggested that it was necessary to maintain a minimal level of detection activity (verification) to preserve this deterrent effect. Therefore, the Department has decided to offer two alternative methods of verification to School Food Authorities which are both designed to maintain this minimum level of detection activity.

The random method offered to School Food Authorities is based on verification of 3 percent of approved applications on file. This method requires a higher level of verification activity since selection of the applications to be verified is not based on procedures designed to identify those applications more likely to contain errors. This method maintains the level of verification activity required by the interim rule. Since many School Food Authorities and State agencies have indicated that they were reluctant to change verification systems already established, the Department is offering the random method to permit continuity in verification activity in these School Food Authorities.

The focused method of verification offers a significant reduction in the

number of verifications required. By focusing on those applications more likely to contain errors, the Department has reduced the number of verifications required to a minimum level. School Food Authorities using this method need verify only 1 percent of all applications on file, plus one-half of 1 percent of those applications which provided a food stamp case number instead of income information. The Department believes that this level of verification is the minimum necessary to preserve an effective deterrence to program abuse. This verification activity, when combined with the improved application form required by this final rule, should result in significant improvements in program integrity and administration.

It should be noted that the Department has previously established exemptions from verification requirements in § 245.6a(A)(5). These exempted entities include residential child care institutions, schools in which FNS has approved special cash assistance claims based on economic statistics regarding per capita income, schools in which all children are served with no separate charge for food service and no special cash assistance is claimed, and in some years, schools which participate in the Special Assistance Certification and Reimbursement Alternatives. Therefore, the Department has determined that no further reduction in verification activity is possible in this final rule.

Approximately 20 commentors suggested that the Department mandate higher levels of verification activity up to 100 percent of total applications on file. The Department wishes to emphasize that additional verification activity is left to the discretion of State agencies and School Food Authorities. The Department has established the minimum verification requirements in this final rule to impose as small a burden as possible on School Food Authorities and still maintain an effective level of deterrence. The Department will not mandate additional activity in the final rule but recommends it if a State agency or School Food Authority deems it advisable to improve program integrity.

Several commentors suggested that State agencies rather than FNS have authority to grant extensions for completion of verification activity by School Food Authorities. The Department believes that it is necessary to keep this discretion with FNS to ensure, to the extent possible, consistent standards of verification activity on a national basis.

Improved Application

Based on findings of the verification study, the proposed rule suggested improvements to the application for free and reduced price meals. These changes require that households submit total household income identified by source of income for each household member. The verification study found that this type of application significantly reduced income misreporting by households and would make a sizeable contribution to program integrity if used on a national basis. The verification study found that the improved application resulted in only 3 percent of totally ineligible applicants receiving free and reduced price benefits (verification study page 87). This verified error rate is contrasted with comparable error rates over 3 times as great in studies where the improved application was not utilized (verification study page 42). In effect, the improved application is best at deterring the most serious types of misreporting. Approximately 40 commentors stated that they believed that this type of application would represent a barrier to participation by many eligible households. Approximately 45 commentors, many with practical experience using an application of this type, supported its use. In addition to establishing that the improved application achieved a significant reduction in misreporting, the study produced no evidence that the improved application adversely affected the participation of eligible individuals. Further, the verification study reported that 86 percent of a sample of the households interviewed after completing the application were not concerned about reporting detailed income information for each adult member.

Additionally, this rule provides that food stamp households may, at their option, substitute their food stamp case number for income information. Since food stamp households represent a substantial portion of the children served in these programs, the substitution of a food stamp case number for income information should help assure that no participation barrier exists for those households.

Several commentors stated that the Department has not provided enough information concerning the verification study to enable commentors to submit fully informed comments. The Department made every reasonable effort to provide the verification study to all interested persons and organizations. The Department released the verification study to the public on April 1, 1984. The study was widely disseminated and was available to all individuals or organizations which requested copies. As appropriate, the Department has utilized findings of the verification study as the proposed rule and this preamble clearly state. The Department attempted to place the verification study on public display at the Office of the Federal Register but was informed that the study did not meet the legal standards specified for the display of public documents.

One commentor re-emphasized a point initially raised in the verification study about the *degree* to which evidence supports the findings that the improved application reduced errors. The verification study indicates that no definitive estimate of the *magnitude* of error reduction can be safely made because of the lack of a formal control group (page 81). However, the verification study findings unambiguously point out that there is overwhelming evidence to indicate that the improved application significantly reduces error. The Department's decision to recommend use of the application, therefore, was based on its demonstrated error-reducing capabilities, not the precise degree of error reduction which may actually be achieved.

Section 245.6(c) contains a provision allowing School Food Authorities to complete and file an application for needy families which fail to apply. This application should be completed using the best income and family size information available to the school. One commentor suggested that this procedure be codified in this final rule. The Department wishes to point out that this procedure has been in Part 245 for many years and has not been changed by either the proposed or this final rule.

Approximately 50 commenters believed that an application of the type required in this final rule would impose a significant increase in the time and staff needed by School Food Authorities to review and approve applications. Approximately 45 commenters, many representing School Food Authorities using applications of this type, supported the proposal to utilize this type of application. While the verification study did find that there was a marginal increase in time needed to process the application used in the study, other provisions of this final rule serve to mitigate this potential burden. It should be noted that the application used in the verification study was considerably more extensive in both information collection and in actual size than the application required by this final rule (verification study appendix A). The Department has utilized only

those features of the verification study application which give evidence of deterring program abuse. As a result, the recommended application gathers household income by source and household member. Since several other items on the verification study application are not required by this final rule, the Department does not expect any overall increase in processing time or cost associated with the improved application required by this final rule. The Department's reasoning for this conclusion is explained in detail later in the preamble.

In this final rule, the Department is also permitting food stamp households to substitute their food stamp case number for income information on the application for free and reduced price meals. Since food stamp households account for approximately one-half of all applicants for school meal benefits nationwide, this provision should substantially reduce the workload associated with application processing, especially in those School Food Authorities located in low-income areas with a high percentage of free benefit households, most of which are receiving food stamps. Applications which contain a food stamp case number instead of income will require *no* income review by the School Food Authority. Instead, School Food Authorities will, if the application meets all other requirements, automatically approve the children for free meals. Since the income determination is the most time-consuming component of application processing, this final rule offers significant administrative relief to many School Food Authorities.

One commenter suggested that it could cost School Food Authorities over $20 million per year to process an improved application. It should be noted that this estimation was based on an average additional cost of $1.50 above prior years application processing costs, as suggested by the verification study, multiplied by an estimated 15 million applications for free and reduced price meals submitted annually. Although the verification study did estimate that an additional $1.50 was needed to process the verification study application, this estimated increase in cost may not reasonably be applied to the application required by this final rule (verification study page 79). The application required by this final rule is significantly less burdensome than the application utilized during the verification study. The application required by this final rule requires less information and will be simpler to process. Further, the verification study points out that even if there were a slight cost increment for processing a new kind of application, such processing costs are likely to diminish in time as School Food Authorities become more familiar with the improved form.

The Department estimates that initially the improved application form and the lack of familiarity with processing of this form may produce an increase in processing costs for nonfood stamp households. However, the income exemption for food stamp households in this final rule will provide a reduction in application processing costs which will more than compensate most School Food Authorities. Approximately one-half of all applicants for school meal benefits are from households which also receive food stamps and these households will not be required to provide income information on the application. The expedited processing of applications from food stamp households will more than compensate most schools for the time spent on both the improved application and the entire verification process, regardless of which verification method is selected by the school.

Additional cost savings result from the focused sampling and verification method offered by this final rule which requires less than one-half as many verifications as required by the interim rule. The Department cannot accurately project cost savings in this area because they are dependent on the number of School Food Authorities selecting this focused method of verification. However, the Department anticipates significant cost savings for large School Food Authorities selecting this method.

Verification Methods

The proposed rule offered two alternative methods of verification to School Food Authorities. The "random" sampling method required that School Food Authorities verify the lesser of 3 percent or 3,000 of the approved free and reduced price applications. The "focused" verification method specified that School Food Authorities were required to select and verify: (1) The lesser of 1 percent or 1,000 of total applications, selected from non-food stamp households claiming monthly income within $100 or yearly income with $1200 of the income eligibility limit for free or reduced price meals; plus (2) the lesser of one half of 1 percent (.5%) or 500 applications of food stamp households that provided food stamp case numbers in lieu of income information.

Approximately 70 commentors generally supported the availability of an alternative verification method. Although some of these commentors stated that they preferred one verification method over another for a variety of reasons, their comments supported the flexibility offered by the proposed rule. Commentors expressing opposition to verification in general have been addressed previously in this preamble.

Fourteen commentors stated that they opposed use of the focused verification method because they believed it to be discriminatory to a certain group of households. It is worth noting that the focused method relies only on income information provided by the household and does not discriminate with respect to race, color, handicap, national origin, sex or age. This focused approach is based on statistical formulas which distinguish applications likely to result in an excess benefit reward.

Some commentors believed that households verified under this method would be likely to be singled out year after year as subjects of verification activity. The Department has not specified in this final rule the procedures to be used by School Food Authorities to select individual applications for verification from the group of applications claiming monthly income near the income eligibility limit for free and reduced price meals. The Department strongly recommends that School Food Authorities not verify the same applicant household in consecutive years if that household has been the subject of a previous verification which confirmed eligibility.

It should be noted that the verification study provides clear support for focusing verification activity (page 64, 91). Further, Phase I of the Income Verification Pilot Project demonstrated that use of an error-prone model similar to that used in this final rule was four times more likely to identify persons receiving excess benefits than use of random-sampling procedures ("Income Verification Pilot Project (IVPP), the Development Of An Error-Prone Model For School Meal Programs, Revised August, 1983", page 3). Further, this type of focused monitoring has been used by other Federal programs, such as the Food Stamp Program, for many years and has proved to be most effective in concentrating limited monitoring resources where necessary.

The Department does not believe that focused verification is discriminatory and believes further that the number of verifications required is so minimal that it is unlikely that any one household will receive disproportionate attention year after year. More importantly, the Department is confident that school

officials have the ability and desire to devise a selection method that is equitable to the families in their communities. School officials submitting comments are representative of school officials nationwide and all seemed very concerned about protecting parent-educator relationships.

Approximately 40 commentors stated that they believed the selection process for the focused verification method would be so time-consuming in certain School Food Authorities that the time needed would exceed that saved by performing fewer verifications. The Department has retained the random method of verification as an option for those School Food Authorities which believe that focused verification is unsuitable for their local circumstances. However, the Department does not believe that the selection process using the focused method will be time-consuming. Many of these commentors seemed to believe that School Food Authorities must randomly select applications to be verified using the focused method from all applications with monthly income within $100 or yearly income within $1200 of the income eligibility limit for free or reduced price meals. This would require that School Food Authorities wait until all such applications have been received and classified prior to proceeding with any verification activity.

The Department wishes to emphasize that School Food Authorities may verify any application after approval which falls within the income limits for focused verification. Since most School Food Authorities can, based on the experience of prior years, accurately estimate the minimum number of total verifications which will be required to meet the requirements of the focused method, verification activity can commence as soon as those applications are approved. It is not necessary to categorize all applications to meet the requirements of focused verification.

However, these commentors also point out that the requirement to verify the lesser of one-half percent (.5%) or 500 of applications which substitute a food stamp case number in lieu of income information does require that all applications of this type be identified before the minimum number to be verified is known. This will be true of the first year until a pattern is established. In subsequent years schools should have the experience to accurately estimate the number of verifications required. Schools wishing to get an early start in the first year may start verification of food stamp households based on their best estimates. In any event, those School Food Authorities which believe that the focused method presents practical difficulties due to local circumstances may, of course, utilize the random method although it has a higher number of required verifications.

Six commentors stated that they believe that State agencies should be able to determine which verification method is most suitable on a statewide basis. These commentors argue that this would simplify State agency training and monitoring efforts. The Department agrees with these commentors that administrative efficiencies could result when one method is mandated on a statewide basis. In addition, providing this authority to State agencies would be consistent with general practice in these programs. The Department has, as a general rule, always permitted State agencies to establish statewide policy if consistent with Federal requirements. Therefore, the Department has provided in this final rule that a State agency may require that all School Food Authorities within that State perform one method of verification; i.e. random or focused. Of course, additional verification activity may be performed at local discretion.

Four commentors suggested that focused verification does not address certain types of applications which they consider to be more likely to misreport income. Examples cited include households which report "zero" income or those households terminated due to verification in previous years. The verification study did not find that these kinds of applications were especially likely to contain errors and, therefore, has not focused verification activity on these households. However, the Department wishes to emphasize that the verification requirements of this rule are *minimum* requirements and that additional verification activity may be conducted up to and including 100% of all applications as deemed appropriate by the School Food Authority. As stated previously, the Department endorses verification efforts which enhance program integrity.

Clarification of Sample Selection Process

Approximately 40 commentors requested clarification of the procedures to be used to select applications for verification using the focused method. The number of applications which must be verified is based on the applications on file as of October 31 of each school year. However, verification activity may begin prior to that date since October 31 is used only to determine the minimum number of verifications needed. School Food Authorities using the *focused* method must verify the lesser of 1 percent or 1000 of *total* approved applications. Total applications means all non-food stamp *and* food stamp applications. The School Food Authority must arrive at this total number, determine what one percent of this total is, and then select that number of applications from non-food stamp households with income near the eligibility limits (with monthly income within $100 or yearly income within $1200 of the income eligibility limits for free and reduced price meals). In addition, School Food Authorities must verify the lesser of one-half percent (.5%) or 500 of those applications which substitute a food stamp case number for income information. The number of these verifications required is based on the number of applications which substitute a food stamp case number for income information, not the total number of applications on file with the School Food Authority.

Example—Focused Sampling could be accomplished as follows using, for this example, a School Food Authority with 900 approved applications which includes 600 food stamp households.

1. Count *all* approved applications, including food stamp households, to determine the number required to fill the 1% non-food stamp sample size. (1%×900=9)

2. Separate applications into two groups, non-food stamp and food stamp households.

3. From the non-food stamp group select the sample of households (9) that report income within $100 monthly or $1200 yearly below the income eligibility limit for free or reduced price meals and proceed to verify their income.

4. From the food stamp group determine the number required to fill the .5% sample size. (.5%×600=3)

5. Submit a list of the selected names (3) and case numbers to the food stamp office for confirmation of current receipt of food stamps or request a current "Notice of Eligibility" from the household.

Food Stamp Households

The proposed rule contained several provisions designed to expedite the certification and verification procedures for food stamp households. The proposed rule would permit food stamp households to substitute their food stamp case number in lieu of income information on the free and reduced price applications. School Food Authorities receiving such applications would be able to determine eligibility without evaluating income information. Approximately 60 commentors

supported this provision. These commentors believed that this provision would eliminate duplication of verification effort already accomplished by the food stamp office and would expedite the application approval process. Eleven commentors opposed this provision on the grounds that it treated food stamp households differently than other households. The Department wishes to emphasize that the substitution of food stamp numbers instead of income information is a voluntary act by the household. No School Food Authority or State agency may require that a food stamp case number be given by the household. Further, the Department does not believe that this provision treats food stamp households differently. These households must have their income verified to participate in the Food Stamp Program. By allowing food stamp households to substitute their food stamp case number for income information, the Department is permitting these households to avoid a duplicative process. Eight commentors opposed this provision because they believed that the potential for misuse or the food stamp case number of verification information obtained from the food stamp office outweighed any benefits. The Department wishes to emphasize that the use of food stamp case numbers is specifically restricted in this final rule. This final rule provides that food stamp case numbers are to be used only: (1) In lieu of income information in the free and reduced price application and (2) to verify current receipt of food stamp program benefits by the applicant household. No other uses are permitted in this final rule. The Department does not believe that it is necessary to impose any additional restrictions on the use of food stamp case numbers or food stamp participation information since their use is already clearly specified.

The second major provision of the proposed rule affecting food stamp households would provide an expedited method of verification for those households. The proposed rule would permit School Food Authorities to verify applications which contained a food stamp number instead of income information in one of two ways. School Food Authorities could opt to verify those applications by either confirming with the local food stamp office that the household is currently receiving Food Stamp Program benefits or by obtaining a copy of a current "Notice of Eligibility" for Food Stamp Program benefits from the household. Fourteen commentors suggested that difficulties in working with local food stamp offices may delay timely completion of these verifications. The Department recognizes that verification of these households is contingent on the cooperation of local food stamp offices and will encourage such offices to expedite this verification activity.

Several commentors stated that the "Notice of Eligibility" may not always be available from the household to confirm current food stamp status or that another document is more commonly used in their area. The Department wishes to emphasize that the "Notice of Eligibility" is the document issued to the food stamp household periodically and which states the period of eligibility for food stamp benefits. If School Food Authorities elect to accept another document as a substitute for the "Notice of Eligibility" it should clearly establish the *current* receipt by that household of food stamp benefits. The Authorization to Participate (ATP) document is usually issued monthly and is exchanged by the household at a bank or other issuance site for the actual food stamps. The ATP Card may serve to establish current receipt of food stamps by the household. However, the Food Stamp Identification Card by itself is not sufficient since it is issued at the time of initial certification, does not usually contain an expiration date, *does not* establish current participation in the Food Stamp Program and is usually retained by the household after participation in the Food Stamp Program has ended. The language of § 245.6a(a)(3) has been changed from that of the proposal to provide that School Food Authorities may accept from households selected for verification other offical documentation issued by the food stamp office which establishes current participation in the Food Stamp Program.

Several commentors pointed out that the provisions in § 245.6a(a)(3) concerning adverse notice for food stamp households provide those households with a substantially longer period of time in which they may continue to participate in the program than non-food stamp households after verification fails to establish eligibility. After review, the Department believes these commentors to be correct. The provision, as proposed, permitted food stamp households to submit income information along with documentation when it was established that the household was not currently receiving food stamps. Only when the household failed to provide this information or when the information did not establish eligibility was the food stamp household notified that their benefits would be terminated. Non-food stamp households, on the other hand, are immediately notified that their benefits will be terminated after verification establishes that the household is not eligible. Therefore, the Department is changing this provision so that when current participation in the Food Stamp Program cannot be established for a household which used a food stamp case number instead of income information, the household will be provided with a notice that benefits will be terminated within 10 days, unless the household submits income information and documentation establishing eligibility for free or reduced price meal benefits. All other requirements of § 245.6a(e) dealing with adverse action shall apply. This change ensures that both food stamp and non-food stamp households are given 10 days notice prior to a reduction or termination of benefits.

Notice of Verification

The proposed rule required that School Food Authorities provide written notice of verification to those households selected for verification. This requirement applies to all verification activity except that utilizing a system of records. Seven commentors opposed this rule arguing that this required additional paperwork and was not needed. Approximately 40 commentors supported this provision believing that it offered protection to the household being verified. The Department has retained this provision in the final rule. The Department believes that written notification will best serve to protect the interests of all involved. The Department wishes to point out however that this notice need not be separate from other written correspondence and may be a part of other notices supplied to the household.

Clarifications

Several commentors suggested that the language found at § 245.6a(a) has changed from that found in the interim rule so that the Department is imposing verification requirements directly on School Food Authorities. The Department inadvertently changed this language in the proposal and shares the concerns of those commentors. This final rule will therefore specify that "* * * State agencies shall ensure that * * * School Food Authorities * * *" One commentor pointed out that the language in § 245.6(a) was inconsistent since it contained references to both families and households. The Department shares the concerns of this commentor and has removed all

references to family in this section and has used the term household exclusively. One commenter stated that the definition of verification found at § 245.2(k) was confusing and did not clearly establish the extent of permissible verification activity. After review, the Department agrees with this commentor and has modified the definition of verification to more closely follow the language of the National School Lunch Act, § 245.2(a–3) and § 245.6(b). The definition has been changed in this final rule to be consistent with the sentence in the Act which states in § 9(b)(2)(c) that "The Secretary, States and local school food authorities may seek verification of the data contained in the application." Therefore, in this final rule "verification" means confirmation of eligibility for free or reduced price benefits under the National School Lunch program or School Breakfast Program. Verification shall include confirmation of income eligibility or current participation in the Food Stamp Program. At State or local discretion verification may also include confirmation of any other information on the application which is defined as documentation at § 245.2(a–3). The Department believes that the definition of verification provided in the proposed rule was effectively the same. However, the Department also believes that the definition of verification provided by this final rule does more closely conform to the statutory and regulatory provisions discussed above. Several other nonsubstantive changes were made to clarify the regulations.

Further explanations and history on the application and verification process in schools and the first phase of the verification study may be found in the preambles of the previously published proposed and interim rules cited earlier in this preamble and are incorporated by reference.

List of Subjects in 7 CFR Part 245

Food assistance programs, Grant programs—Social programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Reporting and recordkeeping requirements.

PART 245—DETERMINATION OF ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

Accordingly, Part 245 is amended as follows:

1. In § 245.2, paragraphs (a–3) and (k) are revised as follows:

§ 245.2 Definitions.

* * * * *

(a–3) "Documentation" means the completion of the following information on a free and reduced price application: (1) Names of all household members; (2) social security number of each adult household member or an indication that a household member does not possess one; (3) household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income; or in lieu of income information, the Food Stamp Program case number for those households currently receiving food stamps; and (4) signature of an adult member of the household.

* * * * *

(k) "Verification" means confirmation of eligibility for free or reduced price benefits under the National School Lunch Program or School Breakfast Program. Verification shall include confirmation of income eligibility or current participation in the Food Stamp Program. At State or local discretion verification may also include confirmation of any other information in the application which is defined as documentation in § 245.2(a–3).

2. In § 245.5, paragraph (a)(1)(iii) is revised; paragraphs (a)(1) (iv) through (x) are redesignated as paragraphs (a)(1) (v) through (xi); and a new paragraph (a)(1)(iv) is added. The revision and addition read as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) * * *

(1) * * *

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete documentation of eligibility information including names of all household members, social security numbers of all adult household members or an indication that a household member does not possess one, total household income and the amount and source of income received by each household member, and the signature of an adult household member;

(iv) an explanation that households currently receiving food stamps may submit their Food Stamp Program case number instead of income information;

3. In § 245.6:

* * * * *

a. Introductory paragraph text of (a) is amended by revising the third sentence; and by adding one sentence after the fourth sentence;

b. Paragraph (a)(1) is amended by adding the words "contacting a Food Stamp Office to determine current receipt of food stamps," between the words "determine income," and "contacting the State" in the fifth sentence;

c. Paragraph (a)(2) is amended by removing the third sentence; and

d. Paragraph (d) is removed.

The revision and addition read as follows:

§ 245.6 Application for free and reduced price meals and free milk.

(a) * * * The information requested in the application with respect to the current annual income of the household shall be limited to total household income and the income received by each member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income). * * * The application shall require applicants to provide total households income and the income received by each household member identified by source of income; and shall enable household receiving food stamps to provide their Food Stamp Program case number in lieu of income information. * * *

* * * * *

4. In § 245.6a:

a. Introductory text of paragraph (a) is revised;

b. The first sentence of paragraph (a)(2) is revised;

c. Paragraph (a)(3) is revised; and

d. Paragraph (b) is amended by removing the words "school conferences" in the first sentence, and by removing paragraph (b)(4);

The revisions read as follows:

§ 245.6a Verification requirements.

(a) *Verification Requirement.* State agencies shall ensure that by December 15 of each School Year, School Food Authorities have selected and verified a sample of their approved free and reduced price applications in accordance with the conditions and procedures described in this section. Verification activity may begin at the start of the school year but the final required sample size shall be based on the number of approved applications on file as of October 31. Any extensions to these deadlines must be approved in writing by FNS. School Food Authorities are required to satisfy the verification requirement by using either random sampling or focused sampling as described below. *Random* sampling consists of verifying a minimum of the lesser of 3 percent or 3,000 applications

which are selected by the School Food Authority. *Focused* sampling consists of selecting and verifying a minimum of: the lesser of 1 percent or 1,000 of total applications selected from non-food stamp households claiming monthly income within $100 or yearly income within $1200 of the income eligibility limit for free or reduced price meals; plus the lesser of one half of 1 percent (.5%) or 500 applications of food stamp households that provided food stamp case numbers in lieu of income information. A State may require all School Food Authorities to perform either random or focused sampling. School Food Authorities may choose to verify up to 100 percent of all applications to improve program integrity. Any State may, with the written approval of FNS, assume responsibility for complying with the verification requirements of this Part within any of its School Food Authorities. When assuming such responsibility, States may utilize alternate approaches to verification provided that such verification meets the requirements of this Part.

* * * * *

(2) *Notification of selection.* Households selected to provide verification shall be provided written notice that they have been selected for verification and that they are required, by such date as determined by the School Food Authority, to submit the requested verification information to confirm eligibility for free or reduced price benefits. * * *

(3) *Food stamp recipients.* Verification of the eligibility of households who provide their Food Stamp Program case number on the application in lieu of income information shall be accomplished either by confirming with the local food stamp office that the household is currently receiving Food Stamp Program benefits *or* by obtaining from the household a copy of a current "Notice of Eligibility" for Food Stamp Program benefits or equivalent official documentation of current participation issued by the food stamp office. If it is not established that the household is currently receiving food stamp benefits, the procedures for adverse action specified at § 245.6a(e) shall be followed. The notification of forthcoming termination of benefits provided to such households shall include a request for income information and for written evidence which confirms household income to assist those households in establishing continued eligibility for free meal benefits.

* * * * *

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

Dated: June 21, 1984.

John W. Bode,

Deputy Assistant Secretary for Food and Consumer Services.

[FR Doc. 84-16944 Filed 6-25-84; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 332]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 332 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 29-July 5, 1984. This regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 332 (§ 908.632) becomes effective June 29, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202-447-5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricutural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The regulation is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

The regulation is consistent with the marketing policy for 1983-84. The marketing policy was recommended by the committee following discussion at a public meeting on February 14, 1984. The committee met again publicly on June 19, 1984, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges. The committee reports the demand for Valencia oranges continues to decline.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been notified of the regulation and its effective date.

List of subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

Section 908.632 is added as follows:

§ 908.632 Valencia Orange Regulation 332.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period June 29, 1984, through July 5, 1984, are established as follows:

(a) *District 1:* 184,000 cartons;

(b) *District 2:* 266,000 cartons;

(c) *District 3:* Unlimited cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: June 21, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-16959 Filed 6-25-84; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to require improvements in the design and operation of light-water-cooled nuclear power plants to reduce the likelihood of failure of the reactor protection system to shut down the reactor (scram) following anticipated transients and to mitigate the consequences of anticipated transients without scram (ATWS) event. The final rule requires the installation of certain equipment in nuclear power plants. It also encourages the development of a reliability assurance program for the reactor trip system on a voluntary basis. This will significantly reduce the risk of nuclear power plant operation.

EFFECTIVE DATE: July 26, 1984.

FOR FURTHER INFORMATION CONTACT: David W. Pyatt, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 443–7631.

SUPPLEMENTARY INFORMATION: An anticipated transient without scram (ATWS) is an expected operational transient (such as a loss of feedwater, loss of condenser vacuum, or loss of offsite power to the reactor) which is accompanied by a failure of the reactor trip system (RTS), a part of the protection system, to shut down the reactor. The reactor trip system consists of those power sources, sensors, initiation circuits, logic matrices, bypasses, interlocks, racks, panels and control boards, and actuation and actuated devices that are required to initiate reactor shutdown; this includes circuit breakers, the control rods and control rod mechanisms. That portion of the RTS exclusive of the control rods and control rod mechanisms is here referred to as the scram system. ATWS accidents are a cause of concern because under certain postulated conditions they could lead to severe core damage and release of radioactivity to the environment. The ATWS question involves safe shutdown of the reactor during a transient, if there is a failure of the RTS. There have been precursors to an ATWS; the latest was a failure of the automatic portion of the RTS at the Salem 1 nuclear generating station on February 25, 1983. In that incident, manual shutdown was accomplished after 30 seconds, and no core damage or release of radioactivity occurred.

On November 24, 1981, the Commission invited comments on three alternative proposed rules relating to ATWS (46 FR 57521). Each of the three alternative proposed rules had the objective of reduction of risk from ATWS and each featured a different approach to achieve that objective. One alternative (the Staff Rule) emphasized individual reactor evaluation to identify needed improvements. The second alternative (the Hendrie Rule) emphasized reliability assurance and would have also required certain hardware modifications. The third alternative, proposed by the Utility Group on ATWS in petition for rulemaking PRM 50–29, prescribed specific changes that were keyed to the type of reactor and its manufacturer.

Thirty-nine public comments were received at or close to the April 23, 1982 deadline for submission of comments. An additional comment was received on June 24, 1982. Copies of the comments may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. The following organizations and individuals provided comments:

1. F. I. Lewis, Philadelphia, Pennsylvania (private citizen)
2. S. L. Hiatt, Mentor, Ohio (private citizen)
3. Washington Public Power Supply System (WPPSS)
4. Standardized Nuclear Unit Power Plant System (SNUPPS)
5. South Carolina Electric and Gas Company (South Carolina)
6. General Electric Company (GE)
7. Duke Power Company (Duke)
8. Atomic Industrial Forum (AIF)
9. Detroit Edison (DE)
10. Mississippi Power and Light Company (MP&L)
11. Texas Utilities Generating Company (TUGC)
12. Commonwealth Edison Company
13. Combustion Engineering, Incorporated (CE)
14. The Utility Group on ATWS, representing 22 utilities
15. Combustion Engineering Owners Group
16. Houston Lighting and Power (HL&P)
17. Portland General Electric Company (PGEC)
18. GPU Nuclear (GPU)
19. Babcock and Wilcox Company (B&W)
20. Ebasco Services, Incorporated (Ebasco)
21. Public Service Electric and Gas Company (PSE&G)
22. Carolina Power and Light Company (CP&L), first comment
23. Stone and Webster Engineering Corporation (S&W)
24. Florida Power Corporation (FPL)
25. Gulf States Utilities Company (Gulf)
26. Duquesne Light Company
27. Wisconsin Public Service Corporation (WPSC)
28. Pacific Gas and Electric Company (PG&E)
29. Tennessee Valley Authority (TVA)
30. Pennsylvania Power and Light Company (PP&L)
31 Virginia Electric and Power Company (VEPCO)
32. Arkansas Power and Light Company. (AP&L)
33. Alabama Power Company (Alabama)
34. Wisconsin Electric Power Company (WEPC)
35. Power Authority of the State of New York (PASNY)
36. Yankee Atomic Electric Company (Yankee)
37. Public Service Company of Indiana (Indiana)
38. Northeast Utilities Service Company (NUSCO)
39. Carolina Power and Light Company (CP&L), second comment
40. American Electric Power Service Corporation (received June 24, 1982)

Following are members of the Utility Group on ATWS, the petitioner in the PRM–50–29.

Arkansas Power and Light Company
Boston Edison Company
Connecticut Yankee Power Company
The Detroit Edison Company
Florida Power Corporation
Gulf States Utilities Company
Maine Yankee Atomic Power Company
Northeast Nuclear Energy Company
Pacific Gas and Electric Company
Public Service Electric and Gas Co.
Washington Public Power Supply System
Baltimore Gas and Electric Company
Commonwealth Edison Company
Consumers Power Company
Duke Power Company
Florida Power and Light Company
Long Island Lighting Company
Nebraska Public Power District
Omaha Public Power District
Pennsylvania Power and Light Company
Vermont Yankee Nuclear Power Corp.

The breakdown by preference among commenters for the three alternative proposed rule approaches is as follows:

Support "Utility Rule" (PRM–50–29)

WPPSS
DE
Commonwealth Edison
The Utility Group on ATWS
HL&P
Ebasco
PSE&G
FPL
Gulf
PP&L
Yankee

Support "Hendrie Rule" (Most support for this option is tentative with many reservations.)

South Carolina
Duquesne

CP&L, first comment (could also be considered a "No Rule" choice)
WPSC
VEPCO
S&W

Favor No Rule

SNUPPS
GE
Duke
AIF
MP&L
TUGC
CE
CE Owners Group
PGEC
GPU
B&W
PG&E
AP&L
Alabama
WEPC
Indiana
CP&L, second comment
NUSCO
American Electric

The Staff Rule option was favored by Ms. S. L. Hiatt who commented that it was the most stringent of the three proposals, but that it would be better to return to the implementation of specific hardware changes than to require evaluation models. Commenters TVA and PASNY stated a preference for "Alternative 2A" of NUREG-0460[1], Vol. 4, which is very similar to the Utility Rule. The comments from Mr. M I. Lewis did not favor any of the alternatives, but he pointed out limitations of both NRC-proposed rules (limitations of modeling) and felt that the Commission was not fully addressing ATWS.

Most of the utility commenters preferred that the Commission promulgate no rule on ATWS. However, many commenters chose either the Utility Rule or the Hendrie Rule as the more favorable of the alternatives presented (including some commenters within the Utility Group). The No Rule category described above includes those who felt that the risks from ATWS are already sufficiently low, plus those who recommended combining the ATWS rulemaking with other Commission activities such as the Severe Accident Program or the development of a Safety Goal.

The comments provided by the Utility Group on ATWS consisted of a three volume technical report which includes a review and evaluation of past NRC and industry studies, a generic but substantial probabilistic risk assessment of the issue for each NSSS vendor, and a value-impact analysis of all three proposed rules. The conclusions are:

1. The Staff and Hendrie Rules fail the value-impact test.

2. Only the Utility Rule is consistent with current NRC policies.

3. The record and notice for the Staff and Hendrie Rules are inadequate.

In order to resolve the ATWS rule issue, it was necessary for the NRC staff to evaluate the Utility Group report. This was done by a technical assistance contract.

A report which provided a critique of the Utility Group comments was prepared by Energy Incorporated through Sandia National Laboratories and may be examined at the Commission's Public Document Room (PDR) at 1717 H Street, Washington, D.C. Also, a summary of 39 public comments, as well as a plan to resolve the ATWS rule, is available in SECY-82-275 at the PDR.

As proposed in SECY-82-275 and the Commission briefing on July 13, 1982, a Task Force and Steering Group of NRC personnel from several offices was formed to consider the following alternatives:

1. Promulgation of no ATWS rule or including ATWS under the Severe Accident Program;

2. Adoption of the proposed or a modified version of the Utility Group Rule (PRM-50-29);

3. Adoption of the Staff Rule or a modification of it; or

4. Adoption of those portions of the Hendrie Rule for which there exists a technical basis.

The Commission has given careful consideration to all the comments and is now publishing a final rule. This final rule uses in part the same approach that is used in the Utility Group's petition for rulemaking. Prescribed changes, keyed to the reactor's type and manufacturer, are set out in the final rule. The costs and values of these changes and of other considered changes are discussed in a document on file in the Commission's Public Document Room, entitled "Recommendations of the ATWS Task Force."

Summary of Staff, Hendrie, and Utility Rules

The Staff Rule (46 FR 57521) would have resolved ATWS by establishing performance criteria (e.g., there would be analyses to verify that Service Level C of the ASME Boiler and Pressure Vessel Code would not be exceeded, fuel integrity would be maintained, there would be no excessive radioactivity release, the containment would not fail, and long-term shutdown and cooling would be assured). The Hendrie Rule (46 FR 57521), while using much of the same information base as the Staff Rule, proposed to resolve ATWS by establishing a reliability assurance program for systems that prevent or mitigate ATWS accidents and prescribing certain hardware modifications which would allow for: (1) Automatically tripping recirculation pump of a BWR under conditions indicative of an ATWS; (2) automatically actuating the standby liquid control system (SLCS) for BWRs; (3) providing a reliable scram discharge volume for BWRs; (4) providing for the prompt, automatic initiation of the auxiliary feedwater system for conditions indicative of an ATWS; and (5) assuring that the instruments necessary for the diagnosis of and recovery from ATWS accident sequences will not be disabled. Finally, the Utility Rule proposed specific design modifications for each reactor manufacturer. It contained proposals that: (a) all Westinghouse reactors have initiation of the auxiliary feedwater system and turbine trip diverse from the reactor protection system; (b) all Combustion Engineering and Babcock and Wilcox reactors have diverse initiation of auxiliary feedwater and turbine trip (similar to Westinghouse) and a diverse scram system; and (c) existing boiling water reactors manufactured by General Electric have (1) a means to trip the recirculation pumps upon receipt of a signal indicative of an ATWS, (2) a diverse scram system, and (3) a modification of the scram discharge volume. Also, new (three years after the rule becomes effective) General Electric plants would have a standby liquid control system increased to 86 gpm and all reactor licensees would institute training for operators.

Basis for Final Rule as Promulgated by the Commission

The vast majority of the commenters felt that the approach of the Staff Rule was too open-ended in terms of costs to resolve ATWS (e.g., the analyses could be very costly and time consuming). The Hendrie Rule was found difficult to interpret by most commenters. The ATWS Steering Group opted to evaluate generic plants, in a fashion similar to the Utility Group approach, and define the various fixes and estimate the reduction in probability for ATWS sequences as each additional requirement was added. This would then give a value (reduction in risk) that could be compared to the impact (cost in dollars) of each

[1] A free single copy of NUREG-0460, Vol. 4, to the extent of supply, may be requested for public comment by writing to the Publication Services Section, Document Management Branch, Division of Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

incremental requirement. There are large uncertainties in these analyses, and the detailed results of the analyses can be found in the report entitled "Recommendations of the ATWS Task Force" (discussed above). A brief discussion of the final rule's provisions, including value/impact evaluations, is given next:

Diverse and Independent Auxiliary Feedwater Initiation and Turbine Trip for PWRs: § 50.62(c)(1)

This was proposed by the Utility Group on ATWS. It consists of equipment to trip the turbine and initiate auxiliary feedwater independent of the reactor trip system. It has the acronym AMSAC, which stands for *A*uxiliary (or *A*TWS) *M*itigating *S*ystems *A*ctuation *C*ircuitry. It has a highly favorable value/impact for Westinghouse plants[2] and a marginally favorable value/impact for Combustion Engineering and Babcock and Wilcox plants. Since it has the potential for a spurious trip of the reactor which reduces its value/impact, it should be designed to minimize these trips.

Diverse Scram System: 50.62 (c)(2) and (c)(3)

This was proposed by the Utility Group on ATWS for General Electric, Combustion Engineering, and Babcock and Wilcox plants. It has a favorable value/impact from the Staff's analysis. However, the principal reasons for requiring the feature are to assure emphasis on accident prevention and to obtain the resultant decrease in potential common cause failure paths in the trip system. It also has the potential for a spurious trip of the reactor; therefore, it should be designed to minimize spurious trips. For General Electric plants, installation may extend by one or two days the downtime during a refueling outage.

A diverse scram system for Westinghouse plants was not a recommendation of the Utility Group on ATWS and was not a clear requirement of the Staff Rule or the Hendrie Rule; although the Utility Group on ATWS interpreted the Staff Rule to include it. The system does, however, have a marginally favorable value/impact for Westinghouse plants; assures emphasis on accident prevention, and results in a minimization of the potential for common cause failure paths. To assure full opportunity for public comment, the requirement for a diverse scram system for Westinghouse plants will be published separately as a proposed rule.

[2] The installation of a diverse scram system significantly affects the value/impact of AMSAC.

Increased Standby Liquid Control System (SLCS): § 50.62(c)(4)

The SLCS is a system for injecting borated water into the reactor primary coolant system. The neutron absorption by the boron causes shutdown of the reactor. Addition of this system was proposed by the Utility Group on ATWS for new plants (those receiving an operating license three years after the effective date of the final rule). The Commission believes that, with the use of the Emergency Procedure Guidelines proposed by the BWR Owners Group and General Electric that are being implemented at operating BWRs, increasing the SLCS capacity for operating plants may insure an intact containment for isolation transients, although there is uncertainty in containment failure modes. Because of the vulnerability of BWR containments to ATWS sequences, the Commission has determined that this enhanced mitigation feature is warranted. The high pressure portion of the ECCS of BWR/5 and BWR/6 licensees (HPSC) is injected into spray spargers in the core exit plenum. For these plants, the preferred location for the injection of the borated water from the SLCS is the HPCS line just external to the reactor vessel instead of the standpipe at the core inlet plenum. A similar location is preferred for those BWR/4 licensees with HPCI injection into spargers in the core exit plenum. This injection location provides significant improvement in mixing of the borated water, particularly under low vessel water level conditions such as encountered when the EPGs are followed. This injection location is also preferred, since it could prevent local power increases and possible power excursions during the recovery phase of an ATWS when cold unborated ECCS water could be added above the core. Some BWR/5 and BWR/6 licensees already have this injection location and have designed the SLCS accordingly.

Automatic Recirculation Pump Trip for BWRs: § 50.62(c)(5)

Recirculation pump trip (RPT) was proposed as a rule requirement by the Utility Group on ATWS. This safety feature will result in a reduction of reactor power from 100 percent to about 30 percent following a transient (and failure to scram) within a minute or so. This proposed requirement has already been implemented on all operational BWRs in response to a show cause order dated February 21, 1980. The BWR owners generally agree that this is a necessary requirement, and it is being included in the final rule for completeness.

Automatic Initiation of Standby Liquid Control System

One of the alternatives considered by the Task Force was an automatically initiated standby liquid control system with a capacity of greater than 86 gpm (such as 150–200 gpm). This would have resulted in a considerable risk reduction (about a factor of seven) after the ARI is installed for operating plants. Unfortunately, the cost to do this (based on information supplied by the Utility Group on ATWS) is on the order of $24 million per plant and is significantly impacted by the costs of downtime from an inadvertent trip which would inject boron into the reactor water and by the costs of downtime for installation in existing plants. The value/impact does not favor this alternative for existing plants.

New plants (those which will receive construction permits after the effective date of this rule) will be required to have equipment for automatic initiation of the SLCS. Most of those plants already have been designed for this feature. Also, other plants that have been designed and built to include this feature must utilize the feature. The equipment for automatic SLCS actuation should be designed to perform its function in a reliable manner and to provide high reliability against spurious actuation.

Adding Extra Safety Valves or Burnable Poisons

One of the alternatives considered by the Task Force was adding more safety valves to plants manufactured by Combustion Engineering (CE) and Babcock and Wilcox (B&W). This would reduce the peak pressure in the reactor vessel and yield a higher probability of the plant surviving an ATWS with no core damage. The peak overpressure could also be reduced by modifying the core behavior (the fraction of the time the moderator temperature coefficient is unfavorable) by adding burnable poisons. The Utility Group on ATWS estimated that installing larger valve capacity could cost up to $10 million per plant. A large fraction of this cost is the downtime for installation of the valves. While the probability of ATWS can be reduced about a factor of three or more, the value/impact is unfavorable for this alternative for existing plants. These plants all have large dry containments and will be most able to mitigate the radiological consequences from an ATWS. This rule does not cover enhanced pressure relief capacity for new CE and B&W plants. However, the Commission expects that this issue

would be addressed during the NRC's design review of any specific new plant or standard plant application.

Need for all Control Rods to be Inserted for PWRs

By using soluble boron for burnup and xenon control, PWRs normally operate at or near 100 percent power with control rods nearly out (except for some Babcock and Wilcox "rodded" reactors which keep one bank inserted for xenon control). Thus, nearly all rods are available to participate in a scram.

Insertion of only about 20 percent (approximately 10) of the control rods is needed to achieve hot, zero power provided that the inserted rods are suitably uniformly distributed. What is important is the uniform spacing of the rods. In installing a diverse scram system, the licensee can allow for partial scram failures if it is demonstrated that the rod insertion pattern is sufficiently uniformly spaced such that a hot, zero power is achieved.

Considerations Regarding Reliability Assurance

As a result of the failure of the Salem Unit 1 reactor to scram automatically on February 25, 1983, the NRC conducted an investigation of the events (see NUREG–0977, "NRC Fact-finding Task Force Report on the ATWS Events at Salem Nuclear Generating Station, Unit 1, on February 25, 1983" [3]). One of the principal findings was the lack of adequate attention being paid to the reliability of the reactor trip system. The Salem Generic Issues Task Force recommended to the Commission that a reliability assurance program be included in the final ATWS rule (NUREG–1000, Volume 1, "Generic Implications of ATWS Events at the Salem Nuclear Power Plant"[3]). While this rule does not require such a program, the Commission urges the voluntary development of a reliability assurance program for the RTS.

The reliability assurance program should have the following elements:

1. An analysis of the challenges to and failure modes of the RTS system, considering independent failures quantitatively and common cause failures qualitatively. An estimate of the challenge rate and the reliability of the RTS should be a part of the analysis.

2. A numerical performance standard for the RTS challenges and the RTS unavailability to use as an aid in the initial and continuing evaluation of the adequacy of the system.

3. A process of evaluating plant-specific and industry-wide operating experience to provide feedback to assess whether the RTS is performing reliably enough.

4. Procedures within quality assurance programs to ensure that the RTS performs satisfactorily in service from a reliability perspective. The frequency of challenges to the RTS should be as low as practicable.

A pivotal aspect of the ATWS issue is the reliability of the reactor trip system (RTS), including the control rods, and the difficulty associated with assessing the impact of common cause failures on the availability of the system to function when required. All RTS systems are designed for high availability, yet ATWS precursors at Kahl and Browns Ferry 3, and the ATWS event at Salem 1 did occur and were the result of common cause failures of the RTS. The Kahl and Brown Ferry 3, incidents were described in the Federal Register notice containing the proposed rules which was published on November 24, 1981 (46 FR 57521). The Salem 1 incident occurred after the proposed rules were published.

An analysis of the RTS should be performed using existing methodologies for quantitative evaluation of system reliability (e.g., unavailability). A fault tree and qualitative common cause failure analysis should be performed to identify the potential important faults of the RTS. Examples of quantitative analysis for the RTS are: WASH–1400 (the Reactor Safety Study) [4], the Indian Point Probabilistic Safety Study [5], the Zion Probabilistic Safety Study [5], and other probabilistic safety studies performed by Industry at their own initiative or at the request of the Commission. There are an estimated 15–20 probabilistic studies of plants that have been performed or are being performed, although some of these do not include detailed RTS analyses.

Additional methodological guidance is given in the PRA Procedures Guide, NUREG/CR–2300 [6], January 1983. This Guide was developed jointly by the Commission, the American Nuclear Society and the Institute of Electrical and Electronic Engineers.

Each licensee should establish a goal or benchmark to assess the performance of the trip system. The Commission and the industry have had considerable disagreement about the "correct" or "appropriate" value of RTS unavailability. It would be more fruitful for each licensee to have a benchmark for comparison as the plant operates and generates new data. The treatment of common cause failures will be analyzed in a qualitative fashion to determine if there are any significant failure modes previously unidentified. The cost of doing this can be minimized by forming or using existing owners groups, since there is much commonality in RTS designs.

Each licensee, as part of the RTS unavailability analysis, should examine its maintenance, surveillance, and testing requirements. The testing frequency would be examined to determine if testing is done too often or not often enough. The type of testing, e.g., completeness and sequencing of component verification for operability, would be throughly reviewed. The nature and frequency of maintenance, e.g., lubrication, cleaning, calibration, dimensional verification, physical movement, would be reviewed. Recordkeeping procedures should be reviewed.

The Commission believes that a reliability assurance program for the reactor trip systems should be developed and implemented, with clear objective of providing additional assurance that the desired high reliability of the RTS is indeed achieved and maintained. Operating experience in the United States appears to demonstrate, in some instances, that implementation of Appendix A (particularly General Design Criterion 21) and Appendix B to 10 CFR Part 50, and other NRC regulatory requirements may not have yielded the degree of reliability that is possible to achieve with available technology in a cost-effective manner. One reason for this failure might be that a reliability standard has not been sufficiently developed nor quantitatively set down in procedures. Another reason might be a failure to understand fully the dominant role played by common cause failures.

[3] Copies of NUREG–0977 and 1000 may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[4] Microfiche copies are available for purchase from the Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

[5] These may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

[6] Copies of this NUREG may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

The techniques for a reliabilty assurance program are in existence. They have been applied in an orderly, structured fashion in defense and aerospace applications since at least the 1960s. However, details of its application to a commercial nuclear power plant have not been worked out. Therefore, it is strongly recommended that the development of a voluntary reliability assurance program, limited to the reactor trip system, be performed jointly by the NRC and Industry, appropriately coordinated with INPO, EPRI, and the various owners groups. If this program is not voluntarily implemented in an effective manner, the Commission will reconsider the question of rulemaking in this area.

The development of industry programs on a voluntary basis has precedence in the evaluation of operating data for commercial nuclear power plants. The industry has developed the Nuclear Plant Reliability Data (NPRD) System as a voluntary program for the reporting of reliability data. The NPRD system is now undergoing a program of substantial improvement under INPO direction with close NRC interest. Even while such improvement is underway, the NPRD system is a valuable element of a reliability assurance program.

Challenges to Safety Systems

This rule concerns itself with mitigating systems which are intended to reduce the challenge to plant safety systems due to a low probability ATWS event. However, the Commission has concluded that a reduction in the frequency of challenges to plant safety systems should be a prime goal of each licensee, and the Commission believes that ATWS risk reductions can also be achieved by reducing the much larger frequency of transients which call for the reactor protection system to operate. Challenges to the reactor protection system may arise from such things as: Unreliable components, inadequate post-trip reviews, testing, and tolerance of inadequate or degraded control systems. Operating experience in Japan indicates a transient frequency that is substantially less that in the United States. Utilities have categorized transients for over ten years but have not specifically instituted a program to reduce them. While not specifically required by this rule, the Commission urges licensees to analyze challenges to the plant safety systems, particularly the reactor trip system, so as to determined where improvements can be made.

Considerations Regarding System and Equipment Criteria

The Commission place a high premium on hardware, operating practices and maintenance practices which will reduce the frequency of challenges to plant safety systems. Therefore equipment required by this rule should be of sufficient quality and reliability so as to perform its intended function while at the same time minimizing the potential for transients, e.g., inadevertent scrams, which challenge other safety systems.

The additional equipment required by this amendment to implement diversity for auxiliary feedwater system initiation, turbine trip, recirculation pump trip, and reactor trip, while required to be reliable, will not have to meet all of the stringent requirements normally applied to safety-related equipment. The equipment required by this amendment is for the purpose of reducing the probability of unacceptable consequences following anticipated operational occurrences. Since the combination of an anticipated operational occurrence, failure of the existing reactor trip system, and a seismic event or an event which results in significant plant physical damage has a low probability, seismic qualification and physical separation criteria need not be applied to the equipment required by this rule. In view of the redundancy provided in existing reactor trip systems, the equipment required by this amendment does not have to be redundant within itself.

The amendment is to require diversity to those portions of existing reactor trip systems, where only minimal diversity is currently provided. The logic circuits and actuation devices (e.g., circuit breakers on pressurized water reactors) in existing reactor trip systems utilize redundant, but in general identical, components and thus are subject to potential common cause failures. Existing reactor trip systems, however, measure a variety of plant parameters and utilize a variety of sensor types. Common cause failures in the diverse sensors of existing reactor trip systems are considered sufficiently unlikely that additional sensor diversity is not necessary. Even though sensor diversity is not necessary, it is desirable that sensors in the existing reactor trip system not be used to provide the signals for the diverse equipment required by this amendment. Use of the same sensor for the existing reactor trip system and the diverse equipment would result in interconnections between the two systems that are difficult to analyze and which could increase the potential for common cause failures affecting both systems. Since the sensors for the equipment required by this amendment do not have to be safety related, there should be considerable flexibility for using existing sensors without using reactor trip system sensors. However, there may be some cases where the use of less than safety-related sensors would result in increased risk from frequent safety system challenges or where it would not be cost effective to use sensors separate from those in the existing reactor trip system. This is particularly the case where not using sensors in the existing reactor trip system would result in the need to install a new sensor connected to the reactor coolant system. This could result in significant radiation does to personnel making the modifications. Another case would be where installation of additional containment penetrations would be required. In cases where existing protection system sensors are used to provide signals to the diverse equipment, particular emphasis should be placed on the design of the method used to isolate the signal from the existing protection system to minimize the potential for adverse electrical interactions.

The equipment required by this amendment must be implemented such that it does not degrade the existing protection system. This is to be accomplished by making the diverse equipment electrically independent to the extent practicable from the existing protection system and by insuring that the existing protection system will continue to meet all applicable safety-related criteria after installation of the diverse equipment.

The following table illustrates the system specifications that the staff would find acceptable for the diverse scram and mitigating systems. The staff will publish this guidance in a Regulatory Guide or Standard Review Plan revision which will also cover

testing, maintenance, and surveillance. Additionally, the staff will issue explicit QA guidance for the non-safety related equipment in the form of a generic letter. The generic letter will specify which requirements of the following sections of Appendix B are to be applied to non-safety related equipment: (1) Instructions, procedures, and drawings, (2) document control, (3) inspection, (4) test control, (5) control of measuring and testing equipment, (6) inspection, test, and operating status, (7) corrective action, and (8) quality assurance records.

Exemptions

Some of the older operating nuclear power plants (e.g., those licensed to operate prior to August 22, 1969) may be granted an exemption from these amendments if they can demonstrate that their risk from ATWS is sufficiently low. Factors important to this demonstration could be power level, unique design features that could prevent or mitigate the consequences of an ATWS, remaining plant lifetime, or remote siting.

GUIDANCE REGARDING SYSTEM AND EQUIPMENT SPECIFICATIONS

Guidance \ System	Diverse Reactor Trip System	Mitigating Systems (Recirculation Pump Trip and Automatic SLCS actuation for BWRs: Auxiliary Feedwater Actuation and Turbine Trip for PWRs)*
ety Related :E-279)	Not required, but the implementation must be such that the existing protection system continues to meet all applicable safety related criteria.	Not required, but the implementation must be such that the existing protection system continues to meet all applicable safety related criteria.
undancy	Not required.	Not required.

xisting recirculation pump trip equipment installed in BWRs in accordance with vious staff requirements for the mitigat'cn of anticipated transients without am need not be modified.

Guidance \ System	Diverse Reactor Trip System	Mitigating Systems (Recirculation Pump Trip and Automatic SLCS actuation for BWRs: Auxiliary Feedwater Actuation and Turbine Trip for PWRs)*
Diversity from existing Reactor Trip System	Equipment diversity to the extent reasonable and practicable to minimize the potential for common cause failures is required from the sensors to and including the components used to interrupt control rod power or vent the scram air header. Circuit breakers from different manufacturers alone is not sufficient to provide the required diversity for interruption of control rod power. The sensors need not be of a diverse design or manufacturer. Existing protection system instrument-sensing lines may be used. Sensors and instruments-sensing lines should be selected such that adverse interactions with existing control systems are avoided.	Equipment diversity to the extent reasonable and practicable to minimize the potential for common cause failures is required from the sensors to, but not including, the final actuation device--e.g., existing circuit breakers may be used for auxiliary feedwater initiation. The sensors need not be of a diverse design or manufacturer. Existing protection system instrument-sensing lines may by used. Sensors and instrument-sensing lines should be selected such that adverse interactions with existing control systems are avoided.
Electrical Independence from existing Reactor Trip System	Required from sensor output to the final actuation device at which point non-safety related circuits must be isolated from safety related circuits.	Required from sensor output to the final actuation device at which point non-safety related circuits must be isolated from safety related circuits.

[7590-01]

System / Guidance	Diverse Reactor Trip System	Mitigating Systems (Recirculation Pump Trip and Automatic SLCS actuation for BWRs: Auxiliary Feedwater Actuation and Turbine Trip for PWRs)*
Physical Separation from existing Reactor Trip System	Not required, unless redundant divisions and channels in the existing reactor trip system are not physically separated. The implementation must be such that separation criteria applied to the existing protection system are not violated.	Not required, unless redundant divisions and channels in the existing reactor trip system are not physically separated. The implementation must be such that separation criteria applied to the existing protection system are not violated.
Environmental Qualification	For anticipated operational occurrences only, not for accidents.	For anticipated operational occurrences only, not for accidents.
Seismic Qualification	Not required.	Not required.
Quality Assurance for Test, Maintenance, and Surveillance	Explicit guidance will be issued in a letter.	Explicit guidance will be issued in a letter.
Safety-Related (1E) Power Supply	Not required, but must be capable of performing safety functions with loss of offsite power. Logic and actuation device power must be from an instrument power supply independent from the power supplies for the existing reactor trip system. Existing RTS sensor and instrument channel power supplies may be used provided the possibility of common mode failure is prevented.	Not required, but must be capable of performing safety functions with loss of offsite power. Logic power must be from an instrument power supply independent from the power supplies for the existing reactor trip system. Existing RTS sensor and instrument channel power supplies may be used provided the possibility of common mode failure is prevented.
Testability at Power	Required.	Required.

[7590-01]

System / Guidance	Diverse Reactor Trip System	Mitigating Systems (Recirculation Pump Trip and Automatic SLCS actuation for BWRs: Auxiliary Feedwater Actuation and Turbine Trip for PWRs)*
Inadvertent Actuation	The design should be such that the frequency of inadvertent reactor trips and challenges to other safety systems is minimized.	The design should be such that the frequency of inadvertent actuation and challenges to other safety systems is minimized.

With the promulgation of this final ATWS rule, the Commission has completed action on PRM–50–29. The petitioner's requests have been granted in part through the incorporation of requirements into the final rule which address the following issues: (1) (For GE BWRs) (a) recirculation pump trip following an event indicative of an ATWS, and (b) independent, redundant and diverse electrical initiation of scram following an event indicative of an ATWS; (2) (For CE and B&W PWRs) automatic initiation of auxiliary feedwater independent of the reactor protection system; and (3) (For Westinghouse PWRs) automatic initiation of turbine trip and auxiliary feedwater independent of the reactor protection system. The petitioner's request for promulgation of specific provisions *within the context of an ATWS rulemaking* for the following systems are hereby denied: (1) (For GE BWRs) a scram discharge volume system [this provision was not included in the final ATWS rule because licensees already have installed or are installing this system]; and (2) (For CE and B&W PWRs) an alternate means to shut down the reactor that is diverse from and redundant to the electrical portion of the reactor protection system *up to but not including* the *trip breakers* [the final ATWS rule includes a requirement for the installation of an alternate shut-down system which *must include* the trip breakers].

Additional View of Commissioner Asselstine

While I approve this rule, I would have required automation of the Standby Liquid Control System (SLCS) for all boiling water reactors. In addition, while I approve the elements of the final rule dealing with future reactors, I am not satisfied that sufficient attention has been given to future reactors. It appears that significant additional reductions in the ATWS risk can be achieved without incurring insurmountable economic costs if such measures are considered during the design phase. I believe this rule should not be taken as a barrier to further consideration of measures for future reactors that can reduce ATWS risk below that achieved by this rule.

Additional Views of Commissioner Roberts

In addition to specifying measures to reduce the risk from ATWS events, the Statement of Considerations which accompanies this rule directs licensees to "volunteer" to implement a reliability assurance program for the Reactor Trip System.

The Reactor Trip System is one of the most important safety systems at commercial nuclear power plants. However, it is only one of many safety-related systems which must be closely monitored and carefully maintained to ensure a plant's safety and reliability. It is my view that a more logical approach to reliability assurance would be to consider such a program embracing those several safety systems which experience and analyses show could be significantly improved by such a program. This program should be reviewed separately from the ATWS rulemaking effort.

Furthermore, the Commission should not call upon the industry to implement complicated and costly reliability assurance programs until it more thoroughly analyzes the concept and until it provides specific guidance.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the rule as considered by the Commission. A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. Single copies of the analysis may be obtained from David W. Pyatt, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 443–7631.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0011.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule affects only licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. These licensees do not fall within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Incorporation by reference, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendment to 10 CFR Part 50 is published as a document subject to codification.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. A new § 50.62 is added to read as follows:

§ 50.62 Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants.

(a) *Applicability.* The requirements of this section apply to all commercial light-water-cooled nuclear power plants

(b) *Definition.* For purposes of this section, "Anticipated Transient Without Scram" (ATWS) means an anticipated operational occurrence as defined in Appendix A of this part followed by the failure of the reactor trip portion of the protection system specified in General Design Criterion 20 of Appendix A of this part.

(c) *Requirements.* (1) Each pressurized water reactor must have equipment from sensor output to final actuation device, that is diverse from the reactor trip system, to automatically initiate the auxiliary (or emergency) feedwater system and initiate a turbine trip under conditions indicative of an ATWS. This equipment must be designed to perform its function in a reliable manner and be independent (from sensor output to the final actuation device) from the existing reactor trip system.

(2) Each pressurized water reactor manufactured by Combustion Engineering or by Babcock and Wilcox must have a diverse scram system from the sensor output to interruption of power to the control rods. This scram system must be designed to perform its function in a reliable manner and be independent from the existing reactor trip system (from sensor output to interruption of power to the control rods).

(3) Each boiling water reactor must have an alternate rod injection (ARI) system that is diverse (from the reactor trip system) from sensor output to the final actuation device. The ARI system must have redundant scram air header exhaust valves. The ARI must be designed to perform its function in a reliable manner and be independent (from the existing reactor trip system) from sensor output to the final actuation device.

(4) Each boiling water reactor must have a standby liquid control system (SLCS) with a minimum flow capacity and boron content equivalent in control capacity to 86 gallons per minute of 13 weight percent sodium pentaborate solution. The SLCS and its injection location must be designed to perform its function in a reliable manner. The SLCS initiation must be automatic and must be designed to perform its function in a reliable manner for plants granted a construction permit after July 26, 1984, and for plants granted a construction permit prior to July 26, 1984, that have already been designed and built to include this feature.

(5) Each boiling water reactor must have equipment to trip the reactor coolant recirculating pumps automatically under conditions indicative of an ATWS. This equipment must be designed to perform its function in a reliable manner.

(6) Information sufficient to demonstrate to the Commission the adequacy of items in paragraphs (c)(1) through (c)(5) of this section shall be submitted to the Director, Office of Nuclear Reactor Regulation.

(d) *Implementation.* By 180 days after the issuance of the QA guidance for non-safety related components each licensee shall develop and submit to the Director of the Office of Nuclear Reactor Regulation a proposed schedule for meeting the requirements of paragraphs (c)(1) through (c)(5) of this section. Each shall include an explanation of the schedule along with a justification if the schedule calls for final implementation later than the second refueling outrage after July 26, 1984, or the date of issuance of a license authorizing operation above 5 percent of full power. A final schedule shall then be mutually agreed upon by the Commission and licensee.

Dated at Washington, DC, this day of 19th day of June 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-16839 Filed 6-25-84; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-44-AD; Amdt. 39-4882]

Airworthiness Directives; Canadair Model CL-600 and CL-601 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document adds a new airworthiness directive which supersedes two existing airworthiness directives (AD) applicable to the Canadair Model CL-600 and CL-601 airplanes. These AD's require repetitive inspections of the outboard flap vane attachment structure. The manufacturer has modified the outboard flaps on all airplanes, making some inspection requirements unnecessary. This rule consolidates and revises the inspections contained in the existing AD's.

EFFECTIVE DATE: June 27, 1984.

ADDRESSES: The service information specified in this AD may be obtained upon request to Canadair Ltd, Commercial Aircraft Technical Services, Box 6087, Station A, Montreal, PQ H3C 369, Canada, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Airframe Section, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: AD 83-14-06, Amendment 39-4687 (48 FR 33245; July 21, 1983), and telegraphic AD T83-20-51, issued September 30, 1983, require inspection of the wing outboard flap vane support structure for cracks. The manufacturer has since modified the outboard flap design so that some of the inspections prescribed by these AD's are no longer required. The repetitive inspection intervals may also be increased. The FAA has been advised that all airplanes in the world fleet have been modified in accordance with the manufacturer's instructions. The Canadian Department of Transport has issued an AD which reflects the revised repetitive inspections. This amendment incorporates the revised inspections and intervals and supersedes AD's 83-14-06 and T83-20-51.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

This amendment combines the inspection requirements of two existing AD's and imposes no additional regulatory or economic burden on any person. Further, it deletes inspection requirements that now are superfluous due to modification of the affected aircraft, therefore, notice and public procedure hereon are unnecessary and contrary to the public interest, and good cause having been shown therefor, the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Canadair: Applies to Model CL-600-1A11 (CL-600) and Model CL-600-2A12 (CL-601) airplanes, certificated in all categories. Compliance required as indicated.

A. To detect possible fatigue cracks in the outboard flap vane support structure, accomplish the following inspections for cracks on each side of the aircraft, initially within 100 hours time in service after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 100 hours time in service.

1. Visually inspect the following parts:

a. The flap vane support straps, P/N 600-10460-13 and -23, at the inboard and outboard ends of the outboard flap.

b. The lower skins on the outboard flap vanes with particular attention given to the spanwise direction at the mid-chord position and the chordwise direction adjacent to the vane attachment points.

c. The three vane main support fittings and two vane intermediate support fittings attached to the outboard flap vane.

Main Supports: P/N 600–14562–1 and –2 (FS 189); P/N 600–14563–1 and –2 (FS 235); P/N 600–14564–1 and –2 (FS 280).

Intermediate Supports: P/N 600–14588–1 and –2 (FS 209); or P/N 600–14586–1 and –2 (FS 209); or P/N K600–14502–5 and –6 (FS 209); P/N 600–14589–1 and –2 (FS 254); or P/N 600–14585–1 and –2 (FS 254); or P/N 600–14502–7 and –8 (FS 254).

Particular attention should be given to the root of the attachment lugs.

d. The two intermediate support blades attached to the outboard flap leading edge structure.

P/N 600–10463–35 (FS 209); or P/N K600–14502–1 (FS 209); P/N 600–10463–37 (FS 254); or P/N K600–14502–3 (FS 254).

2. Conduct an eddy current or dye-penetrant inspection on the following parts:

The three outboard flap vane main support blades which form an integral part of the outboard flap hinge fittings.

P/N 600–14543–1 and –2 (FS 189);
P/N 600–14546–1, –2, –3, and –4 (FS 235;)
P/N 600–14547–1 and –2 (FS 280).

This must be accomplished along the root radius at the bottom edge of the blade where it passes through the leading edge of the flap. To accomplish this inspection, it is necessary to remove the sealant from the root radius. Reseal after inspection.

B. Parts found cracked during inspection must be replaced with serviceable or new parts prior to further flight. After replacement, continue to inspect in accordance with paragraph A., above.

C. Alternate means of compliance, which provide an equivalent level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and door modifications required by this AD.

E. Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the repetitive inspection intervals required by this AD.

This supersedes Amendment 39–4687 (48 FR 33245; July 21, 1983), AD 83–14–06, and telegraphic AD T83–20–51 issued September 30, 1983.

This amendment becomes effective June 27, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89))

Note: For the reasons given earlier in the preamble this amendment is not major under Executive Order 12291 (46 FR 13193; February 19, 1981) and not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. For these reasons and because few, if any, Canadair Model CL–600 or CL–601 airplanes are operated by small entities, I certify that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Seattle, Washington, on June 7, 1984.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 84–16882 Filed 6–25–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 84–ASO–12]

Alteration of Transition Area, Eufaula, Alabama

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Eufaula, Alabama, transition area by revising the geographical coordinates of Weedon Field and designating additional controlled airspace south of the airport. The airport coordinates are improperly listed in the transition area description and this amendment will correct the deficiency. A new instrument approach procedure has been developed to serve the airport and additional controlled airspace is required for containment of Instrument Flight Rule (IFR) operations in the vicinity of the airport. This action will lower the base of controlled airspace, in the area south of the airport, from 1,200 to 700 feet above the surface.

EFFECTIVE DATE: 0901 GMT, August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald T. Niklasson, Airspace Specialist, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On Monday, April 16, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71). This action will correct the geographical coordinates of Weedon Field and provide controlled airspace for aircraft executing a new instrument approach procedure to the airport (49 FR 14966). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. All comments received were favorable. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Eufaula, Alabama, transition area by correcting the geographical coordinates of Weedon Field and adding controlled airspace south of the airport to accommodate IFR aeronautical operations.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Eufaula, Alabama, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 GMT, August 30, 1984, as follows:

Eufaula, AL—[Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Weedon Field (Lat. 31°56'59"N., Long. 85°07'45"W.); within 5 miles each side of Eufaula VORTAC 014° and 177° radials, extending from the 6.5-mile radius area to 11.5 miles north and south of the VORTAC.

((Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97–449, January 12, 1983))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on June 15, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84–16883 Filed 6–25–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 84-ASO-8]

Designation of Transition Area, Fort Payne, Alabama

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Fort Payne, Alabama, transition area to accommodate Instrument Flight Rule (IFR) operations at the Isbell Field Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on a new non-Federal radio beacon (RBN), has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

EFFECTIVE DATE: 0901 GMT, August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Ronald T. Niklasson, Airspace Specialist, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 29, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Fort Payne, Alabama, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Isbell Field Airport (49 FR 12281). The operating status of Isbell Field Airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments or objections were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Fort Payne, Alabama, transition area to accommodate IFR aeronautical operations in the vicinity of the Isbell Field Airport.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Fort Payne, Alabama, transition area is designated under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended), effective 0901 GMT, August 30, 1984, as follows:

Fort Payne, AL [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Isbell Field Airport (Lat. 34°28'20"N., Long. 85°43'25"W.); within 3 miles each side of the 043° bearing from the Fort Payne RBN (Lat. 34°31'08"N., Long. 85°40'16"W.), extending from the 6.5-mile radius to 8.5 miles northeast of the RBN.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983))

Note: The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on June 15, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-16886 Filed 6-25-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-226 (Colorado-38); Order No. 386]

High-Cost Gas Produced from Tight Formations; Colorado

Issued: June 26, 1984.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the National Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. The Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here the Commission adopts the recommendation of the State of Colorado, Oil and Gas Conservation Commission that a portion of the Niobrara Formation located in Larimer and Weld Counties, Colorado, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective July 26, 1984.

FOR FURTHER INFORMATION CONTACT: Jane M. Oliver, (202) 357-8511 or victor Zabel. (202) 357-8616.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Oliver G. Richard III.

Based on a recommendation made by the State of Colorado, Oil and Gas Conservation Commission (Colorado), the Commission amends its regulations [1] to include a portion of the Niobrara Formation, located in Larimer and Weld Counties, Colorado, as a designated tight formation eligible for incentive pricing. The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on March 15, 1984.[2]

Evidence submitted by Colorado supports the assertion that a portion of the Niobrara Formation, located in Larimer and Weld Counties, Colorado, meets the guidelines contained in § 271.703(c)(2). The Commission adopts this recommendation.

This amendment shall become effective July 26, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration, of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended to read as follows:

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[1] 18 CFR 271.703(d) (1983).

[2] 49 FR 10,273 (March 20, 1984); 28 FERC ¶ 62,260 (1984). Comments on the proposed rule were invited. No comments were received. No party requested a public hearing and no hearing was held.

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703(d) is amended by revising paragraph (166) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(166) *Niobrara Formation in Colorado.* RM79–76–226 (Colorado-38).

(i) *Delineation of formation.* The Niobrara Formation is located in Weld County, Colorado, in Township 4 North, Range 68 West, Sections 4 through 6; and in Larimer County, Colorado, in Township 4 North, Range 69 West, Sections 1 through 10, 15 through 22; Township 5 North, Range 68 West, Sections 19 through 21, 28 through 33; Township 5 North, Range 69 West, Sections 25 through 36, 6th P.M.

(ii) *Depth.* The average depth to the top of the Niobrara Formation is 3,000 feet. The Niobrara Formation averages 300 feet in thickness.

[FR Doc. 84–16982 Filed 6–25–84; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76–171; (Texas–9 Addition III); Order No. 384]

High-Cost Gas Produced From Tight Formations; Texas

Issued: June 26, 1984.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here the Commission adopts the recommendation of the Railroad Commission of Texas that an additional area of the Travis Peak Formation located in Nacogdoches County, Texas, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective July 26, 1984.

FOR FURTHER INFORMATION CONTACT: Elisabeth Pendley (202) 357–8476, or Walter W. Lawson (202) 357–8556.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Oliver G. Richard III.

Based on a recommendation made by the Railroad Commission of Texas (Texas), the Commission amends its regulations [1] to include an additional area of the Travis Peak Formation in Nacogdoches County, Texas, as a designated tight formation eligible for incentive pricing.[2] The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on March 14, 1983.[3]

Evidence submitted by Texas supports the assertion that the Travis Peak Formation, located in Nacogdoches County, Texas, meets the guidelines contained in § 271.703(c)(2). The Commission adopts this recommendation.

This amendment shall become effective July 26, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kennth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended to read as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(36)(iii) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(36) *Travis Peak Formation in Texas.* RM79–76–171 (Texas–9 Addition III).

* * * * *

(iii) *Melrose, South (Travis Peak) Field.*

(A) *Delineation of formation.* The Travis Peak Formation in the Melrose, South (Travis Peak) Field is located four miles south of the city of Melrose, southeastern Nacogdoches County, Texas Railroad Commission District 6, and is within a 2.5 mile radius around the Texlan Oil Company, Inc. T.W. Baker No. 1 well.

(B) *Depth.* The top of the Travis Peak Formation is encountered at 8,920 feet and the base of the formation is at 9,940 feet (log depths).

[FR Doc. 84–16980 Filed 6–25–84; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76–189 (Wyoming–16); Order No. 385]

High-Cost Gas Produced From Tight Formations; Wyoming

Issued: June 26, 1984.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here the Commission adopts the recommendation of the State of Wyoming Oil and Gas Conservation Commission that portions of the Muddy, Lakota, Morrison and Sundance Formations located in Natrona County, Wyoming, be

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[1] 18 CFR 271.703(d) (1983).

[2] The designated tight formation is located in the Melrose, South (Travis Peak) Field, four miles south of the city of Melrose, Texas, and is the stratigraphic equivalent of the Travis Peak Formation in three other areas in Texas which have been approved by the Commission: the Sym-Jac, West (Houston) Field in Cherokee County, Order No. 154 issued June 10, 1981, in Docket No. RM79–76 (Texas–9); the Bear Grass Area in portions of Freestone and Leon Counties, Order No. 180, issued October 6, 1981, in Docket No. RM79–76 (Texas–9 Addition); and the Martinsville (Travis Peak) Field in eastern Nacogdoches County, Order No. 330, issued September 27, 1983, in Docket No. RM79–190 (Texas–9 Addition IV).

[3] 48 FR 11299, March 17, 1983. Comments on the proposed rule were invited and one comment from Champlin Petroleum Company supporting the recommendation was received. No party requested a public hearing and no hearing was held.

designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective July 26, 1984.

FOR FURTHER INFORMATION CONTACT: Elisabeth Pendley, (202) 357–8476, or Victor H. Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Oliver G. Richard III.

Based on a recommendation made by the State of Wyoming Oil and Gas Conservation Commission (Wyoming), the Commission amends its regulations [1] to include portions of the Muddy, Lakota, Morrison and Sundance Formations in Natrona County, Wyoming, as designated tight formations eligible for incentive pricing.[2] The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on May 27, 1983.[3]

Wyoming's recommendation is submitted under the alternative requirements of § 271.703(c)(2)(ii). Under these requirements, the Commission may approve any formation which meets the stabilized production rate guideline found in § 271.703(c)(2)(i)(B) and the crude oil production guideline in § 271.703(c)(2)(i)(C) but does not meet the permeability guideline in § 271.703(c)(2)(i)(A), if the jurisdictional agency shows that the formation exhibits low permeability characteristics and that the incentive price is necessary to provide reasonable incentives for production from the formation.

We believe that the recommended formations satisfy the guidelines set forth in § 271.703(c)(2)(ii). The record submitted by Wyoming contains completion data from three wells which penetrated the Muddy, Lakota, Morrison and Sundance Formations; one well was completed at a depth of 19,640 feet. The record states that the low in-situ gas permeability found throughout the recommended area is attributable to the great depths of these formations. Hydraulic fracturing has been performed at great expense with the open flow potential 2.78 times that demonstrated in unstimulated performance. The total cost of drilling and completing one well was $16 million and no payout is expected for this well. A second well drilled in the designated area exceeded $15 million and failed to establish commercial production. Finally, the commingled acreage stabilized production rate against atmospheric pressure of wells completed for production does not exceed the allowable for that depth. No well is expected to produce more than five barrels of crude oil per day without stimulation.

Additionally, the Commission is designating as tight formations the Muddy, Lakota, Morrison and Sundance Formations, which are entirely below 15,000 feet, when most gas produced from such depths qualifies under NGPA section 107(c)(1) and therefore is already price deregulated under NGPA section 121. It is our position that Wyoming may recommend areas for designation as a tight formation even if they are located at depths greater than 15,000 feet so long as the tight formation standards are met. The purpose for designating formations deeper than 15,000 feet as tight formations is to allow gas produced from wells drilled before February 19, 1977, to qualify as recompletion tight formation gas under § 271.703(b)(3).

Evidence submitted by Wyoming supports the assertion that the Muddy, Lakota, Morrison and Sundance Formations located in Natrona County, Wyoming, meet the guidelines contained in § 271.703(c)(2)(ii). The Commission adopts this recommendation.

This amendment shall become effective July 26, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended to read as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703(d) is amended by adding paragraphs (d)(172) through (175) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(172) Muddy Formation in Wyoming. RM79–76–189 (Wyoming–16).

(i) *Delineation of formation.* The Muddy Formation is located in Natrona County, Wyoming, in Township 36 North, Range 86 West, 6th P.M., Sections 4 through 9, Sections 15 through 22, and Sections 28 through 30; Township 36 North, Range 87 West, 6th P.M., Sections 1 through 3, Sections 11 through 14, NE¼ of Section 23, and N½, N½ S½ of Section 24; Township 37 North, 86 West, 6th P.M., Sections 19, 20, and 28 through 33; Township 37 North, Range 87 West, 6th P.M., Sections 23 through 26, and Sections 35 and 36.

(ii) *Depth.* The vertical limits of the Muddy Formation are defined as the Mowry Shale above, and the Thermopolis Shales below. The average depth to the top of the formation is 19,800 feet.

(173) Lakota Formation in Wyoming. RM79–76–189 (Wyoming–16).

(i) *Delineation of formation.* The Lakota Formation is located in Natrona County, Wyoming, in Township 36 North, Range 86 West, 6th P.M., Sections 4 through 9, Sections 15 through 22, and Sections 28 through 30; Township 36 North, Range 87 West, 6th P.M., Sections 1 through 3, Sections 11 through 14, NE¼ of Section 23, and N½, N½ S½ of Section 24; Township 37 North, 86 West, 6th P.M., Sections 19, 20, and 28 through 33; Township 37 North, Range 87 West, 6th P.M., Sections 23 through 26, and Sections 35 and 36.

(ii) *Depth.* The vertical limits of the Lakota Formation are defined as the Thermopolis Shale above, and the Morrison Shale below. The average depth to the top of the formation is 20,020 feet.

(174) Morrison Formation in Wyoming. RM79–76–189 (Wyoming–16).

(i) *Delineation of formation.* The Morrison Formation is located in Natron County, Wyoming in Township 36 North, Range 86 West, 6th P.M., Sections 4 through 9, Sections 15 through 22, and Sections 28 through 30; Township 36 North, Range 87 West, 6th P.M., Sections 1 through 3, Sections 11 through 14, NE¼ of Sections 23, and N½, N½ S½, of Section 24; Township 37 North, 86 West, 6th P.M., Sections 19, 20 and 28 through 33; Township 37 North, Range 87 West, 6th P.M., Sections 23 through 26, and Sections 35 and 36.

(ii) *Depth.* The vertical limits of the Morrison Formation are defined as the Lakota Shale above, and the Sundance

[1] 18 CFR 271.703(d) (1983).

[2] The United States Department of Interior, Bureau of Land Management concurs with Wyoming's recommendation.

[3] 48 FR 24732, June 2, 1983. Comments on the proposed rule were invited and one comment supporting the recommendation was filed by Champlin Petroleum Corporation. No party requested a public hearing and no hearing was held.

Shale below. The average depth to the top of the formation is 20,100 feet.

(175) Sundance Formation in Wyoming. RM79–76–189 (Wyoming–16).

(i) *Delineation of formation.* The Sundance Formation is located in Natrona County, Wyoming, in Township 36 North, Range 86 West, 6th P.M., Sections 4 through 9, Sections 15 through 22, and Sections 28 through 30; Township 36 North, Range 87 West, 6th P.M., Sections 1 through 3, Sections 11 through 14, NE¼ of Section 23, and N½, N½ S½ of Section 24; Township 37 North, 86 West, 6th P.M., Sections 19, 20, and 28 through 33; Township 37 North, Range 87 West, 6th P.M., Sections 23 through 26, and Sections 35 and 36.

(ii) *Depth.* The vertical limits of the Sundance Formation are defined as the Morrision Shale above, and the Triassic Shale below. The average depth to the top of the formation is 20,300 feet.

[FR Doc. 84–16881 Filed 6–25–84; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 282

[Docket No. RM79–14]

Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION:

Issued: June 21, 1984.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(l) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of July 1984 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to January 1984 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar year 1984]

	January	February	March	April	May	June	July
Incremental Pricing Threshold	[illegible]	$2.291	$2.299	$2.307	$2.315	$2.323	$2.331
NGPA Section 102 Threshold	[illegible]	3.609	3.632	[illegible]	[illegible]	3.705	3.730
NGPA Section 109 Threshold	2.359	2.367	2.375	[illegible]	2.391	2.399	2.407
130% of No. 2 Fuel Oil in New York City Threshold	7.730	7.570	7.570	[illegible]	[illegible]	7.670	7.930

[FR Doc. 84–16884 Filed 6–25–84; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 84–131]

Change in Hours of Customs Service at Noyes, Minnesota

AGENCY: Customs Service, Treasury.

ACTION: Change of hours of service.

SUMMARY: This document reduces the hours of service currently provided at the Customs port of Noyes, Minnesota, located on the U.S.-Canadian border, in the Pembina, North Dakota, Customs District.

Because traffic at Noyes does not justify the current 24-hour schedule, service between midnight and 8 a.m is being eliminated. The Customs port of Pembina, only a mile and a quarter from Noyes, will remain open 24-hours daily and absorb any traffic that would otherwise enter the United States at Noyes between midnight and 8 a.m.

This change, which will enable Customs to obtain more efficient use of its personnel, facilities, and resources, will result in substantial savings to the Government. Further, it will not have any major adverse impact on industry, transportation, or the local population.

EFFECTIVE DATE: July 26, 1984.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8157)

SUPPLEMENTARY INFORMATION:

Background

Section 101.6, Customs Regulations (19 CFR 101.6), provides that, with certain stated exceptions, each Customs office shall be open for the transaction of Customs business between the hours of 8:30 a.m. and 5 p.m. on all days of the year except Saturdays, Sundays, and national holidays. It also provides that services performed outside a Customs office generally shall be furnished between the hours of 8 a.m. and 5 p.m. However, because of local conditions, different but equivalent hours may be necessary to maintain adequate and efficient service.

The Customs ports of entry of Noyes, Minnesota, and Pembina, North Dakota, both located on the U.S.-Canadian border in the Pembina, North Dakota, Customs District, currently operate on a 24-hour basis and are staffed by Customs and Immigration and Naturalization Service personnel. Because traffic at Noyes and Pembina does not justify the hours of service between midnight and 8 a.m., and since these two ports are located only a mile and a quarter from each other, Customs does not believe it is cost efficient to staff both locations on a 24-hour basis. Because Pembina is located on an interstate highway and Noyes is not, and since a lesser volume of traffic is processed at Nayes between midnight and 8 a.m. than is processed at Pembina during the same hours, by notice published in the **Federal Register** on January 12, 1984 (49 FR 1530), Customs proposed to eliminate service between midnight and 8 a.m. at Noyes.

As stated in the notice, the change will enable Customs to realize a savings of more than $40,000 a year. In addition, the proposal will not have any major adverse impact on industry,

transportation, or the local population because of the close proximity to Pembina which will easily absorb the additional workload.

Discussion of Comments

Fifteen comments were received in response to the notice. One commenter favored the reduction in hours, fourteen opposed. The commenter in favor stated that since there are very few trucks or tourists traveling either port during the midnight shift, Customs is justified in proceeding with the proposal.

The opposing comments contained several common observations, i.e., that the ports of Noyes and Pembina are unique in that traffic can travel through both ports easily, better service to North Dakota is unfair to Minnesota, and there are more cost efficient measures which could be taken such as moving the administration building from Pembina to Noyes.

In response to these comments, Customs believes that because the ports are located only a mile and a quarter apart, and since Pembina is located on an interstate highway and handles the majority of traffic, it appears more practical to close Noyes during these hours rather than Pembina. In addition to these factors, because Customs plans no further reduction in the hours of service at Noyes, and since there is only a small amount of traffic on the road after midnight, Customs believes there will be little, if any, adverse impact on local businesses in either North Dakota or Minnesota. With regard to the suggestion that the administration building in Pembina be closed and moved to Noyes, based on the number of employees now located at Pembina and when coupled with relocation expenses, etc., there would not be any savings.

Canadian Customs and Excise commented that, as a result of the change, they would have to look seriously at moving their automated commercial facility (Emerson East), located at Noyes, to Pembina (Emerson West), at considerable cost and inconvenience. However, this has been resolved through meetings between U.S. and Canadian Customs and Excise officials. The Deputy Minister of Revenue for Canadian Customs and Excise recently advised Customs that the Canadians can accommodate changes if necessary.

Members of the transportation industry were among those opposing the proposal. A trucking firm stated that the proposal would cause delays, additional costs, and undue hardship on the movement of goods. Customs does not agree. For northbound trucks requiring Canadian inspection and previously utilizing the Noyes/Emerson East crossing, an additional distance of less than 5 miles would be necessary to cross at Pembina/Emerson West. However, a significant percentage of loaded trucks presently enter first at Pembina/Emerson West and would not be affected by the change. In fact, a truck destined to Canada on Interstate 29 would save ½ mile by entering at Pembina/Emerson West rather than crossing over to Noyes to enter Emerson East directly. The additional workload can be sufficiently handled at Pembina during the midnight to 8 a.m. hours of service. Therefore, Customs believes any adverse impact on the movement of goods will be minimal.

A railroad company also opposed the proposal on the basis that since the railroad inspection facilities have always been located in Noyes, overtime costs would escalate and there would be some inconvenience to the joint agency of U.S. and Canadian railroad clerks whose office is located on the Canadian side of the border at Emerson East opposite Noyes. These clerks meet trains coming into the United States with the necessary paperwork for Customs clearance at Noyes. Since Customs has never regularly provided service to the railroads during the midnight shift, and they arrive sporadically and never on a scheduled basis, overtime has always been incurred by the requesting railroads. The only change for requesting overtime service will be to call Customs at the Pembina office rather than the Noyes office. Customs will develop a procedure to correct any transportation problems the joint agency of U.S. and Canadian railroad clerks may encounter. Between midnight and 8 a.m., the railway agents will be able to enter at Noyes and report for inspection to the Customs officer at the depot who has been called to clear the train.

Finally, an issue was raised concerning the 7:15 a.m. arrival of the Greyhound bus at Noyes. One local business uses this stop to board freight for further delivery. The terminal manager for Greyhound Bus lines at Fargo, North Dakota, was contacted and indicated the existing route could be changed to enter at Pembina.

Accordingly, after consideration of the comments, and further review of the matter, Customs has determined that it is desirable to make the change as proposed.

Change in Hours of Service

Customs service at Noyes, Minnesota, will be provided between the hours of 8 a.m. and midnight, daily. No service will be provided between midnight and 8 a.m.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved: June 8, 1984.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 84-16623 Filed 6-25-84; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6544

[I-17847]

Idaho; Withdrawal of Forest Service Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 13.51 acres of national forest lands to protect the improvements to be constructed for the Moyer Creek Administrative Site. This action will close the land to mining, but not to surface entry or mineral leasing, for 20 years.

EFFECTIVE DATE: June 26, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, Idaho State Office, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands, which are under the jurisdiction of the Secretary of Agriculture are hereby withdrawn from entry and location under the general mining laws (30 U.S.C., ch. 2), but not from leasing under the mineral leasing laws, for protection of the Moyer Creek Administrative Site.

Boise Meridian Salmon National Forest

T. 20 N., R. 18 E.,
sec. 35, beginning at U.S. Mineral Monument No. 3, Blackbird Mining District, thence South 80°24'04" East a distance of 5036.33 feet to the true point of beginning: thence South 30°59'28" East a distance of 1727.95 feet; thence North 72°55'03" West a distance of 1019.17 feet; thence North 04°05'17" East a distance of 1184.91 feet to the true point of beginning.

The area described aggregates 13.51 acres in Lemhi County.

2. The withdrawal made by this order does not alter the applicability of those public lands under lease, license, or permit, or govern the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Inquiries should be addressed to the Chief, Branch of Land Operations, Bureau of Land Management, Idaho State Office, 3380 American Terrace, Boise, Idaho 83706.

Dated: June 18, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-16894 Filed 6-25-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6545

[(OR-19614 (WASH), OR-19650 (WASH), OR-19651 (WASH), OR-19654 (WASH))]

Washington; Partial Revocation of Powersite Classification Nos. 161, 177, and 207; Partial Revocation of Powersite Reserve No. 534

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes three Secretarial orders and an Executive Order insofar as they affect 279.46 acres of land withdrawn for powersite classification and powersite reserve purposes. This action will restore 240.65 acres to surface entry. The balance of 38.81 acres is included in the Skagit National Wild and Scenic Rivers System and will remain closed to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: June 26, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Energy Regulatory Commission in DA–230–Washington, it is ordered as follows:

1. The Executive Order of June 30, 1916, which withdrew lands for use by the U.S. Geological Survey for Powersite Reserve No. 534, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 33 N., R. 11 E.,
sec. 31, lots 2 and 3.

The area described contains 77.15 acres in Skagit County.

2. The Secretarial Orders of January 8, 1927, April 18, 1927, and November 13, 1928, which withdrew lands for use by the U.S. Geological Survey for Powersite Classification Nos. 161, 177, and 207, respectively are hereby revoked insofar as they affect the following described lands:

Willamette Meridian

T. 28 N., R. 14 W.,
sec. 15, lots 4 and 5.
T. 29 N., R. 3 W.,
sec. 18, lot 1 and S½SE¼.
T. 34 N., R. 10 E.,
sec. 19, lot 7.

The area described contains 202.31 acres in Clallam and Skagit Counties.

3. Lot 2, sec. 31, T. 33 N., R. 11 E., is included in the Skagit National Wild and Scenic Rivers System and will not be restored to operation of the public land laws, including the mining and mineral leasing laws.

4. At 8:30 a.m., on July 24, 1984, the lands described in paragraphs 1 and 2, except as provided in paragraph 3, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on July 24, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. The lands described in paragraphs 1 and 2, except as provided in paragraph 3, have been and remain open to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 18, 1984.

Garrey E. Carruthers

Assistant Secretary of the Interior.

[FR Doc. 84-16895 Filed 6-25-84; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6546

[ORE-011495]

Oregon; Modification of Public Land Order No. 4289 of October 5, 1967

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a public land order affecting 911.42 acres of public land withdrawn for the Rogue River Basin Reclamation Project. This action will permit location, entry and mining subject to contract provisions imposed by the Bureau of Reclamation as provided in the Act of April 23, 1932, 47 Stat. 136; 43 U.S.C. 154. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: July 24, 1984.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and the Act of April 23, 1932, 47 Stat. 136; 43 U.S.C. 154, it is ordered as follows:

1. Public Land Order No. 4289 of October 5, 1967, which withdrew public lands for the Rogue River Basin Reclamation Project is hereby modified to permit mineral location, entry, and mining, under the provisions of the Act of April 23, 1932, 47 Stat. 136; 43 U.S.C. 154:

Willamette Meridian

T. 40 S., R. 7 W.,
sec. 1, S½ of lot 1, SW¼NE¼, NE¼SW¼, and those portions of lots 2 and 3, and the SE¼NW¼ that are located outside of patented M.S. 930.

Siskiyou National Forest

T. 39 S., R. 6 W.,
sec. 29, SW¼
sec. 30, lot 2, W½ and W½E½ of lot 4, and N½S½SE¼;
sec. 31, lot 2, 3, and 4, W½ and W½E½ of lot 1, SE¼NE¼NE¼, S½NE¼, and SE¼NW¼.
T. 40 S., R. 6 W.,
sec. 6, lots 4 and 5.

The areas described aggregate approximately 911.42 acres in Josephine County.

2. At 8:30 a.m., on July 24, 1984, the lands will be opened to location, entry, and mining under the provisions of the Act of April 23, 1932 (SUPRA). Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including

attempted adverse possession under 30 U.S.C. Section 28, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

3. Prior to location or entry under the mining laws and as a condition precedent to the vesting of any rights, the intending locator or entryman must properly execute and record the appropriate contract for mining as provided in the Act of April 23, 1932 (SUPRA). The contract for mining may be obtained from the Pacific Northwest Region, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, Idaho, 83724.

4. Any mining location made on the lands is subject to the provisions that if and when the lands are actually required for reclamation purposes, they may be utilized by the United States without payment, and any structures or improvements placed on the lands which may interfere with contemplated reclamation works will be removed or relocated without expense to the United States, its successors and assigns.

The lands have been and remain open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 18, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-16898 Filed 6-25-84; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 6547

[I-18220]

Idaho; Withdrawal of Forest Service Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 107.02 acres of national forest land to protect the watershed, hydrologic values, and fishery in the Salmon River drainage. This action will close the land to mining, but not to surface entry or mineral leasing, for 20 years.

EFFECTIVE DATE: July 24, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, Idaho State Office, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location under the general mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, for protection of watershed, hydrologic and fishery values in the Salmon River drainage.

Boise Meridian

T. 23 N., R. 20 E.,
sec. 12, 13, 14.

Beginning at USLM No. 4, Eureka Mining District, said Monument No. 4 being more particularly located in the unsurveyed NW¼SE¼ Section 24.

From point of beginning, North 4°32'52" East 5061.93 feet to Corner No. 1, the True Point of Beginning, said Corner being identical with Corner No. 1 Lemhi Gold Placer, as shown on Moose Creek Hydraulic Placer Mineral Survey Plat No. 3057.

Thence North 0°01' West, 4109.7 feet along the west line of Lemhi Gold Placer to a point at the intersection of line 1-2 of Rocky Mountain Placer, MS No. 1867, which point lies North 58°56' West, 58.1 feet for Corner No. 1 of MS No. 1867 and said point being Corner No. 2 of herein described lands;

Thence North 58°56' West, along line 1-2 of MS No. 1867 for a distance of 817.35 feet to Corner No. 3;

Thence South 0°01' East, 4529.24 feet to Corner No. 4;

Thence South 8°33' East, 1877.1 feet to Corner No. 5;

Thence South 89°49' East, 883 feet to Corner No. 6, said Corner No. 6, being identical with Corner No. 4 of Moose Creek Hydraulic Placer MS 3057;

Thence North 8°33' West, 1877.1 feet along the west line of said Moose Creek Hydraulic Placer to Corner No. 7 said Corner No. 7 being identical with Corner No. 5 of MS No. 3057;

Thence North 89°49' West, 183 feet to Corner No. 1, the True Point of Beginning.

The area described aggregates 107.02 acres in Lemhi County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. The withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Inquiries concerning the forest lands should be addressed to Chief, Branch of Lands and Minerals, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: June 18, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84-16900 Filed 6-25-84; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 6548

[CA-13720]

California; Partial Revocation of Secretarial Order of January 10, 1927, and Partial Revocation of Departmental Order of June 24, 1952

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes one Secretarial order and one Departmental order (partially overlapping) as they affect 109.06 acres of national forest land withdrawn for powersite classification purposes. This action will open the lands to appropriate forms of surface entry on the national forest. The lands have been and remain open to mining and mineral leasing.

EFFECTIVE DATE: July 24, 1984.

FOR FURTHER INFORMATION CONTACT: Marie M. Getsman, California State Office, 916-484-4431.

By virtue of the authority contained in section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and section 24 of the Federal Power Act of June 10, 1920, 41 Stat. 1075, as amended, 16 U.S.C. 818, and pursuant to the determination of the Federal Energy Regulatory Commission in DA-1144 California, it is ordered as follows:

1. The Secretarial Order of January 10, 1927, and Departmental Order of June 24, 1952, creating Powersite Classification No. 163 and Powersite Classification No. 425, respectively, are hereby revoked insofar as they affect the following described lands:

Plumas National Forest Mount Diablo Meridian

T. 22 N., R. 13 E.,
sec. 8, NE¼NE¼ and SW¼NE¼;

sec. 30, lots 7 and 8 (formerly described as lot 5).

The area aggregates approximately 109.06 acres in Plumas County, California.

2. The State of California has waived its preference right of application for highway rights-of-way or material sites as provided by Section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. At 10:00 a.m. on July 24, 1984, the lands will be opened to such disposition as may by law be made of national forest lands, subject to valid existing rights and the requirements of applicable regulations.

4. The lands have been and remain open to applications and offers under the mineral leasing laws, and to location under the United States mining laws.

Inquiries concerning these lands should be addressed to the State Director, Bureau of Land Management, Room E–2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Dated: June 18, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84–16897 Filed 6–25–84; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[General Order 16; Docket No. 84–17]

Interest in Reparation Proceedings

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This rule changes the method of assessment from simple to compound interest calculated on U.S. Treasury obligations. The rule implements section 11(g) of the Shipping Act of 1984 but would be equally applicable to proceedings under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933, initiated on or after June 18, 1984.

EFFECTIVE DATE: July 26, 1984.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Office of Policy Planning and International Affairs, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523–5870.

SUPPLEMENTARY INFORMATION:

I. Background

This proceeding was instituted by a Notice of Proposed Rulemaking published in the **Federal Register** on April 23, 1984 (49 FR 17044) for the purpose of conforming the Commission's current rule on the award of interest in reparations proceedings to section 11(g) of the recently enacted Shipping Act of 1984. Section 11(g) of the Act requires that interest assessed in reparations proceedings be at "commercial rates compounded from the date of injury." The current Commission rule on the assessment of interest in reparations proceedings specifies that "Interest (simple) will accrue from the date of payment of freight charges to the date reparations are paid."

The proposed rule would make two modifications to the current rule. The first modification changes the period during which interest accrues. The period in the current rule extends from the date the freight charges are paid until the date reparations are paid. The period in the proposed rule would extend from the date the injury occurred until the date specified in the Commission Order awarding reparations.

The second modification changes the manner in which interest is accrued. In the current rule, simple interest is assessed on reparations awards, while in the proposed rule, interest is compounded on a daily basis.

The comment period on the proposed rule was 30 days after publication in the **Federal Register.** Comments were received from Traffic Service Bureau, Inc., United States Lines, Inc. and United States Lines (S.A.) Inc. (together U.S.L.), and two Trans-Pacific conferences. These comments are discussed below.

The Period of Time During Which Interest Accrues

The proposed rule states that "Interest awarded in reparations proceedings will accrue from the date of injury to the date specified in the Commission Order awarding reparations." Traffic Service Bureau, Inc. suggests that interest should accrue from the date of injury to the date reparations are paid. It points out that: (1) This is the policy of the current rule; and (2) it encourages the timely payment of reparations.

U.S.L. suggests that a "mechanism should be developed whereby payment may be made in the discretion of the Respondent after service of the Recommended Decision of [the] Administrative Law Judge or the Settlement Officer." They argue that: (1) The rule provides a disincentive for earlier payment, (because once a date is specified in the Commission Order, there will be no incentive to pay before that date); and (2) the respondent is forced to pay interest during comment or Commission review periods subsequent to the date of recommended decisions by Administrative Law Judges or Settlement Officers. U.S.L. suggests that in the event that a party wishes to object to the decision of the Administrative Law Judge or of the Settlement Officer, that party should be required to file a notice of intention to object prior to the date specified for payment, and a failure to file such a notice would be deemed a waiver of its right to file objections. U.S.L adds that "interest on any additional amount only, as determined by the Commission to be owed, could then be calculated in the same manner as the previous award."

The Commission, in enforcing the current rule, determines the relevant *rate* of interest to be assessed on reparations awards. The current rule also specifies that this relevant rate of interest is to be assessed on a simple basis (i.e., it is not compounded). The Commission however does not compute the actual interest *amount*, but leaves this to the respondent. Under the proposed rule, not only would the Commission determine the relevant rate of interest, but it would also calculate the actual amount of interest to be paid. This involves: (1) A determination of the relevant rate of interest (in this regard the current and the proposed rules are identical); and (2) the daily compounding of this rate of interest via a compounding formula in order to determine the precise interest payment to be made.

The proposed rule, in responding to a Congressional mandate to compound interest, requires the use of several involved calculations in order to compute the actual interest payments. While the least complicated compounding formula is used, it nevertheless lands itself to easy error either in misapplication or simple arithmetic mistakes. It is thus believed that if such calculations are made in all cases by the Commission, not only will there be a uniform application of the rule, but also, there will be a minimal number of errors, because of a developed, inhouse expertise (due to repetitive calculations) in the application of the formula (as opposed to occasional use by outside parties).

In order to include the amount of the interest payments in the Commission Orders awarding reparations, it is necessary to know the specific termination date of the reparations period. Under the current rule, where interest accrues until the date reparations are paid, such a date is unknown at the time of the Commission Order. Hence, the proposed rule (in order to identify a specific termination date for the reparations period), recommends that the reparations period terminate on the date specified in the

Commission Order awarding reparations. The proposed rule also states that "Normally, the date specified within which payment must be made will be 15 days subsequent to the date of service of the Commission Order." The amount of lost interest which would accrue during the 15-day period would be negligible.

With respect to U.S.L.'s argument that some mechanism should be established to toll the time for payment of interest, this flies in the face of the theory underlying interest. No matter how long a proceeding may continue, the "offender" still has the use of the illegally-obtained monies. It should also be mentioned at this point that carriers as well as shippers benefit from this rule inasmuch as the 1984 Act permits carriers to proceed against shippers for underpayment.

In response to Traffic Service Bureau, Inc.'s concern about timely payment of reparations, it should be noted that in those instances of delinquent payments, the complainant may seek enforcement of the Commission Order in the United States District Court having jurisdiction over the parties as well as petitioning the Commission for relief.

The Compounding of Interest on a Daily Basis

The proposed rule specifies that interest will be compounded on a daily basis. U.S.L. argues against daily compounding and suggests that compounding occur every six months because this is the same maturity period as for six-month Treasury bills which are the benchmark on which the reparations rate of interest is based.

There is an important conceptual point that should be made concerning the above issue. The intent behind the proposed rule was to establish a benchmark interest rate that would produce a reasonable result for the reparations process. The Commission is not attempting to look behind a particular entity's uses of working capital to reveal in each case where the monies at issue were actually invested. The fungibility of money would make such an exercise impossible because the funds could have been placed in numerous alternative forms of investments. These alternatives include certificates of deposit, Treasury bills and bonds, money market funds, long-term corporate debentures, and literally hundreds of other instruments of varying risk and maturity. Thus, the linkage between the use of six-month-Treasury-bill yields and a compounding of interest every six months is spurious. The interest rate factor determined by evaluating the monthly yields on six-month Treasury bills is simply a representation of what the Commission believes to be a fair rate of interest.

Daily compounding is recommended in the proposed rule because it is the most precise and least complicated, compounding formula which can be used. Perhaps of more importance, daily compounding is now used in the commercial sector by most major money market funds.

Furthermore, if six-month compounding were adopted by the Commission, there would still be a residual, daily compounding computation necessary in those instances when the reparation period did not precisely terminate at the beginning or the end of a six-month interval. This would unnecessarily complicate the proposed rule's compounding formula. Finally, the difference in the amount of reparations between six-month compounding (as recommended by U.S.L.) and daily compounding (as used in the proposed rule) is not very large. For example, at 10%, daily compounding over 5 years, a dollar would grow to $1.648, whereas with semiannual compounding, the amount would be $1.629.

The Use of the Six-Month Treasury Bill Rate

The Trans/Pacific Freight Conference of Japan/Korea and Japan/Korea-Atlantic and Gulf Freight Conference, and their member lines, have argued against the proposed rule's use of the interest rates on six-month Treasury bills. They point out that six-month Treasury bills are available only in minimum $10,000 denominations, and consequently suggest that "it would be inappropriate to assess interest rates beyond those available in commercial passbook accounts for reparation awards before the Commission." U.S.L. on the other hand stated that: "While it can be argued that some index other than secondary market interest rates on six-month Treasury Bills may be more valid, since not all claims will involve $10,000 or more, U.S. Lines is satisfied that this index represents a readily ascertainable rate and a rate that is adequately reflective of the statutory intent."

This issue was raised in Docket 81–22 (the rulemaking for the current reparation rule). In its Final Order in that proceeding, the Commission upheld the use of six-month Treasury bills as a basis for calculating a reparations rate of interest and stated that: "While most reparation amounts, by themselves, would probably not be large enough to invest in Treasury bills, there are a myriad of investment opportunities at rates approximating the Treasury bill rate which are available to the small investor." The Commission thus concluded that "the use of an average Treasury bill rate as opposed to a fixed 'statutory' rate or 'passbook' rate is a valid exercise of agency discretion." As such the six-month Treasury bill rate fully meets the benchmark standard contemplated in this rule.

To reiterate, the six-month Treasury bill rate represents a benchmark interest rate that establishes a reasonable level of compensation. The Commission is not attempting to identify the actual investment instruments used in each instance. It should be pointed out, however, that a hypothetical investor with less than $10,000 could obtain a return that would closely approximate the six-month Treasury bill rate by investing in a money market fund which invested solely in Treasury bills. As previously stated, most major money market funds compound interest on a daily basis.

All other comments have been considered and have been found to be without merit.

In view of the foregoing, the Commission is adopting the proposed rule as final, without change.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure.

PART 502—[AMENDED]

Therefore, pursuant to 5 U.S.C. 553, sections 22 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 821 and 841a.) and sections 11(g) and 17(a) of the Shipping Act of 1984 (46 U.S.C. app. 1710(g) and 1716(a)), the Commission is revising 46 CFR § 502.253 to read as follows:

§ 502.253 Interest in reparation proceedings.

Interest awarded in reparation proceedings will accrue from the date of injury to the date specified in the Commission Order awarding reparations. Normally, the date specified within which payment must be made will be 15 days subsequent to the date of service of the Commission Order. The rate of interest will be derived from the average monthly rates on six-month U.S. Treasury bills commencing with the rate for the month that the injury occurred and concluding with the latest available monthly Treasury bill rate at the date of the Commission Order awarding reparations. Compounding will be daily from the date of injury to the date specified in the Commission Order awarding reparations. The monthly rates on six-month U.S. Treasury bills

for the reparation period will be summed and divided by the number of months for which interest rates are available in the reparation period to determine the average interest rate applicable during the period.

By the Commission.

Francis C. Hurney,

Secretary

[FR Doc. 84-16893 Filed 6-25-84; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 83-115; FCC 84-252]

Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies

AGENCY: Federal Communications Commission.

ACTION: Denial of petitions for reconsideration or stay of final rules.

SUMMARY: The Commission has required that any of the companies divested from AT&T (BOCs) which choose to provide enhanced services or customer premises equipment (CPE) after June 30, 1984 do so only through structural separation from basic transmission services. The rules require that the BOCs uniform to the requirements imposed on AT&T in the Second Computer Inquiry (Computer II), subject to certain modifications. Several parties requested that the Commission reconsider the application of the modified Computer II rules to the BOCs. In addition, two BOCs requested that the Commission stay the effective date of the rules as they pertain to the BOCs pending resolution of the petitions for reconsiderations and of a pending judicial appeal. The Commission has denied these requests, finding that the grounds for stay have not been met and that until it has gained more experience in the effects of the BOCs' provision of enhanced services and CPE, structural separation will enable it to control potential anticompetitive conduct or cross-subsidization of CPE and enhanced services by the BOCs' regulated operations. In addition, the Commission has retained the modifications of the Computer II rules as applied to the BOCs, finding that these will enable the BOCs to provide services which can benefit consumers, and do not raise the threat of conduct which will outweigh the benefits provided by the limited amount of unseparated activity they permit.

EFFECTIVE DATE: June 26, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Povich, (202) 632-9342.

Memorandum Opinion and Order on Reconsideration

In the matter of Petitions for Reconsideration of an Order in Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies (CC Docket No. 83-115).

Adopted June 1, 1984.

Released June 1, 1984.

By the Commission: Commissioner Dawson issuing a separate statement at a later date.

I. Introduction

1. We have before us petitions for reconsideration of our decision to apply modified structural separation conditions to the unregulated offerings of customer premise equipment (CPE) and enhanced services by the recently divested Regional Bell Operating Companies (regional companies or BOCs) [1] pursuant to the principles we established in the *Second Computer Inquiry (Computer II).*[2] In fashioning separation requirements for the divested companies in their provision of CPE and enhanced services we decided to apply a more limited form of structural separation than we required of American Telephone and Telegraph Company (AT&T) at the time we first established the structural separation requirements for regulated and unregulated activities in *Computer II.* The Order permitted the regional companies to engage in the provision of CPE and enhanced services as of January 1, 1984, the date of the divestiture, until June 30, 1984 without structural separation. During this start up period the regulated operations of the regional companies may support affiliated CPE or enhanced service providers in a manner otherwise prohibited by the rules.

2. Several parties, including the seven regional companies, request that we vacate the structural separation requirements and permit the BOCs to integrate the offering of enhanced services and CPE with their regulated offerings.[3] Other parties request that we affirm our decision to require the regionals to adhere to the modified structural requirements, and further urge that we apply the full panopy of restrictions to the regionals.[4] Finally, certain of the regionals request that we allow shared activities with their separate entity beyond those activities the Order permits.[5] We recognize that

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[1] *BOC Separation Order,* FCC 83-552, 49 FR 1190 (Jan. 10, 1984) (Hereinafter referred to as Order), *appeal pending,* Illinois Bell Tel. Co. v. FCC, Nos. 84-1145, 84-1382, 84-1475 (7th Cir., filed January 30, 1984). Because most of the BOCs have proposed forming subsidiaries on a regional basis, we generally refer herein to the BOCs as the regional operating companies. The separate subsidiary requirement also applies, of course, to any individual BOC planning to offer CPE, enhanced services, or cellular services on its own. See *BOC Separation Order* at para. 1 n.3.

[2] Amendment of § 64.702 of the Commission's Rules and Regulations (Computer II), 77 FCC 2d 384 (1980) (Final Decision), *reconsideration,* 84 FCC 2d 50 (1981), *further reconsideration,* 88 FCC 2d 512 (1980), *aff'd sub nom.* Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied,* 103 S. Ct. 2109 (1983).

[3] At least one operating company of each RBOC, except the Bell Atlantic Operating Companies, objects to the imposition of any structural separation. Bell Atlantic does not oppose structural separation. Rather, it seeks permission to offer protocol conversion functions within its regulated offerings and opposes petitions which request that we rescind the exceptions we have drawn in the BOC Separation Order. On March 1, 1984, Illinois Bell Telephone Company and Wisconsin Bell moved the Commission to stay the Order's prohibition on direct BOC provisions of CPE and enchanced services pending resolution of petitions for reconsideration and completion of appellate review. Utilizing the factors enumerated in Virginia Petroleum Jobbers v. FPC, 259 F.2d 921 (D.C. Cir. 1958), as modified in Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977), we conclude that Illinois and Wisconsin Bell have not made a sufficient showing to warrant the grant of a stay pending reconsideration or appellate review. In particular they have not demonstrated any irreparable harm should a stay not be granted. The have demonstrated that the Order's requirements will impose costs on them. We find, however, that those costs are outweighed by the harm to ratepayers and consumers if we delay the implementation of separate structure beyond the time which is essential to the regionals' ability to reenter competitive activities on an effective basis. We conclude that a balancing of the equities favor denial of the stay request.

[4] Certain petitioners also challenge the requirement that any offering of cellular CPE by the regional companies be made through a separate subsidiary other than the cellular service subsidiary. Order at para. 76 n.29. The Commission will shortly take action on that matter. In the interim, cellular CPE may be offered through the BOC organization or organizations providing enhanced services and CPE but not through the cellular subsidiary. *Id.* No party seeks reconsideration of that part of the Order which continues the requirement that the divested companies offer cellular services through a subsidiary separate from the Computer II subsidiary pursuant to § 22.901 of our Rules.

[5] NYNEX Corp., BellSouth and Ameritech, either in their interim capitalization plans or petitions for reconsideration or both, have proposed to market network services and CPE on an integrated basis. Those proposals are being evaluated in the context of capitalization plan review or separate waiver proceedings. NYNEX filed a petition for waiver on May 10, 1984. Public comments on that petition are being solicited. In addition, certain pleadings by the divested companies request that we permit the offering of code and protocol conversion functions as a non-tariffed part of requlated service offerings within the regulated network. Those issues are under consideration in Docket No. 80-756,

Continued

structural separation will generate certain inefficiencies, particularly in the regional companies' provision of enhanced services. For example, certain regionals have asked the Commission to waive aspects of the structural separation requirements to allow the network to perform protocol conversion. Those more refined proposals are currently being considered.[6] However, on the general record before us at this time, we find that it is beneficial to require structural separation of the BOCs' CPE and enhanced services activities. This approach will enable us to gain more experience regarding the effects of the BOCs' enhanced services and CPE offerings in the new post-divestiture environment. We have not imposed on the regionals the full range of structural separation requirements which we imposed on AT&T. As we stated in the Order, we are prepared to review the Order's requirements in two years and will modify those requirements as changed circumstances evolve.

A. Background

3. In the *Second Computer Inquiry* we decided that enhanced services and CPE should be detariffed and not subject to Title II regulation. To ensure that the ratepayer for regulated monopoly services not cross-subsidize these competitive activities we concluded that all carriers should separate the revenues and costs associated with the provision or unregulated products and services from the revenues and costs associated with the offer of transmission services through the mechanism of separate accounting. In the case of AT&T, however, we determined that the *Computer II* goals could best be met by the offer of CPE and enhanced services through a subsidiary which operated independently both structurally and financially from the basic network.

4. Following the adoption of the *Computer II* rules, in a judicially approved agreement between AT&T and the Department of Justice reflected in the Modification of Final Judgment (MFJ), AT&T agreed to divest itself of 22 of the BOCs.[7] At divestiture on January 1, 1984 these 22 companies were consolidated into 7 regional companies.[8] The MFJ permits the divested BOCs to establish Bell Communications Research, Inc. (Bell Research, originally named the Central Services Organization). Each regional funds approximately one-seventh of the expenses of Bell Research and participates in its projects. Bell Research personnel possess expertise in the development, modernization and improvement of efficient local networks including provision of enhanced services such as protocol conversion and interface specifications with CPE.[9] We issued a Notice of Proposed Rulemaking in this proceeding to determine whether and what types of structural separation might be appropriate for the divested regional companies given any changed circumstances that might result from the upcoming divestiture.[10]

5. Following a thorough review of the record in the instant proceeding, we found that the potential for the regionals to cross-subsidize competitive offerings with funds derived from regulated services, or to engage in anticompetitive conduct such as discriminatory interconnection of competitors' offerings to the network, was sufficient to require structural separation of the regionals' competitive offerings. We found that, in the factual circumstances of the divested regional operating companies, a modified form of structural separation would at this time produce benefits to consumers. We also found that the reduced regulatory intrusion into the conduct of unregulated businesses which attend structural separation, as opposed to accounting separation, would benefit competition. We concluded that these benefits outweighed the costs to the regionals in forming and operating through separate entities.

6. In order to permit immediate and flexible reentry by the BOCs into the provision of CPE and enhanced services, however, we deferred the effective date of compliance with structural separation until June 30, 1984, provided that interim plans for capitalizing separate operations were filed with the Commission. We found that the benefits of the regionals' entry during this initial start up period outweighed the potential harms which could occur without structural separation.[11]

7. In order to tailor our structural remedies to fit the individual circumstances of the divested companies, and because we found that consumers would benefit with no concomitant harm to the public interest or competition, we allowed the following joint operations which are not otherwise permitted under § 64.702 of our Rules. First, customer representatives of a BOC's telephone company may inform residential and business customers seeking basic services that they may obtain CPE from the regional's or BOC's CPE organization, provided the customer is informed that other vendors also provide CPE. Second, the operating company's personnel may provide installation and maintenance services in support of residential and single-line business telephones on behalf of customers of the CPE entity. Third, BOC regulated operations may provide billing services on behalf of the CPE affiliate for four years following January 1, 1984. Fourth, we permitted RBOC telephone companies to provide CPE associated with party-line service on an unseparated basis. Fifth, we provided the regionals an opportunity to demonstrate that some alternative corporate structure, such as an unincorporated division, could satisfy the Commission's concerns regarding the financial independence of the separate organization.

Communications Protocols under § 64.702 of the Commission's Rules and Regulations (Protocol Order), FCC 83-510, released Nov. 21, 1983, *recon. pending*, and separate waiver proceedings. ENF File No. 84-15, 19, 20, 21, 22, 23.

[6] ENF File Nos. 84-15, 19, 20, 21, 22, 23.

[7] United States v. AT&T, 552 F. Supp. 131 (D.D.C 1982), *aff'd sub nom.* Maryland v. United States, 103 S. Ct. 1240 (1983). AT&T was not required to divest itself of Southern New England Co. (SNET) and Cincinnati Bell, Inc. (CBI), operating companies in which AT&T held a minority interest. CBI and SNET have, following the effective date of the AT&T divestiture, reached agreements designed to phase out AT&T control of those companies. *See* Letter from D. J. Culkin to Chief, Common Carrier Bureau (February 29, 1984).

[8] The MFJ placed line-of-business restrictions on the services and products which the BOCs can provide. *See* Order at paras. 8-9 and n.9-10.

[9] Bell Communications Research, Inc. Memorandum (*Bell Research Report*), at 16 (Feb. 28, 1984). NATA and IDCMA and others argue that we should prohibit Bell Research from engaging in any activities which directly or indirectly support CPE or enhanced services. Commenters on the Bell Research Report also suggest that Bell Research's activities may violate the MFJ and that we commence a separate proceeding into Bell Research organization and activities. It appears that Bell Research activities implicate critical national public interest concerns that require our scrutiny. We have already initiated a proceeding regarding Bell Research's activities. *See* Order at para. 70; FCC Public Notice No. 2911 (March 14, 1984). The staff is directed to continue its inquiry into the activities of Bell Research, pursuant to Sections 218 and 403 of the Act, and to report to us their findings by October 31, 1984. We are currently considering in another proceeding, options by which Bell Research may support national security and emergency preparedness communications needs. Second Further Notice of Proposed Rulemaking, in Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (NSEP Rulemaking), CC Docket No. 81-893, at para. 13 (released May—, 1984).

[10] Notice of Proposed Rulemaking (Notice), 48 FR 13056 (March 28, 1983).

[11] We required that the BOCs file interim capitalization and accounting plans demonstrating how they would achieve compliance with the Order by June 30, 1984. Our review of BOC interim plans will allow us to guide the BOCs in making any modifications necessary to achieve compliance with the *Computer II* rules. Permanent capitalization plans are to be filed by June 30, 1984. Order at para. 74.

B. Issues Before the Commission

8. Petitions for reconsideration of the Order and other pleadings have been filed by numerous parties. These include the regional companies or their operating companies; manufacturers or associations of manufacturers of telecommunications equipment; providers or associations of providers of enhanced services; telecommunications carriers; and state regulatory authorities.[12]

9. The parties are divided on whether we have established the correct balance of safeguards necessary to maximize consumer benefits from the entry by the regional operating companies into the CPE and enhanced services marketplaces. The Association of Data Processing Organizations, Inc. (ADAPSO), the Independent Data Communications Manufacturers Association, Inc. (IDCMA), and North American Telecommunications Association (NATA), supported by several other parties, contend that, despite the changed circumstances caused by the divestiture, the regional companies have shown no justification for removal of the structural separation requirements which applied to the BOCs prior to divestiture. These parties further assert that we erred in permitting exceptions to the *Computer II* rules such as dial-tone referral, joint billing and joint installation and maintenance.

10. In contrast, the regional companies, NTIA, and certain other parties argue that, using the four guidelines stated in *Computer II* to analyze the costs and benefits of structural separation to carriers, the regional should be treated like General Telephone & Electronics Corp. (GTE), Cincinnati Bell, Inc. (CBI) and Southern New England Telephone Co. (SNET), which are not subject to similar separation requirements.[13] Each regional petitioner and certain other parties request that if the structural separation requirements are not rescinded, we preserve the exceptions contained in the Order. In addition, Pacific Bell (Pacific), BellSouth Corp. (BellSouth) and Southwestern Bell Corporation (Southwestern) each request removal or modification of the conditions placed on the provision of billing services due to the asserted difficulties and costs of bringing their billing systems into conformity with our Order on a timely basis.

[12] A list of parties filing pleadings in this proceeding is attached as an Appendix to this Order. A summary of those pleadings has been placed in the docket of this proceeding. All motions for waiver of page limitations or for leave to late-file or supplement pleadings are granted.

[13] Those four guidelines included a carrier's ability through control over local transmission bottleneck facilities to engage in anticompetitive activity; the carrier's ability to engage in cross-subsidization to the detriment of communications ratepayers; the carrier's vertical integration with entities supported by basic communications services-derived revenues; and possession of sufficient resources to enter competitive markets through a separate subsidiary. *Reconsideration*, 84 FCC 2d at 72.

II. Discussion

A. Jurisdiction Over Regional Holding Companies and Their Subsidiaries

11. As a threshold matter we reject arguments proffered by certain regional companies which assert that the regional holding companies and their non-common carrier subsidiaries are not subject to our jurisdiction under the Act because they do not directly provide common carrier facilities. This is an overly restrictive view of our jurisdiction. See *Computer and Communications Industry Ass'n* v. *FCC*, 693 F.2d 198, 212–14 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 2109 (1983) (affirming *Computer II*, and holding that FCC has ancillary jurisdiction to impose separation requirements on AT&T); *General Telephone of the Southwest* v. *United States*, 449 F.2d 846, 855 (5th Cir. 1971); *Application of General Telephone & Electronics Corp. To Acquire Control of Telenet Corp.*, 72 FCC 2d 91, 96 (1979). Our examination into holding company and other affiliate transactions is necessary to fulfill our responsibilities to ratepayers by ensuring that structural separation is complied with. *See* 47 U.S.C. 218, 219(a) and 403.

B. Applicability of Modified Structural Separation to the BOCs

12. We cannot accept the contention advanced by the regionals that the Order in this proceeding arbitrarily imposed structural separation on the divested companies without following the guidelines developed in *Computer II* or without considering each of the BOCs' unique circumstances after they were divested from AT&T. The BOCs argue that we may impose structural separation only if they exhibit each of the characteristics articulated in the *Reconsideration*. In particular they assert that structural separation is unwarranted because no BOC controls bottleneck transmission facilities on a nationwide basis, and because the BOCs lack the vertical integration which characterized the predivestiture Bell System.

13. As we stated in the Order, the factors considered in *Computer II* and in the Order do not constitute rigid requirements each of which must be met before structural separation can be applied to a particular carrier. Instead, these were only guidelines we considered relevant in deciding which carriers should be required to form separate subsidiaries in *Computer II*. These factors together with other considerations relevant to the particular circumstances of the BOCs, were weighed here in a cost-benefit analysis to determine whether structural separation would be warranted for the BOCs. Thus, not every one of these four factors need be satisfied to impose structural separation. Reliance on static guidelines would be inconsistent with the balancing test we applied in *Computer II*, and might cause us to relinquish our duty to make rulings consistent with current circumstances and the overall public interest objectives of the Act.[14] Indeed in the *Final Decision* we stated that the balance of costs and benefits of structural separation, as well as the proper degree of separation imposed, could change with the circumstances.[15] Therefore, we modified the *Computer II* requirements to recognize that the divested BOCs' circumstances differ from those of pre-divestiture AT&T.

14. In deciding to require structural separation for AT&T's provision of enhanced services and CPE we focused in part upon AT&T's ability to use its nationwide control over bottleneck facilities and its vertical integration with research and development and manufacturing operations to engage in anticompetitive conduct. As noted above, we recognized that the divested regionals do not exhibit these characteristics to the extent that AT&T did. We concluded in the Order, however, that the regional control over bottleneck facilities possessed by the divested companies is sufficient to enable them to engage in anticompetitive conduct requiring structural separation at this time. Further, while the BOCs are not now permitted to manufacture CPE, they are permitted to engage in research and development of both basic and competitive offerings. Order at para. 36.

15. The Order was based upon our findings that in light of current circumstances, a modified structural separation is necessary to ensure that BOC provision of CPE and enhanced services does not lead to unreasonable rates for regulated services or diminished competition in the provision of CPE or enhanced services. Absent modified structural separation it would

[14] *See* Geller v. FCC, 610 F.2d 973, 980 (D.C. Cir. 1979).

[15] *Final Decision*, 77 FCC 2d at 389, 463.

be more difficult to control the regionals' ability to cross-subsidize competitive offerings or to discriminate in the interconnection of competitors' offerings. The benefits to consumers of controlling such potential conduct outweight the costs of separation. We do recognize the possible inefficiencies inherent in structural separation. Structural separation may reduce possible economies of scale and scope. Public services might be provided more cheaply on an unseparated basis. However, until we have had the opportunity to measure the effect of structural separation on the regionals' provision of CPE and enhanced services, structural separation is valuable to maximize the benefits and minimize the harms of the regionals' participation in these activities while we acquire experience which will enable us to adjust the structure under which this participation may be most beneficial.

1. Protection of Competition for CPE and Enhanced Services Offerings

16. We found in the Order that each BOC has the ability to act in an anticompetitive manner which could adversely affect consumers. We based this determination on our examination of circumstances pertinent to the BOCs following divestiture. These circumstances include their substantial control over monopoly bottleneck facilities in large regions which include virtually every populous urban area. Arguments in petitions for reconsideration do no cause us to change these findings.

17. In each region of the country, the regional companies, through their operating companies, control the preponderance of "bottleneck" facilities, and serve most areas with an overwhelming concentration of urban and business ratepayers. IDCMA points out that 41 of 45 cities in the United States with populations of 300,000 or more are served by BOCs. Even the smallest regional company serves cities with over 300,000 in population. Marketing of CPE and enhanced services in such locations is likely to be most intense. Control in urban areas therefore provides the regionals with substantial opportunities to affect the interconnection of CPE and enhanced services to the network. As we have stated:

> The importance of the control of local facilities . . . cannot be overstated. As we evolve into more of an information society, the access/bottleneck nature of the telephone local loop will take on greater significance.[16]

[16] *Id.* at 466.

As parties to this proceeding point out, absent structural separation, the BOCs could also use their predominance in providing local service to induce subscribers to use BOC-provided CPE by discriminating in the quality and timing of installing and maintaining network facilities, with the effect of impairing the benefits of competition and the public interest objectives of the Act.

18. Certain of the companies also contend that their operating companies lack the concentrated urban bottleneck control which would enable them effectively to use local facilities to their competitive advantage. Nevada Bell represents that it serves only 35% of the access lines in its own state. The U.S. West operating companies represent that they serve a sparsely populated region comprising 40% of the nation's land mass with only 10% of its population. Ameritech and U.S. West also emphasize that their BOCs are limited to serving noncontiguous LATAs which limits their ability to use their bottleneck control anticompetitively. There is no reason, however, for treating individual BOCs which are owned by larger regional companies differently, from the regional parent companies at this time. The Regionals' assertions do not contradict our finding that each BOC is an operating arm of a centralized regional company, and that the regionals each serve most or all of the urban and industrial areas in their respective regions. In each of these regions, between 70 and 92 percent of all exchange service customers are served by BOCs. Therefore each BOC is part of a larger organization with the ability to engage in significant anticompetitive conduct and cross-subsidization. As part of the pre-divestiture Bell System, each BOC was subject to structural separation because of AT&T's control over it. Here, too the individual BOCs are subject to structural separation because they are controlled by the larger regional companies. These findings are buttressed by statistics cited by NATA, Rolm and IDCMA, and uncontradicted by any of the parties, that the regionals control far more bottleneck facilities in concentrated population centers than independent carriers.

19. The regional petitioners cite various factors which they assert reduce their incentive and ability to engage in anti-competitive conduct and thereby reduce the need for structural separation as a regulatory tool. Southwestern Bell and NYNEX argue that our Part 68 registration program [17] allows connection of equipment manufactured by all vendors. In addition, the *Computer II* network information disclosure rules require all carriers to disclose to the public information affecting changes to the telecommunications network which would affect either intercarrier interconnection or the attachment of CPE to the network.[18] U.S. West and NYNEX also cite statements in their interim capitalization plans and plans for shared services that the BOCs will continue to use Centralized Operations Groups (COGs) to ensure equal interconnection of CPE provided by competing vendors.[19] The network information disclosure requirement and BOC procedures, it is argued, ensure that their BOCs lack the ability to discriminate in providing access to basic facilities against competing equipment and services providers.

[17] 47 CFR 68.1 *et seq.*

20. Most of these arguments were presented in response to the Notice. While these safeguards alone may, at some time in the future, prove adequate to protect the public interest, the structural separation conditions are necessary at this time. No argument in the petitions for reconsideration compel us to conclude otherwise. Structural separation reduces the common transactions between providers of basic services and affiliated providers of competitive offerings, and highlights transactions such as the flow of funds, transfers of information, and the procedures for accomplishing interconnection by affiliated vendors. Indeed, in the *COG Order* we clarified that the use of identical procedures by the regionals' CPE entity and competing vendors to obtain basic services on behalf of customers is a part of the structural separation requirement. We also made clear that the COG-like procedure was only one mechanism to

[18] 47 CFR 64.702(d)(2); Computer and Business Equipment Manufacturers Ass'n, 93 FCC 2d 1226 (1983).

[19] A COG is an organization established by each BOC to serve as centralized point of contact for customers and vendors of CPE including key, PBX and multifunction systems. COGs were established pursuant to a settlement agreement between AT&T and some interconnect vendors. *Jarvis, Inc.* v. *American Telephone and Telegraph Co.*, Civil Action No. 74–1674 (D.D.C. settlement effective May 27, 1980). COGs process orders for BOC services relating to the inteconnection of customer premises equipment including scheduling and coordination services. The first COG was established in 1980 and COGs were operational in all BOCs by the end of 1981. We recently directed the BOCs to implement procedures and meet with interconnect vendors to resolve any service problems reported by the interconnect industry in obtaining service interconnection on behalf of their customers. *NATA Petition for Emergency Relief*, FCC 84–132 at para. 2 and n.3 (released April 11, 1984). (*COG Order*).

achieve the BOCs' overall obligation to provide nondiscriminatory interconnection.[20] Without structural separation, which reduces a carrier's ability to engage in anticompetitive conduct, neither the COG-like procedure, nor other safeguards would be as effective as we have deemed necessary in the present circumstances to maintain open entry, fair competition, and reasonable rates and practices.[21]

21. The BOCs also argue that the joint establishment of discriminatory network interfaces would be difficult to implement, easy to detect and unlikely given that they intend to contract with a number of CPE vendors to manufacture their CPE requirements. We are concerned, however, that particularly in the provision of business CPE, the importance of network specifications for sophisticated systems will increase, adding to the opportunity and incentive to fashion discriminatory specifications within each regional territory. Structural separation places controls on the dissemination of information, including network information, which can curtail discriminatory activity.

2. Ability of BOCs to Cross-subsidize CPE and Enhanced Services Activities From Regulated Services

22. The regional companies make the same arguments concerning the likelihood of cross-subsidization as they did in responding to the Notice.[22] They argue that opportunities for cross-subsidization have been diminished by the prohibition in the MFJ against ownership of manufacturing facilities and provision of interexchange services. They also assert that their incentives and ability to cross-subsidize are diminished by the growing pressure from state regulatory authorities to control basic transmission rates. Finally, they assert that because there are few common costs between the provision of CPE and network offerings, cross-subsidization would be easily detectable, that accounting review is sufficient to detect any misallocation of costs, and that any cross-subsidization which occurs would be too minor to warrant structural separation.

23. As we found in *Computer II*, accounting and tariff review and the complaint process promote the goal of separating costs, as does the *Computer II* requirement that every carrier maintain separate books of account for regulated and unregulated transactions.[23] The *Computer II* structural separation requirements, however, increase the benefits to the public to be derived from these other safeguards by decreasing common activities which must be allocated between regulated and unregulated operations and minimizes regulatory intrusion and oversight over this process. The BOC's have not demonstrated that the range of common activities is of a level to alleviate our concerns. In addition, separate organizations facilitate narrow, targeted scrutiny of permissible intracorporate transactions for the proper allocation and payment of costs.

24. The Order also acknowledged that the regional companies are no longer directly affiliated with AT&T or any manufacturing entity. However, even absent such affiliation, we found that unseparated CPE and enhanced services activities between each BOC and its affiliates could generate enough cross-subsidization to warrant structural separation. Structural separation, while not a foolproof method of detection or deterrence, will assist our efforts to ensure that ratepayers are properly charged for regulated activities, since BOC separate organizations must be charged for unregulated activities.[24]

Upon gaining experience with the BOC's competitive offerings as their entry into competitive markets matures, we may determine that other safeguards will suffice and will adjust our requirements accordingly.

25. Several parties have argued that state commissions can protect ratepayers from bearing the costs of CPE and enhanced services ventures. Although we have no doubt that state commissions are motivated to hold down rates for regulated services, their ability to do so may be hampered by the multistate nature of the regional companies. Most of the regional's subsidiaries will operate on a broad regional basis transcending state boundaries. *See, e.g.,* Interim Capitalization Plan of BellSouth (January 30, 1984). Even Ameritech, which purports to establish subsidiaries in each state within its territory, provides numerous services from both the parent and regional subsidiaries which transcend state boundaries. *See* Interim Capitalization Plan filed by Ameritech (January 30, 1984). This fact may frustrate the states for effectively controlling the inclusion of CPE and enhanced services costs in regulated revenue requirements.

26. What is more, AT&T's divestiture of the BOC's pursuant to the MFJ and our adoption of an access charge plan have resulted for the first time in the BOC's filing their own tariffs with this Commission for a wide variety of interstate services. See *MTS and WATS Market Structure, Third Report and Order,* CC Docket 78–72, Phase I, 93 FCC 2d 241 (1983), *reconsideration,* 48 FR 42987, *further recon.,* 49 FR 7810, *further recon. pending, appeal filed,* No. 83–1225 (D.C. Cir., March 1, 1983). Prior to divestiture, the BOC's generally provided interstate service jointly with AT&T, and concurred in the latter's tariffs. The few service offerings that were contained in independent BOC tariffs, were filed by AT&T on behalf of the BOC's. The Commission, therefore was engaged in little direct oversight of BOC rates and revenue requirements. This industry structure has, of course, given way to a new regime under which the BOC's are independent providers of many access and other intraLATA interstate services to interexchange carriers and end users. We, therefore, have the responsibility to determine that BOC revenue requirements do not include improper expenses or rate base items to ensure that rates are just and

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[20] *COG Order* at para. 11. In addition, we expect that any Maintenance of Service Charge (MOSC) provisions in tariffs filed by the BOCs will be applied equally when a BOC's CPE is involved or a competitor's CPE is involved. *See* Maintenance of Service Charge Declaratory Ruling, Mimeo No. 1640 (released January 5, 1984).

[21] The BOCs also argue that they have no incentive to discriminate against competitors' offerings because it would be counterproductive to both the BOCs and regulated ratepayers. Discrimination would, according to several parties, cause customers of those competitors to bypass the local network, harming both the BOCs and ratepayers. The BOCs' arguments in this regard may be valid; however, we are currently examining elsewhere the difficult problems raised by potential bypass. We are not ready at this time to remove structural separation based upon bypass concerns. *See* FCC Pub. Notice No. 3206 (released March 28, 1984).

[22] We found in the Order that the potential for cross-subsidization occurs where there are transactions in which the same personnel perform both network and competitive functions, such as installation and maintenance or marketing. In addition, cross-subsidization can occur where the cost of an activity is not charged to unregulated operations, such as with advertising for unregulated products. Order at paras. 28–30.

[23] *Final Decision,* 77 FCC 2d at 475.

[24] The regionals further assert that we were incorrect in assuming that the use of excess computer capacity for enhanced services would burden basic service ratepayers. They assert that such usage would actually ease the burden on ratepayers by promoting efficient use of the network. We recognize that ratepayers could benefit from efficiencies of the shared use of computer capacity to provide unregulated services. However, in practice there may be significant opportunity and incentive to disadvantage ratepayers by adding unnecessary capacity to the network at ratepayer expense and by failing to charge unregulated operations a reasonable price for the use of such capacity. We conclude at this time that the benefits of modified structural separation outweigh the costs. Nevertheless, we will monitor closely developments in the communications industry in order to modify these requirements as changed circumstances develop.

reasonable. 47 U.S.C. 201(b). In view of the multitude of service offerings and individual rates we can reasonably expect the BOC's to file as they adjust to their new status, it becomes even more important for the Commission to avail itself of self-policing regulatory tools rather than to rely solely on the resource-consuming activities of cost support analysis and accounting review. We find, therefore, that, at the present time, structural separation is the best mechanism to assist us in preventing the improper inclusion of expenses associated with CPE and enhanced services activities in regulated revenue requirements.

27. Another Commission objective in permitting carriers to offer CPE and enhanced services is ensuring that such entry does not hinder the viability and continued growth of the regulated network. This includes the requirement that a carrier obtain our approval of the capitalization, or modification thereof, of its affiliate providing unregulated products and services.[25] Our review of capitalization plans helps us to determine that the proposed activity will not burden the eventual financial independence of the separated unregulated operation and will not burden the carrier's ability to maintain and improve the basic network. Financially independent subsidiaries do not compete for additional funds which would otherwise be used to improve and maintain the underlying network. Of course, we will continue to evaluate whether BOC CPE and enhanced services offerings may provide indirect benefits to regulated operations which justify modifying or removing the current financial requirements.[26]

C. Viability of Operating Through Structural Separation

28. We are not persuaded by petitions for reconsideration which assert that the BOCs should be relieved of structural separation either because they are unable to support the expense or because other carriers not subject to structural separation could afford the expense. The interim capitalization plans filed on behalf of each subsidiary for CPE and enhanced services demonstrate that the cost of establishing such operations is currently minor in proportion to the amount of total operating company revenues. As we concluded in the Order, moreover, the regionals do not face costs of disentangling existing offerings of CPE and enhanced services from basic operations.[27] Although there may be cost savings from certain unseparated activites, the regional companies still have not in their petitions for reconsideration identified specific levels of cost from establishing separate organizations which they would not, in any event, incur if competitive offerings could be performed on an unseparated basis.[28]

29. Ameritech and Pacific Bell argue that we have failed to recognize that the MFJ's restrictions on the BOCs' provision of "information services" makes structural separation of any enhanced services they may offer even more burdensome than for CPE. They assert that the MFJ limits them to certain "low-level" functions which could not be offered economically through a separate organization.[29]

30. As we acknowledged in the Order, and in *Computer II*, there may be inefficiencies inherent in separating enhanced services from the basic network.[30] We found on balance, however, that these inefficiencies should be tolerated at this time in light of the benefits to the public from structural separation in reduced opportunities for cross-subsidization and unreasonable discrimination. Furthermore, as we stated in the Order, we are prepared to review the proper degree of separation and will be able to adjust for any unnecessary inefficiencies.[31] In particular with respect to potential network operations on protocols, we have created a framework for doing so, and will act promptly on the regionals' requests for waivers to incorporate protocol conversion into the network.[32]

D. Applicability of Structural Separation to BOCs Vis-A-Vis Other Carriers

31. A major criticism made by several regionals is that we had no legitimate basis for subjecting them to structural

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[25] 47 CFR 64.702(d)(4). American Telephone and Telegraph Co. (Enhanced Services Order), 90 FCC 2d 404, *recon. granted in part and denied in part*, 91 FCC 2d 578 (1982), *further recon. denied*, FCC 83–427 (released September 20, 1983) (approving enhanced services capitalization plan), *further recon. pending*. U.S. West complains that our requirement that capitalization plans be filed 180 days prior to capitalization as required by § 64.702(d)(4) prevents it from rapidly entering competitive markets. "[T]he subsidiary, at the end of some determinate period, must be in a position to establish its financial independence and assume for itself the risks associated with its competitive ventures." Enhanced Services Capitalization Order, 90 FCC 2d at 412. We recognize that this lead time and disclosure requirement can have adverse consequences in a marketplace where other competitors are not subject to the same regulatory burden. But, this requirement permits us to review the capitalization amounts to assure that regulated funds are not unreasonably diverted to CPE and enhanced services operations. As indicated, subsidiaries should be capitalized with sufficient funding to ensure that the parent need not continually seek permission to infuse more funds. Therefore, once U.S. West's formal capitalization plan receives our approval, U.S. West has the option of funding additional activities of its *Computer II* subsidiary without receiving approval for funding from the parent. A 180 day waiting period and Commission approval in this case would not be required as long as the new venture is operated consistent with the *Computer II* separation conditions.

[26] Some parties argue that the amount of funding proposed by the regionals for unregulated activities is miniscule in comparison to the operating budgets of the regionals. It should be noted, however, that AT&T's initial capitalization amount for AT&T Information Systems (ATTIS) for the provision of enhanced services was $59 million. Since that investment, more than $11 billion in funds and assets have been provided to or transferred to ATTIS. Enhanced Services Order at 407–08; New CPE Capitalization Plan Order, 91 FCC 2d at 580; Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services, CC Docket No. 81–893, FCC 83–551 (Embedded CPE Detariffing Order) at para. 198 (released December 15, 1983), *recon. pending*. These amounts illustrate that relatively small initial capitalization can aggregate into substantial sums, and illustrate the importance of our ability to review the regional companies' funding levels to meet our responsibility under the Communications Act to ensure the viability of the nationwide network.

[27] Order at para. 59.

[28] It also appears that the regional companies do not oppose the concept of structural separation itself. Ameritech has decided to form multiple subsidiaries rather than one unified subsidiary. Bell Atlantic, BellSouth and Pacific Telesis all support their requests before the Court for waivers of MFJ line-of-business restrictions by offering to operate through separate subsidiaries. Motion of Pacific Bell and Nevada Bell for Permission to Enter into Foreign Business Ventures, filed February 8, 1984; Motion for a Waiver Permitting BellSouth Corporation to Provide a Response to NASA Request for Proposal, filed February 24, 1984; Bell Atlantic Corporation's Motion for a Waiver of Section II(D) of the Modification of Final Judgment, filed January 26, 1984 (proposed acquisition and operation of certain assets of a company leasing equipment other than CPE). These motions also do not demonstrate a variance between the costs of establishing subsidiaries as the Regionals would choose and the costs of establishing separate organizations as required by the Order. Nor do they describe the relationship of the regulated to unregulated activities the Regionals would establish. Furthermore, Bell Atlantic has not sought reconsideration of our requirement that it establish separate competitive operations although it objects to specific separation requirements. In addition, U.S. West has stated herein that it voluntarily established a separate CPE subsidiary prior to the Order, although it objects to the restrictions we have placed on the interaction between those entities and its operating companies. It is therefore difficult to weigh the assertions that requiring the regionals to operate through separate structure imposes substantial costs on the regional companies.

[29] The regional companies also request that we specify which enhanced services are not prohibited "information services" so that they will not be inhibited from entering competitive activities. Requests for waiver of line-of-business restrictions or further definition of the term "information services" are better addressed by the Court. Order at para. 22. There does not at this time appear to be any public interest reason for the Commission to involve itself in these determinations.

[30] Order at para. 55; *Final Decision* at 478–79.

[31] Order at para. 61.

[32] *See* Protocol Order, *supra* note 5; ENF File Nos. 84–15, 19, 20, 21, 22, 23.

separation when GTE [33] CBI and SNET are not required to comply with *Computer II's* structural separation conditions.[34] As we stated in the Order, this proceeding is concerned only with whether structural separation is warranted for the BOCs following divestiture, and our decision is sustainable on this basis alone.[35] In any event we did find that the BOCs may be distinguished from GTE and other independents based upon the BOCs' control of bottleneck facilities in large geographic regions containing virtually all of the populous urban areas which encompass the greatest use of CPE and enhanced services, and the lack of disentanglement costs generated by requiring the BOCs to establish separate structure for unregulated offerings. These findings have not been effectively refuted in reconsideration petitions.[36]

32. BellSouth, Ameritech, U.S. West and Pacific Bell assert that a comparison of GTE with the regionals would show that GTE possesses greater numbers of assets, net plant, construction budgets, and access lines than the regional companies. They further argue that the Order's finding that the BOCs uniformly serve large, contiguous, urban areas, while the areas served by GTE are scattered and largely rural, was an over-generalization.[37] NYNEX and Comdial represent that since GTE's service areas are spread over 31 states and 52% of GTE's subscribers are served by 11% of its central offices GTE's operations are quite concentrated. Pacific, NYNEX and BellSouth point out that GTE has a major presence in urban areas such as Los Angeles, San Diego, and Tampa-St. Petersburg. BellSouth enumerates urban areas within its operating companies' territories where GTE has a major presence. Pacific Bell cites GTE's more than 2 million access lines in California and presence in two of Pacific's key exchange areas, Los Angeles and San Diego, in support of its argument that it not be required to form a separate subsidiary to offer CPE and enhanced services. U.S. West compares itself to GTE and contrasts its operating territory with those of other regionals, representing that it serves a sparsely populated region comprising 40% of the nation's land mass with only 10% of its population. In addition, U.S. West notes that in the *Computer II Reconsideration* the Commission, in exempting GTE from structural separation, relied in part on GTE's representation that over 90% of exchanges served by GTE had 7500 or fewer main stations.[38] By comparison, in the states served by U.S. West BOCs, 66% to 97% of exchanges served by those BOCs have 7500 or fewer main stations. Nevada Bell represents that it has significantly fewer access lines than either CBI or SNET.

33. The regional companies also point out that CBI and SNET each controls monopoly bottleneck facilities in a populated urban area, while the MFJ limits the divested companies to serving non-contiguous LATAs. They point out that GTE serves almost the entire state of Hawaii and SNET serves virtually all of Connecticut. Finally, the regionals argue that GTE, CBI and SNET may provide interexchange services, while the regional operating companies may not.

34. We disagree with the conclusions the regionals draw from the foregoing. Individually, the regionals possess great financial strength and clear dominance of bottleneck facilities in their respective operating territories. Each regional company has annual revenues of more than $7.4 billion, and serves from 10 to 14 million network access lines.[39] At divestiture, each RBOC employed close to or more than 100,000 persons, and served at least 70 percent of the population in its service territory populated by 20 to 30 million persons.[40] If GTE and each regional company are compared statistically in a national context, there are similarities. This does not, however, contradict our finding that there are important distinctions between the locus of BOC and GTE operations which justify treating the BOCs differently from GTE at this time.[41]

35. We have already pointed out the extent to which the BOCs dominate urban population centers where CPE marketing efforts are likely to be most intense.[42] Further, in most geographic areas where BOCs assert that GTE is a formidable presence, statistics show that the geographically adjacent BOC is nevertheless the larger carrier in the area. IDCMA points out that in California, although GTE serves ⅓ of the Los Angeles area, Pacific Bell serves 13 Standard Metropolitan Statistical Areas (SMSAs) with a population of over 250,000 as compared to GTE's six, and in Florida, Southern Bell serves 8 of 10 SMSAs of that size.

36. The differences become even more dramatic when each RBOC is compared with CBI and SNET. While CBI and SNET each controls a populous urban exchange area, those areas are adjacent to overwhelmingly more populous areas served by the Ameritech and NYNEX BOCs, respectively. These companies dwarf CBI and SNET in terms of access lines, assets, and other bases of comparison. Ohio Bell serves the six SMSAs in Ohio which, besides Cincinnati, have populations of more than 100,000. Similarly, the major SMSAs served by the NYNEX operating companies areas surrounding SNET's service area include metropolitan New York City, Boston and Providence.

37. The regional companies and others also correctly assert that the GTE operating companies, CBI and SNET, at the time those carriers were relieved of structural separation, all were part of larger companies integrated with affiliates providing research and development and manufacturing, and with interexchange affiliates. Moreover, GTE's operating companies are affiliated at this time with a manufacturing organization and an interexchange network. Therefore, it is argued, the degree of integration is no basis for treating the regional companies' competitive operations differently from those of other carriers.

38. We never relied upon BOC integration with interLATA or manufacturing operations as a basis for structural separation. Instead we relied

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[33] Structural separation originally applied to GTE Corp. (GTE) as well as AT&T. However, we later exempted GTE from those requirements. 84 FCC 2d at 72–74. We clarified that state regulators may impose structural constraints upon GTE and other independent carriers consistent with our actions in *Computer II. Further Reconsideration*, 88 FCC 2d at 542, *recon. denied*, FCC 84–190, (released May 4, 1984). We determined that we might impose structural separation for other carriers in the future. *Final Decision*, 77 FCC 2d at 470; *Further Reconsideration*, 88 FCC 2d at 541.

[34] Following the announcement of the divestiture agreement, we relieved Cincinnati Bell (CBI) and Southern New England Telephone (SNET) from structural separation. *In re Motion of Cincinnati Bell, Inc. for Declaratory Ruling to Remove Uncertainty of its Status (CBI/SNET Decision)*, FCC 83–74 (released February 25, 1983).

[35] In affirming our *Computer II* decisions, the Court affirmed our authority to apply structural separation conditions to the operations of a single carrier. Computer and Communications Industry Ass'n v. FCC, 693 F.2d at 218–19.

[36] Order at paras. 58, 59.

[37] *Id.* at para. 58.

[38] *Reconsideration*, 84 FCC 2d at 73.

[39] Joint Petition for Reconsideration of Indiana Bell Tel. Co., Michigan Bell Tel. Co., and the Ohio Bell Tel. Co. (Ameritech Petition) at 27 (February 10, 1984).

[40] Consolidated Application of AT&T and Specified Bell System Companies for Authorization for Transfers of Interstate Lines, Assignments of Radio Licenses, and Other Transactions, File No. W–P–C–4855, FCC 83–566, Appendix B *(Facilities Transfer Order)*, (released December 23, 1983), *recon. pending.*

[41] As a procedural matter, even were we inclined to impose structural separation on GTE, such a determination would require us to conduct a proceeding separate from this one to re-evaluate the costs and benefits of structural separation for GTE. Equally, as we learn more about the effects of the regionals' competitive offerings and of structural separation, we may find it appropriate to modify or remove the requirements we have placed upon the BOCs.

[42] *See* para. 17, *supra.*

in part upon their involvement with research and development activities. Order at para 36. As previously noted, the regionals control bottleneck facilities, in general, in geographically more concentrated areas than other carriers. This control increases their ability to favor their own CPE and enhanced services.[43] Furthermore, the regionals have failed to challenge the Order's findings that the regionals do not have the large disentanglement costs which independents would have in establishing structural separation. Moreover, the regionals have not shown that the costs of structural separation with respect to lost efficiencies and economies of scale outweigh the benefits to the public of the modified structural separation requirements. In any event, the sharing of certain services permitted by the Order will reduce some of the additional costs which may be caused by separate operations.[44]

39. One petition for reconsideration also appears to assert that only an organization with the same characteristics as the former Bell System requires separate structure for competitive operations. The joint petition of the U.S. West BOCs compares the aggregate net plant, operating revenues and access lines owned by the U.S. West BOCs with pre-divestiture AT&T, arguing that these great differences require this Commission to treat the divested companies differently from the integrated Bell System. These statistical differences do not sway our decision to apply structural separation to each regional company. We have consistently stated that we could, if necessary, require structural separation for carriers of less size and market power than the former Bell System. *E.g.*, Petitions for Reconsideration of Order on Further Reconsideration, Docket No. 20828, FCC 84–190 at para. 5 (released May 4, 1984). Moreover, the divested BOCs did not even exist at the time we addressed the separation issue in *Computer II*, and we could not have there resolved the separation question for these new companies. The balancing test we employed in *Computer II* requires us again to weigh the costs and benefits of separation when circumstances change.

40. Finally, several of the regional petitioners criticize us for basing our decision to apply structural separation upon potential rather than actual anticompetitive conduct. These parties assert that the Order contradicts our statement in the *CBI/SNET Decision* that we would not apply the *Computer II* requirement to CBI or SNET absent concrete evident of significant marketplace abuses.[45] They also assert that our Order is inconsistent with the statement in our *Amicus* brief submitted to the divestiture Court that upon divestiture each BOC would have no history of abuse,[46] and our statement in the MFJ proceeding that the *Computer II* separate subsidiary requirements would not appear applicable to divested companies without affirmative Commission action applying structural separation to them.[47]

41. Our statement to the Court does not indicate that we there intended to make findings of fact with respect to the actual circumstances of the regional companies after divestiture. Moreover, the Commission's support there of BOC entry into unregulated markets did not mean that we believed such entry necessarily should be on an unseparated basis. Indeed the regionals fail to quote the brief of the Commission submitted to the Court which states that we would apply separate structure if that alternative proved warranted.[48] Our Order found that the application of separate structure at this time is justified on the basis of preventing potential harm where costs do not exceed the benefits of such structure.

42. The absence of a finding of actual abuses in the case of the divested operating companies does not in any way make our application of structural separation to the BOCs improper. Language in the *CBI/SNET Decision* which suggested that there is a requirement of actual abuses in order to impose structural separation on a carrier is not inconsistent with imposing separate structure on the regional companies on the basis of significant potential harm. In the *CBI/SNET Decision*, we found that our assessment at that time of potential harm to competition was insufficient to justify structural separation for CBI or SNET in particular. This finding does not preclude us from finding that other differenty situated carriers could engage in significant anticompetitive conduct. Similarly, in the *Reconsideration* where we lifted the structural separation conditions from GTE, we stated that we would wait and see if marketplace abuses developed since the costs outweighed the benefits in imposing structural separation on GTE based on potential harm.[49] Indeed, the appellate Court affirmed the *Computer II* decisions which imposed structural separation on AT&T (and on its then-owned BOCs) on the basis of potential harm. See also *GTE Service Corp.* v. *FCC*, 474 F.2d 724, 731 (2d Cir. 1973) (affirming *Computer I* separation requirements based upon findings of potential abuse). In considering the overall cost-benefit analysis surrounding the application of structural separation to the regionals, we find at this time that the BOCs may have the potential to engage in a substantial level of conduct detrimental to the consumer. Therefore, it is within our discretion to determine that the benefits to consumers will be maximized by implementing separated operations from the outset. As we indicated in the Order, we will review the separation requirements two years after June 30, 1984. If conditions warrant, we will modify or remove entirely those requirements. In addition, as previously noted, there are currently pending waiver petitions concerning unseparated provision of protocol conversion.[50] Similarly, we may find it appropriate to remove or modify those exceptions to the *Computer II*

[43] In addition, we note that a pending GTE consent decree, while not imposing structural separation on the provision of CPE, would impose structural separation conditions on the provision of enhanced services by that company substantially similar to those applicable to the BOCs. *See* United States v. GTE Corp., 1983–2 Trade Cas. ¶50,833, at 56,812–13 (sections IV.A.6 & IV.D.2). *See also, Competitive Impact Statement filed by the U.S. Department of Justice at 34–39 (May 4, 1983) in United States v. GTE Corp., supra.*

[44] Order at paras. 53–55, 59. Admittedly, GTE, CBI and SNET might be able to operate viably through structural separation. However, simply because an independent telephone company might be capable of conducting some of its operations through a separate subsidiary does not mean that it would be in the public interest to require this. As we stated before, we have taken into account and weighed both the costs and the benefits of structural separation for each company before imposing such a requirement. We reject Pacific Bell's argument that if structural separation is less intrusive than accounting, all carriers providing competitive offerings should be subject to structural separation rather than separate accounting. We reiterate that structural separation and accounting are complementary safeguards, and that whatever costs there are in operating through separate structure are likely to become disproportionately greater for smaller carriers or carriers with geographically diffuse operations due to indivisibilities of various operations. *Computer II Reconsideration*, 84 FCC 2d at 74. In addition, structural separation does not eliminate accounting requirements, but rather obviates the necessary amount of review of such accounting systems.

[45] *CBI/SNET Decision*, at para. 33 n.26.

[46] Brief of FCC as *Amicus Curiae*, United States v. AT&T, Civ. Action No. 82–0192, (April 29, 1981).

[47] Brief of FCC as *Amicus Curiae* on Question No. 2, United States v. AT&T, Civ. Action 82–0192, at 9 n.3 (June 14, 1982).

[48] Our brief stated that "The Commission could amend [the *Computer II*] rules to extend the requirement to divested BOCs if it concluded that such a requirement would be appropriate." *Id.*

[49] *Reconsideration*, 84 FCC 2d at 72.

[50] *See* para. 2, *supra*.

restrictions we have permitted or require additional restrictions.[51]

III. Limitations on Separation Conditions

43. The petitions of ADAPSO, IDCMA and NATA, supported by other parties, object to the modifications we made to the structural separation conditions which apply to AT&T. They assert that the modifications effectively negate the benefits of structural separation and that we have fostered opportunities for the very cross-subsidization and competitive problems which structural separation is intended to reduce. We recognize that we have allowed the regional companies more latitude to commingle operations than we did with AT&T. As we have stated, however, such latitude is the result of a careful balancing of objectives herein, and is necessary to provide maximum benefits to consumers in light of the regional companies' unique post-divestiture circumstances. Both the public in general and ratepayers in particular will benefit if the regionals' reentry into CPE and enhanced services offerings is permitted to develop into fully competitive operations as long as our concerns are met.[52]

44. Moreover, the particular activities we permitted are either those which we permitted AT&T to engage in (*i.e.*, shared administrative services), or those which afford relatively minor opportunities for anticompetitive conduct or cost-shifting, *i.e.*, neutral customer referral ("dial tone referral"), joint installation and maintenance of residential and single-line business telephones, and, for four years, joint billing. In addition, we have received submissions from each RBOC entity for competitive services describing their planned operations and the manner of compliance with the separation conditions. Our thorough staff review of these plans should assist us in detecting and preventing competitive problems before they arise. We find that, with these modifications to *Computer II*, our ruling is carefully crafted so as to entail the least restrictive means of accomplishing our goals.[53]

A. Joint Billing

45. We have permitted the operating companies for four years after divestiture to bill customers for CPE provided by their separate organizations. We allowed joint billing to facilitate rapid reentry by the BOCs into CPE markets, and to alleviate customer confusion.[54] In the Order we recognized that joint billing could result in the misallocation of costs between regulated, as opposed to unregulated, products and services and in the improper transfer of customer proprietary information.[55] However, we limited the transfer of proprietary information by specifying that the CPE provider could only provide the regulated company computer tapes needed to produce a bill and could not access telephone company data bases containing customer proprietary information. We also prohibited regulated personnel from providing bill dispute resolution and bill collection activities.

46. We are not persuaded by the arguments of NATA, ADAPSO and IDCMA that joint billing will generate, rather than alleviate, customer confusion caused by divestiture, or that it will be more confusing to separate billing activities in four years than to require separate billing from the outset. At this time we believe customers are better served by receiving one bill as long as that bill distinguishes between the various entities providing products or services. During the four years in which joint billing is permitted, customers will be able to adjust to the changes stemming from divestitures and the fact that ATTIS-provided equipment will be billed separately;[56] therefore any confusion from terminating joint billing at that time should be substantially reduced. NATA also argues that the BOCs have an advantage over other CPE vendors from joint billing, because they can collect amounts owed more easily since joint billing carries an implied threat that local service may be terminated for failure to pay CPE charges. The safeguards we are requiring should substantially alleviate these concerns.

47. It is necessary to clarify the intent of the guidelines for joint billing that were specified in the Order. We required that partial payments be applied to local transmission services first and that local service could not be terminated for failure to pay CPE charges. Southwestern Bell, Pacific Bell and BellSouth represent that the Customer Records Information Systems (CRIS), through which they produce customer bills, cannot maintain separate balances for different service providers. If a customer remits payment of less than the total amount due in a particular month, the BOC generally cannot apply the partial payment to any particular provider's balance in the computerized billing system. Each petitioner asserts that modifying CRIS to mechanically segregate amounts owed each entity would be costly and could not be effectuated prior to the date set for complete structural separation. They assert that the cost of requiring such modifications is so high that, given the limited duration of the joint billing exception, it would cause them to abandon joint billing.

48. We hold to our view that local services should not be terminated for failure to pay CPE charges. Our primary concern is that customers understand that the operating company will not terminate local service or engage in collection activities for amounts owed for CPE. If a regional experiences

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[51] In addition, we find unpersuasive arguments made by certain regional companies and parties which support them that we incorrectly placed the burden on the regionals to justify the removal from them of structural separation. The focus of this proceeding is whether the record adequately justifies the degree of separation we have prescribed in achieving our objectives. We have concluded that it does.

[52] ADAPSO, IDCMA and NATA also request that we reduce the six months allotted the divested companies to convert to unseparated operations, asserting that six months is longer than necessary to offset the purported competitive disadvantages the regionals face. We reject that request. The benefits of reducing that time period would be minimal and outweighed by the necessity of giving the regionals sufficent time to comply with our Rules.

[53] In contrast, the Court in the MFJ proceedings approved on outright prohibition against entry into lines of business other than CPE, Yellow Pages, exchange telecommunications, exchange access and information access. The Court of course has waiver procedures it can utilize to permit entry into those activities if warranted. Furthermore, the waiver provisions of *Computer II* remain in place to provide a vehicle to customize the separation conditions to meet individual circumstances, where warranted. For example, to protect the uninterrupted support of CPE for national security and emergency preparedness requirements of the federal government, we have waived the separation conditions on a temporary basis. American Telephone and Telegraph Company, Petition for Waiver of § 64.702 With Respect to the Department of Defense and Specified Government Agencies, File No. ENF 83–13, FCC 83–143 (released April 12, 1983). We are again considering the matter. NSEP Rulemaking, *supra* note 21. In addition, we have granted temporary waivers of the structural separation conditions to give individual enhanced service customers time to relocate equipment used to provide enhanced service to the public to their premises. *E.g.*, Letter from Chief, Common Carrier Bureau to W.G. Zanmiller dated March 2, 1983 (Michigan Bell permitted temporarily to provide Data Communications Management Service on unseparated basis); Letter from Chief, Common Carrier Bureau to William L. Leonard dated March 4, 1983 (permitting temporary use of Bell of Pennsylvania network equipment for Dial-It-Services).

[54] Order at para. 63.

[55] *Id.* at para. 62.

[56] BOC billing on behalf of ATTIS is required to be completed by June, 1985. Embedded CPE Detariffing Order at para. 116. NATA and others also question the basis for permitting the BOCs to engage in joint billing for three years following the termination of billing for ATTIS. The Order, however, is allowing joint billing, noted that customer confusion could persist even if a BOC did not bill on behalf at ATTIS. Order at para. 63. Therefore, the continuation of joint billing beyond the termination of billing for ATTIS will provide independent benefits.

difficulties in allocating partial payments to local service first it should inform us in writing by June 15, 1984 of alternative procedures which will satisfy our concerns.[57] We will promptly consider those procedures and inform the regional whether it may utilize those procedures. We anticipate ruling on those procedures by June 30, 1984.

49. Regardless of the system used, any BOC providing joint billing should require that its employees review customer records manually prior to submitting an order that service be terminated or suspended. In addition, each BOC further asserts that its procedures require that disputes regarding CPE charges be referred immediately to CPE vendors and those amounts be removed from the total balances due upon such referral. The BOCs should continue to use this procedure. We are not persuaded that allowing joint billing will negate the benefits of structural separation. Our pending review of operational and accounting plans for these services should enable us to curtail any problems caused by joint billing arrangements. We deny Pacific Bell's request that it be allowed to provide billing dispute resolution and collection services for its CPE affiliate.

50. The BOCs also propose that we rescind the requirement that CPE providers receiving joint billing services may only transfer computer tapes needed to process bills. They assert that this procedure would require costly modifications to their computer systems and they contend that, to avoid giving employees of the subsidiary access to sensitive customer proprietary data, their computers can mask such data. Our concern was that employees of the subsidiary not have on-line access to customer proprietary information in the possession of the operating company. We will not limit a BOC to transfer of computer tapes if it informs us by June 15 of its method to ensure that only non-proprietary information is transferred on-line between the subsidiary and the operating company's billing personnel and of the types of information which will be transferred. We anticipate ruling on its proposal to transfer on-line information by June 30, 1984.

51. U.S. West proposes that we permit it to utilize joint billing on a permanent basis if it also bills on behalf of third party CPE vendors as well as affiliates. We recognize that there may be benefits from permitting billing for third parties but conclude that it is appropriate to address proposals for permanent joint billing when we generally review the structural separation requirements in two years.

B. Dial Tone Referral

52. The Order created one exception to the proscription in the *Computer II* rules against the joint marketing of network services and CPE. We permitted customer contact personnel for BOC network services to inform customers in a neutral fashion that the operating company does not provide CPE but that CPE is provided both by other vendors and by the operating company's separate CPE organization. Order at paras. 67–68. Under this exception, the telephone contact person may transfer the call to the CPE affiliate if the customer permits. We required each BOC seeking to engage in this service to file an accounting and operational plan to ensure that costs are allocated correctly to the separate organization and that the referral is not used as a vehicle to market CPE actively or to derogate other vendors' products. We provided for this exception to permit the BOCs to explain to customers the impact of divestiture and our *Computer II* principles upon the BOCs' provision of CPE.

53. NATA, IDCMA and others question whether the Commission can effectively monitor neutral referrals without specifying permissible language or procedures. They also contend that the flow of information about customers' needs will unduly advantage regional company CPE providers. They also fear that dial tone referral gives the RBOCs unwarranted leverage to market CPE to captive monopoly service customers, an advantage that no other CPE vendor possesses. Parties opposed to this exception propose that if it is continued, operating company personnel be permitted to refer CPE customers only to general information sources such at the Yellow Pages and newspaper advertisements, that the actual referral be limited to providing the CPE vendor's telephone number, and that the BOC contact personnel maintain a list of CPE vendors to whom customers requiring CPE would be referred.

54. We find no justification for eliminating the dial tone referral exception or adopting the specific alternatives at this time. While the parties raise valid concerns, we believe that our procedures for reviewing the individual BOCs' conduct in this area, including the complaint process, are sufficient to prevent abuses.

C. Joint Installation and Maintenance

55. We have permitted the BOCs, subject to our approval of operational and accounting plans, to use the same personnel who perform network installation and maintenance to install and maintain residential and single-line business telephones, should they wish to do so. We found that there would be only a relatively small amount of common costs which would need to be allocated, and therefore, that these services need not be provided seperately.[58] NATA contends that the very simplicity of installing and maintaining this equipment increases the opportunity for misallocation of costs between network and unregulated operations, and that review of accounting and operational plans provides little safeguard against misreporting of time spent on different activities by network technicians. Although there may be some opportunity for abuse of this exception, we stand ready to correct such abuse where warranted. The efficiencies of joint operations in this area outweigh the limited opportunity for cross-subsidization or other anticompetitive behavior.

56. In addition, BellSouth requests that, until we have disposed of petitions for reconsideration in our proceeding to implement the detariffing of embedded CPE, we permit the BOCs to provide installation and maintenance of embedded CPE remaining with the BOCs on an unseparated basis from the maintenance of new CPE. This request is granted in view of the limited amounts of CPE remaining with the operating companies. *See* Embedded Base Detariffing Order at para. 5, n.9.

D. Shared Administrative Services

57. We have authorized the BOCs to share with their separated affiliates certain administrative services. These services include financial, accounting, legal, auditing, personnel recruitment and management, tax, insurance and pension services.[59] Certain parties, ADAPSO in particular, assert that we should have enumerated at the outset the range of services permitted to be shared, requiring each BOC which seeks to provide any particular shared service to demonstrate the need to share that service.

58. We conclude that the procedures we have adopted are satisfactory to ensure that there is no unjustified sharing of administrative services. We required the BOCs to file shared

[57] We expect that at a minimum each regional will state on the monthly bill that the customer's service may not be terminated for failure to pay CPE charges, and will contact a customer by telephone in order to determine that the late payments are unrelated to a CPE billing dispute prior to ordering the termination of exchange service.

[58] Order at para. 71.

[59] *Further Reconsideration*, 84 FCC 2d at 86.

administrative service plans in order to determine whether the sharing proposals are in compliance with the policies of *Computer II* and related decisions. Prior to approval of shared service accounting plans, however, we are permitting the BOCs, after June 30, 1984, to share those administrative services which AT&T has been permitted to share with ATTIS. Order at para. 78.[60] We delegate to the Chief of the Common Carrier Bureau authority to make modifications to the accounting procedures utilized to bill the *Computer II* organization for shared administrative services. The Bureau should report to us the results of its investigation with respect to shared administrative services by April 1, 1985.

IV. Ordering Clauses

59. Accordingly, pursuant to sections 4(i), 4(j), 201–205, 214, 218, 403 and 405, of the Communications Act of 1934, as amended (47 U.S.C. 154(i) and (j), 201–205,214, 218, 403, and 405) and §§ 1.106 and 64.702 of our Rules (47 CFR 1.106 and 64.602) it is ordered that the petitions for reconsideration, or in the alternative, for waiver, filed by Bell Atlantic; BellSouth; Mountain Bell, Northwestern Bell, and Pacific Northwest Bell; New England Telephone and New York Telephone; Indiana Bell, Michigan Bell and Ohio Bell; Nevada Bell; Pacific Bell; Southwestern Bell; Association of Data Processing Organizations, Inc.; North American Telecommunications Association; and Independent Data Communications Manufacturers Association are denied except as described herein.

60. It is further ordered that the motion for stay filed by Illinois Bell and Wisconsin Bell is denied.

61. in view of the complexity of this proceeding, the public interest would be served by a grant of all motions herein to supplement pleadings, to accept late filed pleadings, and to accept pleadings exceeding page limitation. Accordingly, it is further ordered that these motions are granted.

62. It is further ordered that the Secretary shall cause a copy of this Order to be published in the **Federal Register.**

63. And is is further ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix—Parties Filing Pleadings in This Proceeding

Petitioners

Association of Data Processing Services Organizations (ADAPSO)
Bell Atlantic Telephone Companies
BellSouth Corporation
Independent Data Communications Manufacturers Association (IDCMA)
Indiana Bell Tel. Co./Michigan Bell Tel. Co./ Ohio Bell Tel. Co. (Ameritech BOCs)
Mountain States Tel. and Tel. Co./ Northwestern Bell Tel. Co./Pacific Northwest Bell Tel. Co. (US West BOCs)
Nevada Bell
New Vector Communications. Inc.
New York Tel. Co./New England Tel. Co. (NYNEX BOCs)
North American Telecommunications Association (NATA)
Pacific Bell
Southwestern Bell Corporation

Oppositions and Comments

American Telecom, Inc.
ADAPSO
Comdial Corporation
GTE Telenet Communications Corporation
Hayes Microcomputer, Inc.
International Business Machines Corporation
IDCMA
MCI Telecommunications Corporation
National Cable Television Association
National Telecommunications and Information Administration
NYNEX BOCs
NATA
RCA Cylix Communications Network, Inc.
Rolm Corporation
Southwestern Bell
Tandy Corporation
Telocator Network of America
Tymnet, Inc.
US West BOCS

Replies to Oppositions and Comments

Ameritech BOCS
ADAPSO
Bell Atlantic
Bell South
Comdial
IDCMA
NATA
NYNEX DOCs
Southwestern Bell
US West DOCs

[FR Doc. 84–18432 Filed 6–25–84; 8:45 am]
BILLING CODE 6712–01–M

[60] The U.S. West BOCs request that if we affirm the requirement of structural separation, we further limit the *Computer II* separation requirements. They request that a regional company's enhanced services provider be able to build and own its own basic transmission facilities or pay compensatory rates for the use of a regulated affiliate's central office facilities; that the enhanced service provider be permitted to resell exchange services provided by a regulated affiliate; that a separate subsidiary be permitted to sell transmission and network equipment to regulated affiliates on an arm's length basis; that operating companies be permitted to sell cetain services to unregulated affiliates on marketplace terms. U.S. West has not proffered the accounting systems which could adequately separate costs associated with the foregoing exceptions and has not identified the level of increased costs which result from retaining these separation conditions. The reasons for imposing each of these separation conditions were fully articulated in the *Computer II* decisions. We find that U.S. West has not at this time met its burden of justifying these modifications of the *Computer II* separation conditions. We do not, of course, conclude that we would not modify these conditions pursuant to a particularized showing of need and justification. For example, we are currently considering the modification of particular portions of these conditions for AT&T. *See* American Telephone and Telegraph Company Provision of Basic Services Via Resale by Separate Subsidiary, CC Docket No. 83–1375, FCC 83–604, *49 FR 1248* (released January 5, 1984); Special Construction of Lines and Special Service Arrangements Provided by Common Carriers, Notice of Proposed Rulemaking, CC Docket No. 84-369, FCC 84–146, *49 FR 19528 (released April 30, 1984).*

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47 CFR Part 90

[Docket No. 20846; FCC 84–170]

Interconnection of Private Land Mobile Radio Systems With Public Switched Telephone Network in 806–821 and 851–866 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; action on petitions for reconsideration and rulemaking.

SUMMARY: The Commission is adopting a *Memorandum Opinion and Order* in response to a Petition for Reconsideration and a Joint Petition for Reconsideration or Rule Making of the Commission's previous *Memorandum Opinion and Order,* Docket No. 20846, which amended the rules governing interconnection above 800 MHz. This *Memorandum Opinion and Order* affirms the rule changes made by the Commission's *Second Report and Order,* Docket No. 20846, and the previous *Memorandum Opinion and Order.*

EFFECTIVE DATE: June 26, 1984.

FOR FURTHER INFORMATION CONTACT: Nia Chirigos Cresham, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Radio.

Memorandum Opinion and Order

In the matter of amendment of Part 90 of the Commission's Rules to Prescribe Policies and Regulations to Govern the Interconnection of Private Land Mobile Radio Systems with the Public Switched Telephone Network in the 806–821 and 851–866 MHz Bands (Docket No. 20846).

Adopted: April 26, 1984.
Released: June 20, 1984.

By the Commission.

Background

1. In view of the length of the pendency of this docket, we feel it is useful to recapitulate the history of this proceeding here for ease of

understanding the issues now before us. The Commission initiated this proceeding in 1976 with a *Notice of Inquiry and Notice of Proposed Rule Making* "to better define and regulate interconnection of private land mobile systems with the public switched telephone network [PSTN]." [1] In general, we characterized interconnection as describing those situations "in which a PSTN telephone is interconnected to radio facilities licensed in the private services to permit communications in a radiotelephone mode," and noted that for many years licensees in the private land mobile services have used the wireline facilities of telephone companies in conjunction with the operations of their radio systems.[2] Transmitter control in the context of private land mobile stations was the ability of the licensee to turn the land station on and off, which traditionally involved a station operator and compliance with the control requirements.[3] We noted, however, the increasing use of the dial-up circuits as a substitute for leased lines to control transmitters, as well as the emergence of automatic interface equipment which obviated the need for a dispatcher manually to interface radio and telephone systems.[4] We stressed our concern that as modern equipment and techniques became available which permitted "connection to be made automatically at the transmitter site, or elsewhere," there was the risk that the licensee's control point operator would lose "effective control" of the transmitters.[5]

2. As an initial point we stated our predisposition to define the "key" to permissible interconnection arrangements as the maintenance of "proper control over the circuit" which was used to turn the transmitter off and on.[6] In order to accomplish this we stated we intended to require "all calls' from PSTN telephone positions to be received at the transmitter control position by the licensee's dispatcher and to be manually connected (patched), if interconnection is to be done at all." [7] While we indicated we would not require calls placed from mobile stations into the PSTN to be manually patched, we also stated that the licensee's control station operator must be able to (1) monitor the conversations; (2) interrupt the call; and (3) be able to override the mobile and close down the base station if required.[8] Having enunciated our objectives in this matter, we stated, "but we recognize that restrictions of this kind may go too far." [9] We therefore asked interested parties to address themselves to this subject in their comments as fully as possible.[10]

3. In response to this Notice, numerous comments were filed by associations of radio utilities, private land mobil user groups, local governmental entities, radio equipment manufacturers and emergency service providers. After reviewing these submissions, in 1978 we issued a *First Report and Order*. Interim provisions were applied to the 806–821 and 851–866 MHz bands (hereinafter 800 MHz), while varying conditions and restrictions were adopted to govern the other bands.[11]

4. More specifically, for the bands below 800 MHz, we adopted (1) geographic limitations on all interconnected systems within 75 miles of 25 of the nation's largest urban areas in the Automobile Emergency, Business, Special Emergency, Special Industrial and Taxicab Radio Services; [12] (2) special provisions covering the use of internal systems of communication in conjunction with the operation of private land mobile stations; (3) special provisions to govern the use of dial-up circuits for transmitter control; and (4) special requirements pertaining to the methods of interconnection, such as monitoring by the control operator, and time limitations on interconnected communications. A three second limitation was placed on initial access transmissions from the PSTN, at which time the transmitter would not shut down and further communications had to be initiated by the mobile operator. Moreover, the system had to be designed for the transmitter to shut down and all conversation cease after three minutes. In simplex operations, transmissions were limited to 30 seconds prior to shut down. Timers were required to be installed at all base station transmitters which would limit interconnected communications to three minutes, prior to system shut down. We also separated paging regulations from those relating to two-way voice and data communications.[13] Finally, we permitted licensees of existing interconnected systems to continue using them until January 1, 1984. On or prior to this date, however, all of these systems were to be brought into compliance with the rules we adopted in the *First Report and Order*.[14]

5. The *First Report and Order* concluded that the key to permissible interconnection of radio systems with the public switched telephone network was the ability of licensees to maintain "postive control" over "the radio facilities authorized for their use."[15] We also stated we favored the use of dial-up circuits to control private land stations because it was both economic and efficient and because the requirement that private land mobile licensees employ dedicated leased lines was "wasteful of telephone company resources."[16] We modified our rules, however, to limit the use of dial-up circuits to "link 'licensed transmitter control points'" and "transmitters being controlled."[17] Further we required system design features to preclude operation of the land station from any fixed position other than a licensed control point.[18] Lastly, we required licensees to employ special equipment to prevent a licensee's mobiles from reaching points in the public switched telephone network other than the authorized control points of the licensee.[19]

6. Upon review of the arrangements and equipment licensees could employ to interconnect their radio stations with the public switched telephone network, we recognized that possible configurations varied "in almost infinite detail."[20] We also noted that the patch or interconnection device was available from a variety of sources and in a wide selection of equipment for operations in both the automatic and manual mode. We further recognized that all types of special equipment were obtainable which (1) allowed automatic channel monitoring; (2) could restrict dialing to pre-determined numbers;[21] and (3) permitted full duplex, half duplex or simplex modes of operation.[22] We therefore concluded that access to the PSTN by licensees of private radio systems was not limited by available technology.[23]

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[1] *Notice of Inquiry and Notice of Proposed Rule Making*, Docket 20846, FCC 76–603 41 FR 28540 (July 12, 1976).

[2] *Id.* at paragraphs 2 and 7.

[3] *Id.* at paragraph 4.

[4] *Id.* at paragraph 6 and footnote 6.

[5] *Id.* at paragraph 8.

[6] *Id.* at paragraph 10.

[7] *Id.*

[8] *Id.* at paragraph 11.

[9] *Id.* at paragraph 12.

[10] *Id.* at paragraph 18.

[11] *First Report and Order*, Docket No. 20846, 69 FCC 2d 1831 (1978), 43 FR 38396 (August 28, 1978), at paragraph 3.

[12] *Id.* at paragraph 4.

[13] *Id.* at paragraph 5.

[14] *Id.*, Appendix B, § 89.951(f).

[15] *Id.* at paragraph 7.

[16] *Id.* at paragraph 8.

[17] *Id.* at paragraph 9.

[18] *Id.*

[19] *Id.* at paragraph 9.

[20] *Id.* at paragraph 16.

[21] *Id.* at paragraph 18.

[22] *Id.* at paragraph 19.

[23] *Id.* at paragraph 20.

7. We also determined that interconnection of private land mobile radio systems with the public switched telephone network was consistent with the purposes private radio systems were intended to serve.[24] We noted that as early as 1968, in the *Carterfone* case,[25] the Commission had concluded that private land mobile licensees had demonstrated significant needs and requirements for interconnected facilities, and these conclusions were again affirmed in 1978.[26] We also found that there was nothing intrinsic in the nature of private services to bar interconnected operation, and there was no inter-system compatibility argument to persuade us that dispatching types of operation could not continue in the private services merely because other licensees used interconnected circuits.[27] The record persuaded us that the two methods of operation (i.e., dispatching and interconnection) may and do work well and effectively together.[28] In sum, on the entire subject of spectrum impact and the issue of whether interconnection in the private services would achieve or impede efficient communications in the private land mobile radio services, we agreed that interconnection would improve operating efficiencies, particularly where modern automatic equipment was employed.[29] We did, however, adopt geographic restrictions on interconnection, as noted *infra*, in areas where frequency congestion was present, based on the conclusion that congestion follows population density patterns, and that if the right to interconnect in these radio services were limited to areas 75 miles or more from the centers of the most densely populated urbanized areas, the potential for adverse results would be eliminated.[30] We deferred action on the subject of common point interconnection pending resolution of the regulatory status of third party arrangements.[31]

8. Petitions were received to reconsider various aspects of our *First Report and Order* and in response to these petitions we revisited and modified several aspects of the earlier decision by a *Memorandum Opinion and Order* issued in 1979.[32] More specifically several parties had argued that the geographic and radio service restrictions on interconnection were too broad and should be relaxed.[33] We declined to modify our earlier decision, however, in light of the "high-intensity use services" involved.[34] We also declined to eliminate the rules adopted in the *First Report and Order* which required interconnected communications to be limited in length in automatically interconnected mobile systems. While we recognized such an automatic time out rule could be undesirable, we refused to eliminate it across the board. However, it was eliminated in the Police, Fire, Local Government, Special Emergency, Power, Petroleum and Railroad Radio Services, in recognition of and agreement with the particular arguments made for these exceptions. A *Further Notice of Proposed Rule Making* was also issued in 1979 to address interconnection at 800 MHz.[35]

9. In 1982, in response to the *Further Notice of Proposed Rule Making*, a *Second Report and Order* was released adopting final rules to govern the interconnection of 800 MHz stations. After reviewing the entire history of this proceeding, we reaffirmed the public interest in facilitating interconnection in the private land mobile services,[36] and we adopted rules which were less rigid than those adopted in the *First Report and Order*.[37] We concluded that eligibles in the private services should have "freedom to use state-of-the-art equipment and systems design"[38] and that their use of their radio systems in an interconnected mode should not be "fettered unnecessarily by artificial limitations and restrictions."[39] More specifically, we decided not to adopt any geographical, radio service or time limit restrictions for the bands above 800 MHz.[40] Also we amended our interim rule provisions which limited 800 MHz interconnection to a licensee's premises and prohibited common point interconnection by a group of licensees.[41] In so doing, we concluded the effect of this rule was "unnecessarily inefficient" and denied private radio licensees and users alternatives which "may be economically more desirable." Interconnection was permitted in a manual or automatic mode [42] and there were no time limits imposed on the length of communications.[43] Finally, there were no requirements placed on licensees to employ specially designed channel monitoring equipment.[44] However, we prohibited Specialized Mobile Radio System (SMRS) base station licensees from making arrangements for the telephone service. These changes in the Commission's regulatory structure were designed to increase the utility of private land mobile systems by facilitating the passage of information from a telephone user to a radio user and *vice versa*.[45] These changes were also found to serve the public interest by maximizing consumer choice.[46]

10. On reconsideration, the *Second Report and Order* was modified by a *Memorandum Opinion and Order*, which also addressed the effect of "The Communications Amendments Act of 1982" on the rules governing interconnection above 800 MHz.[47] The

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[24] *Id.* at paragraph 21.

[25] *Carterfone*, 13 FCC 2d 420 (1968).

[26] *First Report and Order*, Docket No. 20846, at paragraph 22.

[27] *Id.* at paragraph 28.

[28] *Id.* at paragraph 30.

[29] *Id.* at paragraph 33.

[30] *Id.* at paragraph 31.

[31] *Id.* at paragraph 47.

[32] *Memorandum Opinion and Order*, Docket No. 20846, FCC 79-720, 44 FR 67119 (November 23, 1979).

[33] One party, Telocator Network of America, argued that the number of geographic areas in which the restriction should apply should be increased.

[34] *Memorandum Opinion and Order, supra*, at paragraph 12.

[35] *Further Notice of Proposed Rule Making*, Docket No. 20846, FCC 79-18, (1979).

[36] "Modern society could not function as it does without telephone communications, and information transmitted over private radio facilities often originates from a telephone and *vice versa*. Without interconnection, transfer of such information between radio and telephone facilities can only be accomplished orally through a third party, with the possibility of error. For this reason we concluded in *Carterfone*, 13 FCC 2d 420 (1968), that interconnection of private radio and telephone facilities is in the public interest, and it increases the utility both of radio facilities and the telephone facilities involved. Even parties opposing permissive interconnection herein do not deny this. Their main concern, rather, relates to the way in which interconnection of private systems to telephone facilities should be accomplished * * * In sum the need for interconnection at 800 MHz is clear." *Second Report and Order*, Docket No. 20846, 89 FCC 2d 741 (1982) at paragraph 42.

[37] *Second Report and Order, supra*, at paragraph 37.

[38] *Id.*

[39] *Id.*

[40] *Id.* at paragraph 50.

[41] *Id.* at paragraph 49.

[42] *Id.* at paragraph 50.

[43] *Id.*

[44] *Id.*

[45] *Id.* at paragraph 39.

[46] *Id.* at paragraph 43.

[47] *Memorandum Opinion and Order*, Docket No. 20846, released May 27, 1983, 48 FR 29512 (June 27, 1983). The *Memorandum Opinion and Order* addressed Petitions for Reconsideration filed by Telocator Network of America and the National Association of Regulatory Utility Commissioners. The *Memorandum Opinion and Order* has been appealed to the United States Court of Appeals, District of Columbia Circuit, *Telocator Network of America* v. *FCC & USA*, No. 83-1905, and *People of the State of California and the Public Utilities Commission of the State of California, et al.* v. *FCC & USA*, No. 83-1791. *See, also* "The Communications Amendments Act of 1982," Pub. L. 97-259, 96 Stat. 1087, September 13, 1982; see Section 120 (Section 331 of the Communications Act of 1934, as amended, is codified at 47 U.S.C. 332).

Memorandum Opinion and Order further amended the rules to allow private licensees and users authorized to operate transmitters in the private land mobile bands at 800 MHz to obtain telephone service from any duly authorized carrier either individually or jointly on a non-profit cooperative basis. Third parties, including SMRS base station licensees and equipment suppliers, were permitted to act as ordering agents in arranging for telephone services for licensees and users, in recognition that this could facilitate the process thereby benefitting the public generally. However, we required the telephone service to be secured on a non-profit, non-resale basis. The *Memorandum Opinion and Order* also addressed arguments that the interconnection device or patch is part of the telephone service and should be provided by an authorized carrier. We determined that the patch is simply an unlicensed piece of electronic gear broadly manufactured and available from many sources and there was no public interest reason for regulating the manner in which it was obtained.[48]

Petitions for Reconsideration

11. Two Petitions for Reconsideration of this *Memorandum Opinion and Order* have been filed. A "Joint Petition for Reconsideration or in the Alternative Petition for Further Rule Making Action" was filed by Communications Sales and Services, Inc., South Texas Radio Service, Inc., Auto Page, Inc. and Louis Systems, Inc. Another request for reconsideration was filed by the Telocator Network of America ("Telocator").[49]

12. The Joint Petition was filed by a group of small businesses engaged in the sale and servicing of radio equipment. They are licensees and users of private paging and two-way systems. The Joint Petition requests that the Commission reconsider its decision in the *Memorandum Opinion and Order*, or issue a further order amending Part 90 of the Commission's Rules to: (1) Eliminate the restriction on transmitter control from positions in the PSTN in the operation of paging stations and (2) eliminate the restriction against the interconnection with the PSTN of certain shared radio systems operating below 800 MHz.[50]

13. In support of its request to eliminate the restrictions on transmitter control from positions in the PSTN the Joint Petition points out that the practical effect of the Commission's Rules is to preclude the use of the telephone to control paging transmitters except to the extent the telephone is equipped as a control point. This restricts the flexibility of licensees and users in the operation of their paging transmitters while increasing their cost and reducing the effectiveness of their system.[51] In addition, the Joint Petition notes that there is currently no similar restriction prohibiting access from the PSTN on interconnecting two-way private radio systems. It contends there is no longer justification for the restriction on one-way paging systems and points to the "The Communications Amendments Act of 1982."

14. In discussion of its request to eliminate restrictions on the interconnection of private land mobile radio systems below 800 MHz with the PSTN, the Joint Petition points out that similar restrictions on interconnected shared radio facilities above 800 MHz were removed by the Commission in its *Second Report and Order* and its *Memorandum Opinion and Order*. The thrust of the Joint Petition is that the restriction below 800 MHz which prevents interconnection at a common point where radio equipment is provided by a third party is no longer necessary and is economically inefficient.[52] In addition, the Joint Petition argues that the Commission's deferral of a decision on interconnection at shared locations pending the resulution of the regulatory status of third party arrangements should no longer be an issue in light of the new legislation and the Commission's *Memorandum Opinion and Order*.[53]

15. Telocator, a representative of the radio common carrier industry, argues that the Commission's interpretation of the new legislation and the rule changes made in the *Memorandum Opinion and Order* which permit private licensees and users to interconnect freely, limited only by the prohibition against "resale" of telephone service or facilities, are incorrect and should have been subject to notice and comment. Telocator would interpret the legislation as prohibiting all interconnection of private land mobile radio services with the PSTN, except for certain very limited exceptions. Telocator also argues that by allowing private licensees and users to utilize the services of ordering agents in obtaining telephone service from a duly authorized carrier, the Commission is allowing "resale" of the telephone lines. A third argument made by Telocator refers to the amendment of 47 CFR 90.129(1). This section previously required that applicants proposing to operate interconnected stations include in their applications a complete description of the equipment, devices and techniques to be used to accomplish interconnection. Our amendment simplified this procedure by requiring only that applicants indicate on their applications that their stations will be interconnected, rather than sending detailed descriptions of the interconnection to the Commission. However, licensees were required to maintain detailed descriptions of the interconnection techniques in their station records. Telocator claims that the new rule impermissibly confines its application to the PSTN and that dedicated and non-switched lines should also be included. Finally, Telocator challenges the Commission's decision that the patch may be provided by any third party on a competitive basis, and argues that it must be obtained "directly from a duly authorized carrier."[54]

Oppositions

16. Oppositions to Telocator's Petition for Reconsideration were filed by: The National Mobile Radio Association (NMRA), a non-profit association of small businesses engaged in sales and maintenance of radio communications equipment and systems; the National Association of Business and Educational Radio (NABER), a recognized frequency advisory committee and a non-profit association of Business Radio Service licensees and vendors of private land mobile products and services; and the Central Committee on Telecommunications of the American Petroleum Institute (API), an association of representatives of petroleum and natural gas companies. In general, these parties support our conclusions in the *Second Report and Order* and the *Memorandum Opinion and Order*. They disagree with the points raised by Telocator, and argue that our interpretation of the new legislation is correct. In addition, NABER states that each of the arguments made by Telocator was raised in its Petition for Reconsideration of the *Second Report and Order* and has already been addressed in the *Memorandum Opinion and Order*.

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[48] *Memorandum Opinion and Order*, at paragraph 16.

[49] Telocator was also one of the parties who petitioned for reconsideration of the *Second Report and Order*.

[50] These regulations are contained in 47 CFR 90.490(c), and 90.477(d) (1) and (2), respectively.

[51] Joint Petition, p. 4.

[52] 47 CFR 90.477(d)(1).

[53] *First Report and Order, supra*, p. 17.

[54] Petition for Reconsideration by Telocator, p. 16.

17. Telocator filed an Opposition to the Joint Petition for Reconsideration, arguing that the Commission should not act on the Joint Petition until it resolves Telocator's Petition for Reconsideration.[55]

Decision

18. We have reviewed the various points raised by the petitions for reconsideration and the responses thereto and we affirm our earlier conclusions. We also decline to expand in this document the applicability of this proceeding to private land mobile systems operating below 800 MHz.

19. Telocator has requested reconsideration of each of the issues discussed in our *Memorandum Opinion and Order.* These are essentially the same issues previously raised by Telocator in its Petition for Reconsideration of the *Second Report and Order,*[56] with the exception of our interpretation of the legislation, discussed *infra.*

20. Telocator appears to present two arguments for reconsideration of our interpretation of the new legislation. The first argument is a procedural one which claims that the Commission violated the due process rights of the parties by interpreting section 331 without issuing a *Notice of Proposed Rule Making.*[57] The second argument is a substantive one which claims that the Commission interpreted the legislation incorrectly. We fail to find merit in either of these arguments.

21. First, we will address Telocator's allegation that it was entitled to specific notice and an opportunity to comment prior to our considering the impact of the new legislation in the context of this proceeding. The new section 331(c), which contains specific provisions for private land mobile radio services, was enacted by Congress, signed by the President and became effective on September 13, 1982. Thus, no question exists that all interested parties had constructive, if not actual, notice of the passage of this legislation during the pendency of this proceeding. Accordingly, this is not a case where facts or ideas considered and relied upon during the rule making were available only to the agency. Compare *Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 393 (D.C. Cir. 1973), *cert. denied,* 417 U.S. 921 (1974). More importantly, although the provisions of the statutory amendment influenced our policy determinations concerning interconnection, we were not required to solicit public comment before construing or considering the meaning of the legislation. The public had ample notice and opportunity to comment on all aspects of the policy issues under consideration in this docket; matters involving only statutory interpretation are uniquely within an agency's prerogative. *See* 5 U.S.C. 553(b)(3)(A), [interpretive rules are not subject to the notice and comment requirements of the APA]. Accordingly, we believe that no unfairness resulted merely because we acknowledged and considered the new law when reaching our decision.[58] Furthermore, Telocator stated in its Petition for Reconsideration in this proceeding, that, "the legislation is now the law of the land which the Commission is duty bound to execute and enforce." (Petition for Reconsideration, at page 3.) In fact, throughout its Petition, Telocator refers to the Commission's legal obligation and authority under the new legislation. Telocator apparently argues that the Commission has immediate authority to interpret and apply the legislation only if it is in conformance with Telocator's interpretation; otherwise, we must issuing a *Notice of Proposed Rule Making* prior to applying the legislation. As discussed above, however, we believe that we were fully empowered to consider the impact of the legislation on issues in this docket without issuing a *Further Notice of Proposed Rule Making.*

22. Telocator also disagrees with our interpretation of section 331(c), and argues that the new legislation prohibits all interconnection of private land mobile services with the PSTN, except for certain very limited exceptions. Telocator argues that the Commission's application of section 331(c) is too broad, and "improperly inverts the burden of proof" concerning interconnection, by allowing private licensees and users to interconnect freely, subject to the restriction on the resale of telephone services and facilities. Instead, Telocator would place the burden on the entrepreneurs involved with interconnected stations to prove that the interconnection falls within an "exception to the prohibition" as provided by the legislation. We have considered the argument made by Telocator, and do not find it to have merit. The intent of Congress in drafting this legislation was to clarify that private systems may be interconnected with the PSTN, and remain classified as private land mobile service.[59] This is evident by the accompanying legislative history, which states that "[o]nly if a private land mobile operator or licensee is reselling for profit interconnected common carrier services is the interconnection prohibited."[60] We have interpreted the statute as Congress indicated, by allowing interconnection of private land mobile radio services with the PSTN by eligible users on a commercial basis as long as the telephone services and facilities are provided on a non-resale basis.[61]

23. Although Telocator has not presented any further arguments which cause us to alter our previous conclusions, we will address briefly the other issues it has raised on reconsideration. Telocator argues that by allowing private licensees and users to utilize the services of ordering agents in obtaining telephone service from a duly authorized carrier, the Commission is allowing "resale" of telephone services and facilities. This issue was specifically addressed in the *Memorandum Opinion and Order,* where we stated that any joint arrangements must be for telephone service to be provided on a non-profit basis with costs apportioned among the participating user-licensees on a pro rata formula or paid by each participant to the carrier providing the telephone service.[62] We therefore have continued to prohibit the resale of telephone service or facilities in the private land mobile services. As stated earlier, Congress intended to prohibit interconnection only if the private land mobile operator or licensee is reselling for profit common carrier services or facilities. Our private land mobile rules do not permit resale of telephone services or facilities.[63] Another

[55] The Joint Petition filed a Reply to Telocator's Opposition, reiterating its position.

[56] Petition for Reconsideration and/or Clarification by Telocator, filed June 3, 1982.

[57] *Petition for Reconsideration,* p. 3. Section 331(c) of the Communications Amendments Act of 1982 is codified at 47 U.S.C. 332(c).

[58] Indeed, we note that Telocator recognized our authority and responsibility in this regard in a separate proceeding where it argued that as of September 13, 1982, ". . . the new test of common carriage in the land mobile services promulgated by that section became an integral part of the law which the Commission is duty bound to execute and enforce. 47 U.S.C. 151. While there may be a reasonable basis for instituting a rulemaking for the purpose of identifying and revising those already administratively final rules which are affected by the legislation, there is correspondingly no basis whatsoever for refusing to reexamine those rules which are not yet administratively final and which are in conflict with the legislation." Telocator's Reply to Oppositions, filed December 7, 1982, at page 2; *See Memorandum Opinion and Order,* Docket No. 80-183, released November 23, 1983, 48 FR 56229 (December 20, 1983).

[59] *See Conference Report,* No. 97-765, 97th Cong., 2d Sess., August 19, 1982, at 55.

[60] *Id.* at p. 56.

[61] 47 U.S.C. 332(c)(1).

[62] *Memorandum Opinion and Order,* at paragraph 14.

[63] 47 CFR 90.477.

argument made by Telocator is that the interconnection device or "patch" must be obtained directly from a duly authorized carrier. We received numerous comments on this issue prior to the release of our *Memorandum Opinion and Order*, and see no need to address this in detail at present, particularly since Telocator also argued this point in its Petition for Reconsideration of the *Second Report and Order*. We would only reiterate that the patch is simply an unlicensed piece of electronic gear, which is not part of the telephone facilities and which may be furnished by the provider of the base station equipment or any other third party on a competitive basis.[64]

24. Lastly, Telocator objects to our amendment of 47 CFR 90.129(l). On February 15, 1983, the Office of the Managing Director released an *Order* eliminating the requirement in § 90.129(l) that applications for interconnected stations in the private land mobile radio services include a complete description of the equipment, devices, and techniques to be used to accomplish interconnection. Instead, as a result of our amendment of § 90.129(l), applicants are now only required to indicate on their applications that their stations will be interconnected. They then must keep detailed descriptions of the interconnection as a part of their station records but need not file the information with the Commission unless requested to do so in particular instances. On April 4, 1983, Telocator filed a Petition for Reconsideration of the *Order*. However, we specifically addressed this issue in our *Memorandum Opinion and Order* at footnote 18. We concluded that it was unnecessary for this information to be considered on a routine basis, and by requiring licensees to keep descriptions in their station records, we could minimize administrative burdens and obtain the information if necessary to ensure compliance with our rules. Telocator has presented no persuasive argument why that decision should be reconsidered, and we are, therefore, dismissing its Petition for Reconsideration on this point in this proceeding.

25. The Joint Petition raises two requests. The first, elimination of the prohibition on the control of paging transmitters from telephone positions in the PSTN, has already been implemented by the Commission on a limited basis at 900 MHz.[65] As we stated in our reconsideration of our 900 MHz decision, we will not remove this restriction in other frequency bands until more experience is acquired, and we do not find any further action to be appropriate at this time.

26. The second request, for elimination of restrictions on interconnection below 800 MHz, is being addressed in a separate proceeding being initiated in a companion item which incorporates several of the suggestions made in the Joint Petition.[66] We decline, therefore, to address these issues further in this proceeding.

27. Accordingly, it is ordered that the petitions for reconsideration and rulemaking in this proceeding are granted to the extent indicated and denied in all other regards, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-16932 Filed 6-25-84; 8:45 am]

BILLING CODE 6712-01-M

[64] *Memorandum Opinion and Order*, at paragraph 18.

[65] *See Memorandum Opinion and Order*, Docket No. 80-183, released November 23, 1983, 48 FR 56229 (December 20, 1983).

[66] *See Notice of Proposed Rule Making*, Docket 84-414, released June 12, 1984.

GENERAL SERVICES ADMINISTRATION

48 CFR Part 553

[APD 2800.12 CHGE 1]

Illustration of Forms

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to add revised and new illustration of forms in Part 553. The intended effect is to provide uniform guidance and procedures to the contracting activities.

EFFECTIVE DATE: June 13, 1984.

FOR FURTHER INFORMATION CONTACT: Richard Sanders, Office of GSA Acquisition Policy and Regulations, Office of Acquisition Policy, (202) 535-4040.

SUPPLEMENTARY INFORMATION:

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Services Administration certifies that this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) therefore, no regulatory flexibility analysis has been prepared. All forms which contain information collection requirements have been approved under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and the OMB Approval numbers are shown on each form.

List of Subjects in 48 CFR Part 553

Government procurement.

PART 553—FORMS

§ 553.370—[Amended]

The list of forms appearing in section 553.370 is amended by adding the following new entries:

Sec.

553.370-300 GSA Form 300, Order for Supplies or Services.

553.370-618-A GSA Form 618-A, Transmittal of Contract Award (Form Letter).

553.370-2166 GSA Form 2166, Service Contract Act of 1965 (As Amended).

553.370-2419 GSA Form 2419, Certificate of Payment to Subcontractors and Suppliers.

553.370-3503 GSA Form 3503, Representations and Certifications.

553.370-3504 GSA Form 3504, Service Contract Clauses.

553.370-3505 GSA Form 3505, Labor Standards (Construction Contract).

553.370-3506 GSA Form 3506, Construction Contract Clauses.

553.370-3507 GSA Form 3507, Supply Contract Clauses.

Authority: 40 U.S.C. 486(c).

Note.—GSAR forms are not published in the **Federal Register** or the Code of Federal Regulations. A copy of the forms are filed with the original document.

Dated: June 13, 1984.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 84-16936 Filed 6-25-84; 8:45 am]

BILLING CODE 6820-61-M

Proposed Rules

Federal Register
Vol. 49, No. 124
Tuesday, June 26, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1872, 1951, and 1965

Servicing of Real Estate Security

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise and redesignate its regulations regarding servicing of loans secured by real estate. This action is being taken to comply with an overall restructuring of FmHA regulations, and to incorporate the provisions of enacted legislation affecting these regulations. The intended effect of this action is to provide more responsive and equitable credit service to farmers and other rural residents.

DATE: Comments must be received on or before August 27, 1984.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under Section 3504(b) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Farmers Home Administration, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: For Subpart A of Part 1965, Benjamin R. Beckham, Deputy Director, Farm Real Estate and Production Division, FmHA, USDA, Room 5320, South Agriculture Building, Washington, DC 20250, telephone (202) 447–4572. For Subpart C of Part 1965, Frances B. Calhoun, Chief, Property Management Branch, Single Family Housing Servicing and Property Managment Division, FmHA, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291, and has been determined to be "nonmajor." This proposed action has been determined "nonmajor" since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. FmHA proposes to revise and redesignate its regulations on servicing and liquidation of real estate security and certain note-only cases from Subpart A of Part 1872, to new Subparts A and C of Part 1965, Chapter XVIII, Title 7, Code of Federal Regulations.

Implementation of Subpart A of Part 1965 is imperative for present and future FmHA borrowers to fully utilize resources and maximize credit availability in times of economic stress. Many farmers must avail themselves of these authorities to continue in agriculture during this time of severe economic stress in the industry.

Many of the servicing actions permitted by Subpart A of Part 1872 can only be approved at the National Office level. The submission of individual cases to the National Office for review is a time consuming process. Upon implementation of this proposed Subpart A of Part 1965, approval authorities will be placed within various field offices and thereby expedite servicing actions. County and District Offices will be able to carry out actions which now require State or National Office concurrence. This will eliminate considerable time in documentation, correspondence, and mailing delay.

This proposed Subpart A of Part 1965 enables FmHA farmer program loans secured by real estate to be serviced in compliance with the applicable statutory authorities and administrative requirements implemented since the last major revisions to the regulation in 1975. In order for borrowers to be successful in their farming operations, they must be able to manage both real estate and debts secured by real estate. This proposed Subpart A of Part 1965 prescribes the authorities, policies, and routines for servicing loans secured by real estate. These proposed servicing authorities will provide borrowers with the opportunity to be successful and will allow FmHA to protect the government's interests. This proposed Subpart A of Part 1965 clarifies the servicing of loans to partnerships, cooperatives and corporations. It also specifically provides for the transfer and assumption of Emergency loss loans and Economic Emergency loans.

FmHA has reviewed the proposed changes and determined that they are cost-effective since they will afford both individual and entity type farm borrowers the additional opportunity to maintain their property serving as security for FmHA loans, utilize the property to obtain other essential credit or dispose of all or part of the property by means of partial sale or transfer to other parties subject to the FmHA security instruments. Borrowers are also afforded expanded opportunities to retire their debt under an accelerated repayment agreement under certain conditions.

Various sections of proposed Subpart A of Part 1965 are being revised to incorporate the provisions of the Agricultural Credit Act of 1978 and the Emergency Agricultural Credit Adjustment Act of 1978, Pub. L. 95–334, Title II.

The current Subpart A of Part 1872 needs to be rearranged and updated to include servicing of loans authorized by legislation, and in some instances clarified for easier understanding by the Servicing Office. In addition, certain changes in interest rates and terms available to eligible applicants in transfers and assumptions are included.

Other than the proposed action, the alternative would be to take no action. However, to do so would leave the current Subpart A of Part 1872 in a status which would not address the servicing of loan authorities enacted since its formulation and issuance.

The proposed Subpart C of Part 1965 reflects changes made necessary by the

Garn-St. Germain Depository Institutions Act of 1982, particularly as it affects the leasing of security by a borrower. The provisions relating to borrowers' leasing of security and expanded terms for accelerated repayment agreements will assist FmHA field personnel in more effectively servicing loans and will at the same time provide more flexibility to borrowers than the present regulation.

It also clarifies and simplifies the instructions for servicing Single Family Housing (SFH) loans by excluding a number of subjects now found in current Subpart A of Part 1872 and proposed Subpart A of Part 1965 which affect borrowers with agricultural-type credit only. Other than the proposed action, the alternatives are (1) to take no action, or (2) to include servicing of SFH loans in a revised regulation for servicing both SFH and farmer programs loans which are secured by real estate, as the current Subpart A of Part 1872 does. The proposed action was chosen because it will be simpler for loan servicing personnel to follow regulations if the instructions for loan servicing are contained in separate regulations by loan type.

In Subpart A of Part 1965, the major changes and additions are as follows:

1. Section 1951.8(a) has been revised to delete procedural reference to FmHA Instruction 465.1 and insert examples of normal income and to add paragraph (b)(8).

2. Section 1965.1 removes servicing for Multiple Family Housing loans and Rural Housing (RH) loans where the borrower is not indebted for a farmer program loan. All Multiple Family Housing loans are serviced in accordance with Subpart B of Part 1965. Single Family Housing loans to borrowers who are not indebted for farmer program type loans will be serviced in accordance with the proposed Subpart C of Part 1965.

3. Section 1965.3 includes, for easy reference and clarification, references to the regulations which explain the borrower's responsibility for paying real estate taxes and property insurance.

4. Section 1965.4 give the District Director servicing responsibilities, to be consistent with agency restructuring requirements. It also requires notice to the Finance Office of servicing actions affecting a borrower's account in order to assure appropriate application of proceeds or to suspend accounts pending a servicing action.

5. Section 1965,7 provides a list of definitions of terms used in the regulation for reader's ready reference and for clarification.

6. Section 1965.11 provides administrative changes to:

—Include guidance to field offices for handling cases to protect the Government's interest when borrowers continue to occupy but do not maintain security property; and

—Include guidance to field offices when borrowers abandon security property;

—Prescribe policy for servicing where third party actions affect security;

—Clarify actions of FmHA when sale by a prior lien foreclosure is contemplated or occurs and for handling foreclosure sales subject to an FmHA mortgage; and provide guidance for servicing divorce cases.

7. Section 1965.12 includes administrative changes to:

—Expand authority to subordinate farmer program real estate secured loans in order to carry out the Administration's policy of participating more actively with the private sector;

—Permit subordination for operating expenses to be approved by the State Director in certain cases; remove the $225,000 secured debt limitation because the limitation is no longer mandated by legislation; although this limitation is removed FmHA will not make loans which are not fully collateralized consistent with current policy.

—Limit subordinations involving the acquisition of land to not larger than family size operation, to be consistent with loan making eligibility requirements authorizing land purchase as a purpose;

—Permit subordinations involving a reduction of FmHA debt without prior approval of the National Office to facilitate handling of requests;

—Revise the conditions which warrant a new appraisal in view of current changes in land value;

—Coordinate subordination approval authority with loan approval authority for uniformity and include loan types not in prior regulations.

8. Section 1965.13 includes administrative changes to:

—Clarify that the sale of clear cut timber, mining products, removal of gravel, oil, gas, coal, or other minerals by unit or lump sum payments will be considered as disposition of a portion of the security and to revise the conditions which warrant a new appraisal;

—Clarify and expand authorities for use of proceeds, other than RH security, derived from sale of a portion of the security property including minerals to eliminate need for cases to be submitted to the Administrator;

—And set forth terms of sale for farmer program loan security and RH security when the borrower is also indebted for an RH loan.

9. Section 1965.16 provides policy permitting junior liens on security property and guidance in servicing to protect the Government's interest when consent is not requested or granted.

10. Section 1965.19 provides additional guidance in servicing requests for severance agreements and a list of determinations required before approval of requests. A borrower might request a severance agreement so that items to be acquired through other credit and subject to a chattel lien will not become a part of the real estate securing the FmHA debt. The approval of a severance agreement is delegated entirely to the County Supervisor.

11. Section 1965.26 provides guidance in handling liquidation action cases where a borrower might express interest in voluntary liquidation and procedural references when involuntary liquidation appears necessary. This will permit borrowers who wish to liquidate security the same consideration as borrowers who voluntarily transfer security to other parties or convey the property to the Government. It also provides guidance for servicing multiple types of loans and provides a method for handling loans to correct deficiencies when borrowers are in violation of FmHA security agreements. These actions will facilitate more expeditious handling of loan liquidations and help reduce the Government's inventory of acquired property. Provisions for accelerated repayment agreements are revised to permit terms up to 15 years with a balloon installment for real estate loans. This will provide alternatives for borrowers who are requested to refinance or cannot achieve objectives of the loan. This section also provides special conditions and guidance for the State Director to process requests for dwelling retention for farmer program loan borrowers in accordance with debt settlement authorities. It also provides for release of liability when the borrower has sold the security for its market value under certain conditions to provide uniformity with authority to release borrowers of liability when they transfer security to other parties or convey security to the Government.

12. Section 1065.27 makes explicit authorities for transfer of real estate security with assumption of FmHA indebtedness to include Emergency loan programs; eliminates the $225,000 secured indebtedness limitation against security as it is no longer mandated by legislation or justified by loan limits;

provides specific examples regarding transfer and assumption for emergency type loans, partnerships, corporations and cooperative loans not presently in regulations. Include provisions for other real estate (ORE) loans to be transfered to eligible or ineligible transferees. Present regulations do not address servicing of ORE loans. Costs, rates and terms for transfer and assumtion by ineligible RH and farmer program loans are set out with changes in the farmer program loans to provide for a minimum of 5 percent downpayment, terms up to 25 years with balloon installment and interest rate at regular FO rates plus 1 percent to facilitate borrowers exiting agriculture when they lack alternatives. The procedure for servicing loans when a borrower transfers security and FmHA cannot approve a transfer and assumption is provided.

13. Section 1965.34 includes servicing of ORE loans. A ORE borrower is not an eligible borrower. Present regulations do not provide guidance for servicing ORE loans. Guidance is provided, with exceptions listed for ORE borrowers.

14. Section 1965.35 provides direction to the State Director for submission to the FmHA National Office those proposed transactions which cannot be approved within these servicing regulations. Cases must be referred to OGC before submission to the National Office in cases where OGC advice is needed.

15. Section 1965.37 includes an administrative change for redelegation authority of the State Director.

Subpart C of Part 1965 sets forth policies and authorities for servicing real estate security for SFH loans. Primary differences between the provisions of this Subpart and the current Subpart A of Part 1872 are:

1. Section 1965.110 provides that consideration for security disposed of through partial release authority must be for cash or in exchange for another parcel of property with equal or greater value. Partial disposals on nonfarm tracts such as those which secure Single-family Housing loans normally involve relatively small sums of money in connection with sale of a right-of-way or easement and consideration for terms is not feasible.

2. Section 1965.112 removes the requirement that FmHA must consent to the borrower's leasing security. The Garn-St. Germain Depository Institutions Act of 1982 makes it possible for a person to lease property indefinitely and prohibits the lender from considering this a default unless a lease is for three years or more or contains an option to purchase. Therefore, it was deemed impractical to require FmHA consent.

3. Section 1965.113 sets forth provisions for consent to mineral leases and gives guidance on treatment of income from mineral leases.

4. Section 1965.116 incorporates detailed instructions for servicing deceased Rural Housing borrower cases which Subpart A of Part 1872 includes by reference to Subpart A of Part 1962 of this Chapter. This Section has been tailored to the Single-Family Housing borrower rather than all FmHA borrowers in general as Subpart A of Part 1962 does.

5. Section 1965.117 includes detailed instructions for servicing cases of SFH borrowers who declare bankruptcy which Subpart A of Part 1872 includes by reference to Subpart A of Part 1962 of this Chapter. This Section reflects provisions of the Bankruptcy Code and addresses this issue from the standpoint of a SFH borrower.

6. Section 1965.125 provides that in lieu of foreclosure FmHA may allow the borrower to enter into an Accelerated Repayment Agreement which will bear new rates and terms, relieve the borrower of the occupancy and graduation requirements, after which the loan will be reclassified as "Other Real Estate (ORE)". This will enable FmHA to have more flexibility in servicing loans and will preclude the necessity to liquidate loans where it was previously necessary to do so. At the same time the interest rate will be elevated to market rate as distinguished from the program rates.

7. Section 1965.126 provides that all loan assumptions will be at new rates and terms. In a few cases involving family members of deceased or divorced borrowers, the same interest rate may be retained. Also sets forth new policies on transfer or properties which are larger than a minimum-adequate site or have been improved so they are no longer modest. In the final rule, due to recent amendments to Title V of the Housing Act of 1949, it is anticipated that the term of assumption by persons who meet all eligibility requirements except their income is above moderate will be reduced to less than 33 years and be classified as "Other Real Estate" loans, not eligible for interest credits or moratoriums.

8. Section 1965.127 provides for satisfaction of all the transferor's FmHA accounts when the transferor is released from liability. At present it is necessary to process an additional debt settlement action to clear the books of accounts which the borrower has already been relieved of liability. The proposed represents more efficient handling of accounts in this category.

9. Section 1965.137 grants authority to the FmHA Administrator to make exception to provisions of this Subpart which are not inconsistent with the authorizing statute. It is impossible to address all situations which may arise to require loan servicing action. Such an exception paragraph provides flexibility for these cases to be handled individually at the National Office level.

Intergovernmental consultation in accordance with 7 CFR Part 3015 Subpart V "Intergovernmental Review of Department of Agriculture Programs and Activities" is not applicable.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

These proposed changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans
10.416—Soil and Water Loans
10.417—Very Low-Income Housing Repair Loans and Grants

List of Subjects

7 CFR Part 1872

Foreclosure, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Loan programs—Agriculture, Housing, Rural areas, Mortgages.

Therefore, as proposed, Chapter XVIII of Title 7, Code of Federal Regulations, is amended as follows:

PART 1872—[REMOVED AND RESERVED]

1. Part 1872 is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

Subpart A—Account Servicing Policies

2. In § 1951.8, paragraph (a) is revised and paragraph (b)(8) is added to read as follows:

§ 1951.8 Types of payments.

(a) *Regular payments.* Regular payments are all payments other than extra payments and refunds. Usually, regular payments are derived from normal farm or non-farm income, and do not include proceeds from the sale of basic chattel or real estate security. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, and income derived from the sale or use of property on a recurring basis, such as proceeds from crops, milk, livestock produced on the farm, selective timber harvest, annual rental, that is not of a depleting nature. Regular payments in the case of a Section 502 RH loan to an applicant involved in a mutual self-help project will include loan funds advanced for the payment of any part of the first and second installments. All payments to the Finance Office by direct payment borrowers are considered regular payments.

(b) * * *

(8) Any other transaction where a program regulation specifically requires application as an extra payment.

* * * * *

PART 1965—REAL PROPERTY

3. Subpart A is added and reads as follows:

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

Sec.

1965.1 Purpose.
1965.2 General policies.
1965.3 Borrower's responsibility.
1965.4 FmHA's responsibility.
1965.5 Servicing insured Farm Ownership (FO) loans.
1965.6 Consent of lienholders.
1965.7 Definitions.
1965.8–1965.10 [Reserved]
1965.11 Preservation of security and protection of liens.
1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.
1965.13 Consent by partial release, or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.
1965.14 Subordination of FmHA real estate mortgages to easements to the U.S. Fish and Wildlife Service (formerly the Bureau of Sport Fisheries and Wildlife.)
1965.15 Subordination of FmHA's lien to the Commodity Credit Corporation's (CCC) security interest taken for loans made for farm storage and drying equipment.
1965.16 Consent to junior liens.
1965.17 Consent to borrower's granting lease of security.
1965.18 Transfer of upland cotton, peanut, or tobacco allotments.
1965.19 Severance agreement
1965.20 [Reserved]
1965.21 Assignment and release of Soil Bank or similar program payments.
1965.22 Deceased borrower.
1965.23 Bankruptcy and insolvency.
1965.24 Servicing note-only cases.
1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security, because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.
1965.26 Liquidation action.
1965.27 Transfer of real estate security.
1965.28–1965.30 [Reserved]
1965.31 Taking liens on real estate as additional security in servicing FmHA loans.
1965.32 Assignment of promissory notes and security instruments outside the program.
1965.33 Cosigners)—RH Loans.
1965.34 Other Real Estate Loans (ORE).
1965.35 Exception Authority.
1965.36 State Supplements and reference to the OGC.
1965.37 Redelegation of Authority.
1965.38–1965.50 [Reserved]
Exhibit A—Memorandum of Understanding between Bureau of Sport Fisheries and Wildlife and the Farmers Home Admininstration

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

§ 1965.1 Purpose.

This Subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests and certain note-only security for Farmers Home Administration (FmHA) Farmer Program loans other than Shift-in-Land-Use (Grazing Association), Irrigation and Drainage (I&D) and Indian Tribes and tribal corporations. Servicing of Rural Housing (RH) loans to Farmer Program borrowers is also included. This Subpart does not apply to FmHA guaranteed loans, Rural Rental Housing (RRH) loans, Labor Housing (LH) loans, Business and Industrial (B&I) loans or to Community Programs (CP) loans. This Subpart does not apply to Section 502 or Section 504 RH loans when the borrower is not indebted for a Farmer Program type loans(s).

§ 1965.2 General policies.

Real estate security will be serviced in a manner which will best accomplish the loan objectives and protect the Government's financial interest. To accomplish this, the real estate security will be serviced in accordance with the security instruments and related agreements, including any authorized modifications, provided the borrower—

(a) Has reasonable prospects of accomplishing the loan objectives,

(b) Properly maintains and accounts for the security, and

(c) Otherwise meets the loan obligation, including repayment of the loan(s), in a satisfactory manner.

When the above conditions are not satisfied or when it is determined that the loan(s) must be liquidated for other reasons, and sufficient legal grounds for liquidation exist, prompt action will be taken to liquidate the security to protect the Government's financial interest.

§ 1965.3 Borrowers's responsibility.

Each borrower is responsible for repaying principal and interest on a timely basis pursuant to the loan documents, paying real estate taxes in accordance with Part 1863 of this Chapter (FmHA Instruction 425.1), providing adequate property insurance in accordance with Subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1), maintaining, protecting, and accounting to the FmHA for all real estate security, and complying with other loan requirements.

§ 1965.4 FmHA's responsibility.

The County Supervisor, District Director or other servicing official is responsible for informing borrowers of their responsibilities in connection with the loan, seeing that the security is being properly maintained and accounted for, and servicing the security in accordance with this Subpart. When a borrower fails to maintain, protect, or account for the security, as required by the loan documents, or makes unauthorized disposition or use of any security, prompt action will be instituted to protect FmHA's interests. The County Supervisor, District Director or other servicing official will obtain any needed legal advice from the Office of the General Counsel (OGC) through the State Director. Once a case has been referred to the OGC for legal action, no further action will be taken by the County Supervisor, District Director or other servicing official without prior clearance from OGC. If the case has been referred to the U.S. Attorney, clearance with the U.S. Attorney will be obtained through OGC. Actions taken to service a loan will be documented in the running case record in the borrower's FmHA file(s). When a servicing action affects a borrower account (e.g., a foreclosure action is pending), the Finance Office will be notified by the appropriate FmHA servicing official.

§ 1965.5 Servicing insured Farm Ownership (FO) loans.

(a) *Servicing actions.* When an insured FO mortgage running to the lender as mortgagee is not held by the FmHA under trust assignment, or declaration of trust, or in the insurance fund (called insured FO mortgage held by the lender in this Subpart) and a written subordination or partial release or other servicing document is requested, the document will be executed by the holder on a form prepared or approved by OGC. In those cases, execution of the document will constitute consent.

(b) *Execution of documents.* The County Supervisor is authorized to execute, on behalf of the Government, all necessary forms, satisfactions, releases, and other documents required to complete any transactions in this Subpart after the transaction has been approved by the appropriate approval official. The documents will be executed on behalf of the United States in the following form:

(1) "United States of America," when the mortgage names the United States as mortgagee, or when a mortgage running to the lender is not under a trust or declaration of trust and the note is held by the insurance fund.

(2) "United States of America, for Itself and as Trustee," when an FO mortgage is held by the FmHA under a trust assignment or declaration of trust, regardless of whether the note is held by a lender or by the insurance fund.

§ 1965.6 Consent of lienholders.

When this Subpart requires the consent of other lienholders, consent will be obtained and furnished in writing to the FmHA by the borrower before the FmHA enters into a transaction which affects its security or its lien. This consent will, unless otherwise provided in a State Supplement, include an agreement as to the disposition of any funds involved in the transaction.

§ 1965.7 Definitions.

(a) *County Supervisor* also includes Assistant County Supervisor who has written delegated authority to carry out purposes of this Subpart.

(b) *District Director* also includes Assistant District Director who has written delegated authority to carry out purposes of this Subpart.

(c) *FmHA loans, FmHA accounts, FmHA interest, FmHA security, FmHA debts* and similar terms apply to indebtedness owed to, or insured by, the United States of America acting through the FmHA, and to related security instruments.

(d) *Foreclosure sale.* The act of selling security either under the "Power of Sale" in the security instrument or through court proceedings.

(e) *Leasehold.* Possession by lease. Property held by lease. For purposes of this Subpart any lien on a leasehold is security.

(f) *Mortgage* includes deeds of trust and similar real estate security instruments and chattel security instruments, where appropriate.

(g) *Note* includes any note, bond, assumption agreement or other evidence of indebtedness.

(h) *Security.* Property of any kind subject to a real or personal property lien including, among other things, appurtenant rights of development, leasehold, grazing or other use privileges.

(i) *Servicing action* includes, among other things, the cash sale or transfer of real estate and chattel property and the assumption of loans.

§§ 1965.8—1965.10 [Reserved]

§ 1965.11 Preservation of security and protection of liens.

(a) *Inspection of security.* The County Supervisor will inspect farm real estate security a minimum of one time every three years for accounts that are current. If all or part of the security is located in another County Office area, the County Supervisor for that area may be requested to inspect the property. More frequent inspections will be made when a borrower is deliquent or otherwise in default or when problems exist involving the security. Security on nonfarm tracts will be inspected when:

(1) Liquidation action is likely to be taken;

(2) The property has been abandoned;

(3) Necessary to protect the interest of the Government; or

(4) Requested by the borrower.

(b) *Action by FmHA for account of borrower.* When necessary to protect the interest of the Government, actions will be taken by FmHA for the account of the borrower as provided below. Any protective advances made for these purposes will be paid by Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," or other approved voucher in accordance with FmHA Instruction 2075–A (available in any FmHA Office), and forwarded to the Finance Office for issuance of the Treasury Check and charged to the borrower's account.

(1) *Taxes and assessments.* Real estate taxes and assessments will be handled in accordance with Part 1863 of this Chapter (FmHA Instruction 425.1).

(2) *Insurance.* For FmHA loans secured by liens on real estate, property insurance will be obtained and serviced in accordance with Subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1), and when appropriate, Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2).

(3) *Maintenance.* Where the borrower continues to occupy the security property but is not adequately maintaining it, prior authorization from the National Office must be obtained before funds are advanced for necessary repairs. The State Director will submit the facts and his/her recommendation for continuing the loan to the Assistant Administrator, Farmer Programs. If there is a prior lien, expenditures for maintenance will not be made by the Government unless the prior lienholder refuses to make them. Evidence of the prior lienholder's unwillingness to do so will be fully documented.

(4) *Abandonment.* When a borrower removes personal property from the farm or home or takes other actions which lead the County Supervisor to believe real estate security has been abandoned by the borrower, an immediate check with neighbors, relatives in the area, the local post office, utilities offices, schools, and other appropriate sources will be made to determine if the borrower has moved from the area and, if so, whether a forwarding address can be determined. If the security is not being maintained, and available information indicates that it has been abandoned, the facts will be documented in the case file and the FmHA official having jurisdiction will taken action to protect the Government's interest in accordance with Subpart B of Part 1955 of this Chapter. Form FmHA 465–7, "Report on Real Estate Problem Case," will be prepared and submitted to the State Director.

(c) *Action by third parties which affect security.* (1) *General provisions.* When third parties being suit or take any other action which could affect property serving as security, borrowers are expected to protect their own interests in the property. A few examples of actions by third parties are: condemnation proceedings, foreclosure, trespass suits, and actions to quiet title.

(i) *County Supervisor's responsibility.* When the County Supervisor learns of a third party action which could jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will send the County Office case file, complete with information

concerning the action, and recommendations for FmHA servicing action to the State Director. The information sent to the State Director will include a copy of any petition or complaint, as soon as available; a current Form FmHA 451–11, "Statement of Account", or documented record of telephone conversation with the Finance Office verifying current balances; a current appraisal report; the name and address of the borrower's attorney, if any; and any other information which the County Supervisor believes important.

(ii) *State Director's responsibility.* The State Director will consult OGC about all lawsuits involving the property. The State Director will also consult OGC about any other third party actions when OGC's advice would be helpful. The State Director will then advise the County Supervisor of the actions to be taken to protect the Government's interest in the property. Protective advances will only be authorized to protect the Government's interest. Protective advances will not be authorized for protection of the borrower's interest. When foreclosure or any other action which would cause the borrower to lose possession of the property is imminent, the State Director may give consideration to making a subsequent loan or to approving a subordination to permit another lender to make a loan, provided:

(A) a subsequent loan or subordination is necessary to enable the borrower to retain the property,

(B) the borrower has the ability and resources necessary to overcome the problems that caused the foreclosure or other action, and

(C) the third party agrees to postpone further action pending the processing of a subsequent loan or subordination.

(iii) *Other actions.* The State Director may also approve a transfer and assumption under this Subpart provided the action will adequately protect the Government's interest and the third party agrees to delay further action pending processing of the transfer and assumption. The State Director will notify the County Supervisor of the actions to be taken to protect the Government's interest.

(2) *Sale by a prior lien foreclosure.* When FmHA learns that a prior lienholder is contemplating foreclosure, the prior lienholder will be contacted to determine the amount of the prior lien indebtedness and the estimated cost of a foreclosure sale. An insured note which is not held by the insurance fund will, whenever possible, be assigned to the insurance fund before a foreclosure sale. Otherwise, the assignment will be completed as soon as feasible after the foreclosure sale.

(i) *Paying off the prior lien.* When, under State law, it is necessary prior to foreclosure to acquire the prior lienholder's rights to protect the Government's junior lien interest, and in other situations when it is advantageous to the Government to pay the prior lien in full before the foreclosure sale, title evidence will be obtained. Information clearly supporting the action as being to the Government's financial advantage must be documented and made a part of the file. Payment of the prior lien and required costs may be made with the advice of OGC, provided:

(A) The Government will obtain a greater recovery of the secured debt (not an inventory profit) than it could by bidding at the foreclosure sale, and

(B) The FmHA account after acquisition of the prior lien will be liquidated as provided in § 1965.26 of this Subpart unless other appropriate actions will be taken, such as obtaining a new participating lender, or rescheduling or reamortizing the FmHA debt.

(C) Loans will not be reamortized to include protective advances unless authorized on an individual case basis by the National Office. When continuation with reamortization to include protective advances is recommended, the case file with documentation of all facts of the situation necessitating protective advances, efforts to obtain a new participating lender, and justification for reamortizing will be submitted to the National Office.

(ii) *Making a bid.* If a substantial net recovery on the Government's interest can be made by acquiring and reselling the security, title evidence will be obtained and the State Director will authorize a bid in accordance with Subpart A of Part 1955 of this Chapter. The prior lienholder, court clerk, sheriff or other sale official will be contacted to determine whether payment by Standard Form 1034 is acceptable if the Government is the successful bidder at the sale. If the prior lienholder requires a cash payment, Standard Form 1034 must be sent to the Finance Office in sufficient time for the County Supervisor to receive a U.S. Treasury check before the sale. Requesting the check, payment of the bid, and payment of any other costs by using Standard Form 1034 will be in accordance with the applicable paragraphs of § 1955.15 of Subpart A of Part 1955 of this Chapter. The costs will be charged to the borrower's account. Bidding will be completed in accordance with Subpart A of Part 1955 of this Chapter except that incremental bids will not be placed where borrowers have redemption rights unless, with prior assistance of OGC, a deficiency judgment will be obtained against the borrower(s). Information clearly supporting the bid as being to the Government's financial advantage must be documented and made a part of the file.

(iii) *Making no bid.* When the State Director determines that no bid will be entered by FmHA, the County Supervisor will nevertheless attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. If the Government is to rely on its redemption rights, that fact will be indicated in the report.

(iv) *Reporting.* When FmHA enters a bid or is the successful bidder at the foreclosure sale, reporting actions will be taken in accordance with Subpart A of Part 1955 of this Chapter.

(v) *Servicing Government redemption rights.* If the Government for any reason did not protect its interest at the time of the foreclosure sale and if the Government has any redemption rights, the State Director will determine whether to redeem the property. This determination will be made after considering all pertinent factors including the value of the property after the sale and any other related information. This decision will be made far enough in advance of expiration of the redemption period to permit exercise of the Government's rights. If redemption of the property is appropriate, complete information showing the basis for not acquiring the security at the sale and factors which justify redemption of the property will be documented in the case file and the State Director will proceed to redeem the property after obtaining any necessary assistance from OGC. If the State Director decides not to redeem the property, the right of redemption may be sold for its value. There is no authority to dispose of redemption rights without consideration.

(3) *Foreclosure sale subject to FmHA mortgage.* When a lien junior to the FmHA lien is foreclosed and the property is sold subject to the FmHA mortgage, the account will normally be transferred in accordance with § 1965.27 of this Subpart, if appropriate, or liquidated as provided in § 1965.26 of this Subpart. However, in an unusual case, the Administrator may authorize continuation of an account for a reasonable period of time to permit a junior lienholder to market the property provided:

(i) It is in the best interest of the Government,

(ii) The Government will obtain a greater recovery of the secured debt than it could by foreclosure proceedings,

(iii) The Government's right to foreclose will not be jeopardized,

(iv) The junior lienholder will agree to protect, preserve and market the property, and

(v) The State Director makes a request for the continuation and submits the account file with the junior lienholder proposal, a current market appraisal of the security and other pertinent facts and recommendations, including a statement regarding any adverse effects on the FmHA Program in the area, to the Administrator for consideration.

(d) *Divorce actions.* (1) When borrowers owing farmer program loans secured by real estate become divorced, the County Supervisor will submit the case to the District Director, with a copy of the final divorce decree, for advice or concurrence in servicing the account after the divorce is granted. A subsequent loan made as a result of a divorce action will be handled in accordance with § 1965.27(b)(11) of this Subpart.

(2) When a jointly liable former spouse of a divorced borrower is to be released from liability under court decree or otherwise, Form FmHA 1965–8, "Released From Personal Liability," will be used.

(3) Neither borrower will be released from liability when a divorce decree awards security property to one spouse and provides that the other spouse will be responsible for paying all or part of the mortgage payments.

§ 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.

(a) *Conditions for subordination.* A subordination may be granted subject to the following conditions:

(1) The FmHA debt cannot be refinanced on terms which the borrower can reasonably be expected to meet;

(2) The transaction will further the objectives for which the FmHA loan or loans were made;

(3) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them, as well as all other debts;

(4) An assignment of the beneficial interest in any stock required in connection with a loan will be obtained as security, when possible and when needed;

(5) The FmHA indebtedness after the subordination will be adequately secured or will not be adversely affected by the transaction;

(6) The proposed use of the funds will improve the borrower's ability to repay the FmHA loan(s) or is necessary to place the borrower's operation on a sound basis;

(7) The use of the funds obtained as a result of the subordination will not conflict with loan purposes, restrictions or requirements of the type of loan(s) being subordinated;

(8) The amount ot any prior lien plus the balance of the FmHA debt will not exceed the market value of the security. When the FmHA indebtedness was not fully secured by the market value of the security before the transaction, a subordination may be granted only if the market value of the total security will be increased through improvement or acquisition by an amount at least equal to the additional advance. For Section 502 RH loans subject to recapture FmHA indebtedness will be determined in accordance with Subpart I of Part 1951; and

(9) See § 1965.34(e) for additional requirements concerning subordinations of Other Real Estate (ORE) loans.

(b) *Purposes of subordination.* A subordination may be granted for any of the following purposes:

(1) *Refinance, extend, or reamortize debts of other lenders.* Refinance, extend, or reamortize an existing prior lien provided the amount of the indebtedness secured by the prior lien, as of the date of the transaction, is not increased by more than reasonable costs incidental to loan closing plus funds for the purchase of any required stock.

(2) *Increase the amount of a prior lien or permit a new prior lien when another lender's funds will not be used to reduce the FmHA debt.* The requirements of § 1965.12(a) of this Subpart must also be met.

(i) Nonfarm tract. When a nonfarm tract secures an RH loan, the other lender's funds will only be used for the same purposes and with the same limitations that would be applicable if an RH loan were made.

(ii) Farm tract. (A) When a farm tract secures and FO loan only or an FO and any other type FmHA loan, the other lender's funds may be used for any purpose for which and FO loan can be made, regardless of the requirements in § 1965.12(a)(7) of this Subpart.

(B) When a farm tract secures other type(s) of FmHA loan(s) currently authorized, the other lender's funds may be used for any purpose for which that type loan is authorized.

(C) When a farm tract secures any loan which has annual operating credit as a loan purpose, and it is determined essential for the borrower to remain in farming, the State Director may approve a subordination for operating credit when no other alternative exists. The reasons and justification supporting the subordination for operating expenses will be fully documented in the case file by the County Supervisor prior to submission to the State Director.

(D) When additional land is to be acquired by use of proceeds from the subordiantion, Form FmHA 440–2, "County Committee Certification or Recommendation", will be completed before the subordination is approved. A subordination for purchase of additional land will not be approved without favorable recommendation of the County Committee.

(iii) Any proposed development will be planned and performed in accordance with Subpart A of Part 1924 of this Chapter or in a manner directed by the creditor which reasonably attains the objectives of Subpart A of Part 1924 of this Chapter and is agreed to by FmHA.

(iv) Funds used to develop or to acquire land will be handled as prescribed in Subpart A of Part 1902 of this Chapter. If the creditor will not permit the use of a supervised bank account, arrangements satisfactory to the FmHA which will assure that the funds will be spent for the planned purposes may be substituted.

(v) In cases of land purchase or exchange of property, the FmHA will obtain a valid mortgage on the acquired land. Title clearance and loan closing will be required as for an initial or subsequent FO loan, as appropriate. The mortgage will be recorded when the subordination is delivered to the other lender or immediately after the other lender records its mortgage.

(3) *Increase the amount of a prior lien or permit a new prior lien, when the other lender's funds will be used wholly or in part to reduce the FmHA debt.* Funds of another lender may be used to pay on an FO, SW, RL, OL, EE, or EM loan. Funds of another lender may also be used to pay the amount delinquent on a RH loan provided the RH borrower also owes an FO loan. FmHA may subordinate its lien to that of the other lender, even though the primary purpose of the new loan funds is to reduce the existing FmHA loan. A written justification for allowing the subordination must be prepared and made a part of the borrower's case file. The approval official will decide whether or not to allow the subordination based on the following

factors, which should be addressed in the written justification:

(i) The new loan funds must be needed to accomplish the objectives set out in § 1965.2 of this Subpart;

(ii) The new loan funds must be needed to establish the borrower's operation on a sound basis;

(iii) The conditions set out in § 1965.12(a) of this Subpart must be met; and

(iv) The restrictions set out in § 1965.12(b)(2) of this Subpart will apply to any part of the other lender's funds not applied on the FmHA indebtedness.

(c) *Request for subordination.* When a borrower request the FmHA to subordinate a mortgage, Form FmHA 465–1, "Application for Partial Release, Subordination, or Consent," will be prepared. If an agreement to give notice of foreclosure is required for approval of an initial FmHA loan, an agreement with a new prior lienholder will be obtained as required in § 1807.2(f)(5) of Part 1807 of this Chapter (FmHA Instruction 427.1, paragraph II F 5). In case of an insured FO mortgage held by the lender, the holder's consent will be obtained in accordance with § 1965.5 of this Subpart. Any other lienholder's consent to the transaction and use of the proceeds will be obtained as provided in § 1965.6 of this Subpart.

(d) *Appraisal.* A current appraisal report will be prepared in accordance with Subpart A of Part 1809 of this Chapter (FmHA Instruction 422.1) when property is to be purchased or exchanged, or when the existing appraisal report is more than one year old or is inadequate to make the determination required in this paragraph. When an appraisal is required by FmHA in connection with a subordination being granted to the Federal Land Bank (FLB), the appraiser may recommend, or the loan approval official may find, the market value of the total security to be equal to the market value of the real estate plus the value of the FLB stock. This determination will be recorded on a separate sheet and attached to the appraisal report. When a subordination is granted in connection with any FmHA loan to permit a loan by another lender, the FmHA appraiser is authorized to use the appraisal report prepared for the other lender in determining the recommended market value of the property in accordance with FmHA Instruction 422.1, Exhibit A (available in any FmHA office).

(e) *Approval authority.* (1) *Nonfarm tracts.* County Supervisors and District Directors are authorized to approve subordinations under § 1965.12 which do not exceed their respective loan approval authorities, as outlined in Subpart A of Part 1901 (available in any FmHA Office). State Directors are authorized to approve any subordination which exceeds the approval authority for County Supervisors or District Directors.

(2) *Farm tracts.* County Supervisors and District Directors may approve subordinations for purposes authorized in this Subpart when the FmHA indebtedness does not exceed their approval authority for the type of loan or a combination of types of loans as outlined in Subpart A of Part 1901 (available in any FmHA Office). When more than one type of loan is involved in the subordination, the loan approval authority of County Supervisors and District Directors will be the highest amount, or combination, authorized in Subpart A of Part 1901 of this Chapter for any of the loan types involved, except for subordination of real estate security for operating credit, for which the authority is reserved to the State Director. State Directors are authorized to approve any subordinations, consistent with this Subpart, which exceed the approval authority of County Supervisors and District Directors.

(f) *Processing.* When the approval of the subordination by the State Director is required or when the County Supervisor or District Director desires advice before approval of the subordination, the borrower's case folder with current documents to support the applicable determinations, such as, where appropriate, Forms FmHA 431–2 "Farm and Home Plan," FmHA 431–1, "Long-Time Farm and Home Plan," FmHA 431–3, "Household Financial Statement and Budget," FmHA 422–1, "Appraisal Report (Farm Tract)," FmHA 1922–8, "Residential Appraisal Report," FmHA 440–2, other necessary forms, and Form FmHA 465–1 will be sent to the State Office. Form FmHA 440–2 will be completed when a subordination is granted for the purchase of additional land. After approval of the subordination, it will be closed in accordance with State Supplements to the maximum extent possible as provided in § 1965.36 of this Subpart. However, when legal advice on an individual case is necessary, Form FmHA 465–1, any subordination form furnished in connection therewith, the original or a copy of the FmHA mortgage, the refinancing mortgage or agreement, and related documents will be submitted to the OGC for review and preparation of the necessary instruments and closing instructions. The documents and closing instructions will be sent to the County Office. If the signature of the State Director is required on some of the instruments, the docket and closing instructions will be routed through the State Office. The subordination will be completed in accordance with the closing instructions.

(g) *Reamortizing existing FmHA debts other than Section 502 RH.* The County Supervisor, District Director or the State Director (as appropriate) may consent to a reamortization of an existing FmHA debt when a subordination is granted to the debt of another lender. The reamortization will be allowed only if the borrower cannot reasonably be expected to meet installments when due. Reamortizations of farmer program loans will be processed in accordance with Subpart A of Part of 1951 of this Chapter. Reamortization of RH loans will be processed in accordance with Subpart G of Part 1951 of this Chapter.

§ 1965.13 Consent by partial release, or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

(a) *Provisions of FmHA mortgages.* In all FmHA mortgages except RH loans mortgages prepared before October 1, 1950, and a few Operating Loans (OL), Emergency (EM), Special Livestock (SL), and Water Facilities (WF) loan mortgages, the borrower has agreed not to sell, transfer, assign, mortgage, or otherwise encumber the security or any portion of or interest in it without the prior written consent of the mortgagee. Furthermore, in the case of the few RH, OL, EM, SL, and WF loan mortgages not requiring FmHA consent, any property, or any part thereof or interest therein, which is subject to the FmHA mortgage and which is disposed of by the borrower without consent remains subject to the mortgage lien. In all FmHA mortgages the borrower expressly agrees not to engage, without prior consent, in certain specified transactions, including the cutting or removal of timber, or mining or removal of gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary domestic purposes. The sale of clear cut timber, mining products, removal of gravel, oil, gas, coal or other minerals by unit of lump sum payments will be considered as disposition of a portion of the security. This section explains how and under what circumstances FmHA will grant partial releases, and give its consent to certain transactions affecting the security. Subordinations, transfers, consents to junior liens, leases and severance agreements are discussed individually in other sections of this Subpart. Releases granted in connection with a final payment on real estate will

be handled in accordance with Part 1866 of this Chapter (FmHA Instruction 451.4).

(b) *Conditions of FmHA consent.* A State Supplement will be developed, with guidance of OGC, and issued to provide guidance for handling of easements or rights-of-way in connection with the development, extension, construction or modification of community based programs, such as rural water districts, drainage, and irrigation districts, without requiring monetary consideration or detailed appraisals. Otherwise, FmHA may consent to certain transactions affecting the security (for example, a sale or an exchange of security or granting a right-of-way across security and/or grant a partial release if:

(1) The consideration is adequate for the security being disposed of or the rights granted (see paragraph (c) of this section),

(2) Orderly repayment of the FmHA indebtedness will not be impaired (does not apply in condemnation cases after final judgment or award which is not appealed),

(3) The transaction will not interfere with successful operation of any farming or other enterprise providing the borrower with repayment ability (does not apply in condemnation cases after final judgment or award which is not appealed),

(4) The market value of the remaining security is adequate to secure the unpaid balance of the FmHA debts, or if the market of the security before the transaction was inadequate to fully secure the FmHA debts, the FmHA's security interest is not adversely affected,

(5) The requirements of §§ 1965.6 and 1965.13 of this Subpart are met, and

(6) The borrower cannot graduate to other credit.

(c) *Exchange of property.* When an exchange of property serving as security for an FmHA loan results in a balance owing to the FmHA borrower, the provisions of this section applicable to a sale of portion of the security will apply as to disposition of proceeds. When property is exchanged, the property acquired by the FmHA borrower must meet requirements of the program objectives, purposes and limitations outlined in this Subpart relating to the type of loan involved as well as respective requirements for appraisal, title clearance and security. Requests for exchange of property which cannot be approved under this section may be submitted to the National Office for consideration provided the request meets conditions set forth in § 1965.35 of this Subpart.

(d) *Appraisals.* When the official authorized to approve the transaction is uncertain whether the proposed consideration is adequate, or for any other reason considers an appraisal necessary to complete Form FmHA 465-1, or when the transaction involves more than $10,000, a new appraisal report will be obtained in accordance with Subpart A of Part 1809 of this Chapter (FmHA Instruction 422.1). However, a new appraisal report need not be obtained if there is an appraisal report not over one year old in the case file which will permit the official authorized to approve the transaction to make the proper determination of the market value of the property being retained and the market value of the portion to be released. When a new appraisal is not required, the appraiser will indicate the estimation of values and basis for it in the comments section of the existing appraisal report. The notation will be initialed and dated. When a new appraisal report is required, it will be completed to show the present market value of the property being retained. Also, the present market value of the property being released will be shown under the comments section of the same appraisal report. Information regarding sales of comparable properties used in arriving at the present market value of the property being released will be shown in the comments section or on an attached sheet.

(1) *Stationary units.* If timber or minerals, including sand, gravel, and stone which appear to be worth more than $2,000 are to be sold on the basis of the timber stand or the mineral deposit rather then the units to be removed, the borrower will be encouraged to obtain the assistance of a qualified technician other than an FmHA employee to provide advice on the quality or value of the timber or minerals, and the manner in which they should be sold. Generally, assistance can be obtained from State or Federal employees who are located in the area, such as U.S. Department of Agriculture Forest Service employees.

(2) *Units removed.* When timber or minerals including sand, gravel, or stone, are to be sold on the basis of the units to be removed, or when an easement or a right-of-way is to be sold or granted, the employee authorized to make the appraisal may insert date, and initial a notation on the existing appraisal report instead of making a new appraisal report. The notation should show—

(i) The unit value of timber or minerals, or the value of the easement or right-of-way, based on the consideration being paid for similar items in the area; and

(ii) The manner in which the remaining property will be affected. If the market value of the remaining property is significantly decreased, a market value appraisal of the remaining property usually will be required.

(e) *Authority of the County Supervisor and District Director.* (1) *General.* County Supervisors and District Directors are authorized to approve transactions under this section, except for those transactions which are specifically reserved to the state Director.

(2) *Forest Products.* County Supervisors and District Directors can approve *most* applications for consent or release involving the harvest or sale of forest products. In the case of three precent loans for forestry purposes, applications for consent or release will be forwarded to the State Director for approval if:

(i) The harvest or sale is not in accordance with strict provisions of the initially approved forestry plan,

(ii) Future repayments on the three percent advance are scheduled on any basis other than equal annual installments,

(iii) There is a lien on the forest land prior to the lien of the FmHA, or

(iv) There is a delinquency on any FmHA real estate loan.

(3) *Terms of a sale.* County Supervisors and District Directors may approve sales made on the following terms.

(i) Sale of a portion of the security for its market value on the following terms:

(A) For RH loans, not less than ten percent down and payments not to exceed five annual installments of principal plus interest at not less than the current rate being charged on above moderate insured RH loans or the rate on the borrower's note(s), whichever is greater.

(B) For all other loans, not less than ten percent down and payments not to exceed ten annual installments of principal plus interest at not less than the current rate being charged on regular FO loans plus one percent or the rate on the borrower's note(s), whichever is greater.

(ii) In each case it must be determined that:

(A) The Government's security rights, including the right to foreclose on either the portion being sold or retained, are not impaired, and

(B) The downpayment and any subsequent payments are applied to the FmHA debt(s), prior lien(s), or otherwise used as authorized in this paragraph.

(iii) In each case the following conditions must be met:

(A) Any amount to be paid FmHA from the downpayment and subsequent payments must be assigned to FmHA,

(B) The property sold will not be released prior to either full payment of the borrower's account or receipt of full amount of sale proceeds with proper application or release of the proceeds, and

(C) The borrower must agree that the sale proceeds will not affect the borrower's primary and continued obligation for making payments under terms of the note or any reamortization or supplemental agreements approved by FmHA.

(f) *Use of proceeds.* County Supervisors or District Directors may approve transactions if the proceeds will be used in one of the following ways.

(1) Proceeds may be applied on liens in order of priority. Written consent of any prior or junior lienholder will be obtained by the borrower and delivered to the FmHA if any proceeds are not to be applied in accordance with lien priorities.

(2) The borrower may use a portion of any proceeds to pay customary incidental costs appropriate to the transaction and reasonable in amount which the borrower cannot arrange to pay from personal funds or cannot have the purchaser pay. The costs may, for example, include real estate taxes which must be paid to consummate the transaction; costs of title examination, surveys, abstracts, title insurance, reasonable attorney's fees; reasonable attorney's fees and court costs in condemnation cases; costs necessary to determine the reasonableness of an offer or asking price, such as fees for appraisal of minerals, land, or timber when the necessary appraisal cannot be obtained without costs; real estate broker's commissions when the FmHA approval official determines the expected proceeds will be increased by at least the amount of the broker's commission; and additional income tax which the borrower is required to pay for the year because of the capital gain or other payments from the transaction. The amount of the estimated tax on the particular transaction will be deposited in an interest bearing or supervised bank account, and any deposited funds not needed to pay the borrower's adjusted tax liability for the year of the transaction will immediately be applied on the account as an extra payment for RH loans and, for farmer program loans only to bring the account current if presently delinquent, pay the annual installment for the year if not paid, and any balance collected as an extra payment. In any State in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any costs for postage and insurance of the note while in transit. The County Supervisor will advise the borrower when requesting a partial release that the borrower must pay the costs. If the borrower is unable to pay the costs from personal funds, they may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual costs furnished by the lender.

(3) Proceeds may be used for development of land owned by the borrower or for enlargement, if development or enlargement is necessary to improve the borrower's debt-paying ability and to place the borrower's operation on a sound basis, or to otherwise further the objectives of the loan. The use of proceeds for these purposes will not conflict with the loan purposes, restrictions or requirements of the type loan(s) involved. Any proposed development work will be in accordance with Subpart A of Part 1924 of this Chapter. Funds to be used for development or enlargement will be handled in the manner prescribed in Subpart A of Part 1902 of this Chapter.

(4) When FmHA loans secured by a lien on real estate will be adequately secured after a transaction affecting the real estate takes place, proceeds may, with the consent of the State Director and other lienholders on the real estate, be used as follows:

(i) Applied on inadequately secured FmHA loans to reduce them to the extent that security will be adequate. Application can be to delinquent or unmatured installments when the borrower is otherwise unable to meet the installments.

(ii) For other than RH loans, applied on debts owed creditors other than FmHA to the extent needed to establish a basis for continuation of account.

(iii) Develop land not owned by the borrower which is essential to the borrower's operation in an amount not to exceed $10,000, provided: the improvements are needed to improve the borrower's repayment ability and the borrower has tenure arrangements which justify the use of the proceeds on the land not owned by the borrower. Development work performed will be in accordance with Subpart A of Part 1924 of this Chapter. Funds will be handled as prescribed in Subpart A of Part 1902 of this Chapter.

(iv) Any amounts not applied to any prior lien, inadequately secured FmHA loans, other creditor debts or used for development, must be applied to the FmHA lien with the highest priority.

(5) When liquidation action is pending in accordance with § 1965.26 of this Subpart, the County Supervisor or District Director is authorized to approve transactions only when all the proceeds (other than costs authorized in paragraph (f)(2) of this section) will be applied to the liens against the security in the order of their priority.

(g) *Authority of the State Director.* The State Director is authorized to approve transaction that exceed the approval authority granted in paragraph (e) of this section to the County Supervisor and District Director, or that involve an easement or fee title right-of-way granted or conveyed without monetary compensation or for a token consideration. When approving these transactions, the State Director must determine that the requirements of § 1965.13(b) of this Subpart are met.

(h) *Processing.* FmHA's consent will be given by approving a completed Form FmHA 465–1, if the transaction meets the conditions of § 1965.13(b). Also, when requested, the FmHA will give a written partial release on Form FmHA 460–1, "Partial Release," or other form approved by OGC on a case by case basis. A formal release may not be delivered for 15 days after the payment is received unless payment is made in the form of cash, money order, certified check, or check from a reputable lending agency. Releases not delivered will usually be voided 30 days after notification to the requesting party that the release is available. When an insured FO mortgage is held by the lender, the holder's consent will be obtained only if a written partial release or other written servicing document is requested by the borrower. When the approval of a transaction by the State Director is required, or when the County Supervisor or District Director desires advice in connection with approval of a transaction, the borrower's case folder, Form FmHA 465–1, and any other information pertinent to the transaction will be sent to the State Office.

§ 1965.14 Subordination of FmHA real estate mortgages to easements to the U.S. Fish and Wildlife Service, (formerly the Bureau of Sport Fisheries and Wildlife.)

Exhibit A (available in any FmHA office) of this Subpart, "Memorandum of Understanding between Bureau of Sport Fisheries and Wildlife (now the U.S. Fish and Wildlife Service) and the Farmers Home Administration," outlines the procedure to follow in processing a subordination of an FmHA mortgage on wetlands on which the Bureau of Sport

Fisheries and Wildlife requests an easement for waterfowl habitats. The County Supervisors will handle the request in accordance with the steps outlined in Exhibit A and applicable processing portions of § 1965.1 of this Subpart.

§ 1965.15 Subordination of FmHA's lien to the Commodity Credit Corporation's (CCC) security interest taken for loans made for farm storage and drying equipment.

The CCC makes loans under its Farm Storage and Drying Equipment Loan Program for the purchase, construction, erection, remodeling, or installation of either farm storage or drying equipment or both and requires that a loan of $25,000 or more, or any loan at the discretion of the approving committee, be secured by a lien on the real estate. When the CCC proposes to make a loan to an FmHA borrower and requests a subordination of the FmHA real estate lien, the request will be handled on an individual case basis in accordance with the authorizations and requirements of § 1965.12 of this Subpart. A borrower's requests for the FmHA's consent to a severance agreement or other similar instrument for an item or items to be acquired with a CCC loan will be handled in accordance with § 1965.19 of this Subpart.

§ 1965.16 Consent to junior liens.

As a general policy, FmHA borrowers will be discouraged from giving other creditors junior liens on real estate securing an FmHA loan.

(a) *Processing request.* When consent to a junior lien is requested by a borrower, the County Supervisor may consent by executing Form FmHA 465–1 or other form approved by OGC for use in the state provided:

(1) The terms of the junior lien debt are such that repayment is not likely to jeopardize payment of the FmHA loan;

(2) Operating plans made with the junior lienholder are consistent with plans made with FmHA;

(3) Total debt against the security will not exceed its market value;

(4) The junior lienholder agrees in writing not to foreclose the mortgage before a discussion with the County Supervisor and after giving a reasonable specified period of notice to FmHA;

(5) For a Section 502 RH loan subject to recapture of subsidy, the consent form shows the total RH debt, including principal reduction attributed to subsidy, the amount of subsidy granted to date and a statement that any future subsidy granted on the RH loan will have the same lien priority as the RH indebtedness; and

(6) For Sections 502 and 504 RH nonfarm security, the purposes are consistent with authorized Sections 502 and 504 loan purposes.

(b) *Consent not requested or granted.* When a junior lien is placed on any property without FmHA consent and consent cannot be granted in accordance with the policy indicated in this paragraph, the FmHA may continue with the loan as long as the borrower makes payments on FmHA loans as agreed, properly maintains the security, and meets all other conditions of the loan. The County Supervisor will continue to service the loan to protect the Government's security interest.

§ 1965.17 Consent to borrower's granting lease of security.

If consent to a lease is required by the security instruments, Form FmHA 465–1 will be prepared when a borrower requests FmHA's consent to lease all or a portion of the security, or when the County Supervisor discovers that a borrower is leasing the security without consent. This form will show the terms of the lease or the proposed lease and will specify the use of proposed rent proceeds, including any rent proceeds to be released to the borrower. When another lienholder's mortagage requires consent to lease, consent will be obtained as provided in § 1965.6 of this Subpart. FmHA consent to lease, and collections of proceeds derived therefrom, are subject to rights of any existing prior lienholders. In cases where the borrower leases property without consent and consent cannot be granted in accordance with the above provisions, or when further approval of a lease cannot be granted in accordance with the conditions of this paragraph, the case will be serviced promptly in accordance with § 1965.26 of this Subpart, unless the borrower corrects the violation.

(a) *General provisions.* When all of the security is leased, adequate rental income sufficient to make regular payments under terms of the note(s), pay taxes and insurance, and maintain the security must be assigned to FmHA for these purposes unless FmHA is reasonably sure that payment will be made. If foreclosure action has been approved, consent to lease and use of proceeds will be granted only under directions by the OGC. The following requirements must be met before FmHA consents to a lease:

(1) The lease or its terms will not adversely affect the repayment of, or security for, the loan or the Government's rights under the mortgage.

(2) leasing is not an alternative to, or means of delaying, liquidation action,

(3) The operation of the leased security will not adversely affect any applicable crop allotments, and

(4) The lease and use of any proceeds will further the objectives of the loan.

(b) *Leases of security for agricultural purposes.* The requirements set out in paragraph (a) of this section must be met. Leases of upland cotton, peanut or tobacco allotments will be handled in accordance with § 1965.18(d) of this Subpart.

(1) *County Supervisor's authority.* When liquidation in accordance with § 1965.26 of this Subpart is not pending, the County Supervisor is authorized to approve annual leases on all or a part of the security in connection with the following types of loans:

(i) All loan types other than FO, OL and RH. For the purposes of this paragraph, leases for an annual term with the option for the lessor to renew for a successive one year term or to cancel at the end of each year will be considered annual leases. FmHA will reserve the right to withdraw the consent at the end of any year should liquidation or other servicing action be required by FmHA.

(ii) FO, OL or RH loans, provided:

(A) Failure to personally operate the security to be leased is due to old age, poor health, or death in the family and the borrower or the borrower's immediate family will continue to occupy the security as a home, or

(B) The part of the security to be leased is insignificant to total farm acreage and is surplus to the borrower's need; for example, a surplus building, use of a building during idle periods, wasteland, or a few acres of land inconveniently located or otherwise unsuitable and unnecessary for the successful operation of the farm by the borrower. This will also include small allotment acreages that are not feasible for the borrower to operate because of special equipment needs, additional labor requirements, or other economical or management reasons. It must be determined that leasing these alloted acres will not reduce the borrower's operation to less than that of a family farm. This is not intended to cover substantial amounts of allotted crop acres that are an important part of the total farming operation. It must also be determined that the allotted acreage in question cannot be economically disposed of by the borrower in accordance with § 1965.13 and § 1965.18 (a) and (c) or (e) of this Subpart.

(2) *State Director's authority.* The State Director is authorized to approve leases when the following conditions exist:

(i) Failure to personally occupy the home or operate the security is due to conditions beyond the borrower's control and it is determined that the borrower will reoccupy and resume personal operation of the property within a reasonable period of time, generally not to exceed five years.

(ii) Liquidation in accordance with §1965.26 of this Subpart is pending and the lease is to protect the Government's interests. Form FmHA 465–2, "Lease of Real Property," will be used and the rental income will be applied to the FmHA secured debt or to prior lien(s). However, when the value of the property is adequate to cover the secured debt(s) and foreclosure action has not been approved, the rental proceeds may be applied on unsecured or undersecured FmHA debts.

(iii) Consent is not granted for a period in excess of one year unless a lease with longer terms is determined to be in the best interest of the borrower and the Government. Any lease for a term of more than five years will require prior consent by the National Office.

(3) *District Director's authority.* The District Director is authorized to approve leases on the same basis as the State Director provided consent is not given for more than four years without authorization from the State Office.

(c) *Leases of security under conditions other than specified in § 1965.17 (a), (b), (d), or (e) of this Subpart.* The State Director is authorized to grant consent to the lease of security provided:

(1) The requirements set out in paragraph (a) of this section are met.

(2) The lease will not adversely affect the borrower's personal operation of the farm securing any FmHA loan and the land or building to be leased is surplus to the borrower's needs.

(3) Consent for a lease is not granted for more than five years without prior approval of the National Office. In any case where a longer term is recommended by the State Director, the County Office case file, the justification for a lease for a longer period of time, and the reasons why a lease is preferable to disposition of the property will be sent to the National Office for consideration.

(d) *Mineral leases.* The requirements set out in paragraph (a) of this section must be met. The County Supervisor (unless restricted by a State Supplement or unless liquidation is pending) and the State Director are each authorized to consent to a lease and to execute recordable forms and any other forms as may be necessary, under the following conditions:

(1) *Compensation damages.* The lessee agrees in the lease or elsewhere, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface, improvements, and growing crops. When an oil and gas lease provides for payment of compensation for damage to growing crops and contains other provisios generally included in so-called "standard" lease forms used in the area, the State director may determine that it will not be necessary to obtain any additional agreement for payment of compensation for damages if the value of the security is not likely to be lessened. Damage compensation other than crop damage will always be assigned to the FmHA by the use of Form FmHA 443–16, "Assignment of Income from Real Estate Security," or to the prior lienholder. When FmHA is financing a crop, an assignment on crop damage compensation may be taken if the compensation would be needed for loan repayment. The crop damage payment liability requirement may be omitted or deleted from the lease on small nonfarm tract cases.

(2) *Assignments.* Payments for lease, damages, royalties or other compensation will be assigned on Form FmHA 443–16 when required to assure payment on the FmHA debt.

(3) *Lease amount.* The bonus and rentals are at least equal to any minimum amounts established by a State Supplement.

(4) *Lease forms.* The lease form is prepared by, or is acceptable to, the OGC.

(e) *Naval stores leases.* The requirements set out in paragraph (a) of this section must be met. The County Supervisor (unless liquidation is pending) and the State Director in any case, are authorized to execute Form FmHA 465–1 giving consent to the lease of naval stores and to execute any other forms on behalf of the FmHA as may be necessary. No lease may be consented to unless it requires operation consistent with approved naval stores' practices in the community and any State Supplement on this subject. When naval stores are not managed or operated by the borrower, an assignment of the rent proceeds will be taken on Form FmHA 443–16.

(f) *Use of proceeds.* All disposition of proceeds will be subject to right of lienholder priority. Proceeds from leases authorized in this paragraph (except lease proceeds referred to in § 1965.17 (b)(2)(ii) of this Subpart and royalty payments for oil, gas, coal, gravel, sand or other minerals referred to in § 1965.17 (d) of this Subpart), will be considered as normal income and may be used for the same purposes as normal income security as outlined in § 1962.17 (b) of Subpart A of Part 1962 of this Chapter. Proceeds from sale of minerals (oil, gas, coal, gravel, sand, etc.), will be considered as disposition of a portion of the security and will be used for the purpose outlined in § 1965.13 (f) of this Subpart.

§ 1965.18 Transfer of upland cotton, peanut, or tobacco allotments.

(a) *General.* Agriculture stabilization and Conservation Service (ASCS) regulations, pursuant to approved legislation, permit the transfer of upland cotton, peanut, or tobacco allotments by one or more of the following transactions: (1) sale, (2) lease, or (3) transfer by the owner to another farm owned or controlled by the owner. These regulations require, among other things, that no allotment be transferred from a farm which is subject to a mortgage or other lien, unless the transfer is agreed to by the lienholders. It is FmHA's policy to approve the transfer of any crop allotments permited by the ASCS regulations if the conditions and requirements of this Subpart can be met. FmHA personnel should familiarize themselves with the State ASCS policies and requirements concerning the sale, lease, or transfer of allotments to security.

(b) *Authorization.* County Supervisors are authorized to approve a transfer of upland cotton, peanut, or tobacco allotment by execution of a completed Form FmHA 465–1. County Supervisors are also authorized to execute the lienholder or mortgagee agreement on appropriate ASCS forms provided by ASCS for those cases in which a transfer is approved.

(c) *Transfer by sale.* Crop allotments enhance the value of a farm mortgaged to the FmHA and constitute basis security for the FmHA loan. Accordingly, when a borrower whose farm is mortgaged to the FmHA inquires about the sale of any of the allotted acres or requests the FmHA to sign the required lienholder of mortgagee agreement, the request will be treated the same as for a sale of a portion of the security and approval of the sale can be granted only in accordance with the applicable conditions and requirements of § 1965.13 of this Subpart. The sale proceeds may be used as authorized in § 1965.13(f) of this Subpart.

(d) *Transfer of allotment by lease.* Small allotment acreages leased in connection with the lease of land securing an FO or OL loan will be handled in accordance with § 1965.17(b) of this Supbart. The County Supervisor

has the authority to approve a lease of all or a portion of an allotment for a one-year period, contingent upon compliance with the provisions of § 1965.17(a) of this Subpart, except that item (3) will not be applicable. If a one-year lease is approved, the lease proceeds may be used as normal income as outlined in § 1962.17(b) or Subpart A of Part 1962 of this Chapter. Leases for a period of more than one year will be granted only with the concurrence of the District Director. When a lease is for more than one year, an assignment of the rental proceeds should be obtained for application on the appropriate FmHA debt in accordance with § 1951.9(a) of Subpart A of Part 1951 of this Chapter.

(e) *Transfer of allotment by owner to other land owned or controlled by the owner.* A transfer by an owner to other land owned or controlled by the owner is normally interpreted by the ASCS as a permanent transfer and can be avoided only by stipulating in the mortgagee approval that the transfer is to be considered as a lease for the appropriate number of years. This type of transfer will be approved only as a lease under conditions outlined in § 1965.18(d) of this Subpart to assure that the crop allotment on the security is not adversely affected.

§ 1965.19 Severance agreement.

Form FmHA 465–1 will be completed when a borrower requests FmHA's consent to a severance agreement, or other instrument of similar effect, so that items to be acquired by the borrower through other credit and subject to a chattel lien will not become a part of the real estate securing the FmHA debt. Some examples of items which may be acquired subject to a chattel lien are silos, storage bins, bulk milk tanks, irrigation or income producing facilities, non-farm enterprise facilities, and recreational equipment. County Supervisors are authorized to give FmHA consent by executing Form FmHA 465–1 and any necessary severance agreements, provided that the following determinations are made:

(a) The financing arrangements are sound and proper,

(b) The transaction will not adversely affect FmHA's security position and will be within the borrower's debt-paying ability, and

(c) The facility does not exceed the borrower's needs, is modest in cost and design, and is otherwise in line with FmHA financing polilcies. OGC will be requested to approve any severance agreement submitted by a borrower that is of a type not previously approved for use in the State and, when necessary, to issue closing instructions. The State Director may request the OGC to prepare a severance agreement instrument for use in the State.

§ 1965.20 [Reserved]

§ 1965.21 Assignment and release of Soil Bank or similar program payments.

The County Supervisor may take an assignment on income to be received under USDA Programs of similar contracts to protect the financial interest of the government or to facilitate loan servicing. The assignment of all or a portion of the income from the assignment may be released to the borrower by the County Supervisor when not to the financial detriment of the Government, and when payments due on all FmHA loans have been made from other income or the assigned income is urgently needed in an emergency.

§ 1965.22 Deceased borrower.

Deceased borrower cases will be handled in accordance with the policy outlined in § 1962.46 of Subpart A of Part 1962 of this Chapter.

§ 1965.23 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled in accordance with the policy outlined in § 1962.47 of Subpart A of Part 1962 of this Chapter. The handling of bankruptcy cases varies from State to State. Therefore, the State Director will issue, with assistance of OGC, a State Supplement for more specific guidance when it will expedite the handling of these cases.

§ 1965.24 Servicing note-only cases.

Each loan made on a note-only basis without real estate security will be serviced in a manner consistent with the best interests of the FmHA.

(a) *Sale of real property on which improvements were made with note-only FmHA funds.* Any loan evidenced only by an unsecured note will be collected by voluntary means at the time of the sale of the property, if possible. If collection is not possible, the loan may be assumed by the purchaser of the property on the terms of the note if the assumption is determined to be in the FmHA's best financial interest. If collection or assumption cannot be effected, consideration should be given to settling the account in accordance with Part 1864 of this Chapter (FmHA Instruction 456.1) if it is eligible, obtaining judgment, or classifying it as collection-only. In case of a judgment sale, the State Director, with the advice of OGC and the U.S. Attorney, will authorize an employee to attend the sale and if appropriate, enter a bid on behalf of the Government in accordance with Subpart A of Part 1955 of this Chapter.

(b) *Assumption of note-only when real property securing another FmHA loan is involved.* When a borrower has an FmHA secured by real estate and another FmHA loan evidenced only by a note and the real estate is to be transferred and the entire secured real estate debt is to be assumed, all or a part of the unsecured note up the present market value of the property in excess of existing liens must also be assumed.

§ 1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security, because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.

(a) *Additional real estate, chattel, or miscellaneous security.* Real estate, chattels, or miscellaneous items which were taken as additional security for a loan secured by real estate may be released by the State Director without consideration before the loan is paid in full, if the market value of the remaining security for the loan is clearly adequate to secure the unpaid balance of the loan. For any loans made for operating purposes, a real estate lien may be released only if the real estate was considered "additional" security when the loan was made. For the purposes of this paragraph, real estate securing any loan made for real estate purposes is not considered "additional security." Additional security for an RH non-farm loan is real estate in addition to the tract on which the dwelling is located. Before a release can be granted there must be reasonable assurance that orderly payments can be made on the FmHA indebtedness, and:

(1) The release is needed in order for FmHA or other creditors to finance the borrower's operations; or

(2) The purpose for which the loan was made would be facilitated; or

(3) The borrower's ability to repay the loan will be improved.

(b) *Release of real estate from mortgage because of mutual mistake.* Land or buildings included in the mortgage through mutual mistake, when substantiated by the facts of the situation, may be released from the mortgage by the State Director. The release is contingent on a determination of the State Director, with the advice of the OGC, that a mutual error existed at the time such property was included in the Government's mortgage.

(c) *No evidence of indebtedness.* The FmHA mortgage may be released by the County Supervisor in situations where there is no evidence of an existing

indebtedness secured by the mortgage in the records of the FmHA County, State, and Finance Offices.

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens which have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

(1) *Appraisal report.* A market value appraisal report on the security prepared by an FmHA employee authorized to make appraisals in accordance with Subpart A of Part 1809 of this Chapter (FmHA Instruction 422.1).

(2) *Lienholders.* The names of the holders of prior liens on the property, the amount secured by each lien which is prior to the FmHA, the amount of taxes or assessments, and other items which might constitute a prior claim. This information will be recorded in the running case record of the borrower's County Office case folder and submitted to the State Director for review.

§ 1965.26 Liquidation action.

Problem cases and delinquent borrowers require special servicing actions (described in Subpart A of Part 1960 of this Chapter for Farmer Program borrowers) before liquidation action is considered. When the County Supervisor, with the advice of the District Director and the County Committee (except the County Committee will not be used for servicing RH loans), determines that continued servicing of the loan will not accomplish the objectives of the loan, or that, for other reasons, further servicing cannot be justified under the policy stated in § 1965.2 of this Subpart, liquidation of the account(s) will be accomplished as expeditiously as possible.

(a) *Voluntary liquidation.* Borrower will arrange for sale, transfer or conveyance.

(1) *General.* When the borrower has voluntarily agreed to liquidate the account, the County Supervisor may give the borrower 60 days (or such a longer time as the FmHA official servicing the loan determines is reasonable and justifiable) to take one of the following actions:

(i) Sell the property and pay the account in full.

(ii) Transfer the total security with an assumption of all or the appropriate portion of the debt under § 1965.27 of this Subpart.

(iii) Sell the property for not less than its present market value under § 1965.26(g) of this Subpart.

(iv) Convey the security to FmHA as outlined in § 1955.10 of Subpart A of Part 1955 of this Chapter.

(2) *Sale or transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized FmHA employee in accordance with Subpart A of Part 1809 of this Chapter (FmHA Instruction 422.1) and placed in the borrower's case file.

(3) *Voluntary liquidation after acceleration.* When a borrower requests permission to arrange for sale, transfer or conveyance *after* an account is accelerated, the request will be handled in accordance with Subpart A of Part 1955 of this Chapter.

(b) *Involuntary liquidation (foreclosure).* If the borrower is unwilling to take any of the actions specified in § 1965.26(a) of this Subpart, or if the borrower fails to carry out the actions within the set time, the procedures for foreclosure set out in § 1955.15 of Subpart A of Part 1955 of this Chapter will be followed. Subpart B of Part 1900 of this Chapter will be observed in providing appeal notice.

(c) *Multiple loans.* When a borrower is indebted to the FmHA for more than one type of FmHA loan, a detailed study should be made of each loan and of the effect liquidation of one or more of the loan(s) would have on any other loan(s). If liquidation of one or more FmHA loans secured by real estate is necessary but will jeopardize repayment or accomplishment of the loan objectives of the other FmHA loan(s), all FmHA loans should be liquidated. Liquidation of real estate and chattel security should be started simultaneously, and should be coordinated to the extent possible in accordance with Subpart A of Part 1962 of this Chapter and this Subpart or Subpart A of Part 1955 of this chapter as appropriate. When an account(s) will be transferred, transfer(s) will be accomplished in accordance with § 1965.27 of this Subpart. RH loans on nonfarm tracts should not be routinely liquidated just because the borrower could not be successful in the farming operation. When a borrower is indebted for both farmer program type loans and an RH loan for a dwelling on a nonfarm tract, consideration may be given to continuing with the RH loan when the farmer program loans are liquidated, provided the borrower:

(1) Has acted in good faith;

(2) Has satisfactorily accounted for all security property;

(3) Has paid in accordance with ability;

(4) Voluntarily liquidates all security for the loans other than the RH nonfarm security;

(5) Has repayment ability and agrees to continue to pay on the RH loan;

(6) Continues to comply with conditions of the RH loan; and

(7) Will further agree:

(i) Through a compromise or adjustment offer, to pay on the balance of any FmHA debt(s) other than the RH, an amount equal to the difference between balance owed on the RH loan and market value of the retained property at the time and any additional amount the borrower is able to pay; or

(ii) When the difference between balance owed on the RH loan and market value of property to be retained exceeds the balance owed on FmHA loans, to pay the balance, including accruing interest, over a reasonable period of time.

(d) *Correction of violations.* Borrowers who violate loan agreements by failure to occupy the property securing the loan and/or to operate the farm or other enterprise financed by FmHA, will be promptly contacted in person by the County Supervisor. The borrower will be advised of the violation and told that it will be necessary to pay the account in full, by completely refinancing or by using some other form of debt liquidation, unless definite arrangements are made to remove the violation. The borrower must remove the violation by reoccupying or resuming personal operation of the property as required by the loan documents, or FmHA must grant a consent for lease as authorized in § 1965.17 of this Subpart. If the borrower is not available for personal contact, the County Supervisor will write to the borrower's last known address, giving notice of the violation and advising that, because of the violation, it will be necessary to pay the account in full; a notice of acceleration such as that set forth as Exhibit C of Subpart A of Part 1955 will not be used for this purpose. The County Supervisor may give the borrower a reasonable period of time (60 to 90 days) to correct the violation. This time will not be extended. If during that period a borrower fails to remove the violation or pay the account in full, the case will be handled in accordance with § 1965.26(b) of this Subpart.

(e) *Accelerated repayment agreement.* When liquidation of an account is necessary because of failure to graduate to other credit or for other reasons, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. When an understanding is reached with the borrower, Form FmHA 1965–11, "Accelerated Repayment Agreement," will be prepared and executed in accordance with the Forms Manual Insert for each note accelerated. Accounts rescheduled under Form FmHA 1965–11 will be reclassified by the Finance Office as ORE loans. The balance of the debt will be scheduled for repayment in annual or monthly amortized installments. If the borrower has monthly income, monthly payments will be scheduled. If annual payments are scheduled, the first installment may be less than a full amortized installment if it is due subtstantially less than a full year after the date the agreement is executed and the borrower will not be able to pay the first full amortized installment. If the borrower fails to meet any installment when due as provided in the agreement, foreclosure action will be initiated. Rates and terms authorized are:

(1) *Other than RH loans.* (i) For real estate purpose loans secured by real estate when the remaining repayment period exceeds 10 years, the term generally will not exceed 10 years. In justifiable cases, the term may be up to 15 years. In no case may the term exceed the final due date of the note. An amortization factor for 20 to 25 years may be used, with a balloon installment due on the final due date. The interest rate will be that in effect for regular FO loans on the date the agreement is executed plus 1 percent or the interest rate of the note, whichever is greater.

(ii) For loans for operating purposes secured by real estate when the remaining repayment period exceeds 2 years, the term may not exceed 5 years and in no case may the term exceed the final due date of the note. The interest rate will be that in effect for regular OL loans on the date the agreement is executed plus 1 percent or the interest rate of the note, whichever is greater.

(iii) For loans for either real estate or operating purposes when the remaining repayment period is less than 10 years or 2 years, respectively, the State Director may authorize a shorter term. For loans made for a combination of loan purposes, the State Director may authorize an accelerated repayment term of up to 10 years, not to exceed the final due date of the note. The interest rate will be as specified in paragraph (e)(1) (i) or (ii) of this section.

(2) *Single-family housing (SFH) RH loans.* For SFH loans, the term may not exceed ten years and the interest rate will be the Section 502 RH above-moderate rate in effect on the date the agreement is executed.

(f) *Dwelling retention.* This paragraph applies only to a situation where a farmer program borrower does not have an RH loan outstanding (see § 1965.26(c) of this Subpart for RH loans) and the borrower desires to retain an existing dwelling for personal residence.

(1) When an individual borrower is indebted to FmHA for a farmer program loan(s) and the borrower's personal dwelling is part of the security for the loan(s), FmHA may, in exceptional cases and with proper justification, permit a borrower to retain the dwelling for his/her personal residence after other security property is liquidated. The tract on which the dwelling is situated will be of minimum adequate size for the dwelling and residential related appurtenant facilities/structures. Before granting such permission it must be determined that the borrower:

(i) Has acted in good faith.

(ii) Satisfactorily accounted for all security.

(iii) Paid in accordance with ability.

(iv) Voluntarily liquidated all other security for the loan(s).

(v) Has repayment ability to meet any terms agreed upon and income sufficient to maintain the property, taxes, insurance and other related costs of ownership.

(vi) Will personally occupy the dwelling.

(vii) Will not be retaining a dwelling which is unreasonably larger or more valuable than similar dwellings in the area.

(viii) Will be able to obtain full market value of other security if the dwelling is retained.

(2) Requests for dwelling retention will be processed as part of a compromise or adjustment offer in accordance with Part 1864 of this Chapter (FmHA Instruction 456.1). The value of existing security (market value or market value less any prior liens) will be determined by a current appraisal completed by an authorized FmHA employee in accordance with Subpart A of Part 1809 (FmHA Instruction 422.1) or Subpart C of Part 1922 of this Chapter as appropriate. The borrower must agree, in a compromise or adjustment offer, to:

(i) Pay FmHA an amount equal to the value of existing security in the retained property plus any additional amount the borrower is able to pay; or

(ii) Pay the balance owed on FmHA loan(s), including accruing interest over a reasonable period of time when existing FmHA security interest exceeds balance on the FmHA debt.

(g) *Cash sale.* When a cash sale of mortagaged real estate will not result in the secured debts being paid in full, the County Supervisor is authorized to approve the sale for an amount not less that the present market value of the property and to release the Government's liens, provided:

(1) A substantial recovery can be made on the FmHA secured indebtedness based on the recent appraisal report required by § 1965.26(a)(2) of this Subpart;

(2) All the proceeds are applied on the mortgage debts in accordance with their respective priorities except authorized costs as specified in § 1965.13(f) of this Subpart; and

(3) The FmHA liens are not released by the County Supervisor until the appropriate sale proceeds for application on the Government's claim are received. The release will be made on forms approved or prepared by OGC. When the debt is not paid in full and a deficiency judgment is not to be obtained, a release of liability of the borrower can be processed under § 1965.27(f) of this Subpart in the same manner and with the same considerations as for a transfer and assumption; otherwise, the case will be reclassified as "collection-only," provided the debt cannot be settled under the provisions of Part 1864 of this Chapter (FmHA Instruction 456.1). The requirements of FmHA Instruction 1900–A, which is available in any FmHA office, must be met and Form FmHA 404–1, "Case Reclassification," must be sent to the Finance Office.

§ 1965.27 Transfer of real estate security.

When the mortgage requires the consent of the FmHA to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor. If a proposed sale would not result in the FmHA account being paid in full at the time of sale, the County Supervisor should explain thoroughly the requirements of this section and §§ 1965.13 or 1965.26 of this Subpart, as appropriate. When the transferor is receiving a substantial downpayment from the sale of the property, the purchaser must be required to contact other sources of credit in an actual effort to secure a loan for

repayment of the FmHA loan(s) in full. When real estate security, including water, access, development or other rights, is to be sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate sections of this Subpart, the account will be liquidated as required in § 1965.26 of this Subpart, or will be handled in accordance with § 1965.27(g) of this Subpart.

(a) *Authority.* County Supervisors, District Directors and State Directors are authorized to approve initial and subsequent transfers of real estate security to eligible or ineligible transferees, to approve assumptions, and to release borrowers and co-signers from liability, when applicable, in accordance with the approval authority outlined in § 1965.12(e) (1) and (2) of this Subpart. When a transfer is not within the County Supervisor or District Director's approval authority, the docket and the transferor's case file will be sent to the District Director or State Director, as appropriate, for approval or disapproval. State Directors are also authorized to approve transfers to ineligible transferees regardless of the amount of the outstanding FmHA debts or the amount of prior liens. Proposed transfers to, and assumptions by, eligible tranferees which will exceed the authorization of the State Director for an initial or subsequent loan of the same type will be submitted to the National Office for prior authorization before approval.

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers, or proposes to transfer, real estate which is security for an FmHA loan(s) and the loan account(s) is to be assumed by use of Form FmHA 1960–5, "Assumption Agreement" for Farmer Progam loans or Form FmHA 1965–15, "Assumption Agreement (Single Family Housing Loan(s)" for RH loans. See §§ 1965.11(d) and 1965.27(b)(4)(iii) of this Subpart for divorced borrower cases.

(1) *Agreement.* Form FmHA 465–5, "Transfer of Real Estate Security," will be completed to reflect the agreement between the transferor and the transferee.

(2) *Assignment.* If an insured loan is involved, the Finance Office will have the note assigned to the insurance fund when the assumption agreement changes the terms of the note.

(3) *Amount assumed.* All transfers will be based on present market value. When the total secured FmHA debt(s) exceeds the present market value, the transferee will assume an amount equal to the present market value as determined in accordance with § 1965.26 (a)(2) of this Subpart, less prior liens. Otherwise, the transferee will assume the total FmHA secured debt(s).

(4) *Assumption on same terms.* In the following situations, the debt will be assumed on the same terms as in the original note (with certain exceptions listed below).

(i) For EM actual loss loans assumed by eligibles, the interest rate and terms of the assumption agreement will remain the same as in the original note(s), except that the number of years over which the loan was amortized can be extended to meet the repayment ability of the eligible transferee. Eligible transferees of real estate for EM loss loans are limited to those who were actually involved in the operation at time of the loss and meet one of the following requirements:

(A) If an individual received the actual loss loan, the only eligible transferee is an individual who is an immediate family member of the borrower. An entity is an eligible transferee if it is made up of only immediate family members of the borrower. Such a transferee can assume the entire amount of the actual loss loan on the same terms.

(B) If a partnership received the actual loss loan, an eligible transferee is a partner who was a partner in the partnership at the time the actual loss loan was made. An entity is also an eligible transferee if it is made up of only those who were partners in the partnership at the time the actual loss loan was made. Such transferees can assume the entire amount of the actual loss loan on the same terms.

(C) If a corporation/cooperative received the actual loss loan, the only eligible transferee is a stockholder/member who was a stockholder/member of the corporation/cooperative at the time the actual loss loan was made. An entity is an eligible transferee if it is made up of only stockholders/members who were stockholders/members of the corporation/cooperative at the time the actual loss loan was made. Such transferees can assume on the same terms only that portion of the actual loss loan equal to the transferee's percentage of ownership in the corporation/cooperative (or, in the case of an entity transferee, the combined percentages of the individual stockholders/members).

(ii) A deceased borrower's spouse who did not sign the note and wishes to assume the loan, regardless of loan type, will be allowed to do so by executing Form FmHA 1960–5. This is necessary because the spouse is not already liable for the debt. Form FmHA 1960–5 will be completed and retained in the County Office. Information on this form will be entered on Form FmHA 1960–8, "Assumption Agreement (Information)," and the original of this form will be sent to the Finance Office. The interest rate and terms of the Assumption Agreement will remain the same as they were in the note(s), except the number of years over which a note was amoritized may be extended to be within the repayment ability of the assuming spouse. The reamortization period cannot exceed the maximum repayment period applicable to the kind of loan being assumed. However, if the spouse qualifies as a limited resource borrower, FO and/or OL loan(s) may be assumed at the current interst rate in effect for a limited resource borrower for the type of loan involved. (See Exhibit B of FmHA Instruction 440.1, which is available in any FmHA office, for this rate.)

(iii) When one of the joint individual borrowers withdraws from the operation and conveys his or her interest in the security to the remaining borrower who will repay the total indebtedness, the repayment rates and terms will be the same as in the existing note(s). An assumption agreement is not required, unless an FO or OL loan is being assumed and the rate will be lowered to the current limited resource rate. FO and OL loans may be assumed at the current rate in effect for limited resource borrowers, if the tranferee is an eligible limited resource borrower. Form FmHA 450–10 "Advice of Borrower's Change of Address or Name", will be submitted to the Finance Office when the account will be continued with the remaining borrower(s) under a different name. The previous joint owner will be released from liability for the indebtedness by completing Parts 1 and 3 of Form 1965–8. The remaining borrower must consent to this release; this consent will be documented in the Running Case Record. If the remaining borrower objects to the release, OGC will be contacted for advice. When a divorce decree awards the security to one spouse and provides that the other spouse will be responsible for paying all or part of the mortgage payments, neither spouse will be released from liability. Partners in a partnership, stockholders in a corporation, or members of a cooperative who signed the note are not joint borrowers, but only cosigners; therefore, this paragraph does not apply to them.

(iv) When a family member of a borrower wants to assume a debt with the existing borrower(s), the assumption will be made on the same rates and terms as in the original note, provided the family member is eligible for the

type of loan involved. After the transfer, the assuming family member may own the property as an individual, jointly with the existing borrower(s), or subject to a life estate of the existing borrower.

(v) If there is only one stockholder/member/partner of a corporation/cooperative/partnership who is personally liable on the note and that stockholder/member/partner withdraws from the operation or dies, all of the remaining stockholders/members/partners will be required to assume personal liability on the loan. A transfer does not have to be processed unless title to the real estate is transferred.

(vi) If a stockholder/member/partner or a corporation/cooperative/partnership buys out the shares of the other stockholders/members/partners and continues to operate the farm, and if the remaining stockholder/member/partner is not personally liable on the note, that stockholder/member/partner will be required to assume personal liability on the loan. A transfer does not have to be processed unless title to the real estate is transferred.

(vii) New stockholders/members/partners entering the corporation/cooperative/partnership must assume the loan. A transfer does not have to be processed unless title to the real estate is transferred.

(5) *Loan type.* The type(s) of loan will remain the same for all loans except that loans which are transferred to ineligible applicants will be classified as ORE.

(6) *Conveyance of a portion of the security.* Generally, title to all FmHA real estate security, including any water, access, development or other rights, must be conveyed to the transferee not later than the date of closing of the assumption. However, a transfer of a portion of the FmHA real estate security with an assumption of the *total* indebtedness may be approved, provided:

(i) The portion of the FmHA security transferred has a present market value at least equal to the total indebtedness owed by the borrower or indebtedness is reduced by a cash payment to the present market value of the property,

(ii) the transaction is advantageous to the Government, and

(iii) in cases of RH loans, the portion of the property improved with RH funds is conveyed to the person assuming the RH loan. In such a transaction, the transferor will be released from personal liability for the debt. The security retained by the transferor will be released from the Government's lien.

(7) *Multiple sales and assumption.* When a request is made by a borrower to transfer the real estate security as parcels to two or more transferees with each assuming a portion of the debt, the County Supervisor may send the proposed action to the State Director for consideration if the County Supervisor recommends that the transaction would be advantageous to the Government. The total debt owed on all outstanding notes must be assumed by the transferees even though a portion of the security may be retained by the transferor. The County Supervisor will submit to the State Director the complete factual information concerning the transaction, including appraisal reports showing the present market value of each portion to be transferred; value of the total unit before subdivision; the amount of indebtedness to be assumed by each transferee; and the case file with other pertinent information outlining the reasons for the proposed actions. If approved by the State Director, new security instruments will be required for each transferee at closing and any security retained by the transferor will be released from the Government lien. This policy is to permit transfer to two or more transferees when the transferor owes more than one note evidencing indebtedness or the indebtedness on one note is to be divided between transferees. OGC guidance will be requested in these cases to assure enforceable liens are obtained.

(8) *Dual security.* When the account(s) is secured by both chattels and real estate, all the chattel security must be transferred, sold or liquidated by the time of the transfer of real estate, except that in cases of EM, EE, or SL security, the real estate security may be transferred without transfer or liquidation of the chattel security upon prior approval of the National Office.

(9) *Consent.* Written consent to a proposed transfer and assumption must be obtained if required by any other lienholder(s).

(10) *Junior liens.* When the full amount of the FmHA debt is assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA liens being assumed unless the State Director determines that the liens, judgments, or claims will not adversely affect the Government's security interests and that the transferee's ability to pay the FmHA debt will not be impaired. When less than the full amount of the FmHA debt is being assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA loans being assumed.

(11) *Loans.* A loan for which the transferee is eligible may be made in connection with a transfer, subject to the policies and procedures governing the type of loan being made. When the transfer is being made to an eligible FO applicant, FO loan funds may be used to pay for the equity in the property being transferred. When real estate security for an RH loan is transferred to a person eligible under Subpart A of Part 1944 of this Chapter for an RH loan to purchase the real estate, RH loan funds may be used to pay for the equity in the property being transferred other than income-producing land or buildings. In lieu of a subsequent loan of the kind involved, the Government's lien may be subordinated to enable the transferor to take a first mortgage, or permit another lender to take a first mortgage, in return for furnishing the funds needed in connection with the transfer. In these cases, the subordination will be processed in accordance with the applicable provisions of § 1965.12 of this Subpart. For other than RH loans, the transferor may convey title to the property by warranty deed or by purchase contract or similar instrument which meets the conditions of § 1943.16(a)(3) of Subpart A of Part 1943 of this Chapter. Prior lienholder's agreements will be obtained in accordance with § 1807.2(f)(5) of Part 1807 of this Chapter (paragraph II F 5 of FmHA Instruction 427.1). When necessary to settle a divorce action, a subsequent loan may be made, or a subordination may be granted to permit the remaining borrower to obtain a loan in an amount not to exceed the equity in the property provided the purchase of land is an authorized loan purpose or the subordination is in accordance with § 1965.12 of this Subpart. (Also see § 1965.11(d) of this Subpart.)

(12) *Payments.* When a payment is made to the transferor in connection with the transfer and assumption, and the full amount of the FmHA secured debt is not being assumed and other FmHA debts owed by the transferor are not adequately secured, the State Director may, as a condition of approving the transfer, require that all or a part of any payment be applied on the debts.

(13) *Downpayment.* An eligible transferee who is financially able, will be required to make a downpayment on the FmHA secured debts. When a downpayment is required it will be collected at closing.

(14) *Date.* The effective date of the assumption will be the date on which Form FmHA 1960–5 is signed. In connection with the use of this form, the unpaid principal balance and accrued interest will be shown in Table 1 and the accrued interest will be computed

from Form FmHA 451–26, "Transaction Record," or obtained, from the monthly payment account Status Report. The transferee will be informed of the amount of principal and interest owed, the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, and any accounts that must be paid to bring any monthly payments up to date.

(15) *Nondiscrimination Assurance.* When the property transferred will continue to be used for the same or a similar purpose and the assistance was subject to the Civil Rights Act of 1964 and other similarly worded Federal Statutes that prohibit discrimination on the basis of race, color, national origin, handicap, age, religion, marital status, or sex in programs or activities receiving Federal financial assistance, the transferee must agree to comply with requirements of these statutes. The transferee will be required to sign a Form 400–4, "Assurance Agreement."

(16) *Recapture of subsidy.* Recapture of subsidy in connection with assumptions will be as provided in Subpart I of Part 1951 of this Chapter.

(17) *County Committee.* The County Committee, except for RH loans, must find that the transferee will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan. (See § 1965.27 (g)(6) of this Subpart.)

(c) *Assumption of direct or insured loans by eligible transferees.* (1) *Eligibility.* A loan may be assumed on eligible rates and terms by an applicant (including an entity applicant) who meets all of the eligibility and loan purpose requirements for the type of loan being assumed or whose situation after the transfer of the real estate will satisfy the eligibility and loan purpose requirements. Eligibility and loan purpose requirements can be found in the loan making regulations appplicable to the type of loan being assumed. (See § 1965.27(b)(4) of this Subpart for a list of situations in which the debt can be assumed on the same rates and terms as in the existing note.) Indebted borrowers can assume loans so long as applicable loan limits are not exceeded. Loans may also be assumed on eligible rates and terms under the following conditions:

(i) *RH assumptions.* An RH low- or moderate-income loan may be assumed by a low-, moderate- or above-moderate income applicant provided he/she is otherwise eligible for an RH loan. An above-moderate income loan may be assume by a low-, moderate-income applicant. After the transfer, the loan will be classified as low- or moderate-income or above-moderate income according to the terms on which the transferee assumed it. Where a property securing an RH loan is located in an area which has been reclassified from rural to nonrural the loan may be transferred without regard to the nonrural designation.

(ii) *ORE loan.* An ORE loan may be assumed by an applicant who is determined eligible for an FO loan if the property is a suitable farm tract, or an applicant eligible for an RH loan if the property is a suitable dwelling on a farm or nonfarm tract. When closing the assumption, the loan will be reclassified as "FO" or "RH", as applicable.

(iii) *SL and other emergency type loans no longer being made.* SL and other emergency type loans no longer being made may be assumed in accordance with § 1965.27(d) of this Subpart. The loan(s) will be serviced in accordance with § 1965.34 of this Subpart.

(iv) *EM actual loss loans.* See § 1965.27(b)(4)(i) of this Subpart.

(v) *Other loan types currently being made.*

(A) *Individual transferees.* If real estate security is transferred to an individual who meets all of the eligibility requirements and loan purpose requirements for the type of loan being assumed, the loan may be assumed on eligible terms. This applies to transfers of real estate from individual borrowers and from entity borrowers, including entities in which the transferee had an interest.

(B) *Entity transferees.* If real estate security is transferred to an entity which meets all of the eligibility requirements and loan purpose requirements for the type of loan being assumed, the loan may be assumed on eligible terms.

(C) *EM non-actual loss loans.* These loans can be assumed on eligible terms. The loan making regulation requirement that an applicant must have suffered an actual loss in order to be eligible for a non-actual loss loan does *not* apply, for the purposes of this paragraph.

(2) *Repayment and reamortization terms.* Except as provided in § 1965.27 (b)(4) of this Subpart and as noted in this paragraph, all loans will be assumed by eligible applicants at the current interest rate in effect for the loan type involved at the time the approval official approves the assumption by executing and delivering a copy of Form FmHA 1940–1, "Request for Obligation of Funds," to the assuming party. Form FmHA 1960–5 will be used to complete the assumption. The repayment period will not exceed the repayment period for a new loan of the type involved; for example, FO—40 years, OL—7 years, EM—depends on loan purpose and RH—33 years. An ORE loan will be considered an FO or RH loan as appropriate, if the applicant and the property meet the requirements of § 1965.27 (c)(1) of this Subpart. Low- and moderate-income RH loans assumed by an eligible applicant having an above-moderate income will be assumed at the current rate for an above-moderate RH loan and above-moderate loans assumed by low- or moderate-income applicants will be assumed at the current low- or moderate-income RH interests rate. (See Exhibit C to Subpart A of Part 1944). FO and OL loans may be assumed at the current rate in effect for limited resources loans by those applicants eligible for a limited resource loan(s). See Subparts A of Parts 1941 and 1943 of this Chapter for the definition of a limited resource applicant and an explanation of limited resource eligibility criteria.

(d) *Assumption of direct or insured loans by ineligible transferees.* When a borrower sells or proposes to sell the real estate security to a person(s) or entity not eligible to assume the debt in accordance with § 1965.27 (b)(4) or (c) of this Supart and the mortgage requires the Government's consent for the transaction, it will be the policy to permit assumption of the account by an ineligible transferee if it is in the best interest of FmHA. Otherwise, the account will be liquidated as provided for in § 1965.26 of this Subpart except as outlined in § 1965.27 (e) or (h) of this Subpart. Ineligibles will be considered without regard to race, color, religion, sex, national origin, marital status, age or handicap. Types of loans for which there are no existing authorizations or eligibility requirements in FmHA regulations may be assumed under the requirements and conditions of this paragraph (see also § 1965.27 (c)(i)(iii) of this Subpart). Form FmHA 1960–5 will be completed and retained in the County Office. Information on this form will be entered on Form FmHA 1960–6 and the original of the completed form will be submitted to the Finance Office. If the approval official determines that it is in the best financial interest of FmHA to have the account assumed, the approval official may consent to the initial or subsequent assumption agreement provided that:

(1) *Downpayment.* Each assuming party is required to make as large a downpayment on the FmHA secured debt as the party is financially able to make under the circumstances.

However, no RH loan may be assumed by an ineligible applicant without at least a 10 percent down payment and no other type FmHA loan covered by this Subpart may be assumed without at least a 5 percent downpayment.

(2) *Terms—Other than RH.* The balance of the FmHA debt assumed will generally be scheduled for repayment over a period not to exceed 15 years with equal amortized monthly or annual installments. Interest on Farmer program loans will be at the current rate being charged for regular FO loans, plus 1 percent, or at the rate of interest specified in the note(s) being assumed, whichever is greater. If it is determined that the property cannot be transferred on terms of 15 years or less because of conditions in the area, the State Director may authorize a balloon installment or a longer repayment term not to exceed 25 years. In the case of real estate loan transfers originally made on repayment terms of not more than 15 years, an extension of the repayment period, not to exceed a total of 25 years from the date of the transfer, may be authorized when the borrower, because of crop failure, a natural disaster, or economic condition beyond the borrower's control, is unable to meet the scheduled installment(s). An extension may be granted only if the County Committee and the State Director determine that the extended repayment period is necessary to prevent foreclosure action and that the Government's interest will not be adversely affected. In these cases, the unpaid balance owed may be reamortized over the remainder of the 25 year period, and the borrower will execute a replacement assumption agreement evidencing the debt.

(3) *Terms—RH loans.* For RH loans, the balance of the RH debt assumed will be scheduled for repayment in not more than 10 years with amortized annual or monthly installments. Interest on the amount assumed will be charged at the rate currently applicable to above-moderate RH loans, including insurance charges.

(4) *Payment.* The transferee must have the ability to pay the FmHA debt in accordance with the assumption agreement and the legal capacity to enter into the contract.

(5) *ORE loan.* An ORE loan may be assumed by an applicant on ineligible rates and terms if it is in the best interests of FmHA.

(6) *County Committee.* The County Committee, except for RH loans, must find that the transferee will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan. (See § 1965.27(g)(6) of this Subpart.)

(7) *Condition.* The transfer must not adversely affect the FmHA program in the area.

(e) *Consent of FmHA not required to transfer.* When the FmHA mortgage(s) does not require the Government's consent to the sale of the security and the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with § 1965.27 (c) or (d) of this Subpart, the Government will not consent to the sale. In that case, the County Supervisor will advise the State Director of the sale. If the account is delinquent or the loan is otherwise in default, the County Supervisor will also advise the State Director of the nature of the default and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the original FmHA borrower, in the usual manner.

(f) *Release of transferor from liability.* The borrower (and any cosigner for an RH loan) will be released from personal liability when all of the real estate security is transferred under § 1965.27 (c) or (d) of this Subpart and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. Borrowers, however, may not be released from personal liability to the FmHA when real estate securing loans is transferred to an ineligible transferee under paragraph (d) of this Section unless the debt assumed by the transferee is scheduled for repayment in not to exceed 5 years from the date of the Assumption Agreement. When a portion of the real estate is transferred and the total RH debt is assumed, a release can be granted in accordance with § 1965.27(b)(6)(iii) of this Subpart. When only that portion of the debt equal to the market value of the security is assumed and the borrower is to be released from liability the following conditions must be met:

(1) *Required certification.* (i) *Certification by County Committee.* The County Committee must determine that the facts in each case support signing a memorandum containing the following statement:

(Name of transferor and any cosigner) in our opinion do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of their ability. Therefore, we recommend that the transferor and any cosigner be released of personal liability upon the transferees' assumption of that portion of the indebtedness equal to the present market value of the security.

(ii) The official approving the transfer of RH loans must also execute a memorandum containing the above statement.

(2) *Release.* For an RH loan involving a cosigner, the transferor may be released from personal liability only if the cosigner also can be released (See § 1965.129 of Subpart C of this Part).

(g) *Processing transfers and assumptions of indebtedness.* Transfers and assumptions will be processed as follows:

(1) *Refund of unused funds, loan funds not advanced, transaction record.* Unexpended funds in the supervised bank account will be applied as a refund unless security is transferred to an eligible applicant and the funds are needed for completing planned development. (See paragraph (g)(10) of this section for directions on transferring these funds.) Any obligation of, or request for, loan funds not yet advanced will be canceled. Form FmHA 451–26, the monthly payment account Status Report, or information obtained from the Finance Office, will be used to compute the unpaid balance due on the effective date of the transfer. (See paragraph (g)(3) of this section for directions on handling collections made while a transfer is pending.)

(2) *Preparation and distribution of transfer docket.* Loan docket processing and forms required will be the same as for an initial or subsequent loan of the type(s) involved.

(i) *Checking docket forms.* When the transfer docket forms, including those applicable forms shown in § 1965.27(g)(2)(iv) of this Subpart, have been completed, the approval official will determine that the proposed transfer conforms to the applicable procedural requirements, each form is prepared correctly in accordance with the Forms Manual Insert or other appropriate instructions, and items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which the items appear.

(ii) *Information on the availability of other credit.* An eligible transferee must meet the "no credit elsewhere" requirements for the type of loan being assumed. The County Supervisor will record in the running case record the pertinent information concerning the negotiations made by an eligible transferee and the discussion by FmHA

personnel with the applicant's creditors and other lenders. The investigation and availability of other credit for eligible transferees will be documented as required for the kind of loan being assumed. This must be sufficiently clear and adequate to establish that other credit is not available to pay the debt in full, which would make the transfer unnecessary. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain satisfactory credit elsewhere will be included in the loan docket.

(iii) *Transferor records.* The transferor's copies of notes, mortgages and other instruments in connection with the security are to be made available to the transferee.

(iv) *Distribution of transfer docket forms.* The following table will be used as a guide in distributing the necessary forms. Other forms will be distributed in accordance with the appropriate loan processing regulation and the FMI for the form.

FmHA form No.	Name of form	Total number of copies	Signed by transferee	Transfer docket	Copy for transferee
1940-1 [6]	Request for Obligation of Funds	[7] 3	[6] 2-O&C	2-O&C	1-C.
400-4*	Assurance Agreement	1	1-0	1-0	1-C.
410-1*	Application for FmHA Services (with attachments)	[6] 1	1-0	1-0	
410-4*	Application for Rural Housing Assistance Non-Farm Tract)	[6] 1		1	
410-5*	Request for Verification of Employment	1		1	
465-5 [5]	Transfer of Real Estate Security	3	1-0	1-0	1-C.
440-2*	County Committee Certification or Recommendation	1		1-0	
431-2* [1]	Farm and Home Plan	1	1-0	1-0	In record book
431-1*	Long-Time Farm and Home Plan	2	2-O&C	1-0	1-C.
431-3* [1]	Household and Financial	1	1-O&C	1-0	1-C.
431-4* [1]	Business Analysis-Nonagricultural Enterprise	2	2-O&C	1-0	1-C
422-1*	Appraisal Report (Farm Tract)	1		1-0	
422-3*	Map of Property	1		1-0	
1922-8*	Residential Appraisal Report			1-0	
426-1*	Valuation of Buildings	1		1-0	
440-9* [2]	Supplementary Payment Agreement	1	1-0	1-0	1-C.
424-1*	Development Plan	2	1-0	1-0	1-C.
1960-5* [3]	Assumption Agreement	4	1-0	1-0	1-C.
1965-8* [3]	Release from Personal Liability	2		1-C.	1-C.
443-17*	Agreement to Sell Nonessential Real Estate	2	2-O&C	1-0	1-C.
1940-41* [3]	Truth in Lending disclosure Statement	2		1	1-0.
1940-43* [4]	Notice of Right to cancel	3	[6] 1	1	2-O&C
451-10*	Request for Statement of Account	[6] 3		2-O&C (O to FO)	
451-25*	Status of Account	2		2-O&C	
1960-8*	Assumption Agreement (information)	[6] 2		1-C.	

O—Original; C—Copy.
*—When applicable.
FO—Finance Office.

[1] In addition to plan for first full year, interim plan, if prepared, will be included in the docket.
[2] The original Form will not be executed until date of closing the assumption. Distribute other copies in accordance with FMI
[3] In right to cancel cases, original and sufficient copies for each person who has right to cancel in accordance with Subpart I of Part 1940 of this Chapter.
[4] Original and one copy to transferee, two copies to each other person who has right to cancel in accordance with Subpart I of Part 1940 of this Chapter. If the person exercises the right to cancel, one copy of the Form will be signed and returned to the County Office.
[5] When requested, prepare an additional copy for delivery to transferor.
[6] Applicant must sign and date this form.
[7] For ineligible transferees, delete the first sentence referring to other credit in item 34 of the form. The deletion will be initialed by the applicant.
[8] For ineligible transferees, delete the first sentence in the applicant's certification (item 23 on the Form FmHA 410-1 or item 21 on the Form FmHA 410-4) which refers to other credit. The deletion will be initialed by the applicant.
[9] Original to Finance Office.

Other transfer docket items may include a mortgagee title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property to be taken as additional security, purchase contract or other instrument of ownership, and information on prior mortgage(s) and cosigner(s). When the County Supervisor is the approval official, in lieu of including the document evidencing ownership, he or she may include a statement in the docket indicating that the document has been seen and reviewed. When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making regulation.

(3) *Collections and receipts.* During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account and Form FmHA 451-26 will be forwarded to the County Office. When the County Supervisor has received a payment on the account which is not included in the latest transaction record or monthly payment account Status Report, the amount will be deducted from the total amount of principal and interest (this figure will be based on the latest information available) before completing the assumption agreement and having it signed. The following will also be done:

(i) *Transaction record.* When the borrower has made a direct payment to the Finance Office and there is no record of the payment in the County Office, the account will be assumed on the basis of the latest record in the County Office. In those cases, the application of the direct payment will be reversed from the account and the assumption agreement will be processed in the Finance Office. The Finance Office will contact the County Supervisor to determine the disposition of the proceeds from the direct payment.

(ii) *Identification of payments.* For payments received on the date of transfer, Form FmHA 451-2, "Schedule of Remittances," will be prepared to show "Transfer in process for account owed by (borrower's name and case number) to be transferred to (name of tranferee and case number, if known)". If the borrower number portion of the case number has not yet been assigned for a transferee, only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA 451-2 and the amount paid.

(iii) *Payment.* When a payment is due on the assumption agreement shortly after the transfer is completed, the payment should, if possible, be collected at the time of transfer and remitted in the name of the transferee.

(4) *Farm and Home plans and financial statements.* When the transfer involves an inelgible transferee, Form FmHA 431-3 or Form FmHA 431-2 will be used with Tables A and J being completed in the same manner as for any other borrower but other tables and portions of the Form will be completed only to the extent necessary to determine the debtpaying ability of the transferee and to give sufficient information for completing Table J. When an assumption will be of less than

the amount of the indebtedness and a relase of liability is involved, a current financial and income statement of transferor will be obtained on Form FmHA 431–3 or Form FmHA 431–2.

(5) *Appraisal report.* Form FmHA 422–1, or Form FmHA 1922–8 as appropriate will be obtained when the amount to be assumed is less than the full amount of the indebtedness, when required in connection with an initial or subsequent loan to be processed with the transfer, or when the loan approval official requests a current appraisal.

(6) *County Committee certification and recommendation.* The complete transfer docket, except RH loans, will be presented to the County Committee for review.

(i) The transfer will be contingent upon the County Committee making its appropriate certification on Form FmHA 440–2 for an eligible applicant or, when the transfer is to an ineligible applicant, executing a memorandum containing the following statement:

> In our opinion, the transferee, *(name of Transferee),* will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan.

(ii) When the County Committee recommends a release of the transferor and any cosigner from liability when real estate security is being transferred under § 1965.27(c) or (d) of this Subpart with an assumption of less than the total debt, the provisions of § 1965.27(f) of this Subpart will be followed.

(7) *Property insurance.* The Transferee will obtain property insurance in accordance with the property insurance requirement for the loan(s) involved. If insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of new coverage by the transferee. The insurance company will be notified by the County Supervisor immediately after completion of the transfer. When the full amount of the FmHA indebtedness is being assumed and an insurance premium has been advanced to the account, the transfer will not be completed until the amount of the premium has been charged to the transferor's account.

(8) *Title clearance and legal services.* Title clearance and legal services for closing transfers will be accomplished in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1). Where the original repayment terms are altered, it may be necessary to obtain a new mortgage from the transferee to continue FmHA's lien on the transferred real estate. The advice of OGC will be obtained on a State-by-State basis and implemented through State Supplements to provide for new mortgages where required, and to further provide instructions on whether the original mortgage should be released. Title clearance and legal services for the above loans(s) are not required when a joint borrower's interest in the security is conveyed to the remaining borrower who assumes the total indebtedness on the same terms, provided a subsequent loan or subordination is not involved. For all other kinds of loans, title clearance and loan closing services will not be required unless the approval official, with the advice of OGC, determines that the services are needed to maintain FmHA's security position or for other reasons. If another mortgagee's mortgage requires the mortgagee's consent to the transfer, consent will be obtained.

(9) *Assumption agreements, releases from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this Subpart and all of the security is being transferred, Forms FmHA 1960–5, FmHA 1960–6, FmHA 451–1, "Acknowledgment of Cash Payment," and FmHA 1965–8, will be completed and executed simultaneously with the closing of the transaction. The original Form FmHA 1960–6 and, when applicable, Form FmHA 451–1 will be transmitted immediately to the Finance Office.

(10) *Transfer of unused development funds.* Any remaining funds not to be refunded that are in the transferor's supervised bank account will be transferred to the eligible tranferee's supervised bank account simultaneously with the closing of the transfer for use in completing planned development.

(h) *Transfer of security without FmHA consent or approval.* When a borrower transfer or proposes to transfer real estate security to another party and FmHA is unable or unwilling to approve the transferee as either an eligible or ineligible applicant and the County Supervisor determines it is not in the best interest of FmHA to liquidate the loan(s) in accordance with § 1965.26 of this Subpart, the following actions will be taken in order listed:

(1) The County Supervisor will advise the State Director of the transfer or proposed transfer of the security and reasons why FmHA cannot approve the transferee as eligible or ineligible. Complete details of the transfer conditions, terms and consideration will be submitted to the State Director with the borrower (transferor) file. Current information on status of the loan(s) owed FmHA and of any debts owed other lenders on the property will be included with a current appraisal of the FmHA security and security equity position. The appraisal will be completed in accordance with Subpart A of Part 1809 of of this Chapter (FmHA Instruction 422.1). Recommendations of the County Committee, County Supervisor and District Director will be included on the following:

(i) Reasons why continuation of the loan would be in the best interest of the Government.

(ii) The effect continuation of the account will have on the FmHA program in the area.

(iii) Comments and opinion on adequacy of security and ability of transferor to pay the FmHA debt.

(2) The State Director will review all information submitted and request any additional information he or she determines is necessary to reach a decision. This includes advice of OGC. After making a determination, the State Director will either:

(i) Return the file to the County Supervisor with instructions that the borrower be requested to correct the violation in accordance with § 1965.26(d) of this Subpart or proceed with liquidation of the account in accordance with § 1965.26(b) of this Subpart and state reasons for the determination; or

(ii) Return the file to the County Supervisor stating reasons for the determination and giving consent to continue the account as an ORE loan with instructions for obtaining liability of the transferee, maintaining security position and future servicing. If FmHA is adequately secured and the entire FmHA debt will be paid in 5 years or less from date of the transfer, the borrower-transferor can be released of liability in accordance with § 1965.27(f) of this Subpart and the account serviced in the name of the transferee. If the entire FmHA debt will not be paid within 5 years from date of the transfer, the borrower will not be released of liability, the account will continue to be serviced in the borrower's name and the borrower will remain liable for the debt in accordance with the terms of the security instruments. Advice of OGC will be obtained as needed or desired to determine the borrower's continued liability and adequacy of security.

§§ 1965.28–1965.30 [Reserved]

§ 1965.31 Taking liens on real estate as additional security in servicing FmHA loans.

(a) *Liens.* When taking real estate as additional security, the best lien

obtainable will be taken on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Normally, the prior concurrence of the District Director will be obtained. Liens will be taken only when:

(1) Present security for the loan is not adequate to protect the interests of the FmHA, and

(2) The borrower has substantial equity in the real estate to be mortgaged and it is determined that the taking of the mortgage will not prevent the making of an FmHA real estate loan, which might be needed in the foreseeable future.

(b) *Real estate.* Before taking real estate as additional security for an FmHA loan the following items will be documented in the running record:

(1) The facts which justify taking the real estate lien;

(2) A conservative estimate of the present market value of the real estate to be mortgaged. (It will not be necessary to submit an appraisal of the property to be mortgaged.);

(3) A brief description of any existing liens on the property, and the repayment terms and the unpaid balance on the debts secured by existing liens, unless this is accurately reflected on a recent financial statement; and

(4) The name of the title holder and how title of the property is held. (Title evidence need not be required.)

(c) *Forms.* Each real estate lien taken as additional security for both FmHA direct and insured loans will be taken on Form FmHA 427–1 (State), "Real Estate Mortgage for (State)," unless a State Supplement requires the use of a form of mortgage comparable to that which secures the existing loan(s) to be additionally secured. The notes evidencing both FmHA direct and insured loans for which the additional security will be taken will be described in the same mortgage.

§ 1965.32 Assignment of promissory notes and security instruments outside the program

The policy described in § 1962.28 of Subpart A of Part 1962 of this Chapter, for assigning notes and security instruments to third parties will apply to all loans secured by real estate, when the State Director determines it is to the financial advantage of the Government or when the borrower has failed to refinance after an appropriate request (See Subpart F of Part 1951, which explains graduation policies and procedures). Payment of the FmHA debt in full will be collected and transmitted to the Finance Office at the time the assigned instruments are delivered. For insured loans, an assignment may be made on a non-insured basis after the note has been assigned to the insurance fund. The assignment will be effected on an assignment form furnished by the OGC which will include provisions to release the FmHA from liability as insurer, and nullify the provisions and covenants in the note and security instruments relating to the Government's rights and obligations as insurer and collection agent. The Government's endorsements of the promissory note will be made without recourse. The State Director will execute the assignment instruments unless authority is delegated to the County Supervisor in a State Supplement.

§ 1965.33 Cosigners—RH Loans.

See § 1965.129 of Subpart C of this Part for servicing RH loans with cosigners.

§ 1965.34 Other real estate loans (ORE).

ORE loans will be serviced as outlined in this Subpart except:

(a) An ORE borrower, other than those approved under § 1965.26(f) for dwelling retention, is not required to occupy the dwelling,

(b) An ORE borrower who assumes a loan does not have to occupy or operate the farm, and

(c) ORE borrowers are not subject to the graduation requirements as outlined in Subpart F of Part 1951 of this Chapter.

(d) ORE loans may be transferred pursuant to authorities in § 1965.27 of this Subpart.

(e) Subordination of ORE loans:

(1) ORE loans of ineligible transferees will not be subordinated unless it is clearly in the best interest of FmHA.

(2) ORE loans assumed by otherwise eligible transferees but coded ORE because the type of loan is no longer authorized (see § 1965.27 (c)(1)(iii) of this Subpart) may be subordinated for the same purposes and under the same conditions authorized for FO loans in § 1965.12 of this Subpart.

§ 1965.35 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this Subpart not inconsistent with the authorizing statute if the Administrator finds that application of the requirement would adversely affect the interest of the Government. The Administrator will exercise this authority only at the request of the State Director.

(a) This paragraph is primarily intended to be used for those cases in which the use of proceeds is necessary for the borrower to retain the farm or rural residence. The State Director must submit a written recommendation to the National Office, along with the County Office case file. The recommendation will contain a summary of the facts and an explanation of the proposed transaction. If OGC's advice is needed as to whether or not a proposal can be accomplished legally, the State Director should ask for OGC's advice before sending the proposal to the National Office and a copy of OGC's memorandum should be sent to the National Office with the State Director's recommendation.

(1) The transaction and use of any proceeds will:

(i) Further the purposes for which the loan was made,

(ii) Improve the borrower's debt-paying ability, and

(iii) Permit payment of reasonable costs and expenses incidental to the transaction when the borrower is unable to pay costs and expenses from other sources.

(2) After the transaction is completed:

(i) The remaining FmHA debt will be adequately secured, or

(ii) The Government's security interest will not be adversely affected.

(b) In the National Office, the Administrator (or a delegate) will review the material submitted by the State Director, and will approve or disapprove the proposal. After National Office approval, if legal assistance is needed to accomplish the proposed transaction, the State Director will obtain such advice from OGC.

§ 1965.36 State Supplements and reference to the OGC.

State Supplements will be prepared, with the advice of the OGC, as necessary to carry out this Subpart and forwarded to the National Office for prior or post approval.

§ 1965.37 Redelegation of authority.

The State Director is authorized to redelegate in writing any authority delegated to the State Director in this Subpart to one or more of the following State Office employees: Chief, Farmer Programs; Farmer Programs Specialist.

§§ 1965.38–1965.50 [Reserved]

Exhibit A—Memorandum of Understanding Between Bureau of Sport Fisheries and Wildlife and the Farmers Home Administration

The purpose of this memorandum is to simplify and facilitate the obtaining by the Bureau of Sport Fisheries and Wildlife (Bureau) of subordination of mortgages held by the Farmers Home Administration (FmHA) on land with respect to which the Bureau obtains a "Conveyance of Easement for Waterfowl Management Rights" (3–1916

Rev. April 1970). In order to accomplish this purpose it is agreed that:

1. In each case in which the Bureau proposes to take an easement from a landowner whose land is subject to a mortgage held by FmHA and the Bureau's proposal is acceptable to the landowner, the Bureau will notify the local FmHA County Supervisor. The notification will show the amount of consideration to be offered for the easement and the legal description of the land to be affected by the easement. Where there are existing drainage facilities on the land, the affected wetland areas that are to be excluded from coverage by the easement will be outlined on a map and furnished to FmHA and the landowner.

2. Where a subordination agreement is required, the FmHA County Supervisor will advise the designated local official of the Bureau as to whether the consideration is adequate from the standpoint of FmHA as mortgagee.

3. Where a subordination is required and the County Supervisor advises that the consideration is adequate, said easement form will be amended by inserting at the end of the instrument the following:

"In consideration of payment which is determined to be adequate from the standpont of the FmHA as mortgagee, for the foregoing easement as provided in paragraph 5 thereof, the United States of America acting through FmHA hereby subordinates its mortgage dated ———, recorded in Book ——, page ——, of the real estate records in ——— County, State of ——— to said easement.

"United States of America.

"Date ———

By FmHA County Supervisor" ———

4. Where a subordination is not required of FmHA, because of a waiver of the need for a subordination by the United States Attorney General, the Bureau nevertheless will send a copy of the agreement and the check for the easement consideration, which will include FmHA as a co-payee, to the FmHA County Supervisor.

5. In all cases where an FmHA mortgage is involved, the easement form will be amended by inserting at the end of paragraph 5 an additional sentence as follows:

"The check for the easement consideration will be made payable to the Farmers Home Administration (FmHA) and the landowner(s), as co-payees, and will be mailed to the FmHA to be applied to its mortgage unless applied on a prior mortgage debt or released for other use as permitted by FmHA regulations."

6. The Bureau and the FmHA will issue such procedures or directives to their respective field offices as may be necessary to effectuate this memorandum of understanding.

Acting Director, Bureau of Sport Fisheries and Wildlife
Date ———

Administrator, Farmers Home Administration
Date ———

4. Subpart C is added to Part 1965 and reads as follows:

Subpart C—Security Servicing for Single Family Rural Housing Loans

Sec.
1965.101 Purpose.
1965.102 Policy.
1965.103 Responsibilities.
1965.104 Preservation of security and protection of liens.
1965.105 Subordination of FmHA lien.
1965.106 1965.109 [Reserved]
1965.110 Release of security.
1965.111 Junior liens.
1965.112 Lease of security property.
1965.113 Mineral Leases.
1965.114–1965.115 [Reserved]
1965.116 Deceased borrower.
1965.117 Bankruptcy.
1965.118 Release of FmHA lien without monetary consideration.
1965.119–1965.124 [Reserved]
21965.125 Liquidation.
1965.126 Transfer of property with assumption of indebtedness.
1965.127 Release from liability.
1965.128 Assignment of promissory notes and security instruments.
1965.129 Co-signers.
1965.130–1965.135 [Reserved]
1965.136 Redelegation of authority.
1965.137 Exception authority.
1965.138–1965.150 [Reserved]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 7 CFR 2.70.

Subpart C—Security Servicing for Single-Family Rural Housing Loans

§ 1965.101 Purpose.

The purpose of this Subpart is to prescribe policies and procedures for servicing actions related to real estate which secures Section 502 and Section 504 Rural Housing (RH) loans on nonfarm tracts or on farms when the borrower is indebted to Farmers Home Administration (FmHA) for the RH loan *only*, herein referred to as Single-family Housing (SFH) loans. Security servicing for RH loans when the borrower is also indebted for Farmer Programs will be in accordance with Subpart A of this Part.

§ 1965.102 Policy.

Real estate security will be serviced in accordance with the provisions of the security instruments and related agreements, including authorized modifications, in a manner which will assist the borrower in accomplishing the loan objectives and protect the Government's financial interest.

§ 1965.103 Responsibilities.

(a) *Borrower.* The borrower is responsible for:

(1) Making loan payments as agreed;

(2) Paying real estate taxes and/or assessments when due;

(3) Keeping adequate property insurance in force; and

(4) Maintaining the property in good repair.

(b) *FmHA officials.* For purposes of this Subpart, "County Supervisor" includes an Assistant County Supervisor, GS–7 or above, who has written delegated authority to carry out the provisions of this Subpart; and "District Director" includes an Assistant District Director who has written delegated authority to carry out the provisions of this Subpart. Servicing actions will be documented in the running record of the case file. The County Supervisor is authorized to execute on behalf of the Government all forms and other documents necessary to complete transactions covered by this Subpart after the transaction has been approved by the appropriate approval official.

(1) The County Supervisor is responsible for servicing the loan account as outlined in Subpart G of Part 1951 of this Chapter, for seeing that the security property is properly maintained, and for taking appropriate action promptly when necessary to protect the Government's interest.

(2) The District Director will assist in unusual cases or when the County Supervisor requests assistance in servicing any case.

(3) The State Director will obtain legal advice from the Regional Attorney, Office of the General Counsel (OGC), as necessary on an individual-case basis or in issuing a State supplement where specifically authorized.

§ 1965.104 Preservation of security and protection of liens.

(a) *Inspection of security.* The County Supervisor will inspect real estate security as necessary to protect the Government's interest.

(b) *Action by FmHA for account of borrower.* When necessary to protect the interest of the Government, FmHA may make protective advances for purposes outlined below. Standard Form 1034, "Public Voucher for Purchases and Service Other Than Personal," Form FmHA 120–10, "Solicitation, Quotation. Purchase Order, Inspection, and Invoice," or other approved voucher, and Form FmHA 2024–1, "Miscellaneous Payment System," must be prepared and submitted according to the Forms Manual Insert (FMI) for payment to be charged to the borrower's account as recoverable costs.

(1) *Taxes and/or assessments.* Real estate taxes and assessments will be handled in accordance with Part 1863 of this Chapter (FmHA Instruction 425.1).

(2) *Insurance.* Property insurance will be handled in accordance with Subparts A and B of Part 1806 of this Chapter

(FmHA Instruction 426.1 and 426.2), if applicable.

(3) *Maintenance.* Where the borrower continues to occupy the security property but is not adequately maintaining it, prior authorization from the National Office must be obtained before funds are advanced for essential repairs. The State Director will submit the facts and reasons why the loan should not be liquidated to the Assistant Administrator, Housing. If there is a prior lien, expenditures for maintenance will not be made by the Goverment unless the prior lienholder refuses to make them. Evidence of the prior lienholder's refusal to do so must be fully documented.

(4) *Abandoment.* When the County Supervisor has reason to believe the borrower has abandoned security property, actions will be taken without delay in accordance with § 1955.55 of Subpart B of Part 1955 of this Chapter.

(c) *Actions by third parties which affect security property.* When a third party brings suit or takes any other action which affects FmHA security property, borrowers are expected to protect their own interests in the property. Examples of these actions are: condemnation proceedings, trespass suits, and actions to quiet title. When the County Supervisor learns of a third-party action which may jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will send the case file, complete with information concerning the action, and recommendations for FmHA servicing actions to the State Director. A copy of the petition or complaint, as soon as available; the account status; a current appraisal; the name and address of the borrower's attorney, if any; and any other information the County Supervisor believes important will be included. The State Director will consult OGC about all such lawsuits. The State Director will also consult OGC about other third-party actions when legal advice is needed. Protective advances will be authorized only to protect the Government's interest. When foreclosure or other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan in accordance with § 1944.37 of Subpart A of Part 1944 of this Chapter provided the third party agrees to postpone further action pending the processing of a subsequent loan. The State Director will advise the County Supervisor of the actions to be taken to protect the Government's interest.

(1) *Prior lien foreclosure.* When FmHA learns that a prior lienholder is contemplating foreclosure, the prior lienholder will be contacted to determine the amount of the prior lien indebtedness, the estimated costs of the foreclosure sale, and whether or not SF–1034 would be accepted if the Government were the successful bidder at the sale.

(i) *Paying the prior lien debt.* When it is advantageous to the Goverment to pay the prior lienholder in full before the foreclosure sale, title evidence must be obtained. Information clearly supporting the action as being to the Government's financial advantage must be documented in the file. Payment of the prior lien and required costs may be made with the advice of OGC, provided:

(A) The Government will obtain a greater recovery on the secured debt than it could by bidding at the foreclosure sale; and

(B) The FmHA account, after payment of the prior lien, will be liquidated.

(ii) *Bidding at prior lien foreclosure sale.* When acceptable title evidence has been obtained and it is determined that a net recovery on the Government's investment can be made by acquiring the property, the State Director may authorize bidding at the foreclosure sale. Calculation of the bid amount, designation of bidder and reporting of sale will be in accordance with § 1955.15 of Subpart A of Part 1955 of this Chapter. If payment by voucher is not acceptable, SF–1034 and Form FmHA 2024–1 must be prepared and submitted according to the FMIs in time to receive a check before the sale date.

(2) *Junior lien foreclosure.* FmHA will not bid at a junior lien foreclosure sale. When a junior lienholder foreclosure does not result in payment in full of the FmHA debt but the property is sold subject to the FmHA lien, the account may be assumed by the purchaser if the requirements of § 1965.126(c) or (d) of this Subpart can be met; otherwise the FmHA loan will be liquidated.

(3) *Tax sale.* (i) *Authority.* The State Director may authorize bidding at a tax sale if it is determined to be in the best financial interest of the Government and all of the following conditions exist:

(A) OGC advised that under applicable State law, the tax sale will not extinguish the FmHA lien in case another party is the successful bidder at the tax sale or the borrower redeems the property before the tax deed is delivered.

(B) Under applicable State law, the purchaser will be able to obtain a deed to the property sooner than foreclosure could be completed.

(C) Taxes which will accrue during the time that foreclosure is expected to take will create or increase a loss to the Government.

(ii) *Limitations.* (A) When all of the conditions outlined in paragraph (c)(3)(i) of this section are met and the taxing authority schedules the security property to be sold for delinquent taxes (which are a prior lien), the State Director may designate an FmHA employee to bid at the tax sale provided a title search covering the period since the last title opinion in the file reveals no liens which cannot be settled in accordance with § 1955.10(c) of Subpart A of Part 1955 of this Chapter.

(B) When all of the conditions outlined in paragraph (c)(3)(i) of this section are *not* met, FmHA will pay the taxes to protect the Government's security interest as provided in Part 1863 of this Chapter (FmHA Instruction 425.1.) When taxes are paid by FmHA under these circumstances, the case will be considered a problem case and a decision made on whether liquidation will be required.

(iii) *Bid.* The gross investment will be determined in accordance with § 1955.15 (d)(9) and (10) of Subpart A of Part 1955 of this Chapter. The State Director will designate, in writing, an employee to bid at the tax sale. The designation will specify that incremental bidding will be used starting at the lowest level possible and that the maximum bid will not exceed the gross investment or the market value of the security property (less other liens which must be settled), whichever is less (stated in dollar amount).

(iv) *Credit to borrower.* When title to SFH security property is acquired by tax deed, the borrower's account will be credited as though the acquisition had been through foreclosure by FmHA.

(v) *State supplement.* The State Director with the assistance of OGC will issue a State supplement to this section setting forth the applicable provisions of State law and giving specific guidance pertinent to the particular state.

(4) *Bankruptcy sale.* With prior advice from OGC, the State Director may authorize bidding at a bankruptcy sale provided title to the security property can be acquired free of liens other than FmHA's lien(s). Bidding and credit to the borrower's account will be the same as outlined in paragraph (c)(3)(iii) and (iv) of this section.

§ 1965.105 Subordination of FmHA lien.

(a) *Conditions for subordination.* Subordination of FmHA's lien to another

lender may be granted subject to the following provisions:

(1) The funds obtained from the other lender will be used only for purposes for which an RH loan could be made and subject to the same limitations applicable to RH loan funds.

(2) The prior lien debt plus the FmHA debt will not exceed the market value of the security. (For this purpose, the FmHA debt is the unpaid balance on the loan exclusive of recapture of subsidy.)

(3) The prior lien debt must be on terms and conditions which the borrower can reasonably be expected to meet without jeopardizing repayment of the FmHA indebtedness.

(4) Proposed development, if any, will be planned and performed in accordance with Subpart A of Part 1924 of this chapter or directed by the other lender in a manner which is consistent with that Subpart.

(5) The funds obtained from the other lender for development will be handled through a supervised bank account or under other arrangements approved by the County Supervisor which will assure that the funds are used for the planned purposes.

(6) An agreement must be obtained in writing from the prior lienholder providing that at least 30 days' advance notice will be given to FmHA before action to foreclose on their prior lien is initiated.

(b) *Approval authority.* An approval official may approve subordinations when the total indebtedness against the security including prior-lien debt(s) does not exceed his/her respective loan approval authority.

(c) *Request for subordination and processing.* When a borrower requests FmHA to subordinate its lien, Form FmHA 465–1, "Application for Partial Release, Subordination, or Consent," will be prepared. A new appraisal will be made when the latest appraisal report is more than one year old or if it does not reflect market value. When development work is planned, a new appraisal is required to reflect the development. The subordination will be completed in accordance with a State supplement approved by OGC.

§ 1965.106–§ 1965.109 [Reserved]

§ 1965.110 Release of security.

(a) *Release or partial release.* FmHA may consent to transactions affecting the security such as sale or exchange of security, granting of a right-of-way across the security, etc. and grant a release or partial release provided:

(1) The consideration is:

(i) In sale of property, cash in an amount equal to the value of the security being disposed of or rights granted;

(ii) In exchange of property, another parcel of property acquired in exchange with value equal to or greater than that being disposed of; or

(iii) In granting an easement or right-of-way, benefits derived which are equal to or greater than the value of the property being disposed of;

(2) The property after the transaction is completed will be an adequate but modest, decent, safe, and sanitary dwelling and related facilities.

(3) Repayment of the FmHA debt will not be jeopardized.

(b) *Approval authority.* An official who has loan approval authority may approve release or partial release transactions when the total indebtedness against the security does not exceed his/her respective loan approval authority.

(c) *Request for consent and processing.* When a borrower requests consent to sale or other disposition of a portion of the security, Form FmHA 465–1 will be prepared. If exchange of all or part of the security is involved, title clearance on the proposed new security and a new security instrument will be obtained in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) before release of existing security. A new appraisal will be made when the latest appraisal is more than one year old or if it does not reflect market value. When a new appraisal is required, it will be based on the property being retained with a notation on the value of the portion to be released entered on Form FmHA 1922–8, "Residential Appraisal Report," in the "Comments" section of the same appraisal report. Form FmHA 460–1, "Partial Release," or other form approved by OGC, will be used to release a portion of the security. When the entire security is being exchanged OGC will be requested to provide a form of release without satisfaction of debt. The release may be recorded simultaneously with the new security instrument. When full payment is received in the form of cash, money order, certified check, Cashier's check or security property, the release may be delivered.

(d) *Use of proceeds.* Proceeds from sale of a portion of the security, granting of an easement or right-of-way, damage compensation, and all similar transactions requiring FmHA consent, will be used in the following order:

(1) To pay customary and reasonable costs (as determined by FmHA) related to the transaction which must be paid by the borrower, such as real estate taxes which must be paid to conclude the transaction; cost of title examination, survey, abstract, and reasonable attorney's fees; costs necessary to determine a reasonable price, such as appraisal of minerals, when the necessary appraisal cannot be obtained without cost; and additional income tax the borrower will be required to pay;

(2) To be applied on a prior lien debt, if any; or

(3) To be applied to the FmHA indebtedness as an extra payment or used for improvements to the security property in keeping with purposes and subject to limitations applicable to use of RH loan funds. Proposed development will be planned and performed in accordance with Subpart A of Part 1924 of this Chapter and the proceeds handled through a supervised bank account to assure that the proceeds are used as planned.

§ 1965.111 Junior liens.

(a) *Consent to junior liens.* FmHA borrowers generally will be discouraged from giving junior liens on real estate which secures an FmHA loan. In considering requests for consent to a junior lien, the unpaid balance on the FmHA loan will be the *sum* of unpaid principal, interest, total subsidy granted, and principal reduction attributed to subsidy if the loan is subject to recapture. When consenting to a junior lien, the County Supervisor may enter into an agreement to notify the junior lienholder in the event FmHA initiates foreclosure if the junior lienholder requests. When consent to a junior lien is requested by a borower, the County Supervisor may consent by executing Form FmHA 465–1, or other form approved by OGC for use in a State, provided:

(1) Repayment of the FmHA loan will not be jeopardized;

(2) The total debt against the security will not exceed its market value; and

(3) The proposed loan is for purposes for which FmHA RH loan funds could be used.

(b) *Junior lien placed without FmHA's consent.* When a junior lien is placed on FmHA security property without consent, and consent cannot be granted in accordance with paragraph (a) of this section, FmHA will continue to service the loan in the usual manner as long as the borrower makes payments as scheduled, properly maintains the security, and meets other loan conditions. The loan may be liquidated if the junior lien hampers transfer with assumption of the FmHA debt, voluntary conveyance to the Government, or the making of a subsequent loan.

§ 1965.112 Lease of security property.

(a) When a borrower leases or proposes to lease, security property, consent of FmHA is not required, and no action to initiate liquidation may be taken unless:

(1) A lease is for a term of more than 3 years;

(2) A lease for any term contains an option to purchase; or

(3) The borrower is in default in loan obligations including:

(i) Keeping the account current;

(ii) Adequately maintaining the property;

(iii) Keeping the property insured; and

(iv) Paying real estate taxes when due.

(b) If a borrower leases, or proposes to lease security property for a term of more than 3 years, or with an option to purchase, FmHA should normally initiate liquidation action, preferably voluntary. However, if under unusual circumstances the servicing official believes FmHA should consent to such a lease arrangement, prior approval of the Assistant Administrator, Housing, is required. The State Director should forward such a request along with a justification to the National Office.

§ 1965.113 Mineral leases.

(a) *Authority.* When a borrower requests consent to lease the mineral rights to security property, the County Supervisor may consent provided the proposed use of the leased rights will not result in the property being made unsuitable as a nonfarm residence and the Government's security interest being adversely affected.

(b) *Income from lease of mineral rights.*

(1) The basic rental proceeds from lease of mineral rights will be treated as normal income.

(2) If the proposed activity is such that it will decrease the security value of the property (such as strip-mining or quarrying), consent may be given only if the borrower assigns the income from the lease (both damage compensation and royalty payments) to FmHA to be applied to the FmHA loans(s) as extra payments.

(3) If the proposed activity is not likely to decrease the security value of the property, damage compensation must be used to repair the damage or assigned to FmHA for application on the FmHA loan(s) as an extra payment; and royalty payments will be treated as normal income.

(c) *Processing.* Form FmHA 465–1, will be used to process requests under this section. The County Supervisor should carefully document the facts to support the determinations reached concerning the effects of a mineral lease on value. Assignment of income will be taken by use of Form FmHA 443–16, "Assignment of Income from Real Estate Security," or other form approved by OGC which is necessary to comply to comply with State law.

§§ 1965.114–1965.115 [Reserved]

§ 1965.116 Deceased borrower.

When the County Supervisor learns of the death of a SFH borrower, one of the actions outlined in Paragraphs (a), (b), or (c) of this Section may be taken provided title to the security property is not transferred. If title to the property is transferred, assumption of the FmHA indebtedness may be approved in accordance with § 1965.126(c) or (d), depending on whether the assuming party is eligible or ineligible for an RH loan.

(a) *Continue with jointly liable borrower.* If a jointly liable borrower will continue occupying the dwelling and repaying the loan, no action will be taken except to notify the Finance Office by use of Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," to place the account in the name of the surviving borrower if the account is not presently in that name. An assumption agreement will not be used.

(b) *Continue with spouse of deceased borrower not liable for the FmHA debt.* A deceased borrower's spouse who is not liable for the FmHA debt may assume the loan in accordance with § 1965.126(c)(2)(i) of this Subpart.

(c) *Continue with person other than the spouse who is not liable for the FmHA debt.* A person other than the deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death without receiving title to the property, may do so in accordance with § 1965.126(c)(2)(ii) of this Subpart provided:

(1) The dwelling will continue to be occupied by one or more persons who were dependent on the borrower at the time of death; and

(2) There is reasonable prospect for orderly repayment of the loan and other loan conditions will be met such as payment of taxes, insurance, maintenance, etc.

(d) *Report to State Director.* Prepare and submit Form FmHA 455–17, "Report On Deceased Borrower," along with the case file to the State Director if:

(1) The FmHA indebtedness is inadequately secured and the estate has other assets from which collection could likely be made; or

(2) The County Supervisor needs advice on servicing the case.

§ 1965.117 Bankruptcy.

This section applies to SFH borrowers who declare bankruptcy under Chapter 7 (liquidation) or Chapter 13 (adjustment of debts of an individual with regular income) of the Federal Bankruptcy Code. SFH borrowers who declare bankruptcy under Chapter 11 (reorganization) will be handled on a case-by-case basis in accordance with a State Supplement or as advised by OGC.

(a) *Meetings and hearings.* It is not necessary that FmHA be represented at most meetings and hearings during bankruptcy proceedings. If, however, the Regional Attorney advises that FmHA attend a meeting or hearing, the State Director will appoint an FmHA representative.

(b) *Initial notification of bankruptcy.* When an Order of First Meeting of Creditors is received or the County Supervisor is otherwise informed that a borrower has filed a petition in bankruptcy the County Supervisor shall:

(1) Continue to accept and remit payments made voluntarily by the borrower, but discontinue collection efforts.

(2) Flag the office management card to indicate that the borrower is in bankruptcy.

(3) Request a statement of account from the Finance Office if a Proof of Claim will be filed.

(4) Determine whether or not FmHA wishes to continue with the borrower and advise the State Director. If the decision is to continue, the actions outlined in paragraph (d)(1) of this section will be taken.

(5) Refer the case to the State Director who will consult OGC for advice. Form FmHA 1965–18, "Proof of Claim," or other form approved by OGC, is required in all Chapter 13 cases unless the Order of First Meeting of Creditors specifically states that a proof of claim is not required. Proofs of claim will be sent to OGC for filing. A proof of claim need not be filed in no-asset Chapter 7 cases, but otherwise it should be filed even if FmHA does not wish to continue with the borrower. The Order of First Meeting of Creditors and a copy of the proof of claim will be filed in position 4 of the borrowers case file. A proof of claim must be filed within 90 days after the date set for the first meeting of creditors, unless the bankruptcy court has granted an extension. The proof of claim will set forth the amount of unpaid principal and interest, as well as principal reduction attributed to subsidy

and the total amount of interest credits granted if the loan is subject to recapture. The proof of claim will cover all indebtedness to FmHA except judgments obtained by a U.S. Attorney and will indicate whether the indebtedness is secured or unsecured.

(c) *Continuation in Chapter 13 cases.* FmHA must continue with a borrower covered under a confirmed Chapter 13 plan while the plan is in effect. Prior to confirmation of the plan, the State Director or his delegate through OGC will contact the Trustee and request that the plan provide that all payments to FmHA, whether paid through the Trustee or directly to FmHA, will be made through the County Office. If a borrower defaults in payments during the plan, OGC may be requested to petition for relief from the automatic stay if liquidation of the loan is recommended. Upon completion of the chapter 13 plan, the borrower will not be discharged from the FmHA debt if the final due date on the loan is after expiration of the plan.

(d) *Continuation in Chapter 7 cases.* (1) If a decision is made to continue with the borrower, Form FmHA 460–10, "New Promise to Pay," will be completed and, with the advice of OGC, forwarded to the borrower or the borrower's attorney with instructions to execute prior to discharge and present the executed Form FmHA 460–10 to the Bankruptcy Court in accordance with section 524(d) of the Bankruptcy Code. The borrower's attorney should be advised to return the fully executed Form FmHA 460–10 to the County Supervisor after the Bankruptcy Court has granted the borrower's discharge and the reaffirmation hearing has been held. The New Promise to Pay should be executed prior to the borrower's discharge even if the Bankruptcy Court has previously advised that it will not review Form FmHA 460–10.

(2) If Form FmHA 460–10 is not executed prior to discharge, a letter in the form of Exhibit A (available in any FmHA office) of this Subpart (with changes approved by OGC) will be sent to the borrower after discharge. This guide letter will advise the borrower that FmHA acknowledges that he/she is not personally liable for the debt; the security property will be the only source to which FmHA may look for recovery of the debt, and in the event of foreclosure, FmHA will be barred from seeking a deficiency judgment. The letter will also indicate that as long as the scheduled payments are made and all other covenants contained in the promissory note(s) and security instrument(s) are complied with, FmHA will not foreclose, but will continue servicing in the usual manner.

(e) *Not continuing with borrower.* If a decision is made not to continue with a secured loan, liquidation action, either voluntary or foreclosure, may be initiated as soon as one of the following has occurred:

(1) The bankruptcy case is dismissed or closed; or

(2) An order lifting the automatic stay is received. This may be in connection with an order of abandonment or a separate order; however, an order of abandonment without specific language that the automatic stay is removed *does not* permit liquidation to be initiated. To petition for relief from the automatic stay, the State Director will forward a request to OGC along with the borrower's case file including a current appraisal and the account status.

(f) *Servicing prior to discharge or during a Chapter 13 plan.* A petition filed under Chapters 7 or 13 of the Bankruptcy Code operates as an automatic stay. This stay prohibits all collection efforts and foreclosure actions. The receipt of voluntary payments, granting of interest credits and moratoriums, and collection letters for a borrower under a confirmed Chapter 13 plan that are sent to the Trustee, however, are allowed. Any other servicing actions may not be initiated or approved without the prior consent of OGC.

(g) *Servicing discharged borrowers.* Discharge under Chapter 7 of the Bankruptcy Code operates as an injunction against any act to collect a debt which implies personal liability of the debtor. Chapter 13 debtors' discharges will not include the FmHA debt if the final due date is after expiration of the plan. For borrowers who have received discharges under Chapter 7, normal servicing procedures may be followed after the discharge provided the borrower has received the letter specified in paragraph (d)(2) of this Section or properly executed Form FmHA 460–10. For borrowers who filed under Chapter 13, normal servicing may be resumed when the confirmed plan has expired or been terminated. After discharge of an *unsecured* debt (for example, a note-only loan), the State Director will request the Finance Office to cancel the account balance. This will be done by memorandum with copy of the Order of Discharge attached.

(h) *State supplements.* The State Director with the assistance of OGC may issue a State supplement when it is needed to facilitate the handling of bankruptcy cases.

§ 1965.118 Release of FmHA lien without monetary consideration.

FmHA liens may be released without monetary consideration as follows:

(a) *Additional security.* The State Director may approve and authorize the release from FmHA's lien real estate which was taken as additional security before the loan is repaid provided the market value of the remaining security is clearly adequate to secure the loan balance. Property considered as "additional security" may not be any part of the tract bought with RH loan funds or part of the minimum-adequate site on which the dwelling is located.

(b) *Mutual mistake.* The State Director may approve and authorize the release of property included in the FmHA security instrument through mutual mistake when substantiated by facts and when he/she can determine with the advice of OGC that a mutual error existed at the time the property was included in the security instrument.

(c) *Valueless lien.* The State Director may approve and authorize release of an FmHA lien which is determined to have no present or prospective value or when enforcement would be ineffectual or uneconomical. This does not include judgment liens or statutory redemption rights except with the consent of OGC. When recommending release of an FmHA lien as valueless, the County Supervisor will forward to the State Director the case file and the following:

(1) Current appraisal report reflecting market value of the property;

(2) The name(s) of prior lienholder(s) and the amount secured by each lien which is prior to FmHA;

(3) Amount of real estate taxes and/or assessments which are or will become a prior lien on the property; and

(4) Facts which substantiate that the lien is valueless.

§§ 1965.119–1965.124 [Reserved]

§ 1965.125 Liquidation.

(a) *Voluntary liquidation.* (1) *Agreement.* When it is determined that liquidation is necessary, the County Supervisor will attempt to have the borrower agree to liquidate voluntarily and after reaching agreement may allow the borrower 60 days to arrange for one of the following:

(i) Selling the property outside the FmHA program.

(ii) Transferring the property to an individual who will assume the FmHA indebtedness in accordance with § 1965.126 of this Subpart.

(iii) Paying the FmHA indebtedness in full.

(iv) Conveying the property to the Government in accordance with § 1955.10 of Subpart A of Part 1955 of this Chapter.

At the borrower's request, an extension of time may be granted to enable the borrower to complete the transaction outlines in paragraph (a)(1)(i) of this section provided the borrower has the property listed for sale with a real estate broker for not more than the market value; paragraph (a)(1)(ii) of this section provided an assumption is being processed; or paragraph (a)(1)(iii) of this section provided the borrower has applied to a long-term lender for a refinancing loan. A borrower who has initiated bankruptcy proceedings should not be requested to liquidate voluntarily since such an act by FmHA personnel may violate the automatic stay provisions of the Bankruptcy Code.

(2) *Consent to sale for less than the FmHA debt.* If a borrower proposes to sell or transfer the property for an amount less than the FmHA debt (and prior lien(s), if any), the County Supervisor will appraise the property and may consent to the sale if the proposed sale price is not less than the market value. When consent in accordance with this paragraph is given and payment in an amount at least equal to the market value of the security property (less prior liens if paid separately) is received by FmHA in the form of cash, money order, certified check, or Cashier's Check, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with State Law, a State supplement approved by OGC will prescribe procedures for releasing security instruments when the debt evidenced therein is not satisfied in full.

(3) *Distribution of proceeds.* In any case where the FmHA debt will not be paid in full, the entire sale proceeds must be applied to the FmHA debt (and prior lien(s), if any), less only costs which the seller customarily or legally must pay in order to convey title. These costs may include real estate taxes, preparation of the deed, abstracting fees, and deed or other revenues stamps but do not include a real estate broker's commission or points paid by the seller to enable the buyer to obtain credit.

(4) *Accelerated repayment agreement.* When liquidation is necessary for reasons other than failure to graduate to other credit, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. When this type agreement has been reached with the borrower, Form FmHA 1965–11, "Accelerated Repayment Agreement," will be prepared and executed in accordance with the Forms Manual Insert. Accounts rescheduled by means of Form FmHA 1965–11 will be reclassified by the Finance Office to "Other Real Estate (ORE)" loans. The term for the rescheduled payments may not exceed 10 years or the final due date of the note being rescheduled, whichever is sooner. The interest rate will be the RH above-moderate income rate which is in effect on the date the agreement is executed or the note rate, whichever is greater.

(b) *Forced liquidation.* If the borrower will not agree to voluntary liquidation or fails to accomplish it within the time agreed to by FmHA, the County Supervisor will recommend foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this Chapter.

§ 1965.126 Transfer of property with assumption of indebtedness.

When a borrower proposes to sell real estate security, assumption of the loan(s) may be approved on eligible or ineligible terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. When security property is sold, whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA account is not assumed by the purchaser, the loan must be liquidated.

(a) *Authority.* Subject to the prior concurrence of the State Director required by paragraph (b)(7) of this section, County Supervisors may approved transfers and assumptions on eligible or ineligible terms and release borrowers and co-signers from liability, when applicable, when the indebtedness involved does not exceed his/her loan approval authority.

(b) *General.* The following policies are applicable to all transfers and assumptions covered under this Subpart:

(1) *Forms.*

(i) Form FmHA 465–5, "Transfer of Real Estate Security," or an executed sales contract, will reflect the agreement between transferor and the party(ies) who will assume the FmHA debt.

(ii) Form FmHA 1940–1, "Request for Obligation of Funds," will be used for approval of the assumption and/or a subsequent loan, if any.

(iii) Form FmHA 1965–15, "Assumption Agreement Single Family Housing Loan(s)," will be executed by the assuming party(ies).

(iv) Form FmHA 1960–6, "Assumption Agreement (Information)," will be used to transmit information on the assumption to the Finance Office, except as provided in paragraph (c)(2) of this Section.

(2) *Dwelling situated on more than a minimum-adequate site.* If the property to be transferred with assumption consists of a dwelling on more than a minimum-adequate site as defined in § 1944.11 of Subpart A of Part 1944 of this Chapter, a determination must be made as to whether the excess land can serve as a minimum-adequate site for another dwelling. It is not intended to exclude an otherwise-suitable dwelling from being transferred to another program-eligible applicant simply because it is situated on more than a minimum adequate site. Consideration must be given to such things as local zoning requirements, road or street access, and marketability of portions separately if subdivided. If it is determined that the excess property cannot be sold separately as a minimum-adequate site for another dwelling, the facts must be documented and the property may be retained in the SFH program. When all of the security property is not being transferred to the part assuming the FmHA debt and the balance of the FmHA debt is not paid in full when the assumption is closed, the remaining debt of the transferor will be rescheduled through an accelerated repayment agreement in accordance with § 1965.125(a)(4) of this Subpart. OGC will be requested to advise how to retain the appropriate security interest on each portion of the security property. When the balance of the transferor's debt is paid and it is necessary to release the portion of the security property not transferred within the program, the Regional Attorney will be requested to prepare the release document.

(3) *Above-modest property.* When a previously modest property has been improved by the borrower to a point where it is no longer typical of other modest dwellings in the area, a transfer with assumption may be approved only for an applicant with an above-moderate income who meets all the other eligibility requirements of § 1944.9 of Subpart A of Part 1944 of this Chapter or on ineligible terms as set forth in paragraph (d) of this Section. It is not intended to exclude an otherwise-suitable dwelling from being transferred to another program-eligible applicant simply because it contains more than 1400 square feet of living area or design features which would not be permitted in a new dwelling as long as it is still typical of modest homes in the area.

(4) *Amount of assumption.* The transferee will assume the entire FmHA indebtedness unless the indebtedness plus prior liens exceeds the market value of the property, in which case the

transferee will assume an amount equal to the market value of the property, less the amount of prior liens, if any. When the buyer and seller have agreed upon transfer for "amount of debt," recapture of subsidy due based on market value of the security property must be calculated and included as part of the total indebtedness.

(5) *Recapture of subsidy.* Recapture of subsidy in connection with assumptions will be as provided in Subpart I of Part 1951 of this Chapter.

(6) *Consent of prior lienholder.* If there is a prior lien and if required by security instruments or other agreements, written consent of the prior lienholder will be obtained before approval of a transfer and assumption.

(7) *Junior liens.* When the full amount of the FmHA debt is assumed, there must be no liens, judgments, or other claims against the security which are junior to the FmHA lien(s) being assumed unless the State Director determines those liens will not adversely affect the Government's security interest and that the transferee's ability to repay the FmHA debt will not be impaired. When less than the full indebtedness is being assumed, there must be no liens against the security which are junior to the FmHA lien(s).

(8) *Loan in connection with assumption.* A loan for which the transferee is eligible may be made in accordance with Subpart A of Part 1944 of this Chapter in connection with transfer and assumption.

(9) *Withdrawal of jointly liable borrower.* When a jointly liable borrower withdraws, such as in a divorce case, it is not necessary to have the remaining borrower execute an assumption agreement. Form FmHA 450–10 should be prepared and submitted to the Finance Office if the account is not in the name of the person with whom the account will be continued.

(10) *Change in rural area designation.* Where security property is located in an area which has been redesignated from rural to nonrural, a loan may be assumed without considering the nonrural designation.

(c) *Assumption on eligible terms.* A loan may be assumed on eligible terms when the transferee meets eligibility requirements outlined in the loan making regulation for the type loan involved, except that a Section 504 transferee must have only an ownership interest in the property and occupy the dwelling as his/her residence after the assumption is closed. Interest rates and amortization periods will be as follows:

(1) Except as provided in paragraph (c)(2) of this Section, all assumptions will be at the interest rate in effect when the assumption is approved as determined from Exhibit B to FmHA Instruction 440.1 (available in any FmHA office) for the type loan and income category of the transferee. The repayment period may be up to 33 years for Section 502 loans or up to 20 years for Section 504 loans. Based on the transferee's income, a low- or moderate-income loan may be assumed at above-moderate interest rate, or an above-moderate-income loan may be assumed at the low- or moderate-income interest rate if the dwelling complies with the provisions of § 1944.16(b) of Subpart A of Part 1944 of this Chapter. An ORE loan may be assumed at the interest rate consistent with the transferee's income if the property is suitable for the RH program. After assumption, a loan will be classified according to the income category of the assuming party.

(2) In the situations outlined in this subparagraph only, the assuming party will execute an assumption agreement which will be placed in the case file. Form FmHA 1960–6 will not be submitted to the Finance Office. Form FmHA 450–10 will be used to inform the Finance Office when the name on the account is to be changed. The interest rate, final due date, payment date, and whether or not the loan is subject to recapture will not be changed by virtue of the assumption. Situations where these terms are authorized are:

(i) A deceased or divorced borrower's spouse or other relative who acquires title to the property who is not liable for the debt and wishes to assume the loan may do so, after which compliance with the loan conditions is required.

(ii) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in § 1965.116(c) of this Subpart may do so without considering the assuming party's eligibility. In this type situation, interest credits may be considered based on the income of only the occupants of the security property, whether or not the assuming party is one of the occupants, if the loan is otherwise eligible for interest credits.

(iii) A borrower's spouse or other family member who is not liable for the debt and wishes to assume the debt with an existing borrower may do so.

(d) *Assumption on ineligible terms.* When a borrower sells or proposes to sell security property and the purchaser does not meet the eligibility requirements for an RH loan, or the property is not suitable for retention in the program, the debt may be assumed on ineligible terms if the assuming party has repayment ability and it is advantageous to the Government to allow the assumption. Otherwise the account must be liquidated. After assumption on ineligible terms, the loan will be classified as an ORE loan. A payment on the debt of not less than 10 percent of the unpaid balance (including subsidy to be recaptured, if any) must be made and the balance of the debt will be scheduled for repayment in not more than 10 years at the above-moderate income interest rate in effect on the approval date. An ORE loan may be assumed by another ineligible party; however, each time there is an assumption on ineligible terms a payment on the account in the amount of 10 percent of the unpaid balance is required and the interest rate will be the above-moderate-income interest rate in effect when the assumption is approved. Suitable property transferred with assumption on ineligible terms will not be brought back into the SFH program for two (2) years from the date of the assumption unless it is determined and documented by the approval official to be in the best interest of the Government in servicing the loan account.

(e) *Processing and closing transfer with assumption.* (1) *Refund of unused funds and loan funds not advanced.* Funds remaining in a supervised bank account will be applied to the transferor's account unless the transfer is to an eligible applicant and the funds will be used to complete planned development. In this case the funds will be transferred to a supervised bank account in the transferee's name at closing. Obligation of funds not yet advanced, if any, will be cancelled.

(2) *Preparation and distribution of docket.* Loan docket preparation and forms required will be the same as outlined in Subpart A of Part 1944 of this Chapter for Section 502 loans or Subpart J of Pat 1944 of this Chapter for Section 504 loans, with the addition of the forms listed in Paragraph (b)(1) of this section. Forms will be prepared and distributed in accordance with the respective Forms Manual Inserts.

(3) *Title clearance and loan closing.* Title clearance and closing of the assumption and subsequent loan, if any, will be as provided in Part 1807 of this Chapter (FmHA Instruction 427.1), and Subpart A of Part 1944 of this Chapter for a Section 502 loan or Subpart J of Part 1944 of this Chapter for a Section 504 loan. A State supplement will be issued with the advice of OGC to provide instructions on:

(i) The type security instrument which is required to secure recapture of

subsidy when the loan being assumed is not subject to recapture and new loan is not being made simultaneously; and

(ii) Whether or not a new security instrument is required when the term of the assumption is extended beyond the final due date of the loan(s) being assumed.

(4) *Property insurance.* Property insurance will be required in accordance with Subparts A and B of Part 1806 of this Chapter (FmHA Instruction 426.1 and 426.2), as applicable.

(5) *Account balance.* The unpaid balance of the transferor's account will be obtained from the Inquiry Station of the Finance Office or account status report prepared by the Finance Office. If the loan being assumed is subject to recapture of subsidy, the account balances including total subsidy granted and principal reduction attributed to subsidy must be obtained from the Finance Office Inquiry Station. If the borrower has made a payment which has not been applied, the account will be assumed on the basis of the balance reflected by the Inquiry Station. If a payment pending results in overpayment of the transferor's account, the Finance Office will contact the County Supervisor to determine the disposition of the overpayment.

(f) *Release from liability.* Release from liability will be made in accordance with the provisions of § 1965.127 of this Subpart, as appropriate.

§ 1965.127 Release from liability.

(a) *Circumstances where release from liability is authorized.* Release from liability will be accomplished by preparing and distributing Form FmHA 1965–8, "Release From Personal Liability," in accordance with the Forms Manual Insert in the following instances:

(1) When the total debt is assumed on eligible terms, the borrower and co-signer, if any, will be released from liability by the County Supervisor.

(2) When the total debt is assumed on eneligible terms, upon recommendation of the County Committee the borrower and co-signer, if any, may be released only if the term of the assumption is not more than 5 years.

(3) A person who is jointly liable for a loan but has withdrawn may be released from liability by the County Supervisor provided:

(i) A divorce decree did not make the withdrawing party responsible for loan payments;

(ii) The value of the security property is at least equal to the debt;

(iii) The withdrawing party's interest in the security property is conveyed to the person with whom the loan will be continued; and

(iv) The person with whom the loan will be continued has repayment ability.

(4) When the value of the security property is less than the total debt and an amount equal to the market value of the security is assumed in accordance with § 1965.126(b)(4) of this Subpart, or sale outside the program for an amount not less than the market value is approved in accordance with § 1965.125(a)(2) of this Subpart, the transferor (and co-signer, if any) may be released from liability when the determination is made that the transferor (and cosigner, is any) does not have reasonable ability to repay the balance of the debt and the tranferor has acted in good faith, adequately maintained the security property and otherwise fulfilled the loan covenants to the best of the borrower's ability. If a cosigner is involved, the transferor will not be released unless the cosigner is also released. Authority to make the determination on release of liability is as follows:

(i) When assumption on eligible terms is approved, the approval official may make the determination and will document the determination in the case file.

(ii) When assumption on ineligible terms is approved, or when the property is sold outside the program, the County Committee must make the determination on release from liability, which will be documented on Form FmHA 440–2, "County Committee Certification or Recommendation."

(b) *Account balances.* When security property is sold for an amount not less than the market value as authorized in § 1965.125(a)(2) of this Subpart or assumption of an amount equal to the market value is approved as authorized in § 1965.126(b)(4) of this Subpart, *and* the transferor (and co-signor, if any) is released from liability, the Finance Office will satisfy the transferor's account when one of the following is received:

(1) In the case of sale outside the FmHA program, a memorandum from the County Supervisor requesting satisfaction of the transferor's account balance, with a copy of Form FmHA 1965–8 attached indicating release from liability.

(2) In the case of assumption, Form FmHA 1960–6 indicating the transferor is released from liability.

§ 1965.128 Assignment of promissory notes and security instruments.

When a borrower requests it or when the State Director determines that liquidation is necessary, with the advice of and instructions from OGC, the note(s) and security instrument(s) may be assigned on a non-recourse basis to a third party, who has paid the borrower's account in full. The assignment will be made by a form prepared and furnished by OGC on an individual-case basis. The State Director will execute the assignment instrument(s); this authority may not be redelegated.

§ 1965.129 Co-signers.

Although a co-signer is personally liable for repayment of the FmHA debt, he/she is not entitled to any interest in the security or the rights of the borrower under the loan or security instruments. If the security is transferred to the co-signer, he/she may assume the FmHA indebtedness on eligible or ineligible terms, as applicable.

(a) *Replacement of co-signer.* If it becomes necessary to replace a co-signer, a person determined by the County Supervisor to have repayment ability may be substituted. The new co-signer will execute an agreement prepared by OGC to guarantee payment of the balance owed on the RH debt. The original of the agreement will be attached to the original note and a copy of the agreement will be attached to each copy of the note.

(b) *Release of co-signer.* Upon satisfactory substitution of a new co-signer, a co-signer of a note may be released from personal liability by completion of Form FmHA 1965–8 prepared according to the FMI.

§§ 1965.130–1965.135 [Reserved]

§ 1965.136 Redelegation of authority.

The State Director may redelegate in writing any authority delegated to the State Director in this Subpart, except where specifically excluded, to one or more of the following State Office employees: Chief, Rural Housing, or Rural Housing Specialist.

§ 1965.137 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the Assistant Administrator, Housing. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the

Government's interest, propose alternative course of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1965.138–§ 1965.150 [Reserved]

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70)

Dated: June 12, 1984.

Michael E. Brunner,

Acting Administrator, Farmers Home Administration.

[FR Doc. 84-16813 Filed 6-25-84; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AWP-15]

Proposed Alteration of VOR Federal Airways; Arizona and California

Correction

In FR Doc. 84-16149 beginning on page 24896 in the issue of Monday, June 18, 1984, make the following correction:

On page 24897, column one, V-137 [Amended], line two, "feel MST" should read "feet MSL".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Corporate Estimated Income Tax; Proposed Rulemaking

Correction

In FR Doc. 84-7770 beginning on page 11186 in the issue of Monday, March 26, 1984, make the following corrections:

1. On page 11188, third column, 15th line from the bottom, insert "date" after "last".

2. On page 11190, second column, 14th line, "+d" should read "÷d"; and in the ninth line from the bottom, "+28" should read "÷28".

3. On the same page, third column, ninth line from the bottom, "o" should read "of".

4. On page 11191, second column, 16th line, "he" should read "be".

5. On page 11192, first column, fifth line, "taxpayer" should read "taxable"; and in the 16th line from the bottom, "used" should read "uses".

6. On the same page, third column, in paragraph (a)(2)(ii), second line, "A)(z)(i)" should read "(a)(2)(i)".

7. On page 11193, third column, in paragraph (9) of the first computation, second line, "$480,000" should read "$840,000"; in paragraph (e), the fifth line should read "of section 6655(e)(2) and § 1.6655-3(a)(2)) for"; and in paragraph (9) of the second computation, second line, "$90,000" should read "$900,000".

8. On page 11194, first column, in paragraph (5) of the computation, first line, "divided" should read "divide".

BILLING CODE 1505-01-M

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26 CFR Part 1

[LR-26-81]

Taxable Years to Which the Net Operating Loss of a Real Estate Investment Trust May Be Carried; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 172 (b)(1)(E). These amendments are being proposed to conform the regulations to the changes made by the Act of December 24, 1980 (Pub. L. 96-595), the Economic Recovery Tax Act of 1981, and the Technical Corrections Act of 1982. These proposed regulations provide the public with information concerning the taxable years to which a net operating loss of a real estate investment trust (hereinafter REIT) may be carried.

DATES: Written comments and requests for a public hearing must be delivered or mailed by August 27, 1984. These regulations are generally proposed to be effective for net operating losses in taxable years ending after December 31, 1975; however, the regulations conforming to section 207(a)(2)(B)(i) of the Economic Recovery Tax Act of 1981 (§ 1.172-10(a)(3)) shall apply to the determination of the net operating loss deduction for taxable years ending after October 4, 1976, for net operating losses sustained in taxable years ending after December 31, 1972.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-26-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Mitchell H. Rapaport of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave, NW., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3829).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 172 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to the amendments made by section 1606 of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1755), section 1 of the Act of December 24, 1980 (Pub. L. 96-595, 94 Stat. 3464) and by section 207 (a) and (c) (1) and (3) of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34, 95 Stat. 225, 226) (as amended by section 102(d) (1) and (2) of the Technical Corrections Act of 1982 (Pub. L. 97-448, 96 Stat. 2370)) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805). This document also contains proposed amendments that would update the existing regulations under section 172 and delete provisions that are no longer applicable.

Explanation of Provisions

Section 172 provides rules with respect to the treatment of net operating losses including the years to which such losses may be carried. In general, a net operating loss shall first be carried to the earliest of the several taxable years for which such loss is allowable as a carryback or a carryover, and shall then be carried to the next earliest of such several taxable years, etc.

Section 172(b)(1)(E) provides that a net operating loss sustained by a qualified REIT in a qualified taxable year ending after October 4, 1976, shall not be carried back to a preceding taxable year. A net operating loss sustained by a qualified REIT in a qualified taxable year ending before October 5, 1976, shall be a net operating loss carryback to each of the 3 preceding taxable years (but note that § 1.857-2(a)(5) does not allow the net operating loss deduction in computing REIT taxable income for taxable years ending prior to October 5, 1976).

Section 172(b)(1)(E) permits a REIT to carry forward a net operating loss to succeeding taxable years including those for which the taxpayer is a qualified REIT; the number of succeeding taxable years to which a net operating loss may be carried depends in part on the year in which the loss was sustained. A net operating loss sustained by a qualified REIT in a taxable year ending December 31, 1972, shall be a net operating loss carryover to each of the 15 succeeding taxable years. A net operating loss sustained by

a qualified REIT in a taxable year ending before January 1, 1973, shall be a net operating loss carryover to each of the 8 succeeding taxable years. Although the above-stated rules permit a net operating loss incurred in a qualified REIT year to be carried over to succeeding taxable years, such net operating loss deduction may not be allowed in computing real estate investment trust taxable income under § 1.857–2(a)(5) (which provides that, for taxable years ending before October 5, 1976, the net operating loss deduction is not allowed in computing the REIT taxable income of a qualified REIT).

The proposed regulations provide that a net operating loss sustained in a taxable year for which the taxpayer is not a qualified REIT shall be a net operating loss carryback to each of the 3 preceding taxable years. However, see § 1.857–2 with respect to a net operating loss sustained in a taxable year ending before January 1, 1976. In addition, a net operating loss sustained in a taxable year ending after December 31, 1975, shall not be carried back to any qualified taxable year.

A net operating loss sustained in a taxable year ending after December 31, 1975, for which the taxpayer is not a qualified real estate investment trust, in general, shall be a net operating loss carryover to each of the 15 succeeding taxable years. A net operating loss sustained in a taxable year ending before January 1, 1976, for which the taxpayer is not a qualified REIT, in general, shall be a net operating loss carryover to each of the 5 succeeding taxable years; however, where the net operating loss was a net operating loss carryover to one or more qualified taxable years then the net operating loss shall be a net operating loss carryover to each of the 15 succeeding taxable years if the loss could be a net operating loss carryover to a taxable year ending in 1981 by reason of the law in effect on August 12, 1981. If such a loss could not be a net operating loss carryover to a taxable year ending in 1981 under the law in effect on August 12, 1981, then the 15-year carryover period shall not apply, and the applicable carryover period shall be the period determined under the law in effect on August 12, 1981. For purposes of determining whether the loss could be a net operating loss carryover to a taxable year ending in 1981 or, where it could not, for determining the applicable carryover period, the law in effect on August 12, 1981, is that the net operating loss shall have a carryover period of 5 years and such period shall be increased (to a number not greater than 8) by the number of REIT years to which such loss was a net operating loss carryback; however, where the taxpayer acted so as to cease to qualify as a REIT and the principal purpose of such action was to secure the benefit of the allowance of a net operating loss carryover under section 172(b)(1)(B), the net operating loss carryover period shall be limited to 5 years.

This document also contains proposed amendments that would update certain existing regulations under section 172 and delete provisions that are no longer applicable. These changes are of a non-substantive nature. Paragraph (b) of § 1.172–5, with respect to taxable years subject to the 1939 Code, has been removed and reserved; this paragraph has been reserved for administrative convenience and there is no intent to add new regulations under the 1939 Code.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this proposed regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Michell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.851–1—1.860–1

Income taxes, Investment companies, Real estate investment trusts.

26 CFR 1.6411–1—1.6425–3

Income taxes, Administration and procedure, Abatements, Credits, Refunds.

PART 1—[AMENDED]

Proposed amendments to the regulations.

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.172–1 is amended by removing paragraph (f), by redesignating paragraphs (g) and (h) as paragraphs (f) and (g) respectively, and by revising paragraph (e) to read as follows:

§ 1.172–1 Net operating loss deduction.

* * * * *

(e) *Law applicable to computations.* (1) In determining the amount of any net operating loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year.

(2) The net operating loss for any taxable year shall be determined under the law applicable to that year without regard to the year to which it is to be carried and in which, in effect, it is to be deducted as part of the net operating loss deduction.

(3) The amount of the net operating loss deduction which shall be allowed for any taxable year shall be determined under the law applicable to that year.

* * * * *

Par. 2. Section 1.172–2 is revised to read as follows:

§ 1.172–2 Net operating loss in case of a corporation.

(a) *Modification of deductions.* A net operating loss is sustained by a corporation in any taxable year if and to the extent that, for such year, there is an excess of deductions allowed by chapter 1 of the Code over gross income computed thereunder. In determining the

excess of deductions over gross income for such purpose—

(1) *Items not deductible.* No deduction shall be allowed under—

(i) Section 172 for the net operating loss deduction, and

(ii) Section 922 in respect of Western Hemisphere trade corporations;

(2) *Dividends received.* The 85-percent limitation provided by section 246(b) shall not apply to the deductions otherwise allowed under—

(i) Section 243(a) in respect of dividends received from domestic corporations,

(ii) Section 244 in respect of dividends received on preferred stock of public utilities, and

(iii) Section 245 in respect of dividends received from foreign corporations; and

(3) *Dividends paid.* The deduction granted by section 247 in respect of dividends paid on the preferred stock of public utilities shall be computed without regard to subsection (a)(1)(B) of Section 247.

(b) *Example.* The following example illustrates the application of paragraph (a):

Example. For the calendar year 1981 the X corporation has gross income of $400,000 and total deductions allowed by chapter 1 of the Code of $375,000, exclusive of any net operating loss deduction and exclusive of any deduction for dividends received or paid. Corporation X in 1981 received $100,000 of dividends entitled to the benefits of section 243(a). These dividends are included in Corporation X's $400,000 gross income. Corporation X has no other deductions to which section 172(d) applies. On the basis of these facts, Corporation X has a net operating loss for the year 1981 of $60,000, computed as follows:

Deductions for 1981	$375,000
Plus: Deduction for dividends received, computed without regard to the limitation provided in section 246(b) (85% of $100,000)	85,000
Total	460,000
Less: Gross income for 1981 (including $100,000 dividends)	400,000
Net operating loss for 1981	60,000

(c) *Qualified real estate investment trusts.* For taxable years ending after October 4, 1976, the net operating loss of a qualified real estate investment trust (as defined in § 1.172–10(b)) is computed by taking into account the adjustments described in section 857(b)(2) (other than the deduction for dividends paid, as defined in section 561), as well as the modifications required by paragraph (a)(1) of this section. Thus, for example, the special deductions for dividends received, etc., provided in part VIII of subchapter B (other than section 248), as well as the net operating loss deduction under section 172, are not allowed in computing the net operating loss of a qualified real estate investment trust.

§ 1.172–3 [Amended]

Par. 3. Section 1.172–3 is amended as follows:

1. Paragraph (a) is amended by removing the phrase "beginning after December 31, 1953,", by removing "of 1954", and by removing the clause"; this rule shall apply even though the loss year is otherwise subject to the Internal Revenue Code of 1939." and by adding a period after the word "thereunder";

2. Paragraph (b) is amended by removing the phrase "in case of a taxable year beginning after December 31, 1963,";

3. Paragraph (e) is removed; and

4. Paragraph (f) is redesignated as paragraph (e).

Par. 4. Section 1.172–4 is amended as follows:

1. Paragraph (a) (5) is removed;

2. Existing paragraph (a) (6), (7), and (8) are redesignated as paragraph (a) (5), (6), and (7), respectively;

3. Newly redesignated paragraph (a) (7) is amended by removing "1371" and adding "1361" in lieu thereof and by removing "(g)" and adding "(f)" in lieu thereof; and

4. Paragraphs (a) (1) and (b) are revised to read as follows:

§ 1.172–4 Net operating loss carrybacks and net operating loss carryovers.

(a) *General provisions*—(1) *Years to which loss may be carried*—(i) *In general.* In order to compute the net operating loss deduction the taxpayer must first determine the part of any net operating losses for any preceding or succeeding taxable years which are carrybacks or carryovers to the taxable year in issue.

(ii) *General rule for carrybacks and carryovers.* Except as provided in section 172 (b) (1) (C), (D), (E), (F), (G), (H), (I), and (J), paragraphs (a)(1)(iii), (iv), (v), and (vi) of this section, and § 1.172–10(a), a net operating loss shall be carried back to the 3 preceding taxable years and carried over to the 15 succeeding taxable years (5 succeeding taxable years for a loss sustained in a taxable year ending before January 1, 1976).

(iii) *Loss of a regulated transportation corporation.* Except as provided in subdivision (iv) of this subparagraph and § 1.172–10(a), a net operating loss sustained by a taxpayer which is a regulated transportation corporation [as defined in section 172(g)(1)) in a taxable year ending before January 1, 1976, shall, subject to the provisions of section 172(g) and § 1.172–8, be carried back to the taxable years specified in paragraph (a)(1)(ii) of this section and shall be carried over to the 7 succeeding taxable years.

(iv) *Loss attributable to foreign expropriation.* If the provisions of section 172(b)(3)(A) and § 1.172–9 are satisfied, the portion of a net operating loss attributable to a foreign expropriation loss (as defined in section 172(h)) shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 10 taxable years following the taxable year of such loss.

(v) *Loss of a financial institution.* A net operating loss sustained in a taxable year beginning after December 31, 1975, by a taxpayer to which section 585, 586, or 593 applies shall be carried back (except as provided in § 1.172–10(a)) to the 10 preceding taxable years and shall be carried over to the 5 succeeding taxable years.

(vi) *Loss of a Bank for Cooperatives.* A new operating loss sustained by a taxpayer which is a Bank for Cooperatives (organized and chartered pursuant to section 2 of the Farm Credit Act of 1933 (12 U.S.C. 1134)) shall be carried back (except as provided in § 1.172–10(a)) to the 10 preceding taxable years and shall be carried over to the 5 succeeding taxable years.

* * * * *

(b) *Portion of net operating loss which is a carryback or a carryover to the taxable year in issue.* (1) A net operating loss shall first be carried to the earliest of the several taxable years for which such loss is allowable as a carryback or a carryover, and shall then be carried to the next earliest of such several taxable years, etc. Except as provided in § 1.172–9, the entire net operating loss shall be carried back to such earliest year.

(2) The portion of the loss which shall be carried to any of such several taxable years subsequent to the earliest taxable year is the excess of such net operating loss over the sum of the taxable incomes (computed as provided in § 1.172–5) for all of such several taxable years preceding such subsequent taxable year.

(3) If a portion of the net operating loss for a taxable year is attributable to a foreign expropriation loss (as defined in section 172(h)) and if an election under paragraph (c) of § 1.172–9 is made with respect to such portion of the net operating loss, then see § 1.172–9 for the separate treatment of such portion of the net operating loss.

* * * * *

§ 1.172-5 [Amended]

Par. 5. Section 1.172–5 is amended as follows:

1. Paragraph (a)(1) is removed;

2. Paragraph (a) (2), (3), (4), and (5) are redesignated as paragraph (a) (1), (2), (3), and (4), respectively;

3. Newly redesignated (a)(3) is amended by removing "1371" and adding "1361" in lieu thereof and by removing "paragraph (g)" and adding "paragraph (f)" in lieu thereof;

4. Newly redesignated (a)(4) is amended by removing "§ 1.172–12(b)" and adding "§ 1.172–10(b)" in both places that "§ 1.172–12(b)" appears and by removing "paragraph (a)(3)" and "paragraph (a)(3)(i)" and adding "paragraph (a)(2)" and "paragraph (a)(2)(i)", respectively, in lieu thereof; and

5. Paragraph (b) is removed and reserved.

§1.172-7 [Amended]

Par. 6. Paragraph (a) of § 1.172–7 is amended by removing the last sentence thereof.

§ 1.172-8 [Removed]

Par. 7. Section 1.172–8 is removed.

§ 1.172-9 [Removed]

Par. 8. Section 1.172–9 is removed.

Par. 9. Section 1.172–10 is redesignated as § 1.172–8 and amended as follows:

1. Paragraph (d) is removed;

2. Paragraph (e) is redesignated as paragraph (d); and

3. Paragraph (a) is revised to read as follows:

§ 1.172-8 Net operating loss carryovers for regulated transportation corporations.

(a) *In general.* A net operating loss sustained in a taxable year ending before January 1, 1976, shall be a carryover to the 7 succeeding taxable years if the taxpayer is a regulated transportation corporation (as defined in paragraph (b) of this section) for the loss year and for the 6th and 7th succeeding taxable years. If, however, the taxpayer is a regulated transportation corporation for the loss year and for the 6th succeeding taxable year, but not for the 7th succeeding taxable year, then the loss shall be a carryover to the the 6 succeeding taxable years. If the taxpayer is not a regulated transportation corporation for the 6th succeeding taxable year then this section shall not apply. A net operating loss sustained in a taxable year ending after December 31, 1975, shall be a carryover to the 15 succeeding taxable years.

* * * * *

§ 1.172-9 [Redesignated from § 1.172-11]

Par. 10. Section 1.172–11 is redesignated as § 1.172–9 and amended as follows:

1. Paragraph (c)(2) is removed;

2. Paragraph (c)(3) is redesignated as paragraph (c)(2) and is amended by removing "subparagraphs (1) and (2)" and adding "subparagraph (1)" in lieu thereof, by removing "172 (b)(3)(C) (ii)" and adding "172 (b)(3)(A)(ii)" in lieu thereof, and by removing the flush material under subdivision (iv);

3. Paragraph (d) is removed;

4. Paragraphs (e) and (f) are redesignated respectively as paragraphs (d) and (e) and are amended by removing "paragraph (a)(1)(v)" and adding "paragraph (a)(1)(iv)" in each place it appears; and

5. Newly redesignated paragraph (d) is further amended by removing "paragraph (c)" and adding "paragraph (a)" in lieu thereof and by removing "paragraph (c) (2)" and adding "paragraph (a)" in lieu thereof.

Par. 11. Section 1.172–12 is redesignated as § 1.172–10 and amended as follows:

1. Paragraph (a)(2) is redesignated as paragraph (a)(8);

2. Paragraph (c) is redesignated as paragraph (d);

3. Newly redesignated (d) is amended by removing "§§ 1.172–2(e)" and adding "§§ 1.172–2(c)" in lieu thereof; and

4. New paragraphs (a) (1) through (7) and (c) are added to read as follows:

§ 1.172-10 Net operating losses of real estate investment trusts.

(a) *Taxable years to which a loss may be carried.* (1) A net operating loss sustained by a qualified real estate investment trust (as defined in paragraph (b)(1) of this section) in a qualified taxable year (as defined in paragraph (b)(2) of this section) ending after October 4, 1976, shall not be carried back to a preceding taxable year.

(2) A net operating loss sustained by a qualified real estate investment trust in a qualified taxable year ending before October 5, 1976, shall be carried back to the 3 preceding taxable years. However, see § 1.857–2(a)(5), which does not allow the net operating loss deduction in computing real estate investment trust taxable income for taxable years ending before October 5, 1976.

(3) A net operating loss sustained by a qualified real estate investment trust in a qualified taxable year ending after December 31, 1972, shall be carried over to the 15 succeeding taxable years. However, see § 1.857–2(a)(5).

(4) A net operating loss sustained by a qualified real estate investment trust in a qualified taxable year ending before January 1, 1973, shall be carried over to the 8 succeeding taxable years. However, see § 1.857–2(a)(5).

(5) A net operating loss sustained in a taxable year for which the taxpayer is not a qualified real estate investment trust generally may be carried back to the 3 preceding taxable years; however, a net operating loss sustained in a taxable year ending after December 31, 1975, shall not be carried back to any qualified taxable year. However, see § 1.857–2(a)(5) with respect to a net operating loss sustained in a taxable year ending before January 1, 1976.

(6) A net operating loss sustained in a taxable year ending after December 31, 1975, for which the taxpayer is not a qualified real estate investment trust generally may be carried over to the 15 succeeding taxable years.

(7)(i) A net operating loss sustained in a taxable year ending before January 1, 1976, for which the taxpayer is not a qualified real estate investment trust generally may be a net operating loss carryover to each of the 5 succeeding taxable years. However, where the loss was a net operating loss carryback to one or more qualified taxable years, the net operating loss, in accordance with paragraph (a)(7)(ii) of this section, shall be—

(A) Carried over to the 15 succeeding taxable years if the loss could be a net operating loss carryover to a taxable year ending in 1981, or

(B) Carried over to the 5, 6, 7, or 8 succeeding taxable years if paragraph (a)(7)(i)(A) of this section does not apply.

(ii) For purposes of determining whether a net operating loss could be a carryover to a taxable year ending in 1981 under paragraph (a)(7)(i)(A) of this section or, where paragraph (a)(7)(i)(A) of this section does not apply, to determine the actual carryover period under paragraph (a)(7)(i)(B) of this section, the net operating loss shall have a carryover period of 5 years, and such period shall be increased (to a number not greater than 8) by the number of qualified taxable years to which such loss was a net operating loss carryback; however, where the taxpayer acted so as to cause itself to cease to be a qualified real estate investment trust and the principal purpose for such action was to secure the benefit of the allowance of a net operating loss carryover under section 172(b)(1)(B), the net operating loss carryover period shall be limited to 5 years. However, see § 1.857–2(a)(5).

* * * * *

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1)—(i) *Facts.* X was a qualified real estate investment trust for the taxable years ending on December 31, 1972, and December 31, 1973. X was not a qualified real estate investment trust for the taxable years ending on December 31, 1971, and December 31, 1974. X sustained a net operating loss for the taxable year ending on December 31, 1974.

(ii) *Applicable carryback and carryover periods.* The net operating loss must be carried back to the 3 preceding taxable years. Under § 1.857–2 (a)(5) the net operating loss deduction shall not be allowed in computing real estate investment trust taxable income for the years ending December 31, 1972, and December 31, 1973. Where a net operating loss is sustained in a taxable year ending before January 1, 1976, for which the taxpayer is not a qualified real estate investment trust and the loss is a net operating loss carryback to one or more qualified taxable years, the carryover period is determined under § 1.172–10 (a)(7); the carryover period is determined by first applying the rule provided in paragraph (a)(7) (ii) of this section to obtain the carryover period for purposes of determining whether the net operating loss could have been a net operating loss carryover to a taxable year ending in 1981. Under these facts, of paragraph (a)(7) (ii) of this section provides for a 7-year carryover period (5 years increased by the 2 qualified taxable years to which the loss was a net operating loss carryback); therefore, since the carryover period provided for by of paragraph (a)(7) (ii) of this section would allow the net operating loss to be a net operating loss carryover to a taxable year ending in 1981, under of paragraph (a)(7) (i)(A) of this section the applicable carryover period is 15 years (provided that X did not act so as to cause itself to cease to qualify as a real estate investment trust for the principal purpose of securing the benefit of a net operating loss carryover under section 172 (b)(1)(B)).

Example (2)—(i) Facts. The facts are the same as in example (1) except that the taxable year ending December 31, 1973, was not a qualified taxable year for X.

(ii) *Applicable carryback and carryover periods.* The net operating loss must be carried back to the 3 preceding taxable years. Section 1.857–2 (a)(5) provides that the net operating loss deduction shall not be allowed in computing real estate investment trust taxable income for the year ending December 31, 1972. Under these facts the carryover period is determined under § 1.172–10 (a)(7). Paragraph (a)(7) (ii) of this section provides for a 6 year carryover period (5 years increased by the 1 qualified taxable year to which the loss was a net operating loss carryback); therefore, since a 6 year carryover period would not allow the net operating loss to be a net operating loss carryover to a taxable year ending in 1981, paragraph (a)(7) (i)(A) of this section does not apply. Where the rule stated in of paragraph (a)(7) (i)(A) of this section does not apply, of paragraph (a)(7) (i)(B) of this section provides that the applicable carryover period is the carryover period determined under paragraph (a)(7) (ii) of this section, which, in this case, is 6 years (provided that the principal purpose for X acting so as to cause itself to cease to qualify as a real estate investment trust was not to secure the benefit of the allowance of a net operating loss carryover under section 172 (b)(1)(B)).

* * * * *

§ 1.857–6 [Amended]

Par. 12. Paragraph (e)(1)(ii) of § 1.857–6 is amended by removing "§ 1.172–5(a)(5)" and by adding "§ 1.172–5(a)(4)" in lieu thereof.

§ 1.6411–1 [Amended]

Par. 13. Paragraph (d) of § 1.6411–1 is removed.

These amendments are proposed to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue

[FR Doc. 84–16878 Filed 6–25–84; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 301

[LR–228–82]

Corporate Estimated Income Tax; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to proposed rule.

SUMMARY: This document contains corrections to the **Federal Register** publication beginning at 49 FR 11186 (published March 26, 1984) of the notice of proposed rulemaking relating to corporate estimated income tax.

DATES: Generally, the proposed regulations that are the subject of these corrections would be effective for taxable years beginning after December 31, 1982. The proposed rules that would provide guidance to "large corporations" would be effective for taxable years beginning after December 31, 1980. The correction that relates to "section 351" would be effective for taxable years beginning after December 31, 1980, and the correction of the example caption would be effective for taxable years beginning after December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, telephone 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1984, the **Federal Register** published proposed regulations (49 FR 11186) relating to corporate estimated income tax. These proposed amendments were issued under the authority contained in section 7805 of the Internal Revenue Code (68 Stat. 917, 26 U.S.C. 7805).

Need for a Correction

As published in the proposed regulations, the right-hand column of page 11187 incorrectly included the language "section 351 or" in the last two lines of the first full paragraph immediately following the language "where a transaction described in" and preceding the language "section 381 (a) occurs.".

A second correction is required in the left-hand column of page 11193. The second paragraph from the bottom of that page that is captioned *"Example."* should read *"Example.* (a)".

Correction of Publication

Paragraph 1. On page 11187 in the right-hand column, the language "where a transaction described in section 351 or section 381 (a) occurs." is removed from the last two lines of the first full paragraph, and the language "where a transaction described in section 381 (a) occurs." is added in its place.

Paragraph 2. On page 11193 in the left-hand column, the language *"Example."* is removed from the first line of the second paragraph from the bottom of that column, and the language *"Example.* (a)" is added in its place.

George H. Jelly,

Director, Legislation and Regulations Division.

[FR Doc. 84–17027 Filed 6–25–84; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Permanent State Regulatory Program of Indiana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a proposed program amendment to the Indiana

Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSM pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendment submitted by the State on May 31, 1984, consists of regulations which would set forth procedures to be followed in conducting administrative hearings pursuant to the Indiana Adjudication Act, IC 4–22–1.

This document sets forth the times and locations that the Indiana program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATE: Written comments relating to Indiana's proposed modification of its program not received on or before 4:00 p.m. on July 26, 1984, will not necessarily be considered in the Director's decision to approve or disapprove the proposed program modifications.

If requested, a public hearing will be held on July 23, 1984; beginning at 10:00 a.m. at the location shown below under "**ADDRESSES**."

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

If a public hearing is held, its location will be at: OSM Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana; Telephone: (317) 269–2600.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204; Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, D.C. 20240.

Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana.

Indiana Department of Natural Resources, 606 State Office Building, Indianapolis, Indiana 46204.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Indianapolis, Indiana, will not necessarily be considered and include in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business July 16, 1984. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the heaing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard followings those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each pubic meeting will be made a part of the Administrative Record.

II. Discussion of the Proposed Amendment

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32071–32108).

On May 31, 1984, the Director, Indiana Department of Natural Resources, submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment establishes procedures for administrative hearings conducted pursuant to IC 4–22–1. In various provisions of indiana's approved program, reference is made to hearings conducted pursuant to IC 4–22–1.

Pursuant to 30 CFR 732.17 and 732.15, the Director requests public coment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA and consistent with the Federal regulations, the amendment will be incorporated as part of the approved Indiana program.

Procedural Matters

1. Compliance with the National Environmental Policy Act.

The Secreatry has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act.

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act.

This rule does not contain information collection requirements which require

approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subject in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Undergound mining.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1202 *et seq.*))

Dated: June 21, 1984.

J. Lisle Reed,

Acting Director, Office of Surface Mining.

[FR Doc. 84–16855 Filed 6–25–84: 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Reopening and Extension of Public Comment Period on Proposed Amendment to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: On March 5, 1984, the Ohio Division of Reclamation (the Division) submitted to OSM a proposed program amendment to establish a program for blaster training, examination and certification. OSM published a notice in the **Federal Register** on March 27, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 11687). The public comment period ended April 26, 1984.

By letter dated May 25, 1984, the Division submitted an additional modification to its proposed amendment to provide that a person who has failed the blaster's examination may not retake the examination until at least ninety days have passed. OSM also met with the State on May 22, 1984, to review the State's current blaster examination. The Division agreed to revise its current blaster examination to include certain topics required by the Federal rules.

Accordingly, OSM is reopening and extending the comment period of Ohio's March 5, 1984 proposed amendment as modified on May 25, 1984. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendment.

DATE: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 p.m. July 11, 1984 will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to: Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227.

Copies of the Ohio program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters office and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Administrative Record, Room 5124, 1100 "L" Street, N.W., Washington, D.C. 20240.

Ohio Division of Reclamation, Building B–3, Fountain Square, Columbus, Ohio 43224

FOR FURTHER INFORMATION CONTACT: Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION: The Ohio State program was approved effective August 16, 1982, by notice published in the August 10, 1982, **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**.

By letter dated March 5, 1984, Ohio submitted proposed regulations which would establish requirements for the training and certification of blasters working in surface coal mining operations. The new requirements are set forth in OAC 1501:13–14–05—*Training, Examination, and Certification of Blasters*. OSM announced receipt of the amendment and initiated a public comment period on March 27, 1984 (49 FR 11687). The comment period ended April 26, 1984.

OSM met with the State on May 22, 1984, to review the State's current blaster examination. OSM identified several topics required by 30 CFR 850.13(b) that should be included in the State's examination. By letter dated May 25, 1984, the Division agreed to revise its current blaster examination to include the topics identified by OSM. The Division also submitted an additional modification to its proposed amendment to provide that a person who has failed the examination may not retake the examination until at least ninety days have passed. The full text of the proposed program amendment and of the subsequent modification is available for review at the locations listed above under "**ADDRESSES**". Accordingly, OSM is now seeking public comment on the adequacy of Ohio's March 5, 1984 amendment in light of the State's May 25, 1984 modification.

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

Dated: June 19, 1984.

Arthur W. Abbs,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 84–16807 Filed 6–25–84: 8:45 am]

BILLING CODE 4310–05–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6122]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed Rule; Revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Burleigh County of Bismarck, North Dakota.

Due to recent engineering analysis, this proposed rule would revise the proposed determinations of base (100-year) flood elevations published in 46 FR 39625 on August 4, 1981 and in the *Bismarck Tribune*, published on or about July 3, 1981, and July 10, 1981, and hence would supersede those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newpaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at County Engineering Department, Sixth and Bismarck, Bismarck, North Dakota.

Send comments to: Honorable Deanna Hill, Burleigh County Courthouse, 514 E. Thayer, Bismarck, North Dakota 58501.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0230.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in Burleigh County, North Dakota, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Missouri River	Confluence with Burnt Creek	*1,639
Burnt Creek	400 feet upstream from center of Old F.A.S. 1804.	*1,647
	1000 feet downstream from center of U.S. Highway 83.	*1,774
Apple Creek	300 feet upstream from center of Bismarck Avenue.	*1,658

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: June 19, 1984.

Jeffrey S. Bragg,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 84–16909 Filed 6–25–84; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 81–893; FCC 84–238]

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The notice proposes a framework for the acquisition of customer premises equipment (CPE) by federal agencies for national security and emergency preparedness (NSEP) communications functions, and also proposes a mechanism for the detariffing of installed CPE currently owned by Independent telephone companies and tariffed at the federal level. The proposed action is necessary because, in the case of CPE used for NSEP communications purposes, there is a need to reconcile requirements established by the Commission regarding the manner in which carriers may provide CPE with the needs of certain federal agencies for the provision and maintenance of CPE on a coordinated and expedited basis to maintain the effective operation of NSEP communications systems. In the case of CPE owned by the Independents and tariffed at the federal level, the proposed action is necessary in order to implement further deregulatory decisions made by the Commission regarding the provision of CPE by carriers. The intended effects of the proposed action are (1) to facilitate the operation of NSEP communications systems while also continuing to foster the growth of competition in the CPE industry; and (2) to provide that Independents' CPE tariffed at the federal level will be removed from tariff regulation, subject to certain conditions, on January 1, 1985.

DATES: Comments regarding the notice are due July 20, 1984, and replies are due August 9, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John Cimko, Jr., (202) 632–9342.

Second Further Notice of Proposed Rulemaking

In the Matter of Procedures for Implementing The Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry) CC Docket No. 81–893.

Adopted: May 24, 1984.
Released: June 20, 1964.

By the Commission.

I. Introduction

1. This Notice addresses two issues regarding Commission policies relating to the provision of customer premises equipment (CPE). First, this Notice proposes several options for a framework under which certain federal agencies [1] may obtain CPE needed for national security and emergency preparedness (NSEP) functions, and may arrange for maintenance and servicing of this CPE, in a manner which is consistent with the principles and goals we have established in *Second Computer Inquiry*.[2] Second, this Notice

[1] The federal agencies involved are the Department of Defense (DoD), the Department of Energy, the Department of the Interior, the Department of Transportation (including the Federal Aviation Administration and the Coast Guard), the General Services Administration, the Central Intelligence Agency, the Federal Emergency Management Agency, the National Aeronautics and Space Administration, the United States Information Agency, and the Nuclear Regulatory Commission. These agencies are hereinafter referred to as the "specified federal agencies."

[2] Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384, *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied sub nom.* Louisiana Pub. Serv. Comm'n v. FCC, 103 S.Ct. 2109 (1983).

proposes and seeks comment with regard to a structure for the detariffing of embedded CPE which is owned by independent telephone companies and is tariffed at the federal level.

II. Background

2. The rules we established in *Second Computer Inquiry* [3] require the American Telephone and Telegraph Company (AT&T) to provide CPE through a fully separated subsidiary which is not subject to any state or federal tariff regulation. Regulated entities of AT&T, such as AT&T Communications (AT&T–C), are prohibited from engaging in CPE offerings. Equipment previously provided by the Bell Operating Companies (BOCs) was transferred to AT&T in the course of the divestiture of the Bell System, and the newly divested BOCs are authorized to engage in the retail marketing of new CPE through separate organizational structures.[4]

3. We adopted a circumscribed waiver of the Computer II Rules in 1983 to permit the BOCs and AT&T–C to furnish new CPE federal agencies to meet critical NSEP communications needs.[5] The Department of Defense (DoD) and other specified federal agencies were authorized to obtain new CPE from AT&T–C and the BOCs in emergencies declared by the President and in certain other emergenices.[6] We also authorized DoD and other specified federal agencies to obtain service from AT&T–C and the BOCs in other situations in which sole source procurement is permitted under federal regualtions, but we required the identification of at least one other CPE supplier. AT&T–C and the BOCs then would either directly supply the CPE (if they were selected by the government agency involved) or would obtain the CPE from the supplier selected by the agency. *CPE Waiver Order* at para. 16. New CPE furnished under the waiver could not be provided under tariff or added to the embedded rate base. The waiver was to expire on the date of divestiture. *Id.* at para. 18.

4. The treatment of embedded CPE used in NSEP communications systems was not specifically addressed in the *Notice of Proposed Rulemaking* in this docket.[7] In commenting on the *Notice*, Federal Executive Agencies (FEA) argued that embedded CPE associated with certain systems and circuits[8] should not be detariffed and transferred to AT&T Information Systems (ATTIS), but rather should be transferred to AT&T–C so that end-to-end service to DoD and other specified federal agencies could be maintained.

5. In the *CPE Detariffing Order*, we concluded that CPE associated with the systems and circuits designated by FEA would be detariffed and transferred to ATTIS together with other CPE in AT&T's embedded base. *CPE Detariffing Order* at para. 172. We provided, however, that this detariffing of CPE used with NSEP systems would not occur until June 1, 1984, in order to give interested parties an opportunity to comment on the issues raised by FEA and to request waivers of the detariffing requirements as made applicable to the special systems and circuits identified by FEA. *Id.*

6. AT&T, at the request and on behalf of DoD and other specified federal agencies, submitted a petition for such a waiver and for related waivers.[9] The AT&T request for waivers contained four elements: (1) Permit embedded CPE associated with the designated NSEP systems and circuits to be transferred to ATTIS as of January 1, 1984; (2) waive the Computer II Rules, as of January 1, 1984, to the limited extent necessary to permit AT&T–C to be responsible for this embedded CPE as part of its end-to-end service, even though ATTIS would own the CPE; (3) permit AT&T–C to continue obtaining new CPE for these designated systems and circuits; and (4) authorize AT&T–C to continue serving as a single point of contact for the provision of CPE associated with emergency communications service.

7. On December 29, 1983, the Chief, Common Carrier Bureau, adopted on *Order* in this docket granting the waiver requests subject to certain terms and conditions.[10] The *Bureau Waiver Order*

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[3] Section 64.702 of the Commission's Rules and Regulations, 47 CFR 64.702 (hereinafter Computer II Rules).

[4] The CPE retail marketing authority of the BOCs is established in the Modification of Final Judgment (MFJ) approved by the United States District Court for the District of Columbia (hereinafter District Court). *See* United States v. American Tel. & Tel. Co., 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 103 S.Ct. 1240 (1983) (hereinafter United States v. AT&T). We have required the BOCs to establish separate organizational structures to market new CPE. Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services, CC Docket No. 83–115, Report and Order, FCC 83–552, 49 Fed. Reg. 1190 (released Dec. 30, 1983), *reconsideration*, FCC 84–252 (released June 1, 1984) (hereinafter BOC Structure Order).

Under the MFJ, most embedded CPE owned by the Bell System was transferred to AT&T on January 1, 1984, the date of divestiture. We have acted in this docket to permit this embedded CPE to be detariffed and transfered to AT&T Information System (ATTIS) as of the divestiture date, subject to certain requirements and procedures. CC Docket No. 81–893, Report and Order, FCC 83–551, 48 FR 57168 (released Dec. 15, 1983), *reconsideration petitions pending*, Public Notice No. 1445, 49 FR 5672 (released Feb. 6, 1984) (hereinafter CPE Detariffing Order).

[5] American Telephone and Telegraph Company, Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations with Respect to the Department of Defense and Specified Government Agencies, ENF 83–13, Memorandum Opinion and Order, FCC 83–143 (released Apr. 12, 1983) (hereinafter CPE Waiver Order). The terms and conditions of the CPE Waiver Order may be summarized as follows: (1) In presidentially declared emergencies and other emergencies (as defined in DCA Circular 310–130–1), DoD and other specified federal agencies may obtain service, including new CPE, from AT&T–C or regulated BOC entities. (2) In other situations in which sole source procurement is permitted under applicable federal regualtions, DoD and other specified federal agencies may obtain new CPE from AT&T–C or regulated BOC entities. (3) In this latter case, however, AT&T–C or the BOC involved must (a) indicate whether the CPE is available from embedded inventory and, if it is not, identify the CPE which is unavailable; (b) identify at least one unaffiliated supplier which can supply the CPE (unless they have no knowledge of such a supplier); and (c) obtain the CPE from the supplier selected by the federal agency. (4) CPE obtained under the waiver may not be provided under tariff or added to the rate base. (5) Title to any new CPE may be held by the federal agency, AT&T–C, the BOC, or the third party CPE supplier. *See* CPE Waiver Order at paras. 15–17.

[6] Defense Communications Agency Circular 310–130–1, ch. II, para. 2 (Feb. 1982) defines these other emergency situations. *See* CPE Waiver Order at para. 7 n.6.

[7] Docket No. 81–893, Notice of Proposed Rulemaking, 94 FCC 2d 76 (1983) hereinafter Notice).

[8] FEA listed the following systems and circuits as being covered by its request that CPE associated with NSEP functions not be detariffed and transferred to ATTIS: (1) The following Department of Defense systems: Automatic Secure Voice Communications Network (AUTOSEVOCOM); Joint Chiefs of Staff systems (JCS Alerting Network and Minuteman); Strategic Air Command systems (SAC Primary Alerting System; SAC Operations Conference System; and SAC Command Post Command and Control Consoles); North American Air Defense Command (NORAD) Alerting System; Tactical Air Command systems (TAC Command and Control Alerting System and TAC Force Control Management System); Military Airlift Command (MAC) Operational Phone System; Air Force Digital Graphics System (AFDIGS); Air Force Command Post Alerting Network (COPAN); and Air Force Command Post Record Capability (COPREC). (2) The U.S. National Airspace System in the Federal Aviation Administration. (3) The following Federal Emergency Management Agency systems: a classified FEMA system provided under AT&T Tariff FCC No. 260; Emergency Broadcast System; FEMA National Voice System; and FEMA National Warning System. (4) The NRC Emergency Notification System in the Nuclear Regulatory Commission. (5) The following White House Communications Agency systems and equipment: transportable electric consoles; Echo Fox Radio System. FEA Direct Comments at 12–13. The Central Command systems in the Department of Defense (CENTCOM Army Alert Hotline, CENTCOM Air Force Alert Hotline, and CENTCOM Navy/Marine Corps Alert Hotline) were originally listed by FEA but later were deleted because AT&T–C currently is not responsible for CPE for these systems. *See* CPE Detariffing Order at para. 171 & n. 146.

[9] AT&T Petition, ENF 83–13 (filed Dec. 14, 1983).

[10] CC Docket No. 81–893, Order, Mimeo No. 1705 (released Jan. 10, 1984) (hereinafter Bureau Waiver Order).

waived the provisions of the *CPE Detariffing Order* which required that embedded CPE associated with NSEP systems must be tariffed at the federal level until June 1, 1984, waived the Computer II Rules in the manner sought by AT&T, and extended all the provisions of the *CPE Waiver Order* (but narrowed the waiver to apply only to the 21 systems and circuits designated by FEA). *See Bureau Waiver Order* at paras. 13–17. As part of this extension, AT&T was required to continue submitting quarterly reports as required in the *CPE Waiver Order*, and the *Bureau Waiver Order* provided that "costs related to the ownership, installation, and maintenance of [the covered] CPE shall not be borne by AT&T Communications and shall be segregated and charged separately from costs incurred by AT&T Communications in connection with its tariffed services." *Id.* at para. 18.

8. The *Bureau Waiver Order* established waivers on a temporary basis, providing that the waivers would expire on May 31, 1984. *Id.* at para. 21. The Bureau also noted that it would recommend the issuance of a proposed rulemaking in this docket "in order to solicit comments from all interested parties regarding an appropriate framework for meeting the NSEP communications needs of DoD and the specified federal agencies in a manner which gives due consideration to Second Computer Inquiry requirements and principles." *Id.* at para. 1 n. 4. The purpose of this Notice is to provide a forum in which FEA's concerns can be addressed and we can initiate our efforts to establish a permanent structure for accommodating the critical NSEP communications needs of DoD and other specified federal agencies.[11]

III. Provision of CPE for NSEP Functions

9. We are proposing four options for the establishment of a framework for the provision of CPE to meet national defense and emergency communications needs. Under the first option, with regard to the provision of new CPE by AT&T and the BOCs [12] for NSEP communications functions, we propose as a long-term solution an amendment to the Computer II Rules, or a permanent waiver of the Computer II Rules, which would permit AT&T–C (and regulated BOC entities) to maintain end-to-end responsibility for servicing a limited class of critical NSEP systems and circuits. This approach consists of the following elements. First, both AT&T–C and the BOCs would be permitted to be responsible for the acquisition of limited amounts of new CPE (to augment or replace embedded CPE) on behalf of DoD and other specified federal agencies in accordance with the terms of the *CPE Waiver Order*.[13] We invite interested parties to propose and discuss additional terms and conditions which may be necessary to ensure that the arrangements proposed here do not result in unreasonably preferential treatment for AT&T–C or the BOCs. We also request interested parties to comment on whether, and if so, how, we might establish mechanisms which would require carriers and vendors to furnish CPE to AT&T–C or the BOCs (or any other entity established as a single point of contact as a result of this proceeding or otherwise functioning as a single point of contact) on a priority basis to ensure that the government's NSEP needs are met. Second, the terms of the *CPE Waiver Order* (as these terms relate to national security communications systems and circuits) would be narrowed so that AT&T–C and the BOCs would be able to obtain new CPE under the waiver only with regard to the NSEP systems and circuits identified by FEA.[14]

10. Third, we propose that the waiver would continue to apply to the provision of new CPE for emergency communications services, as described in the *CPE Waiver Order*. Fourth, new CPE which is not needed to augment or replace embedded CPE associated with the systems and circuits identified by FEA (or associated with emergency communications services) would not be covered by this proposed amendment or waiver of the Computer II Rules. AT&T and the BOCs would be required to provide this new CPE consistent with the Computer II Rules, or would have to seek specific waivers of the Computer II Rules with respect to this new CPE. Fifth, in cases in which AT&T–C personnel make premises visits when the source of a trouble report is CPE obtained by DoD or the other specified federal agency involved from ATTIS and used for NSEP communications funictions, AT&T–C would be required to bill a maintenance of service charge to DoD or the other specified federal agency in accordance with any applicable tariffs.[15] Sixth, the quarterly reporting requirements which were extended in the *Bureau Waiver Order* would remain in place. *See Bureau Waiver Order* at para. 18. Seventh, AT&T–C or the regulated BOC entity involved would in effect function as a general contractor in providing communications services to DoD and other specified federal agencies. AT&T–C or the BOC would arrange for the procurement of new CPE in conjunction with providing these services, and would be authorized (but not required) to take title to the CPE. Further, the new CPE would not be tariffed and would not be added to the regulatory revenue requirements, and expenses incurred by AT&T–C or the BOC in connection with making such procurement arrangements would be recorded as "below-the-line" expenses. We request parties to comment regarding whether we should establish requirements, under this option and the following options, governing the holding of title to the CPE, or whether this should be left to the discretion of the parties to the transactions involved. It is our tentative view that the approach suggested in this option sufficiently accommodates the needs and concerns of DoD and other specified federal agencies while also minimizing any variance from the general goals of the *Second Computer Inquiry*.

11. With regard to embedded CPE used in connection with the 21 systems and circuits identified by FEA and in connection with emergency communications services, the long-term solution proposed in this first option would provide that all this embedded equipment currently owned by AT&T shall be detariffed and transferred to ATTIS. As we have noted, this action already has been taken on an interim basis in the *Bureau Waiver Order*. We propose that this detariffing and transfer would be carried out in accordance with the conditions and requirements established in the *CPE Detariffing Order*. For example, ATTIS would be

[11] On February 9, 1984, the Bell Atlantic Companies submitted to the Chief, Common Carrier Bureau, a Petition for Partial Reconsideration of the Bureau Waiver Order seeking certain clarifications of the Bureau's action. On February 23, 1984, DoD and certain member agencies of the National Communications System filed an opposition to the Bell Atlantic petition. GTE Service Corporation submitted comments regarding the Bell Atlantic petition on March 5, 1984, and AT&T filed an opposition to the petition on March 12, 1984. These filings have been referred to the Commission by the Bureau and will be held in abeyance until we take further action based on this Notice.

[12] Under our BOC Structure Order, the BOCs have been required to market new CPE through a separate organizational structure. We here are also seeking comment on whether we should waive that requirement with regard to NSEP communications functions, in order to enable the regulated BOC entities to offer end-to-end services to DoD and other specified federal agencies.

[13] For a summary of the terms and conditions of the CPE Waiver Order, see para. 3 n. 5, *supra*.

[14] See para. 4 n. 8, *supra*.

[15] *See, e.g.*, American Tel. & Tel. Co., Maintenance of Service Charges Associated with Private Line Service and Dataphone Digital Service, FCC Tariffs No. 260 and 267, Declaratory Ruling by the Chief, Common Carrier Bureau, Mimeo No. 7640 (released Jan. 5, 1984).

required to establish sale prices and lease rates for the embedded CPE during a transition period in accordance with the terms of the *CPE Detariffing Order*. Further, we request parties to comment regarding the valuation standard which should be used for this embedded equipment, and regarding whether (for purposes of valuation and the establishment of sale prices) the rules of the *CPE Detariffing Order* should apply and this CPE should be aggregated together with all other multi-line CPE transferred to ATTIS. We also propose that the transition period for this transferred equipment should begin no earlier than the effective date of the Order we adopt in this proceeding. We further propose, under this option, to amend the Computer II Rules, or grant a permanent waiver of the Computer II Rules, to enable AT&T–C to be responsible for this embedded CPE and to serve as a single point of contact for DoD and other specified federal agencies. Under this approach, the terms and conditions of the *Bureau Waiver Order* would continue to apply. In the case of any embedded CPE retained by the BOCs and used in connection with NSEP functions, such as circuit switching units and network channel terminating equipment, we propose the same arrangement as we are proposing for AT&T. We have tentatively concluded that this approach achieves the greatest degree of consistency with *Second Computer Inquiry* principles while also fulfilling our mandate under Section 1 of the Communications Act of 1934, 47 U.S.C. § 151, to assist the Nation's defense and protect the safety and property of its inhabitants. Implementation of *Second Computer Inquiry* policies is achieved, under this first option, by applying price predictability and other transitional requirements to the transferred embedded equipment, and by continuing in place the requirement that AT&T–C identify non-affiliated CPE vendors who are capable of meeting particular federal agency equipment needs. National defense concerns are accommodated by easing the application of *Second Computer Inquiry* requirements regarding the 21 systems which DoD has identified as critical to defense needs, and by constructing a framework which enables the federal government to draw upon the experience and expertise of AT&T–C personnel in maintaining these systems on an end-to-end basis.

12. Under the second option, AT&T–C would retain or receive ownership of embedded CPE associated with the critical NSEP systems and circuits identified by FEA. This option also would require that AT&T–C be permitted to own and provide new CPE associated with these critical systems and circuits. AT&T–C also would be authorized to own and provide new CPE needed to meet emergency communications needs. Embedded CPE used in connection with emergency communications needs would remain with ATTIS (as provided in the *Bureau Waiver Order*), but AT&T–C would be permitted to provide end-to-end service, including the provision of embedded CPE, in emergency situations. The equipment would not be provided under tariff or included in regulatory revenue requirements, and AT&T–C would have to follow separate accounting procedures. This approach constitutes a close approximation of the *status quo* regarding the service relationship between AT&T and DoD and other specified federal agencies, but it is our tentative view that such an approach would result in too great a departure from the principles and objectives of the *Second Computer Inquiry*. We are, however, soliciting comments regarding this option so that we can better evaluate whether this is a useful means for ensuring that critical defense and emergency preparedness needs are met.

13. The third option involves expanding the role of Bell Communications Research Incorported (BCR)[16] established in the AT&T Plan of Reorganization [17] to supplant any end-to-end responsibility for NSEP communications needs currently performed by AT&T–C. The AT&T Plan, as amended and approved by the District Court, contemplates that:

> [T]he BOCs and the centralized government communications group [within BCR] will cooperate fully with the interexchange and intraexchange carriers and equipment vendors involved to provide efficient service. Specifically, the centralized group will, if the government desires, serve as a point of contact for other carriers and vendors to arrange for the installation, joint testing, maintenance, restoration, repair and all other operational aspects of BOC-provided NSEP services that are interconnected with services provided by other carriers.

AT&T Plan at 421.

14. The AT&T Plan provides that "AT&T" will retain in its regulated entity its existing government communications organization which will continue to perform all of its current NSEP functions other than those transferred to the Central Staff Organization under this Plan of Reorganization." *Id.* at 423–24. The AT&T Plan also indicates that this government communications organization:

> [W]ill continue to provide a single point of contact for the government with AT&T affiliates for both NSEP situations and those long-term research, manufacturing or equipment needs that require the resources of Western Electric, Bell Telephone Laboratories or other AT&T affiliates. If the government desires, the AT&T organization will also serve as a point of contact for the government to coordinate NSEP communications requests that require interconnection between an AT&T affiliates' service and a service provided by a BOC or another exchange carrier.

Id. at 424.

15. Under the option described here, BCR would replace the government communications organization within AT&T and would become the industry-wide point of contact for DoD and other specified federal agencies for all NSEP communications needs. BCR would be responsible for coordinating all service and equipment arrangements with regulated BOC entities and independent exchange carriers, with AT&T–C and ATTIS, and with other interexchange carriers and vendors selected by the federal agencies involved. BCR would not play any direct role in the selection process. Under this approach, full *Second Computer Inquiry* separation requirements would apply regarding relationships between AT&T–C and ATTIS, and between regulated and unregulated BOC entities. With regard to AT&T, embedded CPE used in connection with the 21 designated systems and emergency communications services would be detariffed and transferred to ATTIS pursuant to the valuation, sale, and price predictability requirements discussed in the first option. *See* para. 11, *supra*. Although this approach would achieve a desirable level of consistency with *Second Computer Inquiry* principles, it is our tentative view that there may be practical, competitive, and operational problems associated with assigning such a role to BCR. It may be difficult for BCR or any other single entity to achieve the desired level of coordination and cooperation which would be necessary to maintain an industry-wide single point of contact. Carriers and vendors

[16] This organization was previously known as the Central Staff Organization and the Central Services Organization. We note that, although the discussion here addresses BCR, we also invite comments regarding whether other industry organizations or other organizations could perform the role described here.

[17] AT&T Plan of Reorganization, United States v. AT&T (filed Dec. 16, 1982) (hereinafter AT&T Plan). The AT&T Plan, in pertinent part, has been approved by the District Court. *See* United States v. Western Electric Co., 569 F.Supp. 990 (D.D.C.), *aff'd sub nom.* California v. United States, 104 S.Ct. 542 (1983).

might be reluctant to enter into such a cooperative venture on an extensive basis. Further, there could be legal impediments to such a centralized structure. Nonetheless, we invite interested parties to comment regarding the viability and advisability of this alternative.

16. The fourth option involves transferring all embedded CPE associated with the designated NSEP systems and circuits to ATTIS, requiring that AT&T provide new CPE for these systems and circuits only through ATTIS, and permitting ATTIS to resell basic transmission service acquired from AT&T–C (or other carriers) for these systems and circuits and for emergency communications services. This approach, in effect, would enable ATTIS, rather than AT&T–C, to function as AT&T's single point of contact for DoD and other specified federal agencies with respect to maintaining and servicing these systems.[18] This alternative constitutes a subset of proposals we already have made in a separate proceeding.[19] The basis for this option is premised on the same intent we expressed in that proceeding: To "allow ATTIS to provide efficient, innovative offerings of basic, resold services themselves or basic, resold services in conjunction with enhanced services or customer-premises equipment in a manner that does not promote the acquisition and abuse of market power, cross-subsidies, or discrimination." *ATTIS Resale Notice* at para. 3. In this context this intent is particularized by the NSEP and safety objectives of the Communications Act.

17. There are two aspects to this option. First, ATTIS would be permitted to resell basic transmission service obtained from AT&T–C and associated with any of the designated systems, but AT&T–C would still be required to make these transmission services available to other vendors on an unbundled, nondiscriminatory basis. ATTIS also would be authorized to resell basic transmission services for these systems which ATTIS acquires from unaffiliated carriers. Thus, ATTIS would be in a position to continue serving as a single point of contact in cases in which DoD or other specified federal agencies exercised their option to obtain transmission service for the designated systems from carriers other than AT&T–C. Under this option ATTIS would be required to submit annual reports to the Commission (which would be available to the public) specifying each carrier which provided ATTIS with basic transmission services and the amounts paid by ATTIS for these services.

18. Second, we seek comment regarding whether, for purposes of such resale, ATTIS should be subject either to streamlined regulation or to forbearance from tariff-filing and facilities-authorization requirements under the Communications Act of 1934.[20] We also seek comments regarding the relative advantages and disadvantages of streamlined regulation and forbearance applied to ATTIS's resold offerings in support of the designated NSEP systems.

19. In requesting comments concerning the costs and benefits of this option, we note our preliminary view that the primary benefit of this approach is that it would permit ATTIS to serve as a single point of contact for purposes of meeting the government's NSEP communications needs. There seems to be sufficient basis for tentatively concluding that important national defense goals are advanced through maintenance of a system which enables the specified federal agencies to make their NSEP communications arrangements on a centralized basis through one vendor. We also seek comments regarding whether the potential problems which we have suggested might result from permitting ATTIS to resell basic services generally [21] also would apply in the context of the resale of basic transmission services associated with the designated NSEP systems and with emergency communications services. We also request parties, in considering this fourth option, to comment regarding whether alternatives other than the extension of resale authority to ATTIS (*e.g.*, permitting ATTIS to function as an agent of DoD for purposes of arranging for transmission services from AT&T–C) would be sufficient to meet our concerns.

IV. Federally-Tariffed CPE Owned by Independent Companies

20. We proposed in the *Notice* a general framework for removing from regulated service embedded CPE owned by the independent telephone companies. *See Notice*, 94 FCC 2d at 109–10. That framework, however, would apply only to embedded equipment currently subject to state tariffs and would not embrace equipment owned by the independents and tariffed at the federal level. Our purpose here is to seek comments from interested parties regarding a proposal for the detariffing of this federally-tariffed embedded equipment.[22] (We will establish rules for the detariffing of equipment owned by the independents and currently tariffed at the state level in a subsequent action in this docket.)

21. It is our understanding that the amount of embedded CPE owned by the independent telephone companies and tariffed at the federal level comprises only a small portion of the total amount of embedded equipment owned by the independents. This CPE usually is associated with interstate private line services which the independents offer as connecting or concurring carriers. The CPE includes data sets, conference telephone sets, hand sets, and other equipment. We note, however, that it is difficult to acquire accurate information regarding the value of this federally-tariffed CPE and we are hopeful that parties filing comments in response to this Notice will include data which shed light on this question.

22. In our view, it may be the case that, even though the total amount of this federally-tariffed equipment may be small in comparison with the total amount of CPE owned by independent telephone companies, a significant portion of embedded CPE owned by particular independent companies may be tariffed at the federal level.[23] It thus

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[18] Although the text addresses only the situation of ATTIS, we also request comment regarding whether the resale option, if adopted, also should apply to the separate organizational structures established by the BOCs. *See* para. 9 & n. 12, *supra*. Further, we seek comment regarding whether such resale by the BOCs should be limited to intra-LATA service.

[19] Provision of Basic Services Via Resale by Separate Subsidiary, CC Docket No. 83–1375, Notice of Proposed Rulemaking, FCC 83–604, 49 FR 1248 (released Jan. 5, 1984) (ATTIS Resale Notice).

[20] *See* ATTIS Resale Notice at para. 14 & n. 25. The type of streamlined regulation and forbearance discussed here is the same as that specified in the ATTIS Resale Notice. As noted in the ATTIS Resale Notice, certain obligations under Title II of the Communications Act of 1934 (*e.g.*, the complaint process and the requirement of just, reasonable, and nondiscriminatory rates) would apply to ATTIS's resold services.

[21] *See id.* at para. 9 & nn. 18–20.

[22] It should be noted that, under the CPE Detariffing Order, no distinction was made between Bell System embedded CPE tariffed at the state or federal level. Embedded equipment owned by AT&T, or owned by the BOCs and transferred to AT&T at divestiture, which is tariffed at the federal level has been detariffed in accordance with the terms of the CPE Detariffing Order and is subject to the sale and lease requirements and other requirements established in the CPE Detariffing Order. It also should be noted that we indicated in the CPE Detariffing Order that we would address issues relating to federally-tariffed CPE owned by the independents in a subsequent action in this proceeding. *See* CPE Detariffing Order at para. 175. We do so here.

[23] This may be particularly true for small companies, such as Benton Ridge Telephone Company, Inter-Community Telephone Company, Clifton Forge-Waynesboro Telephone Company, and Peninsula Telephone and Telegraph Company.

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becomes important to fashion a detariffing mechanism which works efficiently with respect to all embedded equipment remaining under federal tariffs and which also is sufficiently flexible to ensure that companies which have a substantial portion of their embedded CPE tariffed at the federal level are subject to detariffing rules and procedures which do not disadvantage their ratepayers or investors, while adequately balancing the interests of users of this CPE.

23. We propose to establish a detariffing plan under which federally-tariffed CPE owned by independent telephone companies would be detariffed on a "flash-cut" basis as of January 1, 1985. Under this approach, the equipment would be removed from regulated service at adjusted net book value [24] as of that date. In-place customers would be given the opportunity to purchase their equipment at any time during the two-year period following detariffing at sale prices which, in the aggregate, do not exceed the adjusted net book value of the equipment plus reasonable transaction costs. Accounting requirements currently applicable to the offering of new CPE, by companies which do not establish separate subsidiaries for such offerings, also would apply to this detariffed CPE. We also seek comment regarding whether we should establish a price predictability program, based upon the requirements applicable to ATTIS established in the *CPE Detariffing Order*, under which lease rates charged by the independent companies would be subject to established ceilings. Existing contracts applicable to this detariffed equipment would remain in effect and would be enforceable by the independent company and the customer involved. The company would have to establish accounting mechanisms for the detariffed equipment which comply with the accounting requirements we will establish in this docket for state-tariffed embedded CPE owned by the independents. *See CPE Detariffing Order* at para. 175; *Notice*, 94 FCC 2d at 106–07.

24. Our goal, in formulating this proposal for the deregulation of independent companies' CPE tariffed at the federal level, is to effectuate the detariffing of this equipment as expeditiously as possible while also protecting the interests of ratepayers, investors, and in-place customers, and investors. We invite interested parties to comment on our proposal and to present and discuss other alternatives for the detariffing of this embedded equipment.

V. Regulatory Flexibility Act Certification

25. This Notice proposes rules and policies under which AT&T and the BOCs may provide new and embedded CPE to federal agencies as a part of end-to-end NSEP communications service. The objective of this proceeding is to establish a workable and durable framework for the provision of this CPE in a manner which accommodates national defense and emergency preparedness goals as well as the policies of *Second Computer Inquiry*. This Notice also proposes a framework for the deregulation of embedded CPE owned by independent telephone companies and currently tariffed at the federal level, with the objective of establishing requirements and procedures which accommodate the particular needs of these independent companies. The authority for this proposed rulemaking proceeding is contained in Sections 4(i), 4(j), 201–205, 213, 218, 220, and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 213, 218, 220, 403.

26. We certify that small business entities, as defined for purposes of the Regulatory Flexbility Act, 5 U.S.C. 602–612, would not be affected by this proposed rulemaking. The proposals made in this Notice would affect AT&T, the BOCs, and the independent telephone companies. We conclude that these entities are not small businesses within the meaning of the Regulatory Flexibility Act. This is the case regarding the independent companies because each of them is the dominant provider of telephone service within its service area. *See Notice*, 94 FCC 2d at 114. We also conclude that there are no federal rules which would overlap, duplicate, or conflict with the action proposed in this Notice. We note that, even though the Regulatory Flexibility Act does not apply to independent telephone companies, our proposal regarding the detariffing of CPE owned by the independents and tariffed at the federal level complies with the spirit of that statute because it will have the effect of reducing administrative burdens faced by small independent telephone companies.

VI. Comment Filings; Ordering Clauses

27. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantial disposition of the matter is to be considered in a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever occurs earlier. In general, an *ex parte* presentation is any written or oral communiation (other than formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding.

28. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation, and that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

29. Accordingly, it is hereby ordered, that, pursuant to Sections 4(i), 4(j), 201–205, 213, 218, 220, and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 213, 218, 220, 403, and pursuant to Section 553 of Title 5, United States Code, notice is hereby given of the proposed adoption of new or modified rules, in accordance with the discussion and delineation of issues in this Notice and on the basis of previous notices and filings in this proceeding.

30. It is further ordered, that all interested persons may file comments onthe issues and proposals discussed in this Notice not later than July 20, 1984 and that replies may be filed not later than August 9, 1984. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, an original and five copies of all statements, briefs, comments, or replies shall be filed with the Federal Communications Commission, Washington, D.C. 20554, and all such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, D.C., offices. In reaching its decision, the Commission may consider information

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which have a significant amount of assets tariffed at the federal level. *See* FCC Tariff No. 260 at 253–58 (revisions effective Apr. 13, 1983 and Aug. 31, 1983).

[24] Adjustments to net book value would be made in accordance with the principles and rules adopted with respect to the Bell System in the CPE Detariffing Order.

and ideas not contained in filings, provided that such information is reduced to writing and placed in the public file, and provided that the fact of the Commission's reliance on any such information or ideas is noted in the *Order*.

31. It is further ordered, that the Secretary shall cause this Notice of Proposed Rulemaking to be published in the **Federal Register**.

32. It is further ordered, that the Secretary shall transmit a copy of this Notice to the Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-16929 Filed 6-25-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 15

[Gen. Docket No. 83-325; RM-4062; RM-4075]

Amendment of the Commission's Rules To Add New Interim Provisions for Cordless Telephones; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On May 23, 1984, the Commission released a Further Notice of Proposed Rulemaking (FCC 84-232) in this proceeding regarding cordless telephones. Inadvertently, the document was published twice (first on May 25, 1984, 49 FR 22112, then again on June 6, 1984, 49 FR 23397). Because the comment/reply comment dates are affected by this error, this document establishes June 6, 1984 as the correct publication date. This is to allow sufficient time for comments and replies.

DATES: Comments and reply comments regarding the proposed rule are due by July 9, 1984 and July 24, 1984 respectively, as set forth in the June 6, 1984 publication.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Julius Knapp, (202) 653-8247.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-16931 Filed 6-25-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 31

[CC Docket No. 84-468]

Amendment of the Commission's Rules To Revise the Accounting Provisions for Cost of Removal, Gross Salvage, and Reusable Plant; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry; Extension of comment/reply comment period.

SUMMARY: This Commission is granting a request by the United States Telephone Association (USTA) for an extension of time to file comments in the Commission's Notice of Inquiry concerning uniform system of accounts in Docket 84-468, FCC 84-199, released May 16, 1984, and a request for a waiver of § 1.46(b) of our rules which requires requests for extension of time to file comments in rulemaking proceedings to be filed at least 7 days before the filing date. This additional time should provide all parties adequate time to analyze and address all issues raised in this proceeding.

DATES: Comments and reply comments are now due by July 12, 1984 and July 27, 1984 respectively.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Chief, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: The Notice of Inquiry was published on May 21, 1984, 49 FR 21375.

Order

In the matter of amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, to revise the accounting provisions for cost of removal, gross salvage, and reusable plant (CC Docket 84-468).

Adopted: June 15, 1984.

Released: June 18, 1984.

By the Chief, Common Carrier Bureau.

1. We have before us a motion filed on June 13, 1984, by the United States Telephone Association (USTA) for an extension of time to file comments on our Notice of Inquiry (NOI) in Docket 84-468 (FCC 84-199, released May 16, 1984). USTA requests that the time for filing such comments be extended from June 15, 1984, to July 12, 1984. USTA also requests a waiver of § 1.46(b) of the Commission's rules which requires motions for extension of time to be filed at least 7 days before the filing date.

2. As indicated by USTA, the NOI seeks comments on several accounting recommendations of the Telecommunications Industry Advisory Group (TIAG) and a dissenting report by the National Association of Regulatory Utility Commissioners (NARUC), both of which were submitted to the Commission on January 9, 1984. In support of its motion, USTA states that its mid-size and smaller exchange carriers need additional time because they do not have the accounting resources available to develop promptly the various tax consequences and revenue impacts called for in the NOI.

3. We hereby grant USTA's request to extend the date for filing comments from June 15, 1984, to July 12, 1984, and USTA's request for a waiver of § 1.46(b) of the Commission's rules. This additional time period should provide all parties adequate time to analyze and address all the issues raised in this proceeding.

4. Accordingly, it is ordered, pursuant to § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291, that, the due date for filing comments in this proceeding is extended to July 12, 1984, and the due date for reply comments is extended to July 27, 1984.

William F. Adler,

Deputy Chief, Policy, Common Carrier Bureau.

[FR Doc. 84-16933 Filed 6-25-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-600; RM-4642]

FM Broadcast Station in East Jordan, Michigan; Proposed Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 265A to East Jordan, Michigan, in response to a petition filed by Midwest Radio Consultants. The proposed assignment could provide a first FM service to that community.

DATES: Comments must be filed on or before August 6, 1984, and reply comments on or before August 21, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (East Jordan, Michigan); MM Docket No. 84-600, RM-4642.

Adopted: May 15, 1984.

Released: June 14, 1984.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Midwest Radio Consultants ("petitioner"), requesting the assignment of FM Channel 265A to East Jordan, Michigan, as that community's first FM service. The petitioner filed information in support of the proposal, but did not state that he would apply for the channel, if assigned. Petitioner is expected to do so in his comments.

2. Channel 265A can be assigned to East Jordan, Michigan, in compliance with the minimum distance separation requirements of the Commission's Rules. Canadian concurrence must be obtained since the proposed assignment is within 320 kilometers (200 miles) of the common U.S.-Canadian border.

3. In view of the fact that the proposed assignment could provide a first FM service to East Jordan, Michigan, the Commission believes it is appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
East Jordan, Michigan		265A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before August 6, 1984, and reply comments on or before August 21, 1984, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner, as follows:

Midwest Radio Consultants, David C. Schaberg, Post Office Box 11101, Lansing, Michigan 48901-1101.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 84-16942 Filed 6-25-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR PART 73

[Gen. Docket No. 84-282]

General Fairness Doctrine Obligations of Broadcast Licensees; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry; extension of reply comment period.

SUMMARY: Upon further reflection, the General Counsel's Office has decided that additional time for interested persons to review initial comments and prepare reply comments in Gen. Docket 84-282 Concerning General Fairness Doctrine Obligations of Broadcast Licensees is warranted and would serve the public interest.

DATE: Initial comment date originally extended to September 5, 1984, remains the same but the reply comment period now expires November 8, 1984.

ADDRESS: Submit comments to Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Bailey (202) 254–6530.

SUPPLEMENTARY INFORMATION: The Notice of Inquiry was published on May 14, 1984, 49 FR 20317.

Order Extending Reply Comment Period

In the matter of inquiry into § 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees, (Gen. Docket No. 84–282).

Adopted: June 12, 1984.
Released: June 15, 1984.

1. On April 11, 1984, the Commission adopted a notice of inquiry in the above-captioned proceeding relating to the obligations imposed upon broadcast licensees under the general fairness doctrine and originally set August 6, 1984, for the filing of initial comments and September 5, 1984, for the filing of reply comments. *See Notice of Inquiry in Gen. Docket 84–282,* FCC 84–140 (released May 8, 1984). On May 17, 1984, Media Access Project filed a motion for extension of time requesting that the initial comment period be extended to November 16, 1984, and the reply comment period to February 6, 1985, on the basis, *inter alia,* that such "an unusually lengthy period of time for comments" was necessary "due to the extraordinary nature of the Notice of Inquiry." By *Order,* adopted June 4, 1984 (Release No. 4674), the General Counsel's Office denied in part MAP's original request but granted a limited extension of time to allow interested persons to file initial comments on or before September 6, 1984, and reply comments on or before October 9, 1984.

2. Upon further reflection, the General Counsel's Office has decided that, although no additional time is warranted for submission of initial comments, which are now required to be filed on or before September 6, 1984, it believes that the reply comment period which is scheduled to expire on October 9, 1984, approximately thirty days later, may not provide sufficient time for interested persons to review the initial comments and prepare reply comments that are responsive to the issues in those initial comments. For these reasons, a further limited extension of time for reply comments would serve the public interest.

3. Therefore, it is hereby ordered, That pursuant to the applicable procedures set out in §§ 1.4 and 1.415 of the Commission's Rules and Regulations, 47 CFR 1.4 and 1.415, and the authority delegated in § 0.251 of the Commission's Rules and Regulations, 47 CFR 0.251, interested persons may file reply comments in the above-captioned proceeding on or before November 8, 1984.

Bruce E. Fein,
General Counsel.

[FR Doc. 84–16834 Filed 6–25–84; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 40674–4074]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA isssues a proposed rule to implement Amendment 9 to the fishery management plan for the Commercial Tanner Crab off the Coast of Alaska. Implementation of measures contained in this amendment is necessary to adjust fishing seasons and areas based on current harvest levels and socioeconomic needs of the fishery. Implementation would also update a maximum sustainable yield and allowable biological catches, from which optimum yields are derived. These measures are intended to promote an orderly fishery that is consistent both with the needs of the industry and with conservation requirements.

DATE: Written comments on the amendment, proposed rule, environmental assessment (EA), and regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) must be received on or before August 3, 1984.

ADDRESS: Comments should be mailed to Robert W. McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802, or delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska. Copies of the amendment, EA, and RIR/IRFA may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501, telephone 907–274–4563.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Biologist, Kodiak Field Office, NMFS), 907–486–4791.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP) was developed by the North Pacific Fishery Management Council (Council) and approved and implemented by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), under the Magnuson Fishery Conservation and Management Act, Pub. L. 94–265, as amended, 16 U.S.C. 1801–1887 *et seq.* (Magnuson Act). The FMP was published in the **Federal Register** on May 6, 1978 (43 FR 21170). Following initial implementation of the FMP in December 1978, the Assistant Administrator has approved and implemented eight amendments to the FMP that had been developed by the Council.

The Secretary of Commerce (Secretary) has received Amendment 9, which was approved by the Council at its July 1983 meeting. A notice of its availability has been published in the **Federal Register** (49 FR 22362, May 29, 1984), inviting written data, views, or comments on the amendment by August 3, 1984. A description of the management measures contained in Amendment 9 follows:

A. Establish a Framework Provision for Setting Tanner Crab Fishing Seasons

This framework management measure provides a mechanism for setting season opening and closing dates in accordance with biological or socioeconomic factors. Seasons are usually closed during the biologically sensitive period of the life cycle of Tanner crab, which is generally from spring to fall, although the timing for individual stocks may vary somewhat, necessitating some adjustments in seasons. Winter through early spring is generally the acceptable period for harvesting crab from a biological standpoint. However, molting Tanner crab have been found to some extent at all times of the year and in every area.

Seasons are usually closed to protect the spawning population of male Tanner crab during their migrations into shallow water spawning grounds and to allow sufficient time preceding peak spawning periods so that spawning males are not overharvested as they segregate into discrete schools immediately prior to spawning. After molting, sufficient time is allowed until shells have hardened to enable handling with minimal mortality and damage. Seasons may also remain closed in consideration of the time of egg hatching by females.

Fishing seasons are opened during periods when crab are not molting or reproducing, and when handling mortality should be low and meat content high. These periods may last up to nine months, far exceeding the time required to harvest the available catch. In some areas, provision for an open season may be desirable to provide for an exploratory fishery on underutilized stocks. An opening may also be justified if adverse environmental conditions such as sea ice covering the fishing grounds prevent utilization of harvestable crab during a normal season even though the opening were during a period that was not optimal relative to the biology of the crab. An opening during a sensitive biological period would be designed to ensure that no irreparable damage will be done to any Tanner crab stock.

To meet the objectives of the FMP, the Council and the Regional Director may therefore consider the following factors in setting fishing seasons:

- *Deadloss.* Rational—All Tanner crab must be alive when processing begins. Those dying prior to processing are classed as "deadloss" and discarded. They are counted as part of the harvest and the optimum yield (OY). Deadloss increases if crab are (1) in softshell condition, (2) not completely filled out, (3) held for long periods in boat tanks or processor holding tanks, (4) held in tank contaminated by fresh or warm water, and (5) handled too many times. Seasons should be set when crab are hard and well filled out, and scheduled in relation to other fishing seasons and activities to promote orderly deliveries and processing, thereby reducing to a minimum the time a catch is kept in vessel or processor holding tanks. Warm water temperatures and periods when fresh water is on the surface of bays and harbors should be avoided if possible, since both factors increase mortality in holding tanks.
- *Recovery rate.* Rationale—Since different segments of a stock within a fishing area may fill out at different times during the acceptable biological season, it is not always possible to harvest all crab in an area during the best meat recovery period. Seasons should be scheduled to produce the best possible recovery rate, which is the ratio of meat recovered in proporation to live weight.
- *Weather.* Rationale—Seasons should be scheduled to minimize the period of severe weather conditions during the fishery to avoid loss of fishing time and losses of lives and ships because of adverse conditions.
- *Costs.* Rationale—Costs of industry operations are affected by the timing of seasons. Seasons should be scheduled to minimize these costs.
- *Other fisheries.* Rationale—Seasons should be scheduled in consideration of other fisheries that will be making demands on the same harvesting, processing, and transportation systems needed in the Tanner crab fishery.
- *Coordinated season timing.* Rationale—Seasons should be scheduled in consideration of the need to time Tanner crab seasons relative to one another to distribute fishing effort, prevent gear saturation in a particular area, and allow maximum participation in the fishery by all elements of the Tanner crab fleet.
- *Enforcement and management costs.* Rationale—Seasons should be scheduled in consideration of the costs of enforcement and management before, during, and after an open season as affected by the timing and area of different Tanner crab seasons and as affected by seasons for king crab and other resources.

The Council normally receives testimony on these factors from representatives of the industry and from professional fishery managers at joint meetings of the Council Alaska Board of Fisheries, which are usually conducted during March of each year. If the Council determines that these factors warrant adjustments to previously specified opening or closing dates of any fishing season following receipt of testimony, it will recommend to the Regional Director that the seasons be adjusted.

The Secretary will publish a notice in the **Federal Register**, specifying the adjustments he considers necessary, as soon as practicable after receiving the Council's recommendations. The notice will invite comments for a 30-day period from the interested public on the adjustments and whether they are consistent with the FMP. The Secretary will then publish a second notice approving, disapproving, or partially disapproving the season adjustments based on comments received and the consistency of the adjustments with the objectives of the FMP, the national standards, and other applicable law.

B. Broaden the Secretary's Field Order Authority To Adjust Seasons or Fishing Areas for Socioeconomic Reasons

This management measure will add to the scope of criteria for which the Secretary may find it necessary to make inseason adjustments to harvest levels and season opening and closing dates. In addition to the biological criteria already provided for in the FMP, the Secretary will also have the authority to take prompt action to make such adjustments for factors that relate to socioeconomic conditions in the fishery, if he finds that new information so requires. The Secretary will issue a field order in the **Federal Register**, making the inseason adjustment to the season opening or closing dates. He may decide for good cause to make the adjustments without affording a prior opportunity for public comment. An after-the-fact comment period of 15 days will be provided, however, when public comments on the necessity for, and extent of, the adjustment will be received. If comments are received, he will reconsider the necessity for the adjustment and either continue, modify, or rescind it, publishing his decision and responses to any comments in the **Federal Register**.

C. Establish New Optimum Yields for Tanner Crab Stocks Based on the Best Available Scientific Information

Significant changes in the status of Tanner crab stocks have occurred in many districts. Therefore, the values of maximum sustainable yield (MSY) and acceptable biological catch (ABC) that are specified in the FMP are being updated to reflect these changes. Values for OYs, derived from the amended ABCs, are proposed. (See Table of MSYs and ABCs for Tanner crab stocks in the Registration Areas and districts). These changes are required to bring the FMP into conformity with the best available scientific information. Fishermen frequently rely on published values as a guide to current and expected stock conditions and potential harvests. With the close relationship that exists between the attainment of OY and the setting of fishing seasons, this measure would serve to announce to fishermen the best available information on stock conditions.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97–453, requires the Secretary to publish regulations proposed by a Council within 30 days of receipt of the amendment and regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment for this

amendment and concluded that no significant impact on the human environment will result from this rule. A copy of the environmental assessment may be obtained from the Council for review and comment at the address listed above.

The Council has determined that approval and implementation of this rule would be carried out in a manner that is consistent to the maximum extent practicable with the Alaska Coastal Management Program. The State of Alaska's Office of Management and Budget concurred with this determination on July 11, 1983.

TABLE OF MSYS AND ABCS FOR TANNER CRAB STOCKS IN THE REGISTRATION AREAS AND DISTRICTS

[All figures are in millions of pounds]

Registration area	District	MSY	Years on which MSY is based	ABC	Source
A (Southeastern)	Southeast	1.7	1973–82	1.0 to 3.0	Alaska Department of Fish and Game (ADF&G) harvest guideline.
	Yakutat	1.4	1973–82	0.1 to 1.0	ADF&G harvest guideline; 0.1 figure equals 1983 catch.
E (Prince William Sound)		4.3	1973–82	1.5 to 3.5	ADF&G harvest guideline based on surveys and recent catch data.
H (Cook Inlet)		4.2	1973–82	1.5 to 3.0	ADF&G harvest guideline based on surveys and recent catch data.
J (Westward)	Kodiak	22.5	1973–82	11.0 to 33.0	ADF&G index surveys and trawl surveys.
	Chignik	[illegible]	1973–82	0.5 to 5.0	ADF&G index surveys and trawl surveys.
	South Peninsula	6.7	1973–82	2.0 to 6.0	ADF&G index surveys.
	Eastern Aleutians	[illegible]	1973–82	0.1 to 2.0	NMFS trawl surveys.
	Western Aleutians	0.3	1973–82	0.1 to 2.0	1978–83 catch data.
	Bering Sea:				
	Chionoecetes bairdi	32.0	1978–83	5.0 to 28.5	NMFS trawl surveys; 28.5 figure is based on highest estimates of stock abundance during 1978–83 using an exploitation rate of 0.4 and an average weight of 2.3 lbs. per crab; 5.0 figure is based on lowest catch during 1978–83.
	Chionoecetes opilio	30.0	1978–83	20.0–130.0	NMFS trawl surveys; 130.0 figure is based on 1978–83 data for all male crabs captured, using an exploitation rate of 0.58 and an average weight of 1.2 lbs. per crab; 20.0 figure is based on lowest catch during 1978–83.

The Administrator of NOAA has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291, but that the proposed rule, if implemented, would have a significant economic impact upon a substantial number of small domestice entities for the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* These determinations were base on an analysis contained in an RIR/IRFA prepared by the Council. The following is a summary of the analysis in the RIR/IRFA.

1. A framework mechanism based upon meeting biological and/or socioeconomic criteria for development of season opening dates is preferred. This form of framework allows the Secretary the flexibility to receive and act upon the best available industry and biological information, while at the same time having guidance in the criteria to be met. Although the constraints on the Secretary are broader in scope, criteria are included that would provide guidance.

2. A rule giving the Secretary broader authority to make inseason modifications of seasons and areas on the basis of new socioeconomic information as well as on biological information is superior to considering only biological information. Needs of the industry can be responded to better and in a more timely manner.

3. Updating the value of ABC on which OYs are based is superior to not changing them. The values, which indicate the biological status of stocks, are based on the best available information obtained during recent years of the fishery.

This proposed rule is exempt from the procedures of E.O. 12291 under Section 8(a)(2) of the order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97–453, require the Secretary to publish this proposed rule 30 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why following the regular procedures of the order is not practicable.

This proposed rule does not contain a collection of information requirement within the meaning of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fish, Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: June 20, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 671—[AMENDED]

For the reasons set forth in preamble, it is proposed to amend 50 CFR Part 671 as follows:

1. In § 671.2, new definitions for "Council" and "FMP" are added in appropriate alphabetical order as follows:

§ 671.2 Definitions.

* * * * *

Council means the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, telephone 907–274–4563.

* * * * *

FMP means the Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska

* * * * *

2. In § 671.21, Table 1 at paragraph (a) is revised to read as follows:

§ 671.21 Optimum yield.

(a) * * *

TABLE 1. OPTIMUM YIELDS (MILLIONS OF POUNDS) OF TANNER CRAB STOCKS IN THE FISHING DISTRICTS OR REGISTRATION AREAS OFF ALASKA [1]

Registration area—district	Optimum yield
Southeastern (A):	
Southeast	1.0 to 3.0.
Yakutat	0.1 to 1.0.
Prince William Sound (E)	1.5 to 3.5.
Cook Inlet (H)	1.5 to 3.0.
Westward (J):	
Kodiak	11.0 to 33.0
Chignik	0.5 to 5.0.
South Peninsula	2.0 to 6.0.
Eastern Aleutians	0.1 to 2.0.
Western Aleutians	0.1 to 2.0.
Bering Sea:	
C. bairdi	5.0 to 28.5.
C. opilio	20.0 to 130.5 = domestic annual harvest.

[1] Catches of Tanner crab in a State of Alaska registration area or district will be considered part of the optimum yield specified for the contiguous Federal registration area or district of the same name.

* * * * *

3. In § 671.26, paragraph (a) is revised to read as follows: paragraphs (c)(2), (d)(2), (e)(2), and (f)(2) are removed, and paragraphs (c)(3), (d)(3), and (f)(3) are redesignated as paragraphs (c)(2), (d)(2), and (f)(2), respectively.

§ 671.26 Seasons, general gear restrictions, and registration areas.

(a) *Season dates*— (1) *Criteria for setting season opening and closing dates.* The Council may recommend to the Regional Director Tanner crab season opening and closing dates that it finds to be necessary in accordance with the following factors:

(i) *Deadloss*—the need to prevent or minimize deadloss, i.e. mortality of crab prior to processing.

(ii) *Recovery rate*—the need to increase the meat recovery rate.

(iii) *Weather*—the need to shorten the period of severe weather conditions during the fishery to minimize unsafe fishing time and losses of ships and crew.

(iv) *Costs*—the need to minimize costs to the industry.

(v) *Other fisheries*—the need to consider demands by other fisheries on harvesting, processing, and transportation systems.

(vi) *Coordinated season timing*—the need to distribute fishing effort and thus prevent gear saturation in a particular area.

(vii) *Enforcement and management costs*—the need to consider costs of enforcement and management before, during, and after an open season.

(2) *Procedures.* (i) As soon as practicable after the Council has recommended season opening and closing dates to the Regional Director, the Secretary will publish a notice in the **Federal Register** specifying the proposed dates. Public comments on the proposed dates and whether they are consistent with the objectives of the FMP will be invited for a period of 30 days after this notice is published in the **Federal Register.**

(ii) Within 30 days after the end of the comment period, the Secretary will publish a second notice approving, disapproving, or partially disapproving the proposed season dates based on comments received and his determination on whether the dates are consistent with the objectives of the FMP, the national standards of the Magnuson Act, and other applicable law. Season opening and closing dates presented under this paragraph will remain in effect until the Secretary issues a notice approving changes to those dates.

* * * * *

4. In § 671.27, paragraph (b) is revised to read as follows:

§ 671.27 Time and area closures.

* * * * *

(b) *Adjustments of harvest levels and season opening and closing dates*—(1) *General.* The Secretary may, following consultation with the ADF&G, adjust the harvest levels and season opening and closing dates for the Federal registration areas, districts, subdistricts, and sections, or parts thereof, specified in § 671.26.

(2) *Determinations.* Any adjustment under this section will be based on a determination by the Regional Director that the harvest levels and season opening and closing dates previously specified require modification in light of newly obtained information if the fishery is to be conducted in accordance with the factors listed in § 671.26(a)(1) and the objectives of the FMP or if harm to Tanner crab stocks is to be avoided.

* * * * *

[FR Doc. 84-16869 Filed 6-21-84: 2:29 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 124
Tuesday, June 26, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Citizens' Advisory Committee on Equal Opportunity; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: Citizen's Advisory Committee on Equal Opportunity
Dated: June 28–29, 1984
Place: Ramada Inn, 25 Hotel Circle, N.E. Albuquerque, New Mexico
Time: 8:30 am–5:00 pm
Purpose: To promote discussion among Committee members to identify specific problem areas within the Department's civil rights program, and to develop recommendations on ways to strengthen and improve the Department's civil rights efforts. Also, to meet with Indian leaders to discuss and exchange ideas for improving benefits and services of USDA programs to the Pueblos.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Office of Equal Opportunity, U.S. Department of Agriculture, 14th & Independence Avenue, S.W., Room 102W, Washington, D.C. 20250, (202) 447–5681. Written statements may be submitted prior to or up to July 16, 1984.

This Notice is submitted in less than 15 days because of administrative error.

Dated: June 22, 1984.

Alma R. Esparza,

Director, Office of Equal Opportunity, U.S. Department of Agriculture.

[FR Doc. 84–17119 Filed 6–25–84; 8:45 am]
BILLING CODE 3410–85–M

State of Iowa Abandoned Mine Reclamation Program Payments; Determination of Primary Purpose for Amounts That May Be Excluded From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all state cost-share payments or improvements made under the Iowa Abandoned Mine Reclamation Program are made primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Dan Chargo, Abandoned Mine Land Coordinator, Iowa Department of Soil Conservation, Wallace State Office Building, Des Moines, Iowa 50319, (515) 281–5347, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 382–1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife . . . ." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Iowa Abandoned Mine Reclamation Program is authorized by Iowa Code, section 83.21. It is funded through grants from the Office of Surface Mining, the Department of the Interior, to provide financial assistance to owners of abandoned mined land to help them install various conservation practices on their land. Cost-share payments accomplish one or more of the following purposes:

(1) Properly conserve and utilize the water and related land resources.

(2) Protect public health, safety, general welfare and property from the adverse effects of past coal mining practices.

(3) Protect the public health, safety, and general welfare from the adverse effects of past coal mining practices which do not constitute an extreme danger.

(4) Restore eligible land and water and the environment previously degraded by adverse effects of past coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife.

(5) Promote research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods and techniques.

(6) Protect, repair, replace, construct, or enhance public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by past coal mining practices.

(7) Develop publicly owned land adversely affected by past coal mining practices, including land acquired for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

(8) Protect the public from hazards endangering life and property resulting from the adverse effects of past noncoal mining practices. However, upon the request of the Governor of the State of Iowa, such work, if authorized by the State Soil Conservation Committee, may be undertaken before the priorities related to past coal mining have been fulfilled.

(9) Protect the public from hazards to health and safety from the adverse affects of past noncoal mining practices.

(10) Restore the environment degraded by the adverse effects of past noncoal mining.

(11) Construct public facilities in communities impacted by coal development if the Governor of the State of Iowa certifies that all other objectives of the fund have been met, the available impact funds are inadequate for such construction, and the Director of the Office of Surface Mining and the State Soil Conservation Committee concur.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause of a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An Iowa Abandoned Mine Reclamation Program "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or Dan Chargo, Abandoned Mine Land Coordinator, Iowa Department of Soil Conservation, Wallace State Office Building, Des Moines, Iowa 50319.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Iowa Abandoned Mine Reclamation Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under this program are for soil conservation, protecting or restoring the environment, improving forests, or providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the Iowa Adandoned Mine Reclamation Program after December 2, 1984.

Signed at Washington, D.C., on June 21, 1984.

John R. Block,

Secretary.

[FR Doc. 84–16912 Filed 6–25–84; 8:45 am]

BILLING CODE 3410–01–M

State of North Dakota Abandoned Mine Reclamation Program Payments; Determination of Primary Purpose for Amounts That May Be Excluded From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Determination.

SUMMARY: The Secretary of Agriculture has determined that all state cost-share payments or improvements made under the North Dakota Abandoned Mine Reclamation Program are made primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forest, or providing a habitat for wildlife. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: North Dakota Public Service Commission, Capitol Building, Bismarck, North Dakota 58505–0165, (701) 224–2400, Lynn Schloesser, Director, Abandoned Mine Land Division, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 382–1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife . . . ." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments. The North Dakota Abandoned Mine Reclamation Program is authorized by state law, Chapter 38–14.2, N.D.C.C. (1981). It is funded by biennial state appropriations and grants from the Office of Surface Mining, the Department of the Interior, to provide for reclamation of abandoned mined lands. Cost-share payments accomplish one or more of the following purposes:

(1) Properly conserve and utilize the water and related land resources.

(2) Protect the health and safety of the public.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A North Dakota Abandoned Mine Reclamation Program "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or the North Dakota Public Service Commission, Abandoned Mine Lands Division, Capital Building, Bismarck, North Dakota 58505–0165.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the North Dakota Abandoned Mine Reclamation Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under this program are for soil and water conservation and protecting or restoring the environment. Subject to

further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of reclamation construction costs incurred under the North Dakota Abandoned Mine Reclamation Program after September 30, 1979.

Signed at Washington, D.C., on June 21, 1984.

John R. Block,

Secretary.

[FR Doc. 84-16910 Filed 6-25-84; 8:45 am]
BILLING CODE 3410-01-M

State of West Virginia Abandoned Mine Reclamation Program Payments; Determination of Primary Purpose for Amounts That May Be Excluded From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all state cost-share payments or improvements made under the West Virginia Abandoned Mine Reclamation Program are made primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Patrick C. Park, Assistant Chief, Department of Natural Resources, Division of Reclamation, 1800 Washington Street, East, Charleston, West Virginia 25305, (304) 348-3267 or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 382-1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife . . . ." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The West Virginia Abandoned Mine Reclamation Program is authorized by the Abandoned Mine Reclamation Act of West Virginia, Code 20-6C. State funds generated by grants administered from the Office of Surface Mining, the Department of the Interior, provide financial assistance to owners of abandoned mined land to help them install various conservation practices on their land. Cost-share payments accomplish one or more of the following purposes:

(1) Properly conserve and utilize the water and related land resources.

(2) Attempt to restore, reclaim, abate, control or prevent the adverse effects caused by past coal mining practices.

(3) Provide a habitat for wildlife.

Procedural matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. A West Virginia Abandoned Mine Reclamation Program "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or Patrick C. Park, Assistant Chief, West Virginia Department of Natural Resources, Division of Reclamation, 1800 Washington Street, East, Charleston, West Virginia 25305.

Determinations

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the West Virginia Abandoned Mine Reclamation Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under this program are for soil and water conservation, protecting or restoring the environment, improving forests or providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the West Virginia Abandoned Mine Reclamation Program after January 16, 1981.

Signed at Washington, D.C., on June 21, 1984.

John R. Block,

Secretary.

[FR Doc. 84-16911 Filed 6-25-84; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grant Committee; Meeting

Contingent upon timely establishment of the Food and Agricultural Sciences National Needs Graduate Fellowships Grant Committee and according to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 85 Stat. 770-776), the Agricultural Research Service office of Higher Education Programs announces the following meeting:

Name: Food and Agricultural Sciences National Needs Graduate Fellowships Grant Committee.

Date: August 14-18, 1984.

Time: 9:00 a.m.—5:00 p.m.

Place: U.S. Department of Agriculture, Room 024 West Auditors Building, Washington, D.C.

Purpose: To review and evaluate proposals for the Food and Agricultural Sciences National Needs Graduate Fellowships Grant program as part of the selection process for awards.

Type of meeting: Closed.

Reasons for closing: The meeting is being closed in accordance with section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I). Section 10(d) requires advisory committee meetings to be open to the public except "in accordance

with subsection (c) of section 552b of title 5, United States Code." That subsection authorizes the head of the agency to which an advisory committee reports to close that portion of a meeting which the agency head finds likely to "disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy." Because information related to quality of academic programs will be discussed (including quality of faculty) there is a need to close these meetings.

Authority to close meeting: This determination was made by the Acting Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92–463.

Contact person: Dr. K. Jane Coulter, Director, Higher Education Programs, Agricultural Research Service, U.S. Department of Agriculture, Room 350–A, Administration Building, 14th and Independence Avenue, SW., Washington, D.C. 20250, Telephone (202) 447–7654.

Done at Washington, D.C. this 20th day of June, 1984.

K. Jane Coulter,

Director, Higher Education Programs, Agricultural Research Service.

[FR Doc. 84–16858 Filed 6–25–84; 8:45 am]

BILLING CODE 3410–03–M

Packers and Stockyards Administration

Proposed Posting of Stockyards; Mike's Livestock Auction, et al.; Correction

On May 15, 1984, (49 FR 20530) a notice was published in the **Federal Register** giving notice of the proposed posting for certain stockyards listing their facility number, name, and location of stockyards.

This notice is to correct the facility nos. assigned to the following markets in that publication.

The notice should have read:

GA–191 Taylor County Livestock, Inc. Reynolds, Georgia

NC–153 Southeastern Livestock Market, Inc. Chadbourn, North Dakota

TX–329 San Augustine Livestock Auction, Inc. San Augustine, Texas

Done at Washington, D.C., this 20th day of June, 1984.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 84–16857 Filed 6–25–84; 8:45 am]

BILLING CODE 3410–02–M

Soil Conservation Service

Suwanee Creek Watershed, Georgia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Suwanee Creek Watershed project, Gwinnett and Hall Counties, Georgia, effective on June 1, 1984.

FOR FURTHER INFORMATION CONTACT: B. C. Graham, State Conservationist, Soil Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601, telephone: 404–546–2276.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 19, 1984.

B. C. Graham,

State Conservationist.

[FR Doc. 84–16829 Filed 6–25–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL RIGHTS COMMISSION

Maine Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee to the Commission scheduled for July 10, 1984, at Augusta, Maine (FR Doc. 84–15651 on page 24154) appeared with the incorrect Regional Office as an informational source.

The correct Regional Office is the New England Regional Office, at (617) 223–4671. All other information will remain the same.

Dated at Washington, D.C., June 21, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–16961 Filed 6–25–84; 8:45 am]

BILLING CODE 6335–01–M

Washington Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 8:30 a.m. and will end at 5:00 p.m., on August 10, 1984, at the Richland City Council, Chambers Room, 505 Swift Boulevard, Richland, Washington 99352. The purpose of the meeting is to discuss the subject of Administration of Justice issues involved in the immigration process in Washington, and to hear expert presentations on the subject.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Northwestern Regional Office at (206) 442–1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 21, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–16960 Filed 6–25–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–401]

Preliminary Determinations of Sales at Less Than Fair Value and Sales at Not Less Than Fair Value; Certain Stainless Steel Sheet and Strip Products From Spain

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain stainless steel sheet products from Spain are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of certain stainless steel sheet products from Spain that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each such entry in amounts equal to: 2.1 percent for hot-rolled stainless steel sheet and 2.1 percent for cold-rolled stainless steel sheet. We have preliminarily determined that certain stainless steel strip products are not being, nor are likely to be, sold in the United States at less than fair value. Liquidation will not be suspended for cold-rolled stainless steel strip and hot-rolled stainless steel strip. If this investigation proceeds normally, we will make a final determination by September 4, 1984.

Effective Date: June 26, 1984.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–1766.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that certain stainless steel sheet products from Spain are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). For hot-rolled stainless steel sheet we have preliminarily determined the weighted-average margin of sales at less than fair value to be 2.1 percent. For cold-rolled stainless steel sheet we have determined the weighted average margin to be 2.1 percent. For cold-rolled stainless steel strip we have preliminarily determined that there were no sales at less than fair value. There were no sales of hot-rolled stainless steel strip during the period of investigation.

If this investigation proceeds normally, we will make a final determination by September 4, 1984.

Case History

On January 13, 1984, we received a petition from counsel for: Allegheny Ludlum Steel Corporation; Armco Inc.; Carpenter Technology Corporation; Eastern Stainless Steel Company; J & L Specialty Steels, Inc.; Jessop Steel Company; Republic Steel Corporation; Universal-Cyclops Specialty Steel Division, Cyclops Corporation; Washington Steel Corporation; and United Steelworkers of America, AFL/CIO–CLC, on behalf of the domestic stainless steel sheet and strip industry. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that imports of certain stainless steel sheet and strip products from Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring or are threatening to materially injure a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on February 1, 1984 (49 FR 4959). On February 27, 1984, the ITC determined that there is a reasonable indication that imports of certain stainless sheet and strip products from Spain are materially injuring a U.S. industry (49 FR 8505).

On February 22, 1984, we presented an antidumping questionnaire to counsel for Compania Espanola Para la Fabricacion de Acero Inoxidable, S.A. (Acerinox). An extension of the time to respond was granted, and on April 9, 1984, we received Acerinox's response to the questionnaire.

Scope of Investigation

The merchandise covered by these investigations consists of certain stainless steel sheet and strip products. For a further description of these products, see the appendix appearing with this notice.

Since we believe Acerinox to be the sole manufacturer of this merchandise to the United States, we limited our investigation to this one firm. We investigated 84 percent of sales of this merchandise by Acerinox to the United States during the period August 1, 1983, through January 31, 1984.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. In the case of hot-rolled stainless steel sheet, no sales in the home market of such or similar merchandise were available for comparison. For the purpose of this preliminary determination, we are applying the weighted-average margin calculated for cold-rolled stainless steel sheet to hot-rolled stainless steel sheet as the best information available. Additional information has been requested of Acerinox regarding third-country sales and constructed value of hot-rolled stainless steel sheet. If such information is provided in time to be verified and evaluated, we will use it for purposes of our final determination. In the case of hot-rolled stainless steel strip, there were no sales to the U.S. during the period of investigation. Information on sales of hot-rolled stainless steel strip during an expanded period of investigation will be sought for use in arriving at our final determination.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Acerinox because there were sufficient sales to unrelated purchasers prior to its importation into the United States. We calculated the purchase price for each United States sale based on either the (1) packed, C.I.F. or (2) packed, C.I.F. duty paid, delivered prices to unrelated customers in the United States. We deducted costs for foreign handling, insurance, ocean freight, and, where appropriate, U.S. customs duties and U.S. inland freight. We accounted for taxes rebated or uncollected by virtue of exportation but included in the home market prices. Respondent claimed an addition to the U.S. prices for a "bonus" to those prices based on an average of expected exchange rate fluctuations. We received insufficient information to evaluate this claim, and are disallowing it for purposes of our preliminary determination.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on Acerinox's home market prices. Acerinox made sufficient sales of cold-rolled stainless steel sheet and strip in the Spanish home market to form a basis for fair value comparisons. We calculated home market prices on the basis of the packed, ex-works, insured price to unrelated purchasers with discounts based on class, size, and importance of customer, sales from stock and, where appropriate, adjustments for untrimmed coil edges, coil size, strip width, quality, plus polishing and coating extras. We made deductions for rebates and insurance. As packing is identical in both markets, no adjustment was made for home market packing. In accordance with § 353.15 of our regulations (19 CFR 353.15), we made a circumstance of sale adjustment for differences in credit terms. Respondent claimed an allowance for indirect sales expenses in the home market. As the only commissions in the U.S. prices used for comparison were paid to a sales facility majority-owned by Acerinox, no offset was allowed. Respondent claimed an allowance, where appropriate, for an advertising rebate. From data submitted in the response this advertising appears to be for the benefit of the producer of the merchandise, and was not allowed. Respondent claimed an allowance for warehousing expenses. These expenses consisted of pre-sale warehousing and interest on inventory, and were not allowed because they are not directly related to sales. The respondent claimed an allowance for warranty expenses. However, data submitted provided only an amount budgeted for such expenses and no information regarding actual expenses incurred. No allowance has been granted; however, we will reconsider this claim if further information on actual expenses incurred is supplied in sufficient time to be analyzed and verified. Respondent claimed an allowance for technical service expenses. Data were not

submitted in sufficient detail to allow us to determine whether the amounts claimed were of a nature allowable as technical service expenses. No adjustment was made. Respondent claimed an allowance for bad debt expenses. We did not grant an allowance because these expenses were not tied to sales under consideration and are considered a normal general expense of doing business.

Comparisons were made based on categories selected by a Department industry specialist.

Verification

As provided in section 773(a) of the Act, we will verify all data used in reaching the final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act we are directing the United States Customs Service to suspend liquidation of all entries of the subject stainless steel sheet products from Spain which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise exceeded the United States price, which was: 2.1 percent for hot-rolled stainless steel sheet; 2.1 percent for cold-rolled stainless steel sheet. This suspension of liquidation does not apply to hot-rolled or cold-rolled stainless steel strip. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 A.M. on July 13, 1984, at the United States Department of Commerce, Conference Room 5611, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by July 6, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address and in at least 10 copies.

Dated: June 21, 1984.

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

Appendix—Product Description: Certain Stainless Steel Sheet and Strip Products

For the purpose of this investigation the term "certain stainless steel sheet and strip products" covers hot or cold rolled stainless steel sheet or strip, excluding hot or cold rolled stainless steel strip not over 0.01 inch in thickness, currently provided for in items 607.7610, 607.9010, 607.9020, 608.4300, and 608.5700 the Tariff Schedules of the United States Annotated.

Hot rolled stainless steel sheet covers hot rolled stainless steel sheet products whether or not corrugated or crimped and whether or not pickled; not cold rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; and under 0.1875 inch in thickness and over 12 inches in width.

Hot rolled stainless steel strip is a flat-rolled stainless steel product whether or not corrugated or crimped and whether or not pickled; not cold rolled; not cut, not pressed, and not stamped to non-rectangular shape; and under 0.1875 inch in thickness and not over 12 inches in width. Hot rolled stainless steel strip, including razor blade strip, not over 0.01 inch in thickness is not included.

Cold rolled stainless steel sheet covers cold rolled stainless steel sheet products whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; and under 0.1875 inch in thickness and over 12 inches in width.

Cold rolled stainless steel strip is a flat-rolled stainless steel product whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; under 0.1875 inch in thickness and over 0.50 inch in width but not over 12 inches in width. Cold rolled stainless steel strip, including razor blade strip, not over 0.01 inch in thickness is not included in this investigation.

[FR Doc. 84-17001 Filed 6-25-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-588-047]

Chain of Iron or Steel From Japan; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on chain of iron or steel from Japan. The review covers the period January 1, 1983, through December 31, 1983. As a result of the review, the Department has preliminarily determined the amount of the net subsidy to be 1.95 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 26, 1984.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 43369) the final results of its last administrative review of the countervailing duty order on chain of iron or steel from Japan (43 FR 37685, August 24, 1978) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act") the Department has now conducted that review.

Scope of the Review

Imports covered by the review are shipments of Japanese chain of iron or steel, the links of which are essentially round in cross section, and parts thereof. Such merchandise is currently classifiable under items 652.2410 through 652.2450, 652.2710 through 652.2740, 652.3010 through 652.3040, 652.3310 through 652.3330, and 652.3510 through 652.3530 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1983, through December 31, 1983, and a program of tax deferrals on funds held in the Overseas Market Development Reserve ("OMDR").

Analysis of Programs

The Government of Japan has not responded to our questionnaire on the status of benefits bestowed on the covered merchandise during the review period. Therefore, the Department is using the subsidy determined during our previous administrative review as the best information available.

Preliminary Results of the Review

As a result of the review, we preliminarily determine the aggregate net subsidy to be 1.95 percent *ad valorem* for the period January 1, 1983, through December 31, 1983.

On November 17, 1982, the International Trade Commission ("the ITC") notified the Department that the Government of Japan had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. Should the ITC find that there would be material injury or threat of material injury to an industry in the United States if the order were revoked, the Department will instruct the Customs Service to assess countervailing duties in the amount of estimated duties required to be deposited on all unliquidated entries of Japanese chain of iron or steel entered, or withdrawn from warehouse, for consumption on or after November 17, 1982, and through the date of the ITC's notification to the Department of its determination.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for by section 751(a)(1) of the Tariff Act, of 1.95 percent of the entered value on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: June 19, 1984.

Alan F. Holmer,

Deputy Assistant Secretary Import Administration.

[FR Doc. 84-17002 Filed 6-25-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-001]

Ferrochrome From South Africa; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on ferrochrome from South Africa. The review covers the period January 1, 1982, through December 31, 1982.

As a result of the review, the Department has preliminarily determined the amount of the total bounty or grant to be 0.74 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 26, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Williams or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 21983) the final results of its last administrative review of the countervailing duty order on ferrochrome from South Africa (46 FR 21155, April 9, 1981) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of Review

Imports covered by the review are shipments of South African ferrochrome. Such merchandise is currently classifiable under items 606.2200 and 606.2400 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1982, through December 31, 1982, and six programs: (1) Industrial Development Corporation loans; (2) Export Incentive Program—Categories A, B, C, and D; (3) preferential rail rates; (4) Electrical Power Cost Aid Scheme; (5) regional decentralization program; and (6) beneficiation allowances for mineral processors.

Analysis of Programs

(1) Industrial Development Corporation Loans

The Industrial Development Corporation ("IDC") a South African government corporation, provides funds for the purposes of establishing new export capacity throughout the country and housing in decentralized areas. These loans are long-term and are given at below commercial interest rates. During the review period, four of the five companies investigated had outstanding IDC loans. In calculating the benefit arising from these loans, we compared what a company would pay for comparable commercial loans with what a recipient company actually paid for an IDC loan. As a benchmark for the export capacity loans, we used the average long-term interest rate (in the year of receipt of the loan) established in the secondary market on company loan securities, as reported in the *Quarterly Bulletin* of the South African Reserve Bank. For the housing loans, we used the prevailing interest rates on new mortgage loans offered by building societies in South Africa, as reported in the *Quarterly Bulletin*.

We then calculated the present value of each year's payment differentials for the loans, using the benchmark interest rate described above as the discount rate. We then allocated this amount over the life of the loan using the declining balance methodology described in the Subsidies Appendix to the notice of "Final Affirmative Countervailing Duty Determinations" on

cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006). For each firm, we divided the benefit allocated to the review period by the firm's total exports. We then weight-averaged each company's benefit by its share of South African exports to the United States. We preliminarily determine that the benefit from this program during the period of review was 0.51 percent *ad valorem*. In 1983, one company completed repayment of its only outstanding IDC loan. Therefore, for purposes of the cash deposit of estimated countervailing duties, the potential benefit under this program is 0.42 percent.

(2) Export Incentive Program

In 1980 the South African Department of Industries, Commerce, and Tourism expanded and restructured its Export Incentive Program into four categories. Category C of this program, a scheme of rebate of finance charges for exporters, was eliminated on April 1, 1982. One of the companies that exported ferrochrome to the United States during the review period reported that it had received Category C benefits on United States exports during the first three months of 1982. To calculate the benefit attributable to this program, we divided the benefits on export shipments to the United States by total ferrochrome exports to the United States. We preliminarily determine that the benefit from the Export Incentive Program during the review period was 0.23 percent *ad valorem*. None of the companies investigated received Categories A, B, or D benefits on exports to the United States during the review period. Because Category C was eliminated on April 1, 1982, the potential benefit under this program for purposes of the cash deposit of estimated countervailing duties is zero percent.

(3) Preferential Rail Rates

Effective January 1, 1982, the South African Transport Services ("SATS") equalized rail rates on shipments of ferrochrome destined for domestic and export markets. During the review period, SATS did not reinstate higher rail rates for shipments of ferrochrome destined for domestic markets. We therefore preliminarily determine that rail rates on ferrochrome do not confer a subsidy.

(4) Electrical Power Cost Aid Scheme

The South African Department of Industries, Commerce, and Tourism provides a 45 percent rebate on the cost of electricity used in the production of minerals for export. During our verification, we found that electricity costs on the production of ferrochrome exported to the United States are excluded from the companies' claims under this program. We therefore preliminarily determine that this program was not used with respect to exports of ferrochrome to the United States.

(5) Other Programs

We also examined the following two programs and preliminarily find that South African companies that exported ferrochrome to the United States did not use them during the review period:

A. Regional Decentralization Program

B. Beneficiation Allowances for Mineral Exporters

Preliminary Results of the Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.74 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 0.74 percent of the f.o.b. invoice price on any shipments of this merchandise exported on or after January 1, 1982, and on or before December 31, 1982.

Because of the changes in the programs described above, we preliminarily determine the potential bounty or grant to be 0.42 percent. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*. Therefore, the Department intends to instruct the Customs Service to continue to waive the cash deposit of estimated countervailing duties, as provided for by section 751(a)(1) of the Tariff Act, on all shipments of South African ferrochrome entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days afer the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: June 20, 1984.

Alan F. Holmer,

Deputy Assistant Secretary Import Administration.

[FR Doc. 84-17004 Filed 6-25-84; 8:45 am]

BILING CODE 3510-DS-M

[C-201-006]

Polypropylene Film From Mexico; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Suspension Agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on polypropylene film from Mexico. The review covers the period December 7, 1982, through March 31, 1983.

As a result of the review, the Department has preliminarily determined that the signatory, Celulosa y Derivados, S.A., the only known exporter of polypropylene film to the United States, has complied with the terms of the suspension agreement. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 26, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 54992) a notice of suspension of countervailing duty investigation regarding polypropylene film from Mexico, and announced its intent to conduct an administrative review. The petitioner requested that the investigation be continued and on April 4, 1983, the Department published in the **Federal Register** (48 FR 14421) a notice of final affirmative countervailing duty determination. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted the administrative review.

Scope of the Review

Imports covered by the review are shipments of Mexican polypropylene film, a thin transparent film made from polypropylene resin. Such merchandise is currently classifiable under items 774.5595 and 771.4316 of the Tariff Schedules of the United States Annotated. Polypropylene film is used for packaging a wide variety of articles and in the manufacture of pressure sensitive packing tape, dielectric material in electrical capacitors, and for wrapping power and communication cables.

The review covers the period December 7, 1982, through March 31, 1983, and eight programs: (1) CEDI, (2) FOMEX, (3) CEPROFI, (4) FONEI, (5) FOGAIN, (6) State Tax Incentives, (7) Import Duty Reductions and Exemptions, and (8) NIDP Preferential Price Discounts. Celulosa y Derivados, S.A. ("CYDSA") is the only known manufacturer and exporter of Mexican polypropylene film to the United States.

Analysis of Programs

(1) CEDI

The Certificado de Devolucion de Impuesto ("CEDI") is a certificate issued by the Government of Mexico in an amount equal to a percentage of the value of exported goods. The CEDI certificates may be used to pay a wide range of federal tax liabilities (including payroll taxes, value added taxes, federal income taxes, and import duties). The CEDI rate was 15 percent for the period January 1, 1982, through August 25, 1982, and zero after the Mexican government suspended the CEDI program for all exports on or after August 26, 1982. CYDSA, therefore, could not receive CEDI benefits during the period of review.

(2) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program since August 1, 1983. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters of goods for two purposes: pre-export (production) financing and export financing. We consider both export and pre-export FOMEX loans export subsidies since these loans are given only on merchandise destined for export. CYDSA received no such loans during the period of review.

(3) CEPROFI

Certificates of Fiscal Promotion ("CEPROFI") are tax certificates which are used to promote the goal of the National Industrial Development Plan and are granted in conjunction with investments in designated industrial activities and geographic regions. CEPROFI certificates can be used to pay a wide range of federal tax liabilities.

CYDSA received one CEPROFI certificate for production of polypropylene film during the period of review. This benefit had been applied for an August 9, 1982, about 4 months prior to the effective date of the suspension agreement, and was received by CYDSA on December 14, 1982, one week after the date of the suspension agreement. This CEPROFI was in the amount of approximately $2,000, and represents less than 0.1 percent of the value of CYDSA's total production of polypropylene film during the period of review. No other CEPROFI benefits have been applied for or received on polypropylene film during the period of review. Under the circumstances and because the total benefit is *de minimis*, we believe acceptance of this single CEPROFI benefit does not constitute a violation of the suspension agreement. We preliminary find that CYDSA did not use the CEPROFI program during the period of review.

(4) Other Programs

We also examined the following programs and preliminary find that CYDSA did not use them during the period of review.

(A) State Tax Incentives.

(B) Fund for Industrial Development ("FONEI").

(C) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN").

(D) Import Duty Reductions and Exemptions.

(E) National Industrial Development Plan ("NIDP") Preferential Discounts.

Preliminary Results of Review

As a result of the review, we preliminarily determine that CYDSA has complied with the terms of the suspension agreement for the period December 7, 1982, through March 31, 1983.

The agreement can remain in force only so long as shipments covered by the agreement account for at least 85 percent of exports of polypropylene film to the United States. Our information indicates that CYDSA account for 100 percent of United States imports of polypropylene film from Mexico during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: June 19, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-17003 Filed 6-25-84; 8:45 am]

BILLING CODE 3510-DS-M

COMMODITY FUTURES TRADING COMMISSION

Exchange Proposals to Trade Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Availability of the proposed terms and conditions for trading commodity options on futures contracts in domestic agricultural commodities.

SUMMARY: Six domestic boards of trade have submitted applications to trade options on commodity futures contracts in domestic agricultural commodities under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public comment on these proposals is in the public interest, and is consistent with its option regulations, and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 26, 1984.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the

particular application addressed in the comment.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254–7303.

The Commission has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for options trading (46 FR 54500 (November 3, 1980)). The pilot program was subsequently expanded to permit trading of options on physical commodities as well (47 FR 56996 (December 22, 1982); 48 FR 41575 (September 16, 1983)). The pilot program has been further expanded to permit the designation for each board of trade in no more than two options on futures contracts in domestic agricultural commodities (49 FR 2752 (January 23, 1984)).

Six domestic boards of trade have applied for contract market designation, pursuant to section 6 of the Commodity Exchange Act, 7 U.S.C. 8 (1982), ("Act") and Commission Regulation 33.5, to trade options on futures contracts in domestic agricultural commodities. Applications submitted by the following boards of trade: Chicago Board of Trade to trade options on soybean and corn futures contracts; Chicago Mercantile Exchange to trade options on live cattle and live hog futures contracts; Kansas City Board of Trade to trade options on hard winter wheat futures contracts; MidAmerica Commodity Exchange to trade options on wheat and soybean futures contracts; Minneapolis Grain Exchange to trade options on hard red spring wheat futures contracts; and New York Cotton Exchange to trade options on cottom futures contracts.

A copy of the terms and conditions of each of these proposals to trade options on a commodity futures contract in domestic agricultural commodities will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted in support of these applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8. Certain of these submissions are subject to requests for confidential treatment pursuant to 17 CFR 145.9.

Any persons interested in submitting written data, views or arguments on the terms and conditions of the proposed options contracts, or with respect to other materials submitted in support of the applications, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by July 26, 1984. Such comment letters will be publicly available except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on June 20, 1984.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84–16915 Filed 6–25–84; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 84–1]

Honeywell, Inc., a Corporation; Prehearing Conference

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Prehearing Conference.

DATE: This notice announces a prehearing conference to be held in the matter of Honeywell, Inc. on July 12, 1984 at 9:30 a.m.

ADDRESS: The prehearing conference will be in Hearing Room E, Interstate Commerce Commission Building, 12th & Constitution Ave., NW., Washington, DC. For additional information contact: Sheldon D. Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6800.

Notice of Prehearing Conference

Please take notice that a prehearing conference in this proceeding will be held at 9:30 a.m., on July 12, 1984, in Hearing Room E, Interstate Commerce Commission, 12th & Constitution Ave., NW., Washington, DC, for the purposes outlined in 16 CFR 1025.21(a). The Presiding Officer will be Administrative Law Judge Richard M. Wilkins. The issues to be considered may include any or all of the following:

(1) Petitions for leave to intervene;

(2) Motions, including motions for consolidation of proceedings and for certification of class actions;

(3) Identification, simplification and clarification of the issues;

(4) Necessity or desirability of amending the pleadings;

(5) Stipulations and admissions of fact and of the content and authenticity of documents;

(6) Oppositions to notices of depositions;

(7) Motions for protective orders to limit or modify discovery;

(8) Issuance of subpoenas to compel the appearance of witnesses and the production of documents;

(9) Limitation of the number of witnesses, particularly to avoid duplicate expert witnesses;

(10) Matters of which official notice should be taken and matters which may be resolved by reliance upon the laws administered by the Commission or upon the Commission's substantive standards, regulations, and consumer product safety rules;

(11) Disclosure of the names of witnesses and of documents or other physical exhibits which are intended to be introduced into evidence;

(12) Consideration of offers of settlement;

(13) Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time and place of the hearing, with due regard to the convenience of the parties; and

(14) Such other matters as may aid in the efficient presentation or disposition of the proceedings.

Dated: June 21, 1984.

Sheldon D. Butts,

Deputy Secretary, Office of the Secretary.

[FR Doc. 84–16962 Filed 6–25–84; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee has been scheduled as follows: Friday, 17 August 1984, The Pentagon, Washington, D.C.

The entire meeting, commencing at 0800 hours is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Special Actions.

Dated: June 21, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-16096 Filed 6-25-84; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee Pacific Basin Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Pacific Basin Task Force will meet July 23–24, 1984, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to evaluate alternative U.S. Maritime Strategies in the Pacific Basin areas. The entire agenda for the meeting will consist of discussions of key issues related to United States national security interests and naval strategies in the Pacific and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be keep secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756–1205.

Dated: June 21, 1984.

Dennis Gonzalez,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Office.

[FR Doc. 84-16046 Filed 6-25-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Federal Education Data Acquisition Council; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Federal Education Data Acquisition Council. This notice also describes the functions of the council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: July 12 and 13, 1984.

ADDRESS: Regional Office Building, Room 3652, 7th & D Streets SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, Executive Director, Federal Education Data Acquisition Council, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, D.C. 20202, (202) 426–7304.

SUPPLEMENTARY INFORMATION: The Federal Education Data Acquisition Council is established under section 400A of the General Education Provisions Act (Pub. L. 95–561; 20 U.S.C. 1221–3). The Council is established to advise and assist the Secretary with respect to the improvement, development and coordination of Federal education information and data acquisition activities, and to review the policies, practices, and procedures established by the Secretary.

The meeting of the Council is open to the public. The agenda includes: Orientation, Plan Next Year's Agenda, Establish Next Meeting Date.

Records are kept of all Council proceedings, and are available for public inspection at the Division of Education Information Management, 330 C Street SW., Washington, D.C. 20202 from the hours of 8:00 a.m. to 5:00 p.m.

Dated: June 21, 1984.

Ralph J. Olmo,

Acting Deputy Under Secretary for Management.

[FR Doc. 84-16047 Filed 6-25-84; 8:45 am]

BILLING CODE 4000-01-M

Library Career Training Program; Application

AGENCY: Department of Education.

ACTION: Application Notice.

Applications are invited for new projects under the Library Career Training Program for fiscal year 1985.

Authority for this program is contained in Sections 201 and 222 of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 U.S.C. 1021 *et seq.*)

The Secretary may award a grant to an institution of higher education or library agency or organization. The purpose of these grants is to assist in training persons in librarianship.

Closing Date for Transmittal of Applications: An application for a grant must be mailed or hand delivered by September 16, 1984.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.036, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center (Room 5673, Regional Office Building 3), 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information: Evaluation criteria and eligibility requirements for

the Library Career Training program appear in the Code of Federal Regulations at 34 CFR Part 776. The fiscal year 1985 grant program will be governed by the provisions of the final regulations published on March 8, 1982, in the **Federal Register** (47 FR 9796).

An application for grants will be evaluated independently *according to academic levels*, i.e., associate, bachelor's, master's, post-masters, and doctorate. If funds are appropriated for fiscal year 1985, the Secretary anticipates making grants for fellowship projects only. The Secretary will not consider applications for institute or traineeship projects.

Available Funds: For fiscal year 1985 the Department of Education has not requested funds for the Library Career Training program. However, applications are invited for fellowship projects to allow sufficient time to evaluate applications and complete processing prior to the end of the fiscal year, if funds are appropriated for the program. At the present time, there are no multi-year projects under this program.

In fiscal year 1984, 41 grants were awarded totaling $638,800 which provided fellowships to 76 individuals. In fiscal year 1984, $534,000 was awarded for fellowships at the master's level, $44,800 at the post-master's level and $60,000 at the doctoral level. If funds are appropriated for the program in fiscal year 1985, the Secretary will reserve funds for fellowships.

The U.S. Department of Education is not bound to a specific number of grants or to the amount of any grant unless that number is specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing by July 27, 1984. They may be obtained by writing to the Library Education, Research and Resources Branch, Attn: II–B, U.S. Department of Education (Room 613, Brown Building), 400 Maryland Avenue SW., Washington, D.C. 20202.

An application must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing this program. The Secretary urges that applicants *not* submit information that is not requested. (Approved OMB #1850–0022).

Applicable Regulations: Regulations applicable to this program include the following:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78.

(b) Regulations governing the Library Career Training Program (34 CFR Part 776).

Further Information: For further information, contact Mr. Frank A. Stevens or Ms. Yvonne Carter, Library Education, Research and Resources Branch, Division of Library Programs, Center for Libraries and Education Improvement, U.S. Department of Education (Room 613, Brown Building), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 254–5090.

(20 U.S.C. 1021, *et seq.*)

(Catalog of Federal Domestic Assitance Program No. 84.036, Library Career Training Program)

Dated: June 21, 1984.

Donald J. Senese,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 84–16963 Filed 6–25–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Inventions Available for License

The Department of Energy hereby announces a number of inventions available for license, in accordance with 35 U.S.C. 207–209, in order to achieve expeditious commercialization of results of federally funded research and development. For further information concerning licensing of the inventions, please contact Robert J. Marchick, Office of the Assistant General Counsel for Patents, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of specification of the listed U.S. patent applications may be obtained, for a modest fee, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

Signed at Washington, D.C. on this 11th day of June, 1984.

United States Department of Energy.

Theodore J. Garrish,

General Counsel.

UNITED STATES DEPARTMENT OF ENERGY, PATENT APPLICATIONS

Serial No.	Title of invention
477,548	Electrostatic Wire for Stabilizing a Charged Particle Beam.
491,132	Radionuclide Labeled Lymphocytes for Therapeutic Use.
491,133	Fire Flood Method for Recovering Petroleum from Oil Reservoirs of Low Permeability and Temperature.
491,134	Manipulator Having Thermally Conductive Rotary Joint for Transferring Heat from a Test Specimen.
491,639	Graphite-Ceramic RF Faraday-Thermal Shield and Plasma Limiter.
492,924	Method of Controlling Fusion Reaction Rates.
492,925	Separation of Certain Carboxylic Acids Utilizing Cation Exchange Membranes.
492,926	Method of Using a Nuclear Magnetic Resonance Spectroscopy Standard.
494,236	Staged Fluidized Bed.
494,482	Method of Saccharifying Cellulose.
494,484	Electropositive Bivalent Metallic Ion Unsaturated Polyester Complexed Polymer Concrete.
494,487	Integral, Low Energy Thermite Igniter.
495,205	Photothermal Method of Determining Calorific Properties of Coal.
495,386	Steady State Compact Toroidal Plasma Production.
495,888	Graphite Furnace Atomizer.
495,889	Circuit Breaker Lock Out Assembly.
498,434	Low-Temperature Magnetic Refrigerator.
498,435	Method for Making Generally Cylindrical Underground Openings.
498,437	Ethanol Production Method and System.
498,438	Silane-Propane Ignitor/Burner.
498,999	Method and Apparatus for Producing High Purity Silicon.
500,101	Production of Chemical Feedstock by the Methanolysis of Wood.
500,102	Tantalum-Copper Alloy and Method for Making.
500,105	Transverse Field Focused System.
500,106	Portable Instrument and Method for Detecting Reduced Sulfur Compounds in a Gas.
500,107	Homogenous Tritium Production Reactor.
500,112	Barrier Breaching Device.
500,189	Variable Control of Neutron Albedo in Toroidal Fusion Devices.
500,717	Plasma Discharge Elemental Detector for a Mass Spectrometer.
501,312	Rigid Indented Cylindrical Cathode for X-Ray Tube.
501,313	Rotational Viscometer for High-Pressure High-Temperature Fluids.
503,128	Ceramic to Metal Attachment Systems.
503,129	Fuel Assembly for the Production of Tritium in Light Water Reactors.
503,130	Laser Induced Phosphoresecence Uranium Analysis.
503,373	Electron Emitting Filaments for Electron Discharge Devices.
504,904	Reductive Stripping Process for Uranium from Organic Extracts.
504,905	X-Ray Beam Finder.
505,011	Dual Rotating Shaft Seal Apparatus.
506,559	High Surface Area ThO_2 Catalyst.
506,560	Method and Apparatus for Synthesizing Hydrocarbons.
507,188	Vapor Spill Pipe Monitor.
507,189	Flexural Support Member Having a High Ratio of Lateral-to-Axial Stiffness.
509,076	Photovoltaic Cells and Electrodes.
509,077	Heart Testing Compound.
509,554	Front Lighted Optical Tooling Method and Apparatus.
509,555	Omnidirectional Fiber Optic Tiltmeter.
509,557	Solvent Recovery of Eastern Shale Oil.
509,758	Helical Screw Viscometer.
511,702	Positioning Apparatus.
512,059	Quantum Well Multijunction Photovoltaic Cell.
513,521	Laser Window with Annular Grooves for Thermal Isolation.
513,523	Steam Reforming of Fuel to Hydrogen in Fuel Cell.
513,557	High Resolution, High Rate X-Ray Spectrometer.
514,126	Capacitive Label Reader.
514,127	Fully Synthetic Taped Insulation Cables.
515,844	Catalysis Using Hydrous Metal Oxide Ion Exchangers.
517,138	Process for Tertiary Oil Recovery Using Tall Oil Pitch.
517,473	Hermetically Sealed Electrical Feed-Through for High Temperature Secondary Cells.

UNITED STATES DEPARTMENT OF ENERGY, PATENT APPLICATIONS—Continued

Serial No.	Title of invention
517,474	Oxidation Sulfidation Resistance of Fe-Cr-Ni Alloys.
517,475	Method for Extracting Lanthanides and Actinides from Acid Solutions.
517,476	Method and Source for Producing a High Concentration of Positively Charged Molecular Hydrogen or Deuterium Ions.
517,477	Method of Enhancing Selective Isotope Desorption from Metals.
517,531	Method of Making Fine-Grained Triaminotrini-trobenzene.
517,536	Hard Metal Composition.
518,243	Method and Apparatus for Measuring Stress
519,873	Method for Fabricating Laminated Uranium Composites.
519,941	Ductile Aluminide Alloys for High Temperature Applications.
521,497	Silicon Crystal Growing by Oscillating Crucible Technique.
521,815	Method for Removing Cesium from a Nuclear Reactor Coolant.
521,816	Process for the Production of 5÷-Deoxy-5-[18F] Fluorouridine.
522,277	Process for Removing Sulfur from Coal.
522,282	Method and Apparatus for Measuring Response Time.
523,207	Nuclear Reactor Safety Device.
523,492	Extraction of Trace Metals from Fly Ash.
523,556	Synthesis of Refractory Materials.
523,990	Superconducting Magnet Wire.
526,246	Natural Chelates for Radionuclide Decorporation.
526,249	Fluorination Process Using Catalysts.
526,251	Tin-117m-Labeled Stannic (Sn^{4+}) Chelate of Diethylenetriamine Penta-acetic Acid (DPTA) for Application in Diagnosis and Therapy.
526,765	Shock Wave Absorber Having Apertured Plate.
526,767	Shock Wave Absorber Having a Deformable Liner.
526,855	Desulfurization of Fuel Gases in Fluidized Bed Gasification and Hot Fuel Gas Cleanup System.
527,547	Detachable Connection for a Nuclear Reactor Fuel Assembly.
528,278	Dual Aperture Dipole Magnet with Second Harmonic Component.
528,279	Separation of Uranium from Technetium in Recovery of Spent Nuclear Fuel.
528,284	Method and Apparatus for Fringe-Scanning Chromosome Analysis.
528,285	Reflex Ring Laser Amplifier System.
528,509	Inductively Stabilized, Long Pulse Duration Transverse Discharge Apparatus.
528,510	Separations by Supported Liquid Membrane Cascades.
532,430	Jet Spoiler Arrangement for Wind Turbine.
534,427	Combustion Heater for Oil Shale.
534,472	Process for Oil Shale.
535,462	Gas Tagging and Cover Gas Combination for Nuclear Reactor.
535,463	Method and System for Producing Lower Alcohols.
535,464	Method to Produce Large, Uniform Hollow Spherical Shells.
535,974	In-Situ Determination of Energy Species Yields of Intense Particle Beams.
535,979	Void/Particulate Detector.
537,218	Laser or Charged-Particle-Beam Fusion Reactor with Direct Electric Generation by Magnetic Flux Compression.
537,219	Process for the Preparation of Benzotriazoles and Their Polymers, and 2(2-Hydroxy-5-Isopropenylphenyl)-2H-Benzotriazole Produced Thereby.
538,006	Physico-Chemical Fracturing and Cleaning of Coal.
538,059	Digital Rotation Measurement Unit.
538,889	Ceramic-Glass-Metal Seal by Microwave Heating.
538,890	Ceramic-Glass-Ceramic Seal by Microwave Heating.
539,011	Biasing and Fast Degaussing Circuit for Magnetic Materials.
539,013	Thermoacoustic Couple.
539,366	Ultraviolet Light Absorbers Having Two Different Chromophors in the Same Molecule.
539,367	Use of Layer Strains in Strained-Layer Superlattices to Make Devices for Operation in New Wavelength Ranges, e.g., InAsSb at 8–12 um.
539,369	Gaseous Leak Detector.

UNITED STATES DEPARTMENT OF ENERGY, PATENT APPLICATIONS—Continued

Serial No.	Title of invention
539,370	Multi-Function Magnetic Jack Control Drive Mechanism.
539,493	Di- and Tri-Benzotriazole Substituted Tri-Hydroxybenzenes.

[FR Doc. 84–16996 Filed 6–25–84; 8:45 am]
BILLING CODE 6450–01–M

Economic Regulatory Administration

Ozark County Gas, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order (PRO) which was issued to Ozark County Gas, Inc., P.O. Box 1339, Branson, Missouri 65616. This Proposed Remedial Order alleges violations in the pricing of motor gasoline of 10 CFR 212.92 and 212.93 for the period March 1, 1979 through August 31, 1979. The principal amount of the alleged violations for this period is $152,538.41.

A copy of the Proposed Remedial Order, with confidential information deleted may be obtained from: David H. Jackson, Director, Kansas City Office, ERA (816) 374–2092. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Kansas City, Missouri, on the 12th day of June 1984.

David H. Jackson,

Director, Kansas City Office, Office of Special Counsel, Economic Regulatory Administration.

[FR Doc. 84–16995 Filed 6–25–84; 8:45 am]
BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board; Renewal

This notice is published in accordance with the provisions of Section 101–6.1029 of the General Services Administration Interim Rule on Advisory Committee Management. Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Energy Research Advisory Board has been renewed for a 2-year period ending June 19, 1986.

The renewal of the Energy Research Advisory Board has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), the General Services Administration Interim Rule on Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee may be obtained from Gloria Decker (202) 252–8990.

Issued at Washington, D.C., on June 19, 1984.

K. Dean Helms,

Advisory Committee Management Officer.

[FR Doc. 84–16994 Filed 6–25–84; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Algonquin Gas Transmission Co.; Rate Reduction Filing Under Rate Schedule S–IS

June 20, 1984.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on June 18, 1984 tendered for filing Seventh Revised Sheet No. 213 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Seventh Revised Sheet No. 213 is being filed to reflect in Algonquin Gas' Rate Schedule S–IS Payment for Inventory Sale Gas a decrease in Consolidated Gas Supply Corporation's ("Consolidated") underlying Rate Schedule E.

Algonquin Gas requests that the Commission accept such tariff sheet to be effective June 1, 1984, to coincide with the proposed effective date of Consolidated's Rate Schedule E rate change.

Algonquin Gas requests permission to credit the subsequent month's bill following Commission acceptance to effectuate such rate change as of June 1, 1984 in the event Algonquin Gas does not receive approval in time or the July 7, 1984 billing of June, 1984 sales.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Kenneth F. Plumb

Secretary.

[FR Doc. 84-16986 Filed 6-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-483-000]

Arkansas Power & Light Co.; Filing

June 21, 1984.

The filing Company submits the following:

Take notice that on June 7, 1984, Arkansas Power & Light Company (AP&L) tendered for filing an amendment to the December 14, 1983 Letter Agreement between AP&L and Cajun Electric Power Cooperative, Inc. The amendment increases to 74 MW the contract capacity and accompanying energy for which AP&L will furnish transmission services.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16987 Filed 6-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4579-027, et al.]

Cities Service Oil & Gas Corp., et al.; Applications To Amend Certificates To Establish Entitlement to Section 109 Price [1]

June 21, 1984.

Take notice that each of the Applicants listed herein has either filed a petition to amend certificate pursuant to section 7 of the Natural Gas Act or a notice of change in rate which is being treated as a petition to amend certificate to establish Applicant's right to collect the section 109 price consistent with the court order issued in *Tenneco Exploration Ltd.* v. *FERC*, 649 F.2d.376, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure Base
G-4579-027, Apr. 30, 1983	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102.	K-N Energy, Inc., Morton Field, Finney and Kearny Counties, Kansas.	(1)	
G-10139-002, Feb. 16, 1984	do	Tennessee Gas Pipeline Company, West Delta Area, Offshore Louisiana.	(1)	
CI61-1332-000, June 4, 1984	do	Transwestern Pipeline Company, Bluitt Plant, Roosevelt County, New Mexico.	(1)	
CI65-561-000, June 4, 1984	do	Natural Gas Pipeline Company of America, Bluitt Plant, Roosevelt County, New Mexico.	(1)	
CI83-168-002, June 7, 1984	do	Tennessee Gas Pipeline Company, West Delta & Grand Isle Areas, Offshore Louisiana.	(1)	

[1] Applicant proposes to amend certificate to establish Applicant's entitlement to collect Section 109 price consistent with court order to *Tenneco Exploration, Ltd.* v. *FERC* 649 F2d 376. Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 84-16988 Filed 6-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-485-000]

Consumers Power Co.; Filing

June 21, 1984.

The filing Company submits the following:

Take notice that on June 11, 1984, Consumers Power Company (Consumers) tendered for filing Consumers' Supplemental Agreement No. 3 to the Coordinated Operating Agreement with the City of Holland, Michigan dated as of April 1, 1981.

Consumers state that Supplemental Agreement No. 3 adds a new schedule, Service Schedule F—Specific Capacity

and Energy available from surplus capacity on the other party's system for a period of not less than five nor more than twelve calendar months.

Consumers further state that the extent and use of Specific Capacity and Energy among the parties for the next twelve months is not known at the present time as such transaction will only be scheduled from time to time as load and capacity conditions on either system dictate. Accordingly, it is not possible to estimate the transactions for such period.

Consumers request an effective date of June 1, 1984, and therefore request waiver of the Commission's notice requirements.

According to Consumers copies of the filing were served on the City of Holland, Michigan and on the Michigan Public Service Commission.

Any person desiring to be heard or to protest filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16969 Filed 6-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-480-000]

Idaho Power Co.; Filing

June 21, 1984.

The filing Company submits the following:

Take notice that on June 7, 1984, Idaho Power Company (Idaho) tendered for filing in compliance with the Federal Energy Regulatory Commissions' Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during April, 1984, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement 30
Sierra Pacific Power Company—Supplement 28
Montana Power Company—Supplement 27
Portland General Electric Company—Supplement 23
Washington Water Power Company—Supplement 18
Puget Sound Power & Light Company—Supplement 8

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16970 Filed 6-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-484-000]

Illinois Power Co.; Filing

June 21, 1984.

The filing Company submits the following:

Take notice that on June 8, 1984, Illinois Power Company (Illinois) tendered for filing the Interconnection Agreement, dated March 1, 1983, between Southern Illinois Power Cooperative (SIPC) and Illinois, and Amendment No. 1 thereto dated June 24, 1983.

Illinois indicates that ths filing is made for the purposes of FERC approval of this interconnection between these two utilities.

Illinois requests an effective date of July 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon SIPC and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16971 Filed 6-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-418-005]

Kansas Power and Light Co.; Refund Report

June 21, 1984.

Take notice that on June 11, 1984, the Kansas Power and Light Company (KP&L) submitted for filing its refund report pursuant to the Commission's order issued May 2, 1984.

KP&L states that in accordance with § 35.19a, interest for the entire refund period was calculated at an average prime rate for each calendar quarter on all excessive rates.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 on or before July 10, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16972 Filed 6-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-477-000]

Lone Star Gas Co., a Division of Enserch Corp.; Request Under Blanket Authorization

June 21, 1984.

Take notice that on June 11, 1984, Lone Star Gas Company, a Division of Enserch Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP84-477-00 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Lone Star proposes

to construct and operate sales taps and appurtenant facilities under authorization issued in Docket No. CP83–59–000, as amended in Docket No. CP83–59–002,[1] all as more fully set forth in the request on file with the Commission and open to public inspection.

Lone Star proposes to construct and operate three sales-tap facilities in order to sell up to 100 Mcf of natural gas on an annual basis to two residential customers located in McClain County, Oklahoma, and to sell up to 18,000 Mcf of natural gas on an annual basis to Sun Exploration and Production Company (Sun Exploration). Lone Star states that Sun Exploration would utilize the natural gas to power a water pumping unit in Garvin County, Oklahoma.

Lone Star further states that it would utilize its residential rate for the service to the two residential customers and its industrial rate for the service to Sun Exploration. Both rates have been approved by the Oklahoma Corporation Commission, it is asserted.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–16973 Filed 6–25–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–488–000]

Maine Electric Power Company, Inc.; Filing

June 21, 1984.

The filing Company submits the following:

Take notice that on June 11, 1984, Maine Electric Power Company, Inc. (MEPCO) tendered for filing an initial rate for transmission service to be provided to Bangor Hydro-Electric Company by MEPCO over its Transmission Facilities system.

MEPCO states that the rate applicable to the provisions of transmission service is .03 cents per kilowatt, per mile, per year which is MEPCO's filed Rate Schedule FPC No. 1.

MEPCO requests an effective date of August 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–16974 Filed 6–25–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–276–000]

Mississippi Power & Light Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Motion To Reject, and Establishing Hearing and Price Squeeze Procedures

Issued: June 22, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Oliver G. Richard III.

On February 13, 1984, as completed on April 23, 1984,[1] Mississippi Power & Light Company (MP&L) tendered for filing a proposed increase in rates for full requirements and transmission service to twelve wholesale customers.[2] The proposed rates would increase revenues by about $2.4 million (16.3%) for the twelve month period ending May 31, 1985. MP&L has also proposed increased rates applicable to its Interconnection Agreement with the Municipal Energy Agency of Mississippi (MEAM).[3] The Interconnection Agreement was initially filed as part of a settlement in Docket No. ER84–128–000, but has not yet become effective, pending ratification by MEAM members. The revised rates under the Interconnection Agreement will have no revenue impact until the Interconnection Agreement is ratified. Until that time, MEAM members are served individually by the company under separate requirements rate schedules for which MP&L has proposed an increasse increase in this docket.[4] MP&L requests an effective date of June 22, 1984, for the rates for transmission service to the Tennessee Valley Authority (TVA) and an effective date of April 14, 1984, for all other proposed rates.[5]

Notice of the original a submittal was published in the **Federal Register,** with comments due on or before March 6, 1984. Timely motions to intervene were filed by MEAM and the South Mississippi Electric Power Association (SMEPA).

In support of its request for a five month suspension, MEAM raises various cost of service issues, including: (1) Inclusion of operating reserves in rate base; (2) assignment of construction-related materials and supplies to CWIP balances; (3) inclusion in land held for future use of amounts related to the Desoto County Unit; (4) inclusion in rate base of CWIP related to baseload units that may ulitmately be assigned to serve other utilities under the Middle South Pool equalization formula; (5) return on equity and overall rate of return; (6) depreciation allowance for steam production plant, cash working capital allowance, O&M expenses, and A&G expenses; (7) amortization of investment tax credit; (8) estimates of interchange revenues and costs; and (9) projected wholesale demands. Further, MEAM seeks to reserve the ability to raise additional issues, including the appropriateness of requiring MP&L to provide a "postage stamp" transmission rate for service

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[1] By the Commission's order issued November 7, 1983, Lone Star was authorized in Docket No. CP83–59–002 to install and operate on-system sales taps pursuant to § 157.211 and the Regulations for retail customers not currently receiving gas at another service location in Lone Star's system.

[1] By letter dated March 13, 1984, the Director of the Commissioner's Office of Electric Power Regulation advised MP&L that its filing was deficient. On April 23, 1984, the company submitted additional workpapers and other supporting data which cured the deficiencies.

[2] *See* Attachment for affected customers and rate schedule designations.

[3] MEAM represents eight wholesale customers of MP&L, including the Cities of Canton, Durant, Itta Bena, Koscisuko, Leland, Clarksdale, Greenwood, and Yazoo City.

[4] The Interconnection Agreement was assigned an effective date coincident with MEAM member ratification and will supersede the current individual MEAM rate schedules when it becomes effective, without further filing by MP&L.

[5] The requested April 14, 1984 effective date is 60 days after MP&L's original submittal. MP&L requests an effective date of June 22, 1984, for TVA, because TVA is served under a contract which is subject to revision in June 1984, and annually thereafter, subject to TVA's right to terminate the agreement within 30 days of a proposed increase.

over the entire Middle South network. Finally, MEAM alleges that the proposed rates may create a price squeeze.

SMEPA contends that MP&L's failure to file required workpapers justifies rejection of the filing or issurance of a deficiency letter. In support of its alternative against for a five month suspension, SMEPA raises many of the same cost of service issues identified by MEAM, in addition to issues concerning: (1) The demand rate for transmission service; and (2) deduction of AFUDC related to claimed amounts for CWIP.

On march 21, 1984, MP&L filed a response to the motions of MEAM and SMEPA. MP&L requests that the Commission deny the motion of SMEPA for rejection, deny the motions of SMEPA and MEAM for a five month suspension, and deny MEAM's attempt to reserve the right to later raise a transmission rate issue.

On March 26, 1984, as amended on April 30, 1984, the Mississippi Public Service Commission filed a motion for late intervention. The Mississippi Commission states, as justification for its untimely intervention, that its staff did not receive actual notice of the proceeding until March 20, 1984, and that, at that time, "the orderly flow of information" was disrupted, because its staff was in the process of moving its offices. It also asserts that its intervention will neither disrupt the proceeding nor prejudice any party's rights. The Mississippi Commission raises no substantive issues.

On May 16, 1984, after MP&L had revised its filing to respond to the Staff deficiency letter, SMEPA filed a motion to reject the company's amended filing and to terminate the docket. SMEPA asserts that the revised filing is still deficient and does not support the increased rates. On May 18, 1984, MEAM filed a request for permission to amend its original protest. MEAM also argues that not all of the original deficiencies have been cured and that the revised filing does not support MP&L's proposed increase. MP&L responded to the motion to reject on May 31, 1984.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed motions to intervene serve to make MEAM and SMEPA parties to this proceeding. Furthermore, given the Mississippi Commission's interest as a State public utility commission, the stated reasons for its delay, and the early stage of this proceeding, we find that good cause exists to grant its motion to intervene out of time.

We shall also consider the late-filed pleadings of SMEPA and MEAM, inasmuch as they address the company's April 23, 1984 deficiency response. However, despite SMEPA's and MEAM's claim that MP&L's filing is still incomplete, we find that the company's revised submittal substantially complies with the filing requirements set forth in Part 35 of the Commission's regulations.[6] We shall, therefore, deny SMEPA's request that MP&L's submittal be rejected.

Our preliminary review of MP&L's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept MP&L's proposed rates for filing and suspend them as ordered below.[7]

In *West Texas Utilities Company*, Docket No. ER82–23–000, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that a proposed increase may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our preliminary examination indicates that MP&L's proposed requirements and transmission rates may not yield substantially excessive revenues. Further, MP&L's revised rates under the Interconnection Agreement with MEAM are based on the same cost of service used to support the requirements rates. Accordingly, we shall suspend all of MP&L's proposed rates for one day. As noted, MP&L requests an effective date of April 14, 1984, for rates applicable to all customers except TVA and an effective date of June 22, 1984, for the rates applicable to TVA. We note, however, that MP&L did not complete its filing until April 23, 1984, and has shown no good cause for waiver of notice. Therefore, we shall suspend MP&L's proposed rates for one day from 60 days after completion of its filing, to become effective on June 24, 1984, subject to refund.

In light of the price squeeze allegations raised by MEAM, we shall phase that issue in accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79–339, 8 FERC ¶ 61,131 (1979).

The Commission orders

(A) The Mississippi Public Service Commission's motion to intervene out of time is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) SMEPA's motion to reject MP&L's filing is hereby denied.

(C) MP&L's proposed rates are hereby accepted for filing and suspended for one day, to become effective on June 24, 1984, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of MP&L's rates.

(E) The Commission staff shall serve top sheets in this proceeding on or before June 29, 1984.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rul on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations

[6] *See Municipal Light Boards of Reading and Wakefield, Massachusetts v. FPC*, 450 F. 2d 1341 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 989 (1972).

[7] We note that all of the cost of service issues raised by the intervenors, including MEAM's concern as to a "postage stamp" transmission rate, present questions of fact best resolved in the context of an evidentiary proceeding. Therefore, despite the fact that an intervenor's pleading should identify all of its objections to a rate filing, we find that denying the intervenors' rights to pursue any of these issues would be premature at this stage of the proceeding.

as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission

Kenneth F. Plumb,

Secretary.

Attachment.—Mississippi Power & Light Company

[Docket No. ER84–276–000]

RATE SCHEDULE DESIGNATIONS

Designation	Description	Other party
(1) Supplement No. 11 to Rate Schedule FPC No. 87 (Supersedes Supplement No. 10).	Rate Schedule MW–17	City of Kosciusko.
(2) Supplement No. 11 to Rate Schedule FPC No. 88 (Supersedes Supplement No. 10).	....do	City of Canton.
(3) Supplement No. 11 to Rate Schedule FPC No. 93 (Supersedes Supplement No. 10).	....do	City of Leland.
(4) Supplement No. 7 to Rate Schedule FPC No. 236 (Supersedes Supplement No. 6).	....do	City of Durant.
(5) Supplement No. 7 to Rate Schedule FPC No. 238 (Supersedes Supplement No. 6).	....do	City of Itta Bena.
(6) Supplement No. 4 to Supplement No. 6 to Rate Schedule FPC No. 239 (Supersedes Supplement No. 3 to Supplement No. 6).	Amendment No. 2 to Revised Service Schedule E.	City of Greenwood.
(7) Supplement No. 4 to Supplement No. 6 to Rate Schedule FPC No. 243 (Supersedes Supplement No. 3 to Supplement No. 6).	....do	City of Clarksdale.
(8) Supplement No. 4 to Supplement No. 5 to Rate Schedule FERC No. 254 (Supersedes Supplement No. 3 to Supplement No. 5).	....do	City of Yazoo City.
(9) Supplement No. 3 to Supplement No. 8 to Rate Schedule FERC No. 251 (Supersedes Supplement No. 2 to Supplement No. 8).	Amendment No. 2 to Revised Service Schedule TS–2.	South Mississippi Electric Power Association.
(10) Supplement No. 3 to Supplement No. 11 to Rate Schedule FERC No. 251 (Supersedes Supplement No. 2 to Supplement No. 11).	Amendment No. 2 to Revised Service TS–1.	South Mississippi Electric Power Association.
(11) Supplement No. 1 to Rate Schedule FERC No. 263.	Amendment No. 1 to Letter Agreement.	Tennessee Valley Authority.
(12) Supplement No. 1 to Rate Schedule FERC No. 265.	Amendment No. 1 to Service Schedule TS–3.	Gulf States Utilities Corporation.
(13) Supplement No. 1 to Supplement No. 9 to Rate Schedule FERC No. 266.	Amendment No. 1 to Service Schedule E.	Big Rivers Electric Corporation.
(14) Rate Schedule FERC No. 268	Interconnection Agreement	Municipal Energy Agency of Mississippi.
(15) Exhibit A to Rate Schedule FERC No. 268.	Points of Delivery, Full Requirements	Do.
(16) Exhibit B to Rate Schedule FERC No. 268.	Point of Delivery, Clarksdale	Do.
(17) Exhibit C to Rate Schedule FERC No. 268.	Point of Delivery, Greenwood	Do.
(18) Exhibit D to Rate Schedule FERC No. 268.	Point of Delivery, Yazoo City	Do.
(19) Supplement No. 1 to Rate Schedule FERC No. 268.	Service Schedule A, Partial Requirements.	Do.
(20) Supplement No. 2 to Rate Schedule FERC No. 268.	Service Schedule B, Emergency Service.	Do.
(21) Supplement No. 3 to Rate Schedule FERC No. 268.	Service Schedule C, Maintenance Service.	Do.
(22) Supplement No. 4 to Rate Schedule FERC No. 268.	Service Schedule D, Economy Energy.	Do.
(23) Supplement No. 5 to Rate Schedule FERC No. 268.	Service Schedule E, Reserve Capacity.	Do.
(24) Supplement No. 6 to Rate Schedule FERC No. 268.	Service Schedule F, Inadvertant Energy.	Do.
(25) Supplement No. 7 to Rate Schedule FERC No. 268.	Service Schedule G, Reactive Power	Do.
(26) Supplement No. 8 to Rate Schedule FERC No. 268.	Service Schedule H, Transformation Capacity.	Do.
(27) Supplement No. 9 to Rate Schedule FERC No. 268.	Service Schedule I, Bulk Power Transmission.	Do.
(28) Supplement No. 1 to Supplement No. 1 to Rate Schedule FERC No. 268.	Amendment No. 1 Service Schedule A.	Do.
(29) Supplement No. 1 to Supplement No. 9 to Rate Schedule FERC No. 268.	Amendment No. 1 to Service Schedule H.	Do.
(30) Supplement No. 1 to Supplement No. 9 to Rate Schedule FERC No. 268.	Amendment No. 1 Service Schedule I	Do.

Designations (14)–(27) apply to the Interconnection Agreement with MEAM that will not be made effective until properly ratified by MEAM's member utilities. These designations were inadvertently excluded from the Commission's letter accepting the settlement agreement in Docket No. ER82–128–000.

[FR Doc. 84–16975 Filed 6–25–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–450–000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

June 21, 1984.

Take notice that on May 30, 1984, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP84–450–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Northwest proposes to transport natural gas for an eligible end-user under the authorization issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to five billion Btu of natural gas per day for the account of NGL Production Company (NGL) pursuant to a letter agreement (Agreement) dated March 19, 1984. The proposed transportation service shall be for an initial term expiring June 30, 1985, it is stated.

Northwest states that the gas is purchased by Overthrust Gas Brokers Company (OGBC) from Cities Service Oil Company (Cities) at the outlet of Cities' Lignite Plant in Burke County, North Dakota, and sold by OGBC to NGL at the below-described delivery points from the Montana-Dakota Utilities Co. (Mondak) to Colorado Interstate Gas Company (CIG) pursuant to a gas purchase contract dated January 18, 1984. NGL warrants that this gas was not dedicated to interstate commerce on or before November 8, 1978, it is submitted.

It is indicated that NGL would tender gas to Northwest for transportation at existing points of interconnection between Mondak pipeline and CIG pipeline in Park County, Wyoming (Elk Basin Receipt Point), or Fremont County, Wyoming (Madden Receipt Point). It is explained that Northwest, by utilizing its March 11, 1980, gas transportation and exchange agreement with CIG, would provide for the transportation of NGL's gas from the Elk Basin and/or Madden Receipt Points to existing points of delivery on Northwest's transmission system in Sweetwater County, Wyoming, or Uintah County, Utah. Northwest states that it then would transport NGL's gas on its mainline and redeliver thermally equivalent volumes of gas, less fuel, to NGL's Foundation Creek, North Douglas Creek, and Moxa Arch processing plants located adjacent to Northwest's facilities in Rio Blanco County,

Colorado, and Lincoln County, Wyoming.

Northwest states that NGL has indicated that the natural gas would be used exclusively to replace fuel and shrinkage incurred in the processing of Northwest's gas at NGL's processing plants. Approximately 10 percent of the gas would replace plant fuel, with the remaining 90 percent replacing plant shrinkage, it is submitted.

Northwest states that the proposed service is conditioned upon the availability of pipeline capacity sufficient to provide such service without detriment or disadvantage to Northwest's existing customers who are dependent on Northwest's general system supply.

Northwest states that it would charge NGL a mainline transportation rate of 1.25 cents per million Btu and a GRI adjustment of 0.118 cents per million Btu. Northwest would also retain 0.83 percent of volumes transported as reimbursement for mainline fuel usage, which are set forth in Northwest's currently effective FERC Gas Tariff, Volume No. 2. It is stated that NGL would also reimburse Northwest for the charges incurred from CIG in transporting NGL's gas from the Elk Basin and Madden receipt points to Northwest's transmission system. It is further stated that CIG's current rate is 36.0 cents per million Btu plus reimbursement of compressor fuel in kind. The average delivered price to NGL, exclusive of fuel reimbursement, would be approximately $2.8287 per million Btu, it is submitted.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16970 Filed 6-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-89-000]

Texas Eastern Transmission Corp.; Request for Approval of Refund Plan

June 20, 1984.

Take notice that on June 12, 1984, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing a request that the Commission approve its refund plan.

On May 3, 1984, in Docket No. RM84-6-000 the Commission promulgated an Interim Rule regarding how to refund amounts Texas Eastern receives from producers as a result of the decision in *Interstate Natural Gas Ass'n of America v. FERC*, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, U.S. (1984) (INGAA) wherein the Court vacated Order Nos. 93 and 93-A on grounds that the NGPA required that maximum lawful price ceilings be calculated on a saturated Btu basis. Texas Eastern has filed a Request for Clarification of that Rule insofar as its instructions to pipelines on how to refund the amounts received. That request is pending. However, in the meantime, Texas Eastern may soon receive refunds from certain producers pursuant to the Interim Rule. For this reason, Texas Eastern requests that the Commission approve its refund plan with respect to amounts it receives as a result of the *INGGA* decision.

Texas Eastern states that, with minor exceptions, it collected from its customers the amounts required as a result of Order Nos 93 and 93-A in the period from April 1, 1982 to April 1, 1983. This was the period of time in which its surcharge for the Order Nos. 93 and 93-A retroactive payments was in effect and also the period of time when it began paying producers on a current basis according to Orders Nos. 93 and 93-A and including such costs in rates. Accordingly, Texas Eastern submits that consistent with the Interim Rule an equitable and fair way of distributing the subject refunds to its customers is to pay them a percentage of the refunds based on the total sales to each customer compared to total sales to all customers during the period April 1, 1982 to April 1, 1983, a period representative of Texas Eastern's customers' payment of the Order Nos. 93 and 93-A amounts and a period which covers a winter heating and summer take pattern. Texas Eastern believes that this is in accord with the Interim Rule's goal of refunding to the customers who paid the Order Nos. 93 and 93-A.

Texas Eastern states that a copy of this filing has been mailed to each person designated on the official service list.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-16977 Filed 6-25-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-91-000]

Texas Eastern Transmission Corp.; Petition for Waiver of Tariff Provisions and Proposed Changes in FERC Gas Tariff

June 20, 1984

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 18, 1984 filed with the Commission a petition to waive certain of the provisions of the Gas Transportation Agreement dated August 27, 1959 between Texas Eastern and Consolidated Gas Transmission Corporation pursuant to the terms of a letter agreement dated June 7, 1984 (Letter Agreement) between Consolidated and Texas Eastern. Said transportation agreement is currently on file with the Commission as Rate Schedule X-43 of Texas Eastern's FERC Gas Tariff, Original Volume No. 2. In addition, Texas Eastern tendered for filing as part of Rate Schedule X-43 the following tariff sheets:

Original Sheet No. 344A
Original Sheet No. 344B
Original Sheet No. 344C

The foregoing tariff sheets set forth in full the text of the Letter Agreement.

Texas Eastern states the Letter Agreement provides for a waiver of all, or a portion of, the minimum bill in Rate Schedule X-43 in the event Consolidated tenders pursuant to Rate Schedule X-43, at Texas Eastern's request, a quantity of gas less than 103,809 dth, which is the Maximum Daily Quantity specified in the rate schedule. In particular, for each day during the period June 1, 1984 through and including November 15,

1984 in which, at Texas Eastern's request, Consolidated tenders a quantity of gas equal to or less than the difference between the Maximum Daily Quantity and the quantity requested not to be tendered by Texas Eastern for transportation pursuant to Rate Schedule X–43, Texas Eastern and Consolidated have agreed to waive the minimum monthly bill otherwise due pursuant to Paragraph 2 of Article III of Rate Schedule X–43 by an amount equal to the product of (i) the sum of the quantities requested not to be tendered by Texas Eastern on such days in a month times (ii) the effective X–43 rate (currently 4.60¢ per dth) times (iii) 86%.

By granting its petition for waiver and authorizing implementation of the terms of the Letter Agreement, Texas Eastern states the Commission will permit Consolidated, at its discretion upon request by Texas Eastern, to assist Texas Eastern in alleviating, estimated insufficient actual operating capacity on Texas Eastern's system and as a result to receive appropriate recognition of Consolidated's assistance on the minimum bill under Rate Schedule X–43.

Texas Eastern anticipates experiencing insufficient actual operating capacity west of Uniontown, Pennsylvania to meet the throughput demand at and east of Uniontown, Pennsylvania. During the period of June 1, 1984 through and including November 15, 1984, Texas Eastern states its actual operating capacity west of Uniontown, Pennsylvania will be impacted during said period by the estimated low daily takes of its jurisdictional customers in Zone C during said period and extensive pipeline maintenance and testing scheduled by Texas Eastern for this summer.

The proposed waiver is requested for a limited term from June 1, 1984 through and including November 15, 1984. The proposed effective date of the above tariff sheets is for the period June 19, 1984 through and including November 15, 1984.

Texas Eastern states that copies of the petition and the tariff filing are being posted in accordance with § 154.16 of the Commission's Regulations and are being served on the affected party.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before *June 27, 1984.* Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–16978 Filed 6–25–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP84–88–000]

Transwestern Pipeline Co.; Request for Approval of Refund Plan

June 20, 1984.

Take notice that on June 12, 1984, Transwestern Pipeline Company (Transwestern) tendered for filing a request that the Commission approve its refund plan.

On May 3, 1984, in Docket No. RM84–6–000 the Commission promulgated an Interim Rule regarding how to refund amounts Transwestern receives from producers as a result of the decision in *Interstate Natural Gas Ass'n of America* v. *FERC,* 716 F.2d 1 (D.C. Cir. 1983), *cert. denied,* — U.S. — (1984) (INGAA) wherein the Court vacated Order Nos. 93 and 93–A on grounds that the NGPA required that maximum lawful price ceilings be calculated on a saturated Btu basis. Texas Eastern Transmission Corporation has filed a Request for Clarification of that Rule insofar as its instructions to pipelines on how to refund the amounts received, with which Transwestern concurs. That request is pending. However, in the meantime, Transwestern may soon receive refunds from certain producers pursuant to the Interim Rule. For this reason, Transwestern requests that the Commission approve its refund plan with respect to amounts it receives as a result of the *INGAA* decision.

Transwestern states that, with minor exceptions, it collected from its customers the amounts required as a result of Order Nos. 93 and 93–A in the period from April 1, 1982 to April 1, 1983. This was the period of time in which its surcharge for the Order Nos. 93 and 93–A retroactive payments was in effect and also the period of time when it began paying producers on a current basis according to Orders Nos. 93 and 93–A and including such costs in rates. Accordingly, Transwestern submits that consistent with the Interim Rule an equitable and fair way of distributing the subject refunds to its customers is to pay them a percentage of the refunds based on the total sales to each customer compared to total sales to all customers during the period April 1, 1982 to April 1, 1983, a period representative of Transwestern's customers' payment of the Order Nos. 93 and 93–A amounts and a period which covers a winter heating and summer take pattern. Transwestern believes that this is in accord with the Interim Rule's goal of refunding to the customers who paid the Order Nos. 93 and 93–A.

Transwestern states that a copy of this filing has been mailed to each person designated on the official service list.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–16979 Filed 6–25–84; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals is seeking comments on a Proposed Decision and Order concerning refund procedures for moneys obtained from five crude oil producers and resellers.

DATE AND ADDRESS: Comments may be submitted no later than 30 days from the date of publication in the **Federal Register** and should be addressed to: Marcia B. Proctor, Chief, Docket and Publications Branch, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should display Case No. HEF–0489.

FOR FURTHER INFORMATION CONTACT: Roger J. Klurfeld, Assistant Director,

Meri Arnett Kremian, Staff Attorney, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2383.

SUPPLEMENTARY INFORMATION: The Department of Energy's Office of Hearings and Appeals (OHA) has issued a Proposed Decision and Order which sets forth its tentative conclusions concerning appropriate refund procedures to be adopted for disposition of moneys obtained through consent orders and stipulated settlements entered into by the DOE with five crude oil producers and resellers. The names of those firms and individuals are listed in the Appendix to the Proposed Decision which follows this Notice. The OHA proposes that a two-stage refund process be followed. In the first stage, the OHA proposes to accept refund applications in these cases. Those applications will be adjudicated in the same manner and using the same principles as applied to those refund applications filed pursuant to two earlier OHA determinations, *Office of Enforcement: In the Matter of Alfred B. Alkek*, 47 FR 2196 (1982), and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 47 FR 16381 (1982). After all valid claims are paid in the first stage, some funds may remain for distribution in a second stage of the refund process. The OHA proposes to reserve until the conclusion of the first stage the determination of the procedures which will govern the second stage proceedings.

Specific information concerning any individual consent order or stipulated settlement underlying these special refund proceedings may be obtained by contacting the persons whose names are listed at the beginning of this Notice. The Office of Hearings and Appeals will accept comments on the Proposed Decision that are filed within 30 days of the date of publication of this Notice in the **Federal Register**. Applications for refund should not be filed at this time.

Dated: June 8, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 8, 1984.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Petitioner: Ernest E. Allerkamp and others listed in Appendix.

Date of Filing: March 20, 1984.

Case Number: HEF–0489, and others listed in Appendix.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement a specially-designed process to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the ERA filed Petitions for the Implementation of Special Refund Procedures in connection with consent orders or stipulated settlements which it entered into with Ernest E. Allerkamp and four other firms and individuals. The names of each firm or individual, and the refund amount provided for by the corresponding consent order or stipulated settlement are listed in the Appendix to this Decision and Order.[1] Pursuant to these orders, these parties have agreed to make refunds totaling approximately $1.3 million for violations and alleged violations of DOE pricing regulations. Those funds, which have already been paid to the DOE, are being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.[2] As will be discussed in greater detail below, each alleged violation of the DOE pricing regulations in these cases is similar because it involves crude oil pricing violations, and the parties injured by each of the alleged or actual violations are for the most part identical. Therefore these cases have been consolidated for purposes of this Decision.

I. Regulatory Background

Each of the consent orders and stipulations involved in this proceeding resulted from an audit or investigation conducted by the DOE and its predecessor agencies. As a result of these audits and investigatios, the DOE alleged that the parties in each of these cases were involved in the sale of crude oil at prices in excess of those established in the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.

Those regulations generally required crude oil producers to determine the first sale price of crude oil on the basis of the level of production from a property during a specified base period, *i.e.*, the base production control level (BPCL). See 6 CFR 150.354; 10 CFR 212.72–212. 74. The term "property" was defined as the right to produce crude oil which arises from a lease or fee interest. 6 CFR 150.354(b)(2); 10 CFR 212.72. Crude oil production that did not exceed the BPCL for a particular property was generally subject to the lower tier ("old" oil) ceiling price rule. 6 CFR 150.354; 10 CFR 212.73. Crude oil production that exceeded the BPCL ("new" oil) could generally be sold without regard to the ceiling price rule prior to February 1, 1976, and at the upper tier ceiling price level after that date. 6 CFR 150.354(c)(2); 10 CFR 212.74(a). Prior to February 1, 1976, in months in which new oil could be sold from a property, additional volumes of crude oil could be sold as "released" oil at prices in excess of the applicable lower tier ceiling price level. 6 CFR 150.354(c)(3); 10 CFR 212.74(b). Additionally, crude oil produced from a "stripper well property" could generally be sold at market price levels. Producers and resellers of crude oil were generally required to certify in writing to each purchaser in the distribution chain the respective volumes of the various categories of price-controlled domestic crude oil included in each purchase. 10 CFR 212.131(a)(4), (b)(1). Refiners were required to report these certifications to the DOE and its predecessors when they processed the crude oil to enable the agency to administer the Entitlements Program, 10 CFR 211.67.

The Entitlements Program, 10 CFR 211.67, was part of the comprehensive program administered by the DOE for the mandatory pricing and allocation of crude oil, residual fuel oil and refined petroleum products. As discussed above, the federal regulations governing the price of crude oil created a price disparity between, on the one hand, foreign crude and uncontrolled domestic crude oil, and old and upper-tier (price-controlled) oil on the other hand. These price controls had an unequal effect on refiners because some refiners had greater access to the cheap old oil than others. Firms which had little or no access to price-controlled oil were forced to purchase uncontrolled domestic or similarly expensive foreign crude oil. As a result, many small, independent firms, with little or no access to price-controlled domestic reserves, experienced crude oil acquisition costs so high relative to the industry as a whole that those costs threatened their viability. To remedy these imbalances, the DOE established the Entitlements Program. 39 FR 31650 (1974); 39 FR 39740 (1974). Under the Entitlements Program, refiners with

[1] Copies of the respective refund orders and supporting materials filed by ERA may be obtained from the OHA Public Docket Room. However, inasmuch as the majority of these orders contain little specific information regarding the crude oil pricing violations that were actually alleged prior to settlement, we have not attempted to include in this Decision any specific identification of the alleged violations underlying these consent orders and stipulated settlements.

[2] All funds are deposited as collected into an escrow account which, along with accrued interest, totaled approximately $1,314,500 as of March 30, 1984.

proportionally greater access to cheap price-controlled oil made cash payments, in the form of the purchase of entitlements, to refiners with less access to price-controlled oil. The program was designed to restore the competitive viability of the refining industry by generally equalizing among all domestic refiners the benefits associated with access to the lower-priced domestic crude oil.

II. Factual Background

The types of alleged violations involved in this proceeding fall into four categories. Some of the alleged violations involve incorrect certifications by producers. The producers were therefore alleged to have overcharged purchasers by an amount per barrel which represents the difference between the "new" or "stripper well" prices and the maximum price permitted for "old" oil. The second type of violation involved concerns producers who were alleged to have sold "old" oil at levels in excess of the applicable ceiling price. In this type of case, the producers allegedly determined May 15, 1973 posted prices for crude oil incorrectly and thus sold crude oil at a price higher than that permitted by the regulations. The third type of violation concerns resellers that were alleged to have miscertified "old" crude oil which they owned and sold it at the higher "new" or world market level (uncontrolled) oil prices. The fourth type of violation concerns resellers who were alleged to have engaged in "layering" practices—that is, charging a price to customers greater than the price which it paid for the crude oil without performing any of the services traditionally and historically associated with resellers—or to have charged prices in excess of the "permissible average mark-up" provided by the regulations. *See* 10 CFR 212.183.

In these cases, the Government agreed to terminate the pending investigations, administrative proceedings, and court litigation through a consent order or stipulation of settlement and the parties agreed to pay a stipulated sum of money to the DOE. Notices of some of the consent orders were published in the **Federal Register**.[3] Interested parties were provided an opportunity to comment on the terms of the consent orders and to submit written notices to ERA of potential claims against the settlement funds. In one of these cases the funds were remitted to the DOE as the result of a court-approved stipulation of settlement.[4] The respective dates of the publication of the final consent orders and the dates of the court orders approving the settlements are set forth in Appendix to this Decision. In some cases parties have submitted claims for a portion of the funds.[5]

III. Jurisdiction.

The procedural regulations of the Department of Energy set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V.[6] Those regulations provide that the Subpart V process may be used in situations where the Department of Energy is unable to identify readily persons who were or may have been injured by alleged or adjudicated violations or to readily ascertain the amount of their alleged injuries. 10 CFR 205.280. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the records developed in the cases involved in this proceeding, we have concluded that in each of these cases, it is difficult to identify potentially injured parties and to determine to what extent a refund applicant may have been injured by the pricing or certification practices of a firm which entered into a settlement. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. The Office of Hearings and Appeals therefore will accept jurisdiction over the funds received by the DOE in settlement of the enforcement proceedings underlying the Petitions for Implementation of Special Refund Proceedings set forth in the Appendix to this Decision.

IV. Proposed Refund Procedures

We have previously established refund procedures for consent orders involving the same type of crude oil-related violations as those which are the subject of the present proceedings. In *Office of Enforcement: In the matter of Alfred B. Alkek*, 9 DOE ¶ 82,521 (1982) (hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982) (hereinafter cited as *Adams*), which involved consent orders and remedial orders with 58 firms, we established a two-stage refund procedure for consent order and remedial order funds received as a result of alleged crude oil regulatory violations.[7] We noted in *Alkek* that "the benefits associated with the moneys received as refunds for possible overcharges should be distributed in a manner that will inure to the maximum extent possible to those who were actually injured by the alleged overcharges." Alkek at 85,135. We stated that any party that believed it could prove an injury resulting from the alleged violations may file an Application for Refund, but cautioned that a claimant must affirmatively demonstrate that it has been injured by the alleged violation and should consequently received a refund. *Id.* We suggested some kinds of evidence which would tend to demonstrate that a party was injured by a consent order firm's pricing or certification practices. *Id.* at 85,137.

However, in both *Adams* and *Alkek*, we point out that refiners which purchased crude oil directly from consent order firms and other refiners which participated in the Entitlements Program, 10 CFR 211.67, might not be appropriate recipients of the total pool of refund moneys available. Because of

[3] The DOE procedural regulations require the publication for public comment in the **Federal Register** of consent orders which call for the payment of sums exceeding $500,000. *See* 10 CFR 205.199J(b).

[4] On January 26, 1984, the United States District Court for the District of Utah signed an Order stipulating settlement in a consolidated case involving Flying Diamond Oil Corporation, No. C–77–0292J No. C–77–0292J. By the terms of that Order, $130,000 plus interest was paid to the Department of Energy, and subsequently deposited in an escrow account. The settlement also provided for payment to parties which had filed claims against Flying Diamond, including Telum Inc., PREMOCO, KarKwik, Stimson, Inc., and Major Oil Company and its receiver. In return, these firms released Flying Diamond from further claims. Because of the settlement and release, those firms will be precluded from filing an Application for Refund in this proceeding.

[5] All claims and comments received by the ERA were included in the materials which it filed with its March 20, 1984 Petitions for the Implementation of Special Refund Procedures. All of those claimants will receive a copy of this Proposed Decision and Order and be given an opportunity to file comments on it. In addition, all of those parties will receive a copy of the final Decision and Order setting forth the procedures for filing an application for refund.

[6] At one time crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to overcharged parties including ultimate consumers. However, since the President has exempted crude oil and all refined petroleum products from the DOE regulatory program, *see* Exec. Order No. 12287, 46 FR 9909 (1981), price rollbacks are no longer an effective means of refunding money to purchasers who were overcharged in the past.

[7] We subsequently added to the Alkek/Adams "pool" the portion of the Amoco consent order funds that was allocated for crude oil claims. *See* Office of Special Counsel, 10 DOE ¶ 85,048 at 88,203. We have also discussed the potential distribution of crude oil overcharge funds in re Stripper Well Exemption Litigation, Case No. HEF–0025, 48 FR 57608 (1983).

the way the Entitlements Program was set up, it had the effect of dispersing overcharges resulting from miscertifications of crude oil throughout the domestic crude oil refining industry. As we noted in *Alkek*:

> Miscertifications cause price-controlled crude oil to disappear. This disappearance caused the volume of old oil to be distributed through the Entitlements Program to decline and caused the DOSR [Domestic Crude Oil Supply Ratio] to be reduced. Thus, refiners who included more than the national average percentage of price-controlled oil in their crude oil receipt and runs to stills had to purchase a *greater* number of entitlements. Similarly, refiners with less than the national average percentage of price-controlled crude oil had *fewer* entitlements to sell. As a result, every refiner's cost of crude oil was increased. Thus, all refiners were affected by the alleged miscertification violations involved in the Consent Orders.

Alkek at 85,133 (citations omitted). These cost increases were treated by refiners exactly like other crude oil cost increases such as an OPEC price increase or an increase in a domestic posting for crude oil. To the extent they could increase their prices for refined peteroleum products to reflect these cost increases, refiners were able to shift the effects of these cost increases to their customers. *Tenneco Oil Company/ Plateau, Inc.*, 10 DOE ¶ 85,015 (1982). If these cost increases were entirely passed through by a refiner, it incurred no injury as a result of miscertifications of crude oil. If the passthrough were less than complete, that refiner would likely have incurred some injury. However, because of such factors as the accumulation of refiners' banks of increased costs, and changes in prevailing crude oil costs and price levels during the relatively lengthy period covered by the consent orders, it would be extremely burdensome to compute with precision the degree to which each refiner absorbed any increases in costs engendered by miscertifications.

We did note, however, that certain identifiable parties might be able to show demonstrable injury from the alleged violations. One such class of potentially injured parties was the group of resellers or refiners that obtained crude oil directly from the parties which entered into consent orders in which an improper computation of the base price for crude oil was alleged. We noted that because this oil appeared to be properly certified, the alleged overcharges were not passed through the mechanisms of the Entitlements Program. As a result, these direct purchasers and refiners may have borne the effect of such overcharges and may be eligible for refunds to the extent that they could show that the alleged overcharges were not passed through to subsequent purchasers. *Alkek* at 85,133–34.

The second class of potentially injured parties which should be able to demonstrate injury consists of refiners that obtained crude oil from parties that entered into consent orders concerning violations alleged to have occurred before the commencement of the Entitlements Program on November 1, 1974. As we noted in *Alkek*, because the effects of these overcharges were not passed through the Entitlements Program, these refiners were directly affected and may have absorbed the effects of the alleged overcharges. Thus we concluded that refiners in this class, like those that purchased crude oil for which the base price was improperly computed, would be eligible for refunds to the extent they could show that they did not pass these increased costs on the subsequent Purchasers. *See Tenneco Oil Company/Plateau, Inc.*, 10 DOE ¶ 85,015 (1982).

A third class of claimants that may be able to demonstrate that injury resulting from a consent order firm's alleged violations consists of purchasers which used crude oil as industrial boiler fuel. These end-users of crude oil would also be eligible to file claims for refunds in these cases.

Despite our concern that it would be a extremely difficult for refiners to demonstrate that they absorbed, rather than passed through, the injurious effects of a consent order firm's alleged violations, refiners are not foreclosed from submitting applications for refund in this proceeding. For periods subsequent to November 1, 1974, both refiners and subsequent purchasers that obtained crude oil or refined products produced or sold by the parties that entered into the consent orders involved in the proceeding could be eligible for refunds if they can show that the Entitlements Program did not negate the adverse effects caused by the alleged violations and could accurately calculate the impact of those effects on them. *Alkek* at 85,136–37.

As noted above, because the types of alleged violations that underlie the present proceeding are substantially the same as those that were the subject of the *Alkek* and *Adams* proceedings, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after those proceedings. We therefore propose to establish first-stage refund procedures for these five cases in which we will accept first-stage refund applications to be adjudicated in the same manner and using the same principles as those refund applications that were filed pursuant to the *Alkek* and *Adams* determinations. As we noted in *Alkek*, however, if our tentative conclusions are correct, the effects of the alleged overcharges were spread among all refiners by the Entitlements Program and were largely passed on by them and subsequent purchasers to ultimate consumers. However, as we noted in *Alkek*, it would be premature for consumers and consumer groups to file Applications for Refund until the refiners' and resellers' claims have been resolved. *Alkek* at 85,136.

V. Second Stage Refund Procedures

Because of the difficulty inherent in establishing the level of injury to parties in the majority of these cases, there is likely to be a substantial portion of these refund moneys remaining after all successful first-stage claimants have been paid. As in previous cases, we shall hold in abeyance our determination as to appropriate second-stage procedures for these cases until we know how much money will remain after first-stage claims are paid. *See Office of Enforcement*, 9 DOE ¶82,508 (1982). Our views concerning possible second-stage resolutions are contained in *In Re Stripper Well Exemption Litigation*, Case No. HEF–0025, 48 FR 57608 (1983).

It Is Therefore Ordered That:

The refund amounts provided in conjunction with the consent orders, remedial orders, and stipulations of settlement listed in the Appendix to this Decision and Order shall be distributed in the manner set forth in the foregoing Decision.

Appendix

Name of firm	Case No.	Settlement amount	
Ernest E. Allerkamp.	HEF–0489	$444,080.64	*
Flying Diamond Oil Co.	HEF–0490	155,537.88	(D. Utah) Jan. 25, 1984.
Kaelman Oil Company.	HEF–0492	50,000.00	*
Southern Crude Oil Resources, Inc.			
Texas Pacific Oil Co., Inc.	HEF–0496	500,000.00	48 FR 43378 (1983).

[FR Doc. 84–16000 Filed 6–25–84; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Radio Advisory Committee Meets

July 11, 1984.

The next meeting of the Advisory Committee on Radio Broadcasting has been scheduled for 1:30 p.m., Wednesday, July 11, 1984, in Room 330, 1200 19th Street, NW., Washington, D.C.

The Committee will consider:

—Recommendations to the FCC concerning ongoing discussions with Mexico relating to revisions to the United States—Mexican AM Radio Broadcasting Agreement; and

—Other business.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for July 11, 1984 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information please contact the Committee Chairman, Louis C. Stephens, or Jonathan David, at FCC Headquarters: (202) 632–7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–16930 Filed 6–25–84; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–711–DR]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–711–DR), dated June 18, 1984, and related determinations.

DATED: June 18, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0501.

Notice: Notice is hereby given that, in a letter of June 18, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288) as follows:

I have determined that the damage in certain areas of the State of Connecticut, resulting from severe storms and flooding beginning on or about May 27, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Albert A. Gammal, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared major disaster:

Hartford and Middlesex Counties for Individual Assistance and Public Assistance.

Fairfield, Litchfield, New Haven and Tolland Counties for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–16913 Filed 6–25–84; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–712–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–712–DR), dated June 18, 1984, and related determinations.

DATED: June 18, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0501.

Notice: Notice is hereby given that, in a letter of June 18, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288) as follows:

I have determined that the damage in certain areas of the State of Vermont, resulting from severe storms and flooding beginning on June 6, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Brendon Bailey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster:

Caledonia, Franklin, Lamoille, Orange and Washington Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–16914 Filed 6–25–84; 8:45 am]

BILLING CODE 6718–02–M

Privacy Act of 1974; Proposed New Routine Use to Existing System of Records

AGENCY: Federal Emergency Management Agency.

ACTION: The purposes of this notice are to add a new routine use to an existing system of records entitled, "FEMA/FIA–1, Federal Crime Insurance Program" and to make administrative and typographical corrections to the system

of records entitled, "FEMA/NPP–1, National Defense Executive Reserve System" which was published in the **Federal Register** on May 17, 1984, (49 FR 20907).

SUMMARY: The Federal Crime Insurance Program will expire in September 1984. While we will continue to honor existing policies after that date, no renewals will be available upon the expiration of the policies after that date, no renewals will be available upon the expiration of the policies. Therefore, we require a new routine use in order to make the names and addresses available to State facilities and private insurers for direct solicitation of the Federal crime insurance policyholders for the purpose of providing crime insurance coverage to them after September 1984.

EFFECTIVE DATE: Except for the new routine use which appears in the "FEMA/FIA–1, Federal Crime Insurance Program" systems of records, all other changes become effective on June 26, 1984. The new routine use will become effective, without further notice, on July 26, 1984, unless comments dictate otherwise.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 287–0313.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 96–375), agencies are required to publish a notice of the systems of records they maintain that are subject to the Act only when the agency is establishing a new system or when it substantively alters an existing system. A substantive change to an existing system is one which would also require a "Report on New Systems" and is described in the Office of Management and Budget's Circular A–108, Transmittal Memorandum No. 1 and No. 3. Thus, a change to the system notice that does not require such a report need only be described in a **Federal Register** notice, without the necessity of publishing the complete text of the notice. The new information is being printed in italics.

On November 26, 1982, (47 FR 53493), the Federal Emergency Management Agency published the complete text of the system of records, "FEMA/NPP–1, National Defense Executive Reserve System." Revisions to this system of records were published on May 17, 1984, (49 FR 20907). The complete text of the system of records, "FEMA/FIA–1, Federal Crime Insurance Program" was published on October 7, 1981 (46 FR 49470).

Dated: June 20, 1984.

James L. Holton,

Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/NPP–1,

SYSTEM NAME:

National Defense Executive Reserve System.

CATEGORIES OF RECORDS IN THE SYSTEM:

On the first line, add the word, "*and*" between the words, "Applicants for" and the words, "the incumbents of".

* * * * *

PURPOSE(S):

On the eighth line, delete the first word, "date" and insert in its place, the word, "*data*".

* * * * *

FEMA/FIA

SYSTEM NAME:

Federal Crime Insurance Program.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the servicing company for the contract and insurance adjustment firms retained by the servicing company for billing, verification of coverage, claims adjusting and issuance of policies; to property loss reporting bureaus; to State Insurance Departments and insurance companies investigating fraud or potential fraud in connection with burglary or robbery claims; *to State property insurance facilities and private sector insurers for the purpose of providing crime insurance to Federal crime insurance policyholders following the expiration of the Federal Crime Insurance Program.* Additional routine use may include Nos. 1, 2, 3, 5, and 8 of Appendix A.

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[FR Doc. 84–16906 Filed 6–25–84; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916 and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 003–010071–003.

Title: Cruise Lines International Association.

Parties: American Hawaii Cruises, Bahama Cruise Line, Inc., Carnival Cruise Lines, Commodore Cruise Line, Ltd., Costa Cruises, Cunard Line Ltd., Cunard Norwegian American Cruises, Delta Queen Steamboat Company, Eastern Cruise Lines, Epirotiki Lines, Inc., Holland America Line, USA Inc., Home Lines Cruises Inc., Norwegian Caribbean Lines, Ocean Cruise Lines, Inc., Paquet Cruises, Inc., Pearl Cruises of Scandinavia, Princess Cruises, Royal Caribbean Cruise Line, Inc., Royal Cruise Line, Royal Viking Line, Sitmar Cruises, Sun Line Cruises, Western Cruise Lines.

Synopsis: The proposed amendment would modify Article 8 of the agreement to provide that the basic agreement, which now may be amended by agreement of at least one less than the total number of member companies, may in the future be amended by agreement of a least 75 percent of the total number of member companies.

Filing party: Edward Schmeltzer, Esquire, Schmeltzer, Aptaker & Sheppard, 1800 Massachusetts Avenue NW., Suite 500, Washington, D.C. 20036.

By Order of the Federal Maritime Commission.

Dated: June 21, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–16881 Filed 6–25–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citicorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794)

for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commerce or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is availabe for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 16, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage *de novo* in the making, acquiring or servicing, for its own account or for the account of others, commercial loans and other extensions of credit, including but not limited to the business of factoring and asset-based financing.

Board of Governors of the Federal Reserve System, June 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16689 Filed 6-25-84; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is not listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 not later than July 16, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York, to engage *de novo* in acting as agent or broker for the sale of life insurance related to individual retirement accounts offered by any of its subsidiaries authorized under state or federal law to accept such accounts. Applicant asserts that the proposed activities are exempt from the prohibitions against insurance activities found in section 601 of the Garn-St Germain Depository Institutions Act of 1982 based on the exception contained in subsection (D)(ii) of that section. Interested parties may comment on whether the activity is exempt within the meaning of subsection 601(D)(ii) or on whether the activity is closely related to banking.

Board of Governors of the Federal Reserve System, June 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16688 Filed 6-25-84; 8:45 am]

BILLING CODE 6210-01-M

Fairbank, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 18, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fairbank, Inc.*, Fairhaven, Massachusetts; to become a bank holding company by acquiring at least 93 percent of the voting shares of National Bank of Fairhaven, Fairhaven, Massachusetts.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *F.N.B. Corporation*, Hermitage, Pennsylvania; to merge with North Central Financial Corporation, Emporium, Pennsylvania, thereby indirectly acquiring 100 percent of the voting shares of Bucktail Bank and Trust Company, Emporium, Pennsylvania.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Mid-Tennessee Bancorp, Inc.*, Ashland City, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Ashland City Bank & Trust Company, Ashland City, Tennessee.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Golden Sands Bankshares, Inc.*, Neshkoro, Wisconsin; to become a bank holding company by acquiring 97.8 percent of the voting shares of Farmers Exchange Bank of Neshkoro, Neshkoro, Wisconsin.

E. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Southwest Tennessee Bancshares, Inc.*, Adamsville, Tennessee; to become a bank holding company by acquiring at least 80 percent of the voting shares of Farmers & Merchants Bank, Adamsville, Tennessee.

G. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Langdon Bancshares, Inc.*, Langdon, North Dakota; to become a bank holding company by acquiring 81 percent of the voting shares of Farmers and Merchants State Bank, Langdon, North Dakota.

H. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Community Bancorp*, Lacey, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank of Washington, Lacey, Washington.

Board of Governors of the Federal Reserve System, June 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16000 Filed 6-25-84; 8:45 am]

BILLING CODE 6210-01-M

Selin Corp.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in disputed and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 10, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Selin Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares of American National Bank, South Chicago Heights, Illinois, First National Bank of Crystal Lake, Crystal Lake, Illinois; Wauconda National Bank and Trust Company, Wauconda, Illinois; and Wheeling Trust and Savings Bank, Wheeling, Illinois; and 16.1 percent of the voting shares of First National Bank of Niles Illinois, Niles, Illinois.

Board of Governors of the Federal Reserve System, June 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-17200 Filed 6-25-84; 10:42 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

Child Support Enforcement Research and Demonstration Grants; Availability of Fiscal Year 1984 Grant Funds

The Acting Director of the Office of Child Support Enforcement (OCSE) gives notice of the availability of fiscal year 1984 funds for child support enforcement research and demonstration (R&D) grants. Funding for grants is authorized under Section 1110 of the Social Security Act.

The closing date for fiscal year 1984 requests for grants will be August 27, 1984.

Program Purpose

Grants funded by OCSE are for research and demonstration projects which will add to existing knowledge and improvements of new methods and techniques for the planning, management, coordination and delivery of child support enforcement activities related to the eligible population.

Program Goals

In general, OCSE intents to support the following types of projects:

(1) Those which develop and demonstrate new performance assessment mechanisms, administrative procedures, and technological innovations for improving the effectiveness and efficiency of child support enforcemet at the State and local levels.

(2) Those which develop more knowledge on the characteristics and financial needs of a target group.

(3) Those which develop and implement analytical models for comparing the relative merits of alternative methods for carrying out the child support enforcement programs.

(4) Those which develop and demonstrate more effective linkages between child support enforcement programs and related programs such as Aid to Families With Dependent Children (AFDC), medical assistance, unemployment compensation, etc.

Program Priorities for Research and Demonstration Funding

Research and demonstration projects will be directed toward priorities derived from State administration and program issues. OCSE has identified certain specific priority projects, listed below, which reflect these administrative program issues.

Applicants may also submit proposals for projects not specifically identified in this announcement but which are relevant to OCSE program goals. These proposals will be designated as nonpriority but will also be subject to the panel review process. A limited number of projects may be approved pending available funds and will compete with other nonpriority projects.

Priority Projects

Fiscal Year 1984 Projects

Study of Alternative Approaches to User Fees for Applicants of Non-AFDC Services (OCSE 84-1) Since the inception of the IV-D program in 1975, States have had the option to charge application fees and/or recover actual costs in excess of the application fee for non-AFDC services. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) made a significant change in this area by requiring States to impose a ten percent fee on absent parents to cover costs in excess of the application fee. The Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L 97-248) eliminated the 10 percent fee requirement and allowed States, at their option, to recover costs either from the

absent parent or from the non-AFDC individual who is receiving the IV–D services. State approaches to fee assessment have varied in response to changing Federal law, growing demands on State budgets and differences in State policies. These variations have generated a number of questions, raised through policy inquiries and comments on proposed regulations, by States and other interested groups.

It would be useful to have available an assessment of the alternate user fee approaches, including alternative approaches to those allowed by current law, so that future policy determinations can be made.

Under current procedures, States cannot apply income related sliding fee scales to the recovery of costs. The grantee should address the pros and cons of recovery of costs for provision of non-AFDC child support services using income related charges which may involve possible changes in current statutes. One of the principal issues is that of the costs and benefits of cost recovery. Other issues revolve around the connection between mandatory recoupment of costs and the size of support orders, the costs and benefits associated with recovery of actual costs on a case by case basis versus a standardized cost system. Other issues may be addressed by applicants.

It is expected that this project will produce data, based on both an overview assessment of the current diverse statewide fees and cost recovery options in the States and an analysis of alternative approaches to current law, which will provide some answers to the key questions outlined above. Based on these data, the grantee should develop a set of recommendations on some model approaches that could be used in varying situations. It is anticipated that one grant will be awarded for one year not to exceed $120,000. It is also anticipated that, based on the results of this grant, a subsequent grant may be awarded in FY 1985 for a model demonstration of the use of alternative approaches to non-AFDC user fees, and that a contract may be awarded to evaluate the effectiveness of the model demonstration.

Evaluation of the Usage and Effectiveness of Medical Support Requirements (OCSE 84–2). The current Child Support Enforcement (CSE) program permits State IV–D agencies to explicitly include medical support for children by allowing States to petition courts to order absent parents to take advantage of medical insurance. Proposed Federal regulations would require State IV–D agencies to petition courts to order absent parents to obtain medical insurance for their children whenever group medical insurance is readily available to the absent parent at a reasonable price. Little is currently known about the extent to which States have already implemented the proposed requirement in the existing CSE caseload and little is known about how much Medicaid costs have been reduced in those States.

The study will focus on producing national estimates of (a) how much Medicaid costs are reduced under the current regulations and (b) how much Medicaid costs would be reduced if State IV–D agencies were required to petition courts to order absent parents to obtain medical insurance for their children. Other questions to be addressed are: (a) How many cases, with court ordered support have private medical insurance coverage (court ordered and voluntary); (b) to what extent are case support awards reduced in consideration of medical support; (c) how has the number of cases with private medical insurance coverage varied over time (pre-and-post current regulations and for both cases with court ordered support and cases without court ordered support); and (d) to what extent have net Medicaid savings been realized? Other questions may be addressed by the study.

The project will be approached by examining representative samples of CSE case records for each State currently petitioning courts to order private medical insurance to be provided by absent parents. Preference will be given to collecting data in States with large caseloads where representative sampling is easy, if funds are not sufficient to sample all States.

It is anticipated that one grant will be awarded for one year not to exceed $160,000.

Eligible Applicants

Any State, public, or nonprofit organization or agency may apply for a grant under the Section 1110 authority.

Availability of Funds

It is anticipated that approximately two new grant awards will be made pursuant to this announcement in FY 1984.

Anticipated Amounts Are

Fiscal Year 1984 Projects

OCSE–84–1 (Study of Alternative Approaches to User Fees for Applicants of non-AFDC Services). It is anticipated that one grant for one year will be awarded for up to $120,000.

OCSE–84–2 (Evaluation of the Usage and Effectiveness of the Medical Support Requirements). It is anticipated that one grant for one year will be awarded for up to $160,000.

Recipient Share of the Project Costs

Applicants for grants are expected to contribute some portion of the total cost of the activity in order to receive consideration for funding. Generally, 5 percent of the total cost of the project is considered acceptable. No grant will be awarded which will cover 100 percent of project costs.

The Application Process

1. *Availability of application forms.* Application kits which contain the prescribed application forms and supplemental descriptive information on the priority projects of the Office of Child Support Enforcement are available from: Social Security Administration, Division of Contracts and Grants Management, OMBP, Grants Management Branch, 1–C–1, Dogwood West Building, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207, Telephone: (303)594–0284, Lawrence H. Pullen, Chief, Grants Management Branch.

2. *Application submission.* To be considered for a grant award, all applications must be submitted on standard forms provided by the Division of Contracts and Grants Management. The application shall be executed by an individual authorized to act for the applicant agency or organization and to assume for the agency or organization the obligations imposed by the terms and conditions of the grant.

As part of the project title (page 1 of the Application form SSA–96, item 7) the applicant must clearly indicate whether the application submitted is in response to a priority project identified in this announcement and must reference the unique project identifier.(OCSE–84–1, etc.) for which the application is to compete. If the application is not submitted in response to a priority project, indicate "nonpriority".

3. *Application consideration.* Applications are initially screened for relevance to the interest of OCSE. Irrelevant applications are returned to the applicant. Relevant applications are reviewed and evaluated by a review panel of not less than three persons. Written assessment of each application is made.

4. *Application approval.* Following approval of the applications selected for funding, financial assistance awards will be issued within limits of Federal funds available. The FY 84 grants awards will be issued in August 1984. The official award document is the

Notice of Grant Award. It provides the amount of funds awarded, the purpose of the award, the budget period for which support is given, the terms and conditions of the award, the total project period for which support is contemplated, and the total grantee financial participation.

5. Additional information, for questions concerning project development please contact John K. Maniha, Office of Child Support Enforcement, Rockville, MD 20852, (301) 443–2980.

Criteria for Review and Evaluation of Applications

Competing applications will be reviewed and evaluated against the following criteria.

1. *Research and Demonstration Design.* Understanding the scope of the work statement and the proposed technical approach to the requirement. This includes clarity of goals and objectives. (30 points)

2. *Knowledge.* Knowledge of the field, literature, and background presentation material. Assurance of timely and acceptable performance. (10 points)

3. *Reasonableness.* Reasonableness of the proposal. Does it make sense? Can it be done? Are the workhour effort and types of workpower to complete the project reasonable? (15 points)

4. *Experience.* Prior experience and/or new approaches or ideas in the branch of the technology or field involved. (10 points)

5. *Relevance.* Relevance of proposal to OCSE priorities and goals; and to the purposes of these grants. (25 points)

6. *Personnel, Budget, and Facilities.* Availability and competence of specific kinds and numbers of experienced personnel. Is the project cost effective? Are the costs reasonable and adequately described considering the anticipated results? Are the applicant's facilities and resources adequate? (10 points)

Closing Dates and Times

For fiscal year 1984 projects, the closing date will be August 27, 1984.

Applications may be mailed or hand delivered to: Social Security Administration, Division of Contracts and Grants Management, OMBP Grants Management Branch, 1–C–1 Dogwood West Building, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207.

Appliction must be received by the Division of Contracts and Grants Management, Grants Management Branch, by the above closing date. Hand delivered applications are accepted during normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date. Applications which are not received on time will not be considered for funding.

Exective Order 12372 Intergovernmental Review of Federal Program. These grant activities are not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

Dated: June 19, 1984.

Martha A. McSteen,

Acting Director, Office of Child Support Enforcement.

[FR Doc. 84–16291 Filed 6–25–84; 8:45 am]

BILLING CODE 4150–11–M

Food and Drug Administration

[Docket No. 83D–0414]

Volatility N-Nitrosamines in Rubber Baby Bottle Nipples; Availability of Revised Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a modification in the methodology the agency will use to determine levels of total volatile *N*-nitrosamines (nitrosamines) in rubber baby bottle nipples (rubber nipples). The agency has revised Compliance Policy Guide 7117.11 to reflect that modification. FDA is also rescinding its advisory that consumers should repeatedly boil rubber nipples before using them. Recent data show that the levels of nitrosamines in rubber nipples have been dramatically reduced, and that repeated boilings do not further significantly reduce the nitrosamine levels.

ADDRESS: Written requests for single copies of revised Compliance Policy Guide 7117.11 and for the revised methodology for determining nitrosamine levels in rubber nipples may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raymond W. Gill, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0179.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 27, 1983 (48 FR 57014), FDA announced the availability of Compliance Policy Guide 7117.11 that establishes action levels for nitrosamines in rubber nipples. An action level of 60 parts per billion (ppb) applies to rubber nipples for consumer use that are initially introduced or initially delivered for introduction into interstate commerce between January 1 and December 31, 1984, and to rubber nipples for hospital use that are initially introduced or initially delivered for introduction into interstate commerce between March 1 and December 31, 1984. FDA also announced that an action level of 10 ppb for nitrosamines in rubber nipples will apply to rubber nipples for both consumer and hospital use that are initially introduced or initially delivered for introduction into interstate commerce on or after January 1, 1985.

In the Compliance Policy Guide, FDA cited the method of analysis published in the November–December 1982 issue of *Food and Chemical Toxicology* ("Estimation of Volatile *N*-Nitrosamines in Rubber Nipples for Babies' Bottles," 20:939–944) as the method it would use to determine compliance with the established action levels. However, recent changes in the formulations of some of the rubber nipples have prevented use of that method because uncontrollable foaming occurs during the distillation step of this method. Thus, FDA has found it necessary to modify the method to curb the foaming. The modification involves the addition of 2 grams of barium hydroxide ($Ba(OH)_2$) to the solution to be distilled. A copy of an FDA memorandum that explains this modification in methodology has been filed with the Dockets Management Branch (address above) (Ref. 39). The agency has revised Compliance Policy Guide 7117.11 to reference this modification. A copy of revised Compliance Policy Guide 7117.11 also has been filed with the Dockets Management Branch (Ref. 37).

FDA also announced in the December 27, 1983 notice that consumers should boil new rubber nipples five to six times before the initial use, using fresh water

for each boil. FDA requested that the industry voluntarily label rubber nipple packages with a statement that reflects this advice.

FDA's announcement suggesting the boiling of new rubber nipples was based on studies conducted by FDA in which the rubber nipples tested contained very high levels of nitrosamines. The results of those tests led FDA to conclude that if the rubber nipples were boiled five to six times, the levels of nitrosamines would be significantly reduced.

After publication of the December 27, 1983 notice, however, FDA and the Rubber Manufacturers Association independently conducted similar tests to determine the effects of repeated boilings on the nitrosamine levels in rubber nipples. These tests utilized rubber nipples that were in compliance with the 60 ppb action level. The results of these tests reveal that boiling does not necessarily reduce the level of nitrosamines in rubber nipples in which the level is low before boiling (Ref. 38).

Based on these more recent data, FDA has determined that repeated boilings of rubber nipples containing low levels of nitrosamines may not provide any benefit to consumers. Thus, FDA is rescinding the advisory that consumers should repeatedly boil new rubber nipples before they are used. FDA is also rescinding the request that the industry voluntarily label rubber nipple packages with a statement advising the consumer to boil the rubber nipples before the initial use.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1–36. See **Federal Register** notice of December 27, 1983 (48 FR 57016–57017).

37. Revised Compliance Policy Guide 7117.11.

38. Memorandum of meeting between FDA and representatives of the rubber baby bottle nipples industry, February 21, 1983.

39. Memorandum from Additives Analytical Methods Branch (HFF–459) to Associate Director for Compliance (HFF–300), April 6, 1984.

Dated: June 14, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–16805 Filed 6–25–84; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 46, No. 223, pp. 56911–56934, dated Thursday, November 19, 1981, and **Federal Register**, Vol. 48, No. 3, pp. 512–518, dated Wednesday, January 5, 1983) is amended to reflect the Secretary's approval of changes to the organizational structure of HCFA. A brief summary of the changes follows:

- Office of the Associate Administrator for Management and Support Services: Amend the functional statement of the Office of Direct Reimbursement (ODR) to reflect the transfer of the claims processing functions for certain experiments and demonstration projects to the Office of Research and Demonstration (ORD).
- Office of the Associate Administrator for Policy: Amend the ORD functional statement to include the claims processing functions for experiments and demonstration programs transferred from ODR.

The specific changes to Part F. are detailed below:

- Section FH.20., Office of the Associate Administrator for Management and Support Services (FH)(Functions) is amended as follows:

1. Section FH.20.E., Office of Direct Reimbursement (FHF) is deleted in its entirety and replaced by the following:

E. Office of Direct Reimbursement (FHF)

Directs HCFA's function of reimbursing those Medicare providers who are reimbursed directly by the Federal Government. Plans and designs operations systems and develops methods and procedures for the review, disallowance, or authorization of Medicare claims submitted by these providers. Determines the methods and procedures for interim reimbursement and establishes interim reimbursement rates. Receives and analyzes Medicare cost reports submitted by these providers to validate aggregate and program costs to determine final Medicare program payments.

- Section FQ.20., Office of the Associate Administrator for Policy (FQ) (Functions) is amended as follows:

1. Section FQ.20.B., Office of Research and Demonstrations (FQB) is deleted and replaced with a new functional statement. The new functional statement reads as follows:

B. Office of Research and Demonstrations (FQB)

Provides leadership and executive direction within HCFA for health care financing research and demonstrations activities pertaining to HCFA programs. Works closely with the Associate Administrator for Policy, other Bureau/Office Directors, and high level staff outside HCFA to insure that the Agency's objectives in these areas are accomplished. Participates with Departmental components in a wide range of experimental health care delivery projects. Performs claims adjudication, reimbursement, and data collection for demonstration projects. Provides a setting for testing proposed policies and procedures which impact on fiscal intermediary and carrier operations.

Dated: June 18, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84–16880 Filed 6–25–84; 8:45 am]

BILLING CODE 4120–03–M

Office of Human Development Services

FY 1984 and FY 1985 Grants to Indian Tribes for Supportive and Nutritional Services for Older Indians

AGENCY: Administration on Aging (AoA), Office of Human Development Services, HHS.

ACTION: Notice.

Subject: Extension of Deadline for Applications from Potential New Indian Tribal Grantees for Supportive and Nutritional Services under Title VI of the Older Americans Act.

SUMMARY: The Administration on Aging announces that the deadline for applications from new applicants (not current grantees) for grants under Title VI of the Older Americans Act is extended from June 29, 1984 to August 15, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Michio Suzuki, Associate Commissioner, Office of State and Tribal Programs, Administration on Aging, Office of Human Development Services, Department of Health and Human Services, North Building, Room 4282, 330 Independence Avenue, SW., Washington, D.C. 20201, Telephone Number (202) 245–0011.

DATE: The closing date for receipt of applications from new applicants is August 15, 1984. Applications from current grantees are due June 29, 1984.

SUPPLEMENTARY INFORMATION: On April 10, 1984, AoA published Program Announcement 13655-841 in the **Federal Register** (Vol. 49, No. 70, pages 14248-14250) stating that applications from both current Indian tribal grantees and new Indian tribal applicants were due at the Office of Human Development Services by June 29, 1984. We are extending the due date for applications from new Tribes to August 15, 1984.

This extension applies only to Federally recognized Indian Tribes which have not received grant support under Title VI of the Older Americans Act for the previous year. Applications from current grantees are still due by June 29, 1984.

The reason for the extension is to allow more time to small Tribes to make certain arrangements with regard to eligibility for the grant. Many small Tribes do not represent the required number of 75 Indians age 60 or over and can meet this requirement only by forming a consortium of two or more Tribes. Forming a consortium requires resolutions by all participating Tribes, and developing cooperative arrangements to prepare a service program which will serve all the participating Tribes. The extension will allow more time to make these arrangements.

One (1) signed original and two (2) copies of the application including all attachments must be submitted no later than 5:30 p.m., Wednesday, August 15, 1984 to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, North Building, Room 1740, 330 Independence Avenue, SW., Washington, D.C. 20201. Attn: William J. McCarron.

The awards to current grantees will be announced by September 30, 1984. Awards to new applicants will be announced when funds become available.

Dated: June 14, 1984.

Lennie-Marie P. Tolliver, Ph.D.,

Commissioner on Aging.

Dated: June 19, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 84-16920 Filed 6-25-84; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services; Public Health Service.

ACTION: Notification of a proposal to add a routine use and to add a special disclosure statement to the existing system of records 09-37-0015, National Center for Health Services Research Grants Records System, HHS/OASH/NCHSR.

SUMMARY: In accordance with the requirements of the Privacy Act and the Debt Collection Act of 1982 (Pub. L. 97-365), the Public Health Service (PHS) is publishing notice of a proposal to add a new routine use and the (b)(12) special disclosure statement to consumer reporting agencies to system of records 09-37-0015, National Center for Health Services Research Grant Records System. The new routine use is for the purpose of determining creditworthiness of individual grant applicants of the National Center for Health Services Research (NCHSR).

PHS invites interested persons to submit comments on the proposed new routine use on or before July 26, 1984.

DATE: PHS will adopt the new routine use without further notice 30 days after the date of publication (July 26, 1984), unless PHS receives comments which would result in a contrary determination. The special disclosure provision is effective on the date of publication.

This (b)(12) special disclosure is so named because it does not require a public comment period.

ADDRESS: Please address comments to: Ms. Helen T. Rickrode, Privacy Act Coordinator, NCHSR, Park Building, Room 3-28, 5600 Fishers Lane, Rockville, MD 20857.

Comments received will be available for inspection at the same address from 8:00 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Sloat, Chief, Grants Operations and Administration Branch, Office of Program Support/NCHSR, Room 1-43, Park Building, 5600 Fishers Lane, Rockville, MD 20857, 301/443-4033. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: NCHSR is the primary source of Federal support for research on problems relating to the quality and delivery of health services. Grants are awarded primarily to researchers located in universities, hospitals, and other research organizations. The system of records covers principal investigators. Records in the grant file are used to facilitate day-to-day grant management operations. Adding the proposed new routine use pursuant to OMB Bulletin No. 83-21 will allow disclosures to credit reporting agencies to determine creditworthiness of individual grant applicants.

The addition of the special disclosure statement to the system of record under the authority of subsection (b)(12) of the Privacy Act (added by Pub. L. 97-365, the Debt Collection Act of 1982), will permit the disclosure of personal information to consumer reporting agencies to encourage repayment of overdue debts owed to the Federal Government.

We are adding a statement in the Purpose section that if individual grantees fail to repay excess grant funds, or funds subject to audit exception, the information will be referred to the DHHS fiscal office for the purpose of debt collection.

We have also corrected the address of NCHSR, reformatted the Safeguards section, and made other minor changes to enhance the clarity and specificity of the system notice.

The system notice was last published in the **Federal Register** on November 29, 1983, pp. 53794-53795. We are publishing the system notice in its entirety below to incorporate the proposed changes.

Dated: June 20, 1984.

Wilford Forbish,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-37-0015

SYSTEM NAME:

National Center for Health Services Research Grants Records System, HHS/OASH/NCHSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Center for Health Services Research, Park Building, Room 1-44, 5600 Fishers Lane, Rockville, Maryland 20857.

Federal Records Center, 4205 Suitland Road, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal Investigators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant files, including summary reports, grant applications, grant award notices, credit reports, summary comments of peer reviewers, salary

information, staffing lists, general project correspondence, and Social Security Numbers (optional).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Title II, Administration, Section 304, (General Authority Respecting Health Statistics and Health Services Research Evaluations, and Demonstrations (42 U.S.C. 242b)), Section 305, (National Center for Health Services Research (42 U.S.C. 242c)). Section 308, (General Provisions Respecting Sections 304, 305, 306, and 307 (42 U.S.C. 242m)), Title XII, Emergency Medical Services Systems, Section 1205, (Grants and Contracts for Research (42 U.S.C. 300d–4)).

PURPOSE(S):

The information in this system is used to facilitate day-to-day grants management operations and for purposes of review, analysis, planning and policy formulation by NCHSR staff members and by other components of DHHS.

These records may also be referred to the DHHS fiscal office for the purpose of debt collection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

3. NCHSR may disclose information about an individual grant applicant to credit reporting agencies to obtain a credit report in order to determine his/her creditworthiness.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 522a(b)(12): Disclosure may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Disclosure of records is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency or program under which the claim arose. This disclosure will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files (file folders).

RETRIEVABILITY:

Retrievable by name and grant number.

SAFEGUARDS:

1. Authorized Users: Only staff members of the Grant Operations and Administration Branch (GOAB) have regular access.

2. Physical Safeguards: Locked file cabinets; general building security.

3. Procedural Safeguards: NCHSR staff may inspect and review records on a need-to-know basis only, with the approval—and in the presence—of GOAB staff.

4. These safeguards are in compliance with DHHS Chapter 43–13 and Chapter PHS.hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL

Approved grant applications and their respective files are retained at NCHSR for two years beyond the termination date of the project. Rejected grant applications are held for one year. The grant files are then retired to a Federal Records Center and subsequently disposed of in accordance with the PHS/OASH records control schedule. The records control schedule may be obtained by writing to the System Manager at the following address.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Grants Operations and Administration Branch; National Center for Health Services Research, Park Building, Room 3–28, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Positive identification is required, except that no verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Applications, reports and correspondence from the research community, and statments from grant review committees; consumer reporting agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–17013 Filed 6–25–84; 8:45 am]
BILLING CODE 4160–17–M

Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses of the National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses of the National Committee on Vital and Health Statistics, pursuant to functions established by section 306(k)(2) of the Public Health Service Act, as amended 42 U.S.C. 242k), will convene on Thursday, July 12, 1984, at 9:00 a.m. in Room 503–A of the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

The Subcommittee will consider several critical issues in disease classification, medical nomenclature, automated coding systems, and diagnostic related groups.

Further information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting William F. Stewart, National Committee on Vital and Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

Date: June 19, 1984.

Manning Feinleib,

Director, National Center for Health Statistics

[FR Doc. 84–16879 Filed 6–25–84; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Battle Mountain District, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: In accordance with Pub. L. 94–579, a meeting of the Battle Mountain District Grazing Advisory Board will be held. The meeting will be held jointly with the Battle Mountain District Advisory Council.

DATE: July 25, 1984, begin at 8:00 a.m. in the Tonopah Convention Center, 301 Brougher, Tonopah, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes:

1. A review of proposed range improvement projects along with the investment analysis.
2. Discussion of the cooperative management agreement program and consideration of potential nominees for this program.
3. A field trip to a grazing allotment under the Tonopah Experimental Stewardship Program.

The field trip will begin at 12:00 noon from the Tonopah Convention Center. Participants should bring their own lunch. The purpose of the trip is to observe grazing allotment conditions, review the grazing system and discuss progress of the stewardship program in the area. The trip will end at approximately 5:00 p.m. Public comment time is scheduled from 11:15 to 11:45 a.m. The public is invited to attend this meeting and field trip and may, at the designated time, submit written or oral statements for the advisory groups' consideration.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820, or phone (702) 635–5181.

Date signed: June 15, 1984.

Michael C. Mitchell,

Acting District Manager, Battle Mountain, Nevada.

[FR Doc. 84–16880 Filed 6–25–84; 8:45 am]

BILLING CODE 4310–HC–M

[A–18416–A]

Navajo Relocation Exchange; Maricopa County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Designating Public Lands for Transfer out of Federal Ownership in Exchange for Private Lands Selected by the Navajo Tribe for Relocation Purposes.

SUMMARY: Under the provisions of sections 4 and 28 of the Navajo and Hopi Indian Relocation Amendment Act, 1980, 25 U.S.C., 640d–10 and 25 U.S.C. 640d–28, the Navajo Tribe filed a selection application on June 30, 1983, for private lands in Apache County, Arizona, to be obtained by exchange for public lands. Interest has been expressed by the private landowners to select the following public lands for part of the compensation for the lands selected by the Navajo Tribe:

Gila and Salt River Meridian, Arizona

T. 1 S., R. 2 W.,
Sec. 1, lots 5 through 20; 610.74.
Sec. 10, all; 640.00.
Sec. 11, all; 640.00.
Sec. 12, lots 1 through 16; 602.17.
Sec. 13, lots 1 through 16; 603.09.
Sec. 14, all; 640.00.
Sec. 15, all; 640.00.
Sec. 22, E½, E½NW¼, SW¼; 560.00.
Sec. 23, all; 640.00.
Sec. 24, all; 640.00.
Sec. 25, W½, SE¼; 480.00.
Sec. 26, lots 1 through 16; 639.36.
Sec. 27, all; 640.00.
Sec. 28, S½; 320.00.
Sec. 30, lot 1; 39.87.
Sec. 31, lots 1, 3, 4, NE¼NW¼, N½NE¼, E½SW¼; 319.78.
Sec. 32, S½N½, SW¼SW¼; 200.00.
Sec. 33, NE¼, S½NW¼; 240.00.
Sec. 34, NW¼, N½S½, SE¼SW¼, S½SE¼; 440.00.
Sec. 35, all; 640.00.
Sec. 36, all; 640.00.

Comprising 10,815.01 acres, more or less, located in Maricopa County.

In accordance with the regulations in 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document of conveyance to such lands to the private landowners or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

Inquiries, comments and protests to the Notice should be addressed to either the Indian Project Manager, Indian Project Office, 2708 North 4th Street, Suite B–5, Flagstaff, Arizona 86001, or the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: June 15, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84–16935 Filed 6–25–84; 8:45 am]

BILLING CODE 4310–32–M

[U–53908]

Utah: Realty Action, Non-Competitive Sale of Public Lands in Uintah County

The following described land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value ($40 000).

Salt Lake Meridian, Utah

T. 8 S., R. 23 E.,
Sec. 36: W½.

The land described aggregates 320 acres.

This land is being offered at direct sale to Deseret Generation and Transmission Cooperative at the appraised market value.

The land offered in this sale is for surface estate only. The United States will reserve all minerals, plus the right to construct ditches and canals in the future. Setting aside this land for the power plant is consistent with Bureau planning, county zoning, and the EIS prepared or the right-of-way. The public interest will be well served by offering these lands for direct sale to Deseret.

For a period of 45 days from the date of the Notice, interested parties may submit comments to the Vernal District Manager, 170 South 500 East, Vernal, Utah 84078. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will

become the final determination of the Department of the Interior.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 84-16936 Filed 6-25-84; 8:45 am]

BILLING CODE 4310-DQ-M

[W-81397]

Wyoming; Conveyance, Sale of Public Land in Sweetwater County, Wyoming

June 15, 1984.

Notice is hereby given that pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1982), Niels Hansen has purchased and received a patent for the following described public land in Sweetwater County, Wyoming:

Sixth Principal Meridian, Wyoming

T. 19 N., R. 96 W.,
Sec. 18, SW¼NE¼NE¼, NE¼SE¼NW¼NE¼, and S½SE¼NW¼NE¼.

Containing 17.5 acres.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 84-16937 Filed 6-25-84; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.):*

Applicant: National Zoological Park, Washington, D.C.—APP 5934AB.

The applicant requests a permit to import two captive-bred male maned wolves (Chrysocyon brachyurus) from Ravensden Zoo Ltd., Northants, England, for enhancement of propagation.

Applicant: New York Zoological Society, Bronx, NY—APP 1051BM.

The applicant requests a permit to import a pair of captive-bred Babirusa (Babyrousa babyrussa) from Wilhelma Zoo, Stuttgart, West Germany for enhancement of propagation.

Applicant: Mesa Garden, Belen, NM—APP 1500BM.

The applicant requests a permit to export and conduct interstate commerce with artifically propagated specimens of Knowlton's cactus (*Pediocactus knowltonii*), Peeble's Navajo cactus (*P. peeblesianus*) and Wright's fishhook cactus (*Sclerocactus wrightiae*) for enhancement of propagtion.

Applicant: International Animal Exchange, Ferndale, MI—APP 152592.

The applicant requests a permit to purchase in interstate commerce two male and one female captive-bred jaguars from Prosect Park Zoo, NY Jacksonville Zoo, TN and Oklahoma City Zoo, OK for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 601, 1000 North Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 22203

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT 2/APP number when submitting comments.

Dated: June 20, 1984.

Larry LaRochelle,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-16904 Filed 6-25-84; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Intention to Negotiate Concession Contract

On February 27, 1984, pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice was given in the **Federal Register** (Vol. 46, No. 49, page 7156) that the Department of the Interior, through the Director, National Park Service, proposed to negotiate a concession contract with ARA Virginia Skyline Company, Incorporated authorizing it to continue to provide food and lodging facilities and services for the public at Shenandoah National Park, Virginia for a period of twenty (20) years from January 1, 1985.

All interested parties were to submit their proposals on or before April 27, 1984. However, following the issuance of this public notice, the Department of the Interior found it necessary to revise the franchise fee in the proposed contract. Therefore, pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with ARA Virginia Skyline Company, Incorporated authorizing it to continue to provide food and lodging services for the public at Shenandoah National Park, Virginia for a period of twenty (20) years from January 1, 1985.

This proposed contract requires a construction and improvement program. The construction and improvement program required was previously addressed in the Environmental Assessment (June 1981) that was prepared in conjunction with the General Management Plan for Shenandoah National Park.

The following concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision in effect grants ARA Virginia Skyline Company, Incorporated an opportunity to meet the terms and conditions of any other proposal submitted in response to this Notice which the Secretary may consider better than the proposal submitted by the aforementioned ARA Virginia Skyline Company, Incorporated. If ARA Virginia Skyline Company, Incorporated amends its proposal and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with said ARA Virginia Skyline Company, Incorporated.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Shenandoah National Park, Virginia 22835, phone (703) 999-2243, for information as to the requirements of the proposed contract.

Dated: June 15, 1984.

Richard H. Briceland,

Acting Director, National Park Service.

[FR Doc. 84-16954 Filed 6-25-84; 8:45 am]

BILLING CODE 4310-70-M

Proposed Guidelines for Alaska Land Bank Program; Availability

AGENCY: National Park Service; U.S. Fish and Wildlife Service; Bureau of Land Management, Interior.

ACTION: Notice of Availability of Proposed Guidelines.

SUMMARY: The Alaska Land Bank Program was established by section 907 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, 43 U.S.C. 1936, which provides that certain

private landowners may participate in the Land Bank Program by entering into a written agreement with the Secretary regarding the use and development of their lands. The program was established to "enhance the quantity and quality of Alaska's renewable resources and to facilitate the coordinated management and protection of Federal, State and Native and other private lands." 43 U.S.C. 1636(a).

The program is intended, in part, to induce compatible, low developmental uses of undeveloped private lands that adjoin, or would directly affect federal and state lands. In addition the program offers a mechanism through which lands conveyed under the terms of the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 688, 43 U.S.C. 1601, could be retained in Native ownership for the benefit of future generations

The purpose of the Proposed Guidelines are to outline for the Interior Department land managing agencies the scope of the program, the policies that should be pursued in its implementation, and the various terms and conditions that should be considered in any agreement.

Due to its length, the Proposed Guidelines are not being reproduced in the **Federal Register**. Copies of the Guidelines are available for inspection during normal business hours at Bureau of Land Management, Department of the Interior, 18th & C Street, NW., Room 3256, Washington, D.C. 20240; Bureau of Land Management, 701 C Street, Anchorage, Alaska 99513; U.S. Fish and Wildlife Service, Department of the Interior, 18th & C Street, NW., Room 5660, Washington, D.C. 20240; U.S. Fish and Wildlife Service, Region 7, 1011 E. Tudor Road, Anchorage, Alaska 99503; National Park Service, Department of the Interior, 18th & C Street, NW., Room 3104, Washington, D.C. 20240; Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503. In addition, copies will be sent upon request.

DATE: Comments are requested on or before August 27, 1984.

Comments should be directed to: William Horn, Deputy Under Secretary, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: David Watts, Assistant Solicitor, Conservation and Wildlife, Department of the Interior, Washington, D.C. 20240.

Dated: June 15, 1984.

William Horn,

Deputy Under Secretary.

[FR Doc. 84-16953 Filed 6-25-84; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 15, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 11, 1984.

Carol D. Shull,

Chief of Registration, National Register.

IOWA

Fayette County

Oelwein, *Hanson, Alfred, House*, 403 N. Frederick Ave.

Jasper County

Colfax, *Hall, James Norman, House*, 416 E. Howard St.

Johnson County

Iowa City, *Close, M.T., and Company Flaxseed Warehouse*, 521 S. Gilbert St.

Madison County

Winterset vicinity, *Schoenenberger, Nicholas, House and Barn*, Off IA 169

Scott County

Bettendorf, *Bettendorf-Washington School*, 533 16th St.
Davenport, *Adams, Walker, House (Davenport MRA)*, 1009 College Ave.
Davenport, *Ball-Waterman House (Davenport MRA)*, 616 Kirkwood Blvd.
Davenport, *Burdick, Anthony, House (Davenport MRA)*, 833 College Ave.
Davenport, *Busch, Diedrich, House (Davenport MRA)*, 2340 E. 11th St.
Davenport, *Cameron, W.S., House (Davenport MRA)*, 623 Kirkwood Blvd.
Davenport, *Cawley, James, House (Davenport MRA)*, 1406 Esplanade
Davenport, *Columbia Avenue Historic District (Davenport MRA)*, Roughly W. Columbia Ave., Harrison, Ripley, and W. Haynes Sts.
Davenport, *Copeland, George, House (Davenport MRA)*, 929 College Ave.
Davenport, *Davenport Hose Station No. 3 (Davenport MRA)*, 326 E. Locust St.
Davenport, *Davison, Abner, House (Davenport MRA)*, 1234 E. River Dr.
Davenport, *Dessaint, Marie Clare, House (Davenport MRA)*, 4808 Northwest Blvd.
Davenport, *Ebeling, Arthur, House (Davenport MRA)*, 1108 W. 15th St.
Davenport, *Ebeling, Henry, House (Davenport MRA)*, 1623 W. 6th St.
Davenport, *Eldridge, D.C., House (Davenport MRA)*, 1333 E. 10th St.
Davenport, *Eldridge, Theodore, House (Davenport MRA)*, 1404 E. 10th St.
Davenport, *First Church of Christ, Scientist (Davenport MRA)*, 636 Kirkwood Blvd.
Davenport, *Grilk, Charles, House (Davenport MRA)*, 2026 Main St.
Davenport, *Guy, Finley, Building (Davenport MRA)*, 310 E. Locust St.
Davenport, *Hall, Israel, House (Davenport MRA)*, 1316 E. 10th St.
Davenport, *Holbrook, William, House (Davenport MRA)*, 804 Kirkwood Blvd.
Davenport, *House at 2212 W. River Drive (Davenport MRA)*, 2212 W. River Dr.
Davenport, *House at 6212 Northwest Boulevard (Davenport MRA)*, 6212 Northwest Blvd.
Davenport, *Kiene, Albert, House (Davenport MRA)*, 1321 W. 8th St.
Davenport, *Klindt, Henry, House (Davenport MRA)*, 834 Marquette St.
Davenport, *Koch Drug Store (Davenport MRA)*, 1501 Harrison St.
Davenport, *Lindsay, James E., House (Davenport MRA)*, 911 College Ave.
Davenport, *Littig, John, House (Davenport MRA)*, 6035 Northwest Blvd.
Davenport, *Lueschen, John, House (Davenport MRA)*, 1628–1632 Washington St.
Davenport, *McCarthy, Patrick F., House (Davenport MRA)*, 942 Marquette St.
IOWA, *Scott County,*
Davenport, *McClellan Heights Historic District (Davenport MRA)*, Roughly bounded by city limits, E. River Dr., East St., Jersey Ridge and Middle Rds.
Davenport, *McHarg, Joseph S., House (Davenport MRA)*, 5905 Chapel Hill Rd.
Davenport, *Meadly House (Davenport MRA)*, 1425 W. 10th St.
Davenport, *Murray, Thomas, House (Davenport MRA)*, 628 Kirkwood Blvd.
Davenport, *Nighswander, Benjamin, House (Davenport MRA)*, 1011 Kirkwood Blvd.
Davenport, *Northwest Davenport Savings Bank (Davenport MRA)*, 1529 Washington St.
Davenport, *Oak Lane Historic District (Davenport MRA)*, Oak Lane between High and Locust Sts.
Davenport, *Palmer, B.J., House (Davenport MRA)*, 808 Brady St.
Davenport, *Peters, J.C., House (Davenport MRA)*, 1339 W. 13th St.
Davenport, *Picklum, Frank, House (Davenport MRA)*, 1340 W. 7th St.
Davenport, *Plambeck, Joachim, House (Davenport MRA)*, 1421 W. 14th St.
Davenport, *Pohlmann, Elizabeth, House (Davenport MRA)*, 1403 W. 13th St.
Davenport, *Pohlmann, Henry, House (Davenport MRA)*, 1204 W. 13th St.
Davenport, *Prospect Park Historic District (Davenport MRA)*, Roughly bounded by E. River Dr., Mississippi Ave., Prospect Terr., 11th and Adams Sts.
Davenport, *Quickel, Jacob, House (Davenport MRA)*, 1712 Davenport St.
Davenport, *Radcliff, William, House (Davenport MRA)*, 904 College Ave.
Davenport, *Riverview Terrace Historic District (Davenport MRA)*, Roughly Riverview Terr., Clay and Marquette Sts.
Davenport, *Roberts, Edward C., House (Davenport MRA)*, 918 E. Locust St.
Davenport, *Rowhouses at 702–712 Kirkwood Boulevard (Davenport MRA)*, 702–712 Kirkwood Blvd.

Davenport, *Schricker, John, House (Davenport MRA)*, 5418 Chapel Hill Rd.
Davenport, *Shaw, E.A., House (Davenport MRA)*, 1102 College Ave.
Davenport, *Smith, James, House (Davenport MRA)*, 1037 E. 18th St.
Davenport, *St. Mary's Academy (Davenport MRA)*, 1334 W. 8th St.
Davenport, *Struck, Dr. Kuno, House (Davenport MRA)*, 1645 W. 12th St.
Davenport, *Untiedt, Claus, House (Davenport MRA)*, 1429 W. 14th St.
Davenport, *Vander Veer Park Historic District (Davenport MRA)*, Roughly bounded by Temple Lane, W. Central Park Ave., Brady, High, and Harrison Sts.
Davenport, *Von Ach, Frank J., House (Davenport MRA)*, 1618 Davenport St.
Davenport, *Washington Flats (Davenport MRA)*, 1415–1431 Washington St.
Davenport, *Washington Gardens (Davenport MRA)*, 1301 W. 13th St.
Davenport, *Werthman Grocery (Davenport MRA)*, 1402 W. 7th St.
Davenport, *Westphal-Schmidt House (Davenport MRA)*, 432 S. Fairmount St.
Davenport, *Wilkinson, Thomas C., House (Davenport MRA)*, 118 McManus St.
Davenport, *Wolters Filling Station (Davenport MRA)*, 1229 Washington St.
Davenport, *Woods, Oscar C., House (Davenport MRA)*, 1825 Grand Ave.

KENTUCKY

Fayette County

Lexington, *Kinkead, Henry P., House*, 403Walnut St.

Jefferson County

Louisville, *Caperton Block*, 564–574 4th Ave.
Louisville, *First Street District (North Old Louisville MRA)*, Roughly bounded by E. Preckinridge, E. Kentucky, and I–65
Louisville, *Old Louisville Residential District (Boundary Increase)*
Louisville, *Tingley, George H., Elementary School*, 1311–1317 S. Preston St.

Nelson County

Bloomfield vicinity, *Stone, John, House*, U.S. 62

LOUISIANA

Lafayette Parish

Lafayette, *Old Guaranty Bank Building*, 500 Jefferson St.

West Feliciana Parish

St. Francisville vicinity, *Catalpa*, U.S. 61

MISSISSIPPI

Amite County

Magnolia vicinity, *Felder-Richmond House*, Off I–55
Magnolia vicinity, *Lea, Hampton, House*, Lea Rd.

Warren County

Vicksburg, *McDermott House*, 1100 South St.

NEBRASKA

Hamilton County

Aurora, *Hearn, Kathleen, Building*, 10th and O Sts.

NORTH CAROLINA

Burke County

Morganton, *Avery, Alphonso Calhoun, House*, 408 N. Green St.

Forsyth County

Winston-Salem, *O'Hanlon Building*, 103 W. 4th St.
Winston-Salem, *Spruce Street YMCA*, 315 N. Spruce St.

Guilford County

Gibsonville, *Smith, Francis Marion, House*, 204 Railroad Ave.
Greensboro vicinity, *Scott, Thomas, House*, SR 1001
Greensboro, *Weir, Dr. David P., House*, 223 N. Edgeworth St.

Haywood County

Cruso vicinity, *Gwyn, James M., House*, NC 276

Madison County

Mars Hill vicinity, *California Creek Missionary Baptist Church*, U.S. 23

Vance County

Stone, Daniel, Plank House,

PENNSYLVANIA

Delaware County

Chanticleer,

Philadelphia County

Philadelphia, *26th District Police and Patrol Station*, 2136–2142 E. Dauphin St.
Philadelphia, *Wills Hospital*, 1601 Spring Garden St.

PUERTO RICO

Ponce County

Ponce, *La Perla Theater*, Mayor and Cristina Sts.
Ponce, *Parque de Bombas de Ponce*, Plaza Las Delicias

TENNESSEE

Bradley County

Charleston, *Charleston Cumberland Presbyterian Church*, Railroad St.

Knox County

Knoxville, *Cowan, McClung and Company Building*, 500–504 Gay St.

Lawrence County

Lawrenceburg, *Garner Mill*, Garner Lane

Marshall County

Chapel Hill, *Swaim House*, Main St.

Scott County

Robbins, *Barton Chapel*, U.S. 27

Shelby County

Memphis, *Austin, John Alexander, House*, 290 S. Front St.
Memphis, *Gartly-Ramsay Hospital*, 696 Jackson Ave.
Memphis, *Richards, Newton Copeland, House*, 975 Peabody Ave.

Tipton County

Covington vicinity, *Mt. Carmel Presbyterian Church*, Mt. Carmel Rd.

Williamson County

Franklin vicinity, *Cedarmont*, Off TN 96

UTAH

Grand County

Moab vicinity, *Dewey Bridge*, NE of Moab on UT 128

Salt Lake City

Salt Lake City, *Gibbs-Thomas House*, 137 N.W. Temple St.

Utah County

Lehi, *Cutler, Thomas R., Mansion*, 150 E. State St.
Provo, *Frisby, Joseph H., House*, 290 N. 400 West
Provo, *Provo West Co-op*, 450 W. Center St.
Provo, *Roberts, William D., House*, 212 N. 500 West

Washington County

St. George, *Butler, William F., House*, 168 S. 300 West

Weber County

Ogden, *Cross, Charles W., House*, 451 17th St.

VERMONT

Caldeonia County

Barnet, *Barnet Center Historic District*, Off U.S. 5

Rutland County

Clarendon, *Clarendon Congregational Church*, Middle Rd.

[FR Doc. 84–16952 Filed 6–25–84; 8:45 am]
BILLING CODE 4310–70–M

Bureau of Reclamation

Salt River Project, Phoenix, Arizona; Realty Action; Competitive Sale of Public Land

The following described land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374) at no less than the appraised fair market value. The Bureau of Reclamation (Reclamation) will accept bids on the following land, and will reject any bid for less than the appraised value.

The area of the following described parcel lying within the South Half of the Northwest quarter of Section 36, Township 1 North, Range 4 East, Gila and Salt River Base Meridian is 0.621 acre.

Description

A strip of land 25 feet in width located in the Northwest quarter of Section 36, Township 1 North, Range E East, said strip lying adjacent to and on the right side counting forward from the initial point of the left boundary line thereof, the said left boundary being described (based on assumed bearing of East for

the West half of the North line of said Section 36) as follows, to wit:

Beginning at a point on the North and South center line of said Section 36, distant 40 feet South 1 degree 48 minutes West; thence South 89 degrees 52 minutes West a distance of 192 feet; thence along a curve to the left having a radius of 50 feet; a distance of 73.4 feet measured along 25 foot chords; thence South 4 degrees 49 minutes West a distance of 638.6 feet; thence along a curve to the right having a radius of 100 feet a distance of 95.3 feet measured along 25 foot chords; thence

South 59 degrees 37 minutes West a distance of 881.5 feet; thence South 66 degrees 51 minutes West a distance of 573.3 feet; thence along a curve to the right having a radius of 100 feet; a distance of 53.9 feet measured along 25 foot chords; thence North 82 degrees 09 minutes West a distance of 493.2 feet; thence along a curve to the right having a radius of 100 feet a distance of 74.8 feet; measured along 25 foot chords; thence North 39 degrees 11 minutes West a distance of 432.8 feet; thence along a curve to the right, having a radius of 100 feet a distance of 71.9 feet measured along 25 foot chords; thence North 2 degrees 08 minutes East a distance of 231.0 feet; thence on a curve to the left, having a radius of 61 feet a distance of 86.7 feet; measured along 25 foot chords; thence on a curve to the right, having a radius of 98.5 feet a distance of 140.8 feet measured along 25 foot chords, to a point 30 feet East of the West line of said Section 36; thence North 2 degrees 14 minutes East parallel to the West line of said Section 36 a distance of 562.2 feet to a point South 2 degrees 14 minutes West at a point on the North line of said Section 36 distant 30 feet East of the Northwest corner thereof.

The parcel will be offered for sale through competitive bidding process. The sale will be held at Bureau of Reclamation, Central Arizona Project, 23636 North Seventh Street, Phoenix, Arizona 85024, Main Conference Room on August 24, 1984, at 10:00 a.m. Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws.

The parcel is located approximately ½ mile south of Williams Field Road, and ¼ mile east of McClintock Road, within the incorporated city of Chandler, County of Maricopa, State of Arizona, and has a potential for urban-suburban development. The sale is consistent with Sale River Project and Bureau of Reclamation land use planning and it was determined that the public interest would best be served by offering these lands for sale; the parcel listed and platted is offered for sale "as is" and "where is."

Resource clearances consistent with NEPA requirements have been completed and approved. A categorical exclusion for Cultural Resources and a Land Report has been completed and approved, and is available for public review at Bureau of Reclamation, Central Arizona Project Office, 23636 North Seventh Street, Phoenix, Arizona 85024.

The patents issued for the parcel sold will be subject to a right-of-way for ditches and canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (26 Stat. 391, 86 U.S.C. 945), and reservations for public road and utility easements identified by the city of Chandler and the County of Maricopa. This land sale will be for surface estates only.

From the date of this notice until August 23, 1984, interested parties may submit comments to Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Dated: June 19, 1984.

N. W. Plummer,

Regional Director.

Chandler Land Sale

August 24, 1984.

Introduction

Action: The Bureau of Reclamation is offering Federal Land in the City of Chandler for Sale at Public Auction.

Date: August 24, 1984, Bidder Registration begins at 9:00 a.m., Auction begins at 10:00 a.m.

Location: Central Arizona Project Office, Main Conference Room, 23636 North Seventh Street, Phoenix, Arizona 85024.

Price: No bid will be accepted for less than the appraised Fair Market Value of the parcel.

Appraised Fair Market Value (minimum bid)— $20,000.00

Patent (Title) Reservations

(1) The parcel shall be sold subject to a right-of-way for ditches and canals constructed by authority of the United States in accordance with the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

(2) The reservation of all rights-of-way and easements of record.

(3) The reservation to the United States of any and all mineral interests.

Location

This land is located south of Tempe, Arizona, in the western city limits of Chandler, Arizona, north of the Gila River Indian Reservation. Approximately ½ mile south and east of the road intersection of Williams Field Road nd McClintock Road. Although the legal description is provided above, it is recommended that prospective bidders inspect the parcel of land before bidding.

Access

Physical and legal access to this land is via Williams Field Road and McClintock Road. Southerly and easterly respectively.

Topography

Generally flat, previously leveled and previously cultivated.

Flood Potential

This land has been placed in the Zone B Flood Zone category as defined by the Department of Housing and Urban Development on its July 16, 1980, Flood Insurance Rate Map. Zone B is between limits of the 100 year flood and the 500 year flood. Certain areas are subject to 100-year floods with average depths of less than 1 foot where the contributing drainage area is less than 1 square mile. Any future development of these lands would be subject to compliance with city codes and regulations.

Vegetation

Vegetation is sparce and low shrubs. The parcel has been a part of a larger previously leveled and cultivated field, and has been fallow for a number of years.

Utilities

Electric power, domestic water, sanitary sewage, telephone and natural gas facilities are available on the southern perimeter of the parcel. The appropriate utility entity or service company can provide installation costs to the parcel.

Land Use-Subject Parcel and Adjacent Lands

The subject parcel is located in the corporate limits of the city of Chandler, Arizona, and is presently zoned PAD, which is for Planned Area Development.

The adjacent land in Section 36, Township 1 South, Range 4 East, north of the subject parcel is for light industrial.

The adjacent land in Section 36, Township 1 South, Range 4 East, south of the subject parcel is zoned PAD which is for Planned Area Development.

Sale Procedures

The auction will begin at 10:00 a.m. and will proceed continuously until the parce has been sold. No preference rights are recognized in this sale.

Should the parcel remain unsold, it may be reoffered for sale at 10:00 a.m. on August 31, 1984, at the same address as indicated above.

No conveyance of land will be made to Federal employees or their dependents who might reasonably be expected to have information with regard to the property or its uses which is not readily available to members of the public, or who participate in the decision to dispose of this property, or in this sale itself.

Federal law limits sale of this land to United States citizens (18 years of age or older), corporations subject to the law of any State or of the United States, and any entity legally capable of conveying and holding lands or interest therein under the laws of the State within which the lands to be conveyed are located. The purchaser is deemed to be the individual(s) or corporation that will actually take title to the land from the Government. The citizenship limitation does not apply to agents who bid on behalf of an associate, client, or employer.

Registration

On the day of the sale, anyone intending to bid on the offered land must register and obtain a bidder's identification card, and registration will be conducted by a Bureau of Reclamation registration official at a registration table at which time a certified check, cash, postal money order, cashiers check for the appraised Fair Market Value (identified above) will be deposited with the Registrar. Registration will begin at 9:00 a.m. Bidders may register anytime during the sale; however, they must be reigistered before bidding. The bidder identification card is merely a numbered card which must be displayed when offering a bid, so the auctioneer can conduct an orderly bidding process.

Bidding Information and Instructions

Bids may be made either by sealed bids or by oral bidding at the sale.

Sealed bids sent by mail or personnally delivered will only be considered if received prior to the close of business on August 23, 1984, at the following address:

Bureau of Reclamation, Central Arizona Project Office, P.O. Box 9980, Phoenix, Arizona 85068. Attention: Chandler Land Sale

Sealed bids must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Reclamation for not less than the appraised fair market value, and must be in a separate sealed envelope enclosed with the transmittal envelope. The sealed bid envelope must be marked conspicuously on the face of the envelope as follows:

Sealed Bid
Chandler Section 36 Land Sale
Sale No. SRP–84–1
Sale To Be August 24, 1984

Oral bids will be received immediately after all sealed bids have been opened and the highest sealed bid id announced. The highest sealed bid for the parcel will then become the base price for the oral bids. If the highest bid is an oral bid, the successful bidder will be required to pay immediately the appraised fair market value by cash, money order, bank draft, cashier's or certified check, or any combination of those, and all deposits may be unsuccessful bidders will be returned. Failure to deposit the appraised fair market value by the high bidder will result in disqualification as the high bidder. The authorized officer shall determine whether to accept the highest bid, withdraw the parcel from the market, or reoffer the parcel of land for sale at a later date.

The authorized officer reserves the right to reject any or all bids and to waive technical defects in bids as may be in the best interest of the United States. In order to promote full and free competition, a certificate of independent price determination must accompany each sealed bid. Regarding oral bids and as a condition of award, the successful bidder is required to sign a certificate to the effect that ". . . the bid was arrived at by the bidder or offeror independently and was tendered without collusion with any other bidder or offeror." The form and content of the said certificate is as follows:

Chandler Land Sale

Invitation # ————————————

Representation and Certification of

Name and Address of Bidder (Street, City, State, Zip Code).

Date of Bid: August 24, 1984.

In this Realty Action "bid" and "bidder" shall be construed to mean "offer" and "offeror."

The bidder makes the following representations and certifications as part of the bid identified above.

1. Small Business

He — is, or — is not, a small business concern. (A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operations in which it is bidding on Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria as prescribed by the Small Business Administration. For additional information see governing regulations of the Small Business Administration (13 CFR Part 121)).

2. Minority Business Enterprise

He — is, — is not a minority business enterprise. A minority business enterprise is defined as a "business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock which is owned by minority group members. For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts."

3. Contingent Fee

(a) He — has, — has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure this land offer and (b) he — has, — has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this offer and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Subpart 1–1.5).

4. Type of Organization

He operates as an — individual, — partnership, — joint venture, — corporation, incorporated in State of ————

5. Independent Price Determination

(a) By submission of this bid, each bidder certifies, and in the case of a joint bid each party thereto certifies as to his own organization, that in connection with this procurement:

(1) The prices in this bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition.

(b) Each person signing this bid certifies that:

(1) He is the person in the bidder's organization responsible within that organization for the decision as to the prices being bid herein, but that he has been authorized in writing to act as an agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) This certification is not applicable to a foreign bidder submitting a bid for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A bid will not be considered for award where (a)(1) through (a)(3), or (b) above, has been deleted or modified. Where (a)(2) above, has been deleted or modified, the bid will not be considered for award unless the bidder furnishes with the bid a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

Note.—Bids must be set forth full, accurate, and complete information as required by this initiation for bids (including attachments). The penalty for making false statements in bids is prescribed in 18 U.S.C. 100

6. Equal Opportunity

He — has, — has not, participated in a previous contract or subcontract subject to the Equal Opportunity Clause herein, the clause originally contained in Section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114; he — has, — has not, filed all required compliance reports; and representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards.

(The above representations need not be submitted in connection with contracts or subcontracts which are exempt from the equal opportunity clause.)

7. Parent Company and Employer Identification Number

Each bidder shall furnish the following information by filing in the appropriate blocks:

(a) Is the bidder owned or controlled by a parent company as described below?—Yes—No. (For the purpose of this bid, a parent company is defined as one which either owns or controls the activities and basic business policies of the bidder. To own another company means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine, or veto basic business policy decisions of the bidder, such other company is considered the parent company of the bidder. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.)

(b) If the answer to (a) above is "Yes," bidder shall insert in the space below the name and main office address of the parent company.

Name of Parent Company ———————
Main Office Address (No., Street, City, State, and ZIP Code) ———————

(c) Bidder shall insert in the applicable space below, if he has no parent company, his own Employer's Identification Number (E.I. No.) (Federal Social Security Number used on Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941), or, if he has a parent company, the E.I. No. of his parent company.

Employer Identification Number of———
Parent Company ———————
Bidder ———————

Bids in amounts less than the appraised fair market value will be rejected.

All sealed bids shall be accompanied with a Sealed Bid Form of the following form and format:

Offer No. ———————

Sealed Bid Form

Name and Location of Project ———————
Bidder's Name and Address (Include ZIP Code, Type or Print) ———————
Telephone Number ———————
Date ———————
To ———————

In compliance with the above-dated Bid Offering, the undersigned hereby submits the bid price of ———————, as due consideration for the following identified parcel of land.

A parcel lying within the South Half of the Northwest quarter of Section 36, Township 1 North, Range 4 East, Gila and Salt River Base Meridian is 0.621 acre.

Description

A strip of land 25 feet in width located in the Northwest quarter of Section 36, Township 1 North, Range 4 East, said strip lying adjacent to and on the right side counting forward from the initial point of the left boundary line thereof, the said left boundary being described (based on assumed bearing of East for the West half of the North line of said Section 36) as follows, to wit:

Beginning at a point on the North and South center line of said Section 36, distant 40 feet South 1 degree 48 minutes West; thence South 89 degrees 52 minutes West a distance of 192 feet; thence along a curve to the left having a radius of 50 feet; a distance of 73.4 feet measured along 25 foot chords; thence South 4 degrees 49 minutes West a distance of 638.6 feet; thence along a curve to the right having a radius of 100 feet a distance of 95.3 feet measured along 25 foot chords; thence South 59 degrees 37 minutes West a distance of 881.5 feet; thence South 66 degrees 51 minutes West a distance of 573.3 feet; thence along a curve to the right having a radius of 100 feet; a distance of 53.9 feet measured along 25 foot chords; thence North 82 degrees 09 minutes West a distance of 493.2 feet; thence along a curve to the right having a radius of 100 feet a distance of 74.8 feet; measured along 25 foot chords; thence North 39 degrees 11 minutes West a distance of 432.8 feet; thence along a curve to the right, having a radius of 100 feet a distance of 71.9 feet measured along 25 foot chords; thence North 2 degrees 08 minutes East a distance of 231.0 feet; thence on a curve to the left, having a radius of 61 feet a distance of 86.7 feet; measured along 25 foot chords; thence on a curve to the right, having a radius of 98.5 feet a distance of 140.8 feet measured along 25 foot chords, to a point 30 feet East of the West line of said Section 36; thence North 2 degrees 14 minutes East parallel to the West line of said Section 36 a distance of 562.2 feet to a point South 2 degrees 14 minutes West of a point on the North line of said Section 36 distant 30 feet East of the Northwest corner thereof.

Signature ———————

———————

———————

———————

Post Sale Information and Instructions

The declared high bidder, whether by sealed or oral bid, will be required to submit the remainder of the land payment in cash, certified check, bank draft, money order, cashier's check, or any combination of these by close of business 5:00 p.m. on the day of the auction.

If final payment is not received within the time frame required above, the deposit amount is forfeited, and the land may be reoffered. The authorized official shall determine whether to offer the land to the second bidder, subject to the same terms and conditions, or to reoffer the parcel of land for sale at a later date.

Upon payment of the entire purchase price, the authorized official shall cause a quitclaim deed to be issued granting all the right, title and interest of the United States in and to the property to the purchaser, subject, however, to the following reservations, limitations, and conditions:

(a) The reservation covenant or burden running with the land releasing all claims for damages against the United States which may be sustained by such land.

(b) Title of the land transfers when the United States issues a patent (deed) to the purchaser. Patents issued for the parcel sold will be subject to a right-of-way for ditches and canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. § 945), certain reservations for public roads and utility easements, and other reservations required by law.

(c) A reservation of all rights-of-way and easements of record.

(d) A reservation to the United States of any and all mineral interests.

Once the patent is issued the purchaser will be responsible for complying with all applicable laws regarding zoning and land uses.

The authorized officer may set aside the sale of the parcel at any time prior to the issuance of patent if it is determined that a sale should not be completed for any reason.

No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this sale or to any benefit that may arise therefrom, unless it be made with a corporation for its general benefit.

[FR Doc. 84-17048 Filed 6-25-84; 8:45 am]
BILLING CODE 4310-06-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30483]

Boston and Maine Corporation and Providence and Worcester Railroad Company—Exemption From 49 U.S.C. 11343

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343, (a) the purchase by Providence and Worcester Railroad Company (P&W) of a one-mile segment of line in Gardner, MA and a four-mile segment of line in Worcester, MA, from Boston and Maine Corporation (B&M); (b) the acquistition by B&M of trackage rights from P&W over the above-described one- and four-

mile segments of line; (c) the acquisition of trackage rights by B&M from P&W over the rail line of P&W running between the above-described one-mile and four-mile segments of line; and (d) the lease by P&W of B&M's line between Worcester and Lancaster, MA.

DATES: These exemptions will be effective on July 26, 1984. Petitions for reconsideration must be filed by July 16, 1984. Petitions to stay must be filed by July 6, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30483 to:
(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioners' representatives:
James E. Howard, 1500 Oliver Building, Pittsburgh, PA 15222
Joseph R. DiStefano, One Depot Square, Woonsocket, RI 02895

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: June 19, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioner Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84–16917 Filed 6–25–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.
The title of the form.
The OMB and Agency form numbers, if applicable.
How often the form must be filled out.
Who will be required to or asked to report.
Whether small businesses or organizations are affected.
An estimate of the number of responses.
An estimate of the total number of hours needed to fill out the form.
The number of forms in the request for approval.
An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration

Electrically Operated Mining Equipment Field Approval
Application (Coal Operator): 1219–0002
On occasion
Businesses and other for profit; small businesses or organizations 12 applications; 4 hours

Requires coal mine operators to submit an application (MSHA Form 2000–38) to obtain MSHA approval of electrically operated mining equipment which is built or assembled by the mine operator.

Air Volume Measurements, Gassy Mines: 1219–0031

Weekly
Businesses and other for profit; small businesses or organizations
800 responses; 6,400 hours

Requires that air volume measurements be taken weekly in metal and nonmetal mines which have been classified as gassy. Records are required to be kept of the measurements.

Main Fan Maintenance Records: 1219–0012

Weekly
Businesses and other for profit; small businesses or organizations
707 recordkeepers; 601 hours

The regulation requires that records be kept of the maintenance performed on the main fans at underground metal and nonmetallic mines.

Reinstatement

Employment and Training Administration

Forms for the Interstate Clearance Program of Services to Migratory Workers and Employers: 1205–0134; ETA 790, ETA 795, ETA 785, ETA 785A.
On occasion
State or local governments
22,000 responses; 13,000 hours; 4 forms

Forms are used by State Employment Security Agencies in servicing agricultural employers to ensure that their labor needs for domestic migratory agricultural workers are met; in servicing domestic agricultural workers to assist them in locating jobs expeditiously and orderly; to ensure exposure of employment opportunities to domestic agricultural workers before certification for employment of foreign workers.

Signed at Washington, D.C., this 21st day of June 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84–17005 Filed 6–25–84; 8:45 am]

BILLING CODE 4510–30–M, 4510–43–M

Mine Safety and Health Administration

[Docket No. M–84–171–C]

Eastern Associated Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Corporation, One PPG Place, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.1714–2(e)(3) (self-contained self-rescue devices; use and location requirements) to its Keystone No. 5 Mine (I.D. No. 46–02067) located in Raleigh County, West Virgina. The petition is filed under section 101(c) of

the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that self-contained self-rescuers (SCSRs) may not be placed more than 25 feet away from miners on mantrips into and out of the mine.

2. Miners ride covered mantrip cars from the slope bottom to the 2 West boom. From this point, belts are used for mantrips, which prohibit implementing a full-time underground storage plan because of the requirement that SCSRs be within 25 feet during mantrips.

3. As an alternate method, petitioner proposes to store the SCSRs while miners use the belts for mantrips, as follows:

a. Each track vehicle will store a number of SCSRs to match the seating capacity;

b. Each work area will have a storage area within five minutes travel time that will store enough SCSRs to match a full crew plus spares for personnel who occasionally visit the section or work area;

c. Section belt conveyors used for mantrips will have storage areas at ten-minute intervals in numbers consistent with section storage;

d. Main belt conveyors used for mantrips will have storage areas at ten-minute intervals for the maximum number of people that may have occasion to ride the belt at any time; and

e. Stored SCSRs will be inspected each 24 hours.

4. Petitioner states that the proposed alternate method will provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office or or before July 26, 1984. Copies of the petition are available for inspection at that address.

Dated: June 19, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-17009 Filed 6-25-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-111-C]

Empire Energy Corp.; Petition for Modification of Application of Mandatory Safety Standard

Empire Energy Corporation, P.O. Box 68, Craig, Colorado 81626 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Eagle No. 5 Mine (I.D. No. 05-01370) located in Moffat County, Colorado. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries.

2. As an alternate method, petitioner proposes to use the belt lines for intake airways. In support of this request, petitioner states that:

a. Low-level continuous carbon monoxide (CO) monitoring devices will be installed in the belt lines, and located to monitor at each belt drive and tailpiece and at 2,000 foot intervals between. The specific location of each monitor will be shown on the certified map;

b. The monitoring device will automatically provide a warning when the level of CO at any location exceeds 10 ppm above the ambient level of the mine;

c. The monitoring system will be capable of providing either a visual or audible alarm signal at either a continuously manned location on the section or a continuously manned location on the surface where there is a two-way communications with the miners on the sections;

d. The monitoring system will be able to identify any activated sensor within the belt haulage entry. This system will also have a map or schematic which will identify all monitors and belt locations;

e. If a surface monitoring station is used, the persons stationed there will be trained in the operation of the system and the proper procedures to follow in the event of an emergency;

f. At any time the CO monitoring system has been deenergized, for reasons such as power outages or routine maintenance, the belt conveyor may continue to operate if the belt entry is continuously patrolled and physically monitored by a qualified person with CO detector tubes or equivalent means. The automatic monitoring system will be put back into operations as soon as possible.

g. The CO monitor and sensor will be visually examined at least once every 24 hours to ensure proper functioning. The unit will be inspected by a qualified person for proper operation at least every seven days. This inspection will ensure that the required maintenance as recommended by the manufacturer is performed. The monitor will be calibrated with known quantities of CO and air mixtures at least evey 30 calendar days. An inspection record will be maintained on the surface and made available to all interested persons. The inspection record will show the date, the time of each weekly inspection, calibration of the monitor, and all maintenance performed, whether at the time of the weekly inspection or otherwise; and

h. Belt entries used as intake entries will be monitored for methane at the tailpiece. This will be done either by a continuous monitoring system installed as indicated above, or by manually making readings with an approved detector every 20 minutes when the belt is in operation.

3. Petitioner further states that with an additional intake, the air available at the last open crosscut will be significantly increased. This will provide an improved working environment for the miners at the face areas by decreasing the respirable dust exposure.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 26, 1984. Copies of the petition are available for inspection at that address.

Dated: June 19, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-17012 Filed 6-25-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-170-C]

Johnson Brothers Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Johnson Brothers Coal Company, 109 Broad Bottom Road, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 2 Mine (I.D. No. 15-12077) located in Pike County, Kentucky.

The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the No. 2 Elkhorn seam and ranges from 38 to 42 inches in height, with consistent ascending and descending grades creating dips throughout the coal bed.

3. Petitioner states that the canopies can strike and dislodge roof supports, creating the potential of a roof fall. The canopies also restrict and cramp the operator's seating position and limit visibility, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 26, 1984. Copies of the petition are available for inspection at that address.

Dated: June 19, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-17007 Filed 6-25-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-150-C]

M. C. Mining Corp.; Petition for Modification of Application of Mandatory Safety Standard

M. C. Mining Corporation, P.O. Box 409, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-05527) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the constant rise and fall of the mine floor and the rolls and dips encountered make the use of canopies on the mine's electric face equipment dangerous. The canopies strike roof bolts loose, creating the potential of a roof fall. The canopies also restrict the equipment operator's visibility, causing the operator to lean out from the canopy, increasing the chances of an accident.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 26, 1984. Copies of the petition are available for inspection at that address.

Dated: June 19, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-17008 Filed 6-25-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-156-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, St. Louis, Missouri 63102 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Sinclair No. 2 Mine (I.D. No. 15-07166), Star North Mine (I.D. No. 15-03161), and its Star South Mine (I.D. No. 15-11265), all located in Muhlenberg County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all power connection points outby the last open crosscut be in intake air.

2. Petitioner seeks a modification from the requirement that power connection points for water pumps used to pump water from behind sealed areas be on the surface.

3. As an alternate method, petitioner proposes to use a submersible pump, as follows:

a. A grounded phase protection system, such as the Mindel Shok-Blok No. 21-7000-30 will be installed with the pump. The breaker will be interrupted when 30 milliamps is detected between any one phase and ground;

b. The copper conductors, power, grounding and ground check will be stranded annealed-coated copper. The cable will be #4 AWG with a minimum 259 strands, 0.075 inch insulation thickness and 0.25 inch jacket insulation. Metallic shielding braid will provide a minimum coverage of 84 percent. There will be no cable splices in the borehole;

c. The borehole will be drilled into the floor of the mine to ensure that the pump motor and power connection points be immersed at all times;

d. The discharge switch will have a flapper-type power disconnection switch; and

e. Petitioner will continue a regular program of safety instruction, with specific emphasis on electrical hazards, incorporating instructions on the submersible pump.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 26, 1984. Copies of the petition are available for inspection at that address.

Dated: June 19, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-17010 Filed 6-25-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-132-C]

Ray Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Ray Coal Company, P.O. Box 5002, Hazard, Kentucky 41701 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mine No. 49 (I.D. No. 15-14057) located in Leslie County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air from belt haulage entries be used to ventilate active working places.

2. The mine will be developed on a seven entry system. This is the

maximum number of entries practical due to high overburden in places (900 feet) and a substantial thickness of soft fireclay bottom, creating a potential hazard of a "squeeze" or "bottom upheaval". The portals of the mine are located approximately 15 feet of elevation below drainage. Some areas of the mine will extend as far as four miles from the portals. Therefore, all entries must be utilized to the fullest extent in the circulation of air to the working places. In order to most efficiently ventilate the working places and to maintain a bleeder system workable in all phases of the mining operation, a split system of face ventilation will be used with intakes up the middle entries and returns on the outside entries. Due to high quartz content in the strata common to this region, there are inherent problems with dust concentrations. A split air system with line brattice exhausting at the face is best suited to controlling respirable dust at the face.

3. As an alternate method, petitioner proposes to use air from belt haulage entries to ventilate the active working places. In support of this request, petitioner proposes to install low level carbon monoxide (CO) monitoring devices in all belt entries used as intake air courses. Petitioner further states that:

a. The devices will give early warning automatically when a fire occurs in the belt entry and provide both audible and visual signals that permit rapid location of the fire;

b. The automatic fire detection system will be calibrated to activate the warning signals should the carbon monoxide concentration reach 10 p.p.m. above ambient;

c. The automatic fire detection system will, upon activation, provide an effective warning signal at a manned location on the surface where personnel have an assigned post of duty and have telephone or equivalent communication with all persons who may be endangered. The automatic fire detection system will provide identification of any activated sensor. In addition, the detector located at or near the section loading point will activate when carbon monoxide is detected and give a warning signal that may be heard on the working section. All persons, except those required to investigate and take appropriate action in the event of a fire in the belt entry, will be immediately withdrawn from the endangered area of the mine to a safe area;

d. The person at the manned location on the surface will be trained in the operation of the CO monitoring system and in the proper procedures to follow in the event of an emergency;

e. The CO monitoring devices will be located so that the air is monitored at each belt drive, tail piece, and other locations as may be required by the District Manager to ensure safety of the miners;

f. The details for the fire detection system, including but not limited to type of monitor, sensor location, alarm system, maintenance and calibration schedule will be included as a part of the ventilation system and methane and dust control plan required by § 75.316;

g. Should the automatic fire detection system be affected by a power interruption or other malfunction, the belt conveyors can continue to operate if a qualified person is stationed at each malfunctioning sensor to continuously monitor for carbon monoxide with a suitable instrument;

h. Each carbon monoxide monitor and sensor will be visually examined at least once each 24 hours to ensure proper functioning. The units will be checked weekly for proper operation of the built-in safety features and other checks recommended by the manufacturer. At least every 30 calendar days, the monitors will be checked for operating accuracy with a known concentration of carbon monoxide gas and calibrated as necessary. A record will be kept of these tests and be made available to all interested persons;

i. The construction of the stoppings separating the belt haulage entry from the intake escapeway will be of concrete blocks, cinder blocks, brick or tile with mortared joints. The blocks may be stacked providing the stoppings are plastered on both sides with a material having the same strength as that of mortared joints;

j. Low level carbon monoxide sensors will not be used where the velocity of the air current in the belt conveyor entry is less than 50 feet a minute or where the air current does not have a definite and distinct directional movement; and

k. The velocity of the air current in the belt entry will not exceed 300 feet per minute.

4. In conclusion, petitioner states that this requested modification to allow the use of air from belt haulage entries to ventilate the active working places is a vital part of the overall ventilation system for the health and safety of the miners, as this is the best source for improving the quantity of intake air reaching the active working places.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virgnia 22203. All comments must be postmarked or received in that office on or before July 26, 1984. Copies of the petition are available for inspection at that address.

Dated: June 19, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-17011 Filed 6-25-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-139-C]

Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 490, Athens, Ohio 45701 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Meigs No. 1 Mine (I.D. No. 33-01172) and its Meigs No. 2 Mine (I.D. No. 33-01173), both located in Meigs County, Ohio. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking device (harness snap) in lieu of padlocks to secure battery plugs to machine-mounted battery receptables on permissible, mobile, battery-powered machines. The metal locking device will be designed, installed and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening. The fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets. The locking device will be securely attached to the brackets to prevent accidental loss of the locking devices.

3. Petitioner states that the harness snaps will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the

proper use of the locking device, trained in the hazards of breaking battery-plug connections under load, and trained in the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 26, 1984. Copies of the petition are available for inspection at that address.

Dated: June 19, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-17008 Filed 6-25-84; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 84-70; Exemption Application No. D-3604 et al.]

Grant of Individual Exemptions; Third Revised Profit Sharing and Retirement Plan of International Rectifier Coporation et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments in the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, setion 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713), October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Third Revise Profit Sharing and Retirement Plan of International Rectifier Corporation et al. (the Pan) Located in Los Angeles, California

[Prohibited Transaciton Exemption 84-70; Exemption Application No. D-3604]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the continuation past June 30, 1984, of the leases of five parcels of real property (the Properties) by the Plan to International Rectifier Corporation (the Employer), the sponsor of the Plan, provided that (1) the terms and conditions of the leases are at least as favorable to the Plan as the Plan could obtain in similar transactions with unrelated parties; and (2) after December 31, 1987 the aggregate value of the Properties leased to the Employer at anytime will not exceed 25 percent of the assets of the Plan.

Effective Date: The effective date of this exemption, is July 1, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 18636.

For Further Information Contact: Louis Campagna of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Bruce J. Rice, M.D., and Barry R. Weiss, M.D., Inc. Employees' Money Purchase Pension Plan and Trust and Bruce J. Rice, M.D., and Barry R. Weiss, M.D., Inc. Employees' Profit-Sharing Plan and Trust (collectively, the Plans) Located in Oakland, California

[Prohibited Transaction Exemption 84-71; Exemption Application Nos. D-3986 and D-3987]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The sale by the individual participant accounts (the Accounts) of Bruce J. Rice (Rice) and Cathie Davis in the Plans of certain residential real property to Rice, a party in interest with respect to the Plans; and (2) the extension of credit by the Accounts to Rice, provided that the price paid in such sale is no less than the fair market value of the subject property at the time of such sale, and provided that such extension of credit is on terms at least as favorable to the Accounts as could be expected in dealing with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17609.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Stair Cargo Services, Inc. Employees Profit-Sharing Plan (the Plan) Located in Miami, Florida

[Prohibited Transaction Exemption 84-72; Exemption Application No. D-4419]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The sale of a parcel of real estate (the Property) from the Plan to Stair Realty (Stair), a party in interest with respect to the Plan,

at the higher of (a) its appraised fair market value or (b) the total expenditures incurred by the Plan in connection with the acquisition and holding of the Property through the date of sale. In addition, Stair will assume the unpaid balance due on the land contract (the Contract) which encumbers the Property; and (2) the possible assignment of the Contract by the Plan to Stair.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18641.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

New England Nuclear Corporation Pension Plan and Trust (the Plan) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 84–73; Exemption Application No. D–4648]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale in 1981 by the Plan to E. I. du Pont de Nemours & Company, a party in interest with respect to the Plan, of 358 shares of Conoco Inc. common stock, provided that the amount received was no less than the fair market value of the stock on the date of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17612.

Effective Date: The exemption is effective July 24, 1981.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Carvel Retirement Trust Plan (the Plan) Located in Yonkers, New York

[Prohibited Transaction Exemption 84–74; Exemption Application No. D–4653]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchases by the Plan of customer notes with remaining terms of 36 to 48 months (the Additional Notes) from the Carvel Corporation (Carvel), the sponsor of the Plan; provided the following conditions are met:

A. All conditions of Prohibited Transaction Exemption 79–9 (PTE 79–9, 44 FR 17819, March 23, 1979) shall be satisfied except for the condition relating to the remaining term of customer notes secured by tangible personal property other than heavy equipment or motor vehicles.

B. Prior to the purchase by the Plan of any Additional Notes, the Independent Fiduciaries (as identified in the notice of proposed exemption) of the Plan must review such proposed purchase and approve such purchase only after a specific determination that the purchase will be for the exclusive benefit of the Plan and in the best interests and protective of the participants and beneficiaries of the Plan.

C. Any Additional Notes purchased by the Plan must yield an annual return of no less than 10%.

D. The Plan shall not purchase any Additional Note if, after such purchase, more than 5% of the Plan's total assets would be invested in the customer notes of any one Carvel dealer.

E. At any time after the purchase by the Plan of an Additional Note, the Employer shall repurchase any Additional Note from the Plan at the request of both of the Independent Fiduciaries and shall bear all expenses related thereto.

F. This exemption shall expire five years from the date of grant.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18642.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Garrett Book Company Employee Pension Trust (the Plan) Located in Ada, Oklahoma

[Prohibited Transaction Exemption 84–75; Exemption Application No. D–4802]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale, on October 15, 1982, of certain real property (the Real Property) by the Plan to Mr. and Mrs. Lionel Garrett for the cash amount of $20,000, provided the price paid for the Real Property was not less than its fair market value at the time the sale was consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1984 at 49 FR 15162.

Effective Date: This exemption is effective October 15, 1982.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Colorado Automobile Dealers Association Insurance Trust (the Trust) Located in Denver, Colorado

[Prohibited Transaction Exemption 84–76; Exemption Application No. D–4839]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the purchase by the Trust of an automobile from a new car dealer who is a member of the Colorado Automobile Dealers Association, the sponsor of the Trust; provided that the terms of the proposed transaction are on terms not less favorable to the Trust than those available in transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17616.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Profit Sharing Plan and Trust of Northern Wire and Cable, Inc. and Pension Plan and Trust of Northern Wire and Cable, Inc. (the Plans) Located in Troy, Michigan

[Prohibited Transaction Exemption 84–77; Exemption Application Nos. D–4866 and D–4867]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plans of certain unimproved real property to Northern Wire and Cable, Inc., the sponsor of the Plans, provided that such sale is on terms which are at least as favorable to the Plans as those

which the Plans could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17616.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Atlas Industries, Inc. Employees Stock Ownership Plan (the Plan) Located in Carnegie, Pennsylvania

[Prohibited Transaction Exemption 84–78; Exemption Application No. D–4926]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed loan (the Loan) by the Plan to Atlas Industries, Inc. (the Employer), the sponsor of the Plan; and (2) the personal guarantee of the obligation of the Employer in such Loan by Mr. William A. Bayer, a party in interest with respect to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17620.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8972. (This is not a toll-free number.)

Berton A. Lowell, D.D.S., P.A. Profit Sharing Plan and Trust (the Plan) Located in Ft. Lauderdale, Florida

[Prohibited Transaction Exemption 84–79; Exemption Application No. D–4959]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale, for $150,000 in cash, of certain real property (the Real Property) by the Plan to Dr. and Mrs. Berton Lowell, provided the sales price of the Real Property is not less than its fair market value at the time the sale is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18649.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Delong's, Inc. Profit Sharing Trust Plan (the Plan) Located in Jefferson City, Missouri

[Prohibited Transaction Exemption 84–80; Exemption Application No. D–5113]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of a parcel of improved real property located at 1811 Industrial Drive, Jefferson City, Missouri, by the Plan to Delong's, Inc. for $77,500 in cash, provided that this amount is not less than the fair market value at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17625.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

San Marino Ophthalmological Medical Clinic, Inc. Defined Benefit Pension Plan (the Plan) Located in San Marino, California

[Prohibited Transaction Exemption 84–81; Exemption Application Nos. D–5248, D–5249 and D–5250]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan for two years of $71,058 by the Plan to San Marino Ophthalmological Clinic, Inc., which employs Plan participants, provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17626.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction;

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 21st day of June, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84–16869 Filed 6–25–84; 8:45 am]

BILLING CODE 4510–29–M

MERIT SYSTEMS PROTECTION BOARD

Federal Employees; Review of Agency Actions Taken Under 5 U.S.C. 4303; Opportunity To File Amicus Briefs in Board Proceedings

AGENCY: Merit Systems Protection Board.

ACTION: Notice of opportunity to file amicus briefs in certain appeals of agency actions taken under 5 U.S.C. 4303.

SUMMARY: The Merit Systems Protection Board provides an opportunity to file amicus briefs on significant issues of law common to a number of cases pending before the Board involving appeals of agency actions taken under 5 U.S.C. 4303.

DATE: Amicus briefs submitted in response to this notice shall be filed with the Acting Secretary of the Board on or before July 26, 1984.

ADDRESS: All briefs shall be captioned "Chapter 43 Appeals, No. 48 FR 000 (1984)" and entitled "Amicus Brief." All briefs shall also contain separate, numbered headings for each issue discussed. The original and fourteen (14) copies of each amicus brief submitted in response to this notice shall be filed with the Office of the Secretary of the Board and addressed to Paula A. Latshaw, Acting Secretary, Merit Systems Protection Board, Attn: Chapter 43 Appeals, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Paula A. Latshaw, Acting Secretary, Merit Systems Protection Board, (202) 653–7200. For copies of the Initial Decisions in the referenced cases, contact Kathleen O'Sullivan, Director, Research Services Divisions, Merit Systems Protection Board, (202) 653–7132.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board currently has before it numerous petitions for review of initial decisions issued by the Board's regional offices in appeals taken under 5 U.S.C. 4303. The Board has identified several cases, listed below, which address significant issues of law common to a large number of these appeals and finds it appropriate to provide an opportunity for the filing of amicus briefs addressing these issues. These cases include the following:

Thomas J. Griffin v. *Department of the Army*, MSPB Docket No. CH0752821083 (April 8, 1983);
Montine B. Callaway v. *Department of the Army*, MSPB Docket No. PH04328310029 (August 3, 1983);
Jack L. Larrimore v. *Department of the Treasury*, MSPB Docket No. AT04328310090 (October 24, 1983);
Leroy Sandland v. *General Services Administration*, MSPB Docket No. PH04328310205 (November 22, 1983);
Lenwood L. Buggie v. *Department of Health and Human Services*, MSPD Docket NO. NY04328210249 (July 9, 1982);
Dze K. Kao v. *Department of the Army*, MSPB Docket No. SE04328310109 (January 31, 1984);
Moses B. Sanchez v. *Department of the Air Force*, MSPB Docket No. DE04328310102 (June 27, 1983);
Janet Hill v. *Department of Health and Human Services*, MSPB Docket No. DC04328310306 (September 26, 1983). (A petition for review is not pending in this case but the case is before the Board pursuant to the Board's remand motion, which was granted by the U.S. Court of Appeals for the Federal Circuit.)

This notice represents the Board's offer to receive and consider amicus briefs from interested parties on the issues relevant to these appeals including:

I. Proof of a Performance Appraisal System Reviewed and Approved by the Office of Personnel Management (OPM)

A. Whether the agency's compliance with 5 U.S.C. 4304 (which requires OPM to review each agency's performance appraisal system and determine whether it meets statutory requirements) and 5 CFR 430.301 (1983) (which required agencies to implement approved performance appraisal systems by October 1, 1981) is an element of proof in an action taken under 5 U.S.C. 4303?

B. If so, what burden of proof and evidentiary standards are applicable to the issue of the agency's compliance with 5 U.S.C. 4304 and 5 CFR 430.301 (1983)? [For example, is compliance with these provisions an element of the agency's *prima facie* case, a rebuttal presumption, or an affirmative defense subject to one of the standards in 5 U.S.C. 7701(c)(2); and what evidentiary standard is applicable?]

C. When an agency brings an action under 5 U.S.C. 4303 after October 1, 1981 [the date agencies were required by 5 CFR 430.301 (1983) to implement an OPM-approved performance appraisal system], under what circumstances, if any, should the Board consider the action under the standards of 5 U.S.C. Chapter 75 in the absence of proof of compliance with these provisions?

II. Absolute Performance Standards

A. Under what circumstances, if any, does a performance standard which is absolute (i.e., allows for no errors or deviations) violate the provision of 5 U.S.C. 4302(b)(1) requiring the establishment of performance standards "which will, to the maximum extent feasible, permit accurate evaluation of job performance on the basis of objective criteria . . ."?

B. If the Board finds that an agency action is partly based on an absolute performance standard which does not comply with 5 U.S.C. 4302(b)(1), should the Board consider the lack of compliance under the harmful procedural error standard [5 U.S.C. 7701(c)(2)(A)], or should the Board find that the agency's charges based on that standard cannot be considered because the action is not in accordance with law under 5 U.S.C. 7701(c)(2)(C)?

C. If an agency action is based solely on an absolute standard or standards found not in compliance with 5 U.S.C. 4302(b)(1), under what circumstances, if any, should the Board consider the agency action under the standards of 5 U.S.C. Chapter 75?

III. Multiple Standards Describing Minimally Acceptable Performance for a Critical Element

A. Where a performance standard which describes minimally acceptable performance for a critical element contains several components, does a sustained charge of unacceptable performance on one component constitute proof that the employee's performance on the standard or critical element as a whole was unacceptable?

B. If not, what factors should the Board consider in determining whether or not unacceptable performance on a component of the standard constitutes unacceptable performance on the standard or critical element as a whole?

IV. Proof of an Opportunity To Demonstrate Acceptable Performance Under 5 U.S.C. 4302(b)(6)

A. Whether the agency's compliance with 5 U.S.C. 4302(b)(6) (which requires the agency to provide an employee with an opportunity to demonstrate acceptable performance) is an element of proof in an action taken under 5 U.S.C. 4303?

B. If so, what burden of proof and evidentiary standards are applicable to the issue of the agency's compliance with 5 U.S.C. 4302(b)(6)? [For example, is compliance with this provision an element of the agency's *prima facie* case, a rebuttal presumption or an affirmative defense subject to one of the standards in 5 U.S.C. 7701(c)(2); and what evidentiary standard is applicable?]

C. When an agency brings an action under 5 U.S.C. 4303, under what circumstances, if any, should the Board consider the action under the standards of 5 U.S.C. Chapter 75 in the absence of proof of compliance with 5 U.S.C. 4302(b)(6)?

V. Modification of Agency Actions

A. Whether the Board has the authority to modify removal or demotion actions taken pursuant to 5 U.S.C. 4303?

B. If so, under what standards?

C. Whether the Board may modify such removal or demotion actions to suspensions or other actions?

Dated: June 21, 1984.

For the Board.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 84-16985 Filed 6-25-84; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Demonstration Section) to the National Council on the Arts will be held on July 18-19, 1984, from 9:00 a.m.—5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

June 19, 1984.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-16901 Filed 6-25-84; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Communication Section) to the National Council on the Arts will be held on July 12-13, 1984, from 9:00 a.m.-5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

June 19, 1984.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-16900 Filed 6-25-84; 8:45 am]

BILLING CODE 7537-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, 202-632-6000.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on May 22, 1984 (49 FR 21581). Individual authorities established or revoked under Schedules A, B, or C between May 1, 1984 and May 31, 1984 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exceptions are established:

Department of the Army

One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations. Effective May 24, 1984.

Department of Commerce

Not to exceed 20 professional and scientific positions at grades GS-9 through GS-12 in the Bureau of the Census filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years. Effective May 14, 1984.

Department of the Navy

One Director of Academic Planning, Naval Postgraduate School. Effective May 14, 1984.

Schedule B

No exceptions were established or revoked in Schedule B during the month of May.

Schedule C

The following exceptions are established:

Department of Agriculture

One Director, Office of Information. Effective May 14, 1984.

One Private Secretary to the Assistant Secretary for Administration. Effective May 15, 1984.

One Private Secretary to the Deputy Assistant Secretary for Science and Education. Effective May 23, 1984.

Department of Commerce

One Special Assistant to the Deputy Assistant Secretary for the Economic Development Administration. Effective May 4, 1984.

One Confidential Assistant to the Deputy Assistant Secretary for International Economic Policy, International Trade Administration. Effective May 8, 1984.

One Congressional Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 17, 1984.

Department of Defense

One Special Assistant to the Principal Deputy Assistant Secretary (Public Affairs). Effective May 15, 1984.

One Private Secretary to the Deputy Under Secretary of Defense for

Research and Engineering (International Program and Technology). Effective May 15, 1984.

One White House Director of Television Services to the President/ Director of Support Services, White House Support Group. Effective May 30, 1984.

Department of Education

One Executive Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective May 2, 1984.

One Special Assistant to the Deputy Assistant Secretary for Higher Education Programs. Effective May 4, 1984.

One Special Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation. Effective May 15, 1984.

Department of Energy

One Confidential Assistant to the Inspector General. Effective May 2, 1984.

One Private Secretary to a Member, Federal Energy Regulatory Commission. Effective May 4, 1984.

One Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy. Effective May 24, 1984.

Department of Health and Human Services

One Staff Assistant to the Secretary. Effective May 2, 1984.

One Confidential Staff Assistant to the Chief of Staff. Effective May 4, 1984.

One Confidential Staff Assistant to the Assistant Secretary for Planning and Evaluation. Effective May 4, 1984.

One Director, Office of Intergovernmental Communications, Social Security Administration. Effective May 15, 1984.

One Special Assistant to the Assistant Secretary for Legislation. Effective May 15, 1984.

One Special Assistant to the Executive Administrative Assistant to the Secretary. Effective May 18, 1984.

One Special Assistant to the Senior Advisor to the Secretary. Effective May 23, 1984.

Department of Housing and Urban Development

One Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs. Effective May 23, 1984.

One Special Assistant to the Deputy Assistant Secretary for Operations and Management. Effective May 24, 1984.

One Senior Legislative Specialist to the Deputy Assistant Secretary for Legislation and Congressional Relations. Effective May 30, 1984.

One Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs. Effective May 31, 1984.

Department of the Interior

One Special Assistant to the Assistant Secretary for Land and Minerals Management. Effective May 15, 1984.

One Special Assistant to the Counselor to the Secretary. Effective May 17, 1984.

One Special Assistant to the Counselor to the Secretary. Effective May 17, 1984.

Department of Justice

One Special Assistant to the Assistant Attorney General, Antitrust Division. Effective May 23, 1984.

One Confidential Assistant and Private Secretary to the Chairman, Foreign Claims Settlement Commission. Effective May 30, 1984.

Department of Labor

One Staff Assistant to the Deputy Under Secretary for International Affairs. Effective May 23, 1984.

One Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration. Effective May 29, 1984.

Department of State

One Deputy to the Ambassador-at-Large and Special Advisor to the Secretary. Effective May 17, 1984.

One Special Assistant to the Ambassador-at-Large and Special Advisor to the Secretary. Effective May 18, 1984.

One Deputy Assistant Secretary for Congressional Relations to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective May 18, 1984.

One Protocol Officer (Visits) to the Chief of Protocol. Effective May 23, 1984.

One Staff Assistant to the Ambassador-at-Large and Special Advisor to the Secretary. Effective May 23, 1984.

One Secretary (Typing) to the Assistant Secretary for the Bureau of International Organization Affairs. Effective May 23, 1984.

One Public Affairs Specialist to the Deputy Assistant Secretary for Public Affairs. Effective May 23, 1984.

Department of Transportation

One Private Sector Initiatives Coordinator to the Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration. Effective May 23, 1984.

One Special Assistant to the Deputy Secretary. Effective May 23, 1984.

One Special Assistant to the Administrator, Urban Mass Transportation Administration. Effective May 29, 1984.

One Staff Assistant to the Director, Office of Commercial Space Transportation. Effective May 31, 1984.

Department of the Treasury

One Special Assistant to the Assistant Secretary for Public Affairs. Effective May 2, 1984.

One Special Assistant to the Assistant Secretary for Legislative Affairs. Effective May 17, 1984.

One Executive Assistant to the Assistant Secretary for Legislative Affairs. Effective May 18, 1984.

One Confidential Assistant to the Assistant Secretary for Legislative Affairs. Effective May 18, 1984.

One Staff Assistant to the Executive Secretary. Effective May 18, 1984.

One Staff Assistant to the Director of Revenue Sharing. Effective May 23, 1984.

One Staff Assistant to the Commissioner, United States Customs Service. Effective May 29, 1984.

ACTION

One Special Assistant to the Executive Officer. Effective May 23, 1984.

Agency for International Development

One Confidential Assistant to the President, African Development Foundation Effective May 7, 1984.

One Special Assistant to the President, African Development Foundation. Effective May 10, 1984.

One Special Assistant to the Assistant Administrator, Bureau for Private Enterprise. Effective May 17, 1984.

One Special Assistant to the Assistant Administrator, Bureau for Latin America and the Caribbean. Effective May 17, 1984.

One Congressional Liaison Officer to the Director, Office of Legislative Affairs. Effective May 29, 1984.

One Congressional Liaison Officer to the Director, Office of Legislative Affairs. Effective May 29, 1984.

One Congressional Liaison Officer to the Director, Office of Legislative Affairs. Effective May 29, 1984.

Commission on Civil Rights

One Confidential Secretary to a Commissioner in San Antonio, Texas. Effective May 2, 1984.

One Confidential Secretary to the Staff Director. Effective May 18, 1984.

One Special Assistan to the Staff Director. Effective May 18, 1984.

Consumer Product Safety Commission

One Special Assistant to the Chairman. Effective May 31, 1984.

Environmental Protection Agency

One Special Assistant to the Director, Office of Public Affairs. Effective May 2, 1984.

One Special Assistant to the Executive Assistant to the Administrator, Office of the Administrator. Effective May 17, 1984.

One Congressional Liaison Specialist to the Director of Congressional Liaison. Effective May 30, 1984.

Equal Employment Opportunity Commission

One Special Assistant to the Chairman. Effective May 2, 1984.

One Staff Assistant to the Chairman. Effective May 17, 1984.

Exective Office of the President

One Legislative Assistant to the Assistant Director for Legislative Affairs, Office of Management and Budget. Effective May 2, 1984.

Federal Emergency Management Agency

One Special Assistant to the Director, Office of the Director. Effective May 23, 1984.

Federal Trade Commission

One Director, Office of Public Affairs. Effective May 15, 1984.

Interstate Commerce Commission

One Confidential Assistant to a Commissioner. Effective May 29, 1984.

International Trade Commission

One Staff Assistant (Economics) to a Commissioner. Effective May 15, 1984.

One Staff Assistant (Legal) to a Commissioner. Effective May 15, 1984.

Office of Personnel Management

One Staff Clerk (Typing) to the Confidential Assistant to the Director, Office of the Director. Effective May 18, 1984.

Pension Benefit Guaranty Corporation

One Secretary (Typing) to the Deputy Executive Director for Resource Management, Office of the Executive Director. Effective May 17, 1984.

Securities and Exchange Commission

One Secretary to the Director, Division of Corporation Finance. Effective May 15, 1984.

One Executive Aide (Typing) to the Executive Assistant to the Chairman. Effective May 24, 1984.

Small Business Administration

One Confidential Assistant to the Regional Administrator in New York, New York. Effective May 2, 1984.

One Staff Assistant to the Administrator. Effective May 2, 1984.

One Deputy Assistant Administrator for Congressional and Legislative Affairs. Effective May 15, 1984.

One Special Assistant to the Associate Deputy Administrator for Management and Administration. Effective May 17, 1984.

One Special Assistant to the Associate Deputy Administrator for Special Programs. Effective May 21, 1984.

One Executive Assistant to the Administrator. Effective May 24, 1984.

Veterans Administration

One Confidential Assistant to the Associate Deputy Administrator for Congressional and Intergovernmental Affairs. Effective May 29, 1984.

One Confidential Assistant to the Director of Intergovernmental Affairs. Effective May 30, 1984.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-16951 Filed 6-25-84 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) Collection title: Request for Review of Part B Medicare Claim.

(2) Form(s) submitted: G-790, G-791.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 4,100.

(7) Annual reporting hours: 1,025.

(8) Collection description: The Board administers the Medicare program for persons covered by the railroad retirement system. The requests provide the means for obtaining reviews of the determinations made by Travelers on claims for Part B Medicare benefits.

Additional information or comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Milo Sunderhauf (202-395-6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 84-16887 Filed 6-25-84; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23336; 70-6989]

Alabama Power Co. and the Southern Co.; Proposal by Subsidiary To Sell Existing Transmission Line to Nonaffiliate

June 20, 1984.

The Southern Company, 64 Perimeter Center East, Atlanta, Georgia 30346 a registered holding company, and its wholly owned subsidiary, Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, has filed a declaration with this Commission under Section 12(d) of the Public Utility Holding Company Act of 1935 and Rule 44 thereunder.

Alabama proposes to sell a transmission line, known as the Wiregrass-ECI-Bay Springs tap in Geneva County, Alabama to Alabama Electric Cooperative, Inc. ("AEC"), for $205,232.00 in cash. The conveyance includes a Trustee's release of the line from Alabama's first mortgage indenture lien. The sale will not affect an existing transmission service agreement, pursuant to which this line is now used by AEC to receive power from Alabama.

The declaration, and any amendments thereto, are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 16, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at

law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A persons who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to degelated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16986 Filed 6-25-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23335; 70-6969]

The Columbia Gas System, Inc. and Columbia Gas Brokerage Corp.; Proposal by Registered Holding Company To Acquire Common Stock of Subsidiary, Which Will Participate in Natural Gas Spot Market

June 20, 1984.

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and its wholly owned subsidiary, Columbia Gas Brokerage Corporation ("CGB"), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, have filed an application-declaration with the Commission pursuant to Sections 6, 7, 9, 10, and 13(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 16 and 43, thereunder.

The proposed transaction is intended to provide CGB with $200,000 in operating capital from the cash sale of common stock to Columbia, in the amount of 8,000 shares at $25 par value, to allow CGB to participate in U.S. Natural Gas Clearing House ("The Clearing House"). The Clearing House will be a limited partnership composed of a general partner (itself a partnership), and several limited partners, which will act as a broker in arranging purchases, sales and transportation of natural gas in the spot market.

CGB would participate, first, as a common stockholder in Clearing House Corporation, a member of the general partnership owned by participating affiliates of pipeline companies, and secondly, as a limited partner. Under the proposal, CGB would provide a *pro rata* share of The Clearing House's expenses, and the services of one employee on loan to CGB from an affiliate, at cost.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 16, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issue of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16988 Filed 6-25-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21071; SR-AMEX-84-17]

Self-Regulatory Organizations; American Stock Exchange; Filing and Order Granting Accelerated Approval of Proposed Rule Change

June 20, 1984.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1984, the American Stock Exchange, Inc. ("AMEX") 86 Trinity Place, New York, New York 10006, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would amend Amex Rule 904C to permit an increase in position and exercise limits for the Computer Technology Index ("XCI") from the current 4,000 contract limit to 8,000 contracts. Currently, the trading of narrow-based or industry index options on Amex is governed by a three-tiered position and exercise limit structure. Limits are set at 4,000, 6,000 or 8,000 contracts, depending on the degree of concentration of the index.[1] The position and exercise limits adopted by Amex are identical to ones approved by the Commission for other exchanges trading narrow-based index options.[2] Because a single component stock, International Business Machines ("IBM") constitutes more than fifty percent of the value of XCI, the index is subject to a 4,000 contract limit, the lowest position and exercise limit applicable to narrow based index options.

In its rule filing, Amex asserts that though XCI is presently being used in conjunction with numerous trading strategies (*e.g.*, hedging portfolios composed of various computer technology stocks), the present position and exercise limits imposed on XCI prevent market participants from fully utilizing the index, and thus have hindered the development of the index.

Originally, position and exercise limits for stock options were approved by the Commission to prevent the establishment of large options positions that might be used to manipulate the underlying market to benefit the options positions.[3] In addition to this concern, the Commission's original approval of three-tiered position and exercise limits for narrow-based index options addressed concerns with respect to the potential use of narrow-based index options to circumvent limits applicable to positions held in options on individual stocks. The Commission continues to believe that it is necessary to avoid conferring any regulatory advantage on narrow-based index options over individual stock options by approving position and exercise limits on narrow-based index options that are generally equivalent to those applicable to individual stock options.

At its current price and weight in the index, one XCI contract confers an equity position equivalent to roughly 50 shares of IBM. One IBM individual stock option establishes an equity position twice that large. Hence, the Commission does not find a doubling of the size of the XCI option position and exercise limits results in a competitive advantage over the IBM individual stock options contract. In addition, because of the substantial public float in IBM and the extremely deep and liquid markets that

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[1] *See* Amex Rule 904C.

[2] *See, e.g.*, Chicago Board Options Exchange, Incorporated ("CBOE") Rule 24.4(b); New York Stock Exchange, Inc. ("NYSE") Rule 704(c), and Philadelphia Stock Exchange, Inc. ("Phlx") Rule 1001A, approved in Securities Exchange Act Release Nos. 20125, August 26, 1983, 48 FR 40046, September 2, 1983; 20663, February 17, 1984, 49 FR 7171, February 27, 1984; and 20437, December 2, 1983, 48 FR 55229, December 9, 1983, respectively.

[3] *See e.g.*, Securities Exchange Act Release No. 19975, July 15, 1983.

exist in IBM stock and IBM options, the Commission does not find that this proposal will result in materially increased manipulation or disruption concerns.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–Amex–84–17.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the rule change approved herein has been published in the **Federal Register** as part of SR–Amex–84–8 with adequate opportunity for public comment.[4] No comment letters have been received on that filing.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84–16984 Filed 6–25–84; 8:45 am]
BILLING CODE 8010–01–M

[4] *See* Securities Exchange Act Rel. No. 20946, May 9, 1984; 49 FR 20965, May 17, 1984.

[Release No. 34–21070; Filed No. SR–AMEX–84–19]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Miscellaneous Office Rule Amendments

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 6, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The American Stock Exchange, Inc. ("Amex" or the "Exchange") is proposing to amend Rules 300 and 301 to require the submission of all member firm partnership agreements and amendments; to amend Rule 341 to limit Exchange approval to certain corporate officers, and to delete Rule 344 to eliminate an out-of-date membership requirement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The Exchange is proposing a number of membership rule changes as part of its continuing program to ensure that the Exchange's rules remain up-to-date and are as uniform as possible with New York Stock Exchange rules. Each of the proposed changes is reviewed separately below.

Submission of Documents

To assure that member organizations comply with the requirements of the Amex Constitution and Rules, it is necessary for the Exchange to review all essential corporate and partnership documents. Amex Rule 310 requires the submission of principal corporate documents such as the certificate of incorporation. In contrast, Amex Rules 300 and 301, which apply to partnerships, provide that essential partnership documents need only be submitted upon the request of the Exchange. While it is Exchange policy to routinely request their submission, it is proposed that Rules 300 and 301 be amended to require that partnership agreements and amendments be submitted without the need for an Exchange request. This will conform Exchange requirements for partnerships and corporations, while providing better notice of our filing requirements.

Corporate Officers

The Exchange is proposing to amend Rule 341 to provide that only corporate officers who have authority to legally bind the corporation must file an allied member application and receive Exchange approval. This change will ease the administrative workload of member organizations and the Exchange while continuing to assure adequate regulation of corporate principals. The New York Stock Exchange recently amended its comparable Rule 345.

Nominal Employment

Rule 344 prohibits the nominal employment of any person by a member or member organization because of the business obtained by that person. This rule was adopted as anti-rebate provisions when fixed commission rates were in effect and this prohibition is no longer appropriate because fixed commission rates have been abolished. The NYSE recently deleted a comparable provision in its Rule 345. It is therefore proposed that Amex Rule 344 be deleted.

(2) *Basis.* The proposed amendments are consistent with Section 6(b) of the Exchange Act, in general, in that they are designed to ensure that the Exchange's rules remain up-to-date and as uniform as possible with New York Stock Exchange Rules, and are consistent with Sections 6(b)(1) and 6(b)(5), in particular, in that they help enforce compliance with Exchange rules and eliminate regulation not related to the purpose of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments to Rules 300, 301 and 344 will not impose a burden on competition, while the proposed amendment to Rule 341 will eliminate a burden by alleviating member organizations' excess administrative workload.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determined whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 20, 1984.

George A. Fitzsimmons,

Secretary.,

[FR Doc. 84-16085 Filed 6-25-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21067; SR-NYSE-84-2]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Partial Approval of Proposed Rule Change

June 19, 1984.

The New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, New York, submitted on April 23, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to authorize the opening of new series of index options at a new higher (or lower) exercise price when the index value climbs (or falls) to a value 2.5 points lower (or higher) than the highest (or lowest) exercise price then trading. Current NYSE rules require that the index value actually reach the highest (or lowest) exercise price then trading before new series at a higher (or lower) exercise price may be added. In addition, the NYSE proposes to permit the introduction of series of index options up to the beginning of the calendar month in which the options series expires. Thus, it would permit the addition of series that have as few as 16 days left to expiration. Under current NYSE rules, new series of index options can only be added for options with at least 30 days left to expiration.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20911, April 30, 1984) and by publication in the **Federal Register** (49 FR 19426, May 7, 1984). No comments were received with respect to the proposed rule change.

The NYSE has consented to an extension of time to August 31, 1984, for Commission action pursuant to Section 19(b)(2) with respect to the portion of the filing that would allow the opening of new series of index options at a new higher (or lower) exercise price when the index value climbs (or falls) to a value 2.5 points lower (or higher) than the highest (or lowest) exercise price then trading.[1] The Commission, therefore, takes no action in this order with respect to that portion of the filing.

The remaining portion of the proposed rule change would allow the introduction of series of index options with as few as 16 days left to expiration.[2] The NYSE argues that the current 30 day rule prohibits the exchange from adding new exercise prices to the nearest term options, *i.e.*, the ones with one month or less left to expiration. In the past, the Commission traditionally has been concerned about the introduction of new options series in already trading expiration months that would have only a short period to expiration. While recognizing the utility of at-the-money options for investors, the Commission has questioned the need to introduce such series in nearby (as well as further out) expiration months in response to price changes in the underlying stock that occur shortly before expiration, particularly since there may be only limited liquidity because of the option's limited duration. At the same time, the Commission has recognized that options on stock indices have functioned as more short-term investment vehicles than options on individual stocks, particularly in its determination to permit index options to trade on a monthly expiration cycle.[3] For this reason, the Commission is satisfied that the benefits of making available to investors at-the-money index options in the expiring month, even if they have as few as 16 days to expiration, outweigh the concerns that

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[1] *See* letter dated June 8, 1984, from James E. Buck, Secretary, NYSE, to Michael Cavalier, Division of Market Regulation, SEC.

[2] Technically, the proposed rule change allows the introduction of new series of index options "other than for options expiring in the current month." Because options expire on the Saturday following the third Friday of the month, under the proposal no option could be added with less than 16 days to expiration.

[3] *See* Securities Exchange Act Release Nos. 20201 and 20414, September 20 and November 25, 1983; 48 FR 43747 and 54308, September 26 and December 1, 1983; where the Commission relied upon data indicating that trading in index options is concentrated in the nearest-to-expiration series to a far greater extent that is the case with individual stock options. While index options now expire in consecutive months, with the nearest term series never being more than 30 days away from expiration, individual stock options expire quarterly, so that the nearest term series is initially three months away from expiration. The cut-off date for the introduction of new exercise prices for individual stock options is 45 days before expiration. The instant proposal would, thus, make the cut-off date for the introduction of new exercise prices for index options in a sense symmetrical with the cut-off date used for individual stock options; both cut-off dates would be approximately the half-way point between the time when the option because nearest-to-expiration and the time when the option expires.

such options series may prove illiquid. The Commission also finds that the introduction of series of index options with as few as 16 days left to expiration is unlikely to lead to any substantial proliferation of index options series.[4] The Commission finds therefore, that this portion of the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and the regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned portion of the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-16987 Filed 6-25-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2151]

Missouri; Declaration of Disaster Loan Area

Jackson County in the State of Missouri constitutes a disaster area because of damage caused by tornadoes and flooding which occurred June 6, 1984. Applications for loans for physical damage may be filed until the close of business on August 20, 1984, and for economic injury until the close of business on March 20, 1985, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, TX 75051, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.500
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.500
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 215112 for physical damage and for economic injury the number is 618700.

[4] In this connection, the Commission notes that stock index values generally move much more slowly than do prices of individual stocks, so that the number of series of index options that might be added in any period of time due to movements in the value of the underlying index should be less than the number of series of individual stock options that might be added in that same time due to movements in the price of the underlying stock.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 20, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-16999 Filed 6-25-84; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Companies; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective *July 1, 1984,* and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is *13.395%* per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act, as amended by Section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: June 20, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-17000 Filed 6-25-84; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee; Meeting and Determination of Closing of Meeting

The meeting of the Investment Policy Advisory Committee (the Advisory Committee) to be held Friday, July 13, 1984, from 10:00 a.m. to 12:00 noon in Washington D.C., will involve a review and discussion of current issues involving the investment and trade policies of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, D.C. 20506.

William E. Brock,

United States Trade Representative.

[FR Doc. 84-16919 Filed 6-25-84; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 150—Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation above Flight Level 290 to be held on July 17-19, 1984 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) approval of Minutes of the Sixth Meeting Held on April 26-27, 1984; (3) review of the Glossary; (4) review First Draft of the Committee Report; (5) report on Pacer Aircraft Calibration; (6) consideration of Draft Altimeter Specifications; (7) review and Discussion of Working Group Activities on System Performance Requirements, Altimetry System Errors, and Flight Technical Errors; (8) consideration of Initial Data Collection Planning; and (9) other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a

written statement to the committee at any time.

Issued in Washington, D.C., on June 18, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-16885 Filed 6-25-84; 8:45 pm]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Federal Accident Data Collection and Analysis Activities; Change of Meeting and Inquiry

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of change of date of public meeting, announcement of Federal Accident Data Collection and Analysis Activities, and request for comments.

SUMMARY: This notice announces a change of date of a public meeting (originally announced at 49 FR 20402, May 14, 1984) at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs, and at which NHTSA's accident data collection and analysis activities will be discussed. The public meeting, originally scheduled for July 11, 1984, will now be held on August 1, 1984. The agency seeks both written and oral comments on the use of federal accident data systems. The agency has chosen to combine the quarterly public meeting with a planned technical meeting on federal accident data activities to gain additional technical information on data collection and analysis as well as to reduce the costs which would be incurred if separate meetings were held.

DATES: Questions for the meeting relating to the agency's rulemaking, research, and enforcement programs, and submissions relating to accident data collection and analysis must be submitted in writing by July 11, 1984. The agency also seeks suggestions for future technical meetings. If sufficient time is available, questions received after the July 11 date may be answered at the meeting. The individual group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by July 11 and the issues to be discussed will be mailed to interested persons on or before July 23, and will be available at the meeting. A transcript of the meeting will be taken, copies of which will be available from the Docket Section. Requests to make a formal presentation at the accident data collection and analysis portion of the public meeting should be received on or before July 11. The public meeting will be held on August 1, 1984, beginning at 10:30 a.m.

ADDRESSES: Questions for the August 1 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW. Washington, D.C. 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. Requests for participation in the accident data portion of the public meeting should be directed to the "Information Contact" specified below.

FOR FURTHER INFORMATION CONTACT: J. F. Delahanty, NRD-30, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, (202-426-1470).

SUPPLEMENTARY INFORMATION: On August 1, 1984, NHTSA will hold a meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs. The meeting will begin at 10:30 a.m., and will be held at EPA's laboratory facility in Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature.

At the close of the usual question and answer session a brief discussion of accident data collection and analysis activities will be held. Immediately thereafter (or on the following day, depending on available time), the agency will conduct a technical meeting at which presentations will be made regarding the accident data program. Several agency officials involved in the program will make presentations, and industry representatives and other interested individuals are invited to make similar technical presentations. Depending on the number of participants desiring to make presentations, the meeting may be carried over to August 2.

Issued on: June 20, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-16825 Filed 6-25-84; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circ. Public Debt Series No. 19-84]

Series F-1991; Treasury Notes

June 20, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $5,500,000,000 of United States securities, designated Treasury Notes of July 15, 1991, Series F-1991 (CUSIP No. 912827 QZ 8). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated July 9, 1984, and will bear interest from that date, payable on a semiannual basis on January 15, 1985, and each subsequent 6 months on July 15 and January 15 until the principal becomes payable. They will mature July 15, 1991, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available,

and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, July 3, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, July 2, 1984, and received no later than Monday, July 9, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in for the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in section 3.5., must be made or completed on or before Monday, July 9, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, July 5, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, July 9, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not

required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-16948 Filed 6-25-84; 8:45 am]

BILLING CODE 4810-40-M

[Dept. Circ. Public Debt Series No. 18-84]

Series M-1988; Treasury Notes

June 20, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,000,000,000 of the United States securities, designated Treasury Notes of June 30, 1988, Series M-1988 (CUSIP No. 912827 QY 1). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated July 2, 1984, and will bear interest from that date, payable on a semiannual basis on December 31, 1984, and each subsequent 6 months on June 30 and December 31 until the principal becomes payable. They will mature June 30, 1988, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regualtions governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, June 26, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, June 25, 1984, and received no later than Monday, July 2, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids.

Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1 Settlement for allotted securities must be made at the Federal Reserve Bank of Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5., must be made or completed on or before Monday, July 2, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, June 28, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, July 2, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-16949 Filed 6-25-84; 8:45 am]
BILLING CODE 4810-40-M

[Dept. Circ. Public Debt Series—No. 20-84]

Treasury Bonds of 2004

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $4,000,000,000 of United States securities, designated Treasury Bonds of 2004 (CUSIP No. 912810 DK 1). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated July 10, 1984, and will bear interest from that date, payable on a semiannual basis on February 15, 1985, and each subsequent 6 months on August 15 and February 15 until the principal becomes payable. They will mature August 15, 2004, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, July 5, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, July 4, 1984, and received no later than Tuesday, July 10, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 95.000. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5., must be made or completed on or before Tuesday, July 10, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be

received from institutional investors no later than Friday, July 6, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, July 10, 1984. When payment has been submitted with the tender and the purchase price of allocated securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identifcation number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-16950 Filed 6-25-84; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 124
Tuesday, June 26, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:35 p.m. on Wednesday, June 20, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) adopt a resolution (A) making funds available for payment of insured deposits in Republic Bank of Kansas City, Kansas City, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Monday, June 18, 1984, (B) accepting the bid of Landmark Bank of Kansas City, Kansas City, Missouri, a newly-chartered State nonmember bank, for the transfer of the insured deposits of the closed bank, and (C) designating Landmark Bank of Kansas City as the agent for the Corporation for the payment of insured deposits of the closed bank; and (2) approve the applications of Landmark Bank of Kansas City, Kansas City, Missouri, for Federal deposit insurance and for consent to establish the sole branch of Republic Bank of Kansas City as a branch of Landmark Bank of Kansas City.

At the same meeting, the Board also considered a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 21, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-17062 Filed 6-22-84; 8:45 am]

BILLING CODE 6714-01-M

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FEDERAL ENERGY REGULATORY COMMISSION

Meeting

June 21, 1984.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-4109), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: June 28, 1984, approximately 1:00 p.m. (following open meeting).

PLACE: 825 North Capitol Street, NE., Washington, D.C. 20426, Room 9306.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Texas Gas Transmission Corporation and Lawrenceburg Gas Transmission Corporation, Docket No. CP84-209-000.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone: (202) 357-8400.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17041 Filed 6-22-84; 10:56 am]

BILLING CODE 6717-01-M

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FEDERAL ENERGY REGULATORY COMMISSION

NOTICE

June 21, 1984.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409). 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: June 28, 1984, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone: (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda

794th Meeting—June 28, 1984, Regular Meeting (10:00 a.m.)

CAP-1: Project No. 814-004, Utah Power and Light Company
CAP-2: Project No. 3858-003, Idaho Renewable Resources, Inc., City of Ashton, Idaho
CAP-3: Project No. 6015-004, Charles D. Howard
CAP-4: Project No. 6955-002, Pan Pacific Hydro, Inc.
CAP-5: Project No. 7719-000, Myron and Nola Jones, Larry and Christie Oja
CAP-6: Project No. 7742-000, Long Shoals Hydro, Inc.
CAP-7: Project No. 7806-000, Richard and Georgenia Wilkinson
CAP-8: Project No. 7982-000, Donald A. Smith and Margaret E. Evans, d.b.a. Eastman Brook Hydro
CAP-9: Project No. 8013-000, Small Hydro East
CAP-10:
Project No. 7512-001, Granite Associates
Project No. 7834-001, WP, Inc.
CAP-11: Project No. 7840-001, WP, Inc.
CAP-12: Project No. 7833-001, WP, Inc.
CAP-13: Project No. 5363-003, Warrensburg Board and Paper Corp.
CAP-14:
Project Nos. 3493-003 and 006, Town of Summersville, West Virginia,
Project Nos. 8170-000 and 001, Southeastern Renewable Resources, Inc.
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CAP-36: Docket No. ER83-646-000, Union Electric Company
CAP-37: Docket No. ER83-652-000, Niagara Mohawk Power Corporation
CAP-38: Docket No. ER83-672-000, Baltimore Gas and Electric Company
CAP-39: Docket Nos. ER83-655-000, EL83-5-000 and EL83-25-000, Wisconsin Public Service Corporation
CAP-40: Docket No. EL83-4-000, Wabash Valley Power Association Inc. v. Northern Indiana Public Service Company
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CAM-2: Docket Nos. RM84-6-000, 001 and 002, Refunds Resulting From Btu Measurement Adjustments
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CAM-4: Docket No. RM79-76-088 (Texas-15), High-Cost Gas Produced From Tight Formations
CAM-5: Docket No. GP84-4-001, United Gas Pipe Line Company
CAM-6:
Docket No. GP80-24-002, Transcontinental Gas Pipe Line Corporation
Docket No. GP80-11-005, Columbia Gas Transmission Corporation
Docket No. GP80-15-004, Michigan Wisconsin Pipe Line Company
Docket No. GP80-23-002, Texas Gas Transmission Corporation
Docket No. GP80-16-000, Mid-Louisiana Gas Company
Docket No. GP80-17-000, Mississippi River Transmission Corporation
Docket No. GP80-5-002, Natural Gas Pipeline Company of America
Docket No. GP80-19-001, Panhandle Eastern Pipe Line Company
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Docket No. GP80-20-001, Tennessee Gas Pipeline Company
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Docket No. GP80-26-002, Trunkline Gas Company
Docket No. GP80-41-033, United Gas Pipe Line Company
Docket No. GP80-42-001, Sea Robin Pipeline Company
Docket No. GP80-36-000, Northwest Pipeline Company
Docket No. GP80-32-000, Montana-Dakota Utilities Company
Docket No. GP80-21-002, Texas Eastern Transmission Corporation
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Docket No. GP80-28-000, Cimarron Transmission Company
Docket No. GP80-31-001, Cities Service Gas Company
Docket No. GP80-8-001, Colorado Interstate Gas Company
Docket No. GP80-45-000, Eastern Shore Natural Gas Company
Docket No. GP80-40-001, El Paso Natural Gas Company
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Docket No. GP80-13-001, Kansas-Nebraska Natural Gas Company
Docket No. GP80-30-000, Mountain Fuel Supply Company
CAM-7: Docket No. GP80-23-001, Texas Gas Transmission Corporation
CAM-8: Docket No. RO82-72-001, Billy Bridewell, William J. Cobb, Burt E. Cobb, Eugene Jeffers and G. Vernon Whyte
CAM-9: Docket No. RA81-76-000, Navajo Refining Company
CAM-10: Docket Nos. RM83-1-000 and 001, Rules of Practice and Procedure: Reconsideration of Initial Decisions

Consent Gas Agenda

CAG-1: Docket Nos. TA82-2-33-023 and TA83-1-33-012 (Affiliated Entities), El Paso Natural Gas Company
CAG-2: Docket No. RP78-78-013, Natural Gas Pipeline Company of America
CAG-3: Docket Nos. RP83-30-019 and RP84-51-001, Transcontinental Gas Pipe Line Corporation
CAG-4: Docket No. RP82-14-005, Mountain Fuel Resources, Inc.
CAG-5: Docket No. TA84-2-29-003 (PGA84-2a, IPR84-2a), Transcontinental Gas Pipe Line Corporation
CAG-6: Docket No. RP84-86-000, Locust Ridge Gas Company
CAG-7: Docket Nos. RP84-82-000 and 001, Tarpon Transmission Company
CAG-8: Omitted
CAG-9: Omitted
CAG-10: Docket No. TA84-2-2-000, East Tennessee Natural Gas Company
CAG-11: Docket No. TA84-2-5-001 (PGA84-3 and IPR84-2), Midwestern Gas Transmission Company
CAG-12: Docket Nos. TA84-2-6-000 and 001, Sea Robin Pipeline Company
CAG-13: Docket Nos. TA84-2-9-000, TA84-2-9-001 (PGA84-2, GRI84-2, IPR84-2) and RP84-84-000, Tennessee Gas Pipeline Company
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CAG-18: Docket No. TA84-2-55-000, Mountain Fuel Resources, Inc.
CAG-19: Docket Nos. TA84-1-16-003 (PGA84-1) and GP84-17-002, National Fuel Gas Supply Corporation
CAG-20:
Docket No. RP84-43-001, Southwest Gas Corporation v. Northwest Pipeline Corporation
Docket No. RP82-56-015, Northwest Pipeline Corporation
Docket Nos. ST83-700-001, ST83-701-001, ST83-702-001, ST83-703-001, ST83-704-001 and ST83-705-001, Northwest Pipeline Corporation
CAG-21: Docket No. RP78-62-013, Panhandle Eastern Pipe Line Company
CAG-22: Docket No. TA82-1-59-005, Northern Natural Gas Company
CAG-23: Docket No. TA84-2-33-000, El Paso Natural Gas Company
CAG-24: Docket No. TA84-54-000, Louisiana Nevada Transit Company
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CAG-26: Docket No. TA84-2-43-001, Northwest Central Pipeline Corporation
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CAG–36: Docket No. CP84–119–002, Texas Eastern Transmission Corporation, ANR Pipeline Company and Chevron U.S.A., Inc.
CAG–37: Docket No. CP84–426–002, Trunkline Gas Company, Panhandle Eastern Pipe Line Company and Transcontinental Gas Pipe Line Corporation
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CAG–39: Docket No. CP84–437–003, Colorado Interstate Gas Company
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CAG–46: Omitted

I. Licensed Project Matters

P–1:
Project No. 3654–001, Pacific Hydro, Inc., and City of Tenino, Washington
Project Nos. 4441–001 and 002, Pacific Power and Light Company, et al.
Project No. 4702–000, City of Centralia, Washington
P–2: Project Nos. 2959–003, 004 and 005, City of Seattle, Washington

II. Electric Rate Matters

ER–1: Docket No. ER84–416–000, Nevada Power Company
ER–2. Omitted

Miscellaneous Agenda

M–1: Docket No. RM84–16–000, Methodology for Sales of Electric Power to Bonneville Power Administration
M–2: Reserved
M–3: Reserved
M–4. Docket No. RM83–66–000, Revisions to Public Utility and Natural Gas Company Classification Criteria, Uniform Systems of Accounts, Form Nos. 1, 1–F, 2 and 2–A and Related Regulations
M–5: Docket No. SA80–40–004, RJB Gas Pipeline Company

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I. Pipeline Rate Matters

RP–1: Omitted
RP–2: Omitted
RP–3: Docket No. OR84–2–000, Hydrocarbon Trading and Transport Company, Inc., v. Texas Eastern Transmission Corporation
RP–4: Docket Nos. TA80–2–21–008, 009, 010 and 011, et al., Columbia Gas Transmission Corporation, et al.
RP–5: Docket No. CP80–22–007 Through 016, Northern Natural Gas Company
RP–6: Omitted

II. Producer Matters

CI–1: Reserved

III. Pipeline Certificate Matters

CP–1: Docket No. TC83–6–000, Arkansas Louisiana Gas Company
CP–2: Docket No. CP83–502–008, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–17042 Filed 6–22–84; 10:56 am]
BILLING CODE 6717–01–M

4

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 2, 1984.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Eligibility issues regarding Federal Reserve Bank and Branch directors.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–17100 Filed 6–22–84; 3:45 pm]
BILLING CODE 6210–01–M

5

INTERNATIONAL TRADE COMMISSION

TIME AND PLACE: 2:30 p.m., Thursday, July 5, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
a. Disintegration of urinary calculi (Docket No. 1060).
b. Compound action metal-cutting snips and components thereof (Docket No. 1061).
c. Portable calculators (Docket No. 1062).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–17106 Filed 6–22–84; 3:54 pm]
BILLING CODE 7020–02–M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 25, 1984, at 450 Fifth Street, NW., Washington, D.C.

An open meeting will be held on Wednesday, June 27, 1984, at 10:00 a.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Cox and Marinaccio voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting schedule for Wedensday, June 27, 1984, at 10:00 a.m., will be:

1. Consideration of whether to adopt revised regulations related to the preservation of records under the Public Utility Holding Company Act of 1935. For further information, please contact Grant G. Guthrie at (202) 272–7677.

2. Consideration of whether to adopt temporary rules and forms necessary to implement the EDGAR Pilot project. The proposed temporary rules and forms would adapt current rules to accommodate the electronic submission of documents to be filed by volunteer companies in the Pilot. The EDGAR Pilot is a project to develop and test, using actual filings, an electronic disclosure system, designated "EDGAR" for Electronic Data Gathering, Analysis and Retrieval. For further information, please contact Leslie A. Murphy at (202) 272–2589.

3. Consideration of whether to adopt a temporary new Rule 202.3a, which would offer filers the option to remit filing fees via mail or wire transfer to a lockbox depository located at the Mellon Bank, Pittsburgh, Pennsylvania. For further information, please contact Carol K. Scott at (202) 272–2474.

The subject matter of the closed meeting schedule for Wednesday, June 27, 1984, following the 10:00 a.m. open meeting, will be:

Formal orders of investigation.
Institution of administrative proceeding of an enforcement nature.
Institution of injunctive actions.
Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Wescoe at (202) 272–2092.

June 20, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–16983 Filed 6–21–84; 8:45 am]
BILLING CODE 8010–01–M

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Tuesday, June 26, 1984

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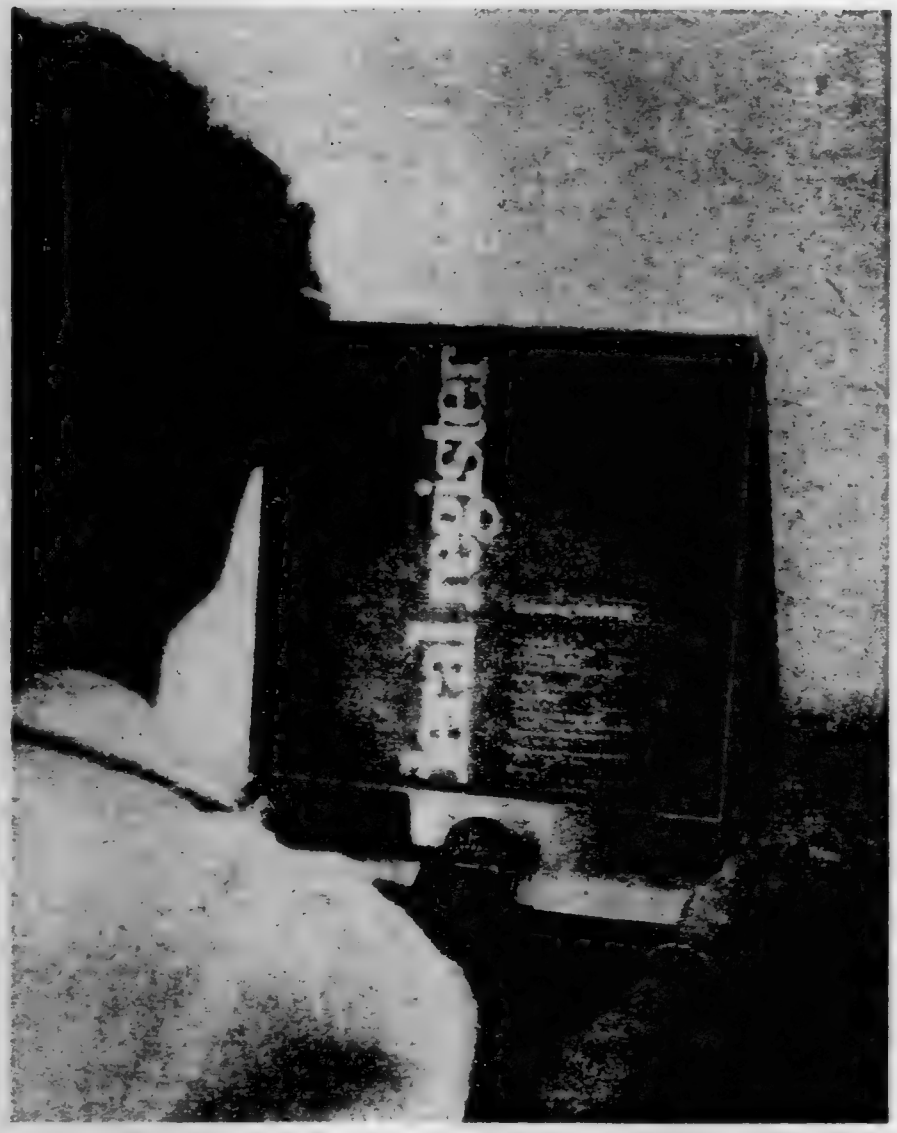
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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Presidential Documents

Title 3—

The President

Executive Order 12483 of June 25, 1984

Amending the Generalized System of Preferences

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*), as amended (the "Trade Act"), and sections 503 and 604 of the Trade Act (19 U.S.C. 2463 and 2483), and in order to adjust the original designation of eligible articles for purposes of the Generalized System of Preferences (GSP), it is hereby ordered as follows:

Section 1. The articles provided for in item 706.39 of the Tariff Schedules of the United States (TSUS) are hereby removed from the list of eligible articles for purposes of the GSP.

Sec. 2. Annex III of Executive Order No. 11888 of November 24, 1975, as amended, listing articles that are eligible for benefits of the GSP when imported from all designated beneficiary developing countries except those specified in general headnote 3(c)(iii) of the TSUS, is further amended by deleting item 706.39.

Sec. 3. General headnote 3(c)(iii) of the TSUS, listing articles that are eligible for benefits of the GSP except when imported from the beneficiary developing countries listed opposite those articles, is modified by deleting the following TSUS item number and countries: "706.39 . . . Hong Kong, Republic of Korea, and Taiwan".

Sec. 4. The amendments made by this Order shall be effective with respect to articles both: (1) imported on and after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after June 25, 1984.

Ronald Reagan

THE WHITE HOUSE,
June 25, 1984.

[FR Doc. 84-17344
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 83-345]

7 CFR Part 301

Pink Bollworm Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the Pink Bollworm Quarantine and Regulations by quarantining the States of Arkansas and Mississippi because of the pink bollworm and by designating certain areas within Desha County in Arkansas and Washington County in Mississippi as suppressive areas. This action is necessary as an emergency measure in order to prevent the artificial spread of the pink bollworm through the interstate movement of regulated articles. The effect of this action is to impose certain conditions on the interstate movement of regulated articles moved from suppressive areas.

DATES: Effective date of the interim rule is June 27, 1984. Written comments concerning this interim rule must be received on or before August 27, 1984.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 728 Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 663 Federal Building, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Due to the possibility that pink bollworm could be artificially spread interstate to noninfested areas of the United States, a situation exists requiring immediate action to prevent the artificial spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the most destructive and widespread insect pests of cotton in the world. This insect spread to the United States from Mexico in 1917 and now occurs throughout most of the cotton-producing State west of the Mississippi River.

Prior to the effective date of this document, the Pink Bollworm Quarantine and Regulations (referred to below as Regulations; 7 CFR 301.52–1 through 301.52–10) quarantined the States of Arizona, California, Louisiana, New Mexico, Nevada, Oklahoma, and Texas because of the pink bollworm. The quarantine and regulations restrict the interstate movement of regulated articles from regulated areas in quarantined States in order to prevent the artificial spread of the pink bollworm.

Under the Regulations, an area must be designated as a "regulated area" if it is an area in which the pink bollworm has been found, or in which there is reason to believe that the pink bollworm is present, or which it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Regulated areas are classified as either "suppressive areas" or "generally infested areas". Suppressive areas are regulated areas in which eradication of the pink bollworm is undertaken as an objective. Generally infested areas are all regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from both generally infested areas and suppressive areas in order to prevent the artificial movement of the pink bollworm into noninfested areas, and to prevent the reinfestation of suppressive areas of the pink bollworm.

Specifically, § 301.52(b) (1) through (12) of the Regulations [7 CFR 301.52(b)(1)–(12)] lists articles which are regulated for the pink bollworm. Further, § 301.52–3 (a), (b), and (c) of the regulations [7 CFR 301.52–3 (a), (b), and (c)] permit the interstate movement of articles designated as regulated articles from regulated areas under the following conditions:

(a) From any regulated area, with certificate or permit issued and attached in accordance with §§ 301.52–4 and 301.52–7 if moved:

(1) From any regulated area into or through any point outside of the regulated areas; or

(2) From any generally infested area into or through any suppressive area; or

(3) Between any noncontiguous suppressive areas; or

(4) Between contiguous suppressive areas when it is determined by the inspector that the regulated articles present a hazard of the spread of the pink bollworm and the person in possession thereof has been so notified; or

(b) From any regulated area, without certificate or permit if moved;

(1) Under the provisions of § 301.52–2b which exempts certain articles from certificate and permit requirements; or

(2) From a generally infested area to a contiguous generally infested area; or

(3) From a suppressive area to a contiguous generally infested area; or

(4) Between contiguous suppressive areas unless the person in possession of the articles has been notified by an inspector that a

hazard of spread of the pink bollworm exists; or

(5) Through or reshipped from any regulated area if the articles originated outside of any regulated area and if the point of origin of the articles is clearly indicated, their identity has been maintained and they have been safeguarded against infestation while in the regulated area in a manner satisfactory to the inspector; or

(c) From any area outside the regulated areas, without a certificate or permit if the regulated articles are exempt under the provisions of § 301.52–2b or if the point of origin of such movement is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

These regulations are designed to restrict the interstate movement of regulated articles from regulated areas in those circumstances where there would be a risk of spread of the pink bollworm. A certificate or limited permit is authorized to be issued based on treatment of a regulated article or based on a determination that movement of a regulated article without treatment would not result in the spread of the pink bollworm.

This document quarantines the States of Arkansas and Mississippi and designates certain areas in Arkansas or Mississippi as suppressive areas because of the pink bollworm. This action has been taken because inspectors of the U.S. Department of Agriculture and State officials of Arkansas and Mississippi have determined, based on recent surveys conducted in Arkansas and Mississippi, that there is reason to believe that the pink bollworm is present within the areas designated as suppressive areas in Arkansas and Mississippi. The following areas are designated as suppressive areas:

Arkansas

(1) *Generally infested area.* None.
(2) *Suppressive area.*
Desha County. That area of the county lying south and southwest of the Arkansas River.

Mississippi

(1) *Generally infested area.* None
(2) *Suppressive area.*
Washington County. That portion of sec. 11 and 14, T. 18 N., R. 7 W. lying northwest of old U.S. Highway 61.

That portion of sec. 12, T. 18 N., R. 7 W. lying west of county road 269 and that portion of said section lying south of county road 268 and northwest of old U.S. Highway 61.

That portion of sec. 8, T. 18 N., R. 7 W. lying east of county road 253 and north of the northern most Illinois Central Gulf Railroad track.

That portion of sec. 17, T. 18 N., R. 7 W. lying east of U.S. Highway 253.

That portion of sec. 22, T. 18 N., R. 7 W. lying north of U.S. Highway 82 and west of old U.S. Highway 61.

Sec. 32, 33, and 34, T. 19 N., R. 7 W.

Sec. 3, 4, 5, 9, 10, 15, and 16, T. 18 N., R. 7 W.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an estimated annual effect on the economy of less than $30,000; will not cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from specified areas in Desha County in Arkansas and Washington County in Mississippi. There are hundreds of small entities that move such articles interstate from nonregulated areas in the United States. However, based on information compiled by the Department, it has been determined that fewer than 20 small entities move such articles interstate from the affected areas in Desha County, Arkansas, and Washington County, Mississippi. Further, the overall economic impact from this action is estimated to be less than $30,000.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Pink bollworm.

PART 301—DOMESTIC QUARANTINE NOTICES

§ 301.52 [Amended]

Accordingly, under the circumstances described above, §§ 301.52(a) and 301.52–2a of the regulations in "Subpart—Pink Bollworm", Chapter III, Title 7 of the Code of Federal Regulations (7 CFR 301.52(a) and 301.52–2a) are amended as follows:

1. In § 301.52(a) the States of Arkansas and Mississippi are added in alphabetical order to the list of States quarantined.

2. The list of regulated areas for Arkansas and Mississippi in § 301.52–2a are added in alphabetical order to read as follows:

§ 301.52–2a Regulated areas; suppressive and generally infested areas.

* * * * *

ARKANSAS

(1) *Generally infested area.* None.
(2) *Suppressive area.*
Desha County. That area of the county lying south and southwest of the Arkansas River.

* * * * *

MISSISSIPPI

(1) *Generally infested area.* None.
(2) *Suppressive area.*
Washington County. That portion of sec. 11 and 14, T. 18 N., R. 7 W. lying nothwest of old U.S. Highway 61.

That portion of sec. 12, T. 18 N., R. 7 W. lying west of county road 269 and that portion of said section lying south of county road 268 and northwest of old U.S. Highway 61.

That portion of sec. 8, T. 18 N., R. 7 W. lying east of county road 253 and north of the northern most Illinois Central Gulf Railroad track.

That portion of sec. 17, T. 18 N., R. 7 W. lying east of U.S. Highway 253.

That portion of sec. 22, T. 18 N., R. 7 W. lying north of U.S. Highway 82 and west of old U.S. Highway 61.

Sec. 32, 33, and 34, T. 19 N., R. 7 W.

Sec. 3, 4, 5, 9, 10, 15, and 16, T. 18 N., R. 7 W.

* * * * *

(Sec. 106, 71 Stat. 33; (7 U.S.C 150ee); Secs. 8, 9, 37 Stat. 318 as amended; (7 U.S.C. 161, 162); 7 CFR 2.17, 2.51, 371.2(c))

Done at Washington, D.C. this 22nd day of June 1984.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84–17055 Filed 6–26–84; 8:45 am]
BILLING CODE 3410–34–M

Federal Crop Insurance Corporation

7 CFR Part 411

[Docket No. 1094S; Amdt. No. 3]

Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Grape Crop Insurance Regulations (7 CFR Part 411), effective for the 1984 and succeeding crop years, by (1) changing the policy to make it easier to read; (2) providing for insurance on grapes grown for processing as wine or juice; (3) adding a provision which permits determination of indemnities based on the acreage report rather than at loss adjustment time; (4) requiring a report of a stand if it is less than 90 percent of the original stand; (5) providing a coverage level if the insured does not select one; (6) adding a provision regarding the end of the insurance period of unharvested acreage as the date harvest should have started on the unit; (7) adding a 60-day claim for indemnity provision; (8) adding a section which allows for quality adjustment for grapes which do not meet the minimum requirements for processing of wine or juice and have a value of less than 75 percent of the market price; (9) adding a section regarding appraisals following the end of the insurance period for unharvested acreage; (10) adding a hail/fire provision for appraisals of uninsured causes; (11) changing the cancellation/termination dates to conform to farming practices; (12) providing that any change in the policy will be available in the service office by a certain date; (13) adding a definition of "service office;" (14) providing for unit determination when the acreage report is filed; (15) adding sections concerning "descriptive headings," "notices," and "determination"; and (16) redesignating Appendix B to Part 411 as Appendix A, listing the counties wherein Grape Crop Insurance is authorized to be offered.

In addition, FCIC issues a new subsection in the grape crop insurance regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations. The intended effect of this rule is to update the policy for insuring grapes in accordance with Departmental Regulation 1512–1 (December 15, 1983), requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to comply with OMB regulations requiring publication of OMB control numbers assigned to information collection requirements in these regulations.

EFFECTIVE DATE: July 27, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under procedures established in Departmental Regulation 1512–1 (December 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more, and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the notice related to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, are excluded from the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

On Thursday, October 20, 1983, FCIC published a notice of proposed rulemaking to amend the Grape Crop Insurance Regulations (7 CFR Part 411), as outlined in the summary to this document. The public was given 60 days in which to submit written comments, data, and opinions on this proposed rule, but none were received. Therefore, the proposed rule as published is hereby adopted with minor clerical and nonsubstantive changes as a final rule, effective with the 1984 and succeeding crop years.

List of Subjects in 7 CFR Part 411

Crop insurance, grape.

PART 411—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Grape Crop Insurance Regulations, effective for the 1984 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 411 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 411.3 is added to read as follows: 7 CFR 411.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 411) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

3. 7 CFR 411.7(d) is revised to read as set forth below:

§ 411.7 The application and policy.

* * * * *

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38; first published at 48 FR 1023, January 10, 1983) and may be amended from time to time for subsequent crop years. The provisions of the Grape Insurance Policy for the 1984 and succeeding crop years, are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Grape—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Wildlife;
(4) Earthquake;
(5) Volcanic eruption;
(6) Direct Mediterranean Fruit Fly damage; or
(7) Failure of the irrigation water supply from an unavoidable cause occurring after insurance attaches,

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6). Direct Mediterranean Fruit Fly damage

shall be actual physical damage to the grapes on the unit which causes such grapes to be unmarketable and shall not include unmarketability of such grapes as a direct result of a quarantine, boycott, or refusal to accept the grapes by any entity without regard to actual physical damage to such grapes.

b. We shall not insure against any loss of production due to:

(1) The neglect, mismanagement or wrong doing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good grape management practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be any insurable variety of grapes which are grown for wine, juice, raisins, or canning on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be grapes grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured grapes at the time insurance attaches.

d. We do not insure any acreage:

(1) On which the vines, after being set out, have not reached the number of growing seasons designated by the actuarial table;

(2) Which has not produced an average of 2 tons of grapes per acre; or

(3) With less than 90 percent of a stand of bearing vines based on the original planting, unless inspected by us and we agree in writing to insure such acreage. (the actuarial table may provide exceptions to this clause).

e. Where insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good grape irrigation practice at the time insurance attaches; and

(2) Any loss of production caused by failure to carry out a good grape irrigation practice, except failure of the water supply from an unavoidable cause occurring after insurance attaches, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

3. Report of acreage, share, yield, and practice.

You must report on our form:

a. All the acreage of grapes in the county in which you have a share;

b. The practice;

c. Your share at the time insurance attaches;

d. The number of bearing vines (if less than 90 percent of a stand based on the original planting pattern); and

e. The most recent year's production for insurable acreage on each unit.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any grapes grown in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

Loss ratio [2] through previous crop year	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

Loss ratio [2] through previous crop year	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	156	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.

[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract will be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the vineyard operation; or

(3) Your contract if you stop vineyard operations in one county and start vineyard operations in another county.

d. If participation is not continuous, any premium will be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a will be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches each crop year on:

(1) February 1 in California;

(2) November 21 in Washington; and

(3) December 11 in all other states.

b. Insurance ends at the earliest of:

(1) Total destruction of the grapes on the unit;

(2) The date harvest should have started on the unit, on any acreage which is not harvested;

(3) Harvest;

(4) Final adjustment of a loss; or

(5) December 10 (November in Washington and California) of the calendar year in which the grapes are normally harvested.

c. In New York, Pennsylvania and Ohio, if you purchase any insurable acreage on or before January 5 of any crop year and if we inspect, consider acceptable, and agree in writing to insure such acreage, insurance will be considered to have attached to such acreage on the preceding December 11. In New York, Pennsylvania and Ohio, if you sell any acreage of grapes on or before January 5 of any crop year, insurance will not be considered to have attached to such acreage for that crop year.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if during the period before harvest, the grapes on any unit are damaged and you decide not to further care for or harvest any part of them.

(2) You must give us notice:

(a) At least 15 days before the beginning of harvest if you anticipate a loss on any unit; or

(b) Immediately, if damages occurs within 15 days prior to harvest or during harvest.

(3) If you are going to claim an indemnity on any unit, notice must be given not later than 48 hours:

(a) After total destruction of the grapes on the unit;

(b) After discontinuance of harvest on the unit; or

(c) Before harvest would normally start if any acreage on the unit is not to be harvested.

(4) Unless notice has been given under subsection (3) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earlier of:

(a) Harvest of the unit; or

(b) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the grapes which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the grapes on the unit;

(2) harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay indemnity unless you:

(1) Establish the total production of grapes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grapes to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

e. The total production to be counted for a unit will include all harvested and appraised production:

(1) Grape production:

(a) Which, due to insurable causes, does not meet the minimum sugar solids and/or quality requirements of the receiving processor and has a value of less than 75 percent of the market price for grapes meeting the minimum requirements or would not meet these requirements if properly handled, will be adjusted by:

(i) Dividing the value per ton of such grapes, by the highest price election available for such grapes; and

(ii) Multiplying the result (not to exceed 1) by the number of tons of such grapes.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good grape management practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent;

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production:

(a) Is not harvested before the harvest of grapes becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause.

(4) If any grapes are harvested before normal maturity, the production of such grapes will be increased by the factor obtained by dividing the price per ton received for such grapes by the price per ton for fully matured grapes.

(5) The amount of production of any unharvested grapes may be determined on the basis of field appraisals conducted after discontinuance of harvest or the end of the insurance period.

(6) When you have elected to exclude hail and fire as insured causes of loss and the grapes are damaged by hail or fire, appraisals for uninsured causes will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment of fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity or insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all grapes produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date such payment was approved.

d. The cancellation and termination dates are:

State	Cancellation and termination dates
California	January 31.
Washington	November 20.
All other states	December 10.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. *However,* if such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31 preceding the cancellation date for counties with a November 20 or December 10 cancellation date, and by October 31 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of grape crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding grape insurance in the county.

b. "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way shall be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the period beginning with the date insurance attaches and extending through normal harvest time and will be designated by the calendar year in which the grapes are normally harvested.

e. "Harvest" means picking the grapes from the vines.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the grapes or a share of the proceeds therefrom.

k. "Ton" means 2000 pounds.

l. "Unit" means all insurable acreage of grapes in the county, located on contiguous land, on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the grapes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between you and us. Units as herein defined will be determined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

4. 7 CFR Part 411 is further amended by redesignating Appendix B as Appendix A.

Done in Washington, D.C., on May 7, 1984.

Dated: June 19, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-17023 Filed 6-26-84; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 431

[Docket No. 1088S; Amdt. No. 1]

Soybean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1984 and succeeding crop years by: (1) Changing

the policy to make it easier to read; (2) adding a provision to permit determination of indemnities based on the acreage report rather than at loss adjustment time; (3) adding a provision to provide a coverage level if the insured does not select one; (4) providing that, in the event of a probable loss, a representative sample of the unharvested crop be left intact for 15 days after notice of loss is given; (5) revising the hail/fire provision for appraisals of uninsured causes of loss; (6) changing the cancellation/termination dates to conform with farming practices; (7) providing that any changes in the policy will be available in the service office by a certain date; (8) changing unit guidelines in certain instances; (9) providing for a reduction in guarantee for double cropped soybean; and (10) limiting the guarantee.

In addition, FCIC issues a new subsection in the soybean crop insurance regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations. The intended effect of this rule is to update the policy for insuring soybeans in accordance with Departmental Regulation 1512–1, (December 15, 1983) requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to comply with OMB regulations requiring publication of OMB control numbers assigned to information collection requirements in these regulations.

EFFECTIVE DATE: July 27, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation (December 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more, and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the notice related to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, are excluded from the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

On Wednesday, July 27, 1983, FCIC published a notice of proposed rulemaking in the **Federal Register** at 48 FR 34047, to amend the Soybean Crop Insurance Regulations. The public was given 60 days in which to submit written comments, data, and opinions, but none were received. On Thursday, March 8, 1984, a Supplemental Notice of Proposed Policy Rulemaking and Extension of Comment Period was published in the **Federal Register** at 49 FR 8620. The supplemental notice proposed to further amend the Soybean Crop Insurance Regulations by (1) offering soybean crop insurance only on the unit basis provided in the policy for insurance, with guidelines providing no further unit division in those states with a cumulative loss ratio of at least 1.30, and a cumulative premium income of at least $1 million; (2) providing for a reduction in guarantee of 15 percent (15%) on any practice of double-cropped soybeans; and (3) providing that soybeans will not be insured at more than 100 percent (100%) of the guarantee based on the county average yield. The public was given 15 additional days in which to submit comments on the proposed rule, but none were received. Therefore, both proposed rules as published and described above, are hereby adopted as a final rule effective with the 1984 and succeeding crop years, and are incorporated herein.

List of Subjects in 7 CFR Part 431

Crop insurance, Soybean.

Final Rule

PART 431—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1984 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 431 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 431.3 is added to read as follows:

§ 431.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 431) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

3. 7 CFR 431.7(d) is revised to read as set forth below:

§ 431.7 The application and policy.

* * * * *

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38; and may be amended from time to time for subsequent crop years. The provisions of the Soybean Insurance Policy for the 1984 and succeeding crop years, are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Soybean—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the water supply from an unavoidable cause occurring after the beginning of planting, unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(5).

b. We shall not insure against any loss of production due to:

(1) The neglect, mismanagement or wrong doing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good soybean farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be soybeans which are planted for harvest as beans and which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be soybeans planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we will elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured soybeans at the time of planting.

d. We do not insure any acreage:

(1) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, we determine it is practical to replant to soybeans and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you sign an option form agreeing to coverage reduction;

(5) Of volunteer soybeans;

(6) Planted to a type or variety of soybeans not established as adapted to the area or excluded by the actuarial table;

(7) Planted with a crop other than soybeans; or

(8) Of a second soybean crop following a soybean crop harvested in the same crop year.

e. Where insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good soybean irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good soybean irrigation practice, except failure to the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Unless otherwise provided in the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation but, if such insured acreage is destroyed and replanted, whether in the same manner or by broadcasting, drilling, or in rows too close to permit cultivation, it will be regarded as insured acreage and not as acreage put to another use.

g. Acreage planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act to Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You will report on our form:

a. All the acreage of soybeans in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any soybeans planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

Loss ratio [2] through previous crop year	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	60	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	90	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

Loss ratio [2] through previous crop year	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	106	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	156	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.

[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract will be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium will be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a will be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the soybeans are planted and ends at the earliest of:

a. Total destruction of the soybeans;

b. Combining, threshing or removal from the field;

c. Final adjustment of a loss; on

d. The date immediately following planting as follows:

(1) Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas and Virginia, December 20;

(2) All other states, December 10.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant soybeans damaged due to any insured cause. (To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit.);

(b) During the period before harvest, the soybeans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the soybeans and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of the unharvested soybeans (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the soybeans on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the soybeans on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the soybeans which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the soybeans on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of soybeans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of soybeans to be counted (see section 9f);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

e. The indemnity will be reduced by the amount of any replanting payment.

f. The total production to be counted for a unit will include all harvested and appraised production.

(1) Mature soybean production:

(a) Which otherwise is not eligible for quality adjustment and which grades No. 4 or better will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(b) Which, due to insurable causes, does not grade No. 4 or better in accordance with the Official United States Grain Standards, will be adjusted by:

(i) Dividing the value per bushel of such soybeans, by the price per bushel of U.S. No. 2 soybeans; and

(ii) Multiplying the result by the number of bushels of such soybeans.

The applicable price for No. 2 soybeans will be the local market price on the earlier of: the day the loss is adjusted or the day such soybeans were sold.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good soybean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage:

(a) Is not put to another use before harvest of soybeans becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(4) We may determine the amount of production of any unharvested soybeans on the basis of field appraisals conducted after the end of the insurance period.

(5) When you have elected to exclude hail and fire as insured causes of loss and the soybeans are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured soybeans replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date we determine reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed 3 bushels multiplied by the price election the product of which is multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

(3) Any replanting payment will be considered as an indemnity.

h. You must not abandon any acreage to us.

i. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

j. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance shall we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the soybeans are planted for any crop year, any indemnity will be paid to

the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all soybeans produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) if deducted from an indemnity will be the date you sign the claim; or

(2) if deducted from payment under another program administered by United States Department of Agriculture will be the date such payment was approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, Gonzales, Lavaca, Wharton and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other states.	Apr. 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. *However,* if such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31, preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of soybean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding soybean insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the soybeans are normally grown and will be designated by the calendar year in which the soybeans are normally harvested.

d. "Harvest" means the completion of combining or threshing of soybeans on the unit.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Replanting" means performing the cultural practices necessary to replant insured acreage to soybeans.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the soybeans or a share of the proceeds therefrom.

k. "Unit" means all insurable acreage of soybeans in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the soybeans on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those

determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on May 7, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 19, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-17020 Filed 6-26-84; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 435

[No. 1096S; Amendment No. 3]

Tobacco (Quota Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), effective for the 1984 and succeeding crop years: by (1) Changing the policy to make it easier to read; (2) eliminating reference to tobacco types 14 and 13 regarding support price establishment, stalk inspection requirements, etc.; (3) adding volcanic eruption as an insured cause of loss; (4) adding a provision regarding insurability of irrigated acreage where no irrigated practice is established on the actuarial table; (5) adding a provision permitting the determination of indemnities based on the acreage report rather than at time of loss adjustment; (6) providing for a coverage level when the insured does not select one; (7) providing procedures for reporting a probable loss; (8) adding a 60-day claim for indemnity provision; (9) adding a hail/fire provision for appraisals of uninsured causes; (10) adding a section regarding appraisals following the end of the insurance period for unharvested acreage; (11) changing the cancellation/termination dates to conform to farming practices; (12) providing that any change in the policy will be available in the service office by a certain date; (13) adding a definition for "service office;" (14) providing for a unit determination when the acreage report is filed; (15) adding sections concerning "descriptive headings" "determinations" and "notices;" and (16) redesignating Appendix B to Part 435 as Appendix A.

In addition, FCIC issues a new subsection in the tobacco (Quota Plan) crop insurance regulations to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements of these regulations. The intended effect of this rule is to update the policy for insuring tobacco (Quota Plan) in accordance with Departmental Regulation 1512-1, requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to comply with OMB regulations requiring publication of OMB control numbers assigned to information collection requirements in these regulations.

EFFECTIVE DATE: July 27, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 (December 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more, and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the notice related to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, are excluded from the provisions of Executive Order No. 12372 requiring intergovernmental consultation with State and local officials.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

On Thursday, November 17, 1983, FCIC published a notice of proposed rulemaking to amend the Tobacco (Quota Plan) Crop Insurance regulations (7 CFR Part 435) as outlined in the summary to this document. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule with minor style changes is hereby adopted as a final rule, effective for the 1984 and succeeding crop years.

List of Subjects in 7 CFR Part 435

Crop insurance, Tobacco (Quota Plan).

Final Rule

PART 435—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Tobacco (Quota Plan) Crop Insurance Regulations, effective for the 1984 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 435 is:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 435.3 is added to read as follows:

§ 435.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 435) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

3. 7 CFR 435.7(d) is revised to read as set forth below:

§ 435.7 The application and policy.

* * * * *

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38; first published at 48 FR 1023, January 10, 1983) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Quota Plan) Insurance Policy for the 1984 and succeeding crop years, are as follows:

Department of Agriculture

Federal Crop Insurance Corporation

Quota Plan of Tobacco Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy

in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the water supply from an unavoidable cause occurring after the beginning of planting,

unless those causes are excepted, excluded, or limited by the actuarial table or section 9d(8).

b. We do not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrong doing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good tobacco farming practices;

(3) Damage resulting from the impoundment of water by any Governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, insured poundage quota, and share insured.

a. The crop insured will be tobacco of the type shown as insurable by the actuarial table, which is grown on insured acreage, and for which a premium rate is provided by the actuarial table.

b. The acreage insured for each crop year will be an insurable type of tobacco planted on insurable acreage and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting.

d. We do not insure any acreage:

(1) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) Which is destroyed, it is practical to replant to tobacco, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree to coverage reduction on our form;

(5) Planted to tobacco of a discount variety under provisions of the tobacco price support program;

(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table;

(7) Designated as uninsurable by the actuarial table; or

(8) Planted for experimental purposes.

e. The insured poundage quota for each crop year will be the effective poundage marketing quota applicable to the unit as provided under ASCS Tobacco Marketing Quota Regulations for the crop year plus any additional poundage you intend to produce on the unit that crop year, as reported by you or as determined by us, whichever we will elect. *However:*

(1) The insured poundage quota will not include any amount which would be subject to a marketing quota penalty under ASCS Tobacco Marketing Quota Regulations;

(2) The poundage marketing quota may be reduced for any carryover tobacco to be marketed under the poundage quota applicable to the unit when such poundage reduction is clearly specified by you in filing the acreage and quota report;

(3) The insured poundage quota will never exceed the pounds obtained by multiplying the insured acres by the applicable farm yield per acre; and

(4) Unless otherwise provided by the actuarial table, for any crop year in which tobacco poundage marketing quota regulations are not in effect, the insured poundage quota will be the pounds obtained by multiplying the applicable farm yield per acre times the lower of the reported or insured acreage on the unit.

f. Where insurance is provided for an irrigated practice:

(1) You will report as irrigated only the acreage for which you have adequate facilities and water to carry out a good tobacco irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good tobacco irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

Insurance will not attach on an irrigated basis to acreage otherwise insurable on such basis unless it is reported and designated as irrigated at the time the acreage is reported.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and poundage quota.

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. Your share at the time of planting; and

c. The effective poundage marketing quota applicable to the unit as provided under ASCS Tobacco Marketing Quota Regulations plus any additional poundage you intend to produce on the unit in that crop year. Such poundage marketing quota may be reduced for any carryover tobacco to be marketed under the poundage quota applicable to the unit provided such poundage reduction is clearly specified in filing the acreage and quota report. The quota so reported will not be subject to change by you.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of insurance and coverage levels.

a. The coverage levels are contained in the actuarial table.

b. The amount of insurance for a unit will be the dollar amount determined by multiplying the insured poundage quota for the unit by the percentage guarantee for the applicable coverage level established by the actuarial table and multiplying this product by the current year's support price for type 31 tobacco (rounded to the nearest cent) less six cents per pound for warehouse charges.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance for the unit times the premium rate, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

Loss ratio [2] through previous crop year	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

Loss ratio [2] through previous crop year	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	156	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part therof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract will be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium will be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a will be applicable.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing or immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. February 28, immediately following the normal harvest period.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice will be given. Where harvest of the unit is to be completed within 7 days of the date notice of probable loss is given, a representative sample of the tobacco (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any tobacco is destroyed or damaged by fire during the insurance period.

(5) Where tobacco is not to be sold through auction warehouses and an indemnity is to be claimed, notice must be given to allow us sufficient time to inspect the cured tobacco prior to its sale or other disposition.

(6) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Subtracting from the amount of insurance for the unit, the value of the total production of tobacco to be counted (see section 9d); and

(2) Multiplying the remainder by your share.

d. The value of the total production to be counted for a unit will include the value of all harvested and appraised production.

(1) Production to count will include:

(a) The gross returns (less six cents per pound for warehouse charges) from tobacco sold on the warehouse floor;

(b) The fair market value of the tobacco sold other than on the warehouse floor;

(c) The fair market value of the tobacco harvested and not sold;

(d) The fair market value of any unharvested tobacco as if such tobacco were harvested and cured; and

(e) The appraised value of lost production caused by poor farming practices or uninsured causes of loss using the current year's support price per pound (less six cents per pound for warehouse charges). *However,* if a price support program is not in effect, such appraised production will be valued at the market price for the current crop year.

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we will be given the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of and, if the best offer you receive for any such tobacco is considered by us to be inadequate, to obtain additional offers on your behalf.

(3) The value of appraised production to be counted will include:

(a) The value of unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tobacco farming practices;

(b) Not less than the average amount of insurance per insured acre in the unit for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than 35 percent of the average amount of insurance per insured acre in the unit for all other unharvested acreage.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage:

(a) Is not put to another use before harvest of tobacco becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(5) We may determine the amount of production of any unharvested tobacco on the basis of field appraisals conducted after the end of the normal harvest period.

(6) When you have elected to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

e. You must not abandon any acreage to us.

f. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

g. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

h. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tobacco is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

i. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You will keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all tobacco produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date such payment was approved.

d. The cancellation and termination dates are April 15 for all states.

e. If you die or are judicially incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. *However,* if such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of quota tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "Carryover tobacco" means any tobacco on hand from the previous year's production.

d. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

e. "Crop year" means the period within which the tobacco is normally grown and will be designated by the calendar year in which the tobacco is normally harvested.

f. "Effective farm marketing quota" means the farm marketing quota as established and recorded by ASCS.

g. "Farm yield" means the yield per acre used by ASCS in establishing the basic farm marketing poundage quota for the tobacco farm, unless we have established a yield for the farm by the actuarial table.

h. "Harvest" means:

(1) The completion of cutting of tobacco on any acreage; and

(2) From which acreage at least 20 percent of the amount of tobacco in pounds per acre (obtained by multiplying the applicable insured poundage quota for the unit by the applicable percentage of guarantee shown in the actuarial table for such acreage and dividing this result by the insured acreage in the unit) is cut.

i. "Insurable acreage" means that acreage planted to an insurable type of tobacco excluding any acreage designated as noninsurable by the actuarial table.

j. "Insured" means the person who submitted the application accepted by us.

k. "Market Price" for a crop year means the average auction price for the applicable type (less six cents per pound for warehouse charges) in the belt or area. The market price will be filed with the actuarial table.

l. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

m. "Planting" means transplanting the tobacco plant from the bed to the field.

n. "Rounded" means rounding up for ½ and above and rounding down for less than ½.

o. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

p. "Support price per pound" means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program. For any crop year in which a price support for the insured type is not in effect, the market price for that crop year will be used in lieu thereof.

q. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

r. "Unit" means all insurable acreage in the county of an insurable type of tobacco planted on a farm or farms for which a single poundage marketing quota for the insurable type of tobacco is established on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

If a tobacco price support program is not in effect for the insurable type of tobacco for any crop year, the words "planted on a farm or farms for which a single poundage quota for the insurable type of tobacco is established" shall be disregarded. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the tobacco on such land will be considered as owned by the lessee. Poundage quotas leased and combined with other quotas under a leasing arrangement providing compensation to the lessor on some other basis than a specified share in the production from a unit shall be considered to be the 100 percent interest of the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units as herein defined will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

4. The appendix to § 435.7 is revised.

Appendix B [Redesignated as] Appendix A

5. Appendix B is redesignated as Appendix A.

Done in Washington, D.C., on May 7, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 19, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-17021 Filed 6-26-84; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 435

[Docket No. 1095S]

Tobacco (Quota Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This action makes final Amendment No. 2 to the Tobacco (Quota Plan) Crop Insurance Regulations, effective for the 1982 and succeeding crop years. The amendment to these regulations was implemented by the Federal Crop Insurance Corporation (FCIC) on an interim basis to allow insureds sufficient time to consider changes in the regulations for insuring tobacco insured under the quota plan of insurance. The intended effect of this action is to confirm the interim rule as published.

EFFECTIVE DATE: June 27, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On March 30, 1982, FCIC published an interim rule in the **Federal Register** at 47 FR 13320, amending the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), effective for the 1982 and succeeding crop years. The public was given 60 days after publication of the interim rule in which to submit comments, data, and opinions on the rule and the rule was scheduled for review in order to provide for any amendments made necessary by such public comment, but no comments were received.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more, and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the notice related to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, are excluded from the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action has been reviewed under USDA procedures established in Departmental Regulation No. 1512–1 (December 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1987.

List of Subjects in 7 CFR Part 435

Crop insurance, Tobacco (quota plan).

PART 435—[AMENDED]

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Interim Rule, amending the Tobacco (Quota Plan) Crop Insurance Regulations as published in the **Federal Register** at 47 FR 13320 on March 30, 1982, is hereby adopted as final.

Done in Washington, D.C., on May 7, 1984.

Dated: June 19, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84–17022 Filed 6–26–84; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 1207

Potato Research and Promotion Plan, Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amends the Rules and Regulations issued pursuant to the Potato Research and Promotion Plan. The Plan authorizes a national potato promotion program. The amendment authorizes the Potato Board, the industry agency which administers the program, to levy an assessment rate of two cents per hundredweight of potatoes handled to fund program operations, and requires that administrative expenses of the program incurred by the Department be reimbursed. The provisions effectuate a recent amendment of the Plan which provided for these changes.

EFFECTIVE DATE: June 27, 1984.

FOR FURTHER INFORMATION CONTACT: Kurt Kimmel, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447–2681.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act.

Information collection requirements contained in this regulation (7 CFR Part 1207) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581–0093.

This rule has been reviewed under Secretary's memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA). William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action would not have a significant economic impact on a substantial number of small entities.

The Potato Board is the administrative agency established by the Potato Research and Promotion Plan (7 CFR Part 1207). The plan is effective under the Potato Research and Promotion Act, as amended (7 U.S.C. 2611–2627).

Recently, the Act and the Plan were amended to change the maximum authorized rate of assessment from one cent per hundredweight to one-half of one percent of the past ten year U.S. average price received for potatoes by growers, and to provide for reimbursement of the Department for administrative expenses. Although a 2.3 cent assessment rate is currently authorized, the Board recommended assessing growers two cents per hundred weight at its March 16 annual meeting. It concluded this would be sufficient to fund an effective and appropriate program of marketing research, promotion, advertising and export development and the Rules and Regulations are proposed to be amended accordingly.

The amendment also adds a new "§ 1207.508 USDA costs" specifying the responsibilities of the Potato Board to reimburse the Department for administrative expenses incurred in the conduct of its duties as authorized in the Plan, and determined by the Secretary. It further specifies that such expenses shall be reimbursed promptly upon billing by the Department. This provision merely implements those requirements in the Act and Plan.

After consideration of all relevant matters, including the amendments to the Act and Plan which authorize these provisions, it is found that the following amendment should be approved.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that (1) this amendment should become effective as soon as possible so that the Potato Board may implement its promotion program for FY 1985, which begins July 1, 1984, (2) this amendment does not impose any additional requirements on handlers or producers, and (3) potato producers and handlers have been notified that authorization for these changes was being considered since October 20, 1983, when a notice of hearing to consider these changes was issued.

These provisions will effectuate a recent amendment of to the Plan which provided for these changes.

List of Subjects in 7 CFR Part 1207

Administrative practice and procedure, Advertising, Agricultural research, Potatoes.

PART 1207—[AMENDED]

The amendment is as follows:

1. Add a new § 1207.508 to read:

§ 1207.508 USDA costs.

Pursuant to § 1207.341 of the Plan the Board shall pay those administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Plan as are determined periodically by the Secretary. Payment shall be due promptly after billing for such costs.

2. Revise § 1207.510 *Levy of assessment* to read:

§ 1207.510 Levy of assessment.

During the effective period of this subpart, an assessment of two cents per hundredweight shall be levied on all potatoes for ultimate consumption as human food and seed. Potatoes used for other nonhuman food purposes, including starch, are exempted from assessment but subject to the safeguard provisions of § 1207.515 of this subpart. No more than one such assessment shall be made on any potatoes. No assessments shall be levied on potatoes grown by producers of less than five acres of potatoes.

(Title III of Pub. L. 91–670; 84 Stat. 2041; 7 U.S.C. 2611–2627; as amended)

Dated: June 22, 1984, to become effective upon publication.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–17107 Filed 6–26–84; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1430

1983–84 Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations (7 CFR 1430.320 *et seq.*) governing the reduction from milk proceeds authorized by the Dairy and Tobacco Adjustment Act of 1983 (Pub. L. 98–180) by reassigning certain administrative functions under the regulations from the Executive Vice President, Commodity Credit Corporation (CCC), and the Controller, CCC, to the Vice-President of CCC who also serves as the Administrator of the Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) and to the Director of the Dairy Division, AMS. These functions are being consolidated in order to provide for more effective program operations.

EFFECTIVE DATE: June 26, 1984.

FOR FURTHER INFORMATION CONTACT: David Cauthon, Fiscal Divisoin, ASCS–USDA, 6716-South Building, P.O. Box 2415, Washington, D.C. 20013, (202–382–8263).

SUPPLEMENTARY INFORMATION: This rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1521–1 and has been classified as "not major." It has been determined that this rule wil not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases: Number—10.051 as found in the Catalog of Federal Domestic Assistance.

The Regulatory Flexibility Act is not applicable to this rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This notice is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, or land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 201(d) of the Agricultural Act of 1949, which was amended by the Dairy and Tobacco Adjustment Act of 1983, provides that, effective for the period December 1, 1983, through March 31, 1985, the Secretary of Agriculture is required to collect a fifty-cent reduction from the proceeds of all milk produced in the forty-eight contiguous States of the continental United States and marketed by producers for commercial use. Regulations (7 U.S.C. 1430.320 *et seq.*) implementing the deduction program were published on January 3, 1984 (49 FR 2). The regulations required payment of the reduction to CCC, an instrumentality of the Department of Agriculture (USDA). The regulations contemplated and provided that some program functions would be handled directly by CCC while other program functions would be handled for CCC by USDA's Agricultural Marketing Service (AMS). In order to provide for more effective program operations, it has been determined that there should be a consolidation of normal program operations, other than setoffs and withholdings, with AMS. In order to accomplish this, the regulations are amended in this rule by reassigning certain functions in the regulations from the Executive Vice President, CCC, and the Controller, CCC, to the Vice President of CCC who also serves as the Administrator of AMS, and to the Director of AMS's Dairy Division. These reassignments relate to subpoenas, penalties, and administrative review of disputes. The consolidation of these functions should improve program service by centralizing the public's dealings under the program, in most instances, with one agency. Also, since AMS has handled and will continue to handle staff work for billings and audits, the consolidation should help expedite the consideration and disposition of assessment and penalty disputes arising in connection with the program.

Since the purpose of these amendments relate to agency management and procedure, it has been determined that no further public rulemaking is required. Accordingly, this rule shall become effective upon the date of filing with the Director, Office of the Federal Register.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Dairy support programs, Dairy products.

Final Rule

PART 1430—[AMENDED]

Accordingly, 7 CFR Part 1430 is amended as follows:

§§ 1430.322, 1430.326 and 1430.329 [Amended]

1. 7 CFR 1430.322, 1430.326 and 1430.329 are amended by removing the words "Executive Vice President, CCC" and inserting in lieu thereof the words "Vice-President, CCC, who is the Administrator, Agricultural Marketing Service" wherever they appear.

§ 1430.329 [Amended]

2. 7 CFR 1430.329 is further amended by: (a) Removing in the first sentence the words "Controller, CCC" and inserting in lieu thereof the words "Director of the Dairy Division who shall be a CCC Claims Official for such purposes"; and (b) removing in the second sentence the word "Controller" and inserting in lieu thereof the words "Director of the Dairy Division".

Authority: (Section 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446); Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*)).

Signed at Washington, D.C., on June 20, 1984.

Richard E. Lyng,

Acting Secretary of Agriculture.

[FR Doc. 84–17148 Filed 6–26–84; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Pro Air Services

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of carriers which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States by adding the name of Pro Air Services.

EFFECTIVE DATE: June 11, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Pro Air Services on June 11, 1984 to provide for the preinspection of its passengers and crews as provided by section 238(b) of the Immigration and Naturalization Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilities processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds an air carrier's name to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Air carriers, Airlines, Aliens, Government contracts, Inspections.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

Section 238.4 is amended by adding the name "Pro Air Services" under "At Nassau".

(Secs. 103 and 238 of the immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: June 21, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-17052 Filed 6-26-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 8

[Docket No. 84-19]

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is revising the semiannual assessment schedule for national banks, District of Columbia banks, and federally licensed branches and agencies. The revision increases by 12 percent the assessment fees to be paid by such entities on or before July 31, 1984 and January 31, 1985. The increase is necessary for the Office to continue its effective supervision of the national banking system.

EFFECTIVE DATE: June 27, 1984.

FOR FURTHER INFORMATION CONTACT: Peter Struck, Manager, Economic and Policy Analysis Division, (202) 447-1924 or Chari Anhouse, Attorney, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Office was created by Federal legislation for the purpose of regulating the national banking system. Under the National Bank Act, 12 U.S.C. 1 *et seq.*, it has a responsibility to take every necessary and appropriate step to ensure that all national banks are in compliance with the varied laws enacted by Congress and the States.

On May 10, 1984, the Office published a notice of proposed rulemaking (Docket No. 84-15) in the **Federal Register**, 49 FR 19828, concerning the assessment schedule to be applicable to all national banks. This Office is authorized by 12 U.S.C. 482 and 12 U.S.C. 3102 to assess national banks, District of Columbia banks, and federal branches and agencies of foreign banks in order to recover examination and related expenses. Section 482 requires that these assessments be made in proportion to a bank's assets or resources and that the rate of assessments be the same for all banks of the same asset size. The current assessment schedule fulfills this statutory requirement. *First National Bank of Milaca* v. *Heimann*, 572 F.2d 1244 (8th Cir. 1978).

Concurrent with the filing of the notice of proposed rulemaking concerning § 8.2 with the **Federal Register**, the Office sent a Banking Bulletin containing the proposal to the chief executive officer of each national bank. The purpose of that Banking Bulletin, dated May 9, 1984, was to ensure that each national bank received direct and timely notice of the proposed changed and to explain the reasons for the change in detail.

As stated in the proposal, the principal reason for the assessment increase is that Office expenses have been rising at a faster rate than Office revenues. Indeed, since the last assessment schedule revision in 1976, expenses have increased 90 percent, while assessment revenues have increased 67 percent. As a consequence, the Office experienced a $7.4 million dificit in 1983 and faces a larger deficit in 1984. This situation is attributable to several factors. Primary among these factors are:

- An increase in the number of national banks requiring special supervisory attention as a result of the recent recession.
- An increase in regulatory responsibilities that have required expanded supervisory activities; and,
- A slowdown in assessment revenue growth due to inflation. The current assessment schedule provides for declining marginal assessment rates, consistent with declining marginal examination costs, as bank size increases. Over time, therefore, growth in bank assets generates proportionately smaller increases in Office revenue. However, when asset growth and Office costs rise due to inflation, the economies of scale in the examination process are not realized and assessments cover a decreasing portion of examination costs.

Comments

Comments on the proposal were solicited both by the **Federal Register** notice of proposed rulemaking and by the issuance of the Banking Bulletin to each national bank. It was requested that comments be received no later than June 11, 1984. In response, 28 comments, all opposed to the proposal as drafted, were received from national banks. Several specific concerns were raised by the commenters. The commenters generally believed that the additional costs incurred by the Office to examine banks requiring special supervisory attention should not be paid by clean, well-run banks, that the Office should recommend statutory change to allow assessments to be related directly to the actual cost of an examination, and that there is need for better control over Office costs.

Twenty-three of the 28 commenters focused primarily on the issue that well-run banks must pay the cost of special supervisory attention of problem banks. Three of those commenters also believed that banks entering nontraditional activities should pay additional costs associated with those activities. Specifically, most suggested that the assessment schedule should be based on the direct costs attributable to examining a particular bank, not its asset size. It was implied that such a method would eliminate any inequities in allocating supervision costs to banks.

This Office is aware of the situation identified by these commenters. As the statute currently reads, the Office is not authorized to charge a higher assessment to banks that are

experiencing difficulties. Revising the assessment schedule to a direct cost basis would require an amendment to 12 U.S.C. 482, and a statutory change was suggested by four commenters. Although a statutory change is not feasible as an alternative to the current proposal, the Office intends to review its long-term revenue needs and statutory change will be considered as part of that review.

Nine commenters questioned whether the Office had been diligent enough in controlling costs. As explained in the proposal, in the face of increased responsibilities, the Office has prudently restructured its operation to employ resources more effectively and to provide better service. In fact, it has been estimated that without the restructuring, the Office would have needed a much larger staff to carry out its responsibilities. Moreover, to limit the scope of its operations or cease to meet its responsibilities solely because of cost considerations would be inconsistent with the Office's mission to foster the safety and soundness of the national banking system.

In the same vein, a few of these commenters thought Office expenses should be lower because their institutions are receiving full scale, comprehensive examinations less frequently. These comments refer to the Office's restructured examination priority schedule that allows on-site examinations less frequently for smaller, well-run banks and more frequently for large and/or special supervision banks. However, in conjunction with the examination priority schedule came a commitment to move toward more off-site monitoring of bank performance. This required a large initial investment in systems and computer hardware that will produce cost savings for both banks and the Office in the years ahead.

After careful consideration of the issues raised by the commenters, it is clear that most of the commenter suggestions require changes in the law. The current deficit position of the Office requires prompt action. Therefore, the Office, in order to meet its revenue requirements on an interim basis, is imposing a 12 percent increase in the assessment fees to be paid by national banks on or before July 31, 1984, and on or before January 31, 1985. Because it affects banks of similar asset size in the same manner, and it is necessary for the Office to recover its costs, the revision fulfills the requirements of 12 U.S.C. 482.

Reason for Immediate Effective Date

This final rule was made effective immediately in order to provide adequate lead time for national banks to calculate their July 31, 1984 assessment fee payments, and to eliminate any confusion about the amount due. Unnecessary burden, including additional communication, the preparation of an additional check, and possibly interest expense could be borne by a bank that does not apply the procedure required in this final rule to its July 31, 1984 assessment fee calculation.

Executive Order 12291

The Office has examined the impact of this final rule and estimates that the aggregate effect on the economy will be slightly over $8 million in 1984 and 1985. This amount represents the difference in expected assessment revenues between the current schedule with and without the increase. Because the aggregate amount will be spread among all national banks, D.C. banks, and federal branches and agencies of foreign banks, the expected impact of the rule on those banks' earnings is minimal. Institutions of similar size will incur the same increase. Thus, the effect of the revision is unlikely to put competing institutions at a disadvantage with one another or with other competing suppliers of financial services. Finally, this final rule is not expected to have a significantly adverse effect on the ability of U.S.-domiciled national banks to compete with foreign entities. This is due to the fact that, generally, only the largest of institutions in the national banking system compete directly with foreign banks. The effect of the rule on their earnings is slight. Accordingly, this Office has concluded that the rule does not meet any of the conditions set forth in Executive Order 12291 for designation as a major rule. Consequently, a regulatory impact statement was not prepared.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), it is certified that the assessment fee increase will not have a significant impact on a substantial number of small entities. The regulation does not impose additional reporting or recordkeeping requirements on any bank subject to the jurisdiction of this Office, nor does it have a substantial impact on smaller banks. This Office anticipates that the necessary increase in fees payable by any individual bank is sufficiently small as to have no appreciable effect on the individual bank's financial stability. Consequently, a regulatory flexibility statement was not prepared.

List of Subjects in 12 CFR Part 8

National banks, Assessment of fees.

For the reasons set forth above, 12 CFR Part 8 is amended as follows:

1. The authority citation for 12 CFR Part 8 reads as follows:

Authority: R.S. 5240, as amended, 12 U.S.C. 481, 482, 12 U.S.C. 3102, and sec. 3, 47 Stat. 1566, 26 D.C. Code 102.

2. Section 8.2 is amended by adding a new paragraph (c) to read as follows:

§ 8.2 Semiannual assessment.

* * * * *

(c) The assessement fee due to be paid on or before July 31, 1984, and January 31, 1985, under paragraphs (a) and (b) of this section shall be 112 percent of the amount computed under those paragraphs.

Dated: June 13, 1984.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84-17110 Filed 6-26-84; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AGL-23]

Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to establish a separate transition area for Mt. Vernon, Ohio, and to redescribe and reduce the airspace currently designated for Knox County Airport (formerly Mt. Vernon Airport). A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on December 29, 1983 (48 FR 57311), to alter this transition area. Subsequent to its publication, an additional area was identified for inclusion to accommodate amended instrument approach procedure requirements. This action cancels the previously published NPRM.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des

Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: This action redescribes the airspace associated with Knox County Airport to accommodate existing airspace requirements. The new description removes the current airspace designation from the Columbus, Ohio, transition area and establishes a separate transition area for Knox County Airport in order to simplify both descriptions. The new description also reduces the radius of designated airspace by 1.5 miles from 8 miles to 6.5 miles and designates an additional amount of controlled airspace approximately 7 miles by 6.5 miles located southwest of Knox County Airport excluding the portion overlying the Newark, Ohio, transition area. Additionally, the description corrects the name of the associated airport from Mt. Vernon Airport to Knox County Airport.

Minimum descent altitudes may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On page 14969 of the **Federal Register** dated April 16, 1984, the FAA proposed to amend § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) so as to alter the transition area near Mt. Vernon, Ohio. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in FAA Order 7400.6, Part 1, dated January 3, 1984.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.M.T., August 30, 1984, as follows:

Mt. Vernon, OH

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Knox County Airport (lat. 40°19'42" N., long. 82°31'22" W.); within 3.5 miles either side of the 197° bearing from the airport extending to the Appleton, Ohio, VORTAC (lat. 40°09'04" N., long. 82°35'18" W.), excluding that portion overlying the Newark, Ohio, transition area.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on June 15, 1984.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 84–17033 Filed 6–26–84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84–AGL–2]

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: The nature of this Federal action is to designate a new controlled airspace area near Lexington, Ohio, to accommodate a new VOR/DME Runway 26 instrument approach procedure into Perry County Airport. This designation is based on a request from the Perry County Airport officials to provide that facility with instrument approach capability.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedure requires that the FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On page 10939 of the **Federal Register** dated March 23, 1984, the FAA proposed to amend § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) so as to establish a new 700-foot controlled airspace transition area near New Lexington, Ohio. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in FAA Order 7400.6, Part 1, dated January 3, 1984.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., August 30, 1984, as follows:

New Lexington, OH

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Perry County Airport (lat. 39°41'29" N., long. 82°11'52" W.)

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is

a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on June 15, 1984.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 84-17036 Filed 6-26-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AGL-1]

Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the Sturgis, Michigan, transition area to accommodate a new MLS Runway 18 instrument approach procedure to Kirsch Municipal Airport and to revise/reduce the airspace currently designated for the transition area.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The development of a new MLS instrument approach procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The additional airspace designated will be an area approximately 3 miles by 2 miles, located northeast of the airport. The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

The new procedure has also necessitated redesigning the transition area to return a portion of controlled airspace determined unnecessary to a noncontrolled status. The portion being returned will be an area approximately 7.5 miles by 7 miles, located northeast of the airport.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On page 14968 of the **Federal Register** dated April 16, 1984, the FAA proposed to amend § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) so as to alter the transition area near Sturgis, Michigan. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in FAA Order 7400.6, Part 1, dated January 3, 1984.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, August 30, 1984; as follows:

Sturgis, MI

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Kirsch Municipal Airport (lat. 41°48'35" N., long. 85°26'10" W.); within 3 miles west of the 341° bearing from the airport and 5 miles east of the 341° bearing from the airport extending from the 5.5-mile radius area to 8 miles northwest of the airport.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on June 15, 1984.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 84-17037 Filed 6-26-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 83-AAL-9]

Establishment of J-529, Fort Yukon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes new Jet Route J-529 between Fort Yukon, AK, and Shingle Point nondirectional beacon (NDB), Yukon territory, Canada. This new jet route is part of a planned new polar route across Canada. This action designates controlled airspace in a area where no FAA radar coverage exists and improves flight planning.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATT-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On March 21, 1984, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish new Jet Route J-529 between Fort Yukon, AK, and Shingle Point NDB, Yukon Territory, Canada (49 FR 10552). The International Airline Transportation Association (IATA) requested a new polar route across canadian territory and the FAA is cooperating with the Canadian Government by implementing the initial phase of the route in the Fort Yukon area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal

were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations establishes new Jet Route J–529 between Fort Yukon, AK, and Shingle Point NDB, Yukon Territory, Canada. This jet route is a segment of a new polar route across Canada. This action designates controlled airspace in an area where no FAA radar coverage exists and improves flight planning.

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, effective 0901 GMT, August 30, 1984, as follows:

J–529 [New]

From Fort Yukon, AK, via 049° radial; to Shingle Point NDB, YT, Canada. The airspace within Canada is excluded.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulatons for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on June 19, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84–17034 Filed 6–26–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture: Adjustments to Piece Rates

AGENCY: Employment and Training Administration, Labor.

ACTION: Withdrawal of rule-related notice and reinstatement of effective date.

SUMMARY: On September 14, 1983, the Department of Labor published a rule-related notice on piece rates adjustment in the temporary alien agricultural labor certification program. The Order requiring the notice was vacated, and it is withdrawn.

EFFECTIVE DATE: September 2, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Harry L. Sheinfeld. Telephone: 202–523–7836.

SUPPLEMENTARY INFORMATION: On September 2, 1983, the Department of Labor (DOL) published in the **Federal Register** a final rule revising 20 CFR 655.207 (b) and (c), effective on publication. 48 FR 40168. Section 655.207(c) relates to the adjustment of piece rates for employment covered by the temporary alien agricultural labor certification program.

On September 8, 1983, the U.S. District Court for the District of Columbia suspended indefinitely the effective date of revised § 655.207(c), pending further order of the court, and ordered that notice of the Order's terms be published in the **Federal Register.** *NAACP, Jefferson County Branch* v. *Donovan,* Civ. No. 82–2315. The rule-related notice was published at 48 FR 41154 (September 14, 1983).

On June 12, 1984, the U.S. Court of Appeals for the District of Columbia Circuit vacated

the district court's order of September 8, 1983 in its entirety, and thereby reinstate[d] the regulation promulgated by DOL on September 2, 1983. *See* 48 FR 40,168 (1983) (to be codified at 20 CFR 655.207).

NAACP, Jefferson County Branch v. *Donovan,* Nos. 83–1919 and 83–2165, Slip Opinion at 14.

Accordingly, the rule-related notice published by DOL at 48 41154 (September 14, 1983) is hereby withdrawn; and the final rule revising 20 CFR 655.207(c) published September 2, 1983 (48 FR 40168) and effective on that date is reinstated on September 2, 1983.

Signed at Washington, D.C., this 20th day of June 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 84–17015 Filed 6–26–84; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7961]

Income Tax: Taxable Years Beginning After December 31, 1953; Limitation on Foreign Tax Credit for Foreign Oil and Gas Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the limitation on the foreign tax credit with respect to taxes paid on foreign oil related income. Changes to the applicable tax law were made by the Tax Reduction Act of 1975, the Tax Reform Act of 1976, and the Revenue Act of 1978. The regulations would provide the public with the guidance needed to comply with these Acts and would affect all taxpayers claiming a foreign tax credit for taxes paid with respect to foreign oil related income. This document does not reflect the changes made in section 907 by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

DATES: These regulations apply to taxable years ending after December 31, 1974, and beginning before January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mary Frances Pearson of the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T. 202–566–9050.

SUPPLEMENTARY INFORMATION:

Background

On November 17, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 907 of the Internal Revenue Code of 1954 (45 FR 75695). These amendments were proposed to conform the regulations to section 601(a) of the Tax Reduction Act of 1975 (89 Stat. 54), section 1035 of the Tax Reform Act of 1976 (90 Stat. 1630), and section 301(b)(14) of the Revenue Act of 1978 (92 Stat. 2822). A public hearing was held on

May 29, 1981. After consideration of all comments from interested persons regarding the proposed regulations, they are adopted with revisions. This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

General Explanation

The United States imposes an income tax on its citizens, residents, and corporations on a worldwide basis. The U.S. system prevents international double taxation through the allowance of a foreign income tax credit. Such a system accords the country where income is earned the first right to tax it. The United States taxes this same income only to the extent the U.S. tax exceeds the foreign income tax on the income.

The foreign tax credit mechanism raises a number of problems. One problem is that not every payment made to a foreign country constitutes a creditable tax. Only a foreign income tax is creditable against the U.S. income tax. Whether a particular foreign payment constitutes an income tax is frequently difficult to determine. This difficulty is especially true in the case of the development of a foreign country's natural resources which the foreign sovereign owns. In these cases the distinction between creditable income taxes and other deductible payments, such as royalties, bonuses, other consideration for the right to a mineral concession, or a purchase price for the minerals, can become blurred.

Other problems arise under the section 904 limitation. Generally, section 904 limits the foreign tax credit to a taxpayer's pre-credit U.S. tax on worldwide income and further limits the credit to the U.S. tax on foreign-source taxable income, *i.e.*, the tax base of the foreign income under U.S. law. If for a taxable year the foreign taxes imposed on the income base as determined under foreign law exceed the U.S. taxes imposed on that income base determined under U.S. law, the unused foreign tax credits, or excess credits, may be used in certain other taxable years in which the U.S. tax exceeds the foreign taxes on foreign-source income.

Currently, section 904 allows the averaging of low-tax foreign income and high-tax foreign income, referred to as the overall limitation. Under the overall limitation, the U.S. tax on income from sources in a low-tax country may be reduced by foreign taxes that exceed the U.S. tax on income from a high-tax country. Section 904 limits the benefits of the overall limitation to a certain extent through the creation of separate limitations which require the separation of foreign income into various classes of foreign-source income. The foreign taxes paid on one class may not reduce the U.S. tax imposed on another class.

Problem

Prior to the enactment of section 907, the U.S. oil companies operating in foreign countries were accumulating large amounts of unused foreign tax credits attributable to foreign oil and gas extraction activities. Under section 904, the oil companies could only use foreign taxes as credits against their U.S. tax liability to the extent of the U.S. tax computed on foreign-source taxable income. In 1974, the Treasury Department estimated that the excess credits generated in that year might exceed $16 billion. H. Rept. No. 93–1502, 93d Cong., 2d Sess. 62 (1974). These excess credits were attributable to a number of reasons explained below.

The foreign countries imposing the taxes retained the rights to the oil in the ground. The sovereign could demand a royalty payment, impose an income tax, or collect royalties and taxes. When U.S. corporations began their foreign oil operations, they usually paid the sovereign only a royalty because there frequently was no general income tax system in producing countries. When the sovereigns later sought to increase their revenue, they structured income tax systems. The foreign income taxes grew while the royalty payments remained relatively modest. The U.S. oil companies would be in better after-tax positions with higher foreign income taxes as contrasted with higher royalties, since the former are creditable against U.S. taxes while the latter are only deductible in arriving at the U.S. tax base. Since foreign governments acted as sovereigns in imposing taxes and as proprietors in collecting royalties, what producers claimed as creditable income taxes may have been in fact deductible royalties.

Another reason for excess credits was the existence in oil producing countries of stated tax rates in excess of the U.S. tax rates. Furthermore, besides increasing their stated tax rates, some foreign countries found ways to increase the effective tax rates by increasing the income base under foreign law upon which the stated foreign tax rate applied. The producing country could limit deductions that are allowed in the United States and they could overstate the gross income of the oil companies by basing the tax on an artificially high posted or tax reference price rather than the market price.

Because of the reasons above, the oil companies were left with excess credits they could not use. Some oil companies therefore found it desirable to acquire other lines of low-taxed foreign enterprises wholly unrelated to the production or distribution of oil and gas.

Technical Explanation

Prior to TEFRA, section 907 handled the two problems noted above—the existence of excess credits and their use against the U.S. tax on foreign income from activities unrelated to oil and gas—in two primary ways that are explained below. Section 907, as added to the Code by the Tax Reduction Act of 1975 (1975 Act), was amended by the Tax Reform Act of 1976 (1976 Act) and the Revenue Act of 1978.

1975 Act

Section 907(a) reduces otherwise creditable foreign income taxes imposed on "foreign oil and gas extraction income" to a certain precentage of this income. The applicable percentages are 52.8 and 50.4 for taxable years ending in 1975 and 1976, respectively. Under the 1975 Act, the applicable percentage for years ending after 1976 was 50. Section 907(c)(1) defines foreign oil and gas extraction income as foreign-source taxable income derived from the extraction of minerals from oil or gas wells or the sale or exchange of assets used in that activity.

Section 907(b) creates a separate section 904 limitation for "foreign oil related income". Section 907(c)(2) defines foreign oil related income to include extraction income as well as foreign-source taxable income from a "downstream" trade or business, such as the processing of minerals from oil or gas wells into primary products, marketing and transporting the minerals or primary products, or the selling or exchanging of assets used in these trades or businesses.

Section 907(a) applies before section 907(b). To summarize, section 907(a) initially reduces creditable foreign oil and gas extraction taxes to a certain percentage of the foreign oil and gas extraction income. Section 907(b), on the other hand, in essence then provides that the extraction taxes as reduced by section 907(a) along with the creditable taxes on the income from downstream trades or businesses can only be used under section 904 to reduce the U.S. tax on foreign oil related income. Section 907(a) does not reduce the creditable foreign taxes imposed on the income from downstream trades or businesses.

Section 907(c)(3) includes dividends (including deemed dividends) and interest from a foreign corporation in the definitions of foreign oil related income

and foreign oil and gas extraction income if the taxpayer could be deemed to pay the corporation's foreign taxes under sections 902 or 960 (Subpart F). Also included in the definitions are foreign-source dividends from a domestic corporation and a taxpayer's distributive share of partnership income. However, interest from a foreign corporation and dividends from a domestic corporation can only be oil related income in applying section 907(b) and not extraction income in applying section 907(a).

Section 907(c)(4) in essence provides that extraction losses from sources in one foreign country are not offset against extraction income earned in other foreign countries in applying section 907(a). However, those losses do reduce foreign oil related income in applying section 907(b).

Section 907(d) provides that in determining foreign oil and gas extraction income the fair market value of oil or gas is to be used if the oil is disposed of, or is acquired other than from a foreign country, at a posted price or other pricing arrangement which differs from that value.

Section 907(e) is a transitional rule that serves two functions. First, it limits the carryover of unused foreign taxes from pre-effective date (pre-1975) years to post-effective date years by assuming that section 907(a) was in effect in the pre-1975 years. This assumption does not affect the credits claimed in the pre-1975 years. Second, section 907 divides the carryovers that remain between foreign oil related income and other foreign-source income for purposes of applying the separate section 904 limitations in the post-effective date years.

1976 Act

Section 1035 of the 1976 Act made three amendments to section 907. The first reduced the section 907(a) limitation percentage that would have applied to post-1976 years by two percentage points (*i.e.*, from 50 to 48).

The second amendment added section 907(f) which generally provides that unused foreign extraction taxes represented by the two percentage point reduction in the section 907(a) limitation percentage may be carried back or over in certain circumstances. Briefly, a taxpayer may only carry those unused foreign extraction taxes to another year in which the foreign extraction taxes paid are less than that other year's section 907(a) limitation level and in which the foreign oil related taxes paid are less than the U.S. tax on foreign oil related income (excess limitation under section 904).

The third amendment added section 907 (c)(5) which defined foreign extraction taxes as otherwise creditable taxes paid or accrued (or deemed to have been paid under sections 902 or 960) with respect to foreign oil and gas extraction income or foreign oil and gas extraction loss.

1978 Act

The 1978 Act reduced the limitation percentage under section 907(a) from 48 to 46. The change applies to taxable years beginning after December 31, 1978, and was necessary to conform section 907(a) to the effective date of a reduction in the maximum corporate tax rate.

TEFRA—Separate Document

Section 211 of TEFRA amended section 907 in a number of ways. Generally, for taxable years beginning after December 31, 1982, TEFRA repealed both the separate section 904 limitation for foreign oil related income in section 907(b) and the per-country loss rule in section 907(c)(4). It added, however, a rule (similar to section 904(f)) for the re-sourcing of extraction income as other foreign-source income to "recapture" an overall foreign extraction loss. TEFRA also added certain transitional rules for the carryover and carryback of unused foreign tax credits and dropped the 2-percent limitation that previously applied under section 907(f).

In addition, TEFRA modified the definition of foreign oil related income in section 907(c)(2) so that it no longer includes extraction income but now specifically includes the performance of any related service. Nonextraction oil related income may also be "Subpart F income".

The final regulations do not apply to taxable years for which the changes made by TEFRA apply. Regulations for those years reflecting those changes will be proposed in a separate document.

Individuals

The final regulations contain general rules that will apply to individuals. However, they do not contain other rules that apply exclusively to individuals because the Treasury believes that these rules follow directly from the statute.

Explanation of Changes

The Treasury made a number of changes in the proposed regulations in response to public comments.

The more important changes in the proposed regulations are discussed below. Furthermore, the reasons for not making certain other suggested changes are also discussed below.

Year of Use Rule

Proposed § 1.907(b)–2(d) reduced the carryover of unused foreign oil related income taxes by splitting the carryover into its component parts, *i.e.*, the unused extraction tax and unused nonextraction tax elements, and by applying to the unused extraction tax the lower limitation percentage of section 907(a) for the year to which the taxes were to be carried and used. The rule would have applied to unused taxes arising in post-1974 years and also to those arising in pre-1975 years which are subject to the transitional rules in section 907(e) (proposed § 1.907(e)–1(a)). The final regulations eliminate the rule and, with it, a major source of regulations' complexity.

Amount of Extraction Income

Proposed § 1.907(c)–1(b)(1) calculated foreign oil and gas extraction income as the gross income from the property within the meaning of § 1.613–3(a) less certain deductions. Encompassed within the reference to § 1.613–3(a) is the notion of the representative market or field price in the immediate vicinity of the well. Commentators pointed out that the determination of the representative market or field price is difficult in foreign oil and gas operations because of a lack of comparable sales in the immediate vicinity of the well. Taxpayers urged the Treasury to provide a facts and circumstances test and they also requested the use of various formulas, such the proportionate profits and rate of return methods, in applying this test to determine the wellhead price.

In foreign oil operations, the foreign government usually retains the ownership of the oil or gas in the ground. The foreign sovereign usually grants a concession to an oil company giving the latter the right to extract and export the crude oil. Frequently, the producing country will retain a share of the crude oil that is extracted. In some cases, the oil company that is granted the concession will purchase this "nonequity" oil from the foreign government while in other cases the foreign government will sell the oil to other oil companies. When the crude oil is extracted, the mineral usually has to be transported some distance through pipelines to a tank farm or a port before it can be sold, refined, or loaded onto tankers for export. The facilities beyond the wellhead are usually owned by the oil company. This pattern of operations

raises the following questions and considerations.

First, the foreign government usually establishes a posted price for the equity oil for purposes of computing the taxes to be paid to the sovereign. This price is usually a port price, not a wellhead price, and it may or may not be comparable to the "fair market value" of the oil at the port. Section 907(c) (1) and (2) require a distinction between the foreign oil and gas extraction income and the foreign income from the transportation of the oil through the oil company's pipeline, *i.e.*, a downstream activity. The question becomes what, if any, value is added to the crude oil beyond the wellhead *in the particular producing country.*

Second, the oil companies not only pay taxes on the basis of a port price for equity oil, but also may pay royalties to the foreign government on the very same basis. If any significant value is added to the crude oil in the producing country beyond the wellhead because of transportation through the oil company's pipeline or other factors, it is surprising that a part of this added value has to be paid back to the foreign sovereign in the form of increased royalties.

Third, the oil company with the concession may buy a significant part of the foreign sovereign's nonequity oil. The government sets the price and again, the price is usually a port price. The price may directly or indirectly reflect some fee for the use of the oil company's facilities in lifting the oil and transporting it to the port prior to its purchase. However, that fee may, or may not, be an arm's-length amount.

Finally, fair market value may differ from a representative market or field price in certain cases, at least in the domestic context. The proposed regulations incorrectly assumed that the representative price would be the same as fair market value in foreign operations. The reason for the use of a representative price rather than fair market value in domestic contexts is to protect independent producers. (See *United States* v. *Cannelton Sewer Pipe Co.*, 364 U.S. 76, 87 (1960)). This reason simply does not exist in foreign oil and gas operations.

The final regulations rely on the fair market value of the oil or gas in the immediate vicinity of the well to determine the gross income from extraction. This reliance is consistent with complimentary provisions, such as section 907(d) and section 901(f) which was also added to the Code by section 601 of the 1975 Act (89 Stat. 57). Moreover, the determination of fair market value necessarily results in the case-by-case analysis that was requested by commentators. In some cases, analysis of the arrangements associated with the producer's extracting, transporting, and later purchasing of the host country's nonequity oil could provide a reasonable basis for reaching fair market value at the wellhead. In other cases, the fair market value could be negotiated on audit. This flexibility seems to be the only way to protect the interests of both the Government and taxpayers and, perhaps, is the most that can be done in this area. Resolution of the valuation issue in *Buffalo Tool & Die Mfg. Co.* (74 T.C. 441, 451 (1980)) seemed "more properly suited for the give and take of the settlement process than adjudication." The valuation issues in this particular area also seem suited for resolution through the settlement process.

Trading Income

Other commentators pointed out that extraction income should include trading income and they objected to the rule (proposed § 1.907(c)–(1)(b)(5)) that extraction income does not include income derived in a transaction in which the foreign income taxes would not be creditable under section 901(f). This rule has not been changed. Characterizing trading as an extraction activity would be inconsistent with section 907(c)(2)(D) which clearly indicates that taxable income from the distribution of oil or gas primary products is foreign oil related income and not foreign oil and gas extraction income. Furthermore, setion 901(f) applies only if a person does not have an economic interest in the minerals and was added to the Code to disallow foreign tax credits in cases where, after nationalization of oil operations in various foreign countries, the oil companies no longer extract their own crude oil but instead purchase and sell crude oil. After nationalization, the oil companies cease to be producers. See, *H. Rept. No. 94–120, 94th Cong.*, 1st Sess. 69 (1975), and 121 *Cong. Rec.* 8920 (March 26, 1975).

Taxes

Proposed § 1.907(c)–(3)(a) (1) and (2) relied on rules in § 1.901–3(a)(2)(i) to determine foreign oil related and foreign extraction taxes. Commentators argued that these rules produced distorted results in many cases where it is necessary under sections 907 and 904 to distinguish between foreign oil and gas extraction income, foreign oil related income other than extraction income, and other foreign-source income. They claim that the rule was unworkable where the tax rates for different-categories of income were not the same, where there is a loss in any of the relevent categories, or where the foreign tax was determined on the basis of a posted price. Moreover, the proposed regulations, it was argued, neither specified whether the extraction taxes or foreign oil related taxes should be computed first nor suggested a method to apportion the foreign taxes between the exraction and other foreign oil related categories. The commentators urged that the taxes be characterized and apportioned on the basis of the relative amounts of taxable income, as determined under U.S. standards, in the various categories of income.

The final regulations clarify the characterization of taxes in number of ways. First, increased foreign taxes that are paid or accrued by reason of the use of a posted price in excess of a market price are in effect characterized as extraction taxes. The Treasury believes that this rule follows from both the language and the intent of section 907(d). The excess posted price is (or at least was) a part of the income base upon which the foreign country levied taxes which, of necessity, have to be characterized in applying section 907 under U.S. law. The existence of the posted price system was one of the major reasons for the existence of excess credits which section 907(a) was designed to limit. See *H.R. Rep. No. 93–1502*, 93d Cong., 2d Sess. 60–66 (1974).

Second, the characterization and apportionment of taxes among the classes of foreign-source income is to be made without regard to the amount of U.S. *taxable* income in each class. Any other rule would ignore the difference between the foreign tax base and the U.S. tax base, another difference which the Congress considered may have contributed at least in part to the excess credits which section 907 was intended to limit. (See *H.R. Rep. No. 93–1502, supra*, at 61–62). Furthermore, any other rule would ignore section 907(c)(5) which clearly indicates that a taxpayer can pay or accrue extraction taxes even though it has an extraction loss under U.S. law.

Third, if foreign law taxes what the United States characterizes as foreign oil and gas extraction income and foreign oil related income other than extraction income (other oil related income) under separate tax bases; the taxes will be characterized in accordance with the separate foreign tax bases. If foreign law treats these two classes of income as in a single tax base, then the characterization of the foreign gross income base as extraction or other oil-related income will be

governed by general principles of U.S. tax law.

Fourth and last, the final regulations clarify the tax allocation in cases where there is a non-oil loss that reduces under foreign law and foreign oil related taxes or where foreign law imposes on various classes of income a single income tax under a progressive system.

Income Definitions

Some commentators suggested that income which is incidental in nature or amount (sale of tires, batteries and repair services by a service station, for example) to the conduct of the trades or businesses described in section 907(c)(1) or (2) be considered extraction or oil related income. Another commentator suggested that the separate section 904 limitation for oil related income under section 907(b) should not apply to a taxpayer that had substantial oil-related income but only *de minimus* extraction income. The Treasury Department does not have the authority under section 907(c)(1) or (2) to adopt these suggestions.

Other commentators suggested that income which is directly related to activities in section 907(c)(1) or (2) should be extraction or oil related income. The final regulations reserve part of § 1.907(c)–1 that would classify certain "directly related income" as extraction or oil related income. The rules that are reserved are set out in a notice of proposed rulemaking in the Proposed Rules Section of this issue of the **Federal Register**. The proposed rules relate to service income and certain "passive" income (such as interest or rents).

Sale of Stock

Many taxpayers objected to the rule in proposed § 1.907(c)–1(d)(2) that prohibited gain (other than section 1248 gain) on the sale or exchange of stock from inclusion in foreign oil and gas extraction income and foreign oil related income. Commentators urged that the regulations provide that gain on stock dispositions are includible under the "look-through" rule in section 907(c)(3) which generally characterizes certain dividends and interest as extraction income or oil related income and in effect treats the owners of an entity as if they conduct the activities that the entity actually conducts. Taxpayers argued that section 907(c)(3) is not an exclusive list and, they contended, the provision avoids discrimination between taxpayers that carry on the relevant activities through branches of domestic corporations on the one hand or through foreign subsidiaries on the other hand. Alternatively, commentators urged that the regulations interpret the term "assets used by the taxpayer in the trade or business" of extraction or oil related activities as embracing stock. See section 907(c)(1)(B) and (c)(2)(E).

The Treasury Department does not believe that section 907(c)(3) includes gain from a stock disposition in extraction or oil related income. While dividends from a foreign corporation may be extraction or oil related income, interest from the same corporation may only be oil related income under section 907(c)(3). Moreover, dividends from domestic corporations may be oil related, but not extraction, income and interest from such a corporation is neither oil related nor extraction income. Thus, section 907(c)(3) distinguishes between a taxpayer that conducts its activities through a domestic subsidiary and one conducting its activities through a foreign subsidiary. Furthermore, if the Treasury were to include gain on a stock disposition in section 907(c)(3), could the gain be both extraction income and oil related income, or could it only be oil related income? Would the characterization of gain on the disposition of stock in a domestic or foreign corporation be the same or would the Treasury be forced to create distinctions similar to those drawn by section 907(c)(3) in the case of other types of income realized by the shareholders of domestic or foreign corporations? These distinctions and questions are legislative, and not regulatory. Had Congress intended to include in oil related or extraction income under section 907(c)(3) gain on the sale or exchange of stock in any corporation, it would have done so. Compare section 907(c)(3) with section 954(f)(1), which relates to foreign base company shipping income and which was also added by the 1975 Act.

The analysis is different for stock which is exclusively a "business" asset (*i.e.*, not a capital asset). Such stock could be an asset used by a taxpayer under section 907(c)(1)(B) or (c)(2)(E). The pattern of section 907(c) suggests that this interpretation is correct and, if gain on a stock disposition is includible, it would be under section 907(c)(1) or (2).

Finally, losses on stock dispositions will be allocated to and reduce the same class of income (extraction, oil related, or other income) which would be increased if the stock disposition produced a gain.

Carrybacks to Pre-1975 Years

Proposed § 1.907(e)–1(c) prohibits the carryback of unused foreign oil related taxes to taxable years ending before January 1, 1975. One commentator objected to this rule but the final regulations retain it.

The rule itself follows from the creation of a separate section 904 limitation for foreign oil related income, *i.e.*, unused foreign oil related taxes may not reduce an excess limitation on income other than foreign oil related income. It is not clear whether the unused taxes would be determined without regard to section 907(a), whether the amount of unused oil related taxes which could be carried back would be determined with or without regard to the creation by section 907(b) of the separate section 904 limitation for foreign oil related income or, more importantly, whether one should assume that section 907(b) was in effect in pre-effective date years to which unused taxes are carried. See the transitional rule for carryovers under section 907(e)(1) and (2), the transitional rules for carrybacks under section 904(f)(4) (as in effect on the day before the enactment of the 1976 Act). In the absence of a statute, the Treasury declines to fashion a transitional rule for carrybacks and, in any event, believes it has no authority to do so.

Interest From Foreign Corporations

Section 907(c)(3)(A) in effect provides that interest paid by a foreign corporation may be foreign oil related income if the corporation is one whose foreign income taxes (paid or deemed paid would be deemed paid by the "taxpayer" under section 902. Section 907(c)(3)(A) also applies to dividends from a foreign corporation but the dividends can be extraction or oil related income. Although a foreign corporation is not necessarily a "taxpayer", it is necessary to classify the income and earnings of the corporation to classify the dividends and interest as extraction, oil related, or other income, when dividends and interest are paid by the corporation to U.S. taxpayers.

Proposed §1.907(c)–2 (c)(2) in effect provides a stock ownership rule. Under that rule, a foreign corporation may have foreign oil related income or extraction income on the receipt of dividends from other foreign corporations in a chain of ownership if the taxes of both the recipient and the payor of the dividends may be deemed paid under section 902 (a) or (b) by the domestic corporation that directly or indirectly owns the requisite percentage under section 902 of the voting stock of the foreign corporations in the chain. This stock ownership rule applies even if the payor of the dividend does not pay

any foreign taxes. A similar rule was fashioned to treat interest payments as oil related income. Commentators claim that this interest rule is unclear, *i.e.,* whether the same domestic corporation must own directly or indirectly the payor and the payee of the interest (if the payee is a foreign corporation).

Commentators asked the Treasury to interpret the term "taxpayer" in section 907(c)(3)(A) broadly. They argued that a literal interpretation is too restrictive, is unnecessary to reflect the objective of section 907, and would needlessly force taxpayers to restructure their organizations merely to obtain what is argued as the correct characterization of the income. For example, they posit a situation where P wholly owns D_1 and D_2, all U.S. corporations; D_1 wholly owns F_1, and D_2 wholly owns F_2, where F_1 and F_2 are foreign corporations. Taxpayers argue that interest income paid, for example, by F_1 to P, D_2, or F_2, should be eligible for characterization as foreign oil related income even though P, D_1 and D_2 do not file a consolidated return.

The Treasury does not believe section 907(c)(3)(A) can be interpreted to support such requests. In the example above, although it may benefit P or D_2 to characterize the interest as oil related income in a particular case, an identical characterization for another affiliated group with the same corporate structure may produce a detriment. In the latter case, the Treasury would be without authority to force the characterization. In the example above, F_1 simply is not a corporation whose taxes would be deemed paid under section 902 by the "taxpayer", *i.e.,* P or D_2. Indeed, the Treasury would have no authority to enforce in different taxable years a consistent characterization of the interest income for the same affiliated group. More importantly, the characterization of interest paid to a member of an affiliated group that does not file a consolidated return should be the same as if the interest were paid to an unrelated party, provided the member does not meet the literal requirements of section 907(c)(3)(A). Since interest paid by F_1 to D_2 may not be oil related income, interest paid by F_1 to F_2, D_2's subsidiary, may not be oil related income.

The final regulations clarify proposed § 1.907(c)–2(c)(2) to provide that interest received by any corporation, whether foreign or domestic, from a foreign corporation may be oil related income so long as the payor's taxes may be deemed paid under section 902 by the payee (the taxpayer) or, if the payee is a foreign corporation, both the payor's and payee's taxes may be deemed paid by the same taxpayer. Moreover, in applying this rule and solely for the purposes of section 907(c)(3)(A), if one or more members of the affiliated group filing a consolidated return would be deemed to pay under section 902 the foreign taxes of a foreign corporation paying interest, the term "taxpayer" includes all members of that group.

Technical Changes

The final regulations also make numerous technical and clarifying changes to the proposed regulations.

Regulatory Flexibility Act and Executive Order 12291

A notice of proposed rulemaking for this regulation was published before January 1, 1981, the effective date of the Regulatory Flexibility Act (5 U.S.C. Chapter 6). Thus, this regulation is not subject to the Regulatory Flexibility Act. The Commissioner of Internal Revenue has determined that this regulation is not a major regulation as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Drafting Information

The principal author of these final regulations is Donald K. Duffy of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Parts 1.861–1–1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, Source of income, United States investment abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. There are added immediately after § 1.905–5 the following new §§ 1.907–0, 1.907(a)–1, 1.907(b)–1, 1.907(b)–2, 1.907(c)–1, 1.907(c)–2, 1.907(c)–3, 1.907(d)–1, 1.907(e)–1 and 1.907(f)–1:

§ 1.907–0 Introduction.

(a) *Key terms.* For purposes of the regulations under section 907—

(1) "FOGEI" means foreign oil and gas extraction income.

(2) "FORI" means foreign oil related income.

(3) "Other FORI" means FORI other then FOGEI.

(4) "FOGEI taxes" mean foreign oil and gas extraction taxes.

(5) "FORI taxes" mean foreign oil related taxes.

(6) "Other FORI taxes" mean FORI taxes other than FOGEI taxes.

(b) *FOGEI tax limitation.* Section 907(a) limits the foreign tax credit for taxes paid or accrued on FOGEI. The limit is a certain percentage of FOGEI. See § 1.907(a)–1.

(c) *Section 904 limitation.* Section 907(b) creates a separate limitation under section 904 for a taxpayer FORI. FORI taxes (after any reduction under section 907(a)) may not be used as credits against the taxes imposed on income other than FORI. The separate FORI limitation applies even though a taxpayer may not have any FOGEI. See §§ 1.907(b)–1 and 1.907(b)–2.

(d) *FOGEI and FORI.* FOGEI includes the taxable income from the extraction of minerals from oil or gas wells by a taxpayer (or another person) and from the sale or exchange of assets used in the extraction business. FORI is a broader category of income than FOGEI. Although FORI includes FOGEI, it also includes taxable income from the activities of processing oil and gas into their primary products, transporting or distributing oil and gas and their primary products, and from the selling or exchanging of assets used in these activities. FOGEI and FORI may also include certain dividends, interest, or amounts described in section 951(a). See §§ 1.907(c)–1 through 1.907(c)–3.

(e) *Posted prices.* Certain sales prices are disregarded when computing FOGEI for purposes of chapter 1 of the Code. See § 1.907(d)–1.

(f) *Transitional rules.* Section 907(e) provides rules for the carryover of unused FORI taxes from taxable years ending before January 1, 1975. Transitional rules also apply to carrybacks and carryovers of certain taxpayers that changed from the per-country to the overall limitation. See § 1.907(e)–1.

(g) *Section 907(f) carrybacks and carryovers.* Certain FOGEI taxes disallowed under section 907(a) may be carried back or over to other taxable years. These FOGEI taxes may be absorbed in another taxable year to the extent of the lesser of a separate excess extraction limitation or a separate excess oil related limitation for the year. See § 1.907(f)–1.

(h) *Cross-references.* (1) See section 907(g) (as in effect for taxable years beginning before January 1, 1980) for rules relating to Western Hemisphere Trade Corporations that are members of an affiliated group.

(2) See section 1035(c) of the Tax Reform Act of 1976, as amended by section 701(u)(9) of the Revenue Act of 1978, for rules relating to the foreign tax credit for certain production-sharing contracts.

(i) *Statutes covered.* (1) The regulations under section 907 are issued as a result of the enactment of section 601 by the Tax Reduction Act of 1975, of section 1035 by the Tax Reform Act of 1976, and of section 301(b)(14) of the Revenue Act of 1978. These regulations do not cover certain provisions relating to taxpayers other than corporations. See section 701(u)(8) of the Revenue Act of 1978 which amended section 907 (a) and (b).

(2) The regulations under section 907 also do not reflect certain amendments of section 907 made by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982. Sections 1.907–0 through 1.907(f)–1 apply to taxable years ending after December 31, 1974, and beginning before January 1, 1983.

(j) *Pre-TEFRA Code references.* References in the regulations under section 907 to sections of the Internal Revenue Code of 1954 are references to those sections as in effect prior to their amendment by the Tax Equity and Fiscal Responsibility Act of 1982.

§ 1.907(a)–1 Reduction in taxes paid on FOGEI.

(a) *Amount of reduction.* FOGEI taxes are reduced by the amount by which they exceed a limitation level (as defined in paragraph (c) of this section). This rule applies to taxable years ending after December 31, 1974. If the per-country limitation under section 904(a)(1) (as in effect prior to the Tax Reform Act of 1976) applies for a taxable year ending before January 1, 1976, the reduction is applied separately with respect to each foreign country or possession for that year.

(b) *Foreign taxes paid or accrued.* For purposes of the regulations under section 907—

(1) *Foreign taxes.* The term "foreign taxes" means income, war profits, or excess profits taxes of foreign countries or possessions of the United States otherwise creditable under section 901 (including those creditable by reason of section 903).

(2) *Foreign taxes paid or accrued.* The terms "foreign taxes paid or accrued," "FOGEI taxes paid or accrued," "FORI taxes paid or accrued", and "other FORI taxes paid or accrued" include foreign taxes deemed paid under sections 902 and 960. Unless otherwise expressly provided, these terms do not include foreign taxes deemed paid by reason of sections 904(c) and 907(f).

(c) *Limitation level*—(1) *In general.* The limitation level is FOGEI for the taxable year multiplied by the limitation percentage for that year.

(2) *Limitation percentage for corporations.* A corporation's limitation percentage is—

(i) For its taxable years ending in 1975 and 1976, 52.8 percent and 50.4 percent respectively.

(ii) For its taxable years ending after 1976, and beginning before January 1, 1979, the percentage is 48 percent.

(iii) For any other taxable year, the highest rate of tax specified in section 11(b) for the particular year.

(3) *Limitation percentage for noncorporate taxpayers.* See section 907(a)(2)(B) to determine the limitation percentage for noncorporate taxpayers.

(4) *Losses*—(i) *Net operating loss.* Certain net operating losses are disregarded in computing FOGEI for purposes of the regulations under section 907. See section 907(c)(4).

(ii) *Certain foreign losses.* For purposes of determining whether income is FOGEI, a taxpayer's income will be treated as income from sources outside the United States even though all or a portion of that income may be resourced as income from sources within the United States under section 904(f) (1) and (4) for purposes of the separate application of section 904 with respect to FORI.

(5) *Priority.* Section 907(a) applies before section 908, relating to reduction of credit for participation in or cooperation with an international boycott.

(d) *Illustrations.* Paragraphs (a) through (c) of this section are illustrated by the following examples:

Example (1). M, a domestic corporation, uses the calendar year as its taxable year. For each taxable year involved, the overall limitation under section 904(a) is used. M has FOGEI derived from operations in foreign countries, with respect to which it has paid or accrued foreign taxes, and no other income (or loss). To determine the amount of M's foreign taxes allowable as a credit under section 901(a), the FOGEI taxes must be reduced for each of those taxable years in accordance with the additional facts assumed in the table below:

	1975	1976	1977
(1) FOGEI	$2,000	$2,000	$2,000
(2) Multiply by limitation percentage	52.8	50.4	48
(3) Limitation level	1,056	1,008	960
(4) FOGEI taxes	1,150	1,150	1,150
(5) Amount of reduction (line (4) minus line (3))	94	142	190

Example (2). Assume the same facts as in example (1), except that, for 1975, $1,000 of M's FOGEI is derived from sources within foreign country X and $1,000 of M's FOGEI is derived from sources within foreign country Y. M does not elect the overall limitation for 1975. The FOGEI taxes must be reduced as follows for 1975 in accordance with the additional facts assumed in the table below:

	Country X	Country Y
(1) FOGEI from sources within foreign country	$1,000	$1,000
(2) Multiply by limitation percentage	52.8	52.8
(3) Limitation level	528	528
(4) FOGEI taxes	450	700
(5) Amount of reduction (line (4) less line (3))		172

Example (3). Assume the same facts as in example (2), except that M elects the overall limitation. Based on the additional facts assumed in the table below, M's FOGEI, FOGEI taxes, and reduction of tax are as follows for 1975:

(1) Loss sustained under U.S. tax concepts from extraction operations in country Z	$(100)
(2) Income derived from extraction operations in country Z under Z's tax concepts	400
(3) FOGEI taxes paid to country Z with respect to extraction operations	200
(4) FOGEI (line (1) of example (2) for countries X and Y disregarding loss on line (1) in accordance with section 907(c)(4))	2,000
(5) Limitation level (line (4) x 52.8%)	1,056
(6) FOGEI taxes (line (4) of example (2) for countries X and Y + line (3))	1,350
(7) Amount of reduction (line (6) less line (5))	294

(e) *Effect on other provisions*—(1) *Deduction denied.* No deduction is allowed for the amount of the FOGEI taxes that exceed a taxpayer's limitation level for the taxable year. See section 275(a)(4). Thus, FOGEI taxes disallowed under section 907(a) are not added to the cost or inventory amount of oil or gas.

(2) *Reduction inapplicable.* The reduction under section 907(a) does not apply to a taxpayer that deducts foreign taxes and does not claim the benefits of section 901 for a taxable year.

(3) *Section 78 dividend.* The reduction under section 907(a) has no effect on the amount of foreign taxes that are treated as dividends under section 78.

§ 1.907(b)–1 Application of section 904 limitation with respect to FORI.

(a) *In general.* Section 907(b) applies to taxable years ending after December 31, 1974. Under sections 907(b) and 904(d), the provisions of section 904 apply as a separate limitation (whether per-country or overall) with respect to each of the following classes of income:

(1) FORI (as defined in §§ 1.907(c)–1 and 1.907(c)–2);

(2) Section 904(d) interest (as defined in § 1.904–4 (a)(2));

(3) Section 904(d) dividends (as defined in § 1.904–5(a)(2)); and

(4) Other income.

(b) *Overall limitation.* Only the overall limitation applies to FORI for taxable years ending after December 31, 1975.

(c) *FORI taxes.* FORI taxes paid or accrued are determined under the principles of § 1.907(c)–3.

§ 1.907(b)–2 FORI tax carryovers and carrybacks.

(a) *Modifications in use of § 1.904–2.* The rules set forth in this section modify the application of § 1.904-2 when that section is used in conjunction with this section.

(b) *Unused foreign tax—(1) General rule.* The "unused foreign tax" with respect to FORI ("unused FORI tax") is the excess of FORI taxes (after any reduction under section 907(a)) over the separate FORI limitation.

(2) *Per-country limitation year.* For any taxable year ending before January 1, 1970, to which the per-country limitation applies, the unused FORI tax and separate FORI limitation are determined separately for each foreign country or possession.

(c) *Tax deemed paid or accrued with respect to FORI.* The amount of any unused FORI tax that is carried from any taxable year ("year of origin") and deemed paid or accrued in any other taxable year ("excess limitation year") is the lesser of—

(1) The unused FORI tax (determined under paragraph (b) of this section) available to be carried to the excess limitation year or

(2) The excess FORI limitation (determined under paragraph (d) of this section) for the excess limitation year.

(d) *Excess FORI limitation—(1) When overall limitation applies.* The excess FORI limitation for a taxable year is computed for a particular year of origin. This amount is equal to the separate FORI limitation for the excess limitation year minus the sum of the following items:

(i) The FORI taxes paid or accrued in the excess limitation year.

(ii) The portion of the unused FOGEI tax from the particular year of origin, or any year of origin prior to the particular year of origin, that is absorbed under section 907(f) as taxes deemed paid or accrued in the excess limitation year. Unused FOGEI tax is defined in § 1.907(f)–1(b)(1).

(iii) The portion of the unused FORI tax for any prior year of origin that is absorbed as taxes deemed paid or accrued in the excess limitation year under section 904(c).

(2) *Per-country limitation year.* If the per-country limitation applies with respect to FORI for any excess limitation year ending before January 1, 1976, then the excess FORI limitation is determined separately for each foreign country or possession in accordance with the principles of paragraph (d)(1) of this section. See § 1.907(e)–1 (b) and (c) for rules relating to FORI tax carryovers and carrybacks where a taxpayer changes from the per-country to the overall limitation.

(e) *Cross-reference.* Section 904(f)(4) relates to the recharacterization of FORI as U.S.-source income because of a prior foreign-source loss with respect to FORI. This recharacterization applies to the separate section 904 limitation for FORI (created by section 907(b)). Section 904(f)(4) applies to foreign oil related losses sustained in taxable years ending after December 31, 1975. See section 1032(c) of the Tax Reform Act of 1976, as amended by section 701(u)(5) of the Revenue Act of 1978.

(f) *Separation of limitation—(1) General rule.* The unused foreign tax, the excess limitation, and the unused foreign tax deemed paid or accrued in an excess limitation year are determined separately under § 1.904–2 (b) and (c) with respect to income other that FORI. These items are determined without taking into account any amounts with respect to FORI.

(2) *Special rules.* In applying paragraph (f)(1) of this section, the following special rules apply:

(i) Unused FORI tax does not reduce an excess limitation with respect to income other than FORI.

(ii) Unused foreign tax with respect to income other than FORI does not reduce an excess FORI limitation.

(iii) If an unused FORI tax for any taxable year is not deemed paid or accrued in another taxable year to which the tax may be carried under § 1.904–2(b) and this section, the other taxable year is counted as one of the years to which the unused foreign tax may be carried.

(iv) Unused FORI tax may not be carried back to a taxable year ending before January 1, 1975. See § 1.907(e)–1 (c).

(g) *Illustrations.* The application of this section is illustrated by the following examples. For all relevant taxable years, the United States tax rate and the sum of the normal tax and surtax rates are 48 percent. Each corporation involved is a domestic corporation which is organized on January 1, 1975, using the calendar year as the taxable year. Each corporation elects the overall limitation.

Example (1). Assume that X has no FOGEI. Additional facts are assumed in the table below:

FORI items	1975	1976
(1) Income	$180	$200
(2) Foreign tax paid	100	80
(3) Separate limitation (48% × line (1))	86.4	96
(4) Unused FORI tax (line (2) minus line (3))	13.6	
(5) Excess limitation (line (3) minus line (2))		6
(6) Unused FORI tax for 1975 deemed paid or accrued in 1976		6

Example (2). The foreign taxes paid or accrued by Y during 1975 include FOGEI taxes and 1976 is an excess limitation year. Additional facts are assumed in the table below:

FORI items	1975	1976
(1) Income:		
(a) FOGEI	$2,360	$1,700
(b) Other FORI	140	300
(c) Total FORI	2,500	2,000
(2) FORI taxes:		
(a) FOGEI taxes before reduction under § 1.907(a)–1	1,800	1,020
(b) FOGEI taxes after reduction (line (1)(a) × 52.8% for 1975; × 50.4% for 1976)	1,246	857
(c) Other FORI taxes	12	84
(d) Total FORI taxes (lines (2)(b) and (2)(c))	1,258	941
(3) Separate limitation (line (1)(c) × 48%)	1,200	960
(4) Unused FORI tax (line (2)(d) minus line (3))	58	
(5) Excess limitation (line (3) minus line (2)(d))		19
(6) Unused FORI tax for 1975 deemed paid or accrued in 1976 (lesser of line (4) for 1975 or line (5) for 1976)		19
(7) Unused FORI tax for 1975 that may be carried to years after 1976. (Line (4) for 1975 minus line (6) for 1976.)		39

§ 1.907(c)–1 Definitions relating to FORI and FOGEI.

(a) *Scope.* This section explains the meaning to be given certain terms and items in section 907(c) (1), (2), and (4). See also, § 1.907–0(a)

(b) *Extraction income–(1) General rule.* A person has gross income from extraction in every case in which that person has an economic interest in the minerals in place. The term "minerals" is defined in paragraph (e)(1) of this section. For determination of taxable income from FOGEI, see paragraph (e)(2) of this section.

(2) *Amount.* The gross income from extraction is determined by reference to the fair market value of the minerals in the immediate vicinity of the well. Fair market value if determined under paragraph (b)(6) of this section.

(3) *Other circumstances.* Gross income from extraction or the sale or exchange of assets described in section 907(c)(1)(B) includes income from any arrangement, or a combination of arrangements or transactions, to the extent the income is in substance

attributable to the extraction of minerals or such a sale or exchange. For instance, a person may have gross income from such a sale or exchange if the person purchased minerals from a foreign government at a discount and the discount reflects an arm's-length amount in consideration for the government's nationalization of assets that person owned and used in the extraction of minerals.

(4) *Income directly related to extraction.* Gross income from extraction includes directly related income under paragraph (f) of this section.

(5) *Income not included.* Extraction income as otherwise determined under this paragraph (b), nevertheless, does not include income to the extent attributable to marketing, distributing, processing or transporting minerals or primary products. Income from the purchase and sale of minerals is not ordinarily extraction income under this subparagrah (5). If the foreign taxes paid or accrued in connection with income from a purchase and sale are not creditable by reason of section 901(f), that income is not extraction income. A taxpayer to whom section 901(f) applies is not a producer.

(6) *Fair market value.* For purposes of this paragraph (b), the fair market value of oil or gas in the immediate vicinity of the well depends on all of the facts and circumstances as they exist relative to a party in any particular case. The facts and circumstances that may be taken into account include, but are not limited to, the following:

(i) The facts and circumstances pertaining to an independent market value (if any) in the immediate vicinity of the well.

(ii) The facts and circumstances pertaining to the relationships between the taxpayer and the foreign government. If an independent fair market value in the immediate vicinity of the well cannot be determined but fair market value at the port, or a similar point, in the foreign country can be determined (port price), an analysis of the arrangements between the taxpayer and the foreign government that retains a share of production could be evidence of the appropriate, arm's-length difference between the port price and the field price.

(iii) The other facts and circumstances pertaining to any difference in the producing country between the field and port prices.

(7) *Economic interest.* For purposes of this paragraph (b), the term "economic interest" means an economic interest as defined in § 1.611–1(b)(1), whether or not a deduction for depletion is allowable under section 611.

(c) *Other FORI*—(1) *In general.* This paragraph (c) defines certain terms and items applicable to other FORI.

(2) *Transportation.* Gross income from transportation of minerals or primary products ("gross transportation income") is gross income arising from carrying minerals or primary products between two places (including time or voyage charter hires) by any means of transportation, such as a vessel, pipeline, truck, railroad, or aircraft. Except for directly related income under paragraph (c)(7) of this section, gross transportation income does not include gross income received by a lessor from a bareboat charter hire of a means of transportation, certain other rental income, or income from the performance of certain services.

(3) *Distribution or sale.* The terms "distribution or sale" means the sale or exchange of minerals or primary products to processors, users who purchase, store, or use in bulk quantities, other persons for further distribution retailers, or consumers. Gross income from distribution or sale includes interest income attributable to the distribution of minerals or primary products on credit.

(4) *Processing.* The term "processing" means the destructive distillation, or a process similar in effect to destructive distillation, of crude oil and the processing of natural gas into their primary products including processes used to remove pollutants from crude oil or natural gas.

(5) *Primary product from oil.* The term "primary product" (in the case of oil) means all products derived from the processing of crude oil, including volatile products, light oils (such as motor fuel and kerosene), distillates (such as naphtha), lubricating oils, greases and waxes, and residues (such as fuel oil).

(6) *Primary product from gas.* The term "primary product" (in the case of gas) means all gas and associated hydrocarbon components from gas wells or oil wells, whether recovered at the lease or upon further processing, including natural gas, condensates, liquified petroleum gases (such as ethane, propane, and butane), and liquid products (such as natural gasoline).

(7) *Directly related income.* Gross income from processing, transporting, distributing or selling also includes directly related income under paragraph (f) of this section.

(d) *Assets used in a trade or business*—(1) *In general.* The term "assets used in the trade or business" in section 907(c) (1)(B) and (2)(E) means property primarily used in one or more of the trades or businesses that are section 907(c) activities. For purposes of this paragraph (d), assets used in a trade or business are assets described in section 1231(b) (applied without regard to any holding period or the character of the asset as being subject to the allowance for depreciation under section 167). Stock may be considered such an asset only if it is not a capital asset.

(2) *Section 907(c) activities.* Section 907(c) activities are those described in section 907(c)(1)(A) (for FOGEI) or (c)(2)(A) through (D) (for FORI). If an asset is used primarily in one or more section 907(c) activities, then the entire gain (or loss) will be considered attributable to those activities. For example, if a person uses a service station primarily to distribute primary products from oil, then all of the gain (or loss) on the sale of the station is FORI (and also other FORI) even though the person uses the station to distribute products that are not primary products (such as tires or batteries). If an asset is not primarily used in one or more section 907(c) activities, then the entire gain or loss will not be FOGEI, other FORI, or FORI.

(3) *Stock.* Stock of any corporation (whether foreign or domestic) will not be treated as an asset used by a person in section 907(c) activities unless the stock, as held by that person, is not a capital asset under section 1221. If the stock is not a capital asset, the character of any gain (or loss) on the disposition of the stock is determined with reference to the holder's use of the stock in section 907(c) activities. Thus, the character of the assets or activities of the corporation is irrelevant. For example, if a refiner in Asia owns stock in a corporation that produces oil in order to assure a steady and reliable supply of crude oil and if the stock is not a capital asset, then the gain (or loss) from sources outside the United States on the sale of stock by the refiner is other FORI under section 970(c)(2) (B) and (E) and not FOGEI.

(4) *Losses on sale of stock.* If, under § 1.861–8(e)(7), a loss on the sale or exchange of stock which is a capital asset is considered a deduction which is definitely related and allocable to FOGEI or other FORI, then nothwithstanding § 1.861–8(e)(7) and paragraph (e)(2) of this section, this loss shall be allocated and apportioned to the same class of income that would have been produced if there were capital gain from the sale or exchange.

(5) *Character of gain or loss.* Except in the case of stock, gain or loss from the sale of exchange of assets used in the

trade or business may be other FORI or FOGEI to the extent taken into account in computing taxable income for the taxable year, whether or not the gain or loss is ordinary income or ordinary loss.

(6) *Allocation of amount realized.* The amount realized from the sale or exchange of several assets in one transaction is allocated among them in proportion to their respective fair market values. This allocation is made under the principles set forth in § 1.1245–1(a)(5) (relating to allocation between section 1245 property and nonsection 1245 property).

(7) *Interest.* Gross income from the sale or exchange of an asset used in a section 907(c) activity includes interest income from such a sale or exchange.

(e) *Terms and items common to other FORI and FOGEI—*

(1) *Minerals.* The term "minerals" means hydrocarbon minerals extracted from oil and gas wells, including crude oil or natural gas (as defined in section 613A(e)). The term includes incidental impurities from these wells, such as sulphur, nitrogen, or helium. The term does not include hydrocarbon minerals derived from shale oil or tar sands.

(2) *Taxable income.* Deductions to be taken into account in computing taxable income or net operating loss attributable to FOGEI, other FORI, or FORI are determined under the principles of § 1.861–8. For an exception, see paragraph (d)(4) of this section. The special deduction for Western Hemisphere trade corporations provided by section 922 (as in effect for taxable years beginning before January 1, 1980) is allowed as a deduction in computing taxable income.

(3) *Interest on working capital.* [Reserved]

(4) *Exchange gain or loss.* [Reserved]

(5) *Allocation.* [Reserved]

(6) *Facts and circumstances.* [Reserved]

(f) *Directly related income.* [Reserved]

(g) *Certain net operating losses*—(1) *In general.* Losses described in section 907(c)(4) are losses determined under section 172(c). Section 907(c)(4) does not affect the amount of FOGEI taxes paid or accrued and that are described in section 907(c)(5). Thus, taxes paid by a person to a foreign country may be FOGEI taxes even though that person has under U.S. law a net operating loss described in section 907(c)(4) from sources within that country.

(2) *Passive income.* For purposes of section 907(c)(4), the term "items from sources within such country" includes dividends described in section 907(c)(3)(A) and amounts described in section 907(c)(3)(C) to the extent attributable to FOGEI from sources within the particular foreign country.

(3) *Source rule.* For purposes of paragraph (g)(2) of this section—

(i) The source rules under §§ 1.902–1(h), 1.960–1(i), 1.863–6 do not apply.

(ii) Dividends from a foreign corporation described in section 907(c)(3)(A), or amounts described in section 907(c)(3)(C) with respect to a foreign corporation, retain their source from a particular foreign country as actually derived by the foreign corporation earning the FOGEI.

(iii) The amount of the item described in paragraph (g)(3)(ii) of this section that is FOGEI from sources within a particular country equals the dividend or amount that is FOGEI multiplied by a fraction. The numerator is the foreign corporation's FOGEI earnings and profits for the appropriate year from sources within the particular country and the denominator is the foreign corporation's total FOGEI earnings and profits for the year.

(iv) FOGEI earnings and profits are computed in accordance with § 1.907(c)–2(d)(1)(ii) with respect to a dividend described in section 907(c)(3)(A), or § 1.907(c)–2(d)(4)(ii) with respect to an amount described in section 907(c)(3)(C). FOGEI earnings and profits do not include amounts described in section 959(b).

(v) The principles of this subparagraph (3) apply to distributions received by a foreign corporation from another foreign corporation if the distributions may be FOGEI under § 1.907(c)–2(c)(2).

(h) *Coordination with other provisions*—(1) *Certain adjustments.* The character of income as FOGEI or FORI is determined before making any adjustment under section 482 or 907(d). For example, assume that X and Y are related parties, Y's only income is from the sale of oil that Y purchased from X, and FOGEI from X is diverted to Y through an arrangement described in paragraph (b)(3) of this section. Accordingly, Y has FOGEI. If under section 482 the Commissioner reallocates the FOGEI from Y to X, then Y's remaining income represents only a profit from distributing the oil, and thus is other FORI. If the foreign taxes paid by Y on this income are otherwise creditable under section 901, the foreign taxes that are not refunded to Y retain their characterization as FOGEI taxes.

(2) *Section 901(f).* Section 901(f) (relating to certain payments with respect to oil and gas not considered as taxes) applies before section 907. Taxes disallowed by section 901(f) are added to the cost or inventory amount of oil or gas.

§ 1.907(c)–2 Section 907(c)(3) items.

(a) *Scope.* This section provides rules relating to certain items listed in section 907(c)(3). The rules of this section are expressed in terms of FORI but apply for determining FOGEI by substituting "FOGEI" for "FORI" whenever appropriate. FOGEI does not include interest described in section 907(c)(3)(A) or dividends described in section 907(c)(3)(B).

(b) *Dividend*—(1) *Section 1248 dividend.* A section 1248 dividend is a dividend described in section 907(c)(3)(A). Except as otherwise provided in this paragraph (b)(1) or in § 1.907(c)–1(d), gain (or loss) from the disposition of stock in any corporation is not FOGEI, other FORI, or FORI.

(2) *Section 78 dividend.* A section 78 dividend is FORI to the extent it arises from a dividend described in section 907(c)(3)(A), or an amount described in section 907(c)(3)(C).

(c) *Taxes deemed paid*—(1) *Voting stock test.* Items described in section 907(c)(3) (A) or (C) are FORI only if a deemed-paid-tax test is met under the criteria of section 902 or 960. The purpose of this test is to require minimum direct or indirect ownership by a domestic corporation in the voting stock of a foreign corporation as a prerequisite for the item to qualify as FORI in the hands of the domestic corporation. The test is whether a domestic corporation would be deemed to pay any taxes of a foreign corporation when a dividend or an amount described in section 907(c)(3) (A) or (C), respectively, is included in the domestic corporation's gross income. In the case of interest described in section 907(c)(3)(A), the test is whether any taxes would be deemed paid if there were a hypothetical dividend.

(2) *Dividends and interest.* For purposes of section 907(c)(3)(A), a domestic corporation is deemed under section 902 to pay taxes in respect of dividends and interest received from a foreign corporation if the following condition is met: the domestic corporation would be deemed under section 902 to pay taxes in respect of dividends received from the foreign corporation whether or not the foreign corporation—

(i) Actually pays or is deemed to pay taxes or

(ii) In the case of interest, actually pays dividends.

This subparagraph (2) also applies to dividends received by a foreign corporation from a second or third-tier foreign corporation (as defined in § 1.902–1(a) (3)(i) and (4), respectively).

In the case of interest received by a foreign corporation from another foreign corporation, this paragraph (c)(2) applies if the taxes of both foreign corporations would be deemed paid under section 902 (a) or (b) for purposes of applying section 902(a) to the same taxpayer which is a domestic corporation. In the case of interest received by any corporation (whether foreign or domestic), all members of an affiliated group filing a consolidated return will be treated as the same taxpayer under section 907(c)(3)(A) if the foreign taxes of the payor and (if the recipient is a foreign corporation) the foreign taxes of the recipient would be deemed paid under section 902 by at least one member. The term "member" is defined in § 1.1502–1(b). Thus, for example, assume that P owns all of the stock of D_1 and D_2 and P, D_1, and D_2 are members of an affiliated group filing a consolidated return. Assume further that D_1 owns all of the stock of F_1 and D_2 owns all of the stock of F_2, where F_1 and F_2 are foreign corporations. Interest paid by F_1 to P, D_2, or F_2 may be other FORI.

(3) *Amounts included under section 951(a).* For purposes of section 907(c)(3)(C), a domestic corporation is deemed under section 960 to pay taxes in respect of a foreign corporation, whether or not the foreign corporation actually pays taxes on the amounts included in gross income under section 951(a).

(d) *Amount attributable to certain items*—(1) *Certain dividends*—(i) *General rule.* The portion of a dividend described in section 907(c)(3)(A) that is FORI equals:

Amount of dividend x a/b

where—

a=FORI accumulated profits in excess of FORI taxes paid or accrued, and

b=Total accumulated profits in excess of total foreign taxes paid or accrued.

This paragraph (d)(1)(i) applies even though the FORI accumulated profits arose in a taxable year of a foreign corporation ending before January 1, 1975.

(ii) *Cross-references.* See § 1.902–1(g) for the determination of a foreign corporation's earnings and profits and of those out of which a dividend is paid. See § 1.1248–2 or 1.1248–3 for the determination of the earnings and profits attributable to the sale or exchange of stock in certain foreign corporations.

(2) *Interest received from certain foreign corporations.* Interest described in section 907(c)(3)(A) is FORI to the extent the corresponding interest expense of the paying corporation is properly allocable and apportionable to the gross income of the paying corporation that would for FORI were that corporation a domestic corporation. This allocation and apportionment is made in a manner consistent with the rules of § 1.861.8(e)(2).

(3) *Dividends from domestic corporation.* A dividend from a corporation described in section 907(c)(3)(B) that is FORI is determined under the prinicples of paragraph (d)(1)(i) of this section with respect to its current earnings and profits under section 316 (a)(2) or its accumulated earnings and profits under section 316(a)(1), as the case may be.

(4) *Amounts with respect to which taxes are deemed paid under section 960(a)*—(i) *Portion attributable to FORI.* The portion of an amount described in section 907(c)(3)(C) that is FORI equals:

Amount described in section 907(c)(3)(C) × FORI earnings and profits/Total earnings and profits.

(ii) *Earnings and profits.* Total earnings and profits are those of the foreign corporation for a taxable year under section 964 and the regulations thereunder.

(5) *Section 78 dividend.* The portion of a section 78 dividend that is FORI equals the amount of taxes deemed paid included in the dividend that is FORI taxes under § 1.907(c)–3 (b) or (c).

(6) *Special rule.* (i) No item in the formula described in paragraph (d)(1)(i) of this section includes amounts excluded from the gross income of a United States shareholder under section 959(a)(1).

(ii) With respect to a foreign corporation, earnings and profits in the formula described in paragraph (d)(4)(i) of this section do not include amounts excluded under section 959(b) from its gross income.

(7) *Deficits.* A deficit in earnings and profits in a taxable year that is not attributable to FOGEI or other FORI is to be allocated ratably between, and reduce, FOGEI earnings and profits and other FORI earnings and profits. However, any deficit in earnings and profits for the taxable year attributable either to FOGEI or other FORI is to be allocated first to other FORI or FOGEI (as the case may be) earnings and profits before the deficit is allocated in that taxable year to earnings and profits that are not attributable to other FORI and FOGEI. FORI earnings and profits is the sum of the other FORI and FOGEI earnings and profits.

(8) *Illustrations.* The application of this paragraph (d) is illustrated by the following examples:

Example (1). X, a domestic corporation, owns all of the stock of Y, a foreign corporation organized in country S. Y owns all of the stock of Z, a foreign corporation also organized in country S. Each corporation uses the calendar year as its taxable year. In 1975, Z has $150 of FOGEI earnings and profits and $250 of earnings and profits other than FOGEI. Assume that Z paid no taxes to S and X must include $100 in its gross income under section 951(a) with respect to Z. Under paragraph (d)(4)(i) of this section $37.50 of the amount described in section 951(a) is FOGEI ($100×$150/$400). The remaining $62.50 of the section 951(a) amount represents other income.

Example (2). (a) Assume the same factsge a27jn0.064 as in example (1). Assume further that, in 1975, Z distributes its entire earnings and profits ($400) to Y as a dividend. Y has no earnings and profits during 1975 other than this dividend. Assume that the dividend is not foreign personal holding company income under section 954(c). Y pays no taxes to S. In 1975, Y distributes its entire earnings and profits to X.

(b) Under paragraphs (c)(2) and (d)(1)(i) of this section, Y has FOGEI of $150, *i.e.*, the amount of the dividend received by Y ($400) multiplied by the fraction described in paragraph (d)(1)(i). The numerator of the fraction is Z's FOGEI accumulated profits in excess of the FOGEI taxes paid ($150) and the denominator is Z's total accumulated profits in excess of total foreign taxes paid ($400). The rule of paragraph (d)(6)(ii) of this section does not apply since X does not include any amount in its gross income under section 951(a) with respect to Y. If Y paid taxes to S, this paragraph (d) would apply to characterize those taxes as FOGEI taxes or other taxes. See § 1.907(c)–3(a)(8) and example 2(c) under § 1.907(c)–3(e).

(c) The distribution from Y to X is a dividend to the extent of $300, *i.e.*, the amount of the distribution ($400) minus the amount excluded from X's gross income under section 959(a)(1) ($100). Under paragraph (d)(1)(i) and (6)(i) of this section, $112.50 of the dividend is FOGEI, *i.e.*, the amount of the dividend ($300) multiplied by a fraction. The numerator of the fraction is $112.50, *i.e.*, the FOGEI accumulated profits of Y in excess of FOGEI taxes paid ($150) minus the FOGEI accumulated profits of Y in excess of FOGEI taxes paid excluded from X's gross income under section 959(a)(1) ($37.50). The denominator of the fraction is $300, *i.e.*, the total accumulated profits of Y in excess of taxes paid ($400) minus the amount excluded from X's gross income under section 959(a)(1) ($100).

Example (3). Assume the same facts as in example (1) with the following modifications: In 1975, Z's only earnings and profits are FORI earnings and profits which are included in X's gross income under section 951(a). Z distributes its entire earnings and profits to Y. In 1975, Y has total earnings and profits of $100 without regard to the dividend from Z, $60 of which are FORI earnings and profits. Y also has $40 which is included in X's gross income under section 951(a). Under paragraph (d)(6)(ii) of this section, the dividend from Z is disregarded for purposes of applying paragraph (d)(4)(i) of this section to the $40 included in X's gross income under

section 951(a) with respect to Y. Accordingly, $24 of the amount described in section 951(a) is FORI ($40×$60/$100).

(e) *Dividends, interest, and other amounts from sources within a possession.* FORI includes the items listed in section 907(c)(3) (A) and (C) to the extent attributable under the principles of § 1.907(c)–1(g)(3) to FORI of a corporation that is created or organized in or under the laws of a possession of the United States.

(f) *Income from partnerships, trusts, etc.* Other FORI and FOGEI includes a person's distributive share (determined under the principles of section 704) of the income of any partnership and amounts included in income under subchapter J of chapter 1 of the Code (relating to the taxation of trusts, estates, and beneficiaries) to the extent the income and amounts are attributable to other FORI and FOGEI.

§ 1.907(c)–3 FOGEI and FORI taxes.

(a) *Tax allocation*—(1) *Scope.* Paragraph (a) (2) through (6) of this section provides rules for the characterization, allocation, and apportionment of the income taxes (other than withholding taxes) paid or accrued to a foreign country among FOGEI, other FORI, and other income relevant for purposes of sections 907 and 904. Some of the rules in this section are expressed in terms of FOGEI taxes but they apply to FORI taxes by substituting "FORI taxes" for "FOGEI taxes" whenever appropriate. For the treatment of withholding taxes, see paragraph (a)(8) of this section. FOGEI taxes are determined without any reduction under section 907(a) or any exclusion under section 907(c)(4).

(2) *Three classes of income.* There are three classes of income: FOGEI, other FORI, and other income.

(3) *More than one class in a foreign tax base.* If more than one class of income is taxed under one tax base under the law of a foreign country, determine the amount of pre-credit foreign tax for the base. This amount is the foreign taxes paid or accrued to that country for the base as increased by the tax credits (if any) which reduced those taxes and were allowed in the country for that tax. More than one class of income is taxed under the same base if, under a foreign country's law, deductions from one class of income may reduce the income of any other class and the classes are subject to foreign tax at the same rates.

(4) *Allocation of tax within a base.* If more than one class of income is taxed under the same base under a foreign country's law, then apportion the pre-credit foreign tax for the base to each class of income in proportion to the income of each class and then allocate (under paragraph (a)(6) of this section) tax credits to the apportioned pre-credit tax. Income of a class is the excess of modified gross income for a class over the deductions allowed under foreign law for, and which are attributable to, that class.

(5) *Modified gross income.* Modified gross income is not necessarily the same as gross income as defined for purposes of chapter 1 of the Internal Revenue Code of 1954. Modified gross income is determined with reference to the foreign tax base for gross income (or its equivalent). However, the characterization of the base as a particular class of income is governed by general principles of U.S. tax law. Thus, for example—

(i) Gross income from extraction is the fair market value of oil or gas in the immediate vicinity of the well (as determined under § 1.907(c)–1(b)(2) (without any deductions).

(ii) Whether cost of goods sold (or any other deduction) is a deduction from modified gross income and the amount of such a deduction is determined under foreign law.

(iii) Modified gross income includes items that are part of the foreign tax base even though they are not gross income under U.S. law so long as the foreign taxes paid on the base constitute creditable taxes under section 901 (including taxes described in section 903). For example, if a foreign country imposes a tax (creditable under section 901) on a tax base that includes in small part a percentage of the value of a company's oil reserves in place, modified gross income from extraction includes such a percentage of value solely for purposes of making the tax allocation in paragraph (a)(4) of this section.

(iv) Modified gross income from extraction is increased for purposes of this subparagraph (5) by the entire excess of the posted price over fair market value if the foreign country uses a posted price system or other pricing arrangement described in section 907(d) in imposing its income tax.

(v) Modified gross income from other FORI is that income attributable to the activities in section 907(c)(2) (B) through (D).

(vi) Modified gross income for any class may not include gross income that is not subject to taxation by the foreign country.

(6) *Allocation of tax credits.* The foreign taxes paid or accrued on a particular class of income equals the precredit tax on the class reduced (but not below zero) by the credits allowed under foreign law against the foreign tax on the particular class. Any tax credit attributable to a class that is not allocated to that class is allocated to the other class in the base or, if there are three classes in the base, is apportioned ratably among the taxes paid or accrued on the other two classes (as reduced in accordance with the preceding sentence).

(7) *Coordination with regulations under section 901.* [Reserved]

(8) *Withholding taxes.* Paragraphs (a) (2) through (6) of this section do not apply to withholding taxes imposed by a foreign country. FOGEI taxes may include withholding taxes imposed with respect to a distribution from a corporation. The portion of the total withholding taxes on a distribution that constitutes FOGEI taxes is determined by the portion of the distribution that is FOGEI. In addition, FOGEI taxes may include taxes imposed on a distribution described in section 959(a)(1) or on amounts described in section 959(b). The portion of the total withholding taxes imposed on a distribution described in section 959(a)(1) or on amounts described in 959(b) is determined by reference to the portion of the amount included in gross income under section 951(a) that was FOGEI.

(b) *Dividends*—(1) *In general.* FOGEI taxes deemed paid with respect to a dividend equal the total taxes deemed paid with respect to the dividend multiplied by the fraction:

FOGEI taxes paid or accrued by the payor/Total foreign taxes paid or accrued by the payor

This paragraph (b) applies to a dividend described in section 907(c)(3)(A) (including a section 1248 dividend) with reference to the particular taxable year or years of those accumulated profits out of which a dividend is paid. See section 960(a)(3) and § 1.960–2 relating to distributions that are treated as dividends for purposes of section 902.

(2) *Section 78 dividend.* There are no FOGEI taxes with respect to section 78 dividend.

(c) *Includible amounts under section 951(a).* FOGEI taxes deemed paid with respect to an amount includible in gross income under section 951(a) equal the total taxes deemed paid with respect to that amount multiplied by the fraction:

FOGEI taxes paid or accrued by the foreign corporation/Total foreign taxes paid or accrued by the foreign corporation

Taxes in this fraction include only those foreign taxes that may be deemed paid under section 960(a) by reason of such inclusion. See §§ 1.960–1(c)(3) and 1.960–2(c)(2).

(d) *Partnerships.* A partner's distributive share of the partnership's FOGEI taxes is determined under the principles of section 704.

(e) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). X, a domestic corporation, owns all of the stock of Y, a foreign corporation organized in country S. Y owns all of the stock of Z, a foreign corporation organized in country T. Each corporation uses the calendar year as its taxable year. In 1975, X includes in its gross income an amount described in section 951(a) with respect to Z. Assume that the taxes deemed paid under section 960(a)(1) by X by reason of such an inclusion is $70. Assume further that Z paid total taxes of $120, $80 of which is FOGEI tax. Under paragraph (c) of this section, the FOGEI tax deemed paid is $46.67 (*i.e.*, $70 × $80/$120). This $46.67 is also FOGEI under § 1.907(c)–2(d)(5) because it must be included in X's gross income under section 78.

Example (2). (a) Assume the same facts as in example (1). Assume further that, in 1975, Z distributes its entire earnings and profits to Y. Y has no earnings and profits during 1075 other than this dividend. Y paid a tax of $50 to S. Assume that Y is deemed under section 902(b)(1) to pay $50 of the tax paid by Z which was not deemed paid by X under section 960(a)(1) in 1975. In 1975, Y distributes its entire earnings and profits to X. Assume that X is deemed under section 902(a) to pay $100 of the taxes actually paid, and deemed paid, by Y.

(b) Paragraph (b)(1) of this section applies to characterize the $50 tax of Z that Y is deemed to pay under section 902(b)(1). Y is deemed to pay $33.33 of FOGEI tax, *i.e.*, the amount of the tax deemed paid by Y ($50) multiplied by a fraction. The numerator of the fraction is the amount of Z's FOGEI tax ($80) and the denominator is the total taxes paid by Z ($120).

(c) Under paragraph (a)(8) of this section, a portion of the $50 tax actually paid by Y on the earnings and profits received from Z is FOGEI tax. The amount of tax actually paid by Y that is FOGEI tax depends on the amount of the distribution from Z that is FOGEI (see § 1.907(c)–2(d)(1)(i) and example (2)(b) under § 1907(c)–2(d)(8)). This result does not depend upon whether a portion of the distribution from Z is described in section 959(b) and it follows even though a portion of Y's earnings and profits will be excluded from X's gross income under section 959(a)(1) when distributed by Y. Assume that $12.50 of the $50 tax actually paid by Y is FOGEI tax.

(d) Under paragraph (b)(1) of this section, X is deemed to pay $45.83 of FOGEI tax by reason of the distribution from Y. This amount is determined by multiplying the total taxes deemed paid by X by reason of such distribution ($100) by a fraction. The numerator of the fraction is the FOGEI tax paid, and deemed paid, by Y ($45.83, *i.e.*, $33.33 under paragraph (b) of this example plus $12.50 under paragraph (c) of this example). The denominator of the fraction is the total taxes paid, and deemed paid, by Y ($100). This $45.83 is FOGEI under § 1.907(c)–2(d)(5) because it is included in X's gross income as a section 78 dividend.

Example (3). (a) X, a domestic corporation, has a concession with foreign country Y that gives it the exclusive right to extract and export the crude oil and natural gas owned by Y. The concession agreement and location of the oil and gas wells mandate that X construct a system of pipelines to transport the minerals that are extracted to a port where they are loaded onto tankers for export. X owns the transportation facilities. Y has an income tax system under which income from mineral operations is subject to a 50 percent tax rate. The taxation by Y of the mineral operations is a separate tax base under paragraph (a)(3) of this section. Under this system, Y imposes the tax at the port prior to export and it establishes a posted price of $12 per barrel. Y also collects royalties of $1.44 per barrel (*i.e.*, 12 percent of this posted price) which is deductible in computing the petroleum tax. Y also allows X deductible lifting costs of $.20 per barrel and deductible transporting costs of $.80 per barrel. Y does not allow any credits against the mineral tax. Assume that X does not have any income in Y other than the mineral income. (In 1975, X extracts, transports, and exports 10,000,000 barrels of crude oil, but for convenience, all computations are in terms of one barrel). X pays foreign taxes of $4.78 per barrel, computed as follows:

Sales		$12.00
Royalties	$1.44	
Lifting	.20	
Transporting	.80	
	2.44	(2.44)
Income base		9.56
Tax rate (percent)		50
Tax		4.78

Assume that these taxes are creditable taxes under section 901, that the fair market value of the oil at the port is $10 per barrel, and that under § 1.907(c)–1(b)(6) fair market value in the immediate vicinity of the oil wells is $9 per barrel. Thus, at the port the excess of posted price ($12) over fair market value ($10) is $2.

(b) The $4.78 foreign tax paid to Y is allocated to FOGEI and other FORI in accordance with the rules in paragraph (a) (2) through (5) of this section.

(c) Under paragraph (a)(3) of this section, FOGEI and other FORI are subject to foreign taxation under one tax base. This foreign tax is allocated between FOGEI tax and other FORI tax in accordance with paragraph (a) (4) and (5) of this section.

(d) The modified gross income for FOGEI is $11, *i.e.*, fair market value in the immediate vicinity of the well ($9) plus the excess at the port of posted price over fair market value ($2). The modified gross income for other FORI is $1, *i.e.*, value added to the oil beyond the wellhead which is part of Y's tax base ($10–$9).

(e) Under paragraph (a)(4) of this section, royalty deductions allowed by Y are allocated as follows between FOGEI and other FORI. The royalty of $1.44 (*i.e.*, 12 percent of the posted price of $12 determined by Y at the port prior to export) are allocated between FOGEI and other FORI on the basis of the $11 value (deemed under foreign law) in the immediate vicinity of the well and the $1 in value added beyond the wellhead. Thus, royalties allocated to FOGEI are $1.32 (*i.e.*, $1.44 multiplied by $11/$12) and the royalties allocated to other FORI are $.12 (*i.e.*, $1.44 multiplied by $1/$12).

(f) Under paragraph (a)(4) of this section, the income or each class is determined as follows:

	FOGEI	Other FORI
(1) Modified gross income	$11.00	$1.00
(2) Deductions:		
(a) Royalties	1.32	.12
(b) Lifting	.20	0
(c) Transporting	0	.80
(d) Total	1.52	.92
(3) Income (line 1 minus line 2 (d))	9.48	.08

(g) under paragraph (a)(4) of this section, the total tax paid to y is allocated to FOGEI and other FORI in proportion to the income in each class. The calculation is as follows:

FOGEI tax = $4.78 × $9.48/$9.56 = $4.74

Other FORI tax = $4.78 × $0.08/$9.56 = $0.04

Thus, for the 10,000,000 barrels, the FOGEI tax is $47,400,000 and the other FORI tax is $400,000.

(h) The allocation under paragraph (a)(4) of this section, rather than the direct application of stated foreign tax rates to foreign-law taxable income in each class of income (which would produce the same results in the facts of this example), is necessary when a foreign country taxes more than one class of income under under a progressive rate structure. See example (4) in this paragraph (e).

Example (4). Assume the same facts as in example (3) except that Y's tax is imposed at 40 percent for the first $20,000,000 of income and at 60 percent for all other income. The foreign taxes are allocated under paragraph (a)(4) of this section between FOGEI and other FORI in the same manner as in paragraphs (f) and (g) of example (3), as follows:

(1) Taxable income		$95,000,000
(2) Tax:		
(a) 40% of $20,000,000	$8,000,000	
(b) 60% of $75,000,000	45,360,000	
(c) Total tax		53,360,000
(3) FOGEI tax (line 2 (c) × $9.48/$9.56)		52,913,473
(4) Other FORI tax (line 2 (c) × $.08/$9.56)		446,527

Example (5). Assume the same facts as in example (3). Assume further that X refines the crude oil into primary products prior to export and Y imposes its tax on the basis of crude oil equivalences of $12 per barrel, rather than the value of the primary products, to establish port prices.

Assume that this arrangment is a pricing arrangement described in section 907(d). Thus, Y does not tax the refinery income. The results are the some as in example (3) even if $12 per barrel is equal to, more than, or less than, the value of the primary products at the port. See parapraph (a)(5)(vi) of this section.

§ 1.907(d)–1 Disregard of posted prices for purposes of chapter 1 of the Code.

(a) *In general*—(1) *Scope.* Section 907(d) applies if a person has FOGEI from the—

(i) Acquisition (other than from a foreign government) or

(ii) Dispostion of minerals at a posted price that differs from the fair market value at the time of the transaction. Also, if a seller (other than a foreign government) derives FOGEI upon a disposition described in the preceding sentence, section 907(d) applies to the acquisition by the purchaser whether or not the purchaser has FOGEI. Thus, section 907(d) may apply in determining a person's FORI

(2) *Initial computation requirement.* If section 907(d) applies to any person, income on the transaction as initially reflected on the person's return shall be computed as if the transaction were effected at fair market value. This requirement applies the first time a person has taxable income derived from the transaction or an item (such as a dividend described in section 907(c)(3)(A)) determined with reference to that income.

(3) *Burden of proof.* The taxpayer must be able to demonstrate the transaction as it actually occurred and the basis for reporting the transaction under the principles of paragraph (a)(2) of this section.

(4) *Related parties.* Section 907(d) (as a rule of characterization) applies whether or not the parties to the transaction are related. Thus, the excess of the posted price over the fair market value may never be taken into account in determining a persons's FOGEI under section 907(a) but may be taken into account in determining other FORI.

(b) *Adjustments.* If a taxpayer does not comply with the initial requirement of paragraph (a)(2) of this section, adjustments under section 907(d) may be made only by the Commissioner in the same manner that section 482 is administered. Correlative and similar adjustments consistent with the substantive and procedural principles of section 482 and § 1.482–1(d) apply. However, section 907(d) is not a limitation on section 482. If a taxpayer disposing of minerals at a posted price does comply with the initial computation requirement of this section, adjustments and correlative and similar adjustments consistent with the substantive and procedural aspects of section 482 and § 1.482–1(d) shall apply, whether made on the return by the taxpayer or on a later audit. This paragraph (b) does not apply to an actual sale or exchange of minerals made between persons with respect to whom adjustments under section 482 would never apply (but see paragraph (a)(4) of this section).

(c) *Definitions.* For purposes of this section—

(1) *Foreign government.* The term "foreign government" includes an agency of, or an entity controlled by, a foreign government.

(2) *Minerals.* The term "minerals" has the same meaning as in § 1.907(c)–1(f)(1).

(3) *Posted price.* The term "posted price" means the price set by, or at the direction of, a foreign government (i) to calculate income for purposes of its tax or (ii) at which minerals must be sold.

(4) *Other pricing arrangement.* The term "other pricing arrangement" in section 907(d) means a pricing arrangement having the effect of a posted price.

(5) *Fair market value.* The term "fair market value", whether or not at the port prior to export, is determined in the same way that the wellhead price is determined under § 1.907(c)–1(b)(6).

§ 1.907(e)–1 Transitional rules for section 904 carrybacks and carryovers.

(a) *Carryovers from taxable years ending before January 1, 1975*—(1) *In general.* If FOGEI taxes are included in foreign taxes in a year of origin ending before January 1, 1975, section 907 (a), (c), and (d) and the regulations thereunder apply to the year in which the FOGEI taxes were paid or accrued for purposes of determining the amount of the unused FORI taxes that may be deemed paid under section 904 in an excess limitation year ending after December 31, 1974. See section 907(e)(1)(A). A limitation percentage of 52.8 percent is used for all years of origin ending before January 1, 1975, regardless of the year to which unused FORI taxes are carried and used.

(2) *Sections 901(e) and 907(a).* For years of origin ending before January 1, 1975, the reduction under section 901(e) "is made before the reduction under section 907(a). Section 901(e) relates to foreign mineral income.

(3) *General rule for division of unused foreign tax.* The unused foreign tax that is divided under section 907(e)(1)(B) is the unused foreign tax that has not been absorbed in any taxable year ending before January 1, 1975. This unused tax is determined after any reduction of tax under section 901(e) or 907(a) and paragraph (a)(1) of this section. The unused foreign tax is divided as of the beginning of the first taxable year ending after December, 31, 1974.

(4) *Computation.* (i) Unused FORI tax equals:

Unused foreign tax × FORI/Total foreign income

Other unused foreign tax equals total unused foreign tax minus unused FORI tax. This computation is made separately for each particular year of origin.

(ii) If the per-country limitation under section 904(a)(1) (as in effect prior to the Tax Reform Act of 1976) applies, the division of the unused foreign tax is made separately for each foreign country or possession.

(5) *Illustrations.* The application of this paragraph (a) is illustrated by the following examples:

Example (1). (a) Domestic corporation X, which is organized on January 1, 1973, uses the calendar year as the taxable year. X elects the overall limitation. For 1973, X does not claim a deduction for percentage depletion. The rate of United States corporate tax and the sum of the normal tax and surtax rates are each assumed to be 48 percent. X's only income and tax items for 1973 are listed in the table below:

(1) FORI (all of which is FOGEI)	$1,000
(2) Income other than FORI (foreign source)	500
(3) Total income	1,500
(4) FOGEI taxes	600
(5) Other foreign taxes paid or accrued	250
(6) Total foreign taxes paid or accrued	850
(7) Overall limitation (line (3) x 48%)	720
(8) Unused foreign tax for 1973 (line (6) minus line (7))	130

(b) Assume that 1974 is not an excess limitation year. In determining X's unused foreign tax for 1973 that may be carried over to any taxable year ending after December 31, 1974, the FOGEI taxes are reduced under section 907 (a) to $528. X's unused foreign tax for 1973 is reduced to $58, as follows:

(1) FOGEI for 1973	$1,000
(2) Limitation percentage	52.8
(3) Limitation level (line (1) x line (2))	528
(4) FOGEI taxes for 1973 after reduction for purposes of 1975 (line (4) of paragraph (a) less the amount by which it exceeds line (3))	528
(5) Unused foreign tax for 1973 for purposes of 1975 (line (5) of paragraph (a) ($250) plus line (4) (528) minus line (7) of paragraph (a) (720))	58

(c) The unused foreign tax for 1973 is divided, effective as of January 1, 1975, as follows:

(1) Unused foreign tax	$58
(2) Multiply by fraction for 1973 (FORI/Total foreign income)	1,000/1,500
(3) Unused FORI tax	39
(4) Other unused foreign tax (line (1) minus line (3))	19

(d) The unused FORI tax of $39 (line (3) of paragraph (c)) may be carried to 1975, 1976, 1977, or 1978.

Example (2). Assume the same facts as in example (1) except that, for 1974, X has an excess limitation of $20. In determining the unused foreign tax for 1973 that may be carried to years ending after 1974, the $20 of unused foreign tax for 1973 that is deemed paid in 1974 is subtracted from $58, the unused foreign tax for 1973 adjusted for purposes of 1975. Thus, the remaining unused FORI tax is $25, *i.e.*, $38 x $1,000/$1,500, and the other unused foreign tax is $13, *i.e.*, $38−$25.

Example (3). Assume the same facts as in example (1) except that X has an excess limitation of $100 for 1974. For 1974, X is deemed to have paid or accrued $100 of the unused foreign tax for 1973. See § 1.904–2(c)(2)(f). However, under section 907(e)(1)(A), X is considered to have unused foreign tax for 1973 of only $58, all of which was absorbed in 1974. Thus, X has no unused foreign tax to be divided as of January 1, 1975. The reduction of unused foreign tax for 1973 for purposes of 1975 does not affect the amount of unused foreign tax absorbed as taxes deemed paid or accrued for 1974.

Example (4). (a) Assume the same facts as in example (1) except that X is allowed a deduction for percentage depletion in 1973. Because X has income from the extraction of minerals from oil wells, it has foreign mineral income and its foreign taxes for 1973 must be reduced under section 901(e). Assume that the reduction, made on a country-by-country basis, aggregates $92 of FOGEI taxes and that 1974 is not an excess limitation year.

(b) In determining X's unused foreign tax for 1973 that may be carried to years ending after 1974, no reduction is made under paragraph (a)(1) of this section because section 901(e) applies before section 907(a) and the FOGEI taxes are reduced under section 901(e) to $508 (line (4) of example (1)(a) ($600) minus $92), an amount that is less than the limitation level ($528). The unused foreign tax for 1973 that may be carried to 1975 is $38 (line (5) of example (1)(a) ($250) plus $506 minus line (7) of example (1)(a) ($720)).

(c) The unused foreign tax of $38 is divided into unused FORI tax of $25, *i.e.*, $38×1,000/1,500 and other unused foreign tax of $13, *i.e.*, $38–$25.

(b) *Transitional rules for carryovers from per-country limitation years ending before January 1, 1976*—(1) *In general.* Section 907(e)(2) does not modify the second sentence of section 904(e)(2) (as in effect prior to the Tax Reform Act of 1976). The excess limitation year to which an unused foreign tax may be carried under section 907(e)(2) must be available under § 1.904–2(b)(1).

(2) *Pro rata reduction of carryovers.* The application of section 907(e)(2) may result in a reduction of the FORI tax carryover. This reduction occurs if the amount of the carryover to an excess limitation year under the overall limitation is lower than the amount the aggregate carryovers to that year would have been had the per-country limitation applied to that year. If this reduction occurs, the amount carried from a particular country to the excess limitation year is determined under the following formula:

Amount of carryover under per-country limitation (for a country) × Amount of carryover under overall limitation/Aggregate of carryovers under per-country limitation

For purposes of this paragraph (b)(2), the term "carryover" refers to the amount of the unused FORI taxes that may be absorbed in an excess limitation year.

(3) *Illustrations.* The application of this paragraph (b) is illustrated by the following examples. The United States corporate tax rate is assumed to be 48 percent for all relevant years.

Example (1). Domestic corporation M, which is organized on January 1, 1974, uses the calendar year as the taxable year. M does not elect the overall limitation for 1974 or 1975 and 1975 is not an excess limitation year. All of M's income is FORI, none of which is FOGEI. Additional facts are assumed in the following table:

	Per-country limitation		Overall limitation
	Country X	Country Y	
(1) 1974 items:			
(a) FORI	$100	$100	
(b) FORI taxes	60	60	
(c) Section 904 limitation (line (a) × 48%)	48	48	
(d) Unused foreign tax (line (b) minus line (c))	12	12	
(2) 1976 items:			
(a) FORI	200	100	300
(b) FORI taxes	80	50	130
(c) Section 904 limitation (line (a) × 48%)	96	48	144
(d) Unused foreign tax (line (b) minus line (c))		2	
(e) Excess limitation (line (c) minus line (b))	16		14
(3) Unused foreign tax for 1974 that would be deemed paid or accrued in 1976:			
(a) Under overall limitation (lesser of aggregate amount of line (1)(d) or (2)(e))			14
(b) Under per-country limitation (lesser of line (1)(d) or (2)(e))	12		
(4) Unused foreign tax for 1974 deemed paid or accrued for 1976 under this paragraph (b) (lesser of line (3)(a) or the aggregate amount of line (3)(b))			12

Example (2). Assume the same facts as in example (1), except that M elects the overall limitation for 1975. M may not carry over its unused foreign tax for 1974 as taxes deemed paid or accrued in 1976.

Example (3). Assume the same facts as in example (1), except as otherwise provided in the table below. M also does business in country Z. The results are in the table below:

	Per-country limitation			Overall limitation
	Country X	Country Y	Country Z	
(1) 1974 items:				
(a) FORI	$1,000	$1,000	$1,000	
(b) FORI taxes	600	500	500	
(c) Section 904 limitation (line (a) × 48%)	480	480	480	
(d) Unused FORI tax (line (b) minus line (c))	120	150	120	
(2) 1976 items:				
(a) FORI	1,000	1,000	1,000	3,000
(b) FORI taxes	800	330	580	1,240
(c) Section 904 limitation (line (a) × 48%)	480	480	480	1,440
(d) Excess FORI limitation	150	150		200
(3) Unused FORI tax for 1974 that would be deemed paid or accrued in 1976:				
(a) Under overall limitation				200
(b) Under per-country limitation	120	150		
(4) Unused FORI tax for 1974 deemed paid or accrued for 1976 (lesser of line 3(a) or aggregate amount of line 3(b))				200
(5) Amount of unused FORI tax for 1974 from a country deemed paid or accrued for 1976 under paragraph (b)(2) of this section	120×200/270=89	150×200/270=111	0×200/270=0	
(6) Unused FORI tax for 1974 that may be carried over to other excess limitation years (line 1(d) minus line (5))	31	39	120	

(c) *Transitional rules for carryback from taxable years ending after December 31, 1974*—(1) *In general.* Unused FORI tax from a year of origin ending after December 31, 1974, may not be carried back to a taxable year ending before January 1, 1975. If the per-country limitation was used for an excess limitation year and the overall limitation for a year of origin, a carryback is prohibited except in the case of a calendar year taxpayer which used the per-country limitation in 1975. See section 904(e)(3).

(2) *Applicable principles.* If a carryback is permitted to calendar year 1975 and the per-country limitation applies to that year, the application of section 904(e)(3) may result in a reduction of the unused FORI tax (computed as if the per-country limitation applied) that may be carried back to that year. This reduction occurs if the amount of the unused FORI tax for a year of origin under the overall limitation is lower than the aggregate amount of unused FORI tax that would have arisen had the per-country

limitation applied to that year. If this reduction occurs, the unused FORI tax that may be carried back from a particular country is determined under the following formula:

Amount of unused FORI tax under per-country limitation (for a country) × Amount of unused FORI tax under overall limitation/Aggregate amount of unused FORI tax under per-country limitation

§ 1.907(f)–(1) Carryback and carryover of credits disallowed by section 907(a).

(a) *In general.* If a taxpayer chooses the benefits of section 901, any unused FOGEI tax paid or accrued in a taxable year ending after October 4, 1976, may be carried to the taxable years specified in section 907(f) under the carryback and carryover principles of this section and § 1.904–2(b).

(b) *Unused foreign extraction tax*—(1) *In general.* The "unused FOGEI tax" for purposes of this section is the excess of the FOGEI taxes for a taxable year (year of origin) over that year's limitation level (as defined in § 1.907(a)–1(c)).

(2) *Limit.* The unused FOGEI tax for any year of origin may not exceed 2 percent of that year's FOGEI. This limitation does not apply in determining the amount of unused FOGEI tax carried over or carried back under section 907(f) to a taxable year ending in 1975, 1976, or 1977. However, the amount of unused FOGEI tax that can be carried to years other than 1975, 1976, or 1977, is limited to 2 percent of FOGEI for the year of origin less the unused FOGEI tax absorbed in 1975, 1976, and 1977.

(3) *Year of origin.* The term "year of origin" in the regulations under section 907 corresponds to the term "unused credit year" under section 907(f).

(c) *Tax deemed paid or accrued.* The unused FOGEI tax from a year of origin that may be deemed paid or accrued under section 907(f) in any preceding or succeeding taxable year ("excess limitation year") may not exceed the lesser of—

(1) The excess extraction limitation for the excess limitation year or

(2) The excess oil related limitation for the excess limitation year.

(d) *Excess extraction limitation.* The "excess extraction limitation" for an excess limitation year is the amount by which that year's limitation level exceeds the sum of—

(1) The FOGEI taxes paid or accrued and

(2) The FOGEI taxes deemed paid or accrued in that year by reason of a section 907(f) carryback or carryover from preceding years of origin.

(e) *Excess oil related limitation.* The "excess oil related limitation" for an excess limitation year is the amount by which that year's separate FORI limitation under § 1.907(b)-1(a)(1) exceeds the sum of—

(1) The FORI taxes paid or accrued,

(2) The FORI taxes deemed paid or accrued in that year by reason of a section 904(c) carryback or carryover from preceding years of origin, and

(3) The FOGEI taxes described in paragraph (d)(2) of this section.

(f) *Limitation percentage in certain excess limitation years.* For purposes of determining the excess extraction limitation for an excess limitation year ending in 1975 or 1976, the limitation percentage for those years is 48 percent. See section 907(f)(3)(C).

(g) *Section 907(f) priority.* If a taxable year is a year of origin under both section 907(f) as to FOGEI taxes and section 904(c) as to FORI taxes, section 907(f) applies first. See section 907(f)(3)(A). FOGEI tax for a year of origin that remains unused after applying section 907(f) cannot be absorbed by an excess FORI limitation. To determine the excess FORI limitation when an unused FOGEI tax is absorbed under section 907(f), see section 907(f)(3)(B) and § 1.907(b)–2(d).

(h) *Per-country limitation.* Unused FOGEI tax for a taxable year for which the overall limitation applies may be deemed paid or accrued under section 907(f) in calendar year 1975 if the per-country limitation applies to that year and if unused FORI tax could be deemed paid or accrued in that year under § 1.907(e)-1(c). If this carryback is permitted, the unused FOGEI tax is subject to § 1.907(e)-1(c)(2) (relating to reduction of unused tax) determined by applying section 907(a) in the year of origin on an overall basis (with regard to section 907(c)(4)) and on a per-country basis.

(i) *Cross-reference.* In computing the carryback and carryover of disallowed credits under section 907(f), the principles of § 1.904–2 (d), (e), and (f) apply.

(j) *Illustration.* The following example illustrates the application of the regulations under section 907(f).

Example. (a) *Facts.* X is a domestic corporation organized on January 1, 1975, and uses the calendar year as its taxable year. X chooses to claim a credit under section 901 for each of the taxable years set forth below. For 1975, X elects the overall limitation. X has FOGEI and FORI in each of these taxable years. For purposes of simplicity, the United States corporate tax rate and the limitation percentage for years other than 1975 and 1976 are each assumed to be 48 percent. Based upon the foreign taxes paid with respect to both these classes of income, and the additional facts assumed in the table below, the unused FOGEI tax deemed paid under section 907(f), and the unused FORI tax deemed paid under section 904(c) in each of the appropriate years are as follows:

Taxable years	1975	1976	1977	1978	1979(a)	1979(b)	1979(c)	1980	1981
1. FOGEI	$100.00	$1,120.00	$300.00	$250.00	$700.00	$700.00	$700.00	$7,000.00	$2,000.00
2. FOGEI taxes	49.00	586.88	124.00	150.00	210.00	210.00	210.00	3,500.00	940.00
3. Limitation level:									
(a) For unused tax	52.80	564.48	144.00	120.00	336.00			3,360.00	960.00
(b) For excess limitation	48.00	537.60	144.00		336.00	336.00	336.00		960.00
4. Disallowed FOGEI taxes (excess of line 2 over line 3(a))	0.00	22.40		30.00				140.00	
5. FOGEI taxes from preceding years of origin deemed paid in current year						2.40	7.40		
6. Unused FOGEI tax:									
(a) Line 4		22.40		30.00				140.00	
(b) 2% of line 1				5.00				140.00	
(c) Lesser of line (a) or (b)		22.40		5.00				140.00	
7. Excess extraction limitation:									
(a) Line 2	49.00	586.88	124.00		210.00	210.00	210.00		940.00
(b) Line 5						2.40	7.40		
(c) Sum of lines (a) and (b)	49.00	586.88	124.00		210.00	212.40	217.40		940.00
(d) Excess of line 3(b) over line (c)	0.00	0.00	20.00		126.00	123.60	118.60		20.00
8. FORI	200.00	1,620.00	450.00	600.00	1,000.00	1,000.00	1,000.00	8,000.00	3,000.00
9. FORI taxes:									
(a) Total	50.00	850.00	166.00	328.00	240.00	240.00	240.00	4,140.00	1,425.00
(b) Less line 4	0.00	22.40		30.00				140.00	
(c) Adjusted FORI taxes	50.00	827.60	166.00	298.00	240.00	240.00	240.00	4,000.00	1,425.00
10. Section 904 limitation (48% of line 8)	96.00	777.60	216.00	288.00	480.00	480.00	480.00	3,840.00	1,440.00
11. FORI taxes from preceding year of origin deemed paid in current year						4.00	14.00		
12. Unused FORI tax (excess of line 9(c) over line 10)		50.00		10.00				160.00	

Taxable years	1975	1976	1977	1978	1979(a)	1979(b)	1979(c)	1980	1981
13. Excess oil related limitation:									
(a) Line 9(c)	60.00		188.00		240.00	240.00	240.00		1,425.00
(b) Line 11						4.00	14.00		
(c) Line 5						2.40	7.40		
(d) Sum of lines (a), (b), and (c)	60.00		188.00		240.00	246.40	261.40		1,425.00
(e) Excess of line 10 over line (d)	36.00		30.00		240.00	233.60	218.60		15.00
14. FOGEI taxes deemed paid under section 907(f) (not to exceed the lesser of line 7(d) or line 13(e))	0.00	0.00	20.00		2.40	5.00	118.60		15.00
15. Taxes deemed paid under line 14 as carried from:									
(a) 1976			20.00		2.40				
(b) 1978						5.00			
(c) 1980							118.60		15.00
16. Unused FOGEI tax not absorbed as taxes deemed paid in a preceding excess limitation year available to be carried to:									
(a) 1979(a) (line 6(c) in 1976 minus line 15(a))			2.40						
(b) 1981 (line 6(c) in 1980 minus line 15(c))							21.40		
(c) 1982–1985 (line (b) minus line 15(c))									6.40
17. Excess FORI limitation after application of section 907(f):									
(a) Line 9(c)	60.00		188.00		240.00	240.00	240.00		1,425.00
(b) Line 11						4.00	14.00		
(c) Line 14	0.00		20.00		2.40	7.40	126.00		15.00
(d) Sum of lines (a), (b), and (c)	60.00		208.00		242.40	251.40	380.00		1,440.00
(e) Excess of line 10 over line (d)	36.00		10.00		237.60	238.60	100.00		0.00
18. FORI taxes deemed paid under section 904(c): Lesser of line:									
(a) 12 in 1976 or line 17(e)	36.00								
(b) 20(a) or line 17(e)			10.00						
(c) 20(b) or line 17(e)					4.00				
(d) 12 in 1978 or line 17(e)						10.00			
(e) 12 in 1980 or line 17(e)							100.00		
(f) 20(c) or line 17(e)									0.00
19. Taxes deemed paid under line 18 as carried from:									
(a) 1976	36.00		10.00		4.00				
(b) 1978						10.00			
(c) 1980							100.00		
20. Unused FORI tax (§ 1.907(b)–2(b)) not absorbed as taxes deemed paid in a preceding excess limitation year available to be carried to:									
(a) 1977 (line 12 in 1976 minus line 19(a))	14.00								
(b) 1979(a) (line (a) in 1975 minus line 19(a))			4.00						
(c) 1981 (line 12 in 1980 minus line 19(c))							80.00		
(d) 1982–1985 (line (c) in 1979(c) minus line 19(c))									80.00

(b) *1975.* None of the unused FOGEI tax (line 6(c)) for 1976 can be carried back to 1975 because there is no excess extraction limitation (line 7(d)) for 1975. The limitation level under section 907(a) for unused tax (line 3(a)) is different than the level for the excess extraction limitation (line 3(b)) for 1975 because the limitation percentage for unused tax is 52.8 percent (§ 1.907(a)–1(c)(2)) while the percentage for the excess extraction limitation is 48 percent paragraph (f) of this section. Therefore 1975 is not an excess extraction limitation year because the limitation level for determining the excess limitation ($48.00) is less than the FOGEI taxes paid ($49.00). 1975 could not be a year of origin under section 907(f) because that section does not apply to FOGEI taxes paid or accrued in that year. The unused FORI tax for 1976 (line 12) that is absorbed by the excess FORI limitation for 1975 (line 17(e)) is computed in accordance with the general rule of § 1.907(b)–2(c).

(c) *1976.* 1976 is a year of origin under sections 907(f) and 904(c) (see paragraph (g) of this section). The unused FOGEI tax would not be reduced to 2 percent of FOGEI if the excess limitation year was 1977 or 1975 (see paragraph (b)(2) of this section. For 1976, the limitation percentages for unused tax and for excess extraction limitation are 50.4 percent and 48 percent, respectively, for the reasons given in paragraph (b) of this example. The unused FORI tax (line 12) for 1976 that is absorbed by the excess FORI limitation for 1975 (line 17(e)) is determined in accordance with the explanation in paragraph (b) of this example.

(d) *1977.* The unused FOGEI tax for 1976 (line 6(c)) that is absorbed as taxes deemed paid in 1977 (line 14) is limited to $20.00 because the excess extraction limitation for 1977 (line 7(d)) is less than the excess oil related limitation (line 13(e)) for that year (see paragraph (c) of this section). The computations of the unused FOGEI tax (line 6(c)) and unused FORI tax (line 12) are not necessary because 1977 is an excess limitation for both FOGEI and FORI tax. The computation of the excess FORI limitation (line 17(e)) reflects the FOGEI taxes deemed paid (line 14) under section 907(f) in accordance with § 1.907(b)–2(d)(1)(ii). The computation of unused 1976 FOGEI tax available as a carryover for future years (line 16(a)) is in accordance with paragraph (b)(2) of this section. The limitation level (line 3) for unused tax and excess limitation is the same for years 1977 through 1981.

(e) *1978.* The computations of the excess extraction limitation (line 7(d)), excess oil related limitation (line 13(e)), and excess FORI limitation (line 17(e)) are not necessary because 1978 is a year of origin. The unused FOGEI tax is limited to 2 percent of FOGEI in accordance with paragraph (b)(2) of this section. (However, the 2-percent limitation would not apply if the unused FOGEI tax were carried back to 1976 or 1977.)

(f) *1979.* 1979 is an excess limitation year with respect to the extraction and oil related limitations (lines 7(d) and 13(e), respectively). The chart provides three columns for 1979 to reflect the order in which unused taxes are deemed paid under section 907(f) and section 904(c). For any particular year of origin, unused FOGEI taxes are deemed paid under section 907(f) in a particular excess limitation year before unused FORI taxes from the same year of origin are deemed paid under section 904(c) in that year.

(g) *1979(a).* The excess FORI limitation (line 17(e)) reflects the FOGEI taxes deemed paid (line 14) under section 907(f) in accordance with § 1.907(b)–2(d)(1)(ii).

(h) *1979(b).* In computing both the excess extraction (line 7(d)) and oil related (line 13(e)) limitations, the FOGEI taxes deemed paid under section 907(f) for prior years of origin (line 5) are included in accordance with paragraph (d)(2) and (e)(3) of this section, respectively. Line 11 only has application to 1979. In computing the excess FORI limitation (line 17(e)), the aggregate of the FOGEI taxes deemed paid under section 907(f) (line 14) in 1979(a) and § 1.979(b) is used in accordance with § 1.907(b)–2(d)(1)(ii).

(i) *1979(c).* The principles that apply to 1979(c) were discussed in paragraph (h) of this example. The taxes deemed paid in 1979(c) are those carried back from 1980. In computing both the excess oil related (line 13(e)) and the excess FORI (line 17(e)) limitations, the FORI taxes deemed paid under section 904(c) for prior years of origin (line 11) are included in accordance with paragraph (e)(2) of this section and § 1.907(b)–2(d)(1)(iii) respectively.

(j) *1980.* The unused FOGEI tax is computed in accordance with paragraph (b)(1) of this section. 1980 is a year of origin under sections 907(f) and 904(c) (see paragraph (g) of this section).

(k) *1981.* The unused FORI tax for 1980 (line 12) that was not absorbed in 1979 (line 20(c)) cannot be carried to 1981 because of the priority rule in paragraph (g) of this section (see line 17(c)). This rule reduces the excess FORI limitation to zero (see line 17(e)).

Par. 2. Paragraph (a) of § 1.78–1 is amended by adding a new sentence immediately after the first sentence to read as set forth below:

§ 1.78–1 Dividends received from certain foreign corporations by certain domestic corporations choosing the foreign tax credit.

(a) *Taxes deemed paid by certain domestic corporations treated as a section 78 dividend.* Any reduction under section 907(a) of the foreign income taxes deemed to be paid with respect to foreign oil and gas extraction income does not affect the amount treated as a section 78 dividend.

* * * * *

Par. 3. Paragraph (a) of § 1.901–1 is amended by adding a new subparagraph (4) immediately after subparagraph (3) to read as set forth below:

§ 1.901–1 Allowance of credit for taxes.

(a) *In general.* * * *

(4) *Limitation.* Section 907(a) limits the credit against the tax imposed by chapter 1 of the Code for certain foreign taxes paid or accrued with respect to foreign oil or gas extraction income. See § 1.907(a)–1.

* * * * *

Par. 4. Paragraph (a) of § 1.904–2 is amended by adding a new sentence to immediately after the last sentence read as set forth below:

§ 1.904–2 Carryback and carryover of unused foreign tax.

(a) *Credit for foreign tax carryback and carryover.* * * * For special rules regarding these computations in the case of taxes paid, acccrued, or deemed to be paid with respect to foreign oil and gas extraction income of foreign oil related income, see section 907 (b), (e), and (f) and the regulations thereunder.

* * * * *

§ 1.904–3 [Amended]

Par. 5. The last sentence of paragraph (e) of § 1.904–3 is amended by deleting the period at the end thereof and by inserting at the end thereof", or foreign oil related income described in section 907(c) with respect to which the separate limitation in section 907(b) applies."

Par. 6. Paragraph (a) of § 1.904–4 is amended by adding a new sentence at the end of subparagraph (1)(vii) and by revising subparagraph (3). These added and revised provisions read as follows:

§ 1.904–4 Separate limitation for section 904(f) interest.

(a) *Separate limitation.*—(1) *In general.* * * *

(vii) * * * For special rules for determining the separate limitation with respect to oil related income, see section 907(b).

* * * * *

(3) *Other income defined.* For purposes of this section, other income is all income of the taxpayer for the taxable year other than—

(i) Section 904(f) interest (as defined in paragraph (a)(2) of this section),

(ii) Section 904(f) dividends (as defined in section 904(f)(1)(B) and § 1.904–5(a)(2)), and

(iii) Foreign oil related income (as defined in section 907(c)) in a taxable year beginning before January 1, 1983.

* * * * *

Par. 7. Paragraph (a) of § 1.904–5 is amended by adding a new sentence at the end of subparagraph (1)(vii) and by revising subparagraph (3). These added and revised provisions read as follows:

§ 1.904–5 Separate limitation for section 904(f) dividends.

(a) *Separate limitation*—(1) *In general.* * * *

(vii) * * * For special rules for determining the separate limitation with respect to oil related income, see section 907(b).

* * * * *

(3) *Other income.* For purposes of this section, other income is all income of the taxpayer for the taxable year other than—

(i) Section 904(f) dividends (as defined in paragraph (a)(2) of this section),

(ii) Section 904(f) interest (as defined in section 904(f)(2) and § 1.904–4(a)(2)), and

(iii) Foreign oil related income (as defined in section 907(c)) in a taxable year beginning before January 1, 1983.

* * * * *

Par. 8. Paragraph (f) of § 1.960–1 is amended by adding a new sentence at the end thereof to read as follows:

§ 1.960–1 Foregin tax credit with respect to taxes paid on earnings and profits of controlled foreign corporations.

* * * * *

(f) *Reduction of foreign income taxes paid or deemed paid.* * * * For reduction of the foreign income taxes deemed paid by a domestic corporation under section 960 with respect to foreign oil and gas extraction income, see section 907(a).

§ 1.1248–1 [Amended]

Par. 9. Paragraph (d)(1)(i) of § 1.1248–1 is amended by deleting "905" and by inserting in lieu thereof "908".

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: June 11, 1984.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 84–16773 Filed 6–20–84; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Correction

AGENCY: Minerals Management Service, Interior.

ACTION: Interim final rule; correction.

SUMMARY: This Notice corrects the Interim Final Rule concerning leases in water depths of 400 to 900 meters which was published in the **Federal Register** on April 24, 1984 (49 FR 17449). The correction adds an additional paragraph 9 which was inadvertently omitted as a redesignated reference under 30 CFR 250.12.

FOR FURTHER INFORMATION CONTACT: Jane Roberts, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 646; Reston, Virginia 22091; telephone (703) 860–7916 or (FTS) 928–7916.

Dated: June 20, 1984.

Price McDonald,

Acting Associate Director for Offshore Minerals Management.

The following correction is made in FR Doc. 84–10885 appearing on page 17450 in the issue of April 24, 1984:

On page 17450 after item 8, add item 9 as follows:

9. The reference in redesignated § 250.12(g)(1)(ii) to paragraph (g) is changed to paragraph more (h).

[FR Doc. 84–17104 Filed 6–26–84; 8:45 am]

BILLING CODE 4310–MR–M

VETERANS ADMINISTRATION

38 CFR Part 17

Nondiscrimination in Admission of Alcohol and Drug Abusers to VA Health Care Facilities

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration is amending a medical regulation by adding a paragraph to provide that eligible veterans who are alcohol or drug abusers and who are suffering from medical disabilities shall not be discriminated against in admission or treatment, solely because of their alcohol or drug abuse or dependence, by any Veterans Administration health care facility. This amendment is based on Pub. L. 94–581, Veterans Omnibus Health Care Act of 1976.

DATE: This regulation amendment is effective June 27, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein, (202) 389–2851.

SUPPLEMENTARY INFORMATION: This regulation implements section 4133, Title 38 United States Code, as added by Pub. L. 94–581. It provides that there will be no discrimination by the VA in the admission or treatment of veterans eligible for VA medical care simply because they are alcohol or drug abusers. On pages 9235 and 9236 of the **Federal Register** of March 12, 1984, the proposed amendment to section 17.48 was published. Interested persons were given 30 days to submit comments, suggestions or recommendations. No comments were received regarding the proposed regulation amendment. The proposed amendment is hereby adopted without change as set forth below.

The Administrator considers this amendment nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect of $100 million or more on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse economic effects.

The Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA (Regulatory Flexibility Act), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed amendment is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This rule governs the conduct of VA employees, not that of the private sector. It will only be applicable in the case of certain veterans applying for medical care at VA health care facilities.

The Catalog of Federal Domestic Assistance numbers are 64.007, 64.008, 64.009, 64.010, and 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs, Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: June 6, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—[AMENDED]

38 CFR Part 17, Medical, is amended by adding a new paragraph (h) to § 17.48 to read as follows:

§ 17.48 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

(h) Eligible veterans who are alcohol or drug abusers and who are suffering from medical disabilities shall not be discriminated against in admission or treatment (38 U.S.C. 4133).

[FR Doc. 84–17081 Filed 6–26–84; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 21

Veterans Education; Report of State Approving Agency Activities

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The VA (Veterans Administration) receives reports of State approving agency activities. This regulation is designed to reduce the information collected from State approving agencies by reducing the frequency of the reports. It also allows the Administrator of Veterans' Affairs to reduce the amount of information collected because the regulation no longer describes the content of the report in detail.

EFFECTIVE DATE: June 12, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, (202–389–2092).

SUPPLEMENTARY INFORMATION: On pages 16506 and 16507 of the **Federal Register** of April 18, 1983 there was published a notice of intent to amend Part 21 to require State approving agencies to report their activities to the VA less frequently.

Interested people were given 30 days in which to submit comments, suggestions or objections regarding the proposal. The VA received no comments, suggestions or objections. However, after analyzing the proposal, the VA has decided to amend the proposal somewhat, and is making the amended regulation final. In contrast to the previous regulation and the proposal, this regulation does not describe the content of the report in detail. This will give the VA greater flexibility in the future should the agency wish to adjust the information collection burden by changing the report.

The VA has determined that this regulation is not a major rule as that term is defined by Executive Order 12291, entitled "Federal Regulation." The annual effect on the economy will be less than $100 million. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this regulation affects only State governments. State governments do not come within the meaning of the term "small governmental jurisdiction" as defined in section 601(5) of the RFA. The regulation will have no significant impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

Information collection requirements contained in this regulation (§ 21.4154)

have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2900–0051.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this regulation are 64.111, 64.117 and 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 12, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration is amending 38 CFR Part 21 as set forth below:

Section 21.4154 is revised as follows:

§ 21.4154 Report of activities.

(a) *State approving agencies must report their activities.* Each State approving agency entering into a contract or agreement under § 21.4153 must submit a quarterly report of its activities to the Veterans Administration. (38 U.S.C. 1774)

(b) *Content of the report.* The report—

(1) Shall be in the form prescribed by the Administrator;

(2) Shall detail the activities of the State approving agencies under the agreement or contract during the preceding quarter;

(3) May include a report by the State approving agency of its activities from the beginning of the fiscal year through the end of that quarter;

(4) Shall describe the services performed and the determination made in supervising and ascertaining the qualifications of educational institutions in connection with the programs of the Veterans Administration; and

(5) Shall inculde other information as the Administrator may prescribe. (38 U.S.C. 1774)

(Approved by Office of Management and Budget under OMB control number 2900–0051)

[FR Doc. 84–17082 Filed 6–26–84; 8:45 am]

BILLING CODE 8320–01–M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual, Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for Issue 14 of the Domestic Mail Manual (DMM), which is incorporated by reference in the **Federal Register**, 39 CFR 111.1.

Most of the revisions are minor, editorial or clarifying. Substantive changes, such as the regulations allowing mailers to combine Presort First-Class and ZIP + 4 Presort mailings under limited conditions during a transition period, have previously been published in the **Federal Register**.

EFFECTIVE DATE: April 12, 1984.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 245–4638.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual, which is incorporated by reference in the **Federal Register** (see 39 CFR 111.1) has been amended by the publication of a transmittal letter for issue 14, dated April 12, 1984. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 14 covers the minor changes not previously described in interim or final rules published in the **Federal Register**.

Note.—Issue 14 contains all DMM revisions published between December 29, 1983, and April 12, 1984. (Postal Bulletins 21438 through 21453.)

Summary of Changes

Major Revisions

1. * * *

2. *Centralized Advance Deposit Accounts.* Sections 281 through 285 are revised to reflect that, effective February 18, 1984, Express Mail customers who ship an average of five Express Mail pieces per week may establish a centralized advance deposit account (PB 21444, 2–9–84).

3. *Preferred Handling of Second-Class Mail.* Sections 431, 432, 453, 462, 463, 464, and 467 are revised to provide for the transport of second-class mail in the preferential mail network. A transition period of March 1, 1984, through January 1, 1985, is designated for second-class mailers and the Postal Service to make any necessary operational changes (PB 21447, 3–1–84, and PB 21448, 3–8–84).

4. *Detached Address Labels.* New sections 452.1, 452.2, and 452.3 are added and the former sections renumbered to 452.4, 452.5, and 452.6 to assure uniform awareness that this addressing option may be used, when appropriate, for delivering second-class publications (PB 21453, 4–12–84). * * *

Section 664.23 is revised to allow advertising or other information to be printed on the back of the address card used in the mailing of a merchandise sample (PB 21453, 4–12–84).

Other Revisions

1. Section 111.53 is changed to reflect the current public subscription price for the DMM. The DMM is available to the public through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–0001.

2. * * *

3. Sections 115.231, 115.232, 136.321, and 136.52 are amended to clarify the procedures governing mailing mixed classes (PB 21439, 1–5–84).

4. Sections 121, 124, and 125 are changed to (a) eliminate redundant marking requirements; (b) recommend marking of contents on packages containing human ashes; and (c) correct references and clarify requirements on live day-old poultry and air shipments to overseas military post offices (PB 21449, 3–15–84).

5. The mailing lists in Exhibits 122.63 *a, c, d,* and *e* are corrected (PB 21440, 1–12–84).

6. Section 145.44 is revised to reduce the record retention period to one year (PB 21443, 2–2–84).

7. Section 159.16 is amended to reflect that forwarding units must mail Forms 3579, *Undeliverable-As-Addressed Second, Third, Fourth-Class Matter,* to publishers once each week (PB 21443, 2–2–84).

8. Section 159.521 is revised to change the dispatch routing for dead letters originally mailed in Canada. Canadian dead letters are now sent, along with all other foreign dead letters, to an appropriate USPS foreign exchange office (PB 21448, 3–8–84, and PB 21449, 3–15–84).

9. Sections 159.551, 159.552, and 159.553 are changed to add the ZIP + 4 codes for dead mail branches. The use of these codes is mandatory for postal employees (PB 21449, 3–15–84).

10. Sections 362.2 and 362.4 are revised to clarify that required endorsements may be placed in the line above the address (PB 21453, 4–12–84).

11. Sections 467.244, 467.344, 667.644, 667.744, 667.824, 767.535, and 767.624 are revised to permit top caps to be constructed of other material if the equivalent protection of the wooden top caps is provided (PB 21452, 4–5–84).

12. Sections 621 and 721 are amended to clarify the circumstances under which second-class matter may be mailed at third- or fourth-class rates (PB 21446, 2–23–84).

13. Section 767.535 is revised to give mailers the option of using corrugated cardboard to enclose mail on pallets (PB 21448, 3–8–84).

14. Section 945.32*a* is amended to give the required new dimensions for address cards (PB 21442, 1–26–84).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

In consideration of the foregoing, 39 CFR 111.3 is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	"Federal Register" publication
14	Apr. 12, 1984	49 FR (page number and date of publication).

(5 U.S.C. 552(a); 39 U.S.C. 401, 407, 408, 3001–3011, 3201–3218, 3403–3405, 3601, 3621; 42 U.S.C. 1973 cc-13, 1973 cc-14)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84–17043 Filed 6–26–84; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR-FRL-2615-1]

Delegation of New Source Performance Standards (NSPS) State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the California Air Resources Board (CARB) on behalf of the San Diego County Air Pollution Control District (SDCAPCD). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: May 8, 1984.

ADDRESS: San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8236, FTS 454–8236.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS categories on behalf of the SDCAPCD. Delegation of authority was granted by a letter dated April 24, 1984 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA

Dear Mr. Boyd: In response to your request of March 27, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce two New Source Performance Standard (NSPS) Categories in 40 CFR Part 60: Subpart SS, Standard of Performance for Industrial Surface Coating: Large Appliances and Subpart TT, Standard of Performance for Metal Coil Surface Coating on behalf of the San Diego County Air Pollution Control District (SDCAPCD). We have reviewed your request for delegation and have found the SDCAPCD programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: San Diego County Air Pollution Control District

With respect to the areas under the jurisdiction of the SDCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the SDCAPCD at the address shown in the ADDRESS Section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic Fibers.

(Sec. 111, Clean Air Act, as amended (42 U.S.C. 1857,) et seq.)

Dated: June 18, 1984.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 84–17067 Filed 6–26–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 60

[OAR-FRL 2615-4]

Delegation of New Source Performance Standards (NSPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the California Air Resources Board (CARB) on behalf of the Monterey Bay Unified Air Pollution Control District (MBUAPCD). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: May 25, 1984.

ADDRESS: Monterey Bay Unified Air Pollution Control District, 1164 Monroe Street, Suite 10, Salinas, CA 93906.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8236; FTS 454 8236.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the MBUAPCD. Delegation of authority was granted by a letter dated May 10, 1984 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of April 19, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) Category in 40 CFR Part 60: Standard of Performance for the Graphic Arts Industry: Publication Rotogravure Printing on behalf of the Monterey Bay Unified Air Pollution Control District (MBUAPCD). We have reviewed your request for delegation and have found the MBUAPCD programs and procedures to be acceptable.

Acceptance to this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator

cc: Monterey Bay Unified APCD

With respect to the areas under the jurisdiction of the MBUAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source category should be directed to the MBUAPCD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.).*

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: June 18, 1984.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 84–17003 Filed 6–26–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 60 and 61

[OAR–FRL–2615–3]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the Nevada Department of Conservation and Natural Resources (NDCNR). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: June 4, 1984.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415)-974–8236, FTS 454–8236.

SUPPLEMENTARY INFORMATION: The NDCNR has requested authority for delegation of certain NSPS and NESHAPS categories. Delegation of authority was granted by letters dated December 20, 1983, May 14, 1984, and May 18, 1984 and are reproduced in their entirety as follows:

December 20, 1983.

Mr. Richard Serdoz,
Air Quality Officer, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources, Capitol Complex, Carson City, NV 89710

Dear Mr. Serdoz: In response to your request of Novembr 15, 1983, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart RR—Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations and Subpart VV—Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

May 14, 1984.

Mr. Richard Serdoz,
Air Quality Officer, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources, Capitol Complex, Carson City, NV 89710

Dear Mr. Serdoz: In response to your request of April 23, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart LL—Standards of Performance for Metallic Mineral Processing Plants. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

May 18, 1984.

Mr. Richard Serdoz,
Air Quality Officer, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources, Capitol Complex, Carson City, NV 89710

Dear Mr. Serdoz: In response to your request of April 30, 1984, I am pleased to

inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart HHH—Standards of Performance for Synthetic Fiber Production Facilities and the National Emission Standard for Hazardous Air Pollutants (NESHAP) category in 40 CFR Part 61: Subpart M—National Emission Standard for Asbestos. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

With respect to the areas under the jurisdiction of the NDCNR, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAP source categories should be directed to the NDCNR at the address shown in the letters of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

List of Subjects

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorportion by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

40 CFR Part 61

Asbestos, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

Dated: June 18, 1984.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 84-17084 Filed 6-26-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 61

[OAR-FRI-2615-2]

Delegation of National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Sacramento County Air Pollution Control District (SCAPCD). This action is necessary to bring the NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: May 25, 1984.

ADDRESS: Sacramento County Air Pollution Control District, 3701 Branch Center Road, Sacramento, CA 95827.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8236, FTS 454-8236.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NESHAPS categories on behalf of the SCAPCD. Delegation of authority was granted by a letter dated May 10, 1984 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of April 4, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the National Emission Standard for Hazardous Air Pollutants (NESHAP) Category in 40 CFR Part 61: Standard of Asbestos on behalf of the Sacramento County Air Pollution Control District (SCAPCD). We have reviewed your request for delegation and have found the SCAPCD programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: Sacramento County Air Pollution Control District

With respect to the areas under the jurisdiction of the SCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NESHAPS source category should be directed to the SCAPCD at the address shown in the ADDRESS Section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 61

Asbestos, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: June 18, 1984.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 84-17085 Filed 6-26-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 162

[OPP-250031E; PH-FRL 2616-2]

Pesticide Programs; Effective Date for the Exemption From FIFRA Requirements for Certain Products Containing Pheromone Attractants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; confirmation of effective date.

SUMMARY: As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),

EPA submitted a final regulation exempting from regulation under FIFRA, all pheromones and identical or substantially similar compounds labeled for use only in pheromone traps and the pheromone traps in which those compounds are the sole active pesticide ingredient(s) to both Houses of Congress for review prior to the regulation taking effect. The regulation was published in the **Federal Register** of August 24, 1983 (48 FR 38572). The minimum 60-day period for Congressional review ended.

DATE: The regulation is effective on June 27, 1984.

FOR FURTHER INFORMATION CONTACT:

By mail: David Alexander, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1114C, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–0592).

SUPPLEMENTARY INFORMATION: EPA issued a final regulation, which was published in the **Federal Register** of August 24, 1983 (48 FR 8572), under section 3 of FIFRA. The regulation exempts from regulation under FIFRA, all pheromones and identical or substantially similar compounds labeled for use only in pheromone traps and the pheromone traps in which those compounds are the sole active pesticide ingredient(s). However, as required by section 25(a)(4) of FIFRA, the regulation could not take effect until it had been submitted to both Houses of Congress for a period of 60 days of continuous Congressional session, as defined by section 25(a)(4). Since it was not possible to predict an exact date on which the Congressional review period would end, the preamble to the final regulation stated that EPA would issue a separate **Federal Register** notice after the review period was over announcing the effective date of the regulation.

Accordingly, the final regulation published in the **Federal Register** of August 24, 1983 (48 FR 38572) is effective on June 27, 1984.

(Sec. 25, as amended, Pub. L. 96–539, 94 Stat. 3195 (7 U.S.C. 136))

List of Subjects in 40 CFR Part 162

Administrative practice and procedure, Intergovernmental relations, Labeling Packaging and containers, Pesticides and pests.

Dated: June 22, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84–17220 Filed 6–26–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6549

[C–17322]

Colorado; Partial Revocation of Executive Order of April 17, 1926, Public Water Reserve No. 107

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects 40 acres of public land withdrawn for public water reserve purposes. This action will open the land to surface entry and nonmetalliferous mining. The land has been and will remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: June 27, 1984.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303–837–2592.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. That portion of Public Water Reserve No. 107 granted to the Bureau of Land Management by Executive Order of April 17, 1926, and further designated by Bureau of Land Management order dated November 15, 1972, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 1 N., R. 76 W.,
Sec. 17, NE¼SE¼.

The area described aggregates 40 acres in Grand County.

2. At 10 a.m. on July 24, 1984, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on July 24, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on July 24, 1984, the land shall be open to nonmetalliferous mineral location under the United States mining laws. Appropriation of lands for nonmetalliferous minerals under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land has been and will remain open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning these lands shall be directed to the State Director, Colorado State Office, Bureau of Land Management, 1037—20th Street, Denver, Colorado 80202.

Dated: June 18, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 84–17111 Filed 6–26–84; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 536 and 580

[Docket No. 84–24]

Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Interim rules and request for comments; correction.

SUMMARY: The Commission is correcting the authority citation for a document concerning Publishing and Filing Tariffs By Common Carriers in the Foreign Commerce of the United States.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5725.

In FR Doc. 84–15509, appearing in the **Federal Register** of Monday, June 11, 1984, on page 24023, the authority citation appearing at the end of the

second column is corrected by changing "5 U.S.C. 533" to "5 U.S.C. 553".

Francis C. Hurney,

Secretary.

[FR Doc. 84-17016 Filed 6-26-84; 8:45 am]

BILLING CODE 6730-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 800

Organization and Functions of the Board and Delegations of Authority

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: This amendment revises Part 800 to reflect the current organizational structure of the Board and to make additional delegations of authority to the Directors of the Bureau of Accident Investigation and the Bureau of Field Operations.

EFFECTIVE DATE: June 27, 1984.

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594; Telephone: 202-382-6540.

SUPPLEMENTARY INFORMATION: The National Transportation Safety Board is amending Part 800 to reflect the current organizational structure of the Board. This updating includes (a) deleting organizational components which have been disestablished (Bureau of Plans and Programs), (b) adding organizational components which have been recently established (Bureau of Safety Programs and Bureau of Field Operations), and (c) deleting provisions which are references to other regulations of the Board and which therefore are not needed. At the same time, additional delegations of authority are being made to the Directors of the Bureau of Accident Investigation and Bureau of Field Operations, as described below.

The Safety Board has the statutory responsibility to investigate and determine the facts, conditions and circumstances and the cause or probable cause or causes of all civil aircraft accidents and specified accidents in other modes of transportation (49 U.S.C. 1903(a)). When major accidents are investigated by the Board the determination of cause is issued as part of a detailed narrative report. However, in the overwhelming majority of aviation and railroad accident investigations, and to some extent in other modes of transportation, the determinations of cause are issued in a format entitled "Briefs of Accident." In the past there have been approximately 4,000 aircraft accidents and 550 railroad accidents each year in which causal determinations have been issued in the brief format. In other modes of transportation brief format reports have been issued periodically.

In the interest of administrative efficiency, and to allow the Board Members to concentrate their time and attention on reports of major accident investigations and safety studies, the Board has decided to delegate to the Director, Bureau of Accident Investigation, and to the Director, Bureau of Field Operations the authority to determine the probable cause(s) of accidents reported in the brief format. The delegations reserve the determination of cause in any such accident investigations to the Board when requested by a single Board Member and also require that the Bureau Director refer the findings of the accident investigation to the Board for determination of cause when it is apparent that the accident investigation involves a matter of significant public interest, a policy issue, or a safety issue or other matter which dictates that the determination of probable cause be made by the Board. The delegation will not affect the opportunity, as provided in § 845.41 of the Board's rules (49 CFR 845.41), for any person having a direct interest in an accident investigation to submit a petition for reconsideration or modification of the determination of probable cause, and such petitions will continue to be acted on by the Board Members. The Director, Bureau of Field Operations also is being delegated authority parallel to that currently given to the Director, Bureau of Accident Investigation, with respect to ordering investigations and disclosing factual information.

Since this regulatory amendment is not a substantive rule but a rule of agency organization and procedure, notice and public procedure are not necessary and the amendment may be made effective immediately.

Regulatory Flexibility

Under the criteria of the Regulatory Flexibility Act, these amendments to Part 800 will not impose any kind of regulatory burden on any entity. These amendments are intended to clarify the Board's procedures in respect to accident/incident investigations, hearings and reports.

Paperwork Reduction

The amendments that are adopted herein will not in any way impose paperwork requirements.

List of Subjects in 49 CFR Part 800

Organization and functions, Authority delegations (government agencies).

Accordingly, Part 800 of the Board's Rules (49 CFR 800) is revised to read as follows:

PART 800—ORGANIZATION AND FUNCTIONS OF THE BOARD AND DELEGATIONS OF AUTHORITY

Subpart A—Organization and Functions

Sec.

800.1 Purpose.
800.2 Organization.
800.3 Functions.
800.4 Operation.
800.5 Office locations.
800.6 Availability of information and materials.

Subpart B—Delegations of Authority to Staff Members

800.21 Purpose.
800.22 Delegation to the Managing Director.
800.23 Delegation to the administrative law judges, Office of Administrative Law Judges.
800.24 Delegation to the General Counsel.
800.25 Delegation to the Director, Bureau of Accident Investigation.
800.26 Delegation to the Director, Bureau of Administration.
800.27 Delegation to investigative officers and employees of the Board.
800.28 Delegation to the Director, Bureau of Field Operations.
Appendix—Request to the Secretary of the Department of Transportation To Investigate Certain Aircraft Accidents for a Temporary Period

Authority: Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2166 (49 U.S.C. 1901 et seq.).

Subpart A—Organization and Functions

§ 800.1 Purpose.

This part describes the organization, functions, and operation of the National Transportation Safety Board (Board).

§ 800.2 Organization.

The Board consists of five Members appointed by the President with the advice and consent of the Senate. One of the Members is designated by the President as Chairman with the advice and consent of the Senate, and one as Vice Chairman. The Members exercise the functions, powers, and duties of Titles VI and VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441), and the Independent Safety Board Act of 1974 (88 Stat. 2166 et seq. (49 U.S.C. 1901 et

seq.)). The Board is an independent agency of the United States. A detailed description of the Board and its components is published in the Board's internal orders, which are available for inspection and copying in the public reference room in the Washington office of the Board. The various delegations of authority from the Board and the Chairman to the staff are set forth in Subpart B of this part. The Board's staff is comprised of the following prinicipal components:

(a) The Office of the Managing Director, which assists the Chairman in the discharge of his functions as executive and administrative head of the Board, coordinates and directs the activities of the staff, is responsible for the day-to-day operation of the Board, and recommends and develops plans to achieve the Board's program objectives. The Office of the Managing Director also provides excutive secretariat services to the Board.

(b) The Office of Government and Public Affairs, which supplies the public, the Congress, other Federal, state and local government agencies, the transportation industry and the news media, with current, accurate information concerning the work, programs, and objectives of the Board.

(c) The Office of the General Counsel, which provides legal advice and assistance to the Board and its staff components, prepares Board rules, opinions and/or orders, and advice to all offices and bureaus on matters of legal significance; and represents the Board in court actions to which the Board is a party or in which the Board is interested.

(d) The Office of Administrative Law Judges, which conducts all formal proceedings arising under Title VI of the Federal Aviation Act of 1958, including proceedings involving suspension or revocation of certificates and appeals from actions of the Administrator, Federal Aviation Administration, in refusing to issue airman certificates.

(e) The Bureau of Accident Investigation, which conducts investigations of all major transportation accidents and other marine, pipeline and hazardous materials accidents within the Board's jurisdiction; recommends to the Board whether a public hearing or deposition proceeding should be held to determine the facts, conditions, and circumstances of major accidents; prepares a report for release to the public regarding such accidents for submission to the Board including a recommendation as to the probable cause(s); determines the probable cause(s) of accidents where delegated authority to do so by the Board; initiates safety recommendations to prevent future transportation accidents; and participates in the investigation of accidents which occur in foreign countries and which involve U.S.-registered and/or U.S.-manufactured aircraft, pursuant to Annex 13 of the Chicago Convention.

(f) The Bureau of Field Operations, which oversees the Board's field offices located throughout the United States, and conducts all aviation, rail and highway accident investigations within the Board's jurisdiction other than those conducted by the Bureau of Accident Investigation; prepares a report for release to the public regarding such accidents; determines the probable cause(s) of accidents where authority to do so is delegated by the Board; initiates safety recommendations to prevent future transportation accidents; and conducts special investigations into selected aviation, rail or highway accidents involving safety issues of concern to the Board.

(g) The Bureau of Technology, which provides technical advice and services, conducts research, and carries out analytical studies and tests on all aspects of the Board's accident investigation, accident prevention, and safety promotion activities, including safety recommendations, studies, and special investigations.

(h) The Bureau of Safety Programs, which conducts safety studies of specific safety issues; coordinates the development of and follow-up on the safety recommendations issued by the Board; coordinates preparation of Board comments on Notices of Proposed Rulemaking by other Federal agencies which involve transportation safety issues; provides statistical analyses of transportation accident and incident data; and prepares transportation safety program proposals for submission to the Board.

(i) The Bureau of Administration, which provides administrative support for the Board in the following areas: Budget, accounting and audit; personnel, training and payroll; information management and automatic data processing; property, space, communications, facilities and transportation management; and printing, publications, mail, procurement, contracting, and accident inquiry services.

§ 800.3 Functions.

(a) The primary function of the Board is to promote safety in transportation. The Board is responsible for the investigation, determination of facts, conditions, and circumstances and the cause or probable cause or causes of: All accidents involving civil aircraft; highway accidents including railroad grade-crossing accidents, the investigation of which is selected in cooperation with the States; railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train; pipeline accidents in which there is a fatality or substantial property damage; and major marine casualties and marine accidents involving a public and a non-public vessel or involving Coast Guard functions. The Board makes transportation safety recommendations to Federal, State, and local agencies, and private organizations, to reduce the likelihood of recurrence of transportation accidents. It initiates and conducts safety studies and special investigations on matters pertaining to safety in transportation, assesses techniques and methods of accident investigation, evaluates the effectiveness of transportation safety consciousness and efficacy in preventing accidents of other Government agencies, and evaluates the adequacy of safeguards and procedures concerning the transportation of hazardous materials.

(b) Upon application of affected parties, the Board reviews in quasi-judicial proceedings, conducted pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 et seq., denials by the Administrator of the Federal Aviation Administration of applications for airman certificates and orders of the Administration modifying, amending, suspending, or revoking certificates. The Board also reviews on appeal the decisions of the Commandant, U.S. Coast Guard, on appeals from orders of adminstrative law judges suspending, revoking, or denying seamen licenses, certificates, or documents.

(c) The Board, as provided in Part 801 of this chapter, issues reports and orders pursuant to its duties to determine the cause or probable cause or causes of transportation accidents and to report the facts, conditions and circumstances relating to such accidents; issues opinions and/or orders after reviewing on appeal the suspension, amendment, modification, revocation, or denial of any certificate or license issued by the Secretary of the Department of Transportation (who acts through the Administrator of the Federal Aviation Administration or the Commandant of the United States Coast Guard); and issues and makes available to the public safety recommendations, studies, safety recommendations, safety studies, and reports of special investigations.

§ 800.4 Operation.

In exercising its functions, duties, and responsibilities, the Board utilizes:

(a) The Board's staff, consisting of specialized bureaus and offices dealing with particular areas of transportation safety and performing administrative and technical work for the Board. The staff advises the Board and performs duties for the Board that are inherent in the staff's position in the organizational structure or that the Board has delegated to it. The staff is described more fully in § 800.2.

(b) Rules published in the **Federal Register** and codified in this Title 49 of the Code of Federal Regulations. These rules may be inspected in the Board's public reference room, or purchased from the Superintendent of Documents, Government Printing Office.

(c) Procedures and policies set forth in the agency's internal directives system which govern the activities of employees and organizational components of the Board. The internal directives system is designated as the NTSB Manual and consists of instructions which are called NTSB Orders and NTSB Notices.

(d) Meetings of the Board Members conducted pursuant to the Government in the Sunshine Act.

(e) Public hearings in connection with transportation accident investigations and public hearings and oral arguments in proceedings concerned with certificates or licenses issued by the Secretary or an Administrator of the Department of Transportation. They are held at the time and place announced in the notices thereof which are served on the parties to the proceedings or published in the **Federal Register**.

§ 800.5 Office locations.

The principal offices of the National Transportation Safety Board are located at 800 Independence Avenue, SW., Washington, D.C. 20594. The Board maintains field offices in selected cities throughout the United States.

§ 800.6 Availability of information and materials.

Part 801 of this chapter provides detailed information concerning the availability of Board documents and records. That part also provides a fee schedule and information concerning inspection and copying.

Subpart B—Delegations of Authority to Staff Members

§ 800.21 Purpose.

The purpose of this Subpart B is to publish all delegations of authority of staff members which do not appear in other Board regulations.

§ 800.22 Delegation to the Managing Director.

(a) The Board hereby delegates to the Managing Director the authority to:

(1) Make the final determination as to whether to withhold a Board record from inspection of copying, pursuant to Part 801 of this chapter.

(2) Approve for publication in the **Federal Register** notices concerning issuance of accident reports and safety recommendations and responses to safety recommendations, as required by sections 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (49 U.S.C. 1903(a)(2) and 1906).

(b) The Chairman delegates to the Managing Director the authority to exercise and carry out, subject to the direction and supervision of the Chairman, the following functions vested in the Chairman:

(1) The appointment and supervision of personnel employed by the Board;

(2) The distribution of business among such personnel and among organizational components of the Board; and

(3) The use and expenditure of funds.

§ 800.23 Delegation to the administrative law judges, Office of Administrative Law Judges.

The Board hereby delegates to the administrative law judges the authority generally detailed in procedural regulation, Part 821, of this chapter.

§ 800.24 Delegation to the General Counsel.

The Board hereby delegates to the General Counsel the authority to:

(a) Approve, disapprove, or request further information concerning requests for testimony of Board employees with respect to their participation in the investigation of accidents, and, upon receipt of notice that an employee has been subpoenaed, to make arrangements with the court either to have the employee excused from testifying or to give the employee permission to testify in accordance with the provisions of Part 835 of this chapter.

(b) Approve or disapprove in safety enforcement proceedings, for good cause shown, requests for changes in procedural requirements subsequent to the initial decision, grant or deny requests to file additional briefs pursuant to § 821.48 of this chapter, and raise on appeal any issue the resolution of which he deems important to the proper disposition of proceedings under § 821.49 of this chapter.

(c) Approve of disapprove, for good cause shown, requests to extend the time for filing comments on proposed new or amended regulations.

(d) Issue regulations for the purpose of making editorial changes or corrections in the Board's rules and regulations.

(e) Issue orders staying, pending judicial review, orders of the Board suspending or revoking certificates, and consent to the entry of judicial stays with respect to such orders.

(f) Compromise civil penalties in the case of violations arising under Title VII of the Federal Aviation Act of 1958, or any rule, regulation, or order issued thereunder.

(g) Issue orders dismissing appeals from initial decisions of Board administrative law judges pursuant to the request of the appellant.

(h) Correct Board orders by eliminating typographical, grammatical, and similar errors, and make editorial changes therein not involving matters of substance.

§ 800.25 Delegation to the Director, Bureau of Accident Investigation.

The Board hereby delegates to the Director, Bureau of Accident Investigation, the authority to:

(a) Order an investigation into the facts, conditions, and circumstances of transportation accidents which the Board has authority to investigate.

(b) Disclose factual information pertinent to all accidents or incidents as provided for in Part 801 of this chapter.

(c) Determine the probable cause(s) of accidents in which the determination is issued in the "Brief of Accident" format, except that the Bureau Director will submit the findings of the accident investigation to the Board for determination of the probable cause(s) when (a) any Board Member so requests, or (b) it appears to the Bureau Director that, because of significant public interest, a policy issue, or a safety issue or other matter, the determination of the probable cause(s) should be made by the Board. Provided, that a petition for reconsideration or modification of a determination of the probable cause(s) made under § 845.41 of the Board's regulations (49 CFR 845.41) shall be acted on by the Board.

§ 800.26 Delegation to the Director, Bureau of Administration.

The Board hereby delegates to the Director, Bureau of Administration, the authority to:

(a) Determine initially the withholding of a Board record from inspection or copying, pursuant to Part 801 of this chapter.

(b) Settle claims for money damages of $2,500 or less against the United States arising under section 2672 of 28 United States Code (the Federal Tort

Claims Act) because of acts or omissions of Board employees.

§ 800.27 Delegation to investigative officers and employees of the Board.

The Board hereby delegates to any officer or employee of the Board who is designated by the Chairman of the Safety Board the authority to sign and issue subpoenas, and administer oaths and affirmations, and to take depositions or cause them to be taken in connection with the investigation of transportation accidents.

§ 800.28 Delegation to Director, Bureau of Field Operations.

The Board hereby delegates to the Director, Bureau of Field Operations, the authority to:

(a) Order an investigation into the facts, conditions, and circumstances of transportation accidents which the Board has authority to investigate.

(b) Disclose factual information pertinent to all accidents or incidents as provided for in Part 801 of this chapter.

(c) Determine the probable cause(s) of accidents in which the determination is issued in the "Brief of Accident" format, except that the Bureau Director will submit the findings of the accident investigation to the Board for determination of the probable cause(s) when (a) any Board Member so requests, or (b) it appears to the Bureau Director that, because of significant public interest, a policy issue, or a safety issue or other matter, the determination of the probable cause(s) should be made by the Board. Provided, that a petition for reconsideration or modification of a determination of the probable cause(s) made under §845.41 of the Board's regulations (49 CFR 845.41) shall be acted on by the Board.

Appendix—Request to the Secretary of the Department of Transportation to Investigate Certain Aircraft Accidents

(a) Acting pursuant to the authority vested in it by Title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441) and section 304(a)(1) of the Independent Safety Board Act of 1974, the National Transportation Safety Board (Board) hereby requests the Secretary of the Department of Transportation (Secretary) to exercise his authority subject to the terms, conditions, and limitations of Title VII and section 304(a)(1) of the Independent Safety Board Act of 1974, and as set forth below to investigate the facts, conditions, and circumstances surrounding certain fixed-wing and rotorcraft aircraft accidents and to submit a report to the Board from which the Board may make a determination of the probable cause.

(b) The authority to be exercised hereunder shall include the investigation of all civil aircraft accidents involving rotorcraft, serial application, amateur-built aircraft, restricted category aircraft, and all fixed-wing aircraft which have a certificated maximum gross takeoff weight of 12,500 pounds or less except:

(1) Accidents in which fatal injuries have occurred to an occupant of such aircraft, but shall include accidents involving fatalities incurred as a result of aerial application operations, amateur-built aircraft operations, or restricted category aircraft operations.

(2) Accidents involving aircraft operated in accordance with the provisions of Part 135 of the Federal Air Regulations entitled "Air Taxi Operators and Commercial Operators of Small Aircraft."

(3) Accidents involving aircraft operated by an air carrier authorized by certificate of public convenience and necessity to engage in air transportation.

(4) Accidents involving midair collisions.

(c) *Provided,* That the Board may, through the chiefs of its field offices, or their designees who receive the initial notifications, advise the Secretary, through his appropriate designee, that the Board will assume the full responsibility for the investigation of an accident included in this request in the same manner as an accident not so included; and *Provided further,* That the Board, through the chiefs of its field offices, or their designees who receive initial notifications may request the Secretary, through his appropriate designee, to investigate an accident not included in this request, which would normally be investigated by the Board under Section (b) (1) through (4) above, and in the same manner as an accident so included.

(d) *Provided,* That this authority shall not be construed to authorize the Secretary to hold public hearings or to determine the probable cause of the accident; and *Provided further,* That the Secretary will report to the Board in a form acceptable to the Board the facts, conditions, and circumstances surrounding each accident from which the Board may determine the probable cause.

(e) *And provided further,* That this request includes authority to conduct autopsies and such other tests of the remains of deceased persons aboard the aircraft at the time of the accident, who die as a result of the accident, necessary to the investigations requested hereunder and such authority may be delegated and redelegated to any official or employee of the Federal Aviation Administration (FAA). For the purpose of this provision, designated aviation examiners are not deemed to be officials or employees of the FAA.

(f) Invoking the provisions of section 701(f) of the Federal Aviation Act of 1958, and section 304(a)(1) of the Independent Safety Board Act of 1974, is necessary inasmuch as sufficient funds have not been made available to the Board to provide adequate facilities and personnel to investigate all accidents involving civil aircraft. This request, therefore, is considered to be temporary in nature and may be modified or terminated by written notice to the Secretary.

(42 FR 8379, Mar. 1, 1977)

Signed in Washington, D.C. on June 18, 1984.

Jim Burnett,

Chairman.

[FR Doc. 84-16606 Filed 6-26-84; 8:45 am]

BILLING CODE 7533-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Fourteenth Revised Service Order No. 1474]

Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. Debtor (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Fourteenth Revised Service Order No. 1474.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254, this order authorizes various railroads to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie), Trustee, and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE: 11:59 p.m., June 30, 1984, and continuing in effect until 11:59 p.m., September 30, 1984, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840 or 275-1559.

Decided: June 21, 1984.

Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254, the Commission is authorizing the temporary provision of interim service over Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee), (MILW) and the use of such tracks and facilities as are necessary for those operations.

In view of the continued urgent need for rail service over certain MILW lines pending the implementation of long-range solutions, this order permits carriers named in Appendix A to this order, to provide service to shippers which might otherwise be deprived of essential rail transportation.

On June 14, 1984, the MILW Trustee notified the Railroad Service Board (Board) of the following changed circumstances which necessitated his request for the deletion of Seattle and North Coast Railroad Company (Seattle) from Appendix A of this order, effective June 30, 1984.

(1) By Order No. 746 dated April 16, 1984, the MILW's Reorganization Court declared Seattle in default under the lease and sale agreements between Seattle and the MILW.

(2) The Reorganization Court made a determination that continuation of Seattle's Operations over the MILW's Seattle-Port Angeles branch line without compensation is harmful to the debtor estate and its efforts to reorganize.

(3) In addition to being in default of its agreements with the MILW Trustee, Seattle has failed its responsibilities under ordering paragraph (c) of Thirteenth Revised Service Order No. 1474, which requires that the Trustee will be compensated for the use of the MILW property described in Appendix A and utilized by the interim operator.

(4) The Trustee is unable to provide the requisite concurrence for Seattle's continued use of MILW property.

Since the inception of interim operations over MILW's abandoned lines, and with consideration of the MILW's ongoing rail operations and reorganization, the Board has sought and received the Trustee's concurrence each time the order's effectiveness has been extended. The Board believes such concurrence is imperative, and essential to the Trustee in fulfilling his responsibilities. Moreover, the action by the Bankruptcy court to terminate Seattle's lease/purchase agreements and Seattle's failure to compensate the Estate for the use of its property strengthen the Trustee's request for termination of Seattle's interim operating authority under the service order..

It is the conclusion of the Board that, given the position of the Trustee, and Seattle's apparent inability to consummate the acquisition of the MILW line during the four years since it was authorized or, more recently, to compensate the Trustee, deletion of Seattle's interim operating authority should not affect its prospects of acquiring the MILW line. Moreover, the Board agrees that continued use of MILW property by Seattle without compensation will significantly diminish the Estate and the Trustee's ability to liquidate certain lines and reorganize.

Appendix A of Thirteenth Revised Service Order No. 1474 is revised by deleting at Item 1., the authority for Seattle to operate between Port Angeles and Port Townsend, Washington, including Pier 27 and associated track in Seattle, Washington. Remaining items are renumbered accordingly.

This order is further revised by extending the expiration date until September 30, 1984.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendix be authorized to conduct operations using MILW tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

§ 1033.1474 [Amended]

It is ordered, Fourteenth Revised Service Order No. 1474

(a) Various railroads authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee). Various railroads are authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW), as listed in Appendix A to this order, to provide interim service over the MILW.

(b) The Trustee shall permit the affected carriers to enter upon the property of the MILW to conduct service essential to these interim operations.

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by section 122(a) Pub. L. 96–254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the MILW Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of these operations over the MILW lines, interim operators shall be responsible for preserving the value of the lines, associated with each interim operation, to the MILW estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as this operation by interim operators over tracks previously operated by the MILW is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via MILW, until tariffs naming rates and routes specifically applicable become effective.

(k) In transporting traffic over these lines, all interim operators involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) *Employees.* In providing service under this order interim operators, to the maximum extent practicable, shall use the employees who normally would have performed work in connection with the traffic moving over the lines subject to this Service Order.

(m) *Effective date.* This order shall become effective at 11:59 p.m., June 30, 1984.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1984, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304–10305 and Section 122, Public Law 96–254.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad

Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C. and by filing a copy with the Director, Office of the Federal Register.

List of Subjects in 49 CFR Part 1033

Railroads.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien. Bernard Gaillard not participating.

James H. Bayne,

Secretary.

Appendix A—MILW Lines Authorized To Be Operated by Interim Operators

1. *Des Moines Union Railway Company (DMU):*

A. Between Des Moines (milepost 0) and Clive, (milepost 8.5) Iowa; and between Clive (milepost 0) and Grimes, Iowa (milepost 7), a total distance of 15.5 miles.

2. *Central Wisconsin Railroad Company (CWRC):*

A. Between Elkhorn, Wisconsin (milepost 38.5) and Bardwell, Wisconsin (milepost 53.0), a distance of 14.5 miles.

B. Between Janesville (Station Anderson), Wisconsin (milepost 102.0) and Madison (Station Minona), Wisconsin (milepost 138.4), a distance of 36.4 miles.

[FR Doc. 84-17056 Filed 6-26-84; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 49, No. 125
Wednesday, June 27, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 435

[Docket No. 1114S; Amdt. No. 4]

Tobacco (Quota Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend Appendix A to the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435) to include additional counties recently approved by FCIC's Board of Director for tobacco crop insurance, to list counties inadvertently omitted from previous county listing publications, and to republish Appendix A in its entirety to reflect all counties currently designated for tobacco crop insurance. The intended effect of this rule is to update the list of counties wherein tobacco crop insurance is otherwise authorized to be offered under the provisions of the Tobacco (Quota Plan) Crop Insurance Regulations and to notify all interested parties in the additional affected counties that they are now eligible to participate in the program.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than July 27, 1984, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation No. 1512–1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under that memorandum. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive order No. 12291 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title-Crop Insurance; Number 10.450.

As set forth in the notice related to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, requiring intergovernmental consultation with State and local officials are excluded from the provisions of Executive Order No. 12372.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

Under the provisions of 7 CFR 435.1, before any insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which tobacco crop insurance shall be offered. The Board of Directors has approved additional counties for tobacco crop insurance and the Manager proposes to make crop insurance available in those counties effective with the 1984 and succeeding crop years. The proposed additional counties are listed and identified in Appendix A by an asterisk ("*").

In reviewing the county listing for tobacco crop insurance, FCIC noted that several counties had been inadvertently omitted from previous regulations published in the **Federal Register.** These counties are included in Appendix A and are identified by two asterisks ("**").

To be sure that Appendix A lists every county wherein tobacco crop insurance is otherwise authorized to be offered, FCIC is republishing Appendix A in its entirety.

The public is invited to submit written comments, data, and opinions on this proposed rule for 30 days after publication in the **Federal Register.** All comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 435

Crop insurance, Tobacco (Quota Plan).

Proposed Rule

PART 435—[AMENDED]

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 CFR 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), effective for the 1984 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 435 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 435 is amended by revising and reissuing Appendix A thereto to read as follows:

Appendix A—Counties Designated for Tobacco (Quota Plan) Crop Insurance

The following counties are designated for Tobacco (Quota Plan) Crop Insurance under the provisions of 7 CFR 435.1.

Indiana

**Bartholomew	Jennings
*Brown	*Lawrence
Clark	**Ohio
*Crawford	*Orange
Dearborn	*Owen
*Decatur	*Perry
*Fayette	Ripley
**Floyd	*Rush
Franklin	Scott
*Greene	Spencer
Harrison	Switzerland
*Jackson	Washington
Jefferson	

Kentucky

Adair	Butler
Allen	Caldwell
Anderson	**Calloway
Ballard	**Campbell
Barren	Carlisle
Bath	Carroll
Boone	**Carter
Burbon	Casey
*Boyd	Christian
Boyle	Clark
Bracken	**Clay
**Breathitt	**Clinton
Breckinridge	**Cumberland
**Bullitt	Daviess

**Edmonson	Marion	
**Elliott	Marshall	
**Estill	Mason	
Fayette	Meade	
Fleming	**Menifee	
Franklin	Mercer	
**Gallatin	Metcalfe	
Garrard	**Monroe	
Grant	Montgomery	
Graves	**Morgan	
Grayson	Muhlenberg	
Green	Nelson	
**Greenup	Nicholas	
Hancock	Ohio	
Hardin	**Oldham	
Harrison	Owen	
Hart	**Owsley	
Henderson	Pendelton	
Henry	*Perry	
**Hickman	**Powell	
Hopkins	Pulaski	
**Jackson	Robertson	
**Jefferson	**Rockcastle	
Jessamine	**Rowan	
**Johnson	Russell	
**Kenton	Scott	
**Knox	Shelby	
Larue	Simpson	
**Laurel	Spencer	
**Lawrence	Taylor	
**Lee	Todd	
*Leslie	Trigg	
Lewis	Trimble	
Lincoln	Warren	
Logan	Washington	
**Lyon	Wayne	
McCracken	Webster	
*McCreary	**Whitley	
McLean	**Wolfe	
Madison	Woodford	
**Magoffin		

Missouri

*Boone	*Clinton	
Buchanan	**Howard	
**Chariton	Platte	
*Clay		

North Carolina

Alleghany	Haywood
Ashe	Madison
**Avery	Mitchell
Buncombe	Watauga
**Graham	Yancey

Ohio

Adams	*Hamilton	**Pike
Brown	Highland	*Ross
Clermont	*Jackson	**Scioto
**Gallia	**Lawrence	

Tennessee

Anderson	Hancock	**Pickett
Bedford	Hawkins	Putnam
*Bledsoe	**Hickman	*Rhea
Blount	**Houston	**Roane
*Bradley	*Humphreys	Robertson
**Campbell	Jackson	Rutherford
**Cannon	Jefferson	*Scott
Carter	Johnson	Sevier
Cheatham	Knox	Smith
Claiborne	Lawrence	Stewart
**Clay	*Lewis	Sullivan
Cocke	Lincoln	Sumner
*Coffee	Loudon	Trousdale
**Cumberland	McMinn	Unicoi
**Davidson	Macon	**Union
Dekalb	Marshall	*Van Buren
Dickson	Maury	Warren
**Fentress	**Meigs	Washington
Franklin	Monroe	White
Giles	Montgomery	Williamson
Grainger	**Moore	Wilson
Greene	*Morgan	
Hamblen	**Overton	

Virginia

**Bland	Russell	Washington
**Grayson	Scott	**Wise
Lee	Smyth	

West Virginia

**Cabell	**Mason
**Lincoln	**Putnam

Done in Washington, D.C., on May 11, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 5, 1984.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-15723 Filed 6-26-84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Ch. X

[Docket Nos. AO-160-A62-RO2, etc.]

Milk in Middle Atlantic and Certain Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	AO Nos.
1004	Middle Atlantic	AO-160-A62-R02.
1001	New England	AO-14-A60.
1002	New York-New Jersey	AO-71-A74-R01.
1006	Upper Florida	AO-356-A21.
1007	Georgia	AO-366-A23.
1011	Tennessee Valley	AO-251-A26.
1012	Tampa Bay	AO-347-A24.
1013	Southeastern Florida	AO-286-A31.
1030	Chicago Regional	AO-361-A21.
1032	Southern Illinois	AO-313-A32.
1033	Ohio Valley	AO-166-A53.
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A48.
1040	Southern Michigan	AO-225-A36.
1044	Michigan Upper Peninsula	AO-299-A23.
1046	Louisville-Lexington-Evansville.	AO-123-A52.
1049	Indiana	AO-319-A33.
1050	Central Illinois	AO-355-A22.
1062	St. Louis-Ozarks	AO-10-A56.
1064	Greater Kansas City	AO-23-A55.
1065	Nebraska-Western Iowa	AO-86-A42.
1068	Upper Midwest	AO-178-A38.
1075	Black Hills	AO-248-A18.
1076	Eastern South Dakota	AO-260-A26.
1079	Iowa	AO-295-A35.
1093	Alabama-West Florida	AO-366-A2.
1094	New Orleans-Mississippi	AO-103-A43.
1096	Greater Louisiana	AO-257-A31.
1097	Memphis	AO-219-A39.
1098	Nashville	AO-184-A46.
1099	Paducah	AO-183-A38.
1102	Fort Smith	AO-237-A32.
1106	Southwest Plains	AO-210-A44.
1108	Central Arkansas	AO-243-A36.
1120	Lubbock-Plainview	AO-328-A25.
1124	Oregon-Washington	AO-368-A13.
1125	Puget Sound-Inland	AO-226-A30.
1126	Texas	AO-231-A52.
1131	Central Arizona	AO-271-A25.
1132	Texas Panhandle	AO-262-A35.
1134	Western Colorado	AO-301-A18.
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A4.
1136	Great Basin	AO-309-A25.
1137	Eastern Colorado	AO-328-A22.
1138	Rio Grande Valley	AO-335-A30.
1139	Lake Mead	AO-374-A9.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by the National Milk Producers Federation to amend all 45 Federal milk marketing orders. The Federation represents most of the dairy farmer cooperatives in the United States.

The proposals would provide a separate classification for milk used to make butter and nonfat dry milk. The proposed price for such milk would be the Minnesota-Wisconsin series price (M-W) or a butter-nonfat dry milk formula price, whichever is lower. Milk used to produce butter and nonfat dry milk now is included generally in the same classification (and therefore priced the same at the M-W price) as other milk used to make hard cheese, other dry milk products, and condensed milk.

The proponents consider these proposed changes necessary to maintain an appropriate price for milk used to make butter and nonfat dry milk in the event that the M-W price increases relative to the market values of butter and nonfat dry milk. The proponents also have indicated that they will ask for emergency consideration of these issues at the hearing.

DATE: The hearing will convene at 9:00 a.m., local time, on July 11, 1984.

ADDRESS: The hearing will be held at the Ramada Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia 22314, (703) 683-6000.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Ramada Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia, beginning at 9:00 a.m., on July 11, 1984, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing order (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

This hearing represents a reopening for the limited purposes stated herein of the public hearings previously held with respect to the orders regulating the handling of milk in the New York–New Jersey (Docket No. AO–71–A74) and Middle Atlantic (Docket No. AO–160–A62) marketing areas.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Ch. X

Milk Marketing orders, Milk, Dairy products.

The proposed amendments as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the National Milk Producers Federation

Proposal No. 1

Amend each Federal milk marketing order to separately classify and price milk used in the production of butter and nonfat dry milk.[1]

For example, the St. Louis-Ozarks marketing order (Part 1062) would be changed as follows:

§1062.40 [Amended]

1. In Section 1062.40 remove paragraph (c)(1)(ii).

2. Amend § 1062.40(c)(1)(iii) to read: "Any milk product, other than nonfat dry milk, in dry form;"

3. Add the following paragraph at the end of § 1062.40:

(d) *Class IV milk.* Class IV milk shall be all skim milk and butterfat used to produce:

1. Butter; and

2. Nonfat dry milk.

§ 1062.50 [Amended]

4. Add the following paragraph at the end of § 1062.50:

* * * * *

(d) *Class IV price.* The Class IV price shall be the lower of:

(1) The basic formula price for the month; or

(2) An amount computed as follows:

(i) Multiply by 4.27, the simple average Chicago Mercantile Exchange Grade A (92-score) butter price for the month as reported by the Dairy Division;

(ii) Multiply by 8.3, the simple average of the averages of high heat, low heat and Grade A nonfat dry milk, for the month for the Central States production area as reported by the Dairy Division;

(iii) Subtract from the sum of (i) and (ii) of this paragraph, $1.32 and round to the nearest cent.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 2

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of each of the aforesaid specified marketing areas, or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organization units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator of each of the 45 Orders

Procedural matters are not subject to the above prohibition and may be discussed at any time.

(Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C. on: June 22, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84–17204 Filed 6–26–84; 8:45 am]
BILLING CODE 3410–02–M

[1] Consideration of the proposal raises certain other issues related to classification for which specific order language was not proposed. Accordingly, the Department seeks record information relevant to such issues as follows:

(a) Whether butter-powder price snubbers should be removed from any orders that so provide?

(b) What handler butterfat differential should be applied to the proposed new price in any order that provides for handler butterfat differentials?

(c) What minimal changes may be necessary in order provisions pertaining to the classification of transfers of milk between plants, and the assignment of milk received from various sources to the utilization available in each class?

Food Safety and Inspection Service

9 CFR Part 313

[Docket No. 82-021P]

Electrical Method of Slaughter

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rules.

SUMMARY: This is a proposal to amend the Federal meat inspection regulations by permitting the use of electrical devices that induce instantaneous cardiac arrest in animals as a means of slaughter. Current regulations require that animals must die from loss of blood resulting from the bleeding operation and not from the electrical shock. The proposed rule change is based upon scientific research published in the literature which indicates that the procedure is an effective and humane slaughter method.

DATE: Comments must be received on or before August 27, 1984.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Dr. John C. Prucha, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a "major rule" as defined under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because the proposed procedure would only provide an optional method of humane slaughter, there would not be any new cost burdens mandated for the industry.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because the proposed procedure provides an optional method of humane slaughter that would not require any equipment or facility changes.

Comments

Interested persons are invited to submit written comments concerning this proposal. Comments should be sent in duplicate to the Regulations Office and reference the docket number located in the heading. Comments submitted pursuant to this notice will be made available for public inspection in the Regulations Office, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, between 9:00 a.m., and 4:00 p.m. Monday through Friday.

Background

The Secretary of Agriculture has been charged with the responsibility of assuring that livestock slaughter is conducted in a humane manner (7 U.S.C. 1901 *et seq.*) The Secretary is further "authorized and directed to conduct, assist, and foster research, investigation, and experimentation * * *" into humane slaughter methods (7 U.S.C. 1904(a)). This proposal would allow an alternative slaughtering procedure consistent with the Secretary's mandate.

Until recently, it was generally believed that the continued pumping action of the heart was essential for proper exsanguination of food animals at slaughter. For this reason, the current regulations require that food animals must die from blood loss. To accomplish this in a humane manner, the regulations further mandate that livestock be stunned, that is, rendered insensible, prior to bleeding. Several different humane slaughter stunning methods have been approved: carbon dioxide gas, gunshot or captive bolt, and electrical current. (9 CFR Part 313).

The Department has reviewed data published in the scientific literature which indicate that meat from animals killed outright by an electric current compares favorably in quality with that from animals stunned and killed under the traditional methods of slaughter. By applying a high voltage of electricity using certain techniques, the animal's heart is instantaneously stopped and there is an immediate cessation of circulation to the brain, thus rendering the animal insensible. Such a method of slaughter, which is sometimes referred to as "deep stunning" or "electrical slaughter," has been used effectively in New Zealand and other countries (Ref. 4, 5, 7, 12).[1]

Although conflicting data exist concerning bleedout time when electrical slaughter is used (Ref. 7, 12), the weight of blood lost appears identical to that achieved using other stunning methods (Ref. 4, 7, 12). Additionally, the color of the meat, the amount of residual blood present, and the heme pigment concentration of the meat, which is a good indicator of hemoglobin and therefore the amount of retained blood in the muscle, are comparable (Ref. 12).

The traditional method of electrical stunning often results in agonal hemorrhages in the muscle and fat, commonly known as "blood splashing" and "fat speckling." The major advantage of electrical slaughter appears to be that it causes fewer hemorrhages than are commonly associated with electrical stunning.

It is not entirely clear why electrical slaughter reduces the occurrence of blood splashing and fat speckling, but the reduction may be due to the decrease in blood pressure resulting from electrical slaughter (i.e., death) in contrast to the increase in blood pressure which occurs during conventional electrical stunning (Ref. 1, 5, 7). The phenomenon of fewer blood splashes may also be related to the decreased thrashing of the animals which results when the electrial slaughter procedure is used (Ref. 5).

In addition to the amount of voltage and amperage, the placement of electrodes is an important part of electrical slaughter. The traditional method of electrical stunning involves placing two electrodes on the animal's head. With this method, however, it is not possible to kill the animal outright without greatly increasing the amount of electric current and the length of application time. This, however, adversely affects carcass quality by causing an increase in agonal hemorrhages and damage to the hide.

To overcome these limitations, various techniques for applying the electric current have been devised. The two most effective electrical slaughter methods are head-to-back and head-to-foot. In head-to-back, two electrodes are placed on the head and a third is placed on the back in the mid-thoracic region. In head-to-foot, two electrodes are placed on the head and a third on a foot or a foreleg.

Due to the placement of the third electrode, both of these methods cause the current to flow over a large portion of the animal's body including the area of the heart. When electric current is applied by either of these methods, immediate unconsciousness and heart stoppage occur. Both of the traditional electrical stunning technique for decreasing blood splashing. Of the two, head-to-foot results in the lower incidence of fat speckling (Ref. 7).

The anesthetic effect of electrical stunning is, of course, temporary. Considerable research has been devoted to determining, for each species, the range of time after application of an electric current that stunned animals unconscious (Ref. 1, 2, 3, 5, 8). Although electrically stunned animals remain insensible for various periods of time, so long as death results from

[1] See "references" section for a list of scientific materials consulted during the preparation of this proposed rule.

exsanguination before the animal regains consciousness such a method is humane.

Because the porposed method of electrical slaughter, when correctly applied, would guarantee permanent insensibility, some reserachers believe it to be a better way of slaughter than the traditional electrical stunning method (Ref. 1, 2). The Department has concluded, however, that there is not, at this time, sufficient data to justify mandating the use of electrical slaughter instead of electrical stunning. It will, however, monitor the application of electrical slaughter to determine if such action may be indicated at a later date.

Therefore, the Department is proposing to amend § 313.30 of the Federal meat inspection regulations (9 CFR 313.30) to permit the use of electric current at a level which would cause instantaneous cardiac arrest as an alternative method of humane slaughter.

References

1. Blackmore, D. K. and Newhook, J. C., "Electroencephalographic Studies of Stunning and Slaughter of Sheep and Calves—Part 3: The Duration of Insensibility Induced by Electrical Stunning in Sheep and Calves," *Meat Science*, 7:19–28, (1982).
2. Blackmore, D. K. and Newhook, J. C., "Insensibility During Slaughter of Pigs in Comparison to Other Domestic Stock," *New Zealand Veterinary Journal*, 29:219–222, (1981).
3. Blackmore, D. K., Newhook, J. C. and Petersen, G. V., "Electrical Stunning and Humane Slaughter," *New Zealand Veterinary Journal*, 27:224, (1979).
4. Blackmore, D. K. and Petersen, G. V., "Stunning and Slaughter of Sheep and Calves in New Zealand," *New Zealand Veterinary Journal*, 29:99–102, (1981).
5. Grandin, T., "Slaughter Research in New Zealand," *Meat Industry*, pp. 102–103, (1981).
6. Kirton, A. H., Bishop, W. H., Mullord, M. M., and Frazerhurst, L. F., "Relationships Between Time of Stunning and Time of Throat Cutting and Their Effect on Blood Pressure and Blood Splash in Lambs," *Meat Science*, 2:199–206, (1978).
7. Kirton, A. H., Frazerhurst, L. F., Woods, E. G., and Chrystall, B. B., "Effect of Electrical Stunning Method and Blood Splash in Lambs," *Meat Science*, 5:347–353, (1981).
8. Newhook, J. C. and Blackmore, D. K., "Electroencephalographic Studies of Stunning and Slaughter of Sheep and Calves—Part 1: The onset of Permanent Insensibility in Sheep During Slaughter," *Meat Science*, 6:221–233, (1982).
9. Petersen, G. V. and Wright, D. R., "Observations of Subcutaneous Hemorragic Speckling in Lambs," *New Zealand Veterinary Journal*, 27:166–168, (1979).
10. Warriss, P. D., "Factors Affecting the Residual Blood Content of Meat," *Meat Science*, 2:155–159, (1978).
11. Warriss, P. D., "The Residual Blood Content of Meat—A Review," *Journal of the Science of Food and Agriculture*, 28:457–461, (1977).
12. Warriss, P. D. and Wotton, S. B., "Effect of Cardiac Arrest on Exsanguination in Pigs," *Reserach in Veterinary Science*, 31:82–86, (1981).

List of Subjects in 9 CFR Part 313

Animal welfare, Electrical stunning, Humane slaughter.

Proposed Rule

Accordingly, § 313.30 of the Federal meat inspection regulations (9 CFR 313.30) would be amended as follows:

PART 313—[AMENDED]

1. The authority citation for Part 313 reads as follows:

Authority: 92 Stat. 1069, 72 Stat. 862, 34 Stat. 1260, 79 Stat. 903 as amended, 81 Stat. 91, 438; 21 U.S.C. 71 *et seq.*; 601 *et seq.*; 7 U.S.C. 1901–1906.

2. Section 313.30 (9 CFR 313.30) would be amended by revising the introductory text, and paragraphs (a)(1)(2), (4), and (b) to read as follows:

§ 313.30 Electrical; stunning or slaughtering with electric current.

The slaughtering of swine, sheep, calves, cattle, and goats with the use of electric current and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designed and approved as humane methods of slaughtering and handling of such animals under the Act.

(a) *Administration of electric current, required effect; handling.* (1) The electric current shall be administered so as to produce, at a minimum, surgical anesthesia. The animals shall be either stunned or killed before they are shackled, hoisted, thrown, cast, or cut. They shall be exposed to the electric current in a way that will accomplish the desired result quickly and effectively, with a minimum of excitement and discomfort.

(2) The driving or conveying of the animals to the place of application of electric current shall be done with a minimum of excitement and discomfort to the amimals. Delivery of calm animals to the place of application is essential to ensure rapid and effective insensibility. Among other things, this requires that, in driving animals to the place of application, electrical equipment be used as little as possible and with lowest effective voltage.

* * * * *

(4) The stunned animal shall remain in a state of surgical anesthesia through shackling, sticking, and bleeding.

(B) *Facilities and procedures; operator*—(1) *General requirements for operator.* It is necessary that the operator of electric current application equipment be skilled, attentive, and aware of his or her responsibility.

(2) *Special requirements for electric current application equipment.* The ability of electric current equipment to perform with maximum efficiency is dependent on its proper design and efficient mechanical operation. Pathways, compartments current applicators, and all other equipment used must be designed to accommodate properly the species of animals being anesthetized. They shall be free from pain-producing restraining devices. Injury of animals must be prevented by the elimination of sharp projections or exposed wheels or gears. There shall be no unnecessary holes, spaces or openings where feet or legs of animals may be injured. Impellers or other devices designed to mechanically move or drive animals or otherwise keep them in motion or compartmentalized shall be constructed of flexible or padded material. Power activated gates designed for constant flow of animals shall be so fabricated that they will not cause injury. All equipment used to apply and control the electrical current shall be maintained in good repair, and all indicators, instruments, and measuring devices shall be available for inspection by Program inspectors during the operation and at other times.

(3) *Electric current.* Each animal shall be given a sufficient application of electric current to ensure insensibility immediately and throughout the bleeding operation. Suitable timing, voltage and current control devices shall be used to ensure that each animal receives the necessary electrical charge to produce immediate unconsciousness. The current shall be applied so as to avoid the production of hemorrhages or other tissue changes which could interfere with inspection procedures.

Done at Washington, D.C., on: June 11, 1984.

Donald L. Houston;

Administrator, Food Safety and Inspection Service.

[FR Doc. 84–17054 Filed 6–26–84; 8:45 am]
BILLING CODE 3410–DM–M

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9 CFR Parts 318 and 319

[Docket No. 84–005P]

Margarine or Oleomargarine; Standards Revision

AGENCY: Food Safety; and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would carrect and revise the FSIS final rule entitled

"Margarine or Oleomargarine; Standards Revision" published on November 22, 1983 (48 FR 52692). This proposal is needed to correct the Agency's interpretation of and response to a comment made during the rulemaking for the November 22 rule and to revise terminology in the margarine standard which is inconsistent with language of other Federal meat inspection regulations.

DATE: Comments must be received on or before August 27, 1984.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250. (See also "Comments" under SUPPLEMENTARY INFORMATION.)

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Hibbert, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has determined, in accordance with Executive Order 12291, that this proposed rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would essentially make minor corrections and revisions to the final rule published on November 22, 1983. The final rule was reviewed for cost effectiveness under Executive Order 12291 and determined to not be a "major rule". The only group affected by the final rule was the margarine industry which would be affected only to the extent that existing industry-wide practices would be added to the Code of Federal regulations. Margarine manufacturers currently prepare and label their product in accordance with the Food and Drug Administration's (FDA) regulations. Adopting that rule provided the margarine industry with one standard with which to comply when producing either animal or vegetable margarine. None of the above conclusions would change with this proposed rule.

Effect on Small Entities

The Administrator, Food Safety ;and Inspection Service (FSIS), has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because the proposed rule would make minor corrections and revisions to the earlier published final rule which only formalized existing industry-wide practices.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent in duplicate to the Regulations Office. Comments should refer to the docket number which appears in the heading of this document. All comments submitted pursuant to this notice will be made available for public inspection in the Regulations Office between 8:00 a.m. and 4:30 p.m., Monday through Friday.

Background

FSIS published a final rule entitled "Margarine or Oleomargarine; Standards Revision" on November 22, 1983 (48 FR 52692). The rule revised the standard for margarine or oleomargarine in the Federal meat inspection regulations. The revision removed inconsistencies between the U.S. Department of Agriculture and the FDA standards and established a standard similar to the international standard of the Codex Alimentarius Commission.

After publication of this final rule, the Agency received from a trade association representative clarification of a comment the association had made during rulemaking. The clarification showed that there had been a major difference between the Agency's interpretation of the comment and the commenter's intent. The commenter requested authorization for the use of any nutritive carbohydrate sweetener in margarine. The Agency ;construed this to be a request to approve the use of "safe and suitable" ingredients. In fact, the commenter simply intended to request approval of the use of lactose as an optional ingredient in margarine.

The Agency's position on the overall "safe and suitable" issue remains the same as that described in the final rule, namely, that the Agency intends to guarantee the exact nature and integrity of a specific standardized food to the degree possible and will continue prescribing limits for food ingredients where appropriate. As such, it does not feel that authorization of the use of ingredients through the use of the broad term "safe and suitable" is appropriate to the margarine standard.

Lactose, however, is a food grade nutritive carbohydrate sweetener with an FDA standard of identity (21 CFR 168.122). Therefore, the Agency can see no reason to not permit the use of lactose as an optional ingredient in margarine as long as its presence is properly disclosed on the product's label. In fact, in the November 22 final rule, the Agency granted a similar request for the use of fructose as an optional ingredient.

Rather than adding "lactose" to the current list in the regulations of specific nutritive carbohydrate sweeteners allowed as optional ingredients in margarine, the Agency believes it should simply permit the use of any nutritive carbohydrate sweetener in margarine. This change would make the Federal meat inspection regulations consistent with parallel provisions in FDA and Codex Alimentarius standards for margarine. The Agency's concerns about use of "safe and suitable" substances in margarine, which apply to certain restricted ingredients such as acidulants and alkalizers, do not apply to nutritive carbohydrate sweeteners. Accordingly, the Agency proposes to revise the sweetener provision of the margarine standard (9 CFR 319.700(b)(3)) to read "nutritive carbohydrate sweeteners."

The proposal would also make revisions concerning the chart of approved substances in 9 CFR 318.7(c)(4) to which the margarine standards refer.

The first of these revisions would amend § 319.700(b)(7) of the margarine standard. This provision currently permits use of the class of substances called "color additives" which are identified in 9 CFR 318.7(c)(4). The chart in § 318.7(c)(4), however, uses the term "coloring agents." To remove the inconsistency, this proposal would revise the margarine standard to refer to "coloring agents." In addition, the current margarine standard lists some specific coloring agents identified in the chart in § 318.7(c)(4). The Agency believes this double listing is unnecessary and confusing since the list in the margarine standard is incomplete. Therefore, the Agency proposes to remove the list from 9 CFR 319.700(b)(7) of the margarine standard.

The second revision would amend § 318.7(c)(4)—the chart of approved substances. FDA said in a letter to the Agency dated May 5, 1983, that the term "coal tar dyes" for the substance within the class of substances "coloring agents

(artificial)" in 9 CFR 318.7(c)(4) was both out of date and too general because coal tar dyes include color additives that are not appropriate for use in margarine. In the November 22 final rule, the Agency revised the regulation by simply substituting the term "color additives" for "coal tar dyes." However, even color additives include substances that may not be appropriate for use in margarine. More important than whether a coloring agent is made from coal tar or any other material, is whether the safety of its use in food has been evaluated by a qualified and responsible governmental authority, in this case, FDA. Section 318.7(c)(4) currently does limit use of coloring agents (artificial) to those "approved under the Federal Food, Drug and Cosmetic Act. . . ." The Agency, however, believes § 318.7(c)(4) can and should be more specific since FDA codifies approved color additives in 21 CFR Parts 74 and 82. Therefore, the proposal would revise 9 CFR 318.7(c)(4) by referring specifically to those two parts of 21 CFR.

Proposed Rule

List of Subjects in 9 CFR Parts 318 and 319

Incorporation by reference, Standards of composition, Margarine and oleomargarine.

Accordingly, Parts 318 and 319 of the Federal meat inspection regulations would be amended to read as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 is as follows (9 CFR Part 318):

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, (33 U.S.C. 1254).

§ 318.7 [Amended]

2. Under the "Class of Substance" identified as "Coloring agents (artificial)" in the chart in § 318.7(c)(4), the "Substance" column would be revised to read: "Color additives listed in 21 CFR Part 74, Subpart A or Part 82, Subpart B (Operator must furnish evidence to inspector in charge that color additive has been certified for use in connection with foods by the Food and Drug Administration)."

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

3. The authority citation for Part 319 is as follows (9 CFR Part 319):

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

4. Section 319.700 would be amended by revising paragraphs (b)(3) and (b)(7) to read as follows:

§ 319.700 Margarine or Oleomargarine.[2]

* * * * *

(b) * * *

(3) Nutritive carbohydrate sweeteners.

* * * * *

(7(Coloring agents identified in § 318.7(c)(4) of this chapter, in amounts sufficient for purpose.[4] For the purpose of this subparagraph, provitamin A (beta-carotene) shall also be deemed to be a coloring agent.

* * * * *

Done at Washington, D.C., on: June 11, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-17053 Filed 6-26-84; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL ELECTION COMMISSION

11 CFR Part 6

[Notice 1984-9]

Enforcement of Nondiscrimination on the Basis of Handicap in Federal Election Commission Programs

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations provide for the implementation and enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Federal Election Commission.

DATES: To be assured of consideration, comments must be in writing and must be received on or before July 27, 1984. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, D.C. 20463.

Comments received will be available for public inspection in the Commission's Public Records Office, 1325 K Street, N.W., Washington, D.C. from 9:00 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463, (202) 523-4143 or (800) 424-9530. TDD (202) 523-4068 or (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the proposed rules is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Federal Election Commission. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in the proposed rules are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

These proposed regulations are an adaptation of prototypes prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp. p. 298) and distributed to Executive agencies on April 15, 1983 and May 7, 1984. The proposed rules are also based on the Justice Department's notice of proposed rulemaking, 48 FR 5996 (Dec. 16, 1983), and the comments

filed in response to that notice. The draft notice deviates from the prototypes in several respects in response to comments received on DOJ's notice of proposed rulemaking. For example, in view of the objections to the proposed language in that notice and the prototypes, the definition of "qualified handicapped person" proposed in these rules does not include as a criterion a determination of whether that person's participation would require modifications in the program or activity that would result in a fundamental alteration in its nature. Moreover, the prototypes contained provisions concerning nondiscrimination in historic preservation programs and preschool, elementary, and secondary education programs. These provisions were not included in the proposed regulations since the Commission does not conduct historic preservation or educational programs or activities. Other deviations from the prototypes reflect the fact that the Commission may act only by majority vote, not by unilateral action by the Chairman. *See* 2 U.S.C. 437c(c). The notice also differs from the prototype by referring to the district court's determination in *Paralyzed Veterans of America* v. *Civiletti*, No. CV79–1979–WPG (C.D. Ca., Sept. 12, 1980) that the obligations of section 504 do not apply to presidential candidates receiving public funding. In addition, the compliance procedures under the proposed rules contain provisions from the Justice Department's notice to provide greater specificity on how the process would work. Finally, the provision from the prototypes giving an oversight role to the Assistant Attorney General for Civil Rights was not included in the proposed rules. The statute does not require this proposed oversight function. A summary of the proposed rules follows.

Section-by-Section Analysis

Section 6.101 Purpose

Section 6.101 states the purpose of the proposed rules, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 6.102 Application

The proposed regulations apply to all programs or activities conducted by the agency.

Section 6.103 Definitions

(a) "Agency." For purposes of these regulations, "agency" means the Federal Election Commission, 1325 K Street NW., Washington, DC 20463.

(b) "Auxiliary aids." "Auxiliary aids" mean services, including attendant services, or devices that enable handicapped persons, including those with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 6.160(a)(1), they may also be necessary to meet other requirements of the regulations.

(c) "Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (*see* § 6.170(b)).

(d) "Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," has been deleted because the term "facility", as used in this regulation refers to structures and not to intangible property rights. However, the proposed regulations make it clear that the term "facility" applies to all programs and activities conducted by the agency regardless of whether the facility is owned, leased, or used on some other basis by the agency. The term "facility" is used in § 6.150 and § 6.170(e).

(e) "Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

(f) "Qualified handicaped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (f)(1) deviates from existing regulations for federally assisted programs to expand the definition to include situations in addition to employment. It defines "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs, a qualified handicapped person is one who, with reasonable accommodation, can achieve the purpose of the program. The proposed definition deviates from that contained in the Department of Justice's notice of proposed rulemaking and the prototypes. The definitions proposed in those documents incorporated language from the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). Under the Justice Department's proposed rules, a "qualified handicapped person" would be defined as one "who can achieve the purpose of the program *without modifications in the program that would result in a fundamental alteration in its nature.*" Numerous comments objecting to the underscored language in the proposed definition were received in response to the notice. These comments pointed out that the proposed rules combined what should be a two-step inquiry into a one-step process that could work to the detriment of handicapped individuals. The Commission believes that the issue of whether a handicapped person is "qualified" should be separate from an inquiry into what type of accommodation or modification, if any, is needed for the person to participate in a particular program. Therefore, the Commission has not included the *Davis* language in its proposed definition of "qualified handicapped person". The Commission encourages comment on the proposed definition in paragraph (f)(1) and notes that the *Davis* standard, as proposed by the Justice Department, has been retained in §§ 6.150 and 6.160 of the proposed rules.

For programs or activities that do not fall under the first paragraph, paragraph (f)(2) adopts the existing definition of "qualified handicapped person" with respect to services in the coordination regulation for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

(g) "Section 504." This definition makes clear that, as used in these regulations, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 6.110 Evaluation

The agency will conduct an evaluation of its compliance with section 504 within one year of the effective date of these regulations. The process will include consultation with interested persons, including consultation with handicapped persons

or organizations representing handicapped persons. The Commission is considering whether the Federal Advisory Committee Act, 5 U.S.C. app., is applicable to the proposed consultation requirement. The evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

The proposed rules contain specific criteria for conducting the agency evaluation. Proposed § 6.110(a) provides that the evaluation will include a determination of whether the agency's policies and practices meet the requirements of section 504 and whether modification of any such policies and practices is required. If modification of any policy or practice is found to be required as a result of this evaluation, the agency is required to proceed to make the necessary modifications. Following the completion of the evaluation, under proposed § 6.110(b), the agency would be required to keep on file and make available for public inspection, for at least three years, the following information: (1) a list of interested persons consulted; (2) a description of areas examined and any problems identified; and (3) a description of any modifications made.

Section 6.111 Notice

Section § 6.111 requires the agency to disseminate sufficant information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of the rights and protections afforded by section 504 and the proposed regulations. Methods of providing this information include, for example, the publication of information in handbooks, manuals and pamphlets that describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 6.130 General prohibitions against discriminations

Section 6.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 6.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 6.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled person (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

Section 504, however, prohibits more than just obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit accorded to a handicapped person be as effective as that afforded to others. The later sections on program accessiblity (§§ 6.150–6.151) and communications (§ 6.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) was added in reponse to comments on the Department of Justice's notice of proposed rulemaking. It incorporates a provision from the regulations for federally-assisted programs (28 CFR 41.51(b)(1)(v)) to prohibit the agency from aiding or perpetuating discrimination against a qualified handicapped person by providing significant assistance to an agency, organization or person, except candidates or conventions receiving public financing under Title 26, United States Code, that discriminates on the basis of handicap in providing any aid, benefit or service to beneficiaries of the recipient's program.

Paragraph (b)(1)(vi) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's program or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped person an effective opportunity to participate. Paragraph (b)(3)(iii)) was taken from the regulations governing federally-assisted programs (28 CFR 51(b)(3)(iii) in response to comments on the Justice Department's notice. It would prohibit the agency from utilizing criteria or methods of administration that would have the purpose or effect of perpetuating the discrimination of another agency.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 6.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency from using criteria for the selection of procurement contractors that subject

qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of a certification. A person is a "qualified handicapped person" with respect to certification, if he or she can meet the essential eligibility requirements for receiving the certification (see § 6.103).

In addition, the agency may not establish requirements for the programs or activities of certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. The agency must ensure that standards that it promulgates do not discriminate against the employment of qualified handicapped persons in an impermissible manner.

This section would apply to the Commission's certification of presidential candidates eligible to receive public funding under the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–9013, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–9042. The proposed rules were included even though there is little opportunity for discriminatory treatment since public financing is granted according to automatic formulas on either a matching basis or a cent-per-vote basis. *See* S. Rep. No. 689, 93rd Cong., 2d Sess. 9–10 (1974).

Paragraph (b)(6) does not, however, extend section 504 directly to the programs or activities of certified entities themselves (i.e., the presidential candidates). The program or activities of Federal certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal Certificate. This is consistent with the district court's determination in *Paralyzed Veterans of America* v. *Civiletti*, No. CV79–1979–WPG (C.D. Ca., Sept, 12, 1980), that the obligations of section 504 do not apply to presidential candidates who receive public funding under the Act. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provided that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class or handicapped persons may be limited to those handicapped persons.

Section 6.140 Employment

Section 6.140 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a recent decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The Court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt* v. *United States Postal Service*, 622 F.2d 292 (5th Cir. 1981).

Consistent with that decision, this section provides that the standards, requirements and procedures of section 501 of the Rehabilitation Act, as established in the regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, will be those applicable to employment in federally conducted programs or activities. In addition to this section, § 6.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1979 Comp., p. 206).

Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis to handicap.

Section 6.149 Program accessibility: Discrimination prohibited

Section 6.149 states the general nondiscrimination principles underlying the program accessibility requirements of §§ 6.150 and 6.151.

Section 6.150 Program accessibility: Existing facilities

This section adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance programs (28 CFR 41.56–41.58) with certain modifications. Thus, § 6.150 requires that the agency's program or activity, when viewed in its entirety, be readily assessible to and usable by handicapped persons. The proposed regulations also make clear that the agency is not required to make each of its existing facilities accessible (§ 6.150(a)(1)). Howerver, § 6.150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 6.150 (a)(2), (a)(3)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 6.160(e). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alternation in the nature of a program and on the Court's statement that section 504 does not require modifications that would result in " undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 678 F. 2d 664 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C.Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied to *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F. 2d at 1278.

The inclusion of paragraph (a)(2) is an effort to conform the agency's regulations implementing section 504 to the Supreme Court's interpretation of the statue in *Davis* as well to the decision of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodaticns for a handicapped person may so alter an agency's program or activity, or entail such extensive costs or administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial

invalidation of the regulations or reversal of a particular enforcement action taken pursuant to the regulations.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alternation in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

The Commission expects that compliance with § 6.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. Under the proposed rules, the burden of proving that compliance with § 6.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency in a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency's decision or failure to make a decision may file a complaint under the compliance procedures established in § 6.170.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency will give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of these regulations. Where structural modifications are required, a transition plan will be developed within six months of the effective date of the regulations. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days. The Commission is considering whether the Federal Advisory Committee Act (5 U.S.C. app.) is applicable to the proposed consultation requirements included in § 6.150(d).

Section 6.151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 6.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act, the proposed rules would adopt the existing Architectural Barriers Act standard for section 504 compliance. Adoption of this standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of the regulations are not required to meet the new construction standard. They are subject, however, to the requirements of §6.150.

Section 6.160 Communications

Section 6.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps will include procedures for determining when auxiliary aids are necessary under § 6.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They will also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice will be given primary consideration by the agency (§ 6.160). The agency will honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 6.160(e). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*See supra* preamble § 6.150(a) (3)). Unless not required by § 6.150(e), the agency will provide auxiliary aids at no cost to the handicapped person.

However, the agency need not take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The Commission expects that compliance with § 6.160 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. Under the proposed rules, the burden of proving that compliance with § 6.160 would fundamentally alter the nature or a program of activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency in a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency's decision or failure to make a decision may file a complaint under the compliance procedures established in § 6.170.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency will make clear to the public (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency will ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. § 6.160(a)(1)(ii). For example, the agency need not provide wheelchairs, eye glasses, or hearing aids to applicants or participants in its programs.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Paragraph (d) requires the agency to take appropriate steps to provide handicapped persons with information that is disseminated under § 6.111 regarding section 504 rights and protections.

Section 6.170 Compliance procedures

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints.

Paragraph (b) provides that the agency will process employment complaints according to existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791).

The agency will designate an official, the Rehabilitation Act Officer, who will be responsible for coordinating implementation of this section (§ 6.170(c)).

Under proposed section 6.170(d), any person who believes that he or she or a specific class of persons of which he or she is a member has been discriminated against may file a complaint within 180 days from the date of the alleged discrimination. The proposed regulations also provide that any person who believes that a denial of his or her service will result or has resulted in discrimination prohibited by section 504 may file a complaint under this part. This provision was included based on comments on the Department of Justice's notice, as well as the facts in *United States* v. *Baylor Medical Center*, 564 F. Supp. 1495 (N.D. Tex. 1983). In that case, an interpreter was permitted to file a section 504 complaint on his own behalf when he was denied admission to a hospital to provide assistance to a hearing-impaired person undergoing surgery. The agency may extend the time limit when the complainant shows good cause. Good cause could be found if, for example, (1) the complainant could not reasonably be expected to know of the act or event said to be discriminatory; or (2) the complainant mistakenly filed with the wrong agency and was not informed of the mistake within the 180 days.

Paragraph (e) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

The agency is required to accept and investigate all complete complaints (§ 6.170(f)(1)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 6.170(f)(3)). If a complaint is not complete when it is filed, the agency will notify the complainant within 30 days that additional information is needed. The complainant must furnish the necessary information within 30 days of receipt of the notice, or the complaint will be dismissed without prejudice.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal. One appeal within the agency will be provided (§ 6.170(h)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance. A provision in the prototype that would have authorized the Assistant Attorney General for Civil Rights to grant the agency an extension of time in which to respond to a complaint or appeal under section 504 was not included in the proposed rules. This proposed oversight role in not statutorily required.

Paragraph (i) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 11 CFR Part 6

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

For the reasons set forth in the preamble, Chapter I, Title 11 of the Code of Federal Regulations is proposed to be amended by adding Part 6 as follows:

PART 6—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL ELECTION COMMISSION

Sec.

6.101 Purpose.
6.102 Application.
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6.104–6.109 [Reserved]
6.110 Evaluation.
6.111 Notice.
6.112–6.129 [Reserved]
6.130 General prohibitions against discrimination.
6.131–6.139 [Reserved]
6.140 Employment.
6.141–6.148 [Reserved]
6.149 Program accessibility: Discrimination prohibited.
6.150 Program accessibility: Existing facilities.
6.151 Program accessibility: New construction and alterations.
6.152–6.159 [Reserved]
6.160 Communications.
6.161–6.169 [Reserved]
6.170 Compliance procedures.
6.171–6.999 [Reserved]

Authority: 29 U.S.C. 794.

§ 6.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 6.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 6.103 Definitions.

For purposes of this part, the term—

(a) "Agency" means the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

(b) "Auxiliary aids" means services, including attendant services, or devices that enable handicapped persons, including those with impaired sensory,

manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. Although auxiliary aids are explicitly required only by 11 CFR 6.160(a)(1), they may also be used to meet other requirements of this part.

(c) "Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(d) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property whether owned, leased or used on some other basis by the agency.

(e) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such a impairment. As used in this definition, the phrase: (1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in 11 CFR 6.103(e)(1) but is treated by the agency as having such an impairment.

(f) "Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who, with reasonable accommodation, meets the essential eligibility requirements and who can achieve the purpose of the program or activity; and

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(g) "Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§ 6.104–6.109 [Reserved]

§ 6.110 Evaluation.

(a) Within one year of the effective date of this part, the agency will conduct, with the assistance of interested persons, including handicapped persons and organizations representing handicapped persons, an evaluation of its compliance with section 504. This evaluation will include a determination of whether the agency's policies and practices, and the effects thereof, meet the requirements of this part and whether modification of any such policies or practices is required to comply with section 504. If modification of any policy or practice is found to be required as a result of this evaluation, the agency will proceed to make the necessary modifications.

(b) For at least three years following completion of the evaluation required under paragraph (a) of this section, the agency will maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 6.111 Notice.

The agency will make available to employees, applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency. The agency will make such information available to them in a manner it finds necessary to effectively apprise such persons of the protections against discrimination assured them by section 504 and the provisions of this part.

§§ 6.112–6.129 [Reserved]

§ 6.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to

gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program, except that this paragraph does not apply to candidates or conventions receiving public financing under Title 26, United States Code.

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissible separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap;

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons; or

(iii) Perpetuate the discrimination of another agency.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 6.131–6.139 [Reserved]

§ 6.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination of employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 6.141–6.148 [Reserved]

§ 6.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in 11 CFR 6.150 and 11 CFR 6.151, no qualified handicapped person shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency because the agency's facilities are inaccessible to or unusable by handicapped persons.

§ 6.150 Program accessibility: Existing facilities.

(a) *General.* The agency will operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The agency has the burden of proving that compliance with § 6.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, will meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency will give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency will comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes will be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency will develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan will be developed with the assistance of interested persons, including handicapped persons and organizations representing handicapped persons. A copy of the transition plan will be made available for public inspection. The plan will, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with those assistance the plan was prepared.

§ 6.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers act, 42 U.S.C 4151–4157, as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 6.152–6.159 [Reserved]

§ 6.160 Communications.

(a) The agency will take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency will furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency will give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's), or equally effective telecommunication systems will be used.

(b) The agency will ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency will provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The interntional symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The agency will take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs or activities.

(e) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The agency has the burden of proving that compliance with § 6.160 would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency will take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 6.161–6.169 [Reserved]

§ 6.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency will process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Rehabilitation Act Officer.

(d)(1)(i) Any person who believes that he or she or any specific class of persons of which he or she is a member has been subjected to discrimination prohibited by this part may file a complaint with the Rehabilitation Act Officer.

(ii) Any person who believes that a denial of his or her services will result or has resulted in discrimination prohibited by this part may file a complaint with the Rehabilitation Act Officer.

(2) All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(3) Complaints filed under this part shall be addressed to the Rehabilitation Act Officer, 1325 K Street, NW., Washington, D.C. 20463.

(e) The agency will notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), are not readily accessible and usable to handicapped persons.

(f)(1) The agency will accept and investigate a complete complaint that is filed in accordance with paragraph (d) of this section and over which the agency has jurisdiction. The Rehabilitation Act Officer will notify the complaint and the respondent of receipt and acceptance of the complaint.

(2) If the Rehabilitation Act Officer receives a complaint that is not complete (See 11 CFR 6.101(c)), he or she will notify the complaint within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complaintant fails to complete the complaint within 30 days of receipt of this notice, the Rehabilitation Act Officer will dismiss the complaint without prejudice.

(3) If the Rehabilitation Act Officer receives a complaint over which the agency does not have jurisdiction, the agency will promptly notify the complaint and will make reasonable efforts to refer the complaint to the appropriate governmental entity.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency will notify the complaint of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation fund; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 6.170(g). The agency may extend this time for good cause.

(i) Timely appeals to the agency shall be addressed to the Rehabilitation Act Officer, Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463.

(j) The agency will notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in Paragraphs (g) and (j) of this section may be extended by the agency for good cause.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 6.171–6.999 [Reserved]

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached proposed rules will not have a significant economic impact on a substantial number of small entities because the proposed regulations would impact only on the Commission's own programs and activities, not those of regulated entities. Therefore, no Regulatory Flexibility analysis is required.

Dated: June 22, 1984.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 84–17103 Filed 6–26–84; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84–ASO–13]

Proposed Transition Area, Monroe, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Monroe, Georgia, transition area to accommodate Instrument Flight Rule (IFR) operations at the Monroe Municipal Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Monroe Non-directional Radio Beacon (NDB), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

DATE: Comments must be received on or before: August 1, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Ronald T. Niklasson, Airspace Specialist, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ASO–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will designate the Monroe, Georgia, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Monroe Municipal Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to designate the Monroe, Georgia, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

Monroe, GA [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Monroe Municipal Airport (Lat. 33°46'57"N., Long. 83°41'31"W.); within 3 miles each side of the 212° bearing from the Monroe RBN (Lat. 33°44'15"N., Long. 83°43'37"W.) extending from the 6.5-mile radius area to 8.5-miles southwest of the RBN; excluding that portion which coincides with the Covington transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. If, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on June 15, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-17035 Filed 6-26-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

15 CFR Part 1400

[Docket No. 40563-4063]

Determination of Group Eligibility for MBDA Assistance

AGENCY: Minority Business Development Agency (MBDA), Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: To be eligible to receive MBDA assistance, an applicant must qualify as a socially or economically disadvantaged individual, business enterprise, or group. The purpose of this proposed rule is to provide guidance to groups, not enumerated in E.O. 11625 and not previously designated by the Secretary of Commerce as eligible for assistance, who believe they are entitled to participate in MBDA funded programs. As proposed, upon adequate showing to the Secretary of Commerce by representatives of a group that the group is, as a whole, socially or economically disadvantaged, the Secretary will designate the group as such and individual members of the group will be eligible for MBDA assistance.

DATE: Comments must be submitted on or before August 27, 1984.

ADDRESS: Send comments to: Herbert S. Becker, Assistant Director, Office of Advocacy, Research and Information, United States Department of Commerce, Minority Business Development Agency, 14th and Pennsylvania Ave. NW., Room 5709, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Ron Isler, (202) 377-1712.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 11625 the Minority Business Development Agency (MBDA) provides program funds to recipients who then provide management and technical assistance to persons determined to be socially or economically disadvantaged. The Executive Order lists certain groups whose members have been determined to be socially or economically disadvantaged and who are therefore eligible to receive MBDA assistance. The Secretary may designate other groups as eligible for assistance if the group has made an adequate showing of social or economic disadvantage. However, no formal application procedures have been established for groups which wish to be designated as socially or economically disadvantaged.

The purpose of this proposed rule is to provide a set of formal procedures for groups which wish to be designated by the Secretary as socially or economically disadvantaged for purposes of participation in MBDA programs. The proposed rule will provide guidance to applicants in three areas. First, the rule will indicate what information will be submitted to the Department of Commerce and in what order that information should be arranged.

Second, the rule indicates the kind of evidence which will tend to persuade in the determination of social or economic disadvantage. In addition, other relevant information submitted will be considered.

Finally, the rule describes the decision-making process involved in making a determination of social or economic disadvantage. Provision has also been made for reconsideration of a decision, but only at the absolute discretion of the Secretary.

Executive Order 12291

The Director of MBDA has determined that his rule is not a "major rule" within the meaning of section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

This proposed rule is exempt from the notice and comment requirements of the Administrative Procedure Act under 5 U.S.C. 553(a)(2) because it is a matter of related to grants. Therefore, the requirements of the Regulatory Flexibility Act do not apply.

Paper Work Reduction Act Statement

In preparation for compliance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)), the Department of Commerce has completed the necessary requirements in preparing the regulation for review of its information collection provisions by the Office of Management and Budget (OMB). Final approval of the information collection provisions by OMB is pending and comments may be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Commerce.

List of Subjects in 15 CFR Part 1400

Minority groups, Minority businesses, Technical assistance.

Authority: 15 U.S.C 1512; Executive Order 11625, 3 CFR 616-20 (1971-75), 36 FR 19967 (1971); and Executive Order 12432, 3 CFR 198-99 (1983), 48 FR 32551 (1983).

Accordingly, a new Chapter XIV, Minority Business Development Agency, is hereby established and a new Part 1400, Determination of Group Eligibility for NBDA Assistance, is added to Title 15 of the Code of Federal Regulations as set down below.

PART 1400—DETERMINATION OF GROUP ELIGIBILITY FOR MBDA ASSISTANCE

Sec.

1400.1 Purpose and scope.
1400.2 Definitions.
1400.3 Request for determination.
1400.4 Evidence of social or economic disadvantage.
1400.5 Decision.
1400.6 Construction.

Authority: 15 U.S.C. 1512; Executive Order 11625, 3 CFR 616-20 (1971-75), 36 FR 19967 (1971); and Executive Order 12432, 3 CFR 198-99 (1983), 48 FR 32551 (1983).

§ 1400.1 Scope and purpose.

(a) The purpose of this part is to set forth regulations for determination of group elegibility for MBDA assistance.

(b) In order to be eligible to participate in an MBDA funded program an applicant must qualify as a socially or economically disadvantaged individual, business enterprise, or group. Executive Order 11625 provides the authority to establish eligibility requirements for participation in programs funded by the Minority Business Development Agency (MBDA). It specifically designates Blacks, Puerto-Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts as economically or socially disadvantaged groups eligible for MBDA assistance. Other groups designated so

far by the Secretary are listed below in paragraph (c). The purpose of this regulation is to provide guidance to groups, not enumerated in Executive Order 11625 and not previously designated by the Secretary of Commerce as eligible for assistance, who believe they are entitled to formal designation as "socially or economically disadvantaged" under the Executive Order. Upon adequate showing to the Secretary of Commerce by representatives of a group that the group is, as a whole, socially or economically disadvantaged the Secretary will designate the group as such and the group will be presumed eligible for MBDA assistance. Formal designation by the Secretary under Executive Order 11625 establishes eligibility status only for MBDA funded programs. Formal recognition by the Secretary will not establish eligibility for any other Federal or Federally funded programs.

(c) The Secretary has previously designated Hasidic Jews and Asian Pacific Americans as eligible for assistance.

§ 1400.2 Definitions.

For the purpose of the regulations in this part:

(a) *Social disadvantage.* Socially disadvantaged individuals are those persons who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities.

(b) *Economic disadvantage.* Economically disadvantaged individuals are those persons whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area who are not economically disadvantaged.

§ 1400.3 Request for determination.

A group wishing to apply for designation as socially or economically disadvantaged pursuant to Executive Order 11625 shall submit a written application to the Director of the Minority Business Development Agency, United States Department of Commerce, Washington, D.C., 20230, containing the following information:

(a) Statement of Request: a brief statement clearly indicating that the applicant seeks formal recognition as socially or economically disadvantaged.

(b) Description of Applicants: a detailed sociological, ethnic and/or racial description, as appropriate, of the group they represent which indicates that the group and the traits of its members are sufficiently distinctive to warrant a determination of social or economic disadvantage.

(c) Summary of the Applicant's submission: a one page summary of their Submission.

(d) Presentation of Argument: a narrative description of the documentation in support of their claim of social or economic disadvantage. (Applicants should support their claim of social or economic disadvantage with the criteria described under § 1400.4, "Evidence of Social or Economic Disadvantage.")

(e) Conclusion: summary of applicant's arguments in support of the claims of social or economic disadvantage.

§ 1400.4 Evidence of social or economic disadvantage.

(a) The representative of the group requesting formal designation should establish social or economic disadvantage on the basis of a preponderance of the evidence. Social or economic disadvantage must be chronic, long standing and substantial, not fleeting or insignificant. In determining whether a group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, the Secretary shall determine whether this group has suffered the effects of discriminatory practices over which its members have no control. Applicants must demonstrate that such social or economic conditions have produced impediments in the business world for members of the group which are not common to all business people in the same or similar business and marketplace.

(b) Evidence which will be considered in determining whether groups are socially or economically disadvantaged includes but is not limited to:

(1) *Social disadvantage.* Social disadvantage is evidenced by systematic exclusion, based solely upon racial, ethnic or cultural bias, from those opportunities and institutions which afford individuals the chance to improve and advance themselves. This includes the following:

(i) Evidence of educational discrimination in professional and business schools in comparison to educational opportunities available to those not considered to be members of socially disadvantaged groups.

(ii) Evidence of employment discrimination suffered by members of the group in comparison to employment opportunites available to individuals not considered to be members of socially disadvantaged groups.

(iii) Evidence of the kinds of businesses and business transactions in which group members are engaged in comparison to the kinds of businesses and business transactions engaged in by individuals not considered to be members of socially disadvantaged groups.

(iv) Evidence of denial of access to organizations, groups, or professional societies whether in business or in school, based solely upon racial and/or ethnic considerations.

(v) Any other evidence of denial of opportunity or access to those things which would enable the individual to advance the quality of his life, available to individuals not considered to be socially disadvantaged but unavailable to group members.

(2) *Economic disadvantage.* Economic disadvantage is evidenced by an inability of the individual to compete in the system due to impaired capital and credit opportunities. Evidence includes:

(i) Statistical profile outlining the income level and standard of living enjoyed by members of the group in comparision to the income level and standard of living enjoyed by individuals not considered to be members of economically disadvantaged groups.

(ii) Availability of capital and credit to group members in comparison to the availability of capital to individuals not considered to be members of economically disadvantaged groups.

(iii) Availability of technical and managerial resources to group members in comparison to the technical and managerial resources available to individuals not considered to be members of economically disadvantaged groups.

(iv) Any other evidence of impaired capital or credit opportunity.

§ 1400.5 Decision.

(a) *Procedure.* After receipt of an application requesting formal designation as a socially or economically disadvantaged group, the Department of Commerce may publish a notice in the **Federal Register** that formal designation of this group will be considered. This notice may request comment from the public on the propriety of such a designation. The Department may gather additional information which supports or refutes the group's request. Any member of the public, including Government representatives, may submit information in written form. It is the responsibility of the applicant, however, to submit all relevant information which it wishes

considered in its request for a determination of group eligibility.

(b) *Decision.* A decision will be made within 120 days of the receipt of the request. The decision will be published in the **Federal Register**. Applicants will also be informed in writing.

(c) *Reconsideration.* All questions of eligibility and procedural requirements shall be resolved by the Secretary of Commerce whose decision shall be final. An applicant may request reconsideration of a decision. Applicants requesting reconsideration should provide any information discovered subsequent to the Secretary's initial decision which would further their claim. Reconsideration shall be at the absolute discretion of the Secretary.

§ 1400.8 Construction.

Nothing in this regulation shall be construed as subjecting any functions vested in, or assigned pursuant to law to any Federal department or agency or head thereof to the authority of any other agency or office exclusively, or as abrogating or restricting such functions in any manner.

Dated: June 19, 1984.

James H. Richardson Gonzales,

Director, Minority Business Development Agency.

[FR Doc. 84-17014 Filed 6-26-84; 8:45 am]

BILLING CODE 3510-21-M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

Income Tax, Taxable Years Beginning After December 31, 1953; Limitation on Foreign Tax Credit for Foreign Oil and Gas Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the Rules section of this issue of the **Federal Register**, the Internal Revenue Service adopts final regulations relating to the limitation on the foreign tax credit with respect to taxes paid on foreign oil related income. Section 1.907(c)–1 (e) and (f) of those final regulations reserved certain rules that would apply in defining a taxpayer's extraction and oil related income, and this document serves as the notice of proposed rulemaking for those reserved rules. The regulations would provide the public with the guidance needed to comply with the Tax Reduction Act of 1975 and would affect all taxpayers claiming a foreign tax credit for taxes paid with respect to foreign oil related income.

DATE: Written comments and requests for a public hearing must be delivered or mailed by August 27, 1984. The amendments are proposed to be effective for taxable years ending after December 31, 1974, and beginning before January 1, 1983.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–149–83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Mary Frances Pearson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (LR–149–83), or call (202)–566–3289.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 907 (c)(1) and (c)(2) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 601(a) of the Tax Reduction Act of 1975 (89 Stat. 54). They do not reflect the changes in section 907(c) made by section 211(b) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 449), hereafter referred to as TEFRA.

On November 17, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 907 of the Internal Revenue Code of 1954 (45 FR 75695), hereafter referred to as the 1980 notice. These proposed amendments were adopted as final regulations and appear in the Final Rules section of this issue of the **Federal Register.** Section 1.907(c)–1 (e) and (f) of those final regulations reserved certain rules that would apply in defining a taxpayers's extraction and oil related income and this document serves as the notice of proposed rulemaking for those reserved rules.

1980 Notice

Section 907(a) limits the foreign tax credit otherwise allowed for taxes paid on foreign oil and gas extraction income (extraction income). Extraction income is essentially income from the production of oil and gas. Generally, creditable foreign taxes paid on foreign producing income may not exceed the product of the extraction income and the marginal U.S. corporate tax rate (currently 46 percent).

Prior to the enactment of section 907, producers of foreign oil were generating excess foreign tax credits attributable to their producing operations. The excess credits arose because the effective foreign tax rate on the producing income for exceeded the U.S. rate on the same income. There were some serious questions whether the amounts paid to certain countries and claimed as income tax credits were really deductible royalties. Moreover, the excess credits (if they could be used at all) could be used under section 904 against the U.S. tax and other foreign-source income which, frequently, was low-taxed income completely unrelated to the oil and gas business. Section 907(a) deals with one problem—the generation of the excess credits in the first instance.

Section 907(b) deals (prior to its amendment by TEFRA) with the other problem—the use of excess foreign tax credits against the U.S. tax on foreign income unrelated to the oil and gas business. Section 907(b) creates a separate section 904 limitation for a taxpayer's foreign oil related income. In addition to extraction income, foreign oil related income includes income from processing, transporting, and distributing oil or gas and their primary products, and from selling assets used in these activities. Through section 907(b), Congress permits the major oil companies some of the same benefits accorded other taxpayers under section 904 for using excess credits paid on a particular class of foreign income against the U.S. tax on another class, so long as the classes of income are related to the oil and gas business.

Extraction income is defined in section 907(c)(1). The 1980 notice of proposed rulemaking generally defined extraction income narrowly and in a way to isolate that income which a producing country would excessively tax, i.e., payments in connection with the production of oil and gas where it is difficult to determine whether they are creditable taxes or royalties. For example, assume that a producer must make monthly payments or royalties and taxes to the producing country. The revenues to be paid to the sovereign are collected by the producer and temporarily invested in assets that generate interest income. The interest income would not have been extraction income under the 1980 notice. However, the interest income also would not have been foreign oil related income for purposes of applying the separate section 904 limitation if it were not extraction income, because section 907 (c)(1)(A) (defining extraction income) and section 907(c)(2)(A) (including

extraction income in foreign oil related income) are mirror images of each other.

The Treasury Department does not believe that Congress intended that the interest income in the example above be neither extraction income nor foreign oil related income. Sections 907 (c)(1) and (c)(2) list activities the taxable income from which is extraction or foreign oil related income. Under the statute, the interest income in the example above certainly seems to be income directly attributable to the extraction of minerals and not to the passive investment of excess funds. It is certainly consistent with the intent underlying section 907 (b) and the separate section 904 limitation to characterize the interest income as foreign oil related income. Although the major reason for the reduction of taxes on extraction income under section 907 (a) was the imposition on producing income of excessive foreign taxes under circumstances that raised concerns over the creditability of these taxes, there is no indication that Congress intended that extraction income in section 907 (c)(1) was to be defined exclusively with that reason in mind.

The fact that the interest income in the example above may not be taxed by the foreign country is not a valid reason to characterize it as neither extraction nor foreign oil related income when to do so would deprive the producer of the benefits of averaging lowly and highly taxed income under the overall limitation of section 904—a benefit Congress intended to preserve so long as the income was related to the oil and gas business.

The regulations in essence propose that income directly related to (rather than directly derived from) the actual conduct of the activities in section 907 (c)(1) and (c)(2) may be extraction or foreign oil related income. Moreover, the regulations propose special rules for income derived from the performance of certain services and from the lease or license of property used by the lessor, licensor, or another person in the active conduct of the relevant activities.

Service and Rental Income

The 1980 notice of proposed rulemaking contained a rule (proposed § 1.907 (c)–1 (b)(2)) providing that income from the performance of extraction services would be extraction income (in the absence of an economic interest in the minerals in place) if the consideration received depended in whole or in part on the amount of minerals discovered or extracted. This proposed rule was derived from a statement made in 1975 on the floor of the House by Mr. Ullman, the former Chairman of the Committee on Ways and Means, when asked how section 907 would treat a drilling service company whose income comes not from extraction of oil but from the provision of services (121 *Cong. Rec.* H2383, March 26, 1975). Mr. Ullman stated that if the amount received for the services depended on the amount of oil found or extracted, one had extraction income. If it did not, he said, one had foreign oil related income; this comment cannot be suppported under section 907 (c)(1)(A) and (c)(2)(A) for the same reasons discussed above.

The Treasury Department believes that Mr. Ullman's comment (regarding classification of service income as extraction income) went to an arrangement where the driller had a working interest that constituted an economic interest in the minerals in place. The Treasury Department does not believe that Congress intended to subject independent drilling service companies to the requirements of section 907 in the absence of that economic interest. Moreover, the Treasury Department believes that this general notion (independent persons are not subject to section 907) should apply not only to extraction services but also to any similar service that relates to the oil and gas business.

Similarly, a person that is not actively engaged in the activities listed in section 907 (c)(1) or (c)(2) but whose income comes from the mere ownership of property leased to another who uses the property in the conduct of such activities should not have extraction or oil related income.

Proposed Regulations

The proposed regulations would provide as a general rule that a person may have extraction or oil related income from the performance of certain directly related services and the lease of related property, whether or not the services are performed for, or the property leased to, a related person.

However, a person will not have extraction or oil related income from these activities if one of two conditions exist. These conditions are intended to identify those persons who are "independents" and those persons whose income is income described in section 907 (c)(1) or (2).

The first condition is that neither the person performing the services or leasing the property, nor any related person, has extraction or oil related income from the active conduct of the activities described in section 907 (c)(1) or (c)(2).

The second condition is that less than 50 percent of the person's gross income from sources outside the United States, which is exclusively related to the performance of services or the lease of property directly related to the activities in section 907 (c)(1) or (2), is derived from related persons. However, this second condition will not apply to a person rendering the services or leasing the property if 50 percent or more of that person's total gross income from sources outside the United States is attributable to extraction or oil related income from the active conduct of the activities described in section 907 (c)(1) or (2).

The proposed regulations generally define related person as it is defined in section 954 (d) (3) (relating to Subpart F income) and also define the terms "directly related services" and "lease of related property."

The rules proposed by this document are similar (but not identical) to the rules in the 1980 notice of proposed rulemaking, which were, however, limited to the performance of services directly related to, or bareboat charters of, a means of transportation.

The Treasury Department did consider alternatives to the rules proposed by this document. One alternative would have been to limit the service and lease income to that derived from related persons. Another alternative would have been to characterize the income received by the payee (from a related person) as either extraction or other oil related income in the same proportion that the payor (a related person) reduced its extraction or other oil related income under § 1.861–8 and section 907. Thus, extraction services performed for a related person in a county where that person has a net operating loss would be oil related income and not extraction income. See section 907(c)(4) (as in effect before TEFRA). Taxpayers should be aware of the fact that the Treasury Department is still considering adopting this latter alternative (as a final regulation) for related income if the final regulations provides that the service and lease income may include income from unrelated persons.

TEFRA

Section 212 of TEFRA subjects certain oil related income to the Subpart F provisions in taxable years beginning after 1982. Section 211 of TEFRA amended section 907 in relevant part by changing the definition of oil related income so that it no longer includes extraction income as defined in section 907(c)(1). However, section 211 of TEFRA also added to oil related income the "performance of any other related service."

These amendments are proposed to give taxpayers the opportunity to comment on certain aspects of section 907 prior to its amendment by TEFRA.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public comment procedural requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act [5 U.S.C. Chapter 6]. The Commissioner of the Internal Revenue Service has also determined that this proposed regulation is not a major regulation as defined in Executive Order 12291 and therefore a regulatory impact analysis is not required.

Drafting Information

The principal author of this notice of proposed rulemaking is Donald K. Duffy of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices in the Service and Treasury Department participated in the development of this proposed regulation.

List of Subjects in 26 CFR 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign Investment in U.S., Foreign tax credit, Source of income, United States investment abroad.

PART 1—[AMENDED]

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Section 1.907(c)–1 is amended by adding the text of paragraphs (e) (3), (4), (5), and (6) and by adding the text of new paragraph (f) to read as set forth below.

§ 1.907(c)–1 Definitions relating to FORI and FOGEI.

* * * * *

(e) *Terms and items common to other FORI and FOGEI.*

* * * * *

(3) *Interest on working capital.* Other FORI and FOGEI may include interest on bank deposits or on any other temporary investment which is not in excess of funds reasonably necessary to meet the working capital requirements and the specifically anticipated business needs of the person that is engaged in the conduct of the activities listed in paragraphs (b) and (c) of this section.

(4) *Exchange gain or loss.* Exchange gain (and loss) may be other FORI and FOGEI.

(5) *Allocation.* Interest income and exchange gain (or loss) described, respectively, in paragraphs (e) (3) and (4) of this section are allocated among other FORI, FOGEI, and any other class of income relevant for purposes of the foreign tax credit limitations under any reasonable method which is consistently applied from year-to-year.

(6) *Facts and circumstances.* Income not described elsewhere in this section may be other FORI, FOGEI if, under the facts and circumstances in the particular case, the income is in substance directly attributable to the activities described in section 907(c) (1) or (2). For example, assume that a producer in the North Sea suffers a casualty caused by an explosion, fire, and resulting destruction of a drilling platform. Insurance proceeds received for the platform's destruction in excess of the producer's basis is extraction income if the excess constitutes income from sources outside the United States. In addition, income from an insurance policy for business interruption may be extraction income to the extent the payments under the policy are geared directly to the loss of income from production and are treated as income from sources outside the United States. In further example, assume that an oil company has an exclusive right to buy all the oil in country X from Y, an instrumentality of the foreign sovereign which owns all of the oil in X. The oil company does not have an economic interest in any oil in country X. Y has a temporary cash-flow problem and demands that the oil company make advance deposits for the purchase of oil not yet delivered. In return, Y grants the oil company a discount on the price of the oil when delivered. Income represented by the discount on the later disposition of the oil is other FORI described in section 907(c)(2)(D). The result would be the same if Y credited the oil company with interest on the advance deposits, which had to be used to purchase oil (the interest income would be other FORI).

(f) *Directly related income*—(1) *In general.* This paragraph (f) includes in other FORI and FOGEI income from the performance of directly related services (as defined in paragraph (f)(2) of this section) or from the lease or license of related property (as defined in paragraph (f)(3) of this section). This paragraph (f) does not apply to a person if—

(i) Neither that person nor a related person (as defined in paragraph (f)(4) of this section) has FOGEI described in paragraph (b) of this section (other than subparagraph (4) thereof) or other FORI described in paragraph (c) of this section (other than subparagraph (7) thereof), or

(ii) Less than 50 percent of that person's gross income from sources outside the United States which is related exclusively to the performance of services and from the lease or license of property is attributable to services performed for (or on behalf of), leases to, or licenses with, related persons, but

(iii) Subdivision (ii) of this paragraph (f)(1) will not apply to a person if 50 percent or more of that person's total gross income from sources outside the United States is FOGEI and other FORI (as both described in subdivision (i) of this paragraph (f)(1)).

(2) *Directly related services.* Directly related services are those services that are directly related to the active conduct of the activities described in section 907 (c)(1)(A) or (c)(2) (B) through (D). These services include, for example, extraction (including exploration) services, services performed in relation to the distribution of minerals or primary products or in connection with the operation of a refinery, or the types of services described in § 1.954–6(d) (other than subparagraph (4) thereof) which relates to foreign base company shipping income. The services described in this paragraph (f)(2) include those performed for a person that is not a related person. Directly related services do not include, for example, insurance, accounting, or managerial services in the nature of stewardship.

(3) *Leases and licenses.* A lease or license of related property is the lease or license of assets used (or held for use) by the lessor, licensor, or another person (including the lessee or a sublessee) in the active conduct of the activities described in section 907 (c)(1)(A) or (c)(2) (A) through (D). The leases or licenses described in this paragraph (f)(3) include, for example, a lease of a means of transportation under a bareboat charter hire, of drilling equipment used in extraction operations, or the license of a patent, know-how, or similar intangible property used in extracting, transporting, distributing or processing minerals or primary products. This paragraph (f)(3) applies even though the parties are not related persons.

(4) *Related person.* A person will be treated as a related person for purposes of this paragraph (f) if that person would be so treated within the meaning of section 954(d)(3) (as applied by substituting the word "corporation" for the word "foreign corporation").

(5) *Gross income.* A foreign corporation shall be treated as a domestic corporation solely for the purpose of applying the gross-income rules in paragraph (f)(1) (ii) and (iii) of this section.

Roscoe L. Egger, Jr.,

Commissioner Internal Revenue.

[FR Doc. 84-16702 Filed 6-20-84; 8:45 am]

BILLING CODE 4830-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-21

Federal Buildings Fund, Reimbursable Services

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Proposed rule.

SUMMARY: GSA proposes to amend its regulations for incurring and collecting obligations for reimbursable services in excess of reimbursable work authorization estimates. Total obligations may be incurred against reimbursable work authorizations (RWAs) with a total authorization amount of $1,000 or less in an amount exceeding the authorized amount by up to $100. Total obligations may be incurred against RWA's with an authorized amount in excess of $1,000 by up to 10 percent of the amount or $1,000, whichever is less, unless such action would result in the estimated maximum costs exceeding $500,000 for which no specific congressional prospectus project approval exists. The proposed changes are intended to clarify the policy and to satisfy circumstances where it would be impractical, infeasible or uneconomical to obtain another authorization from the agency to increase the authorized amount to cover all costs incurred. Failure of GSA to notify the agency that the obligations will exceed the authorized amount regardless of amount, does not relieve the agency of paying actual costs.

DATE: Comments must be received on or before: July 27, 1984.

ADDRESS: Comments should be addressed to: General Services Administration, PBS, Office of Buildings Management (PB), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: James Marsden, Office of Buildings Management, (PB), 202-566-1563.

SUPPLEMENTARY INFORMATION: The billing procedure for reimbursable services was revised from fixed-price billing in advance to quarterly billing in an amount equal to obligations accumulated for the billing period, for all except above-standard-level recurring reimbursable work. This procedure was published in the Federal Property Management Regulations (FPMR) as Amendment D-79 dated August 23, 1982, and in the **Federal Register** on September 20, 1982 (47 FR 41361).

In reference to incurring obligations in excess of the estimate, the FPMR states in part:

> GSA will make every effort to obtain approval and certification of additional funds before incurring any obligations in excess of the estimate; however, failure of GSA to notify the agency that obligation will exceed the estimate does not relieve the agency of paying actual costs.

The clause in the FPMR binding the agencies to pay actual cost was included in recognition of the fact that in a limited number of circumstances it would be impractical, infeasible or uneconomical to obtain another authorization from the agency to increase the estimate to cover all costs incurred.

The following are examples of such circumstances:

(1) Costs associated with a particular RWA may be incurred and exceed the authorized amount before initial accounting information is received by the performing organization.

(2) The cost to obtain an amended RWA may exceed the total cost of a relatively low cost RWA or the cost of processing an RWA.

(3) Stopping work on an RWA prior to obtaining formal authorization for additional work required would be a serious inconvenience to the client agency or would substantially increase the cost of completing the RWA.

(4) The time frame of the reimbursable job is of extremely short duration.

The preceding are not intended to be all inclusive, but rather represent the types of circumstances which might exist which would make it impractical or infeasible to obtain another authorization from the client agency when obligations are incurred which would exceed the authorized amount.

GSA, in its efforts to improve the management of the reimbursable program, are proposing the following changes. GSA would not obtain approval and certification of additinoal funds when:

(1) Total obligations are incurred against RWAs with an authorized amount of $1,000 or less in an amount not exceeding the authorized amount by $100; and

(2) Total obligations are incurred against RWAs with an authorized amount in excess of $1,000 in an amount not exceeding the authorized amount by 10 percent or $1,000, whichever is the less amount. However, if the estimated maximum costs will result in an excess of $500,000 for which no specific congressional prospectus project approval exists, GSA is required to get prior prospectus authorization from Congress.

GSA will make every effort to notify the agencies when obligations will exceed the authorized amount. However, there may be circumstances, as discussed above, when GSA will not be able to notify an agency before incurring obligations in excess of the preceding parameters. This failure of GSA to notify the agency does not relieve the agency of paying actual costs, regardless of the dollar amount, and does not constitute a valid reason for chargeback or short paying the bill.

List of Subjects in 41 CFR Part 101-21

Federal buildings and facilities, Government property management.

PART 101-21—FEDERAL BUILDINGS FUND

GSA proposes to amend Part 101-21 as follows:

1. The authority citation for Part 101-21 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)

Subpart 101-21.6—Billings, Payments, and Related Budgeting Information for Space and Services Furnished by the General Services Administration

2. It is proposed to amend § 101-21.604 by revising paragraph (e) to read as follows:

§ 101-21.604 Billing procedures for reimbursable charges.

* * * * *

(e) GSA Form 2957, Reimbursable Work Authorization, must be completed before reimbursable work is begun. This authorization must describe the work or services ordered and include an estimate of the cost of the work described. Work authorizations must be signed by a responsible official capable of authorizing the obligation and committing the agency to payment of the charges, must contain a citation to the appropriation or funds to be charged, and must have statement that funds in the amount of the stated estimate are available for immediate obligation for the requested work. GSA will make every effort to obtain approval and certification of additional funds before incurring any obligations in excess of

the estimate except when : (1) Total obligations are incurred against reimbursable work authorizations with a total authorized amount of $1,000 or less in an amount exceeding the authorized amount by up to $100 and; (2) total obligations are incurred against reimbursable work authorizations with an authorized amount in excess of $1,000 by up to 10 percent of the amount or $1,000, whichever is less, unless such action would result in the estimated maximum costs exceeding $500,000 for which no specific congressional prospectus project approval exists. However, failure of GSA to notify the agency that obligations will exceed the authorized amount, regardless of the dollar amount, does not relieve the agency of paying full actual costs.

* * * * *

Dated: June 6, 1984.

Wolfgang Zoellner,

Acting Commissioner, Public Buildings Service.

[FR Doc. 84-17028 Filed 6-26-84; 8:45 am]

BILLING CODE 6820-23-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Park 74

[Docket No. 19918; RM-2235; RM-3914; FCC 84-158]

FM Broadcast Translator Stations

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order.

SUMMARY: This Memorandum Opinion and Order dismisses a Petition for Rulemaking that would restructure the nature of the FM broadcast translator service and terminates without further action a proceeding to place additional restrictions on FM broadcast station licensee involvement in operating distant translator stations. This action is necessary because the requested amendments would conflict with other recently amended rules intended to expand full local FM service to much of the country needing such local service.

FOR FURTHER INFORMATION CONTACT: John W. Reiser, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Memorandum and Order; Proceeding Terminated

In the matter of Amendment of Part 74, Subpart E of the Commission's Rules Pertaining to FM Radio Broadcast Translator Stations; FCC 84-158, 34543; Docket 19918, RM-2235; Amendment of Subparts F and L of Part 74 to permit use of alternative input sources for FM broadcast translator stations and to permit uniform 10 watt FM translator power; RM-3914.

Adopted: April 11, 1984.

Released: May 18, 1984.

By the Commission: Commissioner Rivera concurring in the result.

Introduction

1. By Petition for Rule Making filed May 27, 1981, the Moody Bible Institute of Chicago ("Moody") petitioned for amendment of Subparts F and L of Part 74 of the Commission's rules to expand the services of FM broadcast translators.[1]

2. The amendments requested would permit FM translators to broadcast program material received via microwave and satellite circuits, broadcast programs specifically originated for a national audience via unattended translators, and originate unlimited hours of local and recorded programs. Moody requested that FM translators be authorized in all areas of the country with a uniform 10 watt transmitter power. In addition, Moody requested that licensees of FM translator stations be permitted to use TV auxiliary Microwave channels on a secondary non-interference basis for extending the programming of the primary stations to locations beyond the normal reception range of the primary FM stations and to obtain alternative program sources.

3. Moody notes that the current rules restrict translators to the simultaneous rebroadcasting of FM signals received "off air" from a primary FM station or another FM translator. This limitation, Moody, claims, makes it necessary to use large, expensive antennas to receive the primary signal and rebroadcast it to the shielded community. The same signal could be more easily and clearly received via satellite microwave transmission, and the transmitter could be located so as to maximize reception quality to the public. The result, Moody says, would be less expense for the licensee and better service to the public. Moody argues that this problem could also be minimized by the use of "FM broadcast relay stations." Its petition requests amendment of Subpart F of Part 74 to permit the use of Bands A, B, and D by such relay stations on a secondary non-interference basis to other TV auxiliary stations.

4. Moody emphasizes that FM translator rules originated from existing TV translator rules but that while the Commission has recognized the potential of television translators through the use of a variety of input sources, the same technological developments have not generated similar consideration for FM translators.[2] The Commission has, for example, permitted TV translators to be relicensed as low power TV stations so that, in addition to simultaneous retransmission of off air signals of TV broadcast stations, they may also broadcast unlimited periods of locally originated programs and programs obtained by recordings, satellite, microwave and other sources.[3]

5. Moody argues that requests for waivers to permit construction of satellite-fed FM translators filed by other parties indicate interest in regulatory reform. Moody further contends that new technologies provide the potential for enhanced service and program diversity to the public via translators. Satellite and microwave feeds, if authorized, could offer more dependable transmission and increased translator service areas, so as to maximize the signal reception in targeted areas.

6. Moody also requests that LPFM service be authorized on a parity with low power television with respect to program origination potential. The authority to originate local programming, it claims, would be consistent with the Commission policy that led to expansion of secondary television service. Origination capability would be especially responsive to the needs of smaller communities that lack a population base sufficient to support a full power FM broadcast station. Local programming responsive to community needs and "narrowcasting" aimed at specific population demographics could be supported. The use of additional input feeds in combination with authority to originate programming would provide the greatest potential for diversity of aural services to the listening public.

7. Finally, Moody contends that translators should be allowed to operate with 10 watts transmitter power regardless of their geographic location. The maximum power of a particular translator, within this range, would continue to be limited by the interference protection standards which secondary broadcast services must adhere to or cease operation. Moody argues that the rules should not arbitrarily limit the power of translator stations in certain locations if they can,

[1] 47 CFR 74.1201-74.1284; 47 CFR 74.601-74.682.

[2] *Report and Order* in BC Docket No. 20539, 42 RR 2d 101 (1977).

[3] *Report and Order* 47 FR 21488, 51 RR 2d 476 (1982).

in fact, operate with higher power and not cause prohibited interference.

8. The Commission published a Notice of Petition for Rule Making requesting comments on Moody's Petition. Ninety-nine comments were received. Fourteen formal comments were filed by broadcasters, networks, industry trade organizations and other communications companies. Informal comments were submitted by 85 individuals across the nation. In response to the initial comments the Commission received four reply comments including two from petitioner, Moody Bible Institute.

Regulatory Background

9. The Commission currently authorizes three types of stations to provide FM broadcast service to the public: full-service stations,[4] translator stations, and booster stations. Full-service stations provide primary service to most of the public while translators and boosters provide "fill-in" service. specifically, translators and boosters receive the signal of a full-service station and simultaneously rebroadcast it to a community or area otherwise unable to receive the primary station's signal. Translators are secondary stations in that they must not cause interference to reception of full-service broadcast stations.

10. The service area of a translator may extend outside the service area of the primary station and can be licensed to any qualified individual, organized group of individuals, local civil government body, and with certain limitations, broadcast station licensees.[5] Translators are frequency conversion devices that receive an incoming signal on one frequency, amplify it, and "translate" it to another for simultaneous rebroadcast. The existing rules permit them to translate ". . . the signals of an FM broadcast station or another FM translator station which have been received directly through space, converted, and suitably amplified."[6] Translators may also broadcast locally-originated material in case of an emergency, or to request or acknowledge contributions. In the latter case, they are limited to a maximum transmission time of 30 seconds each hour.

11. Translators may operate with a maximum transmitter power output ("TPO") of either 1 or 10 watts depending upon their location. Stations located east of the Mississippi River and in Zone I–A are limited to 1 watt.[7] There is no limit on the effective radiated power translators may achieve with directional antennas.

Review of Comments

12. As noted earlier, the Commission received nearly 100 comments, formal and informal, in response to Moody's Petition for Rule Making. The formal comments were evenly split on whether FM translators should be allowed to use a variety of input feeds and have expanded origination capacity. In general, those favoring the authorization of additional input sources also favored expanded origination capacity or a new "low power FM" service.

13. American Broadcasting Companies Inc. ("ABC") and the National Association of Broadcasters ("NAB") were generally in favor of expanding translator access to satellite programming and microwave transmissions but were opposed to the institution of a LPFM service authorizing unlimited origination. The NAB and the National Radio Broadcasters Association (NRBA) voiced similar requests for a Commission inquiry into the economic and administrative impact that would result from implementation of Moody's proposal. They asked that the Commission carefully consider the administrative demands that would be generated by the expected filing of thousands of applications. They also asked that such an inquiry consider the potential for serious economic injury to small full service radio stations. There comments expressed the concern that LPFM stations would divide the market by airing programming from satellites and distant microwave feeds causing local full service stations and their local programming to perish from the air waves. These issues are also addressed in an outstanding *Further Notice of Proposed Rulemaking* in Docket 19918, adopted by the Commission on March 22, 1978, (43 FR 14695).

14. A number of these comments also addressed the need for changes in the current translator ownership restrictions contained in the rules.[8] M/A COM urged the Commission to avoid imposing any ownership limitations on who may own FM translators. John A. Watkins and Wycom Corporation suggested the Commission delete its existing restrictions. The National Citizens Committee for Broadcasting ("NCCB"), on the other hand, stated that it could support "reasonable ownership limitations." The ownership restrictions were also discussed by those parties opposing the Moody petition. These parties felt that the Commission should consider rule changes so FM licensees could establish translators outside their 1 mV/m contours or assist groups interested in doing so. Thomas W. Read submitted a petition for rule making seeking changes in the FM translator rules so *commercial* FM station licensees could operate translators anywhere within 150 miles of their station.[9]

15. Opposing comments from Cascade Broadcasting Corporation cited the economic impact FM translator stations would have on local full service stations. It maintained that local stations are frequently marginal operations and translator stations could drive them out of business. The NRBA echoed these comments stating that the establishment of a large number of translator stations could deleteriously affect the health of the broadcast industry. On the other hand, the NCCB argued that the "economic injury" issue posed by current broadcasters is without merit where marketplace sensitivity is paramount.

16. Some commenters were concerned about adequate interference standards for protection of full service stations, NAB, ABC, Read Broadcasting System ("Read") and the NRBA all referenced the need to plan for the impending drop-in of several new full service FM stations contemplated by our actions in BC Docket 80–90. The commenters generally suggested that no LPFM assignments could be made before the completion of this proceeding to provide adequate interference protection to the full service broadcasters.

17. Family Stations, Inc. ("Family") submitted late-filed comments in support of both translator access to additional input feeds and a uniform 10 watt power limit. It did not support Moody's origination proposal reasoning that there was no compelling public interest need for small originating stations. In addition, it stated that origination potential was likely to encourage the submission of more

[4] "Full service stations" as used herein refers to FM broadcast stations licensed under Subpart 3 of Part 73 of the Commission rules, 47 CFR 73.201–73.346.

[5] See, 47 CFR 74.1232.

[6] 47 CFR 74.1231.

[7] Zone I–A is the Commission's designation for that part of California below the 40th parallel. Stations located elsewhere may operate with 10 watts.

[8] Section 74.1232(d) prevents licensees of FM broadcast stations from establishing translators outside their service area. Specifically, it prohibits any licensee of a FM broadcast station, or any applicant that has received support from such a licensee, from being authorized to operate a commercial translator outside the 1 mV/m contour of the primary station and within the 1 mV/m contour of another commercial station assigned to a different community.

[9] Mr. Read's petition was accepted as a comment on the Moody petition.

applications which would compound the processing problems without an offsetting benefit potential. The 85 informal comments received from radio listeners across the nation were unanimously in favor of expanded authority for translators. Most of the comments were specifically interested in receiving Moody's religious programming by way of satellite and microwave feeds to translators.

18. Moody's reply to the Family comments agreed that its position on origination had some merit. Moody accordingly amended its proposal to propose that origination be limited to 90 minutes weekly rather than unlimited as initially proposed. This limit on origination would not stimulate a flood of applications, it reasoned, yet it would still provide for some local programming. Moody's second reply comment maintained that the low power of FM translator stations is one reason why they will not be able to compete with full service stations. It again stated that it felt that the majority of the new FM translator stations would be located in rural areas. Finally, it suggested that full service stations could establish translators at their 1 mV/m "contour fringe" to "bolster their economic position."

19. NCCB and Moody responded to those commenters fearful of excessive competition if the FM translator rules were modified. NCCB stated that "* * * enhanced competition is healthy for the radio marketplace, beneficial to the public, and a necessary prerequisite to any further consideration of deregulation of broadcasting." The translator service, it stated, should not be used to further concentrate control of the industry as would occur if the suggestions of the NAB, ABC, and Read were followed and only the ownership rules in Section 74.1232 were modified. Instead, it argued "* * * that [low power FM translators] should be used as a means of opening up media access to 'historically under represented groups' and should be implemented in an expeditious and even-handed manner." ABC's reply comments stated that no significant increase in local service would be likely to result from FM translator stations. It agreed with NAB's view that the restricted service contours and budgets of FM translator stations were unlikely to generate production or original local programming.

Discussion and Analysis

20. The Commission recognizes the benefits that could flow from Moody's suggested rule changes, but we do not believe that this is the proper time to undertake the significant expansion of the FM service which would likely result from that proposal. We note, for example that the number of FM translator applications filed in recent months has dramatically increased, and it appears that many of the applicants are anticipating the establishment of a new FM low power service similar to the low power TV service. Some parties have filed a large number of applications for many locations in population centers that, if granted, would virtually preclude other applicants. Moreoever, informal inquiries indicate that, in addition to educational and religious organizations, real estate firms, aspiring disk jockeys and entertainers, political and public interest organizations, operators of stadia and auditoria, athletic organizations, amusement parks, golf courses, ski and other resort operators, summer camps, outdoor theater operators, and numerous other commercial enterprises would also be interested in operating their own low power radio stations.

21. Thus, it is clear that institution of a LPFM service would be greeted by the same application interest as LPTV, and similar processes would have to be developed to handle the staggering application flow.[10] Assuming that the necessary automated engineering standards could be developed, the Commission would require substantial increases in staff and equipment to handle the demand and resolve mutual exclusivities. Even assuming that these impediments could be overcome, this does not appear to be the proper time to open an inquiry that could result in substantial increases in the number of secondary stations occupying the FM band.

22. The Commission has recently amended its FM technical rules to permit additional classes of stations and permit Class A stations to operate in channels that had been reserved for Class B and C use.[11] As a result of those rule changes and in an effort to control the workload, the Commission adopted a *Notice of Proposed Rulemaking* in Docket 84–231, proposing 684 additions to the FM table of allotments.[12] That *Notice* also requested interested parties to submit counterproposals to the Commission's list. At this stage of the proceeding, it is impossible to predict the number of counterproposals that will be received and the number of channels that will ultimately be added under Docket 84–231. Moreover, upon conclusion of Docket 84–231, the Commission expects to receive numerous additional requests for new FM station allotments in compliance with the rules adopted in Docket 80–90. To propose new rules to permit the expanded growth in translator stations, even on a secondary basis, while attempting to complete the FM omnibus rulemaking would not only be counter-productive for us, but misleading for prospective translator operators. Although translators would be on notice of their secondary rights to a channel, once established, the Commission may have difficulty in the forced removal of an established service. At this point, translator applicants would find it virtually impossible to accurately choose channels insulated from the impact of Dockets 80–90 and 83–231.

23. Moreover, the situation in FM is not directly analogous to TV, in which the Commission has authorized the use of microwave and satellite fed translators. Initially, we note that virtually the entire population of the United States receives off the air radio service, but TV service is much less extensive. Thus, strong policy considerations mitigated in favor of changes in the TV translator rules which permitted first microwave and satellite feeds and then low power televisions. These same considerations are not present in FM where virtually all of the United States receives some aural service. Furthermore, the TV video signal is amplitude modulated. Such signals are subject to noise interference to which FM is immune. Thus greater needs existed for a microwave means of feeding TV translators. Also most microwave systems are designed to operate with a constant amplitude output signal typical of FM operation. Linear amplification of an amplitude modulated video signal requires more complex equipment.

24. Recognizing that there may have been a number of impediments to Commission action on its proposal, Moody made several informal suggestions revising its proposal in ways designed to avoid perceived difficulties. As revised, the Moody proposal would permit microwave and satellite program sources only for FM translators operating in the noncommercial part of the FM band. Moreover, rebroadcast

[10] The list of potential users for such a low power radio service would be almost limitless. The RF Devices branch of the Commission's Office of Science and Technology and the Mass Media Bureau are continuously receiving inquiries from those expressing an interest in operating a limited range special purpose service in the brandcast bands because of the availability of low cost receivers.

[11] Docket 80–90, 48 FR 29486, June 27, 1983.

[12] 49 FR 11214, March 26, 1984.

would be permitted only for the program of full service noncommercial educational FM stations, and extended local origination would not be permitted. Finally, there would be no change in the current translator power output limitations.

25. Even as amended, we do not believe it appropriate to commence a rulemaking proceeding on the Moody proposal. Indeed, some of the proponent's changes introduced further complications which mitigate against further action at this time. Permitting satellite or microwave fed FM translators to operate only in the noncommercial band will likely increase the interest in such stations. Although that increase is not expected to be as substantial as contemplated for a LPFM service, it will impact a part of the spectrum with significant existing problems.

26. The first 21 channels in the FM band are reserved for noncommercial use. However, we have found that stations operating on the lower channels of the reserved band have the potential to cause interference to the reception of TV Channel 6. There is also the possibility of interference to the reception of TV Channels 7 and 8, particularly in distant areas where TV booster amplifiers are frequently used. In Docket 20735, the Commission is looking into this interference problem and seeking means to reduce the possibility of it occurring when additional noncommercial educational stations are authorized. One course of action under consideration may place limits on the location and power of stations using some of those channels. Because of their low power, FM translators must be located within the population center of the area to be served. This is also the area that is most susceptable to TV interference complaints. Accordingly, proceeding with a proposal to authorize additional stations in the noncommercial band is not appropriate until we have resolved these interference issues.

27. The selection of the noncommercial band would also complicate the Commission's engineering review of FM translator applications. Noncommercial FM stations are not allotted and licensed according to class and distance separations as are commercial stations. Therefore, a simple distance separation scheme for licensing translators cannot be used in the reserved educational band. An accurate calculation of each full service station's contour would be required to determine the actual protection contour, similar to the difficult calculation procedure used in processing LPTV applications. The Commission staff does not have sufficient information on FM antenna systems in the computer files to conduct this type of application processing. Thus, it is reasonable to expect that the increase in the complexity of the required engineering review would more than outweigh the limitation on the number of applications that could be expected.

28. FM translators in the noncommercial band would also impede the growth of full service stations in that band and effectively re-create the Class D stations. In Docket 20735, the Commission found that the large number of limited range 10 watt Class D stations that had been authorized were impeding licensing of more efficient Class B and C stations that would provide public radio programming to otherwise unserved areas. The *Report and Order*, released in 1978 terminated acceptance of new Class D applications and required existing Class D stations to either upgrade to Class A facilities (100 watts minimum) or move to a non-reserved commercial channel. Class D stations that chose to move to the commercial band no longer had primary status, but could only operate on a secondary non-interference basis. Many Class D stations requested that the Commission permit them to remain on their original noncommercial channel, with secondary status, but the Commission declined to do so. Although a number of the Class D stations elected to move to commercial channels, many others elected to increase their power, and remain in the noncommercial band, resulting in a number of currently pending mutually exclusive applications for power increases. Therefore, to now propose to amend the rules in a manner that would encourage translator or low power operation in that band would be completely counter-productive.

29. The Moody proposal also bears on another Commission rule making proceeding which warrants consideration at this time. In 1974, the Commission was concerned with an emerging pattern of use of FM translators to extend the service areas of existing FM stations rather than to fill in areas of inadequate reception. In the *Notice of Proposed Rulemaking* in Docket 19918, the Commission proposed rules that would prohibit competitive expansion of an FM station's service area through translators where the area to be served was already within the primary service area of two other radio stations.[13] The Commission also proposed a rule which provided for the termination of translator operation upon sixty days notice. This sixty day rule was adopted in the *First Report and Order* in that Docket.[14] In 1978, the Commission issued a *Memorandum Opinion and Order Further Notice of Proposed Rule Making* in Docket 19918.[t115] The Commission therein determined that the two signal limitation was not an appropriate tool for the control of the use of translators for competitive expansion. Rather, the Commission proposed to prohibit the participation of the primary station in the operation of any translators outside their primary area. Upon review of the record accumulated as a result of the *Further Notice*, we find that there has been no additional information brought forth establishing that the present limitations on FM station licensee operation or control of translator stations are inadequate. Accordingly, it appears that no further action is warranted at this time and the Commission takes this opportunity to terminate Docket 19918 without amending the rules.

30. We do not believe that the decision herein is inconsistent with the new Section 7 of the Communications Act.[16] Congress therein declared that it shall be the policy of the United States to encourage the institution of new technologies and services and "[c]onsistent with sound spectrum management, the Commission shall, to the maximum feasible extent, encourage the introduction of new and additional services by new applicants, existing licenses, or other persons." Initially, the service proposed by Moody would not be a "new" service within the meaning of the law. Rather, the service would be an extension of an existing service utilizing existing technology. The proposed changes would merely make a large number of additional stations feasible. Moreover, the proposal is, at this time, inconsistent with sound spectrum management. As indicated above, the Commission is engaged in the study of major changes in the allotment of FM stations. Sound spectrum management requires that we resolve those proceeding before undertaking extension of existing FM translator service.

31. While we must conclude that it is untimely to initiate action on these proposals now, we are not concluding that these ideas will not prove desirable

[13] 39 FR 1867, 44 FCC 2d 794.

[14] 43 FR 14880, published April 7, 1978.

[15] 43 FR 14895, published April 7, 1978.

[16] Federal Communications Commission Authorization Act of 1983, Pub. L. 98–214.

in the future. Three specific ongoing efforts must be completed before the Commission or perspective ongoing efforts must be completed before the Commission or perspective applicants would be able to ascertain with any degree of accuracy where or how many new FM translator stations can be accomodated. First, the three year period during which existing less-than-maximum facility Class C stations can be upgraded must pass so that the configuration of those existing stations will become final. Second, our ongoing proceeding to define future protection criteria between television Channel 6 and the FM radio service must be completed so that minimum TV Channel 6—FM coordination distances can be specified. Third, we must complete the ongoing Omnibus allotment proceeding in Docket 84–231 examining hundreds of new station allotments being created as a result of BC Docket 80–90. Once these three proceedings are completed, the full service station picture will have cleared enough to make a reasoned evaluation of the desirability of expanded FM translator operation. We invite the petitioners to resubmit at that time.

32. For the reasons stated above, it is ordered, that the Petition for Rulemaking RM–3914, filed by the Moody Bible Institute is denied.

33. It is further ordered, for the reasons stated above, The Rulemaking Proceeding in Docket No. 19918 is hereby terminated.

34. It is further ordered, that the Secretary shall cause this *Memorandum Opinion and Order* to by published in the FCC Reports.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–17112 Filed 6–26–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 84–608; RM–4765; FCC 84–267]

Proposal To Allow 800 MHz Conventional and Trunked Stations Operating on Four Specific Mountaintop Sites in the San Diego, California Area To Increase Effective Radiated Power

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to allow 800 MHz conventional and trunked stations operating on four specific mountaintop sites in San Diego, California to increase effective radiated power. The action is being proposed in order to resolve 800 MHz coverage problems in the San Diego area.

DATES: Comments are due by July 30, 1984 and replies by August 14, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, Rules Branch, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Proposed Rulemaking

In the matter of amendment of § 90.635(d) of the Commission's Rules and Regulations to allow 800 MHz conventional and trunked stations operating on four specific mountaintop sites in the San Diego area to increase effective radiated power. (PR Docket No. 84–608 RM–4765).

Adopted: June 15, 1984.

Released: June 22, 1984.

By the Commission.

1. Motorola, Inc. ("Motorola") has petitioned the Commission to amend § 90.635(d), Table 2 of the Commission's Rules and Regulations to allow 800 MHz conventional and trunked stations located on the mountaintop sites of Palomar, Otay, Woodson, and Miguel in San Diego, California to operate with an effective radiated power (ERP) of up to 500 watts.[1] Further, petitioner has requested that the Commission allow this increase in power at these sites on an interim basis during the pendency of the rule making.

2. Section 90.635(d), Table 2 lists the maximum power permitted at various antenna heights above average terrain (HAAT) for base stations operating in the 851–866 MHz band.[2,3] Under the current rules, the maximum ERP permitted for conventional stations located on Palomar (HAAT 2606') is 35 watts and for trunked stations 140 watts. At the Otay site (HAAT 2258') conventional stations may operate with 50 watts and trunked stations 200 watts. For stations located at the Woodson site (HAAT 1829') the maximum ERP permitted is 80 watts for conventional stations and 350 watts for trunked stations. At the Miguel site (HAAT 1867') the maximum ERP is 350 watts, whether the station is conventional or trunked.[4]

Background

3. The power limitations listed in Table 2 were developed in the *Second Report and Order* in Docket 18262.[5] Because the Commission at that time had little practical experience with operations at 800 MHz, a model was developed. The model was designed, in general, to provide a high quality signal within the service area of the typical station. A signal strength of 40 dBu and a service area of 20 miles were assumed for the model. The UHF–TV propagation curves, modified to account for mobile antenna receiving heights and attenuation due to different urban and suburban environments, were then used to determine the appropriate values of power (ERP) at various antenna heights.[6] In adopting the Table, however, the Commission noted that since the powers were based on an average station, service area and terrain, the values may prove unduly restrictive in certain situations. If this in fact occurred, the Commission indicated it would adjust the values accordingly.[7]

4. In 1975 the Commission concluded that a departure from the power table was warranted for stations located in the Los Angeles area.[8] Licensees operating on four nearby mountain peaks were permitted to utilize an ERP of one kilowatt regardless of the station's overall HAAT.[9] In making the Los Angeles exception, the Commission noted that it was taking a practical approach to a special situation.[10] Further, the Commission stated that if similar extenuating circumstances should become evident in other localities it would address them as they arose.

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[1] Petition for Rule Making, RM–4765, filed January 31, 1984.

[2] Antenna height in the Table is specified in terms of antenna height above average terrain (HAAT). HAAT is defined as the height of the center of the radiating element of the antenna above average terrain. *See*, 47 CFR 90.309(a)(4) for the method of calculating HAAT.

[3] For suburban systems the maximum permissible power (ERP) is 500 watts for HAAT's of 500 feet or less. For urban or trunked systems the maximum permissible power is one kilowatt for HAAT's of 1000 feet or less. The maximum power permitted decreases as the station's HAAT increases above these base values.

[4] Miguel is considered an urban site since it is less than 15 miles from the center of San Diego.

[5] *Second Report and Order*, Docket 18262, 46 FCC 2nd 752, adopted May 1, 1974.

[6] *Development of VHF and UHF Propogation Curves for TV and FM Broadcast*, Report No. R–6602, Federal Communications Commission, Office of the Chief Engineer, Research Division, September 7, 1966.

[7] *Second Report and Order, supra.*

[8] *Memorandum Opinion and Order*, Docket 18262, 51 FCC 2nd 945, 979, adopted March 19, 1975.

[9] The four mountaintop sites are Santiago Peak, Sierra Peak, Mount Lukens, and Mount Wilson. 47 CFR 90.362(c) and 90.621(b).

[10] In this regard, the Commission recognized that the very large geographic area of urban Los Angeles, its many suburbs and the presence of several very high mountaintop sites, make Los Angeles unique.

5. Petitioner argues that a similar situation now exists in San Diego. According to Motorola, the city of San Diego has evolved into an extensive metropolitan area covering irregular terrain with numerous peaks and valleys. Present power limits, according to Motorola, have resulted in serious coverage problems. Motorola points out that in order to resolve this same type of problem in the Los Angeles area, the Commission allowed 800 MHz licensees operating on mountaintop sites to utilize a higher power. Petitioner argues that the relief needed in San Diego is similar to that afforded Los Angeles.

Discussion

6. In Docket 18262 we specifically noted that the power values developed may not be ideal in every situation and that we would adjust them if necessary in particular cases. In order to meet users' needs, we have consistently attempted to revise the regulations governing the use of the 800 MHz band in light of our experience and in the interest of improving communications service.

7. Urban San Diego and its many suburbs represent a large and diverse geographic area. The local terrain is irregular, varying from relatively flat, to hilly, to very high mountains. Finally, there is the fact that certain 800 MHz systems in nearby Los Angeles are operating at very high antenna sites with power in excess of that normally authorized in other parts of the country. All of these paramenter differ substantially from those on which the 800 MHz model was based. It is apparent, therefore, that there are particular circumstances existing in San Diego which necessitate some change in our current power limitations. Motorola contends that the maximum power limit should be raised to 500 watts.[11] Upon initial analysis, this appears to be a reasonable increase in the power limits in light of the particular terrain involved. For the purposes of this Notice, therefore, we are proposing to raise the maximum permissible power for 800 MHz conventional and trucked stations located on Palomar, Otay, Woodson, and Miguel to 500 watts. We emphasize, however, that a final decision on how much additional power is needed will not be made until the entire record in this proceeding is thoroughly analyzed. We expect comments proposing or supporting a specific power to be accompanied by a detailed technical analysis and other relevant data supporting the position.

8. In considering how much power is appropriate in the San Diego area, we are cognizant of the possible adverse effect upon channel reuse capacity in this area. However, we also note that San Diego is bordered by the Pacific Ocean on the west and the Sierra Nevada Mountains on the east and therefore reuse possibilites to the east and west are minimal. Further, 800 MHz frequency assignments in the San Diego area are made on frequencies 12.5 kHz removed from regularly assignable channels. To the north of the San Diego area, therefore, this proposal should have little impact on reuse.[12] Nevertheless, comments are requested on the general impact of this proposal upon frequency reuse.

9. We also request comments on the potential for interference to other stations in surrounding communities, particularly Los Angeles. Interference potential in any given situation depends on antenna height, path profile, presence of ducting, effective radiated power, and adjacent channel protection, among other factors. A preliminary analysis of the results of a Commission study on anomalous propagation in the Southern California area indicates enchanced signal levels (as compared to R–6602 predictions) on most of the measured over-the-horizon and over-water paths between Los Angeles and San Diego.[13] [14] On the other hand, operation on frequencies 12.5 kHz offset provides approximately 20 dB of protection compared with co-channel operation. Further, some stations in the Los Angeles area are operating with higher powers. We welcome comments on these specific points as well as the overall issue of increased interference potential.

10. Motorola cites *Swift & Co., Inc.* v. *United States*, 3 RR 2d 20001, 335 F. 2d 788 (CA 7th, 1964) for the proposition that grant of interim relief during the pendency of a rule making proceeding is a permissible action.[15] While we agree that interim relief is permissible in certain cases, we do not agree, because of the potential harm to other users as described above, that such relief is warranted in this case. *(Cf. In Re Matter of the Inner City Broadcasting Corp. (WLIB), New York, N.Y.*, 44 FCC 2d 806 (1974), in which the Commission declined to grant interim relief pending the completion of a rule making proceeding.) Accordingly, we are denying Motorola's request for interim relief.

Regulatory Flexibility

11. The Commission certifies that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) do not apply to this rulemaking proceeding because the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities since it is geographically confined to a specific portion of one state. Also the proposed change imposes no additional record keeping requirements. The rule changes may have a beneficial effect upon licensees in the San Diego area in that they will enhance the ability to operate these systems with improved coverage. Nevertheless in the interest of assuring potential impacts on small entities are addressed, the Secretary shall cause a copy of this *Notice of Proposed Rule Making*, including the above certification, to be published in the **Federal Register**, and to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.* (1981).

12. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments)

[11] The Motorola proposal would result in approximately a 2–5 dB increase in power for trucked stations located on Palomar, Otay, Woodson, and Miguel, depending upon the specific location. It would result in approximately an 8–12 dB increase for conventional stations located on Palomar, Otay, and Woodson and a 2 dB increase for such stations located on Miguel.

[12] Stations located in the US/Mexico border area (110 km or less from the border) are assigned channels 12.5 kHz lower in frequency then those specified in § 90.613. These frequencies are not presently used outside the border region.

[13] This Southern California Propagation Project was begun in September, 1961, as a result of a large number of complaints concerning interference between co-channel stations in the Private Radio Service located in the Los Angeles/San Diego area. See *Notice of Proposed Rule Making*, Docket 82–244, adopted April 29, 1982.

[14] The degree of enhancement varied with the length of the path and the time of the year. Enhanced fields of 20 dB or more, however, were measured for a significant portion of the year. In addition, mobile measurements collected is San Diego were determined to have a higher standard deviation than usually reported in the VHF Band. This could be attributed to the irregularity of the local terrain in the area.

[15] Reported in the Federal Reporter as *Wilson & Co.* v. *United States*.

between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who submits an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules, 47 CFR 1.1231.

13. Authority to issue this Notice of Proposed Rule Making is contained in Sections 4(i) and 303(r) of the Communications Act, as amended. Pursuant to procedures set out in Section 1.415 of the Commission's Rules, 47 CFR 1.415, interested persons may file comments on or before July 30, 1984, and reply comments on or before August 14, 1984. The Commission will consider all relevant and timely comments before taking final action in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

14. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the public who wish to express their interest are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, DC.

15. For further information contact Herb Zeiler, Federal Communications Commission, Private Radio Bureau, Land Mobile and Microwave Division, Washington, DC 20554, (202) 634–2443.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 90—[AMENDED]

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Section 90.635(d) is amended by adding a new footnote to Table 2.

§ 90.635 [Amended]

* * * * *

TABLE 2 EQUIVALENT POWER AND ANTENNA HEIGHTS FOR BASE STATIONS IN THE 851–866 MHZ BAND WHICH HAVE A REQUIREMENT FOR A 32 KM (20 MI) SERVICE RADIUS

Antenna height (AAT) (Feet) (meters)	Effective radiated power power (watts) [1 2 5]	
	Urban/trunked	Suburban
. . . . .		
. . . . .		

[5] Applicants in San Diego, California will be permitted to utilize an ERP of 500 watts at the following mountain-top sites: Palomar, Otay, Woodson, and Miguel.

[FR Doc. 84–17113 Filed 6–26–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 218 and 225

[FRA Docket No. RSOR–6, Notice No. 5]

Control of Alcohol and Drug Use in Railroad Operations; Change in Hearing Date and Announcement of Technical Conference on Post-Accident Toxicological Testing

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Change of public hearing date and announcement of technical conference.

SUMMARY: On June 12, 1984, FRA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) on Control of Alcohol and Drug Use in Railroad Operations. FRA has found it necessary to reschedule the Washington, D.C., public hearing on the NPRM from July 30, 1984, to August 2, 1984. In addition, FRA announces a technical conference on the proposal for post-accident toxicological testing to be held on the afternoon of August 1, 1984, in Arlington, Virginia. These changes are made to facilitate public participation in the rulemaking process and to assure that FRA has adequate information to permit the development of any final rules in this proceeding.

DATES: The public hearing previously scheduled for July 30, 1984, in Washington, D.C., will be held on Thursday, August 2, 1984. The technical conference on post-accident toxicological testing will be held on the afternoon of Wednesday, August 1, 1984.

ADDRESSES: The Washington, D.C., hearing will be held in Room 2230 of the Nassif Building (DOT Headquarters), 400 Seventh Street SW.

The technical conference will be held in the Admiralty Ballroom of the Stouffer's Concourse Hotel, 2399 Jefferson Davis Highway, Arlington (Crystal City), Virginia.

Persons desiring to make oral statements at the hearing or to participate in the technical conference should notify one of the contacts specified below by telephone or provide written notification to the Docket Clerk, FRA (RCC–1), 400 Seventh Street SW., Washington, D.C. 20590. Notification at least five working days prior to the hearing or conference is requested.

FOR FURTHER INFORMATION CONTACT: Walter Rockey, Special Assistant to the Associate Administrator for Safety, FRA, Washington, D.C. 20590 (Telephone: 202–426–0895); or Grady Cothen, Special Assistant to the Chief Counsel, FRA, Washington, D.C. 20590 (Telephone: 202–426–9416).

SUPPLEMENTARY INFORMATION: FRA has found it necessary to make two changes in the public participation schedule announced in the Notice of Proposed Rulemaking (NPRM) on Control of Alcohol and Drug Use in Railroad Operations (49 FR 24252; June 12, 1984):

1. The Washington, D.C., public hearing originally scheduled for July 30, 1984, has been rescheduled for Thursday, August 2, 1984. This change was made to eliminate a conflict with a National Transportation Safety Board (NTSB) symposium on railroad accident investigations.

2. FRA has scheduled a technical conference on post-accident toxicological testing to be convened at 2:00 p.m. on Wednesday afternoon, August 1, 1984, in the Admiralty Ballroom of the Stouffer's Concourse Hotel, 2399 Jefferson Davis Highway, Arlington (Crystal City), Virginia. This informal conference will permit a detailed exchange of views concerning

the logistical and technical issues associated with the post-accident testing proposal. All interested parties are invited to participate in the conference, which will include (i) a short briefing on proposed procedures and (ii) an opportunity to discuss the problems associated with obtaining, handling, and analyzing samples, providing test results to appropriate parties, and interpreting the results. FRA specifically solicits the participation of those who would be involved in the proposed post-accident testing program, including NTSB, participating State agencies, employee representatives, the railroads, representatives of the health care community, and representatives of State and local medical examiners.

Interested persons are also cautioned that the Chicago, Illinois, public hearing will be at the Hotel Continental, 505 North Michigan Avenue (as announced in the **Federal Register** publication of June 12, 1984), rather than the location specified in the original typewritten version of the NPRM.

With these changes, the final schedule for participation in the rulemaking will be as follows:

Public Hearings

Denver, Colorado (Fri., July 6, 1984 at 9:00 a.m.)—Federal Office Building, 1961 Stout St., Room 239.

Chicago, Illinois (Thurs., July 19, 1984 at 10:00 a.m.)—Hotel Continental, 505 North Michigan Avenue.

New Orleans, Louisiana (Mon., July 23, 1984 at 10:00 a.m.)—U.S. Post Office Building, 701 Loyola St., Room 2186.

Washington, D.C. (Thurs., Aug. 2, 1984 at 10:00 a.m.)—Nassif Building (DOT Headquarters), 400 Seventh St., SW., Room 2230.

Technical Conference

Arlington, Virginia (Wed., Aug. 1, 1984 at 2:00 p.m.)—Stouffer's Concourse Hotel, 2399 Jefferson Davis Highway, Admiralty Ballroom.

Comment Closing Date

As previously announced, written comments must be submitted not later than close of business (5:00 p.m.) August 15, 1984.

Issued in Washington, D.C., on June 21, 1984.

John M. Mason,
Chief Counsel.

[FR Doc. 84-17147 Filed 6-26-84; 8:45 am]
BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings; Correction.

SUMMARY: This notice changes the location of a previously announced public hearing (49 FR 24038, June 11, 1984) to review catch limits and other measures to manage mackerel in the Gulf of Mexico.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, 813-228-2815.

The public hearing on July 19 will convene at 7:00 p.m. at the University of Miami, Rosenstiel School of Marine and Atmospheric Sciences Auditorium, 4600 Rickenbacker Causeway, Miami, Florida.

Dated: June 22, 1984.

Roland Finch,
Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-17150 Filed 6-26-84; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 125
Wednesday, June 27, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 22, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name ant telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

• Food and Nutrition Service
Evaluation of Expedited Service in the Food Stamp Program
One Time Only
State or Local Governments: 331 responses; 166 hours; not applicable under 3504(h)
Linda Egrove (703) 756–3115.

Reinstatement

• Agricultural Stabilization and Conservation Service
Record of Transfer of Allotment or Quota
ASCS–378
On Occasion
Individuals or Households, Farms: 245,000 responses; 61,250 hours; not applicable under 3504(h)
Jay Poole (202) 447–2715.

Revised

• Agricultural Stabilization and Conservation Service
Certifications for Eligibility to Receive Price Support on Flue-Cured Tobacco
MQ–32
Annually
Individuals or Households, Farms: 110,000 responses; 5,000 hours; not applicable under 3504(h)
Douglas Richardson (202) 447–4281.

• Animal and Plant Health Inspection Service
Brucellosis Program (9 CFR 51, 78 and Cooperative Agreement) VS 1–47, 1–68, 4–1, 4–1D, 4–4, 4–6, 6–35, 4–33–D, 4–35, 4–59
On Occasion, Monthly, Annually, Triennially
State or Local Government, Farms: 10,487 responses; 4,353 hours; not applicable under 3504(h)
Dr. G. H. Frye (301) 436–8711.

• Agricultural Stabilization and Conservation Service
Application for Review of Farm Marketing Quota
MQ–53
On Occasion
Individuals or Households, Farms: 256 responses; 64 hours; not applicable under 3504(h)
Jay Poole (202) 447–2715.

Extension

• Food and Nutrition Service
7 CFR Part 210–National School Lunch Program
Recordkeeping, Monthly, Quarterly, Annually
State or Local Governments, Non-profit Institutions: 2,147,512 responses; 22,495,415 hours; not applicable under 3504(h)
Barbara Semper (703) 756–3620.

• Agricultural Stabilization and Conservation Service
Daily Warehouse Summary
MQ–8, MQ–82
On Occasion
Businesses or Other For-Profit: 17,500 responses; 5,250 hours; not applicable under 3504(h)
Jay Poole (202) 447–2715.

Jane Benoit,
Acting Department Clearance Officer.

[FR Doc. 84–17108 Filed 6–26–84; 8:45 am]
BILLING CODE 3410–01–M

Commodity Credit Corporation

[1984-Crop Peanuts]

1984-Crop Peanut Program Determination Regarding National Average Support Levels for Quota and Additional Peanuts and the Commodity Credit Corporation Minimum Price for Export Sales for Edible Use of Additional Peanuts Pledged as Collateral for Price Support Loans

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determinations.

SUMMARY: The purpose of this notice is to affirm determinations with respect to the 1984 crop of peanuts which were announced by the Secretary of Agriculture on February 15, 1984, regarding the following: (1) The national average support level for quota peanuts, (2) the national average support level for additional peanuts and (3) the Commodity Credit Corporation (CCC) minimum price for export sales for edible uses of additional peanuts pledged as collateral for price support loans.

EFFECTIVE DATE: February 15, 1984.

FOR FURTHER INFORMATION CONTACT: Kenny Robison, Agricultural Economist, Agricultural Stabilization and Conservation Service, USDA, Room 3736-South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–5188.

The Final Regulatory Impact Analysis is available upon request.

SUPPLEMENTARY INFORMATION:

This notice has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that the provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies to are: Title—Commodity Loans and Purchase, Number—10.051, as found in the Catalog of Federla Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

A notice that the Secretary was preparing to make determinations with respect to the price support levels for the 1984 crop of quota and additional peanuts and the CCC minimum price for export sales for edible uses of additional peanuts pledged as collateral for price support loans was published in the **Federal Register** on January 12, 1984 (49 FR 1543). Quota peanuts are defined in section 358 of the Agricultural Adjustment Act of 1938 as peanuts which are produced on a farm having a farm poundage quota. Additional peanuts are, essentially, all other peanuts. The support levels for quota and additional peanuts are determined in accordance with section 108A of the Agricultural Act of 1949 (the "1949 Act"). The establishment of a minimum price for export sales for edible use of additional peanuts pledged as collateral for price support loans is discretionary with the Secretary.

A total of twenty-four comments were received in response to the January 12 notice. Most of these comments addressed more than one of the price determinations which were the subject of that notice. Twenty-three comments were recieved on the support level determination for quota peanuts. Of these, fourteen favored increasing the levels, some by an unspecified amount.

Others recommended various increases resulting in support levels ranging up to $750 per ton. Eight comments favored using, in lieu of the new method of formatting costs of production set forth in the January 12 notice, the previous method used by the Department of Agriculture (USDA) to compute and to present production costs. One respondent, without further comment, recommended following the requirements of the 1949 Act in establishing the quota support level. Fourteen comments were received with respect to the proposed determination of the support level for additional peanuts. Nine respondents recommended establishing the level of support for additional peanuts at a level estimated to ensure that there will be no losses to CCC. One respondent recommended no change in the level of support for additional peanuts from the level which was applicable to the 1983 crop (i.e, $185/ton). Three of those commenting recommended increases from the average level of support for additional peanuts which was applicable to the 1983 crop to levels ranging from from $200 to $230 per ton. Twelve comments were received on the CCC minimum price for export sales for edible use of additional peanuts pledged as collateral for price support loans. Prices ranging from $475 to $550 per ton were recommended.

For the reasons set forth below, the Secretary on February 15, 1984 announced for the 1984 crop of peanuts the following: (1) A national average quota peanut support level of $550 per ton; (2) a national average additional support level of $185 per ton; and (3) a minimum price of $425 per ton for export sales for edible uses of additional peanuts pledged as collateral for price support loans.

A. National Average Quota Support Rate

Section 108A(1) of the 1949 Act provides that the 1984 national average quota support rate shall be the 1983 quota support rate of $550 per ton adjusted to reflect the increase, during calendar year 1983, in the national cost of peanut production excluding any increase in the cost of land, except that in no event shall the national average support rate for the 1984 crop exceed the national average support rate for the 1983 crop by more than 6 percent. Based upon the Department's analysis of the 1982 and 1983 costs as set forth in the table in the January 12 notice using a trend yield per pound analysis, it was determined that the cost of producing peanuts in 1983 was below the cost of producing peanuts in 1982. Accordingly it was concluded that the national average quota support level for the 1984 crop of $550 per ton, which is the same as the level applicable to the 1983 crop, would be appropriate.

The use of the new format for persenting cost of production data was the subject of a number of comments which expressed the view that the new format tends to show lower total costs of production and is, therefore, unfair. This objection is without merit since the new format was used to make the comparison in production costs between both the 1982 and 1983 crop years. Moreover, use of the old format and trend yields to estimate the change in costs between 1982 and 1983 also shows a decrease in costs of producton of about the same magnitude as that shown by the new format. The new format was developed by the Economic Research Service of the Department of Agriculture after 6 years of study and consultation with numerous organizations and is being used for all commodities.

Some comments challenged the estimated levels of costs components shown in the table in the January 12 notice. These estimates were obtained from national survey data and are the most reliable estimates available. One comment suggested that a trend yield shoud not be used for per pound comparison purposes. However, the year-to-year per unit cost variability caused by abnormal weather and related factors, particularly in the Virginia-Carolina area covering Virginia, North Carolina and parts of South Carolina, would have been accentuated if trend yields were not used.

1984—Crop Peanuts Price Support Levels

TABLE 45.—PEANUT PRODUCTION COSTS, U.S., 1982–1983 [1]

[Dollars per planted acre]

Item	1982 [2]	1983 [2]
Cash receipts:		
Primary crop	[illegible]	[illegible]
Secondary crop	11.00	10.78
Total	667.52	[illegible]
Cash expenses:		
Seed	63.43	[illegible]
Fertilizer	[illegible]	19.56
Lime and gypsum	14.57	13.68
Chemicals	[illegible]	[illegible]
Custom operations	7.49	[illegible]
Fuel and lubrication	[illegible]	34.54
Repairs	[illegible]	20.24
Drying	42.14	34.70
Total, variable expenses	[illegible]	[illegible]
General farm overhead	27.12	27.72

TABLE 45.—PEANUT PRODUCTION COSTS, U.S., 1982–1983 [1]—Continued

[Dollars per planted acre]

Item	1982 [2]	1983 [3]
Taxes and insurance	7.45	8.73
Interest	[illegible]	54.40
Total, fixed expenses	199.22	130.85
Total, cash expenses	411.03	411.63
Receipts less cash expenses	[illegible]	146.73
Capital replacement	53.17	58.31
Receipts less cash expenses and replacements	[illegible]	87.42
Economic costs:		
Variable expenses	267.81	280.79
General farm overhead	27.12	27.72
Taxes and insurance	7.45	8.73
Capital replacement	53.17	58.31
Allocated returns to owned inputs:		
Operating capital	12.09	11.64
Other nonland capital	19.73	21.35
Land	36.01	37.82
Labor [4]	35.01	34.23
Residual to management and risk	[illegible]	76.77
Net returns to owned inputs	221.97	181.61
Trend yield (lbs./planted acre)	[illegible]	2,563.00
Total cash expenses plus capital replacement, land, and labor:		
Dollars per planted acre	545.75	541.09
Dollars per pound with trend yield	.2084	.2334

[1] Based on 1982 survey data.
[2] Preliminary.
[3] Projected.
[4] This item includes hired labor (a cash expense) and unpaid labor; they could not be separately identified given available survey data.

B. National Average Additional Support Rate

In accordance with section 108A(2) of the 1949 Act, the following three factors were taken into consideration in determining the national average support rate for additional peanuts:

1. *Demand for peanut oil and meal.* The projected quantity of peanuts available for crushing in 1984/85 marketing year (August 1, 1984 through July 31, 1985), a residual of edible use, will be 225 thousand tons compared with 188 thousand tons for 1983/84 marketing year. Peanut oil and meal prices are expected to average 33 cents per pound and $174 per ton, respectively, for the 1984/85 marketing year.

2. *Expected prices of other vegetable oils and meals.* In 1983/84, the world aggregate production of oilseeds is estimated to be 182 million short tons (165.3 million metric tons), 8 percent lower than 1982/83. Virtually all the reduction is expected to occur in the U.S. Soybeans account for 48 percent of the world oilseed production while peanuts account for 12 percent. Soybeans lead the demand-supply price patterns for oilseeds. Tight supplies and higher prices dominate the 1983/84 marketing year U.S. soybean outlook. It is estimated that 1983/84 soybean oil prices will average 28 cents per pound compared to 20.6 cents per pound for the 1982/83 marketing year. Soybean meal prices are expected to average $215 per ton, compared with $187 per ton for 1982/83. Soybean acreage will likely increase in 1984. The projected increase in production will offset the drawdown in 1983/84 carryout stocks. Demand for oil and meal is expected to strengthen. Soybean oil prices are projected to decrease 3 percent from 1983/84 prices. Soybean meal prices are projected to decrease 19 percent from 1983/84 price.

3. *Demand for peanuts in foreign markets.* The demand for U.S. peanuts in foreign markets is expected to strengthen as U.S. exports move toward the 1978/79 level achieved prior to the drought-reduced 1980 crop. The U.S. is expected to supply 425 thousand short tons to the export market in the 1984/85 marketing year, 75 thousand tons above the 350 thousand ton estimate for 1983/84 marketing year.

Section 108A(2) provides further that the support rate must be established at a level estimated to ensure no loss to CCC from the sale or disposal of additional peanuts placed under loan. Peanuts are pooled by type and other factors and separate pools are maintained for quota and additional peanuts. Under the pool concept, net gains from a pool are redistributed to producers, while a net loss in a pool is realized by CCC. It is expected that all peanuts in some additional loan pools will be sold for domestic crushing. Further, it has been determined based on the consideration of the market factors set forth above that the estimated average crushing price for loan collateral 1984-crop additional peanuts would be $275 per ton. Since CCC's handling and related costs were estimated to be $85 per ton, it was, therefore, estimated that the expected effective revenue from crushing sales would be $190 per tone. Accordingly, it was concluded that a national average support rate for additional peanuts of $185 per ton would be appropriate to provide a cushion against lower than expected crushing prices, higher than expected costs, or other factors which could result in a loss to CCC from the sale or disposal of additional loan collateral peanuts.

C. CCC Minimum Price for Export Sales for Edible Use of Additional Peanuts Pledged as Collateral for Price Support Loan

As indicated, the determination of a CCC minimum price for export sales for edible use of additional peanuts pledged as loan collateral is discretionary with the Secretary. As set out in the January 12 notice, if the price is established too high, sales of the peanuts for edible uses can be discouraged in which case the peanuts will have to be sold for crushing at low prices. Further, private sales can be discouraged because of speculation by producers that the high CCC price can be achieved, in effect, through pool dividends. If the minimum sales price were established too low the producer's returns can be reduced to the extent that the low price is considered by handlers as the actual price at which the peanuts will be sold by CCC thereby causing them, based on that speculation, to reduce their bids for peanuts in private sales. Based on expected world prices, it was concluded that a CCC minimum price of $425 per ton for export sales for edible use of additional peanuts would be appropriate.

Since the only purpose of this notice is to affirm the determinations announced by the Secretary on February 15, 1984, with respect to the 1984 levels of support for quota and additional peanuts and the CCC minimum price for export sales for edible use of additional peanuts pledged as collateral for price support loans, it has been determined that no further public rulemaking is required regarding the following:

Determinations

(1) The national average level of support for the 1984 crop of quota peanuts has been determined to be $550 per ton. This level of support is applicable to eligible 1984-crop farmers stock peanuts in bulk or in bags, net weight basis.

(2) The national average level of support for the 1984 crop of additional peanuts had been determined to be $185 per ton. This level of support is applicable to eligible 1984-crop farmers stock peanuts in bulk or in bags, net weight basis.

(3) The Commodity Credit Corporation (CCC) minimum price for export sales for edible use of additional peanuts pledged as collateral for price support loans has been determined to be $425 per ton. This CCC minimum sales price is applicable to 1984-crop additional peanuts pledged as loan collateral in accordance with the General Price Support Regulations (7 CFR Part 1446).

Signed at Washington, D.C., on June 22, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84–17109 Filed 6–26–84; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Southwestern Region; South Kaibab Grazing Advisory Board; Meeting

The South Kaibab Grazing Advisory Board will meet from 8:30 a.m. until 4:00 p.m. on Thursday, August 2, 1984 and from 8:30 a.m. until 1:00 p.m. on Friday, August 3, 1984. The meetings will be held at the Kaibab National Forest Supervisor's Office, 800 South Sixth Street, Williams, Arizona.

The purpose of this meeting is:

1. Development of Allotment Management Plans
2. Utilization of Range Betterment Funds

The meeting will be open to the public. Persons who wish to attend should notify: Forest Supervisor, Kaibab National Forest, 800 South Sixth Street, Williams, AZ 86046, Telephone: (602) 635–2681.

Those attending may express their views when recognized by the Chairperson.

Dated: June 19, 1984.

Leonard A. Lindquist,

Forest Supervisor.

[FR Doc. 84–17156 Filed 6–26–84; 8:45 am]

BILLING CODE 3410–11–M

Medicine Bow National Forest Grazing Advisory Board; Meeting

The Medicine Bow National Forest Grazing Advisory Board will meet July 23, 1984, at 7:30 a.m. at the Sandstone Work Center on the Hayden Ranger District. The Board, Forest Service personnel and interested public will then proceed to review range improvements, range condition and allotment management on the Hyden Ranger District.

The Board will make recommendations concerning range analysis development of Allotment Management Plans, utilization of Range Betterment Funds and discuss Advisory Board By-laws.

The meeting will be open to the public. Persons who wish to attend and participate should notify Range Staff Officer, Ladd G. Frary, Medicine Bow National Forest (307/745–8971) prior to the meeting date. Public members may participate in discussions during the tour at any time or may file a written statement following the meeting.

Dated: June 18, 1984.

Roger A. Shepard,

Acting Forest Supervisor.

[FR Doc. 84–17049 Filed 6–26–84; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Environmental Impact Statement; Bonneville County Road Critical Area Treatment RC&D Measure, Idaho

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

Notice

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bonneville County Road Critical Area Treatment RC&D Measure, Bonneville County, Idaho.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Bonneville County Road Critical Area Treatment RC&D Measure will control erosion and sediment damage on two critically eroding sites along county roads. Planned treatments include critical area plantings and grading and shaping.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has also been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the first page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87–703, 16 U.S.C. 590 a–f, q)

Dated: June 14, 1984.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 84–17084 Filed 6–26–84; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact Statement; Mendenhall Ditch Company Sprinkler Irrigation Project RC&D Measure, Idaho

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

Notice

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mendenhall Ditch Company Sprinkler Irrigation Project, RC&D Measure, Caribou and Franklin Counties, Idaho.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for installation of a structural measure to reduce erosion, sedimentation and to conserve water, improve distribution system efficiencies, eliminate weed problems in distribution systems, and maintain or improve the quality of the environment. The planned works of improvement include a gravity sprinkler system and application of conservation practices on private agricultural land.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the first page. The basic data developed during the

environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87–703, 16 U.S.C. 590 a–f, q)

Dated: June 14, 1984.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 84–17086 Filed 6–26–84; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact Statements; Thorn Creek Watershed, Idaho and Washington

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Thorn Creek Watershed, Latah County, Idaho and Whitman County, Washington.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for land treatment to protect the quality of the land resource, reduce severe erosion on non-irrigated cropland and reduce sediment damage. The planned works of improvement include conservation practices such as conservation tillage systems, permanent vegetation and grassed waterways.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 14, 1984.

Stanley N. Hobson,

State Conservationist.

[FR Doc. 84–17086 Filed 6–26–84; 8:45 am]

BILLING CODE 3410–16–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB Meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 1:00 PM to 5:00 PM, Tuesday, July 10, 1984, to take place in the Main Hall of the Disabled American Veterans (DAV) Headquarters, 807 Maine Avenue, SW., Washington, D.C.

Items: Showing of video tape regarding attitudinal barriers toward disabled people; ATBCB Section 504 regulation for its federally conducted programs and activities; invitation for public comment on the development of interpretive standards for chairs used primarily for enplaning and deplaning passengers having physical limitations; ATBCB FY 1986 budget planning document.

DATE: July 10, 1984—1:00 PM–5:00 PM.

ADDRESS: Disabled American Veterans (DAV) Headquarters, Main Hall, 807 Maine Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs, (202) 245–1591 (voice or TDD).

Committee meetings of the ATBCB will be held on Monday, July 9, in the HHS North Building, 330 Independence Avenue, SW., Washington, D.C. and Tuesday morning, July 10, in the second floor meeting area of the Disabled American Veterans (DAV) Headquarters, 807 Maine Avenue, SW., Washington, D.C.

Robert M. Johnson,

Executive Director.

[FR Doc. 84–17101 Filed 6–26–84; 8:45 am]

BILLING CODE 8820–BF–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issue.

DATE: Comments on these applications must be submitted on or before July 17, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84–00022."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of export Trading Company Affairs, International Trade Administration, 202/377–5131, or Eleanor Roberts Lewis, Assistant General Counsel for export Trading Companies, Office of General Counsel, 202/377–0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the secretary of Commerce to issue Export trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596–10604 (Mar. 11, 1983) (to be codified at 15 CCFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under

Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or service of the class exported by the applicant, and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–40 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Great Agassiz Basin Export Trading Company, 112 North University Drive, Suite 385, Fargo, ND 58102.

Telephone: (701) 293–0093.

Application No.: 84–00022.

Date Received: June 11, 1984.

Dated Deemed Submitted: June 14, 1984.

Members in Addition to Applicant: International Enterprises, an Idaho corporation, 1429 Tenth Avenue, South Fargo, ND 58103; Advisors, Inc., a North Dakota corporation, P.O. Box 1681, Fargo, ND 58107; ECO–AG, Inc., an Idaho corporation, 1365 North Orchard Street, #211, Boise, ID 83706; Uebergang-Williams Mineral and Protein Application Co., a partnership under Australian law, c/o P.O. Box 1681, Fargo, ND 58107; and Crary-Williams Attorneys, a North Dakota partnership, P.O. Box 115, Walhalla, ND 58282.

Summary of the Application

A. Export Trade

Great Agassiz Basin Export Trading Company proposes to engage in and export under an export trade certificate of review the following products: (1) All agricultural crops including cash grains, field crops, and vegetables and melons; (2) All types of livestock including livestock, dairy farms, poultry and eggs, and other animals specialties such as fish farms; (3) Food and kindred products including meat products, dairy products, grain mill products, prepared feed and feed ingredient for animals and fowls, sugar and confectionery products, and fats and oils.

B. Export Trade Activities and Methods of Opertations

On behalf of itself and its members, Great Agassiz intends to engage in the following export trade activities and methods of operation:

(1) Great Agassiz will determine prices for the products it intends to export. Such prices will be based upon acquisition costs of base goods to which Great Agassiz may add handling, labeling, and shipping costs and its own mark-up.

(2) Exclusive agreements may be entered into with U.S. suppliers.

(3) Issuance of new stock in Great Agassiz, transfer of stock and other restrictions on stockholders of Great Agassiz shall be at the discretion and/or approval of the directors of Great Agassiz.

(4) Great Agassiz proposes to enter into joint venture agreements with competitors, including large agribusinesses, whereby foreign orders will be shared when Great Agassiz is unable to fill the order itself. Great Agassiz may share information with its competitors on their export activities.

(5) Great Agassiz proposes to enter into agreements with foreign entities for the pooling of tangible commodities. These agreements may contain any or all of the following provisions:

(a) Price maintenance restrictions;

(b) Price fixing agreements for foreign markets; and

(c) Division of foreign markets.

The OETCA is issuing this notice in compliance with section 302 (b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting an application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued.

Dated: June 22, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84–17017 Filed 6–26–84; 8:45 am]

BILLING CODE 3510-DR-M

[C-333–401]

Cotton Shop Towels From Peru; Preliminary Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Peru of cotton shop towels. The estimated net bounty or grant is 44 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to

suspend liquidation of all unliquidated entries of cotton shop towels from Peru which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or bond on these products in an amount equal to the estimated net bounty or grant. If this investigation proceeds normally, we will make our final determination by September 4, 1984.

EFFECTIVE DATE: June 27, 1984.

FOR FURTHER INFORMATION CONTACT: Andrew Debicki, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided to manufacturers, producers, or exporters in Peru of cotton shop towels. The following programs are preliminarily determined to confer subsidies:

- Certificate of Tax Rebate (CERTEX)
- Non-Traditional Export Fund (FENT)

We estimate the net bounty or grant to be 44 percent *ad valorem.*

Case History

On March 28, 1984, we received a petition from Miliken and Company filed on behalf of the U.S. cotton shop towel industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), petitioners alleged that manufacturers, producers, or exporters in Peru of cotton shop towels received, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act. We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and on April 17, 1984, we initiated an investigation (49 FR 15250). We stated at that time that we expected to issue a preliminary determination by June 21, 1984.

Peru is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and, therefore, section 303 of the Act applies to this investigation. The merchandise under investigation is dutiable. Therefore, under this section, the petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

We presented questionnaires concerning the allegations to the government of Peru at its Embassy in Washington, D.C., on April 24, 1984. On June 7, 1984, we received replies to the questionnaires.

Scope of Investigations

The product covered by this investigation is cotton shop towels. This merchandise is currently classified under item number 336.2740 of the Tariff Schedules of the United States Annotated (TSUSA). Fabrica de Tejidos La Union, Ltda., S.A. (La Union) is the only known Peruvian exporter to the United States of cotton shop towels.

The period for which we are measuring bounties or grants is the calendar year 1983.

Analysis of Programs

A number of programs discussed in this notice are specific provisions of the Law for the Promotion of Exports of Non-traditional Goods (the Export Law). These provisions include:

- Articles 8 and 9, providing preferential investment or reinvestment tax credits to exporters;
- Article 12, providing preferential capital asset depreciation rates to exporters;
- Article 13, providing extended tax exemption periods on reinvested earnings to exporters;
- Article 14, providing tax deductions for exporters who increase permanent employment;
- Article 16, providing exemptions from certain import duties to qualifying exports;
- Article 23, providing tax exemptions and refunds to qualifying export consortia; and
- Article 31, providing preferential shipping rates to exporters.

These programs are described in greater detail in the body of this notice.

In their responses, the government of Peru and La Union provided data for the applicable period. On the basis of our analysis of the petition, the responses to our questionnaires and information available to the Department from previous investigations and administrative reviews, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters of cotton shop towels in Peru under the following programs:

A. Certificate of Tax Rebate (CERTEX)

Under this program, qualifying exporters are eligible to apply for certificates issued by the government in amounts equal to a percentage of the f.o.b. invoice price of export shipments. The applicable CERTEX percentage is determined by whether the exports are classified as being of low, medium or high value added. CERTEX certificates may be applied against taxes owed the Peruvian government or negotiated as commercial paper.

The CERTEX program is specifically export oriented. The amount of benefits available under the program is based solely on export performance. La Union has participated in the program. Consequently, we preliminarily determine the CERTEX program operates to confer countervailable export bounties or grants on the Peruvian cotton shop towel industry.

To calculate the benefit derived from this program, we divided the total amount of CERTEX certificates issued to La Union by the value of the company's total exports to all markets during the period for which we are measuring bounties or grants. We preliminarily determine the benefit conferred by this program to be 24 percent *ad valorem.*

B. Non-Traditional Export Fund ("FENT")

Under this program, the government of Peru makes short-term financing available to exporters of goods not traditionally exported. There are three types of short-term financing: local currency loans, "foreign currency" loans and mixed local and foreign currency loans. The loans are drawn from a fund established by the Banco Central de Reserve del Peru ("BCRP"), and passed through the Banco Industrial del Peru and a commercial disbursing bank. La Union participated in this program during the period for which we are measuring bounties or grants. Because this program provides preferential financing on the basis of export performance, we preliminarily determine it confers countervailable export bounties or grants on the Peruvian cotton shop towels industry.

La Union reported no local currency loans during the investigative period, but did report receiving "foreign currency" and mixed loans. In the case of foreign currency loans, a company receives soles loans for a maximum 180 days at the concessional annual interest rate of 1 percent. The loans are usually held for less than the maximum period.

Applications for these loans may be made each time the company exports. The amount of the loan cannot exceed 90 percent of the export value of the shipment. At the same time a firm receives the loan proceeds in soles, it must borrow an amount equal to 80 percent of the value of the soles loans in a foreign currency, usually dollars. The foreign currency loan must be deposited with the BCRP. The cost to the firm of borrowing foreign currency exceeds the return on the deposit with the BCRP. Foreign currency loans are of the same duration as the soles loans.

To calculate the bounty or grant, we totalled the principal amounts of La Union's foreign currency loans and converted this sum to the appropriate soles amount. As best available information, we used an average exchange rate for the year to make this conversion. We will, however, consider whether a different method of conversion is more appropriate. This figure was multiplied by the difference between the concessional FENT rate and the average annual commercial rate for short-term loans in Peru to arrive at the gross benefit. We then calculated the net cost to La Union of its foreign currency borrowings and deposits. After converting this amount to soles, we subtracted it from the gross benefit to obtain the net benefit to La Union. On this basis, we preliminarily determine the benefit from this program to be 15 percent *ad valorem*.

As noted, La Union also reported receiving several mixed loans. This alternative permits exporters to obtain pre-shipment financing in both dollars and soles for up to 90 percent of the export value of each shipment. Out of this 90 percent, 50 percent is available in soles and 40 percent is available in dollars. Similar to loans obtained under the foreign currency alternative, mixed loans also involve a requirement that the exporter borrow 32 percent of the total value of the loan in a foreign currency and deposit this amount with the BCRP. The exporter receives the soles equivalent of the foreign currency portion (40 percent) of these loans at a concessional rate of 1 percent. The soles portion of the loans is apparently available only at prevailing commercial rates.

To calculate the benefit from the foreign currency portion of mixed loans, we determined La Union's total foreign currency loan principal for mixed loans obtained during the investigative period. We converted this amount to the appropriate soles equivalent. Using the same methodology described above for foreign currency loans, we then calculated a gross benefit, and a net cost of foreign borrowing and deposits, and calculated a net benefit. We preliminarily determine the benefit from this program to be 5 percent *ad valorem*.

C. Additional Information on Programs Preliminarily Determined To Confer Countervailable Bounties or Grants

In its response to our questionnaire, the government of Peru stated its intent to enact legislation which would eliminate the eligibility for benefits under the CERTEX and FENT programs of exports to the United States of cotton shop towels. By a letter dated June 19, 1984, the Peruvian Ambassador to the United States informed the Department that, on June 17, 1984, the government of Peru promulgated Supreme Decree No. 251–84–EFC eliminating cotton shop towel exports to the United States from eligibility for these programs.

Because we received notice of the government of Peru's action at such a late date, we were unable to consider it in connection with this preliminary determination. We will, however, consider the matter before reaching a final determination.

II. Programs Preliminarily Determined Not To Be Used

We have preliminarily determined that cotton shop towel manufacturers, producers, or exporters in Peru do not use the following programs that were identified in the notice of "Initiation of Countervailing Duty Investigation of Cotton Shop Towels from Peru:"

A. Articles 8 and 9 of the Export Law

There provisions enable exporters to take special advantage of Peruvian tax laws permitting exemptions on certain percentages of net income which they reinvest. Under Decree Law 18350, industries are assigned to one of four priority levels. Each level represents a larger percentage of net income eligible for a tax exemption upon reinvestment. Articles 8 and 9 permit exporters to move up one level on the priority schedule.

The responses of both the government of Peru and La Union indicate the cotton shop towel industry does not participate in this program.

B. Article 12 of the Export Law

This article permits exporters to depreciate fixed assets at rates higher than those allowed non-exporting enterprises.

The responses of both the government of Peru and La Union indicate the cotton shop towel industry does not participate in this program.

C. Article 16 of the Export Law

This article provides that enterprises which export at least 40 percent of their annual production of nontraditional goods will benefit from either suspension of or exemption from duties on their imports of capital goods.

The responses indicate La Union did not import any capital goods which might qualify for Article 16 benefits during the period for which we are measuring bounties or grants.

D. Article 23 of the Export Law

The article provides that consortia which are formed to facilitate exports of nontraditional goods, and which meet certain criteria, will be eligible for tax exemptions and tax refund certificates.

La Union is apparently not a member of a qualifying export consortium. The response of the government of Peru indicates the cotton shop towel industry has not participated in this program.

E. Article 31 of the Export Law

This article permits shippers to make preferential rates available to exporters of nontraditional goods.

The responses of the government of Peru and La Union indicate the cotton shop towel industry has not benefited from this program.

III. Programs for Which Additional Information is Needed

At this time, we do not have sufficient information from petitioner or respondents to determine whether countervailable benefits are being provided, or to quantify the *ad valorem* amount of the possible bounties or grants, with regard to the following programs:

A. Articles 13 and 14 of the Export Law

Article 13 provides an income tax exemption to exporters who capitalize earnings within six years from the year in which the exemption is taken. This is one year longer than the allowable period for non-exporters. Article 14 provides tax deductions to exporters that increase the number of permanent jobs in their industry. Eligibility is determined on a year to year basis. The response of the government of Peru states that the critical situation of the textile industry in Peru has prevented use of the incentives envisioned in Articles 13 and 14. La Union's response indicated the company has not participated in these programs. Because it is not clear from these responses

whether non-participation has simply been assumed as the result of general economic conditions affecting the textile industry, we will seek additional information regarding these programs.

Verification

In accordance with section 776(a) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of cotton shop towels from Peru which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond for each such entry of this merchandise in the amount of 44 percent *ad valorem*. This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on July 10, 1984, in Room 3092 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, a prehearing brief in ata least 10 copies must be submitted to the Deputy Assistant Secretary by July 3, 1984. Oral presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 355.35, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: June 21, 1984.

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-17145 Filed 6-26-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting at 8 a.m., June 29, 1984, of members of its Shrimp/Stone Crab Ad Hoc Advisory Panel to consider zoning of federal waters off Hernando, Citrus and Pasco Counties, Florida for the coming stone crab season. The meeting will take place at St. Benedict's Church, Route 1, Box 1000, Homosassa, FL. For further information contact the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa FL 33609; telephone (813)–228–2815.

Dated: June 22, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-17158 Filed 6-26-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense (OSD) Performance Review Board

Correction

In FR Doc. 84–16273 beginning on page 25024 in the issue of Tuesday, June 19, 1984, make the following correction: In column three, **SUPPLEMENTARY INFORMATION**, line eight, "1983" should read "1984".

BILLING CODE 1505-01-M

Engineers Corps, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Marathon Development Project, Regulatory Permit Application No. 15483E49, Alameda County, California.

AGENCY: San Francisco District, U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY:

1. *Proposed Action:* Marathon U.S. Realties, Inc. has appplied for a Department of the Army permit under section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), and section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344), to authorize the fill of a 134-acre site for the development of an industrial-commercial business center and the development of two nearby sites (a total of 90 acres) as seasonal wetlands. For flood protection, about 34,000 cubic yards of fill would be placed to construct a levee along the western border connecting to the Bockman Canal and Sulfur Creek levees. About 154,000 cubic yards of fill would be placed to bring the site to its finished grade. This 134-acre site would be developed with city streets, all utilities and services for high-tech firms, light manufacturing, offices, warehouses, and similar uses. A preliminary estimate indiates that about 110 acres of the site are wetlands. To mitigate this habitat loss, the applicant proposes to enhance the habitat value of two nearby sites. Two storm water runoff pump stations would remove runoff water from the proposed business center and an adjoining 65-acre, existing industrial tract. The proposed development is located in the cities of Hayward and San Lorenzo, Alameda County, California. The proposed project will provide additional business and employment opportunities and enhance recreational aspects with dedication of open-space areas. The San Francicso District, U.S. Army Corps of Engineers and the City of Hayward Planning Department will prepare a joint Federal/State environmental document for the proposed project.

2. *Alternatives:* The alternatives being considered at this time are:

a. No Action (permit denial).

b. Project proposed by applicant as described above.

c. Project as proposed by applicant with mitigation alternatives other than described above.

d. Project with modified boundaries to minimize impacts upon existing wetland areas.

Additional alternatives identified during the scoping process will also be considered in the DEIS.

3. *Scoping Process:*

a. A public scoping meeting will be held on Wednesday, July 18, 1984, at the Planning Department, Hayward City Center Building, 22300 Foothill Boulevard, Hayward, California 94541. To facilitate attracting the greatest possible public participaton two sessions have been arranged: the afternoon session starts at 2:00 PM at the Planning Department, 8th Floor, and the evening session starts at 7:00 PM in the Plaza Level, Room B. Government agencies, public and private interest groups, and the public are invited to

participate in the scoping process by attending either meeting session or by submitting written comments. The purpose of the scoping meeting will be to identify significant issues and alternatives to be considered in the DEIS.

b. The significant issues which have been identified to date and which will be analyzed in the DEIS include: (1) the change in land use from open space to business/commercial, (2) impacts on fish and wildlife resources including endangered species, (3) water quality concerns, (4) traffic, (5) air quality concerns, (6) project site topography, (7) and increased need for public services. Additional significant issues identified during the scoping process will also be analyzed.

c. Environmental review and consultation as required by sections 401 and 404 of the Clean Water Act, as amended (33 U.S.C. 1341 and 1344); section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c)); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); Executive Order 11988, "Floodplain Management," 24 May 1977; Prime and Unique Agricultural Lands, CEQ Memorandum dated 11 August 1980; and other statutes or regulations as may be required by the proposed action; will be conducted concurrently with the NEPA process.

4. It is estimated that the DEIS will be released to the public on or about 19 November 1984.

5. Questions regarding the scoping process or preparation of the DEIS may be referred to Les Tong, Environmental Branch, San Francisco District, U.S. Army Corps of Engineers, 211 Main Street, San Francisco, California 94105 (Commercial 415–974–0439 or FTS 454–0439). General questions concerning the processing of the permit application may be referred to Ken Maynard, Regulatory Functions Branch (Commercial 415–974–0424 or FTS 454–0424) at the same address.

Dated: June 20, 1984.

Edward M. Lee, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84–17080 Filed 6–26–84; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP84–474–000]

American Distribution Co. (Alabama Division); Application

June 22, 1984.

Take notice that on June 8, 1984, American Distribution Company (Alabama Division) (Applicant), 1234 Capital Bank Plaza, Houston, Texas 77002 filed in Docket No. CP84–474–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities to be located in Alabama and the transportation of natural gas by means of these facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it is a division of American Distribution Company (ADC), which is a newly organized local distribution company. Applicant indicates that ADC would soon complete construction of its distribution facilities located in Texas. Applicant states that ADC has entered into an agreement to purchase 5,000 Mcf of residue gas per day from a sour gas processing plant now being constructed by Collet Ventures, Inc. (Collet), in Washington County, Alabama. Applicant proposes to construct a 40-mile 6-inch pipeline from the tailgate of the Collet plant to a point of interconnection with the facilities of Florida Gas Transmission Company (FGT). Applicant indicates it would transport up to 5,000 Mcf per day for Collet through those facilities and that ADC would take title to the gas at the interconnection of the proposed facilities with those of FGT. Applicant states that FGT will then transport the gas to Texas Eastern Transmission Corporation, which would then transport the gas to ADC's distribution facilities in Texas. Applicant explains that all of the gas purchased in Alabama would be delivered to ADC's sole customer, the Big Three Industries, Inc., which operates a cogeneration plant.

Applicant states that the proposed project would cost approximately $2.1 million. Applicant proposes to charge Collet a transportation fee of $0.45 per Mcf for the first 4,500,000 Mcf of gas delivered through the new system and $0.25 per Mcf thereafter.

Except for the proposed activities of Applicant, it is alleged that ADC's operations are exempt from the provisions of the Natural Gas Act. Accordingly, Applicant requests that simultaneously with the issuance of the authorization herein sought, the Commission also affirmatively and explicitly declare that the jurisdiction of the Commission under the Natural Gas Act over Applicant and the transactions in which it is engaged would extend solely to the acts and services authorized by the requested certificate and that the jurisdiction of the Commission under the Natural Gas Act specifically would not extend to any transaction which, but for the acts and services authorized to be performed pursuant to the requested certificate, would not be subject to such jurisdiction.

In addition, Applicant indicates that based upon revenue projections it would appear that Applicant would be classified as a Class C natural-gas company under 18 CFR Part 204. Applicant asserts that imposition of the Part 204 regulations would be unduly burdensome and requests waiver of those regulations. Applicant also requests that it be required to submit only an annual report as a Class C company and that other reporting requirements under Parts 158, 160, 216 and 225 of the Commission's regulations be waived.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17134 Filed 6-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-489-000]

Arizona Public Service Co.; Filing

June 22, 1984.

The filing Company submits the following:

Take notice that on June 11, 1984 Arizona Public Service Company submitted for filing Supplement No. 4 to Service Schedule E of the Power Coordination Agreement (Agreement) between Arizona and Tucson Electric Power Company (Tucson), Arizona Rate Schedule No. 32.

Arizona states that this Supplement updates to current levels the rate to be charged for firm transmission service. No new facilities will be required in order to supply service under this proposed Supplement.

Arizona requests an effective date of November 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 10, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17135 Filed 6-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-78-001]

Bayou Interstate Pipeline System; Tariff Filing

June 21, 1984.

Take notice that on June 15, 1984, Bayou Interstate Pipeline System (Bayou) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute First Revised Sheet Nos. 4 and 4A

Bayou states that it is submitting these sheets in conformance with Ordering Paragraph (E) of the Commission's order dated May 31, 1984 in this docket (27 FERC ¶61,329). The Commission ordered Bayou to file revised tariff sheets reflecting elimination of the amount attributable to the amortization of gas plant acquisition adjustment previously included in Bayou's proposed rates.

Bayou further states that by filing these revised sheets, it does not waive its right to seek rehearing of the May 31, 1984, order.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 28, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17136 Filed 6-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-357-000]

Carolina Methane, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 22, 1984.

On June 7, 1984, Carolina Methane, Inc., (Applicant) of P.O. Box 1384, Raleigh, North Carolina 27602, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located in Beaufort County, near Washington, North Carolina. The primary energy source is biomass in the form of methane gas from peat bogs. the electric power production capacity is approximately 208 kilowatts. The facility will not use natural gas, coal or oil.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17137 Filed 6-26-84; 8:45 am]

BILLING CODE 6717-10-M

[Docket No. ER80-363-006]

Delmarva Power and Light Co.; Second Revised Compliance Filing

June 22, 1984.

Take notice that on June 6, 1984, Delmarva Power and Light Company (Delmarva) submitted for filing its compliance report pursuant to the Commission's letter order issued May 23, 1984.

Delmarva states that this second revised compliance COS supersedes the revised compliance COS filed on April 18, 1984. This compliance filing also included revised compliance rates and related workpapers.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before July 9, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17138 Filed 6-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-361-000]

Mutual Energy Co., Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

June 22, 1984.

On June 11, 1984, Mutual Energy Co., Inc. (Applicant) of 3451 Longview Drive, Suite 130, North Highlands, California 95660, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 350 kilowatt hydroelectric facility (P. 8046) will be located in Gooding County, Idaho.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17139 Filed 6-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC84-8-000]

Southwest Gas Corp.; Tariff Filing

June 22, 1984.

Take notice that on June 13, 1984, Southwest Gas Corporation, 5241 Spring Mountain Road, Las Vegas, Nevada 89114-5015, tendered for filing in Docket No. TC84-8-000, pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act, Fourth Revised Sheet No. 25C in its FERC Gas Tariff, Original Volume No. 1.

This sheet is proposed to be effective concurrently with the certificate approval of Northwest Pipeline Corporation's (Northwest) application in Docket No. CP81-19 as amended April 24, 1984. Southwest states that the purpose of this tariff sheet change is to amend its index of end-use volumes to reflect the establishment of a new point of delivery from Northwest at Ignacio, Colorado.

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before July 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D. C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17140 Filed 6-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-471-000]

Utah Power & Light Co.; Filing

June 22, 1984.

The filing Company submits the following:

Take notice that on June 14, 1984, Utah Power & Light Company (Utah) tendered for filing a proposed cancellation of a service agreement with Mexican Hat Association dated March 27, 1971 on the file with the Federal Energy Regulatory Commission (F.E.R.C.) as part of Utah's F.E.R.C. Electric Tariff.

Utah states that for a number of years, Mexican Hat Association has purchased its energy at wholesale from Utah under F.E.R.C. Rate Schedule RS-1. Under an Agreement of Purchase and Sale between the parties, Utah acquired the properties in and near Mexican Hat, Utah as of May 1, 1984, and will operate them as part of its interconnected system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 10, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17141 Filed 6-26-84; 8:45 am]

BILLING CODE 6717-01-M

Hearings and Appeals Office

Issuance of Decisions and Orders; Office of Hearings and Appeals; Week of May 7 through May 11, 1984

During the week of May 7 through May 11, 1984, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

County Fuel Company, Inc., 5/7/84, HRO-0058

County Fuel Company, Inc. (County Fuel) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on May 24, 1982. In the PRO, the ERA found that during the audit period County Fuel sold motor gasoline at the wholesale and retail levels at prices which exceeded the firm's maximum lawful selling prices as governed by 10 CFR 212.93(a). The DOE concluded that the PRO should be issued as a final Remedial Order. Important determinations in the Decision and Order include: (i) A reseller-retailer was required to use the reseller-reseller price rules in determining its

maximum lawful selling prices, and could not use the retailer price rule in the retail portion of its sales and, (ii) § 212.93(a)(4) was a ceiling on the prices a reseller-retailer was permitted to charge under § 212.93(a)(1).

Requests for Modification and/or Rescission

Getty Oil Company, 5/7/84, HRR–0084

Getty Oil Company filed a Motion for Reconsideration of a Decision and Order issued by the Office of Hearings and Appeals (OHA) on February 8, 1984. *Getty Oil Co.*, 11 DOE ¶ 84,047 (1984). That Decision addressed motions for discovery and for evidentiary hearing filed by Getty in connection with certain limited portions of an enforcement proceeding remanded to the OHA by the United States District Court for the District of Delaware. The OHA denied Getty's Motion for Evidentiary Hearing and, in large part, its Motion for Discovery because the District Court had foreclosed many of the issues Getty wished to explore through discovery and an evidentiary hearing. In the present Decision, the OHA also denied Getty's Motion for Reconsideration because the firm did not present any grounds for reconsideration and Getty's wide-ranging discovery requests and requests for an evidentiary hearing, if granted, would substantially delay a final determination of the issues presented to the OHA on remand.

Office of Special Counsel for Compliance, 5/8/85, HRR–0087

The Office of Special Counsel for Compliance (OSC) filed a Motion for Reconsideration of a Remedial Order issued by the Office of Hearings and Appeals (OHA) to Atlantic Richfield Company (Arco) on March 22, 1984. *Atlantic Richfield Co.*, 11 DOE ¶ 83,087 (1984). In the March 22 decision, the OHA considered all objections raised by Arco to a Proposed Remedial Order (PRO) that OSC issued to the firm on May 1, 1979. In the final Remedial Order OHA sustained the majority of the allegations in the PRO, but did accept a limited number of the objections raised by Arco, and modified the PRO accordingly. In its Motion for Reconsideration, OSC objected to a number of the modifications in the PRO, in particular, rulings that certain Arco property configurations satisfied either the severance tax exception or the royalty owner accountability exception to the property definition set forth in Rulings 1977–1 and 1977–2, and a modification of the provisions concerning the imposition of interest. The OHA granted the Motion for Reconsideration in part, holding that a compelling reason existed to modify the interest provisions because of an inadvertent error in the Remedial Order.

Implementation of Special Refund Procedures

Bob's Oil Co., 5/8/84, HEF–0039

The DOE issued a Decision and Order implementing a plan for the distribution of $2,398 received as a result of a consent order entered into by Bob's Oil Company and the DOE on October 2, 1980. The DOE determined that the settlement fund should be distributed to wholesale customers who purchased motor gasoline from Bob's during the September through November 1979 consent order period. The entire amount of the fund will be distributed to the three wholesale customers identified by the DOE as having been overcharged (in proportion to the alleged overcharges) if no other firms are found to be eligible for refunds.

Refund Application

ADA Resources, Inc./Port of Houston Authority, 5/10/84, RQ24–86

The Port of Houston Authority (PHA) filed a plan on how it proposed to use its share of the funds obtained by DOE pursuant to a consent order with Ada Resources, Inc. PHA Proposed to use its share of the Ada settlement funds, $38,749 plus interest, towards the construction and maintenance of navigational aids on the Houston Ship Channel. After reviewing PHA's proposal, the Office of Hearings and Appeals found that the plan, when implemented, will benefit ships calling upon the Port of Houston, members of a class who were injured by the alleged Ada overcharges on bunker "C" fuel. Accordingly, PHA's plan was approved and PHA received its share of the Ada settlement funds.

Dismissals

The following submissions were dismissed

Name	Case No.
Arizona Fuels Corp	DEE–0004.
Brown Oil Co	BEE–0526. RF21–12292.
Ms. Susan Wright	RF21–12293. HFA–0222.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 15, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 84–16690 Filed 6–26–84; 8:45 am]

BILLING CODE 6450–01–M

Cases Filed; Office of Hearings and Appeals; Week of May 25 Through June 1, 1984

During the Week of May 25 through June 1, 1984, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 15, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 25 through June 1, 1984]

Date	Name and location of applicant	Case No.	Type of Submission
May 29, 1984	Atlantic Richfield Company, Washington, D.C	HFA–0226	Appeal of an Information Request Denial. If granted: The May 1, 1984, Freedom of Information Request Denial issued by the Office of Fuels Programs would be rescinded, and Atlantic Richfield Company would receive access to certain records on Alaskan North Slope crude oil.
May 30, 1984	Economic Regulatory Administration, Washington, D.C	HRW–0024	Remedial Order Finalization. If granted: The Economic Regulatory Administration has requested that a Proposed Remedial Order issued to General Atlantic Petroleum on January 3, 1984, would be issued as a final Remedial Order.
May 31, 1984	Doma Corporation, Dallas, Texas	HRD–0214 & HRH–0214	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in Connection with the Statement of Objections submitted by Doma Corporation in response to the February 7, 1984, Proposed Remedial Order (Case No. HRO–0204) issued to the firm.

REFUND APPLICATIONS RECEIVED

[Week of May 25 to June 1, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No.
May 29, 1984	Marion/Pride Terminals, Inc.	RF37-4.
May 29, 1984	Marion/GAF Corporation	RF37-5.
May 29, 1984	Marion/Seaman Fisheries	RF37-6.
May 21, 1984	Amoco/Daly's Standard Service	RF21-12341.
May 30, 1984	Marion/International Paper Company	RF37-7.

[FR Doc. 84-16891 Filed 6-26-84; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Office of Hearings and Appeals; Week of June 1 Through June 8, 1984

During the Week of June 1 through June 8, 1984, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 19, 1984.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 1 through June 8, 1984]

Date	Name and location of applicant	Case No.	Type of submission
June 4, 1984	Pacific Gas and Electric Company, San Francisco, California.	HFA-0227	Appeal of an Information Request Denial. If granted: The April 6, 1984 Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded, and Pacific Gas and Electric Company would receive access to certain DOE information.
June 4, 1984	Storey Oil Company, Inc., Grand Junction, Colorado	HRD-0215 & HRH-0215	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Storey Oil Company, Inc. in response to the April 23, 1984 Proposed Remedial Order issued to Storey Oil Company, Inc. (Case No. HRO-0211).
June 5, 1984	Mustang Fuel Corporation, Oklahoma City, Oklahoma	HQF-0502	Implementation of Second Stage Refund Procedures. If granted: The Office of Hearings and Appeals would implement second-stage procedures in the special refund proceeding instituted to distribute funds remitted to the DOE by Mustang Fuel Corporation (Case No. HEF-0011).
June 7, 1984	Holly Energy, Inc., Houston, Texas	HRD-0216 & HRH-0216	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Holly Energy, Inc. in response to a Proposed Remedial Order (Case No. HRO-0215) issued to the firm.
June 8, 1984	Richard C. Auchterlonie, Chicago, Illinois	HFA-0228	Apeal of an Information Request Denial. If granted: The April 20, 1984, Freedom of Information Request Denial issued by the Office of Defense Programs would be rescinded and Richard C. Auchterlonie would receive access to certain DOE information.

[FR Doc. 84-16892 Filed 6-26-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 4G3035/T448; PH-FRL 2712-8]

American Hoechst Corp.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the herbicide ethyl 2-[4-[(6-chloro-2-benzoxazolyl]oxy]phenoxy]propanoate and its metabolites of 2-[4-[(6-chloro-2-benzoxazolyl]oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one, in or on the raw agricultural commodities rice seed and straw. These temporary tolerances were requested by American Hoechst Corporation.

DATE: These temporary tolerances expire May 1, 1985.

FOR FURTHER INFORMATION CONTACT: By Mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1830).

SUPPLEMENTARY INFORMATION: American Hoechst Corporation, Agricultural Division, Rt. 202-206 North, Somerville, NJ 08876, has requested, in pesticide petition PP 4G3035 the establishment of temporary tolerances for the combined residues of the herbicide ethyl 2-[4-[(6-chloro-2-benzoxazolyl]oxy]phenoxy]propanoate and its metabolites of 2-[4-[(6-chloro-2-benzoxazolyl]oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one, in or on the raw agricultural commodities rice seed and straw at 0.02 part per million (ppm) (calculated as parent compound). A temporary tolerance established April 11, 1984, for residues in soybean seed at 0.05 ppm to support 8340-EUP-7 is extended to May 1, 1985, to support the authorized use in soybeans under 8340-EUP-8.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 8340-EUP-8 which is being issued under the Federal

Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95–396, 92 Stat 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Hoechst Corp., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire May 1, 1985. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health,

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1984 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346(j))))

Dated: June 13, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–16535 Filed 6–26–84; 8:45 am]

BILLING CODE 6560–50–M

[PF–377; PH–FRL 2613–1]

ICI Americas, Inc.; Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions relating to the establishment of tolerances for residues of the herbicide fluazifop-butyl (expressed as fluazifop) in or on certain commodities.

ADDRESS: By mail submit comments identified by the document control number [PF–377] and the petition number, attention Product Manager (PM–23), at the following address: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS–757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Mountfort (PM–23), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 235, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and feed additive (FAP) petitions as follows from the ICI Americas, Inc., Agricultural Chemicals Division, Wilmington, DE 19897, proposing to amend 40 CFR 180.411 (raw agricultural commodity), and 21 CFR 561.428 (animal feed commodity), by establishment of tolerances for residues of the herbicide fluazifop-butyl (±)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and of (±)-butyl-2-[4-[[5trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate, all expressed as fluazifop in or on the following sugar beet products in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, is high pressure liquid chromatography (HPLC).

Petition ID	CFR affected	Commodities	Parts per million (ppm)
PP 4F3082	40 CFR 180.411.	Sugar beets (roots).	0.2
FAP 4H5432	21 CFR 561.428.	Sugar beets molasses.	2.0

Secs. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2)), 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)).

Dated: June 13, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–16534 Filed 6–26–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP 30000/10F; OPTS–FRL 2612–1]

Lindane; Amendment of Notice of Intent to Cancel Pesticide Products Containing Lindane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment of Notice of Intent to Cancel.

SUMMARY: A Notice of Intent to Cancel Pesticide Products Containing Lindane was issued on September 30, 1983. This Notice amends that Notice of Intent to Cancel to permit continued registration of lindane dip to control fleas, ticks, lice, sarcoptic mange, and scabies on dogs provided certain additional protective measures are instituted. The Agency has determined that continued registration with these additional protective measures will not cause unreasonable adverse effects on the environment.

DATE: June 27, 1984.

FOR FURTHER INFORMATION CONTACT: Judith W. Wheeler, Pesticides and Toxic Substances Division, Office of General Counsel (LE–132P), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460 (202–382–7510).

The docket of the administrative hearing (FIFRA Docket No. 524, *et al.*) is available for public inspection in the Office of the Hearing Clerk, Room 3708A, 401 M St., SW., Washington, D.C.

from 7:30 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. An administrative file containing public comments and publicly released Agency documents relating to this action is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. 711, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Regulatory Background

On September 30, 1983 EPA issued a Notice of Intent to Cancel Pesticide Products Containing Lindane which was published in the **Federal Fegister** on October 19, 1983 (48 FR 48512). This Notice, in relevant part, proposed cancellation of the registrations of lindane products for use as dog dips for the treatment of pests other than mites. The decision to cancel registrations for the use of dog dips for the treatment of pests other than mites was a result of a careful evalation of the risks to public health and benefits of this use.

Section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides that a Notice of Intent to Cancel does not become a final order of cancellation if a person adversely affected by the Notice properly requests an adjudicatory hearing to contest the cancellation. A registrant, Happy Jack, Inc., did request a hearing as to the dog dip use of its product, Happy Jack Kennel Dip. All other registrations for lindane dog dip products for treatment of pests other than mites were cancelled by operation of law at the end of 30 days after receipt or publication of the September 30, 1983 Notice, whichever came later, under the terms of that Notice.

B. Amendment of Notice

This amendment to the September 30, 1983 Notice of Intent to Cancel modifies EPA's determination that the remaining registration of lindane dog dip for treatment of pests other than mites was to be cancelled at the end of 30 days from receipt or publication of the September 30, 1983 Notice, whichever came later. Under the terms of the September 30 Notice as amended by this Notice, the terms and conditions of use of the registration of this product may be amended in accordance with this Notice and, if so amended, the registration may continue in effect. In order to remain in effect under the terms of the amended Notice, this registration must be amended to require certain addtional restrictions on the continued use of this product. These additional restrictions, which are detailed below, are intended to provide additional protection to persons applying lindane dog dip to reduce further the risk of cancer from exposure to the product. Taking into account the benefits of continued registration of lindane dip for use to control fleas, ticks, lice, sarcoptic mange, and scabies on dogs as well as the risks of adverse effects, primarily through applicator exposure, the Agency has determined that continued registration under these terms and conditions will not cause unreasonable adverse effects on the environment. Detailed below are specific requirements for modification of the terms and conditions for the remaining registration and the bases for the determination that such registration will not cause unreasonable adverse effects.

II. Requirement for Modification of Registration Terms and Conditions

In order to avoid cancellation under the terms of the September 30, 1983 Notice of Intent to Cancel, the remaining registration for lindane dip for use to control fleas, ticks, lice, sarcoptic mange, and scabies on dogs must be modified in the following manner, and the labeling of any pesticide product sold under such registration must reflect these modifications:

1. The following statement shall be on the label beneath the "MIX AS DIRECTED" statement under "CAUTION" AN INDIVIDUAL APPLICATOR MUST NOT APPLY THIS PRODUCT MORE THAN TWELVE TIMES PER YEAR.

2. The following statement shall be located on the front panel of the label beneath the product name and in the same size type as the signal word: FOR KENNEL, COMMERCIAL, FARM AND SPORT DOG USES ONLY.

3. Under "DIRECTIONS FOR USE" on the label, the last two sentences shall state:

> An individual applicator must not use this product more than twelve times per year. Each treatment of three dogs or fewer should be considered one use.

4. Applicators must wear the following protective clothing during the treament process: elbow-length, waterproof gloves; a waterproof apron; and unlined, waterproof boots.

5. The label shall state that "improper dilution could cause serious injury to your dog."

6. The label shall state that children under the age of thirteen should not be allowed to handle or apply this product.

7. The label shall be revised in accordance with the provisions of the Notice of Intent to Cancel dated September 30, 1983, regarding disposal of dips.

8. The label shall be modified to meet current standards as specified in 40 CFR 162.10. Labels must describe proper handling and disposal, symptoms of poisoning, practical treatment in the event of poisoning, and other warning statements appropriate to the product's toxicity category.

III. Bases for Determinations for Amendment to Cancellation Notice

The September 30, 1983 Notice of Intent to Cancel Pesticide Products Containing Lindane identified the risks associated with the dog dip use of lindane. The estimated cancer risks upon which the regulatory actions in the September 30, 1983 Notice were based were approximately four excess cancers per one million exposed persons. Since the publication of that Notice, the Agency has obtained new information on use patterns for the dog dip use. When this new information was assessed in light of the modifications in conditions and terms of registration identified in Unit II of this Amended Notice of Intent to Cancel, the Agency determined that the use of lindane dip to control fleas, ticks, lice, sarcoptic mange, and scabies in dogs will not result in unreasonable adverse effects on the environment.

The exposure calculations which provided the basis for the regulatory actions contained in the original Notice of Intent to Cancel were based on an assumption of 26 exposures per year. Since the cancellation notice, the Agency has learned that use of this product by kennels and veterinarians is more limited than the Agency previously believed. By modifying the label to limit the number of treatments by one applicator to twelve per year, the exposure of any one individual is reduced substantially from that assumed in the previous assessment. This modification satisfies Agency concerns about the potential of excessive exposure to teenagers working for kennels or veterinarians. Moreover, since the actual treatment time of one dog is under one minute, it is reasonable to allow the treatment of three dogs or fewer to constitute one use.

The requirement for protective clothing (elbow-length, waterproof gloves; waterproof apron; and unlined, waterproof boots) substantially reduces risks from dermal exposure. These garments can be readily obtained at minimal cost.

Implementation of these measures will reduce substantially applicator exposure from the dog dip use and, thus,

will reduce the risk to applicators to an acceptable level. Based on a comparison of the benefits of continued use of lindane dips to control fleas, ticks, lice, sarcoptic mange, and scabies on dogs to these reduced risks, the Agency has determined that the benefits of continued registration as modified herein outweigh the risks of use.

IV. Procedural Matters

This Notice announces the amendment of the September 30, 1983 Notice of Intent to Cancel Pesticide Products Containing Lindane. This action is taken pursuant to the authority granted by section 6(b) of FIFRA and by the Agency's procedural regulations (40 CFR 164.21(b)). This amendment is effective immediately, and affects only the registration of Happy Jack Kennel Dip, Registration No. 2781–3, for which a hearing was requested. Registrations for this use of lindane for which there have been no requests for a hearing have been cancelled by operation of law.

This Notice of Amendment creates no new opportunity to request a hearing pursuant to section 6 of FIFRA. Section 6(b) provides adversely affected persons the right to request a hearing to challenge a notice of intent to cancel a registration of a pesticide product within 30 days. The Notice of Intent to Cancel the use of lindane was issued on September 30, 1983. This Notice of Amendment merely modifies the terms of the September 30 Notice to allow the continued registration for the remaining lindane dip registration for use to control fleas, ticks, lice, sarcoptic mange, and scabies on dogs in accordance with the terms and conditions contained herein. Therefore, this Notice of Amendment is not a notice of intent to cancel nor can any person be adversely affected by this Notice under the terms of section 6 of FIFRA.

Registrants subject to a final cancellation order, as well as other persons, may apply for a new registration in accordance with the terms of the amended notice of intent to cancel and the requirements of the FIFRA and applicable implementing procedures. The registrant of the lindane dog dip product which is not already subject to a final cancellation order may comply with the amended notice of intent to cancel by amending the registration to make the necessary corrections. An application for an amended registration, together with a copy of the amended labeling must be submitted by July 27, 1984 to: By mail: George LaRocca, Product Manager (PM–15), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring material to: Room 204, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–2400).

Happy Jack, Inc., petitioner in the lindane cancellation hearing (FIFRA Docket No. 524, *et al.*), is permitted as a matter of right to amend its objections to the September 30, 1983 Notice to reflect the terms of this Notice of Amendment. 40 CFR 164.22(c). Any amendments to objections should be filed within 30 days of the date of publication of this Notice with the Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Dated: June 11, 1984

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84–16539 Filed 6–26–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180649 OPTS–FRL–2613–4]

Cyromazine; Issuance of Emergency Exemptions for Use of an Unregistered Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption for the use of the pesticide chemical cyromazine to the Florida Department of Agriculture and Consumer Services for use on carrots to control leafminers.

DATES: The specific exemption was granted on May 22, 1984, and expires on March 31, 1985.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency , Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202, (703–557–1192).

SUPPLEMENTARY INFORMATION: The Florida Department of Agriculture and Consumer Services has declared the existence of emergency conditions with regards to control of leafminers on carrots. The leafminer has been a serious problem for Florida growers and has resulted in extreme economic losses on carrots in the past when registered alternative pesticides have failed to provide control.

After reviewing the applications and other available information, EPA has determined that:

1. A pest outbreak of the leafminers has occurred and registered alternative pesticides will not provide adequate control.

2. Significant economic losses are anticipated without the use of an effective leafminer control.

3. It has been determined that the use of cyromazine as proposed will not pose an unreasonable hazard to man or the environment.

Accordingly, Florida has been granted a specific exemption to use cyromazine on carrots. The specific exemption is also subject to the following conditions:

1. The unregistered pesticide product Trigard 75 WP, which contains the active ingredient cyromazine and is manufactured by the CIBA–GEIGY Corporation, will be used.

2. Trigard 75 WP will be applied at a rate of 0.17 pound active ingredient per acre per application.

3. A maximum of 16 applications may be made at seven-day intervals or as necessary to maintain control.

4. Applications may be made up to the day of harvest.

5. A maximum of 13,000 acres of carrots may be treated.

6. Combined residues of cyromazine and its metabolite melamine are not expected to exceed 1.0 ppm in or on carrots as a result of the approved treatments.

7. The EPA shall be immediately informed of any adverse effects resulting from the use of cyromazine in connection with this exemption.

8. A final report summarizing the results of this program is required to be submitted by July 31, 1985.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: June 11, 1984

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 84–16814 Filed 6–26–84; 8:45 am]

BILLING CODE 6560–50–M

([OPP–50618] OPTS–FRL–2613–5)

Pesticides; Issuance of Experimental Use Permits; American Cyanide Co., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway. Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241–EUP–108. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, New Jersey 08540. This experimental use permit allows the use of 2,340 pounds of the herbicide ammonium salt of 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-y1]-3-quinolinecarboxylic acid on soybeans to evaluate the control of various weeds. A total of 12,080 acres are involved; the program is authorized in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. The experimental use permit is effective from May 23, 1984 to August 23, 1985. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

241–EUP–109. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 3,125 pounds of the herbicides *m*-toluic acid, 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-y1)-,methly ester and *p*-toluic acid, 2-(4-isopropyl-4-methyl-5-oxo-2imidazolin-2-y1)-, methyl ester on barley and wheat to evaluate the control of various weeds. A total of 5,000 acres are involved; the program is authorized only in the States of Arizona, California, Colorado, Idaho, Minnesota, Montana, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. The experimental use permit is effective from May 7, 1984 to May 7, 1985. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

8340–EUP–8. Issuance. American Hoechst Corporation, Rt. 202–206 North, Somerville, NJ 08876. This experimental use permit allows the use of 245 pounds of the herbicide ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxyl]propanoate on rice and soybeans to evaluate the control of selective postemergence annual and perennial grass. A total of 1,518 acres are involved (200 acres for rice and 1,318 acres for soybeans); the program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from May 25, 1984 to May 1, 1985. This permit is issued with the limitation that soybean feeding restrictions prohibit grazing and the use of treated forage, hay, or straw. A temporary tolerance for residues of the active ingredient in or on rice seeds, soybean seeds, and straw has been established. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703–557–1830))

7969–EUP–19. Issuance. BASF Wyandotte Corporation, 100 Cherry Hill Road, Parsippany, NJ 07054. This experimental use permit allows the use of 204 pounds of the herbicide 3-isopropyl-1H-2,1,3-benzothiadiazin 4(3H)-one 2,2-dioxide on field corn to evaluate the control of various weeds. A total of 1,360 acres are involved; the program is authorized only in the States of Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from May 8, 1984 to May 8, 1985. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25. Rm. 245, CM#2, (703–557–1800))

352–EUP–112. Issuance. E.I. du Pont de Nemours and Company, Wilmington, DE 19898. This experimental use permit allows the use of 631 pounds of the herbicide 2-[4-[(6-chloro-2-quinoxalinyl)oxy]phenoxy]propionic acid, ethyl ester on fallow land to evaluate the control of various weeds. A total of 10,000 acres are involved; the program is authorized only in the States of Colorado, Idaho, Kansas, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. The experimental use permit is effective from August 1, 1984 to August 1, 1986. (Robert Taylor, PM 25, Rm. 245, CM# 2, (703–557–1800))

352–EUP–113. Issuance. E.I. du Pont de Nemours and Company, Wilmington, DE 19898. This experimental use permit allows the use of 1,100 pounds of the herbicide ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2-yl)amino]carbonyl]amino] sulfonyl]benzoate on soybeans to evaluate the control of various weeds. A total of 11,000 acres are involved (1,000 acres in 1984, 3,000 acres in 1985, and 7,000 acres in 1986); the program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from May 9, 1984 to September 30, 1986. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Robert Taylor, PM 25, Rm. 245, CM# 2, (703–557–1800))

352–EUP–114. Issuance. E.I. du Pont de Nemours and Company, Wilmington, DE 19898. This experimental use permit allows the use of 2,500 pounds of the herbicide 2-[4-[(6-chloro-2-quinoxalinyl)oxy]phenoxy]propionic acid, ethyl ester on cotton to evaluate the control of various weeds. A total of 10,000 acres are involved (3,000 acres in 1984, and 7,000 acres in 1985); the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. The experimental use permit is effective from May 9, 1984 to December 31, 1985. A temporary tolerance for residues of the active ingredient in or on cotton has been established. (Robert Taylor, PM 25, Rm. 245, CM# 2, (703–557–1800))

352–EUP–115. Issuance. E.I. du Pont de Nemours and Company, Wilmington, DE 19898. This experimental use permit allows the use of 2,500 pounds of the herbicide 2-[4-[(6-chloro-2-quinoxalinyl)oxy]phenoxy]propionic acid, ethyl ester on soybeans to evaluate the control of various weeds. A total of 10,000 acres are involved (3,000 acres in 1984 and 7,000 acres in 1985); the program is authorized in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota Mississippi,

Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from May 9, 1984 to December 31, 1985. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Robert Taylor, PM 25, Rm. 245, CM# 2, (703–557–1800))

352–EUP–118. Issuance. E.I. du Pont de Nemours and Company, Wilmington, DE 19898. This experimental use permit allows the use of 44.1 pounds of the fungicide bis(4-fluoro-phenyl)methyl(1H-1,2,4-triazol-1-ylmethyl)silance on peanuts to evaluate the control of early and late leafspot. A total of 50 acres are involved; the program is authorized only in the States of Alabama, Florida, and Georgia. The experimental use permit is effective from June 1, 1984 to June 1, 1985. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Henry Jacoby, PM 21, Rm. 229, CM# 2, (703–557–1900))

21137–EUP–3. Renewal. EM Industries, Inc. 5 Skyline Drive, Hawthorne, NY 10532. This experimental use permit allows the use of 25.8 pounds of the plant growth regulator 2-chloro-9-hydroxyfluorene-9-carboxylic acid on cucumbers to evaluate its ability to induce seedless fruit set in all female cultures of pickling cucumbers. A total of 400 acres are involved; the program is authorized only in the States of Arizona, California, Colorado, Delaware, Florida, Georgia, Maryland, Michigan, North Carolina, Ohio, South Carolina, and Texas. The permit was previously effective from March 22, 1983 to March 22, 1984 The permit is now effective from May 8, 1984 to May 8, 1985. A temporary tolerance for residues of the active ingredient in or on cucumbers has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

46260–EUP–1. Issuance. International Spike, Inc., 617 East Third St., Lexington, KY 40505. This experimental use permit allows the use of 2.23 pounds of the insecticide disulfoton on roses, young and mature deciduous trees, and evergreen shrubs to evaluate the control of aphids, birch leafminers, holly leafminers, lace bugs, leaf hoppers, mimosa webworms, pine-tip moths, spider mites, and whiteflies. A total of 800 residential sites are involved; the program is authorized only in the States of California, Georgia, Oklahoma, Oregon, Tennessee, and Texas. The experimental use permit is effective from May 5, 1984 to August 20, 1984. This permit is issued with the limitation that the soil applications of spikes are adjacent to only specified ornamental plants. (George La Rocca, PM 15, Rm. 204, CM#2, (703–557–2400))

876–EUP–41. Issuance. Velsicol Chemical Corporation, 34 East Ohio St., Chicago, IL 60611. This experimental use permit allows the use of 2,012 pounds of the herbicide potassium of dicamba on asparagus, barley, corn, various grasses, millets, oats, sorghum, sugarcane, and wheat to evaluate the control of various weeds. A total of 11,214 acres are involved; the program is authorized in the States of Alabama, Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The experimental use permit is effective from May 18, 1984 to May 18, 1985. Permanent tolerances for residues of the active ingredient in or on asparagus, barley, corn, grasses, millets, oats, sorghum, sugarcane, and wheat have been established (40 CFR 180.227). Food and feed additive tolerances for residues of the active ingredient in or on sugarcane molasses have been established (21 CFR 183.465 and 561.417) (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: June 13, 1984.

Robert V. Brown,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–16616 Filed 6–26–84; 8:45 am]
BILLING CODE 6560–50–M

[PF–376; PH–FRL 2614–4]

American Cyanamid Co.; Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions relating to the establishment of tolerance for residues of the insecticide flucythrinate in or on certain commodities.

ADDRESS: By mail submit comments identified by the document control number [PF–376] and the petition number, attention Product Manager (PM–17), at the following address: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS–757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments filed in response to this notice will be available for public inspection in the Information Service Section office at the address above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Timothy A. Gardner (PM–17), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. (703–557–2690).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and feed additive (FAP) petitions as follows from the American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540, proposing to amend 40 CFR 180.400 (raw agricultural commodities) and 21 CFR 561.435 (animal feed commodities), by establishment of tolerance for residues of the insecticide flucythrinate (±)-of the insecticide flucythrinate (±)-cyano (3-phenoxyphenyl) methol (±)-4-

(difluoromethoxy)-alpha-(1-methylethyl) benzeneacetate in or on the following tomato products in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, is gas chromatography.

Petition ID	CFR affected	Commodities	Parts per million (ppm)
PP 4F3077	40 CFR 180.400.	Tomatoes	0.2
FAP 4H5431	21 CFR 561.435.	Tomato pomace (dry).	10.5
		Tomato pomance (wet).	1.5

(Secs. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2)), 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))

Dated: June 19, 1984.

Douglas D. Campt.,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-16927 Filed 6-26-84; 8:45 am]

BILLING CODE 6560-50-M

[PP 3G2757/T447; PH-FRL 2614-6]

Pendimethalin; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the herbicide pendimethalin in or on the raw agricultural commodities dry bulb onions and garlic. This temporary tolerance was requested by the American Cyanamid Co.

DATE: This temporary tolerance expires May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, has requested in pesticide petition PP 3G2857, the establishment of a temporary tolerance for residues of the herbicide pendimethalin [*N*(l-ethylpropyl)-3,4-demethyl-2,6-dinitrobenzenamine] in or on the raw agricultural commodities dry bulb onions and garlic at 0.1 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 241-EUP-104 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires May 1, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j))).

Dated: June 19, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-16923 Filed 6-26-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00179; PH-FRL 2614-5]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a two-day meeting of the State FIFRA Issues Research And Evaluation Group (SFIREG). The meeting will be open to the public.

DATES: Thurday, July 12, and Friday, July 13, 1984, beginning at 8:30 a.m. each day and ending prior to 12 noon on July 13.

ADDRESS: The meeting will be held at: Hyatt-Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703-486-1234).

FOR FURTHER INFORMATION CONTACT: By mail: Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7096).

SUPPLEMENTARY INFORMATION: This will be the eighteenth meeting of the full Group. The tentative agenda thus far includes the following topics:

1. Action items from the March 1984 meeting of the SFIREG.
2. Regional reports.
3. Working Committee reports.
4. Other topics which may arise.

Dated: June 18, 1984.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 84-16926 Filed 6-26-84; 8:45 am]

BILLING CODE 6560-50-M

[OSWER-FRL-2614-8]

Solid Waste Disposal; Inventory of Open Dumps

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of the Inventory of Open Dumps.

SUMMARY: The Resource Conservation and Recovery Act (RCRA or the Act)

provides for publication of an inventory of open dumps. The Act defines "open dumps" as facilities which do not comply with EPA's "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257).

State solid waste management agencies have been evaluating disposal facilities in an attempt to identify facilities which do not comply with the criteria and are, therefore, "open dumps". The facility evaluations leading to publication of the inventory were conducted by State agencies as part of their effort to develop and implement State solid waste management plans in accordance with the Act.

This notice indicates that the fourth installment of the inventory of open dumps is now available.

ADDRESSES: Copies of the inventory of open dumps are available from the State agencies listed in Appendix II, the EPA Regional Offices listed in Appendix I, or at EPA Headquarters, Office of Solid Waste (WH-563-B), 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Martha A. Madison, Inventory of Open Dumps, Office of Solid Waste (WH-563-B), U.S. EPA, Washington, D.C. 20460; (202) 382-2[illegible].

SUPPLEMENTARY INFORMATION:

Structure of Subtitle D Planning Program

Subtitle D of the Resource Conservation and Recovery Act (RCRA or the Act) established a voluntary program through which participating States develop and implement solid waste management plans. EPA's role in the program has included publishing guidelines for States to follow in developing their plans, providing funds for the States, and approving those adopted State plans which meet the requirements of the Act.

On July 31, 1979, EPA published "Guidelines for Development and Implementation of State Solid Waste Management Plans" (40 CFR Part 256, 44 FR 45066-45086). The Guidelines are based on Section 4003 of the Act, which lists the minimum requirements with which State plans must comply. Section 4007 of the Act provides for EPA approval of State plans meeting the requirements.

Role of the Inventory

One requirement listed in the Act and addressed in the Guidelines is that ". . . the plan shall provide for the closing or upgrading of all existing open dumps within the State . . ." In furtherance of this planning effort, the Act requires that EPA publish an inventory of open dumps. Publication of the inventory will serve to inform the Congress and the public of those facilities which the States have found to be open dumps.

Classification Criteria

For purposes of State planning and the inventory, the Act defines the term "open dump" to mean ". . . any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under Section 4004 and which is not a facility for the disposal of hazardous waste." Thus, any facility which fails to comply with any one element of the "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257) is an open dump.

Open Dumping

In addition to establishing a mechanism whereby States, with EPA assistance, provide control over *facilities* which are found to be open dumps, RCRA prohibits the *practice* of open dumping of solid waste as a matter of Federal law.

In EPA's view, the Federal prohibition may be enforced in Federal District Court through the citizen suit provisions in section 7002 of RCRA. The Act does not give EPA authority to take legal action against parties that may violate the open dumping prohibition. Whether specific acts of specific individuals constitute the prohibited practice is a matter for the Federal courts to determine in the context of particular cases after *de novo* review of the facts in each case. In reviewing a case *de novo*, the court is not bound by the State's determination that a facility is an open dump. Rather, the court will make its own finding of fact and rule accordingly.

The open dumping prohibition is a provision of Federal law which stands on its own, separate from the State planning program. The inventory of open dumps is a publication of State findings from State planning efforts to satisfy the requirement of section 4003 of the Act. The inclusion of a facility on the list of open dumps is not an administrative determination by EPA that any particular parties are engaging in the prohibited act of open dumping.

A determination for purposes of the open dump inventory need not precede an open dumping suit. However, before the results of the inventory may be used to support a legal determination that open dumping has occurred, the court would have to determine that the classification was a correct application of the criteria and that the defendant was responsible for actions violating the criteria. The court would be obliged to review the sufficiency of the State's classification of a facility and not simply defer to the State's decision.

Description of the Inventory

The first installment of the inventory was published on May 29, 1981 (46 FR 29064-29149). It reflected the initial efforts of the States in evaluating a portion of the total universe of facilities and represented a fraction of the total number of open dumps likely to exist. The second publication of the inventory, published on April 29, 1982, by EPA, reflected subsequent efforts of the States in evaluating facilities during FY 1981. Those facilities found by the States to be open dumps were added to the initial list, and facilities found by the States no longer to be open dumps were deleted.

The third installment of the inventory reflected additions and deletions to the list which were provided by the States during FY 1982. New Federal Subtitle D funds were not available during 1982 to supplement State funds. However, States were permitted to use Subtitle D funds carried over from FY 1981. Twenty States submitted additions and deletions for the third installment of the inventory: Alabama, Arizona, California, Connecticut, Florida, Guam, Louisiana, Maine, Maryland, Minnesota, Montana, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Texas, Virginia, Washington, and Wisconsin.

This fourth publication of the inventory reflects additions and deletions to the list which were provided by the States during FY 1983. Subtitle D funds were not available to the States during FY 1983, nor were any carryover funds remaining. A few States, however, continued to evaluate a limited number of facilities, and to close or upgrade facilities previously listed on the inventory. Only seven States submitted additions and deletions for this edition of the inventory: Washington, Georgia, Arkansas, Idaho, Louisiana, California, and Pennsylvania.

Actions on Facilities

Because the inventory lists facilities which the States have found to pose a reasonable probability of adverse effects on health or the environment, participating States will be planning for the closure or upgrading of these facilities pursuant to State authority. Specific actions may vary, including issuance of a State administrative order or the gathering of additional data. In some cases, States already have placed listed open dumps on compliance schedules for closure or upgrading prior to publication of this list.

All such actions are to be taken under State law and through State regulatory and administrative procedures. Interested parties may wish to contact the State solid waste management agencies (Appendix II) concerning the current status of any of these open dumps and the responsibilities the agencies have under State law.

State Approaches

EPA's Planning Guidelines require the plans of participating States to provide for an orderly time-phasing of the evaluation of disposal facilities to determine which facilities are open dumps. Thus, there is considerable flexibility for the State to set priorities for evaluating facilities. The establishment of these priorities is part of the State plans subject to the public participation provisions of 40 CFR 256.60.

The States have taken differing approaches in ranking facilities for evaluation and in conducting evaluations. For example, where States already had extensive data on hand, they could more easily rank their facilities for evaluation or make noncompliance determinations. Otherwise, resources had to be expended in locating facilities and gathering information, and fewer determinations would be likely to be made over the year.

For this fourth installment of the inventory, five of the seven participating States provided the Agency with brief descriptions of actions and approaches they have taken in evaluating facilities. These descriptions are included in the report. Further information may be obtained from the State agency personnel listed in Appendix II.

Authority: RCRA 4004.

Dated: June 15, 1984.

Lee M. Thomas,

Assistant Administrator for Solid Waste and Emergency Response.

Appendix I—EPA Regional Office Contracts for Open Dump Inventory

Region I

Conrad Desrosiers, Waste Management Branch, USEPA, John F. Kennedy Building, Boston, MA 02203, (617) 223–5630

Region II

Garrett Smith, Hazardous Waste Program Support Section, USEPA, 26 Federal Plaza, New York, NY 10278, (212) 264–3407

Region III

John Armstead (3HW31), State Program Section, USEPA, 6th and Walnut Streets, Philadelphia, PA 19106, (215) 597–7259

Region IV

Jim Scarbrough, Residuals Management Branch, USEPA, 345 Courtland Street, N.E., Atlanta, GA 30365, (404) 881–3016

Region V

Karl J. Klepitsch, Waste Management Branch, USEPA, 230 South Dearborn Street, 13th Floor, Chicago, IL 60604, (312) 886–7435

Region VI

Pat Hull, State Programs Section, USEPA, 1201 Elm Street, First International Building, Dallas, TX 75270, (214) 767–2645

Region VII

Chet McLaughlin, Hazardous Waste Management Section, USEPA, 324 East 11th Street, Kansas City, MO 64106, (816) 374–6534

Region VIII

Charles Brinkman, Solid Waste Section, USEPA, 1860 Lincoln Street, Denver, CO 80295, (303) 327–2221

Region IX

Charles Flippo, State Programs Section (T–2–1), USEPA, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8245

Region X

Tobias A. Hegdahl, Solid Waste Program, USEPA, 1200 6th Avenue, Seattle, WA 98101, (206) 442–2808

Appendix II—State Solid and Hazardous Waste Agencies

Environmental Protection Agency Office of Solid Waste

March 1984

Alabama

Daniel E. Cooper, Chief, Land Disposal Program, Alabama Dept. of Environmental Management, Solid & Hazardous Waste Mgmt. Div., State Capitol, Montgomery, Alabama 36130, CML (205) 832–6728

Alaska

Stan Hungerford, Air & Solid Waste Management, Dept. of Environmental Conservation, Pouch O, Juneau, Alaska 99811, FTS (907) 465–2635, CML (907) 465–2635

American Samoa

Pati Faiai, Executive Secretary, Environmental Quality Commission, American Samoa Government, Pago Pago, American Samoa 96799, Overseas Operator, (Commercial Call 633–4116)

Randy Morris, Deputy Director, Department of Public Works, Pago Pago, American Samoa 96799

Arizona

R. Bruce Scott, Chief, Bureau of Waste Control, Department of Health Services, State Health Bldg., Room 202, 1740 West Adams St., Phoenix, Arizona 85007, CML (602) 255–1170

Arkansas

Vincent Blubaugh, Chief, Solid & Hazardous Waste Mtls. Div., Department of Pollution Control and Ecology, P.O. Box 9583, 8001 National Drive, Little Rock, Arkansas 72219, CML (501) 562–7444

California

Richard Wilcoxon, Acting Chief, Hazardous Waste Management Branch, Department of Health Services, 714 P Street, Sacramento, California 95814, FTS (916) 324–1789, CML (916) 324–1789

Terry Trumbull, Chairperson, State Solid Waste Management Board, 1020—9th St., Suite 300, Sacramento, California 95814, CML (916) 322–3330

Colorado

Kenneth Waesche, Director, Waste Management Division, Colorado Department of Health, 4210 E. 11th Ave., Denver, Colorado 80220, CML (303) 320–8333

Mr. Orville Stoddard, Deputy Director, Waste Management Division, Colorado Department of Health, 4210 East 11th Ave., Denver, Colorado 80220, CML (303) 320–8333

Commonwealth of North Mariana Islands

George Chan, Administrator, Division of Environmental Quality, Department of Public Health and Environmental Services, Commonwealth of the North Mariana Island, Saipan, Mariana Islands 96950, Overseas Operator: 6984, Cable address: GOV. NMI Saipan

Connecticut

Stephen Hitchock, Director, Hazardous Materials Management Unit, Department of Environmental Protection, State Office Building, 165 Capitol Ave., Hartford, Connecticut 06115, CML (203) 566–5712

Michael Cawley, Connecticut Resource Recovery Authority, 179 Allyn St., Suite 603, Professional Building, Hartford, Connecticut 06103, CML (203) 549–6390

Delaware

William Razor, Supervisor/Resource Engineer, Solid Waste Management Branch, Department of Natural Resources and Environmental Control, 89 King Highway, P.O. Box 1401, Dover, Delaware 19901, CML (302) 736–4781

District of Columbia

Angelos Tampros, Chief, Department of Environmental Services, Pesticides & Hazardous Materials Div., 5000 Overlook Ave., SW., Washington, DC 20032, CML (202) 767–8422

Florida

Robert W. McVety, Administrator, Solid Waste Section, Department of Environmental Regulations, Twin Towers Office Bldg., Room 421, 2600 Blair Stone Road, Tallahassee, Florida 32301, CML (904) 488–0300

Georgia

Harold Reheis, Chief, Land Protection Branch, Environmental Protection Division, Dept. of Natural Resources, 270 Washington St., S.W., Room 822, Atlanta, Georgia 30334, CML (404) 656–2833

Guam

James Branch, Deputy Administrator, EPA, Government of Guam, P.O. Box 2999, Agana, Guam 96910, Overseas Operator, (Commercial Call 646–8863)

Hawaii

Melvin Koizumi, Deputy Director, Environmental Health Division, Dept. of Health, P.O. Box 3378, Honolulu, Hawaii 96801, California FTS Operator, FTS 8–556–0220, CML (808) 548–4139

Idaho

Robert Olson, Supervisor, Hazardous Materials Bureau, Dept. of Health & Welfare, State House, Boise, Idaho 83720, FTS 554–4064, CML (208) 334–4064

Illinois

Robert Kuykendall, Manager, Division of Land Pollution Control, Environmental Protection Agency, 2200 Churchill Rd., Room A–104, Springfield, Illinois 62706, FTS 8–782–0246, CML (217) 782–0246

William Child, Deputy Manager, Division of Land Pollution Control, Environmental Protection Agency, 2200 Churchill Rd., Room A–104, Springfield, Illinois 62706, CML (217) 782–0245

Indiana

David Lamm, Director, Land Pollution Control Division, State Board of Health, 1330 West Michigan St., Room A–304, Indianapolis, Indiana 46206, CML (317) 633–0194

Iowa

Ronald Kolpa, Hazardous Waste Program Coordinator, Dept. of Water, Air & Waste Mgmt., Henry A. Wallace Bldg., 900 East Grand, Des Moines, Iowa 50319, CML (515) 281–8853

Kansas

Dennis Murphey, Director, Bureau of Environmental Sanitation, Dept. of Health & Environment, Forbes Field, Bldg. 321, Topeka, Kansas 66620, CML (913) 862–9360

Kentucky

Alex Barber, Director, Division of Waste Management, Bureau of Environmental Protection, Dept. of Natural Resources and Environmental Protection, 18 Reilly Road, Frankfort, Kentucky 40601, CML (502) 564–6716

Louisiana

John Koury, Administrator, Solid Waste Management Division, Dept. of Environmental Quality, P.O. Box 44066, Baton Rouge, Louisiana 70804, CML (504) 342–1216

Gerald J. Healy, Jr., Administrator, Hazardous Waste Management Division, Dept. of Environmental Quality, P.O. Box 44066, Baton Rouge, Louisiana 70804, CML (504) 342–1227

Maine

David Boulter, Director, Licensing and Enforcement Division, Bureau of Oil and Haz. Materials, Dept. of Environmental Protection, State House—Station 17, Augusta, Maine 04333, CML (207) 289–2651

Maryland

Bernard Bigham, Waste Management Administration, Dept. of Health & Mental Hygiene, 201 West Preston St., Room 212, Baltimore, Maryland 21201, CML (301) 383–5740

Fred Sachs, Chief, Hazardous Waste Division, Waste Management Administration, Dept. of Health & Mental Hygiene, 201 W. Preston Street, Baltimore, Maryland 21201, CML (303) 383–5743

Ronald Nelson, Director, Waste Management Administration, Office of Environmental Programs, Dept. of Health & Mental Hygiene, 201 W. Preston Street, Baltimore, Maryland 21201, CML (301) 383–3123

Massachusetts

William Cass, Director, Division of Hazardous Waste, Department of Environmental Quality Engineering, One Winter Street, Boston, Massachusetts 02108, CML (617) 292–5589

Michigan

Delbert Rector, Chief, Hazardous Waste Division, Environmental Protection Bureau, Dept. of Natural Resources, Box 30028, Lansing, Michigan 48909, CML (517) 373–7917

Allan Howard, Chief, Office of Hazardous Waste Management, Environmental Services Division, Dept. of Natural Resources, Box 30028, Lansing, Michigan 48909, CML (517) 373–2730

(Hazardous Waste, Liquid), David Dennis, Chief, Oil & Hazardous Materials Contol Section, Water Quality Division, Dept. of Natural Resources, Box 30028, Lansing, Michigan 48909, CML (517) 373–2794

(Hazardous Waste, Toxic or Critical Materials), Delbert Rector, Chief, Environmental Services Division, Dept. of Natural Resources, Box 30028, Lansing, Michigan 48909, CML (517) 737–2730

John L. Hesse, Chief, Chemicals & Health Center, Michigan Dept. of Public Health, Box 30035, Lansing, Michigan 48909, CML (517) 373–8050

Minnesota

Dale L. Wikre, Director, Solid & Hazardous Waste Division, Pollution Control Agency, 1935 West County Rd., R–2, Roseville, Minnesota 55113, CML (612) 296–7333

Mississippi

Jack M. McMillan, Director, Division of Solid & Hazardous Waste Management, Bureau of Pollution Control, Dept. of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209, CML (601) 961–5171

Missouri

David Bedan, Director, Solid Waste Management Program, Dept. of Natural Resources, State Office Bldg., P.O. Box 1368, Jefferson City, Missouri 65102, CML (314) 751–3241

Montana

Duane L. Robertson, Chief, Solid Waste Management Bureau, Dept. of Health & Environmental Services, Cogswell Bldg. Helena, Montana 59602, FTS 8–587–2821, CML (406) 499–2821

Nebraska

Mike Steffensmeier, Acting Director, Hazardous Waste Section, Dept. of Environmental Control, State House Station, P.O. Box 94877, Lincoln, Nebraska 68509, CML (402) 471–2186

Nevada

Verne Rosse, Waste Management Program Director, Division of Environmental Protection, Dept. of Conservation & Natural Resources, Capitol Complex, Carson City, Nevada 89701, CML (702) 885–4670

New Hampshire

Dr. Brian Strohm, Assistant Director, Division of Public Health Services, Office of Waste Management, Dept. of Health & Welfare, Health & Welfare Bldg., Hazen Drive, Concord, New Hampshire 03301, CML (603) 271–4608

New Jersey

Lino F. Pereira, Director, Solid Waste Administration, Division of Environmental Quality, Dept. of Environmental Protection, 32 E. Hanover Street, CN–027, Trenton, New Jersey 08625, CML (609) 292–9121

New Mexico

Tony Drypolcher, Chief, Ground Water & Hazardous Waste Bureau, Environmental Imrovement Division, N.M. Health & Environment Department, P.O. Box 968, Santa Fe, New Mexico 87504, CML (505) 984–0020 Ext. 272

Ray Sisneros, Program Manager, Hazardous Wastes Section, Ground Water & Hazardous Waste Bureau, N.M. Health & Environment Department, P.O. Box 968, Santa Fe, New Mexico 87504, CML (505) 984–0020 Ext. 275

New York

Norman H. Nosenchuck, Director, Division of Solid Waste, Dept. of Environmental Conservation, 50 Wolf Rd., Room 209, Albany, New York 12233–0001, CML (518) 457–6603

North Carolina

O.W. Strickland, Head, Solid & Hazardous Waste Mgmt. Branch, Environmental Health Section, Dept. of Human Services, P.O. Box 2091, Raleigh, North Carolina 27602, CML (919) 733–2178

North Dakota

Jay Crawford, Director, Division of Environmental Waste Management & Research, Dept. of Health, 1200 Missouri Ave., 3rd floor, Bismark, North Dakota 58505, CML (701) 224–2366

Ohio

Steve White, Chief, Division of Solid and Hazardous Waste, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216, FTS 8–942–8934, CML (614) 466–8934

Oklahoma

H.A Craves, Chief, Industrial & Solid Waste Service, Oklahoma State Dept. of Health, P.O. Box 53551, 1000 N.E. 10th St., Room 803, Oklahoma City, Oklahoma 73152, CML (403) 271–5338

Oregon

Ernest A. Schmidt, Administrator, Solid Waste Management Division, Dept. of Environmental Quality, P.O. Box 1760, 522 S.W. Fifth Avenue, Portland, Oregon 97207, CML (503) 229–5913

Pennsylvania

Donald A. Lazarchik, Director, Bureau of Solid Waste Management, Dept. of Environmental Resources, Fulton Building—8th floor, P.O. Box 2063, Harrisburg, Pennsylvania 17120, CML (717) 787–9870

Puerto Rico

Luis de la Cruz, Director, Solid, Toxics & Hazardous Waste Program, Environmental Quality Board, Box 11488, Santurce, Puerto Rice 00910–1488, CML (809) 725–0439

Rhode Island

John S. Quinn, Jr., Chief, Solid Waste Management Program, Dept. of Environmental Management, 204 Cannon Bldg., 75 Davis Street, Providence, Rhode Island 02908, CML (401) 277–2797

South Carolina

Robert E. Malpass, Chief, Bureau of Solid & Hazardous Waste Management, S.C. Dept. of Health & Environmental Control, J. Marion Simms Bldg., 2600 Bull Street, Columbia, South Carolina 29201, CML (803) 785–5681

South Dakota

Joel C. Smith, Administrator, Office of Air Quality & Solid Waste, Dept. of Water & Natural Resources, Joe Foss Bldg., Pierre, South Dakota 57501, CML (605) 773–3329

Tennessee

Tom Tiesler, Director, Division of Solid Waste Mgmt., Bureau of Environmental Services, Dept. of Public Health, 150 9th Ave., North, Nashville, Tennessee 37203, FTS 8–853–3424, CML (615) 741–3424

Texas

Jack C. Carmichael, Chief, Bureau of Solid Waste Management, Texas Dept. of Health, 1100 West 49th Street, T–602, Austin, Texas 78756, CML (512) 458–7271

Dr. Harry Pruett, Director, Permits Division, Texas Dept. of Water Resources, 1700 North Congress, Room 237–1, P.O. Box 13087 Capitol Station, Austin, Texas 78711, CML (512) 475–2041

Utah

Dale Parker, Director, Bureau of Solid and Hazardous Waste Management Division, P.O. Box 2500, 150 West North Temple, Salt Lake City, Utah 84110, CML (801) 533–4145

Vermont

Richard A. Valentinetti, Director, Air & Solid Waste Programs, Agency of Environmental Conservation, State Office Bldg., Montpelier, Vermont 05602, FTS 8–832–3395, CML (802) 832–3395

Virgin Islands

Robert V. Eepoel, Director, Hazardous Waste Program, Division of Natural Resources, Dept. of Conservation & Cultural Affairs, P.O. Box 4340, Charlotte Amalie, St. Thomas, Virgin Islands 00801, D.C. Overseas Operator 472–6620, CML (809) 774–6420

Virginia

Willian F. Gilley, Director, Division of Solid & Hazardous Waste Management, Virginia Dept. of Health, Madison Bldg, 109 Governor Street, Richmond, Virginia 23219, FTS 8–225–2667, CML (804) 786–5271

Washington

Earl Tower, Supervisor, Solid Waste Mgmt. Division, Dept. of Ecology, Olympia, Washington 98504, CML (206) 459–6317

West Virginia

John Northeimer, Branch Head, Division of Water Resources, Dept. of Natural Resources, 1201 Greenbrier Street, East Charleston, West Virginia 25311, FTS 8–885–5935, CML (304) 384–5935

Wisconsin

Paul Didier, Director, Bureau of Solid Waste Mgmt, Dept. of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707, FTS 8–(608) 266–1327, CML (608) 266–1327

Wyoming

Charles Porter, Supervisor, Solid Waste Mgmt. Program, State of Wyoming, Dept. of Environmental Quality, Equality State Bank Bldg., 401 West 19th Street, Cheyenne, Wyoming 82002, CML (307) 777–7752

FR Doc. 84–17088 Filed 6–26–84; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Radio Advisory Committee Meeting July 11, 1984; agenda

Notice is hereby given that the previously announced agenda for the meeting of the Radio Advisory Committee scheduled to be held at 1:30 p.m., July 11, 1984, in Room 330, 1200 19th Street, NW., Washington, D.C., is amended to read as follows:

—Recommendations to the FCC concerning ongoing discussions with Mexico relating to revisions to the United States—Mexican AM Radio Broadcasting Agreement;
—Ratification of the Region 2 AM Agreement signed in December, 1981 at the Regional Administrative Radio Conference held at Rio de Janeior; and
—Other Business.

The meetings of the Committee are public, and are open for participation by all interested persons.

For further information please contact the Committee Chairman, Louis C. Stephens, or Jonathan David, at FCC Headquarters: (202) 632-7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-17099 Filed 6-26-84; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Rose Development Co.; Inc., Bakersfield CA.	BPH-[illegible]30830AD	84-609
B. Gloria Tackett; Bakersfield CA.	BPH-840105AB	84-610
C. Paul Yang; Bakersfield CA.	BPH-840105AH	84-611
D. J. and R. Communications; Bakersfield CA.	BPH-840105AT	84-612

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. City Coverage, A
2. Air Hazard, D
3. Comparative, All applicants
4. Ultimate, All applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-17095 Filed 6-26-84; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. James E. Stokes & David Kent, d/b/a/ Valdosta Television, Inc.; Valdosta, GA.	BPH-830317AI	84-613
B. The Rainbow Group (Partnership); Valdosta, GA.	BPH-830426AD	84-614
C. Luz N. Ruiz and Robin Lanier Taylor, d/b/a Valdosta Radio, Inc.; Valdosta, GA.	BPH-830604AB	84-615
D. WGAF, Inc.; Valdosta, GA.	BPH-830606AR	84-616
E. Multi Media Broadcasting, Inc.; Valdosta, GA.	BPH-830606AS	84-617
F. Andrew J. Guest and Reginald Taylor, Jr d/b/a Azalea City Broadcasting; Valdosta, GA.	BPH-830606AT	84-618
G. Lowndes County Broadcasting; Valdosta, GA.	BPH-830606AV	84-619

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, C
2. Comparative, all applicants
3. Ultimate, all applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554, Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-17096 Filed 6-26-84; 8:45 am]
BILLING CODE 6712-01-M

[CC Docket Nos. 84-596 and 84-597; File Nos. 11265-CM-P-80 and 50085-CM-P-81]

Commoncarrier Corp., and Microband Corporation of America; Applications for Construction Permits in the Multipoint Distribution Service for a New Station at Wausau, Wisconsin

Memorandum Opinion and Order

Adopted June 5, 1984.
Released June 20, 1984.
By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Wausau, Wisconsin. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and Section 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a CONSOLIDATED PROCEEDING, at a time and place to be specified in a

subsequent Order to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Commoncarrier Corporation, Microband Corporation of America and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of §1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division Common Carrier Bureau.

[FR Doc. 84-17086 Filed 6-26-84; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket Nos. 84-598 and 84-599; File Nos. 11264-CM-P-80 and 50084-CM-P-81]

Commoncarrier Corp. and Microband Corporation of America; Applications for Construction Permits in the Multipoint Distribution Service for a New Station at Columbus, Mississippi

Memorandum Opinion and Order

Adopted June 5, 1984.
Released June 20, 1984.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Columbus, Mississippi. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and Section 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of sevice as set forth in issues (a) and (b).

4. It is further ordered, That Commoncarrier Corporation, Microband Corporation of America and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Oder to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 84-17089 Filed 6-26-84; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

[MM Docket Nos. 84-605 and 84-606; File Nos. BP-830510AD and BP-830930AA]

Duffield Broadcashing Co. and Dove, Inc.; Construction Permit; Hearing Designation Order

Adopted June 13, 1984.
Released June 20, 1984.

By the Chief, Mass Media Bureau.

In re applications of Duffield Broadcasting Company, Duffield, Virginia, Req: 1120 kHz, 1 kW, D, Dove, Inc., Maryville, Tennessee, Req: 1120 kHz, 0.5 kW, D, For Construction Permit.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned applications for new AM broadcast stations.

2. As indicated by the issued specified below the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

3. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural services to such areas and populations.

(2) To determine in light of Section 307(b) of the Communiations Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service.

(3) To determine in the event it is concluded that a choice between the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would on a comparative basis, better serve the public interest.

(4) To determine in light of the evidence adduced pursuant to the

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

foregoing issues, which of the applications, if any, should be granted.

4. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the parties shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

5. It is further ordered, That pursuant to Section 311(a) of the Comunications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of hearing as prescribed in the Rules and shall advise the Commission of the Publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-17080 Filed 6-26-84; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket Nos. 84-620 and 84-621; File Nos. 10568-CM-P-80 and 11039-CM-P-80]

Hi Band Broadcasting Co. and Hydra Communications, Inc.; Applications for Construction Permit

In re applications of Hi Band Broadcasting Company, For Construction Permit in the Multipoint Distribution Service for a new station at El Centro, California and Hydra Communications, Inc. For Construction Permit in the Multipoint Distribution Service for a new station at Westmoreland, California.

Memorandum Opinion and Order

Adopted June 15, 1984.
Released June 21, 1984.

By the Common Carrier Bureau

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at El Centro and Westmoreland, California. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as a result of informal requests by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and othewise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Hi Band Broadcasting Company, Hydra Communications, Inc. and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 84-17084 Filed 6-26-84; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 84-622, etc.]

Jo'Mil Enterprises et al., Application for Construction Permit.

In re applications of JO'MIL ENTERPRISES, CC Docket No. 84-622, File No. 50328-CM-P-82; and MICROBAND CORPORATION OF AMERICA, CC Docket No. 84-623, File No. 50391-CM-P-82; and SOUND ELECTRONICS, INC., CC Docket No. 84-624, File No. 50025-CM-P-83; For Construction Permit in the Multipoint Distribution Service for a new station at Eunice, Louisiana.

Memorandum Opinion and Order

Adopted June 15, 1984.
Released June 21, 1984.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Eunice, Louisiana. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as a result of informal requests by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. I making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Jo'Mil Enterprises, Microband Corporation of America, Sound Electronics, Inc. and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 84-17091 Filed 6-20-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-603 and 84-604; File Nos. BP-800825AD and BP-820721AE

KBOA, Inc. and Charles M. Anderson; Construction Permit

In re applications of KBOA, Inc., KBOA, Kennett, Missouri, Has: 830 kHz, 1 kW, D, Req: 830 kHz, 10 kW, DA-D and Charles M. Anderson, Franklin, Kentucky, Req: 830 kHz, 0.25 kW, D, For Construction Permit.

Hearing Designation Order

Adopted: June 6, 1984.
Released: June 22, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications.

2. *KBOA, Inc.* This application was originally filed by Earldun Broadcasting, Inc. Subsequently the station was assigned to KTMO, Inc. (BAL-830420FQ—granted May 12, 1983) and then to KBOA, Inc. (BAL-830719EN—granted September 30, 1983). An amendment will be required to formally change the applicant's name from Earldun Broadcasting, Inc. (the name still appearing on the proposal) to KBOA, Inc.

3. As indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specifiy issues to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal would best provide a fair, efficient and equitable distruction of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

4. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural services to such areas and populations.

(2) To determine in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

(3) To determine in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

(4) To determine in light of the foregoing issues, which of the applications should be granted.

5. It is further ordered, That KBOA, Inc. shall amend its application as specified in paragraph 2 above within 30 days of the release of this Order.

6. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

7. It is further ordered, That pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-17092 Filed 6-26-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-576, etc.]

KCBD Associates, et al.; Hearing Designation Order

In re Applications of KCBD Associates, For Renewal of License of Station KSWS-TV, Channel 8 Roswell, New Mexico, MM DOCKET NO. 84-576, File No. BRCT-830516KE; KCBD Associates (Assignor) and Caprock Telecasting, Inc. (Assignee), For Assignment of License of Station KSWS-TV, Roswell, New Mexico, MM DOCKET NO. 84-577, File No. BALCT-830609KO; Caprock Telecasting, Inc. (Assignor) and The Stanley S. Hubbard Trust (Assignee), For Assignment of License of Station KSWS-TV, Roswell, New Mexico, MM DOCKET NO. 84-578, File No. BALCT-830609KP; and Western Sun Broadcasting Company, For a Construction a Permit for a New Commercial Television Station on Channel 8, Roswell, New Mexico, MM DOCKET NO. *84-579,* File No. BPCT-830830KI.

Adopted: May 25, 1984.
Released: June 22, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration: (1) The license renewal application of KCBD Associates (Associates) for station KSWS-TV, Roswell, New Mexico; (2) an application for consent to the assignment of the KSWS-TV license from Associates to Caprock Telecasting, Inc. (Caprock); (3) an application for consent to the assignment of the KSWS-TV license from Caprock to The Stanley S. Hubbard Trust (Hubbard); (4) the mutually exclusive application of Western Sun Broadcasting Company (Western) for a construction permit for a new commercial television station on the channel presently used by KSWS-TV; and (5) a petition to deny the assignment applications of KSWS-TV, from Associates to Caprock and from Caprock to Hubbard, filed on July 20, 1983, by New Mexico Broadcasting Co., Inc. (New Mexico) and Caprock's and Hubbard's joint opposition to the petition to deny.

Background

2. On June 9, 1983, Associates filed an assignment application for consent to the sale of its stations, KCBD–TV, Lubbock, Texas, and KSWS–TV, Roswell, New Mexico, to Caprock.[1] Caprock is a wholly-owned subsidiary of Holsum, Inc., licensee of KBIM–TV, Roswell, New Mexico. Since the Commission's one-to-a-market rules, in particular § 73.636(a), prohibit common ownership of two television stations in the same market, an application to assign KSWS–TV to Hubbard was simultaneously filed with the Commission to permit the sale of KCBD–TV and KSWS–TV to Caprock with the immediate spin-off of KSWS–TV to Hubbard. The assignment of KCBD–TV (BALCT–830609KN) was granted pursuant to delegated authority, on August 12, 1983.

Petition to Deny

3. On July 20, 1983, New Mexico filed a petition to deny against the applications assigning the license of KSWS–TV from Associates to Caprock and from Caprock to Hubbard. New Mexico is the licensee of KGGM–TV, Albuquerque, New Mexico, and is the parent corporation of Western, the applicant here for a construction permit for a new commercial television station on channel 8 in Roswell. At the outset of its petition to deny, New Mexico stated its intention of applying for channel 8, the frequency presently used by KSWS–TV. The main thrust of the petition to deny is that in the agreement (Section 3.3) between Caprock and Hubbard, assigning KSWS–TV to Hubbard, Caprock is to be paid an additional one million dollars if Hubbard operates KSWS–TV as a full-service station within five years from settlement. If Hubbard operates KSWS–TV as a full-service station after five years from settlement, but within ten years from settlement, Hubbard will pay Caprock an additional five hundred thousand dollars. The initial consideration from the assignment is two million dollars. Hubbard is licensee of KOB–TV, Albuquerque, New Mexico. New Mexico asserts that the agreement permits Caprock to retain an impermissible financial interest in the operation of KSWS–TV, § 73.1150 of the Commission's Rules, and compromises Hubbard's future control over the station's programming. *Grand Canyon Broadcasters, Inc.*, 9 F.C.C. 2d 830, 836 (1967). In opposition, both Caprock and Hubbard disagree with New Mexico's contention. They state that it is obvious that the station is worth more if operated as a full-service station rather than as a satelitte and the agreement does not in any way inhibit Hubbard from operating the station as it sees fit. In any event, both Caprock and Hubbard have agreed, as a means of resolving this dispute, to delete this provision. On September 26, 1983, an amendment was filed by Caprock and Hubbard deleting Section 3.3 of the agreement. Since the issue raised by New Mexico is moot, New Mexico's petition to deny will be dismissed.

Competing Applications

4. Associates' renewal application and Western's application for a construction permit are mutually exclusive in that they both seek authorization for use of the same frequency in Roswell, New Mexico. Therefore, a hearing must be held to determine whether the KSWS–TV license should be renewed for the purpose of assigning it to Caprock/Hubbard or whether Western should be authorized to use the frequency. In similar situations, the Commission has taken the position that if a renewal application was under challenge, either by petition to deny or competing application, on assignment application filed by the renewal applicant could not be granted until the cloud over the license had been removed. Further, the Commission found that the public interest would be served by comparing the qualifications of the transferor and the new construction permit applicant. *See, e.g., Richards, Transferor*, 14 F.C.C. 429, 430–431 (1950), and the cases cited there. Therefore, if Associates prevails, the renewal and assignment applications will be granted. On the other hand, if Western prevails, it will be awarded the construction permit, the renewal application will be denied, and the assignment applications will be dismissed.

5. No determination has been made that the tower height and location specified by Western would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.[2]

6. As an adjunct to the application of Western for a construction permit for a new commercial television station on the same channel presently used by KSWS–TV, Hubbard filed a petition to deny the license renewal application of New Mexico for KGGM–TV, Albuquerque, New Mexico. As noted above, New Mexico is the parent corporation of Western. The petition was late filed; in fact, it was filed on the same day the KGGM–TV license renewal application was granted, October 27, 1983. Petitions to deny were due no later than September 1, 1983.[3] A review of the petition reveals that it appears to be more an opposition to Western's application for a construction permit than it is a petition to deny the KGGM–TV license renewal application. Therefore, treating the petition as an informal objection, because it was late filed (Section 73.3587 of the Commission's Rules), we will consider Hubbard's allegations raised against New Mexico in this proceeding.

7. In its objection, Hubbard alleges that Western's application was filed for the purpose of obstructing and delaying the pending application for assignment of KSWS–TV to Hubbard. Hubbard further maintains that Western's mutually exclusive application was filed to prevent the competitive advantage New Mexico felt would accrue to Hubbard from its acquisition of KSWS–TV, and that similar motives led New Mexico to file a petition to deny the assignment application. Hubbard states that the Commission has defined such filings as "strike" pleadings and that the filing of such pleadings is not in the public interest and calls into question the basic character qualifications of that licensee.

8. In response to Hubbard's allegations, New Mexico states that its petition to deny the assignment application was entirely proper, since it pointed out deficiencies which were subsequently corrected by the applicants. As to the application for a construction permit for a new station, New Mexico asserts that it too was proper. New Mexico points out that it put Hubbard on notice in its petition to deny that the application for the new station would be filed, though it was not required to do so. Further, the application, itself, upon which Hubbard has relied for information for its petition, sets forth New Mexico's concerns and reasons for filing the application for the construction permit. New Mexico maintains that none of these reasons or concerns, in and of themselves, show any improper conduct on New Mexico's

[1] KSWS–TV was operated as a satellite of KCBD–TV.

[2] The Commission is not in receipt of FAA's determination for Western.

[3] On November 28, 1983, Hubbard filed a petition for reconsideration of that action. Hubbard argues that because its petition to deny was filed on the same day the renewal application was granted, the allegations contained in it were not fully considered. Thus, Hubbard urges that those allegations now warrant reconsideration of the grant of the KGGM–TV license renewal. However, because the pleading merely repeats the allegations raised in the petition to deny, which we are addressing in this Order, the petition for reconsideration and related pleadings will be denied.

part. In his affidavit, which was submitted as part of the response, Bruce Hebenstreits, President of New Mexico, states that the affidavits of Messrs. Reischman and Carriere, submitted by Hubbard, "are basically accurate descriptions of parts of a conversation that I had with them." However, Mr. Hebenstreit further asserts that, in his conversations with them, he consistently emphasized that Roswell was ready for a second full-service television station and that he would build it if no one else would. Mr. Hebenstreit denies that the application for the construction permit was filed for the purpose of obstruction and he declares that it is his desire to operate a full-service station in Roswell because it will better serve the public than would a satellite and because it is a sound business investment.

9. When information comes to our attention that tends to indicate that a licensee is acting in bad faith by filing a pleading the primary intent of which is to improperly delay a proceeding, the Commission will examine and resolve the legitimate public interest question that are raised. *Radio Carrollton, Inc.*, 69 F.C.C. 2d 1139 (1978), *clarified*, 69 F.C.C. 2d 424 (1978), *recon. denied*, 72 F.C.C. 2d 264 (1979), *aff'd mem. sub nom., Faulkner Radio, Inc.* v. *F.C.C.*, No. 79–1749 (D.C. Cir. Oct. 15, 1980), *cert. denied*, 450 U.S. 1041 (1981). *See* also *Little Rock Radio Teleph. Co., Inc.*, 89 F.C.C. 2d 400 (1982). In this respect, the Commission has firmly stated that the crucial consideration in determining whether a pleading is in the nature of a strike petition or strike application is whether the pleading was filed for the primary and substantial purpose of delay. In establishing this policy, the Commission has has to carefully balance the right of any person, licensee or otherwise, to generally conduct business with the Commission against the Commission's duty to protect the public interest from abuse of the administrative process you unwarranted obstruction or delay. And, in considering whether the filing is a strike petition or a strike application, the Commission will not infer the primary purpose to delay from the mere filing because a licensee has a statutory right to bring to the Commission's attention public interest questions raised by a competitor's application. Therefore, in order to justify specification of a strike issue, the charging party must make a strong showing that delay is the primary and substantial purpose of the filing. *Radio Carrollton*, 69 F.C.C. 2d at 1150–1151.

10. In the case at hand, Hubbard has not made the requisite showing. The fact that Western, consistent with Commission's Rules, filed its competing application to protect what it perceives as its competitive position in the Roswell market does not lead to the conclusive presumption that New Mexico acted in bad faith with the primary intent of obstructing and delaying Hubbard's acquisition of KSWS–TV. Similarly, Hubbard's allegations relating to New Mexico's petition to deny the KSWS–TV assignment applications do not, on the basis of the information before us, constitute a strong showing that delay is the primary and substantial purpose of the filing. As the Commission stated in *Radio Carrollton*, there are several factors to be considered. These include; (a) admission of the obstructive purpose, (b) withholding information relevant to the disposition of the requested issues; (c) the absence of any reasonable basis for the adverse allegations in the petition; (d) economic motivation; and (e) other conduct of the licensee, *Id.*, at 1151–1152. In its petition to deny the assignment application, New Mexico pointed out a defect in the contract for assignment. That defect was corrected by the applicants. Also in its petition to deny, New Mexico stated that it would file an application for a construction permit for a new commercial television station in Roswell because it believed that a full-service station was preferable to a satellite and because it believed that Roswell could support a second full-service television station. In its application for the construction permit, Western set out the reasons why it believed Roswell could support a second full-service television station, how the public interest would better served by it, and committed itself to building and operating the proposed new commercial television station. In view of the foregoing, Hubbard's petition to deny the license renewal application of KGGM–TV will be dismissed and, when considered as an informal objection, will be denied.

11. Except as indicated by the issues specified below, Associates and Western are legally, financially, technically and otherwise qualified to operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications of KCBD Associates and Western Sun Broadcasting Company are designated for hearing in a consolidated proceeding, before an Administraive Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine, with respect to Western Sun Broadcasting Company, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

(2) To determine which of the proposals would, on comparative basis, better serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 1.

14. It is futher ordered, That the petition to deny filed by New Mexico Broadcasting Co., Inc. against the applications of Caprock Telecasting, Inc., and The Stanley S. Hubbard Trust is dismissed as moot.

15. It is futher ordered, That the petition to deny filed by The Stanley S. Hubbard Trust against the application of New Mexico Broadcasting Co., Inc., for license renewal of Station KGGM–TV, Albuquerque, New Mexico, is dismissed, and when considered as an informal objection, is denied, and its petition for reconsideration is denied.

16. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issued specified in this Order.

17. It is further ordered, That the applicants shall, pursuant to Section 311(a)(2) of the Commissions Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by Section 73.3694(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Medic Bureau.

[FR Doc. 84–17093 Filed 6–26–84; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket Nos. 84-574 and 84-575, File Nos. BPCT-801208KG and BPCT-810320KE]

Schuyler-Littlefield Broadcasting Co., and Focus Broadcasting of the Monterey Peninsula, Inc.;[1] Application for Construction Permit; Hearing Designation Order

Adopted: May 25, 1984.
Released: June 22, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a construction permit for a new commercial television station to operate on Channel 67, Monterey, California.[2] On November 14, 1983, Schuyler-Littlefield Broadcasting Company (Schuyler) Monterey, California, filed a petition to deny against the application of Focus Broadcasting of the Monterey Peninsula, Inc. (Focus/Monterey) Seaside, California; a second petition to deny was filed by Schuyler on November 29, 1983, and a supplement to the second petition to deny was filed on December 8, 1983. Opposition and reply pleadings were filed in connection with these petitions.

Focus/Monterey

2. *Schuyler's Allegations.* In a petition to deny filed November 14, 1983 Schuyler alleged that the ownership interests of Solomon Atkins, Douglas F. and Beverly Ruhe and William and Judith Geissler in Focus/Monterey represent an "undue concentration of mass communications media" due to their controlling ownership interests in United Press International (UPI), a gatherer and distributor of news and information services. However, those parties withdrew from Focus/Monterey in an amendment filed on November 14, 1983 the "B" cut-off date of that application. Thereafter, on November 29, 1983 Schuyler filed a second petition to deny alleging that the November 14, 1983 amendment was a major amendment requiring a new file number to be assigned to the Focus/Monterey application pursuant to § 73.3572(b).[3] It maintains that the withdrawal of certain parties has produced a new ownership structure that has resulted in "a *de facto*, if not a *de jure* transfer of control of the applicant."[4] Schuyler contends that as a result of the amendment, two brothers, J. Kenton and Dwight W. Allen, together with their wives and children and as the sole general partners of a family partnership called the Allen Investment Company, have become the "dominant force" in the corporation, comprising the majority of the officers and directors of the corporate applicant and controlling nearly 70 percent of its stock. Schuyler claims that the relationships between the Allen family and others in the prosecution of various applications for television stations and the operation of such stations make clear that they operate as a family unit in pursuit of broadcast projects. Thus, taken as a whole, Schuyler argues that the tendered amendment indicates that control of the corporate applicant has been transferred to a group that was not in control at the time the application was originally filed.

3. On December 8, 1983, Schuyler filed a "supplement" to its November 29 petition to deny alleging that after filing that pleading it learned of an unresolved character issue in a Commission proceeding involving some of those individuals who, by the November 14, 1983, amendment, have withdrawn from the Focus/Monterey application. Specifically, in a comparative proceeding for a construction permit for a new commercial television station at Alvin, Texas (MM Docket Nos. 83 440-444), a "real-party-in-interest" issue was requested and added against Focus Communications, Inc. ("FCI"), which is controlled by the Ruhes and Geisslers. Although Schuyler reports that an agreement between the parties settling the Alvin proceeding was approved by the Administrative Law Judge, the character issue against FCI was not resolved prior to the termination of that proceeding. In the absence of a conclusive determination of this issue, Schuyler argues that those parties cannot remove the character issue by merely withdrawing from the corporate applicant and to "the extent to which the departing shareholders' misconduct affects the basic and comparative qualifications of the applicant is a matter which remains for consideration by the Commission." Thus, if the Focus/Monterey application is not assigned a new file number, Schuyler contends that because of their association with FCI, Focus/Monterey is not qualified to be a Commission licensee, requiring its application to be denied or assessed a demerit in a comparative hearing.

4. *The Applicant's Oppositions.* Focus/Monterey opposes each of the Schuyler pleadings arguing that since the Commission deleted its predesignation issue pleading procedures, the petitions must be denied as procedurally defective. It maintains that any concerns Schuyler may have about the Focus/Monterey proposal should be rasied in a post-designation pleading filed pursuant to § 1.229 of the Commission's Rules. As to the substance of Schuyler's allegations, it states that the concern expressed with regard to the interests of the Ruhes, the Geisslers and Atkins in UPI have been rendered moot by their withdrawal from the applicant pursuant to the amendment filed as a matter of right on November 14, 1983. Moreover, Focus/Monterey states that Schuyler has cited no authority and it is aware of none for the proposition that the principals of a news service such as UPI are prohibited from owning television stations. Similarly, Focus/Monterey denies the allegations of unauthorized transfer of control of the applicant contained in Schuyler's November 29, 1983, petition to deny and asserts that such concerns should be raised, if at all, in a post-designation pleading. Although it recognizes that husbands and wives are subject to a spousal attribution of ownership interests, Focus/Monterey maintains that family relationships alone do not provide a basis for attribution of a common control of ownership interests and therefore, Schuyler has failed to establish such a community of interests between brothers, parents and children, in-laws and cousins within the Allen family. Focus/Monterey states that as a result of its November 14, 1983, amendment less than 50 percent of the applicant's stock has changed hands. The applicant further maintains that even if J. Kenton and Dwight W. Allen, as partners of the Allen Investment Company, are each to be attributed with the 15.01 percent interest of the partnership in the applicant as amended, the largest interest held by any individual in Focus/

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[1] Channel 67 is allocated to Salinas-Monterey, California. Seaside is located within 15 miles of Salinas. Although the Commission has abolished its "15 mile rule", the application of Focus Broadcasting of the Monterey Peninsula, Inc. was on file prior to the effective date of the change. Consequently, the "15 mile rule" is applicable to this application. Accordingly, Channel 67 is available for use in Seaside. *Suburban Community Policy*, 53 RR 2d 681, 698 (1983).

[2] See footnote 1, *supra*.

[3] Section 73.3572(b) requires the assignment of a new file number when an amendment to an application results in a transfer of control which would require the filing of "long-form" applications on FCC Form 314 or 315 in the case of an existing station as opposed to a *pro-forma* "short-form" application on FCC Form 316.

[4] Schuyler also maintains that no documentation has been submitted relative to the transfer of stock from the UPI principals to the remaining Focus/Monterey shareholders, thus raising questions of a "continuing involvement" between these parties. However, because the applicant's November 14, 1983, amendment was filed as a matter of right pursuant to § 73.3522(b) of the Commission's Rules, we find no basis for further action on this allegation. See paragraph 9, *infra*.

Monterey would still be a noncontrolling 32.35 percent—Dwight Allen's individual interest (2.33 percent), his interest held jointly with his wife (15.01 percent) and the partnership interest (15.01 percent). See paragraph 7, *infra.*

5. Finally, the applicant asserts that Schuyler's request to specify a character qualification issue against Focus/Monterey because of the unresolved real-party-in-interest against FCI in the Alvin, Texas, proceeding is clearly a matter to be addressed post-designation. Nevertheless, it maintains that the FCI principals have severed their ties with the applicant as a matter of right by the November 14, 1984, amendment and that no interest would be served by examining allegations against persons who are no longer interested parties to this proceeding.

6. *Schuyler's Replies.* In reply to each of the opposition pleadings, the petitioner essentially reiterates its previously raised allegations. It maintains that objections to a "B" cut-off amendment, such as its allegation that Focus/Monterey's November 14, 1983, amendment reflects an unauthorized transfer of control, should be raised at the time it is tendered. Schuyler maintains that because the Allen family is pursuing the Focus/Monterey application as a family project, the Commission must attribute the applicant's stock owned by the individual family members and the Allen Investment Co. to the entire Allen family as a single entity. It asserts that a community of interest is evidenced by not only family relationships, but also the relationships between the Allens and FCI in interrelated commercial television applications and licenses. Schuyler further states that if the Focus/Monterey application is not returned to the processing line in view of its allegations of an unauthorized transfer of control, the Commission must examine the unresolved character issue against the FCI principals and the "growing concentration" of media sources of UPI, contrary to the Commission's ownership policies expressed in § 73.636 of the Rules, against parties who have attempted to sever their ties with the applicant.

7. *Discussion.* As originally filed, the Focus/Monerey application showed that there were 23 persons (including a partnership) with ownership interests. The application was amended on November 14, 1983, to show certain changes in ownership. The effect of the amendment is shown in the following table.

Stockholder	Before amendment (percent)	After amendment (percent)
Jackman L. LeBlanc	15.08	15.08
James L. LeBlanc	[illegible]	15.08
J. Kenton Allen)		
Mary P. Allen)	5.03	10.00
Douglas P. Allen	1.01	[illegible]
Dwight W. Allen	1.01	2.33
Dwight W. Allen)		
Carole J. Allen)	1.87	15.01
Dana L. Allen	1.01	6.00
Cheryl E. Allen	1.01	2.33
Carla J. Allen	1.01	[illegible]
Andrew J. Allen	5.03	10.00
Allen Investment Co.	[illegible]	15.01
Total	52.82	99.17
Others	47.18	.83

8. From the foregoing, it is apparent that no *de jure* change of control resulted from the November 14, 1983, amendment to the Focus/Monterey application. Less than 50 percent of the applicant's stock changed hands, no individual acquired as much as 50 percent of that stock and the same persons who shared control by virtue of their ownership of 52.82 percent of the stock before the amendment continue to share control by virtue of their ownership of 99.17 percent of the stock. Schuyler's argument that the Commission should attribute the interests of the individual Allen family members and the Allen Investment Co. as a single entity to find that a *de facto* transfer of control has taken place is not persuasive. We find no support for the contention that the relationships between the Allen family and others in various broadcast applications and operations evidence that they operate as a family unit. Our review of the Focus/Monterey application as amended indicates that at least five Allens, Andrew, Carla, Cheryl, Dana and Douglas, have no other attributable broadcast interests other than in this applicant, and that two others, Robert and Marie, have only nonattributable interests in various low-power television and applications. Further, even assuming the contention that the relationship between J. Kenton and Dwight W. Allen requires their interest in Focus/Monterey, along with their wives and the Allen Investment Co., to be attributed as a single entity, Schuyler has nevertheless failed to demonstrate that it is a controlling interest sufficient to find that an unauthorized transfer of control took place. Under that analysis, the largest single interest held in the corporate applicant would be 42.35 percent—Dwight Allen's individual interest (2.33 percent), his interest held jointly with his wife (15.01 percent), the interest of Mary and J. Kenton Allen (10 percent) and the partnerships interest (15.01). Thus, we find that the alleged familial/business relationships between various members of the Allen family is insufficient, on the basis of the materials before us, to create a presumption of a community of interest. *See, e.g., L&S Broadcasting Company et al.*, 6 FCC 2d 535, 537 (1967). *See also, Alexander S. Klein*, 86 FCC 2d 423, 428 (1981); *KTRB Broadcasting Co.*, 46 FCC 2d 605, 607 (1974).

9. Having found that no unauthorized transfer of control of the applicant resulted from the November 14, 1983, amendment to the Focus/Monterey application, it is apparent that that amendment was properly submitted as a matter of right on the "B" cut-off date pursuant to § 73.3572(b) of the Commission's Rules. Therefore, Schuyler's November 14, 1983, petition to deny objecting to parties that have properly withdrawn from the applicant will be dismissed as moot. Inasmuch as we are limited at the pre-designation stage of this proceeding to examine whether the Focus/Monterey application and amendments, as tendered, are acceptable for filing purposes, further discussion of Schuyler's allegations is unwarranted. Those allegations comprise, in essence, a pre-designation petition to specify issues and, as noted by Focus/Monterey, such issue pleadings are no longer permitted. *Revised Processing of Contested Broadcast Applications*, 72 FCC 2d 202, 214 (1979). Therefore, those allegations will be dismissed. This action is without prejudice to Schuyler, however, as it will have an opportunity to raise such allegations, if warranted, post-designation pursuant to § 1.229 of the Commission's Rules. Accordingly, Schuyler's November 29, 1983, petition to deny, "as supplemented," will be denied to the extent indicated herein and dismissed in all other respects.

Schuyler

10. Schuyler specifies Monterey as its community of license and Focus/Monterey specifies Seaside. Consequently, it will be necessary to determine, pursuant to section 307(b) of the Communications Act of 1934, as amended, whether a new station in Monterey or Seaside would best provide a fair, efficient and equitable distribution of television service. If the section 307(b) issue is not determinative (the applications would serve substantial areas in common), the applicants can be considered under the comparative issue.

11. Schuyler is a limited partnership. The general partner is Schuyler Broadcasting Corporation, which is jointly owned by William H. Schuyler

and his wife. They also own all of the stock of Schuyler Communications, Inc., permittee to KSCH(TV) Channel 58, Stockton, California. In order to avoid prohibited overlap of the service contours of these commonly-owned stations (See § 73.636(a) of the Commission's Rules), Schuyler proposes to use a directional antenna to attenuate radiation by the proposed Monterey station toward KSCH(TV). As a result, the maximum-to-minimum ratio in the horizontal plane will be 16.45 db. Schuyler has requested a waiver of § 73.685(e) which limits the maximum-to-minimum ratio to 15 db. Accordingly, an appropriate issue will be specified.

The Competing Applications

12. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

13. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Schuyler-Littlefield Broadcasting Company:

(a) Whether circumstances exist to warrant waiver of § 73.685(e) of the Commission's Rules;

(b) Whether, in light of the evidence adduced pursuant to issue (a), the applicant is in compliance with § 73.636(a) of the Commission's Rules.

2. To determine the areas and populations that would receive Grade B or better service from the proposals and the availability of other Grade B services to such areas and populations.

3. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of television service.

4. In the event it is concluded from Issue 3, above, that a choice between the applicants should not be based solely on considerations relating to Section 307(b), to determine which proposal would, on a comparative basis, better serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

14. It is further ordered, That the petition to deny filed by Schuyler-Littlefield on November 14, 1983, is dismissed as moot.

15. It is further ordered, That the petition to deny filed by Schuyler-Littlefield on November 29, 1983, as supplemented on December 8, 1983, is denied to the extent indicated herein and dismissed in all other respects.

16. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

17. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-17086 Filed 6-26-84; 8:45 am]

BILLING CODE 6712-01-M

Summit Communication, Inc. and Telecrafter Corp.; Applications for Construction Permits in the Multipoint Distribution Service for a New Station at Gillette, Wyoming; Memorandum Opinion and Order

[CC Docket Nos. 84-601 and 84-602; File Nos. 50077-CM-P-82 and 50125-CM-P-82]

Adopted June 7, 1984.
Released June 20, 1984.
By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Gillette, Wyoming. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Summit Communication, Inc., Telecrafter Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 84-17087 Filed 6-26-84; 8:45 am]

BILLING CODE 6712-01-M

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[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain, 77* FCC 2d 20 (1980).

[GEN Docket No. 84-607; FCC 84-262]

Preparation for an International Telecommunication Union World Administrative Radio Conference for the Mobile Services; First Notice of Inquiry

Adopted: June 15, 1984.
Released: June 25, 1984.
By the Commission.

Purpose

1. This *Inquiry* is being instituted to begin the Commission's preparations for the upcoming World Administrative Radio Conference (WARC) for the Mobile Services scheduled for 1987, and to invite comments to assist the Commission in developing recommmendations for U.S. proposals for the WARC. The main purposes of this initial *Notice* are: (1) To present the background and preparatory activities leading up to the conference; (2) to solicit comments on issues that should or should not be addressed by the Mobile WARC; and (3) to gather data on the past, current, and projected usage of the high frequency (HF) bands employed by the maritime mobile service. Resolution No. 319 (from the 1983 Mobile WARC) calls for a general review of the HF Bands allocated on an exclusive or shared basis to the maritime mobile service.[1] It is essential that we receive this data from all segments of the maritime industry in order to develop U.S. proposals to address the complexity of issues raised in Resolution No. 319. Future *Notices* in this inquiry proceeding will address other issues to be considered by the conference.

Background

2. The World Administrative Radio Conference (WARC) of 1979 was convened to revise, as necessary, the international Radio Regulations. WARC 79 accomplished only a partial revision of the Radio Regulations, and consequently, it determined to convene a WARC for the mobile services to revise the provisions of the Radio Regulations that relate specifically to these services.[2] A limited Mobile WARC was held in 1983. It addressed essentially only safety and distress matters. The 1982 ITU Plenipotentiary Conference established a six-week Mobile WARC to be convened in August of 1987 (MOB–87) to address the balance of the Radio Regulations pertaining to the mobile services.[3]

It is important to note that the Mobile WARC's of 1983 and 1987 are separate and distinct, and are not first and second sessions. The 39th Session of the ITU Administrative Council in April of this year prepared a list of considerations to be addressed by administrations in preparation for the 1987 Mobile WARC. That list is attached as Appendix 1 to this *Notice*. The Secretary-General of the ITU will issue an official Administrative Council report on conference matters in several months which will include this list of considerations. The agenda for WARC–87 will most likely be adopted by the 40th Session of the Administrative Council in 1985.

Implementation of WARC 79 Final Acts

3. The Final Acts of WARC 1979, which comprise an international treaty, became effective internationally on January 1, 1982, for administrations that ratified the treaty. The United States ratified the treaty on September 6, 1983. In December 1983 the Commission amended Part 2 of the FCC's Rules and Regulations bringing into our domestic Table of allocations the appropriate decisions of the WARC 1979 Final Acts.[4] On this basis we are now beginning our preparation for the 1987 Mobile WARC. There will be a number of related international activities leading up to the conference.

Activities Related to Preparation for the 1987 Mobile WARC

4. After an agenda has been adopted for the Mobile Services conference, it is expected that a special meeting of CCIR Study Group 8 will be proposed for two-three weeks following the final meeting of Study Group 8 in November of 1985. The purpose of this special meeting should be to develop the technical bases for the conference as determined by the agenda and to advise administrations in their preparations for the conference. We anticipate that this special meeting would address all terrestrial mobile, mobile-satellite, radiodetermination, and radiodetermination-satellite services. If a special meeting is not agreed upon, then the final meeting of CCIR Study Group 8 in November 1985 will have to develop the necessary report.

5. The Air Navigation Commission of the International Civil Aviation Organization (ICAO) is currently considering whether to hold a Communications Divisional (Com/Div) Meeting in 1985. If convened, proposed topics for consideration by the meeting include development of the ICAO position for the 1987 Mobile WARC; development of an ICAO position on outstanding ITU resolutions and Recommendations related to the aeronautical mobile and radionavigation services; alignment of ICAO Convention Annex 10 and related documents with the ITU Radio Regulations; and consideration of harmful interference to aeronautical radio services from sources outside the bands allocated exclusively to the aeronautical services. We note that at an April 1981 Com/Div meeting, an initial position was taken by ICAO member states with regard to suggested modifications to the Radio Regulations for consideration at the 1987 Mobile WARC. This initial ICAO position may well be the starting review point if a Com/Div meeting is held.

6. In its March 1984 meeting report to the Maritime Safety Committee, the International Maritime Organization (IMO) Radiocommunications Subcommittee noted that it may have difficulty completing the work requested by the 1983 Mobile WARC for the 1987 Mobile WARC in sufficient time to be considered by administrations in their preparations for this latter conference. However, the Subcommittee will make every attempt to complete its preparations in early 1986.[5] The Subcommittee is preparing a comprehensive list of proposed amendments to the Radio Regulations necessary for the implementation of the Future Global Maritime Distress and Safety System (FGMDSS) or as a consequence of the introduction of the system. IMO is also examining certain non-distress matters in the area of telecommunications.

Maritime Mobile Usage of the High Frequency Bands

7. The United States has long considered the international allotment of maritime HF telephony frequencies to be inadequate. At the World Maritime Administrative Radio Conference, Geneva, 1974 (WMARC 74), the United States took a formal reservation to the Final Acts of the Conference.[6] WMARC

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[1] Final Acts of the 1983 Mobile WARC, Geneva.

[2] See WARC 1979 Final Acts, Geneva, Recommendation No. 12 and Resolution No. 202; these are contained in the 1982 Edition of the ITU Radio Regulations.

[3] Resolution No. 1, International Telecommunication Convention, Nairobi, 1982.

[4] See *Second Report and Order*, General Docket No. 80–739, FCC 83–511, 49 FR 2358, adopted November 8, 1983.

[5] See Docket No. 84–45, an on-going proceeding used to prepare for the IMO Radiocommunications Subcommittee meetings.

[6] The reservation reads:

The Delegation of the United States of America formally declares that the United States of America does not, by signature of these Final Acts on its behalf, accept any obligations in respect of the Frequency Allotment Plan for Coast Radiotelephone

Continued

74 adopted a revised Appendix 25, containing a channel allotment plan for coast radiotelephone stations operating in the maritime mobile bands between 4000 and 23000 kHz. The plan allotted each available channel to as many as 35 administrations. In the view of the United States, the plan was unworkable. In actual practice many of the frequencies are subject to interference.

8. This problem continued into the general World Administrative Radio Conference, Geneva, 1979 (WARC 79). That conference allocated a number of new HF bands to the maritime mobile service.[7] The use of these bands is dependent upon transfer of the existing fixed and mobile services to other bands.[8] The United States, however, in its statement in the Final Protocol, noted that the Conference had failed to provide adequate allocations for the HF maritime mobile service below 10 MHz. The U.S. stated its intention to satisfy maritime mobile requirements in the several HF bands below 10 MHz allocated to the mobile service on a primary basis.

9. The lack of adequate frequencies below 10 MHz and the need to update frequency usage in light of automated communications led Mobile WARC 1983 to adopt Resolution No. 319. This Resolution resulted from a U.S. Proposal to the conference.[9] Mobile WARC 1983 established channeling plans for maritime mobile radiotelephony in the bands 4000–4063 kHz and 8100–8195 kHz based on a 3.0 kHz channel spacing with carrier frequencies on integer multiples of 1 kHz.[10] The conference provided frequencies in the HF maritime mobile bands for use in the FGMDSS.[11] The conference recognized the shortage of radiotelephone frequencies, the congestion and interference on narrow band-direct printing (NB–DP) frequencies, an expected increase in demand for frequencies for duplex and simplex radiotelephony, NB–DP and selective calling (SELCALL) and the importance of keeping frequencies provided for the FGMDSS unchanged as much as possible.[12]

10. Resolution No. 319 specifically tasks the 1987 Mobile WARC to:

A. Carry out a general review and any necessary revision of all HF bands allocated on an exclusive or shared basis to the maritime mobile service.

B. Consider the need for an increase in the number of duplex channels for radiotelephony and narrow-band direct-printing and for additional frequencies for SELCALL.

C. Consider whether 3.0 kHz channel spacing should be used for the future revision of the HF radiotelephone channeling plans, with normal carrier frequencies on integer multiples of 1 kHz.

D. Make every effort to retain unchanged frequencies available for FGMDSS when revising maritime mobile sub-allocations and channeling plans.

11. Within the existing exclusive maritime mobile bands an increase in the number of duplex telephony and NB–DP channels and in frequencies for international SELCALL can only be obtained by revising channels currently indicated for use by international manual Morse Code telegraphy and by using frequencies shared with the fixed service in the 4000 and 8000 kHz bands. This is so because the Resolution considers that the FGMDSS frequency designation made by the 1983 Mobile WARC should remain unchanged, that telephony, NB–DP and SELCALL requirements are increasing, and because a transition in channel spacing in telephony from 3.1 kHz to 3.0 kHz will not significantly increase the number of telephony channels available. Moreover, it is necessary to reallocate approximately 16 continuous wave (CW) radiotelegraphy frequencies in order to obtain one new radiotelephone frequency at 3.0 kHz channel spacing.

12. In conducting its review and in preparing its proposals for MOB 87, the Commission wishes to consider all aspects of current usage data from public coast stations, limited coast stations and ship stations. The following paragraphs describe specific areas of inquiry.

13. From limited coast stations, we seek usage data regarding the 18 frequencies currently available between 4125.0 and 22136.4 kHz for limited coast station use (see § 81.361 of FCC Rules). Such data should include the number of frequencies actually in use, the hours each frequency is in use, the duration and number of calls per hour, the amount of congestion, and the amount of interference experienced by virtue of both domestic sharing and international use assessed separately.

14. From public coast stations, we seek usage data concerning telephony, telegraphy and NB–DP. For each mode of operation, the data should include the number of frequencies actually in use, the hours these frequencies are in use, the duration and number of calls per hour, congestion, and the separate consideration of both domestic and international interference problems.[13]

15. From ship operators, we seek usage data concerning all modes of use, simplex or duplex, the hours of use, congestion and interference problems.

16. From all sources, we seek projections of HF maritime requirements. Whenever possible, these projections should be based on usage trends. We also seek comments on the following specific topics:

a. The advisability of establishing loading criteria as a basis for assigning or reassigning frequencies.

b. The advisability of reassigning frequencies which are or become available by virtue of the closure of stations providing manual Morse radiotelegraphy.

c. The current and projected need for wide band telegraphy (facsimile or other).

d. Anticipated problems and possible solutions which would result from the sharing with the fixed service of the bands 4000–4063 kHz and 8100–8195 kHz.

e. The advisability of proposing various transmission modes, e.g., manual Morse, NB–DP, telephony, within the same frequency bands.

f. Ideas as to how the new WARC 79 HF bands should be subdivided among

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Stations Operating in the Exclusive Maritime Mobile Bands between 4,000 kHz and 23,000 kHz and the associated implementing procedures, and that, although the United States of America will observe the provisions of the Plan and implement procedures to the extent practicable, pending the results of a future World General Administrative Radio Conference, the United States of America reserves its right to take such measures as may be necessary to protect its maritime radiotelephony interests.

Final Acts of the World Maritime Administrative Radio Conference, Geneva, 1974; ITU Geneva at p. 349. The United States indicated at the time of depositing its ratification to the 1979 WARC with the ITU that this reservation is still applicable.

[7] The new bands, as shown in the *Report and Order* in General Docket No. 80–739, supra at (4), in US 235, are as follows: 12230–12330, 16360–16460, 17360–17410, 18780–18900, 19680–19800, 22720–22855, 25110–25210 and 26100–26175 kHz. The WARC also allocated the bands 4000–4063 kHz and 8100–8195 kHz for use by the maritime mobile service on a shared basis with the fixed service. These latter bands are now available for maritime mobile use in the U.S.

[8] See Radio Regulation Nos. 532 and 544, and Resolution No. 8.

[9] See Resolution (B), *Report and Order*, Doc. 80–184 47 FR 31064 adopted June 23, 1982.

[10] Current channeling plans in the existing exclusive maritime mobile bands are based on spacing of 3.1 kHz.

[11] These frequencies are set forth in Article 38 of the Final Acts of the MOB 83 WARC.

[12] These frequencies are set forth in Article 62 of the Final Acts of the MOB 83 WARC.

[13] In May 1983, we surveyed all public coast stations and 20 percent of limited coast stations selected at random to determine the number of messages, by hour and by type, to assist in determining the number of required SELCALL frequencies. The results of the survey are provided here as Appendix 2 to this *Notice*. This survey did not seek message length or use trends which are requested by this *Notice*.

the various operational maritime mobile user categories.

Public Advisory Committee

17. A public advisory committee could prove to be valuable in providing information for the formulation of U.S. proposals, particularly in the Maritime Mobile HF data collection activity. The public is invited to comment on the desirability of forming such a committee.

18. The federal departments and agencies will, within the IRAC and under the sponsorship of the NTIA, develop parallel recommended proposals for the 1987 Mobile WARC to meet their mobile, mobile-satellite, and radio-determination needs.

Conclusion

19. In preparation for the WARC for the Mobile Services to be held in 1987, the Commission seeks data concerning the Maritime Mobile usage of the high frequency bands, and input from the public on issues that should be explored by the conference.[14] In this latter case, we ask that parties refer to Appendix 1 and submit comments on whether the item should be considered by the 1987 Mobile WARC itself. At this time we are not requesting an in-depth exploration of matters contained on the list of issues. Parties may also wish to suggest other items for inclusion on the list. The Commission will develop its proposals in coordination with the National Telecommunication and Information Administration (NTIA) for onward transmission to the Department of State as recommended U.S. proposals to be sent to the ITU for consideration at the Mobile WARC. This proceeding is being initiated to develop U.S. proposals for the conference. It will not promulgate any changes to the Commission's Rule and Regulations. In response to conference action, however, changes may occur to the FCC's Rules and Regulations through further docket proceedings.

Administrative

20. Pursuant to the authority set forth in sections (4)i, 303, and 403 of the Communications Act of 1934, as amended, it is ordered that a Notice of Inquiry is hereby adopted.

[14] Affected Appendices of the International Radio Regulations are Appendix 16 (simplex and duplex telephony channelization), Appendix 25 (Telephony allotment plan); Appendix 31 (Table of frequencies from 4–27.5 MHz allocated exclusively to the maritime mobile service); Appendix 32 (NB–DP paired channeling); Appendix 33 (NB–DP non-paired channeling); Appendix 34 (Table of frequencies assignable for manual Morse telegraphy calling); and Appendix 35 (Table of frequencies assignable for manual Morse telegraph working).

21. Pursuant to applicable procedures set forth in § 1.430 of the FCC's Rules, persons interested in submitting comments to this Notice may do so on or before August 10, 1984; reply comments may be submitted on or before September 10, 1984. Although § 1.419 of the Commission's Rules requires responses will be available for public review during regular business hours in the FCC's Public Reference Room at 1919 M Street NW., Washington DC. Point of contact in this proceeding is Lawrence Palmer, 202/653–8102.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix 1—Considerations of Items of Concern for Preparation for the World Administrative Radio Conference for The Mobile Services, Geneva, 1987 [1]

1. The agenda for the World Administrative Radio Conference, Geneva, 1979, items 1–3, excluded from revision certain articles of the Radio Regulations and certain appendices thereto relating to singel radio services, including the mobile services.

2. The agenda for the World Administrative Radio Conference for the Mobile Services, Geneva, 1983, concentrated mainly upon matters relating to distress and safety communications.

3. As a consequence, certain provisions of the Radio Regulations and certain appendices thereto have not been reviewed since the Ordinary Administrative Radio Conference, Geneva, 1959.

4. Recommendation No. 204 of the World Administrative Radio Conference, Geneva, 1979 as susperseded by Recommendation No. 204 of the World Administrative Radio Conference for the Mobile Services, Geneva, 1983, refers to certain anomalies and the need to bring the Radio Regulations into accord with the needs and practices of the mobile services concerned.

5. There are numerous other Resolutions and Recommendations of the World Administrative Radio Conference for the Mobile Services, Geneva, 1983, many of which request consideration and decision by the next competent World Administrative Radio Conference, i.e. the WARC–MOB 1987.

6. It would, in broad terms, be necessary for that Conference:

(a) To review and, where necessary, revise those parts of the Radio Regulations and certain appendices thereto pertaining to the mobile services, which were excluded from a full review and revision by the World Administative Radio Conference, Geneva, 1979;

(b) To review and, where necessary, further revise those parts of the Radio Regulations which were open to review and revision by the World Administrative Radio Conference for the Mobile Services, Geneva, 1983;

(c) To ensure that, in reviewing and revising the provisions of Chapters IX, X, XI and XII of the Radio Regulations and certain appendices:

(i) The anomalies highlighted in Recommendation No. 204 of the World Administrative Radio Conference for the Mobile Services, Geneva, 1983, are dealt with;

(ii) These four chapters are brought into accord with the current needs and practices of the mobile services concerned;

(d) To review and take appropriate action upon the following Resolutions and Recommendations of the World Administrative Radio Conference, Geneva, 1979, and the World Administrative Radio Conference for the Mobile Services, Geneva, 1983:

WARC 1979

Resolution Nos. 201, 300, 301, 302, 303, 304, 306, 307, 308, 311, 314, 400, 402, 403, 404, 406, 600, 601;

Recommendations Nos. 7, 9, 203, 300, 301, 302, 303, 304, 305, 306, 307, 308, 310, 311, 313, 400, 405, 406, 600, 605.

WARC for the Mobile Services, 1983

Resolutions Nos. 18, 39, 200, 203, 204, 206, 310, 317, 318, 319, 320, 321, 704;

Recommendation Nos. 204, 313, 314, 315, 317, 604, 713.

[(e) To take into account the results of the Region 1 VHF FM Broadcast RARC that pertain to the aeronautical incompatibility situation]

Appendix 2

The following table summarizes the results of a survey of usage on May 16, 1983 in connection with determining the need for digital selective calling frequencies. The table lists the number of messages by type (manual Morse, voice and radioteletype, ship to shore and shore to ship at public coast stations and the number of telephony messages at limited coast stations.

NUMBER OF MESSAGES, BY TYPE, ON MAY 16, 1983

Hour	Ship to shore				Shore to ship				
	CW	Voice	Rtty	Total	CW	Voice	Rtty	Total	Total
0100	134	173	1,018	1,325	82	121	370	[illegible]	[illegible]
0200	88	122	1,029	1,239	72	[illegible]	411	652	[illegible]
0300	134	130	931	1,195	[illegible]	143	[illegible]	447	[illegible]
0400	[illegible]	[illegible]	[illegible]	855	[illegible]	99	172	311	16
0500	[illegible]	111	498	707	15	[illegible]	[illegible]	[illegible]	[illegible]
0600	45	105	245	395	[illegible]	[illegible]	[illegible]	[illegible]	13
0700	42	118	142	302	11	33	[illegible]	[illegible]	10

[1] While this is not the official version, we do not anticipate significant changes from the list that will be forthcoming from the ITU Secretary-General.

NUMBER OF MESSAGES, BY TYPE, ON MAY 16, 1983—Continued

Hour	Ship to shore				Shore to ship				
	CW	Voice	Rtty	Total	CW	Voice	Rtty	Total	Total
0800	25	153	161	339	8	35	66	107	14
0900	28	193	87	306	2	50	34	86	13
1000	51	212	148	409	5	35	36	76	21
1100	29	203	326	558	15	105	153	275	44
1200	55	158	473	686	22	14	134	170	86
1300	115	226	765	1,106	43	228	207	478	83
1400	146	263	758	1,167	55	167	312	564	82
1500	153	394	953	1,500	61	85	362	508	61
1600	178	349	930	1,456	36	218	506	760	54
1700	190	360	958	1,512	46	178	520	744	53
1800	201	409	1,004	1,614	54	181	523	788	59
1900	245	355	1,049	1,649	59	189	552	810	86
2000	130	339	1,232	170	69	235	490	704	72
2100	211	317	1,242	1,770	74	212	489	775	85
2200	114	307	1,267	1,688	107	293	485	885	76
2300	127	233	1,123	1,483	80	103	383	515	77
2400	153	233	1,021	140	175	164	391	730	63

[FR Doc. 84-17115 Filed 6-26-84; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-713-DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA-713-DR), dated June 21, 1984, and related determinations.

DATE: June 21, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice: Notice is hereby given that, in a letter of June 21, 1984, the president declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms, high winds and flooding beginning on or about June 6, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You also are authorized to provide necessary Public Assistance in the affected areas when these requirements are known and an acceptable State commitment for these purposes is provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Joseph E. Hayes of the Federal Emergency Management Agency to act as the Federal Coordinating officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Buchanan County for Individual Assistance only.

Platte County as an adjacent county for Individual Assistance.

Andrew, Atchison, De Kalb and Holt Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance. Billing Code 6718-02)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-17051 Filed 6-26-84; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003800-002.

Title: Long Beach Marine Terminal Agreement.

Parties:

City of Long Beach
California United Terminals

Synopsis: The amendment modifies the basic agreement by extending for one additional year the modification previously approved under Amendment No. 1, whereby compensation paid by California United Terminals for the use of the assigned premises would be equal to compensation paid by comparable terminals at the Port of Long Beach. In addition, the amendment will even out the compensation payments throughout the year rather than having it paid in the first part of each lease year.

Agreement No.: 224-004076-002.

Title: Los Angeles Marine Terminal Agreement.

Parties:

The City of Los Angeles
Marine Terminals Corporation of Los Angeles

Synopsis: The amendment modifies the basic agreement by deleting 6 acres from Marine Terminal's premises at Berth 231, Terminal Island, California, and adds 6 acres to Evergreen Marine Corporation's premises at Berths 232-236. In consideration for the reduction in acreage, the term of Marine Terminal's lease will be extended by two years from March 31, 1986 to March 31, 1988. Charges due under the Port of Los Angeles Tariff No. 3 will be eliminated.

Agreement No.: 224-004087-001.

Title: Los Angeles Marine Terminal Agreement.

Parties:

The City of Los Angeles
Evergreen Marine Corporation (Taiwan) Ltd.

Synopsis: The basic agreement is modified by the Port of Los Angeles by increasing Evergreen's leased premises by 6 acres at Berths 232-236, Terminal Island. The increase in size necessitated

the concurrent reduction of the terminal area assigned to Marine Terminals Corporation.

Agreement No.: 223–004149–001.
Title: Los Angeles Marine Terminal Agreement.
Parties:

The City of Los Angeles
Maritime Services International
(Pasha Maritime Services)

Synopsis: The amendment modifies the basic agreement by changing the name of the tenant at Berths 178–181, Wilmington, California from Maritime Services International to Pasha Maritime Services, and adding to the premises 16.74 acres at Berths 175–177. The minimum guarantee for compensation will be increased to $298,583 per year.

Agreement No.: 202–005680–036.
Title: Pacific-Straits Conference.
Parties:

American President Lines, Ltd.
A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment restates the previously approved agreement, rearranging and rewording it to the extent necessary to comply with the Commission's interim rules concerning the form and content of agreements.

Agreement No.: 202–006060–028.
Title: Pacific/Indonesia Conference.
Parties:

American President Lines, Ltd.
A.P. Moller-Maersk Line

Synopsis: The proposed amendment restates the previously approved agreement, rearranging and rewording it to the extent necessary to comply with the Commission's interim rules concerning the form and content of agreements.

Agreement No.: 202–009836–015.
Title: Malaysia-Pacific Conference Agreement.
Parties:

American President Lines, Ltd.
A.P. Moller-Maersk Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment restates the previously approved agreement, rearranging and rewording it to the extent necessary to comply with the Commission's interim rules concerning the form and content of agreements.

Agreement No.: 024–010600.
Title: New Orleans Marine Terminal Agreement.
Parties:

The Board of Commissioners of the
Port of New Orleans
Ceres Gulf, Inc.

Synopsis: Agreement No. 024–010600 provides that the Board of Commissioners of the Port of New Orleans (Board) will lease to Ceres Gulf, Inc., (Ceres) premises at Berths 4 and 5, Jourdan Road Terminal, New Orleans. Ceres will use the premises as a public multipurpose cargo handling terminal. The lease will run for five years with an extension option of one additional five-year period. Dockage and wharfage charges will be the same as published in the Board's Dock Department Tariff.

By Order of the Federal Maritime Commission.

Dated: June 22, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–17129 Filed 6–26–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

American National Bankshares, Inc., et al.; Formations of; Acquisitions by; Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Compay, Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 19, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *American National Bankshares, Inc.*, Danville, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to American National Bank & Trust Company of Danville, Danville, Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *White County Bancshares, Inc.*, Cleveland, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of White County Bank, Cleveland, Georgia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Bancorp, Inc.*, Joliet, Illinois, to acquire 100 percent of the voting shares of the successor by merger to First National Bank of Carthage, Carthage, Illinois.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Corydon State Bancorp.* Corydon, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Corydon State Bank, Corydon, Indiana.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *American National Bancshares, Inc.*, Waco, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of American National Bank, Waco, Texas.

2. *Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of North Belt National Bank, Harris County, Texas, a *de novo* bank.

3. *National Bancshares Corporation of Texas*, San Antonio, Texas; to acquire 100 percent of the voting shares of Borne State Bank, Borne, Texas.

Board of Governors of the Federal Reserve System, June 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc–84–17031 Filed 6–26–84; 8:45 am]

BILLING CODE 6210–01–M

Southtrust Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to

banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SouthTrust Corporation,* Birmingham, Alabama; to engage *de novo* through its subsidiary, SouthTrust Financial Services, Inc., Birmingham, Alabama, in making and servicing loans; issuance and sale of money orders, savings bonds and travelers checks; securities brokerage services; leasing personal or real property; underwriting credit life, accident and health insurance and insurance sales related to extensions of credit.

Board of Governors of the Federal Reserve System, June 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-17032 Filed 6-26-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management System, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve the extension of an existing information collection.

ADDRESS: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert, GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Sheila M. Dutton, Public Buildings Service, Office of Buildings Management, 202-566-1563.

SUPPLEMENTARY INFORMATION:

1. *Purpose.* Applicants complete GSA Form 3453 to request the use of public space in Federal building for a cultural, recreational or educational activity.

2. *Annual reporting burden.* This is estimated as follows:

3. *Obtaining copies of proposals.* Requestors may obtain copies from the Directives and Reports Management Branch (ATRAI), Room 3007, GS Building, Washington, DC 20405, telephone 202-566-0666.

Dated: June 21, 1984.

William W. Hiebert,

Acting Director, Information Management Division.

[FR Doc. 84-17030 Filed 6-26-84; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement Program for Capacity Building in Occupational Safety and Health for State, Territorial, and Local Public Health Departments

The Centers for Disease Control (CDC) announces that competitive applications are invited for cooperative agreements with State, territorial, and local health departments to enable them to build their capacity in three distinct areas: State initiated occupational health activities, occupational injury and fatility surveillance, and occupational/environmental capacity building activities. The cooperative agreements will be awarded and administered by CDC (jointly by the National Institute for Occupational Safety and Health (NIOSH) and the Center for Environmental Health (CEH)) under the research and demonstration grant authority of section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)) and section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)). Program regulations applicable to these grants are in Part 87, "National Institute for Occupational Safety and Health Research and Demonstration Grants," of Title 42, Code of Federal Regulations. Applications responsive to this announcement are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs nor regulations (42 CFR Parts 122-123) implementing the National Health Planning and Resource Development Act of 1974, as amended. It is not expected that Office of Management and Budget clearance will be required for this project.

Background

CDC is the Nation's reference center for disease containment and prevention activities. CDC's disease containment and prevention activities have historically been performed either through or with State and local health agencies, as these political subdivisions have principal responsibility for the protection of public health through regulatory authority and the delivery of public health program services. State and local health departments also possess expertise in both disease surveillance and epidemology. That expertise has developed over the years as a direct response to the problems they are charged with resolving. That expertise can and should be used to address occupational safety and health problems in the States' arena.

In 1982, NIOSH surveyed the 54 State and territorial health agencies in an effect to determine their interest in occupational safety and health activities, their current involvement, and to catalog occupational safety and health activities they would like to perform. Of the 54 surveyed, 40 indicated both an interest and desire in a cooperative venture with NIOSH to perform occupational safety and health activities that were not within the jurisdiction of other State or Federal agencies or other State agencies. To address special occupational health problems within their jurisdiction, the States and territorial health agencies proposed activities in the areas of surveillance, since State laws and regulations govern the reporting of basic vital statistics and disease morbidity; epidemiology, in which they have expertise; and special projects, which weds their surveillance systems with

their expertise in epidemiology. The State's desire to perform these activities is based upon their mandate to protect the public's health, in the workplace or elsewhere.

In addition to the two occupational safety and health components found in this request, joint occupational and environmental projects are being supported. Historically, there has been a long series of occupational and environmental health problems requiring the response and cooperation of State and local public health agencies and CDC. These occasions have arisen in industrial and agricultural settings and chemical waste areas where pollution and danger threatened the health of workers, the general population, and the environment all at the same time. Proper responses to these continuing events require improved State capacity in terms of technologic expertise, experienced staff, and uniform methodological approaches.

I. Purpose

This cooperative agreement program is an effort to assist State and local health departments in certain occupational safety and health programs and in the expansion of State capacities in the area of occupational and community environmental public health. This program is intended to assist these agencies in developing and sustaining components to identify, control, contain, or prevent occupationally-related morbidity and mortality. Emphasis is placed upon three areas: State initiated occupational safety and health acitivities, occupational fatality and injury surveillance, and occupational/environmental capacity building activities. In addition, the CDC acknowledges the fact there is often more than one State agency involved in activities addressing environmental and occupationally related morbidity/mortality due to injury or illness. Most favorable consideration will be given to those applications that define the participatory role of other State agencies, NIOSH Educational Resource Centers, and other public and private organizations whose commitment is necessary for project completion. The application should be accompanied by letters of endorsement from those participating agencies and organizations.

II. Collaborative Activities

A. Scope—State Initiated Occupational Health Activities

1. It is recognized that the State Initiated Occupational Safety and Health Activities category is broad in its range. The three activities listed under this category (i.e., Surveillance of Occupational Disease and Conditions; Occupational Epidemiology; and Special Projects) are provided only as examples for the applicants and do not represent distinct subgroups in this category.

2. The applicants should address one or more of the Top Ten Leading Work-Related Diseases and Injuries as defined below:

a. Occupational Lung Diseases: asbestosis, byssinosis, silicosis, coal workers' pneumoconiosis, lung cancer, occupational asthma.

b. Musculoskeletal Injuries: disorders of the back, trunk, upper extremity, neck, lower extremity, traumatically induced Raynaud's phenomenon.

c. Occupational Cancers (other than lung): leukemia; mesothelioma; cancers of the bladder, nose, and liver.

d. Amputations, fractures, eye loss, lacerations, and traumatic deaths.

e. Cardiovascular Diseases: hypertension, coronary artery disease, acute myocardial infaraction.

f. Disorders of Reproduction: infertility, spontaneous abortion, teratogenesis.

g. Neurotoxic Disorders: peripheral neuropathy, toxic encephalitis, psychoses, extreme personality changes (exposure-related).

h. Noise-induced loss of hearing.

i. Dermatologic Conditions: dermatoses, burns (scaldings), chemical burns, contusions (abrasions).

j. Psychologic Disorders; neuroses, personality disorders, alcoholism, drug dependency.

3. *Surveillance of Occupational Disease and Conditions (Counting and Dissemination).* Each State health department has at least one surveillance system within their agency over which they have legal authority. In addition, most State health departments have access to data bases in sister State agencies. Funds will be provided to reconfigure the existing system and to defray expenses connected with merging existing data bases available from sister State agencies so that occupationally-related morbidity and mortality can be identified. The occupationally-related morbidity and/or mortality events to be tracked can be one or numerous but the selected events must address either a perceived or actual occupational health or safety problem(s) within their jurisdiction. Examples of this activity could include tracking one or more of the Sentinel Health Events (occupational) as described in the American Journal of Public Health (1983.73(a):1054–1062) matching morbidity/mortality data bases with bases from sister agencies; or tracking one or more of the diseases/injuries listed in the NIOSH "Ten Leading Work-Related Diseases and Injuries."

a. *Recipient Public Health Agency Activities*

i. Design and conduct surveillance activities directed to improve reporting of occupationally-related morbidity and mortality and injuries within the health agency's jurisdiction. In addition, establish a mechanism for information sharing among all interested parties.

ii. All pertinent established information/reporting systems with physicians, hospitals or clinics, cancer registries, laboratories, and other State agencies for identifying and reporting occupationally-related morbidity and mortality should be included.

iii. Prepare a detailed report describing the modifications made to the surveillance system; the disease, condition, and injury entities tracked; a description of the predominate occupationally-related morbidity and mortality found, including a descripition of the population at risk; and the remedial action plan initiated or planned for each of the problems identified and disseminate to other interested public health agencies after collaboration with CDC.

b. *Centers for Disease Control Activities*

i. Collaborate in the design, development, and implementation of the surveillance system, including the selection of diseases and conditions to be tracked, the data bases to be used, and the display format.

ii. Collaborate in the design, development, and implementation of reporting systems.

iii. Collaborate in the dissemination of the recipient's final report to other States with similar characteristics in an attempt to interest other States in similar activities.

4. *Occupational Epidemiology (Hypothesis Generating).* States possess varying levels of epidemiologic expertise. This expertise was developed in response to the States' mandate to protect the public health of their constituents. Currently in most States, that expertise is primarily in the area of infectious disease and nonoccupational chronic disease. Those same epidemiologic principles can be applied to occupationally-related morbidity and mortality. Funds will be provided to assist States in applying epidemiologic methods to those problem(s) defined through the surveillance system or based upon other supportable information/data. Favorable

consideration will be given to those applications that address problems with practical solutions as opposed to those emphasizing long-term research activities with no known solution. Examples of this activity would include matching excessive occupationally-related morbidity/mortality to an occupation, population and/or geographic area; and duplicating previous studies in targeted populations, industries, or occupations for which solution to the problem(s) can be applied (such as health care providers exposure to waste anesthetic gasses). Most favorable consideration will be given to proposals relating to the Top 10 previously listed and issues of occupational-envrionmental concern. Emphasis should be placed on both service delivery and building State capacity in these areas.

a. *Recipient Public Health Agency Activities*

i. Design, develop, and implement an epidemiolgic hypothesis(es) around known or suspected occupationally-related morbidity and mortality within their jurisdiction. Knowledge of the excessive morbidity/mortality will be derived from the existing surveillance system or other supportable information/data.

ii. The problem(s) addressed must have a reasonable and achievable solution(s).

iii. The applicant must prepare a detailed report describing the problem(s) addressed, a suggested remedial action plan, and the proposed outcome, and disseminate to other interested public health agencies after collaboration with CDC.

b. *Centers for Disease Control/NIOSH Activities*

i. Collaborate in the selection of problem(s) and design of the epidemiologic plan.

ii. Collaborate in the selection of the remedial action plan.

iii. Collaborate in the dissemination of the recipient's final report to other States with similar characteristics and problems in an attempt to interest other States in similar activities.

5. *Special Projects (Hypotheses Testing).* Funds will also be provided to enable States to undertake special projects targeted to specific industries, occupational hazards, or populations within their jurisidiction. The special projects should be based on supportive data indicating a potential problem. These special projects should be of a short-term nature and should provide a resolution to the problems identified. This activity will involve extensive field work—"hands-on activity." Examples of this activity might include measuring exposure levels in a targeted industry, occupation, or population; performing medical evaluations of targeted population; implementation of remedial actions; or conducting epidemiologic surveys based on available data or questionnaires.

a. *Recipient Public Health Agency Activities*

i. Design, develop, and implement epidemiologic study(ies) targeted at a specific industry, hazard, or population. The project must have a beginning and end point with an achievable resolution to the targeted problem.

ii. The project must be sufficiently defined to withstand intense scientific scrutiny.

iii. The applicant must prepare a detailed report describing the problem(s) addressed, the remedial action applied, and the outcome, and disseminate to other interested public health agencies after collaboration with CDC.

b. Centers for Disease Control/NIOSH Activities

i. Collaborate in the selection of problem(s), design of the study(ies), and remedial action.

ii. Assure scientific integrity of the study.

iii. Collaborate in the dissemination of the recipient's final report to other States with similar characteristics and and problems in an attempt to interest other States in similar activities.

B. Occupational Injury and Fatality Surveillance

1. A second category for which applications will be accepted is in the area of fatality and injury surveillance. The Division of Safety Research (DSR) of NIOSH has adopted a long-term commitment to improve the surveillance and epidemiology of fatal occupational (work-related) injuries. DSR is particularly interested in expanding the data bases from which estimates of occupational traumatic injury fatalities are made. To accomplish this goal, DSR has identified a series of studies and data analyses which may improve their ability to accurately assess the extent of work-related fatal and other serious disabling injuries. Examples of mortality data studies include:

—Standard mortality ratio and proportionate mortality ratio analyses in specific State or other regional jurisdictions which assess occupational and industrial injury risk. Such analyses entail the coding of death certificates by work-relatedness of injury as a cause of death and populations of workers employed by occupational and industrial classifications.

—Death rates for occupational injury fatalities, where feasible, by occupation, industry, age; and sex.

—Linkage of death certificate, medical examiner report, hospital discharge report, and emergency room report systems to OSHA generated or other State agency generated accident investigation reports.

—State, city, or other jurisdictional assistance with DSR's Fatal Accident Circumstances and Epidemiology program. Currently, DSR works with collaborating medical examiners to identify cases for study relatively sson after a fatal occupational injury occurs. A case-comparison study based on the findings is planned, and State and city health personnel may benefit from the participation.

—Examples of morbidity data studies include:

—Special studies of interest which link high injury-risk industries and occupations specific to the State or city to population variables, health effects, and exposures. Case-comparison studies of specific natures of injury, such as amputations and fractures, or of specific injury types, such as falls, caught-in types, and overexertion types of injury are encouraged.

a. *Recipient Public Health Agency Activities*

i. Design and conduct surveillance activities in line with the above examples.

ii. Pursue, develop, and maintain relationships with sister State agencies to assure that all data available are included in the surveillance activity.

iii. The applicant must prepare a detailed report describing any modifications made to the surveillance system; the injuries, fatalities, occupations, and risk factors tracked; a description of the predominant occupationally-related injury(ies) found, including a description of the population at risk; and the remedial action plan initiated or planned for each of the problems identified, and disseminate to other interested public health agencies after collaboration with CDC.

b. *Centers for Disease Control activities*

i. Collaborate in the design, development, and implementation of the injury surveillance system including the selection of injuries and their causes to be tracked, the data bases to be used, and the display format.

ii. Assist, to the limit of resources available, in the training of State and local agency personnel in coding procedures and all other highly technical aspects of the proposed activities.

iii. Collaborate in the dissemination of the recipient's final report to other States with similar characteristics in an attempt to interest other States in similar activities.

C. Occupational/Environmental Capacity Building

CDC (NIOSH and CEH) has developed numerious programs during past years to improve surveillance, evaluate hazards and exposure, and implement prevention techniques. Continued progress can best be achieved through development of appropriate technology in the States. Certain Federal legislation related to hazardous substance control programs such as the Comprehensive Enavironmental Response Compensation and Liability Act (Superfund), define certain Federal and State relatinships and responsibilities but do not cover all environmental and occupational problems within a State's jurisdiction.

Funds will be provided to applicants to assist them in performing some or all of the following activities:

1. *Laboratory*

Each State health department has some laboratory capacity for performing measurements on environmental or biological samples for assessing potential human exposure to environmental toxicants. Funds will be provided to assist State laboratories to increase their analytical capacity for investigating problems related to environmental/occupational public health. Favorable consideration will be given to those studies that address problems with practical solutions as opposed to proposals emphasizing long-term research activities. Most favorable consideration will be given to proposals relating to the development of technology for measuring body burdens of environmental toxicant sin human tissues and fluids; the development of technology for the organ-specific diagnosis of health effects associated with potential exposure to environmental toxicants; the acquisition of basic information required for the selection of appropriate laboratory tests; and the devlopment of quality control/quantity assurance programs for laboratory generated data associated with environmental health studies. Proposals are invited on studies in population subgroups relating to measuring tissue polychlorinated biphenylenes, dioxins, and furans, and assessing biochemical markers of disease associated with toxic liver and kidney States. Emphasis should be placed on both service delivery and building State capacity in the areas.

a. *Recipient Public Health Agency Activity*

i. Design, develop, and implement a laboratory study around known environmentally and occupationally related population health problems within their jurisdiction.

ii. The applicant must prepare a detailed report on the study, suggest improvements that can be made in the study, and propose how a similar study can best be implemented in other States. The applicant must disseminate this report to other interested public health agencies after collaboration with CDC.

iii. The collaborating groups will prepare appropriate publications.

b. *Centers for Disease Control Activities*

i. Collaborate in the selection of problem(s) and design of the study.

ii. Collaborate in the design, development, and implementation of data handling and reporting systems.

iii. Collaborate in the preparation of appropriate publications.

2. *Surveillance*

There are a number of existing data and data bases available in States which, when combined in some way, could be used to identify occupational/environmental hazards. There are a number of priority chemicals that need to be identified for data base development. Their exposure pathways and human toxicity must be defined as well as other relevant information as a basis for public health action. Funds will be provided to assist States for merging existing data bases for expanding the surveillance to include additional priority chemicals that pose a public health threat to the worker, the population at large, and the environment.

a. *Recipient Public Health Agency Activities*

i. Design surveillance systems and conduct surveillance activities directed to improved reporting of environmentally and occupationally related morbidity and mortality, within the agency's jurisdiction. Expand existing systems by adding priority chemicals. In addition, establish a mechanism for information sharing among all interested parties.

ii. Include all established systems with physicians, hospitals or clinics, cancer registries, laboratories, and other State and local agencies for identifying and reporting environmentally and occupationally related morbidity and mortality.

iii. The applicant must prepare a detailed report describing the modifications made to the surveillance system; the disease, condition, and injury entities tracked; a description of the principal environmentally and occupationally related morbidity and mortality types identified, including a description of the population at risk; and a remedial action plan initiated or planned for each of the problems identified and disseminate to other interested public health agencies after collaboration with CDC.

b. *Centers for Disease Control Activities*

i. Collaborate in the design, development, and implementation of the surveillance system including the selection of diseases, conditions, and chemical exposures to be tracked, the data bases to be used, and the display format.

ii. Collaborate in the design, development, and implementation of reporting systems.

iii. Collaborate in the dissemination of the recipient's final report to other State and local public health agencies with similar characteristics to create interest of others in similar activities.

3. *Special Projects*

The application of pesticides is probably the best example of the kinds of projects addressed in this section. In this single event, when pesticides are improperly used, those applying the pesticide—the ground crew, the environment, and in the case of food stuffs, the consumer—could suffer harmful effects. In this third category, CDC will provide funds for duly constituted public health agencies to identify, address, and resolve these and similar problems that are clearly environment/occupational as opposed to those that are clearly either environment or occupational.

a. *Recipient Public Health Agency Activities*

i. Design, develop, and implement epidemiologic study(ies) targeted at a specific industry, hazard, or population that involves both occupational and environmental threats to the public's health. The project must have a beginning and an end point with an achievable resolution to the targeted problem.

ii. The project must be sufficiently defined to withstand scientific scrutiny.

iii. The applicant must prepare a detailed report describing the problem(s) addressed, the remedial action applied, and the outcome, and disseminate to other interested public health agencies after collaboration with CDC.

b. *Centers for Disease Control/NIOSH Activities*

i. Collaborate in the selection of problem(s), design of the study(ies), and remedial action.

ii. Assure scientific integrity of the study.

iii. Collaborate in the dissemination of the recipient's final report to other States with similar characteristics and problems in an attempt to interest other States in similar activities.

III. Specific Long-Term Objectives of the Program

A. Surveillance of Occupational Disease and Conditions

Once the recipient's existing surveillance system is reconfigured for identification of occupationally-related disease and injury, and a system developed to disseminate the information to the appropriate people, the system will continue.

B. Occupational Epidemiology

The scope of the States' epidemiologic expertise will be expanded to include occupationally-related disease and injury.

C. Laboratory

Laboratory capacity will be expanded to include performing measurements on biologic samples for assessing potential human exposure to environmental toxicants.

D. Special Studies and Demonstration Program Development

Methodologies used to resolve specific environmentally and occupationally related disease and injury problems will have applicability to other targeted problems and can serve as models for other States and communities.

Eligibility Requirements

Eligible applicants for all categories are limited to all duly constituted public health agencies that are officially recognized as such, including local health departments, county health departments, city-county health departments, district health departments, and State and territorial health departments.

Availability of Funds

It is anticipated that approximately $1 million will be available in Fiscal Year 1984 to fund all three categories. Individual project awards are expected to range from $20,000 to $40,000 in the State Initiated category (5 to 10 awards), $25,000 to $50,000 in the injury and accident category (2 to 4 awards), and $50,000 to $150,000 in the Occupational/Environmental category (2 to 6 awards). Second through fifth year funding will depend upon the amount of available funds.

Methods and Criteria for Review

The review of applications will be conducted in accordance with PHS Grants Administration Manual Chapter PHS: 1-507, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the technical and scientific merit of the applications. Applications meeting the requirements for funding as outlined in the Purpose and Long-Term Objective Section will be evaluated and ranked for funding based upon the following factors:

—That the application addresses a problem directly related to one or more of the Ten Leading Work-Related Diseases and Injuries as defined by NIOSH for application submitted in the State Initiated Activity;
—That the application contains project objectives that are clearly established, obtainable, and for which progress toward attainment can and will be measured;
—That the applicant sufficiently details the development and implementation of the submitted project including an accurate listing of available data banks;
—That the applicant describe the size, qualifications, and time allocations of the proposed staff;
—That the applicant provides a proposed schedule for accomplishing the activities of the cooperative agreement including timeframes;
—That the applicant describes the degree to which the project can be expected to yield or demonstrate results that will be useful and desirable on a State or local basis;
—That the applicant provide a detailed description of how the project will be administered and evaluated;
—That health departments' occupational safety, health, and environment components created as a result of this activity will be judged according to the extent they they remain after funding ceases; and
—That the applicant sufficiently describes the severity of the problem, the estimated number of people affected, originality in approach, and methods to problem resolution.

Submission of Applications

The original and two copies of the application must be submitted on or before August 15, 1984, to Mr. Leo A. Sanders at the address given under **"FOR FURTHER INFORMATION CONTACT."** Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

FOR FURTHER INFORMATION CONTACT:

For application procedures and forms:

Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Road, N.E., Room 107A, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 262-6575 or FTS 236-6575

For technical information and assistance:

State Initiated Activities/Occupational Fatality and Injury ¡Surveillance: Phillip W. Strine, Public Health Advisor, Building 1, Room 3120, NIOSH, CDC, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 329-3190 or FTS 236-3190

Occupational/Environmental: Arthur Jackson, Deputy Director, CEH, CDC, Centers for Disease Control, Atlanta, Georgia 30333, Phone: (404) 452-4111 or FTS 236-4111

(The applicable Catalog of Federal Domestic Assistance Program Number is 13.262, Occupational Safety and Health Research Grants)

Dated: June 18, 1984.

Jeffrey P. Koplan,

Acting Director, Centers for Disease Control.

[FR Doc. 84-17116 Filed 6-26-84; 8:45 am]

BILLING CODE 4150-19-M

Food and Drug Administration

[Docket No. 76N-0462]

American Cyanamid Co.; Refusal To Approve Supplemental New Animal Drug Application; Availability of the Commissioner's Decision

AGENCY: Food and Drug Administration.

ACTION: Notice of availability of Commissioner's decision.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Commissioner of Food and Drugs has issued his final decision concerning a supplemental new animal drug application (NDA) for Proban Cythioate Oral Liquid, 1.6% ("Proban") submitted by the American Cyanamid Co. The Commissioner has determined that the supplemental NADA for Proban should not be approved. The decision therefore affirms the initial decision of the Administrative Law Judge, which held that the submission seeking Proban's approval failed to satisfy the Federal Food, Drug, and Cosmetic Act's safety and effectiveness requirements for new animal drugs. Differences between the Commissioner's and the Administrative Law Judge's opinions are specifically identified in the Commissioner's decision.

DATE: Effective June 20, 1984.

ADDRESS: The Commissioner's decision, including the final order, and all other documents related to the decision, may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Theodore E. Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-34880.

SUPPLEMENTARY INFORMATION: This notice is issued in accordance with 21 CFR 12.130(e).

Dated: June 21, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-17040 Filed 6-22-84; 11:05 am]

BILLING CODE 4160-01-M

[Docket No. 84C-0192]

DOW Corning Ophthalmics, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Dow Corning Ophthalmics, Inc., has filed a color additive petition proposing that the color additive regulations be amended to provide for the safe use of 4-[(2,4-dimethylphenyl)azo]-2,4-dihydro-5-methyl-2-phenyl-3H-pyrazol-3-one for coloring silicone resin contact lenses.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(b)(1), 74 Stat. 399-402 as amended (21 U.S.C. 376(b)(1))), notice is given that a color additive petition (CAP 4C0180) has been filed by Dow Corning Ophthalmics, Inc., P.O. Box 1767, Midland, MI 48640, proposing that the color additive regulations be amended to provide for the safe use of 4-[(2,4-dimethylphenyl)azo]-2,4-dihydro-5-methyl-2-phenyl-3H-pyrazol-3-one for coloring silicone resin contact lenses.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Managment Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 20, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-17044 Filed 6-26-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0216]

Halssen & Lyon; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Halssen & Lyon has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethyl acetate as a solvent in the decaffeination of tea.

FOR FURTHER INFORMATION CONTACT: Partricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4A3804) has been filed by Halssen & Lyon, c/o Pine Consultants, Inc., 1905 Pine St., Philadelphia, PA 19103, proposing that § 173.228 *Ethyl acetate* (21 CFR 173.228) be amended to provide for the safe use of ethly acetate as a solvent in the decaffeination of tea.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: June 20, 1984

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-17045 Filed 6-25-84; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program Board of Scientific Counselors' Meeting

Pursuant to Pub. Law 92-463, notice is hereby given of the meeting of the National Toxicology Program Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on July 26, 1984.

The meeting will be open to the public from 10:30 a.m. until adjournment for the purpose of providing peer review of the data from the chronic carcinogenesis bioassay of D & C Red No. 33 in Charles River CD-1 mice and Charles River Sprague Dawley rats. The bioassay was sponsored by the Pharmaceutical Manufacturers Association, conducted by International Research and Development Corporation, and submitted to the Food and Drug Administration (FDA) in support of permanent listing of D & C Red No. 33. The review will be conducted by the Technical Reports Review Subcommittee of the Board in conjunction with an *ad hoc* panel of experts.

The meeting will commence with a brief overview of the studies. This will be followed with presentations by scientific staff from the Center for Food

Safety and Applied Nutrition, FDA, concerning the pathology findings. Sufficient time will be allowed for public comment.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541–3971, FTS 629–3971, will furnish program information prior to the meeting and summary minutes subsequent to the meeting.

Dated: June 20, 1984.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 84–17046 Filed 6–26–84; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on July 27, 1984.

The meeting will be open to the public from 9:00 a.m. until adjournment. The primary agenda item is the completion of peer review on draft technical reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program. Reviews will be conducted by the Technical Reports Review Subcommittee of the Board in conjunction with an *ad hoc* panel of experts.

Draft technical reports on the following chemicals (listed alphabetically with Chemical Abstracts Service registry numbers, routes of administration, and NTP chemical managers for each study) are scheduled to be peer reviewed on July 27. Since NTP policy requires that a data audit be performed with a summary of the audit report included in the appendix of the technical report prior to peer review, there is the possibility that not all of the technical reports listed below will be reviewed at this meeting.

Chemical (CAS Registry No.)	Route	Chemical manager (telephone No.)
Asbestos, Chrysotile (12001–28–5).	Feed	Dr. E. E. McConnell [919–541–3267].
Benzene (72–43–2)	Gavage	Dr. J. E. Huff (919–541–3971).
[illegible] (107–07–3).	Dermal	Dr. D. Goldman (202–382–7335).
1,3-Dichloropropene (Telone II) (542–75–6).	Gavage	Dr. R. Yang (919–541–2947).
Dimethyl Hydrogen Phosphite (868–85–[illegible]).	Gavage	Dr. J. Dunnick (919–541–4611).
HC Blue No. 2 (33229–34–4).	Feed	Dr. J. Menner (919–541–4178).

In addition, the technical report on the toxicology and carcinogenesis studies of 1,1,1-trichloroethane (methylchloroform) (CAS No. 71–55–6) is being revised. If completed in time for the meeting a re-review will be done. This report was reviewed and approved by the Panel in February 1983. However, the subsequent data audit resulted in sufficient changes such that the NTP considers another peer review necessary

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919–541–3971), FTS (629–3971), will furnish final agenda, rosters of subcommittee and panel members, and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Dated: June 20, 1984.

David P. Rall, M.D., PhD.,

Director, National Toxicology Program.

[FR Doc. 84–17047 Filed 6–26–84; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Canon City, Colorado, District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Canon City District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 that a meeting of the Canon City District Advisory Council will be held on Thursday and Friday, July 19 and 20, 1984.

The Council will meet from 1 p.m. to 5 p.m. on July 19 at the Chaffee County Bank Building, 146 G Street, Salida, Colorado. On July 20th from 8 a.m. to 1 p.m. a field trip to view recreation and other uses of public lands along the Arkansas River is planned.

The meeting agenda will include:

1. The Northeast Resource Area Draft Resource Management Plan and Environmental Impact Statement.

2. Briefing on Cooperative Management Agreements.

3. Public presentations to the Council (open invitation).

The meeting is open to the public, transportation for the field trip is the responsibility of the individual. Persons interested may make oral presentations to the Council between 1:30 p.m. Thursday July 19, or they may file written statements for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESS: Anyone wishing to make a presentation to the Council orally or in writing should notify the District Manager, Bureau of Land Management, 3080 East Main (P.O. Box 311), Canon City, Colorado 81212 by July 18, 1984.

SUPPLEMENTARY INFORMATION: Summary minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Glen Wallace, (303) 275–0631.

Donnie R. Sparks,

District Manager.

[FR Doc. 84–17024 Filed 6–26–84; 8:45 am]

BILLING CODE 4310–JB–M

[C–35468 and C–36846]

Realty Action; Noncompetitive Sale of Public Lands in Chaffee County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action C–35468 and C–36846. Noncompetitive Sale of Public Lands in Chaffee County, Colorado.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value:

Serial No.	Parcel	Legal description	Acreage	Appraised value
C–35468	368B	Sixth Principal Meridian, Colorado. T. 11 S., R. 79 W., sec. 31, lots 59 (0.79), 60 (0.34), 61 (0.64), 70 (2.65)	4.42	$6,200
C–36846	368A	T. 12 S., R. 79 W., sec. 34, SW¼SW¼	20.00	$34,850

Parcel 368B is being offered to Walter Maass and Parcel 368A to Franklin

Springer, both by direct sale at the appraised fair market value. No other bids not bidders will be considered or accepted.

The sale to Walter Maass will resolve a long standing, but inadvertent occupancy trespass. Mr. Maass owns three cabins, one his family residence, located on public land. Purchase of this parcel will give him title to the land under occupancy. Disposal by direct sale, rather than by public auction, will protect his equity in the improvements, secure his tenure on the land, and eliminate a hardship that would occur if he were compelled to remove or otherwise dispose of the improvements.

The sale to Franklin Springer will allow better utilization of the isolated public land, which has no public access. Three adjoining landowners expressed no interest in obtaining the parcel, therefore, a direct sale is offered Mr. Springer.

The lands described above have not been used for and are not required for any Federal purpose. The locations and physical characteristics of these parcels make them difficult and uneconomical to manage as public land. Disposal will best serve the public interest. The disposal will be consistent with the existing land use plans of the Bureau. Disposal will not conflict with local planning and zoning regulations.

Each patent issued as a result of the proposed sale will be subject to all valid existing rights and reservations of record; and will contain a reservation to the United States for rights-of-way for ditches and canals constructed by the United States under the Act of August 30, 1890 [26 Stat. 391; 43 U.S.C. 945); and all minerals will be reserved to the United States as required by section 209(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719). Any patent issued for Parcel 368B will also be subject to those rights granted in the following rights-of-way.

1. Denver and Rio Grande Railroad C–094000, 200 feet wide.
2. Cheffee County Road No. 397, 25 feet wide.
3. Sangre De Cristo Electric Association, Inc., C–38662 powerline, 20 feet wide.

Sale Procedures

The designated bidders, Walter Maass and Franklin Springer, will be required to submit payment of a least 20 percent of the appraised fair market value by cash, certified or cashier's check, or money order to the BLM Canon City District Office, 3080 East Main, P.O. Box 311, Canon City, Colorado 81212, on September 6, 1984. The balance will be due within 30 days payable in the same form at the same location. Failure to submit the remainder of the payment within 30 days will result in cancellation of the sale offering and forfeiture of the deposit.

In addition to the appraised fair market value of the lands, the prospective purchaser of any of the lands offered by direct sale shall be required to pay the cost of publishing this notice in the **Federal Register** and for the three consecutive weeks in the local newspaper. These costs must be paid before a patent will be issued.

Further Information and Public Comment

Additional information concerning this sale, including the planning documents and environmental assessment, is available for review in the Royal Gorge Resource Area Office at 9th and Royal Gorge Boulevard, Canon City, Colorado. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Canon City District Office, Bureau of Land Management, 3080 East Main, P.O. Box 311, Canon City, Colorado 81212. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue his final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

Donnie R. Sparks,
District Manager.

[FR Doc. 84–17120 Filed 6–26–84; 8:45 am]
BILLING CODE 4310–JB–M

[N–13238]

Airport Lease Amendment; Nevada

June 15, 1984.

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), the Sandy Valley Associates have applied to amend its existing airport lease, serial number N–13238 to include the following described lands:

Mount Diablo Meridian, Nevada

T. 25 S., R. 57 E.,
Sec. 8, Lots 6 and 7.

The purpose of this notice is to inform the public that the filing of this application segregated the described public lands from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the Las Vegas District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126.

Kemp Conn,
District Manager.

[FR Doc. 84–17156 Filed 6–26–84; 8:45 am]
BILLING CODE 4310–HC–M

Fish and Wildlife Service

Preparation of Environmental Impact Statement on Proposal To Translocate Southern Sea Otters

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent.

SUMMARY: The U.S. Fish and Wildlife Service has under consideration a proposal to translocate a number of southern sea otters to a site within the species' historic range off the Pacific coast of the United States. In connection with this proposal, the Service intends to prepare an environmental impact statement [EIS]. This notice describes the proposed action and possible alternatives, outlines the scoping process that will be employed in preparing the EIS, and identifies the Service officials to whom questions and comments concerning the proposed action and EIS may be directed.

DATES: Scoping meetings will be held at the following locations on the dates and times indicated:

Date	Time	Location
July 23, 1984	5–9 p.m.	City Council Chambers, De La Guerra Plaza 735 Anacapa St., Santa Barbara, Calif.
July 25, 1984	7–10 p.m.	City Council Chambers, City Hall Complex, Room 6, Corner of Pacific and Madison Sts., Monterey, Calif.

Meetings of the interagency project review team (see **SUPPLEMENTARY INFORMATION** section of this notice) will be held at the following locations on the dates and times indicated:

Date	Time	Location
Aug. 6–7, 1984	10 a.m.–4 p.m. (each day).	Federal Building, Conference Room 13029, 450 Golden Gate Ave., San Francisco, Calif.
Aug. 23–24, 1984	10 a.m.—4 p.m. (each day).	Federal Building, Conference Room 2007, 450 Golden Gate Ave., San Francisco, Calif.

ADDRESSES: Questions and comments should be addressed to Skip Ladd or Carl T. Benz, U.S. Fish and Wildlife Service, Division of Endangered Species, 1230 N Street, 14th floor, Sacramento,

California 95814; Telephone: (916) 440–2791.

Effective July 1, 1984, Mr. Ladd's and Mr. Benz' address will be: U.S. Fish and Wildlife Service, Division of Endangered Species, 2800 Cottage Way, Room E–1815, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Skip Ladd or Carl T. Benz at the address and telephone number stated above.

Persons desiring to participate in any of the scoping meetings should contact Mr. Ladd or Mr. Benz in writing as soon as possible, indicating the meeting(s) to be attended and the issue(s) of concern regarding the EIS. Interested persons may also participate in the scoping process by submitting written comments to Mr. Ladd or Mr. Benz at the address above. Interested persons are reminded that the primary purpose of the scoping process is to identify, rather than debate or argue, the significant issues related to a proposed action. Additional public hearings or meetings will be held on later dates in order to provide opportunities to comment on the draft EIS.

SUPPLEMENTARY INFORMATION: As recommended in the Southern Sea Otter Recovery Plan, the U.S. Fish and Wildlife Service [Service] is considering a proposal to translocate a number of southern sea otters (*Enhydra lutris nereis*) to a site within the species' historic range off the Pacific coast of Washington, Oregon, or California. The proposed site currently under consideration as the preferred alternative is San Nicolas Island off the coast of southern California. The southern sea otter is listed as a threatened species under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and is also protected by the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* The proposed translocation is being considered as means of promoting the conservation and recovery of the species by expanding its population and range, reducing the threats posed by oil spills, pollution and other factors, and yielding valuable data and information concerning the species and its ecosystem.

Description of proposed action. The proposed action would involve issuance of experimental population regulations under section 10(j) of the Endangered Species Act, 16 U.S.C. 1539(j), a permit under the Endangered Species and Marine Mammal Protection Acts, and compliance with the consultation, non-jeopardy, and other provisions of section 7 of the Endangered Species Act, 16 U.S.C. 1536, as well as certain provisions of state law. As currently planned, the proposed translocation would occur in three phases. During the first phase: the existing population would be evaluated with regard to its population structure, range, abundance, and trends; a determination would be made as to the optimum size, age, and sex composition of a translocated population; a translocaton site would be selected; and baseline data would be collected concerning the ecological and socioeconomic aspects of the translocaton site.

The second phase would involve capturing, temporary holding, transportation to the translocation site, and release. Based on the results of past translocation efforts with Alaskan otters in Alaska, Canada, Washington and Oregon, and on the size and status of the existing southern sea otter population, translocation would probably involve 30–50 animals per year for a period of three to five years, depending upon the results of the first year's effort. The principal location of the capturing effort would be based on evaluation of three factors: feasibility of capturing, minimization of impacts on the existing population, and maximizing the probability of success of the translocation. Capture methods would probably include the following techniques or modifications thereof: surface tangle nets, dip nets used from a skiff, and diver-held devices. After capture and before transportation to the translocation site, the otters would be temporarily held in floating pens or shore-based tanks for data collection and marking. Marking would be by flipper tagging. Radio implants could also be employed, depending on safety and utility considerations. Otters would be transported to the translocation site by air. After arriving at the translocation site, the otters would be held and cared for in floating pens for a period of time to allow them to acclimate to the area and recover from the stress of transportation to the site. A small vessel would stand by continuously at the site to provide food and veterinary care for the otters. Translocation would be timed to allow release during late summer or early fall, the best time from the standpoint of weather conditions.

During the third phase, the principal emphasis would be on monitoring and data collection and analysis, containment, law enforcement, and public education. Monitoring, censusing, and/or studies would be done regarding number and distribution of the translocated otters, possible short-term postrelease decline in population, overall population trends, feeding, movement, reproduction and mortality patterns, and effects of the otters on the ecosystem. A substantial effort would be made to insure that the translocated otters remain and become established at the translocation site. Using existing and subsequently developed techniques, dispersing otters would be captured and returned to the translocation site or to the original capture location. A joint federal-state law enforcement program would be implemented to regulate access to the translocation site and protect the otters from harassment and taking. In addition, a joint federal-state education program would be implemented to increase public understanding of sea ottters and related issues. It is anticipated that the third phase would last a minimum of 5 to 10 years.

Possible alternatives. One alternative to the proposed action would be translocation to a different site. In this regard, a study was recently conducted in order to identify possible translocation sites. In addition to the preferred alternative site of San Nicolas Island, the study identified as potential translocation sites: the northern coast of Washington, the southern coast of Oregon, and the northern California coast. Whether any of these sites would be more suitable than the preferred alternative site of San Nicolas Island would depend on a wide variety of factors such as habitat suitability, oil spill risks, fisheries conflicts, natural capacity of the site to limit dispersal, ability to protect, monitor and care for the translocated population, law enforcement capabilities, and other considerations. Regardless of the site selected, the phases and component activities of a translocation would be essentially the same as those discussed above for the proposed action.

A second alternative would be translocation to the preferred alternative site in conjunction with containment of the existing population. This alternative appears to have substantial support from some commercial and sport fishing groups which apparently have concerns regarding the potential impact of expansion of the sea otter's range. However, this alternative would be very controversial because of strong opposition to it by other interested members of the public. In view of the current legal status of the southern sea otter under the Marine Mammal Protection Act and Endangered Species Act, pursuit of this alternative would require significant amendments to those Acts.

A third alternative would be no action. This alternative would avoid the monetary costs and signficant controversy associated with the

proposed action. However, it is questionable whether this alternative would be consistent with the conservation and recovery of the southern sea otter. This alternative would mean a greater probability that the species could be adversely affected by a large-scale oil spill, pollution, and other harmful impacts. In addition, this alternative would place the Service in a position of not responding to accumulating information that the species is no longer growing in population and may be undergoing a modest decline.

A fourth alternative to the proposed action would be to employ mitigation measures and/or regulatory actions other than translocation to promote the conservation and recovery of the southern sea otter. Under this alternative, emphasis would be placed on enhancing the growth of the existing sea otter population by identifying the factors responsible for the present low rate of growth, and then taking management actions appropriate to eliminate or reduce the detrimental influences of those factors. However, it is questionable whether this approach would produce the desired results in a sufficiently short period of time, even assuming that the factors responsible for limiting the growth of the existing population could in fact be identified and acted upon.

Other mitigation or regulatory measures that could be pursued would include: better means of regulating tanker traffic; more and improved oil spill containment equipment; additional rehabilitation centers to care for otters harmed by an oil spill; and increased restrictions on fishing methods and other human activities that result in incidental or other taking of otters. These measures could be pursued either as an alternative to translocation or in conjunction with translocation.

Scoping process. As stated above, the Service is requesting information and comments and holding a number of open meetings in order to determine the scope of issues to be addressed in the EIS and to identify which issues are significant and require in depth analysis and which issues are either not significant or have been adequately covered by prior environmental review. The scoping process will also serve to allocate assignments concerning preparation of the EIS, avoid duplication of effort, and integrate preparation of the EIS into the Service's decision making process.

In addition, the Service is hopeful that the information and discussion generated by the scoping process will help to reduce current controversy and promote consensus concerning proper management of the southern sea otter.

To facilitate identification of issues during the scoping process, interested persons may find review and consideration of the following questions to be useful:

(1) What factors should be addressed in a translocation plan—site, affected environment, number of animals, age/sex ratios, etc.?

(2) To what extent would the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, apply to a translocated population, and would amendments to that Act or the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, be necessary?

(3) To what extent would sections 7 and 9 of the Endangered Species Act apply to a translocated population?

(4) Would a translocated population be subject to containment?

(5) What would be the legal/regulatory significance of a successful, or unsuccessful, translocation?

(6) What is the current status and trend of the southern sea otter population?

(7) Does conservation of the southern sea otter warrant establishment of a translocated population?

(8) What are the risks to the southern sea otter from oil tanker and development activities, pollution, commercial fishing, other human activities, and natural factors?

(9) To what extent would a translocation reduce such risks?

(10) What level of annual recruitment to the population would be required to carry out a translocation?

(11) What are the alternatives to translocation?

(12) Would translocation itself pose a risk to the sea otter population?

(13) What studies, if any, would be necessary in connection with a translocation?

(14) Can the existing southern sea otter population be contained or zonally managed?

(15) How would translocation of sea otters likely affect the possible translocation sites?

(16) What would be the likely economic impacts of translocation?

As suggested by the Council on Environmental Quality, *see* 48 *FR* 34263–34264 (July 28, 1983), the Service intends to establish an interagency project review team made up of representatives from agencies such as the Service, California Department of Fish and Game, Marine Mammal Commission, and Minerals Management Service to participate in the scoping process and otherwise consult with the Service in the preparation of the EIS. All meetings of the interagency project review team would be open to and provide for participation and involvement by interested members of the public. (See **DATES** section of this notice for a list of the locations, dates and times for the meetings of the interagency project review team.)

The Service anticipates beginning the preparation of a draft EIS in September of 1984. As stated by the Council on Environmental Quality, "[s]ince the key purpose of scoping is to identify the issues and alternatives for consideration, the scoping process should 'end' once the issues and alternatives to be addressed in the EIS have been clearly identified. Normally this would occur during the final stages of preparing the draft EIS and before it is officially circulated for public and agency review." 48 *FR* 34264 (July 28, 1983).

The Service looks forward to working with all interested parties in the preparation of the EIS.

Dated: June 22, 1984.

F. Eugene Hester,

Acting Director, Fish and Wildlife Service.

[FR Doc. 84–17157 Filed 6–26–84; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Alaska Outer Continental Shelf; Availability of the Environmental Assessment on the Effects of Proposed Outer Continental Shelf Oil and Gas Lease Sale 87, Diapir Field Planning Area

The regulations, 40 CFR 1502.9(c)(1), for implementing the National Environmental Policy Act, as amended, require that a Federal Agency "shall prepare supplements to either the draft or final environmental impact statements (EIS's) if: (i) The Agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

The Minerals Management Service has reviewed the information in the subject Environmental Assessment (EA) and the information in the final EIS for this proposed sale and determined that a supplemental EIS is not required. Copies of the EA may be obtained by written request to Minerals Management Service (MS–644), 12203 Sunrise Valley Drive, Reston, Virginia 22091, or by

phone request to the Minerals Management Service, Environmental Evaluation Branch, (202) 343–6264.

Dated: June 15, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 84–17018 Filed 6–26–84; 8:45 am]

BILLING CODE 4310–MR–M

Training and Qualifications of Personnel in Well-Control Training

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of approved well-control training schools.

SUMMARY: As published in the **Federal Register** (43 FR 59551) December 21, 1978, the Minerals Management Service (MMS) is providing, for public information, a current list of MMS approved well-control schools.

FOR FURTHER INFORMATION CONTACT: Mr. B. J. Shoger, Minerals Management Service, Mail Stop 647, Reston, Virginia 22091, telephone (703) 860–7506.

SUPPLEMENTARY INFORMATION: On January 19, 1982, the MMS was established under Secretarial Order No. 3071. The **Federal Register** Notice (47 FR 7508) on February 19, 1982, published the MMSS–OCS–T 1 Training Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," Second Edition. The following is a list of MMS approved well-control schools:

MMS Approved Well-Control Schools

Legend

Job Classification

RH—Rotary Helper
TP—Toolpusher
DK—Derrickmen
OR—Operator's Representative
DR—Driller

Blowout-Preventer Stack Type

SUR—Surface BOP Stack
SS—Subsea BOP Stack

Rotary Helper and Derrickmen

1. Alaska United Drilling Company; RH, DK
2. Alaska Vocational Technical Center; RH, DK
3. Anglo Alaska/Nabors Alaska Drilling Company; RH, DK
4. Atlantic Pacific Marine Corp.; RH, DK
5. Atwood Group, Inc.; RH, DK
6. Atwood Oceanics, Inc.; RH, DK
7. Bailey-Shannon Drilling, Inc.; RH, DK
8. Basic Research and Training, Inc.; RH, DK
9. Bokenkamp Drilling Co., Inc.; RH, DK
10. Booker Drilling Co., Inc.; RH, DK
11. Broughton Drilling Company; RH, DK
12. Cactus International, Inc.; RH, DK
13. Challenger Drilling, Inc.; RH, DK
14. Chiles Drilling Company; RH, DK
15. Circle Bar Drilling Company; RH, DK
16. Cyclops Drilling Company; RH, DK
17. Dan-Tex International, Inc.; RH, DK
18. Diamond M Company; RH, DK
19. Dixilyn-Field Drilling Company; RH, DK
20. Dolphin-Titan International, Inc.; RH, DK
21. Dual Offshore Company; RH, DK
22. Fluor Drilling Service, Inc.; RH, DK
23. Global Marine Drilling Company; RH, DK
24. Goldrus Marine Drilling Company; RH, DK
25. Griffin-Alexander Drilling Company; RH, DK
26. Houston Offshore International, Inc.; RH, DK
27. Houtech Energy, Inc.; RH, DK
28. Huthnance Drilling Company; RH, DK
29. J.F.P. Drilling Co., Inc.; RH, DK
30. Keydril Company; RH, DK
31. Keyes Offshore, Inc.; RH, DK
32. Loffland Brothers Company; RH, DK
33. Marine Drilling Company; RH, DK
34. Marlin Drilling Company; RH, DK
35. Maurer Engineering, Inc.; RH, DK
36. Mayronne Company; RH, DK
37. Moran Drilling Corp.; RH, DK
38. MUDTECH; RH, DK
39. Nicklos Drilling Company; RH, DK
40. Noble Drilling Company; RH, DK
41. Ocean Drilling and Exploration Company (ODECO; RH, DK
42. O & U Drilling, Inc.; RH, DK
43. Penrod Drilling Company; RH, DK
44. Peter Bawden Drilling, Inc.; RH, DK
45. Phoenix Seadrill; RH, DK
46. Pool Offshore Company; RH, DK
47. Prentice and Records Enterprises, Inc.; RH, DK
48. Reading and Bates Drilling Company; RH, DK
49. Rowan Companies, Inc.; RH, DK
50. Salen Protexa Drilling Company; RH, DK
51. Santa Fe Drilling Company; RH, DK
52. Savage Drilling Company; RH, DK
53. Scan Drilling Company (U.S.A.), Inc.; RH, DK
54. Sea Drilling Corp.; RH, DK
55. Services, Equipment, and Engineering; RH, DK
56. Shell California Production, Inc.; RH, DK
57. Shell Offshore, Inc.; RH, DK
58. Shell Oil Company; RH, DK
59. South Texas Offshore Drilling Company; RH, DK
60. Teledyne Movible Offshore, Inc.; RH, DK
61. Temple Drilling Company; RH, DK
62. The Offshore Company; RH, DK
63. Transworld Drilling Company; RH, DK
64. Ventura College; RH, DK
65. Western Oceanics, Inc.; RH, DK
66. Zapata Offshore Company; RH, DK

Basic Course

1. Alaska Skill Center; DR, TP, OR; SUR, SS
2. Arco Oil and Gas Company; TP, OR; SUR, SS
3. Cape Code Community College; DR, TP, OR; SUR, SS
4. Chevron U.S.A. Inc.; OR; SUR, SS
5. Cities Service Company; OR; SUR, SS
*Colorado NW Community College; DR, TP, OR; SUR, SS
7. Conoco, Inc.; OR; SUR, SS
8. Cudd Pressure Control, Inc.; DR, TP, OR; SUR
9. Delta Drilling; DR, TP, OR; SUR, SS
10. Diamond M Company; DR, TP, OR; SUR, SS
11. Dixilyn-Field Drilling Company; DR, TP, OR; SUR, SS
12. Dresser Industries; DR, TP, OR; SUR, SS
13. Exxon U.S.A.; DR, TP, OR; SUR, SS
14. Global Marine Drilling Company; DR, TP, OR; SUR, SS
15. Gulf Oil Expl. and Prod. Company; DR, TP, OR; SUR, SS
*16. Houston Community College; DR, TP, OR; SUR, SS
17. IMCO Services; DR, TP, OR; SUR, SS
18. International Drilling Schools; DR, TP, OR; SUR, SS
19. Keydril Company; DR, TP, OR; SUR, SS
20. Loffland Brothers Company; DR, TP, OR; SUR
21. Louisiana State University; DR, TP, OR; SUR, SS
22. Marlin Drilling Company, Inc.; DR, TP, OR; SUR, SS
*23. Maurer Engineering, Inc.; DR, TP, OR; SUR, SS
24. Milchem, Inc.; DR, TP, OR; SUR, SS
25. Murchison Drilling Schools; DR, TP, OR; SUR, SS
26. NL Petroleum Services; DR, TP, OR; SUR, SS
27. ODECO; DR, TP, OR; SUR, SS
*28. Odessa College; DR, TP, OR; SUR, SS
29. Oilfield Training Seminars, Inc.; DR, TP, OR; SUR, SS
30. Oklahoma Petro. Training Corp.; DR, TP, OR; SUR, SS
31. Parker Drilling Company; DR, TP, OR; SUR, *
32. Penn State University; DR, TP, OR; SUR, *
33. Pool Offshore Company; DR, TP, OR; SUR, *
34. Prentice & Records Enterprises, Inc.; DR, TP, OR; SUR, SS
35. Preston L. Moore, Inc.; TP, OR; SUR
36. Reading & Bates Drilling Company; DR, TP, OR; SUR, SS
37. Rike Service, Inc.; DR, TP, OR; SUR, SS
38. Sedco, Inc.; DR, TP, OR; SUR, SS
*39. Shell Offshore Inc.; DR, TP, OR; SUR, SS
40. Shell Oil Company; DR, TP, OR; SUR, SS
41. Sturgis/Sheffield, Inc.; DR, TP, OR; SUR, *
42. TDA Training; DR, TP, OR; SUR, SS
43. Texaco; DR, TP, OR; SUR, SS
44. The Training Company; DR, TP, OR; SUR, SS
45. Triton Engineering Services; OR; SUR, SS
46. Union Oil Co. of California; DR, TP, OR; SUR, SS
47. University of Houston/Victoria; DR, TP, OR; SUR, SS
48. University of Oklahoma; DR, TP, OR; SUR, SS
49. University of S.W. Louisiana; DR, TP, OR; SUR, SS
50. University of Texas at Austin (PETEX); DR, TP, OR; SUR, SS
51. Ventura College; DR, TP, OR; SUR, SS

*Approved documented program—pending onsite evaluation.

52. Well-Control School, Inc.; DR, TP, OR; SUR, SS
53. WESTEC; DR, TP, OR; SUR, SS
54. Western Oceanic, Inc.; DR, TP, OR; SUR, SS

Refresher Course

1. Alaska Skill Center; DR, TP, OR; SUR, SS
2. Amoco Production Company; OR; SUR, SS
3. Arco Oil & Gas Company; TP, OR; SUR, SS
4. Cape Cod Community College; DR, TP, OR; SUR, SS
5. Chevron U.S.A., Inc.; OR; SUR, SS
6. Cities Service Company; OR; SUR, SS
*7. Colorado NW Community College; DR, TP, OR; SUR, SS
8. Conoco, Inc.; OR; SUR, SS
9. Cudd Pressure Control, Inc.; DR, TP, OR; SUR,
10. Delta Drilling Company; DR, TP, OR; SUR, SS
11. Diamond M. Company; DR, TP, OR; SUR, SS
12. Dixilyn-Field Drilling Company; DR, TP, OR; SUR, SS
13. Dresser Industries; DR, TP, OR; SUR, SS
14. Gulf Oil Expl. and Prod. Company; DR, TP, OR; SUR, SS
15. Houston Community College; DR, TP, OR; SUR, SS
16. IMCO Services; DR, TP, OR; SUR, SS
17. International Drilling School; DR, TP, OR; SUR, SS
18. Keydril Company; DR, TP, OR; SUR, SS
19. Loffland Brothers Company; DR, TP, OR; SUR
20. Louisiana State University; DR, TP, OR; SUR, SS
21. Marlin Driling Co., Inc.; DR, TP, OR; SUR, SS
*22. Maurer Engineering, Inc.; DR, TP, OR; SUR, SS
23. Milchem, Inc.; DR, TP, OR; SUR, SS
24. Murchison Drilling Company; DR, TP, OR; SUR, SS
25. NL Petroleum Services; DR, TP, OR; SUR, SS
26. ODECO; DR, TP, OR; SUR, SS
*27. Odessa College; DR, TP, OR; SUR, SS
28. Oilfield Training Seminars, Inc.; DR, TP, OR; SUR, SS
29. Oklahoma Petro. Training Corp.; DR, TP, OR; SUR, SS
30. Parker Drilling Company; DR, TP, OR; SUR, SS
31. Pool Offshore Company; DR, TP, OR; SUR, *
32. Prentice & Records Enterprises, Inc.; DR, TP, OR; SUR, SS
33. Preston L. Moore, Inc.; TP, OR; SUR
34. Reading & Bates Drilling Company; DR, TP, OR; SUR, SS
35. Rike Services, Inc.; DR, TP, OR; SUR, SS
36. Sedco, Inc.; DR, TP, OR; SUR, SS
37. Shell Oil Company; DR, TP, OR; SUR, SS
38. Shell Offshore, Inc.; DR, TP, OR; SUR, SS
39. Sturgis/Sheffield, Inc.; DR, TP, OR; SUR, *
40. Texaco; DR, TP, OR; SUR, SS
41. TDA Training, Inc.; DR, TP, OR; SUR, SS
*42. Tridon Engineering Services; OR; SUR, SS
43. Union Oil Co. of California; DR, TP, OR; SUR, SS
44. University of Houston/Victoria; DR, TP, OR; SUR, SS
45. University of Oklahoma; DR, TP, OR; SUR, SS
46. University of S.W. Louisiana; DR, TP, OR; SUR, SS
47. University of Texas at Austin (PETEX); DR, TP, OR; SUR, SS
48. Ventura College; DR, TP, OR; SUR, SS
49. Well-Control School, Inc.; DR, TP, OR; SUR, SS
50. WESTEC; DR, TP, OR; SUR, SS
51. Western Oceanic, Inc.; DR, TP, OR; SUR, SS

It is anticipated that periodic Notices of this type will be published in the future on an as needed basis.

Dated: June 20, 1984.

Price McDonald,

Acting Associate Director for Offshore Director for Offshore Minerals Management.

[FR Doc. 84-16856 Filed 6-26-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-162]

Cardiac Pacemakers and Components Thereof; Determination Not To Review Initial Determination Amending Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (ID) to amend the notice of investigation in the above-captioned investigation.

Authority: 19 U.S.C. 1337; 19 CFR 210.53 (c) and (h).

SUPPLEMENTARY INFORMATION: On May 4, 1984, the Telectronics respondents filed a motion (Motion No. 162-67) to amend the complaint and notice of investigation by deleting certain claims of the suit patents. Each of the claims involved had been added by Order No. 35, March 16, 1984, which the Commission determined not to review. The motion was opposed by complainant Medtronic Inc. on the grounds that the motion did not meet the good cause standard (19 CFR 210.2(d)) and that amendment of the notice is not the proper way to simplify the issues for the hearing. The motion was supported by the investigative attorney (Ms. Partner) on the grounds that complainant lacked the requisite good cause to add the claims at the time that complainant first moved to add those claims.

On May 25, 1984, the presiding officer (ALJ) issued an ID (Order No. 53) granting the motion in part. With regard to some of the claims, the ALJ found that complainant did not have good cause to move their joinder since, on the same day as the motion, complainant stated that it could not read those claims on the allegedly infringing devices. With regard to the other claims, the ALJ found that Motion No. 162-67 was in reality a motion for summary judgment, but that factual matters remained, so he denied the motion with regard to those claims.

The Commission has received neither a petition for review of the ID nor comments from other government agencies.

The amendments to the scope of investigation are: (A) delete claims 12 and 13 of U.S. Letters Patent 4,059,116; and (B) delete claim 5 of U.S. Letters Patent 4,312,355.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0493.

By order of the Commission.

Issued: June 22, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-17154 Filed 6-26-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-168]

Combination Punch Press and Laser Assemblies and Components Thereof; Decision Not To Review Initial Determination Terminating Investigation on Basis of Settlement Agreement

AGENCY: U.S. Internation Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review an initial determination (I.D., Order No. 21) to terminate this investigation on the basis of a settlement agreement.

Authority: 19 U.S.C. 1337; 19 CFR 210.53

SUPPLEMENTARY INFORMATION: Notice of the I.D. was published in the **Federal Register** of May 23, 1984, 49 FR 21807. No petitions for review or agency or public comments were received.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0311.

By order of the Commission.

Issued: June 20, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-17152 Filed 6-26-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-82A]

Headboxes and Papermaking Machine Forming Sections for the Continuous Production of Paper, and Components Thereof; Motion for Termination of Investigation Based on Consent Order Settlement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received a motion for termination of the above-captioned investigation on the basis of a consent order settlement.

Authority: The investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Termination on the basis of a consent order settlement is governed by §§ 210.51(d) and 211.20–211.22 of the Commission's Rules of Practice and Procedure (19 CFR 210.51(d) and 211.21–211.22.)

SUPPLEMENTARY INFORMATION: The investigation initially was conducted in 1981 to determine whether there was a violation of section 337 of the Tariff Act of 1930 in the importation and sale of papermaking machine apparatus alleged to infringe claims of U.S. Letters Patents RE 28,269 and 3,923,593. The Commission determined that a violation existed with respect to certain multi-ply headboxes and forming sections found to infringe the claims of both patents. 46 FR 57774 (Nov. 25, 1981). The investigation was reopened on July 7, 1983, pursuant to a judgment of the U.S. Court of Appeals for the Federal Circuit remanding the case to the Commission for reconsideration. 48 FR 32094 (July 13, 1983). Having entered a settlement agreement, the parties filed a motion on May 23, 1984, requesting termination of the investigation and the entry of a consent order. (Motion No. 82A–1C).

Copies of the settlement agreement (nonconfidential version), the motion to terminate, the proposed consent order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning the proposed termination of the investigation and the entry of a consent order. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after the publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a detailed statement of the reasons why confidential treatment should be granted. If confidential treatment is not granted, the Commission will return the submission (or portion thereof) to the submitter.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

Issued: June 20, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-17153 Filed 6-26-84; 8:45 am]

BILLING CODE 7020-02-M

[Investiation No. 337-TA-54B]

Multicellular Plastic Film; Decision Not To Review Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review an initial determination of the presiding officer in the above-captioned investigation granting petitioner Unipak (H.K.) Ltd.'s motion for summary determination of noninfringement.

Authority: 19 U.S.C. 1337, 1337a; 19 CFR 210.53; paragraph 3 of the Commission Order issued on June 29, 1979, in connection with Inv. No. 337–TA–54, Certain Multicellular Plastic Film (USITC Pub. 987, June 1979).

SUPPLEMENTARY INFORMATION: At the conclusion of Inv. No. 337–TA–54, the Commission, on June 29, 1979, ordered exclusion of multicellular plastic film manufactured abroad in accordance with the process disclosed by claims 1 and 2 of U.S. Letters Patent 3,416,984 ('984 patent) owned by Sealed Air Corporation of Saddle Brook, New Jersey. Paragraph 3 of the Commission's order provided that persons desiring to import multicellular plastic film into the United States could petition the Commission to institute such further proceeding as would be appropriate in order to determine whether the multicellular plastic film sought to be imported should be allowed entry into the United States.

On May 5, 1983, a petition was filed with the Commission on behalf of Unipak (H.K.) Ltd. of Hong Kong, requesting the Commission to institute further proceedings for the purpose of determining whether the process used by that firm to manufacture multicellular plastic film abroad would, if practiced in the United States, infringe claims 1 or 2 of Sealed Air Corporation's '984 patent.

Having considered Unipak's petition, the Commission on June 7, 1983, instituted an investigation to determine whether the process used to manufacture multicellular plastic firm abroad by Unipak would, if practiced in the United States, infringe claims 1 or 2 of the '984 patent.

On April 16, 1984, Unipak filed a motion for a summary determination that the process it uses to manufacture multicellular plastic film in Hong Kong would not, if practiced in the United States, infringe claims 1 or 2 of the '984 patent. The presiding officer granted Unipak's motion in an initial determination (Order No. 15) issued on May 22, 1984. A petition for review of the initial determination was filed on behalf of interested party Sealed Air Corporation. No other petitions for review or agency comments were received.

As a result of the Commission's decision in this matter, multicellular plastic film manufactured by Unipak in Hong Kong will no longer be barred from entry into the United States.

Copies of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0311.

By order of the Commission.

Issued: June 19, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-17151 Filed 6-26-84; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30439]

Gulf & Mississippi Railroad Corp.; Purchase (Portion) Exemption;—Illinois Central Gulf Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Gulf & Mississippi Railroad Corporation (G&M) has filed a petition under 49 U.S.C. 10505 seeking exemption from the requirements of 49 U.S.C. 10901 and any other pertinent provisions of 49 U.S.C. Subtitle IV for the acquisition of 713 miles of track known as the East Mississippi lines from Illinois Central Gulf Railroad Company. The Commission has determined that further information is required because the impact of the proposed acquisition cannot be ascertained from the present record.

DATES: Interested parties desiring to file comments must first file and serve on G&M's representative by July 12, 1984, a notice of intent to participate. G&M shall file evidence to supplement its petition by July 17, 1984. Responsive evidence shall be filed by August 16, 1984, and replies by September 5, 1984.

ADDRESSES: Send comments referring to Finance Docket No. 30439 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Betty Jo Christian, Steptoe & Johnson Chartered, 1250 Connecticut Avenue, NW., Washington, D.C. 20036

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: June 20, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-17057 Filed 6-26-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30437]

Texas City Terminal Railway Co.; Exemption—Issuance of Note

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Texas City Terminal Railway Company from the requirements of 49 U.S.C. 11301 for the issuance of a note in the principal amount of $2.5 million.

DATE: The exemption is effective on June 27, 1984. Petitions to reopen must be filed by July 17, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30437 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Mr. Griffith D. Lambdin, P.O. Drawer 591, Texas City, Texas 77590.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: June 20, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-17059 Filed 6-26-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment; E. L. Industries

Notice is hereby given that E. L. Industries (formerly the Elgin Corporation), Elgin Sweeper Company and Leach Company have filed with the United States District Court for the Northern District of Illinois, Eastern Division, a joint motion to terminate the Final Judgment in *United States* v. *The Elgin Corporation, Elgin Sweeper Company and Leach Company*, Civil Action No. 62 C 1544 (N.D. Ill. 1965); and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the Judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The Complaint in this case (filed on August 9, 1962) alleged that the defendants and unnamed co-conspirators had been engaged in a combination and conspiracy, and had been parties to unlawful contracts, agreements, and understandings in unreasonable restraint of interstate commerce in violation of Section 1 of the Sherman Act. According to the Complaint distributors of Elgin and Leach products were assigned exclusive territories and agreed to sell Elgin and Leach products only in the assigned territories, and only to specific customers or classes of customers assigned to the distributor. The Final Judgment (entered on February 5, 1965) enjoins defendants from restricting the territories within which or the persons to whom distributors may sell street cleaning equipment or trash truck bodies.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the Final Judgment would serve the public interest. Copies of the Complaint and Final Judgment, defendants' motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the Court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, Everett McKinley Dirksen Building, 20th Floor, 219 Dearbon Street, Chicago, Illinois 60604.

Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgment to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should

be addressed to John W. Clark, Chief, Special Trial Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone 202–724–6335).

Joseph H. Widmar,

Antitrust Division, Director of Operations.

[FR Doc. 84–17143 Filed 6–26–84; 8:45 am]

BILLING CODE 4410–01–M

Proposed Termination of Final Judgment; NL Industries

Notice is hereby given that NL Industries, formerly National Lead Company, and E. I. du Pont de Nemours and Company have filed with the United States District Court for the Southern District of New York a motion to terminate the Final Judgment in *United States v. National Lead Company, Titan Company, Inc., E. I. du Pont de Nemours and Company,* Civ. No. 26–258; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the Judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The Complaint in this case (filed in June 1944) alleged defendants had created a world-wide cartel in titanium compounds in conspiracy with German, British, Italian, Japanese and other foreign chemical companies in violation of Sections 1 and 2 of the Sherman Act. The Government contended, and the Court held, that agreements creating a world-wide patent pool of all present and future patents of the parties and embracing a division of the world into exclusive territories within which each of the parties was to confine its business activities with respect to patent protected and unpatented titanium compounds were unlawful under the Sherman Act.

The Final Judgment cancelled the agreements that were found to have restrained trade and ordered the defendants not to renew them and directed compulsory licensing, at reasonable royalties, of patents held at the time of its entry and those acquired by the defendants over the next five years. Disclosure, at reasonable prices, of monopolized know-how was also ordered. All patents which defendants were required to license to others have expired.

The Final Judgment, as presently in effect, enjoins each of the defendants from:

(1) Restricting any purchaser of titanium pigments in the use thereof; and

(2) Entering into an agreement with a producer or dealer of titanium pigments to grant an exclusive territory.

In addition to the stipulation containing the Government's consent, the Department also filed with the court a memorandum outlining the history of the lawsuit and the reasons why the Department believes that termination of the decree would serve the public interest. Copies of the Complaint and Final Judgment, defendants' motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, U.S. Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to Anthony V. Nanni, Chief, Trial Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone: 202–633–2541).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 84–17142 Filed 6–26–84; 8:45 am]

BILLING CODE 4410–01–M

Proposed Termination of Final Judgment; Owens-Corning Fiberglas Corp.

Owens-Corning Fiberglas Corporation, Owens-Illinois, Inc. (formerly Owens-Illinois Glass Company) and Corning Glass Works have filed with the United States District Court for the Northern District of Ohio, Western Division, a motion to terminate the Final Judgment in *United States* v. *Owens-Corning Fiberglas Corp.*, Civil Action No. 5778; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The Complaint in this case, filed in 1947 and amended in 1948, alleged that Owens-Illinois and Corning had combined to monopolize the glass fiber business by transferring to Owens-Corning Fiberglas Corporation their glass fiber technology and businesses and by entering into, through Owens-Corning, agreements with foreign manufacturers that restricted imports into and exports of glass fiber from the United States. The Final Judgment, as presently in effect, prohibits the defendants from entering into exclusive license agreements, and from using distributors that distribute glass fiber products of another manufacturer. It also enjoins Owens-Corning from selling glass fiber or fiber products upon the condition that such products are purchased only from Owens-Corning, and requires Owens-Corning to license certain patents to others. In addition, there are a number of prohibitions which simply prohibit activities, like price fixing, that are *per se* illegal under the antitrust laws. The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the Complaint and Final Judgment, defendants' motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530 (telephone 202–633–2481), and at the Office of the Clerk of the United States District Court for the Northern District of Ohio, Western Division, 213 U.S. Court House, Toledo, Ohio 43624. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulation. Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to John W. Clark, Chief, Special Trial Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone 202–724–6335).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 84–17144 Filed 6–26–84; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-438 and 50-439]

Tennessee Valley Authority; Receipt of Antitrust Information

The Tennessee Valley Authority has submitted antitrust information relating to their application for operating licenses for two pressurized water nuclear reactors known as Bellefonte Nuclear Plant, Units 1 and 2, located in Jackson County, Alabama. The data submitted contain antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage.

On completion of the staff's antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under Section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC, and local Public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Fedral Register** notice. The results of any reevaluation that is requsted will also be published in the **Federal Register** and copies sent to the Washington, DC, and local public document rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and coying for a fee at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the local public document room at the Scottsboro Public Library, 1002 South Broad Street, Scottsboro, Alabama 35768.

Any person who desires additional information regarding the mater covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the applicant's activities since the construction permit antitrust review should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Section Leader, Antitrust and Economic Analysis Section, Site Analysis Branch, Office of Nuclear Reactor Regulation, on or before July 27, 1984.

Dated at Bethesda, Maryland, this 18th day of June 1984.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84-17075 Filed 6-26-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-20952; License No. 29-02477-09 EA 84-20]

U.S. Testing Company, Inc.; Order Imposing Monetary Civil Penalties

I.

United States Testing Company, Inc., 1415 Park Avenue, Hoboken, New Jersey, 07030 (the "licensee") is the holder of License No. 29-02477-09 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the licensee to possess and use radioactive materials in accordance with conditions specified therein.

II

An NRC special safety inspection of the licensee's activities under the license was conducted on March 2-3, 1984. As a result of the inspection, the NRC staff determined that the license had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated April 12, 1984. The Notice states the nature of the violations, the provisions of the Commission requirements that the licensee had violated, and the amount of civil penalties for the violations. Responses dated May 4, 1984 and May 7, 1984 to the Notice of Violation and Proposed Imposition of Civil Penalties were received from the licensee.

III

Upon consideration of the answers received, the statements of fact, explanations, and arguments for remission or mitigation of the proposed civil penalties contained therein, and as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Ten Thousand Dollars ($10,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties; and

(b) whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 18th day of June 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The violations and associated civil penalties identified in Section I of the NRC's Notice of Violation and Proposed Imposition of Civil Penalties dated April 12, 1984 are restated. Further, the licensee's response to the Notice is summarized and the NRC's evaluation and conclusion regarding the licensee's response is provided. The licensee's response was provided in two letters dated May 4, 1984 and May 7, 1984 respectively, from Mr. Carl B. Yoder, Radiation Safety Officer, United States Testing Company, Inc., to the Director, Office of Inspection and Enforcement.

Restatement of Violation

A. 10 CFR 20.101(a) prohibits the use of licensed material in such a manner as to cause any individual in a restricted area to receive in any calendar quarter from

radioactive materials or other sources of radiation a total occupational radiation dose in excess of 18.75 rem to the hands.

Contrary to the above, during the first calendar quarter of 1984, specifically on March 1, 1984, an employee of U.S. Testing Company, Inc., while uncoupling and recoupling the guide tube containing a 24 curie iridium-192 source that had disconnected from a U.S. Testing Company, Inc. radiography device, received a radiation exposure to one of his hands calculated to be about 33 rem.

B. 10 CFR Part 20.201(b) requires that each licensee make such surveys as (1) are necessary to comply with regulations in 10 CFR 20 and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, on March 1, 1984, an adequate survey was not performed prior to uncoupling a source guide tube containing a disconnected 24-curie iridium-192 source from its radiography device, in that the radiation levels in the area of the source guide tube and couping were not determined and the exposure that could be received by the individual was not estimated and shown to be less than the 18.75 rem limit to the extremities.

C. Condition 17 of License No. 29-02477-09 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in applications dated November 21, 1979 and January 29, 1982, and letters dated December 18, 1979, November 6, 1980, November 17, 1980, January 25, 1983, July 1, 1983, July 27, 1983, September 9, 1983, September 12, 1983 and a letter dated December 1, 1983 with attachments.

The December 1, 1983 letter includes the U.S. Testing Company, Inc., Emergency Procedures. Section IV, Part B, Item 6 of these Emergency Procedures requires that the Radiation Protection Officer be notified if a radiography source cannot be cranked back into the fully shielded position for any reason, and that the Radiation Protection Officer determine the course of action to be followed.

Contrary to the above, on March 1, 1984, the Radiation Protection Officer was not immediately notified when it was determined that a source could not be cranked back into a fully shielded position. The radiographer uncoupled the source guide tube and reconnected it prior to notifying the Radiation Protection Officer.

Collectively, the violations have been evaluated as a Severity Level III problem (Supplement IV).

(Cumulative Civil Penalties of $10,000 assessed equally among the violations.)

Summary of Licensee Response

The licensee admits Violations B and C, but questions the validity of Violation A. With regard to Violation A, the licensee does not deny that some radiation exposure occurred, but contends that the radiation exposure stated in the NRC's Notice of Violation, which is a value calculated by the NRC, is based on conjecture and is without specific knowledge of the distance between the radioactive source and the individual's hand. The licensee maintains that the distance used by the NRC in the calculation is overly conservative, and use of a distance one-half inch greater would result in a calculated value less than the regulatory limit. The licensee further indicates that the medical examination of the individual reveals no radiation overexposure.

The licensee further states that the violations did not occur because of any deficiencies in the Operating and Emergency Procedures, but rather because an individual radiographer, when confronted with an emergency situation for the first time, failed to overcome his natural tendency to get out of a troublesome situation by following his instincts. The licensee indicates that it has embarked on an extensive corrective action program directed toward behavioral modification to suppress instinctive, normal reaction to an emergency situation, and to instill an automatic total compliance with written procedures. These actions have included face-to-face meetings between either the Radiation Safety Officer or the Emergency Safety Officer and each company radiographer, and the licensee has committed to issuance of eye-catching bulletins and flyers to each radiographer emphasizing the need to adhere to procedures.

The licensee maintains that its corrective actions will reinforce a total commitment to the procedures, and in consideration of this commitment, the licensee requests that the proposed civil penalty of $10,000 for the violations related to this incident be reduced to the normal civil penalty for Severity Level III violations, namely $4,000.

NRC Evaluation of Licensee Response

The NRC staff acknowledges that there is no specific knowledge of the actual distance that existed between the radioactive source and the individual's hand. The licensee is correct in stating that the calculated exposure would be less than regulatory limits if a distance of one-half inch more were assumed. However, the calculated exposure would be significantly higher if a distance of one-half inch less were assumed. The NRC staff continues to believe that based on interviews, observations and measurements taken during the reenactment of the incident, NRC's method of calculating the overexposure is the most appropriate method and that an overexposure did occur. In any case, the amount of exposure is not the central issue in this case. Even if the calculated value was within regulatory limits, the violations would still be categorized in the aggregate as a Severity Level III problem because a substantial potential existed for a radiation exposure in excess of limits, regardless of whether an excessive exposure actually occurred. *See* 10 CFR Part 2, Appendix C, Supplement IV, Section C.4. The licensee's medical consultant, while indicating the exposure was not medically significant, acknowledged that it may be of regulatory significance.

The NRC staff agrees with the licensee that the violations did not occur because of deficiencies in the procedures, but rather because of an individual radiographer's failure to adhere to emergency procedures. This failure is of significant concern because of a previous failure to adhere to emergency procedures during a source disconnect which occurred in June 1983. During that event, an individual also received an exposure in excess of regulatory limits. The previous violations were identified in the NRC's Notice of Violation and Proposed Imposition of Civil Penalties dated October 7, 1983. The actions taken by the licensee in response to the previous violations were not sufficient to ensure adherence to procedures. Therefore, although the current corrective actions appear extensive, the civil penalties have not been mitigated to emphasize that such corrective actions must be thorough and long lasting.

NRC Conclusion

The violations did occur as originally stated. The information provided in the licensee's response does not provide an adequate basis for mitigation of the civil penalty.

[FR Doc. 84-17076 Filed 6-26-84; 8:45 am]
BILLING CODE 7590-01-M

[License No. 13-00694-03 EA 84-10]

Veterans Administration; Richard L. Roudebush Veterans Administration Medical Center; Order Imposing Civil Monetary Penalties

I

Richard L. Roudebush Veterans Administration Medical Center (the "licensee"), 1481 West 10th Street, Indianapolis, IN 46202, is the holder of Byproduct Material License No. 13-00694-03 (the "license") issued by the Nuclear Regulatory Commission (the "Commission") which authorizes medical research, diagnosis, therapy, and research and development. License No. 13-00694-03 was amended in its entirety on March 15, 1983, and expires on March 31, 1988.

II

As a result of a routine inspection conducted on January 9, 10, and 27, 1984 by the Commission's Region III Office, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served on the licensee by letter dated March 12, 1984. The Notice stated the nature of the violations, the provisions of the Commission's requirements that the licensee had violated, and the cumulative amount of the proposed civil

penalties. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties with two letters dated April 24, 1984.

III

Upon consideration of the licensee's response and the statements of fact, explanation, and arguments for remission or mitigation of the proposed civil penalties contained therein, as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that, with one exception for which the penalty is remitted, the violations occurred as stated, and the penalties proposed for the violations set out in the Notice of violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L 96–295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the cumulative amount of One Thousand Eight Hunderd and Thirty-three Dollars within 30 days of the date of this Order, by check, draft or money order payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Should the licensee fail to request a hearing with 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such a hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties as modified by the Appendix to this Order, and

(b) Whether on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 19th day of June 1984.

For the Nuclear Regulatory Commission

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusions

The violations and associated civil penalties are identified in the Notice of Violation and Proposed Imposition of Civil Penalties dated March 12, 1984. The Office of Inspection and Enforcement's evaluation and conclusions regarding the licensee's response dated April 24, 1984 are presented herein.

In its response, the licensee admits that, with the exception of Item H, each violation occurred as described in the Notice of Violation. Additionally, the licensee offered several reasons why the civil penalty should not be imposed. NRC's evaluation of these reasons is presented below, followed by conclusions regarding the proposed civil penalties.

Item H

Statement of Violation

License Condition No. 21 requires that all licensed material be possessed and used in accordance with statements, representations, and procedures contained in the application dated October 21, 1981, and letter dated February 10, 1983. The referenced application states that users of radioactive materials must obtain a permit approved by the appropriate Veteran's Administration Medical Center (VAMC) committee.

Contrary to the above, an individual in the pharmacology laboratory had been using carbon-14 and tritium on a routine basis since approximately 1980, without obtaining the required permits.

Licensee's Response

The licensee denied this violation stating that the individual in question was approved as an individual user under the guidelines of the previous license. The licensee contends that unless stated in the license application, the procedures for permit approval are not made retroactive, and that only new applications are required to follow the guidelines of the new license. The licensee stated that the Radiation Safety Officer was properly notified that the investigator in question would be an individual user on this permit and the individual would be assuming some of the day-to-day supervision of the laboratory.

NRC Evaluation

Based on the additional information contained in the licensee's April 24, 1984 response, the NRC has withdrawn violation H. NRC agrees that individual users were not required under the previous license to obtain a separate permit but could work under the permit of a Principal Investigator until that permit expired. The licensee's April 24 response stated that now all users have completed the required user applications.

Licensee's Request for Mitigating the Civil Penalties

The licensee's April 24, 1984 response to the Notice of Violation and Proposed Imposition of Civil Penalties presented reasons why the civil penalties should not be imposed. The reasons are stated below together with the NRC's evaluation.

Licensee's Reasons

Every alleged item of noncompliance was addressed for positive corrective actions before the enforcement conference. Procedures have been established to prevent recurrence of the admitted violations. These procedures incorporate proper management controls to assure continued compliance. As a result, potential items of noncompliance will now be self-identified and corrected in a timely manner. The licensee has formalized the function of a Radiation Safety Office and has issued a Medical Center Memorandum to define this office. In addition, the staffing of the Radiation Safety Office has been increased to provide assistance to the Radiation Safety Officer.

NRC's Evaluation

The licensee's response to the violations does not provide a sufficient basis for mitigation of the proposed penalties. In fact, the licensee has admitted that all the violations occurred, except for one violation.

In seeking mitigation or remission of the proposed penalty, it is the licensee's view that the violations do not indicate a breakdown in management's oversight and control of licensed activities and, hence, do not warrant the classification in the aggregate as a Severity Level III problem. As further bases for mitigation, the licensee points to the fact that it initiated corrective actions for the violations.

If they were viewed in isolation, the violations might well be classified individually as Severityl Level IV under the enforcement policy. However, the number of violations indicate that programmatic deficiencies existed in the licensee's implementation of its radiation protection program. The nature and number of violations in NRC's view warrant categorization in the aggregate as a Severity Level III problem in accordance with the Enforcement Policy.

The NRC acknowledges that the licensee has taken corrective action for the violations. However, corrective action is always required to correct violations. In this instance, the licensee's corrective actions were not unusually prompt or extensive. The actions taken were only those that the NRC would expect the licensee to take. Therefore, mitigation on this basis is not appropriate.

Conclusion

After reviewing the licensee's reasons why the civil penalties should not be imposed, the NRC staff has concluded that, except for the civil penalty for one violation (Item H) which is being withdrawn, the licensee has not provided an adequate basis for mitigation of the civil penalties for the other violations. Accordingly, civil penalites of One Thousand Eight Hundred and Thirty-three Dollars are imposed.

[FR Doc. 84–17077 Filed 6–26–84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situations, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published May 21, 1984 (49 FR 21445). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the July 1984 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings.

Combined Waste Management and Reactor Radiological Effects, July 10 and 11, 1984, Washington, DC. The Subcommittees will review: (1) Department of Energy's Mission Plan for the civilian radwaste management program; (2) NRC Waste Management Oversight Committee report; (3) NRC/AIF dose assessments for backfitting; and (4) H. B. Robinson steam generator repair; and be briefed by Federal Emergency Management Agency (FEMA) on its integrated emergency planning computer system.

Safety Philosophy, Technology, and Criteria, July 11, 1984, Washington, DC. The Subcommittee will discuss the EPRI categorization of the NRC Staff's Generic Safety and Licensing Issues regarding their application to standardized nuclear plants.

Class 9 Accidents, July 23, 1984, Washington, DC. The Subcommittee will discuss New York Power Authority's developments in the source term area.

Emergency Core Cooling Systems, July 24, 1984, Washington, DC. The Subcommittee will discuss: (1) The status of Yankee Atomic Electric's decay heat exemption request; (2) the status of SBLOCA model revisions; (3) the stautus of the RCP trip issue; (4) the status of UHI EM Model revision; (5) the impact on BWR ECCS given a loss of control rod guide tube stub leakage; (6) the status of RES Appendix K revision effort; (7) the status of the thermal hydraulic program in support of the PTS issue; and (8) NRC Staff plans to designate generic issue B-23—"Reactor Coolant Pump Seal Failures" as an Unresolved Safety Issue.

Westinghouse Water Reactors, Date to be determined (July tentative), Washington, DC. The Subcommittee will continue its review of the Westinghouse Advanced Pressurized Water Reactor for Preliminary Design Approval.

Combined Reliability and Probabilistic Assessment/Millstone Unit 3, Date to be determined (late July, tentative), Washington, DC. The Subcommittee will review the probabilistic risk assessment (PRA) for Millstone Unit 3.

Maintenance Practices and Procedures, August 7, 1984, Washington, DC. The Subcommittee will continue review of the NRC Maintenance Program Plan.

Qualification Program for Safety-Related Equipment, August 8, 1984, Washington, DC. The Subcommittee will discuss the process for evaluating equipment qualification programs. This will include a discussion of qualification of equipment outside of containment.

Human Factors, Date to be determined (mid August), Washington, DC. The Subcommittee will review: (1) Training and qualifications of civilian nuclear power plant personnel; (2) proposed rule making on requirements for Senior Managers; and (3) Shift Operating Experience: Industry Solution, ACRS response to Chairman Palladino's memo.

Millstone Unit 3, Date to be determined (last August), Waterford, CT. The Subcommittee will review the applications for an operating license by the Northeast Nuclear Energy Company.

Quality & Quality Assurance in Design and Construction, Date to be determined (August-September, tentative), Washington, DC. The Subcommittee will discuss the quantity and quality of quality assurance control personnel at nuclear power plant during construction and the use of a designated representative in QC practices.

Regulatory Policies and Practices, Date to be detemined (August-September, tentative), Washington, DC. The Subcommittee will review experience with the interim backfit procedures now in effect and any revisions resulting from public comments.

Combined Reliability and Probabilistic Assessment/Limerick, Date to be determined, Washington, DC. The Subcommittees will review the probabilistic risk assessment (PRA) for the Limerick Plant.

Electrical Systems, Date to be determined, Washington, DC. The Subcommittee will discuss Westinghouse Advanced Pressurized Water Reactor (WAPWR) Integrated Control and Protection System.

GESSAR II, Date to be determined, Washington, DC. The Subcommittee will continue the review of the General Electric Standard Safety Analysis Report and to extend the Final Design Approval so that it will be applicable to future plants. The review will focus on the GESSAR II treatment of Severe Accidents.

ACRS Full Committee Meeting

July 12-14, 1984: Items are *tentatively* scheduled.

*A. *Consideration of Severe Accidents*—Proposed NRC policy statement regarding consideration of severe accidents in the regulation of nuclear power plants.

*B. *On-Shift Engineering Expertise*—Proposed NRC rule regarding qualification requirements for on-shift personnel at nuclear plants.

*C. *Decay Heat Removal Systems*—Status of NRC activities regarding USI-A-45.

*D. *Characterization of Generic Safety and Licensing Issues*—Application of generic safety and licensing issues to proposed standardized LWR nuclear plants.

*E. *Standardized Westinghouse Electric Corporation Nuclear Plant*—Proposed nodular design review of this license application.

*F. *Meeting with NRC Commissioners*—Discuss recommendations of ACRS with respect to safety related matters.

*G. *Future ACRS Activities—Discuss anticipated ACRS Committee and subcommittee activities.*

August 9-11, 1984—Agenda to be announced.

September 6-8, 1984—Agenda to be announced.

Date: June 21, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-17070 Filed 6-26-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Safety Philosophy, Technology and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology and Criteria will hold a meeting on July 11, 1984, Room 1167, 1717 H Street, NW., Washington, D.C.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday July 11, 1984—1:00 p.m. Until the Conclusion of Business

The Subcommittee will discuss the EPRI categorization of the NRC Staff's Generic Safety and Licensing Issues regarding their application to standardized nuclear plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 4:15 p.m., EDT.

Dated: June 20, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-17069 Filed 6-26-84; 8:45 am]

BILLING CODE 7590-01-M

[License No. 34-13774-01; EA 84-48]

John C. Haynes Co.; Order to Show Cause

I

John C. Haynes Company ("the licensee"), 800 Hebron Road, Newark, Ohio 43055, is the holder of Byproduct Material License No. 34-13774-01 which currently authorizes the licensee to possess americium-241 for storage only. On August 19, 1983, the licensee submitted to the Nuclear Regulatory Commission (NRC) a request for termination of its license.

II

During the 1970's the licensee's facility was used to irradiate diamonds and other gemstones using unsealed americium-241 for the purpose of inducing color changes. At one time the licensee possessed up to 21 curies of americium-241 and 2 curies of cerium-144. There may be up to 150 millicuries of americium-241 still present at the facility.

The licensee's enforcement history has been marked by a series of violations of NRC requirements which raise questions regarding its capability to safely control licensed radioactive material. During a December 16, 1975 inspection of the licensee's facility, several items of noncompliance were identified relating to personnel overexposure, inadequate radiological surveys, inadequate personnel monitoring, inadequate storage of radioactive materials, and inadequate record keeping. Further, as a result of inspections on February 6-7, 1980, March 14, 1980, and November 17-19, 1981, items of noncompliance were identified relating to contamination in excess of a license condition, adequate radiological surveys, and unauthorized storage and incineration of licensed material. In 1980, the NRC was informed that the licensee was in default of the mortgage on its licensed facility and that the mortgagee was threatening foreclosure. The NRC's concern that the licensee might lose control over its licensed facility led to the issuance in 1981 of an Order to Modify License, which required limitation of the licensed activity to storage only, and which required to licensee to submit a decontamination plan. In 1982, upon presentation to tne NRC of documentation that the licensee had paid-off its mortgage and gained clear title to the property, and upon payment of inspection fees owed the NRC, the Order to Modify License was rescinded. This was only done, however, after the license has been amended to limit licensed activity to storage only. On August 19, 1983, the licensee requested termination of its license.

As the result of inspections conducted on July 21-22, August 4, 18 and 19, 1983 at the licensee's facility located at Rural Route 6, Newark, Ohio, Region III inspectors and an NRC consultant, Oak Ridge Associated Universities (ORAU), have determined that extensive contamination exists, both in restricted and unrestricted areas of the facility. The majority of the contamination is located within the restricted laboratory area within the structure. Contamination is extensive on the restricted area walls and floors. Other restricted area surfaces which are contaminated are sinks, shower drains, and exterior surfaces of the glove boxes. Surface paint scraping also yielded extensive contamination.

Contamination in excess of NRC's "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material" and License Condition No. 14 has been found on and under carpeting, on the walls, and under the paint in the unrestricted area of the structure, which is presently inhabited. Some minor contamination is also located on the floor of the adjacent garage. Liquid and gaseous effluent systems also contain a residual Am-241. A small area of contaminated soil was identified at a trash incinceration site.

Although no contamination has to date been detected off the licensee's property, since the americium-241 still present in the facility is in powder form and could be dispersed as a result of vandalism, fire, or other phenomena, the public health and safety requires that the facility be decontaminated expeditiously prior to termination of the license.

III

The request presently pending before the NRC is the licensee's August 19, 1983, request for termination of its license. In that request, the licensee states that it has lost money on the activities conducted under this license, that it "recently went through Chapter Eleven in Federal Court" and that it is financially unable to pay for the

decommissioning. The licensee did not provide specific information about its financial condition or the status of its court proceeding.

Prior to license termination, the licensee must decontaminate its facility, and provide a report to NRC confirming the absence of radioactive contamination as required by 10 CFR 30.36(d)(1)(v). This decontamination must be accomplished in a manner which will provide protection of workers and the public against radiation hazards during decontamination operations and assure that the facility has been fully decontaminated and contaminated material has been safely disposed of.

The licensee has not provided a description of the contamination in its facility or an adequate plan for decontamination. Therefore, this Order requires the licensee to show cause why its facility should not be decontaminated in accordance with an approved decontamination plan.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2 and 30, it is hereby ordered that the licensee shall show cause why:

It should not be required to adopt the ORAU Decontamination Plan contained in the ORAU Final Report (May 1984), or an equivalent plan, and to decontaminate its facility located at Rural Route 6, Newark, Ohio, in accordance with such plan. Any alternative proposed decontamination plan would be required to be submitted by the licensee to the Regional Administrator, NR Region III, for approval. In addition, whether the licensee adopts the ORAU plan or an approved alternative, the licensee would be required to address in its decontamination plan the following factors:

1. The qualifications of the persons performing the decontamination and responsible persons maintaining radiation safety during the decontamination operations;

2. The manner in which the licensee will reduce contamination levels in its facility during the decontamination to levels specified in NRC's "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material";

3. A description of the methods to be used to assure protection of workers and the environment against radiation hazards during the decontamination operations;

4. A description of the methods to be used for disposal of contaminated materials;

5. The milestone dates for achieving the various steps in the proposed decontamination plan;

6. The source(s) of expected funds to complete the decontamination of the facility and disposal of the radioactive waste.

V

Pursuant to 10 CFR 2.202(b), the licensee may show cause, within 25 days after issuance of this Order, as required by Section IV above, by filing a written answer under oath or affirmation setting forth the matters of fact and law on which it relies. Any written answer should contain a statement of the licensees objection to the Order. The licensee may answer, as provided in 10 CFR 2.202(b), by consenting to the entry of an Order in substantially the form proposed in this Order to Show Cause. Upon failure of the licensee to file an answer within the specified time, the Regional Administrator may issue without further notice an Order requiring the licensee to decontaminate its facility.

Pursuant to 10 CFR 2.202(b), the licensee may, in its answer filed under Section V above, request a hearing. Any answer to this Order or any request for a hearing shall be submitted to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, IL, 60137. Copies shall also be sent to the Director, Office of Nuclear Materials Safety and Safeguards, the Director, Office of Inspection and Enforcement, and the Executive Legal Director at the following address: U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

If a hearing is requested by the licensee, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be: Whether the licensee shall submit a decontamination plan and decontaminate its facility in accordance with Section IV of this Order.

Dated at Bethesda, Maryland, this 19th day of June 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-17072 Filed 6-26-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277; 50-278; License Nos. DPR-44; DPR-56; EA 84-39]

Philadelphia Electric Co.; Order Modifying License Effective Immediately

I

Philadelphia Electric Company (the "licensee"); Peach Bottom Atomic Power Station, Units 2 and 3 is the holder of Facility Operating License Nos. DPR-44 and DPR-56, issued October 25, 1973 and July 2, 1974 respectively, which authorize the licensee to operate the Peach Bottom Atomic Power Station, Units 2 and 3 (the "facility") located in Delta, Pennsylvania.

II

In November 1983, the NRC became aware of the licensee's practice of individually scramming control rods to effect a normal reactor shutdown. The practice was further reviewed during an NRC inspection conducted January 5-20, 1984, and a violation of NRC requirements was identified. The violation involved changes to the facility and facility procedures allowing individual scramming of control rods without an adequate safety review, as required by 10 CFR 50.59, to determine if the changes involved a modification to technical specifications or an unreviewed safety question. Specifically, in 1977, plant operating procedure GP-3 used for normal plant shutdowns was changed, and in 1978, plant operating procedure GP-9 was written such that the safety functions of two systems required to be operable by facility technical specifications during plant shutdowns, namely the Rod Worth Minimizer (RWM) and the Rod Sequence Control System (RSCS), were effectively bypassed during plant shutdowns. This operating mode was different than described in the Final Safety Analysis Report (FSAR) and inconsistent with technical specification operability requirements, and was implemented without prior NRC approval, without a change to the technical specification, and without a documented safety evaluation to indicate that the change did not involve an documented safety evaluation to indicate that the change did not involve an unreviewed safety question. This change was reviewed by the licensee's Plant Operations Review Committee (PORC), but the implications of the change apparently were not recognized by the PORC. Further, in 1979, a separate shutdown sequence was programmed into the RWM, that differed substantially from the startup

sequence, without evaluating the change to determine if it involved an unreviewed safety question with respect to the FSAR. Consequently, from 1977 through 1983, the licensee failed to recognize that the method used in shutting down the reactors was contrary to the plant technical specifications and the FSAR.

The RWM and RSCS function to avoid control rod patterns that could result in unacceptable consequences in the event of a control rod drop accident. The licensee's practice of individually scramming control rods effectively bypassed the RWM and RSCS controls and reduced the margin of safety in the event of a rod drop accident.

III

This violation demonstrates the need for an assessment at the Peach Bottom Atomic Power Station to determine (1) whether adequate safety reviews have been and are currently being performed when plant and procedure changes are made; and (2) whether inconsistencies exist in other procedures with regard to the FSAR and technical specification requirements, as a result of procedure changes not receiving adequate safety review. Since such inconsistencies, if any exist, could reduce the level of safety at the facility, I have determined that the actions set forth below are required for the public health, safety, and interest, and therefore, should be imposed by an immediately effective Order.

IV

In view of the foregoing, pursuant to sections 103, 161(i), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2 and 10 CFR Part 50, it is hereby ordered effective immediately that:

Within 60 days of the effective date of this Order, the licensee shall submit to the Regional Administrator, Region I, for review and approval, a plan for an appraisal of: (1) The licensee's process for performing safety evaluations and reviews of procedures pursuant to 10 CFR 50.59 to determine if the process is currently effective, or if improvements are needed; (2) plant and system operating procedures to verify that existing procedures are consistent with technical specifications, technical specification bases, and those sections of the FSAR concerning systems necessary to mitigate Design Basis Accidents, and do not involve unreviewed safety questions; and (3) the licensee's program for ensuring that employees involved in the review and approval of operating procedures remain cognizant of the licensing bases.

The NRC expects that this appraisal will involve a process of screening numerous facility procedures to identify those warranting a detailed review. The appraisal shall be conducted, coordinated, and reviewed, by individuals who are familiar with the application of the Boiling Water Reactor technical specification. In addition, the appraisal shall be performed in manner that shall not detract from safe plant operation.

The appraisal plan shall describe:

(1) The qualifications of the appraisal team members, and a discussion of their degree of independence, regarding areas reviewed;

(2) The methods of performing the appraisal and documenting the results;

(3) The schedule for completion of appropriate milestones; and

(4) The methods for resolving appraisal findings in a timely manner.

Upon approval of the appraisal plan by the Regional Administrator, Region I, the appraisal plan shall be implemented. Scheduled milestone completion dates may be extended without good cause and the concurrence of the Regional Administrator, Region I.

The licensee shall direct the appraisal team to submit to the Regional Administrator, Region I, at the time it is submitted to the licensee management, a copy of any report of the appraisal and recommendations resulting from the appraisal. The licensee shall direct the appraisal team to report immediately, upon identification, to the licensee management and the NRC any inconsistencies which could affect the safe operation of the facilities. In addition, the licensee shall consider the recommendations resulting from the appraisal and provide to the Regional Administrator, Region I, an analysis of each such recommendation and the action to be taken in response to the recommendation. The licensee shall also provide a schedule for accomplishing these actions.

The Regional Administrator, Region I, may relax or terminate in writing any of the proceding requirements for good cause.

V

The licensee may request a hearing on this Order. A request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, Region I, 631 Park Avenue, King of Prussia, PA 19406. Any request for a hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

Dated at Bethesda, Maryland, this 18th day of June 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-17073 Filed 6-26-84; 8:45 am]

BILLING CODE 7590-01-M

[License: 42-19582-01; EA 84-51]

Superior Production Logging, Inc.; Rescission of Suspension and Order Modifying License

I

Superior Production Logging, Inc., P.O. Box 399, Snyder, Texas 79549 (the "licensee"); P.O. Box 399, Snyder, Texas 79549 is the holder of a specific byproduct material license issued by the Nuclear Regulatory Commission (the "Commission") pursuant to 10 CFR Part 30. The license, issued on January 5, 1981, amended in its entirety on October 8, 1982, and due to expire on December 31, 1985, authorizes the use, storage, and transfer of byproduct material as described in the licensee's application dated October 24, 1980, and letters of February 6, June 15, and August 31, 1982.

II

A routine NRC safety inspection was conducted at the licensee's field office in Oklahoma City, Oklahoma, on April 9, 1984, and at the licensee's corporate office in Snyder, Texas, on April 30, 1984. The inspection revealed that the licensee had conducted licensed activities in violation of certain NRC requirements. As a result of this inspection and a discussion of inspection findings at an Enforcement Conference on May 31, 1984, an Order to Show Cause and Order Temporarily Suspending License, effective immediately, was issued to Superior Production Logging, Inc., on June 7, 1984. The licensee responded to the Order on June 14, 1984.

On the basis of an evaluation of the licensee's response, and the results of a follow-up inspection on June 18, 1984, I have now determined the licensee has shown cause why License 42-19582-01 should not be revoked and has shown

that, subject to the implementation of the proposed improvements in its licensed program and the conditions set forth in Section III, licensed activities can be performed in accordance with Commission requirements. Accordingly, I have determined that subject to these conditions and improvements, the license suspension may be rescinded.

III

In view of the foregoing and pursuant to sections 81, 161b, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission' regulations in 10 CFR Parts 2 and 30., it is hereby ordered that:

1. The licensee shall comply with the commitments specified in paragraphs numbered 4 through 7 on page 4 of their June 14, 1984 response to the Order to Show Cause and Order Temporarily Suspending License, dated June 7, 1984.

2. Mr. D. R. Melton is approved as the temporary corporate Radiation Safety Officer. After Mr. Melton has recieved the additional training specified in item 2 and 3 of this Section, the licensee's amendment request of June 14, 1984 will be evaluated and acted upon.

3. The licensee shall conduct compliance audits at each approved field site on a quarterly frequency. These audits shall be conducted for 1 year and shall be performed by an independent consultant approved by the Regional Administrator, NRC Region IV, and accompanied by the Radiation Safety Officer. After each audit, a written report of the audit findings shall be documented and retained at the licensee's facility for future inspection by the NRC. Actions taken in response to the audit findings shall also be documented, reviewed by the licensee, and retained with the records of the audit.

4. The licensee shall send the Radiation Safety Officer, by October 1, 1984, to a training course for well-loggers approved by the Regional Administrator, Region IV. This training course must cover the rules and regulations of the Commission and radiation safety requirements related to well-logging operations. In addition to the training course, each quarterly visit by an independent consultant shall provide for additional ongoing training for the Radiation Safety Officer and for refresher training for other licensee personnel involved in the use of licensed material. This training shall include safe handling and storage of sealed sources and tracer material within each facility and field site. This training shall also consist of a review of the documentation and recordkeeping requirements associated with the licensed program. A written report of the training given shall be documented and retained at the licensee's facility for future inspection by the NRC.

IV

The licensee may request a hearing on this Order within 25 days of the date of its issuance. Any request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section III of this Order.

The Order modifying license set forth in Section III shall become effective upon the licensee's consent or upon expiration of the time within which the licensee may request a hearing or, if a hearing is requested by the licensee, on the date specified in an Order issued following further procedings on this Order.

The suspension of licensed activities imposed by the Order of June 7, 1984, is rescinded upon the effectiveness of the Order set forth in Section III.

Dated at Bethesda, Maryland, this 19th day of June 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director Office of Inspection and Enforcement.

[FR Doc. 84-17074 Filed 6-26-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co. (Surry Power Station, Unit Nos. 1 and 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. DPR-32 and DPR-37 which authorize the operation of the Surry Power Station, Unit Nos. 1 and 2 (the facilities) at steady-state power levels not in excess of 2441 megawatts thermal. The facilities are pressurized water reactors (PWRs) located in Surry County, Virginia.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737 In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82-33 by letter dated April 15, 1983, January 31, 1984, February 21, 1984, March 1, 1984 and March 13, 1984. In this submittal, the licensee made commitments to complete the basic requirements. The following Table, summarizing the licensee's schedular commitments or status, was developed by the NRC staff from the Generic Letter and the information provided by the licensee.

The licensee's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and

(3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed the licensee's April 15, 1983 letter and entered into negotiations regarding suhedules for meeting the requirements of Supplement 1 to NUREG–0737. The NRC staff finds that the dates are reasonable for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments is required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall: Implement the specific items described in this order in the manner described in the licensee's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Complete.
	1b. SPDS fully operational and operators trained	Surry 1—First refueling after July 1985 (about February 1986). Surry 2—First refueling after July 1985 (about October 1986).
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Provide schedule August 30, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	Complete.
	3b. Implement (installation or upgrade) requirements	Refueling in 1986.[1]
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete.
	4b. Implement the upgraded EOPs	Do.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	First refueling after July 1, 1985.
	5b. Operational Support Center fully functional	Complete except for communications tie-in with EOF.
	5c. Emergency Operations Facility fully functional	July 31, 1985 except for data communication which will follow schedule for SPDS.

[1] Incore thermocouples are tracked on separate schedule.

[FR Doc. 84–17078 Filed 6–26–84; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. STN 50–601; RESAR–SP/90]

Westinghouse Electric Corp.; Receipt of Application for Preliminary Design Approval

Westinghouse Electric Corporation has filed with the Nuclear Regulatory Commission an application for a Preliminary Design Approval of its Advanced Pressurized Water Reactor design, RESAR–SP/90, under the provisions of 10 CFR Part 50, Appendix 0. The application was tendered on October 24, 1983 and was found acceptable for docketing on January 25, 1984. By letter dated May 7, 1984, Westinghouse requested that the NRC docket RESAR–SP/90. Docket No. STN 50–601 has been assigned to RESAR–SP/90 and should be referenced in any correspondence relating thereto.

RESAR–SP/90 constitutes a "reference system" design as described in the Commission's August 31, 1978 policy statement on nuclear power plant standardization (43 FR 38954) wherein a facility design or a major portion of a facility design can be approved outside the context of an application for a construction permit or an operating license. RESAR–SP/90 describes and analyzes a standard four-loop, pressurized water reactor nuclear power block design. The reactor is designed for a core thermal power of 3800 megawatts.

When the review of RESAR–SP/90 is complete, the staff will prepare and publish a Safety Evaluation Report documenting the results of its review. In addition, RESAR–SP/90 will be referred to the Advisory Committee on Reactor Safeguards (ACRS) for its review and a report thereon. A notice of the availability of the Safety Evaluation Report and the ACRS report will be published in the **Federal Register.**

A copy of RESAR–SP/90 is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555. When available, the Safety Evaluation Report and the ACRS report will also be made available for inspection by the public at the Public Document Room. Copies of the Safety Evaluation Report may be purchased at current rates from the National Technical Information Service, Springfield, Virginia 22161, when it becomes available.

Dated at Bethesda, Maryland, this 18th day of June 1984.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization & Special Projects Branch, Division of Licensing.

[FR Doc. 84-17079 Filed 6-26-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Announcement of the 1984 SEC Government-Business Forum on Small Business Capital Formation

In order to continue a meaningful and ongoing dialogue on the capital formation problems besetting the small business community, the Securities and Exchange Commission has announced that the Third Annual SEC Government-Business Forum on Small Business Capital Formation will be held September 12–14, 1984, at the Sheraton National Hotel in Washington, D.C. The conference will provide a forum for small business, government regulatory agencies, and private sector organizations concerned with small business issues to discuss solutions to the existing impediments to small business capital formation, particularly in the areas of taxation, securities, financial services and state capital formation. The organizations on the Executive Committee, which are assisting in planning the 1984 Forum, are set forth below.

The format of the Forum calls for participants to meet in working discussion groups of 15–20 persons to consider each major issue before the Forum with the intent of developing specific recommendations. Recommendations approved by all participants meeting in general session will be included in a final report to be submitted to Congress and appropriate regulatory agencies. Further, each participant will be requested to act as a co-discussion leader on one major issue and should be generally familiar with all discussion materials.

Members of the public interested in being considered for active participation at the Forum should promptly complete and return an information card available from the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 5th Street, N.W., Stop 3–12, Washington, D.C. 20549. The information card will facilitate the selection of small business persons, lawyers, accountants and others who are knowledgeable in small business issues and who could make the most meaningful contribution to the Forum.

For further information, contact Mary M. Jackley at (202) 272–2644.

Dated: June 21, 1984.

George A. Fitzsimmons,

Secretary.

Forum Executive Committee

Aetna Life Insurance Company
American Association of Minority Enterprise Small Business Investment Companies
American Bankers Association
American Bar Association
American Institute of Architects
American Institute of Certified Public Accountants
American Stock Exchange
Arthur Anderson & Co.
Commerce Department
Comptroller of the Currency
Coopers & Lybrand
Federal Bar Association
Federal Reserve Board
Financial Accounting Standards Board
Financial Analysts Federation
National Association of Securities Dealers
National Association of Small Business Investment Companies
National Association of Wholesaler Distributors
National Federation of Independent Business
National Small Business Association
North American Securities Administrators Association
Peat, Marwick, Mitchell & Co.
Robert Morris Associates
Securities and Exchange Commission
Small Business Administration
Small Business United
Treasury Department

[FR Doc. 84-17133 Filed 6-26-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21074; SR-NASD-84-8]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

June 20, 1984.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, submitted on April 27, 1984, a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Article III, Section 10 of its Rules of Fair Practice which limits the dollar amount that a member, or person associated with a member, may give to any person when the payment or gratuity is given in relation to the business of the recipient's employer. The amount is being raised from $25 to $50.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 20961, May 15, 1984) and by publication in the **Federal Register** (49 FR 21452, May 21, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17130 Filed 6-26-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21073; File No. SR-PCC-84-8]

Pacific Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

June 20, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 11, 1984, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change amends PCC's fee schedule to include charges for pick-up and delivery services [1] performed by PCC's New York City branch office.[2] PCC further states that

[1] The "New York Pick-Up and Delivery Service" enables PCC members and participants of the Pacific Securities Depository Trust Company ("PSDTC"–PCC's sister clearing agency and affiliated depository) to instruct PCC to make deliveries to or from PCC's New York City branch office.

[2] *See* File No. SR-PCC-84-5, Securities Exchange Act Release No. 20977 (May 18, 1984), 49 FR 22430 (May 29, 1984) (authorizing PCC to open a new branch office at 40 Broad Street, 19th Floor, New York, New York 10004, to provide services, including pick-up and delivery services, to PCC members and PSDTC participants).

the new fees are intended to permit PCC to recover its costs for performing the New York Pick-Up and Delivery Service.[3] PCC states that the proposal is consistent with Section 17A of the Act in that the proposal will provide for the equitable allocation of reasonable fees among PCC's members.[4]

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR–PCC–84–8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendmentrs also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

[3] The new fees are as follows:

New York Pick-up and Delivery Service:

$6.00 per pick-up or delivery in downtown Manhattan.

$10.00 per pick-up or delivery elsewhere in New York City if performed by PCC.

Pass-through of costs of outside courier or messenger service.

$8.00 per rejected item for delivery to third-party.

[4] *See* Section 17A(b)(3)(D) of the Act.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–17131 Filed 6–26–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21076; SR–PSE–81–10]

Pacific Stock Exchange, Inc., Filing and Order Granting Accelerated Approval of Proposed Rule Change

June 21, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 30, 1984, the Pacific Stock Exchange, Inc. ("PSE"), 618 South Spring Street, Los Angeles, CA 90014, filed with the Securities and Exchange Commission the proposed rule change as described herein. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change extends the PSE's pilot program for the appointment and evaluation of specialists and the creation of new specialist posts ("pilot program") from June 30, 1984 to December 31, 1984. the PSE proposes to amend Section 1(1) and 11(t) of Rule II of the Rules of the Board of Governors of the PSE to reflect the pilot program's new scheduled expiration date of June 30, 1984.[1] The Exchange has noted in its filing that it is requesting the six month extension in order to allow the PSE an opportunity to review its experience under the pilot program in greater detail and to provide it with an adequate opportunity to review proposed changes to the pilot program suggested by its members as well as the Commission.[2] The PSE notes that Exchange committees will be reviewing the desirability of revising one or more of the existing measures of specialist performance or adding additional measures of performance under the pilot as well as evaluating its current procedures for the formation of new specialist posts. The PSE states that the proposed rule change in consistent with Section 6(b) of the Act in general, and in particular Sections 6(b) (5) and 6(b) (7).

Interested persons are invited to submit written data, views and agruments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR–PSE–84–10.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change with are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the pilot program is scheduled to terminate on June 30, 1984, unless extended. The Commission believes that extension of the pilot program until December 31, 1984 is appropriate in that it will permit the PSE to more thoroughly review its experience under the pilot program and to develop any necessary modifications to the program prior to requesting permanent Commission approval.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is approved.

[1] The Commission approved the adoption of the pilot program (SR–PSE–81–5) on May 27, 1981 (Securities Exchange Act Release No. 17818, May 27, 1981; 46 FR 30016, June 4, 1981). The term of the program was subsequently extended several times by the Commission. The Commission most recently approved an extension of the pilot program until June 30, 1984 in SR–PSE–84–1 (Securities Exchange Act Release No. 20542, January 10, 1984; 49 FR 1956, January 16, 1984).

[2] The Commission staff has requested that the PSE provide the Commission with certain statistical information in order to assist the staff in assessing the PSE's experience with the pilot program. In addition, the Commission has raised questions and concerns regarding various aspects of the pilot program. The PSE has stated in its filing that it intends to address these concerns in connection with the PSE's overall evaluation of the pilot program.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17132 Filed 6-26-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0239]

Brentwood Capital Corp.; Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Brentwood Capital Corporation, 11661 San Vicente Blvd., Los Angeles, California 90049, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act), (15 U.S.C. 661 *et seq.*), has filed an application with the Small Business Administration, pursuant to Section 312 of the Act and covered by § 107.903(b)(1) of the Regulations governing small business investment companies (SBICs/Licensees) (13 CFR 107.903 (1984)), for approval of a conflict of interest transaction falling within the scope of the above Sections of the Act and Regulations.

Brentwood Capital intends to invest up to $500,000 in shares of convertible preferred stock of DMA Systems Corporation, 601 Pine Avenue, Goleta, California 93117. Other Brentwood entities (Associates) have prior investments in this Small Business Concern.

SBA's prior written approval is required pursuant to § 107.903 of SBA Regulations because Associates own 10 or more percent of the small concern's equity securities and these are not initial joint financings with Associates.

Notice is hereby given that any person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Los Angeles, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 13, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment

[FR Doc. 84-17124 Filed 6-26-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2128; Amdt. 1]

California; Declaration of Disaster Loan Area

The above numbered declaration (See 49 FR *20098*) is amended by adding the adjacent county of Alameda as a result of damage caused by an earthquake which occurred on April 24, 1984. All other information remains the same, i.e., the termination dated for filing applications for physical damage is the close of business on July 2, 1984, and for economic injury until the close of business on February 4, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 21, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-17125 Filed 6-26-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2152]

Kansas; Declaration of Disaster Loan Area

Johnson County in the State of Kansas constitutes a disaster area because of damage caused by tornadoes and flooding which occurred on June 7–9, 1984. Applications for loans for physical damage may be filed until the close of business on August 20, 1984, and for economic injury until the close of business on March 21, 1985, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Grand Prairie, TX 75051, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 215212 for physical damage and for economic injury the number is 618800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 21, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-17127 Filed 6-26-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2153]

Missouri, Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 21, 1984, I find that the County of Buchanan and the adjacent County of Platte constitute a disaster loan area because of damage from severe storms, high winds, and flooding beginning on or about June 6, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on August 20, 1984, and for economic injury until March 21, 1985, at: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Grand Prairie, TX 75051, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 215306 for physical damage and for economic injury the number is 618900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 22, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-17128 Filed 6-26-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2148]

New Hampshire, Declaration of Disaster Loan Area

Cheshire County and the adjacent Counties of Hillsboro and Sullivan in the State of New Hampshire constitute a disaster area because of damage caused by a severe rains and flooding which occurred on May 30, 1984, through June 4, 1984. Applications for loans for physical damage may be filed until the close of business on August 20, 1984, and for economic injury until the close of business on March 20, 1985, at the address listed below. Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, NJ 07410, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit) organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 214806 for physical damage and for economic injury the number is 618400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 20, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-17128 Filed 6-26-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB, May 22–June 14, 1984

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements, transmitted by the Department of Transportation, during the period May 22–June 14, 1984, to the Office of Management and Budget (OMB) for its approval. This notice is published in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Windsor, John Chandler, or Annette Wilson, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426–1887 or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register,** listing those information collection requests submitted to the Office of Management and Budget (OMB) for approval under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. As needed, the Department of Transportation will publish in the **Federal Register** a list of those forms, reporting and recordkeeping requirements that it has submitted to OMB for review and approval under the Paperwork Reduction Act. The list will include new items imposing paperwork burdens on the public as well as revisions, renewals and reinstatements of already existing requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The published list also will include the following information for each item submitted to OMB:

(1) A DOT control number.

(2) An OMB approval number if the submittal involves the renewal, reinstatement or revision of a previously approved item.

(3) The name of the DOT Operating Administration or Secretarial Office involved.

(4) The title of the information collection request.

(5) The form numbers used, if any.

(6) The frequency of required responses.

(7) The persons required to respond.

(8) A brief statement of the need for, and uses to be made of, the information collection.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from May 22–June 14, 1984:

DOT No: 2246
OMB No: 2120–0042 (combined with 2120–0029)
By: Federal Aviation Administration
Title: Aircraft Registration (Includes application, bill of sale)
Forms: AC–8050–1.2.4.81, and 117
Frequency: On Occasion
Respondents: Owners of aircraft
Need/Use: This information is needed to record in one location all documents for registry of U.S. civil aircraft. This service includes assignment of the U.S. identification marks, registration of ownership and changes or cancellation of a registration.

DOT No: 2247
OMB No: 2120–0024
By: Federal Aviation Administration
Title: Application for Aircraft Dealer's Registration Certificate
Forms: AC 8050–5
Frequency: On Occasion
Respondents: Businesses
Need/Use: AC form 8050–5 is an application by a Dealer for an Aircraft Registration Certificate, which may be issued to persons engaged in manufacturing, distributing, or selling aircraft. Information received enables the Aircraft Registry to determine eligibility of applicants to receive a dealer's certificate and to issue it with the correct name and address.

DOT No: 2248
OMB No: 2125–0079
By: Federal Highway Administration
Title: Medical Examination—Drivers Transporting Migrant Workers
Forms: None
Frequency: Recordkeeping requirement 3 years
Respondents: Motor carriers
Need/Use: To assure the Federal Highway Administration that interstate drivers who transport migrant workers are physically qualified and certified every 3 years and that motor carriers retain a copy of the certification in the drivers' qualification file.

DOT No: 2449
OMB No: 2115–0036
By: U.S. Coast Guard
Title: Application for Enlistment
Forms: CG–2520
Frequency: On Occasion
Respondents: Applicants for enlistment in the U.S. Coast Guard
Need/Use: The reporting requirement is needed to obtain the information necessary to evaluate each applicant's qualifications. It also allows for the gathering of information necessary to conduct the required police checks, school checks, character references and employment checks. The information gathered is used to determine an applicant's eligibility to enlist.

DOT No: 2450
OMB No: 2115–0132
By: U.S. Coast Guard
Title: Servicing Records for Life Rafts
Forms: None
Frequency: Recordkeeping retention period 5 years

Respondents: Inflatable life raft servicing units
Need/Use: Title 46 CFR requires each inspected vessel, and mobile offshore drilling unit to carry 2 inflatable life rafts. These rafts are required to be serviced annually at an approved servicing facility. The servicing facility is required to maintain a complete record of each life raft it services. The recordkeeping requirement is needed to determine (1) that the life raft has been serviced and (2) that the life raft has met the applicable requirements and can be relied upon for safe escape of personnel from a vessel or drilling unit in case of an emergency. The information is used by the Coast Guard inspection personnel who issue a servicing certificate. This certificate is valid for 5 years.
DOT No: 2451
OMB No: 2120–0009
By: Federal Aviation Administration
Title: Pilots Schools—FAR 141
Forms: FAA Form 8420–8
Frequency: On Occasion
Respondents: Pilot School Applicants/ Certificate Holders
Need/Use: The Federal Aviation Administration Act of 1958, Section 607 (49 USC 1427) authorizes certification of civilian schools giving instruction in flying. 14 CFR 141 prescribes the syllabus requirements for pilot school certificates. Information collected is used to determine eligibility for certification.
DOT No: 2452
OMB No: 2120–0022
By: Federal Aviation Administration
Title: Certification: Mechanics, Repairmen, Parachute Riggers—FAR 65
Forms: FAA Forms 8610–1 and 8610–2
Frequency: On Occasion
Respondents: Individuals
Need/Use: The Federal Aviation Administration Act of 1958, Section 602 (49 USC 1422) authorizes the issuance of airman certificates. 14 CFR 65 prescribes the training and experience requirements for aircraft mechanics, repairmen and parachute riggers as well as for the position of inspector. Information collected on the forms shows applicant eligibility. Certification by the Federal Aviation Administration is required for employment in these specialized jobs.
DOT No: 2453
OMB No: New
By: Federal Railroad Administration
Title: Control of Alcohol and Drug Use in Railroad Operations
Forms: None
Frequency: Recordkeeping, Annual and On Occasion
Respondents: Railroads
Need/Use: Federal Railroad Administration needs the information to determine the role of alcohol or drugs in train accidents and to prevent their use during operations. The adoption of the system is expected to improve the safety of railroad operations.
DOT No: 2454
OMB No: New
By: Federal Aviation Administration
Title: Survey of Accident Prevention Program Effectiveness
Forms: GL 8740–1
Frequency: Annually
Respondents: General Aviation Pilots in the Great Lakes Region
Need/Use: Information is needed for planning of safety programs which is responsive to the needs of the aviation public. The information is used to measure current effectiveness and to aid the Federal Aviation Administration in selection of programs of importance to safety. Meetings can be scheduled at locations and times when general aviation pilots can attend.

Issued in Washington, D.C., on June 21, 1984.

Jon H. Seymour,

Deputy Assistant Secretary for Administration.

[FR Doc. 84–17146 Filed 6–26–84; 8:45 am]
BILLING CODE 4910–62–Mnn

Federal Aviation Administration

John Wayne Airport; Orange County, California; Environmental Impact Statement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for proposed facility improvements at John Wayne Airport.

FOR FURTHER INFORMATION CONTACT: Herbert W. Hyatt, Airport Planner, AWP–611.2 Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536–6534.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the County of Orange, California, will prepare an Environmental Impact Statement (EIS) for airfield improvements at John Wayne Airport. The proposed project involves development of airport facilities from the current 2.8 Million annual passengers (MAP), to serve about 10.24 MAP in the year 2005. The following projects will be evaluated in the EIS.

—Construction of a new passenger terminal of 390,000 sq. ft. to replace the existing 28,000 sq. ft. terminal
—Construction of a new general aviation terminal
—Construction of aircraft parking aprons
—Construction to strengthen Runways 1R–19L and 1L–19R
—Construction to extend Runway 19–19L from 2,888 ft. to 3,953 ft.
—Terminal area roadway improvements
—Airport ground access improvements
—Parking facilities
—Increase the current authorized average daily departures (ADD) by regularly scheduled aircraft meeting the county's (Class A) Noise Restriction from 41 Class A ADD to 55 Class A ADD, then from 55 Class A ADD to 73 Class A ADD.

The objective of the proposed airport improvements and expansion is to accommodate passengers with a more reasonable level of comfort and convenience than can currently be provided. The airport improvements such as runway strengthening are intended to preserve the useful life of some structures, plus making aircraft ground operations more efficient.

The objective of the airport improvement program is to provdie some level of air travel service without suffering extraordinary environmental effects (e.g. greatly expanded noise contours, deteriorated air quality, and traffic congestion). The Orange County Board of Supervisors considered a full range of commercial service levels from airport closure to totally meeting locally generated demand. The service selected for the proposed project was 73 Class A ADD.

The physical improvements to the airport facilities would be contructed between 1985 and 1989, and would be operational in 1990. However, the number of authorized Class A ADD by air carriers would be established in two stages:

1. The current 41 Class A ADD limit would be raised to 55 Class A ADD upon certification of the Environmental Impact Report prepared under the State of California Environmental Quality Act by the Orange County Board of Supervisors. For purposes of impact analysis, this was projected to occur in 1984.

2. The 55 Class A ADD flight limit would be raised to 73 Class A ADD upon completion of facilities

construction. The first full year at operation of 73 Class A ADD is projected to occur in 1990.

To ensure that the full range of issues related to these proposed projected are addressed and all significant issues idenfitied, comments and suggestions are invited from all interested parties.

Issued in Hawthorne, California, on June 15, 1984.

Russel S. Hathaway,

Manager, Safety and Standards Branch, Airports Division, FAA, Western-Pacific Region.

[FR Doc. 84-17039 Filed 6-26-84; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-84-11]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 31, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 21, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24122	Miami Int'l Airport	14 CFR § 91.303	To permit the continued operation, until December 31, 1987, of Stage 1 aircraft at Miami International Airport on international flights. Additionally, the adoption of a rule allowing any airport to elect to permit Stage 1 aircraft to conduct international operations at its facility is requested. The FAA has extended the comment period for this petition to allow detailed and thorough comments. The FAA may hold a public hearing in August 1984 on this petition.

[FR Doc. 84-17038 Filed 6-26-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular, Public Debt Series No. 17-84]

Notes of Series V-1986; Interest Rates

Washington, June 21, 1984.

The Secretary announced on June 20, 1984, that the interest rate on the notes designated Series V-1986, described in Department Circular—Public Debt Series—No. 17-84 dated June 14, 1984, will be 13 percent. Interest on the notes will be payable at the rate of 13 percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-17019 Filed 6-26-84; 8:45 am]

BILLING CODE 4810-40-M

Fiscal Service Renegotiation Board; Prompt Payment Interest Rate

The Renegotiation Board previously published the rate of interest determined by the Secretary of the Treasury pursuant to section 105(b)(2) of the Renegotiation Act of 1951, as amended. Since the Renegotiation Board is no longer in existence, the Department of the Treasury is publishing the current rate of interest. Also, pursuant to section 2(b)(1) of Pub. L. 97-177, dated May 21, 1982, the Secretary of the Treasury is responsible for computing and publishing the interest rate to be used in cases under the Prompt Payment Act.

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1984 and ending on December 31, 1984, is 14⅜ per centum per annum.

Dated: June 21, 1984.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-17029 Filed 6-26-84; 8:45 am]

BILLING CODE 4810-33-M

VETERANS ADMINISTRATION

Career Development Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report for the calendar year 1983 has been issued for the Veterans Administration, Medical Research Service, Career Development Committee.

The report summarizes the activities of the committee on matters related to the review and evaluation of Career Development applications. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications Reading Room LM 133, Madision Building, Washington, D.C. 20540

and

Veterans Administration, Medical Research Service, Career Development Program, Room 757, 810 Vermont Avenue NW., Washington, D.C. 20420.

Dated: June 21, 1984.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-17080 Filed 6-20-84; 8:45 am]

BILLING CODE 4320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 125
Wednesday, June 27, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:20 p.m. on Thursday, June 21, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Farmers National Bank of Aurelia, Aurelia, Iowa, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, June 21, 1984; (2) accept the bid for the transcation submitted by Heritage Bank, National Association, Aurelia, Iowa, newly-chartered national bank subsidiary of Geiger Corporation, Edina, Minnesota; and (3) provide such financial assistnce pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), councurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 22, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-17205 Filed 6-25-84; 11:23 am]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, July 2, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities and establish one branch:

First Bank and Trust Company, Cozad, Nebraska, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Farmers Cooperative Credit Association, Saronville, Nebraska, an operating noninsured institution, and for consent to establish the sole office of Farmers Cooperative Credit Association as a branch of First Bank and Trust Company.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,955–L (Amended)—Franklin National Bank, New York, N.Y.

Memorandum and resolution re: Final amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," which (1) expand the authority delegated to the appropriate regional directors to act on merger applications; (2) delegate to the Board of Review the authority to deny as well as approve applications under section 19 of the Federal Deposit Insurance Act; (3) delegate to the Director of the Division of Bank Supervision and regional directors the authority to approve, but not deny, all section 19 applications; and (4) delegate to the Board of Review the authority to approve or deny requests seeking exemptions from the Corporation's regulation prohibiting certain management official interlocks.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and Resolution re: Proposed amendments to the Corporation's rules and regulations in the form of new Part 325, to be entitled "Capital Maintenance", which would (1) define capital for insured banks; (2) establish minimum standards for adequate capital for all insured banks; and (3) establish standards to determine when an insured bank is operating in an unsafe or unsound condition by reason of the amount of its capital.

Memorandum and Resolution re: Final amendments to the Corporation's rules and regulations relating to brokered deposits in insured banks.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: June 25, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84-17248 Filed 6-25-84; 3:16 pm]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, July 2, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed

session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affiars thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to merge and establish four branches:

Worcester North Savings Bank, Fitchburg, Massachusetts, an insured mutual savings bank, for consent to merge, under its charter and with the title "First Service Bank for Savings," with Leominster Savings Bank, Leominster, Massachusetts, and for consent to establish the four offices of Leominster Savings Bank as branches of the resultant bank.

Recommendation concerning the Corporation's Assistance Agreement with an insured bank under section 13 of the Federal Deposit Insurance Act.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: June 25, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84-17249 Filed 6-25-84; 3:16 pm]

BILLING CODE 6714-01-M

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FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 2:30 P.M., Friday, June 29, 1984.

PLACE: Board Room, 6th Floor, 1700 G St., N.W., Washington, D.C.

STATUS: Open Meeting.

CONTRACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6970).

MATTERS TO BE CONSIDERED: Finance Subsidiary.

J. J. Finn,

Secretary.

[FR Doc. 84-17258 Filed 6-25-84; 3:55 pm]

BILLING CODE 6720-01-M

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SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: (49 FR 24489 June 13, 1984).

STATUS: Closed meetings.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, June 8, 1984.

CHANGE IN THE MEETING: Additional items.

The following additional item was considered at a closed meeting scheduled for Tuesday, June 19, 1984.

Regulatory matter bearing enforcement implications.

The following additional items were considered at a closed meeting scheduled for Thursday, June 21, 1984, following the 2:30 p.m. open meeting:

Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Chapter 11 proceeding.
Regulatory matter bearing enforcement implications.

Chairman Shad and Commissioners Treadway, Cox and Marinaccio determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Kohn at (202) 272-3195.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17218 Filed 6-25-84; 11:25 am]

BILLING CODE 8010-01-M

federal register

Wednesday
June 27, 1984

Part II

Environmental Protection Agency

40 CFR Part 421

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Proposed Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA is proposing effluent limitations guidelines and standards under the Clean Water Act to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works (POTW) from particular nonferrous metals manufacturing facilities. The Clean Water Act and a consent decree require EPA to propose and promulgate this regulation. The purpose of this action is to propose effluent limitations based on best practicable technology and best available technology, new source performance standards based on best demonstrated technology, and pretreatment standards for existing and new indirect dischargers. After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATES: Comments on this proposal must be submitted by August 27, 1984.

ADDRESSES: Send comments to: Mr. James R. Berlow, Effluent Guidelines Division (WH–552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention: Nonferrous Metals Manufacturing Comments. Technical information and copies of technical documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703/487–6000), or from Mr. James R. Berlow, Effluent Guidelines Division, U.S. Environmental Protection Agency 401 M Street, SW., Washington, DC 20460 or call 202/382–7151. The economic analysis may be obtained from Mr. Mark Kohorst, Economic Analysis Staff (WH–586), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or call 202/382–5397.

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall, 202/382–7126.

SUPPLEMENTARY INFORMATION:

Overview

This preamble describes the legal authority and background, the technical and economic bases, and other aspects of the proposed regulations. It solicits comments on specific areas of interest. The abbreviations, acronyms, and other terms used in the Supplementary Information section are defined in Appendix A to this notice.

These proposed regulations are supported by three major documents available on a limited basis from EPA and the National Technical Information Service. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants.* EPA's technical conclusions are detailed in the *General Development Document for Effluent Limitations Guidelines and Standards for the Nonferrous Metals Manufacturing Phase II Points Source Category* and the subcategory supplements. However, substantial portions of the subcategory supplements have been claimed confidential for fourteen subcategories. As a result, EPA cannot make those portions of these fourteen supplements public without first following the procedures set out in 40 CFR Part 2. The Agency's economic analysis is found in *Economic Impact Analysis of Effluent Limitations Guidelines and Standards for the Nonferrous Metals Manufacturing Point Source Category.*

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear) (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

Organization of This Notice

I. Legal Authority
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  B. Prior EPA Regulations
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III. Scope of this Rulemaking and Summary of Methodology
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XXV. Appendices:
  A. Abbreviations, Acronyms, and Other Terms Used in this Notice
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  C. Toxic Pollutants Not Detected
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  G. Toxic Pollutants Effectively Controlled by Technologies Upon Which are Based Other Effluent Limitations and Guidelines
  H. Toxic Pollutants Detected But Only in Trace Amounts and are Neither Causing Nor Likely to Cause Toxic Effects

I. Legal Authority

EPA is proposing the regulation described in this notice under the authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95–217) ("the Act"). These regulations also are proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.* v. *Train,* 8 ERC 2120 (D.D.C. 1976), *modified,* 12 ERC 1833 (D.C.C. 1979), modified by additional orders of October 26, 1982, August 2, 1983, and January 6, 1984.

II. Background

A. The Clean Water Act and the Settlement Agreement

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," section 101(a). By July 1, 1977, existing industrial dischargers were required to achieve "effluent limitations requiring the application of the best

practicable control technology currently available" ("BPT"), section 301(b)(1)(A). By July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable—which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" ("BAT"), section 301(b)(2)(A). New industrial direct dischargers were required to comply with section 306 new source performance standards ("NSPS"), based on best available demonstrated technology; and new and existing dischargers to publicly owned treatment works ("POTW") were subject to pretreatment standards under section 307 (b) and (c) of the Act. The requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under section 402 of the Act. Pretreatment standards were made enforceable directly against dischargers to POTW (indirect dischargers).

Although section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Moreover, sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

EPA was unable to promulgate many of these regulations by the dates contained in the Act. In 1976, EPA was sued by several environmental groups, and in settlement of this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the District Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgating for 21 major industries BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" pollutants and classes of pollutants. See *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), modified by additional orders of October 26, 1982, August 2, 1983, and January 6, 1984.

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the Federal water pollution control program, its most significant feature is its incorporation into the Act of several of the basic elements of the Settlement Agreement program for toxic pollution control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984 of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under section 307(a) of the Act. Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" ("BMP") to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

The 1977 Amendments added section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those mentioned specifically in section 304(a)(4) (biochemical oxygen demanding pollutants (BOD5), total suspended solids (TSS), fecal coliform, and pH), and any additional pollutants defined by the Administrator as "conventional." (To date, the Agency has added one such pollutant, oil and grease, 44 FR 44501, July 30, 1979.)

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two part "cost-reasonableness" test, *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50372). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

A revised methodology for the general development of BCT limitations was proposed on October 29, 1982 (47 FR 49176), but has not been promulgated as a final rule. We accordingly are not proposing BCT limits for plants in the nonferrous metals manufacturing phase II category at this time. We will await establishing nationally applicable BCT limits for this industry until promulgation of the final methodology for BCT.

For non-toxic, nonconventional pollutants, sections 301 (b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of these proposed regulations is to provide effluent limitations guidelines for BPT and BAT, and to establish NSPS, pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS), under section 301, 304, 306, 307, and 501 of the Clean Water Act.

B. Prior EPA Regulations

EPA already has promulgated effluent limitations and pretreatment standards for certain nonferrous metals manufacturing subcategories. These regulations, and the technological basis are summarized below.

Nonferrous Phase I. On March 8, 1984 EPA promulgated rules for nonferrous metals manufacturing phase I (49 FR 8742), which established BPT, BAT, NSPS, PSES, and PSNS for 12 subcategories. They are: primary aluminum, copper smelting, copper electrolytic refining, lead, zinc, columbium-tantalum, and tungsten; secondary aluminum, silver, copper, lead and metallurgical acid plants.

Bauxite Refining Subcategory. EPA has promulgated BPT, BAT, NSPS, and PSNS in this subcategory 39 FR 12822 (March 26, 1974). BPT, BAT, NSPS, and PSNS are based on zero discharge of process wastewater, but do allow for a monthly net precipitation discharge from red mud impoundments. We are providing notice today that we are considering whether to establish more stringent effluent limitations controlling selected phenolic compounds contained in the net precipitation discharge currently allowed from bauxite refining plants.

Metallurgical Acid Plants. This subcategory was initially established in 1980, and at that time included only acid plants (*i.e.*, plants recovering byproduct sulfuric acid from sulfur dioxide smelter air emissions) associated with primary copper smelting operations. See 45 FR 44926. Primary lead and zinc plants also have associated acid plants; and consequently the applicability of the metallurgical acid plant subcategory was expanded to include these sources in the phase I regulation finalized on March 8, 1984 (49 FR 8742). We are proposing today to amend the existing regulation for metallurgical acid plants by modifying the applicability of the metallurgical acid plant subcategory to include molybdenum acid plants as well.

C. Overview of the Category

The nonferrous metals manufacturing category is comprised of plants that process ore concentrates and scrap metals contained in spent electroplating solutions, spent catalysts, old jewelry, and various other sources. These plants recover nonferrous metals by increasing the metal purity contained in these materials. Depending on the metal and the desired purity, hydrometallurgical or pyrometallurgical exchange operations may be used to purify and upgrade metal values.

The production of nonferrous metals sometimes occurs at plants that also have processes that are regulated as part of other point source categories. Many of the production operations characterizing the nonferrous metals manufacturing category follow mining and milling operations. The ore mining and dressing category includes the extraction of the ore from the ground and the subsequent beneficiation of the ore including gravity concentration, magnetic separation, electrostatic separation, froth flotation, and leaching to produce ore concentrates. The ore concentrates and scrap materials form the raw materials in the nonferrous metals manufacturing subcategories.

Following smelting, refining, or extraction of metal values included in the nonferrous metals manufacturing category, the metal or metal salt products are used as raw materials for such operations as forming, alloying, and the manufacture of inorganic chemicals. Operations such as these, where the metal purity is not increased, are covered by other point source categories. In many of the nonferrous metals manufacturing subcategories, the production operations cease with the casting of the smelted or refined metal. Recasting of the metal without refining for use in subsequent forming or alloying operations is covered by the Aluminum Forming, Nonferrous Metals Forming, or Metal Molding and Casting Point Source Categories.

EPA has divided the nonferrous metals category into separate segments (nonferrous metals manufacturing phase I and nonferrous metals manufacturing phase II), in keeping with Agency priorities to regulate initially those plants which generate the largest quantities of toxic pollutants. As a result, EPA promulgated regulations for nonferrous metals manufacturing phase I (49 FR 8742) on March 8, 1984. Twelve subcategories were addressed: primary aluminum, copper smelting, copper electrolytic refining, lead, zinc, columbium-tantalum, and tungsten; secondary aluminum, silver, copper, lead, and metallurgical acid plants.

EPA also has separately studied the forming or casting of nonferrous metals. EPA promulgated regulations for aluminum forming (48 FR 49126) in October, 1983, and for copper forming (48 FR 36942) in August, 1983. Proposed regulations for metal molding and casting (47 FR 51512) were published in November, 1982. Proposed regulations for forming of nonferrous metals other than aluminum and copper (49 FR 8112) were published on March 5, 1984.

Today's rulemaking focuses on the remaining segment of nonferrous metals manufacturing. The proposed regulatory strategy for nonferrous metals manufacturing phase II addresses the following 24 subcategories:

Primary antimony,
Bauxite refining,
Primary beryllium,
Primary boron,
Primary cesium and rubidium,
Primary and secondary germanium and gallium,
Secondary indium,
Primary lithium,
Primary magnesium,
Secondary mercury,
Primary molybdenum and rhenium,
Secondary molybdenum and vanadium,
Primary nickel and cobalt,
Secondary nickel,
Primary precious metals and mercury,
Secondary precious metals,
Primary rare earth metals,
Secondary tantalum,
Primary and secondary tin,
Primary and secondary titanium,
Secondary tungsten and cobalt,
Secondary uranium,
Secondary zinc, and
Primary zirconium and hafnium.

EPA is proposing to completely exclude three of these subcategories from regulation. Primary lithium and secondary zinc are excluded because the production of these metals does not require process water, and the production of magnesium does not produce wastewater with treatable concentrations of pollutants. The remaining 21 subcategories in nonferrous metals manufacturing phase II contain 34 primary metals and metal groups, 20 secondary metals and metal groups, and bauxite refining. A group of metals—including six primary metals and five secondary metals—were excluded from regulation in a Paragraph 8 affidavit executed pursuant to the Settlement Agreement on May 10, 1979. These metals were excluded from regulation either because the manufacturing processes do not use water or because they are regulated by toxics limitations and standards in other categories (ferroalloys and inorganic chemicals). Four of these metals which were excluded from regulation on May 10, 1979—primary antimony, primary tin, secondary molybdenum, and secondary tantalum—have since been reconsidered and are now included in this rulemaking based on information received during the data collection portion of the study basic to this rulemaking. An explanation of this, along with an explanation of the revised list of metal production processes proposed for exclusion from regulation is provided in section XVI.

There are 141 plants in the 21 regulated phase II subcategories which EPA estimates employ 13,500 people and annually generate raw wastes containing approximately 905,000 kilograms of toxic pollutants. There are 32 direct dischargers which currently discharge 307,000 kg/yr of toxic pollutants and there are 38 indirect dischargers which currently discharge an additional 67,000 kg/yr of toxics. There are 71 plants in this category that do not discharge process wastewater. In the three subcategories that we are proposing not to regulate there is one direct discharger and 13 plants that do not discharge wastewater.

In developing this regulation, it was necessary to determine whether effluent limitations and standards were appropriate for different segments (subcategories) of the category. The

major factors considered in assessing the need for subcategorization and in identifying subcategories included: waste characteristics, raw materials, manufacturing processes, products manufactured, water use, water pollution control technology, treatment costs, solid waste generation, size of plant, age of plant, number of employees, total energy requirements, nonwater quality characteristics, and unique plant characteristics. Section IV of the Development Document and its supplements contain a detailed discussion of these factors and the rationale for subcategorization.

A brief description of each of the 21 subcategories for which regulations are proposed is provided below, with particular emphasis on the sources of wasterwater and the types of pollutants present. Section V of the subcategory supplemental Development Documents provides specific characterization data on each of the wastewater sources.

We are proposing discharge limitations for each of the wastewater sources identified below. The effluent limitations for an individual plant would then be calculated by considering the discharge allowances for those wastewater sources actually present at the plant. (See discussion of building blocks in section VIII below.)

Primary Antimony. Seven of the eight primary antimony plants in the United States are zero dischargers. One primary antimony plant is a direct discharger. The eight plants are geographically scattered, located in seven states across the country. The oldest plant was built in the 1880's, and three others are more than 30 years old. Two plants have been built within the last 10 years. EPA data show that average plant production is approximately 500 kkg per year of antimony and antimony compounds.

The processes used at a primary antimony production facility depend largely on the raw material used and the final produce desired. Pyrometallurgical processing, practiced at five of the eight primary antimony plants, generates no process wastewater. Hydrometallurgical processing, practiced at the remaining three plants, includes the four basic steps which are discussed below.

The first step involves leaching of the ore concentrate with sodium hydroxide to dissolve the antimony. Solids are removed from the resulting slurry by thickening and filtration. The residue is either disposed of or further processed to recover other metals.

The second step involves autoclaving the clarified solution from the leaching process with oxygen. Autoclaving produces sodium antimonate which is dried, packaged, and sold.

The third step involves electrowinning to produce antimony metal from the clarified leaching liquor. Antimony is removed from the solution as cathode metal, and the spent electrolyte is recycled to the leaching operation.

In the fourth step, antimony metal is coverted to antimony trioxide in a fuming furnace. The product of this pyrometallurgical process is captured in a baghouse and sold.

The principal sources of wastewater in the primary antimony subcategory are listed below, alone with the pollutants typically found in each:

(1) *Sodium antimonate autoclave* wastewater is generated when the clarified solution from leaching is autoclaved. Dissolved antimony is converted to sodium antimonate as a final product. This stream is similar to fouled anolyte and contains suspended solids and toxic metals.

(2) *Fouled anolyte* is generated when a portion of the barren electrowinning solution is discharged. This waste stream contains suspended solids and toxic metals.

Bauxite Refining. Of the eight bauxite refining plants in the United States, three are direct dischargers and five are zero dischargers. Seven of the plants are located in the states of Louisiana, Texas, Arkansas, and Alabama. The other plant is located in the U.S. Virgin Islands. Plant age ranges from 15 to 44 years with an average of about 30 years. EPA data show that plant production ranges from 37,000 to 570,000 kkg per year; one of the plants is closed but continues to discharge and four of the remaining eight plants produce between 200,000 and 300,000 kkg per year, measured as aluminum contained in refined bauxite.

The processes used at a bauxite refinery depend largely on the raw material used and the final product desired. In general, plants use the Bayer process or a variation known as the combination process. The four basic steps in the Bayer process which an individual plant may utilize are discussed below.

The first step involves bauxite grinding and digestion. Bauxite ore is crushed, wet-ground with a caustic solution, and digested with sodium hydroxide or lime and sodium carbonate to convert the alumina in the ore to soluble sodium aluminate. The resulting slurry is cooled in flash tanks from which steam is recovered and returned to the digestor.

The second step involves red mud removal and liquor purification. The digested bauxite suspension contains insoluble residue including iron oxides, silica, and undigested bauxite. This residue, known as red mud, is removed by settling, thickening, and filtration. After washing, the mud is disposed of in a mud impoundment. The combination process is a variation of the Bayer process in which the red mud from high-silica bauxites is sintered and leached to recover alumina. The resulting brown mud is disposed of in a mud impoundment.

In the third step, the purified sodium aluminate solution is cooled and aluminum hydroxide is precipitated in the presence of recycled seed crystals. The remaining spent caustic solution is separated from the hydrate crystals by filtration and recycled to the digestion step after concentration by evaporation and removal of excess salts.

The fourth step involves calcination to convert the hydroxide filter cake to anhydrous alumina. If hydrate is the desired final product, the filter cake is dried under less severe conditions than in calcining.

The principal source of wastewater in the bauxite refining subcategory is listed below, along with the pollutants typically found in it:

(1) *Mud impoundment effluent* is discharged from the mud disposal lake in areas of net precipitation. The effluent is characterized by high pH and the presence of phenolic compounds.

Primary Beryllium. The primary beryllium industry in the United States currently consists of two plants that are owned by the same company. One of the plants is located in Utah near the beryllium ore mining operations. This facility processes the raw materials to an intermediate product, beryllium hydroxide. The beryllium hydroxide is shipped to the second facility, located in Ohio, where it is further processed to final product forms. The plant which produces beryllium hydroxide in Utah began operations in 1979 and achieves zero discharge through the use of evaporation ponds. The facility in Ohio which produces beryllium metal and other products including beryllium oxide and beryllium copper alloy is a direct discharger which began operations in 1957.

The production of beryllium products can be divided into three distinct operations—production of beryllium hydroxide from beryllium ores, production of beryllium oxide from beryllium hydroxide, and production of beryllium metal from beryllium hydroxide.

Most domestic beryllium is extracted from bertrandite ore mined in Utah. Imported and domestically produced beryl ore is another potential raw

material for the primary beryllium industry.

Bertrandite ore is first wet ground and screened to form a slurry which is leached with a sulfuric acid solution. The mixture is washed in countercurrent thickeners. The sludge from the thickeners is dewatered in a filter and discarded. The thickener supernatant next enters a solvent extraction process where beryllium is extracted from solution with an organic solvent. The barren raffinate solution is discarded as a waste stream.

The beryllium is stripped from the organic phase into an aqueous solution. Iron is precipitated from solution and the iron sludge is discarded. Beryllium is next precipitated from solution as beryllium carbonate which is separated from the liquid phase by filtration. The beryllium carbonate may be sold as a product or further processed to beryllium hydroxide.

The beryllium carbonate filter cake is redissolved in deionized water and beryllium hydroxide is precipitated and separated from the liquid phase by filtration. Beryllium hydroxide may be further processed to make beryllium copper alloy, beryllium oxide, or pure beryllium metal.

When beryl ore is processed, the ore is crushed and melted. The molten material is quenched with cold water to produce a glassy material called frit. The frit is dried, ground and leached with strong sulfuric acid, forming a mixture of beryllium sulfate, aluminum sulfate, and silica. Water is added to the mixture and the silica is separated in a series of countercurrent decantation steps. The resultant silica sludge is discarded. The beryllium solution is further processed by solvent extraction, purification and precipitation in an identical manner as beryllium solution from bertrandite ore.

The oxide is produced by dissolving beryllium hydroxide in water, sulfuric acid, and ammonium sulfide. The resulting beryllium sulfate solution is then filtered to remove impurities. The solution flows to an evaporator followed by a crystallizer where beryllium sulfate crystals are formed. The crystals are separated from the mother liquor and the mother liquor is recycled. The beryllium sulfate is calcined in gas-fired furnaces to beryllium oxide.

Beryllium hydroxide, $BeOH_2$, is added to a batch makeup tank along with an ammonium bifluoride solution. The resultant ammonium beryllium fluoride solution is filtered to remove insoluble impurities. The washed filter cake is a bifluoride sludge which is discarded.

The filtered ammonium beryllium fluoride solution is next treated with ammonium sulfide to precipitate dissolved impurities, particularly iron. The precipitated solids are removed in a filter and the resultant sulfide sludge is discarded.

The ammonium beryllium fluoride solution next flows to a crystallizer where ammonium beryllium fluoride crystals are formed. The solids are separated from the liquid phase and the supernatant is recycled.

The dried ammonium beryllium fluoride, $(NH_4)_2BeF_4$, is heated in a furnace to drive off ammonium fluoride (NH_4F) and produce beryllium fluoride (BeF_2).

Beryllium fluoride is reduced to beryllium metal by magnesium in a furnace, resulting in a matrix of beryllium metal and magnesium fluoride (MgF_2).

The principal sources of wastewater in the primary beryllium subcategory are listed below, along with pollutants typically found in each:

(1) *Solvent extraction raffinate from bertrandite ore processing* is generated when bertrandite ore is leached with sulfuric acid and beryllium is extracted from the resultant solution with an organic solvent. This stream is characterized by a low pH and the presence of toxic metals.

(2) *Solvent extraction raffinate from beryl ore processing* is generated when beryl ore is leached with sulfuric acid and beryllium is extracted from the resultant solution with an organic solvent. This wastewater has an acid pH and contains toxic metals.

(3) *Beryllium carbonate filtrate* results from the precipitation of beryllium carbonate which is separated from the aqueous phase by filtration. This wastewater stream is characterized by the presence of toxic metals.

(4) *Beryllium hydroxide filtrate* is generated when beryllium carbonate is redissolved in water and beryllium is reprecipitated as beryllium hydroxide. The resultant filtrate stream contains toxic metals.

(5) *Calcining furnace wet air pollution control* wastewater results from the use of wet scrubbing to control sulfur dioxide emissions from beryllium oxide calcining furnaces. This wastewater is characterized by the presence of toxic metals.

(6) *Beryllium hydroxide supernatant* from beryllium recovery is generated when beryllium is recovered from waste materials by dissolution in sulfuric acid and precipitation as beryllium hydroxide. The resultant supernatant stream is characterized by the presence of toxic metals.

(7) *Process condensates* are generated by crystallizers and evaporators used in the production of beryllium metal. These condensate streams are characterized by the presence of fluoride.

(8) *Fluoride furnace scrubber* wastewater results from the use of wet scrubbers to recover ammonium fluoride from the exhaust gases from the beryllium fluoride furnace. This wastewater contains toxic metals and fluoride.

(9) *Chip leaching* wastewater is generated when pure beryllium metal in the form of chips is leached with nitric acid and rinsed prior to being vacuum cast. This wastewater stream is characterized by a low pH and the presence of toxic metals.

Primary Boron. The primary boron industry consists of two plants operating in different areas of the United States. One plant is located east of the Mississippi and the other plant is in the west. Boron is produced in the form of the metal powder. Both of the boron plants currently achieve zero discharge.

There are two production processes presently employed in the primary boron industry to manufacture boron metal powder. The first is thermal reduction of a solid boron compound, and the second involves thermal decomposition of a boron gas.

In the thermal reduction process, the raw material is boric oxide (B_2O_3), also called boric anhydride. Boric acid is obtained from naturally occurring borate mineral deposits and can be derived by the action of sulfuric acid on borax, a common boron-containing ore. In the thermal reduction process, boric oxide and magnesium metal are placed in a reaction vessel and heated. Magnesium reduces boric oxide to boron metal. The reaction products are cooled, broken out of the reaction vessel, and crushed to a powder. Separation of boron powder from magnesium oxide is accomplished by sulfuric acid leaching. Magnesium oxide dissolves in the acid and insoluble boron powder is filtered from the solution and washed with water prior to drying and packaging.

The second boron production process, thermal decomposition, uses diborane as a raw material. The decomposition process takes advantage of the instability of diborane at high temperatures. As the gas is heated, it decomposes into its elemental constituents. Thus boron metal powder is produced. After decomposition and cooling, the boron metal product is recovered and packaged as a powder.

The principal sources of wastewater in the primary boron subcategory are listed below, along with the pollutants typically found in each:

(1) *Reduction product acid leachate* results from acid leaching to facilitate boron metal separation from the magnesium reduction reaction products. Toxic metals and suspended solids are present in this waste stream.

(2) *Boron wash water* is generated when boron powder filtered from spent acid is rinsed prior to drying. This waste stream contains treatable levels of suspended solids and toxic metals.

Primary Cesium and Rubidium. One plant in the United States produces primary cesium and rubidium. That plant is classified as a zero discharger.

The production processes of primary cesium and rubidium are nearly identical and can be divided into three steps, as described below.

The first step involves digestion of cesium or rubidium ores. Pollucite (Cs) or lepidolite (Rb) ores are digested with strong sulfuric acid to dissolve the metal. The ore gangue is removed by filtration and the metal is crystallized out of the remaining solution by cooling. The spent acid is decanted, and the crystals are rinsed with water.

The metal is further purified by redissolution and selective precipitation of impurities. The third step involves reduction to cesium or rubidium metal.

The principal sources of wastewater in the primary cesium and rubidium subcategory are listed below, along with the pollutants typically found in each:

(1) *Spent acid and crystallizer rinse water from cesium production* is generated when water used to wash cesium crystals is combined with spent pollucite ore digestion acid. This stream is characterized by low pH as well as the presence of toxic metals and suspended solids.

(2) *Spent acid and crystallizer rinse water from rubidium production* is generated when water used to wash rubidium crystals is combined with spent lepidolite ore digestion acid. This stream is characterized by low pH as well as the presence of toxic metals and suspended solids.

Primary and Secondary Germanium and Gallium. Of the five primary and secondary germanium and gallium plants in the United States, one is an indirect discharger and four are zero dischargers. There are no direct dischargers. One plant is located in Pennsylvania, two are in the Oklahoma-Texas region, and two are in the far western part of the country. Germanium and gallium plants are located near sources of raw materials, either zinc ore deposits or major electronics firms. All five plants were built within the last 25 years, with two built within the last three years. The average plant age is 12 years.

The processes used at a germanium or gallium production facility depend largely on the raw material used and the final product desired. The four basic germanium and gallium processing steps which an individual plant may utilize are discussed below. Germanium and gallium are produced from both primary and secondary raw materials, however the processing steps are essentially the same.

The first step involves chlorination of the germanium or gallium raw material to produce the tetra- or trichloride, respectively. Chlorination is effected with hydrochloric acid or chlorine gas. Germanium tetrachloride product is a vapor, and is recovered in a condenser. Both germanium tetrachloride and gallium trichloride may be purified by a series of distillation and stripping operations.

The second step involves hydrolysis of germanium tetrachloride to produce germanium dioxide, or gallium trichloride to produce a hydrated gallium compound.

In the third step, germanium dioxide and gallium hydroxide are reduced to metal. Germanium dioxide is reduced to metal powder in a hydrogen furnace, and then is melted and cast as bars. Gallium hydroxide is reduced to metal by dissolution and electrolytic recovery.

The fourth step involves further purification of the germanium and gallium products, to achieve purities in excess of 99.9999 percent. Further purification of germanium is effected by a zone refining process, aimed at removing dissolved oxygen from the metal. Gallium is purified using a crystallization process.

Gallium can also be recovered from scrap using a solvent extraction process. In solvent extraction, gallium scrap is dissolved in acid, and then the gallium is extracted into an organic phase, from which pure metal is recovered. The principal sources of wastewater in the germanium and gallium subcategory are listed below, along with the pollutants typically found in each:

(1) *Still liquor* wastewater results from the excess hydrochloric acid used to chlorinate germanium raw material, and from impurities in the germanium raw material. This wastewater contains toxic metals, low pH, and suspended solids.

(2) *Chlorinator wet air pollution control* wastewater results from wet scrubbers used to control acid and chlorine fumes generated during the reduction of germanium tetrachloride. Chlorinator wet air pollution control wastewater contains toxic metals, and suspended solids.

(3) *Germanium hydrolysis filtrate* wastewater results from the depleted solution after germanium tetrachloride is reacted with water to produce germanium dioxide solids. This wastewater is characterized by toxic metals and suspended solids.

(4) *Acid wash and rinse water* wastewater is produced by the hydrofluoric acid-nitric acid wash, followed by water rinse, of germanium bars prior to zone refining. This wastewater contains germanium, and has a low pH and high fluoride content.

(5) *Gallium hydrolysis filtrate* wastewater results from the depleted solution after gallium trichloride is reacted to produce hydrated gallium solids. This wastewater is characterized by toxic metals and suspended solids.

(6) *Solvent extraction raffinate* wastewater results from the acid solution in which gallium scrap is dissolved prior to being extracted into an organic phase, from which pure metal is recovered. This wastewater is expected to contain toxic organics, metals, and suspended solids.

Secondary Indium. There is one facility currently producing secondary indium in the United States. This facility is an indirect discharger located in the northeastern United States. Plant operations began approximately 50 years ago.

The principal raw materials used for secondary indium production are scrap indium metal and spent electrolyte solutions from secondary silver refining operations.

Leaching and precipitation are the principal operations in the production of secondary indium. Indium scrap is leached with hydrochloric acid to dissolve the indium and produce an indium-laden solution.

The indium-rich leachate then undergoes a series of precipitation steps to remove impurities. Spent electrolytic solutions from secondary silver refineries may be combined with the leachate at this point. Selected impurities such as lead and tin are precipitated out of the solution. The purified indium solution is then processed to precipitate out the indium. Zinc is added to the indium-rich solution and indium ions in solution are displaced by the zinc. The indium precipitate, called indium sponge, is then removed and sent to the melting and casting operation.

Electrolytic refining is used to produce high-purity indium (up to 99.9999 percent), and utilizes low purity indium as the raw material.

Successive electrolysis processes which use the pure indium cathode as

the anode result in the production of indium of even higher purity. These process steps are repeated until the desired grade of indium is obtained.

Refined indium from the leaching, precipitation, and electrolytic refining processes as well as pure indium scrap can be melted down and cast into the desired product. All indium melting and casting operations are dry.

The principal sources of wastewater in the secondary indium subcategory are listed below, along with pollutants typically found in each:

(1) *Displacement tank effluent* is generated when indium sponge is produced by displacing indium ions from solution with zinc. This wastewater is characterized by the presence of toxic metals and suspended solids.

(2) *Spent electrolyte* wastewater results from discharging contaminated electrolyte solution from electrolytic refining operations. This wastewater is characterized by an acid pH and the presence of toxic metals and suspended solids.

Secondary Mercury. All four of the secondary mercury plants in the United States are zero dischargers. One plant achieves this discharge status by contractor disposal of process wastewater, one by complete recycle, and two plants operate dry processes. Two of the four plants are located near the industrial centers of the Northeast, one is in Illinois, and one in California. All four secondary mercury plants were built after World War II. The average plant age is 30 years. EPA data show that plant production ranges from less than 25 tons of mercury per year to 100 tons per year, with mean production approximately 55 tons per year.

The processes used at a secondary mercury production facility depend largely on the raw material used and the purity of final product desired. The three basic secondary mercury processing steps which an individual plant may utilize are discussed below.

The first step involves physically or pyrometallurgically separating mercury from gross impurities in scrap. This step precedes distillation. Electrolyte in mercuric oxide batteries is drained prior to recovering the mercury from the battery. Raw materials such as thermometers, switches, filters, controls, zinc and silver amalgams, and soil samples have mercury separated from gross impurities by roasting in a furnace. This pyrometallurgical separation vaporizes the mercury, which is recovered in a condenser, and leaves the nonvolatile solids remaining in the furnace.

The second step involves purifying mercury by distillation, which is generally accomplished in columns, retorts, stills, or kettles. Distillation typically consists of charging raw, impure mercury into the bottom of a still, and heating the charge to a prescribed temperature. While heating the charge, air may be bubbled through the still to oxidize metallic impurities. When the charge reaches a certain temperature, the mercury begins to vaporize, and the purified mercury is recovered in an overhead, water cooled condensing system. Mercury distillation is run batchwise or continuously.

In the third step, distilled mercury may be further purified using either additional distillation steps, or an acid washing process. Multiple distillation can produce very high purity mercury. Final product can have purity as high as 99.999999 percent. Further purification can also be effected by an acid wash and water rinse method. In this method, a small amount of dilute nitric acid is used to wash the distilled mercury product, and then distilled water is used to wash the residual acid away from the mercury product.

The principal sources of wastewater in the secondary mercury subcategory are listed below, along with the pollutants typically found in each:

(1) *Spent battery electrolyte* wastewater results from draining spent electrolyte from mercuric oxide batteries prior to recovering mercury by distillation. This wastewater is characterized by toxic metals, suspended solids, and a low pH.

(2) *Acid wash and rinse water* wastewater is generated by washing distilled mercury with dilute nitric acid and rinsing it with water in order to further purify the mercury product. This wastewater contains toxic metals and suspended solids.

(3) *Furnace wet air pollution control* wastewater results from controlling air emissions from the furnace used to separate mercury from gross impurities. Particulates and fumes not condensed with the mercury product are scrubbed prior to venting to the atmosphere. The scrubber liquor should contain mercury and other toxic metals, and suspended solids.

Primary Molybdenum and Rhenium. There are 13 plants in the United States which engage in primary molybdenum or rhenium production. Three plants are located in the western United States near copper and molybdenite mining operations. The remaining 10 plants are located east of the Mississippi River with five of them in the northeastern and east central United States. Four of the plants are direct dischargers and the remaining nine plants discharge no process wastewater. There are no indirect dischargers in the primary molybdenum and rhenium subcategory. The average plant age is between 25 and 35 years with a fairly even distribution of ages ranging from eight to 67 years.

Molybdenum is produced primarily as technical grade molybdic oxide which is consumed principally by the steel industry. Approximately 35,000 metric tons of molybdic oxide were produced domestically in 1982 by seven plants with an average plant production rate of 5,000 metric tons per year. Approximately 2,000 metric tons of pure molybdenum metal were produced in the United States in 1982 at six plants with an average plant production of 300 metric tons per year. Less than four metric tons per year of rhenium are produced in the United States. The production of molybdenum products can be divided into four general processes—roasting of molybdenum sulfide concentrates, production of pure molybdic oxide by sublimation, production of ammonium molybdate, and reduction of pure molybdic oxide or ammonium molybdate to produce molybdenum metal powder.

Rhenium is recovered from molybdenum roaster flue gases as crude ammonium perrhenate which can subsequently be purified and reduced to rhenium metal.

The primary source of molybdenum is a molybdenum sulfide (MoS_2) ore called molybdenite. Most domestic molybdenite is mined and concentrated at two large mines in Colorado and a smaller amount comes from a mine in New Mexico. Molybdenite is also recovered as a by-product from concentrating prophyry copper ores. Rhenium is produced only from molybdenite which is associated with copper mining operations.

Molybdenite concentrates, which are typically 90 percent molybdenum disulfide (MoS_2), are roasted in multiple hearth furnaces. The product is technical grade molybdic oxide consisting of 90 to 95 percent MoO_3. The flue gases contain products of combustion, sulfur dioxide, and rhenium heptoxide (Re_2O_7) when molybdenite concentrates from copper mining operations are roasted. Sulfur dioxide emissions are controlled with either a caustic scrubber or a sulfuric acid plant.

Pure molybdic oxide can be produced from technical grade molybdic oxide through sublimation and condensation. The tech oxide is heated in a muffle type furnace. The oxide is vaporized and carried in a stream of forced air through cooling ducts and the condensed oxide

particles are collected in a fabric filter. The purified oxide contains greater than 99.5 percent MoO_3. The pure oxide may be sold as a product, reduced to molybdenum metal powder, or used to produce various molybdenum chemicals.

Technical grade molybdic oxide is dissolved in ammonium hydroxide solution and recrystallized as pure ammonium molybdate. Prior to dissolving, the tech oxide is leached with nitric acid and rinsed with water to remove impurities. Alternatively, the molybdenite may be leached prior to roasting. The ammonium molybdate may be sold as a product, calcined to form pure molybdic oxide, or reduced to form molybdenum metal powder.

Either pure molybdic oxide or ammonium molybdate may be reduced in a hydrogen atmosphere to produce molybdenum metal powder.

When molybdenite concentrates from copper mining operations are roasted, rhenium present in the concentrate is volatilized as rhenium heptoxide (Re_2O_7). The rhenium heptoxide is water soluble and is removed from the flue gas by wet scrubbing. The rhenium is then recovered from the scrubber liquor via selective ion exchange or solvent extraction. Rhenium is stripped from the resin or solvent and crude ammonium perrhenate, NH_4ReO_4, is crystallized from the resultant solution. The crude ammonium perrhenate may be sold as a product, further purified prior to reduction to rhenium metal, or used in the manufacture of various rhenium chemicals.

The principal sources of wastewater in the primary molybdenum and rhenium subcategory are listed below, along with the pollutants typically found in each:

(1) *Molybdenum sulfide leachate and rinse water* is generated when molybdenite concentrates are leached with nitric acid and rinsed with water prior to roasting. This stream is characterized by low pH as well as the presence of toxic metals and suspended solids.

(2) *Roaster wet air pollution control* wastewater results from the use of alkaline wet scrubbing systems to control sulfur dioxide emissions from molybdenite roasting operations. This stream is characterized by high alkalinity and the presence of toxic metals and suspended solids.

(3) *Hydrogen reduction furnace scrubber* wastewater results from scrubbing hydrogen gas with water to cool and quench the gas prior to recycling the hydrogen to the reduction furnace. This wastewater stream is characterized by the presence of toxic metals and suspended solids.

(4) *Molybdic oxide leachate* wastewater results from the leaching of technical grade molybdic oxide with nitric acid, water or ammonium hydroxide prior to dissolving, purification and crystallization of ammonium molybdate. This leachate and rinse wastewater is characterized by the presence of toxic metals and ammonia.

(5) *Rhenium scrubber solution* results from scrubbing rhenium heptoxide from molybdenite roaster off-gases with water and recovering the rhenium from aqueous solution by solvent extraction or ion exchange. This wastewater stream is characterized by the presence of toxic metals.

Molybdenum Metallurgical Acid Plants. Metallurgical acid plants produce sulfuric acid from sulfur dioxide air emissions at primary molybdenum facilities. There are 3 metallurgical sulfuric acid plants associated with primary molybdenum plants in the United States. Of these two are direct dischargers, and one achieves zero discharge. One of the direct discharging facilities is in Iowa and the other two facilities are located in Pennsylvania. There are insufficient data to ascertain the age of acid plants independently of the molybdenum plants associated with them. The average production capacity for metallurgical acid plants associated with primary molybdenum operations is 50,000 to 100,000 tons per year of 100 percent sulfuric acid.

Metallurgical acid plants produce sulfuric acid from the sulfur oxide emissions of pyrometallurgical operations. By producing acid, the acid plants not only clean the smelter emissions of many tons per day of sulfur oxides, but they also produce a marketable sulfuric acid product.

Prior to entering the acid plant, the off-gas stream from pyrometallurgical operations will usually undergo various pretreatment steps. The pretreatment steps include cooling, cleaning, conditioning (humidification), mist precipitation, drying and compression.

In the acid production section, a vanadium pentoxide catalyst converts the sulfur dioxide in smelter off-gases to sulfur trioxide, and the sulfur trioxide is absorbed into a sulfuric acid stream. The sulfur trioxide combines with water in the absorbing sulfuric acid (which, in effect, increases the strength of the contacting acid stream).

The principal wastewater sources in metallurgical acid plants are as follows:

—Sintering wet air pollution control,
—Roasting wet air pollution control,
—Conversion wet air pollution control,
—Acid plant wet air pollution control,
—Mist precipitator,
—Box cooler, and
—Mist eliminator.

These wastewater sources are usually combined into a single wastewater stream—acid plant blowdown—which is treated and then recycled or discharged.

The acid plant blowdown stream contains the toxic metals arsenic, chromium, copper, lead, nickel, selenium, and zinc, and total suspended solids.

Secondary Molybdenum and Vanadium. The one secondary molybdenum and vanadium facility in the United States is a direct discharger. It is located in Southern Texas, and was built in 1973. This industry involves the recovery of molybdenum and vanadium from secondary sources using hydrometallurgical processes.

The basic secondary molybdenum and vanadium processing steps are discussed below.

After some dry preparation steps, the raw material is leached with water to remove impurities and then dissolved, producing a solution containing the molybdenum and vanadium, and a tailing waste stream.

Molybdenum and vanadium are separated by precipitating vanadium from solution. Molybdenum does not precipitate, and the filtrate is routed to the molybdenum purification process. The vanadium rich solids are washed to remove traces of molybdenum, and then are manufactured into their final product form. One product form is vanadium pentoxide (V_2O_5), produced by decomposing the solids in a furnace.

Finally, molybdenum is precipitated from solution. This produces molybdic acid solids, which are recovered by filtration. Molybdic acid solids are dried and converted to molybdenum trioxide product (MoO_3) in a furnace.

The principal sources of wastewater in the secondary molybdenum and vanadium subcategory are listed below, along with the pollutants typically found in each:

(1) *Leach tailings* wastewater results from the water leaching process used to remove inerts and other impurities from the raw material, and is characterized by toxic metals and suspended solids.

(2) *Molybdenum filtrate* wastewater is generated by the precipitation of molybdenum from a molybdenum-rich liquid produced by the vanadium recovery process. This wastewater is characterized by toxic metals, ammonia, and suspended solids.

(3) *Vanadium decomposition wet air pollution control* wastewater results from air emissions control on the furnace used to produce vanadium oxide

from vanadium solids. This wastewater contains ammonia, toxic metals, and suspended solids.

(4) *Molybdenum drying wet air pollution control* wastewater results from air emissions control on the furnace used to dry molybdic acid and to produce molybdenum trioxide from the molybdic acid. This wastewater contains molybdenum, toxic metals, and suspended solids.

Primary Nickel and Cobalt. The one primary and nickel and cobalt plant in the United States is a direct discharger. It is located in southern Louisiana and was built in 1959.

The processes used at a primary nickel and cobalt production facility depend largely on the raw material used and the final product desired. The three basic primary nickel and cobalt processing steps which an individual plant may utilize are discussed below.

The first step involves crushing and grinding the ore concentrate, which contains copper, nickel, cobalt, and various impurities. Raw material is crushed and ground in a wet ball mill, and then fed to a sulfuric acid leaching system.

The second step involves separating copper from the nickel and cobalt. This is effected by leaching with a sulfuric acid-copper sulfate solution. Nickel and cobalt are leached into solution, while copper remains in the solid phase. The copper-containing solids are routed to the copper recovery system.

In the third step, nickel and cobalt are separated from each other, and each metal is purified. Separation is accomplished by precipitating cobalt out of solution with an ammonia compound. Nickel powder is recovered from the nickel-rich solution by reduction in a hydrogen autoclave. The excess solution is routed to an ammonium sulfate recovery process. Purification of cobalt is effected by the pentammine method, where nickel and other impurities are removed. Cobalt pentammine is reduced to cobalt powder in a hydrogen autoclave. The excess solution from cobalt purification is also routed to an ammonium sulfate byproduct recovery system.

The principal sources of wastewater in the primary nickel and cobalt subcategory are listed below, along with the pollutants typically found in each:

(1) *Raw material dust control* wastewater results from slurrying the baghouse dust generated by crushing and grinding ore concentrate in the mill. This wastewater is characterized by toxic metals (mainly copper and nickel), and suspended solids.

(2) *Nickel wash water* wastewater is generated by washing the nickel powder product produced by hydrogen reduction. This wastewater contains toxic metals and suspended solids.

(3) *Nickel reduction decant* wastewater is generated by reducing the nickel-rich solution to metal powder in an autoclave. This waste stream is characterized by a neutral pH, several toxic metals, and a high ammonia (as ammonium sulfate) content.

(4) *Cobalt reduction decant* wastewater is generated by reducing the cobalt-rich solution to metal powder in an autoclave. This waste steam has similar characteristics to the nickel reduction decant waste stream.

Secondary nickel. Of the two secondary nickel plants in the United States, one is an indirect discharger and one is a zero discharger. Both plants are located near the industrial centers of Western Pennsylvania. One plant was built in 1923, and the other plant was built in 1976.

The processes used at a secondary nickel production facility depend largely upon the raw material used and the final product desired. Secondary nickel production processes can be discussed in the context of three sources of raw materials: nickel melt furnace slag, nickel carbonate produced from acidic waste streams and sludges generated during forming operations, and solid scrap. Nickel alloy scrap generated at steel mills may also be recycled within the mill, however, no refining of the nickel scrap takes place prior to recycle.

The objective of slag reclamation is to recover the nickel values from the dross or slag produced in the nickel melt furnaces of a nickel forming plant. When nickel ingots are melted in the presence of fluxing agents, oxidized metals and impurities rise to the surface of the liquid metal and are removed from the furnace. This slag is approximately 10 percent metallics.

The dross or slag is first cooled and solidifed, and then mechanically granulated with a jaw crusher and a wet rod mill, in order to facilitate nickel separation. It is then fed into a mineral jig, which is a wet operation. The jig uses specific gravity differences to recover the nickel-rich material which is recycled to the nickel melt furnace.

In the acid reclaim process, a vessel filled with soda ash (Na_2CO_3) has the spent acids, pickling wastes, and wastewater treatment sludges from nickel forming operations added to it. This pH adjustment step precipitates the nickel out of the dissolved phase into the solid phase. The depleted nickel forming waste solutions are removed by filtration, and the nickel carbonate solids are recovered. The impure nickel carbonate is the raw material for the acid reclaim process.

Impure nickel carbonate is slurried with water to produce a homogeneous solution, and then roasted in an open hearth furnace. Roasting drives off the water, and oxidizes the nickel.

The nickel oxide product from roasting is then leached with water to remove impurities, and filtered. The nickel oxide product is approximately 35 percent nickel, and is returned to the nickel melting furnaces.

Scrap generated by a manufacturing facility may be recycled to recover the nickel values. The scrap is fed into a digestion unit with nitric acid and water. The acid removes silver and other impurities, and a 95 percent nickel product is either sold or returned to the manufacturing facility. The spent solution containing significant silver values is routed to a silver recovery process. There are no waste streams associated with scrap reclaim.

The principal sources of wastewater in the secondary nickel subcategory are listed below, along with the pollutants typically found in each.

(1) *Slag reclaim tailings* wastewater results from the wet operation used to reclaim nickel from melt furnace slags, and contains toxic metals and suspended solids.

(2) *Acid reclaim leaching filtrate* wastewater results from the water leaching process where nickel oxide, produced by roasting nickel carbonate, is purified by leaching away impurities. Toxic metals and suspended solids are found in this waste stream.

(3) *Acid reclaim leaching belt filter backwash* wastewater is produced by backwashing the belt filter used to recover purified nickel oxide, and contains toxic metals and suspended solids.

Primary Precious Metals and Mercury. Seven of the eight primary precious metals and mercury plants in the United States are zero dischargers. One primary precious metals plant is a direct discharger. Six of the plants achieve zero discharge via permanent lagooning and reuse of process wastewater, and one plant does not generate process wastewater. All eight plants are located west of the Mississippi River, with four plants in Nevada, one in South Dakota, one in Montana, one in Idaho, and one in Colorado. Seven primary precious metals and mercury plants began operations within the last 20 years, and one plant began operations more than 75 years ago. EPA data show that plant production of gold ranges from less than 10,000 troy ounces per year to 200,000

troy ounces per year, with average production approximately 70,000 troy ounces per year; plant production of silver ranges from less than 10,000 troy ounces per year to more than 500,000 troy ounces per year, with average production approximately 220,000 troy ounces per year. The production of mercury is not presented to protect confidential data supplied to the Agency.

The processes used at a primary precious metals and mercury production facility depend largely on the raw material used and the final product desired. Primary precious metals produced as a by-product of primary copper manufacturing are regulated under nonferrous phase I in the primary copper refining subcategory. In nonferrous phase II, the primary precious metals raw material is not copper-based. The three basic primary precious metals and mercury processing steps which an individual plant may utilize are discussed below.

The first step involves smelting or calcining the ore mining beneficiation product in a furnace. This pyrometallurgical step is used to separate the primary precious metals or mercury from the base metals and waste ore. If there is mercury in the raw material, it is vaporized, and recovered as a product in a condenser. The calcined ore waste product is removed from the furnace. No further purification of mercury is necessary. Gold and silver containing raw materials are smelted in the presence of fluxing agents to produce a gold- and silver-rich doré metal intermediate product. Slag, containing base metals such as zinc, lead, and copper, is skimmed off the smelting furnace. Doré metal may be cast and sold as a product, or it may be refined.

The second step involves separating gold from silver, and this can be done either electrolytically or with a chlorine parting furnace. In the electrolytic method, gold and silver containing Doré metal is cast as an anode, and electrolytically refined using a silver nitrate electrolyte. Silver crystals are recovered on the cathode, and are cast as a product, and gold remains as slimes in the canvas anode bags. Gold slimes are washed with acid and rinsed with water before being cast as a product.

Gold and silver can also be separated in a parting furnace by forcing chlorine gas through molten Doré metal. Silver is converted to silver chloride, which rises to the surface of the melt and is skimmed. The gold product remains in the furnace.

In the third step, gold and silver are further purified using various methods. Gold can be further purified electrolytically, using a chloride solution. As described above, gold slimes can be further purified using an acid wash and water rise process. Silver chloride can be reduced to silver metal by dissolution and displacement from solution with iron. Silver metal is then melted with a flux and cast as silver product.

The principal sources of wastewater in the primary precious metals and mercury subcategory are listed below, along with the pollutants typically found in each.

(1) *Smelter wet air pollution control* wastewater results from control of air emissions from the precious metals doré smelter using a wet scrubber. This waste stream is characterized by toxic metals and suspended solids.

(2) *Silver chloride reduction spent solution* wastewater results from the reduction of silver chloride to silver metal by dissolution and displacement with iron. This wastewater contains toxic metals, chloride, suspended solids, oil and grease, and a low pH.

(3) *Electrolytic cells wet air pollution control* wastewater results from control of air emissions from the electrolytic cells used to further purify gold, which has already been separated from silver, using a wet scrubber. This wastewater has similar characteristics to the smelter scrubber wastewater.

(4) *Electrolyte preparation wet air pollution control* results from air emissions control on the reaction vessel used to produce silver nitrate electrolyte from pure silver and nitric acid, using a wet scrubber. This wastewater should have characteristics similar to smelter wet air pollution control wastewater.

(5) *Silver crystal wash water* wastewater results from washing the silver crystals deposited on the cathode in the electrolytic refinig of Doré metal. This wastewater should contain toxic metals and suspended solids.

(6) *Gold slimes acid wash and rinse water* wastewater is generated by the dilute nitric acid wash and water rinse of the gold slimes produced by the electrolysis of Doré metal. This wastewater is expected to contain toxic metals and suspended solids.

(7) *Calciner wet air pollution control* wastewater results from control of air emissions from the calcining furnace where mercury-containing raw material is roasted. Fumes and particulates passing through the mercury condenser are controlled with a wet scrubber, or series of scrubbers. This wastewater contains high concentrations of mercury, plus some toxic metals and suspended solids.

(8) *Calciner quench water* wastewater is generated by the water quench used to cool the calcined ore from the mercury roasting furnace. This wastewater contains toxic metals and suspended solids.

(9) *Calciner stack gas cooling water* wastewater results from the contact cooling water used to cool the gas emissions from the mercury roasting furnace. This wastewater contains mercury and suspended solids.

(10) *Mercury calcining condensate* wastewater results from the blowdown of water from the condenser where vaporized mercury is collected. This wastewater is characterized by mercury and suspended solids.

(11) *Mercury cleaning bath* wastewater is generated by the water cleaning bath through which condensed mercury is passed prior to being sold as a product. This wastewater contains mercury, some other toxic metals, and suspended solids.

Secondary Precious Metals. There are 48 plants in the United States that recovery gold, platinum, palladium, iridium, rhodium, osmium, or ruthenium from recycled materials. The plants are concentrated in the Northeast and California, with plants also located in Arizona, Florida, Illinois, Ohio, Virginia, Minnesota, and Washington. EPA data show that a small minority (three) of secondary precious metals plants are direct dischargers. Of the remainder, 29 are indirect dischargers, and 16 are zero dischargers. Most of the plants began operating within the last 15 years.

One-third of the 48 secondary precious metals plants that reported data produce less than 10,000 troy ounces of total precious metals per year; all three of the direct dischargers produce in excess of 50,000 troy ounces per year, as well as 10 of the indirect dischargers.

The processes used at a secondary precious metals production facility depend largely upon the raw materials used and the plant's final products. Secondary precious metals production processes can be divided into two stages: raw material preparation and refining steps.

Depending on the raw material being processed, a plant may use one or more raw material preparation steps to prepare the raw material for the refinery. Plants which process dental scrap, optical scrap, electrical scrap, or spent catalysts may use a pyrometallurgical process. These raw materials may be crushed, ground, and incinerated or smelted in a furnace in order to remove the carbonaceous material and volatile fraction.

Incineration produces a precious-metal bearing residue which may then be fed directly to the refinery. Smelting usually produces a copper based bullion product which can either be sold or further processed in the refinery.

Gold-containing electrical scrap can be stripped with sodium or potassium cyanide solution. Cyanide stripping works best where gold is exposed on the surface of the scrap. The gold is recovered from the cyanide solution by precipitation as a gold-laden sludge, and the sludge is routed to the refinery.

Gold, rhodium or palladium can be recovered from spent or contaminated electroplater's solutions by either a precipitation or electrolysis process. Precious metals are precipitated as a precious metal-bearing sludge from spent plating solutions using zinc or sodium hydrosulfite, and the sludge is routed to the refinery. Gold is also recovered from spent plating solutions electrolytically, and the electolysis product is routed to the refinery.

Some plants do not use any of the raw material preparation steps described above on their raw materials, and proceed directly with the refining steps. Other plants may only melt and granulate their raw material prior to refining. Granulation is a common practice with jewelry scrap.

Refining steps are taken to produce high-purity precious metals (generally 99.9–99.99 percent) from lower purity raw materials, which may have undergone raw material preparation steps. The hydrometallurgical refining process involves dissolving raw materials in strong acid, such as aqua regia (one part concentrated nitric acid: three or four parts concentrated hydrochloric acid), filtering away silver chloride solids, and precipitating gold with sulfur dioxide or chlorine gas. The filtrate from gold precipitation is the raw material for recovering platinum group metals. Platinum group metals are precipitated out of solution using ammonium chloride, and are selectively dissolved in either acid or base and recovered. These refining processes are often repeated to increase the purity of the final product. Each of the metals produced is washed with water to remove any traces of acid or base.

Other hydrometallurgical refining processes, such as electrolysis or solvent extraction, are also used to recover gold. Electrolysis involves casting the raw material as an anode, and using an acidic electrolyte to recover gold on the cathode.

Solvent extraction involves dissolving raw material in acid, and extracting gold into an organic phase. Gold is recovered from the organic phase as a pure metal, and the organic solution is reused. The gold product is washed with water.

After precious metals are refined, they may be further processed in one of three ways. Gold and platinum group metals are cast as bars; gold is granulated to form shot; and gold is reacted with potassium cyanide solution to form potassium gold cyanide (PGC) salt. PGC salt is a raw material used in the electroplating industry. The principal sources of wastewater in the secondary precious metals subcategory are listed below, along with pollutants typically found in each.

(1) *Furnace wet air pollution control* wastewater results from the scrubbing of incinerator and smelting furnace off-gases. This wastewater contains toxic organics, toxic metals, cyanide, and suspended solids.

(2) *Raw material granulation* wastewater is produced by granulating melted raw material with water in a manner similar to shot casting. The wastewater is characterized by toxic metals and suspended solids.

(3) *Spent plating solutions* wastewater is a result of recovering gold, palladium or rhodium from spent or contaminated electroplater's solutions, and is characterized by toxic metals, free and complexed cyanide, and suspended solids.

(4) *Spent cyanide stripping solution* wastewater is produced by stripping gold away from electronic scrap and then recovering the gold from solution. This wastewater consists of free and complexed cyanide, toxic metals, and suspended solids.

(5) *Refinery wet air pollution control* wastewater is a result of air emissions from basic and acid dissolution and precipitation reactions in the refinery. Pollutants found in this wastewater include toxic organics and metals, cyanide, ammonia, and suspended solids.

(6) *Gold solvent extraction raffinate and wash water* wastewater is produced by dissolving raw material in acid, and then recovering it by extraction into an organic solvent. After recovering pure gold, the product is washed with water. This wastewater is characterized by toxic organics and metals, and suspended solids.

(7) *Gold spent electrolyte* wastewater results from the electrolytic recovery of gold from raw material cast as an anode. This wastewater consists of toxic metals and suspended solids.

(8) *Gold precipitation and filtration* wastewater results from the dissolution of raw material in aqua regia, filtering away silver chloride, precipitating gold, and recovering gold by filtration.The gold product is washed with water, which is included in this effluent. This wastewater is contains toxic metals, ammonia, and suspended solids.

(9) *Platinum precipitation and filtration* wastewater results from dissolution of platinum-bearing raw material, precipitation of platinum, and water wash of the product. This wastewater is contains toxic metals, ammonia, and suspended solids.

(10) *Palladium precipitation and filtration* wastewater results from the dissolution of palladium bearing raw material, precipitation of palladium, and a water wash of the product. This wastewater contains toxic metals, ammonia, and suspended solids.

(11) *Other platinum group metals precipitation and filtration* wastewater results from dissolution of platinum group metals (PGM) bearing raw material, precipitation of the PGM, and a water wash of the product. This wastewater contains toxic metals, ammonia, and suspended solids.

(12) *Spent solutions from PGC salt manufacturing* wastewater is a result of adding excess potassium cyanide solution to pure gold in order to produce PGC salt. The excess, or spent solution contains toxic metals, free and complexed cyanide, and suspended solids.

(13) *Equipment and floor wash* wastewater results from the need for plants to recover product which would normally be lost in spills and leaks, and is characterized by toxic metals, ammonia, and suspended solids.

Primary Rare Earth Metals. The primary rare earth metals industry consists of four plants; one is located in southwest United States and the remaining three are in the northeast United States. Of these four facilities, two were built in the past 20 years, while two were built nearly 70 years ago. The average production of rare earth metals from these plants is 270 tons per year. One of the plants is a direct discharger, one is an indirect discharger, and two are zero dischargers.

Rare earth metal production can be divided into two types of metals produced: pure rare earth metals, and mischmetal, an alloy of various rare earth metals and iron. The two types of rare earth metals production processing steps which an individual plant may utilize are discussed below.

Pure rare earth metals are produced through reduction processes. Calcium reduction is used for rare earth fluoride raw materials and mischmetal reduction is used for rare earth oxide raw materials.

In calcium reduction, the pure metal fluoride is placed with calcium into a reaction vessel in which a heat-driven reaction produces the pure rare earth metal and calcium fluoride slag. The metal is further purified by melting in a vacuum to remove impurities. Final product casting is dependent upon the desired product form.

Rare earth metal oxides are reduced to metal by using mischmetal as a reducing agent. The reduced rare earth metal vaporizes and the vapor is condensed into a crystalline mass. This solid metal product may be crushed into powder or melted and cast.

Mischmetal is produced by electrolysis using rare earth chlorides as raw materials. Rare earth chlorides are often in a hydrated form. Drying furnaces are used to dehydrate the metal chlorides prior to electrolytic reduction. The off-gases from the furnace pass through a continuous spray quench and are then either discharged into the atmosphere or passed through a caustic scrubber. Mischmetal is made by mixing the desired quantities of different dry rare earth chlorides and electrolytically reducing the molten chlorides to metal. The molten mischmetal is collected from the electrolytic cell and cast into ingots.

A principal by-product of electrolytic reduction is a gas containing chlorine. This gas is first quenched to remove particulates and then passed through a caustic scrubber. The reaction between sodium hydroxide and chlorine gas produces sodium hypochlorite which is concentrated by recycling scrubber liquor and sold for industrial use.

The principal sources of wastewater in the primary rare earth metals industry are listed below, along with the pollutants typically found in each:

(1) *Dehydration furnace quench and wet air pollution control* wastewater results from air pollution control systems on the wet rare earth chloride drying furnaces. This wastewater contains suspended solids and toxic metals.

(2) *Electrolytic reduction cell quench* wastewater results from cooling gas emissions from electrolytic reduction of rare earth chlorides. This wastewater contains some toxic metals, hexachlorobenzene, and has a low pH.

(3) *Electrolytic reduction cell wet air pollution control* wastewater is presently used for by-product recovery involving sodium hypochlorite produced from sodium hydroxide and chlorine gas from the electrolytic reduction cell. Because of the recovery operation, no wastewater is discharged.

Secondary Tantalum. There are three plants in the United States that recover tantalum from secondary sources. The plants are located in the northeastern part of the United States. EPA data show that all of the plants are direct dischargers. The average age of the plants is 60 years; the oldest plant was built in 1900 while the newest plant was constructed just prior to World War II. Secondary tantalum is produced in the form of tantalum metal powder. Average tantalum powder production for the three plants is 12 tons per year.

The processes used at a secondary tantalum production facility depend upon the raw materials used. Secondary tantalum production can be discussed in the context of three raw materials: scrap tantalum alloy metal, electrical components such as capacitors, and tantalum-bearing sludge.

Scrap tantalum alloy metal is material that is generated from forming and stamping operations. This scrap is immersed in acid causing dissolution of all metal components of the alloy except tantalum. When the batch of scrap tantalum has been sufficiently leached of impurties it is filtered from the spent acid and washed with water.

Another significant raw material is scrap electrical components. Of these, capacitors make up the majority. The recovery of tantalum from capacitors is effected by acid leaching. A mixture of acids is poured into a digestor filled with the scrap. The mixture is agitated until the acid becomes spent, at which time it is decanted, and replaced with fresh acid. The procedure is repeated until pure tantalum powder remains. In order to further purify the powder, it is melted by an electron beam refining process to remove impurities. The pure tantalum is solidified and crushed into powder. Finally, it is washed with acid to remove surface oxides. After rinsing with water, the powder is dried and packaged.

Tantalum-bearing sludge is another significant raw material used for tantalum recovery. In addition to upgrading the tantalum content of the sludge, other metals of value are derived through the tantalum recovery process. The procedure involves successive leachings. After washing the leached sludge, it is dried and packaged. The resulting powder contains 25 percent tantalum.

The principal sources of wastewater in the secondary tantalum subcategory are listed below, along with the pollutants typically found in each:

(1) *Tantalum alloy leach and rinse* wastewater results from leaching tantalum alloy scrap metal, contains dissolved toxic metals such as copper and nickel, suspended solids, and has a low pH.

(2) *Capacitor leach and rinse* wastewater results from leaching of scrap electrical components which are predominantly capacitors. This wastewater has a low pH and contains suspended solids and toxic metals.

(3) *Tantalum sludge leach and rinse* wastewater results from leaching and rinsing tantalum-bearing sludge during tantalum upgrading operations. It contains toxic metals such as copper and lead, suspended solids, and has a low pH.

(4) *Tantalum powder acid wash and rinse* wastewater results from final purification of tantalum powder to remove surface oxides. This wastewater contains toxic metals, suspended solids, and has a low pH.

(5) *Leaching wet air pollution control* wastewater is the scrubber liquor resulting from acid leaching of raw materials for tantalum recovery. This wastewater contains total suspended solids and toxic metals.

Primary and Secondary Tin. There is one plant in the United States which produces primary tin and 11 plants which recover tin from secondary sources such as tin plated steel scrap and tin plating solutions and sludges. Five of the 12 plants which produce primary or secondary tin are located in the west or southwestern United States. Five of the remaining seven plants are located in the east central United States. One plant is located in Indiana and one plant is located Florida. The average plant age is between 16 and 25 years. All of the plants have been built since 1940. The one plant which produces primary tin has a production level between 1,000 and 5,000 metric tons per year. This facility is a direct discharger. Approximately 1,700 metric tons of secondary tin were produced in 1982 at 11 plants with an average plant production of approximately 150 metric tons per year. Seven of the 11 secondary tin plants achieve zero discharge; two are direct dischargers and two discharge to POTW.

Primary tin is produced by smelting tin concentrates with limestone and coke. The crude tin is then electrolytically refined and cast. Secondary tin may also be produced by smelting tin residues, particularly detinners mud from alkaline detinning operations. Most secondary tin, however, is produced by dissolving tin from tin plated steel scrap, and recovering the tin by electrowinning. Tin may also be recovered from solution by precipitation of tin as tin hydroxide. A smaller amount of secondary tin is recovered from tin plating sludges which

are generated by tin plated steel production operations.

Secondary tin production can be divided into four major operations: alkaline detinning, electrowinning, tin hydroxide precipitation, and reduction to tin metal.

The principal raw material for the secondary tin industry is tin plated steel scrap. Virtually all of this scrap comes from fabrication plants which produce cans and a variety of other tin plated steel products. Such scrap may include punched sheets, rolls and bundles. One producer also reported tin recovery from tin plated steel separated from municipal solid waste. Two producers reported that they recovered tin from spent tin electroplating solutions and plating sludges.

Primary tin is produced by smelting tin concentrates and residues in a reverberatory furnace. Sulfur dioxide emissions from the smelting furnace are controlled with a caustic scrubber. Crude molten tin is removed from the furnace, fire refined and cast into anodes. The anodes are consumed in an electrolytic refining process and the purified tin is cast into ingots.

The first step in recovering secondary tin from tin plated scrap is hot alkaline detinning. Tin plated scrap is loaded into perforated steel detinning baskets and placed in a detinning tank which contains a solution of sodium hydroxide and sodium nitrate. The solution is heated to near the boiling point and the tin dissolves into solution as sodium stannate.

Scrap containing aluminum is pretreated in a solution of sodium hydroxide, in which the aluminum dissolves. After rinsing, the dealuminized scrap is sent to the detinning tanks.

There are two variations of the alkaline detinning process: the saturated process and the unsaturated process. In the saturated process, the sodium stannate solution is allowed to become supersaturated and sodium stannate crystals precipitate from solution. The sodium stannate is recovered from the solution in a filter press and the solution is returned to the detinning tanks. The sodium stannate filter cake may then be sold as a product or redissolved in water for further processing or electrowinning.

In the unsaturated process, the sodium stannate concentration in the solution is kept below the saturation point and the solution is pumped directly to further processing or electrowinning. In both the saturated and the unsaturated process, the sodium stannate solution is purified by adding sodium sulfide or sodium hydrosulfide to precipitate lead and other metal impurities as insoluble metal sulfides.

The precipitated residue is called tin mud or detinners mud and is sold to smelters. Detinners mud may also include residues removed from the bottoms of detinning tanks. This mud contains three to five percent tin and is sold as a by-product to smelters. The tin mud is usually rinsed to recover any soluble tin which may be present. The rinse water is recycled to the detinning tanks. One producer reported an acid neutralization step in which acid is added to the mud. The neutralized mud is then dewatered in a filter press and sold to smelters.

When the detinning cycle is complete, the detinned steel is removed from the detinning tanks. The steel is then rinsed to recover any tin solution which may be adhering to it, pressed or baled, and sold as a product. The rinse water is recycled to the detinning tanks to recover tin.

The purified sodium stannate solution is sent to electrolytic cells where pure tin metal is deposited onto cathodes. The tin is then removed from the cathodes, melted and cast. The electrowinning solution is then recycled to the detinning tanks. A blowdown stream must periodically be discharged from the electrowinning circuit in order to control the concentration of aluminum, carbonates, and other impurities in the solution.

One producer reported the use of tin hydroxide as a raw material for electrowinning of tin metal. The tin hydroxide is first washed with water and then dissolved in a solution of sodium hydroxide. The resultant sodium stannate solution is then purified and added to the sodium stannate solution from alkaline detinning and the combined solution enters the electrowinning tanks.

As an alternative to recovering tin metal by electrowinning, tin can be recovered from solution as tin hydroxide. One plant which uses this process precipitates tin from a solution which is a mixture of alkaline detinning solution and a solution generated by dissolving tin plating sludge solids in water. The other plant which precipitates tin hydroxide uses spent tin electroplating solution as a raw material.

The tin hydroxide is dried and calcined in a furnace to produce tin dioxide. The tin dioxide is then charged to a reduction furnace with carbon where it is reduced to tin metal.

The primary sources of wastewater in the primary and secondary tin subcategory are listed below along with the pollutants typically found in each.

(1) *Tin smelter wet air pollution coantrol* wastewater results from the use of wet scrubbing systems to control sulfur dioxide emissions from tin smelting operations. This wastewater is characterized by the presence of toxic metals and suspended solids.

(2) *Dealuminizing rinse* wastewater results from dissolving aluminum from municipal solid waste derived scrap prior to alkaline detinning. This stream is characterized by an alkaline pH and the presence of cyanide, toxic metals, aluminum, and suspended solids.

(3) *Tin hydroxide wash* wastewater is generated when tin hydroxide is used as a raw material in the electrowinning operations and is washed with water to remove impurities prior to dissolving and electrowinning. This waste stream contains toxic metals and suspended solids.

(4) *Tin mud acid neutalization filtrate* is generated when tin mud is upgraded by acid addition and dewatering prior to sale to tin smelters. This wastewater contains cyanide and toxic metals.

(5) *Spent electrowinning solution from new scrap* results from discharging water from the electrowinning circuit to control the buildup of impurities when new tin plated steel scrap is processed. This stream has a very alkaline pH and contains cyanide, toxic metals and suspended solids.

(6) *Spent electrowinning from municipal solid waste* is required to account for the larger volume of spent electrowinning solution which must be discharged when municipal solid waste is used as a raw material in alkaline detinning and electrowinning. This extra discharge is necessitated by impurities which are introduced into the electrowinning solution by the municipal solid waste. This wastewater is characterized by an alkaline pH and the presence of cyanide, toxic metals and suspended solids.

(7) *Tin hydroxide supernatant from scrap* is generated when tin hydroxide is precipitated from alkaline detinning solution and separated from the aqueous phase by gravity separation. This wastewater contains toxic metals, cyanide, and suspended solids.

(8) *Tin hydroxide supernatant from spent plating solutions* is generated when tin hydroxide is precipitated from spent tin electroplating solutions and separated from the aqueous phase by gravity separation. This wastewater is characterized by the presence of toxic metals, cyanide, suspended solids, and high concentrations of fluoride.

(9) *Tin hydroxide supernatant from sludge solids* results when tin hydroxide is precipitated from a solution generated

by dissolving tin plating sludge solids in water. The resultant supernatant stream is characterized by the presence of toxic metals, cyanide, fluoride and suspended solids.

(10) *Tin hydroxide filtrate* results from dewatering tin hydroxide slurry in a filter press. The resultant filtrate stream contains toxic metals, cyanide, fluoride, and suspended solids.

Primary and Secondary Titanium. Of the eight primary and secondary titanium plants in the United States, four are direct dischargers, two are indirect dischargers, and two are zero dischargers. The plants are located mostly in the eastern and northwestern states. Three plants were built around 1940, three were built between 1956 and 1958, and two have been built since 1975. EPA data show that five of the eight plants produce less than 500 kkg per year while, of the remaining three plants, two produce more than 5,000 kkg per year.

The processes used at a primary and secondary titanium production facility depend largely on the raw material used and the final product desired. The four basic primary and secondary titanium processing steps which an individual plant may utilize are discussed below.

The first step involves chlorination of rutile or ilmenite ore in a fluidized bed reactor. The resulting titanium tetrachloride is condensed from the reaction gas and purified by distillation.

The second step involves reduction by one of three methods to produce titanium metal sponge. Four plants use the Kroll process in which titanium tetrachloride ($TiCl_4$) is added to magnesium in a reduction furnace where it is converted to titanium metal and magnesium chloride. Molten magnesium chloride is tapped off as it is formed and recovered electrolytically. One plant uses the Hunter process to reduce titanium tetrachloride to the metal by sodium in an inert atmosphere. One plant reports the production of titanium sponge by reducing rutile ore in a hydrogren atmosphere without forming the chlorinated intermediate.

Titanium metal sponge is crushed and purified by leaching or by vaccum distillation. The purified metal may be sold as titanium sponge, crushed and sold as titanium powder, or further processed by alloying and casting.

Titanium is also recovered from secondary sources, particularly scrap titanium metal which is washed with acid prior to being melted and cast along with titanium from primary sources.

The principal sources of wastewater in the primary and secondary titanium subcategory are listed below, along with the pollutants typically found in each:

(1) *Chlorination off-gas wet air pollution control* wastewater results from wet scrubbers on the fluidized bed reactors used to convert rutile ore to the titanium tetrachloride. This waste stream may contain chlorine, suspended solids, and toxic metals.

(2) *Chlorination area vent wet air pollution control* wastewater results from wet scrubbers used to control fumes from the ore chlorination operation. This waste stream contains chlorine, suspended solids, and toxic metals.

(3) *$TiCl_4$ handling wet air pollution control* wastewater results from wet scrubbers used to control fumes from the handling and storage of titanium tetrachloride. The characteristics of this stream are similar to those of the reduction area scrubber water, which contains suspended solids and toxic metals.

(4) *Reduction area wet air pollution control* wastewater resulting from wet scrubbers used to control fumes generated from the reduction furnace when titanium tetrachloride is reduced to the metal sponge by magnesium. No wet air pollution control is reported to be associated with reduction by sodium or CaH_2. This wastewater is characterized by the presence of magnesium, chloride, and toxic metals.

(5) *Melt cell wet air pollution control* wastewater results from wet scrubbers used to control fumes from molten magnesium chloride which is stored in a melt cell prior to electrolytic recovery. This stream is characterized by low pH and low concentrations of toxic metals.

(6) *Cathode gas wet air pollution control* wastewater results from air pollution control devices on the electrolytic cells used for magnesium recovery. This waste stream is similar to the wastewater from the melt cell scrubber, which contains low concentrations of toxic metals.

(7) *Chlorine liquefaction wet air pollution control* wastewater results from wet scrubbers used to control vapors which escape during the liquefaction of the chlorine gas generated by the electrolytic recovery of magnesium. This stream is characterized by a low pH and the presence of toxic metals.

(8) *Sodium reduction container reconditioning wash water* is generated when water is used to rinse the containers used for the reduction of titanium tetrachloride by sodium. This stream contains chlorides, suspended solids, and toxic metals.

(9) *Chip crushing wet air pollution control* wastewater results from wet scrubbers used to control dust when titanium sponge chips are crushed prior to purification. This stream contains titanium and suspended solids.

(10) *Acid leachate and rinse water* is generated when titanium sponge is purified by leaching. Purification by vaccum distillation does not generate a wastewater. This waste stream is characterized by the presence of suspended solids and toxic metals.

(11) *Sponge crushing and screening wet air pollution control* waterwater results from wet scrubbers used to control dust from the crushing, screening, and storage of leached titanium. This waste stream contains suspended solids and toxic metals.

(12) *Acid pickle and wash water* is generated when large surface area titanium scrap is pickled and rinsed before alloying and casting. This low pH waste stream contains fluoride and toxic metals.

(13) *Scrap milling wet air pollution control* wastewater results from wet scrubbers used to control dust from the milling of titanium scrap and turnings. This waste stream contains suspended solids and toxic metals.

(14) *Scrap detergent wash water* is generated when scrap titanium is washed to remove oil and dirt before alloying and casting. This waste stream contains suspended solids, oil and grease, and toxic metals.

(15) *Casting crucible wash water* is generated when water is used to clean the crucibles used in casting operations. This stream is similar to casting contact cooling water and should contain oil and grease and toxic metals.

(16) *Casting contact cooling water* is generated during the casting operations. This stream is characterized by the presence of oil and grease, suspended solids, and toxic metals.

Secondary Tungsten and Cobolt. Of the five secondary tungsten and cobalt plants in the United States, four are direct dischargers, and one is a zero discharger. All five plants are located in the northeastern part of the country, near industrial centers, and all are in areas of net precipitation. One secondary tungsten and cobalt plant was built prior to World War I, two were built during World War II, and two plants were built in the last 20 years. EPA data show that average plant production of tungsten products is about 100 tons per year. Average plant production of cobalt products is also about 100 tons per year.

The processes used at a secondary tungsten and cobalt production facility depend largely on the raw material used and the final product desired. The basic

hydrometallurgical processing steps which an individual plant may use to recover tungsten, tungsten carbide, cobalt, and synthetic scheelite ($CaWO_4$) are discussed below.

The major hydrometallurgical processing step used to recover tungsten and tungsten carbide from scrap is to leach impurities such as cobalt, copper, nickel, silver, and zinc away from the product. Leaching usually occurs in an agitated reaction vessel with an acid solution. Tungsten, which is relatively insoluble in acid, is separated from the liquid phase by either filtration or decantation.

Prior to leaching, both tungsten and tungsten carbide scrap may be washed with detergent and rinsed with water. Washing removes surface oils and grease from the scrap in order to facilitate the leaching process.

After leaching, both tungsten and tungsten carbide powder may be washed with dilute acid or base, and rinsed with water. This wash step neutralizes and removes any residual leaching acid or impurities from the tungsten product.

Cobalt is recoverd as a by-product of tungsten carbide via a hydrometallurgical process. Cobalt is used as a binder alloy in tungsten carbide manufacturing and is recovered from tungsten carbide leaching acid.

Both tungsten and tungsten carbide scrap may be used to produce synthetic scheelite instead of pure tungsten or tungsten carbide powder. Synthetic scheelite ($CaWO_4$) is used in a primary tungsten refinery as a supplemental feed material to natural scheelite ore.

Pure tungsten scrap is smelted or roasted in a furnace to produce tungsten oxide (WO_3). Tungsten oxide is dissolved with caustic solution. After filtering away impurities, calcium chloride is added to the solution, and synthetic scheelite is produced. Synthetic scheelite is recovered by filtration.

The principal sources of wastewater in the secondary tungsten and cobalt subcategory are listed below, along with the pollutants typically found in each.

(1) *Tungsten detergent wash and rinse* wastewater is a result of washing oil and grease off the surface of tungsten scrap prior to leaching, and this stream contains toxic metals, oil and grease, and suspended solids.

(2) *Tungsten leaching acid* wastewater is generated when tungsten scrap is leached with an acid solution in order to remove impurities from the scrap. This stream is characterized by toxic metals, suspended solids, and a low pH.

(3) *Tungsten post-leaching wash and rinse* wastewater is a result of washing residual leaching acid and impurities away from the tungsten powder product. This stream consists of toxic metals and suspended solids.

(4) *Synthetic scheelite filtrate* wastewater is produced by the dissolution process where tungsten oxide produced from scrap is converted to synthetic scheelite. This waste stream is charcterized by toxic metals and suspended solids.

(5) *Tungsten carbide leaching wet air pollution control* wastewater results from the wet scrubbers used to control acid fumes generated during tungsten carbide leaching. This scrubber liquor contains toxic metals, ammonia and suspended solids.

(6) *Tungsten carbide wash water* is generated when tungsten carbide powder is washed with dilute acid and rinsed with water in order to remove residual leaching acid and impurities. This waste stream is similar to tungsten post-leaching wash and rinse wastewater, and has similar characteristics.

(7) *Cobalt sludge leaching wet air pollution control* wastewater results from the wet scrubber used to control acid fumes generated during cobalt sludge leaching. This waste stream and tungsten carbide leaching wet air pollution control should have similar characteristics.

(8) *Crystallization decant* wastewater is produced by plants which recover cobalt from tungsten carbide leaching acid by crystallization. This waste stream is characterized by toxic metals and suspended solids.

(9) *Acid wash decant* wastewater results from the purification steps used on the cobalt crystals, and contains toxic metals and suspended solids.

(10) *Cobalt hydroxide filtrate* wastewater is generated by the alkaline dissolution and precipitation process used to produce cobalt hydroxide. This waste stream is characterized by toxic metals and suspended solids.

(11) *Cobalt hydroxide filter cake wash water* is produced by washing the cobalt hydroxide filter cake with water in order to remove any traces of caustic or other impurities. This waste stream contains toxic metals.

Secondary Uranium. There are three plants in the United States that produce secondary uranium metal. Of these three, two plants are zero dischargers and the third is a direct discharger. The plants are all located east of the Mississippi River. Two plants were built in the 1950s when the uranium industry first began large scale production. The third plant was built nearly 15 years ago to supplement the growing need for uranium for commercial projects.

The uranium production process can be divided into two phases. The first phase is processing uranium scrap materials into uranium tetrafluoride (UF_4). The second phase is reduction of uranium tetrafluoride to uranium metal.

Raw materials available to uranium producers include scrap from forming operations, material that does not meet specifications for quality or purity, tailings from machining operations, and residuals present in magnesium fluoride slag from the final uranium tetrafluoride reduction processes.

The initial step in processing uranium from secondary sources is acid leaching. Uranium dissolves in nitric acid to form a nitrate compound, uranyl nitrate ($UO_2(NO_3)_2$). Recovery of uranyl nitrate from the spent acid is accomplished by addition of ammonia which precipitates ammonium diuranate. The solid is filtered and the filtrate discharged. After redissolving the precipitate in acid, the uranyl nitrate is purified by extraction into an organic solvent, leaving the impurities in the aqueous phase to be discharged. Reextraction into an aqueous phase is followed by evaporation to form concentrated uranyl nitrate. Calcination of the concentrate produces uranium trioxide (UO_3). The nitrates driven off in calcination combine with hydrogen in the air to produce nitric acid gases which are scrubbed and recycled to the acid leaching operations.

The next process step reduces uranium trioxide to uranium dioxide (UO_2). Ammonia is used to supply hydrogen for the reduction. The reaction gases are passed through a KOH scrubber to neutralize any acidity. The final step in preparation of uranium tetrafluoride is hydrofluorination of uranium dioxide. Hot hydrofluoric acid vapors are contacted with uranium dioxide. The ensuing reaction produces uranium tetrafluoride which is used for reduction to uranium metal. Unreacted gases are water scrubbed to collect residual hydrofluoric acid. The scrubber liquor is recycled to concentrate its acid content, and when a desired concentration is achieved, the solution is drawn off and sold for industrial use.

Magnesium reduction is the process converting uranium tetrafluoride to uranium metal. Magnesium metal and uranium tetrafluoride are laced in a bomb reduction vessel where at elevated temperatures the reduction reaction occurs. After cooling, the products are broken out and separated. The uranium metal product is remelted

and cast into forms suitable for forming operations.

The principal sources of wastewater in the secondary uranium subcategory are listed below, along with the pollutants typically found in each:

(1) *Refinery filtrate* wastewater results from the digestion of uranium scrap with nitric acid, and contains toxic metals and suspended solids.

(2) *Slag leach slurry* wastewater is generated by nitric acid digestion of recycled magnesium fluoride slag. The waste stream contains suspended solids and has a low pH.

(3) *Solvent extraction raffinate* wastewater results from purification of an intermediate uranium compound by extraction into an organic phase. The discharged aqueous solution contains organics and metals, and suspended solids.

(4) *Digestion operation wet air pollution control* wastewater results from wet scrubbers which control the process emissions from acid leaching. The waste stream contains suspended solids and toxic metals.

(5) *Evaporation and calcination wet air pollution control* produces no wastewater discharge. Scrubber liquors resulting from control of emissions in the evaporation and calcination operations were reported to be 100 percent reused in the digestion operation.

(6) *Hydrogen reduction and hydrofluorination KOH wet air pollution control* wastewater results from wet scrubbers that control acid fumes from the hydrogen reduction and hydrofluorination operations. The wastewater contains suspended solids and has an acidic pH.

(7) *Hydrofluorination wet air pollution control* produces no wastewater discharge. Scrubber liquor that absorbs unreacted hydrofluoric acid gases is recycled to concentrate the acid content. The acid scrubber liquor is drawn off and sold for its hydrofluoric acid content.

Primary Zirconium and Hafnium. Of the three primary zirconium and hafnium plants in the United States, one is a direct discharger, one is an indirect discharger, and one is a zero discharger. The plants are located in the states of Massachusetts, Utah, and Washington. Plant age covers a 42 year span, the oldest plant having been built in 1937.

The processes used at a primary zirconium and hafnium production facility depends largely on the raw material used. The five basic processing steps which an individual plant may utilize are discussed below.

The first step involves chlorination of zircon sand to form zirconium-hafnium tetrachloride. The sand may require drying prior to chlorination to remove excess moisture. The crude tetrachloride is recovered and separated from silicon tetrachloride ($SiCl_4$) impurities by fractional distillation. It is then dissolved in water and filtered to remove suspended solids.

The second step involves the separation of zirconium from hafnium. Several liquid-liquid extraction operations are used to separate the zirconium and hafnium while removing iron impurities. The separated zirconium and hafnium are precipitated as their hydroxides and dewatered by filtration or drying. From this point in the process, zirconium and hafnium are processed separately but identically.

In the third step, the zirconium or hafnium filter cakes are calcined to produce zirconium oxide or hafnium oxide.

The fourth step involves pure chlorination to convert the zirconium or hafnium oxides to the tetrachloride. This process is essentially the same as the first step, sand chlorination.

The fifth step involves reduction of the tetrachloride to their respective metals. The tetrachloride is reacted with magnesium in a retort furnace where it is converted to zirconium or hafnium metal and magnesium chloride. When zirconium oxide is used as a raw material instead of the tetrachloride, it is mixed with magnesium powder and retorted to produce zirconium metal sponge and magnesium oxide. Zirconium oxide can also be used to produce zirconium-nickel alloys. In that reduction process, nickel is added directly to the zirconium oxide, and the mixture is reduced by calcium in a hydrogen atmosphere.

The principal sources of wastewater in the primary zirconium and hafnium subcategory are listed below, along with the pollutants typically found in each:

(1) *Sand drying wet air pollution control* wastewater results from wet scrubbers used in the zircon sand drying operation. This stream is characterized by the presence of suspended solids and toxic metals.

(2) *Sand chlorination off-gas wet air pollution control* wastewater results from wet scrubbers used to control off-gases from the chlorinators. This wastewater is characterized by the presence of solids and chlorine.

(3) *Sand chlorination area-vent wet-air pollution control* wastewater results from wet scrubbers used to control fumes in the sand chlorination area. This wastewater is characterized by the presence of solids and chlorine.

(4) *$SiCl_4$ purification wet air pollution control* wastewater is generated when wet scrubbers are used to control fumes from the purification of the silicon tetrachloride formed during sand chlorination. This stream contains suspended solids and cyanide.

(5) *$SiCl_4$ purification waste acid* results from the purification of silicon tetrachloride formed during sand chlorination. This stream may contain solids and toxic metals.

(6) *Feed makeup wet air pollution control* wastewater results from wet scrubbers used to control fumes generated when crude zirconium-hafnium tetrachloride is dissolved in water and filtered to remove solids. This stream is characterized by the presence of suspended solids and cyanide.

(7) *Iron extraction steam stripper bottoms* are generated during the steam stripping process which removes iron from hafnium, following the liquid-liquid extraction process which separates zirconium from hafnium. This waste stream contains ammonia, solids, and toxic metals.

(8) *Zirconium filtrate* wastewater results from the precipitation and filtration of zirconium hydroxide during the separation process. This waste stream contains cyanide, MIBK, solids, and toxic metals.

(9) *Hafnium filtrate* wastewater results from the precipitation and filtration of hafnium hydroxide during the separation process. This waste stream contains suspended solids and cyanide.

(10) *Calcining caustic wet air pollution control* wastewater results from wet scrubbers on the zirconium and hafnium calcining kilns. This stream is characterized by the presence of sodium sulfite.

(11) *Pure chlorination wet air pollution control* wastewater results from wet scrubbers used to control fumes from the chlorination of calcined zirconium oxide or hafnium oxide. This waste stream is similar to the sand chlorination off-gas scrubber wastewater and contains solids and chlorine.

(12) *Reduction area-vent wet air pollution control* wastewater results from water scrubbers on the reduction furnaces used for the magnesium reduction of zirconium and hafnium tetrachlorides. This stream contains solids and metals.

(13) *Magnesium recovery area wet air pollution control* wastewater results from wet scrubbers used to control fumes from the recovery of magnesium for the reduction process. This stream is characterized by low pH and the presence of magnesium and solids.

(14) *Zirconium chip crushing wet air pollution control* wastewater is generated by wet scrubbers used for dust control when zirconium metal sponge is chipped out of the reduction container and crushed prior to purification. This stream contains solids and metals.

(15) *Acid leachate* wastewater is generated when remaining impurities are removed from crushed zirconium metal sponge or zirconium alloy by leaching with hydrochloric or acetic acid. This stream is characterized by low pH and the presence of solids and toxic metals.

(16) *Leaching rinse* wastewater is generated when water is used to rinse leached zirconium sponge or zirconium alloy. This waste stream is characterized by low pH and the presence of solids and toxic metals.

III. Scope of This Rulemaking and Summary of Methodology

This proposed regulation is a part of a new chapter in water pollution control requirements. The 1973–1976 round of rulemaking emphasized the achievement of best practicable technology (BPT) by July 1, 1977. In general, this technology level represented the average of the best existing performances of well-known technologies for control of familiar (or "classical") pollutants.

In this round of rulemakings EPA is emphasizing the achievement of the best available technology economically achievable (BAT), which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. In general, this technology level represents the very best economically achievable performance in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a lengthy list of toxic substances.

In developing this regulation, EPA studied the nonferrous metals manufacturing category to determine whether differences in raw materials, final products, manufacturing processes, equipment age and size of plants, water use, wastewater constitutents, or other factors required the development of separate effluent limitations and standards for different segments (or subcategories) of the industry. This study included the identification of raw waste and treated effluent characteristics, including: the sources and volumes of water used, the processes employed, and the sources of pollutants and wastewaters. Sampling and analysis of specific waste streams enabled EPA to determine the presence and concentration of toxic pollutants in wastewater discharges.

EPA also identified both actual and potential control and treatment technologies (including both in-process and end-of-process technologies). The Agency analyzed both historical and newly generated data on the performance, operational limitations, and reliability of these technologies. In addition, EPA considered the impacts of these technologies on air quality, solid waste generation, water scarcity, and energy requirements.

The Agency then estimated the costs of each control and treatment technology using a cost model developed by standard engineering analyses. EPA derived unit process costs for 70 discharging plants (plus one plant that does not discharge but has stated an intention to discharge in the future) using data and characteristics (production and flow) applied to each treatment process (*e.g.*, chemical precipitation, sedimentation, granular bed—multi-media filtration, etc.). These unit process costs were added to yield the total cost at each treatment level.

As one means of evaluating each technology option, the Agency developed estimates of the pollutant removals and the compliance costs associated with each option. Our methodologies are described below.

A. *Pollutant Removal Estimates.* In calculating pollutant removal estimates, we developed estimates for pollutant loadings in raw wastewater (by subcategory), for the mass of pollutants that would be discharged at each technology option, and for the mass of pollutants discharged currently.

Calculation of raw waste values varied depending upon whether the Agency was able to sample wastewater from unit operations within the subcategory. Where we sampled a unit operation (or sampled the same unit operation at different plants) and were able to obtain both analytical concentration data (mg/l) and production normalized flow values (liters of flow/kkg of production), we computed the mass loading associated with the unit operation (expressed in mg/kkg, *i.e.*, pollutant concentration x production normalized flow), and took the means of these mass loadings at every plant sampled.

After deriving this mean, we multiplied it by the subcategory-wide production associated with that unit operation at each plant (the production data is part of each plant's response to the data collection portfolio (dcp)—see Section IV below). The total represents estimated raw waste values for the subcategory from the unit operation. Summing raw waste values from each unit operation in the subcategory gives the total for the subcategory.

If we sampled a unit operation and were able to determine analytical concentrations of pollutants, but were unable to determine flow, we used production normalized flow data from the dcp's to compute mass loadings and otherwise followed the same procedure.

If we were unable to sample a unit operation at any plant, we computed raw waste values by making an engineering judgment as to which sampled unit operations had wastewater of similar quality. We then took these analytical values and computed a mass limitation using production normalized flow information from the dcp's. These mass limitations then were summed to give total subcategory raw waste values for that unit operation.

In determining mass loadings associated with each technology option, our general procedure is to take the achieveable concentrations associated with the option (mg/l) and compute mass loadings using either the production normalized flow associated with that option (for example, BAT regulatory flow), or the actual flow, whichever is smaller, on a plant-by-plant basis. This mass (mg/kkg of each plant's production) is then multiplied by the production for each plant in the subcategory (from dcp's, as before), which are then summed to give total mass discharged.

We used similar methods to estimate current discharge. We first identified from dcp responses what treatment is in place at each discharging facility. We then determined whether the treatment technology was being operated in a manner that would result in the pollutant mass discharge level considered achievable at each plant with the technolgy they have in place. Based on this determination, the current pollutant mass discharge at each facility was set equal to either the raw waste generated by the plant or to the mass discharge considered achievable by the treatment technology in place. The mass discharges for each facility were then summed to attain the total current discharge for a subcategory.

B. *Compliance Costs.* In estimating subcategory-wide compliance costs our first step was to develop a uniformly-applicable cost model, relating total plant costs associated with installation and operation of wastewater treatment technologies to production and flow data specific to each plant. Section VIII of the General Development Document

provides additional discussion of our cost estimates.

The first step in developing our cost estimates is to perform material balances (pollutant loadings) for the plant's wastewater treatment processes. These material balances are used to determine the type and size of the treatment system needed. The resulting equipment and process selections are then used to calculate investment as well as operation and maintenance (O&M) costs for each component in the treatment system. We then add 37.5 percent system capital costs for engineering, contingency, and contractor's fees to arrive at the total investment cost. Annual costs for the plant to comply with this regulation are determined as the sum of the O&M costs, monitoring costs, taxes, and amortized investment cost. The cost model data base used relies heavily on actual practice reported in this category and on equipment vendor quotes.

Our estimates include capital costs for only those processes that a plant has not yet installed; the annual costs (without depreciation or interest) for each process are included regardless of whether or not this process has been installed. We believe this is a very conservative assumption since most plants have installed treatment to meet NPDES or other requirements rather than in anticipation of this regulation.

The second step is the calculation of flow to the treatment system. For each regulatory option and wastewater source, the Agency has established a flow allowance. The actual wastewater flow (reported in plant dcps) from each production operation is compared to the corresponding regulatory flow for that operation and the lower of the two is selected as the basis for cost estimation (i.e., treatment equipment size, amount of treatment chemicals needed, etc.). This procedure eliminates the overestimation of end-of-pipe treatment system costs for plants that are currently below the regulatory flow allowances. For plants with flows currently above the regulatory flow allowances, costs for installation and operation of equipment necessary to achieve flow reductions to the regulatory flow are included.

Third, several cost and design assumptions are inherent in the computations. Among the most significant of these are the following:

(1) The dollar base is March of 1982;

(2) Twenty percent excess capacity is included in cost estimations;

(3) Unless otherwise specified, all wastewater treatment sludges are considered to be nonhazardous;

(4) Costs for segregation of wastewaters not included in this regulation (e.g., noncontact cooling water) or for routing regulated waste streams not currently treated to the treatment system are estimated on the basis of purchase and installation of 500 feet of four-inch piping (with valves, pipe racks, and elbows) for each stream. Storm water is segregated by including costs for installation of 300 feet of two-foot diameter underground concrete pipe to route storm water around the treatment system;

(5) Monitoring costs are calculated using a frequency that is a function of flow for each plant and a sampling and analysis cost of $120 per sample;

(6) Where a plant has wastewater sources from two nonferrous phase II subcategories (e.g., secondary tantalum and secondary tungsten and cobalt plant wastewater), the costs are normally apportioned between subcategories on a flow-weighted basis, since hydraulic flow is the primary determinant for equipment size and cost. At a specific plant, however, no incremental costs are incurred by a subcategory for flow reduction, if the waste streams associated with that subcategory do not undergo flow reduction. Thus if only the tungsten leaching scrubber from a combined secondary tantalum and secondary tungsten and cobalt plant undergoes flow reduction, all incremental costs are assigned to the secondary tungsten and cobalt subcategory, and the compliance costs estimated for the secondary tantalum subcategory remain the same. Where waste streams from both subcategories undergo flow reduction, a new flow ratio is calculated to apportion costs. (This in essence is only a bookkeeping exercise of how to allot this cost; the total costs calculated remain the same); and

(7) In most cases, where a plant has wastewater sources from the nonferrous phase II category and a category other than nonferrous manufacturing (for example, nonferrous forming) we calculated the costs of segregating these different wastewaters. The only exception is for overlap plants between nonferrous phase I and nonferrous phase II, where we estimated costs for combined treatment, and then flow-apportioned the costs to each category. This means of cost estimation accounts for the possibility that respective regulations for each category are based on different technologies (and may control different pollutants). (We assumed the costs of segregation even if combined treatment, in practice, is a less costly means of compliance. This is one of a number of areas where the Agency was knowingly conservative in estimating compliance costs.)

IV. Data Gathering Efforts

The data gathering program is described briefly in Section III and in substantial detail in Section V of the General Development Document and the subcategory supplements. A data collection portfolio (dcp) was developed to collect information about the industry and was mailed out on May 6, 1983, under the authority of Section 308 of the Clean Water Act, to each company known or believed to perform smelting and refining of the metals discussed in Section III of this notice in the United States. Several plants were sampled in order to obtain wastewater characterization data. Supplemental data were obtained from NPDES permit files, engineering studies on treatment technologies, and a one-page version of the dcp (called the "mini-dcp") which was mailed out in 1977.

EPA reviewed and evaluated existing literature for background information to clarify and define various aspects of the nonferrous metals manufacturing category and to determine general characteristics and trends in production processes and wastewater treatment technology. Review of current literature continued throughout the development of these guidelines. We also reviewed earlier EPA development documents for particular nonferrous metals manufacturing subcategories.

The available information included a summary of the industry describing the production processes, the wastewater characteristics associated with the processes, recommended pollutant parameters requiring control; applicable end-of-pipe treatment technologies for wastewaters; effluent characteristics resulting from this treatment, and a background bibliography. Also included in these studies were detailed production and sampling information for many plants.

Frequent contact has been maintained with industry personnel. Contributions from these sources were particularly useful for clarifying differences in production processes.

The nonferrous metals manufacturing plants were surveyed to gather information regarding plant size, age and production, the production processes used, and the quantity, treatment, and disposal of wastewater generated at these plants. The dcp's also requested economic information including plant capacity, employment, sales, and existing regulatory costs for the base year of 1982. This information was requested in data collection

portfolios (dcp's) mailed to all companies known or believed to be engaged in nonferrous metals manufacturing activities. A listing of the companies comprising the nonferrous metals manufacturing industry (as classified by standard industrial code numbers) was compiled by consulting trade associations and the U.S. Bureau of Mines.

In all, dcp's were sent to the corporate headquarters (where they were known) of 220 firms (276 facilities). In many cases, companies contacted were not actually members of the nonferrous metals manufacturing category as it is defined by the Agency. Where firms had operations at more than one location, a dcp was submitted for each plant.

If the dcp's were not returned, we collected information on production processes, sources of wastewater, and treatment technology at these plants by telephone. The information so gathered was validated by sending a copy of the information recorded to the party consulted. The information was assumed to be correct as recorded if no reply was received in 30 days. In total, more than 99 percent of the industry was contacted either by mail or by telephone.

The dcp responses were interpreted individually, and the following data were documented for future reference and evaluation:

—Company name, plant location, and name of the firm dcp was sent to;
—Plant discharge status as direct (to surface water), indirect (to POTW), or zero discharge;
—Production process and waste streams present at the plant, as well as associated flow rates, production rates, operating hours, wastewater treatment, reuse, or disposal methods, and the quality and nature of process chemicals;
—Capital and annual wastewater treatment costs; and
—Availability of pollutant monitoring data provided by the plant.

Plants in all the nonferrous metals manufacturing phase II subcategories submitted their questionnaires to the EPA and were covered by the Agency's standard confidentiality procedures. Confidential information was handled in accordance with 40 CFR Part 2.

To aid in the economic analysis, additional industry and market information was obtained from trade associations, Bureau of Mines minerals specialists and several publicly available data bases. Also, a number of the plants are corporations and therefore provide annual reports to their stockholders, and to the Security and Exchange Commission, as required by law. To the extent possible, copies of these reports were obtained and used to estimate financial parameters needed for the economic impact analyses. Finally, further plant-specific information was acquired by calling a number of the plants directly. Details of these phone conversations are available in the record for this proposed rulemaking.

V. Sampling and Analytical Program

The sampling and analysis program for this rulemaking concentrated on the toxic pollutants designated in the Clean Water Act. However, we sampled and analyzed nonferrous metals wastewaters for conventional and nonconventional pollutants as well as inorganic and organic toxic pollutants. The Agency has not promulgated analytical methods for many of the organic toxic pollutants under section 304(h) of the Act, although a number of these methods have been proposed (44 FR 69464 (December 3, 1979); 44 FR 75028 (December 18, 1979)). Additional information on the development of sampling and analysis methods for toxic organic pollutants is contained in the preamble to the proposed regulations for the Leather Tanning Point Source Category, 40 CFR Part 425 (44 FR 38749 (July 2, 1979)).

Information gathered in the data collection portfolios was used to select sites for wastewater sampling. The plants sampled were selected taking into account how well each facility represented the subcategory as indicated by available data, potential problems in meeting technology-based standards, differences in production processes used, and wastewater treatment in place.

After selection of the plants to be sampled, each plant was contacted by telephone, and a letter of notification was sent to each plant as to when a visit would be expected. Generally, a pre-sampling site visit was made in order to acquire facility information necessary for efficient on-site sampling. The information resulted in selection of the sources of wastewater to be sampled at each plant and the sampling techniques to be used. The sample points included, but were not limited to, untreated and treated discharges, process wastewater, and partially treated wastewater.

During this program, 29 nonferrous metals manufacturing plants were sampled.

Wastewater samples were collected in two phases. In the first phase, a large number of plants (21) were sampled in an attempt to characterize all the significant waste streams and production processes in these industries. In the second phase, we sampled a smaller number of plants (eight), in an attempt to fill any gaps in the data base, and to confirm data acquired during the first phase of sampling. Samples were generally analyzed for 128 of the 129 toxic pollutants and other pollutants deemed appropriate. (Because no safe analytical standard was available for TCDD, samples were never analyzed for this pollutant, although there is no reason that it would be present in nonferrous metals manufacturing wastewater.) At least one plant in every major subcategory was sampled during the data collection effort, with some subcategories sampled at more than one plant, when the production processes were different. For example, both molybdenum sulfide roasting and molybdic oxide reduction plants were sampled in the primary molybdenum and rhenium subcategory. Appendix C details those pollutants not analyzed for.

To avoid unnecessary expense and direct the scope of the sampling program, analyses were not performed for a number of pollutants not expected to be present in a plant's wastewater. This determination was based on raw materials and production processes used. Two sources of information were used for selecting the analyzed pollutants: the pollutants that industry believes or knows are present in their wastewater based on dcp responses, and the pollutants the Agency believes should be present after studying the processes and materials used by the industry. If industry and the Agency did not believe a pollutant or class of pollutants would likely be present in the wastewater after studying the processes and materials used, analyses for that pollutant were not run. EPA collected this information in the following manner.

The 129 toxic pollutants were listed in each dcp and each facility was asked to indicate for each particular pollutant whether it was known to be present or believed to be present. If the pollutant had been analyzed for and detected, the facility was to indicate that it was known to be present. If the pollutant had not been analyzed, but might be present in the wastewater, the facility was to indicate that it was believed to be present. The reported results are tabulated in Section V of each of the subcategory supplements.

Wherever possible, each sample of an individual raw waste stream, a combined waste stream or a treated effluent was collected by an automatic time series compositor during sampling periods as long as 24 hours. Where

automatic compositing was not possible, grab samples were taken and composited manually.

EPA used the analytical techniques described in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, revised in April 1977. A very similar method is found among those proposed on December 3, 1979 (40 FR 69464).

VI. Industry Subcategorization

In developing this regulation, it was necessary to determine whether different effluent limitations and standards were appropriate for different segments (subcategories) of the industry. The major factors considered in identifying subcategories included: waste characteristics, raw materials used, manufacturing processes, products manufactured, water use, water pollution control technology, treatment costs, solid waste generation, size of plant, age of plant, number of employees, total energy requirements, non-water quality characteristics, and unique plant characteristics.

The Agency set forth a subcategorization scheme based on manufacturing processes in its first proposed regulation for this category on November 30, 1973. EPA stated that manufacturing operations and treatability of wastewaters were considered to be the most significant factors effecting the manner in which the category would be regulated. The proposed regulation on November 30, 1973 (38 FR 33170) established three subcategories, bauxite refining, primary aluminum smelting and secondary aluminum smelting in 40 CFR Part 421. These same subcategories were retained in the final rule promulgated on April 8, 1974 (39 FR 12822).

On February 27, 1975, EPA amended 40 CFR Part 421 by adding five new subcategories, primary copper smelting, primary copper refining, secondary copper, primary lead and primary zinc (40 FR 8514). Again, the manufacturing processes were considered to be the most significant factor in subcategorizing the industry.

On July 2, 1980, EPA modified the subcategorization set forth in the interim final regulation from February 27, 1975 for BPT. The primary copper smelting subcategory was retained. The primary copper refining subcategory which originally included only refineries not on-site with primary copper smelters was changed to the primary copper electrolytic refining subcategory. This new subcategory included all electrolytic refining operations, whether or not they are on-site with a smelter. In addition, EPA added a new subcategory for metallurgical acid plants associated with primary copper smelters. The new subcategory was added because we believed that establishing separate limitations for these three subcategories would ensure that the maximum feasible BPT pollutant reduction could be accomplished for each plant.

On February 17, 1983, EPA proposed to amend 40 CFR Part 421 by adding four new subcategories, primary tungsten, primary columbium-tantalum, secondary silver, and secondary lead (48 FR 7032). Again, the manufacturing processes were considered to be the most significant factor in subcategorizing the industry. These same subcategories were retained in the final rule promulgated on March 8, 1984 (49 FR 8742).

The subcategorization scheme is again modified by today's notice. We again considered raw materials, final products, manufacturing processes, geographical location, plant size and age, wastewater characteristics, nonwater quality environmental impacts, energy costs, and solid waste generation. Our conclusion, as before, is that subcategorization should be based on manufacturing process alone. We are proposing that sulfuric acid plants associated (i.e., on-site) with primary molybdenum roasters be included as part of the metallurgical acid plants subcategory finalized for primary copper, primary lead, and primary zinc metallurgical acid plants on March 8, 1984 (49 FR 8742) (see Section VIII—New Subcategorizations). With respect to the other plants covered by this regulation, the proposed regulation set forth below will amend 40 CFR Part 421—Nonferrous Metals Manufacturing Point Source Category, by adding effluent limitations guidelines, new source performance standards and pretreatment standards for new and existing sources for the following subcategories: primary antimony subcategory (Subpart N), primary beryllium subcategory (Subpart O), primary boron subcategory (Subpart P), primary cesium and rubidium subcategory (Subpart Q), primary and secondary germanium and gallium subcategory (Subpart R), secondary indium subcategory (Subpart S), secondary mercury subcategory (Subpart T), primary molybdenum and rhenium subcategory (Subpart U), secondary molybdenum and vanadium subcategory (Subpart V), primary nickel and cobalt subcategory (Subpart W), secondary nickel subcategory (Subpart X), primary precious metals and mercury subcategory (Subpart Y), secondary precious metals subcategory (Subpart Z), primary rare earth metals subcategory (Subpart AA), secondary tantalum subcategory (Subpart AB), primary and secondary tin subcategory (Subpart AC), primary and secondary titanium subcategory (Subpart AD), secondary tungsten and cobalt subcategory (Subpart AE), secondary uranium subcategory (Subpart AF), and primary zirconium and hafnium subcategory (Subpart AG). As discussed in Section II, EPA is proposing minor technical amendments to the bauxite refining subcategory (Subpart A). We are also considering establishing concentration limits for three pollutants (2-chlorophenol, phenol, and phenols (4AAP) in the net precipitation discharges from bauxite red-mud ponds and soliciting comments on limitations for these three pollutants in these discharges. (See Section XI for a detailed discussion of the limitations under consideration).

VII. Available Wastewater Control and Treatment Technology

A. Control Technologies Considered

The control and treatment technologies available for this category include both in-process and end-of-pipe treatments. These technologies were considered appropriate for the treatment of nonferrous metals manufacturing wastewater and formed the basis for the regulatory options. These control and treatment technologies are discussed in greater detail in Section VII of the General Development Document. The applicability of each of the technologies to specific sources of wastewater is discussed in the subcategory supplements.

In-process treatment includes wastewater flow reduction through the practice of recycle. Recycling of process water is the practice of returning water to the process to be used again for the same purpose either with or without treatment. In establishing BPT for secondary precious metals and other subcategories, EPA considered complete recycle and reuse of equipment and floor wash water after treatment with chemical precipitation and sedimentation to remove suspended solids and metals. EPA also considered partial recycle of process water by using cooling towers and holding tanks. In doing so, we considered that it may be necessary to discharge a bleed stream to purge dissolved and suspended solids that tend to accumulate in the system.

Dry scrubbing can be used in specific applications as an alternative to wet air pollution control, thereby avoiding the discharge of wastewater. It's application is generally limited to control of

particulate emissions and has only been considered in that context in this rulemaking. Dry scrubbing, as it was considered in this rulemaking, is accomplished through the use of baghouses.

End-of-pipe treatment includes technologies used to reduce pollutant concentrations prior to discharge. The following end-of-pipe treatments are considered for this proposal:

Chemical Precipitation. Chemical precipitation generally involves adjusting the pH through chemical addition to precipitate out of solution metal ions (e.g., copper) and certain anions (e.g., fluoride). The chemical commonly associated with this treatment is lime; however, sulfide, caustic or acid are also used depending on the specific situation.

Sedimentation. Sedimentation is a process which removes solid particles from a liquid matrix by gravitational force. This is done by reducing the velocity of the feed stream in a large volume tank or lagoon so that gravitational settling can occur. This treatment when combined with chemical precipitation is frequently referred to as lime and settle treatment.

Ammonia Steam Stripping. Steam is used to remove ammonia from process wastewater. Generally, the steam is introduced into a separation column countercurrent to the process wastewater. The ammonia is absorbed into the steam. In some instances it may be necessary to add lime so that the pH of the wastewater is elevated in order to remove more stable ammonia compounds.

Cyanide Precipitation. Cyanide can be precipitated out of solution using ferrous sulfate. The cyanide is generally complexed with ferrous sulfate at a pH of 9. It is subsequently precipitated with ferrous sulfate addition at pH 3.

Oil Skimming. Oil and other materials with a specific gravity less than water often float unassisted to the surface of the wastewater. Skimming removes these floating wastes usually in a tank designed to allow floating debris to rise while the water flows to an outlet located below the floating layer. A variety of devices are used to remove the floating layer from the surface.

Carbon Adsorption. The use of activated carbon to remove dissolved organics is one of the most efficient organic removal processes available. The carbon removes contaminants from water by the process of adsorption or the attraction and accumulation of one substance on the surface of another. Activated carbon preferentially adsorbs organic compounds and because of this selectivity is particularly effective in removing organic compounds from aqueous solution.

Multimedia Filtration. Gravity mixed-media filtration may be used as an end-of-pipe polishing step to reduce concentrations of toxic metals and total suspended solids. Rapid sand or pressure filters would perform as well.

B. Status of In-Place Technology

Current wastewater treatment practices in the total nonferrous metals manufacturing category range from no treatment to treatment with chemical precipitation, sedimentation and filtration. Of the 236 discharging plants, 121 plants have chemical precipitation and sedimentation treatment to remove metals and suspended solids, 12 have technologies for the control of cyanide, four have technology for oil removal, eight practice ammonia stripping and 25 practice end-of-pipe filtration. The remainder of the dischargers did not report any treatment for their nonferrous metals manufacturing wastewaters.

Recycle after treatment consisting of lime precipitation and sedimentation is practiced at 22 plants. Thirty-nine plants practice recycle of scrubber water without any treatment.

C. Control and Treatment Options

EPA considered the following treatment and control options as the basis for BPT, BAT, NSPS, PSES, and PSNS for those facilities included by today's rulemaking within the nonferrous metals manufacturing category.

Option A—End-of-pipe treatment consisting of chemical precipitation and sedimentation, and preliminary treatment, where necessary, consisting of oil skimming, cyanide precipitation, and ammonia steam stripping. This combination of technology reduces toxic metals and cyanide, conventional and nonconventional pollutants.

Option B—Option B is equal to Option A preceded by flow reduction of process wastewater through the use of cooling towers for contact cooling water and holding tanks for all other process wastewater subject to recycle.

Option C—Option C is equal to Option B plus end-of-pipe polishing filtration for further reduction of toxic metals and TSS.

Option D—Option D is equal to Option C plus treatment of isolated waste streams with activated carbon adsorption for removal of toxic organics and activated alumina for reduction of fluorides and arsenic concentrations. This option was only considered for nonferrous metals phase I and is retained here only for consistency.

Option E—Option E consists of Option C plus activated carbon adsorption applied to the total plant discharge as a polishing step to reduce toxic organic concentrations.

Option F—Option F consists of Option C plus reverse osmosis treatment to attain complete recycle of all process wastewater. This option was only considered for nonferrous phase I.

Option G—Option G consists of chemical oxidation applied to the total plant discharge, as a step to reduce toxic organic concentrations, without any other end-of-pipe treatment or pretreatment.

VIII. Substantive Changes From Prior Regulations

The regulations proposed today contain several substantive changes to regulations proposed and promulgated previously.

A. *New Subcategorizations.* As discussed in Section VI of today's notice, EPA is proposing to include metallurgical acid plants associated (i.e., on-site) with primary molybdenum roasters as part of the metallurgical acid plants subcategory finalized on March 8, 1984 (49 FR 8742). All these plants would accordingly have identical effluent limitations and standards. In making this determination, the Agency considered the way in which acid plants are operated when associated with the primary smelters and the characteristics of the wastewater generated by each type of acid plant. Our conclusion is that these processes, rate of process discharge, and wastewater matrices are essentially identical justifying a single subcategory for all acid plants.

Metallurgical acid plants are constructed on-site with primary copper, lead, zinc, and molybdenum smelters to treat the smelter emissions, remove the sulfur dioxide, and produce sulfuric acid as a marketable by-product. Although two basic technologies, single contact and double contact, are used in the industry, the Agency found no predominance of either technology in place in plants of the four metal types. Nor was there any signficant observable difference in the amount of water discharged from plants using the two technologies. Finally, the Agency found no difference in the characterization of the wastewater at plants which burn supplemental sulfur to enhance the performance of the acid plant.

The processes are also similar in terms of waste streams generated. Wastewaters are typically combined in acid plants into a single waste stream (acid plant blowdown). Principal streams going into the blowdown

(compressor condensate, blowdown from acid plant scrubbing, mist precipitation, mist elimination, and steam generation) are common to all four types of plants.

The wastewater matrices from all four types of acid plants also are similar. The Agency reviewed the analytical data that were obtained in sampling programs described in Section V and compared the characteristics of untreated acid plant blowdown from plants associated with each of the four primary metals considered. There were similar concentrations (i.e., in the same order of magnitude) of antimony, arsenic, chromium, mercury, and selenium, among the four. All of these metals were present at concentrations that are treatable to the same effluent concentration upon application of chemical precipitation and sedimentation or chemical precipitation, sedimentation and multimedia filtration, and are within the range used in calculating treatment effectiveness for these technologies.

Therefore, in light of these essential similarities of process, wastewater flow and composition, we have chosen to include all acid plants in a single subcategory.

B. *Building Blocks.* The regulations proposed today use the so-called building block approach promulgated for phase I, whereby EPA considers both end-of-pipe treatment technologies and process changes and controls within the plant prior to discharge to a common end-of-pipe treatment system. (This examination, of course, is mandated by the Clean Water Act. See e.g., sections 304(b)(2)(A) and 306(a)(1).) As a result, the proposed regulation identifies principal process steps that discharge wastewater, determines what wastewater flows (and in some cases, pollutant concentrations) are permissible for this indigenous operation, and establishes a mass-based limitation or standard for each such step ("building block"). These limitations (or standards) then are added together to give the permissible mass-based discharge for the entire process.

Under the building block approach proposed today, to determine the allowable discharge from a point source a discharger must first identify the specific process sources that comprise that discharge. He should then multiply the limitations or standards (mg/kkg or mg/troy ounce) for each wastewater present in his plant, shown today in 40 CFR Part 421, by the production of that source (kkg or troy ounce), in the units specified, to yield the mass discharge from each source. The mass from all of the sources should then be added to yield the maximum for any one day and the maximum for monthly averages for that discharge point. Waste streams not identified in today's notice may be regulated on a case-by-case basis by the permit writer pursuant to the authority granted in section 402.

We stress that a plant is to receive a discharge allowance for a particular building block only if it is actually operating that particular process. The plant need not be discharging wastewater from the process to receive the allowance, however. Thus, if the regulation contains a discharge allowance for wet scrubber effluent and a particular plant has dry scrubbers, it cannot include a discharge allowance for wet scrubbers as part of its aggregate limitation. On the other hand, if it has wet scrubbers and discharges less than the allowable limit (or does not discharge from the scrubbers), it would receive the full regulatory allowance. In this way, the building block approach recognizes and accommodates the fact that not all plants used identical steps in manufacturing a given metal.

C. *Building Block Approach Applied to Integrated Facilities.* There are several facilities within this category that have integrated manufacturing operations; that is, they combine wastewater from smelting and refining operations, which are part of this point source category, with wastewater from other manufacturing operations which are not a part of this category, and treat the combined stream prior to discharge. Indirect dischargers that are integrated facilities are subject to pretreatment standards as specified by the "combined waste stream formula" set forth at 40 CFR 403.6(e). In establishing direct discharger permit requirements for integrated facilities subject to effluent guidelines that are mass-based for each category, the permit writer can apply the same building block approach discussed above, simply aggregating each allowable discharge.

As an example, we will use a facility which combines secondary precious metals and secondary silver refining, and precious metals forming wastewater and treats this water in a waste treatment system prior to discharge. The permit writer must first identify the manufacturing operations using process water in the facility. The facility in this example discharges wastewater from gold precipitation and filtration, precipitation and filtration of nonphotographic solutions (silver), and surface treatment rinse water. Then by multiplying the production calculated according to 40 CFR 122.63(b)(2) for each of these operations by the limitations or standards in 40 CFR Pat 421 for both precipitation and filtration waste streams and in 40 CFR Part 471 for surface treatment rinse water and by summing the product obtained for each of these waste streams, the permit writer can obtain the allowable mass discharge.

If, for example, the production of gold resulting from gold precipitation and filtration is 200,000 troy ounce per year, the production of silver resulting from precipitation and filtration of nonphotographic solutions is 150,000 troy ounce per year, and the surface treatment rinse water production is 7.774 off-kkg of precious metals surface treated per year, the maximum for any one day limitation based on the best available technology economically achievable (BAT) for the pollutant copper is 1.7439 kg/yr as calculated below:

Gold Precipitation and Filtration

200,000 troy ounce/yr × 5.632 mg/troy ounce = 1.1264 kg/yr

Precipitation and Filtration of Nonphotographic Solutions

150,000 troy ounce/yr × 3.930 mg/troy ounce = 0.5895 kg/yr

Surface Treatment Rinse Water

7.774 Off-kkg/yr × 3,600 mg/kkg = 0.028 kg/yr

Total = 1.7439 kg/yr

In establishing limitations for integrated facilities for which a portion of the plant is covered by concentration-based limitations, the permit writer can determine the appropriate mass limitations for the entire facility or point source as follows. The portion of the wastewater covered by this category receives mass limitations according to the building block methodology described above. The permit writer must then determine an appropriate flow for the portion of the facility subject to concentration-based limitations and multiply it by the concentration limitations to yield mass limitations. The mass limitations applicable to the discharge are obtained by summing these two sets of mass limitations.

Under § 403.12(b)(4) of the General Pretreatment Regulations, a facility must monitor the flow of regulated process streams and other streams as necessary to allow use of the Combined Wastestream Formula. A facility must monitor the flows of its regulated streams. However, a facility can avoid monitoring its other streams (unregulated and dilute) under this section by agreeing to meet a mass limitation at least as stringent as the one

which would be calculated under the Combined Wastestream Formula if these other streams were taken into consideration. An integrated nonferrous metals manufacturing facility combining regulated process streams with either unregulated or dilute streams, or both, can avoid monitoring the flows of those streams if it agrees to meet the mass limit calculated solely through use of the limits applicable to the regulated streams. Such a limit would be as stringent as any which could possibly be derived under the formula if either the unregulated or dilute streams, or both, were taken into consideration. If, however, the facility desires to take into account potential pollutants contained in these unregulated or dilute streams, monitoring of these streams will be required to enable calculation of the alternative limit under the formula.

It should be noted that it is an entirely different matter where concentration-based rather than mass-based limits are involved. A facility cannot, for example, avoid monitoring unregulated or dilute streams by agreeing to meet the concentration limit applicable to its regulated streams. This is because application of the formula could result in a more stringent concentration-based limit if the unregulated or dilute streams were taken into consideration.

As an example, we will use a facility which combines process wastewater from a mill using froth flotation to concentrate copper ore with SO_2 scrubber water from a primary molybdenum roaster. The portion of the limitations attributable to the roaster SO_2 scrubber water is calculated by multiplying the limitations in subpart U of 40 CFR Part 421 in today's notice by the molybdenum sulfide roasted production. The permit writer must then determine the appropriate flow for the discharge from the mill and multiply it by the concentrations set forth in subpart J of 40 CFR Part 440 at 47 FR 54618. If the molybdenum sulfide roasted production is 175,000 kkg per year and the flow from the froth flotation mill is 2,000,000 liters per year, the maximum for any one day limitation based on the best available technology economically achievable (BAT) for the pollutant nickel is 1511.7 kg/yr as calculated below:

Froth flotation mill wastewater

2,000,000 l/yr×0.2 mg/l×1 kg/10^6 mg=0.4 kg/yr

SO_2 Scrubber Water

8.636 mg/kg×175,000 kkg/yr=1511.3 kg/yr

Total=1511.7 kg/yr

The Agency recognizes that there may be different technology bases for the limitations and standards applicable to an integrated facility. As an example, the technology basis for BAT for tin smelting is chemical precipitation, sedimentation and filtration whereas the technology basis for BAT for tin forming is lime precipitation and sedimentation. EPA developed these limitations based on specified in-plant controls and end-of-pipe treatment technology; however, it does not require that the facility implement these specific in-plant controls and end-of-pipe technology. The facility combining wastewater from manufacturing operations covered by the two categories must install technology and modify the manufacturing operations so as to comply with the mass limitations.

D. *Allowances for Net Precipitation in Bauxite Refining.* Promulgated BPT and BAT limitations for the bauxite refining subcategory are based on use of settling impoundments. Facilities in this subcategory are subject to a zero discharge requirement; however, they can discharge on a monthly basis a volume of water equal to the difference between precipitation that falls within the impoundment and evaporation within that impoundment for that month.

We are proposing today to make minor technical amendments to delete or correct references to FDF considerations under Part 125 and pretreatment references to Part 128. We are giving consideration to establishing concentration-based limitations on the net precipitation discharge to control the discharge of phenol based toxic pollutants. Samples of red-mud impoundment discharges collected by EPA showed treatable concentrations of two listed toxic organic compounds, phenol and 2-chlorophenol, and phenols (4AAP). The concentration-based limitations we are considering are based on carbon adsorption treatment of the net precipitation discharge. We formally solicit comment on concentration-based limitations for these pollutants in the net precipitation discharge for bauxite refining.

IX. Summary of Generic Issues

EPA has identified several issues that are generic to many of the subcategories and to the limitations and standards proposed in today's notice. (Many of these issues were identified as a result of the Agency's consideration of public comment on the phase I portion of this rulemaking.) These issues are discussed in this section, rather than in the discussion of each particular subcategory.

A. *Data Bases to Determine Achievable Concentrations and Variability Factors for Hydroxide Precipitation-Sedimentation and for Filtration.* As discussed in Section VII, chemical precipitation-sedimentation and filtration were considered as a part of various treatment options for BPT, BAT, NSPS, PSES and PSNS. The methods of determining achievable concentrations and variability factors used to compute monthly average and daily maximum concentrations are discussed for these technologies below.

a. *Hydroxide Precipitation-Sedimentation.* In considering the performance achievable using hydroxide (usually lime) precipitation-sedimentation of metals with and without polishing filtration, EPA evaluated data for 23 pollutants from 10 subcategories in nonferrous metals manufacturing phase II and plants in other categories with similar wastewater. The data base we selected for lime precipitation and sedimentation (lime and settle) without filtration is the so-called combined metals data base. (See generally 49 FR 8742, March 8, 1984.)

The data base for the performance and variability of hydroxide precipitation-sedimentation technology is a composite of data drawn from EPA protocol sampling and analysis of aluminum forming, copper forming, battery manufacturing, porcelain enameling, and coil coating wastewaters. These data, collectively called the combined metals data base ("CMDB"), include influent and effluent concentrations for nine pollutants. The wastewaters from each of the five categories have been found to be statistically similar in all material respects. A study of statistical homogeneity of these wastewaters is part of the record for this rulemaking.

Two analyses were performed to evaluate these two sets of data. First, the mean wastewater pollutant concentrations of categories in the CMDB were compared statistically with the mean wastewater pollutant concentrations in the nonferrous data base. The technique used to compare these data is referred to as analysis of variance. The analysis of variance methodology is well known to statisticians and is sometimes referred to as a homogeneity analysis. The primary result of the analysis is that, except for lead (Pb), there was no statistical difference detected between the mean effluent pollutant concentrations from categories in the CMDB and the mean effluent pollutant concentrations from the nonferrous

phase II category. The differences in mean effluent Pb concentration will be resolved by using the treatment effectiveness concentrations for Pb which have been developed from a data base which includes over 200 Pb concentration measurements from the effluent wastewaters of several lead battery manufacturing and/or secondary lead plants that employ lime precipitation and sedimentation treatment. The treatment effectiveness concentrations that were developed are substantially larger than those estimated from the CMDB. The procedures used to develop these Pb treatment effectiveness concentrations are described in a memorandum which is included in the record to this proposed rulemaking. The other analysis that the Agency conducted to support the nonferrous phase II proposed rule also employed analysis of variance. The analysis of variance in this second analysis compares the mean wastewater pollutant concentrations among the nonferrous phase II subcategories. The results indicate that the mean pollutant concentrations measured in the subcategories of the nonferrous phase II category are generally similar across subcategories. A report which describes the methodology and results of the analysis of variance comparisons that have been performed to support the nonferrous phase II proposed rulemaking is also included in the record.

We view the use of the combined metals data base as appropriate for setting effluent limitations for the following six pollutants in nonferrous metals manufacturing plants: cadmium, copper, lead, nickel, zinc, and TSS. There are several reasons for this conclusion:

(1) *Process Chemistry:* We believe that properly operated hydroxide precipitation and sedimentation will result in effluent concentrations that are directly related to pollutant solubilities. Since the nonferrous metals manufacturing raw wastewater matrix contains the same toxic pollutants in the same order of magnitude (for the most part) as the combined metals data base raw wastewater and the technology is solubility-based, we believe the mean treatment process effluent variability will be identical.

(2) *Homogeneity:* EPA examined the statistical similarity among wastewater pollutant concentrations in the nonferrous subcategories, as well as between the pooled nonferrous subcategories and the CMDB. The purpose of these analyses was to test the Agency's engineering hypothesis that the mean untreated wastewater concentrations in the nonferrous category were similar to those in the CMDB. In general, the results of the analysis showed that the nonferrous subcategories are statistically similar with respect to mean pollutant concentrations across subcategories. The results also show that the nonferrous metals manufacturing pollutant concentration data combined across subcategories are comparable to the CMDB pollutant concentration data. The similarity of nonferrous and CMDB untreated and treated wastewater pollutant concentrations was established through a statistical assessment. The results of the statistical analysis provide further support to EPA's engineering evaluation that hydroxide precipitation and sedimentation treatment in the nonferrous category reduces the toxic metal pollutant concentrations achieved by the same technology applied to the wastewater from the categories in the CMDB.

We are proposing limits based on chemical precipitation and sedimentation technology for certain pollutants not included in the combined metals data base. Treatment performance concentrations for these pollutants are calculated either from nonferrous metals manufacturing data (for arsenic, selenium, silver, antimony, boron, molybdenum, and tin), or from categories with wastewaters similar to nonferrous metals manufacturing (fluoride from electrical components manufacturing data, cobalt from porcelain enameling data, and uranium and radium 226 from ore mining and dressing data). No treatment effectiveness concentrations are available for germanium, indium and titanium which are proposed for limitation in some subcategories. For these pollutants we have selected treatment effectiveness concentrations by comparing the theoretical solubilities of these pollutants to pollutants in the CMDB at comparable pH levels. As we have discussed above, hydroxide precipitation and sedimentation technology is to a degree solubility related. As such, we believe that these additional pollutants will be reduced to the same effluent concentrations as the corresponding pollutant in the CMDB.

b. *Filtration.* EPA established the pollutant concentrations achievable with lime precipitation, sedimentation, and polishing filtration with data from three plants with the technology in-place: one (phase I) nonferrous metals manufacturing plant and two porcelain enameling plants whose wastewater is similar (as determined by statistical analysis for homogeneity) to wastewater generated by nonferrous metals manufacturing plants. In generating long-term average standards, EPA applied variability factors based on the pooled variances from the combined metals data base because the combined data base provided a broader statistical basis for computing variability than the data from the three plants sampled. The use of lime and settle combined data base variability factors is probably a conservative assumption because filtration is a less variable technology than lime and settle, since it is less operator-dependent.

For pollutants for which there were no data relating to filtration effectiveness from these three plants, long-term concentrations were developed assuming that removal by filtration would remove 33 percent more pollutants than lime precipitation and sedimentation. This assumption was based upon a comparision of removals of several pollutants by lime precipitation, sedimentation, and filtration which showed 33 percent incremental removal attributable to filtration.

EPA selected this approach because of the extensive long-term data available from these three plants. We believe that the use of polishing filtration data from procelain enameling plants is justified because procelain enameling was included in the combined metals data base. Since we have determined that lime precipitation and sedimentation will produce identical results on both nonferrous metals manufacturing and procelain enameling wastewater, it is reasonable for the Agency to assume that polishing filters treating these identical intermediate waste streams will produce an identical final effluent.

c. *Ammonia Steam Stripping.* This technology is used routinely to reduce ammonia concentrations. To evaluate treatment effectiveness, EPA collected chemical analysis data of raw waste (treatment influent) and treated waste (treatment effluent) from one plant in the iron and steel manufacturing category. These data form the data base for determining the effectiveness of ammonia steam stripping technology in this category and are contained within the administrative record supporting this regulation. We believe this treatment performance can be transferred to nonferrous subcategories because the technology is solubility related and the nonferrous subcategories considered here do not contain interfering agents

that would reduce ammonia removal effectiveness.

An arithmetic mean of the treatment effluent data (from iron and steel) produced an ammonia long-term mean value of 32.2 mg/l. The one-day maximum, 10-day, and 30-day average concentrations attainable by ammonia steam stripping were calculated using the long-term mean of the 32.2 mg/l and the variability factors that express an overall pooled variance estimate developed from the combined metals data base. This produced ammonia concentrations of 133.3, 58.6, and 52.1 mg/l ammonia for the one-day maximum, 10-day, and 30-day averages, respectively.

The Agency has verified the proposed steam stripping performance values using steam stripping data collected at a zirconium-hafnium plant, a plant in the nonferrous phase II category, which has raw ammonia concentrations comparable to those in the iron and steel manufacturing data. Data collected by the plant represent almost two years of daily operations, and support the long-term mean used to establish treatment effectiveness.

There is one exception to this discussion. In those subcategories where we are not altering existing BPT requirements—bauxite refining and metallurgical acid plants—those limitations necessarily continue to be based on subcategory specific data.

BAT limitations for all subcategories employing filtration will be based on the data base for polishing filtration discussed above.

We solicit comment on our use of the combined data base for nonferrous metals manufacturing. We specifically request submission of additional data from nonferrous metals manufacturing plants using properly operated lime and settle and lime, settle, and filtration systems.

B. *Mass-Based Standards vs Concentration-Based standards for PSES and PSNS.* In proposing PSES and PSNS, we considered whether to propose exclusively mass-based standards, or to allow POTW the alternative of concentration or mass-based standards. Mass-based standards ensure that limitations are achieved by means of pollutant removal rather than by dilution. They are particularly important when a mass limitation is based upon flow reduction technology because pollutant reductions associated with the flow reduction cannot be ensured except by a reduction in the amount of pollutant allowed to be discharged. Mass-based standards, however, are harder to implement because POTWs face increased difficulties in monitoring. POTW also must develop specific limits for each plant based on the unit operations present and the production occurring in each operation. We have resolved these competing considerations by proposing mass-based standards for PSES and PSNS where we believe that the incremental pollutant removals associated with flow reduction are significant enough to warrant mass-based standards.

C. *pH.* In those subcategories where we are first proposing BPT, we are proposing pH limitations of 7.5 to 10. We are proposing this range to allow for proper performance of the lime precipitation and sedimentation technology. This technology generally requires a wastewater pH of 8.8 to 9.3 (depending on wastewater compositions) to achieve optimum precipitation of toxic metals. This level is somewhat different from the pH 6–9 limitations that the Agency has set for BPT in the past. We are proposing the higher range to allow for proper performance of the lime and settle treatment without requiring the addition of acid to adjust the pH before discharge.

D. *Frequency of Sampling to Demonstrate Compliance with 30-Day Average Limitations.* The proposed regulation establishes monthly average limitations that are based on the average of 10 consecutive sampling days (not necessarily consecutive calendar days). The 10-day average value was selected as the minimum number of consecutive samples which need to be averaged to arrive at a stable slope on a statistically based curve relating one-day and 30-day average values and it approximates the most frequent monitoring requirements of direct discharge permits. The monthly average numbers shown in the regulation are to be achieved regardless of the number of samples averaged and are to be used by plants with combined waste streams that use the "combined waste stream formula" set forth in 40 CFR 403.6(e) and by permit writers in writing direct discharge permits.

E. *Compliance Date for PSES.* The Agency is proposing that the date for compliance with PSES for existing indirect dischargers subject to this rulemaking be three years from the date of promulgation. Few indirect dischargers in this category have installed and are properly operating the treatment technology for PSES. In addition, the readjustment of internal processing conditions to achieve reduced wastewater flows may require further time above installation of end-of-pipe treatment equipment. Many plants in this and other industries also will be installing the treatment equipment suggested as model technologies for this regulation which may result in delays in engineering, ordering, installing, and operating this equipment. Under these circumstances, we think that three years is the appropriate compliance date under Section 307(b)(1) of the Act. We invite comment on the appropriateness of the compliance date.

F. *Recycle of Wet Scrubber and Contact Cooling Wastewater.* We are proposing as BAT and PSES for most subcategories that 90 percent of wet air pollution control and contact cooling wastewater be recycled (we have proposed a higher rate for certain subcategories where reported rates of recycle are even higher). Water is used in wet air pollution control systems to capture particulate matter or fumes evolved during manufacturing. Cooling water is used to remove excess heat from cast metal products.

We observed extensive recycle of these streams throughout the category. Indeed, some plants reported 100 percent recycle of process wastewater from these operations. The Agency believes, however, that most plants may have to discharge a portion of the recirculating flow to prevent the buildup of dissolved solids. The Agency believes that through operation of cooling towers with a discharge of 10 percent of the recirculating flow, contact cooling water and scrubber water can be reused while controlling scale formation, equipment corrosion and maintaining product quality.

Existing practice in nonferrous phase I and phase II supports our selection of a 90 percent recycle rate. Ninety percent recycle is extensively demonstrated in phase I (see 48 FR 7052 and subcategory supplements to the General Development Document).

Twenty-two of 29 secondary precious metals plants using wet air pollution control, four of eight primary precious metals and mercury plants, one secondary mercury plant, one secondary molybdenum and vanadium plant, and one of the two discharging primary molybdenum and rhenium plants practice recycle.

In determining the flow allowance, the Agency examined the production normalized flows for each operation. From the data set for each operation, a normalized flow allowance was developed based on existing performance. In most cases, the normalized flow is not based on recycle with the exception of those instances where recycle is widely demonstrated for a production operation, as it is for

wet scrubbing operations. Plants that were found to use an excessive amount of water on a production normalized basis when compared to other plants were not included in developing the flow allowance. The BAT flow allowance based on recycle was then calculated by reducing the normalized flow by a factor of 10 to require 90 percent recycle.

The Agency would like to point out that the regulations do not require each plant to achieve 90 percent recycle to meet these promulgated mass allowances. For example, a plant achieving the lowest process water use observed in the subcategory may only need to recycle 50 percent or less.

The Agency realizes that the flow rates for wet scrubber streams may not be possible without preliminary treatment to remove the material that has been scrubbed. In developing compliance costs, the Agency carefully examined current methods of recycle and pretreatment for each wet scrubbing operation. Costs for in-process flow reduction were then developed based on the demonstrated recycling methods. In many instances, we developed costs for preliminary treatment consisting of holding and settling tanks to remove suspended solids, while in other (most unusual) instances we developed costs for lime and settle treatment used to achieve recycle of the scrubber liquor.

G. *Cost of Compliance at Integrated Facilities.* As discussed in section VIII (Building Block Approach Applied to Integrated Facilities), integrated facilities subject to both this proposed regulation and to regulations for other point source categories must install technology and modify processes so as to comply with mass limitations calculated using the building block approach. In estimating the cost of compliance with this proposed regulation, we did not generally include specific costs associated with integrated facilities.

We believe this approach is justified for plants not currently providing BPT or BAT because we have included costs for separate treatment of wastewater in calculating costs associated with each regulation. Costs associated with the segregation of the combined waste streams are not normally significant compared to the cost of the treatment equipment. However, we did include the cost of piping and peripherals needed to route non-phase II wastewater away from phase II treatment.

For plants currently providing BPT or BAT on combined wastewater, we believe compatibility of combined treatment is demonstrated by these plants' own conduct. Therefore, we do not believe this proposed regulation will require segregation and separate treatment at these plants.

We solicit comment on these assumptions. We also request cost data from plants that have experienced costs or that have developed cost estimates that reflect specific costs associated with integrated facilities.

X. Best Practicable Technology (BPT) Effluent Limitations

The factors considered in defining best practicable control technology currently available (BPT) include the total cost of applying technology in relation to the effluent reduction benefits derived, the age of equipment and facilities involved, the processes employed, nonwater quality environmental impacts (including energy requirements), and other factors the Administrator considers appropriate. In general, the BPT level represents the average of the best existing performances of plants of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category. Limitations based on transfer technology must be supported by a conclusion that the technology is, indeed, transferable and a reasonable prediction that it will be capable of achieving the prescribed effluent limits. See *Tanners' Council of America* v. *Train*, 540 F. 2d 1188 (4th Cir. 1976). BPT focuses on end-of-pipe treatment rather than process changes or internal controls, except where such are common industry practice.

The basic end-of-pipe treatment for BPT in this rulemaking is lime and settle treatment. We are transferring lime and settle treatment technology and performance for the primary antimony, primary beryllium, primary boron, primary cesium and rubidium, primary and secondary germanium and gallium, secondary indium, secondary mercury, primary molybdenum and rhenium, secondary molybdenum and vanadium, primary nickel and cobalt, secondary nickel, primary precious metals and mercury, secondary precious metals, primary rare earth metals, secondary tantalum, primary and secondary tin, primary and secondary titanium, secondary tungsten and cobalt, secondary uranium, and primary zirconium and hafnium subcategories from aluminum forming, copper forming, battery manufacturing, porcelain enameling and coil coating plants. As discussed in section IX of this preamble, Summary of Generic Issues, the data base for the performance of lime and settle is a composite of data from the industrial categories listed known as the combined metals data base (CMDB). This data base was selected because lime and settle treatment applied to nonferrous metals manufacturing wastewater in each of the subcategories listed above will result in effluent concentrations identical to those achieved by the plants in the CMDB. This is based on the fact that the raw wastewater matrix in each of these subcategories contains the same pollutants in the same order of magnitude as the combined metals data base raw wastewater. The CMDB was also selected because it was determined to be homogeneous with the raw wastewaters in these subcategories.

We are transferring steam stripping technology and performance for ammonia removal in the primary molybdenum and rhenium, secondary molybdenum and vanadium, primary nickel and cobalt, secondary tungsten and cobalt, secondary uranium, secondary precious metals, primary and secondary tin and primary zirconium and hafnium subcategories of the nonferrous metals manufacturing phase II from one iron and steel manufacturing plant. As discussed in Section IX of this preamble, Summary of Generic Issues, we believe that steam stripping performance can be transferred to these subcategories because the technology is solubility related, and because the raw wastewater concentrations of ammonia in these subcategories and in iron and steel manufacturing are similar. We believe that plants in these subcategories will achieve effluent concentrations identical to those achieved by the one iron and steel plant.

One plant in the secondary precious metals subcategory currently uses cyanide precipitation to treat process wastewater. We are transferring cyanide precipitation technology and performance for the secondary precious metals, primary and secondary tin, and the primary zirconium and hafnium subcategories in nonferrous metals manufacturing phase II from coil coating plants. We believe that the technology is transferrable to these subcategories because the raw wastewater concentrations are of the same order of magnitude as those observed in coil coating wastewater. In that cyanide precipitation converts all cyanide species to complex cyanides and that precipitation of the complexed cyanides is solubility related, we believe that the technology will achieve identical effluent concentrations in both categories.

The cost-benefit inquiry for BPT is a limited balancing, committed to EPA's

discretion, which does not require the Agency to quantify benefits in monetary terms. See, e.g. *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir. 1975). In balancing costs in relation to pollutant removal benefits, EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants, and the cost and economic impacts of the required pollution control level. The Act does not require or permit consideration of water quality problems attributable to particular point sources or industries, or water quality improvements in particular water quality bodies. Accordingly, water quality considerations were not the basis for selecting the proposed BPT. See *Weyerhaeuser Company* v. *Costle*, 590 F. 2d 1011 (D.C. Cir. 1978).

In developing the proposed BPT limitations, the Agency considered the amount of water used per unit production in each waste stream. These data were used to determine the average (mean) water discharge for each subcategory operation. Aberrant flows were excluded from mean calculations. Since the proposed BPT limitations were based on the average water discharge, plants with greater than average discharge flows may have to implement some method of flow reduction in order to achieve the effluent limits of BPT.

Next, we evaluated the appropriate treatment technology for BPT treatment. The proposed BPT level treatment for each subcategory was based on the average of the best existing performance currently demonstrated throughout that subcategory. As stated above, BPT was based on end-of-pipe treatment technologies except in those instances where a process change or internal control is common practice in the subcategory. As an example, both of the plants in the rare earth metals subcategory that use wet air pollution control on electrolytic refining operations discharge no process wastewater through by-product recovery of the scrubber liquor. We are proposing zero discharge from this stream because by-product recovery is so widely demonstrated for this waste stream.

The effluent concentrations resulting from the application of the proposed model BPT technology are identical for all wastewater streams; however, the mass limitations vary for each waste stream depending on the regulatory flow. The BPT limitations were calculated by multiplying the effluent concentrations (mg/1) achievable by the selected option technology by the regulatory flow (1/kg production normalizing parameter) established for each waste stream.

Where we already have promulgated BPT, we are not proposing to alter these existing limitations because we have determined that the existing regulation adequately characterizes BPT and because the 1984 BAT compliance date is imminent. We therefore are leaving unaltered existing BPT limitations for the bauxite refining subcategory and are proposing to alter only the applicability of the metallurgical acid plants subcategory.

To fulfill our statutory obligation, we are proposing BPT in those subcategories we have not addressed previously, namely primary antimony, primary beryllium, primary molybdenum and rhenium, secondary molybdenum and vanadium, primary nickel and cobalt, primary precious metals and mercury, secondary precious metals, primary rare earth metals, secondary tantalum, primary and secondary tin, primary and secondary titanium, secondary tungsten and cobalt, secondary uranium, primary and secondary germanium and gallium and primary zirconium and hafnium. We also are proposing that molybdenum metallurgical acid plants be subject to existing limits already promulgated for copper, lead, and zinc metallurgical acid plants. We are not proposing BPT for the five subcategories without direct discharging plants: primary boron, primary cesium and rubidium, secondary indium, secondary mercury, and secondary nickel. Our basis for these decisions is explained below. The pollutant reduction benefits from applying BPT in the regulated subcategories listed above substantially outweigh the costs of compliance.

Primary Antimony

We are proposing BPT requirements for the primary antimony subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH. These technologies are not in-place at the one discharger in this subcategory. The pollutants specifically proposed for regulation at BPT are antimony, arsenic, lead, mercury, TSS, and pH.

Implementation of the proposed BPT limitations will remove annually an estimated 2,642 kg of toxic metals and 965 kg of TSS over estimated current discharge, which is equal to the raw waste load because no treatment is in-place. We project a capital cost of approximately $34,200 and an annualized cost of approximately $17,300 for achieving proposed BPT.

More stringent technology options were not selected for BPT since they require in-process changes and, therefore, are more appropriately considered under BAT.

Bauxite Refining

EPA promulgated BPT effluent limitations for the bauxite refining subcategory on April 6, 1974 under Subpart A of 40 CFR Part 421. The promulgated BPT is based on zero discharge of process wastewater except for an allowance for net precipitation that falls within process wastewater impoundments. EPA is only proposing minor technical amendments to the existing BPT limitations. The technology basis of the existing BPT is impoundment and recycle.

Primary Beryllium

We are proposing BPT requirements for the primary beryllium subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH and fluoride. This technology is already in-place at the one discharger in the subcategory. The pollutants specifically proposed for regulation at BPT are beryllium, chromium, copper, fluoride, TSS, and pH.

Because the one discharging facility in the primary beryllium subcategory already has the BPT technology in-place, and our data indicate that the technology is achieving the proposed BPT limitations, there will be no pollutant removal above the current discharge level and no incremental capital or annual costs.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory, and, therefore, are more appropriately considered under BAT.

Primary Boron

We are not proposing best practicable technology for existing direct dischargers for the primary boron subcategory since there are no existing direct dischargers.

Primary Cesium and Rubidium

We are not proposing BPT limitations for the primary cesium and rubidium subcategory because there are no existing direct dischargers.

Primary and Secondary Germanium and Gallium

We are proposing BPT requirements for the primary and secondary germanium and gallium subcategory, since BPT has not yet been promulgated. Level A provisions are applicable to facilities which only reduce germanium dioxide in a hydrogen furnace and wash and rinse the germanium product in conjunction with zone refining. Level B provisions are applicable to all other facilities in the subcategory. The technology basis for both Levels A and B for the BPT limitations are lime precipitation and sedimentation technology to remove metals, fluoride and solids from combined wastewaters and to control pH. The pollutants specifically proposed for regulation at BPT are arsenic, lead, zinc, germanium, fluoride, TSS, and pH.

Although there are no existing direct dischargers in this subcategory, BPT is proposed for any existing zero discharger that elects to discharge at some point in the future. This action is deemed necessary because wastewaters from germanium and gallium operations which contain significant loadings of toxic pollutants are currently being disposed of in a RCRA permitted surface impoundment.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory, and, therefore, are more appropriately considered under BAT. EPA is proposing a two tier regulatory scheme for this subcategory however the same technology apply to both levels at BPT.

The cost and specific removal data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the benefits justify the costs for this subcategory.

Secondary Indium

We are not proposing BPT limitations for the secondary indium subcategory since there are no existing direct dischargers.

Secondary Mercury

We are not proposing BPT limitations for the secondary mercury subcategory since there are no existing direct dischargers.

Primary Molybdenum and Rhenium

We are proposing BPT requirements for the primary molybdenum and rhenium subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, and ammonia steam stripping preliminary treatment. These technologies are already in-place at one of the two direct dischargers in the subcategory. The pollutants specifically proposed for regulation at BPT are arsenic, lead, nickel, selenium, molybdenum, ammonia, TSS, and pH. As described previously, we also are proposing to add acid plants associated with primary molybdenum plants to those regulated by promulgated BPT limitations for the metallurgical acid plant subcategory.

Implementation of the proposed BPT limitations will remove annually an estimated 73,631 kg of toxic metals, 1,049 kg of molybdenum, 62,813 kg of ammonia, and 51,529 kg of TSS. While one of the discharging plants has the basic equipment components in-place to comply with BPT, we do not believe that either plant is currently achieving the BPT mass limitations.

The cost and specific removal data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the benefits justify the costs for this subcategory.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory, and, therefore, are more appropriately considered under BAT.

We are expanding the applicability of the existing BPT requirements established for the metallurgical acid plants subcategory to include the acid plants associated with primary molybdenum roasting operations. The technology basis for the existing BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH. These technologies are already in-place at both of the dischargers included under the expanded applicability. The pollutants specifically proposed for regulation at BPT are cadmium, copper, lead, zinc, TSS, and pH.

Compliance with the existing BPT limitations for metallurgical acid plants by the two direct discharging primary molybdenum facilities which operate sulfuric acid plants will result in the removal of an estimated 8,026 kg of toxic metals, and 10,903 kg of TSS. While both plants have the equipment in-place to comply with BPT, we do not believe that the plants are currently achieving the proposed BPT limitations.

The cost and specific removal data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the benefits justify the costs for this subcategory.

Secondary Molybdenum and Vanadium

We are proposing BPT requirements for the secondary molybdenum and vanadium subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, and ammonia steam stripping to remove ammonia. These technologies are already in-place at the one discharger in the subcategory. The pollutants specifically proposed for regulation at BPT are antimony, lead, nickel, molybdenum, ammonia, TSS, and pH.

Implementation of these proposed BPT limitations will remove annually an estimated 25,100 kg of toxic metals, and 74,000 kg of TSS.

The cost and specific removal data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the benefits justify the costs for this subcategory.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory, and, therefore, are more appropriately considered under BAT.

Primary Nickel and Cobalt

We are proposing BPT requirements for the primary nickel and cobalt subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, and ammonia steam stripping to remove ammonia. Lime precipitation and sedimentation technology is already in-place at the one discharger in the subcategory. The pollutants specifically proposed for regulation at BPT are copper, nickel, cobalt, ammonia, TSS, and pH.

Implementation of the proposed BPT limitations will remove annually an estimated 241 kg of toxic metals.

The cost and specific removal data for this subcategory are not presented here

because the data on which they are based have been claimed to be confidential. The Agency has determined that the benefits justify the costs for this subcategory.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory, and, therefore, are more appropriately considered under BAT.

Secondary Nickel

We are not proposing BPT requirements for the secondary nickel subcategory, since there are no existing direct dischargers.

Primary Precious Metals and Mercury

We are proposing BPT requirements for the primary precious metals and mercury subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, and oil skimming to remove oil and grease. These technologies are not in-place at the one discharger in this subcategory. The pollutants specifically proposed for regulation at BPT are arsenic, lead, mercury, silver, zinc, oil and grease, TSS, and pH.

Implementation of the proposed BPT limitations will remove annually an estimated 914 kg of toxic metals and 334 kg of TSS. We project a capital cost of $27,500 and an annualized cost of $9,000 for achieving proposed BPT limitations.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory, and, therefore, are more appropriately considered under BAT.

Secondary Precious Metals

We are proposing BPT requirements for the secondary precious metals subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is hydroxide precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, ammonia steam stripping to remove ammonia, and cyanide precipitation to remove free and complex cyanide. Chemical precipitation and sedimentation technology is already in-place at 20 of the plants in the subcategory including all three direct dischargers. One plant has cyanide precipitation in-place. The technology basis for steam stripping is discussed above. The pollutants specifically proposed for regulation at BPT are copper, cyanide, zinc, ammonia, TSS, and pH.

Implementation of the proposed BPT limitations will remove annually an estimated 34,570 kg of toxic pollutants (which include 6.3 kg of cyanide), 490 kg of ammonia, and 11,200 kg of TSS.

The cost and specific removal data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the benefits justify the costs for this subcategory.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory, and, therefore, are more appropriately considered under BAT.

Primary Rare Earth Metals

We are proposing BPT requirements for the primary rare earth metals subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH. These technologies are already in-place at the one direct discharger in the subcategory. The pollutants specifically proposed for regulation at BPT are chromium, lead, nickel, TSS, and pH.

Compliance with of the proposed BPT limitations will remove annually an estimated 0.13 kg of toxic metals and 81.6 kg of TSS (no toxic organics would be removed). We project no capital or additional annual cost for achieving proposed BPT because the technology is already in-place at the one direct discharging facility in this subcategory.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory. Therefore, they are more appropriately considered under BAT.

Secondary Tantalum

We are proposing BPT requirements for the secondary tantalum subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH. These technologies are already in-place at all three of the dischargers in the subcategory. The pollutants specifically proposed for regulation at BPT are copper, lead, nickel, zinc, TSS, and pH.

Implementation of the proposed BPT limitations will remove annually an estimated 26,268 kg of toxic metals and 20,079 kg of TSS.

The cost and specific removal data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the benefits justify the costs for this subcategory.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory. Therefore, they are more appropriately considered under BAT.

Primary and Secondary Tin

We are proposing BPT requirements for the primary and secondary tin subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is chemical precipitation and sedimentation technology to remove metals, fluoride, and solids from combined wastewaters and to control pH, with preliminary treatment consisting of cyanide precipitation and ammonia steam stripping. Chemical precipitation and sedimentation technology is already in-place at two of the three direct dischargers in the subcategory. The pollutants specifically proposed for regulation at BPT are antimony, cyanide, lead, nickel, tin, ammonia, fluoride, TSS, and pH.

Implementation of the proposed BPT limitations will remove annually an estimated 1,169 kg of toxic metals, 144 kg of cyanide, 237,220 kg of fluoride, and 58,560 kg of TSS.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies not demonstrated in the subcategory, and, therefore, are more appropriately considered under BAT.

Primary and Secondary Titanium

We are proposing BPT requirements for the primary and secondary titanium subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, and oil skimming preliminary treatment for streams with treatable concentrations of oil and grease. These technologies are already in place at two of the four direct dischargers in the subcategory. EPA is proposing a two tier regulatory scheme for this subcategory. However, the same

technologies apply to both tiers at BPT. The pollutants specifically proposed for regulation at BPT are chromium, lead, nickel, thallium, fluoride, titanium, oil and grease, TSS, and pH.

Implementation of the proposed BPT limitations will remove annually an estimated 113 kg of toxic metals, 5,791 kg of titanium, and 58,864 kg of TSS. While two plants have the equipment in-place to comply with BPT, we do not believe that the plants are currently achieving the proposed BPT limitations. We project a capital cost of $481,000 and annualized cost of $330,000 for achieving proposed BPT in all plants.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory, and, therefore, are more appropriately considered under BAT.

Secondary Tungsten and Cobalt

We are proposing BPT requirements for the secondary tungsten and cobalt subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, oil skimming and ammonia steam stripping to remove ammonia. Lime precipitation and sedimentation technology is already in-place at three direct dischargers in the subcategory. The pollutants specifically proposed for regulation at BPT are copper, nickel, cobalt, ammonia, oil and grease, TSS, and pH.

Implementation of the proposed BPT limitations will remove annually an estimated 150,650 kg of toxic metals, and 108,700 kg of TSS.

The cost and specific removal data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the benefits justify the costs for this subcategory.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory, and, therefore, are more appropriately considered under BAT.

Secondary Uranium

We are proposing BPT requirements for the secondary uranium subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH. BPT also includes ammonia steam stripping. These technologies are already in-place at the one discharger in the subcategory. The pollutants specifically proposed for regulation at BPT are chromium, copper, nickel, ammonia, fluoride, uranium, TSS, and pH.

Implementation of the proposed BPT limitations will remove annually an estimated 1,280 kg of toxic metals, 12,000 kg of ammonia and 1,763 kg of TSS. While the one discharging plant has the equipment in-place to comply with BPT, we do not believe that the plant is currently achieving the proposed BPT limitations. We project capital and annual costs of $28,600 and $73,644 (1982 dollars) respectively for modifications to technology presently in-place at the discharging facility to achieve proposed BPT regulations.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory. Therefore, they are more appropriately considered under BPT.

Primary Zirconium and Hafnium

We are proposing BPT requirements for the primary zirconium and hafnium subcategory, since BPT has not yet been promulgated. The technology basis for the BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH plus ammonia steam stripping, cyanide precipitation and barium chloride co-precipitation preliminary treatment of streams containing ammonia, cyanide or radium. Lime precipitation and sedimentation technology and ammonia steam stripping is already in-place at one discharger in the subcategory. The pollutants specifically proposed for regulation at BPT are chromium, cyanide, lead, nickel, ammonia, radium (226), TSS, and pH.

Implementation of the proposed BPT limitations will remove annually an estimated 703 kg of toxic metals, and 281,882 kg of TSS.

The cost and specific removal data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the benefits justify the costs for this subcategory.

More stringent technology options were not selected for BPT since they require in-process changes or end-of-pipe technologies less widely practiced in the subcategory, and, therefore, are more appropriately considered under BAT.

XI. Best Available Technology (BAT) Effluent Limitations

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, nonwater quality environmental impacts (including energy requirements) and the costs of applying such technology (section 304(b)(2)(B) of the Clean Water Act). At a minimum, the BAT technology level represents the best economically achievable performance of plants of various ages, sizes, processes or other shared characteristics. As with BPT, where the Agency has found the existing performance to be uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may include feasible process changes or internal controls, even when not in common industry practice.

The required assessment of BAT "considers" costs, but does not require a balancing of costs against pollutant removal benefits (see *Weyerhaeuser* v. *Costle, supra*). In devloping the proposed BAT, however, EPA has given substantial weight to the reasonableness of cost. The Agency has considered the volume and nature of discharges expected after application of BAT, the general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control levels.

Despite this expanded consideration of costs, the primary determinant of BAT is still pollutant removal capability. As a result of the Clean Water Act of 1977, the achievement of BAT has become the principal national means of controlling toxic water pollution.

The Agency has evaluated five major sets of technology options, set out in section VII, that might be considered BAT level technology. Each of these options would substantially reduce the discharge of toxic pollutants. These options are described in detail in section X of the General Development Document.

We also considered dry scrubbing as an in-process modification for BAT. This technology, however, generally was not sufficiently demonstrated for nonferrous metals subcategories subject to this rulemaking. The emissions from many of the manufacturing processes were found to contain hot particulate matter and acidic fumes. Emissions of this nature would tend to cause operational problems in dry scrubbers. The materials of construction would also be prohibitively expensive. Finally, we rejected dry scrubbing because the

retrofit costs associated with implementation of this technology would also be prohibitively expensive.

As a means of evaluating the economic achievability of each of these options, the Agency developed estimates of the compliance costs. An estimate of capital and annual costs for each of the options was prepared for each subcategory as an aid in choosing the best BAT options. All compliance costs are based on March 1982 dollars.

The cost methodology has been described in detail in section III of this preamble. For most treatment technologies, standard cost literature sources and vendor quotations were used for module capital and annual costs. Data from several sources were combined to yield average or typical costs as a function of flow or other characteristic design parameters. In a small number of modules, the technical literature was reviewed to identify the key design criteria, which were then used as a basis for vendor contacts. The resulting costs for individual pieces of equipment were combined to yield module costs. In either case, the cost data were coupled with flow data from each plant to establish system costs for each facility.

End-of-pipe filtration is demonstrated at 23 nonferrous metals plants in subcategories covered under nonferrous metals manufacturing phase I and 2 plants covered under phase II in the primary nickel and cobalt and secondary precious metals subcategories. We are transferring end-of-pipe filtration performance for the Primary Antimony, Primary Beryllium, Primary and Secondary Gemanium and Gallium, Primary Molybdenum and Rhenium, Secondary Molybdenum and Vanadium, Primary Nickel and Cobalt, Primary Precious Metals and Mercury, Secondary Precious Metals, Primary Rare Earth Metals, Secondary Tantalum, Primary and Secondary Tin, Primary and Secondary Titanium, Secondary Tungsten and Cobalt, Secondary Uranium, and Primary Zirconium and Hafnium subcategories of this proposed rulemaking from one nonferrous metals manufacturing plant and two porcelain enameling plants. As discussed in section IX of this preamble Summary of Generic Issues, this data base was selected because the raw wastewater among plants in nonferrous metals manufacturing phase II and in categories in the CMDB is similar. We believe that filtration will achieve the same effluent concentrations for nonferrous metals manufacturing wastewater as for the one nonferrous metals manufacturing and two porcelain enameling plants.

In-process flow reduction is an integral part of the proposed BAT in the primary beryllium, primary molybdenum and rhenium, primary precious metals and mercury, secondary precious metals, primary rare earth metals, primary and secondary titanium, secondary tungsten and cobalt, and primary zirconium and hafnium subcategories. Flow reduction is demonstrated in the category for wet air pollution control wastewater and contact cooling water. The demonstration status of in-process flow reduction and the level of recycle considered for this proposed rulemaking are discussed more fully in section IX of this preamble, Summary of Generic Issues. Flow reduction measures result in concentrating the pollutants present in wastewater. Treatment of a more concentrated stream allows a greater net removal of pollutants and a reduced flow may reduce the size of the treatment equipment and hence the cost of treatment. The Agency believes that the BAT technology based limitations proposed for the subcategories in this rulemaking are economically achievable.

Primary Antimony

Our proposed BAT limitations for this subcategory are based on lime precipitation and sedimentation (BPT technology) with the addition of filtration.

The pollutants specifically limited under BAT are antimony, arsenic, lead, and mercury. The toxic pollutants cadmium, copper and zinc were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

Implementation of the proposed BAT limitations would remove annually an estimated 2,644 kg of toxic pollutants, which is 1.3 kg of toxic metals over the estimated BPT discharge. Estimated capital cost for achieving proposed BAT is $41,250, and annualized cost is $21,183.

Bauxite Refining

We are proposing today to make minor technical amendments to delete or correct references to FDF considerations under Part 125 and pretreatment references to Part 128. The existing BAT (promulgated on April 8, 1974 under Subpart A of 40 CFR Part 421) prohibits the discharge of process wastewater except for an allowance for net precipitation that falls within process wastewater impoundments.

Information has become available to the Agency that suggests the need for treatment of the red mud impoundment effluent to remove toxic organic pollutants not considered in the development of the promulgated limitations. In keeping with the emphasis of the Clean Water Act of 1977 on toxic pollutants, we have considered the discharge from process wastewater impoundments as a part of this rulemaking and are now considering the regulation of toxic pollutants.

Therefore, we also are soliciting comments on the need for BAT limitations on the net precipitation discharge from red-mud ponds based on activated carbon treatment to remove toxic organic pollutants. The pollutants being considered for control under BAT are 2-chlorophenol, phenol (GC/MS) and total phenols (4AAP). The limitations would be based on achieving a daily maximum concentration of 0.010 mg/l for each pollutant. The toxic pollutants 2,4,6-trichlorophenol, 4,6-dichlorophenol, 2-nitrophenol and 4-nitrophenol were also considered for possible regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants are not presently being considered for regulation because they would be effectively controlled by the toxic organic limitations presently being considered.

The BAT limitations on the toxic pollutants under consideration would remove annually an estimated 4,835 kg of toxic pollutants from the estimated current discharge. Estimated capital cost for achieving proposed BAT is $7.60 million, and annualized cost is $2.98 million.

The Agency may promulgate concentration based BAT limitations as discussed above for net precipitation discharge. Accordingly the public should submit comments on this issue at this time. The Agency specifically invites comments on the need to modify the existing regulation. If EPA determines that a change in the existing regulation is necessary, EPA intends to promulgate the technical option discussed above.

Primary Beryllium

Our proposed BAT limitations for this subcategory are based on lime precipitation and sedimentation (BPT technology), with the addition of in-process wastewater reduction, and filtration. Flow reduction is based on 90 percent recycle of beryllium oxide calcining furnace wet air pollution control. Although the one beryllium

plant currently generating beryllium oxide calcining furnace wet air pollution control wastewater does not practice recycle, recycle of similar streams is demonstrated extensively in other subcategories of the nonferrous metals manufacturing category.

The polllutants specifically limited under BAT are beryllium, chromium, copper, and fluoride.

Implementation of the proposed BAT limitations would remove annually an estimated 257 kg of toxic pollutants, which is 8 kg of toxic metals over the estimated BPT discharge. An intermediate option considered for BAT is flow reduction plus lime precipitation and sedimentation. This option would remove an estimated 7.3 kg of toxic metals over the estimated BPT discharge.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential.

Primary Boron

We are not proposing limitations based on best available technology for existing direct dischargers for the primary boron subcategory since there are no existing direct dischargers.

Primary Cesium and Rubidium

We are not proposing BAT limitations for the primary cesium and rubidium subcategory because there are no existing direct dischargers.

Primary and Secondary Germanium and Gallium

We are proposing Level A BAT limitations for this subcategory based on lime precipitation and sedimentation (BPT technology) for plants that only reduce germanium oxide in a hydrogen furnance and then wash and rinse the germanium product in conjunction with zone refining. This is equivalent to BPT technology. Level B BAT limitations are proposed for all other facilities in this subcategory. The Level B effluent limitations are based on the addition of filtration.

The pollutants specifically limited under BAT are arsenic, lead, zinc, germanium and fluoride. The toxic pollutants antimony, cadmium, chromium, copper, nickel, selenium, silver and thallium were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology. The Agency considered applying the same technology levels to this entire subcategory but decided to propose this two tiered regulatory scheme because there was little additional pollutant removal from the Level A wastewater streams when treated by the added Level B technology.

Although there are no existing direct dischargers in this subcategory, BAT is proposed for any existing zero discharger who elects to discharge at some point in the future. This action was deemed necessary because wastewaters from germanium and gallium operations which contain significant loadings of toxic pollutants are currently being disposed of in a RCRA permitted surface impoundment.

It is estimated that Level A plants in this subcategory would remove 335 kg of toxic metals annually. It is also estimated that Level B plants in this subcategory would remove 548 kg of toxic metals annually.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential.

Secondary Indium

We are not proposing BAT limitations for the secondary indium subcategory since there are no existing direct dischargers.

Secondary Mercury

We are not proposing BAT limitations for the secondary mercury subcategory since there are no existing direct dischargers.

Primary Molybdenum and Rhenium

Our proposed BAT limitations for this subcategory are based on (BPT technology) preliminary treatment of ammonia steam stripping, end-of-pipe treatment consisting of lime precipitation and sedimentation, with the addition of in-process wastewater reduction, and filtration. Flow reductions are based on 90 percent recycle of scrubber liquor, a rate demonstrated by one of the two direct discharger plants.

The pollutants specifically limited under BAT are arsenic, lead, molybdenum, nickel, selenium, and ammonia. The toxic pollutants chromium, copper and zinc were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

Implementation of the proposed BAT limitations would remove annually an estimated 73,655 kg of toxic metals, which is 24 kg of toxic metals greater than the estimated BPT removal. No additional ammonia is removed at BAT.

An intermediate option considered for BAT is preliminary treatment with ammonia steam stripping followed by end-of-pipe treatment consisting of chemical precipitation and sedimentation with the addition of flow reduction. This option would remove an estimated 13 kg of toxic metals more than the estimated BPT discharge.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential.

We are expanding the applicability of the existing BAT limitations for metallurgical acid plants to include acid plants associated with primary molybdenum roasting operations. The existing BAT limitations are based on the BPT technology (lime precipitation and sedimentation), in-process wastewater reduction, sulfide precipitation and filtration. Flow reduction are based on 90 percent recycle of scrubber liquor.

Compliance with the BAT limitations for the existing metallurgical acid plants subcategory by the two direct discharging primary molybdenum facilities which operate sulfuric acid plants will result in the annual removal of an estimated 8,245 kg of toxic pollutants.

Secondary Molybdenum and Vanadium

Our proposed BAT limitations for this subcategory are based on preliminary treatment consisting of ammonia steam stripping followed by end-of-pipe treatment consisting of lime precipitation and sedimentation (BPT technology) and filtration.

The pollutants specifically limited under BAT are antimony, lead, molybdenum, nickel, and ammonia. The toxic pollutants arsenic, beryllium, cadmium, chromium and zinc were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

Implementation of the proposed BAT limitations would remove annually an estimated 25,190 kg of toxic pollutants,

which is 80 kg of toxic metals greater than the estimated BPT removal.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential.

Primary Nickel and Cobalt

Our proposed BAT limitations for this subcategory are based on preliminary treatment of ammonia steam stripping followed by end-of-pipe treatment consisting of lime precipitation and sedimentation (BPT technology), and filtration. Filters are presently utilized by the one plant in this subcategory.

We are proposing filtration as part of the BAT technology because this technology is demonstrated in the primary nickel and cobalt category (the one discharger in this subcategory presently has a filter, and a total of 25 facilities in eight nonferrous metals manufacturing subcategories currently have filters), and results in additional removals of toxic metals. In addition, filtration adds reliability to the treatment system by making it less susceptible to operator error and to sudden changes in raw wastewater flows and concentrations.

The pollutants specifically limited under BAT are cobalt, copper, nickel, and ammonia. The toxic pollutant zinc was also considered for regulation because it was found at treatable concentrations in the raw wastewaters from this subcategory. This pollutant was not selected for specific regulation because it will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

Implementation of the proposed BAT limitations would remove annually an estimated 246 kg of toxic metals, which is 5 kg of toxic metals greater than the estimated BPT removal.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential.

Secondary Nickel

We are not proposing BAT for the secondary nickel subcategory since there are no existing direct dischargers.

Primary Precious Metals and Mercury

Our proposed BAT limitations for this subcategory are based on preliminary treatment consisting of oil skimming and end-of-pipe treatment consisting of lime precipitation and sedimentation (BPT technology), and filtration. BAT also includes flow reduction.

The pollutants specifically limited under BAT are arsenic, lead, mercury, silver, and zinc. The toxic pollutants cadmium, chromium, copper, nickel and thallium were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

Implementation of the proposed BAT limitations would remove annually an estimated 914.5 kg of toxic pollutants, which is 0.5 kg of toxic metals greater than the estimated BPT removal. No additional oil and grease is removed at BAT. Estimated capital cost for achieving proposed BAT is $30,000, and annualized cost is $10,000.

Secondary Precious Metals

Our proposed BAT limitations for this subcategory are based on preliminary treatment consisting of cyanide precipitation and ammonia steam stripping and end-of-pipe treatment consisting of chemical precipitation and sedimentation (BPT technology) with the addition of in-process wastewater flow reduction, and filtration. Flow reductions are based on recycle of scrubber effluent. Twenty-one of the 29 existing plants currently have scrubber liquor recycle rates of 90 percent or greater. Filters also are presently utilized by one plant in the subcategory.

The pollutants specifically limited under BAT are copper, cyanide, zinc, and ammonia. The toxic pollutants antimony, arsenic, cadmium, chromium, lead, nickel, selenium, silver and thallium were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

Implementation of the proposed BAT limitations would remove annually an estimated 34,580 kg of toxic pollutants, which is 10 kg of toxic pollutants greater than the estimated BPT removal. No additional ammonia or cyanide is removed at BAT.

An intermediate option considered for BAT is flow reduction plus preliminary treatment consisting of cyanide precipitation, ammonia steam stripping and end-of-pipe treatment consisting of chemical precipitation and sedimentation. This option would remove an estimated 6.3 kg of toxic metals more than the estimated BPT removal.

The costs and specific removal data for this subcategory are not presented here becaue the data on which they are based has been claimed to be confidential.

Primary Rare Earth Metals

Our proposed BAT limitations for this subcategory are based on lime precipitation and sedimentation (BPT technology) with the addition of in-process flow reduction and filtration. Flow reduction is based on 90 percent recycle of scrubber effluent. Activated carbon absorption technology is proposed to control the discharge of hexachlorobenzene which is not effectively removed by existing treatment in the subcategory. Activated carbon technology is transferred from the iron and steel category where it is a demonstrated technology for removal of toxic organics.

The pollutants specifically limited under BAT are hexachlorobenzene, chromium, lead, and nickel. The toxic pollutants benzene, arsenic, cadmium, copper, selenium, silver, thallium and zinc were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic pollutants are treated to the levels achievable by the model BAT technology.

Implementation of the proposed BAT limitations would remove annually an estimated 18.3 kg of toxic pollutants (14.9 kg of toxic organics and 3.4 kg of toxic metals) and 198 kg of suspended solids more than the estimated BPT removal. An intermediate option considered for BAT is lime precipitation and sedimentation with the addition of in-process flow reduction and filtration. This option would remove an estimated 3.4 kg of toxic metals more than the estimated BPT removal. No toxic organics would be removed.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential.

Secondary Tantalum

Our proposed BAT limitations for this subcategory are based on lime preciptation and sedimentation (BPT technology) with the addition of filtration.

The pollutants specifically limited under BAT are copper, lead, nickel, and zinc. The toxic pollutants antimony, beryllium; cadmium, chromium and silver were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

Implementation of the proposed BAT limitations would remove annually an estimated 26,273 kg of toxic metals, which is 4.8 kg of toxic metals more than the estimated BPT removal.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential.

Primary and Secondary Tin

Our proposed BAT limitations for this subcategory are based on preliminary treatment consisting of ammonia steam stripping and cyanide precipitation when required, and end-of-pipe treatment consisting of chemical precipitation and sedimentation, and polishing filtration.

The pollutants specifically limited under BAT are antimony, cyanide, lead, nickel, tin, ammonia, and fluoride. The toxic pollutants arsenic, cadmium, chromium, copper, selenium, silver, thallium and zinc were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

Implementation of the proposed BAT limitations would remove annually an estimated 1,045 kg of toxic metals, which is 91 kg of toxic metals over the estimated BPT discharge. No additional fluoride is removed at BAT. The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential.

Primary and Secondary Titanium

We are proposing Level A BAT limitations for titanium plants which do not practice electrolytic recovery of magnesium and which use vacuum distillation instead of leaching to purify titanium sponge as the final product are based on lime precipitation, sedimentation, and oil skimming (BPT technology) plus in-process wastewater flow reduction. Level B BAT limitations are proposed for all other titanium plants are based on lime precipitation, sedimentation, and oil skimming pretreatment where required (BPT technology) plus flow reduction, and filtration. Flow reduction is based on 90 percent recycle of scrubber effluent through holding tanks and 90 percent recycle of casting contact cooling water through cooling towers. The Agency considered applying the same technology levels to this entire subcategory but decided to propose this two tiered regulatory scheme because there was little additional pollutant removal from the Level A wastewater streams when treated by the added Level B technology.

The pollutants specifically limited under BAT are chromium, lead, nickel, thallium, titanium, and fluoride. The toxic pollutants antimony, cadmium, copper and zinc were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be adequately treated when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

There are currently no direct discharging Level A plants in this subcategory. It is estimated that if the four existing direct discharging Level B plants in this subcategory became Level A dischargers they would incur a capital cost of approximately $641,000 and an annualized cost of $325,000; 135 kg of toxic pollutants would be removed.

Implementation of the proposed Level B BAT limitations would remove annually an estimated 298 kg of toxic pollutants. Estimated capital cost for achieving proposed BAT is $1,030,000, and annualized cost is $585,000.

Secondary Tungsten and Cobalt

Our proposed BAT limitations for this subcategory are based on lime precipitation and sedimentation (BPT technology) ammonia steam stripping plus in-process wastewater reduction, and filtration. Flow reductions are based on 90 percent recycle of scrubber effluent, which is the rate reported by the only existing plant with a scrubber.

The pollutants specifically limited under BAT are cobalt, copper, nickel, and ammonia. The toxic pollutants arsenic, cadmium, chromium, lead, silver and zinc were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

Implementation of the proposed BAT limitations would remove annually an estimated 150,700 kg of toxic pollutants.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential.

The intermediate option we considered for BAT is flow reduction plus ammonia steam stripping and chemical precipitation and sedimentation. This option would remove an estimated 26 kg of toxic metals over the estimated BPT discharge.

Secondary Uranium

Our proposed BAT limitations for this subcategory are based on ammonia steam stripping and lime precipitation and sedimentation (BPT technology), plus filtration.

The pollutants specifically limited under BAT are chromium, copper, nickel, ammonia, uranium and fluoride. The toxic pollutants arsenic, cadmium, lead, selenium, silver and zinc were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from the subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

Implementation of the proposed BAT limitations would remove annually an estimated 1,304 kg of toxic metals and 12,000 kg of ammonia. Estimated capital cost for achieving proposed BAT is $54,312, and annualized cost is $86,452 (1982 dollars).

Primary Zirconium and Hafnium

Our proposed Level A BAT limitations for plants which only produce zirconium or zirconium-nickel alloys by magnesium reduction of ZrO_2 are based on barium chloride coprecipitation, cyanide precipitation, ammonia stream stripping and chemical precipitation and sedimentation (BPT technology), plus in-process wastewater flow reduction. Level B limitations apply to all other plants in the subcategory. The proposed Level B BAT limitations are based on barium chloride coprecipitation, cyanide precipitation, ammonia stream stripping and chemical precipitation and

sedimentation (BPT technology), plus flow reduction, and filtration.

The achievable concentration for ammonia steam stripping is based on iron and steel manufacturing category data. Flow reductions are based on 90 percent recycle of scrubber effluent. The Agency considered applying the same technology levels to this entire subcategory but decided to propose this two tiered regulatory scheme because there was little additional pollutant removal from the Level A wastewater streams when treated by the added Level B technology.

The pollutants specifically limited under BAT are chromium, cyanide, lead, nickel, radium (226) and ammonia. The toxic pollutants cadmium, thallium and zinc were also considered for regulation because they were found at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model BAT technology.

There are currently no level A direct discharging plants in this subcategory.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential.

XII. New Source Performance Standards (NSPS)

The basis for new source performance standards (NSPS) under section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to design and use the best and most efficient nonferrous metals manufacturing processes and wastewater treatment technologies, without facing the added costs and restrictions encountered in retrofitting an existing plant. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible.

The Agency has considered four major sets of technology options for this phase of nonferrous metals manufacturing which might be applied at the BDT level discussed in section VII. Each of these options would substantially reduce the discharge of toxic pollutants. These options are described in detail in Section X of the General Development Document. The option selected for each subcategory and the underlying rationale are presented below.

We are transferring lime precipitation and sedimentation technology and performance for the primary boron, primary cesium and rubidium, secondary indium, secondary mercury and secondary nickel subcategories from aluminum forming, copper forming, coil coating, battery manufacturing and porcelain enameling plants. This technology is not demonstrated on nonferrous metals manufacturing phase II process wastewater discharges in these subcategories. While lime precipitation and sedimentation is not demonstrated in these subcategories, we believe that it is transferable because of its widespread demonstration in this (the nonferrous metals manufacturing) category and by the categories considered in the CMDB. The raw wastewater characteristics of the primary boron, primary cesium and rubidium, secondary indium, secondary mercury and secondary nickel subcategories are similar to those found in this category. Likewise, the raw wastewater characteristics of these phase II subcategories are similar to those for the plants in the combined metals data base (see Section IX of this preamble). We believe that the technology when applied to wastewater in these phase II subcategories will achieve the same effluent concentration as plants in the CMDB.

We are transferring filtration technology for the primary cesium and rubidium, secondary indium, secondary mercury and secondary nickel subcategories from one nonferrous metals manufacturing phase I plant and two porcelain enameling plants. This technology is not demonstrated on nonferrous manufacturing phase II process wastewater discharges in these subcategories. While filtration is not demonstrated in these subcategories, we believe that it is transferrable because of its demonstration in this category. The raw wastewater characteristics of the primary cesium and rubidium, secondary indium, secondary mercury and secondary nickel subcategories are similar to those found in the other subcategories in the nonferrous metals manufacturing category. Likewise, the raw wastewater characteristics of these phase II subcategories are similar to those for plants in the data base used for filtration performance (see section IX of this preamble). We believe that this technology when applied to wastewater in these phase II subcategories will achieve the same effluent concentrations as the plants used to establish filtration performance.

Primary Antimony

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not pose a barrier to the entry of new plants into this subcategory.

Bauxite Refining

As discussed under BAT, we are soliciting comment on the achievability of NSPS equivalent to the BAT limitations. The standards we are considering would require that new bauxite plants achieve a maximum daily concentration of 0.010 mg/1 for 2-chlorophenol, phenol, and phenols (4AAP). Because the NSPS being considered is equal to the BAT we are considering, we believe that the proposed NSPS will not pose a barrier to the entry of new plants into this subcategory.

Primary Beryllium

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not have a detrimental impact on the entry of new plants into this subcategory.

Primary Boron

Our proposed NSPS limitations for this subcategory are based on lime precipitation and sedimentation technology. This technology is fully demonstrated in many nonferrous metals subcategories and would be expected to perform at the same level in this subcategory.

The pollutants specifically limited under NSPS are boron, lead, nickel, TSS, and pH. The toxic pollutants cadmium, chromium, thallium and zinc were also considered for regulation because they are present at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model technology.

The costs and specific removal data for this subcategory are not presented

here because the data on which they are based has been claimed to be confidential. We believe that the proposed NSPS limitations are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Cesium and Rubidium

Our proposed NSPS for the primary cesium and rubidium subcategory are based on lime precipitation, sedimentation, and filtration technology.

The pollutants and pollutant parameters specifically limited under NSPS are lead, thallium, zinc, TSS, and pH. The toxic pollutants antimony, arsenic, beryllium, cadmium, chromium, copper, nickel and silver were also considered for regulation because they are present at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model technology.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. We believe the proposed NSPS is economically achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary and Secondary Germanium and Gallium

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not have a detrimental impact on the entry of new plants into this subcategory.

Secondary Indium

We are proposing that NSPS for the secondary indium subcategory be based on lime precipitation, sedimentation, (the same model technology as PSES) and polishing filtration. The pollutants and pollutant parameters specifically limited under NSPS are cadmium, lead, zinc, indium, total suspended solids and pH. The toxic pollutants chromium, nickel, selenium, silver and thallium were also considered for regulation because they are present at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model technology.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. We believe the proposed NSPS is economically achievable, and that they do not pose a barrier to entry of new plants into this subcategory.

Secondary Mercury

Our proposed NSPS for this subcategory are based on lime precipitation, sedimentation, and filtration. This technology is fully demonstrated in many nonferrous metals manufacturing subcategories and would be expected to perform at the same level in this subcategory.

The pollutants specifically limited under NSPS are lead, mercury, TSS, and pH. The toxic pollutants arsenic, cadmium, copper, silver and zinc were also considered for regulation because they are present at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation because they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model technology.

We believe the proposed NSPS is economically achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Molybdenum and Rhenium

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not have a detrimental impact on the entry of new plants into this subcategory.

We are expanding the applicability of the existing NSPS regulation for the metallurgical acid plants subcategory to include acid plants associated with primary molybdenum roasting operations. We do not believe that this expanded applicability will have a detrimental impact on the entry of new plants into this subcategory.

Secondary Molybdenum and Vanadium

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not pose a barrier to the entry of new plants into this subcategory.

Primary Nickel and Cobalt

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not pose a barrier to the entry of new plants into this subcategory.

Secondary Nickel

We are proposing that NSPS be equivalent to PSES. Our review of the subcategory indicates that no new demonstrated technologies that improve on PSES technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to PSES we believe that the proposed NSPS will not pose a barrier to the entry of new plants into this subcategory.

Primary Precious Metals and Mercury

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not have a detrimental impact on the entry of new plants into this subcategory.

Secondary Precious Metals

We are proposing that NSPS be equal to BAT, except for furnace air pollution control, which we are proposing as zero discharge. Except for furnace air pollution control, our review of the industry indicates that no new demonstrated technologies exist that improve on BAT technology. Zero discharge for furnace air pollution control is based on dry scrubbing, which is demonstrated at 11 out of 16 plants with furnace air pollution control. Cost for dry scrubbing air pollution control in a new facility is no greater than the cost for wet scrubbing which was the basis for BAT cost estimates. We believe that the proposed NSPS is economically achievable, and that they are not a

barrier to entry of new plants into this subcategory.

Primary Rare Earth Metals

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not have a detrimental impact on the entry of new plants into this subcategory.

Secondary Tantalum

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not pose a barrier to the entry of new plants into this subcategory.

Primary and Secondary Tin

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not pose a barrier to the entry of new plants into this subcategory.

Primary and Secondary Titanium

We are proposing that NSPS be equal to BAT plus flow reduction technology with additional flow reduction for four streams. Zero discharge is proposed for chip crushing, sponge crushing and screening, and scrap milling wet air pollution control wastewater based on dry scrubbing. Zero discharge is also proposed for chlorine liquefaction wet air pollution control based on by-product recovery of scrubber liquor as hypochlorous acid. Cost for dry scrubbing air pollution control in a new facility is no greater than the cost for wet scrubbing which was the basis for BAT cost estimates. We believe that the proposed NSPS is economically achievable and that it will not pose a barrier to the entry of new plants into this subcategory.

Secondary Tungsten and Cobalt

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not pose a barrier to the entry of new plants into this subcategory.

Secondary Uranium

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not pose a barrier to the entry of new plants into this subcategory.

Primary Zirconium and Hafnium

We are proposing that NSPS be equal to BAT. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances proposed for BAT. Because NSPS is equal to BAT we believe that the proposed NSPS will not pose a barrier to the entry of new plants into this subcategory.

XIII. Pretreatment Standards for Existing Sources (PSES)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES) to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of POTW. These standards must be achieved within three years of promulgation. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology based, generally analogous to BAT for direct dischargers. (Conference Report 95–830 at 87; Reprinted in Comm. on Environmental and Public Works, 95th Cong. 2d Sess., *A Legislative History of the Clean Water Act of 1977*, Vol. 3 at 272.)

Before proposing pretreatment standards, the Agency examines whether the pollutants discharged by the industry pass through the POTW or interfere with the POTW operation or its chosen sludge disposal practices. In determining whether pollutants pass through the Agency compares the percentage of a pollutant removed by a well-operated POTW, achieving secondary treatment, with the percentage removed by indirect dischargers applying the best available technology economically achievable. A pollutant is deemed to pass through the POTW when the average percentage removed nationwide by a well-operated POTW meeting secondary treatment requirements, is less than the percentage removed by dischargers complying with BAT level effluent limitations guidelines for that pollutant. (See generally, *46* FR at 9415–16 (January 28, 1981).)

This definition of pass through satisfies two competing objectives set by Congress: (1) That standards for indirect dischargers be equivalent to standards for direct dischargers, while at the same time, (2) that the treatment capability and performance of the POTW be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers.

The Agency compares percentage removal rather than the mass or concentration of pollutants discharged because the latter would not take into account the mass of pollutants discharged to the POTW from non-industrial sources nor the dilution of the pollutants in the POTW effluent to lower concentrations due to the addition of large amounts of non-industrial wastewater. We have data to indicate that pollutants are removed to a degree when treated in a POTW. The percentage of removal in POTW for selected pollutants is antimony—0; arsenic—20; cadmium—38; chromium—18; copper—58; cyanide—52; lead—48; mercury—69; nickel—19; selenium—0; silver—66; zinc—65; hexachlorobenzene—12, ammonia—40 and fluoride—0. These removal levels are used in determining pass through of pollutant.

There were no data concerning POTW removals for beryllium, boron, cobalt, germanium, indium, molybdenum, radium 226, thallium, tin, titanium, and uranium, to compare with our estimates of in-plant treatment. Removal of these pollutants is solubility related. Since the removal of metal pollutants for which data are available is also solubility related, EPA believes that these pollutants may pass through a POTW. We have assumed that these metals pass through a POTW in today's notice (zero removal); however, we formally solicit comments and data on whether these pollutants do pass through POTW and on actual POTW removal performance. Where EPA has regulated

these pollutants they are a major pollutant generated in a substantial mass in the subcategory.

EPA is proposing mass-based PSES for eight of the 20 discharging subcategories to assure the effluent reduction benefits associated with flow reductions in those subcategories.

We are transferring lime preciptation and sedimentation technology and its performance for the secondary indium and secondary nickel subcategories from aluminum forming, copper forming, coil coating, battery manufacturing and porcelain enameling plants. This technology is not demonstrated in existing plants in these subcategories. While lime precipitation and sedimentation is not demonstrated in these subcategories, we believe that it is transferrable because of its widespread demonstration in this category. The raw wastewater characteristics of secondary indium and secondary nickel subcategories are similar to those found in this category. Likewise, the raw wastewater characteristics of the phase II subcategories are similar to those for plants in the CMDB (see section IX of this preamble). We believe that the technology when applied to wastewater in these phase II subcategories will achieve the same effluent concentrations as plants in the CMDB.

We are transferring filtration technology for the secondary nickel subcategory from one nonferrous metals manufacturing plant and two porcelain enameling plants. This technology is not demonstrated on existing secondary nickel process wastewater discharges. While filtration is not demonstrated in this subcategory, we believe that it is transferrable because it is demonstrated in the nonferrous metals manufacturing category. The raw wastewater characteristics of the secondary nickel subcategory are similar to those found in the other nonferrous metals manufacturing subcategories and in the plants used for establishing filtration performance (See section IX of this preamble). We believe that this technology when applied to secondary nickel wastewater will achieve the same effluent concentrations as the plants used to establish filtration performance.

Primary Antimony

We are not proposing PSES limitations for the primary antimony subcategory because there are no existing indirect dischargers.

Bauxite Refining

We are not proposing PSES limitations for the bauxite refining subcategory because there are no existing indirect dischargers.

Primary Beryllium

We are not proposing pretreatment standards for existing sources for the primary beryllium subcategory since there are no indirect dischargers.

Primary Boron

We are not proposing pretreatment standards for existing sources for the primary boron subcategory since there are no existing indirect dischargers.

Primary Cesium and Rubidium

We are not proposing PSES for the primary cesium and rubidium subcategory because there are no existing indirect dischargers.

Primary and Secondary Germanium and Gallium

We are proposing two levels of PSES for this subcategory. The first level, A, consists of lime precipitation and sedimentation. Level A applies to plants which only reduce germanium dioxide to metal and practice zone refining and acid washing and rinsing. These plants only have one waste stream—acid wash and rinse water. The second level, B, consists of lime precipitation, sedimentation, and filtration. Level B applies to all other plants in the subcategory.

The pollutants controlled at PSES are the same as those controlled at BAT.

We are proposing PSES to prevent pass-through of arsenic, lead, zinc fluoride and germanium. These pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 33 percent while BAT Level A technology removes approximately 87 percent and Level B technology over approximately 99 percent.

Implementation of the proposed Level A PSES limitations would remove annually an estimated 20 kg of toxic metals, 818 kg of germanium and 376 kg of fluoride.

There are no existing Level B plants in the subcategory which are indirect dischargers. It is estimated that if Level A became Level B plants, an additional 32 kg of toxic metals would be removed annually by the proposed Level B PSES.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The proposed PSES will not result in adverse economic impacts.

Secondary Indium

We are proposing PSES limitations for this subcategory based on lime precipitation and sedimentation technology. The pollutants sepcifically regulated under PSES are cadmium, lead, zinc, and indium. The toxic pollutants chromium, nickel, selenium, silver and thallium were also considered for regulation because they are present at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulation becuase they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model technology. It is necessary to propose PSES to prevent pass-through of cadmium, lead, and zinc. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 38 percent while this BAT level technology removes approximately 99 percent.

Implementation of the proposed PSES limitations would remove annually an estimated 568 kg of toxic metals and 288 kg of indium.

Secondary Mercury

We are not proposing pretreatment standards for existing sources for the secondary mercury subcategory since there are no existing indirect dischargers.

Primary Molybdenum and Rhenium

We are not proposing pretreatment standards for existing sources for the primary molybdenum and rhenium subcategory since there are no existing indirect dischargers.

Secondary Molybdenum and Vanadium

We are not proposing pretreatment standards for existing sources for the secondary molybdenum and vanadium subcategory since there are no existing indirect dischargers.

Primary Nickel and Cobalt

We are not proposing pretreatment standards for existing sources for the primary nickel and cobalt subcategory since there are no existing indirect dischargers.

Secondary Nickel

We are proposing PSES for this subcategory based on chemical precipitation, sedimentation, and filtration (filtration is proposed for acid reclaim leaching filtrate and acid reclaim leaching filter backwash, but not for slag reclaim tailings). The pollutants specifically regulated under PSES are chromium, copper and nickel. The toxic pollutants arsenic and zinc were also considered for regulation because they are present at treatable concentrations in the raw wastewaters from this subcategory. These pollutants were not selected for specific regulations because

they will be effectively controlled when the regulated toxic metals are treated to the levels achievable by the model technology. We are proposing PSES to prevent pass-through of chromium copper, and nickel. These toxic pollutants are removed by a well-operated POTW at an average of 32 percent while PSES technology removes approximately 84 percent.

Implementation of the proposed PSES limitations would remove annually an estimated 1,113 kg of toxic metals. We estimate a capital cost of $287,000 and an annualized cost of $120,000 to achieve the proposed PSES. The proposed PSES will not result in adverse economic impacts.

Primary Precious Metals and Mercury

We are not proposing pretreatment standards for existing sources for the primary precious metals and mercury subcategory because there are no existing indirect dischargers.

Secondary Precious Metals

We are proposing PSES equal to BAT for this subcategory. It is necessary to propose this PSES to prevent pass-through of copper, cyanide, zinc, and ammonia. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 32 percent while BAT level technology removes approximately 99 percent.

The technology basis for PSES thus is hydroxide precipitation and sedimentation, ammonia steam stripping, cyanide precipitation, wastewater flow reduction, and filtration. The achievable concentration for ammonia steam stripping is based on iron and steel manufacturing category data, as explained in the discussion of BPT and BAT for this subcategory. Flow reduction is based on the same recycle of scrubber effluent that is the flow basis of BAT. Recycle is practiced by 21 of the 29 existing plants in the subcategory.

Implementation of the proposed PSES limitations would remove annually an estimated 98,550 kg of toxic pollutants including 840 kg of cyanide, and an estimated 9,240 kg of ammonia. Capital cost for achieving proposed PSES is $1,419,000 and annualized cost of $984,000. The proposed PSES will not result in adverse economic impacts.

An intermediate option considered for PSES is BAT equivalent technology without filters. This option removes an estimated 65,319 kg of toxic pollutants and 9,240 kg of ammonia. We estimate the capital cost of this technology is $1,325,000, and annual cost $928,000.

Primary Rare Earth Metals

We are proposing PSES equal to BAT for this subcategory. It is necessary to propose PSES to prevent pass-through of hexachlorobenzene, chromium, lead, and nickel. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 28 percent while BAT technology removes approximately 74 percent.

The technology basis for PSES is lime precipitation and sedimentation, wastewater flow reduction, filtration, and activated carbon. Flow reduction is based on 90 percent recycle of scrubber effluent that is the flow basis of BAT. Filtration is an effluent polishing step that removes additional pollutants.

Implementation of the proposed PSES limitations would remove annually an estimated 10.9 kg of toxic pollutants.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The proposed PSES will not result in adverse economic impacts.

An intermediate option considered for PSES is BAT equivalent technology without activated carbon adsorption. This option removes an estimated 1.9 kg of toxic pollutants.

Secondary Tantalum

We are not proposing pretreatment standards for existing sources for the secondary tantalum subcategory since there are no existing indirect dischargers.

Primary and Secondary Tin

We are proposing PSES equal to BAT for this subcategory. It is necessary to propose PSES to prevent pass-through of antimony, cyanide, lead, nickel, tin, ammonia, and fluoride. The four toxic pollutants and fluoride are removed by a well-operated POTW achieving secondary treatment at an average of 17 percent while BAT technology removes approximately 97 percent.

The technology basis for PSES thus is chemical precipitation and sedimentation, with preliminary treatment consisting of cyanide precipitation and ammonia steam stripping and filtration.

Implementation of the Proposed PSES limitations would remove annually an estimated 152 kg of toxic metals, 6,282 kg of tin, 32 kg of cyanide and 25,105 kg fluoride over estimated current discharge. Removals over estimated raw discharge are the same as removals over current discharge because neither of the indirect dischargers in this subcategory has any treatment in place. Capital cost for achieving proposed PSES is $341,700, and annual cost of $119,900. The proposed PSES will not result in adverse economic impacts.

Primary and Secondary Titanium

We are proposing PSES equal to BAT for this subcategory. It is necessary to propose PSES to avoid pass-through of chromium, lead, nickel, thallium, titanium and fluoride. The four toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 14 percent while BAT Level A technology removes approximately 53 percent and Level B technology removes approximately 76 percent.

Implementation of the proposed PSES limitations would remove annually an estimated 1.7 kg of toxic pollutants and 147 kg of titanium.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The proposed PSES will not result in adverse economic impacts.

Secondary Tungsten and Cobalt

We are not proposing pretreatment standards for existing sources for the secondary tungsten and cobalt subcategory since there are no existing indirect dischargers.

Secondary Uranium

We are not proposing pretreatment standards for existing sources for the secondary uranium subcategory since there are no existing indirect dischargers.

Primary Zirconium and Hafnium

We are proposing PSES for Levels A and B equal to BAT for this subcategory. It is necessary to propose PSES to prevent pass-through of chromium, cyanide, lead, nickel, ammonia and radium (226). These toxic pollutants are removed by a well-operated POTW at an average of 30 percent, while BAT Level A technology removes approximately 40 percent and Level B technology removes approximately 80 percent.

Level A PSES is for plants which only reduce zirconium or zirconium/nickel alloys from ZrO_2 with magnesium or hydrogen. The technology basis for Level A PSES is preliminary treatment consisting of ammonia steam stripping and cyanide precipitation where necessary, lime precipitation, sedimentation, and flow reduction. Level B PSES is for all other plants in the subcategory. Level B PSES is based on preliminary treatment consisting of

ammonia steam stripping and cyanide precipitation where necessary, lime precipitation, sedimentation, wastewater flow reduction, and filtration. Flow reduction is based on 90 percent recycle of scrubber effluent.

Implementation of the proposed PSES Level A limitations would remove annually an estimated 0.5 kg of toxic pollutants. There is no capital cost for achieving the proposed Level A PSES.

There are currently no Level B plants in this subcategory which are indirect dischargers. If nondischarging plants in this subcategory were to become Level B indirect dischargers, compliance with the proposed Level B PSES would remove 10.6 kg of toxic metals, 7.3 kg of cyanide, and 15 kg of ammonia annually.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The proposed PSES will not result in adverse economic impacts.

XIV. Pretreatment Standards for New Sources (PSNS)

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. New indirect dischargers will produce wastes having the same pass-through problems as described for existing dischargers. In selecting the technology basis for PSNS, the Agency compares the toxic pollutant removal achieved by a well-operated POTW to that achieved by a direct discharger meeting NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant controls, and end-of-pipe treatment technologies, and to use plant site selection to ensure adequate treatment system installation.

We are proposing only mass-based PSNS for all discharging subcategories to assure that the identified flow reduction technologies are considered in new plant designs.

Primary Antimony

We are proposing PSNS equivalent to NSPS and BAT. The technology basis for proposed PSNS is identical to NSPS and BAT. It is necessary to propose PSNS to prevent pass-through of toxic metals. These metals are removed by a well operated POTW achieving secondary treatment at an average of 61 percent. PSNS technology removes these pollutants at an average of 98 percent. We know of no economically feasible, demonstrated technology that is better than BAT level technology. No additional flow reduction for new sources is feasible beyond the allowances proposed for BAT. We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Bauxite Refining

We are not proposing any modifications to PSNS since it is unlikely that any new bauxite sources will be constructed as indirect dischargers.

Primary Beryllium

The technology basis for proposed PSNS is identical to NSPS and BAT. It is necessary to propose PSNS to prevent pass-through of beryllium, chromium, copper and fluoride. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 41 percent while BAT technology removes approximately 93 percent. We know of no economically feasible, demonstrated technololgy that is better than BAT technology. The PSNS flow allowances are based on minimization of process wastewater wherever possible through the use of holding tanks for wet scrubbing wastewater. The discharges are based on 90 percent recycle of this waste stream (see section IX—Recycle of Wet Scrubber and Contact Cooling Water). No additional flow reduction for new sources is feasible. Because PSNS does not include any additional costs compared to NSPS and BAT, we do not believe it will prevent entry of new plants.

Primary Boron

We are proposing PSNS equivalent to NSPS (lime precipitation and sedimentation technololgy) for this subcategory. It is necessary to propose PSNS to prevent pass-through of boron, lead and nickel, which are the regulated pollutants in this subcategory. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 34 percent while NSPS level technology removes approximately 85 percent.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Cesium and Rubidium

We are proposing PSNS equivalent to NSPS. The technology basis for proposed PSNS is identical to NSPS. It is necessary to propose this PSNS to prevent pass-through of toxic metals. These metals are removed by a well-operated POTW achieving secondary treatment at an average of 38 percent. PSNS technology removes these pollutants at an average of 95 percent. We know of no economically feasible, demonstrated technology that is better than NSPS technology.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based and has been claimed to be confidential. We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary and Secondary Germanium and Gallium

We are proposing PSNS equivalent to PSES, NSPS and BAT. The technology basis for proposed PSNS is identical to NSPS, PSES and BAT. The same pollutants pass-through as at PSES, for the same reasons.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Indium

We are proposing PSNS equal to NSPS. The technology basis for proposed PSNS is identical to NSPS. The same pollutants pass through as at PSES, for the same reasons.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Mercury

We are proposing PSNS equivalent to NSPS for this subcategory. It is necessary to propose PSNS to prevent pass-through of lead and mercury. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 59 percent, while PSNS level technology removes approximately 99 percent.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Molybdenum and Rhenium

We are proposing PSNS equal to NSPS and BAT for this subcategory. It is necessary to propose PSNS to prevent pass-through of arsenic, lead, nickel, selenium, molybdenum and ammonia. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 13 percent, while the NSPS and BAT level technology removes approximately 79 percent.

We believe that the proposed PSNS are achievable, and that they are not a

barrier to entry of new plants into this subcategory.

We are proposing to expand the applicability of the existing PSNS for metallurgical acid plants to include metallurgical acid plants associated with primary molybdenum roasters. It is necessary to propose PSNS to prevent pass-through of arsenic, cadmium, copper, lead, and zinc. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 42 percent, while BAT level technology removes approximately 83 percent.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Molybdemum and Vanadium

We are proposing PSNS equal to NSPS and BAT for this subcategory. It is necessary to propose PSNS to prevent pass-through of antimony, lead, nickel, molybdenum and ammonia. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 23 percent, while the NSPS and BAT level technology removes approximately 98 percent.

The technology basis for PSNS thus is hydroxide precipitation and sedimentation, ammonia steam stripping, and filtration. The achievable concentration for ammonia steam stripping is based on iron and steel manufacturing category data, as explained in the discussion of BPT and BAT for this subcategory. Filters are demonstrated at 25 facilities in the nonferrous metals manufacturing category.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Nickel and Cobalt

We are proposing PSNS equal to BAT and NSPS for this subcategory. It is necessary to propose PSNS to prevent pass-through of copper, nickel, cobalt, and ammonia. These toxic pollutants are removed by a well operated POTW at an average of 26 percent, while BAT technology removes approximately 58 percent.

The technology basis for PSNS thus is lime precipitation and sedimentation, ammonia steam stripping, and filtration. The achievable concentration for ammonia steam stripping is based on iron and steel manufacturing category data, as explained in the discussion of BPT and BAT for this subcategory.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Nickel

We are proposing PSNS equivalent NSPS and PSES. The same pollutants pass through at PSNS as at PSES, for the same reasons. We know of no economically feasible, demonstrated technology that is better than PSES technology. The PSES flow allowances are based on minimization of process wastewater wherever possible.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Precious Metals and Mercury

We are proposing PSNS equal to NSPS and BAT for this subcategory. It is necessary to propose PSNS to prevent pass-through of arsenic, lead, mercury, silver, and zinc. These toxic pollutants are removed by a well-operated POTW at an average of 62 percent, while the NSPS and BAT technology removes approximately 93 percent.

The technology basis for PSNS thus is lime precipitation and sedimentation, oil skimming, wastewater flow reduction and filtration. Flow reduction is based on 90 percent recycle of scrubber effluent that is the flow basis of BAT.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Precious Metals

We are proposing PSNS equivalent to NSPS. The technology basis for proposed PSNS is identical to NSPS. This is equivalent to PSES and BAT, with additional flow reduction based on dry air pollution control on furnace emissions. The same pollutants pass through at PSNS as at PSES, for the same reasons. We know of no economically feasible, demonstrated technology that is better than NSPS technology. The NSPS flow allowances are based on minimization of process wastewater wherever possible through the use of holding tanks to recycle wet scrubbing wastewater and the use of dry scrubbing to control furnace emissions. The discharges are based on recycle of these waste streams (see section IX—Recycle of Wet Scrubber and Contact Cooling Water).

There are no additional costs associated with the installation of dry scrubbers instead of wet scrubbers which were used for estimating cost of BAT. We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Rare Earth Metals

We are proposing PSNS equivalent to PSES, NSPS and BAT. The technology basis for proposed PSNS is identical to NSPS, PSES, and BAT. The same pollutants pass through at PSNS as at PSES, for the same reasons. We know of no economically feasible, demonstrated technology that is better than PSES technology. The PSNS flow allowances are equal to the BAT, NSPS and PSES flow allowances.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Tantalum

We are proposing PSNS equal to NSPS and BAT. It is necessary to propose PSNS to prevent pass-through of copper, lead, nickel, and zinc. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 48 percent while BAT level technology removes approximately 99 percent.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary and Secondary Tin

We are proposing PSNS equivalent to PSES, NSPS and BAT. The technology basis for proposed PSNS is identical to NSPS, PSES, and BAT. The same pollutants pass through at PSNS as at PSES, for the same reasons. We know of no economically feasible, demonstrated technology that is better than PSES technology. The PSNS flow allowances are identical to the flow allowances for BAT, NSPS, and PSES.

There would be no additional cost for PSNS above the costs estimated for BAT. We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary and Secondary Titanium

We are proposing Level A and Level B PSNS equivalent to NSPS. The technology basis for proposed PSNS is identical to NSPS. The same pollutants are regulated at PSNS as at PSES and they pass through at PSNS as at PSES, for the same reasons. The PSNS and NSPS flow allowances are based on minimization of process wastewater wherever possible through the use of cooling towers to recycle contact cooling water and holding tanks for wet scrubbing wastewater. The discharge allowance for pollutants is the same at PSNS and NSPS. The discharges are based on 90 percent recycle of these

waste streams (see section IX—Recycle of Wet Scrubber and Contact Cooling Water). As in NSPS, flow reduction beyond BAT is proposed for chip crushing, sponge crushing and screening and scrap milling wet air pollution control based on dry scrubbing. Also zero discharge is proposed for chlorine liquefaction wet air pollution control based on byproduct recovery.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcatetory.

Secondary Tungsten and Cobalt

We are proposing PSNS equal to NSPS and BAT for this subcategory. It is necessary to propose PSNS to prevent pass-through of copper, nickel, cobalt, and ammonia. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 26 percent, while the NSPS and BAT level technology removes approximately 97 percent.

The technology basis for PSNS thus is lime precipitation and sedimentation, oil skimming, ammonia steam stripping, wastewater flow reduction and filtration. The achievable concentration for ammonia steam stripping is based on iron and steel manufacturing category data, as explained in the discussion of BPT and BAT for this subcategory. Flow reduction is based on 90 percent recycle of scrubber effluent that is the flow basis of BAT.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Uranium

We are proposing PSNS equal to NSPS and BAT for this subcategory. It is necessary to propose PSNS to prevent pass-through of chromium, copper, nickel, ammonia, uranium and fluoride. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 40 percent, while the NSPS and BAT level technology removes approximately 88 percent.

The technology basis for PSNS is lime precipitation, sedimentation, and ammonia steam stripping, followed by filtration.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Zirconium and Hafnium

We are proposing PSNS equivalent to PSES, NSPS and BAT. The technology basis for proposed PSNS is identical to NSPS. The same pollutants pass through as at PSES, for the same reasons. We know of no economically feasible, demonstrated technology that is better than PSES technology.

We believe that the proposed PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

XV. Regulated Pollutants

The basis upon which the controlled pollutants were selected, as well as the general nature and environmental effects of these pollutants, is set out in sections V, VI, IX, and X of the General Development Document and each of the subcategory supplements. Some of these pollutants are designated as toxic under section 307(a) of the Act. Three pollutants have been deleted from the list of 129. These are dichlorodifluoromethane, and trichlorofluoromethane (46 FR 2226 (January 8, 1981)), and bis(chloromethyl ether (46 FR 10723 (February 4, 1981)).

The pollutants selected for regulation are listed by subcategory in Appendix B.

XVI. Pollutants and Subcategories Not Regulated

The Settlement Agreement contains provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories.

A. Exclusion of Pollutants

Paragraph 8(a)(iii) of the Settlement Agreement allows the administrator to exclude from regulation toxic pollutants not detectable by section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not detected and, therefore, excluded from regulation are listed in Appendix C of this notice by subcategory. Also included in Appendix C are toxic pollutants not analyzed for in each subcategory.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants detected in amounts too small to be effectively reduced by technologies known to the administrator. Appendix D to this notice lists the toxic pollutants in each subcategory which were detected in the effluent in amounts at or below the nominal limit of analytical quantification. Appendix E to this notice lists the toxic pollutants in each subcategory present in amounts which are too small to be effectively reduced by technologies considered applicable to the category and which, therefore, are excluded from regulation.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants detectable in the effluent from only a small number of sources within the subcategory because the are uniquely related to those sources. Appendix F to this notice lists for each subcategory the toxic pollutants which were detected in the effluents of only one plant, are uniquely related to the plant, and are not related to the manufacturing processes under study.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants which will be effectively controlled by the technologies upon which are based other effluent limitations and guidelines or pretreatment standards. Appendix G lists those toxic pollutants which will be effectively controlled by the BAT limitations, NSPS, and pretreatment standards, even though they are not specifically regulated.

B. Exclusion of Subcategories

EPA executed an affidavit on May 10, 1979 excluding six primary and five secondary metal subcategories from regulation under Paragraph 8(a)(iv) of the Settlement Agreement. The subcategories were:

Primary Arsenic
Primary Antimony
Primary Barium
Primary Bismuth
Primary Calcium
Primary Tin
Secondary Beryllium
Secondary Cadmium
Secondary Molybdenum
Secondary Tantalum
Secondary Babbitt

Four of these excluded subcategories—primary antimony, primary tin, secondary molybdenum, and secondary tantalum, have been reconsidered for regulation in nonferrous phase II. This is due to data received by EPA since May 10, 1979, showing a need for effluent guidelines to be established for these four subcategories. Today's notice proposes effluent limitations and guidelines which include these four subcategories.

In addition to the subcategories already excluded under Paragraph 8(a)(iv) of the Settlement Agreement, EPA proposed to exclude two additional primary and one additional secondary metal subcategory from regulation. EPA proposes these exclusions because no existing primary lithium or secondary zinc plants discharge wastewater and because there are no pollutants at treatable concentrations in primary magnesium discharges. The subcategories are:

Primary Lithium
Primary Magnesium
Secondary Zinc

The Agency is excluding the following subcategories from BAT effluent guidelines and pretreatment standards for existing sources under provisions of Paragraph 8(a)(iv) because there are no facilities discharging wastewater to surface waters or POTW. They are:

Primary Boron
Primary Cesium and Rubidium
Secondary Mercury

The Agency is excluding the following subcategories from BAT effluent guidelines under provisions of Paragraph 8(a)(iv) because there are no facilities discharging wastewater to surface waters. They are:

Secondary Indium
Secondary Nickel

In today's notice, EPA proposes to exclude 10 subcategories from pretreatment standards for existing sources because there are no facilities discharging wastewater to POTW. They are:

Primary Antimony
Bauxite Refining
Primary Beryllium
Primary Molybdenum and Rhenium
Secondary Molybdenum and Vanadium
Primary Nickel and Cobalt
Primary Precious Metals and Mercury
Secondary Tantalum
Secondary Tungsten and Cobalt
Secondary Uranium

XVII. Cost and Economic Impacts

The economic assessment of the proposed regulation is presented in the "Economic Impact Analysis of Proposed Effluent Standards and Limitations for the Nonferrous Smelting and Refining Industry, Phase II," EPA 440/2–84–009. This report details the investment and annual costs for the industry and for each metal subcategory covered by the proposed regulation. Compliance costs are based on engineering estimates of incremental capital requirements above the water pollution control equipment already in-place. The report assesses the impact of effluent control costs associated with each regulatory option in terms of price changes, cost of production changes, plant closures and associated loss of employment, financial impacts and balances of trade effects.

In addition, EPA has conducted an analysis of the incremental removal cost per pound equivalent for each of the proposed technology based options. A pound equivalent is calculated by multiplying the number of pounds of pollutant discharged by a weighting factor for that pollutant. The weighting factor is equal to the water quality criterion for a standard pollutant (copper) divided by the water quality criterion for the pollutant being evaluated. For some pollutants however, toxicity data with respect to human health or chronic, aquatic freshwater criteria are unavailable. Alternative data sources were therefore employed to determine weighting factors for these pollutants based on criteria similar, but not identical, to those used for other pollutants.

The use of "pound equivalent" gives relatively more weight to removal of pollutants that are more toxic. Thus, for a given expenditure, the cost per pound equivalent removed would be lower when a highly toxic pollutant is removed than if a less toxic pollutant is removed. This analysis, which includes detailed descriptions of how all weighting factors were determined, is entitled "Cost Effectiveness Analysis of Proposed Effluent Standards and Limitations for the Nonferrous Metals Manufacturing Industry (Phase II)" and is included in the record for this rulemaking.

The Agency projects there will be 72 "wet-process" manufacturing facilities covered by this regulation. Thirty-four of these plants will discharge their wastewater directly into navigable waters, and 38 will discharge into publicly owned treatment works (POTW). In addition, there will be 83 other facilities which will not produce any wastewater, and therefore not incur costs as a result of the regulation.

Total capital costs for the discharging plants as a result of this regulation are estimated to be $7 million, while total annual costs, including depreciation and interest, are estimated to be $4.4 million. These costs are expressed in 1982 dollars. The major projected economic impacts associated with these costs are 3 plant closures and 2 production line closures at the BPT level of control with an accompanying employment loss of 47 people. The 3 plant closures and one line closure are in the primary and secondary tin subcategory, while the remaining line closure is in the secondary precious metals subcategory. The tin closures imply a potential loss of 12 percent of production capacity for that subcategory, while the production loss for secondary precious is insignificant. While the impacts of the regulation on tin manufacturers are projected to be significant, in that four of the five discharging plants or lines in the tin subcategory would discontinue production as a result of this regulation, we suspect the assumptions employed in our baseline scenario may be pessimistic. Hence, the Agency solicits comment and plans to obtain further market and plant-specific information to improve the accuracy of our analysis. We intend to request additional financial data under the authority of section 308 of the CWA. Information obtained from these plants will be combined with other public data sources to reassess projected baseline conditions for the tin market. If, at promulgation, after reassessing and updating the financial information, EPA determines that there would be a disproportionate impact on any specific segment of this subcategory, the Agency may establish standards based on less stringent technologies. We will solicit data and information specifically relevant to alternative technologies and the appropriateness of a size cut-off with respect to production levels, especially in light of the additional pollutants that would be discharged to the waters.

No further significant impacts are projected as a result of the regulation. Price increases are not expected to exceed 2.5 percent for any subcategory, and balance of trade effects are minimal. No further production loss beyond that described above is expected to occur.

The Economic Impact Analysis assumed a reasonable rate of monitoring (between one and 30 times per month), varying by size of plant and flow. However, since the regulatory limits are based on monitoring 10 times a month, we performed a sensitivity analysis including costs associated with the increased monitoring activity. The analysis showed three additional plant closures occurring as a result of the higher monitoring costs.

For purposes of this regulation, the Agency created 24 separate subcategories based on metal products produced. The economic analysis focuses on 21 of these subcategories, since the remaining three were exempt from regulation under Paragraph 8 of the Clean Water Act. The 21 subcategories are discussed in detail in the economic impact analysis document. Plant descriptions are provided along with market analyses of the metals products produced in each subcategory.

The methodology employed to determine economic impacts is very similar to that used for the Phase I portion of the Nonferrous Metals Manufacturing category (EPA 440/2–84–004). The approach begins with a screening analysis to identify plants that will be significantly affected by the regulation. This consists of a comparison of a plant's estimated annual compliance costs to its projected revenues. If this ratio is found to exceed 1 percent, the plant is then subjected to a 2-step closure analysis: a net present value test and a liquidity test.

The net present value test is designed to assess the firm's long-term profitability. The viability of the plant is judged by a comparison of its cash flows over the entire compliance period to its current liquidation value. The liquidity test, on the other hand, assesses the firm's short-term solvency during the first five years of compliance. If estimated cash-flows over the five years are negative, the plant is cited as potentially insolvent and in danger of closure. Both tests require the estimation of plant revenues in future years in order to determine income and cash flows for those years. This income is taken to be the average of income between 1978–82, a period which spanned a complete business cycle. Average product price over the period was used in conjunction with the average capacity utilization rate over the period to arrive at an estimate of total sales for each plant in a "normal" year. This figure was then used as the basis for the determination of average income which, minus compliance costs, served as the estimate of cash flow for the specific plant.

Structurally, the approach is identical to that used in the Nonferrous Metals Phase I analysis. The only substantive difference involves the estimation of plant specific compliance costs. The Agency's estimation of costs for plants in the Phase II study was based on effluent data gathered in 1982, when production and wastewater flows were abnormally low as a result of the recession. Since compliance costs are related to production and flow, and 1982 production was severely depressed, it was felt that costs based on 1982 production would not be an accurate estimate of costs that would be actually incurred at the time of compliance. The Agency assumes the industry will recover to "normal" production levels as implied by the average capacity utilization rate from 1978–82. Most plants operated well below this average in 1982; hence we project their output at the time of compliance will be substantially higher. Consequently, compliance costs which reflect 1982 production levels are understated. For purposes of the economic impact analysis, the Agency's initial compliance cost estimates were adjusted upwards for most plants. The adjustment factors reflect the expanded production expected for the compliance period (as implied by the average capacity usage rate from 1978–82), yet also account for economies of scale in the output/compliance cost relationship.

Details concerning specific plants are available in the record of this proposed rulemaking. See also the Economic Impact Analysis document (EPA 440/2–84–009) for subcategory discussions.

BPT: New BPT limitations are proposed for 14 subcategories, with 27 plants incurring compliance costs. Investment costs are estimated to be $3.7 million and total annualized costs are $3.0 million. Significant economic impacts are projected only for the tin subcategory, with 1 plant and 1 production line projected to close as a result of this regulation. The impacts on the other subcategories are small, with price changes ranging from less than one-tenth to two percent. No balance of trade effects are expected. Potential production losses are expected only for tin (less than 10 percent of 1982 industry capacity) and secondary precious metals (less than 1 percent).

BAT: New BAT limitations are proposed for 14 subcategories. Total investment costs for these regulations are estimated to be $4.2 million and total annualized costs are $3.2 million. The incremental costs over BPT are estimated to be $0.5 million in investment costs and $0.2 million in annual costs. No additional closures or production loss beyond those expected at BPT are expected to result from these limitations. The price increases associated with these costs are small, ranging from less than one-tenth to 2.4 percent and the limitations are economically achievable.

PSES: PSES is proposed for 8 subcategories. The costs for this regulation are expected to be $2.8 million investment and $1.2 million total annualized costs. Closures projected to result from these costs include a secondary gold production process line in a secondary precious metals plant and two tin plants. The precious metals plant also produces secondary silver and therefore is integrated with the secondary silver subcategory in the Nonferrous Metals Phase I regulation. It was projected that compliance costs associated with the Phase I regulation will result in the closure of the secondary silver process line as well. The combined effects of the two regulations therefore is the closure of the entire facility and the associated loss of approximately 19 jobs. However, the loss of secondary gold/silver production capacity is minimal. The plant represents less than one-half of one percent of industry capacity for both metals. The effect on tin production is discussed in previous sections of this preamble. Impacts of PSES on the *entire* secondary precious metals subcategory and all other subcategories are small overall. The range of expected price increases is less than one-tenth to 2.5 percent and no further production loss is expected to occur. These standards are economically achievable for the subcategories as a whole.

NSPS/PSNS: New source standards are being proposed for 20 of the 24 subcategories. The technology basis for NSPS and PSNS is the same as for BAT for all subcategories where BAT and PSES are proposed except one, Secondary Indium. Three of the 21 subcategories are subject only to new source limitations because they contain no existing discharging plants. These subcategories are Primary Boron, Primary Cesium and Rubidium and Secondary Mercury. New plants in these subcategories, as well as those in Secondary Indium, will not be at a serious cost disadvantage as a result of these limitations. Total incremental investment costs are estimated to be $31 thousand, with annual costs of $11 thousand. Hence this regulation is not expected to discourage entry into the industry.

The Agency believes this regulation is economically achievable and imposes no significant impacts on any subcategory within the industry. The only possible exception is tin, where projected closures at this point threaten 12 percent of existing industry production capacity. As explained earlier, however, the Agency plans to reassess the tin industry through comment solicitation and direct contact with tin manufacturers between proposal and promulgation of this regulation.

Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analysis of major regulations. Major rules impose an annual cost to the economy of $100 million or more or meet other economic impact criteria. The proposed regulation for monferrous metals manufacturing, Phase II, is not a major rule. The costs expected to be incurred by this industry will be significantly less than $100 million. Therefore a formal Regulatory Impact Analysis is not required. This rulemaking satisfies the requirements of the Executive Order for a nonmajor rule. The Agency's regulatory strategy considered both the cost and economic impacts of the regulation.

Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. This analysis

may be conducted in conjunction with or as part of other Agency analyses. A small business analysis is included in the economic impact analysis for this regulation.

For each metal subcategory, small entities were defined on the plant level, using annual plant capacity as an indicator of size. A total of 14 plants were identified in 5 subcategories as small, representing 19 percent of all discharging plants. For these 5 subcategories, the Agency evaluated (1) annual compliance costs as a percentage of revenues for small facilities and (2) annual compliance costs as a percent of the cost of production for small entities. Based on this analysis, EPA has determined that there will not be a significant impact on small entities within this category. Therefore the Agency is not required to perform a formal Regulatory Flexibility Analysis. I hereby certify pursuant to 50 U.S.C. 605(b) that this regulation will not have a significant impact on a substantial number of small entities.

SBA Loans

The Agency is continuing to encourage small plants to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are (1) the Pollution Control Bond Program, (2) the Section 503 Program, and (3) the Regular Business Loan Program. Eligibility for SBA programs varies by industry. Generally, a company must be independently owned, not dominant in its field, the employee size ranges from 250 to 1500 employees (dependent upon industry), and annual sales revenues ranges from $275,000 to $22 million (varies by industry).

For further information and specifics on the Pollution Control Bond Program, contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203, (703) 235–2902.

The Section 503 Program, as amended in July 1980, allows long-term loans to small and medium sized businesses. These loans are made by SBA approved local development companies. These companies are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Business Loan Program, loans are made available by commercial banks and are guaranteed by SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Business Loan and Section 503 Programs, contact your district or local SBA office. The coordinator at EPA headquarters is Ms. Frances Dessell, who may be reached at (200) 382–5373.

XVIII. Nonwater Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. While it is difficult to balance pollution problems against each other and against energy utilization, EPA is proposing regulations which it believes best serve often competing national goals. This regulation has been reviewed by other offices within EPA responsible for these programs.

The following are the nonwater quality environmental impacts (including energy requirements) associated with the proposed regulations:

A. Air Pollution

Imposition of BPT will not create any substantial air pollution problems. BAT, NSPS, PSES, and PSNS will result in a slight increase in air pollution. Water vapor containing some particulate matter will be released in the drift from the cooling tower systems which are used as the technology basis for flow reduction which is a part of BAT, NSPS, PSES, and PSNS in one subcategory, primary and secondary titanium. Plants in this subcategory using lubricants for casting may have organics present in the drift from cooling towers used to cool and recylce casting contact cooling water. The Agency does not consider any of these impacts to be significant.

B. Solid Waste

EPA estimates that the proposed BPT regulation for nonferrous metals manufacturing phase II facilities will generate 8,500 kkg (9,350 tons) of solid wastes (wet basis—1982 production levels) as a result of wastewater treatment. These wastes will be comprised of treatment system sludges containing cyanide and toxic metals, including arsenic, antimony, beryllium, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, thallium, and zinc.

EPA estimates that BAT and PSES will increase wastes by approximately 2100 kkg (2310 tons) per year beyond BPT levels. These sludges will necessarily contain additional quantities (and concentrations) of toxic pollutants. NSPS and PSNS will increase the amount of solid waste by less than 5 percent of the BAT and PSES quantities.

Wastes generated by primary smelters and refiners are currently exempt from regulation by Act of Congress [Resource Conservation and Recovery Act (RCRA), section 3001(b)]. Consequently, sludges generated from treating primary industries' wastewater are not presently subject to regulation as hazardous wastes.

Wastes generated by secondary metal industries can be regulated as hazardous. However, the Agency examined the solid wastes that would be generated at secondary nonferrous metals manufacturing plans by the suggested treatment technologies and believes they are not hazardous wastes under the Agency's regulations implementing section 3001 of the Resource Conservation and Recovery Act. None of these wastes are listed specifically as hazardous. Nor are they likely to exhibit a characteristic of hazardous waste. This judgment is made based on the recommended technology of lime precipitation and filtration. By the addition of a small excess of lime during treatment, similar sludges, specifically toxic metal bearing sludges, generated by other industries such as the iron and steel industry passed the Extraction Procedure (EP) toxicity test. See 40 CFR 261.24. Thus, the Agency believes that the wastewater sludges will similarly not be EP toxic if the recommended technology is applied.

Although it is the Agency's view that solid wastes generated as a result of these guidelines are not expected to be hazardous, generators of these wastes must test the waste to determine if the wastes meet any of the characteristics of hazardous waste (see 40 CFR 262.11).

If these wastes identified should be or are listed as hazardous, they will come within the scope of RCRA's "cradle to grave" hazardous waste management program, requiring regulation from the point of generation to point of final disposition. EPA's generator standards would require generators of hazardous nonferrous metals manufacturing wastes to meet containerization, labeling, recordkeeping, and reporting requirements; if plants dispose of hazardous wastes off-site, they would have to prepare a manifest which would track the movement of the wastes from the generator's premises to a permitted off-site treatment, storage, or disposal facility. See 40 CFR 262.20 [45 FR 33142 (May 19, 1980), as amended at 45 FR 86973 (December 31, 1980)]. The

transporter regulations require transporters of hazardous wastes to comply with the manifest system to assure that the wastes are delivered to a permitted facility. See 40 CFR 263.20 [45 FR 33151 (May 19, 1980), as amended at 45 FR 86973 (December 31, 1980)]. Finally, RCRA regulations establish standards for hazardous waste treatment, storage and disposal facilities allowed to receive such wastes. See 40 CFR Part 464 [46 FR 2802 (January 12, 1981), 47 FR 32274 (July 26, 1982)].

Even if these wastes are not identified as hazardous, they still must be disposed of in compliance with the Subtitle D open dumping standards, implementing 4004 of RCRA. See 44 FR 53438 (September 13, 1979). The Agency has calculated as part of the costs for wastewater treatment the cost of hauling and disposing of these wastes. For more details, see Section VIII of the General Development Document.

C. Energy Requirements

EPA estimates that the achievement of proposed BPT effluent limitations will result in electrical energy consumption of approximately 18.5 million kilowatt-hours per year. The BAT and PSES technology should not substantially increase the energy requirements of BPT because the additional pumping requirements for filtration should be offset by the reduced pumping requirements, the agitation requirements for mixing wastewater and other volume related energy requirements, as a result of reducing process wastewater discharge to treatment. To achieve the proposed BPT and BAT effluent limitations, a typical direct discharger will increase total energy consumption by less than 1 percent of the energy consumed for production purposes.

The Agency estimates that the NSPS and PSNS technology will, in general, require as much energy as the existing source limitations.

XIX. Best Management Practices (BMP)

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" (BMP) described under Legal Authority and Background. EPA is not proposing specific BMP for nonferrous metals manufacturing at this time.

XX. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations is necessary because such upsets will inevitably occur even in properly operated control equipment. Because technology-based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through exercise of EPA's enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F. 2d 1253 (9th Cir. 1977) with *Weyerhaeuser Co.* v. *Costle, supra*, and *Corn Refiners Association, et al.* v. *Costle*, No. 78–1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute* v. *EPA*. 540 F. 2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F. 2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded; a bypass, however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. We have, in the past, included bypass provisions in NPDES permits.

We determined that both upset and bypass provisions should be included in NPDES permits and have proposed NPDES permits that include upset and bypass permit provisions (see 40 CFR 122.41 (m) and (n), 48 FR 14146 (April 1, 1983)). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the nonferrous metals manufacturing industry will be entitled to upset and bypass provisions in NPDES permits, this proposed regulation does not address these issues.

XXI. Variances and Modifications

Upon promulgation of the final regulation, the appropriate effluent limitations must be applied in all Federal and State NPDES permits therafter issued to direct dischargers in the nonferrous metals manufacturing category. In addition, on promulgation, the pretreatment limitations are directly applicable to any indirect dischargers.

For BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. du Pont de Nemours Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle, supra*. This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. However, the economic ability of the individual operator to meet the compliance cost for BPT standards is not a consideration for granting a variance. See *National Crushed Stone Association* v. *EPA*, 449 U.S. 64 (1980). Although this variance clause was set forth in EPA's 1973 to 1976 industry regulations, it is now included in the NPDES regulations and will not be included in the nonferrous metals manufacturing category or other category regulations. See the NPDES regulations at 40 CFR Part 125 Subpart D, 45 FR 33290 et seq. (May 19, 1980) for the text and explanation of "fundamentally different factors" variance.

The BAT limitations in this regulation also are subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations for nonconventional pollutants are subject to individual modifications under sections 301(c) and 301(g) of the Act. According to section 301(j)(1)(B), applications for these modifications under sections 301(c) and 301(g) must be filed within 270 days after promulgation of final effluent limitations guidelines. See 40 CFR 122.21(1)(2), 48 FR 14161 (April 1, 1983).

The economic modification section of the Act (section 301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants for dischargers who file a permit application after July 1, 1978, upon a showing that such modified requirements will (1) represent the maximum use of technology within the economic capability of the owner or operator and (2) result in reasonable further progress toward the elimination of the discharge of pollutants. The environmental modification section (301(g)) allows the Administrator, with the concurrence of the State, to modify BAT limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards,

(b) Such modified requirements will not result in any additional requirements on any other point or nonpoint source, and

(c) Such modification will not interfere with the attainment or maintenance of that water quality which shall assure

protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water, and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities.

Section 301(j)(1)(B) of the Act requires that application for modifications under section 301 (c) or (g) must be filed within 270 days after the promulgation of an applicable effluent guideline. Initial applications must be filed with the Regional Administrator and, in those States that participate in the NPDES program, a copy must be sent to the Director of the State program. Initial applications to comply with 301(j) must include the name of the permittee, the permit and outfall number, the applicable effluent guideline, and whether the permittee is applying for a 301(c) or 301(g) modification or both.

Indirect dischargers subject to PSES and PSNS are eligible for credits for toxic pollutants removed by POTW. See 40 CFR 403.7, 48 FR 9404 (January 28, 1981). New sources subject to NSPS are not eligible for any other statutory or regulatory modifications. See, *E. I. du Pont de Nemours & Co.* v. *Train*, supra.

Indirect dischargers subject to PSES have, in the past, been eligible for the "fundamentally different factors" variance. See 40 CFR 403.13. However, on September 20, 1983, the United States Court of Appeals for the Third Circuit held that "FDF variances for toxic pollutants regulated under PSES are forbidden by the Act," and remanded § 403.13 to EPA. *NAMF et al.* v. *EPA*, Nos. 79–2256 et al. (3rd Cir., September 20, 1983).

In a few cases, information which would affect certain PSES may not have been available to EPA or affected parties in the course of this rulemaking. As a result it may be appropriate to issue specific categorical standards for such facilities, treating them as a separate subcategory with more, or less, stringent standards as appropriate. This will only be done if a different standard is appropriate because of unique aspects of the factors listed in Section 304(b)(2)(B) of the Act: the age of equipment and facilities involved, the process employed, the engineering aspects of applying control techniques, nonwater quality environmental impacts (including energy requirements) or the cost of required effluent reductions (but not of the ability to pay that cost).

After this regulation is promulgated indirect dischargers and other affected parties may petition the Administrator to examine those factors and determine whether these PSES are properly applicable in specific cases or should be revised. Such petitions must contain specific and detailed support data, documentation, and evidence indicating why the relevant factors justify a more, or less, stringent standard, and must also indicate why those factors could not have been brought to the attention of the Agency in the course of this rulemaking. Accordingly persons should submit all available information suggesting that alternate limitations should be established for specific facilities during the comment period for this regulation.

XXII. Implementation of Limitations and Standards

A. Relation to NPDES Permits

The BPT and BAT limitations and NSPS in this regulation will be applied to individual nonferrous metals manufacturing plants through NPDES permits issued by EPA or approved state agencies, under section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit issuing authorities. This regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit such pollutant on a case-by-case basis when limitations are necessary to carry out the purposes of the Act. In addition, to the extent that state water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit issuing authority.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. We emphasize that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary.

We have exercised and intend to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

B. Indirect Dischargers

For indirect dischargers, PSES and PSNS are implemented under National Pretreatment Program procedures outlined in 40 CFR Part 403. The table below may be of assistance in resolving questions about the operation of that program. A brief explanation of some of the submissions indicated on the table follows:

A "request for category determination" is a written request, submitted by an indirect discharger or its POTW, for a determination of which categorical pretreatment standard applies to the indirect discharger. This assists the indirect discharger in knowing which PSES or PSNS limits it will be required to meet. See 40 CFR 403.6(a).

A "baseline monitoring report" is the first report an indirect discharger must file following promulgation of an applicable standard. The baseline report includes: an identification of the indirect discharger; a description of its operations; a report on the flows of regulated streams and the results of sampling analyses to determine levels of regulated pollutants in those streams; a statement of the discharger's compliance or noncompliance with the standard; and a description of any additional steps required to achieve compliance. See 40 CFR 403.12(b).

A "report on compliance" is required of each indirect discharger within 90 days following the date for compliance with an applicable categorical pretreatment standard. The report must indicate the concentration of all regulated pollutants in the facility's regulated process waste streams; the average maximum daily flows of the regulated streams; and a statement of whether compliance is consistently being achieved, and if not, what additional operation and maintenance or pretreatment is necessary to achieve compliance. See 40 CFR 403.12(d).

A "periodic compliance report" is a report on continuing compliance with all applicable categorical pretreatment standards. It is submitted twice per year (June and December) by indirect dischargers subject to the standards. The report shall provide the concentrations of the regulated pollutants in its discharge to the POTW;

the average and maximum daily flow rates of the facility; the methods used by the indirect discharger to sample and analyze data, and a certification that these methods conform to the methods outlined in the regulations. See 40 CFR 403.12(e).

INDIRECT DISCHARGERS SCHEDULE FOR SUBMITTAL AND COMPLIANCE

Item	Applicable sources	Date or time period	Measured from	Submitted to
Request for Category Determination	Existing	60 days or 60 days	From effective date of standard. From Federal Register Development Document Availability.	Director (1)
	New	Prior to commencement of discharge to POTW.		
Baseline Monitoring	All	180 days	From effective date of standard or final decision on category determination.	Control Authority (2)
Report on Compliance	Existing	90 days	From date for final compliance	Control Authority (2)
	New	90 days	From commencement of discharge to POTW	
Periodic Compliance Reports	All	June and December		Control Authority (2)

(1) Director = a) Chief Administrative Officer of a state water pollution control agency with an approved pretreatment program, or b) EPA Regional Water Division Director, if state does not have an approved pretreatment program.
(2) Control Authority = a) POTW if its pretreatment program has been approved, or b) Director of state water pollution control agency with an approved pretreatment program, or c) EPA Regional Administrator, if state does not have an approved pretreatment program.

XXIII. Solicitation of Comments

EPA invites public participation in this rulemaking. We ask that any perceived deficiencies in the record be addressed specifically. We also ask that any suggested revisions or corrections be supported by data.

In addition to issues already addressed in the preamble, EPA is particularly interested in receiving additional comments and information on the following issues:

1. In our discussion of choices for BAT, PSES, NSPS, and PSNS for each subcategory, we described the range of options we considered. We formally solicit comment on whether we should adopt less or more stringent options in each subcategory, and if so, why.

2. The Agency is continuing to seek additional data to support these proposed limitations. In preparing this regulation, the agency collected allowable data on the raw wastewaters and treated wastewaters characteristics of each subcategory and compared it to other available treatment effectiveness data. The treatment effectiveness data for lime and settle and lime, settle and filter technology are based on the results of Agency sampling of the raw wastewaters and treated effluents from a broad range of plants generating similar wastewaters and (for filtration) on long-term self-monitoring, because we believe that these data most appropriately represent the treatment effectiveness of the specific technology. The Agency invites comments on the treatment effectiveness results, and the statistical analysis and underlying assumptions discussed in Section VII of the Development Document as they pertain to the nonferrous metals manufacturing plants. The Agency specifically requests long-term sampling data (especially paired raw wastewater—treated effluent data) from nonferrous metals manufacturing plants having well-operated treatment systems using the treatment technologies relied upon for this regulation, and also other equally effective treatment technologies.

3. The Agency requests long-term sampling data (especially paired raw wastewater—treated effluent data) from any plants treating antimony, arsenic, beryllium, boron, cadmium, chromium, cobalt, copper, cyanide, fluoride, germanium, indium, lead, mercury, molybdenum, nickel, radium 226, selenium, silver, thallium, tin, titanium, uranium and zinc that use chemical precipitation and settling technology (with and without a polishing filter).

4. In its cost estimates the Agency has not considered cost savings associated with water flow reduction, such as reduced charges for water use and sewerage savings. The Agency invites comments and requests that cost data be submitted to the Agency.

5. Nonferrous plants in roughly half the subcategories (primary and secondary germanium and gallium, secondary indium, secondary nickel, secondary precious metals, primary rare earth metals, primary and secondary tin, primary and secondary titanium, and primary zirconium and hafnium) discharge to POTWs. Because their wastewaters contain substantial amounts of toxic metals, the Agency invites comments and any supporting data concerning incompatibility of these wastewaters with the POTW treatment systems or sludge dispostion.

6. We request comment as to whether nonferrous plants could incur disproportionate costs as a result of treating both nonferrous wastewaters and wastewaters from a different point source category.

7. We request that commenters identify any process wastewater streams not identified by EPA which they believe should receive a discharge allowance. For any such streams, commenters should identify flow (in relation to production normalized parameter) and pollutant concentrations.

8. The Agency is proposing BAT, NSPS, PSES, and PSNS based on Options B and C, which include in-process flow reduction of many wastewater streams. We solicit comments on the ability of nonferrous metals manufacturing plants to achieve 90 percent recycle of wet scrubber liquor, and casting contact cooling water. We also solicit comments on the ability of nonferrous metals manufacturing to achieve 90 percent recycle of wet scrubber liquor, where the scrubber is used to control acid fumes emissions.

9. For several subcategories, the Agency is proposing an ammonia limitation on both direct and indirect dischargers. The Agency requests comments on the appropriateness of limiting ammonia in the effluent from indirect dischargers. Also, we request comments on the proposed treatment performance concentrations for ammonia based on stream stripping.

10. In developing the plant-by-plant economic analysis, the Agency made assumptions concerning the effect on final effluent of a poorly operated waste treatement system. For a poorly operated waste treatment system, we assumed a discharge equal to raw waste influent. The agency requests comment on the appropriateness of this assumption.

11. For the secondary precious metals subcategory, we are proposing NSPS and PSNS based, in part, on dry scrubbing of furnace emissions. We solicit comment on the feasibility of this technology in new plants.

12. For the bauxite refining subcategory, we solicit additional data

on red mud lake closure plans for currently operating and shut-down plants. We have discussed the possible limitation of three toxic organic pollutants in rainfall runoff from red mud lakes. We also solicit comments on the regulation of these pollutants.

13. We have proposed that the date for compliance with PSES be three years from the regulation's final promulgation date. We invite comments on the appropriateness of the compliance date.

14. The Agency requests comments on the appropriateness of the cyanide limitations proposed for the secondary precious metals, tin, and zirconium and hafnium subcategories.

15. The Agency is not modifying the promulgated limitations and standards for bauxite refining in this proposed regulation. As a result bauxite plants could continue to discharge equal to the net monthly precipitation falling on the red mud impoundment. EPA has data that indicated these discharges contain phenol, 2-chlorophenol and total phenols (4AAP) in treatable quantities. By using activated carbon adsorption, we project that 4800 lb/yr of phenols would be removed from the discharges of four plants. The investment cost of this removal would be $8.3 million and the annual cost would be $2.1 million.

EPA's present data base does not indicate that these phenols are being discharged in quanties that will present any acute risk to human health or aquatic life. However, under certain conditions these discharges may create taste and odor problems with drinking water supplies downstream of these discharges.

As a result, we intend to collect additional data between proposal and promulgation of this regulation. We solicit data on the presence of phenols in discharges from bauxite plants, as well as comments on the relative significance of these discharges to water quality problems in receiving waters. We also solicit comments and data on the presence of other toxic and nonconventional pollutants (such as toxic metals or iron) in these discharges. If we identify risk to human health, risk to aquatic life or aquatic taste and odor problems sufficient to justify the costs of compliance we intend to promulgate BAT and NSPS limits for phenol, 2-chlorophenol, and phenols (4AAP) based on an achievable daily maximum concentration of 0.010 mg/l for each pollutant. We also solicit comment on the achievability of this concentration using activated carbon adsorption or chemical oxidation (i.e. ozone, permanganate, or hydrogen peroxide).

16. The methodology used to estimate the economic effects of these regulations is discussed in section XVII of this preamble and in the Economic Development Document. We solicit comments on the methodology and criteria used to screen for economic impacts and on the methodology presented for financial analyses of individual plants. In this regard we solicit comment on the Agency's reliance on five year production and sales averages for certain facilities and subcategories in which the Agency believes that the available 1982 data is not representative of their future economic status because of the fact that 1982 was a particularly poor year for certain industries due to the recession and because we anticipate higher levels of production and sales due to the economy's recovery. The Agency plans to reassess a number of its estimates used in its economic analysis based on the economic recession and expected recovery. We solicit information on current production levels for the industry, prices, returns on investment, and changes in industry capacity. We solicit historical information on these same factors so we can evaluate how they change with the general economic conditions. We solicit information on structural changes in the industry that have occurred and changes in the competitive position in the international markets. We specifically solicit comment and additional data and information on the Agency's assumptions and calculations in projecting increased production levels and associated pollution removal costs in moving from 1982 levels to the higher 5 year economic average relied upon. We solicit comment both on the methodology used and its application to particular facilities and subcategories.

17. A number of firms have not responded to the economic survey mailed to them under the authority of section 308 of the Clean Water Act. The Agency asks facilities that have failed to respond to submit their responses. If the questionnaire has been misplaced there is a blank copy of a survey in the Appendix of the Economic Impact Analysis that can be used or a duplicate of the survey will be sent directly upon request to Ms. Ellen Warhit.

18. In may industries, indirect dischargers are located in urban areas, whereas direct dischargers tend to be located in more rural areas. This can sometimes place indirect dischargers at a disadvantage interms of space availability for installing wastewater treatment. However, EPA has concluded that space availability presents no greater problem for existing indirect dischargers than for existing direct dischargers in the nonferrous metals manufacturing category. We request comment on this conclusion.

19. The Agency has discussed the potential economic impacts of this regulation on the secondary tin subcategory. We solicit comment on the issues raised in these discussions.

20. When estimating the cost of meeting discharge limitations based on lime and settle technology in the cesium-rubidium subcategory the Agency used the cost of land disposal of wastewaters when the quantity of such wastewater was so small as to make the cost of land disposal less than lime and settle treatment. Comment on this costing procedure is requested.

21. The Agency is considering the promulgation of fluoride limitations and standards for the primary molybdenum subcategory. These mass limitations and standards would be based on the treatment performance observed on similar untreated fluoride concentrations in the Electrical and Electronic Products Point Source Category (Phase II). Therefore, we are requesting comment on the achievability of mass limitations and standards calculated based on a daily maximum concentration of 35.0 mg/l and a monthly average concentration of 19.9 mg/l. Further information on this subject and the actual mass limitations are available in the supplemental development document for this subcategory.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980. 44 U.S.C. 3501 et seq.

XXIV. List of Subjects in 40 CFR Part 421

Nonferrous metals manufacturing, Water pollution control, Waste treatment and disposal.

Dated: May 15, 1984.

William Ruckelshaus,

Administrator.

Appendix A—Abbreviations, Acronyms, and Other Terms Used In This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under 4(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology under section 304(b)(4) of the Act.

BMP—Best management practices under section 304(e) of the Act.

BPT—The best practicable control technology currently available on 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et. seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95-217).

Direct Discharger—A facility which discharges or may discharge pollutants into waters of the United States.

Indirect Discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works.

NPDES Permits—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act.

NSPS—New source performance standards under section 306 of the Act.

POTW—Publicly owned treatment works.

PSES—Pretreatment standards for existing sources of indirect dischargers under section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect dischargers under sections 307 (b) and (c) of the Act.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94-580) of 1976, Amendments to Solid Waste Disposal Act.

Appendix B—Pollutants Selected for Regulation by Subcategory

(a) Subpart A—Bauxite Refining Subcategory
- 24. (2-chlorophenol)
- 65. (phenol), (phenols 4AAP), (pH)

(As discussed earlier, the Agency is considering effluent limitations for discharges from bauxite red mud impoundments. To assist the public in providing comment on this issue, we are providing information in this appendix on the bauxite subcategory.)

(b) Subpart N—Primary Antimony Subcategory
- 114. antimony
- 115. arsenic
- 122. lead
- 123. mercury, total suspended solids (TSS), pH

(c) Subpart O—Primary Beryllium Subcategory
- 117. beryllium
- 119. chromium
- 120. copper, fluoride, total suspended solids (TSS), pH

(d) Subpart P—Primary Boron Subcategory
- 122. lead
- 124. nickel, boron, total suspended solids (TSS), pH

(e) Subpart Q—Primary Cesium and Rubidium Subcategory
- 122. lead
- 127. thallium
- 128. zinc, total suspended solids (TSS), pH

(f) Subpart R—Primary and Secondary Germanium and Gallium Subcategory
- 115. arsenic
- 122. lead
- 128. zinc, fluoride, germanium, total suspended solids (TSS), pH

(g) Subpart S—Secondary Indium Subcategory
- 118. cadmium
- 122. lead
- 128. zinc, indium, total suspended solids (TSS), pH

(h) Subpart T—Secondary Mercury Subcategory
- 122. lead
- 123. mercury, total suspended solids (TSS), pH

(i) Subpart U—Primary Molybdenum and Rhenium Subcategory
- 115. arsenic
- 122. lead
- 124. nickel
- 125. selenium, molybdenum, ammonia (as N), total suspended solids (TSS), pH

(j) Subpart V—Secondary Molybdenum and Vanadium Subcategory
- 114. antimony
- 122. lead
- 124. nickel, molybdenum, ammonia (as N), total suspended solids (TSS), pH

(k) Subpart W—Primary Nickel and Cobalt Subcategory
- 120. copper
- 124. nickel, cobalt, ammonia (as N), total suspended solids (TSS), pH

(l) Subpart X—Secondary Nickel Subcategory
- 119. chromium
- 120. copper
- 124. nickel, total suspended solids (TSS), pH

(m) Subpart Y—Primary Precious Metals and Mercury Subcategory
- 115. arsenic
- 122. lead
- 123. mercury
- 126. silver
- 128. zinc, oil and grease, total suspended solids (TSS), pH

(n) Subpart Z—Secondary Precious Metals Subcategory
- 120. copper
- 121. cyanide
- 128. zinc, ammonia (as N), total suspended solids (TSS), pH

(o) Subpart AA—Primary Rare Earth Metals Subcategory
- 9. hexachlorobenzene
- 119. chromium (total)
- 122. lead
- 124. nickel, total suspended solids (TSS), pH

(p) Subpart AB—Secondary Tantalum Subcategory
- 120. copper
- 122. lead
- 124. nickel
- 128. zinc, total suspended solids (TSS), pH

(q) Subpart AC—Primary and Secondary Tin Subcategory
- 114. antimony
- 121. cyanide
- 122. lead
- 124. nickel, tin, ammonia (as N), fluoride, total suspended solids (TSS), pH

(r) Subpart AD—Primary and Secondary Titanium Subcategory
- 119. chromium (total)
- 122. lead
- 124. nickel
- 127. thallium, titanium, fluoride, oil and grease, total suspended solids (TSS), pH

(s) Subpart AE—Secondary Tungsten and Cobalt Subcategory
- 120. copper
- 124. nickel, cobalt, oil and grease, ammonia (as N), total suspended solids (TSS), pH

(t) Subpart AF—Secondary Uranium Subcategory
- 119. chromium (total)
- 120. copper
- 124. nickel, uranium, ammonia, fluoride, total suspended solids (TSS), pH

(u) Subpart AG—Primary Zirconium and Hafnium Subcategory
- 119. chromium (total)
- 121. cyanide (total)
- 122. lead
- 124. nickel, radium 226, ammonia, total suspended solids (TSS), pH

Appendix C—Toxic Pollutants Not Detected

(a) Subpart A—Bauxite Refining Subcategory
- 2. acrolein
- 3. acrylonitrile
- 4. benzene
- 5. benzidene
- 7. chlorobenzene
- 8. 1,2,4-trichlorobenzene
- 9. hexachlorobenzene
- 10. 1,2-dichloroethane
- 11. 1,1,1-trichloroethane
- 12. hexachloroethane
- 13. 1,1-dichloroethane
- 14. 1,1,2-trichloroethane
- 15. 1,1,2,2-tetrachloroethane
- 16. chloroethane
- 17. Bis(2-chloromethal)ether (Deleted)
- 18. bis(2-chloroethyl)ether (Deleted)
- 19. 2-chloroethyl vinyl ether (mixed)
- 20. 2-chloronaphthalene

22. para-chloro meta-cresol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
40. 4-chorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
49. Trichlorofluoromethane (Deleted)
50. Dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
56. nitrobenzene
59. 2,4-dinitrophenol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
69. di-n-octyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. diedlrin
94. 4,4'-DDD (p,p'TDE)
105. g-BCH-Delta
113. toxaphene
116. asbestos (fibrous)
117. beryllium*
118. cadmium*
119. chromium (total)*
120. copper*
122. lead*
123. mercury*
124. nickel*
128. zinc*
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(b) Subpart N—Primary Antimony Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenlamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo (a) anthracene (1,2-benzanthracene)*
73. benzo (a) pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo (k) fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo (ghi) perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h) anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd) pyrene (2,3-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (pp'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PBC-1242 (Arochlor 1242)*
107. PBC-1254 (Arochlor 1254)*
108. PBC-1221 (Arochlor 1221)*
109. PBC-1232 (Arochlor 1232)*
110. PCB-1248 (Arochlor 1248)*
111. PCB-1260 (Arochlor 1260)*
112. PCB-1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
117. beryllium*

119. chromium (total)*
121. cyanide (total)*
124. nickle*
125. selenium*
126. silver*
127. thallium*
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgement which includes consideration of raw materials and process operations.

(c) Subpart O—Primary Beryllium Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis (2-chloromethyl) ether (Deleted)*
18. bis(2-chloroethyl) ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl ether)*
43. bis(2-chloroethoxy) methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo (a) anthracene (1,2-benzanthracene)*
73. benzo (a) pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo (k) fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgement which includes consideration of raw materials and process operations.

(d) Subpart P—Primary Boron Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
4. benzene
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)

47. bromoform (tribromomethane)
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
65. phenol
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,1,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
86. toluene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB–1242 (Arochlor 1242)
107. PCB–1254 (Arochlor 1254)
108. PCB–1221 (Arochlor 1221)
109. PCB–1232 (Arochlor 1232)
110. PCB–1248 (Arochlor 1248)
111. PCB–1260 (Arochlor 1260)
112. PCB—1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(e) Subpart Q—Primary Cesium and Rubidium Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidine*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4–trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl) ether (Deleted)*
18. bis(2-chloroethyl) ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl) ether*
43. bis(2-chloroethoxy) methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomehane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butylbenzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo (a) anthracene (1,2-benzanthracene)*
73. benzo (a) pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo (ghi) perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h) anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd) pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'–DDT*
93. 4,4'–DDE (p,p'DDX)*
94. 4,4'DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC–Alpha*
103. b-BHC–Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC–Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgement

which includes consideration of raw materials and process operations.

(f) Subpart R–Primary and Secondary Germanium and Gallium Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis (2-chloromethyl) ether (Deleted)
18. bis (2-chloroethyl) ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
22. para-chloro meta-cresol
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl) ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. Chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
65. phenol
67. butyl benzyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
86. toluene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB–1242 (Arochlor 1242)
107. PCB–1254 (Arochlor 1254)
108. PCB–1221 (Arochlor 1221)
109. PCB–1232 (Arochlor 1232)
110. PCB–1248 (Arochlor 1248)
111. PCB–1260 (Arochlor 1260)
112. PCB–1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(g) Subpart S—Secondary Indium Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
4. benzene
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
23. chloroform (trichloromethane)
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4,-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
66. bis(2-ethylhexyl) phthalate
67. butyl benzyl phthalate
69. di-n-octyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3, 4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-

benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. indeno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
86. toluene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE(p,p'DDX)
94. 4,4'-DDD(p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB-1242 (Arochlor 1242)
107. PCB-1254 (Arochlor 1254)
108. PCB-1221 (Arochlor 1221)
109. PCB-1232 (Arochlor 1232)
110. PCB-1248 (Arochlor 1248)
111. PCB-1260 (Arochlor 1260)
112. PCB-1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(h) Subpart T—Secondary Mercury Subcategory
1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2,4-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chlorethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan-sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
121. cyanide (total)*
129. 2,3,7,8–tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgement which includes consideration of raw materials and process operations.

(i) Subpart U—Primary Molybdenum and Rhenium Subcategory
1. acenaphthene
2. acrolein
3. acrylonitrile
4. benzene
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4,-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl) ether (Deleted)
18. bis(2-chloroethyl) ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene

21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
23. chloroform (trichloromethane)
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl) ether
43. bis(2-chloroethoxy) methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
65. phenol
66. bis(2-ethylhexyl) phthalate
67. butyl benzyl phthalate
68. di-n-butyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
72. benzo (a) anthracene (1,2-benzanthracene)
73. benzo (a) pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo (k) fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo (ghi) perylene (1,2-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h) anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd) pyrene (2,3 -o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
86. toluene
87. trichloroethylene
129. 2,3,7,8-chlorodibenzo-p-dioxin (TCDD)

(j) Subpart V—Secondary Molybdenum and Vanadium Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrozine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h)anthracene (1,2,5,6-debenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*

88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
121. cyanide (total)*
125. selenium*
126. silver*
127. thallium*
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgement which includes consideration of raw materials and process operations.

(k) Subpart W—Primary Nickel and Cobalt Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
23. chloroform (trichloromethane)
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
44. methylene chloride (dichloromethane)
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
65. phenol
67. butyl benzyl phthalate
68. di-n-butyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB-1242 (Arochlor 1242)
107. PCB-1254 (Arochlor 1254)
108. PCB-1221 (Arochlor 1221)
109. PCB-1232 (Arochlor 1232)
110. PCB-1248 (Arochlor 1248)
111. PCB-1260 (Arochlor 1260)
112. PCB-1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
121. cyanide*
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

* We did not analyze for this pollutant in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(l) Subpart X—Secondary Nickel Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*

24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26 1,3-dichlorobenzene*
27 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethylphthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgement which includes consideration of raw materials and process operations.

(m) Subpart Y—Primary Precious Metals and Mercury Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
23. chloroform
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
67. butyl benzyl phthalate
69. di-n-octyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
79. benzo(ghi)perylene (1.12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3,-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachlorethylene
87. trichloroethylene
88. vinyl chloride (chlorethylene)
89. aldrin

90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB–1242 (Arochlor 1242)
107. PCB–1254 (Arochlor 1254)
108. PCB–1221 (Arochlor 1221)
109. PCB–1232 (Arochlor 1232)
110. PCB–1248 (Arochlor 1248)
111. PCB–1260 (Arochlor 1260)
112. PCB–1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(n) Subpart Z—Secondary Precious Metals Subcategory
1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
8. 1,2,4,-trichlorobenzene
9. hexachlorobenzene
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
22. para-chloro meta-cresol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
55. naphthalene
56. nitrobenzene
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
63. N-nitrosodi-n-propylamine
64. pentachorophenol
67. butyl benzyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3,-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgement which includes consideration of raw materials and process operations.

(o) Subpart AA—Primary Rare Earth Metals Subcategory
1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
8. 1,2,4-trichlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2,-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
22. para-chloro meta-cresol
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
50. dichlorodifluorthane (Deleted)
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
67. butyl benzyl phthalate
68. di-n-butyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-

benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3,-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB-1242 (Arochlor 1242)
107. PCB-1254 (Arochlor 1254)
108. PCB-1221 (Arochlor 1221)
109. PCB-1232 (Arochlor 1232)
110. PCB-1248 (Arochlor 1248)
111. PCB-1260 (Arochlor 1260)
112. PCB-1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(p) Subpart AB—Secondary Tantalum Subcategory
1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene.
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
121. cyanide (total)*
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

* We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(q) Subpart AC—Primary and Secondary Tin Subcategory
1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
10. 1,2-dichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane

17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
56. nitorbenzene
60. 4,6-dinitro-o-cresol
61. N-nitrosocimethylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
79. benzo(ghi)perylene (1,12-benzoperylene)
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
85. tetrachloroethylene
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB–1242 (Arochlor 1242)
107. PCB–1254 (Arochlor 1254)
108. PCB–1221 (Arochlor 1221)
109. PCB–1232 (Arochlor 1232)
110. PCB–1248 (Arochlor 1248)
111. PCB–1260 (Arochlor 1260)
112. PCB–1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(r) Subpart AD—Primary and Secondary Titanium Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
12. hexachloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
22. para-chloro meta-cresol
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56 nitrobenzene
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'DDT
93. 4,4'DDE (p,p'DDX)
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB-1242 (Arochlor 1242)
108. PCB-1221 (Arochlor 1221)
109. PCB-1232 (Arochlor 1232)
110. PCB-1248 (Arochlor 1248)
111. PCB-1260 (Arochlor 1260)
112. PCB-1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(s) Subpart AE—Secondary Tungsten and Cobalt Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexaschlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*

17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3'-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodimethylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dixoxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgement which includes consideration of raw materials and process operations.

(t) Subpart AF—Secondary Uranium Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphtalene*
21. 2,4,6-trichlorophenol*
22. para-chloro metha-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitortoluene*
37. 1,2-diphenylhydrazine*
38. ethylebenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. petachlorophenol*
65. phenol*
66. bis(2-ethylhexyl)phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-

benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h) anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a–endosulfan-Alpha*
96. b–endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a–BHC–Alpha*
103. b–BHC–Beta*
104. r–BHC (lindane)–Gamma*
105. g–BHC–Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
121. cyanide (total)*
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgement which includes consideration of raw materials and process operations.

(u) Subpart AG—Primary Zirconium and Hafnium Subcategory
1. acenaphthene
2. acrolein
3. acrylonitrile
4. benzene
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
24. 2–chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
65. phenol
71. dimethyl phthalate
72. benzo(a)anthracene(1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene.
86. toluene.
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. diedrin
91. chlordane technical mixture and metabolites)
92. 4,4'–DDT
93. 4,4'–DDE (p,p'DDX)
94. 4,4'–DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC–Alpha
103. b-BHC–Beta
104. r-BHC (lindane)-Gamma
105. g-BHC–Delta
106. PCB–1242 (Arochlor 1242)
107. PCB–1254 (Arochlor 1254)
108. PCB–1221 (Arochlor 1221)
109. PCB–1232 (Arochlor 1232)
110. PCB–1248 (Arochlor 1248)
111. PCB–1260 (Arochlor 1260)
112. PCB–1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

Appendix D—Toxic Pollutants Detected Below the Analytical Quantification Limit

(a) Subpart A—Bauxite Refining Subcategory
1. acenaphthene
6. carbon tetrachloride (tetrachloromethane)
34. 2,4-dimethylphenol
39. fluoranthene
48. dichlorobromomethane
64. pentachlorophenol
67. butly benzyl phthalate
80. fluorene
84. Pyrene
86. toluene
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta

104. r-BHC (lindane)-Gamma
106. PCB–1242 (Arochlor 1242)
107. PCB–1254 (Arochlor 1254)
108. PCB–1221 (Arochlor 1221)
109. PCB–1232 (Arochlor 1232)
110. PCB–1248 (Arochlor 1248)
111. PCB–1260 (Arochlor 1260)
112. PCB–1016 (Arochlor 1016)
114. antimony
121. cyanide (total)
125. selenium
126. silver

(b) Subpart O—Primary Beryllium Subcategory
114. antimony
121. cyanide
125. selenium
127. thallium

(c) Subpart P—Primary Boron Subcategory
51. dichlorodibromomethane
55. naphthalene
66. bis(2-ethylhexyl)phthalate
68. di-n-butyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
114. antimony
117. beryllium
123. mercury
126. silver

(d) Subpart Q—Primary Cesium and Rubidium Subcategory
121. cyanide (total)

(e) Subpart R—Primary and Secondary Germanium and Gallium Subcategory
21. 2,4,6-trichlorophenol
23. chloroform
64. pentachlorophenol
66. bis(2-ethylhexyl)phthalate
68. di-n-butyl phthalate
87. trichloroethylene
123. mercury

(f) Subpart S—Secondary Indium Subcategory
68. di-n-butyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
103. beta-BHC
114. antimony
115. arsenic
123. mercury

(g) Subpart T—Secondary Mercury Subcategory
114. antimony
117. beryllium
119. chromium (total)
120. copper
124. nickel
125. selenium
126. silver

(h) Subpart U—Primary Molybdenum and Rhenium Subcategory
44. methylene chloride
104. gamma-BHC
114. antimony
127. thallium

(i) Subpart V—Secondary Molybdenum and Vanadium Subcategory
123. mercury

(j) Subpart W—Primary Nickel and Cobalt Subcategory
4. benzene
86. toluene
114. antimony
115. arsenic
117. beryllium
119. chromium
122. lead
126. silver
127. thallium

(k) Subpart X—Secondary Nickel Subcategory
114. antimony
117. beryllium
118. cadmium
121. cyanide
122. lead
123. mercury
125. selenium
126. silver
127. thallium

(l) Subpart Y—Primary Precious Metals and Mercury Subcategory
65. phenol
66. bis(2-ethylhexyl)phthalate
68. di-n-butyl phthalate
78. anthracene
81. phenanthrene
114. antimony

(m) Subpart Z—Secondary Precious Metals Subcategory
4. benzene
7. chlorobenzene
10. 1,2-dichloroethane
21. 2,4,6-trichlorophenol
24. 2-chlorophenyl
34. 2,4-dimethylphenol
44. methylene chloride (dichloromethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
51. chlorodibromomethane
54. isophorone
62. N-nitrosodiphenylamine
68. di-n-butyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
86. toluene

(n) Subpart AA—Primary Rare Earth Metals Subcategory
7. chlorobenzene
21. 2,4,6-trichlorophenol
47. bromoform (tribromomethane)
65. phenol
86. toluene
114. antimony
117. beryllium

(o) Subpart AB—Secondary Tantalum Subcategory
117. beryllium
118. cadmium
119. chromium
125. selenium
127. thallium

(p) Subpart AC—Primary and Secondary Tin Subcategory
9. hexachlorobenzene
11. 1,1,1-trichloroethane
23. chloroform
29. 1,1-dichloroethylene
34. 2,4-dimethylphenol
37. 1,2-diphenylhydrazine
39. fluoranthene
55. naphthalene
62. n-nitrosodimethylamine
68. di-n-butyl phthalate
78. Anthracene
80. fluorene
81. phenanthrene
87. trichloroethylene

(q) Subpart AD—Primary and Secondary Titanium Subcategory
13. 1,1-dichloroethane
21. 2,4,6-trichlorophenol
23. chloroform (trichloromethane)
31. 2,4-dichlorophenol
36. 2,6-dinitrotoluene
48. dichlorobromomethane
51. chlorodibromomethane
57. 2-nitrophenol
70. diethyl phthalate
71. dimethyl phthalate
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
88. vinyl chloride (chloroethylene)
107. PCB–1254 (Arochlor 1254)
117. beryllium

(r) Subpart AF—Secondary Uranium Subcategory
114. antimony
123. mercury
126. silver
127. thallium

(s) Subpart AG—Primary Zirconium and Hafnium Subcategory
55. naphthalene
66. bis)2-ethylhexyl)phthalate
68. di-n-butyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
114. antimony
126. silver

Apendix E—Toxic Pollutants Detected in Amounts too Small To Be Effectively Reduced by Technologies Considered in Preparing This Guideline

(a) Subpart A—Bauxite Refining Subcategory
115. arsenic
127. thallium

(b) Subpart O—Primary Beryllium Subcategory
115. arsenic
123. mercury

(c) Subpart P—Primary Boron Subcategory
115. arsenic
120. copper
125. selenium

(d) Subpart Q—Primary Cesium and Rudibium Subcategory
123. mercury

125. selenium
(e) Subpart R—Primary and Secondary Germanium and Gallium Subcategory
117. beryllium
(f) Subpart S—Secondary Indium Subcategory
117. beryllium
120. copper
(g) Subpart T—Secondary Mercury Subcategory
115. arsenic
118. cadmium
(h) Subpart U—Primary Molybdenum and Rhenium Subcategory
117. beryllium
118. cadmium
121. cyanide
123. mercury
(i) Subpart V—Secondary Molybdenum and Vanadium Subcategory
120. copper
(j) Subpart W—Primary Nickel and Cobalt Subcategory
66. bis(2-ethylhexyl)phthalate
118. cadmium
123. mercury
125. selenium
(k) Subpart Y—Primary Precious Metals and Mercury Subcategory
117. beryllium
125. selenium
(l) Subpart Z—Secondary Precious Metals Subcategory
57. 2-nitrophenol
123. mercury
(m) Subpart AA—Primary Rare Earth Metals Subcategory
121. cyanide (total)
123. mercury
(n) Subpart AB—Secondary Tantalum Subcategory
115. arsenic
123. mercury
(o) Subpart AC—Primary and Secondary Tin Subcategory
117. beryllium
123. mercury
(p) Subpart AD—Primary and Secondary Titanium Subcategory
123. mercury
(q) Subpart AE—Secondary Tungsten and Cobalt Subcategory
117. beryllium
125. selenium
(r) Subpart AF—Secondary Uranium Subcategory
117. beryllium
(s) Subpart AG—Primary Zirconium and Hafnium Subcategory
115. arsenic
117. beryllium
120. copper
123. mercury
125. selenium

Appendix F—Toxic Pollutants Detected in the Effluent From Only a Small Number of Sources

(a) Subpart A—Bauxite Refining Subcategory
23. chloroform (trichloromethane)
44. methylene chloride
55. naphthalene
60. 2,4-dinitro-o-cresol
66. bis(2-ethylhexyl) phthalate
68. di-n-butyl phthalate
70. diethyl phthatate
71. dimethyl phthalate
77. acenaphthylene
85. tetrachloroethylene
(b) Subpart O—Primary Beryllium Subcategory
118. cadmium
122. lead
124. nickel
126. silver
128. zinc
(c) Subpart P—Primary Boron Subcategory
23. chloroform
44. methylene chloride
48. dichlorobromomethane
67. butyl benzyl phthalate
121. cyanide
(d) Subpart R—Primary and Secondary Germanium and Gallium Subcategory
4. benzene
9. hexachlorobenzene
44. methylene chloride
121. cyanide
(e) Subpart S—Secondary Indium Subcategory
44. methylene chloride
64. pentachlorophenol
65. phenol
121. cyanide
(f) Subpart U—Primary Molybdenum and Rhenium Subcategory
126. silver
(g) Subpart Y—Primary Precious Metals and Mercury Subcategory
4. benzene
44. methylene chloride
70. diethyl phthalate
86. toluene
121. cyanide
(h) Subpart Z—Secondary Precious Metals Subcategory
6. carbon tetrachloride
11. 1,1,1-trichloroethane
23. chloroform
65. phenol
66. bis (2-ethylhexyl) phthalate
117. beryllium
(i) Subpart AA—Primary Rare Earth Metals Subcategory
6. carbon tetrachloride (tetrachloromethane)
23. chloroform (trichloromethane)
44. methylene chloride (dichloromethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
51. chlorodibromomethane
66. bis (2-ethylhexyl) phthalate
(j) Subpart AC—Primary and Secondary Tin Subcategory
4. benzene
38. ethylbenzene
44. methylene chloride
57. 2-nitorophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
65. phenol
66. bis (2-ethylhexyl) phthalate
67. butyl benzyl phthalate
84. pyrene
86. toluene
88. vinyl chloride
(k) Subpart AD—Primary and Secondary Titanium Subcategory
4. benzene
11. 1,1,1-trichloroethane
44. methylene chloride
64. pentachlorophenol
65. phenol
66. bis (2-ethylhexyl) phthalate
67. butyl benzyl phthalate
68. di-n-butyl phthalate
69. di-n-octyl phthalate
86. totuene
87. trichoroethylene
94. 4,4'-DDD(p,p' TDE)
95. a-endosulfan-alpha
102. a-BHC-alpha
103. b-BHC-beta
115. arsenic
121. cyanide
125. selenium
126. silver
(l) Subpart AE—Secondary Tungsten and Cobalt Subcategory
114. antimony
121. cyanide
123. mercury
127. thallium
(m) Subpart AG—Primary Zirconium and Hafnium Subcategory
23. chloroform (trichloroethane)
44. methylene choloride (dichloromethane)
48. dichlorobromomethane
51. chlorodibromomethane
67. butyl benzyl phthalate

Appendix G—Toxic Pollutants Effectively Controlled by Technologies Which Other Effluent Limitations and Guidelines Are Based Upon

(a) Subpart N—Primary Antimony Subcategory
118. cadmium
120. copper
128. zinc
(b) Subpart P—Primary Boron Subcategory
118. cadmium
119. chromium (total)
127. thallium
128. zinc

(c) Subpart Q—Primary Cesium and Rubidium Subcategory
114. antimony
115. arsenic
117. beryllium
118. cadmium
119. chromium (total)
120. copper
124. nickel
126. silver
(d) Subpart R—Primary and Secondary Germanium and Gallium
114. antimony
118. cadmium
119. chromium
120. copper
124. nickel
125. selenium
126. silver
127. thallium
(e) Subpart S—Secondary Indium Subcategory
119. chromium
124. nickel
125. selenium
126. silver
127. thallium
(f) Subpart T—Secondary Mercury Subcategory
127. thallium
128. zinc
(g) Subpart U—Primary Molybdenum and Rhenium Subcategory
119. chromium (total)
120. copper
128. zinc
(h) Subpart V—Secondary Molybdenum and Vanadium Subcategory
115. arsenic
117. beryllium
118. cadmium
119. chromium
128. zinc
(i) Subpart W—Primary Nickel and Cobalt Subcategory
128. zinc
(j) Subpart X—Secondary Nickel Subcategory
115. arsenic
128. zinc
(k) Subpart Y—Primary Precious Metals and Mercury Subcategory
118. cadmium
119. chromium
120. copper
124. nickel
125. selenium
127. thallium
(l) Subpart Z—Secondary Precious Metals Subcategory
114. antimony
115. arsenic
118. cadmium
119. chromium
122. lead
124. nickel
125. selenium
126. silver
127. thallium
(m) Subpart AA—Primary Rare Earth Metals Subcategory
4. benzene
115. arsenic
118. cadmium
120. copper
125. selenium
126. silver
127. thallium
128. zinc
(n) Subpart AB—Secondary Tantalum Subcategory
114. antimony
126. silver
(o) Subpart AC—Primary and Secondary Tin Subcategory
115. arsenic
118. cadmium
119. chromium
120. copper
125. selenium
126. silver
127. thallium
128. zinc
(p) Subpart AD—Primary and Secondary Titanium Subcategory
114. antimony
118. cadmium
120. copper
128. zinc
(q) Subpart AG—Secondary Tungsten and Cobalt Subcategory
115. arsenic
118. cadmium
119. chromium
122. lead
126. silver
128. zinc
(r) Subpart AF—Secondary Uranium Subcategory
115. arsenic
118. cadmium
122. lead
125. selenium
128. zinc
(s) Subpart AG—Primary Zirconium and Hafnium Subcategory
118. cadmium
127. thallium
128. zinc.

For the reasons discussed above, EPA proposes to amend 40 CFR Part 421 as follows:

PART 421—NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 421 is revised to read as follows:

Authority: Secs. 301, 304, (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), 308, and 501, Federal Water Pollution Control Act as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

§ 421.1–421.5 [Redesignated]

2. Sections 421.1 through 421.5 are redesignated as §§ 421.01 through 421.05 respectively.

3. Newly redesignated § 421.04 is revised to read as follows:

§ 421.04 Compliance date for PSES.

The PSES compliance date in subparts A through H is March 8, 1987. The PSES compliance date for plants regulated under subpart I promulgated March 8, 1984 is also March 8, 1987. The PSES compliance date for plants proposed for inclusion under subpart I by this rulemaking is posed to be three years after the date of promulgation. The PSES compliance date for plants in subpart J through subpart AG is proposed to be three years after the date of promulgation.

4. The undesignated paragraph of § 421.12 is revised to read as follows:

§ 421.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

5. Section 421.13 is amended by adding an undesignated paragraph preceding paragraph (a) to read as follows:

§ 421.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

Note.—The Agency is considering establishing a concentration limitation for 2-chlorophenol, phenol, and phenols (4–AAP) at a level of 0.010 mg/1. See full discussion in section XI of the preamble to this regulation.

6. Section 421.16 is revised to read as follows:

§ 421.16 Pretreatment standards for new sources.

Any new sources subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart I—Metallurgical Acid Plants Subcategory

§ 421.90 [Amended]

7. Section 421.90 is amended by removing the word "and" following "primary zinc facilities" and by inserting the phrase ", and primary molybdenum facilities," before the word "including."

8. Section 421.92 is revised to make technical changes required in converting kg/kkg units to mg/kg units. Also, the text of § 421.91 and §§ 421.93–421.96, which are not proposed to be amended, is set out for the convenience of the commentor. Comments are requested on how these sections apply to primary molybdenum and rhenium facilities.

§ 421.91 Specialized definitions.

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 apply to this subpart.

(b) The term "product" means 100 percent equivalent sulfuric acid, H_2SO_4 capacity.

§ 421.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Subpart I—Metallurgical Acid Plant

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of 100 percent sulfuric acid capacity	
Cadmium	0.150	0.100
Copper	5.000	2.000
Lead	1.800	0.790
Zinc	3.600	0.900
Total suspended solids	305.000	152.000
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0 at all times.

§ 421.93 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

Subpart I—Metallurgical Acid Plant

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of 100 percent sulfuric acid capacity	
Arsenic	3.550	1.456
Cadmium	.511	.204
Copper	3.269	1.558
Lead	.715	.332
Zinc	2.605	1.073

§ 421.94 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

Subpart I—Metallurgical Acid Plant

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of 100 percent sulfuric acid capacity	
Arsenic	3.550	1.456
Cadmium	.511	.204
Copper	3.269	1.558
Lead	.715	.332
Zinc	2.605	1.073
Total suspended solids	38.310	30.650
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.95 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in metallurgical acid plant blowdown introduced into a POTW shall not exceed the following values:

Subpart I—Metallurgical Acid Plant

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of 100 percent sulfuric acid capacity	
Cadmium	.511	.204
Zinc	2.605	1.073

§ 421.96 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in metallurgical acid plant blowdown introduced into a POTW shall not exceed the following values:

Subpart I—Metallurgical Acid Plant

PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of 100 percent sulfuric acid capacity	
Arsenic	3.550	1.456
Cadmium	.511	.204
Copper	3.269	1.558
Lead	.715	.332
Zinc	2.605	1.073

9. Subparts N through AG are added to read as follows:

Subpart N—Primary Antimony Subcategory

Sec.
421.140 Applicability: Description of the primary antimony subcategory.
421.141 Specialized definitions.
421.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.143 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.144 Standards of performance for new sources.
421.145 [Reserved]
421.146 Pretreatment standards for new sources.
421.147 [Reserved]

Subpart O—Primary Beryllium Subcategory

421.150 Applicability: Description of the primary beryllium subcategory.
421.151 Specialized definitions.
421.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.153 Effluent limitations guidelines repesenting the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.154 Standards of performance for new sources.
421.155 [Reserved]
421.156 Pretreatment standards for new sources.
421.157 [Reserved]

Subpart P—Primary Boron Subcategory

421.160 Applicability: Description of the primary boron subcategory.
421.161 Specialized definitions.

Sec.
421.162–421.163 [Reserved]
421.164 Standards of performance for new sources.
421.165 [Reserved]
421.166 Pretreatment standards for new sources.
421.167 [Reserved]

Subpart Q—Primary Cesium and Rubidium Subcategory

421.170 Applicability: Description of the primary cesium and rubidium subcategory.
421.171 Specialized definitions.
421.172–421.173 [Reserved]
421.174 Standards of performance for new sources.
421.175 [Reserved]
421.176 Pretreatment standards for new sources.
421.177 [Reserved]

Subpart R—Primary and Secondary Germanium and Gallium Subcategory

421.180 Applicability: Description of the primary and secondary germanium and gallium subcategory.
421.181 Specialized definitions.
421.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.183 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.184 Standards of performance for new sources.
421.185 Pretreatment standards for existing sources.
421.186 Pretreatment standards for new sources.
421.187 [Reserved]

Subpart S—Secondary Indium Subcategory

421.190 Applicability: Description of the secondary indium subcategory.
421.191 Specialized definitions.
421.192–421.193 [Reserved]
421.194 Standards of performance for new sources.
421.195 Pretreatment standards for existing sources.
421.196 Pretreatment standards for new sources.
421.197 [Reserved]

Subpart T—Secondary Mercury Subcategory

421.200 Applicability: Description of the secondary mercury subcategory.
421.201 Specialized definitions.
421.202–421.203 [Reserved]
421.204 Standards of performance for new sources.
421.205 [Reserved]
421.206 Pretreatment standards for new sources.
421.207 [Reserved]

Subpart U—Primary Molybdenum and Rhenium Subcategory

421.210 Applicability: Description of the primary molybdenum and rhenium subcategory.
421.211 Specialized definitions.
421.212 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.213 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.214 Standards of performance for new sources.
421.215 [Reserved]
421.216 Pretreatment standards for new sources.
421.217 [Reserved]

Subpart V—Secondary Molybdenum and Vanadium Subcategory

421.220 Applicability: Description of the secondary molybdenum and vanadium subcategory.
421.221 Specialized definitions.
421.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.223 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.224 Standard of performance for new sources.
421.225 [Reserved]
421.226 Pretreatment standards for new sources.
421.227 [Reserved]

Subpart W—Primary Nickel and Cobalt Subcategory

421.230 Applicability: Description of the primary nickel and cobalt subcategory.
421.231 Specialized definitions.
421.232 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.233 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.234 Standards of performance for new sources.
421.235 [Reserved]
421.236 Pretreatment standards for new sources.
421.237 [Reserved]

Subpart X—Secondary Nickel Subcategory

421.240 Applicability: Description of the secondary nickel subcategory.
421.241 Specilized definitions.
421.242–421.243 [Reserved]
421.244 Standards of performance for new sources.
421.245 Pretreatment standards for existing sources.
421.246 Pretreatment standards for new sources.
421.247 [Reserved]

Subpart Y—Primary Precious Metals and Mercury Subcategory

Sec.
421.250 Applicability: Description of the primary precious metals and mercury subcategory.
421.251 Specialized definitions.
421.252 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.253 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.254 Standards of performance for new sources.
421.255 [Reserved]
421.256 Pretreatment standards for new sources.
421.257 [Reserved]

Subpart Z—Secondary Precious Metals Subcategory

421.260 Applicability: Description of the secondary precious metals subcategory.
421.261 Specialized definitions.
421.262 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.263 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.264 Standards of performance for new sources.
421.265 Pretreatment standards for existing sources.
421.266 Pretreatment standards for new sources.
421.267 [Reserved]

Subpart AA—Primary Rare Earth Metals Subcategory

421.270 Applicability: Description of the primary rare earth metals subcategory.
421.271 Specialized definitions.
421.272 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.273 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.274 Standards of performance for new sources.
421.275 Pretreatment standards for existing sources
421.276 Pretreatment standards for new sources
421.277 [Reserved]

Subpart AB—Secondary Tantalum Subcategory

421.280 Applicability: Description of the secondary tantalum subcategory.
421.281 Specialized definitions.

Sec.
421.282 Effluent limitations guidelines, representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.283 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable
421.284 Standards of performance for new sources.
421.285 [Reserved]
421.286 Pretreatment standards for new sources.
421.287 [Reserved]

Subpart AC—Primary and Secondary Tin Subcategory

421.290 Applicability: Description of the primary and secondary tin subcategory.
421.291 Specialized definitions.
421.292 Effluent limitations guidelines, representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.293 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable
421.294 Standards of performance for new sources.
421.295 Pretreatment standards for existing sources.
421.296 Pretreatment standards for new sources.
421.297 [Reserved]

Subpart AD—Primary and Secondary Titanium Subcategory

421.300 Applicability: Description of the primary and secondary titanium subcategory.
421.301 Specialized definitions.
421.302 Effluent limitations guidelines, representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.303 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable
421.304 Standards of performance for new sources.
421.305 Pretreatment standards for existing sources.
421.306 Pretreatment standards for new sources.
421.307 [Reserved]

Subpart AE—Secondary Tungsten and Cobalt Subcategory

421.310 Applicability: Description of the secondary tungsten and cobalt subcategory.
421.311 Specialized definitions.
421.312 Effluent limitations guidelines, representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.313 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable
421.314 Standards of performance for new sources.
421.315 [Reserved]
421.316 Pretreatment standards for new sources.
421.317 [Reserved]

Subpart AF—Secondary Uranium Subcategory

421.320 Applicability: Description of the secondary uranium subcategory.
421.321 Specialized definitions.
421.322 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.323 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.324 Standards of performance for new sources.
421.325 [Reserved]
421.326 Pretreatment standards for new sources.
421.327 [Reserved]

Subpart AG—Primary Zirconium and Hafnium Subcategory

421.330 Applicability: Description of the primary zirconium and hafnium subcategory.
421.331 Specialized definitons.
421.332 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.333 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.334 Standards of performance for new sources.
421.335 Pretreatment standards for existing sources.
421.336 Pretreatment standards for new sources.
421.337 [Reserved]

Subpart N—Primary Antimony Subcategory

§ 421.140 Applicability: Description of the primary antimony subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of antimony at primary antimony facilities.

§ 421.141 Specialized definitions.

For the purposes of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

(a) *Sodium Antimonate Autoclave Wastewater.*

BPT LIMITATIONS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony contained in sodium antimonate product	
Antimony	20.350	9.079
Arsenic	14.830	6.100
Lead	2.979	1.419
Mercury	1.773	0.709
Total suspended solids	290.800	136.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Fouled Anolyte.*

BPT LIMITATIONS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony metal produced by electrowinning	
Antimony	20.350	9.079
Arsenic	14.830	6.100
Lead	2.979	1.419
Mercury	1.773	0.709
Total suspended solids	290.800	136.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.143 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) *Sodium Antimonate Autoclave Wastewater.*

BAT LIMITATIONS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony contained in sodium antimonate product	
Antimony	13.690	6.100
Arsenic	9.859	4.043
Lead	1.986	0.922
Mercury	1.064	0.426

(b) *Fouled Anolyte.*

BAT LIMITATIONS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony produced by electrowinning	
Antimony	13.690	6.100
Arsenic	9.859	4.043
Lead	1.986	0.922
Mercury	1.064	0.426

§ 421.144 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Sodium Antimonate Autoclave Wastewater.*

NSPS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony contained in sodium antimonate product	
Antimony	13.690	6.100
Arsenic	9.859	4.043
Lead	1.986	0.922
Mercury	1.064	0.426
Total suspended solids	106.400	85.120
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Fouled Anolyte.*

NSPS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony metal produced by electrowinning	
Antimony	13.690	6.100
Arsenic	9.859	4.043
Lead	1.986	0.922
Mercury	1.064	0.426
Total suspended solids	106.400	85.120

NSPS FOR THE PRIMARY ANTIMONY SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.145 [Reserved]

§ 421.146 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary antimony process wastewater introduced into a POTW shall not exceed the following values:

(a) *Sodium Antimonate Autoclave Wastewater.*

PSNS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony contained in sodium antimonate product	
Antimony	13.690	6.100
Arsenic	9.859	4.043
Lead	1.986	0.922
Mercury	1.064	0.426

(b) *Fouled Anolyte.*

PSNS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony metal produced by electrowinning	
Antimony	13.690	6.100
Arsenic	9.859	4.043
Lead	1.986	0.922
Mercury	1.064	0.426

§ 421.147 [Reserved]

Subpart O—Primary Beryllium Subcategory

§ 421.150 Applicability: Description of the primary beryllium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of beryllium by primary beryllium facilities processing beryllium ore concentrates or beryllium hydroxide raw materials.

§ 421.151 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) *Solvent Extration Raffinate-Bertrandite Ore.*

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	2,762.000	1,146.000
Chromium (total)	[illegible]	[illegible]
Copper	4,257.000	[illegible]
Fluoride	76,600.000	44,920.000
Total suspended solids	[illegible]	43,790.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Solvent Extraction Raffinate-Beryl Ore.*

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	246.000	102.000
Chromium (total)	80.000	36.000
Copper	380.000	200.000
Fluoride	7,000.000	4,000.000
Total suspended solids	9,200.000	3,900.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Beryllium Carbonate Filtrate.*

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	263.900	109.400
Chromium (total)	94.370	[illegible]

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Copper	407.500	214.500
Fluoride	7,507.000	4,290.000
Total suspended solids	8,794.000	4,183.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Beryllium Hydroxide Filtrate.*

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide precipitated (as beryllium)	
Beryllium	64.780	26.860
Chromium (total)	23.170	9.479
Copper	100.100	52.600
Fluoride	1,843.000	1,053.000
Total suspended solids	2,159.000	1,027.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Beryllium Oxide Calcining Furnace Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum monthly average
	mg/kg (pounds per million pounds) of beryllium oxide produced	
Beryllium	324.400	134.500
Chromium (total)	116.100	47.470
Copper	501.100	260.700
Fluoride	9,231.000	5,275.000
Total suspended solids	10,810.000	5,143.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Beryllium Hydroxide Supernatant.*

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced (as beryllium)	
Beryllium	129.300	53.210
Chromium (total)	45.950	18.760
Copper	198.200	104.300
Fluoride	3,652.000	2,087.000
Total suspended solids	4,277.000	2,035.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Process Condensates.*

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	0.000	0.000
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Fluoride	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Fluoride Furnace Scrubber.*

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	2.712	1.125
Chromium (total)	0.970	0.397
Copper	4.190	2.205
Fluoride	77.180	44.100
Total suspended solids	90.410	43.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Chip Leaching.*

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum monthly average
	mg/kg (pounds per million pounds) of beryllium metal leached	
Beryllium	5.833	2.419
Chromium (total)	2.087	0.854
Copper	9.010	4.742
Fluoride	189.000	94.540
Total suspended solids	194.400	92.470
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.153 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) *Solvent Extraction Raffinate-Bertrandite Ore.*

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	1,842.000	763.600
Chromium (total)	901.000	336.200
Copper	2,875.000	1,370.000
Fluoride	78,600.000	44,920.000

(b) *Solvent Extraction Raffinate-Beryl Ore.*

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	164.000	68.000
Chromium (total)	74.000	30.000
Copper	256.000	122.000
Fluoride	7,000.000	4,000.000

(c) *Beryllium Carbonate Filtrate.*

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	175.900	72.930
Chromium (total)	79.360	32.170
Copper	274.600	130.900
Fluoride	7,507.000	4,290.000

(d) *Beryllium Hydroxide Filtrate.*

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide precipitated (as beryllium)	
Beryllium	43.180	17.910
Chromium (total)	19.490	7.899
Copper	67.410	32.130
Fluoride	1,843.000	1,053.000

(e) *Beryllium Oxide Calcining Furnace Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium oxide produced	
Beryllium	21.630	8.967
Chromium (total)	9.758	3.956
Copper	33.760	16.090
Fluoride	923.100	527.500

(f) *Beryllium Hydroxide Supernatant.*

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced (as beryllium)	
Beryllium	85.550	35.470
Chromium (total)	38.600	15.650
Copper	133.600	63.640
Fluoride	3,652.000	2,087.000

(g) *Process Condensates.*

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	0.000	0.000
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Fluoride	0.000	0.000

(h) *Fluoride Furnace Scrubber.*

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	1.808	0.750
Chromium (total)	0.816	0.331
Copper	2.825	1.345
Fluoride	77.160	44.100

(i) *Chip Leaching.*

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium metal leached	
Beryllium	3.969	1.612
Chromium (total)	1.755	0.711
Copper	5.070	2.059
Fluoride	166.000	84.640

§ 421.154 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Solvent Extraction Raffinate-Bertrandite Ore.*

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	1,842.000	763.600
Chromium (total)	831.200	335.900
Copper	2,878.000	1,370.000
Fluoride	78,600.000	44,920.000
Total suspended solids	33,600.000	26,950.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Solvent Extraction Raffinate-Beryl Ore.*

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	154.000	66.000
Chromium (total)	74.000	30.000
Copper	256.000	122.000
Fluoride	7,000.000	4,000.000
Total suspended solids	3,000.000	2,400.000
pH	(1)	(1)

[1] Within range of 7.5 to 10.0 at all times.

(c) *Beryllium Carbonate Filtrate.*

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	175.900	72.930
Chromium (total)	79.360	32.170
Copper	274.600	130.900
Fluoride	7,507.000	4,290.000
Total suspended solids	3,217.000	2,574.000
pH	(1)	(1)

[1] Within range of 7.5 to 10.0 at all times.

(d) *Beryllium Hydroxide Filtrate.*

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide precipitated (as beryllium)	
Beryllium	42.180	17.910
Chromium (total)	19.490	7.956
Copper	67.410	32.130
Fluoride	1,843.000	1,053.000
Total suspended solids	788.900	632.000
pH	(1)	(1)

[1] Within range of 7.5 to 10.0 at all times.

(e) *Beryllium Oxide Calcining Furnance Wet Air Pollution Control.*

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium oxide produced	
Beryllium	21.630	8.967
Chromium (total)	9.758	3.956
Copper	33.760	16.090
Fluoride	923.100	527.500
Total suspended solids	395.600	316.500
pH	(1)	(1)

[1] Within range of 7.5 to 10.0 at all times.

(f) *Beryllium Hydroxide Supernatant.*

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced (as beryllium)	
Beryllium	85.550	35.470
Chromium (total)	38.600	15.650
Copper	133.600	63.640
Fluoride	3,652.000	2,087.000
Total suspended solids	1,565.000	1,252.000
pH	(1)	(1)

[1] Within range of 7.5 to 10.0 at all times.

(g) *Process Condensates.*

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	0.000	0.000
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Fluoride	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within range of 7.5 to 10.0 at all times.

(h) *Fluoride Furnace Scrubber.*

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	1.806	0.750
Chromium (total)	0.816	0.331
Copper	2.823	1.345
Fluoride	77.180	44.100
Total suspended solids	33.060	20.460
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Chip Leaching.*

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium chips leached	
Beryllium	3.889	1.612
Chromium (total)	1.755	0.711
Copper	6.070	2.693
Fluoride	186.000	94.840
Total suspended solids	71.130	56.910
ph	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.155 [Reserved]

§ 421.156 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary beryllium process wastewater introduced into a POTW shall not exceed the following values:

(a) *Solvent Extraction Raffinate-Bertrandite Ore.*

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	1,842.000	761.500
Chromium (total)	831.000	336.900
Copper	2,875.000	1,370.000
Fluoride	78,600.000	44,920.000

(b) *Solvent Extraction Raffinate-Beryl Ore.*

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	164.000	68.000
Chromium (total)	74.000	30.000
Copper	256.000	122.000
Fluoride	7,000.000	4,000.000

(c) *Beryllium Carbonate Filtrate.*

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate precipitated (as beryllium)	
Beryllium	175.900	72.930
Chromium (total)	79.360	32.170
Copper	274.600	130.900
Fluoride	7,507.000	4,290.000

(d) *Beryllium Hydroxide Filtrate.*

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide precipitated (as beryllium)	
Beryllium	43.180	17.910
Chromium (total)	19.490	7.900
Copper	67.410	32.130
Fluoride	1,843.000	1,053.000

(e) *Beryllium Oxide Calcining Furnace Wet Air Pollution Control.*

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium oxide produced	
Beryllium	21.630	8.967
Chromium (total)	9.758	3.956
Copper	33.760	16.090
Fluoride	923.100	527.500

(f) *Beryllium Hydroxide Supernatant.*

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced (as beryllium)	
Beryllium	85.550	35.470
Chromium (total)	38.500	15.650
Copper	133.600	62.640
Fluoride	3,652.000	2,087.000

(g) *Process Condensates.*

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	0.000	0.000
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Fluoride	0.000	0.000

(h) *Fluoride Furnace Scrubber.*

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	1.806	0.750
Chromium (total)	0.816	0.331
Copper	2.823	1.345
Fluoride	77.180	44.100

(i) *Chip Leaching.*

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium metal leached	
Beryllium	3.866	1.612
Chromium (total)	1.755	0.711
Copper	6.070	2.693
Fluoride	186.000	94.840

§ 421.157 [Reserved]

Subpart P—Primary Boron Subcategory

§ 421.160 Applicability: Description of the primary boron subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of boron by primary boron facilities processing boric oxide or diborane raw materials.

§ 421.161 Specialized definitions.

For the purposes of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ § 421.162–421.163 [Reserved]

§ 421.164 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Reduction Product Acid Leachate.*

NSPS FOR THE PRIMARY BORON SUBCATEGORY

Pollutant or Pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of boron powder produced	
Lead	61.490	29.260
Nickel	281.100	185.900
Boron	162.08	86.80
Total suspended solids	6,003.000	2,855.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Boron Wash Water.*

NSPS FOR THE PRIMARY BORON SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of boron powder produced	
Lead	13.990	6.650
Nickel	63.940	42.290
Boron	36.880	15.200
Total suspended solids	1,366.000	649.400

NSPS FOR THE PRIMARY BORON SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.165 [Reserved]

§ 421.166 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary boron process wastewater introduced into a POTW shall not exceed the following values:

(a) *Reduction Product Acid Leachate.*

PSNS FOR THE PRIMARY BORON SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of boron powder produced	
Lead	61.490	29.260
Nickel	281.100	185.900
Boron	162.08	86.80

(b) *Boron Wash Water.*

PSNS FOR THE PRIMARY BORON SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of boron powder produced	
Lead	13.990	6.650
Nickel	63.940	42.290
Boron	36.880	15.200

§ 421.167 [Reserved]

Subpart Q—Primary Cesium and Rubidium Subcategory

§ 421.170 Applicability: Description of the primary cesium and rubidium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of cesium or rubidium by primary cesium and rubidium facilities.

§ 421.171 Specialized definitions.

For the purposes of this subpart the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§§ 421.172–421.173 [Reserved]

§ 421.174 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Spent Acid and Crystallizer Rinse Water from Cesium Production.*

NSPS FOR THE PRIMARY CESIUM AND RUBIDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pollucite (Cs) ore digested	
Lead	3.705	1.720
Thallium	18.530	7.543
Zinc	13.500	5.558
Total suspended solids	380.000	158.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Spent Acid and Crystallizer Rinse Water from Rubidium Production.*

NSPS FOR THE PRIMARY CESIUM AND RUBIDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of lepidolite (Rb) ore digested	
Lead	2.234	1.037
Thallium	11.170	4.548
Zinc	8.139	3.351
Total suspended solids	119.700	95.750
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.175 [Reserved]

§ 421.176 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary cesium and rubidium process wastewater introduced into a POTW shall not exceed the following values:

(a) *Spent Acid and Crystallizer Rinse Water from Cesium Production.*

PSNS FOR THE PRIMARY CESIUM AND RUBIDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pollucite (Cs) ore digested	
Lead	3.705	1.720

PSNS FOR THE PRIMARY CESIUM AND RUBIDIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Thallium	18.550	7.543
Zinc	13.560	5.558

(b) *Spent Acid and Crystallizer Rinse Water from Rubidium Production.*

PSNS FOR THE PRIMARY CESIUM AND RUBIDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Lb/kg (pound per million pounds) of lepidolite (Rb) processed	
Lead	2.754	1.037
Thallium	11.170	4.548
Zinc	8.139	3.351

§ 421.177 [Reserved]

Subpart R—Primary and Secondary Germanium and Gallium Subcategory

§ 421.180 Applicability: Description of the primary and secondary germanium and gallium subcategory.

(a) The provisions of this subpart are applicable to discharges resulting from the production of germanium or gallium from primary and secondary germanium and gallium facilities.

(b) There are two levels of BPT, BAT, NSPS, PSES and PSNS provisions for this subpart. Level A provisions are applicable to facilities which only reduce germanium dioxide in a hydrogen furnace and then wash and rinse the germanium product in conjunction with zone refining. The level B provisions are applicable to all other facilities in the subcategory.

§ 421.181 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available.

(a) **Level A.**

(1) *Acid Wash and Rinse Water.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	325.500	133.900
Lead	65.400	31.150
Zinc	227.400	94.990
Germanium	68.520	28.090
Fluoride	5,450.000	3,115.000
Total suspended solids	6,385.000	3,037.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(b) **Level B.**

(1) *Still Liquor.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	131.7000	54.160
Lead	26.460	12.600
Zinc	91.980	38.430
Germanium	27.720	11.340
Fluoride	2,205.000	1,260.000
Total suspended solids	2,583.000	1,229.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(2) *Chlorinator Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	27.530	11.330
Lead	5.532	2.634
Zinc	19.230	8.034
Germanium	5.795	2.371
Fluoride	461.000	263.400
Total suspended solids	540.000	256.800
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(3) *Germanium Hydrolysis Filtrate.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium hydrolyzed	
Arsenic	69.440	28.230
Lead	7.926	3.774

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Zinc	27.550	11.510
Germanium	8.303	3.397
Fluoride	900.500	377.400
Total suspended solids	773.700	366.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(4) *Acid Wash and Rinse Water.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	325.500	133.900
Lead	65.400	31.150
Zinc	227.400	94.990
Germanium	68.520	28.090
Fluoride	5,450.000	3,115.00
Total suspended solids	6,385.000	3,037.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(5) *Gallium Hydrolysis Filtrate.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium hydrolyzed	
Arsenic	69.330	28.530
Lead	13.930	6.634
Zinc	48.430	20.240
Germanium	14.600	5.971
Fluoride	1,161.000	663.400
Total suspended solids	1,360.000	646.800
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(6) *Solvent Extraction Raffinate.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium produced by solvent extraction	
Arsenic	39.340	16.190
Lead	7.905	3.764
Zinc	27.480	11.480
Germanium	8.281	3.388
Fluoride	658.700	376.400
Total suspended solids	771.600	367.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

§ 421.183 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) **Level A.**

(1) *Acid Wash and Rinse Water.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	325.500	133.900
Lead	65.400	31.150
Zinc	227.400	[illegible]
Germanium	68.520	28.030
Fluoride	5,450.000	3,115.000

(b) **Level B.**

(1) *Still Liquor.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	87.570	35.910
Lead	17.640	[illegible]
Zinc	[illegible]	[illegible]
Germanium	23.310	[illegible]
Fluoride	2,205.000	1,260.000

(2) *Chlorinator Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	18.310	7.507
Lead	[illegible]	1.712
Zinc	13.440	5.532
[illegible]	4.873	1.976
Fluoride	[illegible]	263.400

(3) *Germanium Hydrolysis Filtrate.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium hydrolyzed	
Arsenic	[illegible]	10.760
Lead	5.284	2.453
Zinc	19.250	7.926
Germanium	[illegible]	2.831
Fluoride	[illegible]	377.400

(4) *Acid Wash and Rinse Water.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/kg (pounds per million pounds) of germanium [illegible]	
Arsenic	216.500	[illegible]
Lead	43.600	[illegible]
Zinc	158.900	[illegible]
Germanium	57.620	23.360
Fluoride	5,450.000	3,115.000

(5) *Gallium Hydrolysis Filtrate.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium hydrolyzed	
Arsenic	46.110	18.910
Lead	[illegible]	4.312
Zinc	33.840	13.930
Germanium	12.270	4.976
Fluoride	1,161.000	[illegible]

(6) *Solvent Extraction Raffinate.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/kg (pounds per million pounds) of gallium produced by solvent extraction	
Arsenic	26.160	10.730
Lead	5.270	2.447
Zinc	19.200	7.905
Germanium	[illegible]	[illegible]
Fluoride	[illegible]	376.400

§ 421.184 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) **Level A.**

(1) *Acid Wash and Rinse Water.*

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 [illegible]	Maximum for monthly [illegible]
	mg/kg (pounds per million pounds) of germanium [illegible]	
Arsenic	325 500	133 900
Lead	65 400	31 150
Zinc	227.400	[illegible]
Germanium	68.520	[illegible]
Fluoride	5,450.000	3,115 000
Total suspended solids	6,385.000	3,037 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) **Level B.**

(1) *Still Liquor.*

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium [illegible]	
Arsenic	87 570	35 910
Lead	17 640	[illegible]
Zinc	[illegible]	[illegible]
Germanium	23 310	9 450
Fluoride	2,205 000	1,260 000
Total suspended solids	[illegible]	756 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(2) *Chlorinator Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	18.310	7 507
Lead	3.688	1.712
Zinc	13.440	5 532
Germanium	4.873	1 976
Fluoride	461.000	[illegible]
Total suspended solids	197.600	158 100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(3) *Germanium Hydrolysis Filtrate.*

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium hydrolyzed	
Arsenic	26.230	10.760
Lead	5.284	2.453
Zinc	19.250	7.926
Germanium	5.982	2.831
Fluoride	560.500	377.400
Total suspended solids	283.100	225.500
pH	[1]	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(4) *Acid Wash and Rinse Water.*

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	216.500	86.760
Lead	43.600	20.250
Zinc	158.900	65.400
Germanium	57.620	23.360
Fluoride	5,450.000	3,115.000
Total suspended solids	2,336.000	1,869.000
pH	[1]	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(5) *Gallium Hydrolysis Filtrate.*

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium hydrolyzed	
Arsenic	46.110	18.910
Lead	9.286	4.312
Zinc	33.840	13.930
Germanium	12.270	4.976
Fluoride	1,161.000	803.400
Total suspended solids	497.500	396.100
pH	[1]	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(6) *Solvent Extraction Raffinate.*

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium produced by solvent extraction	
Arsenic	26.160	10.730
Lead	5.270	2.447
Zinc	19.200	7.905
Germanium	6.954	2.832
Fluoride	658.700	376.400
Total suspended solids	282.300	225.900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.185 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in primary and secondary germanium and gallium process wastewater introduced into a POTW must not exceed the following values:

(a) **Level A.**

(1) *Acid Wash and Rinse Water.*

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	325.500	130.900
Lead	65.400	31.150
Zinc	227.400	94.990
Germanium	68.520	28.030
Fluoride	5,450.000	3,115.000

(b) **Level B.**

(1) *Still Liquor.*

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	87.570	35.910
Lead	17.640	8.190
Zinc	64.260	26.460
Germanium	23.310	9.450
Fluoride	2,205.000	1,260.000

(2) *Chlorinator Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	18.310	7.507
Lead	3.668	1.712
Zinc	13.440	5.502
Germanium	4.873	1.976
Fluoride	461.000	263.400

(3) *Germanium Hydrolysis Filtrate.*

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium hydrolyzed	
Arsenic	26.230	10.760
Lead	5.284	2.453
Zinc	19.250	7.926
Germanium	5.982	2.831
Fluoride	560.500	377.400

(4) *Acid Wash and Rinse Water.*

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	216.500	86.760
Lead	43.600	20.250
Zinc	158.900	65.400
Germanium	57.620	23.360
Fluoride	5,450.000	3,115.000

(5) *Gallium Hydrolysis Filtrate.*

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium hydrolyzed	
Arsenic	52.610	21.580
Lead	10.600	4.921
Zinc	38.610	15.900
Germanium	14.010	5.678
Fluoride	1,325.000	757.000

(6) *Solvent Extraction Raffinate.*

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium produced by solvent extraction	
Arsenic	26.160	10.730
Lead	5.270	2.447
Zinc	19.200	7.905
Germanium	6.964	2.823
Fluoride	658.700	376.400

§ 421.186 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and

achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary and secondary germanium and gallium process wastewater introduced into a POTW shall not exceed the following values:

(a) **Level A.**

(a) *Acid Wash and Rinse Water.*

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	325.500	133.900
Lead	65.400	31.150
Zinc	227.400	94.990
Germanium	86.520	28.030
Fluoride	5,450.000	3,115.000

(b) **Level B.**

(1) *Still Liquor.*

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	87.570	35.910
Lead	17.640	5.190
Zinc	64.250	26.460
Germanium	23.310	9.450
Fluoride	2,205.000	1,260.000

(2) *Chlorinator Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	18.310	7.507
Lead	3.688	1.712
Zinc	13.440	5.532
Germanium	4.873	1.976
Fluoride	461.000	263.400

(3) *Germanium Hydrolysis Filtrate.*

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium hydrolyzed	
Arsenic	26.290	10.760
Lead	5.284	2.453

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Zinc	19.250	7.926
Germanium	6.982	2.831
Fluoride	660.500	377.400

(4) *Acid Wash and Rinse Water.*

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	216.500	88.750
Lead	43.600	20.250
Zinc	156.900	65.400
Germanium	57.620	23.060
Fluoride	5,450.000	3,115.000

(5) *Gallium Hydrolysis Filtrate.*

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium hydrolyzed	
Arsenic	46.110	18.910
Lead	9.268	4.312
Zinc	33.640	13.930
Germanium	12.270	4.976
Fluoride	1,161.000	663.400

(6) *Solvent Extraction Raffinate.*

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium produced by solvent extraction	
Arsenic	26.160	10.730
Lead	5.270	2.447
Zinc	19.200	7.905
Germanium	6.964	2.821
Fluoride	658.700	375.400

§ 421.187 [Reserved]

Subpart S—Secondary Indium Subcategory

§ 421.190 Applicability: Description of the secondary indium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of indium at secondary indium facilities processing spent electrolyte solutions and scrap indium metal raw materials.

§ 421.191 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.192–421.193 [Reserved]

§ 421.194 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Displacement Tank Supernatant.*

NSPS FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of indium metal produced	
Cadmium	1.226	0.495
Lead	1.733	0.805
Zinc	6.314	2.500
Indium	2.291	0.929
Total suspended solids	92.650	74.280
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Spent Electrolyte.*

NSPS FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of indium metal refined	
Cadmium	7.160	2.954
Lead	10.130	4.654
Zinc	36.520	15.040
Indium	13.250	5.370
Total suspended solids	537.000	429.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.195 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in secondary indium process wastewater introduced into a POTW must not exceed the following values:

(a) *Displacement Tank Supernatant.*

PSES FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of indium metal produced	
Cadmium	2.106	0.929
Lead	2.609	1.238
Zinc	9.039	3.776
Indium	2.724	1.114

(b) *Spent Electrolyte.*

PSES FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of indium metal refined	
Cadmium	12.170	5.370
Lead	15.040	7.160
Zinc	52.270	21.840
Indium	15.750	6.444

§ 421.196 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary indium process wastewater introduced into a POTW shall not exceed the following values:

(a) *Displacement Tank Supernatant.*

PSNS FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of indium metal produced	
Cadmium	1.238	0.495
Lead	1.733	0.805
Zinc	6.314	2.500
Indium	2.291	0.929

(a) *Spent Electrolyte.*

PSNS FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of indium metal refined	
Cadmium	7.160	3.854
Lead	10.030	4.854
Zinc	36.530	15.040

PSNS FOR THE SECONDARY INDIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Indium	13.250	5.370

§421.197 [Reserved]

Subpart T—Secondary Mercury Subcategory

§421.200 Applicability: Description of the secondary mercury subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of mercury from secondary mercury facilities processing recycled mercuric oxide batteries and other mercury containing scrap raw materials.

§421.201 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 4401 shall apply to this subpart.

§§ 421.202–421.203 [Reserved]

§421.204 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(b) *Spent Battery Electrolyte.*

NSPS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury produced from batteries	
Lead	0.030	0.014
Mercury	0.016	0.006
Total suspended solids	1.590	1.272
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Acid Wash and Rinse Water.*

NSPS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury washed and rinsed	
Lead	0.00056	0.00026
Mercury	0.00030	0.00012
Total suspended solids	0.030	0.024.
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Furnace Wet Air Pollution Control.*

NSPS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury processed through furnace	
Lead	0.000	0.000
Mercury	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.205 [Reserved]

§ 421.206 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieves the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary mercury process wastewater introduced into a POTW shall not exceed the following values:

(a) *Spent Battery Electrolyte.*

PSNS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury produced from batteries	
Lead	0.030	0.014
Mercury	0.016	0.006

(b) *Acid Wash and Rinse Water.*

PSNS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury washed and rinsed	
Lead	0.00056	0.00026
Mercury	0.00030	0.00012

(c) *Furnace Wet Air Pollution Control.*

PSNS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury processed through furnace	
Lead	0.000	0.000

PSNS FOR THE SECONDARY MERCURY SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Mercury	0.000	0.000

§ 421.207 [Reserved]

Subpart U—Primary Molybdenum and Rhenium Subcategory

§ 421.210 Applicability: Description of the primary molybdenum and rhenium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of molybdenum or rhenium by primary molybdenum and rhenium facilities.

§ 421.211 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.212 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) *Molybdenum Sulfide Leaching.*

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide leached	
Arsenic	0.966	0.398
Lead	0.195	0.093
Nickel	0.889	0.588
Selenium	0.570	0.255
Molybdenum	2.680	1.100
Ammonia (as N)	61.350	26.970
Total suspended solids	18.990	9.029
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Roaster SO_2 Scrubber.*

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	3.509	1.444
Lead	0.705	0.336
Nickel	3.224	2.133
Selenium	2.065	0.924
Molybdenum	9.755	3.998
Ammonia (as N)	223.800	95.931
Total suspended solids	68.940	32.740
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Molybdic Oxide Leachate.*

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium molybdate produced	
Arsenic	14.850	6.108
Lead	2.983	1.421
Nickel	13.640	9.021
Selenium	8.736	3.808
Molybdenum	41.060	16.920
Ammonia (as N)	941.000	413.700
Total suspended solids	291.200	138.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Reduction Furnace Scrubber.*

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum metal produced	
Arsenic	47.660	19.690
Lead	9.617	4.580
Nickel	43.970	20.080
Selenium	29.170	12.600
Molybdenum	132.370	54.570
Ammonia (as N)	3034.000	1334.000
Total suspended solids	938.500	446.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Depleted Rhenium Scrubbing Solution.*

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	1.497	0.616
Lead	0.301	0.143
Nickel	1.375	0.909
Selenium	0.881	0.394
Molybdenum	4.140	1.170
Ammonia (as N)	94.850	41.700

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Total suspended solids	29.380	13.960
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.213 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) *Molybdenum Sulfide Leaching.*

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide leached	
Arsenic	0.644	0.254
Lead	0.130	0.060
Nickel	0.255	0.171
Selenium	0.380	0.171
Molybdenum	1.790	0.738
Ammonia (as N)	61.350	26.970

(b) *Roaster SO_2 Scrubber.*

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	2.334	0.957
Lead	0.470	0.218
Nickel	0.926	0.621
Selenium	1.377	0.621
Molybdenum	6.498	2.667
Ammonia (as N)	223.800	98.390

(c) *Molybdic Oxide Leachate.*

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium molybdate produced	
Arsenic	9.872	4.048
Lead	1.983	0.925
Nickel	9.006	2.628

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Selenium	5.824	2.626
Molybdenum	27.440	11.220
Ammonia (as N)	941.000	413.700

(d) *Reduction Furnace Scrubber.*

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum metal produced	
Arsenic	3.183	1.306
Lead	0.641	0.263
Nickel	1.260	0.847
Selenium	1.878	0.847
Molybdenum	8.650	3.620
Ammonia (as N)	313.670	133.400

(e) *Depleted Rhenium Scrubbing Solution.*

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	0.895	0.408
Lead	0.201	0.093
Nickel	0.394	0.265
Selenium	0.587	0.265
Molybdenum	2.770	1.130
Ammonia (as N)	94.850	41.700

§ 421.214 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Molybdenum Sulfide Leaching.*

NSPS LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide leached	
Arsenic	0.644	0.264
Lead	0.130	0.060
Nickel	0.255	0.171
Selenium	0.380	0.171
Molybdenum	1.790	0.730
Ammonia (as N)	61.350	26.970
Total suspended	8.945	5.556
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Roaster SO_2 Scrubber.*

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	2.334	0.957
Lead	0.470	0.215
Nickel	0.924	0.621
Selenium	1.377	0.621
Molybdenum	6.498	2.687
Ammonia (as N)	225.600	98.390
Total suspended solids	25.190	20.150
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Molybdic Oxide Leachate.*

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium molybdate produced	
Arsenic	9.572	4.048
Lead	1.989	0.923
Nickel	6.306	2.628
Selenium	5.824	2.626
Molybdenum	27.440	11.220
Ammonia (as N)	941.000	413.700
Total suspended solids	106.600	85.230
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Reduction Furnace Scrubber.*

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum metal produced	
Arsenic	3.183	1.306
Lead	0.641	0.263
Nickel	1.260	0.847
Selenium	1.878	0.847
Molybdenum	8.650	3.620
Ammonia (as N)	313.670	133.400
Total suspended solids	84.350	27.480
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Depleted Rhenium Scrubbing Solution.*

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	0.895	0.408
Lead	0.201	0.093
Nickel	0.394	0.265
Selenium	0.587	0.265
Molybdenum	2.770	1.130
Ammonia (as N)	94.850	41.700

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Total suspended solids	10.740	8.592
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.215 [Reserved]

§ 421.216 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary molybdenum and rhenium process wastewater introduced into a POTW shall not exceed the following values:

(a) *Molybdenum Sulfide Leaching.*

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide leached	
Arsenic	0.644	0.264
Lead	0.130	0.060
Nickel	0.255	0.171
Selenium	0.380	0.171
Molybdenum	1.790	0.730
Ammonia (as N)	61.350	26.970

(b) *Roaster SO_2 Scrubber.*

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	2.334	0.957
Lead	0.470	0.216
Nickel	0.924	0.621
Selenium	1.377	0.621
Molybdenum	6.498	2.687
Ammonia (as N)	223.800	98.390

(c) *Molybdic Oxide Leachate.*

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium molybdate produced	
Arsenic	9.572	4.048
Lead	1.989	0.923

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	1.906	2.626
Selenium	5.624	2.626
Molybdenum	27.440	11.220
Ammonia (as N)	941.000	413.700

(d) *Reduction Furnace Scrubber.*

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum metal produced	
Arsenic	3.183	1.306
Lead	0.641	0.256
Nickel	1.260	0.847
Selenium	1.878	0.847
Molybdenum	8.850	3.620
Ammonia (as N)	303.400	133.400

(e) *Depleted Rhenium Scrubbing Solution.*

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	0.995	0.458
Lead	0.201	0.093
Nickel	0.394	0.265
Selenium	0.587	0.265
Molybdenum	2.770	1.130
Ammonia (as N)	94.850	41.700

§ 421.217 [Reserved]

Subpart V—Secondary Molybdenum and Vanadium Subcategory

§ 421.220 Applicability: Description of the secondary molybdenum and vanadium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of molybdenum or vanadium by secondary molybdenum and vanadium facilities.

§ 421.221 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) *Leach Tailings.*

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Antimony	35.990	16.050
Lead	5.267	2.008
Nickel	24.080	15.930
Molybdenum	72.500	28.880
Ammonia (as N)	1661.000	730.400
Total suspended solids	514.200	244.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) *Molybdendum Filtrate.*

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Antimony	222.700	98.200
Lead	32.590	15.520
Nickel	149.000	98.550
Molybdenum	445.660	184.990
Ammonia (as N)	10,280.000	4,519.000
Total suspended solids	3,182.300	1,513.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(c) *Vanadium Decomposition Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of vanadium produced by decomposition	
Antimony	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) *Molybdenum Drying Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Antimony	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.223 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) *Leach Tailings.*

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Antimony	24.200	10.790
Lead	3.511	1.539
Nickel	6.897	4.640
Molybdenum	48.450	19.810
Ammonia (as N)	1,661.000	730.400

(b) *Molybdenum Filtrate.*

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Antimony	149.800	65.740
Lead	21.730	10.090
Nickel	42.660	28.710
Molybdenum	213.000	86.910
Ammonia (as N)	296.770	122.540

(c) *Vanadium Decomposition Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Antimony	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of vanadium produced by decomposition	
Antimony	0.[illegible]	[illegible]
Lead	0.[illegible]	[illegible]
Nickel	0.000	[illegible]
Molybdenum	0.[illegible]	[illegible]
Ammonia (as N)	0.[illegible]	[illegible]

(d) *Molybdenum Drying Wet Air Pullution Control.*

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Antimony	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000

§ 421.224 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Leach Tailings.*

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Antimony	[illegible]4.200	10.790
Lead	3.511	1.630
Nickel	6.[illegible]97	4.640
Molybdenum	48.450	19.810
Ammonia (as N)	1,661.[illegible]00	730.400
Total suspended solids	188.1[illegible]	150.500
pH	[illegible])	[illegible])

[illegible] Within the range of 7.5 to 10.0 at all times.

(b) *Molybdenum Filtrate.*

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Antimony	149.[illegible]00	66.740
Lead	21.7[illegible]0	10.090
Nickel	42.6[illegible]0	28.710
Molybdenum	[illegible]99.770	122.540
Ammonia (as N)	10,280.000	4,519.000
Total suspended solids	1,164.[illegible]0	[illegible]1.200

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(c) *Vanadium Decomposition Wet Air Pollution Control.*

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of vanadium produced by decomposition	
Antimony	0.[illegible]	[illegible]
Lead	0.[illegible]	0.000
Nickel	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(d) *Molybdenum Drying Wet Air Pollution Control.*

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Antimony	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	[illegible]0.000
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

§ 421.225 [Reserved]

§ 421.226 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary molybdenum and vanadium process wastewater introduced into a POTW shall not exceed the following values:

(a) *Leach Tailings.*

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Antimony	24.200	10,790
Lead	3.511	1.630
Nickel	6.897	4.640
Molybdenum	48.450	19.810
Ammonia (as N)	1,661.000	730.400

(b) *Molybdenum Filtrate.*

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Antimony	149.800	66.740
Lead	21.730	[illegible]0.090
Nickel	42.680	28.710
Molybdenum	299.770	122.540
Ammonia (as N)	10,280.000	4,519.000

(c) *Vanadium Decomposition Wet Air Pollution Control.*

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of vanadium produced by decomposition	
Antimony	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000

(d) *Molybdenum Drying Wet Air Pollution Control.*

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Antimony	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000

§ 421.227 [Reserved].

Subpart W—Primary Nickel and Cobalt Subcategory

§ 421.230 Applicability: Description of the primary nickel and cobalt subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of nickel or cobalt by primary nickel and cobalt facilities processing ore concentrate raw materials.

§ 421.231 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.232 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) *Raw Material Dust Control.*

BPT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of copper, nickel, and cobalt in the crushed raw material	
Copper	0.146	0.077
Nickel	0.148	0.096
Ammonia (as N)	10.260	4.400
Cobalt	0.016	0.007
Total suspended solids	3.157	1.502
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Nickel Wash Water.*

BPT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel powder washed	
Copper	0.064	0.034
Nickel	0.065	0.043
Ammonia (as N)	4.510	1.940
Cobalt	0.007	0.003
Total suspended solids	1.389	0.661
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Nickel Reduction Decant.*

BPT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel reduced	
Copper	24.120	12.700
Nickel	24.380	16.120
Ammonia (as N)	1,692.600	725.500
Cobalt	2.666	1.143
Total suspended solids	520.600	247.600
pH	(1)	(1)

[1] With the range of 7.5 to 10.0 at all times.

(d) *Cobalt Reduction Decant.*

BPT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt reduced	
Copper	40.600	21.400
Nickel	41.090	27.180
Ammonia (as N)	2,851.000	1,223.000
Cobalt	4.494	1.926
Total suspended solids	877.300	417.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.00 at all times.

§ 421.233 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) *Raw Material Dust Control.*

BAT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of copper, nickel, and cobalt in the crushed raw material	
Copper	0.099	0.047
Nickel	0.042	0.028
Ammonia (as N)	10.200	4.480
Cobalt	0.011	0.005

(b) *Nickel Wash Water.*

BAT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel powder washed	
Copper	0.144	0.021
Nickel	0.016	0.013
Ammonia (as N)	4.490	1.970
Cobalt	0.006	0.003

(c) *Nickel Reduction Decant*

BAT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel reduced	
Copper	16.250	7.744
Nickel	6.982	4.697
Ammonia (as N)	1,682.000	739.50
Cobalt	1.778	0.889

(d) *Cobalt Reduction Decant.*

BAT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt reduced	
Copper	27.200	13.050
Nickel	11.770	7.917
Ammonia (as N)	2,832.000	1,245.000
Cobalt	2.996	1.498

§ 421.234 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Raw Material Dust Control.*

NSPS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of copper, nickel, and cobalt in the crushed raw material	
Copper	0.099	0.047
Nickel	0.042	0.028
Ammonia (as N)	10.200	4.480
Cobalt	0.011	0.005
Total suspended solids	1.155	0.524
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Nickel Wash Water.*

NSPS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel powder washed	
Copper	0.043	0.021
Nickel	0.019	0.013
Ammonia (as N)	4.490	1.970
Cobalt	0.005	0.002
Total suspended solids	0.508	0.407
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Nickel Reduction Decant.*

NSPS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel reduced	
Copper	16.250	7.744
Nickel	6.982	5.697
Ammonia (as N)	1,682.000	739.500
Cobalt	1.778	0.889
Total suspended solids	200.400	152.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Cobalt Reduction Decant.*

NSPS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt reduced	
Copper	27.300	13.050
Nickel	11.770	7.917
Ammonia (as N)	2,835.000	1,179.000
Cobalt	2.996	1.498
Total suspended solids	321.000	256.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.235 [Reserved]

§ 421.236 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary nickel and cobalt process wastewater introduced into a POTW shall not exceed the following values:

(a) *Raw Material Dust Control.*

PSNS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of copper, nickel, and cobalt in the crushed raw material	
Copper	0.095	0.047
Nickel	0.042	0.028
Ammonia (as N)	10.200	4.480
Cobalt	0.011	0.005

(b) *Nickel Wash Water.*

PSNS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel powder washed	
Copper	0.043	0.021
Nickel	0.019	0.013
Ammonia (as N)	4.490	1.970
Cobalt	0.005	0.002

(c) *Nickel Reduction Decant.*

PSNS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel reduced	
Copper	16.250	7.744
Nickel	6.982	4.697
Ammonia (as N)	1,682.000	739.50
Cobalt	1.778	0.889

(d) *Cobalt Reduction Decant.*

PSNS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt reduced	
Copper	27.300	13.050
Nickel	11.770	7.917
Ammonia (as N)	2,835.000	1,179.000
Cobalt	2.996	1.498

§ 421.237 [Reserved]

Subpart X—Secondary Nickel Subcategory

§ 421.240 Applicability: Description of the secondary nickel subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of nickel by secondary nickel facilities processing slag, spent acids, or scrap metal raw materials.

§ 421.241 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§§ 421.242-421.243 [Reserved]

§ 421.244 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Slag Reclaim Tailings.*

NSPS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of slag reclaim nickel produced	
Chromium (total)	37.670	15.410
Copper	162.700	85.500
Nickel	164.400	108.700
Total suspended solids	3,510.000	1,669.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Acid Reclaim Leaching Filtrate.*

NSPS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	1.848	0.749
Copper	6.394	3.047
Nickel	2.747	1.848
Total suspended solids	74.930	50.040
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Acid Reclaim Leaching Belt Filter Backwash.*

NSPS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	0.444	0.180
Copper	1.535	0.731
Nickel	0.660	0.444
Total suspended solids	17.990	14.390
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.245 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned

treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in secondary nickel process wastewater introduced into a POTW must not exceed the following values:

(a) *Slag Reclaim Tailings.*

PSES FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of slag reclaim nickel produced	
Chromium (total)	37.670	15.410
Copper	162.700	85.500
Nickel	164.400	108.700

(b) *Acid Reclaim Leaching Filtrate.*

PSES FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	1.848	0.749
Copper	6.394	3.047
Nickel	2.747	1.848

(c) *Acid Reclaim Leaching Belt Filter Backwash.*

PSES FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	0.444	0.180
Copper	1,535	0.731
Nickel	0.660	0.444

§ 421.246 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary nickel process wastewater introduced into a POTW shall not exceed the following values:

(a) *Slag Reclaim Tailings.*

PSNS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of slag reclaim nickel produced	
Chromium (total)	37.670	15.410
Copper	162.700	85.500
Nickel	164.400	108.700

(b) *Acid Reclaim Leaching Filtrate.*

PSNS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	1.848	0.749
Copper	6.394	3.047
Nickel	2.747	1.848

(c) *Acid Reclaim Leaching Belt Filter Backwash.*

PSNS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	0.444	0.180
Copper	1.535	0.731
Nickel	0.660	0.444

§ 421.247 [Reserved]

Subpart Y—Primary Precious Metals and Mercury Subcategory

§ 421.250 Applicability: Description of the primary precious metals and mercury subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of gold, silver, or mercury by primary precious metals and mercury facilities.

§ 421.251 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.252 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technolgy currently available:

(a) *Smelter Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold and silver smelted	
Arsenic	27.590	11.350
Lead	5.544	2.640
Mercury	3.300	1.320
Silver	5.412	2.244
Zinc	19.270	8.052
Oil and Grease	264.000	158.400
Total suspended solids	541.200	257.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *AgCl Reduction Spent Solution.*

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver produced by silver solution reduction	
Arsenic	0.836	0.344
Lead	0.168	0.080
Mercury	0.100	0.040
Silver	0.164	0.068
Zinc	0.584	0.244
Oil and Grease	8.000	4.800
Total suspended solids	16.400	7.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Electrolytic Cells Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold refined electrolytically	
Arsenic	413.800	170.300
Lead	83.160	39.600
Mercury	49.500	19.800
Silver	81.180	33.660
Zinc	289.100	120.800
Oil and Grease	3,960.000	2,376.000
Total suspended solids	8,118.000	3,861.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *AgNO3 Electrolyte Preparation Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver in electrolyte produced	
Arsenic	0.105	0.048
Lead	0.021	0.010
Mercury	0.013	0.005
Silver	0.021	0.009
Zinc	0.073	0.031
Oil and Grease	1.000	0.600
Total suspended solids	2.050	0.975
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Ag Crystals Wash Water.*

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver crystals washed	
Arsenic	0.606	0.249
Lead	0.122	0.058
Mercury	0.073	0.029
Silver	0.119	0.049
Zinc	0.423	0.177
Oil and Grease	5.800	3.480
Total suspended solids	11.890	5.655
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Gold Slimes Acid and Water Wash.*

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold [illegible]	
Arsenic	[illegible]	3.440
Lead	1.680	[illegible]
Mercury	1.000	0.400
Silver	1.640	[illegible]
Zinc	5.840	2.440
Oil and Grease	80.000	48.000
Total suspended solids	164.000	76.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Calciner Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	386.600	166.000
Lead	78.120	37.200
Mercury	46.500	18.600
Silver	76.260	31.620
Zinc	271.800	113.500
Oil and Grease	3,720.000	2,232.000
Total suspended solids	7,626,000	3,627.000

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Calcine Quench.*

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	36.790	15.140
Lead	7.392	3.520
Mercury	4.400	1.760
Silver	7.216	2.992
Zinc	25.700	10.740
Oil and Grease	352.000	211.200
Total suspended solids	721.600	343.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Stack Gas Cooling.*

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	8.674	3.569
Lead	1.745	0.720
Mercury	1.038	0.415
Silver	1.702	0.706
Zinc	6.059	2.532
Oil and Grease	83.000	49.800
Total suspended solids	170.200	80.930
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Hg Calcining Condensate.*

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	25.840	11.870
Lead	5.795	2.760
Mercury	3.450	1.380
Silver	5.658	2.346
Zinc	20.150	8.418
Oil and Grease	276.000	165.600
Total suspended solids	565.800	269.100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Hg Cleaning Bath.*

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	2.926	1.204
Lead	1.368	0.280
Mercury	0.350	0.140
Silver	0.574	0.238
Zinc	2.044	0.854
Oil and Grease	28.000	16.800
Total suspended solids	57.400	27.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.253 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) *Smelter Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold and silver smelted	
Arsenic	1.807	0.741
Lead	0.364	0.169
Mercury	0.195	0.078
Silver	0.377	0.156
Zinc	1.326	0.546

(b) *AgCl Reduction Spent Solution.*

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver produced by silver solution reduction	
Arsenic	0.556	0.228
Lead	0.112	0.052
Mercury	0.050	0.024
Silver	0.116	0.048
Zinc	0.408	0.168

(c) *Electrolytic Cells Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold refined electrolytically	
Arsenic	27.520	11.290
Lead	5.544	2.574
Mercury	2.970	1.188
Silver	5.742	2.376
Zinc	20.250	8.316

(d) *AgNO3 Electrolyte Preparation Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver in electrolyte produced	
Arsenic	0.070	0.029
Lead	0.014	0.007
Mercury	0.008	0.003
Silver	0.015	0.006
Zinc	0.051	0.021

(e) *Ag Crystals Wash Water.*

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver crystals washed	
Arsenic	0.403	0.165
Lead	0.081	0.038
Mercury	0.044	0.017
Silver	0.084	0.035
Zinc	0.296	0.122

(f) *Gold Slimes Acid and Water Wash.*

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold times washed	
Arsenic	5.560	2.290
Lead	1.120	0.520
Mercury	0.600	0.240
Silver	1.160	0.480
Zinc	4.080	1.680

(g) *Calciner Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	30.560	12.540
Lead	6.160	2.860
Mercury	3.300	1.320
Silver	6.380	2.640
Zinc	22.440	9.240

(h) *Calcine Quench.*

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	24.470	10.030
Lead	4.928	2.288
Mercury	2.640	1.056
Silver	5.104	2.112
Zinc	17.950	7.392

(i) *Stack Gas Cooling.*

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	9.769	3.366
Lead	1.162	0.540
Mercury	0.523	0.249
Silver	1.204	0.498
Zinc	4.233	1.743

(j) *Hg Calcining Condensate.*

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	19.190	7.868
Lead	3.864	1.794
Mercury	2.070	0.828
Silver	4.002	1.656
Zinc	14.080	5.796

(k) *Hg Cleaning Bath.*

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	1.846	0.798
Lead	0.392	0.182
Mercury	0.210	0.084
Silver	0.406	0.168
Zinc	1.428	0.588

§ 421.254 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Smelter Wet Air Pollution Control.*

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold and silver smelted	
Arsenic	1.807	0.741
Lead	0.364	0.168
Mercury	0.185	0.078
Silver	0.377	0.156
Zinc	1.328	0.546
Oil and Grease	12.000	13.000
Total suspended solids	19.500	15.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *AgCl Reduction Spent Solution.*

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver produced by silver solution reduction	
Arsenic	0.550	0.229
Lead	0.112	0.052
Mercury	0.060	0.024
Silver	0.116	0.048
Zinc	0.408	0.168
Oil and Grease	4.000	4.000
Total suspended solids	6.000	4.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Electrolytic Cells Wet Air Pollution Control.*

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold refined electrolytically	
Arsenic	27.520	11.290
Lead	5.544	2.574
Mercury	2.970	1.188
Silver	5.742	2.376

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Zinc	10.200	8.316
Oil and Grease	198.000	198.000
Total suspended solids	317.000	237.600
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(d) *AgNO3 Electrolyte Preparation Wet Air Pollution Control.*

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver in electrolyte produced	
Arsenic	0.070	0.028
Lead	0.014	0.007
Mercury	0.008	0.003
Silver	0.015	0.006
Zinc	0.051	0.021
Oil and Grease	1.500	0.600
Total suspended solids	0.750	0.600
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) *Ag Crystals Wash Washer.*

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver crystals washed	
Arsenic	0.403	0.165
Lead	0.081	0.038
Mercury	0.044	0.017
Silver	0.084	0.035
Zinc	0.296	0.122
Oil and Grease	8.000	2.900
Total suspended solids	4.350	3.480
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) *Gold Slimes Acid and Water Wash.*

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold slimes washed	
Arsenic	5.550	2.280
Lead	1.120	0.520
Mercury	0.600	0.240
Silver	1.160	0.480
Zinc	4.080	1.680
Oil and Grease	40.000	40.000
Total suspended solids	80.000	45.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(g) *Calciner Wet Air Pollution Control.*

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	30.160	12.540
Lead	8.160	2.960
Mercury	3.300	1.320
Silver	6.360	2.640
Zinc	22.440	9.240
Oil and Grease	220.000	220.000
Total suspended solids	330.000	264.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(h) *Calcine Quench.*

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	24.470	10.030
Lead	4.928	2.288
Mercury	2.640	1.056
Silver	5.104	2.112
Zinc	17.950	7.392
Oil and Grease	176.000	176.000
Total suspended solids	264.000	211.200
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) *Stack Gas Cooling.*

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	5.769	2.366
Lead	1.162	0.540
Mercury	0.623	0.249
Silver	1.204	0.480
Zinc	4.233	1.743
Oil and Grease	41.500	41.500
Total suspended solids	62.250	41.500
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(j) *Hg Calcining Condensate.*

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	19.180	7.866
Lead	3.864	1.794
Mercury	2.070	0.828
Silver	4.002	1.656
Zinc	14.080	5.796
Oil and Grease	138.000	138.000
Total suspended solids	207.000	165.600

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(k) *Hg Cleaning Bath.*

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	1.946	0.798
Lead	0.392	0.182
Mercury	0.210	0.084
Silver	0.406	0.168
Zinc	1.428	0.588
Oil and Grease	14.000	14.000
Total suspended solids	21.000	16.800
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

§ 421.255 [Reserved]

§ 421.256 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary precious metals and mercury process wastewater introduced into a POTW shall not exceed the following values:

(a) *Smelter Wet Air Pollution Control.*

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold and silver smelted	
Arsenic	1.807	0.741
Lead	0.364	0.169
Mercury	0.195	0.078
Silver	0.377	0.156
Zinc	1.326	0.546

(b) *AgCl Reduction Spent Solution.*

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver produced by silver solution reduction	
Arsenic	0.556	0.228
Lead	0.112	0.052

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Mercury	0.060	0.024
Silver	0.116	0.048
Zinc	0.408	0.158

(c) *Electrolytic Cells Wet Air Pollution Control.*

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold refined electrolytically	
Arsenic	27.520	11.290
Lead	5.544	2.574
Mercury	2.970	1.188
Silver	5.742	2.376
Zinc	20.200	8.316

(d) *AgNO3 Electrolyte Preparation Wet Air Pollution Control.*

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver in electrolyte produced	
Arsenic	0.070	0.029
Lead	0.014	0.007
Mercury	0.006	0.003
Silver	0.015	0.006
Zinc	0.051	0.021

(e) *Ag Crystals Wash Water.*

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver crystals washed	
Arsenic	0.403	0.165
Lead	0.081	0.036
Mercury	0.044	0.017
Silver	0.084	0.035
Zinc	0.296	0.122

(f) *Gold Slimes Acid and Water Wash.*

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold slimes washed	
Arsenic	5.580	2.280
Lead	1.120	0.520
Mercury	0.600	0.240

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Silver	1.160	0.480
Zinc	4.080	1.680

(g) *Calciner Wet Air Pollution Control.*

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	30.520	12.540
Lead	6.160	2.560
Mercury	3.300	1.320
Silver	6.380	2.640
Zinc	22.440	9.240

(h) *Calcine Quench.*

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	24.470	10.050
Lead	4.926	2.268
Mercury	2.640	1.056
Silver	5.104	2.112
Zinc	17.950	7.392

(i) *Stack Gas Cooling.*

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	5.766	2.366
Lead	1.162	0.540
Mercury	0.623	0.249
Silver	1.204	0.498
Zinc	4.233	1.743

(j) *Hg Calcining Condensate.*

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	19.180	7.896
Lead	3.864	1.794
Mercury	2.070	0.828

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Silver	4.002	1.656
Zinc	14.080	5.796

(k) *Hg Cleaning Bath.*

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Arsenic	1.946	0.798
Lead	0.392	0.182
Mercury	0.210	0.084
Silver	0.406	0.168
Zinc	1.428	0.588

§ 421.257 [Reserved]

Subpart Z—Secondary Precious Metals Subcategory

§ 421.260 Applicability: description of the secondary precious metals subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of precious metals at secondary precious metals facilities.

§ 421.261 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "precious metals" shall mean gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium.

§ 421.262 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) *Furnace Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, routed through furnace	
Copper	136.400	71.800
Cyanide (total)	20.820	8.616
Zinc	104.800	43.800
Ammonia (as N)	9,583.000	4,205.000
Total suspended solids	2,944.000	1,400.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Raw Material Granulation.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metal contained in the raw material which is granulated	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Spent Plating Solutions.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/liter of spent plating solution used as a raw material	
Copper	1.900	1.000
Cyanide (total)	0.290	0.120
Zinc	1.460	0.610
Ammonia (as N)	133.300	54.500
Total suspended solids	41.000	19.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Spent Cyanide Stripping Solutions.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals produced by cyanide stripping	
Copper	2.640	1.100
Cyanide (total)	0.319	0.132
Zinc	1.606	0.671
Ammonia (as N)	146.800	64.420
Total suspended solids	45.100	21.450
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Refinery Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	30.000	21.000
Cyanide (total)	6.090	2.520
Zinc	30.660	12.810
Ammonia (as N)	2,802.000	1,230.000
Total suspended solids	861.000	400.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Gold Solvent Extraction Raffinate and Wash Water.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by solvent extraction process	
Copper	1.197	0.630
Cyanide (total)	0.183	0.076
Zinc	0.920	0.384
Ammonia (as N)	84.070	36.890
Total suspended solids	25.830	12.290
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Gold Spent Electrolyte.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by electrolytic refining	
Copper	0.017	0.009
Cyanide (total)	0.003	0.001
Zinc	0.013	0.005
Ammonia (as N)	1.160	0.510
Total suspended solids	0.357	0.170
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Gold Precipitation and Filtration.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold precipitated	
Copper	10.000	4.400
Cyanide (total)	1.276	0.528
Zinc	6.424	2.664
Ammonia (as N)	583.800	257.700
Total suspended solids	180.400	85.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Platinum Precipitation and Filtration.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of platinum precipitated	
Copper	9.850	5.200
Cyanide (total)	1.508	0.624
Zinc	7.592	3.172
Ammonia (as N)	693.600	304.500
Total suspended solids	213.200	101.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Palladium Precipitation and Filtration.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	6.650	3.500
Cyanide (total)	1.015	0.420
Zinc	5.110	2.135
Ammonia (as N)	467.000	205.000
Total suspended solids	143.500	68.250
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Other Platinum Group Metals Precipitation and Filtration.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or Pollutant Property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of other platinum group metals precipitated	
Copper	9.850	5.200
Cyanide (total)	1.508	0.624
Zinc	7.592	3.172
Ammonia (as N)	693.600	304.500
Total suspended solids	213.200	101.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Spent Solutions from PGC Salt Production.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or Pollutant Property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold contained in PGC product	
Copper	1.710	0.900
Cyanide (total)	0.261	0.108
Zinc	1.314	0.549
Ammonia (as N)	120.100	52.700
Total suspended solids	36.900	17.550
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Equipment and Floor Wash.*

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or Pollutant Property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of other precious metals, including silver, produced in refinery	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.263 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) *Furnace Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or Pollutant Property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, routed through furnace	
Copper	5.760	2.745
Cyanide (total)	0.900	0.360
Zinc	4.590	1.890
Ammonia (as N)	800.500	263.500

(b) *Raw Material Granulation.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or Pollutant Property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals contained in the raw material which is granulated	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(c) *Spent Plating Solutions.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or Pollutant Property	Maximum for any 1 day	Maximum for monthly average
	mg/liter of spent plating solution used as a raw material	
Copper	1.280	0.610
Cyanide (total)	0.200	0.090
Zinc	1.020	0.420
Ammonia (as N)	133.300	58.900

(d) *Spent Cyanide Stripping Solutions.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals produced by cyanide stripping	
Copper	1.408	0.671
Cyanide (total)	0.220	0.088
Zinc	1.122	0.462
Ammonia (as N)	146.800	64.420

(e) *Refinery Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	1.280	0.610
Cyanide (total)	0.200	0.090
Zinc	1.020	0.420
Ammonia (as N)	133.300	58.900

(f) *Gold Solvent Extraction Raffinate and Wash Water.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by solvent extraction process	
Copper	0.806	0.384
Cyanide (total)	0.126	0.051
Zinc	0.643	0.265
Ammonia (as N)	84.070	36.890

(g) *Gold Spent Electrolyte.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by electrolytic refining	
Copper	0.011	0.005
Cyanide (total)	0.022	0.001
Zinc	0.009	0.004
Ammonia (as N)	1.160	0.510

(h) *Gold Precipitation and Filtration.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold precipitated	
Copper	5.632	2.664
Cyanide (total)	0.880	0.352
Zinc	4.488	1.848
Ammonia (as N)	583.800	257.700

(i) *Platinum Precipitation and Filtration.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of platinum precipitated	
Copper	6.656	3.172
Cyanide (total)	1.040	0.416
Zinc	5.304	2.184
Ammonia (as N)	690.900	304.300

(j) *Palladium Precipitation and Filtration.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	4.450	2.135
Cyanide (total)	0.700	0.280
Zinc	3.570	1.470
Ammonia (as N)	467.000	205.000

(k) *Other Platinum Group Metals Precipitation and Filtration.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of other platinum group metals precipitated	
Copper	6.656	3.172
Cyanide (total)	1.040	0.416
Zinc	5.304	2.184
Ammonia (as N)	[illegible]	304.500

(l) *Spent Solutions from PGC Salt Production.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold contained in PGC product	
Copper	1.152	0.545
Cyanide (total)	0.180	0.072
Zinc	0.918	0.378
Ammonia (as N)	120.100	52.700

(m) *Equipment and Floor Wash.*

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

§ 421.264 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Furnace Wet Air Pollution Control.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, routed through furnace	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Raw Material Granulation.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, contained in the raw material which is granulated	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Spent Plating Solutions.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/liter of spent plating solution used as a raw material	
Copper	1.280	0.610
Cyanide (total)	0.200	0.080
Zinc	1.020	0.420
Ammonia (as N)	133.300	58.600
Total suspended solids	15.000	12.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Spent Cyanide Stripping Solutions.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals produced by cyanide stripping	
Copper	1.408	0.671
Cyanide (total)	0.220	0.088
Zinc	1.122	0.462
Ammonia (as N)	146.800	64.430
Total suspended solids	16.500	13.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Refinery Wet Air Pollution Control.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	1.280	0.610
Cyanide (total)	0.200	0.080
Zinc	1.020	0.420
Ammonia (as N)	133.300	58.600
Total suspended solids	15.000	12.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Gold Solvent Extraction Raffinate and Wash Water.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by solvent extraction process	
Copper	0.606	0.384
Cyanide (total)	0.126	0.051
Zinc	0.643	0.265
Ammonia (as N)	84.070	38.500
Total suspended solids	9.450	7.560
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Gold Spent Electrolyte.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by electrolytic refining	
Copper	0.011	0.005
Cyanide (total)	0.002	0.001
Zinc	0.008	0.004
Ammonia (as N)	1.160	0.510
Total suspended solids	0.131	0.104
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Gold Precipitation and Filtration.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold precipitated	
Copper	5.632	2.684
Cyanide (total)	0.880	0.352
Zinc	4.488	1.848
Ammonia (as N)	583.800	257.700
Total suspended solids	66.000	52.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Platinum Precipitation and Filtration.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of platinum precipitated	
Copper	6.656	3.172
Cyanide (total)	1.040	0.416
Zinc	5.304	2.184
Ammonia (as N)	803.900	304.500
Total suspended solids	78.000	62.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Palladium Precipitation and Filtration.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	4.460	2.135
Cyanide (total)	0.700	0.280
Zinc	3.570	1.470
Ammonia (as N)	467.000	205.000
Total suspended solids	52.500	42.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Other Platinum Group Metals Precipitation and Filtration.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of other platinum group metals precipitated	
Copper	6.656	3.172
Cyanide (total)	1.040	0.416
Zinc	5.304	2.184
Ammonia (as N)	693.900	304.500
Total suspended solids	78.000	62.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Spent Solutions from PCG Salt Production.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold contained in PGC product	
Copper	1.152	0.548
Cyanide (total)	0.160	0.072
Zinc	0.918	0.378
Ammonia (as N)	120.100	52.700
Total suspended solids	13.500	10.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Equipment and Floor Wash.*

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.265 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in secondary precious metals process wastewater introduced into a POTW must not exceed the following values:

(a) *Furnace Wet Air Pollution Control.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, routed through furnace	
Copper	5.760	2.745
Cyanide (total)	0.900	0.360
Zinc	4.590	1.890
Ammonia (as N)	600.500	263.500

(b) *Raw Material Granulation.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals contained in the raw material which is granulated	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(c) *Spent Plating Solutions.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/liter of spent plating solution used as a raw material	
Copper	1.280	0.610
Cyanide (total)	0.200	0.080
Zinc	1.020	0.420
Ammonia (as N)	133.300	58.600

(d) *Spent Cyanide Stripping Solutions.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals produced by cyanide stripping	
Copper	1.406	0.671
Cyanide (total)	0.220	0.088
Zinc	1.122	0.462
Ammonia (as N)	146.600	64.420

(e) *Refinery Wet Air Pollution Control.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	1.280	0.610
Cyanide (total)	0.200	0.080
Zinc	1.020	0.420
Ammonia (as N)	133.300	58.600

(f) *Gold Solvent Extraction Raffinate and Wash Water.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by solvent extraction process	
Copper	0.806	0.384
Cyanide (total)	0.126	0.051
Zinc	0.643	0.265
Ammonia (as N)	84.070	36.890

(g) *Gold Spent Electrolyte.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by electrolytic refining	
Copper	0.011	0.005
Cyanide (total)	0.002	0.001
Zinc	0.009	0.004
Ammonia (as N)	1.160	0.510

(h) *Gold Precipitation and Filtration.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold precipitated	
Copper	5.[illegible]	[illegible]684
Cyanide (total)	0.[illegible]	0.352
Zinc	4.[illegible]	1.848
Ammonia (as N)	583.[illegible]	257.700

(i) *Platinum Precipitation and Filtration.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of platinum precipitated	
Copper	6.656	3.172
Cyanide (total)	[illegible]040	0.416
Zinc	5.[illegible]	2.184
Ammonia (as N)	[illegible]	[illegible]

(j) *Palladium Precipitation and Filtration.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	4.[illegible]	2.135
Cyanide (total)	0.[illegible]	[illegible]
Zinc	3.[illegible]	1.470
Ammonia (as N)	467.[illegible]	[illegible].500

(k) *Other Platinum Group Metals Precipitation and Filtration.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of other platinum group metals precipitated	
Copper	6.656	3.172
Cyanide (total)	1.[illegible]	0.416
Zinc	[illegible]	2.184
Ammonia (as N)	[illegible]	[illegible].500

(l) *Spent Solutions from PGC Salt Production.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold contained in PGC product	
Copper	1.152	0.549
Cyanide (total)	0.180	0.072
Zinc	0.918	0.378
Ammonia (as N)	120.100	52.700

(m) *Equipment and Floor Wash.*

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	0.000	0.000
Cyanide (total)	[illegible]	[illegible]
Zinc	0.000	[illegible]
Ammonia (as N)	0.000	[illegible]

§ 421.266 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary precious metals process wastewater introduced into a POTW shall not exceed the following values:

(a) *Furnace Wet Air Pollution Control.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, routed through furnace	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(b) *Raw Material Granulation.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals contained in the raw material which is granulated	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia (as N)	0.000	0.000

(c) *Spent Plating Solutions.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/liter of spent plating solution used as a raw material	
Copper	1.280	0.610
Cyanide (total)	0.200	0.080
Zinc	1.020	0.420
Ammonia (as N)	133.300	58.600

(d) *Spent Cyanide Stripping Solutions.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals produced by cyanide stripping	
Copper	1.408	0.671
Cyanide (total)	0.220	0.088
Zinc	1.122	0.462
Ammonia (as N)	146.800	64.420

(e) *Refinery Wet Air Pollution Control.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	1.280	0.610
Cyanide (total)	0.200	0.080
Zinc	1.020	0.420
Ammonia (as N)	133.300	58.600

(f) *Gold Solvent Extraction Raffinate and Wash Water.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by solvent extraction process	
Copper	0.606	0.384
Cyanide (total)	0.126	0.051
Zinc	0.643	0.265
Ammonia (as N)	84.070	36.890

(g) *Gold Spent Electrolyte.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by electrolytic refining	
Copper	0.011	0.005
Cyanide (total)	0.002	0.001
Zinc	0.009	0.004
Ammonia (as N)	1.160	0.510

(h) *Gold Precipitation and Filtration.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold precipitated	
Copper	5.632	2.664
Cyanide (total)	0.880	0.352
Zinc	4.485	1.848
Ammonia (as N)	583.800	257.700

(i) *Platinum Precipitation and Filtration.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of platinum precipitated	
Copper	6.656	3.172
Cyanide (total)	1.040	0.416
Zinc	5.304	2.184
Ammonia (as N)	690.900	304.500

(j) *Palladium Precipitation and Filtration.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	4.480	2.135
Cyanide (total)	0.700	0.280
Zinc	3.570	1.470
Ammonia (as N)	467.000	205.000

(k) *Other Platinum Group Metals Precipitation and Filtration.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of other platinum group metals precipitated	
Coppepr	6.656	3.172
Cyanide (total)	1.040	0.416
Zinc	5.304	2.184
Ammonia (as N)	690.900	304.500

(l) *Spent Solutions from PGC Salt Production.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold contained in PGC product	
Copper	1.152	0.549
Cyanide (total)	0.180	0.072
Zinc	0.918	0.378
Ammonia (as N)	120.100	52.700

(m) *Equipment and Floor Wash.*

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

§ 421.267 [Reserved]

Subpart AA—Primary Rare Earth Metals Subcategory

§ 421.270 Applicability: Description of the primary rare earth metals subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of rare earth metals and mischmetal by primary rare earth metals facilities processing rare earth metal oxides, chlorides, and fluorides.

§ 421.271 Specialized definitions.

In addition to what is provided below:

(a) The general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "rare earth metals" refers to the elements scandium, yttrium, and lanthanum to lutetium, inclusive.

(c) The term "mischmetal" refers to a rare earth metal alloy comprised of the natural mixture of rare earths to about 94–99 percent. The balance of the alloy includes traces of other elements and one to two percent iron.

§ 421.272 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) *Dehydration Furnace Quench and Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Chromium (total)	6.512	2.664
Lead	6.216	2.960
Nickel	29.420	18.500
Total suspended solids	592.000	288.600
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(b) *Electrolytic Reduction Cell Quench.*

BPT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Chromium (total)	7.216	2.952
Lead	6.888	3.280
Nickel	31.490	20.830
Total suspended solids	672.400	319.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) *Electrolytic Reduction Cell Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

§ 421.273 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) *Dehydration Furnace Quench and Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene	0.015	0.015
Chromium (total)	0.548	0.222
Lead	0.414	0.192
Nickel	0.814	0.548

(b) *Electrolytic Reduction Cell Quench.*

BAT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Hexachlorobenzene	0.016	0.016
Chromium (total)	0.607	0.246
Lead	0.459	0.213
Nickel	0.902	0.607

(c) *Electrolytic Reduction Cell Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Hexachlorobenzene	0.000	0.000
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000

§ 421.274 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Dehydration Furnace Quench and Wet Air Pollution Control.*

NSPS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene	0.015	0.015
Chromium (total)	0.548	0.222
Lead	0.414	0.192
Nickel	0.814	0.548
Total suspended solids	22.200	17.760
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Electrolytic Reduction Cell Quench.*

NSPS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Hexachlorobenzene	0.016	0.016
Chromium (total)	0.607	0.246
Lead	0.459	0.213
Nickel	0.902	0.607
Total suspended solids	24.600	19.680
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Electrolytic Reduction Cell Wet Air Pollution Control.*

NSPS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Hexachlorobenzene	0.000	0.000
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.275 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in primary rare earth metals process wastewater introduced into a POTW must not exceed the following values:

(a) *Dehydration Furnace Quench and Wet Air Pollution Control.*

PSES FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene	0.015	0.015
Chromium (total)	0.548	0.222
Lead	0.414	0.192
Nickel	0.814	0.548

(b) *Electrolytic Reduction Cell Quench.*

PSES FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Hexachlorobenzene	0.016	0.016
Chromium (total)	0.607	0.246
Lead	0.459	0.213
Nickel	0.902	0.607

(c) *Electrolytic Reduction Cell Wet Air Pollution Control.*

PSES FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Hexachlorobenzene	0.000	0.000
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000

§ 421.276 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary rare earth metals process wastewater introduced into a POTW shall not exceed the following values:

(a) *Dehydration Furnace Quench and Wet Air Pollution Control.*

PSNS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene [2]	0.015	0.015
Chromium (total)	0.548	0.222
Lead	0.414	0.192
Nickel	0.814	0.548

(b) *Electrolytic Reduction Cell Quench.*

PSNS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Hexachlorobenzene	0.016	0.016
Chromium (total)	0.607	0.246
Lead	0.459	0.213
Nickel	0.902	0.607

(c) *Electrolytic Reduction Cell Wet Air Pollution Control.*

PSNS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Hexachlorobenzene	0.000	0.000
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000

§ 421.277 [Reserved]

Subpart AB—Secondary Tantalum Subcategory

§ 421.280 Applicability: Description of the secondary tantalum subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of tantalum at secondary tantalum facilities.

§ 421.281 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.282 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) *Tantalum Alloy Leach and Rinse.*

BPT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	426.250	200.600
Lead	96.850	45.120
Nickel	842.900	252.900
Zinc	336.700	140.700
Total suspended solids	9,455.000	4,497.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Capacitor Leach and Rinse.*

BPT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced from leaching	
Copper	38.380	20.200
Lead	8.484	4.040
Nickel	38.790	25.660
Zinc	29.490	12.320
Total suspended solids	828.200	393.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Tantalum Sludge Leach and Rinse.*

BPT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	390.100	205.300
Lead	88.230	41.060
Nickel	394.200	260.800
Zinc	299.800	125.300
Total suspended solids	8,418.000	4,004.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Tantalum Powder Acid Wash and Rinse.*

BPT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	0.668	0.350
Lead	0.147	0.070
Nickel	0.672	0.445
Zinc	0.511	0.214
Total suspended solids	14.350	6.825
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Leaching Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	9.272	4.060
Lead	2.050	0.978
Nickel	9.370	6.198
Zinc	7.125	2.977
Total suspended solids	200.100	95.160
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.283 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) *Tantalum Alloy Leach and Rinse.*

BAT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	295.350	140.700
Lead	64.570	28.080
Nickel	126.900	85.320
Zinc	235.200	98.280

(b) *Capacitor Leach and Rinse.*

BAT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced from leaching	
Copper	[illegible]	12.320
Lead	5.656	2.626
Nickel	11.110	7.474
Zinc	20.610	[illegible]

(c) *Tantalum Sludge Leach and Rinse.*

BAT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	[illegible]	125.300
Lead	57.490	[illegible]
Nickel	112.900	75.960
Zinc	[illegible]	[illegible]

(d) *Tantalum Powder Acid Wash and Rinse.*

BAT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	[illegible]	0.214
Lead	0.098	0.046
Nickel	0.193	0.130
Zinc	0.357	0.147

(e) *Leaching Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	6.247	2.977
Lead	1.367	[illegible]
Nickel	2.684	1.806
Zinc	4.978	2.050

§ 421.284 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Tantalum Alloy Leach and Rinse.*

NSPS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	[illegible]	140.700
Lead	64.570	29.960
Nickel	126.900	85.320
Zinc	235.200	[illegible]
Total suspended solids	3,459.000	2,767.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Capacitor Leach and Rinse.*

NSPS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced from leaching	
Copper	[illegible]	12.320
Lead	5.656	2.626
Nickel	11.110	7.474
Zinc	20.610	8.484
Total suspended solids	303.000	242.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Tantalum Sludge Leach and Rinse.*

NSPS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	[illegible]	125.300
Lead	57.490	[illegible]
Nickel	112.900	75.960
Zinc	[illegible]	[illegible]
Total suspended solids	3,080.000	2,464.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Tantalum Powder Acid Wash and Rinse.*

NSPS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	[illegible]	0.214
Lead	[illegible]	0.046
Nickel	[illegible]	[illegible]
Zinc	0.357	0.147
Total suspended solids	5.250	4.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Leaching Wet Air Pollution Control.*

NSPS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	6.247	2.977
Lead	1.367	[illegible]
Nickel	2.684	[illegible]
Zinc	4.978	2.050
Total suspended solids	73.200	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 412.285 [Reserved]

§ 421.286 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary tantalum process wastewater introduced into a POTW shall not exceed the following values:

(a) *Tantalum Alloy Leach and Rinse.*

PSNS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	295.200	140.700
Lead	64.570	29.960
Nickel	126.900	85.320
Zinc	235.200	96.850

(b) *Capacitor Leach and Rinse.*

PSNS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced from leaching	
Copper	[illegible]	12.320
Lead	[illegible]	2.626
Nickel	11.110	7.474
Zinc	20.610	[illegible]

(c) *Tantalum Sludge Leach and Rinse.*

PSNS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	282.500	125.300
Lead	57.490	25.500
Nickel	112.900	75.960
Zinc	209.400	86.250

(d) *Tantalum Powder Acid Wash and Rinse.*

PSNS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maxiumum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	0.448	0.214
Lead	0.098	0.046
Nickel	0.193	0.130
Zinc	0.357	0.147

(e) *Leaching Wet Air Pollution Control.*

PSNS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maxiumum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	6.247	2.977
Lead	1.367	0.634
Nickel	3.884	1.806
Zinc	4.978	2.050

§ 421.287 [Reserved]

Subpart AC—Primary and Secondary Tin Subcategory

§ 421.290 Applicability: Description of the primary and secondary tin subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of tin at primary and secondary tin facilities.

§ 421.291 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.292 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) *Smelter Scrubber.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	82.190	27.740
Lead	9.102	4.334
Nickel	41.610	27.520
Cyanide (total)	5.265	2.601
Ammonia (as N)	1,892.000	1,269.00
Fluoride	758.500	403.400
Tin	106.800	43.780
Total suspended solids	896.500	422.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Dealuminizing Rinse.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutan or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized scrap produced	
Antimony	0.101	0.045
Lead	0.015	0.007
Nickel	0.067	0.044
Cyanide (total)	0.010	0.004
Ammonia (as N)	4.670	2.050
Fluoride	1.225	0.700
Tin	0.172	0.071
Total suspended solids	1.435	0.580
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Tin Hydroxide Wash.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin hydroxide washed	
Antimony	34.310	15.300
Lead	5.020	2.391
Nickel	22.950	15.180
Cyanide (total)	3.467	1.435
Ammonia (as N)	1,595.000	700.000
Fluoride	418.400	230.100
Tin	58.810	24.150
Total suspended solids	490.100	232.100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Spent Electrowinning Solution from New Scrap.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of electrolytic tin produced	
Antimony	46.225	21.510
Lead	7.056	3.350
Nickel	23.250	21.340
Cyanide (total)	4.872	2.016
Ammonia (as N)	2,242.000	953.800
Fluoride	536.000	536.000
Tin	82.560	33.940
Total suspended solids	696.600	327.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Spent Electrowinning Solution from Municipal Solid Waste.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of detinned MSW scrap processed	
Antimony	0.342	0.152
Lead	0.052	0.024
Nickel	0.226	0.151
Cyanide (total)	0.035	0.014
Ammonia (as N)	15.890	6.970
Fluoride	4.165	2.360
Tin	0.598	0.240
Total suspended solids	4.979	2.321
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Tin Mud Acid Neutralization Filtrate.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of neutralized dewatered tin mud produced	
Antimony	14.490	6.480
Lead	2.120	1.010
Nickel	9.690	6.410
Cyanide (total)	1.464	0.606
Ammonia (as N)	673.500	295.900
Fluoride	176.700	101.200
Tin	24.830	10.200
Total suspended solids	206.300	98.420
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Tin Hydroxide Supernatant from Scrap.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	[illegible]	71.220
Lead	[illegible]	11.130
Nickel	[illegible]	[illegible]
Cyanide (total)	[illegible]	6.677
Ammonia (as N)	7,427.000	3,259.000
Fluoride	[illegible]	1,113.000
Tin	[illegible]	112.400
Total suspended solids	2,281.000	1,085.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Tin Hydroxide Supernatant from Spent Plating Solutions.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	[illegible]	48.610
Lead	15.950	7.596
Nickel	72.920	48.200
Cyanide (total)	11.020	[illegible]
Ammonia (as N)	5,067.000	[illegible]
Fluoride	1,329.000	759.600
Tin	[illegible]	76.720
Total suspended solids	1,557.000	740.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Tin Hydroxide Supernatant from Sludge Solids.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	477.500	213.000
Lead	69.870	33.270
Nickel	319.400	211.300
Cyanide (total)	48.250	19.970
Ammonia (as N)	[illegible]	9,743.000
Fluoride	5,823.000	3,327.000
Tin	818.800	[illegible]
Total suspended solids	6,821.000	3,244.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Tin Hydroxide Filtrate.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	[illegible]	32.060
Lead	10.520	[illegible]

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	48.000	31.810
Cyanide (total)	7.263	[illegible]
Ammonia (as N)	3,342.000	1,467.000
Fluoride	576.600	500.900
Tin	123.200	50.590
Total suspended solids	1,027.000	468.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.293 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) *Smelter Scrubber.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	41.830	[illegible]
Lead	6.068	2.817
Nickel	11.920	[illegible]
Cyanide (total)	4.334	1.734
Ammonia (as N)	2,892.000	1,269.000
Fluoride	756.500	[illegible]
Tin	71.420	[illegible]

(b) *Dealuminizing Rinse.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized scrap produced	
Antimony	[illegible]	[illegible]
Lead	[illegible]	[illegible]
Nickel	0.019	0.013
Cyanide (total)	0.007	[illegible]
Ammonia (as N)	4.670	2.050
Fluoride	1.225	0.700
Tin	0.120	0.050

(c) *Tin Hydroxide Wash.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin hydroxide washed	
Antimony	23.070	10.280
Lead	3.347	1.554
Nickel	6.574	4.423
Cyanide (total)	2.391	0.957
Ammonia (as N)	1,595.000	700.000
Fluoride	418.400	239.100
Tin	[illegible]	16.180

(d) *Spent Electrowinning Solution from New Scrap.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of electrolytic tin produced	
Antimony	32.430	14.450
Lead	4.704	2.184
Nickel	[illegible]	6.216
Cyanide (total)	[illegible]	1.344
Ammonia (as N)	2,242.000	[illegible]
Fluoride	588.000	336.000
Tin	55.380	22.740

(e) *Spent Electrowinning Solution from Municipal Solid Waste.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized MSW scrap processed	
Antimony	0.230	0.102
Lead	0.033	0.015
Nickel	0.065	[illegible]
Cyanide (total)	0.024	[illegible]
Ammonia (as N)	15.860	[illegible]
Fluoride	4.165	[illegible]
Tin	0.390	0.160

(f) *Tin Mud Acid Neutralization Filtrate.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of neutralized dewatered tin mud produced	
Antimony	9.741	4.341
Lead	1.413	0.656
Nickel	2.776	[illegible]
Cyanide (total)	1.010	0.404
Ammonia (as N)	673.500	295.600
Fluoride	176.700	101.000
Tin	16.640	5.830

(g) *Tin Hydroxide Supernatant from Scrap.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	107.400	47.850
Lead	15.580	7.233
Nickel	30.600	20.590
Cyanide (total)	11.130	4.451
Ammonia (as N)	7,427.000	3,259.000
Fluoride	1,948.000	1,113.000
Tin	183.500	75.310

(h) *Tin Hydroxide Supernatant from Spent Plating Solutions.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	73.300	32.660
Lead	10.640	4.937
Nickel	20.890	14.050
Cyanide (total)	7.600	3.039
Ammonia (as N)	5,067.000	2,223.000
Fluoride	1,329.000	759.600
Tin	125.200	51.400

(i) *Tin Hydroxide Supernatant from Sludge Solids.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	321.100	143.100
Lead	46.580	21.630
Nickel	91.500	61.560
Cyanide (total)	33.280	13.310
Ammonia (as N)	22,200.000	9,743.000
Fluoride	5,823.000	3,327.000
Tin	548.400	225.190

(j) *Tin Hydroxide Filtrate.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	48.340	21.540
Lead	7.013	3.256
Nickel	13.780	9.266
Cyanide (total)	5.009	2.003
Ammonia (as N)	3,342.000	1,467.000
Fluoride	876.600	500.900

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Tin	82.540	33.909

§ 421.294 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Smelter Scrubber.*

NSPS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	41.830	18.840
Lead	6.056	2.817
Nickel	11.920	8.018
Cyanide (total)	4.334	1.734
Ammonia (as N)	2,892.000	1,269.000
Fluoride	758.500	433.400
Tin	71.420	29.330
Total suspended solids	325.100	260.100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Dealuminizing Rinse.*

NSPS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized scrap produced	
Antimony	0.058	0.024
Lead	0.010	0.005
Nickel	0.019	0.013
Cyanide (total)	0.007	0.003
Ammonia (as N)	4.670	2.050
Fluoride	1.225	0.700
Tin	0.120	0.050
Total suspended solids	0.525	0.420
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Tin Hydroxide Wash.*

NSPS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin hydroxide washed	
Antimony	23.070	10.280
Lead	3.347	1.554
Nickel	6.574	4.423
Cyanide (total)	2.391	0.957
Ammonia (as N)	1,595.000	700.500
Fluoride	418.400	239.100
Tin	39.400	16.180
Total suspended solids	179.300	143.500

NSPS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Spent Electrowinning Solution from New Scrap.*

NSPS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of electrolytic tin produced	
Antimony	32.430	14.450
Lead	4.704	2.184
Nickel	9.240	6.216
Cyanide (total)	3.360	1.344
Ammonia (as N)	2,242.000	983.800
Fluoride	585.000	336.000
Tin	55.380	22.740
Total suspended solids	252.000	201.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Spent Electrowinning Solution from Municipal Solid Waste.*

NSPS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of reclaimed MSW scrap processed	
Antimony	0.230	0.102
Lead	0.041	0.015
Nickel	0.095	0.044
Cyanide (total)	0.024	0.010
Ammonia (as N)	15.880	6.970
Fluoride	4.165	2.380
Tin	0.090	0.160
Total suspended solids	1.785	1.428
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Tin Mud Acid Neutralization Filtrate.*

NSPS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of neutralized dewatered tin mud produced	
Antimony	9.741	4.341
Lead	1.413	0.656
Nickel	2.776	1.868
Cyanide (total)	1.010	0.404
Ammonia (as N)	673.500	295.600
Fluoride	176.700	101.000
Tin	16.640	6.830
Total suspended solids	75.710	60.570
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Tin Hydroxide Supernatant from Scrap.*

NSPS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	107.400	47.850
Lead	15.580	[illegible]
Nickel	[illegible]	[illegible]
Cyanide (total)	11.130	4.451
Ammonia (as N)	7,427.000	3,259.000
Fluoride	1,948.000	1,113.000
Tin	[illegible]	75.310
Total suspended solids	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Tin Hydroxide Supernatant from Spent Plating Solutions.*

NSPS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	73.300	32.660
Lead	10.640	4.937
Nickel	20.890	14.050
Cyanide (total)	7.600	[illegible]
Ammonia (as N)	5,067.000	2,223.000
Fluoride	1,329.000	[illegible]
Tin	125.200	51.400
Total suspended solids	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Tin Hydroxide Supernatant from Sludge Solids.*

NSPS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	321.100	143.100
Lead	[illegible]	21.630
Nickel	[illegible]	[illegible]
Cyanide (total)	33.280	13.310
Ammonia (as N)	[illegible]	9,743.000
Fluoride	[illegible]	3,327.000
Tin	[illegible]	[illegible]
Total suspended solids	[illegible]	1,997.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Tin Hydroxide Filtrate.*

NSPS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	[illegible]	21.540
Lead	7.013	[illegible]
Nickel	13.780	9.266
Cyanide (total)	5.009	[illegible]
Ammonia (as N)	3,342.000	1,467.000
Fluoride	[illegible]	[illegible]
Tin	[illegible]	[illegible]
Total suspended solids	375.700	300.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.295 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in primary and secondary tin process wastewater introduced into a POTW must not exceed the following values:

(a) *Smelter Scrubber.*

PSES FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	41.830	178.640
Lead	[illegible]	2.817
Nickel	11.920	[illegible]
Cyanide (total)	4.334	1.734
Ammonia (as N)	2,892.000	1,269.000
Fluoride	[illegible]	[illegible]
Tin	71.420	[illegible]

(b) *Dealuminizing Rinse.*

PSES FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized scrap produced	
Antimony	0.068	0.030
Lead	0.010	0.005
Nickel	0.019	0.013
Cyanide (total)	0.007	0.003
Ammonia (as N)	4.670	2.050
Fluoride	1.225	0.700
Tin	0.120	0.050

(c) *Tin Hydroxide Wash.*

PSES FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin hydroxide washed	
Antimony	[illegible]	10.280
Lead	3.347	1.554
Nickel	6.574	4.423
Cyanide (total)	2.391	0.957
Ammonia (as N)	1,595.000	[illegible]
Fluoride	418.400	[illegible]
Tin	[illegible]	16.180

(d) *Spent Electrowinning Solution from New Scrap.*

PSES FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of electrolytic tin produced	
Antimony	[illegible]	14.450
Lead	4.704	2.184
Nickel	9.240	6.216
Cyanide (total)	[illegible]	1.344
Ammonia (as N)	2,242.000	983.800
Fluoride	[illegible]	336.000
Tin	[illegible]	22.740

(e) *Spent Electrowinning Solution from Municipal Solid Waste.*

PSES FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized MSW scrap processed	
Antimony	[illegible]	0.102
Lead	[illegible]	0.015
Nickel	0.065	0.044
Cyanide (total)	[illegible]	[illegible]
Ammonia (as N)	15.680	[illegible]
Fluoride	4.165	[illegible]
Tin	[illegible]	0.160

(f) *Tin Mud Acid Neutralization Filtrate*

PSES FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of neutralized dewatered tin mud produced	
Antimony	9.741	4.341
Lead	1.413	[illegible]
Nickel	2.776	[illegible]
Cyanide (total)	1.010	[illegible]
Ammonia (as N)	[illegible]	295.600
Fluoride	[illegible]	101.000
Tin	16.840	[illegible]

(g) *Tin Hydroxide Supernatant from Scrap.*

PSES FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	107.400	47.850
Lead	15.580	7.233
Nickel	30.600	20.590
Cyanide (total)	11.130	4.451
Ammonia (as N)	7,427.000	3,259.000
Fluoride	1,948.000	1,113.000
Tin	183.500	75.310

(h) *Tin Hydroxide Supernatant from Spent Plating Solutions.*

PSES FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	73.300	32.660
Lead	10.640	4.937
Nickel	20.890	14.050
Cyanide (total)	7.606	3.039
Ammonia (as N)	5,067.000	2,223.000
Fluoride	1,329.000	759.600
Tin	125.200	51.400

(i) *Tin Hydroxide Supernatant from Sludge Solids.*

PSES FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	321.100	143.100
Lead	46.580	21.630
Nickel	91.500	61.560
Cyanide (total)	33.280	13.310
Ammonia (as N)	22,200.000	9,743.000
Fluoride	5,823.000	3,327.000
Tin	548.400	225.190

(j) *Tin Hydroxide Filtrate.*

PSES FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	48.340	21.540
Lead	7.013	3.256
Nickel	13.780	9.266
Cyanide (total)	5.009	2.003
Ammonia (as N)	3,342.000	1,467.000
Fluoride	876.600	500.900

PSES FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Tin	82.540	33.950

§ 421.296 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary and secondary tin process wastewater introduced into a POTW shall not exceed the following values:

(a) *Smelter Scrubber.*

PSNS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum of any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	41.830	18.540
Lead	6.056	2.817
Nickel	11.920	8.016
Cyanide (total)	4.334	1.734
Ammonia (as N)	2,892.000	1,269.000
Fluoride	756.500	433.400
Tin	71.420	29.330

(b) *Dealuminizing Rinse.*

PSNS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum of any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized scrap produced	
Antimony	0.066	0.030
Lead	0.010	0.005
Nickel	0.019	0.013
Cyanide (total)	0.007	0.003
Ammonia (as N)	4.670	2.050
Fluoride	1.225	0.700
Tin	0.120	0.050

(c) *Tin Hydroxide Wash.*

PSNS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum of any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin hydroxide washed	
Antimony	23.070	10.220
Lead	3.347	1.554
Nickel	6.574	4.423
Cyanide (total)	2.391	0.957

PSNS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum of any 1 day	Maximum for monthly average
Ammonia (as N)	1,595.000	697.000
Fluoride	418.400	238.100
Tin	39.400	16.190

(d) *Spent Electrowinning Solution From New Scrap.*

PSNS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum of any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of electrolytic tin produced	
Antimony	32.450	14.450
Lead	4.704	2.164
Nickel	5.240	6.216
Cyanide (total)	3.300	1.344
Ammonia (as N)	2,242.000	983.800
Fluoride	588.000	336.000
Tin	55.380	22.740

(e) *Spent Electrowinning Solution From Municipal Solid Waste.*

PSNS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum of any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized MSW scrap processed	
Antimony	0.250	0.102
Lead	0.033	0.015
Nickel	0.065	0.044
Cyanide (total)	0.024	0.009
Ammonia (as N)	15.880	6.970
Fluoride	4.165	2.390
Tin	0.390	0.160

(f) *Tin Mud Acid Neutralization Filtrate.*

PSNS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum of any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of neutralized dewatered tin mud produced	
Antimony	9.741	4.341
Lead	1.413	0.656
Nickel	2.776	1.908
Cyanide (total)	1.010	0.404
Ammonia (as N)	673.500	295.600
Fluoride	176.700	101.000
Tin	16.640	6.830

(g) *Tin Hydroxide Supernatant From Scrap.*

PSNS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	107.400	47.850
Lead	15.580	7.233
Nickel	30.600	20.590
Cyanide (total)	11.130	4.451
Ammonia (as N)	7,427.000	3,259.000
Fluoride	1,948.000	1,113.000
Tin	183.500	75.310

(h) *Tin Hydroxide Supernatant From Spent Plating Solutions.*

PSNS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	73.300	32.665
Lead	10.640	4.937
Nickel	20.890	14.050
Cyanide (total)	7.600	3.039
Ammonia (as N)	5,067.000	2,223.000
Fluoride	1,329.000	759.600
Tin	125.200	51.400

(i) *Tin Hydroxide Supernatant From Sludge Solids.*

PSNS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	321.100	143.100
Lead	46.720	21.630
Nickel	91.500	61.580
Cyanide (total)	33.280	13.310
Ammonia (as N)	22,200.000	9,743.000
Fluoride	5,823.000	3,327.000
Tin	548.400	225.150

(j) *Tin Hydroxide Filtrate.*

PSNS FOR THE PRIMARY AND SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Antimony	48.348	21.540
Lead	7.018	3.256
Nickel	13.755	9.256
Cyanide (total)	5.009	2.003
Ammonia (as N)	3,342.000	1,467.000
Fluoride	876.600	500.900
Tin	82.540	33.900

§ 421.297 [Reserved]

Subpart AD—Primary and Secondary Titanium Subcategory

§ 421.300 Applicability: description of the primary and secondary titanium subcategory.

(a) The provisions of this subpart are applicable to discharges resulting from the production of titanium at primary and secondary titanium facilities.

(b) There are two levels of BPT, BAT, NSPS, PSES, and PSNS provisions for this subpart. Level A is applicable to facilities which practice vacuum distillation for sponge purification and which do not practice electrolytic recovery of magnesium. Level B is applicable to all other primary and secondary titanium facilities.

§ 421.301 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.302 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) **Level A.**

(1) *Chlorination Off-Gas Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.412	0.169
Lead	0.393	0.187
Nickel	1.797	1.189
Thallium	1.919	0.786
Fluoride	32.760	18.720
Titanium	0.412	0.169
Oil and Grease	18.720	11.230
Total suspended solids	36.360	18.250
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(2) *Chlorination Area—Vent Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.458	0.187
Lead	0.437	0.208
Nickel	1.997	1.321
Thallium	2.132	0.874
Fluoride	36.400	20.800
Titanium	0.458	0.187
Oil and Grease	20.800	12.480
Total suspended solids	42.640	20.280
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(3) *$TiCl_4$ Handling Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.082	0.034
Lead	0.079	0.037
Nickel	0.359	0.238
Thallium	0.383	0.157
Fluoride	6.545	3.740
Titanium	0.082	0.034
Oil and Grease	3.740	2.244
Total suspended solids	7.667	3.647
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(4) *Sponge Crushing and Screening Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium	2.847	1.165
Lead	2.718	1.294
Nickel	12.420	8.217
Thallium	13.270	5.435
Fluoride	226.500	129.400
Titanium	2.847	1.165
Oil and Grease	129.400	77.640
Total suspended solids	265.300	126.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) **Level B.**

(1) *Chlorination Off-Gas Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.412	0.169
Lead	0.393	0.187

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	1.797	1.189
Thallium	1.919	0.786
Fluoride	32.760	18.720
Titanium	0.412	[illegible]
Oil and grease	16.720	11.230
Total suspended solids	36.360	18.250
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(2) *Chlorination Area-Vent Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.458	0.187
Lead	0.437	0.208
Nickel	1.997	1.321
Thallium	2.132	0.874
Fluoride	36.400	20.800
Titanium	0.458	0.187
Oil and grease	20.800	12.480
Total suspended solids	42.640	20.280
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(3) *$TiCl_4$ Handling Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.082	0.034
Lead	0.079	0.037
Nickel	0.359	0.238
Thallium	0.383	0.157
Fluoride	6.545	3.740
Titanium	0.082	0.034
Oil and grease	3.740	2.244
Total suspended solids	7.667	3.647
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(4) *Reduction Area Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	18.180	7.435
Lead	17.350	8.261
Nickel	79.300	52.460
Thallium	84.670	34.700
Fluoride	1,446.000	826.100
Titanium	18.180	7.435
Oil and grease	826.100	495.700

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Total suspended solids	[illegible]	805.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(5) *Melt Cell Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	9.352	3.826
Lead	8.927	4.251
Nickel	40.810	[illegible]
Thallium	9.352	3.826
Fluoride	743.900	425.100
Titanium	67.140	35.920
Oil and grease	425.100	255.100
Total suspended solids	871.400	414.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(6) *Cathode Gas Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	2.705	1.107
Lead	2.582	1.230
Nickel	11.800	7.807
Thallium	12.600	5.164
Fluoride	215.200	123.000
Titanium	2.705	1.107
Oil and grease	123.000	73.770
Total suspended solids	252.000	119.900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(7) *Chlorine Liquefaction Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	130.900	53.560
Lead	125.000	59.510
Nickel	571.300	377.900
Thallium	610.000	[illegible]
Fluoride	10,420.000	5,951.000
Titanium	130.900	53.560
Oil and Grease	5,951.000	3,571.000
Total suspended solids	12,200.000	5,803.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(8) *Sodium Reduction Container Reconditioning Wash.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.564	0.231
Lead	0.539	0.258
Nickel	2.462	1.628
Thallium	2.628	1.077
Fluoride	44.870	25.640
Titanium	0.564	0.231
Oil and Grease	25.640	15.390
Total suspended solids	52.560	25.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(9) *Chip Crushing Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	10.090	4.126
Lead	9.627	4.584
Nickel	44.010	29.110
Thallium	[illegible]	19.250
Fluoride	[illegible]	[illegible]
Titanium	[illegible]	4.126
Oil and Grease	[illegible]	275.100
Total suspended solids	[illegible]	447.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(10) *Acid Leachate and Rinse Water.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	5.210	2.131
Lead	4.973	2.304
Nickel	22.730	15.040
Thallium	24.270	[illegible]
Fluoride	414.400	236.800
Titanium	5.210	2.131
Oil and Grease	[illegible]	142.100
Total suspended solids	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(11) *Sponge Crushing and Screening Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	2.847	1.165
Lead	2.718	1.294
Nickel	12.420	6.217
Thallium	13.270	5.435
Fluoride	124.500	129.400
Titanium	2.847	1.165
Oil and Grease	129.400	77.640
Total suspended solids	260.300	139.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(12) *Acid Pickle and Wash Water.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium pickled	
Chromium (total)	0.027	0.011
Lead	0.029	0.012
Nickel	0.117	0.077
Thallium	0.125	0.051
Fluoride	2.135	1.220
Titanium	0.027	0.011
Oil and Grease	1.220	0.732
Total suspended solids	2.501	1.190
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(13) *Scrap Milling Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap milled	
Chromium (total)	0.765	0.407
Lead	0.850	0.452
Nickel	4.341	2.871
Thallium	4.635	1.899
Fluoride	79.140	45.220
Titanium	0.995	0.407
Oil and Grease	45.220	27.130
Total suspended solids	91.700	44.050
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(14) *Scrap Detergent Wash Water.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap washed	
Chromium (total)	7.948	3.252
Lead	7.587	3.613
Nickel	34.650	22.940
Thallium	37.980	15.180
Fluoride	632.980	361.300
Titanium	74.060	32.520

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and Grease	981.300	216.800
Total suspended solids	740.600	352.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(15) *Casting Crucible Wash Water.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant of pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	0.210	0.088
Lead	0.200	0.095
Nickel	0.916	0.506
Thallium	0.978	0.401
Fluoride	16.700	9.540
Titanium	0.210	0.088
Oil and Grease	9.540	5.724
Total suspended solids	19.560	9.302
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(16) *Casting Contact Cooling Water.*

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant of pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	321.100	131.400
Lead	306.500	146.000
Nickel	1,401.000	920.800
Thallium	1,496.000	613.000
Fluoride	25,540.000	14,600.000
Titanium	321.100	131.400
Oil and Grease	14,600.000	8,757.000
Total suspended solids	29,920.000	14,230.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.303 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Level A.

(1) *Chlorination Off-Gas Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant of pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.412	0.169
Lead	0.393	0.187
Nickel	1.797	1.189
Thallium	1.919	0.766
Fluoride	32.700	18.720
Titanium	0.412	0.169

(2) *Chlorination Area-Vent Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant of pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.458	0.187
Lead	0.437	0.208
Nickel	1.997	1.321
Thallium	2.132	0.874
Fluoride	36.400	20.800
Titanium	0.458	0.187

(3) *$TiCl_4$ Handling Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant of pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.082	0.034
Lead	0.079	0.037
Nickel	0.359	0.238
Thallium	0.383	0.157
Fluoride	6.545	3.740
Titanium	0.082	0.034

(4) *Sponge Crushing and Screening Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.285	0.117
Lead	0.272	0.129
Nickel	1.242	0.822
Thallium	1.327	0.544
Fluoride	22.650	12.940
Titanium	0.285	0.117

(b) Level B.

(1) *Chlorination Off-Gas Wet Air Pollution Control*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.346	0.140
Lead	0.262	0.122
Nickel	0.515	0.346
Thallium	1.311	0.534
Fluoride	32.760	18.720
Titanium	0.346	0.140

(2) *Chlorination Area-Vent Wet Air Pollution Control*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.385	0.156
Lead	0.291	0.135
Nickel	0.572	0.385
Thallium	1.456	0.593
Fluoride	36.400	20.800
Titanium	0.385	0.156

(3) *$TiCl_4$ Handling Wet Air Pollution Control.*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.069	0.028
Lead	0.052	0.024
Nickel	0.103	0.069
Thallium	0.262	0.107
Fluoride	6.545	3.740
Titanium	0.069	0.028

(4) *Reduction Area Wet Air Pollution Control.*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	1.528	0.620
Lead	1.157	0.537
Nickel	2.272	1.528
Thallium	5.782	2.354
Fluoride	144.600	82.600
Titanium	1.528	0.620

(5) *Melt Cell Wet Air Pollution Control.*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.787	0.316
Lead	0.595	0.276
Nickel	1.170	0.787
Thallium	2.977	1.212
Fluoride	74.410	42.520
Titanium	0.787	0.316

(6) *Cathode Gas Wet Air Pollution Control.*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.225	0.092
Lead	0.172	0.080
Nickel	0.336	0.228
Thallium	0.861	0.351
Fluoride	21.530	12.300
Titanium	0.228	0.092

(7) *Chlorine Liquefaction Wet Air Pollution Control.*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	11.010	4.464
Lead	8.302	3.868
Nickel	16.370	11.010
Thallium	41.660	16.960
Fluoride	1,042.000	595.100
Titanium	11.010	4.464

(8) *Sodium Reduction Container Reconditioning Wash.*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.474	0.192
Lead	0.359	0.167
Nickel	0.705	0.474
Thallium	1.795	0.731
Fluoride	44.870	25.640
Titanium	0.474	0.192

(9) *Chip Crushing Wet Air Pollution Control.*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.846	0.344
Lead	0.642	0.298
Nickel	1.261	0.846
Thallium	3.205	1.306
Fluoride	80.220	45.840
Titanium	0.846	0.344

(10) *Acid Leachate and Rinse Water.*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	4.381	1.776
Lead	3.315	1.539
Nickel	6.512	4.381
Thallium	16.580	6.748
Fluoride	414.400	236.800
Titanium	4.381	1.776

(11) *Sponge Crushing and Screening Wet Air Pollution Control.*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.239	0.097
Lead	0.181	0.084
Nickel	0.356	0.239
Thallium	0.906	0.369
Fluoride	22.650	12.940
Titanium	0.239	0.097

(12) *Acid Pickle and Wash Water.*

BAT Limitations for the Primary and Secondary Titanium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium pickled	
Chromium (total)	0.025	0.009
Lead	0.017	0.008
Nickel	0.034	0.023
Thallium	0.085	0.035
Fluoride	2.135	1.220
Titanium	0.025	0.009

(13) *Scrap Milling Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap milled	
Chromium (total)	0.068	0.034
Lead	0.060	0.030
Nickel	0.135	0.084
Thallium	0.319	0.129
Fluoride	7.945	4.540
Titanium	0.068	0.034

(14) *Scrap Detergent Wash Water.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap washed	
Chromium (total)	6.750	2.710
Lead	5.058	2.349
Nickel	1.425	0.564
Thallium	25.290	10.500
Fluoride	832.200	361.300
Titanium	6.750	2.710

(15) *Casting Crucible Wash Water.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	0.177	0.072
Lead	0.134	0.062
Nickel	0.262	0.177
Thallium	0.668	0.272
Fluoride	16.700	9.540
Titanium	0.177	0.072

(16) *Casting Contact Cooling Water.*

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	27.000	10.950
Lead	20.430	9.487
Nickel	40.140	27.000
Thallium	102.200	41.600
Fluoride	2,554.000	1,460.000
Titanium	27.000	10.950

§ 421.304 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) **Level A.**

(1) *Chlorination Off-Gas Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.412	0.169
Lead	0.393	0.187
Nickel	1.797	1.189
Thallium	1.919	0.786
Fluoride	32.760	18.720
Titanium	0.412	0.169
Total suspended solids	26.380	16.250
Oil and Grease	18.720	11.230
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(2) *Chlorination Area-Vent Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.458	0.187
Lead	0.437	0.208
Nickel	1.997	1.321
Thallium	2.132	0.874
Fluoride	36.400	20.800
Titanium	0.458	0.187
Total suspended solids	42.640	20.280
Oil and Grease	20.800	12.280
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(3) *$TiCl_4$ Handling Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.082	0.034
Lead	0.079	0.037
Nickel	0.359	0.238
Thallium	0.383	0.157
Fluoride	6.545	3.740
Titanium	0.082	0.034
Total suspended solids	7.667	3.647
Oil and Grease	3.740	2.244
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(4) *Sponge Crushing and Screening Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Thallium	0.000	0.000
Fluoride	0.000	0.000
Titanium	0.000	0.000
Total suspended solids	0.000	0.000
Oil and Grease	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) **Level B.**

(1) *Chlorination Off-Gas Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.346	0.140
Lead	0.262	0.122
Nickel	0.515	0.348
Thallium	1.311	0.534
Fluoride	32.760	18.720
Titanium	0.346	0.140
Oil and Grease	9.360	9.360
Total suspended solids	14.040	11.230
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(2) *Chlorination Area-Vent Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.385	0.156
Lead	0.291	0.135
Nickel	0.572	0.386
Thallium	1.456	0.583
Fluoride	36.400	20.800
Titanium	0.385	0.156
Oil and Grease	10.400	10.400
Total suspended solids	15.600	12.480
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(3) *$TiCl_4$ Handling Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.069	0.028
Lead	0.052	0.024
Nickel	0.103	0.069
Thallium	0.262	0.107
Fluoride	6.545	3.740
Titanium	0.069	0.028
Oil and Grease	1.870	1.870
Total suspended solids	2.605	2.244

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(4) *Reduction Area Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	1.528	0.620
Lead	1.157	0.537
Nickel	2.272	1.528
Thallium	5.782	2.354
Fluoride	144.600	82.600
Titanium	1.528	0.620
Oil and Grease	41.300	41.300
Total suspended solids	61.950	49.560
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(5) *Melt Cell Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.787	0.319
Lead	0.595	0.276
Nickel	1.170	0.787
Thallium	2.977	1.212
Fluoride	74.410	42.520
Titanium	0.787	0.319
Oil and Grease	21.260	21.260
Total suspended solids	31.890	25.510
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(6) *Cathode Gas Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.228	0.092
Lead	0.172	0.080
Nickel	0.338	0.228
Thallium	0.861	0.351
Fluoride	21.530	12.300
Titanium	0.228	0.092
Oil and Grease	6.150	6.150
Total suspended solids	9.225	7.380
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(7) *Chlorine Liquefaction Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Thallium	0.000	0.000
Fluoride	0.000	0.000
Titanium	0.000	0.000
Oil and grease	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(8) *Sodium Reduction Container Reconditioning Wash.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.474	0.192
Lead	0.359	0.167
Nickel	0.705	0.474
Thallium	1.795	0.731
Fluoride	44.870	25.640
Titanium	0.474	0.192
Oil and grease	12.820	12.820
Total suspended solids	19.230	15.390
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(9) *Chip Crushing Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Thallium	0.000	0.000
Fluoride	0.000	0.000
Titanium	0.000	0.000
Oil and grease	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(10) *Acid Leachate and Rinse Water.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	4.381	1.776
Lead	3.315	1.539
Nickel	6.512	4.381
Thallium	16.580	6.748
Fluoride	414.400	236.800
Titanium	4.381	1.776
Oil and grease	118.400	118.400
Total suspended solids	177.600	142.100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(11) *Sponge Crushing and Screening Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property.	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Thallium	0.000	0.000
Fluoride	0.000	0.000
Titanium	0.000	0.000
Oil and grease	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(12) *Acid Pickle and Wash Water.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium pickled	
Chromium (total)	0.023	0.009
Lead	0.017	0.008
Nickel	0.034	0.023
Thallium	0.085	0.035
Fluoride	2.135	1.220
Titanium	0.023	0.009
Oil and grease	0.610	0.610
Total suspended solids	0.915	0.732
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(13) *Scrap Milling Wet Air Pollution Control.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pound per million pounds) of scrap milled	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Thallium	0.000	0.000

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	0.000	0.000
Titanium	0.000	0.000
Oil and Grease	0.000	0.000
Total suspended solids	0.000	0.000
pH	10	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(14) *Scrap Detergent Wash Water.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pound per million pounds) of scrap washed	
Chromium (total)	6.684	2.710
Lead	5.778	2.349
Nickel	8.424	3.564
Thallium	25.290	10.300
Fluoride	532.300	391.300
Titanium	6.684	2.710
Oil and Grease	180.700	180.700
Total suspended solids	271.000	215.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(15) *Casting Crucible Wash Water.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pound per million pounds) of titanium cast	
Chromium (total)	0.177	0.072
Lead	0.134	0.062
Nickel	0.262	0.177
Thallium	0.668	0.272
Fluoride	16.700	9.540
Titanium	0.177	0.072
Oil and Grease	4.770	4.770
Total suspended solids	7.158	5.724
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(16) *Casting Contact Cooling Water.*

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/million pound per million pounds) of titanium cast	
Chromium (total)	27.000	10.950
Lead	20.430	9.487
Nickel	40.140	27.000
Thallium	102.200	41.600
Fluoride	2,554.000	1,460.000
Titanium	27.000	10.950
Oil and grease	729.800	729.800
Total suspended solids	1,095.000	875.700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.305 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in primary and secondary titanium process wastewater introduced into a POTW must not exceed the following values:

(a) **Level A.**

(1) *Chorination Off-Gas Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pound per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.412	0.159
Lead	0.393	0.187
Nickel	1.797	1.189
Thallium	1.919	0.756
Fluoride	32.760	18.720
Titanium	0.412	0.159

(2) *Chlorination Area-Vent Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.455	0.187
Lead	0.437	0.208
Nickel	1.997	1.321
Thallium	2.132	0.874
Fluoride	36.400	20.800
Titanium	0.456	0.187

(3) *$TiCl_4$ Handling Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.082	0.034
Lead	0.078	0.037
Nickel	0.359	0.238
Thallium	0.383	0.157
Fluoride	6.545	3.740
Titanium	0.082	0.034

(4) *Sponge Crushing and Screening Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium product	
Chromium (total)	0.285	0.117
Lead	0.272	0.129
Nickel	1.242	0.822
Thallium	1.327	0.544
Fluoride	22.650	12.940
Titanium	0.285	0.117

(b) *Level B.*

(1) *Chlorination Off-Gas Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.346	0.140
Lead	0.262	0.122
Nickel	0.515	0.346
Thallium	1.311	0.534
Fluoride	32.760	18.720
Titanium	0.345	0.140

(2) *Chlorination Area-Vent Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.385	0.156
Lead	0.291	0.135
Nickel	0.572	0.385
Thallium	1.456	0.593
Fluoride	36.400	20.800
Titanium	0.385	0.156

(3) *$TiCl_4$ Handling Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.069	0.026
Lead	0.052	0.024
Nickel	0.103	0.069
Thallium	0.262	0.107
Fluoride	6.545	3.740
Titanium	0.069	0.026

(4) *Reduction Area Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	1.528	0.620
Lead	1.157	0.537
Nickel	2.272	1.529
Thallium	5.752	3.354
Fluoride	144.600	82.600
Titanium	1.528	0.620

(5) *Melt Cell Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.787	0.319
Lead	0.595	0.276
Nickel	1.170	0.787
Thallium	2.977	1.212
Fluoride	74.410	42.520
Titanium	0.787	0.319

(6) *Cathode Gas Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.228	0.092
Lead	0.172	0.080
Nickel	0.338	0.228
Thallium	0.861	0.351
Fluoride	21.530	12.300
Titanium	0.228	0.092

(7) *Chlorine Liquefaction Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	11.010	4.464
Lead	8.332	3.868
Nickel	16.370	11.010
Thallium	41.550	16.950
Fluoride	1,042.000	595.100
Titanium	11.010	4.464

(8) *Sodium Reduction Container Reconditioning Wash.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.474	0.192
Lead	0.359	0.167
Nickel	0.705	0.474
Thallium	1.795	0.731
Fluoride	44.870	25.640
Titanium	0.474	0.192

(9) *Chip Crushing Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.848	0.344
Lead	0.642	0.298
Nickel	1.261	0.845
Thallium	3.208	1.306
Fluoride	80.220	45.840
Titanium	0.848	0.344

(10) *Acid Leachate and Rinse Water.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	4.381	1.776
Lead	3.315	1.539
Nickel	6.512	4.381
Thallium	16.580	6.749
Fluoride	414.400	236.800
Titanium	4.381	1.776

(11) *Sponge Crushing and Screening Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.239	0.097
Lead	0.181	0.084
Nickel	0.356	0.239
Thallium	0.906	0.369
Fluoride	22.650	12.940
Titanium	0.239	0.097

(12) *Acid Pickle and Wash Water.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium pickled	
Chromium (total)	0.025	0.009
Lead	0.017	0.008
Nickel	0.034	0.023
Thallium	0.086	0.035
Fluoride	2.135	1.220
Titanium	0.023	0.009

(13) *Scrap Milling Wet Air Pollution Control.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap milled	
Chromium (total)	0.084	0.034
Lead	0.064	0.030
Nickel	0.125	0.084
Thallium	0.318	0.129
Fluoride	7.945	4.540
Titanium	0.084	0.034

(14) *Scrap Detergent Wash Water.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap washed	
Chromium (total)	6.684	2.710
Lead	5.258	2.349
Nickel	9.935	6.684
Thallium	25.290	10.300
Fluoride	632.300	361.300
Titanium	6.684	2.710

(15) *Casting Crucible Wash Water.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	0.177	0.072
Lead	0.134	0.062
Nickel	0.262	0.177
Thallium	0.668	0.272
Fluoride	16.700	9.540
Titanium	0.177	0.072

(16) *Casting Contact Cooling Water.*

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	27.900	10.950
Lead	20.430	8.487
Nickel	40.140	27.000
Thallium	102.200	41.600
Fluoride	2,554.000	1,460.000
Titanium	27.000	10.950

§ 421.306 Pretreatment standards for new sources.

Except as provided in 40 CFR Part 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary and secondary titanium process wastewater introduced into a POTW shall not exceed the following values:

(a) **Level A.**

(1) *Chlorination Off-Gas Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.412	0.168
Lead	0.398	0.187
Nickel	1.797	1.189
Thallium	1.919	0.786
Fluoride	32.760	18.720
Titanium	0.412	0.169

(2) *Chlorination Area-Vent Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.412	0.167
Lead	0.437	0.208
Nickel	1.997	1.321
Thallium	2.132	0.874
Fluoride	35.400	20.800
Titanium	0.455	0.187

(3) *$TiCl_4$ Handling Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.082	0.034
Lead	0.079	0.037
Nickel	0.359	0.238
Thallium	0.383	0.157
Fluoride	6.545	3.740
Titanium	0.082	0.034

(4) *Sponge Crushing and Screening Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Thallium	0.000	0.000
Fluoride	0.000	0.000
Titanium	0.000	0.000

(b) **Level B.**

(1) *Chlorination Off-Gas Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.348	0.140
Lead	0.262	0.122
Nickel	0.515	0.348
Thallium	1.311	0.534
Fluoride	32.760	18.720
Titanium	0.348	0.140

(2) *Chlorination Area-Vent Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.385	0.156
Lead	0.291	0.135
Nickel	0.572	0.385
Thallium	1.456	0.593
Fluoride	39.400	20.800
Titanium	0.395	0.156

(3) *$TiCl_4$ Handling Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.082	0.034
Lead	0.052	0.024
Nickel	0.103	0.069
Thallium	0.262	0.107
Fluoride	6.545	3.740
Titanium	0.069	0.029

(4) *Reduction Area Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	1.528	0.620
Lead	1.157	0.537
Nickel	2.272	1.528
Thallium	5.782	2.354
Fluoride	144.600	82.600
Titanium	1.528	0.620

(5) *Melt Cell Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.787	0.319
Lead	0.595	0.276
Nickel	1.170	0.787
Thallium	2.977	1.212
Fluoride	74.410	42.520
Titanium	0.787	0.319

(6) *Cathode Gas Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.228	0.092
Lead	0.172	0.080
Nickel	0.338	0.228
Thallium	0.861	0.351
Fluoride	21.530	12.300
Titanium	0.228	0.092

(7) *Chlorine Liquefaction Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	[illegible]	0.000
Lead	[illegible]	[illegible]
Nickel	0.000	0.000
Thallium	[illegible]	0.000
Fluoride	0.000	[illegible]
Titanium	0.000	0.000

(8) *Sodium Reduction Container Reconditioning Wash.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.474	0.192
Lead	0.359	0.167
Nickel	0.705	0.474
Thallium	1.795	0.731
Fluoride	44.870	25.640
Titanium	0.474	0.192

(9) *Chip Crushing Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Thallium	0.000	0.000
Fluoride	0.000	0.000
Titanium	0.000	0.000

(10) *Acid Leachate and Rinse Water.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	4.381	1.776
Lead	3.315	1.539
Nickel	6.512	4.381
Thallium	16.580	[illegible]
Fluoride	414.400	[illegible]
Titanium	4.381	1.776

(11) *Sponge Crushing and Screening Wet Air Pollution Control.*

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.000	[illegible]
Lead	0.000	[illegible]
Nickel	0.000	[illegible]
Thallium	0.000	0.000
Fluoride	0.000	[illegible]
Titanium	0.000	[illegible]

(12) *Acid Pickle and Wash Water.*

PSNS FOR THE PRIMARY SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/kg (pounds per million pounds) of titanium pickled	
Chromium (total)	0.023	[illegible]
Lead	0.017	0.008
Nickel	0.034	0.023
Thallium	0.085	0.035
Fluoride	2.135	1.220
Titanium	0.023	[illegible]

(13) *Scrap Milling Wet Air Pollution Control.*

PSNS FOR THE PRIMARY SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap milled	
Chromium (total)	0.000	[illegible]
Lead	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Thallium	0.000	[illegible]
Fluoride	[illegible]	[illegible]
Titanium	[illegible]	[illegible]

(14) *Scrap Detergent Wash Water.*

PSNS FOR THE PRIMARY SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/kg (pounds per million pounds) of scrap washed	
Chromium (total)	6.684	2.710
Lead	5.058	2.349
Nickel	9.935	6.684
Thallium	25.290	10.300
Fluoride	632.300	361.300
Titanium	[illegible]	2.710

(15) *Casting Crucible Wash Water.*

PSNS FOR THE PRIMARY SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	0.177	0.072
Lead	0.134	0.062
Nickel	0.262	0.177
Thallium	0.668	0.272
Fluoride	16.700	[illegible]
Titanium	0.177	0.072

(16) *Casting Contact Cooling Water.*

PSNS FOR THE PRIMARY SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	27.000	10.950
Lead	20.430	9.487
Nickel	40.140	27.000
Thallium	102.200	41.600
Fluoride	2,554.000	1,460.000
Titanium	27.000	10.950

§ 421.307 [Reserved]

Subpart AE—Secondary Tungsten and Cobalt Subcategory

§ 421.310 Applicability: Description of the secondary tungsten and cobalt subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of tungsten or cobalt at secondary tungsten and cobalt facilities processing tungsten or tungsten carbide scrap raw materials.

§ 421.311 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.312 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(1) *Tungsten Detergent Wash and Rinse.*

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten scrap washed	
Copper	0.371	0.195
Nickel	0.374	0.248
Ammonia (as N)	26.020	11.420
Cobalt	0.041	0.018
Oil and Grease	3.960	1.340
Total suspended solids	7.995	3.803
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(2) *Tungsten Leaching Acid.*

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	4.885	2.571
Nickel	4.907	3.265
Ammonia (as N)	343.100	150.600
Cobalt	0.540	0.231
Oil and Grease	51.420	30.850
Total suspended solids	105.420	50.140
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(3) *Tungsten Post-Leaching Wash and Rinse.*

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	9.772	5.143
Nickel	9.875	6.532
Ammonia (as N)	686.400	301.200
Cobalt	1.080	0.463
Oil and Grease	102.900	61.720
Total suspended solids	210.900	100.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(4) *Synthetic Scheelite Filtrate.*

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of synthetic scheelite produced	
Copper	31.660	16.660
Nickel	31.980	21.160
Ammonia (as N)	2,223.000	975.800
Cobalt	3.499	1.505
Oil and Grease	333.200	200.000
Total suspended solids	683.100	324.900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(5) *Tungsten Carbide Leaching Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide scrap leached	
Copper	3.327	1.751
Nickel	3.362	2.224
Ammonia (as N)	233.700	102.500
Cobalt	1.358	0.158
Oil and Grease	35.020	21.010
Total suspended solids	71.790	34.150
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(6) *Tungsten Carbide Wash Water.*

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide produced	
Copper	15.830	8.333
Nickel	15.000	10.580
Ammonia (as N)	1,112.000	486.100
Cobalt	1.750	0.750
Oil and Grease	166.700	100.000
Total suspended solids	341.700	162.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(7) *Cobalt Sudge Leaching Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced from cobalt sludge	
Copper	87.000	35.780
Nickel	58.700	45.440
Ammonia (as N)	4,775.000	2,095.000
Cobalt	7.514	3.220
Oil and Grease	715.600	429.400
Total suspended solids	1,467.000	697.700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(8) *Crystallization Decant.*

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	79.140	41.650
Nickel	79.970	52.900
Ammonia (as N)	5,559.000	2,439.000
Cobalt	8.747	3.749

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and Grease	833.000	499.800
Total suspended solids	1,708.000	812.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(9) *Acid Wash Decant.*

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	36.220	19.060
Nickel	36.600	24.210
Ammonia (as N)	2,544.000	1,116.000
Cobalt	4.003	1.716
Oil and Grease	381.300	233.500
Total suspended solids	781.600	371.700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(10) *Cobalt Hydroxide Filtrate.*

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	107.600	56.650
Nickel	108.800	71.940
Ammonia (as N)	7,560.000	3,318.000
Cobalt	11.900	5.098
Oil and Grease	1,133.00	679.800
Total suspended solids	2,323.000	1,105.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(11) *Cobalt Hydroxide Filter Cake Wash.*

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	207.200	109.100
Nickel	209.400	138.500
Ammonia (as N)	14,550.000	6,385.000
Cobalt	22.900	9.813
Oil and Grease	2,181.000	1,309.000
Total suspended solids	4,471.000	2,126.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.313 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) *Tungsten Detergent Wash and Rinse.*

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten scrap washed	
Copper	0.250	0.119
Nickel	0.107	0.072
Ammonia (as N)	26.020	11.420
Cobalt	0.027	0.014

(b) *Tungsten Leaching Acid.*

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	3.291	1.569
Nickel	1.414	0.951
Ammonia (as N)	343.100	150.600
Cobalt	0.360	0.180

(c) *Tungsten Post-Leaching Wash and Rinse.*

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	6.583	3.137
Nickel	2.829	1.903
Ammonia (as N)	686.400	301.200
Cobalt	0.720	0.360

(d) *Synthetic Scheelite Filtrate.*

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of synthetic scheelite produced	
Copper	21.330	10.170
Nickel	9.164	6.165
Ammonia (as N)	2,223.000	975.800
Cobalt	2.333	1.166

(e) *Tungsten Carbide Leaching Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide scrap leached	
Copper	0.224	0.107
Nickel	0.096	0.065
Ammonia (as N)	23.370	10.250
Cobalt	0.025	0.012

(f) *Tungsten Carbide Wash Water.*

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide produced	
Copper	10.670	5.000
Nickel	4.583	3.083
Ammonia (as N)	1,112.000	488.100
Cobalt	1.167	0.583

(g) *Cobalt Sludge Leaching Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced from cobalt sludge	
Copper	4.590	2.183
Nickel	1.968	1.324
Ammonia (as N)	477.500	209.500
Cobalt	0.501	0.251

(h) *Crystallization Decant.*

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	53.310	25.410
Nickel	32.910	15.410
Ammonia (as N)	5,558.000	2,439.000
Cobalt	5.831	2.916

(i) *Acid Wash Decant.*

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	24.800	11.630
Nickel	10.490	7.053
Ammonia (as N)	2,544.000	1,116.000
Cobalt	2.669	1.335

(j) *Cobalt Hydroxide Filtrate.*

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	72.510	34.190
Nickel	31.160	20.960
Ammonia (as N)	7,560.000	3,218.000
Cobalt	7.931	3.965

(k) *Cobalt Hydroxide Filter Cake Wash.*

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	139.600	65.510
Nickel	59.970	40.340
Ammonia (as N)	14,550.000	6,195.000
Cobalt	15.270	7.633

§ 421.314 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Tungsten Detergent Wash and Rinse.*

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten scrap washed	
Copper	0.250	0.119
Nickel	0.107	0.072
Ammonia (as N)	26.020	11.420
Cobalt	0.027	0.014
Oil and Grease	1.950	1.950
Total suspended solids	2.925	2.340
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Tungsten Leaching Acid.*

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	3.291	1.569
Nickel	1.414	0.951
Ammonia (as N)	343.100	150.600
Cobalt	[illegible]	0.180
Oil and Grease	25.710	25.710
Total suspended solids	38.570	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Tungsten Post-Leaching Wash and Rinse.*

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	6.589	3.137
Nickel	2.829	1.903
Ammonia (as N)	[illegible]	301.200
Cobalt	0.720	0.360
Oil and Grease	51.430	51.430
Total suspended solids	77.150	61.720
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Synthetic Scheelite Filtrate.*

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of synthetic scheelite produced	
Copper	21.[illegible]	10.170
Nickel	9.168	6.165
Ammonia (as N)	2,223.000	[illegible].500
Cobalt	[illegible]	1.166
Oil and Grease	166.600	[illegible].600
Total suspended solids	[illegible]	[illegible].000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Tungsten Carbide Leaching Wet Air Pollution Control.*

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide scrap leached	
Copper	0.224	0.107
Nickel	0.096	0.065
Ammonia (as N)	23.370	10.250
Cobalt	0.025	0.012
Oil and Grease	1.750	1.750
Total suspended solids	2.625	2.100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Tungsten Carbide Wash Water.*

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide produced	
Copper	10.670	5.083
Nickel	4.583	[illegible]
Ammonia (as N)	1,112.000	[illegible].100
Cobalt	1.167	0.583
Oil and Grease	83.330	[illegible].330
Total suspended solids	125.000	100.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Cobalt Sludge Leaching Wet Air Pollution Control.*

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced from cobalt sludge	
Copper	4.580	2.183
Nickel	1.968	1.324
Ammonia (as N)	477.500	209.500
Cobalt	0.501	0.251
Oil and Grease	35.780	35.780
Total suspended solids	53.670	42.940
pH	(1)	(1)

Within the range of 7.5 to 10.0 at all times.

(h) *Crystallization Decant.*

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	53.310	25.410
Nickel	22.910	15.410
Ammonia (as N)	5,559.000	2,439.000
Cobalt	5.831	2.916

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and Grease	416.500	416.500
Total suspended solids	624.800	499.800
pH	(1)	(1)

Within the range of 7.5 to 10.0 at all times.

(i) *Acid Wash Decant.*

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	24.400	11.630
Nickel	10.490	7.053
Ammonia (as N)	2,544.000	1,116.000
Cobalt	2.669	1.335
Oil and Grease	190.600	190.600
Total suspended solids	286.000	228.800
pH	(1)	(1)

Within the range of 7.5 to 10.0 at all times.

(j) *Cobalt Hydroxide Filtrate.*

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	72.510	34.560
Nickel	31.160	20.960
Ammonia (as N)	7,560.000	3,318.000
Cobalt	7.931	3.965
Oil and Grease	566.500	566.500
Total suspended solids	849.700	679.800
pH	(1)	(1)

Within the range of 7.5 to 10.0 at all times.

(k) *Cobalt Hydroxide Filter Cake Wash.*

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	139.600	66.510
Nickel	59.970	40.340
Ammonia (as N)	14,550.000	6,385.000
Cobalt	15.270	7.633
Oil and Grease	1,091.000	1,091.000
Total suspended solids	1,636.000	1,309.000
pH	(1)	(1)

Within the range of 7.5 to 10.0 at all times.

§ 421.315 [Reserved]

§ 421.316 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary tungsten and cobalt process wastewater introduced into a POTW shall not exceed the following values:

(a) *Tungsten Detergent Wash and Rinse.*

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten scrap washed	
Copper	0.250	0.119
Nickel	0.107	0.072
Ammonia (as N)	[illegible]	11.420
Cobalt	0.027	0.014

(b) *Tungsten Leaching Acid.*

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten pro- [illegible]	
Copper	3.291	1.569
Nickel	1.414	0.951
Ammonia (as N)	343.100	150.600
Cobalt	0.360	0.180

(c) *Tungsten Post-Leaching Wash and Rinse.*

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	[illegible]	3.137
Nickel	[illegible]	1.903
Ammonia (as N)	[illegible]	[illegible]
Cobalt	0.720	[illegible]

(d) *Synthetic Scheelite Filtrate.*

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of synthetic scheelite produced	
Copper	21.330	10.170
Nickel	9.164	6.165
Ammonia (as N)	2,223.000	975.800
Cobalt	2.333	1.166

(e) *Tungsten Carbide Leaching Wet Air Pollution Control.*

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide scrap leached	
Copper	0.224	0.107
Nickel	[illegible]	[illegible]
Ammonia (as N)	23.370	10.250
Cobalt	0.025	0.012

(f) *Tungsten Carbide Wash Water.*

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide produced	
Copper	10.670	5.083
Nickel	[illegible]	[illegible]
Ammonia (as N)	1,112.000	[illegible]
Cobalt	1.167	[illegible]

(g) *Cobalt Sludge Leaching Wet Air Pollution Control.*

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced from cobalt sludge	
Copper	4.580	[illegible]
Nickel	1.956	1.324
Ammonia (as N)	477.500	[illegible]
Cobalt	0.501	0.251

(h) *Crystallization Decant.*

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	53.310	[illegible]
Nickel	22.910	15.410
Ammonia (as N)	[illegible]	[illegible]
Cobalt	[illegible]	[illegible]

(i) *Acid Wash Decant.*

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	[illegible]	11.630
Nickel	[illegible]	7.053
Ammonia (as N)	2,544.000	1,116.000
Cobalt	[illegible]	1.335

(j) *Cobalt Hydroxide Filtrate.*

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	72.510	[illegible]
Nickel	31.160	[illegible]
Ammonia (as N)	7,560.000	[illegible]
Cobalt	7.931	3.965

(k) *Cobalt Hydroxide Filter Cake Wash.*

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	139.600	66.510
Nickel	59.970	40.340
Ammonia (as N)	14,550.000	6,385.000
Cobalt	15.270	7.633

§ 421.317 [Reserved]

Subpart AF—Secondary Uranium Subcategory

§ 421.320 Applicability: Description of the secondary uranium subcategory.

The provisions of this subpart are applicable to discharges resulting from

the production of uranium by secondary uranium facilities.

§ 421.321 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.322 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) *Refinery Filtrate.*

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	15.310	6.264
Copper	[illegible]	34.800
Nickel	[illegible]	44.200
Ammonia (as N)	4,645.000	[illegible]
Fluoride	1,218.000	[illegible]
Uranium	[illegible]	28.540
Total suspended solids	1,427.000	678.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) *Slag Leach Slurry.*

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	1.672	0.684
Copper	7.220	[illegible]
Nickel	7.296	4.826
Ammonia (as N)	507.100	222.500
Fluoride	133.000	76.000
Uranium	7.600	3.116
Total suspended solids	155.800	74.100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Solvent Extraction Raffinate.*

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	2.332	0.954
Copper	10.070	5.300
Nickel	10.180	6.731
Ammonia (as N)	707.200	310.400
Fluoride	185.500	106.000
Uranium	10.600	4.346
Total suspended solids	217.300	103.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Digestion Operation Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0.013	0.005
Copper	0.057	0.030
Nickel	0.058	0.038
Ammonia (as N)	4.000	1.760
Fluoride	1.050	0.600
Uranium	0.060	0.025
Total suspended solids	1.230	0.585
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Evaporation and Calcination Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000
Uranium	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Hydrogen Reduction and Hydrofluorination KOH Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.009	0.004
Copper	0.038	0.020
Nickel	0.038	0.025
Ammonia (as N)	2.670	1.170
Fluoride	0.700	0.400
Uranium	0.040	0.016
Total suspended solids	0.820	0.390
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Hydrofluorination Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000
Uranium	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.323 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) *Refinery Filtrate.*

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	12.880	5.220
Copper	44.550	21.230
Nickel	19.140	12.880
Ammonia (as N)	4,645.000	2,039.000
Fluoride	1,218.000	[illegible]
Uranium	46.290	19.140

(b) *Slag Leach Slurry.*

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	1.406	0.570

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Copper	4.854	2.316
Nickel	2.090	1.406
Ammonia (as N)	507.100	222.500
Fluoride	133.000	76.000
Uranium	5.054	2.090

(c) *Solvent Extraction Raffinate.*

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	1.961	0.795
Copper	6.764	3.233
Nickel	2.915	1.961
Ammonia (as N)	707.200	310.400
Fluoride	185.500	106.000
Uranium	7.049	2.915

(d) *Digestion Operation Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0.011	0.005
Copper	0.038	0.018
Nickel	0.017	0.011
Ammonia (as N)	4.000	1.760
Fluoride	1.050	0.600
Uranium	0.040	0.017

(e) *Evaporation and Calcination Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000
Uranium	0.000	0.000

(f) *Hydrogen Reduction and Hydrofluorination KOH Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.007	0.003
Copper	0.029	0.012
Nickel	0.011	0.007
Ammonia (as N)	2.670	1.170
Fluoride	0.700	0.400
Uranium	0.027	0.011

(g) *Hydrofluorination Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000
Uranium	0.000	0.000

§ 421.324 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) *Refinery Filtrate.*

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	12.880	5.220
Copper	44.550	21.230
Nickel	19.140	12.880
Ammonia (as N)	4,645.000	2,039.000
Fluoride	1,218.000	696.000
Uranium	46.290	19.140
Total suspended solids	522.000	417.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Slag Leach Slurry.*

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	1.406	0.570
Copper	4.854	2.316
Nickel	2.090	1.406
Ammonia (as N)	507.100	222.500

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	133.000	76.000
Uranium	5.054	2.090
Total suspended solids	57.000	45.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Solvent Extraction Raffinate.*

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	1.961	0.795
Copper	6.764	3.233
Nickel	2.915	1.961
Ammonia (as N)	707.200	310.400
Fluoride	185.500	106.000
Uranium	7.049	2.915
Total suspended solids	79.500	63.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Digestion Operation Wet Air Pollution Control.*

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0.011	0.005
Copper	0.038	0.018
Nickel	0.017	0.011
Ammonia (as N)	4.000	1.760
Fluoride	1.050	0.600
Uranium	0.040	0.017
Total suspended solids	0.450	0.360
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Evaporation and Calcination Wet Air Pollution Control.*

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000
Uranium	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Hydrogen Reduction and Hydrofluorination KOH Wet Air Pollution Control.*

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.007	0.003
Copper	0.026	0.012
Nickel	0.011	0.007
Ammonia (as N)	2.670	1.170
Fluoride	0.700	0.400
Uranium	0.027	0.011
Total suspended solids	0.300	0.140
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Hydrofluorination Wet Air Pollution Control.*

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.000	0.000
Copper	0.026	0.012
Nickel	0.000	0.000
Ammonia (as N)	2.670	1.170
Fluoride	0.000	0.000
Uranium	0.027	0.011
Total suspended solids	0.300	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.325 [Reserved].

§ 421.326 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary uranium process wastewater introduced into a POTW shall not exceed the following values:

(a) *Refinery Filtrate.*

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	12.880	5.220
Copper	44.550	21.230
Nickel	19.140	12.880
Ammonia (as N)	4,645.000	2,039.000
Fluoride	1,218.000	469.100
Uranium	46.290	19.140

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY—Continued

(b) *Slag Leach Slurry.*

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	1.406	0.570
Copper	4.864	2.318
Nickel	2.090	1.406
Ammonia (as N)	507.100	222.500
Fluoride	133.000	76.000
Uranium	5.054	2.090

(c) *Solvent Extraction Raffinate.*

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	1.961	0.795
Copper	6.784	3.233
Nickel	2.915	1.961
Ammonia (as N)	707.200	310.400
Fluoride	185.500	106.000
Uranium	7.049	2.915

(d) *Digestion Operation Wet Air Pollution Control.*

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0.011	0.005
Copper	0.038	0.018
Nickel	0.017	0.011
Ammonia (as N)	4.000	1.760
Fluoride	1.050	0.600
Uranium	0.040	0.017

(e) *Evaporation and Calcination Wet Air Pollution Control.*

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000
Uranium	0.000	0.000

(f) *Hydrogen Reduction and Hydrofluorination KOH Wet Air Pollution Control.*

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.007	0.003
Copper	0.026	0.012
Nickel	0.011	0.007
Ammonia (as N)	2.670	1.170
Fluoride	0.700	0.400
Uranium	0.027	0.011

(g) *Hydrofluorination Wet Air Pollution Control.*

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000
Uranium	0.000	0.000

§ 421.327 [Reserved]

Subpart AG—Primary Zirconium and Hafnium Subcategory

§ 421.330 Applicability: Description of the primary zirconium and hafnium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of zirconium or hafnium at primary zirconium and hafnium facilities.

There are two levels of BPT, BAT, NSPS, PSES and PSNS provisions for this subpart. Level A is applicable to facilities which only produce zirconium or zirconium/nickel alloys by magnesium reduction of zirconium

dioxide. Level B is applicable to all other facilities.

§ 421.331 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.332 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) **Level A.**

(1) *Acid Leachate (Zirconium Metal Production).*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	12.970	5.304
Cyanide (total)	8.545	3.536
Lead	12.360	5.893
Nickel	56.570	37.420
Ammonia (as N)	3,932.000	1,726.000
Radium 226 [1]	884.000	363.600
Total suspended solids	1,208.000	574.500
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0, at all times.

(2) *Acid Leachate (Zirconium Alloy Production).*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	0.939	2.839
Cyanide (total)	4.574	1.893
Lead	8.824	3.154
Nickel	30.260	20.038
Ammonia (as N)	2,105.000	923.600
Radium 226 [1]	473.200	194.600
Total suspended solids	646.600	307.600
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(3) *Leaching Rinse Water (Zirconium Metal Production).*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	25.890	10.610
Cyanide (total)	17.090	7.072
Lead	24.750	11.790
Nickel	113.200	74.840
Ammonia (as N)	7,865.000	3,451.000
Radium 226 [1]	1,768.000	727.200
Total suspended solids	2,416.000	1,149.000
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(4) *Leaching Rinse Water (Zirconium Alloy Production).*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	0.347	0.142
Cyanide (total)	0.229	0.095
Lead	0.331	0.158
Nickel	1.515	1.002
Ammonia (as N)	105.300	46.210
Radium 226 [1]	23.670	9.726
Total suspended solids	32.350	15.390
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(b) **Level B.**

(1) *Sand Drying Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zircon sand	
Chromium (total)	0.167	0.068
Cyanide (total)	0.110	0.045
Lead	0.159	0.075
Nickel	0.728	0.481
Ammonia (as N)	50.580	22.200
Radium 226 [1]	11.370	4.677
Total suspended solids	15.540	7.391
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(2) *Sand Chlorination Off-Gas Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	8.473	3.648
Cyanide (total)	5.587	2.766
Lead	8.179	3.943
Nickel	26.250	18.890
Ammonia (as N)	1,083.000	881.600
Radium 226 [1]	441.600	181.600
Total suspended solids	603.200	286.900
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range to 7.5 to 10.0 at all time.

(3) *Sand Chlorination Area Vent Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	5.831	3.531
Cyanide (total)	5.588	2.354
Lead	8.239	3.923
Nickel	37.660	24.910
Ammonia (as N)	2,618.000	1,149.000
Radium 226 [1]	586.500	242.100
Total suspended solids	804.300	382.500
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range to 7.5 to 10.0 at all time.

(4) *$SiCl_4$ Purification Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $SiCl_4$ purified	
Chromium (total)	3.806	1.557
Cyanide (total)	2.509	1.033
Lead	3.633	1.730
Nickel	16.610	10.950
Ammonia (as N)	1,154.000	506.500
Radium 226 [1]	259.600	106.800
Total suspended solids	354.700	168.700
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range to 7.5 to 10.0 at all time.

(5) *$SiCl_4$ Purification Waste Acid.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $SiCl_4$ purified	
Chromium (total)	1.903	0.779
Cyanide (total)	1.254	0.516
Lead	1.817	0.865
Nickel	8.304	5.480

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia (as N)	577,100	253,300
Radium 226 [1]	129,600	53,370
Total suspended solids	177,300	848,340
pH	[2]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range fo 7.5 to 10.0 at all time.

(6) *Feed Makeup Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	2.787	1.140
Cyanide (total)	1.837	0.760
Lead	2.667	1.267
Nickel	12.160	5.144
Ammonia (as N)	845,300	370,900
Radium 226 [1]	190,000	78,160
Total suspended solids	259,700	123,500
pH	[2]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range fo 7.5 to 10.0 at all time.

(7) *Iron Extraction (MIBK) Steam Stripper Bottoms.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) zirconium, and hafnium produced	
Chromium (total)	0.914	0.374
Cyanide (total)	0.602	0.249
Lead	0.872	0.415
Nickel	4.088	2.484
Ammonia (as N)	277,200	121,500
Radium 226 [1]	62,310	25,630
Total suspended solids	85,160	40,530
pH	[2]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range fo 7.5 to 10.0 at all time.

(8) *Zirconium Filtrate.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	31.330	12.820
Cyanide (total)	20.650	8.543
Lead	29.900	14.240
Nickel	136.700	90.410
Ammonia (as N)	9,499.000	4,169.000
Radium 226 [1]	2,136.000	878.500
Total suspended solids	2,919.000	1,398,000
pH	[2]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(9) *Hafnium Filtrate.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of hafnium produced	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Radium 226 [1]	0.000	0.000
Total suspended solids	0.000	0.000
pH	[2]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(10) *Calcining Caustic Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	7.857	3.214
Cyanide (total)	5.178	2.143
Lead	7.500	3.571
Nickel	34.290	22.660
Ammonia (as N)	2,283.000	1,046.000
Radium 226 [1]	535.700	220.400
Total suspended solids	732.100	348,200
pH	[2]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(11) *Pure Chlorination Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	11.580	4.738
Cyanide (total)	7.634	3.159
Lead	11.060	5.265
Nickel	50.540	33.430
Ammonia (as N)	3,512.000	1,541.000
Radium 226 [1]	789.700	324,500
Total suspended solids	1,079.000	513.300
pH	[2]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(12) *Reduction Area-Vent Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.290	0.119
Cyanide (total)	0.191	0.079
Lead	0.276	0.132
Nickel	1.264	0.836
Ammonia (as N)	87,820	36,540
Radium 226 [1]	19.740	8.120
Total suspended solids	26,960	12,830
pH	[2]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(13) *Magnesium Recovery Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	5.791	2.369
Cyanide (total)	3.817	1.580
Lead	5.528	2.632
Nickel	25.270	16.720
Ammonia (as N)	1,756.000	770.800
Radium 226 [1]	394.900	162.400
Total suspended solids	539.600	256.700
pH	[2]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(14) *Zirconium Chip Crushing Wet Air Pollution Control.*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Radium 226 [1]	0.000	0.000
Total suspended solids	0.000	0.000
pH	[2]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(15) *Acid Leachate (Zirconium Metal Production).*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	12.970	5.304

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Cyanide (total)	8.545	3.536
Lead	12.380	5.893
Nickel	56.570	37.420
Ammonia (as N)	3,932.000	1,726.000
Radium 226 [1]	884.000	363.600
Total suspended solids	1,208.000	574.600
pH	([2])	([2])

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(16) *Acid Leachate (Zirconium Alloy Production).*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	6.939	2.839
Cyanide (total)	4.574	1.893
Lead	5.624	3.154
Nickel	30.280	20.030
Ammonia (as N)	2,105.000	923.600
Radium 226 [1]	473.200	194.600
Total suspended solids	646.600	307.600
pH	([2])	([2])

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(17) *Leaching Rinse water (Zirconium Metal Production).*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	25.930	10.610
Cyanide (total)	17.090	7.072
Lead	24.750	11.790
Nickel	113.200	74.840
Ammonia (as N)	7,865.000	3,451.000
Radium 226 [1]	1,768.000	727.200
Total suspended solids	2,416.000	1,149.000
pH	([2])	([2])

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(18) *Leaching Rinse Water (Zirconium Alloy Production).*

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	0.347	0.142
Cyanide (total)	0.229	0.095
Lead	0.331	0.158
Nickel	1.515	1.002
Ammonia (as N)	105.300	46.210
Radium 226 [1]	23.670	9.736

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Total suspended solids	33.950	15.990
pH	([2])	([2])

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

§ 421.333 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) **Level A.**

(1) *Acid Leachate (Zirconium Metal Production).*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	12.970	5.304
Cyanide (total)	8.545	3.536
Lead	12.380	5.893
Nickel	56.570	37.420
Ammonia (as N)	3,932.000	1,726.000
Radium 226 [1]	884.000	363.600

[1] Values in picocuries per kilogram (pc/kg).

(2) *Acid Leachate (Zirconium Alloy Production).*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	6.939	2.839
Cyanide (total)	4.574	1.893
Lead	5.624	3.154
Nickel	30.280	20.030
Ammonia (as N)	2,105.000	923.600
Radium 226 [1]	473.200	194.600

[1] Values in picocuries per kilogram (pc/kg).

(3) *Leaching Rinse Water (Zirconium Metal Production).*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	25.930	10.610
Cyanide (total)	17.090	7.072
Lead	24.750	11.790
Nickel	113.200	74.840
Ammonia (as N)	7,865.000	3,451.000
Radium 226 [1]	1,768.000	727.200

[1] Values in picocuries per kilogram (pc/kg).

(4) *Leaching Rinse Water (Zirconium Alloy Production).*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	0.347	0.142
Cyanide (total)	0.229	0.095
Lead	0.331	0.158
Nickel	1.515	1.002
Ammonia (as N)	105.300	46.210
Radium 226 [1]	23.670	9.736

[1] Values in picocuries per kilogram (pc/kg).

(b) **Level B.**

(1) *Sand Drying Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zircon sand	
Chromium (total)	0.140	0.057
Cyanide (total)	0.076	0.030
Lead	0.106	0.049
Nickel	0.259	0.140
Ammonia (as N)	50.580	22.200
Radium 226 [1]	7.581	3.100

[1] Values in picocuries per kilogram (pc/kg).

(2) *Sand Chlorination Off-Gas Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	0.554	0.221
Cyanide (total)	0.294	0.118
Lead	0.412	0.191
Nickel	0.809	0.544
Ammonia (as N)	196.300	86.160
Radium 226 [1]	29.350	12.030

[1] Values in picocuries per kilogram (pc/kg).

(3) *Sand Chlorination Area Vent Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	0.720	0.284
Cyanide (total)	0.382	0.157
Lead	0.549	0.255
Nickel	1.079	0.726
Ammonia (as N)	261.800	114.900
Radium 226[1]	39.140	16.050

[1] Values in picocuries per kilogram (pc/kg).

(4) *$SiCl_4$ Purification Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $SiCl_4$ purified	
Chromium (total)	0.320	0.130
Cyanide (total)	0.173	0.069
Lead	0.242	0.113
Nickel	0.476	0.320
Ammonia (as N)	115.400	50.650
Radium 226[1]	17.260	7.076

[1] Values in picocuries per kilogram (pc/kg).

(5) *$SiCl_4$ Purification Waste Acid.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $SiCl_4$ purified	
Chromium (total)	1.600	0.645
Cyanide (total)	0.850	0.346
Lead	1.211	0.562
Nickel	2.379	1.600
Ammonia (as N)	577.100	253.300
Radium 226[1]	86.200	35.380

[1] Values in picocuries per kilogram (pc/kg).

(6) *Feed Makeup Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	0.235	0.095
Cyanide (total)	0.127	0.051
Lead	0.178	0.082
Nickel	0.348	0.235
Ammonia (as N)	84.530	37.090
Radium 226[1]	12.630	5.186

[1] Values in picocuries per kilogram (pc/kg).

(7) *Iron Extraction (MIBK) Steam Stripper Bottoms.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.769	0.312
Cyanide (total)	0.415	0.166
Lead	0.582	0.270
Nickel	1.143	0.769
Ammonia (as N)	277.200	121.600
Radium 226[1]	41.440	16.990

[1] Values in picocuries per kilogram (pc/kg).

(8) *Zirconium Filtrate.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	26.340	10.680
Cyanide (total)	14.240	5.696
Lead	19.940	9.255
Nickel	39.160	26.340
Ammonia (as N)	9,499.000	4,169.000
Radium 226[1]	1,420.000	562.400

[1] Values in picocuries per kilogram (pc/kg).

(9) *Hafnium Filtrate.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of hafnium produced	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Radium 226[1]	0.000	0.000

[1] Values in picocuries per kilogram (pc/kg).

(10) *Calcining Caustic Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.661	0.268
Cyanide (total)	0.357	0.143
Lead	0.500	0.232
Nickel	0.982	0.661
Ammonia (as N)	238.300	104.600
Radium 226[1]	35.630	14.610

[1] Values in picocuries per kilogram (pc/kg).

(11) *Pure Chlorination Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.974	0.395
Cyanide (total)	0.526	0.211
Lead	0.737	0.342
Nickel	1.448	0.974
Ammonia (as N)	351.200	154.100
Radium 226[1]	52.510	21.530

[1] Values in picocuries per kilogram (pc/kg).

(12) *Reduction Area-Vent Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	0.244	0.099
Cyanide (total)	0.132	0.053
Lead	0.184	0.086
Nickel	0.362	0.244
Ammonia (as N)	87.820	38.540
Radium 226[1]	13.130	5.383

[1] Values in picocuries per kilogram (pc/kg).

(13) *Magnesium Recovery Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.487	0.197
Cyanide (total)	0.263	0.105
Lead	0.369	0.171
Nickel	0.724	0.487
Ammonia (as N)	175.600	77.080
Radium 226[1]	26.260	10.770

[1] Values in picocuries per kilogram (pc/kg).

(14) *Zirconium Chip Crushing Wet Air Pollution Control.*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Radium 226[1]	0.000	0.000

[1] Values in picocuries per kilogram (pc/kg).

(15) *Acid Leachate (Zirconium Metal Production).*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	10.900	4.420
Cyanide (total)	5.893	2.357
Lead	11.250	3.831
Nickel	16.210	10.990
Ammonia (as N)	3,932.000	1,726.000
Radium 226[1]	887.900	241.000

[1] Values in picocuries per kilogram (pc/kg).

(16) *Acid Leachate (Zirconium Alloy Production).*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	8.635	2.366
Cyanide (total)	3.154	1.262
Lead	4.416	2.050
Nickel	8.674	5.835
Ammonia (as N)	2,105.000	923.600
Radium 226[1]	314.700	129.000

[1] Values in picocuries per kilogram (pc/kg).

(17) *Leaching Rinse Water (Zirconium Metal Production).*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	21.810	8.840
Cyanide (total)	11.790	4.715
Lead	16.500	7.661
Nickel	32.410	21.810
Ammonia (as N)	7,865.000	3,451.000
Radium 226[1]	1,176.000	482.000

[1] Values in picocuries per kilogram (pc/kg).

(18) *Leaching Rinse Water (Zirconium Alloy Production).*

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	0.290	0.118
Cyanide (total)	0.158	0.063
Lead	0.221	0.103
Nickel	0.434	0.292
Ammonia (as N)	105.300	46.210
Radium 226[1]	15.740	6.484

[1] Values in picocuries per kilogram (pc/kg).

§ 421.334 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) **Level A.**

(1) *Acid Leachate from Zirconium Metal Production.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	12.970	5.304
Cyanide (total)	8.545	3.536
Lead	12.360	5.893
Nickel	56.570	37.420
Ammonia (as N)	3,932.000	1,726.000
Radium 226[1]	884.000	363.600
Total suspended solids	1,206.000	574.000
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(2) *Acid Leachate from Zirconium Alloy Production.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	8.830	2.839
Cyanide (total)	4.524	1.893
Lead	6.624	3.154
Nickel	30.280	20.030
Ammonia (as N)	2,105.000	923.600
Radium 226[1]	473.200	194.600
Total suspended solids	646.600	307.600
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(3) *Leaching Rinse Water from Zirconium Metal Production.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	25.930	10.510
Cyanide (total)	17.090	7.072
Lead	24.750	11.750
Nickel	113.200	74.840
Ammonia (as N)	7,865.000	3,451.000
Radium 226[1]	1,768.000	727.200
Total suspended solids	2,418.000	1,149.000
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(4) *Leaching Rinse Water from Zirconium Alloy Production.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	0.347	0.142
Cyanide (total)	0.229	0.095
Lead	0.361	0.158
Nickel	1.515	1.002
Ammonia (as N)	105.300	46.210
Radium 226[1]	23.670	9.736
Total suspended solids	32.350	15.390
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(b) **Level B.**

(1) *Sand Drying Wet Air Pollution Control.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zircon sand	
Chromium (total)	0.140	0.057
Cyanide (total)	0.078	0.036
Lead	0.106	0.045
Nickel	0.209	0.140
Ammonia (as N)	50.580	22.200
Radium 226[1]	7.561	3.100
Total suspended solids	5.065	4.548
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(2) *Sand Chlorination Off-Gas Wet Air Pollution Control.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	[illegible]	0.221
Cyanide (total)	[illegible]	0.118
Lead	0.412	0.191
Nickel	0.809	0.544
Ammonia (as N)	[illegible]	[illegible]
Radium 226[1]	[illegible]	[illegible]
Total suspended solids	22.070	17.650
pH	[illegible]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(3) *Sand Chlorination Area Vent Wet Air Pollution Control.*

NSPS FOR THE PRIMARY ZIRONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	0.726	0.294
Cyanide (total)	0.392	0.157
Lead	0.549	0.255
Nickel	1.079	0.726
Ammonia (as N)	[illegible]	114.900
Radium 226[1]	39.140	16.050
Total suspended solids	29.430	23.550
pH	[1]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(4) *$SiCl_4$ Purification Wet Air Pollution Control.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $SiCl_4$ purified	
Chromium (total)	0.320	0.130
Cyanide (total)	0.173	0.069
Lead	0.242	0.113
Nickel	0.476	0.320
Ammonia (as N)	115.400	50.650
Radium 226[1]	17.260	7.076
Total suspended solids	12.980	10.300
pH	[1]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(5) *$SiCl_4$ Purification Waste Acid.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $SiCl_4$ purified	
Chromium (total)	1.600	0.649
Cyanide (total)	[illegible]	0.346
Lead	1.211	0.562
Nickel	2.379	1.600

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia (as N)	577.100	253.300
Radium 226[1]	[illegible]	35.380
Total suspended solids	54.650	[illegible]
pH	[1]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(6) *Feed Makeup Wet Air Pollution Control.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	0.235	0.095
Cyanide (total)	0.127	0.051
Lead	0.178	0.083
Nickel	0.349	0.235
Ammonia (as N)	84.530	37.090
Radium 226[1]	12.650	5.186
Total suspended solids	9.510	7.606
pH	[1]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(7) *Iron Extraction (MIBK) Steam Stripper Bottoms.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.769	0.312
Cyanide (total)	0.415	0.166
Lead	0.582	0.270
Nickel	1.143	0.755
Ammonia (as N)	277.200	121.600
Radium 226[1]	41.440	16.900
Total suspended solids	31.160	24.930
pH	[1]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(8) *Zirconium Filtrate.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	26.340	10.680
Cyanide (total)	14.240	5.695
Lead	19.940	9.255
Nickel	39.160	26.340
Ammonia (as N)	9,499.000	4,169.000
Radium 226[1]	1,420.000	582.400
Total suspended solids	1,068.000	854.300
pH	[1]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(9) *Hafnium Filtrate.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of hafnium produced	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Radium 226[1]	0.000	0.000
Total suspended solids	0.000	0.000
pH	[1]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(10) *Calcining Caustic Wet Air Pollution Control.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.661	0.266
Cyanide (total)	0.357	0.143
Lead	0.500	0.232
Nickel	0.982	0.661
Ammonia (as N)	238.300	104.600
Radium 226[1]	35.530	14.610
Total suspended solids	26.790	21.430
pH	[1]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(11) *Pure Chlorination Wet Air Pollution Control.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.974	0.395
Cyanide (total)	0.526	0.211
Lead	0.737	0.342
Nickel	1.448	0.974
Ammonia (as N)	351.200	154.100
Radium 226[1]	52.510	21.530
Total suspended solids	39.480	31.590
pH	[1]	[2]

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(12) *Reduction Area-Vent Wet Air Pollution Control.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.244	0.099
Cyanide (total)	0.132	0.052
Lead	0.184	0.088
Nickel	0.362	0.244
Ammonia (as N)	87.826	36.540
Radium 226 [1]	13.130	5.383
Total suspended solids	9.870	7.895
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(13) *Magnesium Recovery Wet Air Pollution Control.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.487	0.197
Cyanide (total)	0.263	0.105
Lead	0.369	0.171
Nickel	0.724	0.487
Ammonia (as N)	175.500	77.060
Radium 226 [1]	26.260	10.770
Total suspended solids	19.740	15.790
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(14) *Zirconium Chip Crushing Wet Air Pollution Cntrol.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Radium 226 [1]	0.000	0.000
Total suspended solids	0.000	0.000
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(15) *Acid Leachate from Zirconium Metal Production.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	10.900	4.420

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Cyanide (total)	5.893	2.357
Lead	8.250	3.831
Nickel	16.210	10.900
Ammonia (as N)	3,932.000	1,726.000
Radium 226 [1]	587.800	241.000
Total suspended solids	441.900	353.500
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(16) *Acid Leachate from Zirconium Alloy Production.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	5.835	2.366
Cyanide (total)	3.154	1.262
Lead	4.416	2.050
Nickel	8.674	5.835
Ammonia (as N)	2,105.000	923.600
Radium 226 [1]	314.700	129.000
Total suspended solids	236.600	189.200
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(17) *Leaching Rinse Water from Zirconium Metal Production.*

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	21.810	8.840
Cyanide (total)	11.790	4.715
Lead	16.500	7.661
Nickel	32.410	21.810
Ammonia (as N)	7,865.000	3,451.000
Radium 226 [1]	1,176.000	482.000
Total suspended solids	884.000	707.200
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

(18) *Leaching Rinse Water from Zirconium Alloy Production.*

NSPS LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNUIM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	0.292	0.118
Cyanide (total)	0.158	0.063
Lead	0.221	0.103
Nickel	0.434	0.292
Ammonia (as N)	105.300	46.210
Radium 226 [1]	15.740	6.454

NSPS LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNUIM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Total suspended solids	11.840	4.738
pH	(2)	(2)

[1] Values in picocuries per kilogram (pc/kg).
[2] Within the range of 7.5 to 10.0 at all times.

§ 421.335 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in primary zirconium and hafnium process wastewater introduced into a POTW must not exceed the following values.

(a) **Level A.**

(1) *Acid Leachate from Zirconium Metal Production.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of –pulrrzirconium produced	
Chromium (total)	12.970	5.304
Cyanide (total)	8.545	3.530
Lead	12.380	5.890
Nickel	56.570	37.420
Ammonia (as N)	3,932.000	1,726.000
Radium 226 [1]	884.000	363.600

[1] Values in picocuries per kilogram (pc/kg).

(2) *Acid Leachate from Zirconium Alloy Production.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	6.835	2.839
Cyanide (total)	4.574	1.893
Lead	6.624	3.154
Nickel	20.280	20.020
Ammonia (as N)	2,105.000	923.600
Radium 226 [1]	473.200	194.000

[1] Values in picocuries per kilogram (pc/kg).

(3) *Leaching Rinse Water from Zirconium Metal Production.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	25.1[illegible]	10.610
Cyanide (total)	17.[illegible]	7.072
Lead	24.75[illegible]	11.790
Nickel	113.20[illegible]	74.840
Ammonia (as N)	7 865.00[illegible]	3.451 000
Radium 226 [1]	1.768.00[illegible]	727.200

[1] Values in picocuries per kilogram (pc/kg)

(4) *Leaching Rinse Water from Zirconium Alloy Production.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	0.347	0 142
Cyanide (total)	0 229	0.[illegible]
Lead	0 331	0.158
Nickel	1 515	1 002
Ammonia (as N)	105 300	46 210
Radium 226 [1]	23 670	9 736

[1] Values in picocuries per kilogram (pc/kg)

(b) **Level B.**

(1) *Sand Drying Wet Air Pollution Control.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zircon sand	
Chromium (total)	0.140	0 057
Cyanide (total)	0 076	0 030
Lead	0 109	0.[illegible]
Nickel	0 209	0 140
Ammonia (as N)	[illegible]	22.200
Radium 226 [1]	7 561	3 100

[1] Values in picocuries per kilogram (pc/kg)

(2) *Sand Chlorination Off-Gas Wet Air Pollution Control.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	0.544	0.221
Cyanide (total)	0 294	0.118
Lead	0.412	0.191
Nickel	0.809	0.554
Ammonia (as N)	196 300	[illegible]
Radium 226 [1]	[illegible]	12 030

[1] Values in picocuries per kilogram (pc/kg).

(3) *Sand Chlorination Area Vent Wet Air Pollution Control.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	0.726	0.294
Cyanide (total)	0 392	0.157
Lead	0 549	0.255
Nickel	1 079	0 726
Ammonia (as N)	261 800	114 900
Radium 226 [1]	39 140	16 050

[1] Values in picocuries per kilogram (pc/kg).

(4) *$SiCl_4$ Purification Wet Air Pollution Control.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $SiCl_4$ purified	
Chromium (total)	0.320	0.130
Cyanide (total)	0 173	0 069
Lead	0 242	0.113
Nickel	0 476	0.320
Ammonia (as N)	115.400	50 650
Radium 226 [1]	17.260	7 076

[1] Values in picocuries per kilogram (pc/kg).

(5) *$SiCl_4$ Purification Waste Acid.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $SiCl_4$ purified	
Chromium (total)	1 600	0.649
Cyanide (total)	0.865	0.346
Lead	1 211	0 562
Nickel	2 379	1 600
Ammonia (as N)	577.100	253 300
Radium 226 [1]	[illegible]	[illegible]

[1] Values in picocuries per kilogram (pc/kg)

(6) *Feed Makeup Wet Air Pollution Control.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	0.235	0.095
Cyanide (total)	0 127	0.051
Lead	0.178	0.082
Nickel	0.349	0.235
Ammonia (as N)	84.530	37 090
Radium 226 [1]	12.650	5.166

[1] Values in picocuries per kilogram (pc/kg).

(7) *Iron Extraction (MIBK) Steam Stripper Bottoms.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.769	0 312
Cyanide (total)	0.415	0 166
Lead	0.582	0.270
Nickel	1.143	0.769
Ammonia (as N)	277.200	121 600
Radium 226 [1]	41.440	16.990

[1] Values in picocuries per kilogram (pc/kg).

(8) *Zirconium Filtrate.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	26 340	10 680
Cyanide (total)	14.240	5.695
Lead	19.940	9 255
Nickel	39 160	26 340
Ammonia (as N)	8.499.000	4,169 000
Radium 226 [1]	1,420.000	[illegible]

[1] Values in picocuries per kilogram (pc/kg).

(9) *Hafnium Filtrate.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of hafnium produced	
Chromium (total)	0.000	[illegible]
Cyanide (total)	0.000	0 000
Lead	0.000	0 000
Nickel	0.000	0 000
Ammonia (as N)	0 000	0.000
Radium 226 [1]	0.000	0.000

[1] Values in picocuries per kilogram (pc/kg).

(10) *Calcining Caustic Wet Air Pollution Control.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.661	0.[illegible]
Cyanide (total)	0.357	0.143
Lead	0.500	0.232
Nickel	0.982	0.661
Ammonia (as N)	213.300	104.600
Radium 226 [1]	35.630	14.610

[1] Values in picocuries per kilogram (pc/kg).

(11) *Pure Chlorination Wet Air Pollution Control.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.974	0.395
Cyanide (total)	0.526	0.211
Lead	0.737	0.342
Nickel	1.448	0.974
Ammonia (as N)	351.200	154.100
Radium 226 [1]	52.510	21.530

[1] Values in picocuries per kilogram (pc/kg).

(12) *Reduction Area-Vent Wet Air Pollution Control.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.244	0.099
Cyanide (total)	0.132	0.053
Lead	0.184	0.086
Nickel	0.362	0.244
Ammonia (as N)	87.820	38.540
Radium 226 [1]	13.130	5.383

[1] Values in picocuries per kilogram (pc/kg).

(13) *Magnesium Recovery Wet Air Pollution Control.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.487	0.197
Cyanide (total)	0.263	0.105
Lead	0.369	0.171
Nickel	0.724	0.487
Ammonia (as N)	175.600	77.080
Radium 226 [1]	26.260	10.770

[1] Values in picocuries per kilogram (pc/kg).

(14) *Zirconium Chip Crushing Wet Air Pollution Control.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Radium 226 [1]	0.000	0.000

[1] Values in picocuries per kilogram (pc/kg).

(15) *Acid Leachate from Zirconium Metal Production.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	10.900	4.420
Cyanide (total)	5.893	2.357
Lead	8.250	3.831
Nickel	16.210	10.900
Ammonia (as N)	3,932.000	1,726.000
Radium 226 [1]	587.800	241.000

[1] Values in picocuries per kilogram (pc/kg).

(16) *Acid Leachate from Zirconium Alloy Production.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	5.835	2.368
Cyanide (total)	3.154	1.262
Lead	4.416	2.050
Nickel	8.674	5.835
Ammonia (as N)	2,105.000	923.600
Radium 226 [1]	314.700	129.000

[1] Values in picocuries per kilogram (pc/kg).

(17) *Leaching Rinse Water from Zirconium Metal Production.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	21.810	8.840
Cyanide (total)	11.790	4.715
Lead	16.500	7.661
Nickel	32.410	21.810
Ammonia (as N)	7,865.000	3,451.000
Radium 226 [1]	1,176.000	482.000

[1] Values in picocuries per kilogram (pc/kg).

(18) *Leaching Rinse Water from Zirconium Alloy Production.*

PSES FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	0.292	0.118
Cyanide (total)	0.158	0.063
Lead	0.221	0.103
Nickel	0.434	0.292
Ammonia (as N)	105.360	46.210
Radium 226 [1]	15.740	6.454

[1] Values in picocuries per kilogram (pc/kg).

§ 421.336 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary zirconium and hafnium process wastewater introduced into a POTW shall not exceed the following values:

(a) **Level A.**

(1) *Acid Leachate from Zirconium Metal Production.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	12.970	5.304
Cyanide (total)	6.548	2.536
Lead	12.380	5.893
Nickel	56.570	37.420
Ammonia (as N)	3,932.000	1,726.000
Radium 226 [1]	864.000	363.600

[1] Values in picocuries per kilogram (pc/kg).

(2) *Acid Leachate from Zirconium Alloy Production.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	5.835	2.839
Cyanide (total)	4.574	1.892
Lead	6.624	3.154
Nickel	30.290	20.030
Ammonia (as N)	2,105.000	923.600
Radium 226 [1]	473.200	194.600

[1] Values in picocuries per kilogram (pc/kg).

(3) *Leaching Rinse Water from Zirconium Metal Production.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	25.980	10.610
Cyanide (total)	17.[illegible]	7.072
Lead	24.750	11.790
Nickel	113.[illegible]	74.840
Ammonia (as N)	7,865.[illegible]	3,451.000
Radium 226[1]	1,768.[illegible]	727.200

[1] Values in picocuries per kilogram (pc/kg).

(4) *Leaching Rinse Water from Zirconium Alloy Production.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	0.347	0.142
Cyanide (total)	0.[illegible]	0.[illegible]
Lead	0.381	0.158
Nickel	1.515	1.002
Ammonia (as N)	105.[illegible]	46.210
Radium 226[1]	23.[illegible]	9.7[illegible]

[1] Values in picocuries per kilogram (pc/kg).

(b) Level B.

(1) *Sand Drying Wet Air Pollution Control.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zircon sand	
Chromium (total)	0.140	0.057
Cyanide (total)	0.076	0.[illegible]
Lead	0.166	0.[illegible]
Nickel	0.[illegible]	0.140
Ammonia (as N)	[illegible]	[illegible]
Radium 226[1]	7.561	3.100

[1] Values in picocuries per kilogram (pc/kg).

(2) *Sand Chlorination Off-Gas Wet Air Pollution Control.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	0.544	0.221
Cyanide (total)	0.[illegible]	0.118
Lead	0.412	0.191
Nickel	0.[illegible]	0.544
Ammonia (as N)	196.[illegible]	86.160
Radium 226[1]	29.360	12.030

[1] Values in picocuries per kilogram (pc/kg).

(3) *Sand Chlorination Area Vent Wet Air Pollution Control.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	0.726	0.294
Cyanide (total)	0.392	0.157
Lead	0.548	0.255
Nickel	1.079	0.726
Ammonia (as N)	251.800	114.900
Radium 226[1]	39.140	16.050

[1] Values in picocuries per kilogram (pc/kg).

(4) *$SiCl_4$ Purification Wet Air Pollution Control.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $SiCl_4$ purified	
Chromium (total)	0.320	0.130
Cyanide (total)	0.173	0.069
Lead	0.242	0.113
Nickel	0.476	0.320
Ammonia (as N)	115.400	50.650
Radium 226[1]	17.260	7.076

[1] Values in picocuries per kilogram (pc/kg).

(5) *$SiCl_4$ Purification Waste Acid.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $SiCl_4$ purified	
Chromium (total)	1.600	0.649
Cyanide (total)	0.865	0.346
Lead	1.211	0.562
Nickel	2.379	1.600
Ammonia (as N)	577.100	253.300
Radium 226[1]	86.250	35.390

[1] Values in picocuries per kilogram (pc/kg).

(6) *Feed Makeup Wet Air Pollution Control.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude $ZrCl_4$ produced	
Chromium (total)	0.235	0.095
Cyanide (total)	0.127	0.051
Lead	0.178	0.082
Nickel	0.349	0.235
Ammonia (as N)	84.530	37.090
Radium 226[1]	12.650	5.186

[1] Values in picocuries per kilogram (pc/kg).

(7) *Iron Extraction (MIBK) Steam Stripper Bottoms.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or Pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium	
Chromium (total)	0.769	0.312
Cyanide (total)	0.415	0.166
Lead	0.582	0.270
Nickel	1.143	0.769
Ammonia (as N)	277.200	121.600
Radium 226[1]	41.440	16.990

[1] Value in picocuries per kilogram (pc/kg).

(8) *Zirconium Filtrate.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or Pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	26.340	10.680
Cyanide (total)	14.240	5.695
Lead	19.940	9.255
Nickel	39.160	26.340
Ammonia (as N)	9,499.000	4,169.000
Radium 226[1]	1,420.000	582.400

[1] Value in picocuries per kilogram (pc/kg).

(9) *Hafnium Filtrate.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or Pollutant property	Maximum for any 1 day	Maximum for monthly average
	.g/kg (pounds per million pounds) of hafnium produced	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Radium 226[1]	0.000	0.000

[1] Value in picocuries per kilogram (pc/kg).

(10) *Calcining Caustic Wet Air Pollution Control.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or Pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.681	0.268
Cyanide (total)	0.357	0.143
Lead	0.500	0.232
Nickel	0.982	0.661
Ammonia (as N)	238.300	104.800
Radium 226[1]	35.630	14.610

[1] Value in picocuries per kilogram (pc/kg).

(11) *Pure Chlorination Wet Air Pollution Control.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or Pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.974	0.385
Cyanide (total)	0.526	0.211
Lead	0.737	0.342
Nickel	1.448	0.974
Ammonia (as N)	351.200	154.100
Radium 226 [1]	52.510	21.530

[1] Value in picocuries per kilogram (pc/kg).

(12) *Reduction Area-Vent Wet Air Pollution Control.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or Pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.244	0.099
Cyanide (total)	0.132	0.053
Lead	0.184	0.086
Nickel	0.362	0.244
Ammonia (as N)	87.820	38.540
Radium 226 [1]	13.130	5.383

[1] Value in picocuries per kilogram (pc/kg).

(13) *Magnesium Recovery Wet Air Pollution Control.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	.g/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.487	0.197
Cyanide (total)	0.263	0.105
Lead	0.369	0.171
Nickel	0.724	0.487
Ammonia (as N)	175.600	77.080
Radium 226 [1]	26.260	10.770

[1]Values in picocuries per kilogram (pc/kg).

(14) *Zirconium Chip Crushing Wet Air Pollution Control.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced.	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000
Radium 226 [1]	0.000	0.000

[1]Values in picocunes per kilogram (pc/kg).

(15) *Acid Leachate from Zirconium Metal Production.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced.	
Chromium (total)	10.900	4.420
Cyanide (total)	5.893	2.357
Lead	8.250	3.831
Nickel	16.210	10.900
Ammonia (as N)	3,932.000	1,726.000
Radium 226 [1]	587.800	241.000

[1]Values in picocunes per kilogram (pc/kg).

(16) *Acid Leachate from Zirconium Alloy Production.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	5.835	2.386
Cyanide (total)	3.154	1.262
Lead	4.416	2.050
Nickel	8.674	5.835
Ammonia (as N)	2,105.000	923.600
Radium 226 [1]	314.700	129.000

[1]Values in picocuries per kilogram (pc/kg).

(17) *Leaching Rinse Water from Zirconium Metal Production.*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	21.810	9.840
Cyanide (total)	01.790	4.715
Lead	16.500	7.661
Nickel	32.410	21.810
Ammonia (as N)	7,865.000	3,451.000
Radium 226 [1]	1,176.000	482.000

[1]Values in picocuries per kilogram (pc/kg).

(18) *Leaching Rinse Water (Zirconium Alloy Production).*

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys	
Chromium (total)	0.262	0.118
Cyanide (total)	0.158	0.069
Lead	0.221	0.103
Nickel	0.434	0.292
Ammonia (as N)	105.300	46.210
Radium 226 [1]	15.740	6.454

[1]Values in picocuries per kilogram (pc/kg).

§ 421.337 [Reserved]

[FR Doc. 84-1672 Filed 6-26-84; 8:45 am]

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Part III

Department of Energy

Bonneville Power Administration

Final Customer Service Policy and Record of Decision; Notice

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File Number: CSP-1]

Final Customer Service Policy and Record of Decision

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of final customer service policy and record of decision.

SUMMARY: Under the Bonneville Project Act of 1937 and subsequent legislation, the BPA is responsible for marketing power from Federal dams and other resources in the Pacific Northwest. BPA is to encourage the widest possible use for the electricity it markets. In fulfillment of this responsibility, BPA has provided a high-voltage power grid which transmits bulk power from Northwest generating facilities to the utilities and other customers which buy power from BPA.

BPA's Customer Service Policy (CSP) defines the divisions of responsibility between BPA and its customers for providing facilities which link BPA's transmission system with the distribution systems or other facilities of BPA customers.

The CSP was established in 1962. This revision of the CSP has been under discussion with BPA customers and interested public since 1982. The final CSP covers services provided for all customer classes and includes all types of facilities constructed by BPA. It places an increased emphasis on joint "one-utility" planning and can be used as a comprehensive planning tool for BPA and customers. Within the policy, sufficient detail is provided describing each party's responsibilities in both transmission facility and distribution substation construction.

EFFECTIVE DATE: The policy will become effective on July 1, 1984.

ADDRESSES: Additional copies of this notice and copies of the Staff Evaluation and Addendum portion of the Record of Decision on this policy may be obtained from The Public Involvement Manager, Bonneville Power Administration, Box 3621, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn W. Baker, Public Involvement office, at the address listed above, 503–230–3478. Oregon callers may use 800–452–8249; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

The Record of Decision on this policy is comprised of (1) this notice, including supplementary information, and the final policy and (2) The Staff Evaluation and Addendum thereto.

The supplementary information portion of this notice provides background on the development of the policy. The text of the policy includes appendices which provide supporting detail to the policy. The Staff Evaluation and Addendum describe issues resolved in the course of policy development; it is not being published because of its length. Copies of the Staff evaluation and Addendum may be obtained by contacting the Public Involvement Office, Bonneville Power Administration, at the address or telephone numbers listed above.

The Staff Evaluation and Addendum provide a detailed description of the decisionmaking process employed by BPA in regard to each of the major policy issues. For each issue, BPA considered carefully all public comments submitted on the policy as well as information developed by staff. BPA then selected those policy alternatives that were determined to contribute to the most effective customer service policy. The Staff Evaluation consists of the March 27, 1984, published Staff Evaluation. The Addendum provides further clarifications to specific issues based upon customer and public comments on the March 27, 1984, Staff Evaluation. The Addendum contains a concise statement of each issue which received comments, the proposed policy on the issue, a description of all alternatives considered and the arguments supporting each alternative, an evaluation of the comments, and BPA's decision for each issue.

I. Summary

A. Policy Development

In 1962, BPA developed a customer service policy to establish guidelines for BPA's participation in distribution substations serving only public utility power purchase customers. The policy was revised, unofficially, in 1976 with minimal changes. On June 15, 1982, BPA published in the **Federal Register** a notice of intent to revise the CSP. Eight public workshops were held throughout the region to assess the concerns of the public and utilities regarding the CSP. BPA received 31 comments. This input was used to develop the proposed policy, published in the **Federal Register** on September 29, 1983, for public review. In October 1983, BPA held six public information and comment forms to receive oral comments on the proposed policy. From the comment forums and associated letters, the staff developed the Staff Evaluation and revised the proposed policy. On March 27, 1984, BPA circulated the Staff Evaluation and revised CSP for public review. BPA received comments from nine utilities/organizations. These comments were evaluated. The resulting changes from the revised policy are mainly clarification of statements in the proposed policy. In addition to the public review, BPA staff reviewed the revised CSP. This internal review resulted in clarifications, which are included in the final CSP.

B. National Environmental Policy Act (NEPA) Compliance, 42 U.S.C. 4321. et seq.

The CSP will not affect the quality of the human environmental; the effects, if any, are entirely remote and speculative. Neither an Environmental Assessment or Environmental Impact Statement has been prepared.

C. Summary of Policy

I. Goals

The CSP provides consistency and flexibility in relationships between BPA and customers. The guidelines contained in the CSP establish the "ground rules"

for BPA's involvement with its customers. These ground rules will help provide consistent levels of service. There can be exceptions to the guidelines; however, suitable justification must be provided for each exception.

The CSP promotes the one-utility planning concept for all customer service projects. One-utility planning means that planning of future customer service projects will be done as if all facilities were owned by a single utility in a particular study or service area. This is the fundamental concept underlying the final policy. For planning purposes, there will be no distinction between BPA facilities and customer facilities. The actual division of construction and financial responsibilities will be done after the planning is completed. As a result of this approach, the most efficient long-range plan will be developed with minimum overall cost and environmental impacts. This planning concept will encourage cooperation between BPA and its customers, thereby minimizing problems in the construction and operation phases.

The CSP closely adheres to the mandate of the Bonneville Project Act the BPA encourage widespread electric use in the Pacific Northwest. Under the policy, BPA's mission of providing bulk power to the region's utilities, regardless of geographic location, is carried forth in the guidelines for financial and construction responsibilities. This is consistent with BPA's "postage stamp" rate concept, under which utilities are charged the same rate for energy regardless of their proximity to generation sources.

2. Major Features in the CSP

The CSP is designed to provide efficient and equitable services to all BPA customers. The policy covers all customers and transmission facilities. The final CSP deals with Direct Service Industries (DSI's), and Investor-Owned Utilities (IOU's) as well as preference customers. Also, it provides guidelines and criteria for all transmission facilities, not only distribution substations. Transmission lines, transmission line taps, and transformer additions are covered as well as distribution substations. The policy also describes the provision of facilities for wheeling (wheeling is transmitting other utilities' energy over BPA lines). Finally, the CSP addresses BPA's participation in emergency operations should a customer suffer a transformer failure.

BPA's service and requirements have been described in detail, so utilities can use the policy as a tool in planning their own facility development . The level of detail provided will also help assure consistent application of the policy throughout BPA's service area. BPA customers had expressed frustration with their inability to determine in advance what services BPA would provide for their systems. The CSP contains sufficient detail to allow customers to employ the policy itself as a planning tool for future expansion projects involving BPA. Also, it outlines BPA's financial and construction responsibilities for a broad range of transmission facilities for different sizes and types of customers. Therefore, customers considering expansion projects can plan with knowledge of BPA's participation in the projects, minimizing uncertainty regarding the extent and timing of BPA's participation. The policy will enhance customers' understanding of facility design construction, operation, and maintenance standards that are required for BPA involvement. This will help them gauge the cost impact of these standards, and determine the overall project economics with more accuracy.

Other features of the CSP include: (1) A transformation capacity limitation which shifts distribution substation responsibility to certain customers, while still providing BPA assistance to smaller customers; (2) description of BPA's role in transmission facility construction and encouraging larger utilities to develop the necessary interconnected transmission system; (3) definition of BPA's responsibilities in environmental reviews; and (4) provisions allowing for upgrading of inferior transfer service.

3. CSP Structure

The proposed CSP consists of a policy statement, guidelines, and appendices. The policy statement provides the foundation for the entire policy. The guideline section provides the necessary detail to assist customers and BPA in policy interpretation, and maintain consistent application. The appendices provides further clarification in specific areas. They include Definitions, Planning Assumptions, Typical BPA Project Lead Times, and Construction Responsibilities.

D. Summary of Issues

The major issues considered during the policy development process which were resolved within the policy are:

a. Maintaining "consistency with flexibility" in policy application.

b. Expanded scope covers all customer classes, not just preference customers, and all types of facilities, not just distribution substations.

c. Comprehensive planning tool for BPA and customers.

d. Increased emphasis on joint "one-utility" planning between BPA and customers for future customer service projects including nonconstruction alternatives such as conservation.

e. Transformation capacity limitation shifts distribution substation responsibility to certain customers, while still providing BPA assistance to smaller customers.

f. Describing BPA's role in transmission facility construction and encouraging larger utilities to develop the necessary interconnected transmission system.

g. Define BPA's responsibilities in environmental review and eliminating redundancy by, where available and appropriate, accepting documentation done by/for other agencies.

h. Transfer service provisions allow for upgrading inferior transfer service.

1. Criterion for transformation capacity limitation revised to the "25/50" basis. Customers below 25 MW average load will be eligible to receive 50 MVA of BPA provided transmission capacity.

j. Further clarification in BPA's responsibilities in environmental reviews.

k. Regional value of losses mandated for all one-utility planning.

l. Removal of BPA's Reliability Criteria and Standards as a policy appendix.

Discussion of these issues and their method of resolution is found in BPA's Staff Evaluation of the Record and the Addendum thereto. These documents are available on request at the locations listed under **ADDRESSES.**

Based upon the information presented above and in the Staff Evaluation and Addendum, I hereby adopt as BPA's final CSP the attached policy. This policy will become effective on July 1, 1984.

Issued in Portland, Oregon on June 15, 1984.

Peter T. Johnson,

Administrator.

Customer Service Policy

July 1, 1984.

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Introduction

The main goal of the Customer Service Policy (CSP) is to provide the most efficient and equitable delivery of electrical energy from Bonneville Power Administration (BPA) through its customer utilities to the region's consumers. This policy will encourage both BPA and the region's utilities to work together in the development of the best plan-of-service under the one-utility concept, and to describe the financial and construction responsibilities for the implementation of the plan. The resulting policy is intended to provide the most efficient, fair division of responsibilities between BPA and its customer utilities for the construction of facilities for delivery of power to those utilities. The policy has been developed through the joint efforts of the region's utilities and BPA.

The CSP consists of a policy statement, guidelines, and appendices. The policy statement provides the foundation for the entire policy. All other statements must be consistent with this policy statement. The guidelines section provides the necessary detail to assist utilities and BPA in policy interpretation, and to maintain consistent application. The appendices provide further clarification of the policy statements and guidelines, with supplemental information regarding BPA's standards and policies. They include sections on Definitions, Planning Assumptions and Project Proposal Outline, Typical Project Lead Times, and Construction Responsibilities.

Due to the detailed nature of certain sections, periodic revision of this document will be necessary. Whether or not a complete public involvement process is required for CSP modifications, the customer utilities shall be apprised or major changes and given an opportunity to comment. Minor changes to the guidelines and updates of the appendices shall made by BPA and distributed to customer utilities.

Customer Service Policy Statement

1. BPA provides services to its customer (power sales and wheeling) in accordance with relevant laws, including the Bonneville Project Act, 16 U.S.C. 832, the Federal Columbia River Transmission System Act, 16 U.S.C. et seq., and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839. BPA delivers the output from Federal generating plants and other acquired resources to its customers to achieve the greatest benefit to the Region's electric power consumers.

2. As a marketing agency, BPA's primary responsibility for delivery of power is to provide a reliable transmission system for the integration and delivery of bulk power to its customers in the Pacific Northwest. BPA will construct and finance transmission facilities for the delivery of bulk power to general service areas. BPA will not assume a utility's area transmission responsibility and will encourage larger utilities to develop the necessary interconnected transmission system.

3. Planning and construction of facilities by BPA will be based upon joint studies conducted by BPA and each customer to determine the best engineering, economic, and environmental plan-of-service based on the one-utility concept. Joint, one-utility, long-range planning will maximize economic efficiency, improve electrical system performance, and minimize environmental impacts.

4. BPA will be financially responsible for providing a limited amount of capacity for deliveries and distribution voltage levels for small utility power sales customers. This assistance to smaller utilities will enable them to develop the financial base necessary to provide the construction, operation and maintenance of the facilities beyond the maximum level provided for by BPA.

5. BPA planning, construction, operation and maintenance of transmission lines and substations will be accomplished in accordance with applicable environmental legislation and in cooperation with Federal, State, and local governments, and concerned public.

CUSTOMER SERVICE POLICY GUIDELINES

I. General

The guidelines section of the Customer Service Policy (CSP) is intended to delineate the basic principles of the Customer Service Policy Statement by providing the datails necessary for applicaion. This should promote consistent interpretation of these principles by both BPA and the utilities. The guidelines were designed for and will be applied in normal situations. Deviations may be necessary to accommodate unique circumstances. Coordination of poilicy modifications and interpretations will be the responsibility of the BPA Division of Customer Service of the Office of Power and Resources Management. This section is divided into three parts: Utility Planning, Facility Construction, and Financial and Construction Responsibilities.

II. Utility Planning

A. One-Utility Planning

BPA will plan its system and encourage others to plan on a one-utility basis without regard to ownership of facilities. This planning criterion is essential to provide the greatest benefits to the electric power consumer. Under one-utility planning, consideration of such factors as engineering and operation and maintenance requirements, long-range planning, service reliability, loss evaluation, the economics and environmental impacts of various alternatives, and evaluation of non-construction alternative would assure the adoption of the best plan-of-service and avoid the construction of unnecessary facilities. A point of delivery or interconnection which does not meet this criterion shall be deemed a convenience point of delivery (see IV.B.3., Convenience Point of Interconnection) and, if constructed, shall be at no expense to BPA.

B. Joint Utility Plan Development

Joint utility plan development requires that all utilities work in a coordinate and cooperative manner to evaluate and develop the plans-of-service. These joint planning discussions must take palce in all phases of the plan development. Early involvement by BPA in the joint planning process will normally assure BPA cooperation. This will lead towards

a timely project completion BPA Area staff will be the primary BPA contact and will work with utilities in developing the joint utility plan.

Plan development should include all "study area" utilities and BPA. The utilities and BPA should evaluate each utilities' system requirements and planning assumptions. Appendix B lists categories of planning assumptions that should be addressed in preliminary plan development. If differences exist in planning assumptions, BPA and the utilities should develop acceptable assumptions for planning purposes which are responsive to the utilities' needs. If common assumptions cannot be agreed upon, BPA should provide a written statement as to the reasons for rejecting the utility's assumptions. BPA's financial participation in a plan which has not been agreed to may be limited, or nonexistent, and will be evaluated on a case-by-case basis. The value of loses used in planning will be based upon the regional value of losses, including any specific utility considerations. BPA and the utilities should develop acceptable assumptions for the value of losses for planning purposes.

After planning assumptions have been defined, the participants will jointly develop the system long-range plan-of-service on a one-utility basis. The key elements in planning for the study area include:

(a) Load forecast for existing and proposed delivery points.

(b) Identification of transmission and distribution capacities, reliability problems, and system losses due to increased loading of the existing system.

(c) Development of all reasonable alternative solutions including long-range needs and costs.

(d) Alternative evaluation; economic, engineering, and environmental.

(e) Plan selection.

All of the above elements must be mutually agreed upon by BPA and the utility in the final long-range plan.

It is important that all relevant factors be considered in the final decision, including alternative transmission system costs, loss analysis, reliability, and environmental impacts. After the long/range plan is developed, the budget item proposal can be prepared. This proposal is a short-term construction plan evaluating solutions to a particular service problem. The elements of this plan which shall be required are shown in Appendix C. Sufficient lead time will insure timely completion of BPA construction responsibilities (see Appendix D, Project Lead Time).

C. Reliability

Under the one-utility concept, reliability factors should be examined within each customer's system as well as in BPA's system. This is necessary because the reliability of the customer's system must be a factor in the selection of the best overall plan and the BPA system must be protected from any possible adverse effects of customer additions. The sensitivity and magnitude of the loads within each customer's system should also be considered in setting the level of reliability required. BPA's reference for its reliability planning is the Reliability Criteria and Standards Manual. This manual outlines the quality of service BPA strives to maintain in its system and it is available at the Area and District offices. Customers are encouraged to employ this manual as a planning tool for future system additions involving BPA.

D. Environmental

Early in the development of customer service project proposals, BPA will work closely with customers and with Federal, State, and local agencies to minimize duplication of efforts and to ensure accurate consideration of environmental effects. While information about the impacts of customer-built facilities must be available to the decision maker in BPA, depending on the degree of BPA involvement, the amount and detailed quality of such information need not be the same as is required by BPA decisions on similar facilities directly undertaken by BPA.

BPA will include in its environmental documents an analysis of its own actions, as well as those of the customer which meet each of the following conditions:

—The customer's action may have substantial environmental impacts;
—Where BPA has asserted influence or control over environmental considerations of location and/or design; and
—The customer's action has not yet satisfactorily addressed Federal, State, and local environmental requirements.

In cases of customer actions with probable minor or negligible impacts, BPA's need for information will be less than for BPA actions. In cases of impacts of increasing significance (to be determined by the Environmental Coordinator), BPA's need for information will increase and with such increase, BPA may determine that it should exercise influence or control over environmental considerations associated with location or design of the customer facility.

III. Facility Construction

The major goal of facility construction is the timely addition of facilities to meet load growth in the most efficient and economic manner. This section discusses the engineering aspects of construction. The conditions under which the facilities will be constructed and the division of financial responsibility are discussed in Section IV, Financial and Construction Responsibilities. A chart on BPA typical project lead times is shown in Appendix D.

A. BPA Construction

Facilities shall be constructed in a manner compatible with both BPA and the utility's system and shall neither jeopardize nor hinder the normal operation of either party's system. BPA will not normally construct facilities required within city limits and urban areas nor facilities to serve a single ultimate consumer (e.g., industrial consumer).

1. Transmission taps. Line taps will normally be constructed by BPA personnel or its contractor. Operation and maintenance responsibility will be determined on a case by case basis. Taps to BPA transmission lines must be adequately equipped with appropriate sectionalizing devices (e.g., disconnect switches, automatic sectionalizing switches, quick break, load break, power circuit breakers) as determined by BPA to maintain system reliability and stability. BPA's authorization for any new or revised POI will be required for this type of project. Compliance with environmental regulations is required. Project lead time is normally 1 year but may be extended due to project complexities.

2. Transmission lines. BPA will construct, operate, and maintain transmission lines at 115 kV and above, as necessary, to a customer's load area, consistent with the other elements of this policy. Construction will normally be by BPA or its contractor. The project lead time can be 2 years or more depending on project complexity. Compliance with environmental regulations is required.

3. Distribution substations. Distribution substations will normally transform transmission level voltages, 115 kV and above, to distribution levels. If the existing transmission voltage is 69 kV, BPA may construct stepdown substations to transform it to distribution voltage levels. Points of delivery at distribution voltages shall be

three-phase deliveries granted only at the secondary voltage level of the distribution substation and not less than 12.5 kV. A typical BPA-constructed stepdown substation consists of high-side isolating and transformer protection devices, power transformer, metering, meter house, and yard. Under normal conditions, the customer will install a switching station adjacent to or within the BPA stepdown substations, with appropriate protective devices. BPA will not provide a lowside circuit breaker.

Substations will be designed to allow the use of mobile emergency transformers and spare transformers simultaneously. Development guidelines, elevation and plan views, and one-line diagram for a typical distribution substation are shown in Appendix E. Construction of BPA portions of substations will normally be done by BPA or its contractor. The normal project lead time is 4 years. Compliance with environmental regulations is required.

4. Transformer additions. BPA transformer capacity additions in distrubution substations will normally be energized based on the Reliability Criteria and Standards in force at the time. Current standards are as follows:

a. Winter peaking loads—before estimated peak load exceeds transformer force-cooled thermal rating adjusted for ambient temperature and 95 percent power factor;

b. Summer peaking loads—before estimated peak load exceeds 90 percent of transformer, force-cooled thermal rating adjusted for ambient temperature and 95 percent power factor.

The project lead time for transformer additions is normally 3 years. However, if an unassigned system transformer is available, the lead time may be reduced. Compliance with environmental regulations is required.

5. Revenue metering. Revenue metering facilities are required to record power deliveries or exchanges. The location of the revenue metering may be at the point of delivery or interconnection, or at a more convenient location. Metering facilities for power deliveries to BPA customers will normally be provided, installed, operated, and maintained by BPA. Normally, metering installations shall conform to BPA standards. Any designs for metering installations deviating from these standards shall receive BPA approval prior to construction. The project lead time for a metering installation is 1 year, but may be extended or reduced based upon project complexities.

6. Transmission substation facilities. BPA may construct, operate, and maintain facilities within existing transmission substations if required by a customer's load. The facilities must be consistent with the best plan-of-service, based upon the one-utility planning concept. Project lead time will vary due to project complexities and magnitude. Compliance with environmental regulations is required.

B. Customer Construction for BPA

Where feasible, it may be appropriate for the customer to construct for BPA (see Section IV.C.1.). Facilities must comply with environmental standards and be constructed so as to not jeopardize the integrity of the BPA system. If operated and maintained by BPA, these facilities must be constructed to BPA engineering and safety standards.

C. Customer Construction in BPA Distribution Substations

In an effort to encourage one-utility planning, customers may install, construct, operate, and maintain their equipment within BPA substation yards when space is available and where the substation supplies a single customer. Exceptions to the single customer criteria may be made where customers at a multiple distribution point can agree to a joint maintenance and operation arrangement. All interconnections to BPA facilities shall meet BPA standards in order to provide the protection necessary for safe and reliable operation of BPA facilities. Compliance with environmental regulations and contracting procedures will be required.

D. Customer Construction in BPA Transmission Substations

BPA will negotiate customer construction and maintenance arrangements. Prime consideration is given to utilities with 24-hour dispatch capability and to the extent of possible adverse impacts to the interconnected transmission system.

E. Project Responsibilities Statement

In any joint project involving two or more utilities, it is essential that a clear understanding of each party's responsibility is established prior to project material acquisition, design, and construction. Normally, a Letter of Intent should be developed and approved after initial agreement on a plan-of-service and prior to budget submittal. This should include project timing, basic project responsibilities and other appropriate issues, see Appendix E. Following the Letter of Intent, commercial arrangements and construction details will be developed separately through the appropriate contractual actions and the Division of Responsibilities Letter Agreement (Appendix F). The development of these contracts may begin at anytime during the preconstruction phase, but must be executed prior to material acquisition, design, and construction phases (CPA). Normally, the Letter of Intent and contracts will be initiated and negotiated by BPA Area Offices. The complexity of a project should determine the necessity of a Letter of Intent for every project. An outline of the Division of Responsibilities Letter Agreement is shown in Appendix F.

IV. Financial and Construction Responsibilities

This section discusses BPA's role and responsibility in providing service facilities to its customers: Publicly and Cooperatively Owned and Investor-Owned Utilities, Federal Agencies, and Direct-Service Industries. Service facilities include both delivery and interconnection facilities, such as transmission support projects, delivery terminals, distribution substations, transformer additions, and resource integration facilities.

A. BPA Criteria for Granting Interconnections

The following criteria shall be met in granting a Point of Delivery (POD) or Interconnection (POI):

1. Best plan-of-service. Consistent with the aspects of the Utility Planning Section (Section II), it must be demonstrated that the POD or POI represents the best overall plan-of-service on a one-utility basis. If it does not represent the best overall plan, it shall be deemed a convenience point of interconnection. (See IV.B.3, Convenience Point of Interconnection.)

2. Service cost recovery. Recovery of BPA's costs associated with establishing and maintaining the facilities required for delivery to and at the POD or POI must be assured. This will be accomplished normally through wholesale power rates (Power Sales Customers), or through transmission rates, or special contract actions (Wheeling Customers). If a POI is granted that is neither for power sales nor wheeling, the costs for the interconnection and any applicable service charges shall be borne by the utility requesting or benefiting from the POI. If both BPA and the interconnecting utility request the POI, then the costs will be allocated based upon relative benefits. Any contract action describing cost-sharing arrangements and construction responsibilities shall be executed prior to project material

acquisition, design, and construction. The contract shall include provisions for recovery of any otherwise unrecoverable costs in the event of load reduction or early termination.

B. BPA Facility Construction

In determining BPA's financial and construction responsibility, the facilities required for Power Sales Customers and Wheeling Customers will be discussed separately. Costs associated with joint-use facilities (power sales and wheeling) shall be allocated equitably among the parties. Discussions regarding each party's financial and construction responsibilities shall occur early in the planning process with final commercial arrangements and appropriate contract actions executed prior to project material acquisition, design, and construction.

1. Power sales facilities—firm power. BPA will construct or be financially responsible for providing the transmission facilities required for the delivery of bulk power to customers' service areas. If BPA is requested to provide facilities to serve a load of tentative nature, the commercial arrangements shall include a minimum bill provision. Also, if a customer requires a higher level of service than normally provided by BPA (e.g., looped instead of radial service), the costs of providing the higher level of service will be borne by the customer. If a customer requests BPA to accelerate the timetable for construction of a customer service project that is consistent with the long-range plan, the customer shall pay all incremental costs associated with the early construction. This type of construction action will be evaluated on a case by case basis. However, a 5-year timetable acceleration would be reasonable for most situations. BPA may, at its option, request the customer construct and/or operate and maintain a facility at BPA expense pursuant to section IV.C.

a. Transmission taps. BPA will construct all taps on BPA transmission lines for deliveries to utility customers at BPA substations or customer-constructed substations. Each tap will include the necessary line sectionalizing switches. The customer will provide the protection and isolation devices as required by BPA to minimize the jeopardy to BPA's system.

b. Transmission lines. BPA will provide lines which deliver bulk power at the local transmission level, consistent with the best plan of service. Transmission lines necessary for bulk power deliveries to new systems will be 115 kV and above. Transmission lines necessary for bulk power deliveries to existing systems which are less than 115 kV may be provided at the established voltage level (normally 69 kV). Although these lines will normally be provided at BPA expense, construction and funding responsibility will be determined on a case-by-case basis.

If transmission lines to a load area are required they will normally be constructed by BPA. However, customers that have assumed load area transmission responsibilities or that serve a continuous load area will be responsible for providing all subsequent transmission lines to those respective load areas. Also, customers shall be responsible for all construction of transmission lines within load areas, city limits, urban areas, and all construction of short tap lines (normally up to ½ mile unless BPA owned distribution substation). Customers above 175 MW peak load will have all construction and financial responsibilities within their service areas regardless of any of the above special conditions. The peak load level will be that projected load level at the time the facilities are required.

c. Distribution substation (25/50 criteria). For utilities under 25 MW average load, BPA will provide 50 MVA of distribution transformation capacity. This will include the next increment which increases the total capacity over the 50 MVA limit. The 25 MW average load level will be based on the projected load level at the time the capacity will be installed. The 50 MVA level includes BPA-installed nameplate transformer capacity and associated substation facilities, transformer capacity that BPA leases, and BPA-provided transfer service loads. This criteria is intended to assist smaller utilities in developing the financial base necessary to provide for distribution facilities beyond the level provided by BPA. Customers shall be responsible for all substation construction within city limits and urban areas.

In transfer situations, BPA will provide continued transfer service for load growth, consistent with the above criteria, at existing points of delivery until additional facilities are required, contracted transfer demand limits are reached, or transfer agreements are terminated. Transfer costs for capacity above this criteria will be borne by the Customer.

d. Transformer additions. Based on the best overall plan-of-service determination and consistent with the criteria stated in IV.B.1c. above, BPA will provide transformer capacity additions at BPA distribution substations for existing points of delivery. Customers above this criteria level will be responsible for transformer additions. BPA may assist these customers by constructing on a trust fund basis or by providing available substation property.

e. Metering. Conssistent with other policy elements, BPA will normally provide all necessary metering, and will assume financial responsibility for interchange telemetering required under transfer situations.

BPA may, at its option, meter and bill more than one point of delivery on a combined or coincidental basis. Under normal conditions, a diversity charge will be assessed; however, it may be waived if the customer has constructed transmission facilities which would provide benefits to BPA. These include, but are not limited to, facilities BPA would have normally constructed, facilities which provide backup for the BPA transmission system leading to continued power sales, and facilities which prolong the life of existing PBA facilities. In order to waive a diversity charge, it must be demonstrated that the benefits BPA would receive due to a customer's increased role in transmission construction exceed the revenues accrued through noncoincidental billing.

f. Transmission substation facilities. BPA will construct and be financially responsible for facilities required for power delivery to customers at the customer's area transmission voltage level. Deliveries to new systems will be provided at 115 kV and above. New deliveries to systems with existing voltage levels less than 115 kV may be provided at the existing voltage level (normally 69 kV), consistent with the best plan of service. These delivery facilities include transmission terminal positions and system transformers.

2. Power sales facilities-nonfirm or short-term firm power. BPA will not normally construct facilities specifically for serving any part of a customer's nonfirm or short-term firm power purchases unless it can be shown to provide overall benefits to the region. If excess capacity is available, BPA will provide deliveries at the requested customer point of delivery.

3. Convenience point of interconnection. A convenience point of interconnection is requested for an individual customer's needs and is not accepted as the best one-utility plan-of-service. Since BPA places the one-utility concept as a fundamental principle in its planning process, it must be assured other utilities plan on the same basis. Therefore, all costs associated with a convenience POI shall be borne directly by the interconnecting utility. A POI

requested to improve a customer's system reliability which satisfies the one-utility planning concept shall not be determined as a convenience POI. Also, customers that have multiple POIs will be expected to utilize existing POI capacities consistent with one-utility planning. Additional POIs, if consistent with the one-utility planning concept, will not be determined as convenience POIs.

In order to grant a convenience POI, BPA must be assured of complete and long-term incremental cost recovery (increased costs of convenience POI over existing POI) associated with the power delivery. This will include direct BPA expenses for facilities constructed (e.g., transmission tap and metering), and any indirect costs (e.g., long-term increased transmission losses, transmission reconductoring, and increased system protection requirements). A specific agreement shall be negotiated outlining these terms prior to the POI approval. In the Power Sales Contract, the POI shall be stated as a convenience point of delivery. Compliance with environmental regulations and procedures will be required.

4. Wheeling facilities. In constructing facilities which provide a wheeling service, BPA must assure recovery of its investments. This will normally be accomplished by the actions stated below. However, a Use-of-Facility Transmission (UFT) rate, another appropriate BPA rate, or a trust fund may be employed if the recovery is uncertain. For facilities that perform a joint-use function (i.e., both power sales and wheeling), this section will apply to the wheeling component or portion of the facilities.

a. Transmission taps. The Wheeling Customer will be financially responsible for all costs associated with a BPA transmission line tap. BPA will normally construct the tap facilities. These will be financed under a trust fund arrangement. The customer will retain ownership of all trust fund line sectionalizing switches.

b. Transmission lines. In the construction of transmission lines, BPA will construct transmission facilities required for and providing the benefits of an interconnected regional network. BPA will not construct facilities from a customer's resource to the BPA transmission system nor assume a customer's service area transmission responsibilities unless agreed upon through specific contractual arrangements. Cost recovery for joint-use lines shall be through established transmission rates, while costs for sole use (wheeling) facilities shall be borne directly by wheeling customers (through a use-of-facilities rate or trust fund). Prior to BPA commitment of funds, appropriate contractual actions shall be executed, including rate, load, and resource reduction/termination provisions.

c. Distribution substations. All costs for the use of distribution substations shall be borne by Wheeling Customers (using a use-of-facilities rate methodology). BPA will not normally construct these types of facilities for the sole purpose of wheeling deliveries.

d. Transformer additions. All costs for the use of distribution substation transformer additions shall be borne by the Wheeling Customers (using a use-of-facilities rate methodology). BPA will nor normally construct these types of facilities for the sole purpose of wheeling deliveries.

e. Metering. BPA will install the metering as required. Costs shall be borne by the Wheeling Customers through a trust fund mechanism.

f. Transmission substation facilities. BPA will construct new transmission substations which provide a regional benefit. Appropriate contractual agreements for recovery of BPA investment will be executed prior to BPA commitment of funds. Specific facilities for wheeling customers within new or existing main grid substations shall normally be limited to terminal positions at approved POIs but may include other facilities, such as system transformers, based upon mutual acceptance. All costs shall be borne by the wheeling customer and will normally be recovered by trust fund.

C. Customer Facility Construction

1. For BPA. A demonstrated benefit to BPA may allow a Power Sales Customer to construct and/or operate and maintain a facility at BPA expense. The following factors will be considered in making the determination:

a. Best overall plan-of-service.

b. Customer(s) will experience undue hardship if project is delayed due to BPA procedural and construction requirements.

c. Overall cost benefit to BPA.

d. Land Acquisition and construction will comply with all Federal, state, and local government regulations and environmental requirements.

e. Unanticipated load growth in the Customer's service area.

f. Geographic proximity to existing BPA facilities and availability of BPA personnel.

This service is not intended to circumvent normal one-utility planning.

Decisions by BPA whether to own or lease facilities constructed by customers will be made on an individual basis. BPA monthly lease payments will be based on the annual facility cost, including interest, amortization, overheads and applicable operations and maintenance costs.

2. In BPA distribution substation yards and other properites. Customers will be encouraged to construct low-voltage delivery facilities within BPA substation yards or other properties. This construction will be limited to available space and compliance with BPA safety and environmental requirements. In existing properties, the customer shall pay for the costs incurred by BPA due to construction of the facility. Land costs will not be included.

D. Emergency Operations

BPA will assist in establishing an emergency transformer coverage program for transformer failures in customer's systems. Depending on the program composition, standard size transformers will be available for participating small to intermediate level customers (less than 175 MW peak load). The customer substatations must be designed to accommodate installation and safe operation of the transformers. All costs associated with this service shall be paid by the participants. To insure adequate coverage, BPA and the customers requesting this service will jointly develop a transformer coverage plan. Two services will be available: mobile spare coverage (short-term) and construction reserve coverage (up to 1 year).

E. Transfer Service

In accordance with other provisions of this policy for establishing new points of delivery, BPA can arrange for service to a power sales customer over a third party's (transferor) facilities if consistent with the best plan-of-service. BPA's financial responsibility shall include the costs of all transfers on the types of facilities that BPA would normally be required to provide for the customer, as specified in Section IV.B.1.

In the event of unsatisfactory or discontinued transfer service, BPA and the customer will develop and implement the best plan-of-service based on one-utility planning principles and in accordance with other provisions of this policy, as an alternative to the original transfer service. The transfer customer may be included in both the transfer contract negotiation process and planning discussions with BPA and the transferring utility.

F. Resource Integration

Facilities necessary to interconnect a non-BPA resource to existing BPA facilities will be installed at the expense of the user. Wheeling of such resources once integrated into BPA facilities will be subject to the BPA transmission policy and the customer service principles in Section IV.B.4. of this policy. Appropriate contractual actions shall be executed before BPA commitment of funds, if any.

G. Direct-Service Industry Service

BPA will construct or provide by transfer service the required transmission and substation facilities for service to its Direct Service Industrial customers.

Appendix A

Definitions

Annual Cost Ratio: Annual cost of the Federal Tranmission System, or any applicable portion thereof, divided by investment in such system. Similar calculation can be made for individual utility's system.

Area Load Center: Point at which the load of a given area is assumed to be centralized or concentrated.

Bulk Power Delivery: With regards to BPA mission, delivery of transmission level power quantities to point of delivery.

Capacity Limit: The maximum load carrying capability of a Utility's transmission or distribution facility determined by the owning utility. See Thermal Limit.

Coincidental Billing: Combining two or more points of metering to bill as one point of delivery.

Construction Project Authorization (CPA): Record and authorization for issuance of work order and obligation of funds to construct transmission system facilities.

Convenience Point of Interconnection: Point of interconnection or delivery that is not accepted as the best plan-of-service.

Cooperative: A private, normally nonprofit utility, operating within state law but essentially self-regulated by a board of directors elected from its membership.

Customer: Power Sales Customers or Wheeling Customer of BPA.

Direct-Service Industry (DSI): An industrial customer that contracts for the direct purchase of power from BPA.

Distribution Facilities: Facilities that move distribution voltage power from distribution substations to individual end-use loads. The maximum voltage of distribution facilities varies around the region but voltages at 34.5 kV and below are normally considered distribution voltages.

Distribution Substation: A substation which transforms transmission to distribution voltage levels (i.e., 115 kV to 12.5 kV).

Distribution Voltage Level: The voltage level used by a utility in its distribution system. The voltage of distribution facilities varies around the region and is normally 34.5 kV and below.

Diversity: The difference between the sum of the noncoincidental peaks of two or more individual loads and the coincidental peak of the combined load.

Diversity Factor: The ratio of the sum of the noncoincident maximum demands of the various subdivisions of a system, or part of a system, to the maximum demand of the whole system, or part under consideration.

End-Use Consumer: A consumer which purchases power from a utility for its own use.

Feeder Position: This normally includes a load and fault interrupting device, metering, a structure to connect an outgoing distribution line, and associated bus and switches as required.

Firm Power: Power guaranteed to be available at all times during the period covered by a commitment, even under adverse conditions, except for reason of certain uncontrollable forces or service provisions. Firm power is composed of either firm energy, firm capacity, or both.

Intermediate Customer: A Power Sales Customer with less than 175 MW peak load and exceeding the 25/50 criteria. See Small Customer and Large Customer.

Investor-Owned Utility (IOU): A utility which is organized under state law as a corporation for the purpose of providing electric power service and earning a profit for its stockholders.

Large Customer: A Power Sales Customer with more than 175 MW peak load who operates an extensive utility system and receives bulk power deliveries from BPA. See Small Customer and Intermediate Customer.

Lead Time: The time required from initial BPA review stages to project energization.

Letter Agreement (Construction): Defines each party's construction responsibilities for providing and installing facilities in a joint project (see Appendix F). Includes customer engineering requirements, identifies equipment to be installed in the customer's and BPA's portion of the substation.

Letter of Intent: Sets forth each utility's basic project responsibilities necessary to begin preliminary facility design. The Letter of Intent should be completed after initial project approval and prior to budget submittal (Construction Budget Project Authorization).

Load: The amount of electric power delivered or required at a given point on a system. Load originates primarily at the energy consuming equipment of consumer or a BPA customer.

Load Area: The distinct portion of a utility's service area in which there is a concentrated isolated and discrete pocket of load, surrounded by lower load-density areas. Examples are cities, densely populated but unincorporated urban areas, and industrial parks.

Load Estimate: The official BPA load estimate for the utility developed jointly between BPA and the utility.

Minimum Bill Provisions: Assurance of cost recovery for facilities constructed by BPA to serve loads of a tentative nature, typically, larger industrial or irrigation loads.

Municipal Utility: A utility owned and operated by a city.

Nonfirm Power: Power supplied or available under an arrangment which does not have the guaranteed continuous availablity feature of Firm Power.

Normal Utility Practice: The range of practices that are generally accepted by electric utilities for all phases of planning, consistent with standards publications such as American National Standards Institute (ANSI), National Electric Code, National Electric and Safety Code, Rural Electric Administration Standards, and Institute of Electrical and Electronics Engineers (IEEE).

One-Utility Concept: Planning decisions are made as though the same utility owned all relevant generating, transmission, and distribution facilities.

Peak Load: Maximum power demanded by a utility.

Planning Standards: Criteria of a utility or utilities, in a joint plan, which describe the standards used in the planning process. These include reliability, economic, environmental, and public policy factors.

Plan-of-Service: The project or projects which will solve a utility's or utilities' electrical service problem.

Point of Delivery (POD): Point at which utility systems are connected with the primary purpose of one-way power delivery.

Point of Interconnection (POI): Point in which utility systems are connected at which power can flow in either direction for power delivery (Point of Delivery), resource integration (wheeling), and system reliability improvement.

Power Sales Customer: A utility or industry which purchases electric power from BPA; distinguished from consumer, one who buys electric power from a utility. See Small, Intermediate, or Large Customer.

Power Transformer: Device used for changing voltage levels.

PUD: Public Utility District (in Washington) or People's Utility District (in Oregon); a separate unit of government established by voters of a district to supply electric or other utility service.

Reliability: In a network power system, the ability of the system to continue operation while some lines or generators are out of service or while the system is under stress. BPA has established minimum standards in the Reliability Criteria and Standards. For distribution utilities, reliability is normally defined in terms of yearly cumulative outage times per customer, number of outages per year per customer, and revenue loss due to outages. (See REA, EPRI, or other published criteria).

Resource Integration: Facilities necessary for interconnection of a generation project to the BPA transmission system.

Service Area: Total geographic area in which the utility provides electrical service.

Small Customer: Power Sales Customer whose total load requirements are less 25 MW average load. See Intermediate Customer and Large Customer.

Termination Charge: Unrecoverable costs associated with the unamortized value of a facility, which are the responsibility of a utility in the event of load reduction or termination before contract expiration.

Thermal Capacity: Maximum load which an electric device can carry under specified conditions for a given period of time, without exceeding limits of temperature of stress.

Transfer Agreement: Contractual agreement outlining the responsibilities of a utility for transfer of another utility's power, normally when the POD is in the transferor's load control area.

Transferor: Entity which receives energy at one point of system and makes such energy available at another point on its system.

Transmission Facilities: Facilities that transport electric energy in bulk from points of supply to points of delivery.

Transmission System: Interconnected electric transmission lines and associated equipment which provide for the transfer of bulk electric energy between point of supply and point of delivery.

Transmission Voltage Level: The voltage level at which bulk power is transmitted from a source to other principle parts of the system. This level is normally 115 kV or above, however, the transmission voltage level may be less than 115 kV.

Urban Area: Residential, commercial, or industrial area as defined by local land use plans.

Voltage Regulator: Usually a transformer-type device with the windings of the primary and regulated circuits suitably adapted and arranged for the control of the voltage of the regulated circuit.

Wheeling: The use of the transmission and distribution facilities of one system to transmit power of and for another system.

Wheeling Customer: A utility which transmits power over BPA transmission facilities for its own use.

Appendix B

BPA/Utility Planning Assumptions

In order to develop the best long-range "one-utility plan," mutually agreeable planning assumptions and methods need to be developed. Ultimately, this will lead to study results that can be used directly by participating organizations. The alternative to this is to produce separate studies, based upon different planning assumptions and methods, which invariably produces different conclusions. The different conclusions become the items to be resolved between BPA and utilities and may result in reduced financial involvement by BPA.

The following is a list of assumptions and methodologies which should be discussed and agreed upon prior to planning.

1. Study Period of Long-Range Plan Normally 20 year minimum.

2. Load Forecast Distribution by load, by point of delivery, or load area.

3. Exploratory Plans Reasonable number of transmission distribution alternatives.

4. Design Consideration.

a. Voltage Regulation Voltage drop with regulators.

b. Facility Capacity Thermal capacities of facilities based upon industry standards.

c. Value of Losses Regional value of power losses.

d. Service Reliability Goal Utility goal accounting for BPA's goal of 2½ hours cumulative annual outage time for point-of-delivery.

5. Facility Costs

Construction costs include design, labor, materials, engineering, and administrative overhead costs.

6. Economic Factors

a. Interest Rate

Individual utility interest rates.

b. Value of Losses Regional value of power losses.

c. Operation Maintenance

Based upon individual utility historical data with administrative overheads.

d. Present Worth Analysis

e. Facility Annual Costs Based on interest, amortization, and administrative overhead costs.

f. Value Remaining

Value remaining calculations to account for plans with different capacities should be made to equate all alternative plans economically.

7. Environmental Process

Environmental considerations are an integral part of one-utility planning. Section II.D.—Environmental Factors and Appendix C-Project Proposals provides guidance regarding environmental requirements.

8. Plan Review

Long-range plans should be reviewed periodically to insure that plans are consistent with the best-plan-of-service concept.

Appendix C

Project Proposal—Short-Term Construction Plan

The project budget item proposal for a short-term construction plan should be consistent with the long-range plan. The project proposal, developed by the customer and the Area, is necessary for BPA's budget proposal process. An outline of the proposal is shown below, and should be used as a guideline. This outline is similar to Appendix II of the REA Bulletin 60–8, "System Planning Guide, Electric Distribution Systems" which may also be used. The bulletin may be helpful as it provides detailed descriptions of the elements of a system plan.

Project Proposal Contents

1. Discussion of existing transmission and distribution facilities. (Include geographical and electrical diagrams showing lines and substations.)

2. Description of the service problem.

3. Alternative plans-of-service studied (description and discussion, including geographical information, electrical diagrams, engineering aspects, and mitigation measures not in the proposed action), and non-construction alternatives (e.g., conservation alternatives, load management, generation resources, loss reduction, etc.).

4. Summary of investments and economic analysis of plans studied. Cost of reliability will also be considered, if appropriate.

5. Long-range plan.

6. Operation and maintenance considerations.

7. Conclusions and recommendations.

Appendix

A. Load Forecast (e.g., load area, delivery point)

B. Comparative cost study using present worth analysis, accounting for all utility losses and transfer charges; study period should be sufficient length to include all major investments. Value remaining must be included in the present worth analysis.

C. Loss analysis.

D. One-line diagram of proposed facilities.

E. Cost estimates.

F. Pertinent correspondence.

G. Environmental analysis.

—What actions are automatically triggered by the proposed BPA action(s).

—What actions cannot or will not proceed unless the proposed BPA action(s) is taken previously or simultaneously?

—What actions are interdependent parts of the larger BPA proposed action(s) and depend on the larger BPA action(s) for their justification?

—What contractural arrangement are needed?

—Provide copies of any project studies already performed.

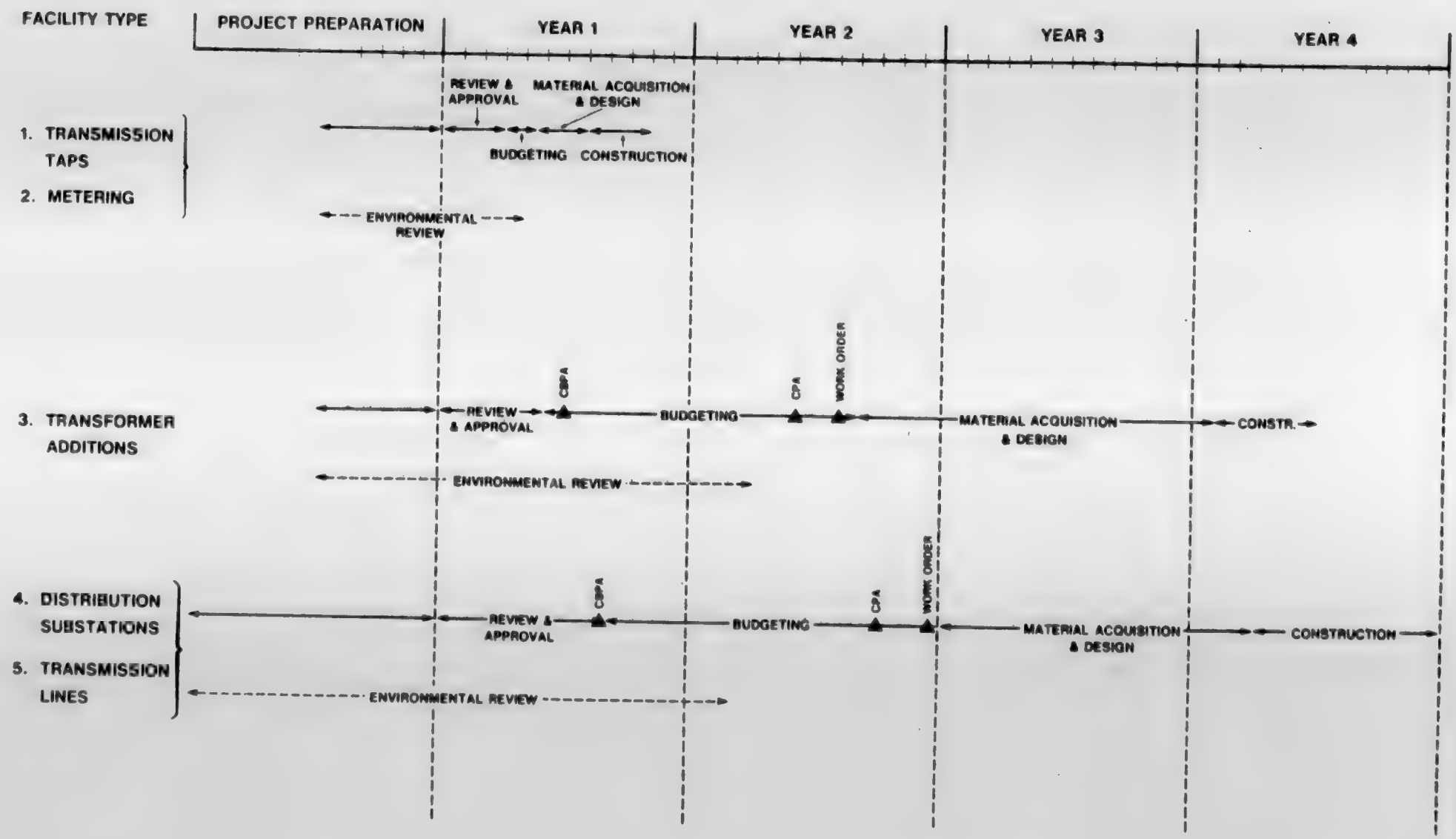
—List all Federal, state, and local agencies or organizations, and utilities that may be interested in this project, such as:

(1) Agencies with jurisdiction by law (permits, licences, etc.);

(2) Agencies with special expertise; and (3) persons and organizations reasonably believed to be interested or affected (utilities, environmental groups and other special interest groups).

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TYPICAL BPA PROJECT LEAD TIME*



NOTE: SEE NEXT PAGE FOR DEFINITION OF TERMS

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* THESE SCHEDULES CAN BE SHORTENED CONSIDERABLY IF THE FOLLOWING CONDITIONS EXIST. EMERGENCY NEED, NO ENVIRONMENTAL WORK REQUIRED, AVAILABLE FUNDS, AND/OR AVAILABLE TRANSFORMER FROM SYSTEM.

BPA Project Lead Time Definitions

Project Preparation

Joint development between the customer and BPA Area to produce a proposed plan-of-service. The time involved depends on the complexity of the service problem.

Review and Approval

Review of the proposal and approval for inclusion into the Construction Program.

Budgeting

Congressional approval of funds including processing the CBPA (Construction Budget Project Authorization), CPA (Construction Project Authorization), and work order; preliminary project design work; division of responsibilities letter agreement shall be negotiated and executed prior to CPA.

Material Acquisition and Design

Material ordering, project design, land acquisition, and surveying.

Construction

Construction, testing, and energization.

Environmental Review

EA (Environmental Assessment) 6–8 mo., EIS (Environmental Impact Statement) 1½–2 years; the type of document needed depends on the nature of the project and the potential impacts. This process should begin during the initial project stages in order to assure completion prior to material acquisition and design.

Appendix E

Guidelines for Joint Development of Distribution Substations

The following guidelines will apply to joint development of distribution substations. These guidelines are intended to reflect the normal situation; however, deviations may be required for specific projects.

Project Planning and Approval

When initial agreement on a plan-of-service is reached, the Letter of Intent will be written and approved. After the project diagram is finalized and substation site is selected and specific details are identified, such as equipment location and orientation, they will be documented in a Division of Responsibilities Letter Agreement between the Area Manager or District Manager and the customer(s). Changes in the plan-of-service or station layout after the Letter Agreement (Appendix F) which add additional cost to the project or result in additional design or material will be paid for by the party requisting the change if the change is not mutually beneficial. Requests for changes should be doucmented and referenced to the Letter Agreement.

Design and Construction

BPA will normally provide the substation site and all high-side equipment including the step-down transformer. The customer will normally provide all low-side equipment with the exception of metering equipment including CTs and PTs. The following division of responsibility will normally apply, but will not preclude other arrangements for new joint distribution substations.

BPA normally will:

1. Perform necessary environmental review and documentation, with assistance from customer (see Appendix D).
2. Acquire the entire substation site.
3. Design and construct the substation entrance/access road and parking area.
4. Design, subgrade, and rock the entire substation electrical yard including the customer's portion of the yard.
5. Design and install the ground mat for the BPA and customer portions of the substation including the perimeter ground mat and fence around the entire substation yard.
6. Design and provide BPA revenue and indicating metering and instrument transformers to be mounted on PBA structure.
7. Design, provide, and install BPA high-side equipment including footings, structures, switches, high-side protective devices, power transformers, required oil spill containment, station service, a meter house and other associated equipment.
8. Participate in appearance improvements with customer where appropriate.
9. Prepare preliminary plot plan for mutual concurrence. The Customer normally will:
1. Design and install low-side switchyard equipment including footings, structures, switches, protective devices, regulators, connections to BPA's oil spill containment system, and other associated equipment.
2. Provide footing layout for ground mat design and installation by BPA.
3. Design and install distribution feeders emanating from the substation.
4. Provide necessary information to BPA to prepare preliminary plot plan.
5. Concur with preliminary plot proposed by BPA.
6. Participate in appearance improvements with BPA where appropriate.

The intent is to negotiate a joint development arrangement with customer(s) which will be of mutual benefit to each and if possible, eliminate the need for any monetary exchanges between parties. If monetary exchange is required, either BPA Agreement Form 1398 (under $50,000) or Trust Agreement will be used. Negotiations for electrical, civil, and mechanical development of joint substations will be accomplished to ensure timely initiation and completion of the substation design.

Installation, Relocation, and Removal of BPA and Customer's Equipment

BPA or customer-owned equipment shall be installed, removed, or relocated at the expense of the owner of the equipment, with the following exception. If one party requires modifications that cause the other party's equipment to be relocated, the party requiring the modifications shall pay the relocation costs.

To avoid conflict with future revisions or expansion of facilities, equipment will be located to minimize the need for relocation. To the extent possible, responsibilities for future revisions of BPA and customer facilities should be identified in the letter of intent or subsequent letter agreements.

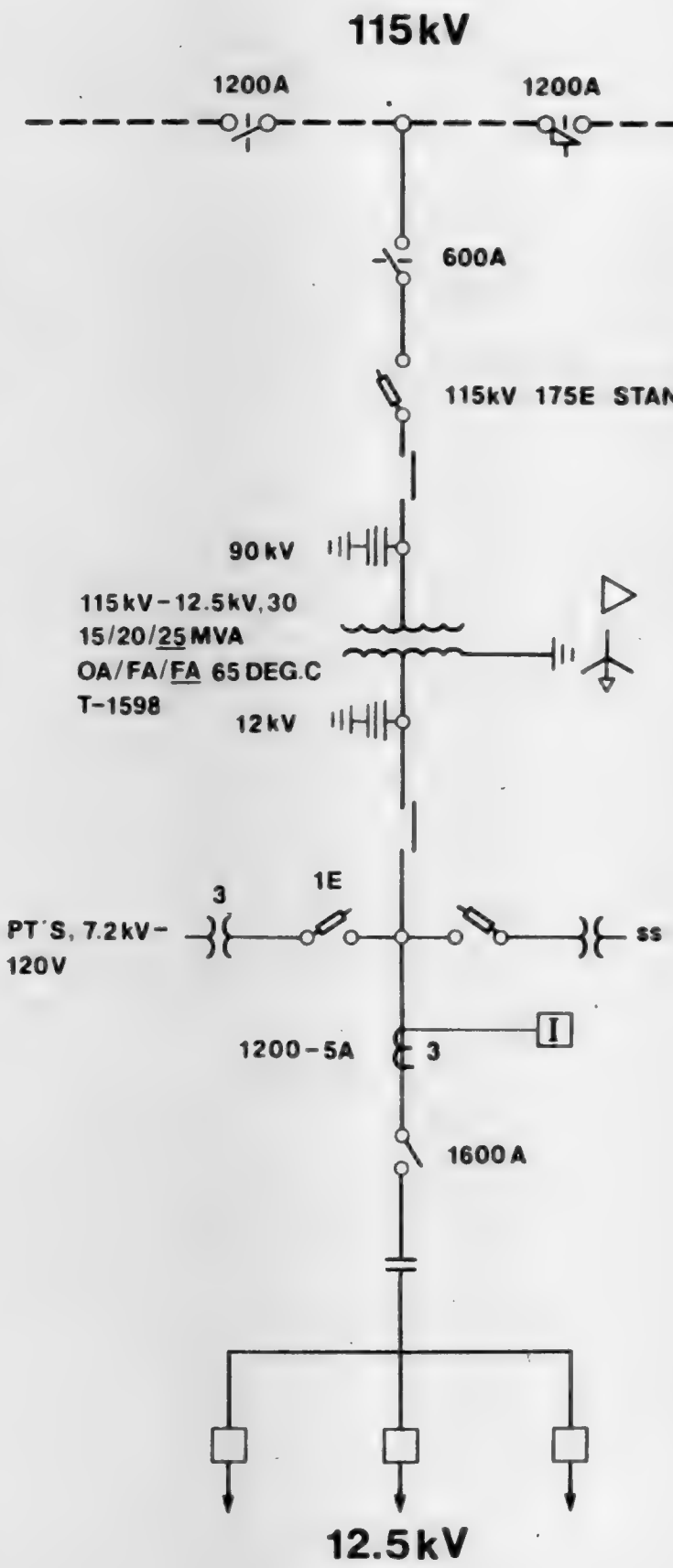
Operation and Maintenance

Operation and maintenance of customer-owned and BPA facilities located in the customers allocated portion of distribution substations will ordinarily be performed by the customer unless other circumstances warrant that BPA do all or part of this work. In some situations, the customer may be required to perform emergency or routine maintenance of the BPA equipment. Arrangements may also be made with customers to take on a shared responsibility with BPA for non-electric plant maintenance of jointly occupied substation sites. A one line diagram, plan and elevation views of a typical distribution substation are attached.

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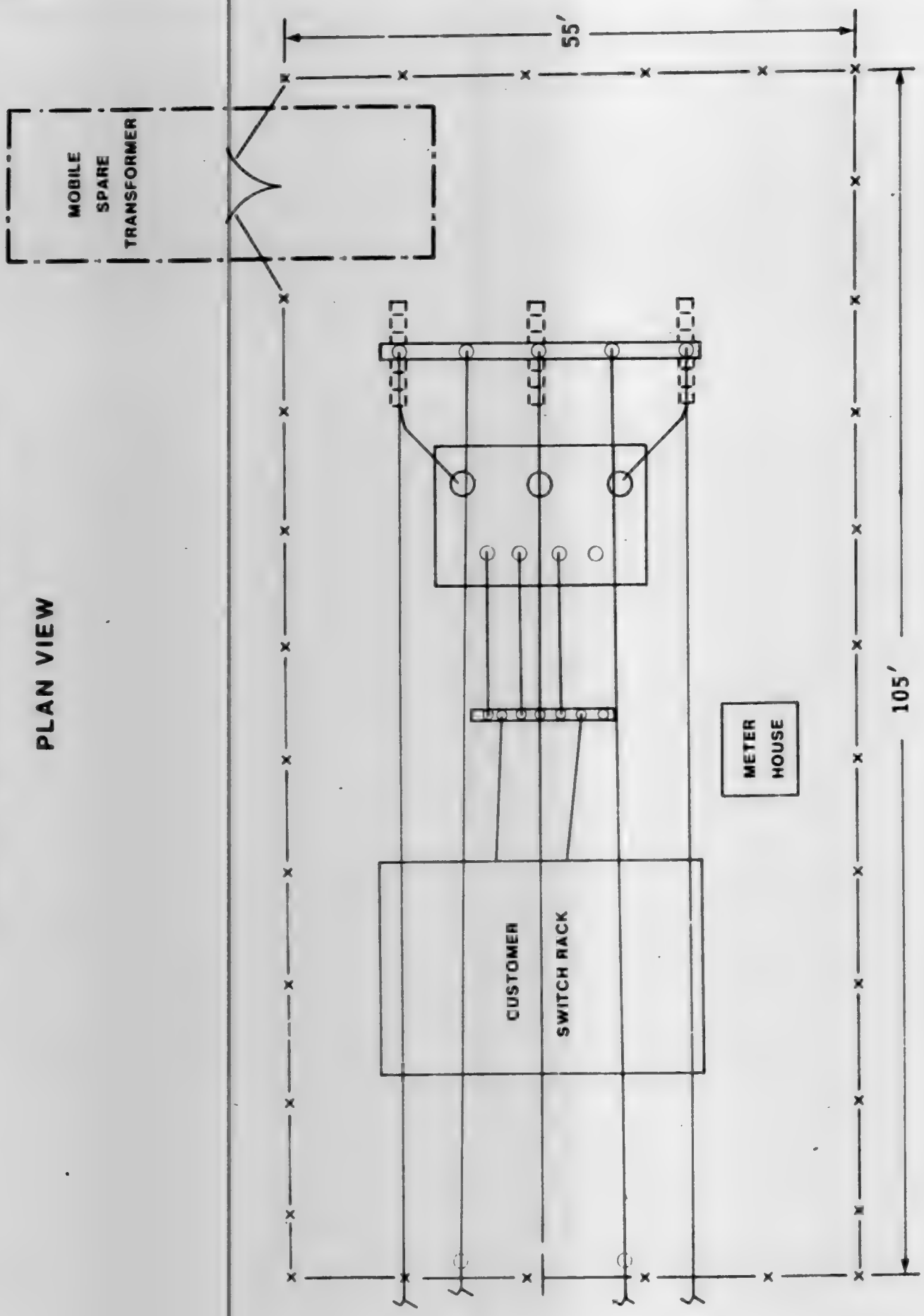
TYPICAL DISTRIBUTION SUBSTATION

ONE - LINE DIAGRAM



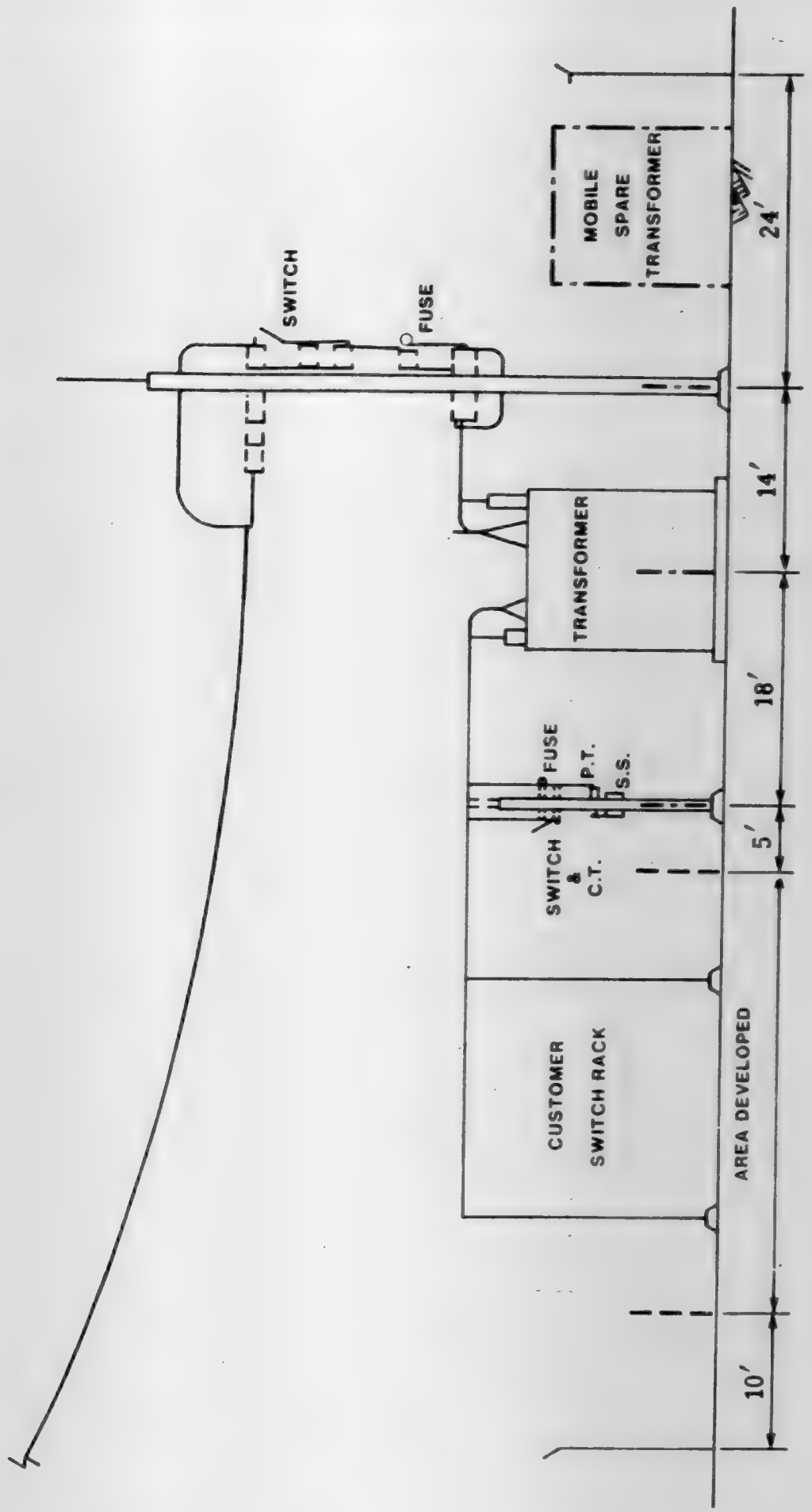
TYPICAL DISTRIBUTION SUBSTATION

PLAN VIEW



TYPICAL DISTRIBUTION SUBSTATION

ELEVATION VIEW



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Appendix F

Division of Responsibilities Letter Agreement Joint Facility Development

The Division of Responsibilities Letter Agreement for joint facility development is necessary for all projects involving BPA. This Agreement will be executed prior to the design and construction phases of the project. The following items are to be outlined in the Agreement, and will define the particular responsibilities of BPA and the customer.

1. Purchase/Ownership of Site (for Substation, see Appendix E)
2. Design of Facility (for Substation, see Appendix E)
3. Construction and Equipment Installation (for Substation, see Appendix E)
4. O&M of Equipment (for Substation, see Appendix E)
5. Maintenance of Site and nonelectric equipment
6. Cost Sharing Arrangements (if under $50,000 per BPA Agreement Form 1398).

In addition, the Agreement shall show concurrence between BPA and the customer for the overall plan-of-service and the schedule for construction, equipment installation, and energization.

The Agreement shall be initiated and negotiated with customer utilities by the appropriate BPA Area or District office.

[FR Doc. 84-16097 Filed 6-25-84; 8:45 am]

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federal register

Wednesday
June 27, 1984

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 921

National Estuarine Sanctuary Program Regulations; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 921

[Docket No. 40315-30]

National Estuarine Sanctuary Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: These final regulations revise existing procedures for selecting and designating national estuarine sanctuaries and provide guidance for their long-term management. Site identification and selection is to be based on a revised biogeographic classification scheme and typology of estuarine areas. The regulations place a greater emphasis on management planning by individual states early in the process of evaluating a potential site. The regulations reflect a progression from the initial identification of a site, through the designation process, and continued management of the sanctuary by the state after Federal financial assistance has ended. The regulations provide for regular programmatic evaluations of sanctuary performance. Clarifications in the financial assistance application and award process have also been made.

EFFECTIVE DATE: These regulations are effective Friday, October 5, 1984. This delayed effective date will allow sufficient time for the Congress to enact legislation pertaining to the conduct of the National Estuarine Sanctuary Program if it chooses to do so. If necessary, the effective date of these regulations will be postponed, and a notice thereof published in the **Federal Register**, in compliance with the notice provisions contained in section 12 of the Coastal Zone Management Act, 16 U.S.C. 1463a.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, NOAA/NOS, 3300 Whitehaven St., NW., Washington, D.C. 20235, (202) 634-4236.

SUPPLEMENTARY INFORMATION:

I. Authority

This notice of final rulemaking is issued under the authority of Section 315(1) of the Coastal Zone Management Act, 16 U.S.C. 1461(1). The National Estuarine Sanctuary Program has been operating under guidelines published June 4, 1974 (39 FR 19922) and proposed regulations published September 9, 1977 (42 FR 45522).

II. General Background

On August 3, 1983 (48 FR 35120), NOAA published proposed regulations for continued inplementation of the National Esturine Sanctuary Program pursuant to Section 315 of the Coastal Zone Management Act, 16 U.S.C. 1461, (the Act). Written comments on the proposed regulations were accepted until October 3, 1983. These comments have been considered in preparing these final regulations. A summary of significant comments on the proposed regulations and NOAA's responses are presented below.

The final regulations establish the Program's Mission and Goals and revise the procedures for selecting, designating, and operating national estuarine sanctuaries.

III. Refinements to the Regulations for the National Estuarine Sanctuary Program

Based on experience in operating the Program and comments on the proposed regulations, a number of refinements in operational procedure and policy have been designed. The final regulations implement these refinements, which include:

A. Defining the Mission and Goals of the Program

The Mission Statement and Goals for the continued implementation of the National Estuarine Sanctuary Program stress the importance of designating estuarine area, through Federal-state cooperative efforts, for long-term research and educational benefits. Though broad in scope, they establish a framework within which specific Program activities are conducted. The Mission Statement and Goals are adopted by the final regulations (§ 921.1).

B. Revision of the Procedures for Selecting, Designating and Operating Estuarine Sanctuaries

(1) Revision of the Biogeographic Classification Scheme and Proposed Estuarine Typologies

The 1974 guidelines identified 11 biogeographic regions from which representative sites throughout the coastal waters of the United States would be chosen. Section 921.4(b) of the 1974 guidelines provided that "various sub-categories will be developed and utilized as appropriate."

In 1981, a study was undertaken to assess the original biogeographic classification scheme and make recommendations, as necessary. A system with 27 subcategories was proposed. The subcategories fit within the original scheme and further define the coastal areas to assure adequate sanctuary representation (Clark. *Assessing the National Estuarine Sanctuary Program: Action Summary*, March 1982, cited as *The Clark Report*).

The Clark Report also recommends consideration of an estuarine typology in evaluating and selecting sites. The typology system recognizes that there are significant differences in estuary characteristics not related to regional location. Such factors include water source, water depth, type of circulation, inlet dynamics, basin configuration, watershed type, and dominant ecological community.

The final regulations adopt the revised biogeographic classification scheme and the recommendation to consider typology in site selection (see § 921.3).

(2) Site Designation

Eligible states may apply for preacquisition awards to aid in selecting an estuarine site in conformity with the classification scheme and typology system. A description of the site selection process to be carried out by the state, including a provision for public participation in the process, must be submitted for NOAA's approval. This ensures that the procedures for the site selection process are planned prior to implementing the selection process and approval of the preacquisition award. Figure 1 depicts the entire designation process.

After selection of a site, a draft management plan is prepared. Requiring the development of a comprehensive draft management plan in the preacquisition phase is designed to guarantee that early in the estuarine sanctuary designation process the state considers management policies, an acquisition and construction plan (including schedules and priorities), staffing requirements, a research component, interpretive and education plans, future funding and other resource requirements, and alternatives. Draft and final environmental impact statements (EIS) are prepared analyzing the environmental and socioeconomic

impacts of establishing a sanctuary and implementing the draft management plan. The EIS is prepared in accordance with National Environmental Policy Act (NEPA) procedures, including provisions for public comment and hearings.

Following NOAA approval of the draft management plan and the final EIS, the site enters an initial acquisition and development phase. The state is then eligible for an initial acquisition and development award. During this phase, award funds may be used to purchase land, construct minor facilities (subject to pre-designation construction policies, see § 921.21), prepare the final management plan, and initiate onsite research and education programs. All of these tasks are to be carried out in conformance with the NOAA-approved draft management plan.

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Figure 1. National Estuarine Sanctuary Program Designation Process

AWARD	STAGE	PUBLIC INPUT
Preacquisition Award	Site Selection (§ 921.11)	Public Meeting on Site(s)
	↓	
	Approval of Site by NOAA (§ 921.11)	
	↓	
	Development of Draft Management Plan and Draft EIS (§ 921.12)	Public Meeting; Public Hearing on the Draft EIS
	↓	
	NOAA Approval of Draft Management Plan (§ 921.12)	
	↓	
	Development of Final EIS (§ 921.12)	Final EIS
	↓	
Initial Acquisition and Development Awards	Preparation of Final Management Plan; Acquisition of Key Land and Water Areas; Minor Construction (§ 921.21)	Public Meeting on Final Plan
	↓	
	Final Management Plan Approved by NOAA; Other Findings (§ 921.30)	
	↓	
	Sanctuary Designation (§ 921.30)	
	↓	
Operation and Management Award; Subsequent Acquisition and Development Award; Potential Research Awards	Implementation of Final Management Plan; Acquisition of Remaining Land; Construction (§ 921.32)	
	↓	
	Programmatic Evaluation (§ 921.34)	Public Meeting(s) on Evaluation

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The task under the intial acquisition and development phase should be completed within two years. At this point, NOAA must make formal findings, as specified § 921.30, that the final management plan has been completed and is approved, that the key land and water areas as specified in the management plan are under state control, and that a memorandum of understanding between the state and NOAA concerning the state's long-term commitment to the sanctuary has been signed. After NOAA makes these findings, the sanctuary is considered "designated". The state than begins implementation of the final management plan, including the construction of necessary facilities and additional land acquisition. The state is also eligible for operation and management awards to provide assistance in implementing the final management plan.

The regulations also provide procedures for the programmatic evaluation of a sanctuary during the period of the operation and management awards (or under the initial acquisition and development award if the sanctuary is not designated within two years) and for a continuing, biennial review of an estuarine sanctuary after Federal funding has expired. Procedures for withdrawing designation, if a sanctuary fails to meet established standards, have been added (§ 921.35).

To foster scientific studies within national estuarine sanctuaries, NOAA is setting aside funds for research within sites with approved final management plans. This is a separate category of financial assistance from the operation and management or acquisition and development support. The research funding is described in Subpart E.

Financial assistance requirements and procedures have been revised. The programmatic information required for each type of award is specified in the appropriate sections—in preacquisition (Subpart B); acquisition and development (Subpart C); and operation and management (§ 921.32). General financial assistance information is provided in Subpart F.

In summary, the regulations include more standards and guidelines for states to follow in developing and operating a national estuarine saanctuary, as well as additional guidelines for NOAA in overseeing the Program. Based on experience and from discussions with several states with estuarine sanctuaries, NOAA has found that the previous lack of guidance raised many concerns about what an estuarine sanctuary should be, the state's role in developing and operating a sanctuary, and how decisions should be made. The regulations ensure that a state will have adequate flexibility in long-term operation of an estuarine sanctuary to deal with changing circumstances. The regulations require more information about the sanctuary, particularly through the development of a site-specific management plan, prior to each step in the funding process. In this manner, it is expected that decisions affecting the sanctuary and management priorities will be planned for in advance, rather than in an *ad hoc* fashion.

IV. Summary of Significant Comments on the Proposed Regulations and NOAA's Responses

Comments were received from 17 sources. Commenters included Federal and state agencies, representatives of the oil and gas industry, representatives of the electric utility industry, and environmental and public interest groups. All comments received are on file at the Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, 2001 Wisconsin Avenue, NW., Room 334 Washington, D.C. 20235. The comments are available for review at that office. Each of the major issues raised by the commenters has been summarized and NOAA's response provided under the relevant subheading in this section.

General

Impact on Existing Sanctuaries

One commenter suggested that the final regulations indicate the impact of the changes on existing sanctuaries.

Response: The changes in procedure reflected in these regulations will improve the Program's operation and the effective implementation of national estuarine sanctuaries over time. They will therefore be applied to existing sanctuaries to the degree practicable.

Public Participation

Because of the potential impacts resulting from an area being designated as a national estuarine sanctuary, one commenter noted that the maximum opportunity for the participation of interested persons should be provided. The commenter encouraged NOAA to ensure that states comply with the conditions of §§ 921.11(d) and 921.12(d). The commenter recommended that a careful review of all established and potential industrial activities be undertaken to ensure a well-balanced decision on the site's suitability for designation as a national estuarine sanctuary.

Response: NOAA agrees with the comment on the importance of public participation. Public participation efforts by the states, in conjunction with NOAA, are mandated by these regulations as an integral part of site selection, designation, and management.

The Program's purpose is to establish selected estuarine areas as sanctuaries to serve as natural field laboratories and provide opportunities for long-term research, education, and interpretation. Because of this, the present and future uses of such an area are certainly an important factor in considering whether it should be a national estuarine sanctuary.

It is also important to emphasize that the Program does not involve broad scale regulation on land uses apart from that already undertaken by the state or proposed by the state under its own applicable authorities. Multiple use of national estuarine sanctuaries is encouraged (see § 921.1(d)). Resource protection is, however, the highest priority goal of the National Estuarine Sanctuary Program and uses must be compatible with long-term resource protection. Within national estuarine sanctuaries, states may impose certain regulatory controls to ensure the continued protection of sanctuary resources. Areas proposed for designation are evaluated through the EIS process with opportunities for public comment.

Section-by-Section Analysis

Subpart A—General

Section 921.1—Mission and Goals.

(1) Several commenters supported the Program Mission and Goals and found them to be a substantial improvement over the 1974 guidelines and 1977 proposed regulations.

Response: The Mission and Goals were established to guide continued effective implementation of the National Estuarine Sanctuary Program. Program experience over the past several years led to the development of refinements designed to improve the original guidelines.

The concept of a national estuarine sanctuary does not easily merge with that of existing natural resource protection programs, such as wildlife refuges or parks. National estuarine sanctuaries are designed to ensure protection of a natural habitat unit in which long-term research and educational projects can be focused. A primary aim of these research and education projects is to provide information to states that is useful for decisionmaking concerning the development or protection of its coast and associated resources.

National estuarine sanctuaries are not established primarily for recreational pursuits, although compatible uses are encouraged. Sanctuaries are also not intended solely to enhance habitat for a single species by modification of the natural character of the estuarine system.

The final regulations, including the Mission and Goals, are designed to clarify the definition and function of a national estuarine sanctuary.

(2) Another commenter, however, suggested that the section on Mission and Goals, which replaced the "Policy and Objectives" section of the 1974 guidelines, expands the scope of the Program in ways not originally intended. The commenter suggested that Goal 2 (concerning research) was adequate, and that the other three should be deleted. The commenter suggested that the first goal, concerning long-term management planning, should be left to the National Marine Sanctuary Program or state coastal zone programs. The commenter further suggested that the third goal, involving enhancement of public awareness through interpretation, should also be dropped even though it was recognized that such interpretive efforts often stem from scientific research. Finally, the commenter suggested that the fourth goal, involving stimulating Federal-state cooperation to promote the management of estuarine areas, should be dropped since it allegedly provides the Federal government with more authority than needed. The commenter supports this view by citing legislative history to assert that the Act "authorizes Federal grants-in-aid, but makes no attempt to diminish State authority through Federal preemption."

The same commenter generally questions the need for the National Estuarine Sanctuary Program and need for revisions to the existing program. The commenter encouraged NOAA to examine the legal and scientific bases for the estuarine sanctuary program and to ensure that the regulations conform to the intended goals of the Coastal Zone Management Act.

Response: The Mission and Goals described in Section 921.1 are in no way an expansion of the Program. Rather they reflect the legislative history and a synthesis of the Program's past experience and need for basic policy guidance. Goals 2 and 3 are both valid; since both education and interpretive efforts are natural outgrowths of science. The first goal, involving management planning, represents a logical mechanism for achieving Program purposes with maximum utility and a minimum amount of waste. NOAA disagrees with the commenter on Goal 4. The purpose of the goal is to ensure the protection of selected estuarine areas. Federal/state cooperative efforts to ensure such protection are emphasized; the Federal role encompasses more then grants-in-aid, but includes continuing evaluation and coordination of research and education to ensure that the sites remain as natural field laboratories consistent with the legislative intent.

NOAA has based these revised regulations on the Act and its legislative history. Through experience with the Program, NOAA has made certain refinements to the process. In fact, by explicitly providing for Section 312 evaluations (as required by the Coastal Zone Management Act) as seeking to coordinate research and education from the national level, the Program has made significant strides to fulfill the Congressional intent (see §§ 921.1(c) and 921.34).

(3) One reviewer felt that the idea of coordinating research and education information expressed in § 921.1(c) was a good idea, but should be carefully thought out and developed in coordination with individual states.

Response: NOAA is now in the process of developing a detailed plan for coordinating research and education. Comments from states and other interested groups are being actively solicited in preparing this plan.

(4) Several commenters strongly supported the concept in § 921.1(d) of encouraging multiple use of estuarine sanctuaries. One of the same commenters also supported the statement in Section 921.11(c)(5) that the site selection process consider "the site's compatibility with existing and potential land and water use in contiguous areas."

Response: NOAA is strongly committed to the concept of multiple use in estuarine sanctuaries as long as the purposes for which the sanctuary is established are maintained. Therefore it is important that site selection efforts closely analyze existing and potential uses of the area and adjacent areas.

Section 921.3—Biogeographic Classification Scheme. (1) One state requested that the goal of one site per region be revised to allow for more sites per region based on the estuarine typology system. The commenter noted that only by including several sites per region could all significant national variation be included. The commenter suggested that outright acquisition was not always necessary. The alternative suggested was to incorporate into the National Estuarine Sanctuary Program those sites, as appropriate, that are owned by a state or conservation group. In this way actual ownership would not be as important as the site's value to the Program.

Response: NOAA believes that the inclusion of representatives of all national estuarine variations would be impracticable from a management perspective. It should be noted that control of estuarine land and water areas is only one facet in sanctuary designation. Properties already owned by the state or a conservation group may not comprise a natural unit or have the research and educational foundation required by the Program. Such areas are already in a protected status and are available for research and educational purposes, along with those regional representatives comprising the National Estuarine Sanctuary system. Adding these sites to the Program may not serve beneficial purposes. Thus, while the biogeographic classification scheme sets the initial parameters within which detailed site selecion and analysis is focused, it should not be considered alone. Many other factors must be considered.

Within regions without an estuarine sanctuary, however, the non-acquisition alternatives suggested by the commenter will be utilized to the greatest degree possible.

(3) Another commenter was concerned that implementation of the biogeographic classification scheme on the basis of one site per region would lead to too many estuarine sanctuaries.

Response: As detailed in *The Clark Report*, the classification scheme and estuarine typology are designed to provide the Program with an array of sanctuaries broadly reflective of our Nation's estuarine zones. Only with this diversity of sites can the Program produce beneficial research and educational projects useful in coastal decisionmaking. There are presently 14 biogeographic regions represented in the system.

(4) Another commenter stated that by including 27 regions, and providing for one site per region, NOAA has extened the Program in an unwarranted manner. The commenter recommended instead that NOAA use the classification scheme in the Program Development Plan for the National Marine Sanctuary Program which relied on eight regions.

Response: Estuarine sanctuaries, in order to be beneficial for long-term research and educational purposes, should reflect the Nation's coastal areas. The biogeographic classification scheme and estuarine typologies were developed from this premise as demonstrated in *The Clark Report*. In

identifying sites for potential marine sanctuary status, eight regions were used, but for administrative purposes rather than representativeness. On top of this scheme, a detailed marine classification scheme, developed solely for marine areas and illustrative of the Nation's oceans, was applied. As a result of this process, twenty-nine sites were selected by NOAA for placement on the Site Evaluation List (see 48 FR 35568 (1983)).

Section 921.4(b)—Coordination With the National Marine Sanctuary Program. One commenter was concerned about the possible duplication of time and effort if an area is established as an estuarine sanctuary and a marine sanctuary. The commenter requested that NOAA address the possibility of a dual designation and means by which both programs could coexist without generating serious problems.

Response: Section 921.4(b) is intended only to ensure that the National Estuarine Sanctuary Program and National Marine Sanctuary Program work closely together; this is particularly true in terms of management planning, research projects, and education/interpretive activities. It is also important to note that the Programs are not duplicative and could serve complementary purposes. The regulations have been clarified to provide that the boundaries of the national marine and estuarine sanctuaries would not overlap, even though they may be adjacent (similar to the case where a National Wildlife Refuge abuts a National Park).

Subpart B—Preacquisition: Site Selection and Management Plan Development

Section 921.10—General. (1) One state suggested that the $50,000 Federal share was not enough to accomplish the goals of the preacquisition award (e.g., site selection and draft managment plan development) and recommended that a small sum be set aside for site selection, and that other funds to prepare the draft plan be negotiated between the state and the Federal government based on the proposed sanctuary's complexity.

Response: Based on past experience, the $50,000 Federal funding level, supplemented by state match, is adequate for site selection and draft plan development. Additional funds to complete the final plan are available under the acquisition and development award (see § 921.21).

(2) One commenter suggested that specific reference to the need for Federal agency coordination be included in Subpart B. Such coordination could appropriately occur during the EIS process, but the commenter suggested that states may wish to involve Federal agencies with special expertise earlier during the site selection process.

Response: The regulations require that states seek the views of Federal agencies as well as other parties early in the site selection process (see §§ 921.11(d) and 921.12(a)(3)). Federal agencies will also be actively involved in the management planning process and EIS development (see § 921.12 (d) and (e)).

Section 921.11—Site Selection. (1) Several states suggested that the regulations address multiple-site national estuarine sanctuaries.

Response: Section 921.10(b) has been revised to specifically reference multiple-site systems within the National Estuarine Sanctuary Program.

(2) One commenter urged early and frequent public involvement in the designation and management of national estuarine sanctuaries. It was suggested that where the proposed regulations limit notice to the local media (for example in § 921.11(d) concerning preliminary site selection), notice should also be made in the **Federal Register** since not all parties interested in the proposed designation live in the adjacent area and the Program has a broad national interest.

Response: This change has been made (see § 921.11(d)).

Section 921.12—Management Plan Development. (1) One state noted that § 921.12(b), concerning management plan development, should include a description of the sanctuary administrative structure as a required plan component. It was suggested that the plan should at least outline the staff's roles for research, education/interpretation, and enforcement.

Response: NOAA agrees and language to this effect has been added at § 921.12(b)(2).

(2) One state suggested that an environmental impact statement not be required in all cases. Rather, in less complex situations, the flexibility to prepare an environmental assessment should be left open.

Response: NOAA disagrees. Based on experience with the program, an environmental assessment is not an adequate mechanism to fully consider the environmental and socioeconomic impacts of a proposed national estuarine sanctuary, particularly where a management program is being proposed. Further, it does not provide for the extensive public review required through the NEPA process. We believe that designation of any site qualifies as a significant Federal action for the purposes of the NEPA EIS requirement.

(3) One commenter noted that since resource protection is a primary program goal, the regulations should specify that the plan detail responsibilities for surveillance and enforcement of human activities.

Response: NOAA agrees and the regulations (at § 921.12(b)(8)) have been revised to require that responsibilities for surveillance and enforcement be detailed in the management plan.

(4) One commenter questioned the usefulness of the NOAA-state memorandum of understanding (MOU), which is required as part of the management plan (see § 921.12 (a)(5) and (b)(10)). The commenter suggested that the MOU could not be considered legally binding on future legislatures.

Response: The MOU emphasizes the significance of establishing an estuarine sanctuary and recognition by the state and Federal government of the long-term commitment to management of the area in accordance with the agreed-upon goals and objectives. The MOU spells out, at the beginning of the process, the roles of the Federal and state governments, and what is expected of each party. It will clearly indicate that each party is aware of its commitment and responsibilities at the beginning of the process. The MOU emphasizes that lands acquired under the National Estuarine Sanctuary Program must continue to be used in a manner consistent with sanctuary purposes.

(5) Several states approved requiring the management plan early in the process as a guide to future decisions before the expenditure of substantial funds. Other commenters, however, expressed concern that requiring the preparation of a draft management plan prior to any commitment to the site from NOAA could lead to the waste of extensive staff time, public participation, and resources.

Response: These regulations are predicated upon ten years of experience in administering the National Estuarine Sanctuary Program. The regulations are intended to rectify many of the problems that have occurred in specific sanctuaries in the past. Many of these problems could have been foreseen and overcome by thoughtful, pre-sanctuary planning. Thus, NOAA is strongly supportive of developing a management plan early in the decision process. The concern that NOAA is not committed to the state during the draft management plan process is unwarranted given the procedures specified in the regulations. NOAA's financial commitment begins with the preacquisition award for site

selection and continues through all the developmental stages. NOAA may support up to one-half of the total costs of establishing a particular sanctuary. NOAA's programmatic commitment to a proposed sanctuary begins with approval of a site and continues through the management plan review and preparation of the EIS. If the sanctuary proposal is approved, and if the requirements of the preacquisition phase are met, NOAA will proceed with establishing the site as a national estuarine sanctuary.

Decision points early in the process provide opportunities for either party to withdraw before too much time and effort have been committed.

(6) In terms of § 921.12(b)(7), one commenter suggested that the schedule for acquisition, required as part of the management plan, was useful as a guide, but not as a rigid planning document.

Response: NOAA views the acquisition strategy as a flexible planning tool. It does, however, identify key areas where acquisition should be focused and acquisition priorities developed. The strategy will also contain alternatives (including boundary changes) if selected priority areas eventually cannot be acquired.

(7) One commenter suggested that the requirements for the draft management plan should reference three additional elements, all of which were included in the 1974 guidelines: (1) Definitions of permitted, compatible, restricted and prohibited uses; (2) a monitoring plan to ensure that the integrity of the sanctuary is maintained; and (3) a description of the authorities which will be put in place to manage the Sanctuary and enforce the policy and use restrictions.

Response: A resource protection plan requirement has been added (see § 921.12(b)(8)) which encompasses elements (1) and (3). A monitoring plan should be included as part of the research plan (see § 921.12(b)(3)).

Subpart C—Development and Preparation of the Final Management Plan

Section 921.21—Initial Acquisition and Development Awards. (1) One state noted that the limit of 5 percent of the initial acquisition and development awards which may be expended on minor construction activities which aid in implementing portions of the management plan may not be adequate for multiple-site systems.

Response: After careful consideration, NOAA has determined that necessary construction can be planned for and included as part of the initial award. The intent of this restriction is to limit large capital expenditures until a final plan is prepared and substantial progress in land acquisition has been made.

Section 921.32—Operation and Management: Implementation of the Management Plan. (1) One state suggested the $250,000 cap on federal funding for operation and management in Section 921.32(b) should be modified to provide for additional funds based on need.

Response: The Program is designed to assist states in establishing estuarine sanctuaries. Funds are provided for an initial period of implemenatation; thereafter the states must assume responsibility for continued operation.

Section 921.33—Boundary Changes and Amendments to the Management Plan. (1) Several states requested that this section be modified to apply only to laws specifically applicable to the sanctuary, and not general environmental quality laws such as for air and water.

Response: Section 921.33 has been clarified to reflect this point.

(2) One commenter recommended that public notice and opportunity to comment be provided in all cases where boundaries are changed or management plans are amended under § 921.33.

Response: The proposed regulations provide that if NOAA determines it is necessary, public notice and an opportunity for comment on boundary changes and changes to the final management plan will be provided. Major changes do require public notice and opportunity for comment and, in certain cases, preparation of an environmental assessment. Thus, the clear intent of these regulations is to provide for public notice where applicable. There may, however, be times where changes to the management plan are minor and will not require such notice.

Section 921.34—Program Evaluation. (1) One commenter specifically questioned the value of Section 312-type evaluations of sanctuary performance; the commenter stated that performance reports, which are required as a condition of the financial award, are adequate for NOAA's purposes.

Response: Performance reports are of course helpful. But such reports do not address the specific range and depth of issues needed to assess the effectiveness of sanctuary operation and opportunities for improvement. In addition during an evaluation, individuals or groups that are, or should be, involved in sanctuary management or are affected by the sanctuary are contacted. This provides NOAA with valuable feedback that is necessary to gauge the effectiveness of the sanctuary's program.

(2) The same commenter as in (1) also questioned the value of a program evaluation after Federal funding expires.

Response: The required evaluations will ensure that sanctuary objectives, as specified in the management plan, are still being attained and that proposed boundary changes and amendments to the management plan can be reviewed. The evaluations will ensure that the purposes for which the sanctuary was established continue to be met and that the site meets the criteria of the national system.

After Federal funding expires, the state is required to submit an annual report on the sanctuary. The report will detail program successes and accomplishments in implementing the policies and activities described in the sanctuary management plan. The report also should propose a work plan for the next year of sanctuary operations and describe the state's role in ongoing sanctuary programs. Inadequate annual reports will trigger a full-scale evaluation with a site-visit. In addition, on a periodic basis, NOAA will also conduct a full-scale Section 312 evaluation with a site visit.

Section 921.35—Withdrawal of Designation. (1) Several reviewers suggested that the section on the withdrawal of designation be modified to allow the applicable state to participate in decisions regarding the disposition of property.

Response: The state will of course be consulted by NOAA in any decision regarding property disposition, which will be carried out according to Attachment N of OMB Circular A–102, Revised, and these regulations.

(2) Several reviewers questioned, in the event of withdrawal of sanctuary designation, the method of disposal for property held in less-than-fee simple or controlled by a lease.

Response: Section 921.21(e) [which was § 921.35(e) in the proposed regulations] would be followed to the extent it applies. Leasehold and other real property interests purchased in whole or in part with Federal funds are subject to the provisions of Attachment N, OMB Circular A–102, Revised.

(3) Another state requested that the deed language be rewritten so that a state would be "entitled to retain title to property which the state determines is no longer needed for grant purposes, so long as the property is used for other purposes approved by NOAA as being consistent with the sanctuary program."

Response: When property purchased in fee simple or less-than-fee simple is

no longer used for the purposes of the National Estuarine Sanctuary Program, NOAA is required to dispose of the property according to the provisions of Attachment N, OMB Circular A–102, Revised. These provisions are essentially the same as stated in § 921.21 (e) of the final regulations.

(4) One commenter suggested that specific criteria and an appeals procedure (including public notice of the proposed withdrawal of designation) be added to the regulations.

Response: As specified in §§ 921.34 and 921.35, NOAA's continuing evaluation of sanctuary performance will examine the state's performance in upholding the mandate of Section 315 of the Act, the national Program goals, and the policies established in the management plan. Specific criteria to judge these factors cannot be enumerated, but will be examined on a case-by-case basis. Section 921.35 spells out a procedure for withdrawal of designation, including an appeal to the Assistant Administrator for Ocean Services and Coastal Zone Management.

(5) One state questioned who would decide the "current fair market value" of lands slated for withdrawal of designation in § 921.35(e)(i) [now § 921.21(e)(i)]. It was recommended that an arbitration system of three independent appraisers or comparable system be established.

Response: Fair market value would be determined by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the state, as provided by Attachment F of OMB Circular A–102, Revised.

Subpart E—Research Funds

(1) Several reviewers suggested that research funds be offered on a 100 percent Federal basis, i.e., without a state match requirement.

Response: Section 315 of the Coastal Zone Management Act requires that all funds to coastal states for national estuarine sanctuary purposes be provided on a fifty-fifty matching basis.

(2) Other commenters suggested that funding limits and the total research budget be discussed in the regulations.

Response: Funding limits and the total Federal funds for research in national estuarine sanctuaries will vary from year-to-year; thus, these figures are not included in the final regulations. NOAA will, however, distribute information about the relative funding limits and funding totals. Such information will be sent to states with national estuarine sanctuaries and to other interested parties.

Subpart F—General Financial Assistance Provisions

(1) One state criticized the exclusion of land as state match for the operation and management awards. The state found such an exclusion to be an undue constraint upon management and operation alternatives available to states.

Response: In order to maximize the support provided to a sanctuary during its early years, NOAA has precluded land as match for the operation and management award. To a reasonable degree, state match should relate to the purpose of the particular award. Since the purpose of the operation and management award is to provide for the sanctuary's operation and implementation of the management plan, the use of land as match is inappropriate, particularly since land acquisition should be well underway prior to the state's receiving an operation and management award. The allowable categories of match (see § 921.51(e)) provide the state with sufficient flexibility.

Appendix 2—Estuarine Typology

(1) One reviewer stated that in Group III—Chemical, the proposed salinity limits were particularly confusing. The reviewer noted that a salinity zone of 10 ppt to 20 ppt is very important because numerous estuaries possess waters in this salinity range, but the proposed polyhaline zone is too broad to describe this. The reviewer included the following table of salinity ranges from *Introduction to Marine Biology* by Mosby:

Salinity (0/00)	Type of water
0 to 0.5	Fresh water.
0.5 to 3.0	Oligohaline brackish water.
3.0 to 10	Mesohaline brackish water.
10.0 to 17	Polyhaline brackish water.
17 to 30	Oligohaline seawater.
30 to 34	Mesohaline seawater.
34 to 38	Polyhaline seawater.
>38	Brine.

From Valikangas, I. 1933. Uber die Biologie der Ostsee als Brackwassergebiet. Verh. int. Verein. theor. angew. Limnol. 6:1.

Response: Polyhaline should be 30 ppt to *18* ppt; the "5" was a typographical error. NOAA considered the information provided, but has decided to continue to use the proposed salinity ranges which are from *Ecology of Inland Waters and Estuaries* (Reid and Wood, 1976). This is the standard limnology test used in college. The table used as an example is from a 1933 paper; the salinity table used in the typology is the widely accepted "Venice System" adopted in 1958.

(2) The same reviewer also questioned the pH values suggesting that a pH of 5.5 is somewhat acid. It was suggested that the circumneutral range should be 6.5 rather than 5.5.

Response: For the reasons indicated in the above response, we decided to continue with the proposed system.

(3) Another reviewer stated that in Group II-Transition Areas, the description of coastal marshes and coastal mangroves as the only coastal wetland transition areas is too narrow. Other wetland areas (marshes, swamps, bogs) should be included.

Response: A new subtitle "Coastal Marshes and Swamps" has been added.

(4) Another commenter stated that the typology did not appear to contain criteria which adequately describe a Great Lakes-type site.

Response: Great Lakes areas can fall under Class II, Group I.B (Basin Structure); I.C (Inlet Type); I.D. (Bottom Composition); Group II.A (Circulation); II.C (Freshwater); and Group III-Chemical.

V. Other Actions Associated With the Proposed Rulemaking

(A) Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major because they will *not* result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These final rules amend existing procedures for selecting and processing potential national estuarine sanctuaries in accordance with a revised biogeographic classification scheme and estuarine typologies. These rules establish a revised process for identifying, designating and managing national estuarine sanctuaries. They will not result in any direct economic or environmental effect nor will they lead to any major indirect economic or environmental impacts.

(B) Regulatory Flexibility Act Analysis

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Thus, regulatory Flexibility Analysis is not

required for this notice of final rulemaking. The regulations set forth procedures for identifying and designating national estuarine sanctuaries, and managing sites once designated.

These rules do not directly affect "small government jurisidictions" as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and the rules will have no effect on small businesses.

(C) Paper Work Reduction Act of 1980 (Pub. L. 96–511)

These regulations do not impose any information requirements of the type covered by Pub. L. 96–511 other than those already approved by the Office of Management and Budget (approval number 0648–0121) for use through September 30, 1986.

(D) National Environmental Policy Act

NOAA has concluded that publication of these rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 921

Administrative practice and procedure, Coastal zone, Environmental protection, Natural resources, Wetlands.

(Federal Domestic Assistance Catalog Number 11.420 Estuarine Sanctuary Program)

Dated: February 29, 1984.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, 15 CFR Part 921 is revised as follows:

PART 921—NATIONAL ESTUARINE SANCTUARY PROGRAM REGULATIONS

Subpart A—General

Sec.

921.1 Mission and goals.
921.2 Definitions.
921.3 National Estuarine Sanctuary Biogeographic Classification Scheme and Estuarine Typologies.
921.4 Relationship to other provisions of the Coastal Zone Management Act and to the National Marine Sanctuary Program.

Subpart B—Preacquisition: Site Selection and Management Plan Development

921.10 General.
921.11 Site selection.
921.12 Management Plan development.

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

921.20 General.
921.21 Initial acquisition and development awards.

Subpart D—Sancturay Designation and Subsequent Operation

921.30 Designation of National Estuarine Sanctuaries.
921.31 Supplemental acquisition and development awards.
921.32 Operation and management: Implementation of the Management Plan.
921.33 Boundary changes, Amendments to the Management Plan, and addition of multiple-site components.
921.34 Program evaluation.
921.35 Withdrawal of designation.

Subpart E—Research Funds

921.40 General.
921.41 Categories of potential research projects; evaluation criteria.

Subpart F—General Financial Assistance Provisions

921.50 Application information.
921.51 Allowable costs.
921.52 Amendments to financial assistance awards.

Appendix 1—Biogeographic Classification Scheme
Appendix 2—Typology of National Estuarine Areas

Authority: Sec. 315(l), Pub. L. 92–583, as amended; 86 Stat. 1280 (16 U.S.C. 1461(1)).

Subpart A—General

§ 921.1 Mission and goals.

(a) The mission of the National Estuarine Sanctuary Program is the establishment and management, through Federal-state cooperation, of a national system of estuarine sanctuaries representative of the various regions and estuarine types in the United States. Estuarine sanctuaries will be established to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the Program for carrying out this mission are:

(1) Enhance resource protection by implementing a long-term management plan tailored to the site's specific resources;

(2) Provide opportunities for long-term scientific and educational programs in estuarine areas to develop information for improved coastal decisionmaking;

(3) Enhance public awareness and understanding of the estuarine environment through resource interpretive programs; and

(4) Promote Federal-state cooperative efforts in managing estuarine areas.

(c) To assist the states in carrying out the Program's goals in an effective manner, the National Oceanic and Atmospheric Administration (NOAA) will coordinate a research and education information exchange throughout the national estuarine sanctuary system. As part of this role, NOAA will ensure that information and ideas from one sanctuary are made available to others in the system. The network that will be established will enable sanctuaries to exchange information and research data with each other, with universities engaged in estuarine research, and with Federal and state agencies. NOAA's objective is a system-wide program of research and monitoring capable of addressing the management issues that affect long-term productivity of our Nation's estuaries.

(d) Multiple uses are encouraged to the degree compatible with the sanctuary's overall purpose as provided in the management plan and consistent with subsections (a) and (b), above. Use levels are set by the individual state and analyzed in the management plan. The sanctuary management plan (see § 921.12) will describe the uses and establishes priorities among these uses. The plan shall identify uses requiring a state permit, as well as areas where uses are encouraged or prohibited. In general, sanctuaries are intended to be open to the public; low-intensity recreational and interpretive activities are generally encouraged.

(e) Certain manipulative research activities may be allowed on a limited basis, but only if specified in the management plan and only if the activity is consistent with overall sanctuary purposes and the sanctuary resources are protected. Manipulative research activities require the prior approval of the state and NOAA. Habitat manipulation for resource management purposes is not permitted within national estuarine sanctuaries.

(f) While the Program is aimed at protecting natural, pristine sites, NOAA recognizes that many estuarine areas have undergone ecological change as a result of human activities. Although restoration of degraded areas is not a primary purpose of the Program, some restorative activities may be permitted in an estuarine sanctuary as specified in the management plan.

(g) NOAA may provide financial assistance to coastal states, not to exceed 50 percent of all actual costs, to assist in the designation and operation of national estuarine sanctuaries (see section 921.51(e)). Three types of awards are available under the National Estuarine Sanctuary Program. The *preacquisition award* is for site selection and draft management plan preparation. The *acquisition and development award* is intended primarily for land acquisition and construction purposes. The *operation and management award* provides funds to assist in implementing the research, educational, and administrative

programs detailed in the sanctuary management plan. Under the Act, the Federal share of funding for a national estuarine sanctuary shall not exceed $3,000,000. At the conclusion of Federal financial assistance, funding for the long-term operation of the sanctuary becomes the responsibility of the state.

(h) Lands already in protected status by another Federal, state, local government or private organization can be included within national estuarine sanctuaries only if the managing entity commits to long-term non-manipulative management. Federal lands already in protected status cannot comprise the key land and water areas of a sanctuary (see § 921.11(c)(3)).

§ 921.2 Definitions.

(a) "Act" means the Coastal Zone Management Act, as amended, 16 U.S.C. 1451 *et seq.* Section 315(1) of the Act, 16 U.S.C. 1461(1), establishes the National Estuarine Sanctuary Program.

(b) "Assistant Administrator" (AA) means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his/her successor or designee.

(c) "Coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territories of the Pacific Islands, and American Samoa (see 16 U.S.C. 1454(4)).

(d) "Estuary" means that part of a river or stream or body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes estuary-type areas of the Great Lakes, see 16 U.S.C. 1454(7).

(e) "National Estuarine Sanctuary" means and area, which may include all or the key land and water portion of an estuary, and adjacent transitional areas and uplands, constituting to the extent feasible a natural unit, set asides as a natural field laboratory to provide long-term opportunities for research, educational, and interpretation on the ecological relationships within the area (see 16 U.S.C. 1454(8)).

§ 921.3 National Estuarine Sanctuary Biogeographic Classification Scheme and Estuarine Typologies.

(a) National estuarine sanctuaries are chosen to reflect regional differences and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the National Estuarine Sanctuary System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the Program reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in Appendix 1, contains 27 regions. Figure 2 graphically depicts the biogeographic regions of the United States.

(c) The typology system is presented in Appendix 2.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act and to the National Marine Sanctuary Program.

(a) The National Estuarine Sanctuary Program is intended to provide information to state agencies and other entities involved in coastal zone management decisionmaking pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.* Any coastal state, including those that do not have approved coastal zone management programs under section 306 of the Act, is eligible for an award under the National Estuarine Sanctuary Program (see § 921.2(e)).

(b) Where feasible, the National Estuarine Sanctuary Program will be conducted in close coordination with the National Marine Sanctuary Program (Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431–1434), also administered by NOAA. Title III authorizes the Secretary of Commerce to designate ocean waters as marine sanctuaries to protect or restore such areas for their conservation, recreational, ecological, or esthetic values. National marine and estuarine sanctuaries will not overlap, though they may be adjacent.

Subpart B—Preacquisition: Site Selection and Management Plan Development

§ 921.10 General.

(a) A state may apply for a preacquisition award for the purpose of site selection and preparation of documents specified in § 921.12 (draft management plan and environmental impact statement (EIS)). The total Federal share of the preacquisition award may not exceed $50,000, of which up to $10,000 may be used for site selection as described in § 921.11. Financial assistance application procedures are specified in Subpart F.

(b) In selecting a site, a state may choose to develop a multiple-site sanctuary reflecting a diversity of habitats in a single biogeographic region. A multiple-site sanctuary also allows the state to develop complementary research and educational programs within the multiple components of its sanctuary. Multiple-site sanctuaries are treated as one sanctuary in terms of financial assistance and development of an overall management framework and plan. Each individual component of a proposed multiple-site sanctuary shall be evaluated separately under § 921.11(c) as part of the site selection process. A state may propose to establish a multiple-site sanctuary at the time of the initial site selection, or at any point in the development or operation of the estuarine sanctuary, even after Federal funding for the single component sanctuary has expired. If the state decides to develop a multiple-site national estuarine sanctuary after the initial acquisition and development award is made on a single site, the proposal is subject to the requirements set forth in § 921.33. It should be noted, however, that the total funding for a multiple-site sanctuary remains at the $3,000,000 limit; the funding for operation of a multiple-site sanctuary is also limited to the $250,000 standard (see § 921.32(b)).

§ 921.11 Site selection.

(a) A state may use up to $10,000 in Federal preacquisition funds to establish and implement a site selection process which is approved by NOAA.

(b) In Addition to the requirements set forth in Subpart F, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency and the potential management agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site(s). NOAA has final authority in approving such sites. Site selection shall be guided by the following principles:

(1) The site's benefit to the National Estuarine Sanctuary Program relative to the biogeographic classification scheme

and typology set forth in § 921.3 and Appendices 1 and 2;

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site should, to the maximum extent possible, be a natural system;

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. National estuarine sanctuaries may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced, see § 921.61(e)(2). Importantly, however, NOAA will not approve a site for potential sanctuary status that is dependent upon the inclusion of currently protected Federal lands in order to meet the requirements for sanctuary status (such as key land and water areas). Such lands may only be included within a sanctuary to serve as a buffer or for other ancillary purposes;

(4) The site's importance for research, including proximity to existing research facilities and educational institutions; *(Comment:* NOAA is developing more detailed criteria for selecting potential national estuarine sanctuaries based upon research characteristics. Once these criteria are developed, a notice of their availability will be published in the **Federal Register**).

(5) The site's compatibility with existing and potential land and water uses in contiguous areas; and

(6) The site's importance to education and interpretive efforts, consistent with the need for continued protection of the natural system.

(d) Early in the site selection process, the state must seek the views of affected landowners, local governments, other state and Federal agencies, and other parties who are interested in the area(s) being considered for selection as a potential national estuarine sanctuary. After the local government and affected landowners have been contacted, at least one public meeting shall be held in the area of the proposed site. Notice of such a meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal news media at least 15 days prior to the date of the meeting and by NOAA in the **Federal Register**.

§ 921.12 Management Plan development.

(a) After the selected site is approved by NOAA and the state, the state may request the remainder of the preacquisition funds to develop the draft management plan and environmental impact statement. The request must be accompanied by the information specified in Subpart F and the following programmatic information:

(1) An analysis of the site based on the biogeographic scheme/typology discussed in § 921.3 and set forth in Appendices 1 and 2;

(2) A description of the site and its major resources, including location, proposed boundaries, and adjacent land uses. Maps, including aerial photographs, are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted;

(4) A list of all sites considered and a brief statement of the basis for not selecting the non-preferred sites; and

(5) A draft management plan outline (see subsection (b) below) and an outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state roles in sanctuary management during the period of federal funding and expressing the state's long-term commitment to operate and manage the sancturay.

(b) After NOAA approves the state's request to use the remaining preacquisition funds, the state shall begin developing a draft management plan. The plan will set out in detail:

(1) Sanctuary goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) An administrative section including staff roles in administration, research, education/interpretation, and surveillance and enforcement.

(3) A research plan, including a monitoring design;

(4) An interpretive plan (including interpretive, educational and recreational activities);

(5) A plan for public access to the sanctuary;

(6) A construction plan, including a proposed construction schedule, and drawings of proposed developments. If a visitor center, research center or any other facilities are proposed for construction or renovation at the site, a preliminary engineering report must be prepared;

Note.—Information on preparing a preliminary engineering report (PER) is provided in "Engineering and Construction Guidelines for Coastal Energy Impact Program Applicants" (42 FR 64830 (1977)), which is supplied to award recipients;

(7) An acquisition plan identifying the ecologically key land and water areas of the sanctuary, priority acquisitions, and strategies for acquiring these areas. This plan should identify ownership patterns within the proposed sanctuary boundaries; land already in the public domain; an estimate of the fair market value of land to be acquired; the method of acquisition, or the feasible alternatives (including less-than-fee techniques) for the protection of the estuarine area; a schedule for acquisition with an estimate of the time required to complete the proposed sanctuary; and a discussion of any anticipated problems;

Note.—As discussed in § 921.11(c)(3), if protected lands are to be included within the proposed sanctuary, the state must demonstrate to NOAA that the site meets the criteria for national estuarine sanctuary status independent of the inclusion of such protected lands.

(8) A resource protection plan detailing applicable authorities, including allowable uses, uses requiring a permit and permit requirements, any restrictions on use of the sanctuary, and a strategy for sanctuary surveillance and enforcement of such use restrictions, including appropriate government enforcement agencies;

(9) If applicable, a restoration plan describing those portions of the site that may require habitat modification to restore natural conditions; and

(10) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the national estuarine sanctuary, and expressing the long-term commitment by the state to maintain effectively the sanctuary after Federal financial assistance ends. In conjunction with the MOU and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection of the sanctuary. The MOU shall be signed prior to sanctuary designation. If other MOUs are necessary (such as with a federal agency or another state agency), drafts of such MOUs also must be included in the plan.

(c) Regarding the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act on a national estuarine sanctuary proposal, the state shall provide all

necessary information to NOAA concerning the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan. Based on this information, NOAA will prepare the draft EIS.

(d) Early in the development of the draft management plan and the draft EIS, the state shall hold a meeting in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action. NOAA will publish a notice of the meeting in the **Federal Register** and in local media.

(e) NOAA will publish a **Federal Register** notice of intent to prepare a DEIS. After the draft EIS is prepared and filed with the Environmental Protection Agency (EPA), a Notice of Availability of the DEIS will appear in the **Federal Register**. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed sanctuary. The hearing will be held no sooner than 15 days after appropriate notice by NOAA of the meeting has been given in the principal news media and in the **Federal Register**. After a 45-day comment period, a final EIS is prepared by NOAA.

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

§ 921.20 General.

After NOAA approval of the site, the draft management plan and the draft MOU, and completion of the final EIS, a state is eligible for an acquisition and development award to acquire land and water areas for inclusion in the sanctuary and to construct research and educational facilities in accordance with the draft management plan. The acquisition and development award has two phases. In the initial phase, state performance should work to meet the criteria required for formal sanctuary designation, i.e., acquiring the key land and water areas as specified in the draft management plan and preparing the final plan. These requirements are specified in § 921.30. The initial acquisition and development phase is expected to last no longer than two years after the start of the award. If necessary, a longer time period may be negotiated between the state and NOAA. After the sanctuary is designated, funds may be used to acquire any remaining land and for construction purposes.

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient in: (1) Acquiring land and water areas to be included in the sanctuary boundaries; (2) minor construction, as provided in paragraphs (b) and (c) of this section; (3) preparing the final management plan; and (4) up to the point of sanctuary designation, for initial management costs, e.g., implementing the NOAA approved draft management plan, preparing the final management plan, hiring a sanctuary manager and other staff as necessary, and for other management-related activities. Application procedures are specified in Subpart F.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. The preparation of architectural and engineering plans, including specifications, for any proposed construction is permitted. In addition, minor construction activities, consistent with paragraph (c) of this section also are allowed. The NOAA-approved draft management plan must, however, include a construction plan and a public access plan before any award funds can be spent on construction activities.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted under the initial acquisition and development award. No more than five (5) percent of the initial acquisition and development award may be expended on such facilities. NOAA must make a specific determination, based on the final EIS, that the construction activity will not be detrimental to the environment.

(d) Except as specifically provided in paragraphs (a)–(c) of this section, construction projects, to be funded in whole or in part under the acquisition and development award, may not be initiated until the sanctuary receives formal designation, see § 921.30.

Note.—The intent of these requirements and the phasing of the acquisition and development award is to ensure that substantial progress in acquiring the key land and waters areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in acquisition has been made, as defined by the state in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

(e) Deeds for real property acquired for the sanctuary under acquisition funding shall contain substantially the following provision:

Title to the property conveyed by this deed shall vest in the [recipient of the CZMA Section 315 award or other Federally-approved entity] subject to the condition that the property shall remain part of the Federally-designated [name of National Estuarine Sanctuary]. In the event that the property is no longer included as part of the sanctuary, or if the sanctuary designation of which it is part is withdrawn, then the National Oceanic and Atmospheric Administration or its successor agency, in conjunction with the State, may exercise any of the following rights regarding the disposition of the property:

(i) The recipient may be required to transfer title to the Federal Government. In such cases, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the program or project to the current fair market value of the property; or

(ii) At the discretion of the Federal Government, (a) the recipient may either be directed to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (minus actual and reasonable selling and fix-up expenses, if any, from the sale proceeds); or (b) the recipient may be permitted to retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property.

Note.—Fair market value of the property must be determined by an independent appraiser and certified by a responsible official of the state, as provided by OMB Circular A–102 Revised, Attachment F.

(f) Prior to submitting the final management plan to NOAA for review and approval, the state should hold a public meeting in the area affected by the estuarine sanctuary. NOAA will publish a notice of the meeting in the **Federal Register** and in the local media.

Subpart D—Sanctuary Designation and Subsequent Operation

§ 921.30 Designation of National Estuarine Sanctuaries.

(a) The AA shall designate an area as a national estuarine sanctuary pursuant to Section 315 of the Act, based upon written findings that the state has met the following conditions:

(1) A final management plan has been approved by NOAA;

(2) Sanctuary construction and access policies, § 921.21(b)–(d), have been followed;

(3) Key land and water areas of the proposed sanctuary, as identified in the management plan, are under state control; and

(4) An MOU between the state and NOAA ensuring a long-term commitment by the state to the

sanctuary's effective operation and implementation has been signed.

(b) A notice of designation of a national estuarine sanctuary will be placed in the **Federal Register** and in the local media.

(c) The term "state control" in § 921.30(a)(3) does not necessarily require that the land be owned by the state in fee simple. Less-than-fee interests and regulatory measures may suffice where the state makes a showing that the lands are adequately controlled consistent with the purposes of the sanctuary.

§ 921.31 Supplemental acquisition and development awards.

After sanctuary designation, and as specified in the approved management plan, the state may request a supplemental acquisition and development award for construction and acquiring any remaining land. Application procedures are specified in Subpart F. Land acquisition must follow the procedures specified in § 921.21(e).

§ 921.32 Operation and management: Implementation of the Management plan.

(a) After the sanctuary is formally designated, the state may apply for assistance to provide for operation and management. The purpose of this phase in the national estuarine sanctuary process is to implement the approved final management plan and to take the necessary steps to ensure the continued effective operation of the sanctuary after direct Federal support is concluded.

(b) Federal funds of up to $250,000, to be matched by the state, are available for the operation and management of the national estuarine sanctuary. Operation and management awards are subject to the following limitations:

(1) No more than $50,000 in Federal funds per annual award; and

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities (i.e., $10,000 maximum per year).

§ 921.33 Boundary changes, amendments to the Management Plan, and addition of multiple-site components.

(a) Changes in sanctuary boundaries and major changes to the final management plan, including state laws or regulations promulgated specifically for the sanctuary, may be made only after written approval by NOAA. If determined to be necessary, NOAA may require public notice including notice in the **Federal Register** and an opportunity for comment. Changes in the boundary involving the acquisition of properties not listed in the management plan or final EIS require public notice and the opportunity for comment; in certain cases, an environmental assessment may be required. Where public notice is required, NOAA will place a notice in the **Federal Register** of any proposed changes in sanctuary boundaries or proposed major changes to the final management plan and ensure that a notice is published in the local media.

(b) As discussed in § 921.10(b), a state may choose to develop a multiple-site national estuarine sanctuary after the initial acquisition and development award for a single site has been made. Public notice of the proposed addition in the **Federal Register** and local media, and the opportunity for comment, in addition to the preparation of either an environmental assessment or environment impact statement on the proposal will be required. An environmental impact statement, if required, will be prepared in accordance with section 921.12 and will also include an administrative framework for the multiple-site sanctuary that describes the complementary research and educational programs within the sanctuary. If NOAA determines, based on the scope of the project and the issues associated with the additional site, that an environmental assessment is sufficient to establish a mulitple-site sanctuary, then the state shall develop a revised management plan as described in § 921.12(b). The revised management plan will address the sanctuary-wide goals and objectives and the additional component's relationship to the original site.

§ 921.34 Program evaluation.

(a) Performance during the term of the operation and management award (or under the initial acquisition and development award, if the sanctuary is not designated within two years) will be evaluated annually by the Program Office and periodically in accordance with the provisions of Section 312 of the Act to determine compliance with the conditions of the award and overall progress in implementing the management plan.

(b) To ensure effective sanctuary oversight after the major federal funding expires, the state is required to submit an annual report on the sanctuary. The report should detail program successes and accomplishments in meeting the policies and activities described in the sanctuary management plan. A work plan, detailing the projects to be undertaken the next year to meet the Program goals and the state's role in ongoing sanctuary programs, should also be included. Inadequate annual reports will trigger a full-scale management audit with a site-visit. On a periodic basis, NOAA will also conduct a full-scale Section 312 evaluation with a site visit and public meeting.

§ 921.35 Withdrawal of designation.

(a) Upon a finding by the Program Office through its programmatic evaluation (§ 921.34) that a national estuarine sanctuary is not meeting the mandate of Section 315 of the Act, the national Program goals or the policies established in the management plan, NOAA will provide the state with a written notice of the deficiency. Such a notice will explain the deficiencies in the state's approach, propose a solution or solutions to the deficiency and provide a schedule by which the state should remedy the deficiency. The state shall also be advised in writing that it may comment on the Program Office's finding of a deficiency and meet with Program officials to discuss the finding and seek to remedy the deficiency.

(b) If the issues cannot be resolved within a reasonable time, the Program Office will make recommendation regarding withdrawal of designation to the AA. A notice of intent to withdraw designation, with an opportunity for comment, will be placed in the **Federal Register**.

(c) The state shall be provided the opportunity for an informal hearing before the AA to consider the Program Office's recommendation and finding of deficiency, as well as the state's comments on and response to the recommendation and finding.

(d) Within 30 day after the informal hearing, the AA shall issue a written decision regarding the sanctuary. If a decision is made to withdraw sanctuary designation, the procedures specified in§ 921.21(e) regarding the disposition of real property acquired with federal funds shall be followed.

Subpart E—Research Funds

§ 921.40 General.

(a) To stimulate high quality research within designated national estuarine sanctuaries, NOAA may find research on a competitive basis to sanctuaries having an approval final management plan. Research funds are intended to support significant research projects that will lead to enhanced scientific understanding of the sanctuary environment, improved coastal decisionmaking, improved sanctuary management, or enhanced public appreciation and understanding of the sanctuary ecosystem. Research opportunities will be identified in final

management plans for national estuarine sanctuaries. Research funds will be used to fill obvious voids in available data, as well as to support creative or innovative projects.

(b) Research funds are provided in addition to any funds available to the state under the operation and management or acquisition and development awards. Research funds must be matched by the state, consistent with § 921.51(e)(iii) ("allowable costs"). Individual states may apply for funding for more than one research project per sanctuary.

§ 921.41 Categories of potential research project; evaluation criteria.

(a) While research funds may be used to start-up long-term projects, they are not intended as a source of continuing funding for a particular project over time. Emphasis will be placed on projects that are also of benefit to other sanctuaries in the system. Proposals for research under the following categories will be considered:

(1) Establishing a Data Base and Monitoring Program (e.g., studies related to gathering and interpreting baseline information on the estuary. Funds are available to establish a data base and monitoring system; however, the long-term support for such a system must be carried out as part of overall sanctuary implementation);

(2) Estuarine Ecology (e.g., studies of the relationships between estuarine species and their environment, studies of biological populations community relationships, studies on factors and processes that govern the biological productivity of the estuary);

(3) Estuarine Processes (e.g., studies on dynamic physical processes that influence and give the estuary its particular physical characteristics, including studies related to climate, patterns of watershed drainage and freshwater inflow, patterns of water circulation within the estuary, and studies on oceanic or terrestrial factors that influence the condition of estuarine waters and bottoms);

(4) Applied Research (e.g., studies designed to answer specific management questions); and

(5) Socioeconomic Research (e.g., studies on patterns of land use, sanctuary visitation, archaeological research).

(b) Proposals for research in national estuarine sanctuaries will be evaluated in accordance with criteria listed below:

(1) Scientific merits;

(2) Relevance or importance to sanctuary management or coastal decisionmaking;

(3) Research quality (i.e., soundness of approach, environmental consequences, experience related to methodologies);

(4) Importance to the National Estuarine Sanctuary Program;

(5) Budget and Institutional Capabilities (i.e., reasonableness of budget, sufficiency of logistical support); and

(6) In addition, in the case of long-term monitoring projects, the ability of the state or the research grant recipient to support the grant beyond this initial funding.

Subpart F—General Financial Assistance Provisions

§ 921.50 Application information.

(a) The maximum total Federal funding per sanctuary is $3,000,000 for the preacquisition, acquisition and development, and operation and management awards. The research funding under § 921.40 is excluded from this total.

(b) Only a state Governor, or his/her designated state agency, may apply for national estuarine sanctuary financial assistance awards. If a state is participating in the national Coastal Zone Management Progam, the recipient of an award under Section 315 of the Act shall consult with the state coastal management agency regarding the application.

(c) No acquisition and development award may be made by NOAA without the approval of the Governor of the state, or his/her designated agency, in which the land to be acquired is located.

(d) All applications are to be submitted to: Management and Budget Group, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven St., NW., Washington, D.C. 20235.

(e) An original and two copies of the complete application must be submitted at least 120 working days prior to the proposed beginning of the project. The Application for Federal Assistance Standard Form 424 (Non-construction Program) constitutes the formal application for preacquisition, operation and management, and research awards. The Application for Federal Assistance Standard Form 424 (Construction Program) constitutes the formal application for land acquisition and development awards. The application must be accompanied by the information required in Subpart B (preacquisition), Subpart C and Section 921.31 (acquisition and development), and § 921.32 (operation and management), as applicable. All applications must contain back up data for budget estimates (Federal and non-Federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Appraisals and title information;

(3) Governor's letter approving the sanctuary proposal; and

(4) Written approval from NOAA of the draft or final management plan.

The Standard Form 424 has been approved by the Office of Management and Budget (Approval number 0648–0121) for use through September 30, 1986.

§ 921.51 Allowable costs.

(a) Allowable costs will be determined in accordance with OMB Circulars A–102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments", and A–87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local, and Federally Recognized Indian Tribal Governments"; the financial assistance agreement; these regulations; and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the awards period, except as provided under preagreement costs, subsection (d).

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) Costs incurred prior to the effective date of the award (preagreement costs) are allowable only when specifically approved in the financial assistance agreement. For non-construction awards, costs incurred more than three months before the award beginning date will not be approved. For construction and land acquisition awards, NOAA will evaluate preagreement costs on a case-by-case basis.

(e) General guidelines for the non-Federal share are contained in OMB Circular A–102, Attachment F. The following may be used by the state in satisfying the matching requirement:

(1) *Preacquisition Awards.* Cash and in-kind contributions (value of goods

and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) *Acquisition and Development Awards.* Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the sanctuary boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. The fair market value of privately donated land, at the time of donation, as establishment by an independent appraiser and certified by a responsible official of the State (pursuant to OMB Circular A–102 Revised, Attachment F) may also be used as match. Appraisals must be performed according to Federal appraisal standards as detailed in NOAA regulations and the "Uniform Appraisal Standards for Federal Land Acquisitions." Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match. Land, including submerged lands, already in the state's possession, in a fully-protected status consistent with the purposes of the National Estuarine Sanctuary Program, may be used as match only if it was acquired within a one-year period prior to the award of preacquisition or acquisition funds and with the intent to establish a national estuarine sanctuary. For state lands not in a fully-protected status (e.g., a state park containing an easement for subsurface mineral rights), the value of the development right or foregone value may be used as match if acquired by or donated to the state for inclusion within the sanctuary.

A state may initially use as match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the estuarine sanctuary.

(3) *Operations and Management Awards; Research Funds.* Cash and in-kind contributions (directly benefiting and specifically identifiable to this phase of the project), except land, are allowable.

§ 921.52 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revisions of the approved project budget, or extension of the performance period must be submitted to NOAA on Standard Form 424 (OMB approved number 0748–0121 for use through September 30, 1986) and approved in writing.

Appendix 1—Biographic Classification Scheme

Acadian

1. Northern Gulf of Maine (Eastport to the Sheepscot River).
2. Southern Gulf of Maine (Sheepscot River to Cape Cod).

Virginian

3. Southern New England (Cape Cod to Sandy Hook).
4. Middle Atlantic (Sandy Hook to Cape Hatteras).
5. Chesapeake Bay.

Carolinian

6. Northern Carolinas (Cape Hatteras to Santee River).
7. South Atlantic (Santee River to St. John's River).
8. East Florida (St. John's River to Cape Canaveral).

West Indian

9. Caribbean (Cape Canaveral to Ft. Jefferson and south).
10. West Florida (Ft. Jefferson to Cedar Key).

Louisianian

11. Panhandle Coast (Cedar Key to Mobile Bay).
12. Mississippi Delta (Mobile Bay to Galveston).
13. Western Gulf (Galveston to Mexican border).

Californian

14. Southern California (Mexican border to Point Concepcion).
15. Central California (Point Concepcion to Cape Mendocino).
16. San Francisco Bay.

Columbian

17. Middle Pacific (Cape Mendocino to the Columbia River).
18. Washington Coast (Columbia River to Vancouver Island).
19. Puget Sound.

Great Lakes

20. Western Lakes (Superior, Michigan, Huron).
21. Eastern Lakes (Ontario, Erie).

Fjord

22. Southern Alaska (Prince of Wales Island to Cook Inlet).
23. Aleutian Islands (Cook Inlet to Bristol Bay).

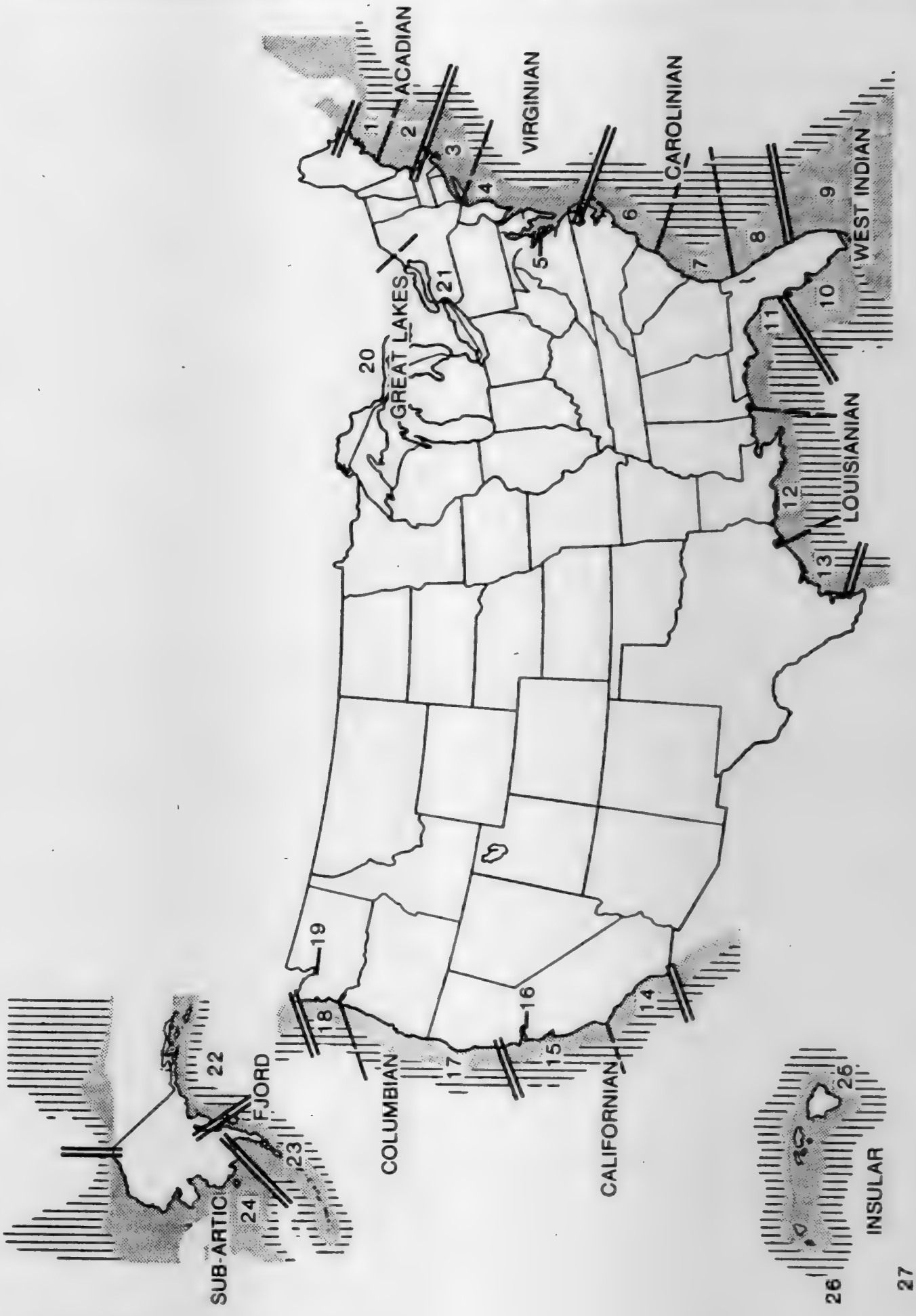
Sub-Arctic

24. Northern Alaska (Bristol Bay to Damarcation Point).

Insular

25. Hawaiian Islands.
26. Western Pacific Island.
27. Eastern Pacific Island.

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Figure 1. Biogeographic Regions of the United States.

Appendix 2—Typology of National Estuarine Areas

This typology system reflects significant differences in estuarine characteristics that are not necessarily related to regional location. The purpose of this type of classification is to maximize ecosystem variety in the selection of national estuarine sanctuaries. Priority will be given to important ecosystem type as yet unrepresented in the sanctuary system. It should be noted that any one site may represent several ecosystem types or physical characteristics.

Class I—Ecosystem Types

Group I—Shorelands

A. *Maritime Forest-Woodland:* This type of ecosystem consists of single-stemmed species that have developed under the influence of salt spray. It can be found on coastal uplands or recent features, such as barrier islands and beaches, and may be divided into the following biomes:

1. *Northern Coniferous Forest Biome:* This is an area of predominantly evergreens such as the sitka spruce (*Picea*), grand fir (*Abies*), and white cedar (*Thuja*), with poor development of the shrub and herb layers, but high annual productivity and pronounced seasonal periodicity.

2. *Moist Temperate (Mesothermal) Coniferous Forest Biome:* Found along the west coast of North America from California to Alaska, this area is dominated by conifers, has a relatively small seasonal range, high humidity with rainfall ranging from 30 to 150 inches, and a well-developed understory of vegetation with an abundance of mosses and other moisture-tolerant plants.

3. *Temperate Deciduous Forest Biome:* This biome is characterized by abundant, evenly distributed rainfall, moderate temperatures which exhibt a distinct seasonal pattern, well-developed soil biota and herb and shrub layers, and numerous plants which produce pulpy fruits and nuts. A distant subdivision of this biome is the *pine edaphic forest* of the southeastern coastal plain, in which only a small portion of the area is occupied by climax vegetation, although it has large areas covered by edaphic climax pines.

4. *Broad-leaved Evergreen Subtropical Forest Biomes:* The main characteristic of this biome is high moisture with less pronounced differences between winter and summer. Examples are the hammocks of Florida and the live oak forests of the Gulf and South Atlantic coasts. Floral dominants include pines, magnolias, bays, hollies, wild tamarind, strangler fig, gumbo limbo, and palms.

B. *Coast Shrublands:* This is a transitional area between the coastal grasslands and woodlands and is characterized by woody species with multiple stems a few centimeters to several meters above the ground developing under the influence of salt spray and occasional sand burial. This includes thickets, scrub, scrub savanna, heathlands, and coastal chaparral. There is a great variety of shrubland vegetation exhibiting regional specificity:

1. *Northern Areas:* Characterized by *Hudsonia,* various erinaceous species, and thickets of *Myrica, Prunus,* and *Rosa.*

2. *Southeast Areas:* Floral dominants include *Myrica, Baccharis,* and *Ilex.*

3. *Western Areas: Adenostoma, Arcotyphylos,* and *Eucalyptus* are the dominant floral species.

C. *Coastal Grasslands:* This area, which possesses sand dunes and coastal flats, has low rainfall (10 to 30 inches per year) and large amounts of humus in the soil. Ecological succession is slow, resulting in the presence of a number of seral stages of community development. Dominant vegetation includes mid-grasses (2 to 4 feet tall), such as *Ammophila, Agropyron,* and *Calamovilfa,* tall grasses (5 to 8 feet tall), such as *Spartina,* and trees such as the willow (*Salix* sp.), cherry (*Prunus* sp.), and cottonwood (*Populus deltoides*). This area is divided into four regions with the following typical strand vegetation:

1. Arctic/Boreal: *Elymus;*
2. Northeast/West: *Ammophila;*
3. Southeast/Gulf: *Uniola;* and
4. Mid-Atlantic/Gulf: *Spartina patens.*

D. *Coastal Tundra:* This ecosystem, which is found along the Arctic and Boreal coasts of North America, is characterized by low temperatures, a short growing season, and some permafrost, producing a low, treeless mat community made up of mosses, lichens, heath, shrubs, grasses, sedges, rushes, and herbaceous and dwarf woody plants. Common species include arctic/alpine plants such as *Empetrum nigrum* and *Betula nana,* the lichens *Cetraria* and *Cladonia,* and herbaceous plants such as *Potentilla tridentata* and *Rubus chamaemorus.* Common species on the coastal beach ridges of the high arctic desert include *Dryas intergrifolia* and *Saxifrage oppositifolia.*

This area can be divided into two main subdivisions:

1. *Low Tundra:* characterized by a thick, spongy mat of living and undecayed vegetation, often with water and dotted with ponds when not frozen; and

2. *High Tundra:* a bare area except for a scanty growth of lichens and grasses, with underlying ice wedges forming raised polygonal areas.

E. *Coastal Cliffs:* This ecosystem is an important nesting site for many sea and shore birds. It consists of communities of herbaceaous, graminoid, or low woody plants (shrubs, heath, etc.) on the top or along rocky faces exposed to salt spray. There is a diversity of plant species including mosses, lichens, liverworts, and "higher" plant representatives.

Group II—Transition Areas

A. *Coastal Marshes:* These are wetland areas dominated by grasses (Poacea), sedges (Cyperaceae), rushes (Juncaceae), cattails (Typhaceae), and other graminoid species and is subject to periodic flooding by either salt or freshwater. This ecosystem may be subdivided into: (a) tidal, which is periodically flooded by either salt or brackish water; (b) non-tidal (freshwater); or (c) tidal freshwater. These are essential habitats for many important estuarine species of fish and invertebrates as well as shorebirds and waterfowl and serves important roles in shore stabilization, flood control, water purification, and nutrient transport and storage.

B. *Coastal Swamps:* These are wet lowland areas that support mosses and shrubs together with large trees such as cypress or gum.

C. *Coastal Mangroves:* This ecosystem experiences regular flooding on either a daily, monthly, or seasonal basis, has low wave action, and is dominated by variety of salt-tolerant trees, such as the red mangrove (*Rhizophora mangle*), black mangrove (*Avicennia nitida*), and the white mangrove (*Laguncularia racemosa*). It is also an important habitat for large populations of fish, invertebrates, and birds. This type of ecosystem can be found from central Florida to extreme south Texas to the islands of the Western Pacific.

D. *Intertidal Beaches:* This ecosystem has a distinct biota of microscopic animals, bacteria, and unicelluar algae along with macroscopic crustaceans, mollusks, and worms with a detritus-based nutrient cycle. This area also includes the driftline communities found at high tide levels on the beach. The dominant organisms in this ecosystem include crustaceans such as the mole crab (*Emerita*), amphipods (Gammaridae), ghost crabs (*Ocypode*), and bivalve molluscs such as the coquina (*Donax*) and surf clams (*Spisula* and *Mactra*).

E. *Intertidal Mud and Sand Flats:* These areas are composed of unconsolidated, high organic content sediments that function as a short-term storage area for nutrients and organic carbons. Macrophytes are nearly absent in this ecosystem, although it may be heavily colonized by benthic diatoms, dinoflagellates, filamentous blue-green and green algae, and chaemosynthetic purple sulfur bacteria. This system may support a considerable population of gastropods, bivalves, and polychaetes, and may serve as a feeding area for a variety of fish and wading birds. In sand, the dominant fauna include the wedge shell *Donax,* the scallop *Pecten,* tellin shells *Tellina,* the heart urchin *Echinocardium,* the lug worm *Arenicola,* sand dollar *Dendraster,* and the sea pansy *Renilla.* In mud, faunal dominants adapted to low oxygen levels include the terebellid *Amphitrite,* the boring clam *Playdon,* the deep sea scallop *Placopecten,* the quahog *Mercenaria,* the echiurid worm *Urechis,* the mud snail *Nassarius,* and the sea cucumber *Thyone.*

F. *Intertidal Algal Beds:* These are hard substrates along the marine edge that are dominated by macroscopic algae, usually thalloid, but also filamentous or unicellular in growth form. This also includes the rocky coast tidepools that fall within the intertidal zone. Dominant fauna of these areas are barnacles, mussels, periwinkles, anemones, and chitons. Three regions are apparent:

1. *Northern Latitude Rocky Shores:* It is in this region that the community structure is best developed. The dominant algal species include *Chondrus* at the low tide level, *Fucus* and *Ascophyllum* at the mid-tidal level, and *Laminaria* and other kelp-like algae just beyond the intertidal, although they can be exposed at extremely low tides or found in very deep tidepools.

2. *Southern Latitudes:* The communities in this region are reduced in comparison to

those of the northern latitudes and possesses algae consisting mostly of single-celled or filamentous green, blue-green, and red algae, and small thalloid brown algae.

3. *Tropical and Subtropical Latitudes:* The intertidal in this region is very reduced and contains numerous calcareous algae such as *Porolithon* and *Lithothamnion*, as well as green algae with calcareous particles such as *Halimeda*, and numerous other green, red, and brown algae.

Group III—Submerged Bottoms

A. *Subtidal Hardbottoms:* This system is characterized by a consolidated layer of solid rock or large pieces of rock (neither of biotic origin) and is found in association with geomorphological features such as submarine canyons and fjords and is usually covered with assemblages of sponges, sea fans, bivalves, hard corals, tunicates, and other attached organisms. A significant feature of estuaries in many parts of the world is the oyster reef, a type of subtidal hardbottom. Composed of assemblages of organisms (usually bivalves), it is usually found near an estuary's mouth in a zone of moderate wave action, salt content, and turbidity. If light levels are sufficient, a covering of microscopic and attached macroscopic algae, such as kelp, may also be found.

B. *Subtidal Softbottoms:* Major characteristics of this ecosystem are an unconsolidated layer of fine particles of silt, sand, clay, and gravel, high hydrogen sulfide levels, and anaerobic conditions often existing below the surface. Macrophytes are either sparse or absent, although a layer of benthic microalgae may be present if light levels are sufficient. The faunal community is dominated by a diverse population of deposit feeders including polychaetes, bivalves, and burrowing crustaceans.

C. *Subtidal Plants:* This system is found in relatively shallow water (less than 8 to 10 meters) below mean low tide. It is an area of extremely high primary production that provides food and refuge for a diversity of faunal groups, especially juvenile and adult fish, and in some regions, manatees and sea turtles. Along the North Atlantic and Pacific coasts, the seagrass *Zostera marina* predominates. In the South Atlantic and Gulf coast areas, *Thalassia* and *Diplanthera* predominate. The grasses in both areas support a number of epiphytic organisms.

Class II—Physical Characteristics

Group I—Geologic

A. *Basin Type:* Coastal water basins occur in a variety of shapes, sizes, depths, and appearances. The eight basic types discussed below will cover most of the cases:

1. *Exposed Coast:* Solid rock formations or heavy sand deposits characterize exposed ocean shore fronts, which are subject to the full force of ocean storms. The sand beaches are very resilient, although the dunes lying just behind the beaches are fragile and easily damaged. The dunes serve as a sand storage area, making them chief stabilizers of the ocean shorefront.

2. *Sheltered Coast:* Sand or coral barriers, built up by natural forces, provide sheltered areas inside a bar or reef where the ecosystem takes on many characteristics of confined waters—abundant marine grasses, shellfish, and juvenile fish. Water movement is reduced, with the consequent effects of pollution being more severe in this area than in exposed coastal areas.

3. *Bay:* Bays are larger confined bodies of water that are open to the sea and receive strong tidal flow. When stratification is pronounced, the flushing action is augmented by river discharge. Bays vary in size and in type of shorefront.

4. *Embayment:* A confined coastal water body with narrow, restricted inlets and with a significant freshwater inflow can be classified as an embayment. These areas have more restricted inlets than bays, are usually smaller and shallower, have low tidal action, and are subject to sedimentation.

5. *Tidal River:* The lower reach of a coastal river is referred to as a tidal river. The coastal water segment extends from the sea or estuary into which the river discharges to a point as far upstream as there is significant salt content in the water, forming a salt front. A combination of tidal action and freshwater outflow makes tidal rivers well-flushed. The tidal river basin may be a simple channel or a complex of tributaries, small associated embayments, marshfronts, tidal flats, and a variety of others.

6. *Lagoon:* Lagoons are confined coastal bodies of water with restricted inlets to the sea and without significant freshwater inflow. Water circulation is limited, resulting in a poorly flushed, relatively stagnant body of water. Sedimentation is rapid with a great potential for basin shoaling. Shores are often gently sloping and marshy.

7. *Perched Coastal Wetlands:* Unique to Pacific islands, this wetland type, found above sea level in volcanic crater remnants, forms as a result of poor drainage characteristics of the crater rather than from sedimentation. Floral assemblages exhibit distinct zonation while the faunal constituents may include freshwater, brackish, and/or marine species. Example: Aunu'u Island, American Samoa.

8. *Anchialine Systems:* These small coastal exposures of brackish water form in lava depressions or elevated fossil reefs, have only a subsurface connection to the ocean, but show tidal fluctuations. Differing from true estuaries in having no surface continuity with streams or ocean, this system is characterized by a distinct biotic community dominated by benthic algae such as *Rhizoclonium*, the mineral encrusting *Schizothrix*, and the vascular plant *Ruppia maritima*. Characteristic fauna, which exhibit a high degree of endemicity, include the mollusks *Theodoxus neglectus* and *T. cariosus*, the small red shrimp *Metabetaeus lohena* and *Halocaridina rubra*, and the fish *Eleotris sandwicensis* and *Kuhlia sandvicensus*. Although found throughout the world, the high islands of the Pacific are the only areas within the U.S. where this system can be found.

B. *Basin Structure:* Estuary basins may result from the drowning of a river valley (coastal plains estuary), the drowning of a glacial valley (fjord), the occurrence of an offshore barrier (bar-bounded estuary), some tectonic process (tectonic estuary), or volcanic activity (volcanic estuary).

1. *Coastal plains estuary:* Where a drowned valley consists mainly of a single channel, the form of the basin is fairly regular, forming a simple coastal plains estuary. When a channel is flooded with numerous tributaries, an irregular estuary results. Many estuaries of the eastern United States are of this type.

2. *Fjord:* Estuaries that form in elongated, steep headlands that alternate with deep U-shaped valleys resulting from glacial scouring are called fjords. They generally possess rocky floors or very thin veneers of sediment, with deposition generally being restricted to the head where the main river enters. Compared to total fjord volume, river discharge is small. But many fjords have restricted tidal ranges at their mouths, due to sills, or upreaching sections of the bottom which limit free movement of water, often making river flow large with respect to the tidal prism. The deepest portions are in the upstream reaches, where maximum depths can range from 800 m to 1200 m, while sill depths usually range from 40 m to 150 m.

3. *Bar-bounded Estuary:* These result from the development of an offshore barrier, such as a beach strand, a line of barrier islands, reef formations, a line of moraine debris, or the subsiding remnants of a deltaic lobe. The basin is often partially exposed at low tide and is enclosed by a chain of offshore bars or barrier islands, broken at intervals by inlets. These bars may be either deposited offshore or may be coastal dunes that have become isolated by recent sea level rises.

4. *Tectonic Estuary:* These are coastal indentures that have formed through tectonic processes such as slippage along a fault line (San Francisco Bay), folding, or movement of the earth's bedrock, often with a large inflow of freshwater.

5. *Volcanic Estuary:* These coastal bodies of open water, a result of volcanic processes, are depressions or craters that have direct and/or subsurface connections with the ocean and may or may not have surface continuity with streams. These formations are unique to island areas of volcanic origin.

C. *Inlet Type:* Inlets in various forms are an integral part of the estuarine environment, as they regulate, to a certain extent, the velocity and magnitude of tidal exchange, the degree of mixing, and volume of discharge to the sea. There are four major types of inlets:

1. *Unrestricted:* An estuary with a wide, unrestricted inlet typically has slow currents, no significant turbulence, and receive the full effect of ocean waves and local disturbances which serve to modify the shoreline. These estuaries are partially mixed, as the open mouth permits the incursion of marine waters to considerable distances upstream, depending on the tidal amplitude and stream gradient.

2. *Restricted:* Restrictions of estuaries can exist in many forms: bars, barrier islands, spits, sills, and more. Restricted inlets result in decreased circulation, more pronounced longitudinal and vertical salinity gradients, and more rapid sedimentation. However, if the estuary mouth is restricted by depositional features or land closures, the incoming tide may be held back until it suddenly breaks forth into the basin as a

tidal wave, or *bore*. Such currents exert profound effects on the nature of the substrate, turbidity, and biota of the estuary.

3. *Permanent:* Permanent inlets are usually opposite the mouths of major rivers and permit river water to flow into the sea. Sedimentation and deposition are minimal.

4. *Temporary (Intermittent):* Temporary inlets are formed by storms and frequently shift position, depending on tidal flow, the depth of the sea and sound waters, the frequency of storms, and the amount of littoral transport.

D. *Bottom Composition:* The bottom composition of estuaries attests to the vigorous, rapid, and complex sedimentation processes characteristic of most coastal regions with low relief. Sediments are derived through the hydrologic processes of erosion, transport, and deposition carried on by the sea and the stream.

1. *Sand:* Near estuary mouths, where the predominating forces of the sea build spits or other depositional features, the shores and substrates of the estuary are sandy. The bottom sediments in this area are usually coarse, with a graduation toward finer particles in the head of the estuary. In the head region and other zones of reduced flow, fine silty sands are deposited. Sand deposition occurs only in wider or deeper regions where velocity is reduced.

2. *Mud:* At the base level of a stream near its mouth, the bottom is typically composed of loose muds, silt, and organic detritus as a result of erosion and transport from the upper stream reaches and organic decomposition. Just inside the estuary entrance, the bottom contains considerable quantities of sand and mud, which support a rich fauna. Mud flats, commonly built up in estuarine basins, are composed of loose, coarse, and fine mud and sand, often dividing the original channel.

3. *Rock:* Rocks usually occur in areas where the stream runs rapidly over a steep gradient with its coarse materials being derived from the higher elevations where the stream slope is greater. The larger fragments are usually found in shallow areas near the stream mouth.

4. *Oyster shell:* Throughout a major portion of the world, the oyster reef is one of the most significant features of estuaries, usually being found near the mouth of the estuary in a zone of moderate wave action, salt content, and turbidity. It is often a major factor in modifying estuarine current systems and sedimentation, and may occur as an elongated island or peninsula oriented across the main current, or may develop parallel to the direction of the current.

Group II—Hydrographic

A. *Circulation:* Circulation patterns are the result of the combined influences of freshwater flow, tidal action, wind and oceanic forces, and serve many functions: nutrient transport, plankton dispersal, ecosystem flushing, salinity control, water mixing, and more.

1. *Stratified:* This is typical of estuaries with a strong freshwater influx and is commonly found in bays formed from "drowned" river valleys, fjords, and other deep basins. There is a net movement of freshwater outward at the top layer and saltwater at the bottom layer, resulting in a net outward transport of surface organisms and net inward transport of bottom organisms.

2. *Non-stratified:* Estuaries of this type are found where water movement is sluggish and flushing rate is low, although there may be sufficient circulation to provide the basis for a high carrying capacity. This is common to shallow embayments and bays lacking a good supply of freshwater from land drainage.

3. *Lagoonal:* An estuary of this type is characterized by low rates of water movement resulting from a lack of significant freshwater influx and a lack of strong tidal exchange because of the typically narrow inlet connecting the lagoon to the sea. Circulation, whose major driving force is wind, is the major limiting factor in biological productivity within lagoons.

B. *Tides:* This is the most important ecological factor in an estuary, as it affects water exchange and its vertical range determines the extent of tidal flats which may be exposed and submerged with each tidal cycle. Tidal action against the volume of river water discharged into an estuary results in a complex system whose properties vary according to estuary structure as well as the magnitude of river flow and tidal range. Tides are usually described in terms of their cycle and their relative heights. In the United States, tide height is reckoned on the basis of average low tide, which is referred to as *datum*. The tides, although complex, falls into three main categories:

1. *Diurnal:* This refers to a daily change in water level that can be observed along the shoreline. There is one high tide and one low tide per day.

2. *Semidiurnal:* This refers to a twice daily rise and fall in water that can be observed along the shoreline.

3. *Wind/Storm Tides:* This refers to fluctuations in water elevation to wind and storm events, where influence of lunar tides is less.

C. *Freshwater:* According to nearly all the definitions advanced, it is inherent that all estuaries need freshwater, which is drained from the land and measurably dilutes seawater to create a brackish condition. Freshwater enters an estuary as runoff from the land either from a surface and/or subsurface source.

1. *Surface water:* This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. *Subsurface water:* This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. *Vadose water:* This is water in the soil above the water table. Its volume with respect to the soil, is subject to considerable fluctuation.

b. *Groundwater:* This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief of the land, being high below hills and sloping into valleys.

Group III—Chemical

A. *Salinity:* This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand—ppt).

1. *Positive estuary:* This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. *Negative estuary:* This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3. *Salinity zones (expressed in ppt):*

a. *Hyperhaline*—greater than 40 ppt.

b. *Euhaline*—40 ppt to 30 ppt.

c. *Mixohaline:* 30 ppt to 0.5 ppt.

(1) Mixoeuhaline—greater than 30 ppt but less than the adjacent euhaline sea.

(2) Polyhaline—30 ppt to 18 ppt.

(3) Mesohaline—18 ppt to 5 ppt.

(4) Oligohaline—5 ppt to 0.5 ppt.

d. *Limnetic:* Less than 0.5 ppt.

B. *pH Regime:* This is indicative of the mineral richness of estuarine waters and fall into three main categories:

1. *Acid:* Waters with a pH of less than 5.5.

2. *Circumneutral:* A condition where the pH ranges from 5.5 to 7.4.

3. *Alkaline:* Waters with a pH greater than 7.4.

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Wednesday
June 27, 1984

Part V

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for New Stationary Sources; Reference Methods; Quality Assurance and Quality Control Revisions to Methods 6 and 7; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2558-4]

Standards of Performance for New Stationary Sources; Reference Methods; Quality Assurance and Quality Control Revisions to Methods 6 and 7

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this action is to promulgate quality assurance and quality control revisions to Methods 6 and 7 of Appendix A of 40 CFR Part 60. These revisions were proposed in the **Federal Register** on March 30, 1983 (48 FR 13388).

These revisions require source testers to analyze audit samples when making compliance determinations in order to assess their analytical accuracy and calculations. A quality control guideline for the Method 7 calibration data is also included for publication.

EFFECTIVE DATE: June 27, 1984.

Under section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Summary of Comments and Responses.* This document for the promulgated revisions may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "Quality Assurance and Quality Control Revisions to Methods 6 and 7 (proposed March 30, 1983, 48 FR 13388)—Summary of Comments and Responses, EPA-450/3-84-006." The document contains (1) a summary of all the public comments made on the proposed rule and the Administrator's response to the comments, and (2) a summary of the changes made to the rule since proposal.

Background Information. This document may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Methods 6 and 7 Quality Assurance and Quality Control Revisions—Background Information, EPA 450/3-82-017." The document offers guidelines for minimizing analytical inaccuracies.

Docket. A docket, number A-81-19, containing materials considered by EPA in development of the promulgated rulemaking, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D. C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

SUPPLEMENTARY INFORMATION: The promulgated revisions will require the source tester to: (1) Analyze audit samples supplied by EPA with Method 6 compliance samples, (2) assure that at least three of the four Method 7 calibration points are within 7 percent of the least squares line, and (3) analyze EPA audits with Method 7 compliance samples.

This rulemaking does not impose any additional emission measurement requirements on facilities affected by this rulemaking. Rather, this rulemaking adds quality assurance and quality control procedures to the test methods to which the affected facilities are already subject. If future standards impose emission measurement requirements, the impacts of the additions to the test methods promulgated today will be evaluated during development of these standards.

Public Participation

The revisions were proposed and published in the **Federal Register** on March 30, 1983 (48 FR 13388). The opportunity to request a public hearing was presented to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed revisions, but no person desired to make an oral presentation. The public comment period was from March 30, 1983 to June 13, 1983. Fifteen comments letters were received concerning issues relative to the proposed revisions. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made.

Significant Comments and Changes to the Proposed Method Revisions

Fifteen comment letters were received on the proposed revisions. The major comments and responses are summarized in this preamble. Some of the comment letters contained multiple comments. The significant comments and subsequent changes to the proposed revisions are listed here.

1. One commenter was concerned about logistic problems that would be created by the rulemaking. It was questioned whether EPA could guarantee delivery of audit samples that would be in the appropriate analytical range of the compliance samples and if assurance could be made that different audit concentrations be sent for different requests. Another commenter voiced concern over the significant cost for reanalysis because samples are not received on time or those received are of poor quality.

The Agency has, for a number of years, effectively delivered quality audit samples to laboratories from industry, contracting firms, universities, foreign countries, and governmental agencies who participate in a voluntary interlaboratory survey. The rulemaking will instruct the tester to notify the appropriate EPA quality assurance office 30 days prior to the test to allow sufficient time for mailing. The audit concentrations will be within the calibration range of Method 7 and within the titration range of Method 6. The EPA regional offices will coordinate the program to ensure that requesters receive different audits on different requests.

2. One commenter thought the proposed requirements were redundant, especially since the Agency already conducts a semiannual interlaboratory survey. It was felt that more frequent audit analyses should only be required in those cases where the ongoing interlaboratory program points out a deficiency in a laboratory's quality control program. A second commenter suggested that rather than analyzing unknown samples, it would be more beneficial to analyze specimens of known concentration prior to running the compliance test samples. A third commenter felt that a single audit check per quarter should be adequate, and that individual precision checks should be accomplished by requiring that the known concentration be analyzed with each set of compliance samples collected during the quarter.

The ongoing interlaboratory program will be phased down upon promulgation of these new audit requirements.

Participation in the program gave laboratories an indication of their relative analytical performance but did not check for or eliminate inaccuracies experienced on an actual test due to using different or inexperienced personnel, mistakes in the standards preparation, calculations, reporting, etc. To maximize the incentive to eliminate such inaccuracies, unknown audits should be analyzed with compliance samples. The proposed quarterly audit as a minimum for compliance samples that are analyzed on a frequent basis has been dropped. This will eliminate the use of 3-month-old analytical reagents that were allowed by the quarterly audit. For different compliance tests performed under the jurisdiction of the same enforcement agency, a monthly audit is required.

3. A commenter noted the additional level of regulation that would be created by the new requirements. It was perceived that the Administrator's discretion to use the compliance result whether the audit is passed or failed, and the option to waive reanalysis if the audit is failed would nullify the rationale for the requirements. The commenter felt that all data outside the maximum allowable error should be invalidated.

Administrator discretion comes into play in only two cases: when the test shows the source is substantially below the standard, but the audit is marginally failed, and when the source is substantially above the standard, but the audit is marginally failed. In each case, the applicatin of a correction factor would not change the compliance or noncompliance status of the source. Acceptance of the test results in each case is allowed because compliance or noncompliance is clearly shown and would not be affected by the additional error above that normally allowed.

4. One commenter thought it best to audit the sampling procedure in addition to the analysis procedure. Another commenter did not think the analysis procedure should be audited since the sampling procedure is not audited. The Agency has considered auditing of the sampling procedure (using gas cylinders) but, at this time, feels that such an approach would be impractical, expensive, and the benefits received would not justify the effort required to perform it. If a simple auditing technique can be developed, EPA will consider such an audit in the future.

5. The proposed rule was opposed by one commenter who saw it as giving smaller stack testing firms a competitive disadvantage due to increased costs. It was felt that the benefits gained would not justify the increased cost. The Agency does not feel that the increased cost associated with implementing quality assurance requirements will be substantial enough to give larger firms a competitive advantage.

6. One commenter objected to requiring only EPA-derived audit samples. It was recommended that internally-generated audit samples be allowed in place of the EPA samples, which themselves have the potential to introduce error due to mistakes in preparation and documentation of the actual concentrations.

The potential for errors in preparation and documentation of actual concentrations would be compounded if each laboratory were allowed to generate its own audit samples. Any error in an EPA-derived audit would be rapidly detected since more than one laboratory will be analyzing them. To assure fairness in meeting the audit accuracy levels, a single source of samples in needed to serve as a reference for all laboratories.

7. Objection was made by one commenter to obtaining the audit results only when reporting compliance results by telephone. Communicating compliance results to the Agency by telephone was a serious concern.

Initial reporting of audit and compliance sample results by telephone will be an allowable option, not a requirement. Submission of a written test report is still mandatory in this case. The allowance for telephone communication enables the tester to determine at an early stage whether the audit is passed and hence the compliance data acceptable, or whether the audit is failed, and a reanalysis is necessary. Determination of the audit status before the test report is written and before the audit and compliance samples have aged substantially would eliminate much of the unnecessary work and expense created if it is determined at a later date that a reanalysis is needed.

8. One commenter thought that Section 4.4 restricts the analysis to one person. This would delay the analysis and preparation of the compliance test report for some laboratories.

The intention of Section 4.4 is not to restrict the analysis to one person but to ensure that all parties involved in the analysis of the compliance samples likewise take part in the analysis of the audits.

Docket

The docket is an organized and complete file of the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purposes of the proposed and promulgated rule and EPA response to significant comments, the contents of the docket will serve as the record in case of judicial review [section 307(d)(7)(A)].

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. The anticipated increase in costs due to implementing this rule should be 5 percent or less for a typical Method 6 or 7 test. Additional costs would be experienced by these laboratories required to perform a reanalysis due to analytical inaccuracies. However, reanalysis should not normally be necessary because the rule recommends procedures for eliminating these inaccuracies. This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Industrial organic chemicals, Organic

solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

This rulemaking is issued under the authority of sections 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

Dated: June 15, 1984.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60, Appendix A, is amended as follows:

1. In Method 6, by adding Sections 3.3.6, 4.4, and 6.4, and by adding a second paragraph to Section 5.5, as follows:

Appendix A—Reference Methods

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Method 6—Determination of Sulfur Dioxide Emissions From Stationary Sources

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3. Reagents.

* * * * *

3.3 * * *

3.3.6 Quality Assurance Audit Samples. Sulfate samples in glass vials prepared by EPA's Environmental Monitoring Systems Laboratory, Quality Assurance Division, Source Branch, Mail Drop 77A, Research Triangle Park, North Carolina 27711. Each set will consist of two vials having solutions of unknown concentrations. Only when making compliance determinations, obtain an audit sample set from the Quality Assurance Management office at each EPA regional Office or the responsible enforcement agency. (Note: The tester should notify the quality assurance office or the responsible enforcement agency at least 30 days prior to the test date to allow sufficient time for sample delivery.)

4. Procedure.

* * * * *

4.4 Audit Sample Analysis. Concurrently analyze the two audit samples and a set of compliance samples (Section 4.3) in the same manner to evaluate the technique of the analyst and the standards preparation. (Note: It is recommended that known quality control samples be analyzed prior to the compliance and audit sample analysis to optimize the system accuracy and precision. One source of these samples is the Source Branch listed in Section 3.3.6.) The same analysts, analytical reagents, and analytical system shall be used both for compliance samples and the EPA audit samples; if this condition is met, auditing of subsequent compliance analyses for the same enforcement agency within 30 days is not required. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of different enforcement agencies, unless prior arrangements are made with both enforcement agencies.

Calculate the concentrations in mg/dscm using the specified sample volume in the audit instructions. (Note: Indication of acceptable results may be obtained immediately by reporting the audit results in mg/dscm and compliance results in total mg SO_2/sample by telephone to the responsible enforcement agency.) Include the results of both audit samples, their identification numbers, and the analyst's name with the results of the compliance determination samples in appropriate reports to the EPA regional office or the appropriate enforcement agency. Include this information with subsequent compliance analyses for the same enforcement agency during the 30-day period.

The concentrations of the audit samples obtained by the analyst shall agree within 5 percent of the actual concentrations. If the 5-percent specification is not met, reanalyze the compliance samples and audit samples, and include initial and reanalysis values in the test report (see Note in first paragraph of this section).

Failure to meet the 5-percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

5. Calibration.

* * * * *

5.5 * * *

Run duplicate analyses. Calculate the normality using the average of a pair of duplicate analyses where the titrations agree within 1 percent or 0.2 ml, whichever is larger.

6. Calculations.

* * * * *

6.4 Relative Error (RE) for QA Audit Samples, Percent.

$$RE = \frac{C_d - C_a}{C_a} \times 100 \quad \text{Eq. 6-3}$$

Where:

C_d = Determined audit sample concentration, mg/dscm.

C_a = Actual audit sample concentration, mg/dscm.

* * * * *

2. In Method 7, by adding Sections 3.3.9, 4.4, 5.2.3, and 6.5, as follows:

Appendix A—Reference Methods

* * * * *

Method 7—Determination of Nitrogen Oxide Emissions From Stationary Sources

* * * * *

3. Reagents.

* * * * *

3.3 * * *

3.3.9 Quality Assurance Audit Samples. Nitrate samples in glass vials prepared by EPA's Environmental Monitoring Systems Laboratory, Quality Assurance Division, Source Branch, Mail Drop 77A, Research Triangle Park, North Carolina 27711. Each set will consist of two vials having solutions of unknown concentrations. Only when making compliance determinations, obtain an audit sample set from the quality assurance management office at each EPA regional office or the responsible enforcement agency. (Note: The tester should notify the quality assurance office or the responsible enforecement agency at least 30 days prior to the test date to allow sufficient time for sample delivery.)

4. Procedures.

* * * * *

4.4 Audit Sample Analysis. Concurrently analyze the two audit samples and a set of compliance samples (Section 4.3) in the same manner to evaluate the technique of the analyst and the standards preparation. (Note: It is recommended that known quality control samples be analyzed prior to the compliance and audit sample analysis to optimize the system accuracy and precision. One source of these samples is the Source Branch listed in Section 3.3.9.) The same analysts, analytical reagents, and analytical system shall be used both for the compliance samples and the EPA audit samples; if this condition is met, auditing of subsequent compliance analyses for the same enforcement agency within 30 days is not required. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of different enforcement agencies, unless prior arrangements are made with both enforcement agencies.

Calculate the concentrations in mg/dscm using the specified sample volume in the audit instructions. (Note: Indication of acceptable results may be obtained immediately by reporting the audit results in mg/dscm and compliance results in total μg NO_2/sample by telephone to the responsible enforcement agency.) Include the results of both audit samples, their identification numbers, and the analyst's name with the results of the compliance determination samples in appropriate reports to the EPA regional office or the appropriate enforcement agency. Include this information with subsequent compliance analyses for the same enforcement agency during the 30-day period.

The concentrations of the audit samples obtained by the analyst shall agree within 10 percent of the actual audit concentrations. If the 10-percent specification is not met, reanalyze the compliance samples and audit samples and include initial and reanalysis values in the test report (see Note in the first paragraph of this section).

Failure to meet the 10-percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the

compliance or noncompliance status of the affected facility.

5. Calibration.

* * * * *

5.2 * * *

5.2.3 Spectrophotometer Calibration Quality Control. Multiply the absorbance value obtained for each standard by the K_c factor (least squares slope) to determine the distance each calibration point lies from the theoretical calibration line. These calculated concentration values should not differ from the actual concentrations (i.e., 100, 200, 300, and 400 μg NO_2) by more than 7 percent for three of the four standards.

* * * * *

6. Calculations.

* * * * *

6.5 Relative Error (RE) for QA Audit Samples, Percent.

$$RE = \frac{C_d - C_a}{C_a} \times 100 \quad \text{Eq. 7-5}$$

Where:

C_d = Determined audit sample concentration, mg/dscm.

C_a = Actual audit sample concentration, mg/dscm.

(Secs. 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)))

* * * * *

[FR Doc. 84-16924 Filed 6-26-84; 8:45 am]

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Part VI

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1984.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of June 1, 1984 of nine rescission proposals and 61 deferrals contained in the first ten special messages of FY 1984. These messages were transmitted to the congress on October 3, November 17, December 14 and December 21, 1983; and January 12, February 1 and 22, March 26, and May 8 and 21, 1984.

Rescissions (Table A and Attachment A)

As of June 1, 1984, there were no rescission proposals pending before the Congress. Attachment A shows the history and status of the nine rescissions proposed by the President in 1984.

Deferrals (Table B and Attachment B)

As of June 1, 1984, $3,558.2 million in 1984 budget authority was being deferred from obligation and $10,000 in 1984 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1984.

Information From Special Messages

The special messages containing information on the rescission proposal and deferrals coverred by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 48, FR p. 45730, Thursday, October 6, 1983
Vol. 48, FR p. 53060, Wednesday, November 23, 1983
Vol. 48, FR p. 56720, Thursday, December 22, 1983
Vol. 48, FR p. 57098, Tuesday, December 27, 1983
Vol. 49, FR p. 2076, Tuesday, January 17, 1984
Vol. 49, FR p. 4692, Tuesday, February 7, 1984
Vol. 49, FR p. 7342, Tuesday, February 28, 1984
Vol. 49, FR p. 13096, Monday, April 2, 1984
Vol. 49, FR p. 20234, Friday, May 11, 1984
Vol. 49, FR p. 22032, Thursday, May 24, 1984

David A. Stockman,
Director, Office of Management and Budget.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1984 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$ 636.4
Accepted by the Congress	-0-
Rejected by the Congress	-636.4
Pending before the Congress	$ -0-

****

TABLE B

STATUS OF 1984 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$ 7,414.9
Routine Executive releases through June 1, 1984 (OMB/Agency Releases of $3,924.0 million and cumulative adjustments of -$69.3 million)	-3,854.7
Overturned by the Congress	-2.0
Currently before the Congress	$ 3,558.2 a/

a/ This amount includes $10,000 in outlays for a Department of the Treasury deferral (D84-16).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1984

As of June 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs								
Payment for operation of low-income housing	R84-2		331,431	2-1-84		331,431	3-28-84	
DEPARTMENT OF THE INTERIOR								
National Park Service								
Land acquisition	R84-3		30,000	2-1-84		30,000	3-28-84	
DEPARTMENT OF LABOR								
Occupational Safety and Health Administration	R84-1		1,700	12-21-83		1,700	3-19-84	
OTHER INDEPENDENT AGENCIES								
Corporation for Public Broadcasting								
Public broadcasting fund	R84-9		20,000	2-1-84		20,000	3-28-84	
Delaware and Susquehana River Basin Commissions								
Salaries and expenses, Delaware River Basin Commission	R84-4							
Salaries and expenses, Susquehana River Basin Commission	R84-5							
Panama Canal Commission								
Operating expenses	R84-6A		17,750	2-1-84		17,750	3-28-84	
Capital outlay	R84-6B		7,625	2-1-84		7,625	3-28-84	
OFF-BUDGET FEDERAL ENTITIES								
DEPARTMENT OF AGRICULTURE								
Rural Electrification Administration								
Rural electrification and telephone revolving fund	R84-7		197,862	2-1-84		197,862	3-28-84	
Rural telephone bank	R84-8		30,000	2-1-84		30,000	3-28-84	
Rescissions, total BA			636,368			636,368		

Attachment B - Status of Deferrals - Fiscal Year 1984

As of June 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-84
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs	D84-1	10,000		10-3-83					10,000
International Security Assistance									
Foreign military sales credit	D84-30	1,315,000		1-12-84	-187000				1,128,000
Economic support fund	D84-24	303,880		12-14-83					
	D84-24A		2,267,691	1-12-84	-2294091				277,480
	D84-60	102,000		5-8-84					102,000
Military assistance	D84-31	426,970		1-12-84	-402830				24,140
DEPARTMENT OF AGRICULTURE									
Soil Conservation Service									
Watershed and flood prevention operations	D84-49	8,138		2-1-84					8,138
Forest Service									
Construction	D84-37	10,814		2-1-84					10,814
Timber salvage sales	D84-2	6,211		10-3-83					
	D84-2A		9,210	1-12-84					15,421
Expenses, brush disposal	D84-3	42,674		10-3-83					
	D84-3A		12,398	1-12-84					
	D84-3B		778	5-8-84					55,850
DEPARTMENT OF COMMERCE									
International Trade Administration									
Participation in U.S. expositions	D84-32	550		1-12-84					550
National Oceanic & Atmospheric Administration									
Promote and develop fishery products and research pertaining to American fisheries	D84-4	33,600		10-3-83	-33600				0
DEPARTMENT OF DEFENSE - MILITARY									
Operation and Maintenance									
Environmental restoration, defense	D84-33	75,000		1-12-84	-75000				0
Military Construction									
Military construction, all services	D84-5	414,597		10-3-83					
	D84-5A		438,340	12-14-83	-637776		125,198		390,359
Family Housing, Defense									
Family housing, Air Force	D84-6	53,000		10-3-83					
	D84-6A		20,131	12-14-83	-73131				
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation	D84-7	777		10-3-83					
	D84-7A		385	1-12-84					1,162
DEPARTMENT OF EDUCATION									
Office of Postsecondary Education									
Higher education	D84-38	500		2-1-84					500
DEPARTMENT OF ENERGY									
Energy Programs									
Energy supply, research and development activities	D84-39	10,052		2-1-84					10,052
Uranium supply and enrichment activities	D84-8	130,000		10-3-83					130,000
Fossil energy research and development	D84-21	20,326		11-17-83	-20326				
	D84-21A		500	12-14-83					
	D84-21B		8,993	2-1-84					9,493
Fossil energy construction	D84-25	38,038	1,962	12-14-83			-26000		
	D84-25A		23,196	2-1-84					37,196
Naval petroleum and oil shale reserves	D84-40	41,500		2-1-84					41,500

As of June 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-84
Energy conservation	D84-41	10,077		2-1-84	-8577				1,500
Strategic petroleum reserve	D84-26	12,707		12-14-83					
	D84-26A		256	2-1-84					12,963
Alternative fuels production	D84-22	13,800		11-17-83					
	D84-22A		4,300	2-1-84	-12300				5,800
Power Marketing Administrations Operation and maintenance, Southwestern Power Administration	D84-42	7,000		2-1-84					7,000
Departmental Administration Departmental administration	D84-43	29,053		2-1-84					29,053
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Centers for Disease Control Disease control	D84-27	15,560		12-14-83					15,560
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program)	D84-9	6,463		10-3-83					
	D84-9A		571	1-12-84					7,034
Social Security Administration Limitation on administrative expenses (construction)	D84-10	10,571		10-3-83					
	D84-10A		10,491	12-21-83	-14				21,048
DEPARTMENT OF THE INTERIOR									
Minerals Management Service Payments for proceeds, sale of water, Mineral Leasing Act of 1920	D84-11	48		10-3-83					48
Bureau of Reclamation Construction program	D84-61	8,000		5-21-84	-8000				
Bureau of the Mines Mines and minerals	D84-44	1,667		2-1-84					1,667
National Park Service Land acquisition and state assistance (contract authority)	D84-23	30,000		11-17-83					
	D84-23A		2,700	2-1-84			-30000		2,700
Construction (trust fund)	D84-50	14,000		2-22-84					14,000
Office of the Secretary Office of Water Policy	D84-51	300		2-22-84					300
DEPARTMENT OF JUSTICE									
Interagency Law Enforcement Organized crime drug enforcement	D84-57	272		3-26-84					272
Federal Bureau of Investigation Salaries and expenses	D84-58	42,000		3-26-84					42,000
Federal Prison System Buildings and facilities	D84-28	22,025		12-14-83					
	D84-28A		23,752						45,777
Office of Justice Assistance, Research and Statistics Law enforcement assistance	D84-52	296		2-22-84					296
DEPARTMENT OF STATE									
International Organizations and Conferences Contributions to international organizations	D84-46	4,723		2-1-84					4,723
Contributions for international peacekeeping activities	D84-45	10,879		2-1-84					10,879
United States emergency refugee and migration assistance fund	D84-12	37,928		10-3-83					
	D84-12A		192	1-2-84					38,120
United States bilateral science and technology agreements	D84-13	2,000		10-3-83					2,000

As of June 1, 1984 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-84
DEPARTMENT OF TRANSPORTATION									
Federal Railroad Administration									
Railroad research and development	D84-53	578		2-22-84					578
Federal Aviation Administration									
Facilities, engineering and development	D84-59	360		3-26-84					360
Construction, Washington Metropolitan Airports	D84-54	277		2-22-84					277
Facilities and equipment (airport and airway trust)	D84-14	1,083,268		10-3-83	-153063				930,205
U.S. Coast Guard									
Retired pay	D84-55	13,350		2-22-84					13,350
Maritime Administration									
Ship construction	D84-47	7,000		2-1-84					7,000
Office of the Secretary									
Transportation planning, research and development	D84-56	160		2-22-84					160
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
State and local government fiscal assistance trust fund	D84-15	56,068		10-3-83	-2866			111	53,313
	D84-16	15,209		10-3-83	-15199				10
Bureau of the Mint									
Expansion and improvements	D84-29	256		12-14-83	-256				
OTHER INDEPENDENT AGENCIES									
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund	D84-17	13,148		10-3-83					13,148
Railroad Retirement Board									
Milwaukee Railroad restructuring, administration	D84-18	85		10-3-83					
	D84-18A		147	12-14-83					232
Tennessee Valley Authority									
Tennessee Valley Authority fund	D84-19	7,000		10-3-83					7,000
	D84-48	2,192		2-1-84					2,192
United States Information Agency									
Salaries and expenses	D84-34	2,400		1-12-84					2,400
Salaries and expenses (special foreign currency program)	D84-35	2,900		1-12-84					2,900
Acquisition and construction of radio facilities	D84-36	9,645		1-12-84					9,645
United States Railway Association									
Administrative expenses	D84-20	2,050		10-3-83		-2050	98-181		
TOTAL, DEFERRALS		4,538,942	2,875,993		-3,924,029	-2,050		69,309	3,558,165

Notes: Deferral D84-25 was reported as part of D84-21 in the second special message. In the third special message the deferral was reported separately and adjusted upward slightly.

Of the amount deferred as D84-25, $26 million was transferred to Fossil energy research and development pursuant to the 1984 Interior and Related Agencies Appropriations Act.

All of the above amounts represent budget authority except one general revenue sharing deferral (D84-16) of outlays only.

The Soil Conservation Service deferral was erroneously transmitted as D84-36 in the sixth special message. It has been renumbered as D84-49.

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Part VII

Department of Agriculture

Agricultural Stabilization and Conservation Service

7 CFR Part 725

Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations; Request for Comments

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 725

Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations; Request for Comments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of request for comments.

SUMMARY: The purpose of this notice is to seek public comments and suggestions concerning the promulgation of regulations which would provide that, beginning with the 1985 crop of flue-cured tobacco, none of the consideration for the lease of any flue-cured tobacco acreage allotment and marketing quota may be paid to the lessor prior to the marketing of the flue-cured tobacco which is produced under the lease on the farm for which such allotment and quota is established.

DATE: Comments and suggestions on this notice of intent must be received by July 27, 1984, in order to be assured of consideration.

ADDRESS: Send comments and suggestions to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. All written submissions made pursuant to this notice will be made available for public inspection in room 5750 South Building, USDA.

FOR FURTHER INFORMATION CONTACT: C. Douglas Richardson, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–4281.

SUPPLEMENTARY INFORMATION: The Dairy and Tobacco Adjustment Act of 1983 amended section 316 of the Agricultural Adjustment Act of 1938 ("1938 Act") to provide that, beginning with the 1985 crop of flue-cured tobacco, a lease and transfer of all or any part of an areage allotment or quota may not be approved unless both the transferring farm owner and the lessee certify that none of the consideration for the lease has been or will be paid to the lessor, either directly or indirectly in any form, prior to the marketing of the tobacco which is produced under the lease. A false statement by the lessor will result in a reduction in the lessor's next established flue-cured tobacco acreage allotment and marketing quota. A false statement by the lessee will result in the lease agreement being declared null and void with respect to the lessee's farm and could result in loss of eligibility for Commodity Credit Corporation price support loans and the assessment of a marketing quota penalty. On May 1, 1984, (49 FR 18672) a proposed rule was published setting forth proposed amendments to 7 CFR 725.72 to implement this provision.

Section 316 was also amended to provide that, beginning with the 1985 crop of flue-cured tobacco, the Secretary shall promulgate regulations establishing, insofar as is reasonably practicable, a similar requirement with respect to the payment of consideration for the lease of any flue-cured tobacco acreage allotment or marketing quota under which the lessee will produce the tobacco on the farm for which such allotment or quota is established. The Department is considering various options to determine how this provision of the 1938 Act could be implemented in a manner which is not unduly burdensome with respect to tobacco producers and which could be effectively administered by the Department.

Under the regulations governing the flue-cured tobacco program (7 CFR Part 725), it is necessary to obtain the approval of the county ASC committee to effect a lease and transfer of a flue-cured tobacco acreage allotment and marketing quota to a farm owned or operated by the lessee. This approval is not needed in order for a flue-cured tobacco acreage allotment and marketing quota established for a farm to be leased by a farm owner to another person for the production of flue-cured tobacco on the lessor's farm.

In view of the different situations existing under a lease as contrasted with a lease and transfer of tobacco acreage allotments and marketing quotas, this notice solicits comments with respect to implementing a rule to prohibit payment of any of the consideration for the lease of flue-cured tobacco acreage allotment and marketing quota prior to the time of marketing the tobacco which is produced under the lease, when the lessee will produce such tobacco on the farm for which such allotment and quota is established. The Department has indentified several specific areas of concern and, therefore, requests that particular attention by given to these areas:

1. In implementing such a requirement, it would be necessary to require each owner of a farm for which a flue-cured tobacco acreage allotment and marketing quota is established who leases such allotment and quota, as well as every flue-cured tobacco producer who is the lessee in such an arrangement, to file a statement with respect to all terms and conditions of the lease and specifically certify that none of the consideration for the leased allotment and marketing quota will be paid to the lessor prior to the marketing of tobacco produced under the lease. Accordingly, the Department requests comments on the following questions:

A. Should all farm owners and all flue-cured tobacco producers be required to file certifications with the county ASCS office stating whether or not acreage allotments and marketing quotas have been leased?

B. If the farm owner certifies that flue-cured tobacco has been or will be produced on the farm but that no lease arrangement is involved, should the county ASC committee make any further inquiry concerning the accuracy of such certification?

2. Many different and varying lease arrangements are in use throughout the flue-cured tobacco producing area. A farm owner may lease the farm's flue-cured tobacco allotment and marketing quota to a lessee to produce the tobacco on the farm and subsequently the lessee may lease such allotment and quota to another person to produce the tobacco on the farm. Also, many tobacco producers lease entire farms, combine such farms with other farms, and operate all the farms as a single farming unit. Accordingly, the Department requests comments on the following questions:

A. Considering the different lease arrangements, what practical method will ensure that all lessors and lessees are contacted when determining compliance with such a regulation?

B. How may the county ASC committee determine those cases in which a farm owner actually leased flue-cured tobacco acreage allotment and marketing quota to a lessee, received payment prior to marketing of tobacco produced under the lease, and concealed such fact from the county ASC committee by indicating that the farm owner is actually producing the crop of tobacco?

C. What action should the county ASC committee take when all owners of a farm cannot be contacted for the purpose of filing any required certification?

3. A means of enforcing such a regulation is necessary to ensure compliance. Under the statute if a lessor knowingly files a false statement with respect to receiving payment for a lease prior to marketing of tobacco, the flue-cured tobacco acreage allotment and marketing quota next established for the farm is required to be reduced by the percentage which the leased allotment

or quota was of the total flue-cured tobacco allotment or quota for the farm. The Department requests comments with respect to the following further questions:

A. What action should be taken with respect to a lessee who fails to file any applicable certification or files a false certification with respect to the payment of any of the consideration for the lease of flue-cured tobacco acreage allotment and marketing quota prior to the time of marketing the tobacco which is produced under the lease?

B. What action should be taken with respect to a lessor who refuse to certify that the consideration of a lease of flue-cured tobacco acreage allotment and marketing quota has not been and will not be paid prior to marketing of tobacco produced under such lease?

C. What action should be taken with respect to a lessor who refuses to certify as to whether or not the flue-cured tobacco has been produced under a lease of the acreage allotment and marketing quota?

D. What action should be taken when there are two or more owners of a farm, either joint owners or different owners of separate tracts, and one or more of such owners fail to file a certification or files a false certification?

4. County ASC committees and county ASCS office employees are prohibited from becoming involved in any lease and transfer activitives which would adversely reflect on ASCS. Prohibited acts include: (a) Acting as a broker in allotment transactions, (2) acting as an agent for any party to a transfer, (3) acting as a "finder" for individual farmers, (4) negotiating transactions, and (5) other similar activities. Accordingly, the Department request comments on the following question:

When a lease covers land or chattels, in addition to a flue-cured tobacco acreage allotment and marketing quota, to what extent should the county ASC committee become involved in determining the consideration applicable to flue-cured tobacco acreage allotment and marketing quota?

All comments are welcome and will be considered. Most desired, however, are comments which specifically address one or more of the specific areas of concern which have been enumerated in this notice.

List of Subjects in 7 CFR Part 725

Acreage allotment, Marketing quota, Report requirements, Tobacco.

(Sec. 316(a)(1), 75 Stat. 469, as amended, 7 U.S.C. 1314b(a)(1))

Signed at Washington, D.C. on June 22, 1984.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-17058 Filed 6-26-84; 8:45 am]

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June 27, 1984

Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 102

Common or Usual Name for Nonstandardized Foods; Diluted Fruit or Vegetable Juice Beverages; Extension of Effective Date

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 80N-0140]

Common or Usual Name for Nonstandardized Foods; Diluted Fruit or Vegetable Juice Beverages; Extension of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; extension of effective date for compliance.

SUMMARY: The Food and Drug Administration (FDA) is extending the period of time for compliance with the labeling requirements to the common or usual name for diluted fruit or vegetable beverages regulation for all affected products initially introduced or initially delivered for introduction into interstate commerce. The extension will last until the effective date of a final rule resulting from an EDA proposal to amend aspects of the labeling requirements in the regulation.

DATE: The effective date for compliance is extended from July 1, 1984 until the effective date of the final rule resulting from the proposal to amend this regulation published at 48 FR 2735, January 21, 1983.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-01777.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 10, 1980 (45 FR 39247), FDA published a final regulation concerning label requirements for the common or usual name of diluted fruit or vegetable juice beverages (21 CFR 102.33). FDA extended the effective date of the regulation until July 1, 1982, by a document published in the **Federal Register** of December 5, 1980 (45 FR 80497). Subsequently, FDA published a proposal in the **Federal Register** of March 26, 1982 (47 FR 13003), and then a final rule in the **Federal Register** of January 21, 1983 (48 FR 2735), extending to July 1, 1984, the effective date for compliance with this common or usual name regulation.

In the **Federal Register** of June 1, 1984 (49 FR 22831), FDA published a proposal that would amend the requirements in 21 CFR 102.33 concerning label requirements for the common or usual name of diluted fruit or vegetable juice beverages. (See 49 FR 22931 for a full discussion of the history of this proceeding and the relevant issues.) In that same issue of the **Federal Register** (49 FR 22834), FDA published a proposal announcing its intention to extend the effective date of § 102.33 until the effective date of a final rule resulting from the new proposal. FDA provided a 15-day comment period on the proposed extension of the effective date of § 102.33. FDA received only supporting comments and, accordingly, is published this final rule extending the effective date as proposed.

List of Subjects in 21 CFR Part 102

Common or usual name; Food labeling.

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOOD

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 104, as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a))) and under 21 CFR 5.11, the effective date for compliance with the labeling requirements of the common or usual name for diluted fruit or vegetable juice beverages regulation (21 CFR 102.33) is extended indefinitely.

(Secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a)))

Dated: June 20, 1984.

Mark Novitch,

Acting Commissioner of Food & Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-17273 Filed 6-26-84; 11:14 am]

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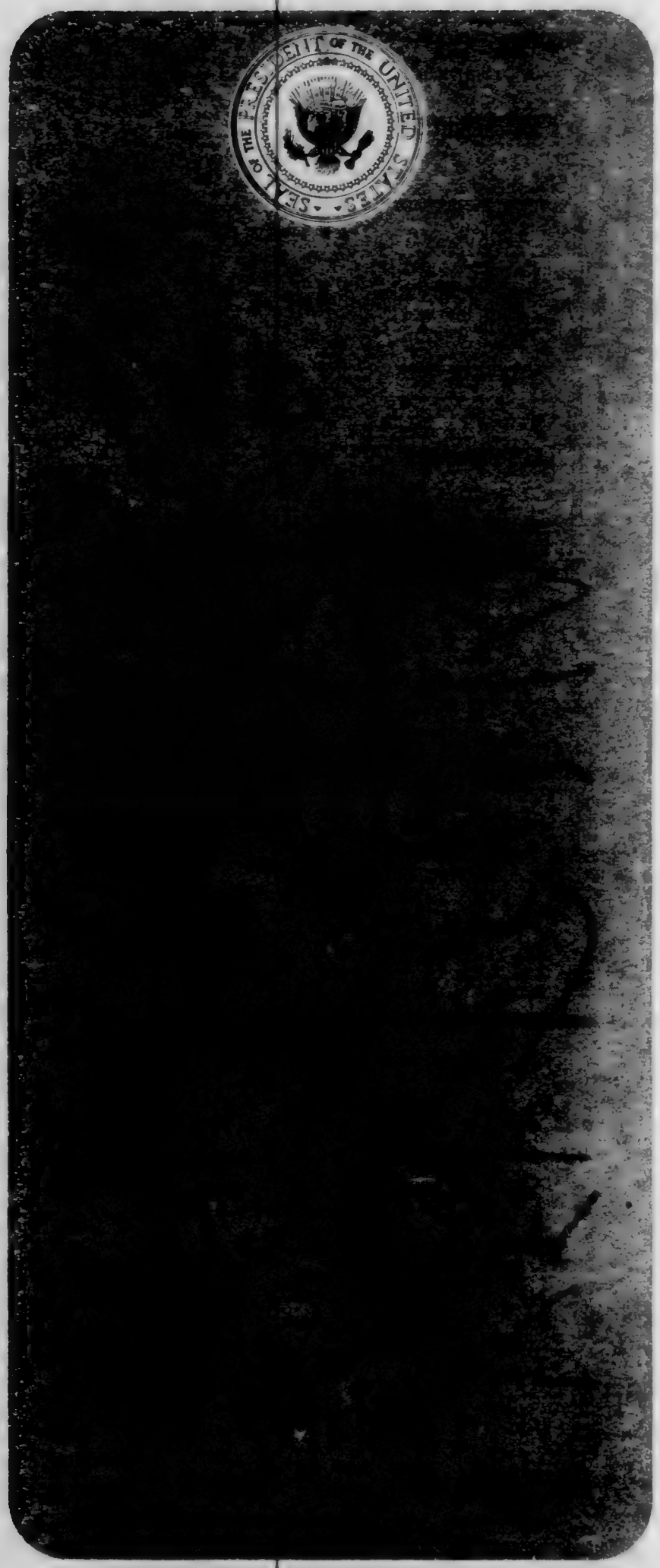
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H.R. 5517 / Pub. L. 98–326

To amend title 31, United States Code, to provide for certain additional experts and consultants for the General Accounting Office, to provide for certain additional positions within the General Accounting Office Senior Executive Service, and for other purposes. (June 22, 1984; 98 Stat. 269) Price: $1.50



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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 28 and 61

Revision of User Fees for Cotton Classification, Testing, and Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is decreasing the fee for cotton classification services to producers under the Smith-Doxey Amendment to the Cotton Statistics and Estimates Act. Lower fees will be sufficient to recover the projected costs of services to producers for the 1984 cotton crop.

AMS is also revising the schedule of fees charged for cotton fiber and processing tests and for the purchase of cotton standards under the United States Cotton Standards Act and the Cotton Service Testing Amendment to the Cotton Statistics and Estimates Act. Fees are revised for certain other classification services, cotton linters standards, and cottonseed grading services. All fee revisions reflect increased costs and changed levels of demand for the services offered. No comments were received on the proposed rule. This final rule does not differ from the proposed rule at 49 FR 20507.

EFFECTIVE DATE: July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Loyd R. Frazier, Chief, Marketing Services Branch, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2147.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be nonmajor since it does not meet the criteria for a major regulatory action as stated in the Order. William T. Manley, Deputy Administrator, AMS has certified that this action will not have a significant economic impact as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The amounts of the increases in fees are too small to have a significant impact; (2) the decrease in classification fees will have a salutary effect on small entities; (3) the use of the services is voluntary; (4) the revised testing fees merely reflect necessary increases of some of the costs currently borne by those entities using the testing services; (5) and, if there is any impact, the Secretary has been directed by statute to recover the costs of cotton classification, standards, and the testing service from users of such services and standards.

Since the harvesting of the 1984 cotton crop will begin in July, it is necessary to implement the revised fee for cotton classification services to producers less than 30 days after the publication date to insure that the benefits of the lower fee will accrue to all participating growers during the 1984 cotton season. All of the other fees in this document are for services directly related to the marketing and utilization of cotton. These fees will also become effective less than 30 days after the publication date because, in addition to the reasons stated as to the impact of this action under the Regulatory Flexibility Act, current revenue does not cover the costs of providing these services and the beginning of the 1984 cotton crop year is in July. Also, it is preferable to have all revisions to the cotton fees implemented on the same date. Accordingly, under the administrative provisions of 5 U.S.C. 553, good cause is found for making this action effective July 1, 1984.

Proposed rulemaking was published in the **Federal Register** at 49 FR 20507 and invited comments for 30 days ending June 14, 1984. No comments were received. This final rule does not differ from the proposed rule.

Classification Fees for Producers

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 95–35) amended section 3a of the Cotton Statistics and Estimates Act (7 U.S.C. 473a), to require that user fees shall be charged for the classification of producer cotton for fiscal years 1982, 1983, and 1984. This legislation directed the Secretary to set the user fee at a level that when combined with the proceeds from the sale of samples submitted for classification would recover, as nearly as practicable, the cost of the service provided, including administrative and supervisory costs. The Secretary was also directed to take necessary action to insure that the Federal cotton classification system continues to operate to provide an official quality description for the United States cotton crop. The fee for classification of producers' cotton was set at $1.15 per sample during the 1983 harvest season (7 CFR 28.909(b) at 48 FR 30937–30939).

The classification fee for manual classification service to producers in § 28.909 is decreased from $1.15 to $1.05 per sample. This decrease in the fee is possible due to the following conditions: (1) Anticipated volume of cotton to be classed from the 1984 crop is substantially above the volume of cotton classed from the 1983 crop. In the 1983 crop 7.7 million bales were produced. The present projections indicate that 11.5 million bales will be produced from the 1984 crop. The 1.5 million bale figure which appeared in the proposal at 49 FR 20507 was corrected to 11.5 million bales at 49 FR 21744. The unit cost of classing is affected by the volume of classings inasmuch as there are certain fixed costs such as salaries and rent which will remain constant whether volume decreases or increases. Since the volume of cotton to be classed from the 1984 crop will be greater than the previous year, the unit cost of classing can be decreased while still providing sufficient revenue to recover the costs of the service; (2) a larger volume of samples acquired for classification purposes will be accumulated for sale, the proceeds for which are used to defray a portion of the classing costs.

In setting the fee, a number of cost and revenue projections were made on the basis of estimated information. These include: (1) The size of the 1984 crop, (2) the percentage of the 1984 crop for which classification service will be requested, (3) the volume of baled samples to be sold and the price to be received therefor, and (4) the ability to collect classing fees. In recognition of these variables, an adjustment in the per

sample classing fee could become necessary during the year.

In addition to the manual classification service, USDA has made High Volume Instrument (HVI) classification service available to growers in some areas on an optional basis. The fee in § 28.909 for HVI classification services to growers, except those served by the Lamesa, Texas classing facility, will remain at an additional 45 cents per sample over the manual classification fee. HVI classing costs are higher than manual classification due primarily to the costs of the additional equipment used and some additional labor charges. While this additional charge of 45 cents will not change because the underlying costs for this charge have not significantly changed, growers will receive a 10 cent reduction in the costs of the service because of the reduction in the underlying manual classification fee. The fee for HVI classification for growers served by the Lamesa, Texas classing facility will be $1.05 per sample, the same as the fee for manual classification to growers.

Paragraph (a) of § 28.910 is revised to specify that the classification memoranda showing the official quality determinations are to be issued in the form of computer punch cards. These cards will be sent to the ginner or an agent designated by the ginner to receive the classification memoranda, rather than returning them to individual cotton producers.

This new procedure is being initiated because the Division is fully equipped with automatic data processing equipment for cotton classification, and the computer punch cards are sorted by gin codes instead of by producers' names.

Paragraph (a) of § 28.910 is further amended by providing for two optional methods of issuing cotton classification data for all bales from a gin, in lieu of receiving computer punch cards. The data can be issued on a computer tape or diskette or by electronic telecommunication transfer. Such services, where available, will be provided on request by the ginner or the ginner's designated agent. If these methods of issuance are requested in addition to computer punch cards, there will be an additional fee charged to the requester to cover the extra costs of furnishing both types of services.

These optional services are offered because there has been a demand for them from the cotton industry and because the Division has the equipment to offer the services in some areas.

The fee in paragraph (b) of § 28.910 for issuance of a new memorandum of classification at the request of the owner of the cotton for the business convenience of the owner without the reclassification of such cotton is increased from $2.00 to $2.50 per sheet due to increased clerical costs of providing this service.

Standards, Testing and Other Classification Fees

Practical forms of the cotton standards are prepared and sold by the Cotton Division offices in Memphis, TN, under the authority of the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). This legislation also authorizes certain other classification and testing services. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) directs that the price for standards will cover, as nearly as practicable, the costs of providing the standards.

Cotton testing services are provided by a USDA laboratory in Clemson, SC under the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–478). The tests are available, upon request, to private sources on a fee basis. The Cotton Service Testing Amendment (7 U.S.C. 473d) specifies that the fees for services will cover, as nearly as practicable, the costs of rendering the services.

The past several years have brought about a gradual shift in the demand for several services and per unit costs are highly related to volume. Therefore, fees need to be adjusted to offset changes in the volume of requests.

Using FY 1983 as a basis and factoring in current and estimated demand, costs, and fees, it has been determined that the fees charged for practical forms of the cotton standards and cotton linters standards are to be changed because of current and estimated decreases in the volume of production of the practical forms. In addition, some of the fees charged for fiber testing and certain other classification services are revised. These fees are increased to bring them in line with actual costs of providing these services.

As a result, the Agency is increasing the fees listed in 7 CFR 28.123, costs of practical forms of cotton standards. The fees for the 6-sample boxes of American Upland cotton are increased from $80.00 to $90.00 for domestic shipments and from $105.00 to $125.00 for shipments outside the continental United States. The fees for the 6-sample boxes for American Pima cotton are increased from $110.00 to $115.00 for domestic shipments and from $135.00 to $150.00 for shipments outside the continental United States. The fees for staple length standards for American Upland cotton are increased from $11.00 to $12.00 for domestic shipments and from $14.00 to $16.00 for shipments outside the continental United States. The fees for staple length standards for American Pima cotton are increased from $12.00 to $13.00 for domestic shipments and from $15.00 to $17.00 for shipments outside the continental United States.

The Agency is also increasing fees for the following fiber and processing test items listed in 7 CFR 28.956: 1.0, 2.0, 3.0, 3.1, 4.0, 4.1, 5.0, 5.1, 5.2, 6.0, 8.0, 11.0, 12.0, 13.0, 15.0, 15.1, 16.0, 17.2, 18.0, 18.1, 24.0, and 26.0.

The new fees for practical forms of cotton standards and the fiber and processing tests result in a weighted average increase of 3.4 percent over present fees. The operating costs for these tests have increased due to increases in: (1) Labor costs; (2) costs of supplies; (3) utility costs; and (4) changes in the mix of tests requested as a reflection of technological changes in the textile industry. The fees for the other test items remain the same. Item 3.2, an array test on absorbent cotton, is deleted from the list due to lack of requests for that test. In response to requests for 4-specimen tests, item 5.2, reporting Stelometer strength and elongation measurement, is revised to list fees based on 6-, 4-, and 2-specimen tests. Therefore, the 2-specimen test in item 5.3 is removed as a separate entry and the test is listed as paragraph (c) in item 5.2.

In addition, the Agency is adding a fineness/maturity test, with a fee of $5.00 per sample, to § 28.956 as item 6.1. This is necessary because there have been requests for such service and the laboratory has recently obtained the device which performs the test. In response to requests, item 26.0 is revised to provide for three separate fees per 5 pound package for delivery of High Volume Instrument calibration cottons, depending upon mode of shipment, to conform to other items which reference different modes of delivery and to recover the costs of the same. The fees are $80.00 for surface delivery, $95.00 for air delivery within the United States, and $110.00 for air delivery outside the United States.

Fees for the practical forms of the official cotton linters standards of the United States (7 CFR 28.151) are also revised because requests for the practical forms have decreased while certain program costs such as salaries and rent remains the same or increased. This rule raises the fee for each box of grade standards for linters from $80 to $95 for shipments within the continental United States, and from $95 to $130 for deliveries outside the United States. The

fee for staple standards for linters remain the same for deliveries within the United States, and goes from $17 to $19 each, for delivery to destinations outside the continental United States to recover the costs of delivery.

The fee in § 28.117 for each new memorandum or certificate issued in substitution for a prior one increases from $2.00 to $2.50 per sheet to recover increased clerical costs. The additional hourly fee charged from Form C determinations (7 CFR 28.120 and 28.149) increases from $15.25 per hour or each portion thereof to $15.85 per hour, or each portion thereof, plus traveling expenses and subsistence or per diem. The fee in § 28.122 for a complete practical classing examination for cotton or cotton linters increases from $100.00 to $110.000.

Cottonseed Grading Fees

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) authorizes the Secretary to promulgate regulations necessary for the inspection, sampling, and certification of cottonseed sold or offered for sale for crushing purposes, including applicable fees. The Agricultural Marketing Act of 1946 directs that such fees be reasonable and as nearly as may be to cover the cost of the service rendered.

The fees charged for the cottonseed grading services set forth in 7 CFR Part 61 are increased to cover the costs of providing these services.

The fee in § 61.43 for a sampler's license increases from $16 to $17 for the examination while the fee for renewal of such a license increases from $14 to $15. In § 61.44 the fee for a chemist's license increases from $310 to $325 for the examination while the fee for renewal of such a license increases from $105 to $110. In § 61.45, those fees charged to each licensed cottonseed chemist to cover in part the cost of administering the regulations in Part 61 increase from $1.20 per certificate issued by the chemist to $1.25. The fee for the review of the grading of any lot of cottonseed increases from $42 to $45 with the disbursement to the two licensed chemists who performed the reanalysis increasing from $14 to $15. All of these fee increases reflect increases in program costs including clerical and administrative costs and rent, utilities, and communications.

List of Subjects

7 CFR Part 28

Cotton, Samples, Standards, Cotton linters grades, Staples, Market news, Testing.

7 CFR Part 61

Cottonseed, Chemists, Samplers, Grades.

Accordingly, 7 CFR Parts 28 and 61 are amended as shown. The Table of Contents is amended accordingly.

PART 28—[AMENDED]

1. The authority citation for Subpart A of Part 28 reads as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

2. The authority citation for Subpart D of Part 28 reads as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c).

3. The authority citation for Subpart E of Part 28 reads as follows:

Authority: Sec. 3d, 55 Stat. 131, (7 U.S.C. 473d); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473).

4. In Subpart A of Part 28, sections 28.117, 28.120, 28.122, 28.123, 28.149, and 28.151 are revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder, thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of $2.50 per sheet.

* * * * *

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A or Form D determinations, the expenses of inspection and sampling, the preparation of the samples and the delivery of such samples to the classification room or other place specifically designated for the purpose by the Director shall be borne by the party requesting the classification. For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $15.85 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

§ 28.122 Fee for practical classing examination.

The fee for the complete practical classing examination for cotton or cotton linters shall be $110. Any applicant who passes both parts of the examination may be issued a certificate indicating this accomplishment. Any person who passes one part of the examination, either grade or staple, and fails to pass the other part, may be reexamined for that part that was failed. The fee for this partial reexamination is $60.

§ 28.123 Costs of Practical Forms of Cotton Standards.

The cost of practical forms of the cotton standards of the United States shall be as follows:

Effective until August 16, 1984	Dollars each box	
	Domestic shipments f.o.b. Memphis, Tenn.	Shipments delivered outside the continental United States
Grade Standards:		
American Upland:		
12-sample official boxes (Universal Standards)	$150.00	$180.00
6-sample guide boxes	[illegible]	125.00
American Pima 6-sample official [illegible]	115.00	150.00
Standards for length of staple:		
American Upland (prepared in one pound rolls for each length)	12.00	[illegible]
American Pima (prepared in one pound rolls for each length)	13.00	17.00

Effective Date: August 16, 1984	Dollars each box	
	Domestic shipments f.o.b. Memphis, Tenn.	Shipments delivered outside the continental United States
Grade Standards:		
American Upland	[illegible]	$125.00
American Pima	115.00	150.00
Standards for length of staple:		
American Upland (prepared in one pound rolls for each length)	12.00	[illegible]
American Pima (prepared in one pound rolls for each length)	[illegible]	17.00

* * * * *

§ 28.149 Fees and costs; Form C determination.

For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $15.85 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of each request, in accordance with the fiscal regulations of

the Department applicable to the Division employee supervising the sampling.

§ 28.151 Cost of practical forms for linters; period effective.

Practical forms of the official cotton linters standards of the United States will be furnished to any person subject to the applicable terms and conditions specified in § 28.05; *Provided*, That no practical form of any of the official cotton linters standards of the United States for grade shall be considered as representing any of such standards after the date of its cancellation in accordance with this subpart, or, in any event, after the expiration of 12 months following the date of its certification. The cost of the official standards for grade shall be at the rate of $95 each, f.o.b. Memphis, Tennessee, for shipments within the continental United States, and $130 each, delivered to destination, for shipments outside the United States. The cost of the official standards for staple shall be at the rate of $15 each, f.o.b. Memphis, Tennessee, for shipments within the continental United States, and $19 each, delivered to destination, for shipments outside the continental United States.

5. In 7 CFR 28.909 paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost for manual cotton classification service to producers is $1.05 per sample.

* * * * *

6. 7 CFR 28.910 is amended by revising its heading, by revising paragraph (a), and by revising paragraph (b) to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

(a) The samples submitted as provided in this subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States will be issued as computer punch cards that are both eye and machine readable. These cards will be returned by the Division to the ginner or an agent designated by the ginner to receive the classification memoranda. The following alternative methods of issuing classification data, where available, may be requested by the ginner or the ginner's designated agent:

(1) Classification data for all bales from a gin may be issued on a computer tape or diskette in lieu of computer punch cards. There will be no additional fee for this service. If the issuance of classification data is requested on computer punch cards as well as on a tape or diskette, the fee for each tape or diskette shall be the higher of $10.00 or 1 cent per bale. The cost of any tape or diskette not returned to the Division will be billed to the requester.

(2) Classification data for all bales from a gin may be transferred by electronic telecommunication equipment in lieu of computer punch cards. There will be no additional charge for this service. If the issuance of classification data is requested on computer punch cards as well as through electronic telecommunications transfer, the fee for electronic telecommunications shall be 1 cent per bale. All long distance telephone line charges will be billed to the requester.

(b) Upon request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be $2.50 per sheet.

7. In Subpart E of Part 28, § 28.956 is amended by revising the entry for item numbers 1.0, 2.0, 3.0, 3.1, 4.0, 4.1, 5.0, 5.1, 5.2, 6.0, 8.0, 11.0, 12.0, 13.0, 15.0, 15.1, 16.0, 17.2, 18.0, 18.1, 24.0 and 26.0; by removing the entries numbered 3.2 and 5.3; and, by adding an entry to be numbered 6.1 to read as follows:

§ 28.956 Prescribed fees.

* * * * *

Item No. and Kind of test	Fee per
1.0 Furnishing USDA calibration cotton in the short, medium, long and extra long staple lengths including standard values for length by both array and Fibrograph methods, strength at ⅛-inch gage, and maturity and fineness by the Causticaire methods:	
a. By surface delivery, 1-lb. sample	$22.00
b. By air delivery within the U.S., 1-lb. sample	25.00
c. By air delivery outside the U.S., 1-lb. sample	30.00
2.0 Furnishing international calibration cotton standards with standard values for micronair reading and fiber strength at zero and ⅛-inch gage and Fibrograph length:	
a. By surface delivery, ½-lb. sample	14.00
b. By air delivery within U.S., ½-lb. sample	16.00
c. By air delivery outside the U.S., ½-lb. sample	20.00
3.0 Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length and average length variability as based on 3 specimens from a blended sample:	
a. Ginned cotton lint, per sample	60.00
b. Cotton comber noils, per sample	95.00
c. Other cotton wastes, per sample	115.00
3.1 Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length, and average length variability as based on 2 specimens from a blended sample:	
a. Ginned cotton lint, per sample	45.00
b. Cotton combed noils, per sample	65.00
c. Other cotton wastes, per sample	90.00
4.0 Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 4 specimens from a blended sample, per sample	8.00
4.1 Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 2 specimens from each unblended sample, per sample	5.00
5.0 Pressley strength of ginned cotton lint by flat bundle method for either zero or ⅛-inch gage as specified by applicant. Reporting the average strength as based on 6 specimens from a blended sample, per sample	8.00
5.1 Pressley strength of ginned cotton lint by flat bundle method for either zero or ⅛-inch gage as specified by applicant. Reporting the strength as based on 2 specimens for each unblended sample, per sample	5.00
5.2 Stelometer strength and elongation of ginned cotton lint by the flat handle method for ⅛-inch gage. Reporting the average strength and elongation:	
a. Based on 6 specimens from each blended sample, per sample	8.00
b. Based on 4 specimens from each blended sample, per sample	6.00
c. Based on 2 specimens from each blended sample, per sample	5.00
6.0 Fiber maturity and fineness of ginned cotton lint by the Causticaire method. Reporting the average maturity, fineness, and micronaire reading as based on 2 specimens from a blended sample, per sample	9.00
Minimum fee	45.00
6.1 Fiber fineness and maturity of ginned cotton lint by the 11C-Shirley Fineness/Maturity Tester method, reporting the average micronaire, maturity ratio, percent mature fibers and fineness (linear density) based on two specimens from a blended sample, per sample	5.00
8.0 Neps content of ginned cotton lint. Reporting the neps per 100 square inches as based on the web prepared from a 3-gram specimen by using accessory equipment with the mechanical fiber blended, per sample	13.00
11.0 Cotton combed yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 8 pounds of cotton in accordance with standard procedures at one of the standard rates of carding of 4½, 6½, or 9½ pounds per hour into two of the standard combed yarn numbers of 22s, 36s, 44s, 50s, 60s, 80s, or 100s employing and standard twist multiplier unless otherwise specified, per sample	130.00
12.0 Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 10 pounds of cotton into two of the standard carded and two of the standard combed yarn numbers employing the same carding rate and the same yarn numbers for both the carded and the combed yarns, per sample	185.00
13.0 Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 9 pounds of cotton into two of the standard combed yarn numbers employing different carding rates and/or yarn numbers for the carded and combed yarns, per sample	205.00
15.0 Processing and testing of additional yarn. Any carded or combed yarn number processed in connection with spinning tests including either additional yarn numbers or additional twist multipliers employed on the same yarn numbers, per additional lot of yarn	27.00

Item No. and Kind of test	Fee per test
15.1 Processing and furnishing of additional yarn: Any yarn number processed in connection with spinning tests. Approximately 300 yards on each of 16 paper tubes for testing by the applicant, per additional lot of yarn	$7.00
16.0 Twist in yarns by direct-counting method. Reporting direction of twist and average turns per inch of yarn:	
a. Single yarns based on 40 specimens per lot of yarn	70.00
b. Plied or cabled yarns based on 10 specimens, per lot of yarn	20.00
17.2 Furnishing yarn wound on boards in connection with yarn appearance tests	5.00
18.0 Strength of cotton fabric. Reporting the average warp and filling strength by the grab method as based on 5 breaks for both warp and filling of fabric furnished by the applicant, per sample	18.00
18.1 Cotton fabric analysis. Reporting data on the number of warp and filling threads per inch and weight per yard of fabric as based on at least three (3) 6 × 6-inch specimens of fabric which were processed or furnished by the applicant, per sample	27.00
24.0 Furnishing additional copies of test reports. Include extra copies in addition to the 2 copies routinely furnished in connection with each test item, per additional sheet	1.00
26.0 Calibration cotton for use with High Volume Instruments, per 5 pound package:	
a. By surface delivery	80.00
b. By air delivery within the U.S.	95.00
c. By air delivery outside the U.S.	110.00

PART 61—[AMENDED]

8. The authority citation for Subpart A of Part 61 reads as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624), unless otherwise noted.

9. Sections 61.43, 61.44, 61.45 and 61.46 are revised to read as follows:

§ 61.43 Fee for sampler's license.

In the examination of an applicant for a license to sample and certificate official samples of cottonseed the fee shall be $17, but no additional charge shall be made for the issuance of a license. For each renewal of a sampler's license the fee shall be $15.

§ 61.44 Fee for chemist's license.

For the examination of an applicant for a license as a chemist to analyze and certificate the grade of cottonseed the fee shall be $325, but no additional charge shall be made for the issuance of a license. For each renewal of a chemist's license the fee shall be $110.

§ 61.45 Fee for certificates to be paid by licensee to Service.

To cover in part the cost of administering the regulations in this part each licensed cottonseed chemist shall pay to the Service $1.25 for each certificate of the grade of cottonseed issued by him. Upon receipt of a statement from the Service each month showing the number of certificates issued by the licensee, such licensee will forward the appropriate remittance in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA."

§ 61.46 Fees for the review of grading of cottonseed.

For the review of the grading of any lot of cottonseed, the fee shall be $45. Remittance to cover such fee, in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA" shall accompany each application for review. Of each such fee collected, $15 shall be disbursed to each of the two licensed chemists designated to make reanalysis of such seed.

Dated: June 22, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-17106 Filed 6-27-84; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

7 CFR Part 68

Fees for Certain Commodity Inspection Services and Rice Inspection Services

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is: (1) Adjusting certain fees for rice and commodity (pulses, hops, hay, straw, and miscellaneous processed commodities) inspection services performed under the Agricultural Marketing Act of 1946 to cover, as nearly as practicable, projected fiscal year 1984 operating costs; (2) changing the method of assessing certain fees to simplify the fee schedule; and (3) revising various sections of Part 68 of the regulations that pertain to the assessment of fees to eliminate duplicative wording, improve clarity, and consolidate similar provisions. This final rule is the same as the revisions proposed at 49 FR 17005 except for nonsubstantive technical changes.

EFFECTIVE DATE: August 1, 1984.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250; telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued under Executive Order 12291 and Departmental Regulation 1512-1. The action has been determined to be "nonmajor" because it does not meet the criteria for major regulatory actions as stated in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule does not have a significant economic impact on a substantial number of small entities because most users of rice and commodity inspection services are not small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and section 3504(h) of the Act, the information collection and recordkeeping requirements contained in this final rule have been approved by OMB under control number 0580-0002. No comments concerning these requirements were received.

Inspection Service Fees

In the April 23, 1984, **Federal Register** (49 FR 17005) FGIS proposed specific changes to the fees for rice and commodity inspection services performed under the Agricultural Marketing Act of 1946. In addition, a public meeting was held on May 10, 1984, to discuss with interested parties the proposed changes. No comments were received at the public meeting or during the formal comment period, therefore, the proposed revisions are finalized without change, except for nonsubstantive technical changes as discussed below. The changes proposed included: (1) Adjusting certain fees for rice and commodity inspection services; (2) changing the method of assessing

[1] Authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.2(e)).

certain fees; (3) assessing the applicable fee each time appeal inspection service is performed; (4) revising the definition of a regular workday for all inspection services; and (5) assessing fees for costs incurred before and after a request for services is withdrawn or dismissed.

Section 203(h) of the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1622(h)) provides for the collection of fees that are reasonable, and as nearly as practicable, cover the costs of the services rendered.

The Federal Grain Inspection Service (FGIS or Service) continually monitors cost, revenue, and operating reserve levels to assure that there are sufficient resources for the Service's operations. During fiscal year 1983, FGIS continued to reduce staffing levels and implemented other cost-saving measures in an effort to provide cost-effective service. In fiscal year 1983, fees for rice and commodity inspection services did not generate sufficient revenues to cover costs for the combined programs.

During fiscal year 1983, the AMA portion of the FGIS revolving fund costs totalled $6,722,000. Revenues collected to offset these costs amounted to $6,523,000, resulting in a loss of $199,000.

Fiscal Year 1984 Projections

The Service's operating budget for fiscal year 1984 is the basis for establishing the Service's cost of operation and for developing fee levels to generate the required revenue. The operating costs include personnel compensation, personnel benefits, travel, rent, communication, utilities, contractual services, supplies, and equipment. The 3.5 percent Federal pay increase effective January 1, 1984, was absorbed in the fiscal year 1984 operating budget together with an additional 0.5 percent increase.

Fiscal year 1984 AMA projected program costs total $6,915,000, which is 2.9 percent more than fiscal year 1983 program costs. Revenue is projected to be $7,006,000 under the revised fee adjustments which equates to a 7.4 percent increase over actual revenues collected in fiscal year 1983. The fee adjustment as finalized will result in a projected margin at the end of fiscal year 1984 of $91,000 which will begin to gradually rebuild the Service's operating reserves, as appropriate.

Fee Adjustments

The rice inspection fees were last increased on January 1, 1983, and commodity inspection fees on February 4, 1982.

To recover projected fiscal year 1984 costs and gradually replenish the operating reserves, FGIS is: (1) Adjusting certain fees for rice and commodity inspection services; and (2) changing the method of assessing certain fees to simplify the fee schedule and billing process by promoting uniform application of fees for services performed under the AMA.

Because of the several changes in the method of assessing fees, the current and final fees are not directly comparable. In general, the cost to an applicant for rice and commodity services, which include appeal inspections, will increase, although in some instances the cost may decrease. The actual increase or decrease realized is dependent upon the type, time, and frequency of service requested.

Presently, rice inspection fees are assessed on an hourly basis for commitment and noncommitment service with varying rates for service provided during day, night or weekend, and holiday. For commitment service the current hourly fees are $25.60, $30.80, and $36.20, respectively. For noncommitment service the present hourly fees are $34.00, $39.00, and $44.40, respectively. Pursuant to the revisions in the method of assessing fees for a workday the commitment hourly rate for Monday-Saturday will be $28.40 and for service performed on Sunday and holiday $39.40. The noncommitment hourly rate will be $34.40 and $48.00, respectively.

Current unit fees for rough, brown, and milled rice are $19.00, $16.25, and $13.50, with the revised fees at $23.00, $20.00, and $14.30, respectively. The fee for factor analyses is increased from $5.50 to $8.60.

Present hourly rates for commodity inspection services are assessed at a contract rate of $16.60 and for noncontract service at $20.80 with no differentiation for workday. The revised hourly contract rate for service provided Monday-Saturday will be $18.40 and $21.00 for Sunday and holiday service, while the noncontract rate will be $22.40 and $25.40, respectively. Unit rates for factor analyses of commodities are being reduced by 6 percent. Other unit rates for commodity inspection services vary by commodity and are increased by 7 to 12 percent. Fees for laboratory testing services are increased by approximately 21 percent.

Appeal Inspection Service

Currently, a fee is not assessed for commodity appeal inspections if the result indicates a material error. However, FGIS incurs the cost of performing each appeal inspection. Therefore, FGIS will assess the applicable fee each time appeal inspection service is performed. This change is consistent with the current method of assessing fees for appeal inspection services in rice.

Workday

For rice inspection services, FGIS currently defines: (1) "Day" as the hours of 6 a.m. to 6 p.m. any Monday through Friday that is not a holiday; (2) "night and weekend" as the hours of 6 p.m. to 6 a.m. Monday through Friday and all day Saturday and Sunday, except holidays; and (3) "holiday" as any legal public holiday as specified in paragraph (a) of Section 6103, Title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal Statute or Executive Order. FGIS presently has one fee for commodity inspection services regardless of when the services are performed.

FGIS has revised the definition of a regular workday for all inspection services as Monday through Saturday, except holidays; and a nonregular workday as any Sunday or holiday.

These revisions will simplify the fee schedule and billing process by promoting uniformity between rice and commodity fee schedules, while more closely reflecting the FGIS budgetary process used to estimate the cost of providing services.

Computing Hourly Rates—Travel

Currently, FGIS: (1) Assesses separate fees for travel time and travel expenses (per diem, subsistence, mileage, and commercial transportation) when rice inspection services are performed more than 20 miles from the FGIS field office or assigned duty station and (2) includes the costs incurred for travel time and travel expenses in the fees for commodity inspection services charged when the Service representative arrives at the point of service. The method of assessing separate fees to cover travel expenses for rice inspection services is an administrative burden to FGIS in relation to the amount of revenue obtained. Therefore, FGIS is including travel expenses in the fees for all official rice inspection service and will continue to include travel expenses in the fees for commodity inspection services.

To recover costs incurred during travel time, FGIS will assess an hourly rate for rice and commodity services from the time a Service representative leaves the FGIS field office or assigned duty station to the service point and return, with no mileage limitation. This method of assessment will simplify the fee schedule and billing process and eliminate the need for a minimum fee

per service request and separate fees to cover travel costs.

Application of Fees When an Application for Service Is Withdrawn or Dismissed

Currently, FGIS assesses a two-hour minimum fee when an application for noncontract service is withdrawn or dismissed. However, FGIS incurs the cost of maintaining these employees and the current rice and commodity noncontract fees include these costs. FGIS is revising the basis for assessing hourly fees when a request for noncontract service is withdrawn or dismissed. Specifically, FGIS will assess hourly fees for the entire period of scheduled noncontract service if the service request is not withdrawn or dismissed by 2 p.m., local time, of the business day preceding the date of scheduled service. However, no fee will be assessed for the time that the Service representative can be utilized elsewhere or if the Service representative can be released without cost to the Service.

Additional Fees

Current rice and commodity inspection service fees include the cost for preparing certificates at the FGIS field office during established working hours. On occasion, FIGS receives requests to provide onsite typing of certificates or typing of certificates at the field office outside established working hours. The costs of these services are not included in the current fees. Therefore, FGIS will assess applicable contract or noncontract hourly fees for onsite typing of certificates or typing of certificates at the field office outside established working hours.

Currently, FGIS interprets postage and delivery to mean first-class mail service. The cost of more expensive types of mail service is not included in the fees. However, FGIS has received requests to use express-type mail or courier service to expedite the delivery of samples. Therefore, FGIS will bill the applicant for the cost of express-type mail or courier service including related travel time and will clarify the definition for postage and delivery to mean first-class.

Format and Miscellaneous Changes

FGIS is revising, redesignating, combining or removing various sections of 7 CFR Part 68 that pertain to the assessment of fees. The revisions eliminate duplicative wording, improve clarity, and consolidate similar provisions.

Specifically in § 68.43, FGIS is clarifying the criteria for assessing fees when service is delayed for any reason not caused by the Service. The term "standby time" will no longer be used in this context. Currently, the applicable hourly rice or commodity inspection fees would be assessed when service is delayed for any reason not caused by the Service. Under this revision, applicable hourly rice or commodity fees will be assessed for the entire period of scheduled service if the Service representative is on duty and ready to provide service, but is unable to do so because of a delay not caused by the Service. However, no fees will be assessed for the time that the Service representative can be utilized elsewhere or if the Service representative can be released without cost to the Service.

In the present § 68.42c, the terms "commitment" and "noncommitment" service, are changed to "contract" and "noncontract" service, respectively. The specific provisions of contract services are removed from the regulations because this information appears as part of the terms of the applicant's agreement with FGIS for contract service.

Sections 68.16 and 68.27 of the regulations on the distribution of certificates and the fees charged for extra copies are clarified so that an additional charge of $3.00 per copy will be assessed when an applicant requests more than an original and three copies of a certificate.

FGIS is revising the format of the fee schedules for certain commodity inspection services (§ 68.42a) and for rice services (current § 68.42c). The revised formats will implement certain changes references above including changes in terminology and the revision to the definition of "workday." The current method of assessing an hourly rate for hay and straw factor analyses is changed to a unit method of assessment to conform with the current unit method of assessing factor analysis fees for other commodities.

FGIS is redesignating § 68.42c as § 68.42b. Previously this section contained the fees for inspection and certification of agricultural and vegetable seeds. Section 68.42b was revised by deleting and incorporating the section in 7 CFR Part 75 in the May 2, 1984, **Federal Register** (49 FR 18721) effective June 1, 1984.

Further, the information contained in the introductory text and in several footnotes to the current fee schedules is removed or incorporated into other section of the regulations. Much of this information is incorporated into § 68.43 which provides an expanded explanation of service fees and additional fees. In § 68.2(v) the definition for Federal-cooperator inspection service is clarified by incorporating language that currently appears in § 68.43(d). The current language in §§ 68.44 through 68.46 is removed as the information contained in those sections appears in the revised §§ 68.42a, 68.42b, or 68.43, as appropriate.

Several nonsubstantive changes from the proposed rule appear in this final action. These changes include deletion of unnecessary language in § 68.42a, Table 1, footnote 1 and Table 2, a correction to § 68.43(g) to refer to § 68.43(d) instead of § 68.43(b) and the addition of clarifying language to § 68.43(h) and (i).

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Rice, Export.

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND PRODUCTS THEREOF

Accordingly, 7 CFR Part 68 is amended as follows:

1. Section 68.2 paragraph (v) is revised to read as follows:

§ 68.2 Terms defined.

* * * * *

(v) "Federal-cooperator inspection service" means inspection service provided by a cooperator under the regulations and the provisions of a cooperative agreement with the Department. Under this service, inspection certificates are issued by the cooperator and all fees and charges are collected by the cooperator, except as provided in the cooperative agreement. The fees and charges assessed by the cooperator shall be reasonable, and as nearly as practicable, cover the cost of providing the service.

* * * * *

2. Section 68.16 is revised to read as follows:

§ 68.16 Inspection certificates; distribution.

Upon issuance, the original and a minimum of one copy of each inspection certificate shall be delivered or mailed to the applicant or to the applicant's order. A maximum of three copies of the inspection certificate may be furnished to the applicant without an additional charge. In addition, one copy of each inspection certificate shall be filed with the office providing the inspection, and one copy shall be forwarded to the office supervising the inspection.

3. Section 68.27 is revised to read as follows:

§ 68.27 Appeal inspection certificate, distribution.

Upon issuance, the original and a minimum of one copy of each inspection certificate shall be delivered or mailed to the appellant or the the appellant's order. A maximum of three copies of the inspection certificate may be furnished to the appellant without an additional charge. A copy shall also be furnished to each interested party of record, and to the agency or field office that performed the inspection that was appealed.

(Approved by the Office of Management and Budget under control number 0580-0002)

4. Section 68.34 is revised to read as follows:

§ 68.34 Conditions and order upon which inspection service is furnished.

(a) *Conditions of service.* Service under the regulations in this Part will be furnished only if the applicant has complied with the Act and the regulations in this Part prescribing the conditions upon which service is made available.

(b) *Order of service.* Official services shall be performend, to the extent practicable, in the order in which requests for service are received. Precedence shall be given, as necessary, to: (1) Contract service participants; (2) requests for appeal service; (3) requests for service by Government agencies; and (4) requests by regular users of the service.

5. Section 68.42a is revised to read as follows:

§ 68.42a Fees for certain Federal inspection services.

The following fees apply to the Federal inspection services specified below.

Fees for Inspection of Hops, Pulses, Hay, Straw and Miscellaneous Processed Commodities

TABLE 1.—HOURLY RATES

Service[1]	Regular workday (Monday–Saturday)	Nonregular workday (Sunday and Holiday)
Contract (per hour per Service representative)	$19.40	$21.00
Noncontract (per hour per Service representative)	22.40	25.40

[1] Original and appeal inspection services include: grading, sampling, factor analysis, checkweighing, checkloading, condition examination, demonstration of grading, and other services requested by the applicant when performed at the point of service.

TABLE 2.—UNIT RATES

Service[1]	Beans, pea and lentil	Hay and straw	Hops	Non-graded, Nonprocessed commodities
Lot or sample (per lot or sample)		$15.00	$22.40	
Field run (per lot or sample)	$15.00			
Other than field run (per lot or sample)	11.20			
Factor analysis (per factor)	3.75	3.75		$3.75
Extra copies of certificates (per copy)	3.00	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeal) for kind, class, grade, factor analysis, and any other quality designation as defined in the official U.S. Standards or applicable instructions when performed at other than the point of service.

TABLE 3.—LABORATORY FEES[1]

	Fees
Laboratory report	$3.00
Laboratory testing:	
(a) In addition to the fees if any, for sampling or other requested service a fee will be assessed for each laboratory test as follows:	
(1) Acidity Greek	6.30
(2) Acid value—oil	6.30
(3) Aflatoxin (Minicolumn method)	18.90
(4) Aflatoxin (TLC)	44.00
(5) Appearance, flavor and odor—oils	3.15
(6) Arachidic acid	12.10
(7) Ash	7.70
(8) Bacteria count	7.90
(9) Baking test—bread	18.90
(10) Baking test—cake	26.50
(11) Baking test—cookies	20.60
(12) Baume	6.30
(13) Bostwick (cooked)	12.60
(14) Bostwick (uncooked	6.30
(15) Calcium (AOAC)	7.90
(16) Calcium enrichment	7.90
(17) Carotenoid color	9.45
(18) Checked and broken macaroni units	6.30
(19) Clarity of oil involving heating	6.30
(20) Cold test—oil	6.30
(21) Coliform	18.90
(22) Color—bleached	9.45
(23) Color—gardner	3.15
(24) Color—lovibond	3.15
(25) Color—oil and shortening	3.15
(26) Congeal point	15.10
(27) Cooking test	6.30
(28) Crude fat	6.30
(29) Crude fiber	10.10
(30) Density	6.30
(31) Dextrose equivalent	18.90
(32) Diastatic activity of flour	18.90
(33) Enrichment—quick test	3.15
(34) Falling number	6.30
(35) Farinograph characteristics	23.60
(36) Fat—acid hydrolysis	12.60
(37) Fat acidity	9.45
(38) Fat stability—AOM	12.60
(39) Filth—heavy	15.60
(40) Filth—light	18.90
(41) Flash point—open and close cup	9.45
(42) Foam test	18.90
(43) Foots—heated and/or chilled	6.30
(44) Foreign material—processed grain products	9.45
(45) Free fatty acids	6.30
(46) Heating test—oil and shortening	6.30
(47) Hydrogen ion concentration pH	9.45
(48) Insoluble bromides	6.30
(49) Insoluble impurities—oil and shortening	6.30
(50) Iodine number or value	9.45
(51) Iron enrichment	12.60
(52) Linolenic acid (fatty acid profile	12.10
(53) Lipid phosphorous	47.00
(54) Loaf volume	18.90
(55) Lysine from fortification	23.10
(56) Lysine from hydrolysis of protein	12.10
(57) Maltose value—flour	18.90
(58) Marine oil in vegetable oil qualitative	6.30
(59) Melting point—Wiley	12.60
(60) Moisture—distillation	9.45

TABLE 3.—LABORATORY FEES[1]—Continued

	Fees
(61) Moisture—oven	4.40
(62) Moisture and volatile matter oil and shortening	6.30
(63) Neutral oil loss	18.90
(64) Nitrogen solubility index	15.70
(65) Oven leak test—oil can	9.45
(66) Oil content—oilseed	9.45
(67) Particle size—flour	14.90
(68) Performance test—prepared bakery mix	21.70
(69) Peroxid value	6.30
(70) Phosphorous	12.60
(71) Popping value—popcorn	18.90
(72) Potassium bromate—qualitative	3.15
(73) Postassium bromate—quantitative	9.45
(74) Protein dispersibility index	15.70
(75) Protein, Kjeldahl	7.30
(76) Purity—Monosodium glutamate	25.20
(77) Reducing sugars	18.90
(78) Refractive index	9.45
(79) Riboflavin	25.20
(80) Rope spore count	31.50
(81) Salmonella	37.00
(82) Salt content	9.45
(83) Saponification number	9.45
(84) Sedimentation	15.70
(85) Sieve test	4.40
(86) Smoke point	9.45
(87) Softening point	12.60
(88) Solid fat index	21.80
(89) Specific baking volume—cake mix	21.60
(90) Specific gravity—oils	12.60
(91) Starch damage—flour	14.90
(92) Staphylococcus aureas	24.50
(93) Sucrose	18.90
(94) Test weight per bushel—other than grain	2.60
(95) Tilletia contaversa Kuhn(TCK)	25.20
(96) Unsaponifiable matter	12.60
(97) Urease activity	9.45
(98) Viscosity	12.60
(99) Water soluble protein	15.70
(100) Xanthydrol test for rodent urine	12.60
(101) Other laboratory tests	(2)
(b) If a requested test is to be reported on a specified moisture basis, a fee for moisture test will also be assessed.	

[1] When laboratory testing service is provided for FGIS by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the costs to FGIS for the service provided.

[2] Fees for other laboratory tests not referenced above will be based on the noncontract hourly rate listed in Table 1.

6. Section 68.42c is redesignated as section 68.42b and is revised to read as follows:

§ 68.42b Fees for certain Federal rice inspection services.

The fees shown in tables 1 and 2 apply to Federal rice inspection services.

Fees for Federal Rice Inspection Services

TABLE 1.—HOURLY RATES

Service[1]	Regular workday (Monday–Saturday)	Nonregular workday (Sunday and Holiday)
Contract (per hour per Service representative)	$28.40	$39.40
Noncontract (per hour per Service representative)	$34.40	$48.00

[1] The hourly rate includes sampling, grading, weighing and other services requested by the applicant when performed at the point of service.

TABLE 2.—UNIT RATES

Service [1]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$23.00	$20.00	$14.30
Factor analysis for any single factor (per factor)	8.50	8.50	5.50
Interpretive line samples: [2]			
(a) Milling degree (per set)			60.00
(b) Parboiled light (per sample)			15.00
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or combined at other than the point of service.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, Federal Grain Inspection Service, Field Management Division, Board of Appeals and Review, Richards-Gebaur AFB, Building #221, Grandview, MO 64030. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Deputy Director, Field Management Division, USDA, FGIS, Washington, DC 20250.

The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

7. Section 68.43 is amended by revising paragraphs (a), (b), (c), and (d); and adding new paragraphs (e), (f), (g), (h), and (i) to read as follows:

§ 68.43 Explanation of service fees and additional fees.

(a) *Definitions relating to the fees.* The following definitions shall apply to the terms used in §§ 68.42a and 68.42b.

(1) Regular workday shall mean any Monday through Saturday that is not a holiday.

(2) Nonregular workday is any Sunday or holiday.

(3) Holiday shall mean the legal public holidays specified in paragraph (a) of section 6103, Title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal Statute or Executive Order. Under section 6103 and Executive Order 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

(4) Service representative shall mean an authorized employee of the Service or a person licensed by the Administrator.

(5) Contract service shall mean any service performed under a contract between an applicant and the Federal Grain Inspection Service.

(b) *Costs included in the fees.* Fees for official services in §§ 68.42a and 68.42b include: (1) The cost of performing the service and related supervision and administration costs; (2) the cost of per diem, subsistence, mileage or commercial transportation to perform the service; (3) the cost of first class mail service; (4) the cost of overtime and premium pay; and (5) the cost of certification except as provided in § 68.43(d).

(c) *Computing hourly rates.* Hourly fees will be assessed in quarter hour increments for: (1) Travel from the FGIS field office or assigned duty location to the service point and return; and (2) the performance of the requested service, less mealtime.

(d) *Additional fees.* Fees in addition to the applicable hourly or unit fee will be assessed when: (1) An applicant requests more than the original and three copies of a certificate; (2) an applicant requests onsite typing of certificates or typing of certificates at the FGIS field office during other than normal working hours; and (3) an applicant requests the use of express-type mail or courier service.

(e) *Application of fees when service is delayed by the applicant.* Hourly fees will be assessed when: (1) Service has been requested at a specified location; (2) a Service representative is on duty and ready to provide service, but is unable to do so because of a delay not caused by the Service; and (3) FGIS officials determine that the Service representative(s) cannot be utilized elsewhere or cannot be released without cost to the Service.

(f) *Application of fees when an application for service is withdrawn or dismissed.* Hourly fees will be assessed to the applicant for the scheduled service if the request is withdrawn or dismissed after the Service representative departs for the service point, or if the request for service is not withdrawn or dismissed by 2 p.m. of the business day preceding the date of scheduled service. However, hourly fees will not be assessed to the applicant if the FGIS officials determine that the Service representative can be utilized elsewhere or if the Service representative can be released without cost to the Service.

(g) *To whom fees are assessed.* Fees for official services including additional fees as provided in § 68.43(d) shall be assessed to and paid by the applicant for the services.

(h) *Advance payment.* As necessary, the Administrator may require that fees shall be paid in advance of the performance of the requested service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by the applicant.

(i) *Time and form of payment*—(1) *Fees for Federal inspection service.* Bills for fees assessed under the regulations for official services performed by FGIS shall be paid by check, draft, or money order, payable to U.S. Department of Agriculture, Federal Grain Inspection Service.

(2) *Fees for Federal-cooperator inspection service.* Fees for inspection services pursuant to a cooperative agreement shall be paid by the applicant in accordance with the terms of such agreement.

§ 68.44 [Reserved]

8. Section 68.44 is amended by removing existing language and reserving the section.

§ 68.45 [Reserved]

9. Section 68.45 is amended by removing existing language and reserving the section.

§ 68.46 [Reserved]

10. Section 68.46 is amended by removing existing language and reserving the section.

(Secs. 203, 205, ch. 966 title II, Stat. 1087, 1090, as amended; 7 U.S.C. 1622, 1624)

Dated: June 15, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84-17208 Filed 6-27-84; 8:45 am]

BILLING CODE 3410-EN-M

Federal Crop Insurance Corporation

7 CFR Part 436

[Doc. No. 1086S; Amdt. No. 2]

Tobacco (Guaranteed Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Tobacco (Guaranteed Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1984 and succeeding crop years, by: (1) Changing the policy to make it easier to read; (2) adding volcanic eruption as an insurable cause of loss; (3) adding a provision regarding the insurability of irrigated acreage where no irrigated practice is established by the actuarial table; (4) adding a provision which provides for determination of indemnities based on the acreage report rather than at loss adjustment time; (5) providing a coverage level in the event that an insured does not select one; (6) providing procedures for reporting a loss when a loss is probable; (7) adding a 60-day claim for indemnity provision; (8) adding a hail/fire provision for

appraisals of uninsured causes; (9) adding a section regarding appraisals following the end of the insurance period; (10) changing the cancellation/termination dates to conform with farming practices; (11) providing that any change in the policy will be available in the service office by a certain date; (12) revising the market price definition to allow for the use of the preceding crop year's average market price in loss determinations on acreage released prior to harvest; (13) adding a definition for "service office;" (14) revising the unit definition to provide for unit determination when the acreage report is filed; and (15) adding a section concerning "descriptive headings," "notices" and "determinations;" and (16) redesignating Appendix B to Part 436 as Appendix A, listing the counties wherein Tobacco (Guaranteed Plan) Crop Insurance is otherwise authorized to be offered.

In addition, FCIC issues a new subsection in 7 CFR Part 436 to contain the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements. The intended effect of this rule is to update the policy for insuring tobacco (Guaranteed Plan) in accordance with Departmental Regulation 1512–1 (December 15, 1983), requiring a review of the regulations as to need, currency, clarity, and effectiveness, and to comply with OMB regulations requiring publication of OMB control numbers assigned to information collection requirements.

EFFECTIVE DATE: July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Department Regulation 1512–1 (December 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more, and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the notice related to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, are excluded from the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

On Thurday, November 10, 1983, FCIC published a notice of proposed rulemaking in the **Federal Register** at 48 FR 51638, to amend the Tobacco (Guaranteed Plan) Crop Insurance Regulations (7 CFR Part 436), as outlined in the summary to this document. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule as published is hereby adopted with minor and nonsubstantive clerical changes as a final rule effective for the 1984 and succeeding crop years.

List of Subjects in 7 CFR Part 436

Crop insurance, Tobacco (guaranteed plan).

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Tobacco (Guaranteed Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1984 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 436 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 436.3 is added to read as follows:

§ 436.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 436) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

3. 7 CFR 436.7(d) is revised to read as set forth below:

§ 436.7 [Amended]

* * * * *

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Guaranteed Plan) Insurance Policy for the 1984 and succeeding crop years, are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Tobacco—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fires;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply from an unavoidable cause occurring after the beginning of planting, unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrong doing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good tobacco farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured shall be tobacco of the type shown as insurable by the actuarial table, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be tobacco planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting.

d. We do not insure any acreage:

(1) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(2) Where the farming practices carried out are not in accordance with the farming

practices for which the premium rates have been established;

(3) Which is destroyed and we determine it is practical to replant to tobacco and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree or our form agree to coverage reduction;

(5) Planted to tobacco of a discount variety under the provisions of the tobacco price support program;

(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the acturial table; or

(7) Tobacco planted for experimental purposes.

e. Where insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good tobacco irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good tobacco irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

Insurance will not attach on an irrigated basis on acreage otherwise insurable on such basis unless it is reported and designated as irrigated at the time the acreage is reported.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, practice, and yield.

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. The practice;

c. Your share at the time of planting; and

d. The most recent year's production for insurable acreage on each unit.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantee will be reduced by 35 percent for any unharvested acreage.

c. Coverage level 2 apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times yor share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

Loss ratio [2] through previous crop year	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

Loss ratio [2] through previous crop year	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
1.10 to 1.19	100	100	100	102	104	106	106	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	156	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest will accrue at the rate of one and one-half percent (1½%) interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract will be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium will be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a will be applicable.

6. Deductions for Debt. Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period. Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing or immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. April 30 immediately following the normal harvest period.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if youanticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. Where harvest of the unit is to be completed within 7 days of the date notice of probable loss is given, a representative sample of the tobacco (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any insured tobacco is destroyed or damaged by fire during the insurance period.

(5) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco is completed on the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) Tobacco production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the value per pound by the market price per pound; and

(b) Multiplying the product by the number of pounds of such tobacco.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tobacco farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraisal in excess of 35 percent of the production guarantee for all other unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage:

(a) Is not put to another use before harvest of tobacco becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(4) We may determine the amount of production of any unharvested tobacco on the basis of field appraisals conducted after the end of the normal harvest period.

(5) When you have elected to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals for uninsured causes will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tobacco is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such viodance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indeminity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may only assign to another party your right to an indemnity for the crop year on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all tobacco produced on each unit including separate records showing the same information for production from any

uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date payment was approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. *However,* if such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of guaranteed tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the tobacco is normally grown and will be designated by the calendar year in which the tobacco is normally harvested.

d. "Harvest" means:

(1) The completion of cutting or priming of tobacco on any acreage:

(2) From which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Market price" means the average price determined by us for the applicable type of tobacco. Such price will be the:

(1) Average price for the preceding crop year for any unit which is not to be harvested; or

(2) The average price for the current crop year for any unit or part thereof which is harvested.

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Planting" means transplanting the tobacco plant from the bed to the field.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

l. "Unit"means all insurable acreage of an insurable type of tobacco in the county on the date of planting for the crop year:

(1) in which you have a 100 percent share; or

(2) which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the tobacco on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units as herein defined will be determined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Appendix B [Redesignated as Appendix A]

4. 7 CFR Part 436 is further amended by redesignating Appendix B as Appendix A.

Done in Washington, D.C., on May 1, 1984.

Dated: June 19, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-17087 Filed 6-27-84; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 441

[Docket No. 1097S]

Table Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues a new part in Chapter IV of Title 7 of the Code of Federal Regulations to prescribe procedures for insuring table grapes effective for the 1984 and succeeding crop years. The intended effect of this rule is to provide insurance for table grapes as a separate commodity from wine grapes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not

a major rule as defined in Executive Order No. 12291 (February 17, 1981), because it will not have an annual effect of the economy of $100 million or more, and (2) will not increase the Federal paperwork burden on individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the notice related to 7 CFR Part 3015, Subpart V [48 FR 29116, June 24, 1983], the Federal Crop Insurance Corporation's program and activities, are excluded from the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

On Friday, October 7, 1983, FCIC published a notice of proposed rulemaking in the **Federal Register** at 48 FR 45782, to issue a new part in Chapter IV of Title 7 of the Code of Federal Regulations prescribing procedures for insuring table grapes. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule as published with minor clerical changes is hereby adopted as a final rule, effective for the 1984 and succeeding crop years.

Background

The grape crop insurance program is presently applicable to growers of both wine and table grapes; however, experience has indicated that, in order for there to be an equitable application, there should be separate regulations prescribing the procedures for insuring table grapes. This judgment has evolved from discussions with producers and processors where such grapes are produced. With a table grape crop insurance program, FCIC is responding to many requests for such a program.

List of Subjects in 7 CFR Part 441

Crop insurance, Table grapes.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) the Federal Crop Insurance Corporation hereby issues a new Part 441 in Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1984 and succeeding crop years, to be known as 7 CFR Part 441—Table Grape Crop Insurance Regulations.

Part 441 is added to read as follows:

PART 441—TABLE GRAPE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1984 and Succeeding Crop Years

Sec.

441.1 Availability of table grape insurance.
441.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities will be computed. .
441.3 OMB control numbers.
441.4 Creditors.
441.5 Good faith reliance on misrepresentation.
441.6 The contract.
441.7 The application and policy.
Appendix A—Counties Designated for Table Grape Crop Insurance

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

§ 441.1 Availability of table grape insurance.

Insurance shall be offered under the provisions of this subpart on table grapes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties will be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there will be published by appendix to this part the names of the counties in which table grape insurance will be offered.

§ 441.2 Premium rates, production guarantees, coverage levels and prices at which indemnities will be computed.

(a) The Manager will establish premium rates, production guarantees, coverage levels, and prices at which indemnities will be computed for table grapes which will be shown on the actuarial table on file in applicable service offices and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant must elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 441.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 441) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 441.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer as other similar interest shall not entitle the holder of the interest to any benefit under the contract except as provided by the policy.

§ 441.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the table grape insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional permiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitiled to an indemnity because of failure to comply with the terms for the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds: (1) That an agent or emloyee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 441.6 The contract.

(a) The insurance contract will become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract will cover the table grape crop as provided in the policy. The contract consists of the application, the policy, the appendix, and the county actuarial table. Any changes made in the contract will not affect its continuity from year to year. Forms referred to in the contract are available at the service offices.

§ 441.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the table grape crop as landlord, owner-operator, or tenant. The application must be submitted to the Corporation at the service office on or before the applicable closing date for the county on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the service office for the county and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1984 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a table grape contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1984 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37; 400.38, first published at 48 FR 1023, January 10, 1983) and may be amended from time to time for subsequent crop years. The provisions of the Table Grape Insurance Policy are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Table Grape—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application, and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Direct Mediterranean Fruit Fly damage; or

(7) When an irrigation practice applies, failure of the water supply from an unavoidable cause occurring after the insurance attaches, unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6). Direct Mediterranean Fruit Fly damage will be actual physical damage to the grapes on the unit which causes such grapes to be unmarketable and will not include such grapes being unmarketable as a direct result of a quarantine, boycott, or refusal to accept the grapes by any entity without regard to actual physical damage to such grapes.

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement or wrong doing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good table grape management practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be any insurable variety of grapes grown for harvest as table grapes on insured acreage on which the cultural practices to produce table grapes are carried out and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be grapes grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured grapes at the time insurance attaches.

d. We do not insure any acreage:

(1) On which the vines, after being set out, have not reached the number of growing seasons designated by the actuarial table;

(2) Which has not produced an average of 150 lugs of table grapes per acre;

(3) Which does not have acceptable records of production unless we agree in writing to insure such acreage; or

(4) With less than a 90 percent stand of bearing vines based on the original planting pattern, unless we agree in writing to insure such acreage.

e. Where insurance is provided for an irrigated practice;

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good grape irrigation practice at the time insurance attaches; and

(2) Any loss of production caused by failure to carry out a good grape irrigation practice, except failure of the water supply from an unavoidable cause occurring after the insurance attaches, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

3. Report of Acreage, Share, Yield, and Practice.

You must report on our form:

a. All the acreage of grapes in the county on which cultural practices to produce table grapes are carried out and in which you have a share;

b. The practice;

c. Your share at the time insurance attaches;

d. The number of bearing vines (if less than 90 percent of a stand based on the original planting pattern); and

e. The most recent year's production for insurable acreage on each unit.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any grapes grown in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual Premium.

a. The annual premium is earned and payable at the time insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

Loss ratio [2] through previous crop year	Numbers of years continuous experience through previous year: Percentage adjustment factor for current crop year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

Loss ratio [2] through previous crop year	Numbers of loss years through previous year [3]: Percentage adjustment factor for current crop year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	143	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	156	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract will be transferred to:

(1) The contract of your estate or surviving spouse in case of your death;

(2) The contract of the person who succeeds you if such person had previously participated in the vineyard operation; or

(3) Your contract if you stop vineyard operations in one county and start vineyard operations in another county.

d. If participation is not continuous, any premium will be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a will be applicable.

6. Deductions for Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches on February 1 and ends on the earliest of:

a. Total destruction of the grapes on the unit;

b. Discontinuance of cultural practices to produce table grapes;

c. The date harvest should have started on the unit on any acreage which will not be harvested as table grapes;

d. Discontinuance of harvesting of table grapes on the unit;

e. Final adjustment of a loss; or

f. October 31 of the calendar year in which the grapes are normally harvested.

8. Notice of Damage or Loss.

a. In case of damage or probable loss:

(1) You must give us written notice if during the period before harvest, the grapes on any unit are damaged and you decide not to further care for or harvest any part of them.

(2) You must give us notice:

(a) At least 15 days before the beginning of harvest if you anticipate a loss on any unit; or

(b) Immediately, if damage occurs within 15 days prior to harvest or during harvest.

(3) If you are going to claim an indemnity on any unit notice will be given not later than 48 hours:

(a) After total destruction of the grapes on the unit;

(b) After discontinuance of cultural practices to produce table grapes;

(c) After discontinuance of harvest on the unit; or

(d) Before harvest would normally start if any acreage on the unit is not to be harvested as table grapes.

(4) Unless notice has been given under subsection (3) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earlier of:

(a) Harvest of the unit; or

(b) October 31.

b. You must obtain written consent from us before you destroy any of the grapes which are not be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity.

a. Any claim for indemnity on a unit will be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the grapes on the unit;

(2) Discontinuance of harvesting as table grapes on the unit;

(3) The date harvest should have started on the unit on any acreage which will not be harvested as table grapes;

(4) Final harvest of the unit; or

(5) October 31.

b. We will not pay any indemnity unless you:

(1) Establish the total production of grapes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grapes to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) Mature grape production which, due to insurable causes, does not grade No. 1 or better in accordance with the Official United States Standards, or would not meet these requirements if properly handled, will be adjusted by:

(a) Dividing the value per lug of such grapes by the price per lug of U. S. No. 1 grapes; and

(b) Multiplying the result by the number of lugs of such grapes. The applicable price for No. 1 grapes will be the week ending price for the district as reported by the Federal State Market Service, Fresno, California on the earlier of: the week before the loss is adjusted or the week before such grapes were sold.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes, failure to follow recognized good table grape management practices and any change in management practices (Green Drop);

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent;

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production:

(a) Is not harvested before the harvest of grapes becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause;

(4) If any grapes are harvested before normal maturity, the production of such grapes will be increased by the factor obtained by dividing the price per lug received for such grapes by the price per lug for fully matured grapes.

(5) We may determine the amount of production of any unharvested grapes on the basis of field appraisals conducted after discontinuance of harvest or the end of the insurance period.

(6) When you have elected to exclude hail and fire as insured causes of loss and the grapes are damaged by hail or fire, appraisals for uninsured causes will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the beginning of the insurance period any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to Farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all grapes produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm from purposes related to the contract.

15. Life of Contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date such payment was approved.

d. The cancellation and termination dates are January 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. *However*, if such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms.

For the purposes of table grape crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding table grape insurance in the county.

b. "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way shall be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the acturarial table.

d. "Crop year" means the period beginning with the date insurance attaches and extending through normal harvest time and will be designated by the calendar year in which the grapes are normally harvested.

e. "Harvest" means picking the grapes from the vines.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Lug" means 22 pounds of table grapes in the Coachella Valley district, California, and 23 pounds in all other California districts.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise of legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Table grapes" means the grapes which are grown for commercial sales as fresh grapes, on acreage which the cultural practices to produce fresh marketable grapes were carried out.

l. "Tenant" means a person who rents land from another person for a share of the grapes or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of grapes in the county, located on contiguous land, on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the grapes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units as herein defined will be determined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Appendix A—Counties Designated for Table Grape Crop Insurance

The following counties are designated for Table Grape Crop Insurance under the provisions of 7 CFR § 441.1.

California

Fresno	Riverside
Kern	San Bernadino
Kings	San Joaquin
Madera	Stanislaus
Merced	Tulare

Done in Washington, D.C., on June 20, 1983.

Dated: June 19, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 84-17121 Filed 6-27-84; 8:45 am]

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Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Inspection, Official Weighing and Supervision of Official Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is: (1) Adjusting fees to cover, as nearly as practicable, the projected fiscal year 1984 operating costs, including related supervisory and administrative costs, for official services performed under the United States Grain Standards Act (USGSA); (2) assessing uniform fees for services with similar costs; (3) changing the method of assessing fees for some services to simplify the fee schedules; and (4) revising supervision of inspection and weighing fees for certain delegated States under an expanded "Delegation of Authority." This final rule is the same as the revisions proposed at 49 FR 17009, except for several nonsubstantive technical changes.

EFFECTIVE DATE: August 1, 1984.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250; telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued under Executive Order 12291 and Departmental Regulation 1512-1. The action has been determined to be "nonmajor" because it does not meet the criteria for major regulatory actions as stated in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, Federal Grain Inspection Service (FGIS or Service), has determined that this revised rule does not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) This revised rule applies to a limited number of delegated States and designated agencies under the USGSA which are not considered small entities as they are dominant in their area of operation; and (2) most other users of FGIS services are not considered small entities. Moreover, FGIS is required by statute to make services available and to cover the estimated costs of providing such services, as nearly as practicable.

In the April 23, 1984, **Federal Register** (49 FR 17009) FGIS proposed specific changes to the fees for Official Inspection, Official Weighing and Supervision of Official Service's performed under the United States Grain Standards Act (USGSA). A correction docket was published on April 26, 1984, at 49 FR 17950. In addition, a public meeting was held on May 10, 1984, to discuss with interested parties the proposed changes. The comment period ended May 23, 1984. Ten written comments were received on the proposed rule. Six commenters generally opposed any increase in FGIS fees with some commenters indicating that FGIS should become more cost-effective.

As discussed below, FGIS continually monitors its costs, revenues, and operating reserve levels. Based upon the Service's fiscal year 1984 operating budget, FGIS has established its costs of operation and has developed fees to generate required revenues. The fees as proposed and finalized herein are necessary to cover FGIS costs. Further, FGIS has implemented cost-saving measures so as to provide cost-effective services.

Four commenters supported the proposed decrease in FGIS fees assessed for supervision of official agencies. FGIS will continue to monitor its fiscal position to provide cost-effective services.

More specific comments received by FGIS are discussed in relation to the individual revisions referenced below. On the basis of all information available, FGIS has concluded that it is necessary to revise the FGIS fee schedule as follows:

Inspection, Weighing, and Supervision Fees in the United States and Canada

The United States Grain Standards Act (USGSA), as amended (7 U.S.C. 71 *et seq.*), requires that FGIS charge and collect fees that cover the estimated cost for performing official inspection, weighing, and appeal inspection services and related administrative and supervisory costs. Further, the USGSA requires that delegated States and designated official agencies pay fair and reasonable fees to cover the estimated costs to FGIS to supervise these agencies. Official inspection and weighing services include grading (original inspection), weighing (Class X or Y), sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, railroad track scale testing, equipment evaluation, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certificating official inspection and weighing results. Appeal inspection services include reinspection, appeal inspection, Board Appeal inspection, and review of weighing.

Fiscal Year 1983 Cost/Revenue

FGIS continually monitors cost, revenue, and operating reserve levels to assure that there are sufficient resources for the Service's operations. During fiscal year 1983, FGIS continued to reduce staffing levels and implement other cost-saving measures in an effort to provide cost-effective service. In fiscal year 1983 (1) fees for original inspection, Class X and Y weighing, and appeal inspection services performed in the United States and Canada did not generate sufficient revenues to cover costs, and (2) supervision fees for official inspection and weighing services provided by delegated States and designated agencies generated revenues in excess of costs. Fiscal year 1983 USGSA revolving fund costs and prior year adjustments totaled $26,123,000. Revenue collected to offset these costs totaled $25,659,000, resulting in a loss of $464,000.

Fiscal Year 1984 Projections

The Service's operating budget for fiscal year 1984 is the basis for establishing the Service's cost of operations and for developing fees to generate the required revenue. The operating costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies and equipment. The 3.5 percent Federal pay increase effective January 1, 1984, was absorbed in the fiscal year 1984 operating budget together with the additional 0.5 percent increase.

For fiscal year 1984, USGSA projected program operating costs total $27,154,000, which is 3.9 percent more than fiscal year 1983 program costs. Revenue is projected to be $28,164,000 under the proposed fee adjustments or a 9.7 percent increase over actual revenues collected in fiscal year 1983. This provides for a projected positive margin of $1,010,000, which would begin to rebuild gradually the Service's operating reserves, as appropriate.

Fee Adjustments

USGSA fees were last revised on January 1, 1983.

FGIS is adjusting certain fees for official inspection, official weighing, appeal inspection services and supervision of inspection and weighing provided in the U.S. and Canada to recover projected fiscal year 1984 operating costs.

FGIS also is changing the method of assessing fees for some services by assessing: (1) Regular workday fees for service provided Monday through Saturday; (2) nonregular workday fees for service performed on Sundays and holidays; (3) hourly fees for all official services from the time a Service representative departs from the FGIS field office or assigned duty station to the service point and return; (4) hourly fees for the entire period of scheduled service if the service request is not canceled by 2 p.m., local time, of the business day preceding the date of scheduled service; and (5) fees to cover the cost of applicant requested express-type or courier mail service, including any travel time involved. In conjunction with these changes FGIS is not assessing: (1) Separate fees for travel costs such as mileage, per diem, subsistence, and commercial transportation and (2) separate fees for standby time. These changes are designed to simplify the fee schedules and billing process and establish uniformity among fees for FGIS services.

In an effort to promote uniformity in fees, FGIS is assessing the same fees for services with similar costs. Specifically, the changes assess: (1) Hourly fees for Class Y weighing services and (2) hourly fees for reinspection and appeal inspection services at locations where FGIS provides original inspections. These fees will be identical to the hourly fees for original inspection or official weighing.

Because of the several changes in the method of assessing fees, the current and revised fees are not directly comparable. The cost to an applicant will increase for the following services provided in the U.S. or Canada: (1) Original inspection; (2) Class X and Y weighing; (3) appeal inspections provided at locations where FGIS does not provide original inspections; and (4) supervision of official weighing services on railcars performed by delegated States and designated agencies. Costs to an applicant will decrease for the following services in the U.S. or Canada: (1) Reinspection and appeal inspections performed at locations where FGIS provides original inspection service; (2) Board appeal inspections; and (3) supervision of inspection and weighing services, excluding supervision of weighing on railcars, performed by delegated States and designated agencies. The actual increase or decrease realized is dependent upon the type (contract/noncontract), time, and frequency of the service requested.

One commenter indicated that he was not in agreement with the proposed Canadian fees, especially those for contract services. The fees as proposed and finalized herein are necessary to recover the costs of FGIS operations while at the same time achieving uniformity and simplicity in the fee schedules, where possible. FGIS carefully developed the proposed fees to accomplish the purposes indicated above. As such, no changes are made from the fee structure in the proposal.

Regular Workday/Nonregular Workday

Currently, regular workday means 6 a.m. to 6 p.m., local time, Monday through Friday, except holidays, and nonregular workday means holidays and any other time that is not a regular workday. FGIS is revising the definition for regular workday to mean 24 hours per day Monday through Saturday except holidays, and nonregular workday to mean any Sunday or holiday. Two commenters questioned the proposed inclusion of Saturday as a regular workday and its effect on FGIS operations. FGIS reviewed this matter and has determined that this change will simplify the fee schedules and billing process while more closely reflecting the FGIS budgetary process used to estimate the cost of providing service. Therefore, these proposals will be finalized without change.

Computing Hourly Rates—Travel

Currently, FGIS includes the costs incurred for travel time and travel expenses (per diem, subsistence, mileage, and commercial transportation) in the hourly fee for original inspection and official weighing services (excluding special services). However, FGIS assesses separate fees for travel time and travel expenses incurred when providing reinspections, appeal inspections, and special services more than 20 miles from the FGIS field office or assigned duty station. Assessing separate fees to cover travel expenses is an administrative burden to FGIS. Therefore, FGIS is including travel expenses in the hourly rate for all official services.

Two commenters indicated that the proposed revisions to travel time would adversely affect certain service locations removed from field offices. One commenter noted that the change in the method of accessing Class Y weighing fees from a unit to an hourly basis would burden distant locations. As discussed, previously, the actual impact of the revisions made to the fee schedules depends upon the type (contract or noncontract), and frequency of requests for services. Additionally, the need for minimum fees is eliminated by these revisions as are separate travel costs, such as mileage, per diem, subsistence and commercial transportation. FGIS has reviewed these revisions and determined that no changes are necessary.

To recover costs incurred during travel time, FGIS is assessing an hourly rate for all services from the time a Service representative leaves the FGIS field office or assigned duty station to the service point and return, with no mileage limitation. This method of assessment simplifies the fee schedules and billing process, and eliminates the need for a minimum fee and separate fees to cover travel expenses.

Application of Fees When an Application for Service is Withdrawn or Dismissed

Currently, FGIS assesses hourly fees when a request for service is withdrawn or dismissed after Service representatives have departed for the point of service. FGIS incurs the cost of maintaining these employees. Under this revision FGIS will assess hourly fees for the entire period of scheduled noncontract service if the service request is not canceled by 2 p.m., local time, the business day preceding the date of scheduled service. However, no fee will be assessed if Service representatives can be utilized elsewhere or can be released without cost to the Service.

Additional Fees

Currently, FGIS interprets postage and delivery to mean first-class mail service. The cost of more expensive types of mail service, i.e., express-type mail or courier service, is not included in the fees. FGIS will assess an additional fee to cover the cost of express-type mail or courier services, including related travel time, when requested by the applicant. In conjunction with this revision, FGIS defines the "cost of postage and delivery" as "first-class mail service."

Class Y Weighing Fees

Currently, FGIS fees for Class Y weighing are assessed on a unit basis with the level of the fee varying by carrier type. FGIS will assess the same hourly rate for Class Y weighing service as the hourly rate for Class X. This change is to simplify the fee schedules and billing process, while assessing the same fee where costs are the same or very similar. As discussed previously, one commenter indicated that changing Class Y weighing to an hourly fee would have an immediate and adverse effect on the marketing program. FGIS does not anticipate that this revision will have such an adverse impact. Accordingly, this revision is finalized as proposed.

Reinspection/Appeal Inspection

Currently, FGIS assesses a unit fee for grading service on all reinspections and appeals. Under this rule FGIS will assess the applicable contract/noncontract hourly fee for reinspection or appeal inspection service at locations where original inspection is provided by FGIS. This change will assess the same fee where costs are the same or very similar.

FGIS is retaining unit fees for grading appeal inspections when not performed at locations where original inspection is provided by FGIS. The cost of mileage, per diem/subsistence and/or commercial transportation is included in the fee.

Delegation of Authority to Certain Delegated States

FGIS is expanding the Delegation of Authority to certain qualified States to: (1) Administer sampler and technician licensing examinations; (2) provide the States with direct access to FGIS Headquarters on delegated program matters; and (3) increase the States' responsibility for supervising employee performance through the use of a national quality control program; and (4) replace the FGIS field office with an FGIS manager responsible for oversight and cooperative management of the delegated program. These modifications will: (1) Improve the efficiency and economy of the FGIS/Delegated State Program while permitting the Administrator to retain responsibility and control of the delegated program; and (2) reduce FGIS' operating cost in those delegated States. FGIS' savings relating to the supervision of inspection and weighing activities delegated to the State will accrue to the benefit of the delegated State in the form of lower supervision fees. This is intended to offset the increased costs incurred by the State due to the added delegated responsibilities.

The fees assessed will cover FGIS field and Headquarter costs relating to the supervision of programs delegated to the State. The amount to be paid by the State will be determined annually by FGIS on the basis of a review of current and projected operating costs.

Therefore, FGIS is revising the applicable supervision fees and method of assessment for those State agencies delegated additional responsibilities. Supervision fees will be assessed as set forth in the State's "Delegation of Authority" document.

FGIS initially plans to expand the delegation of authority and assess revised fees to the States of California and Washington. Before making a final determination to expand these specific delegations to other delegated State agencies, FGIS will review the effectiveness of the implementation of these added responsibilities by the States of California and Washington.

Miscellaneous Changes

FGIS is revising, redesignating, combining or removing certain sections of 7 CFR Part 800 that pertain to the assessment of fees. These revisions eliminate duplicative wording and improve clarity.

In § 800.46(b)(5), FGIS is expanding the requirement for service requests to be made in a timely manner to ensure the performance of service on any day including nonbusiness days. Currently, the requirement for timely arrangement only applies to requests for service to be performed during other than a business day. This change is being made to conform with other changes in the application of fees when a service request is withdrawn or dismissed. The definition of "business day" at § 800.0(b)(12) is revised to conform with the above changes.

In § 800.73, FGIS is clarifying the criteria for assessing fees when service is delayed for any reason not caused by

the Service. The term "standby time" will no longer be used in this context. Currently, the applicable hourly rate for inspection or weighing service would be assessed when service is delayed for any reason not caused by the Service and the Service representative cannot be utilized to provide service elsewhere or released without cost to the Service.

Under this revision, the applicable inspection or weighing hourly fee will be assessed for the entire period of scheduled service if the Service representative is on duty and ready to provide service, but is unable to do so because of a delay not caused by the Service. However, no fees will be assessed for the time that the Service representative is utilized elsewhere or released without cost to the Service. FGIS is increasing or decreasing fees and altering the method of assessing the fees as described in this revision in order to cover the costs of providing the services. Furthermore, in order to provide services, it is necessary to increase the revenue generated from fees for some services. The revisions contained in this final rule are the same as those published in the proposed rule of April 23, 1984 (49 FR 17009).

Several nonsubstantive changes from the proposed rule appear in the final action. These changes include a correction to the definition of "business day." The reference to § 800.0(b)(13) in the proposal is changed to § 800.0(b)(12). Minor format changes to the fee tables have also been made.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

PART 800—GENERAL REGULATIONS

Accordingly, 7 CFR Part 800 of the regulations is amended as follows:

1. Section 800.0, paragraph (b)(12) is revised to read as follows:

§ 800.0 Meaning of terms.

* * * * *

(b) *Definition.* * * *

(12) *Business day.* The established field office working hours, any Monday through Friday that is not a holiday or the working hours and days established by an agency.

* * * * *

2. Section 800.46 paragraph (b)(5) is revised to read as follows:

§ 800.46 Requirements for obtaining official services.

* * * * *

(b) *General requirements.* * * *

(5) *Timely arrangements.* Requests for service shall be made in a timely manner by the applicant with the FGIS field office or agency; otherwise, official personnel may not be available to provide the requested service. For the purpose of this paragraph "timely manner" shall mean not later than 2 p.m., local time, of the preceding business day.

* * * * *

3. Section 800.71 paragraph (a) is revised to read as follows:

§ 800.71 Fees assessed by the Service.

(a) *Official inspection and weighing services.* The fees shown in Schedules A and B apply to official inspection and weighing services performed by FGIS in the United States and Canada. The fees shown in Schedule C apply to official inspection and weighing services performed by delegated States and designated agencies in the United States, except for those State agencies that have been delegated additional responsibilities by FGIS. These States shall be assessed fees as set forth in the State's Delegation of Authority document. Failure of a delegated State or designated agency to pay prescribed fees within 30 days after being due, shall result in automatic termination of the delegation or designation. The delegation or designation shall be reinstated if fees currently due, plus interest and any further expenses incurred by the Service because of the termination are paid within 60 days of the termination.

SCHEDULE A.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES, PERFORMED IN THE UNITED STATES.[1]

Inspection & weighing service (bulk or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection and official weighing:		
(i) Contract (per hour per service representative)	$25.00	$34.00
(ii) noncontract (per hour per service representative)	30.40	41.40
(2) Reinspection, appeal inspection, Board appeal inspection and review of weighing services: [2 3]		
(i) Grading service:		
(A) Grade and factors (per sample)	43.40	56.40
(B) Protein test (per sample)	10.85	14.10
(C) Factor determination (per factor)	21.70	28.20
(ii) Sampling services (per hour per service representative)	43.40	56.40
(iii) Review of weighing service (per hour per service representative)	43.40	56.40
(3) Extra copies of certificates (per copy)	3.00	3.00

[1] Official inspection and weighing services include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] Fees for reinspection and appeal inspection services performed at locations where FGIS is providing original inspection service shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[3] If at the request of the Service a file sample is located and forwarded by an agency for an official appeal, the agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

SCHEDULE B.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN CANADA [1]

Inspection and weighing service (bulk or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection services and official weighing services: [2 3]		
(i) Contract services (per hour per service representative)	$36.40	$44.40
(ii) Noncontract service (per hour per service representative)	45.00	54.00
(2) Extra copies of certificates (per copy)	3.00	3.00

[1] Official inspection and weighing services include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] Fees for reinspection and appeal inspection services shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[3] Board appeal inspections are based on file samples. See § 800.71, Schedule A for Board Appeal fees.

TABLE 1

SCHEDULE C.—FEES FOR FGIS SUPERVISION SERVICES OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR DESIGNATED OFFICIAL AGENCIES IN THE UNITED STATES [1]

Inspection services (bulk or sacked grain)	Official inspection or [illegible] inspection services
(1) Official sample-lot inspection service (white certificate):	
(i) For official grade and official factor determinations:	
(A) Truck or trailer (per inspection) [2]	$0.50
(B) Boxcar or hopper car (per inspection) [2]	1.60
(C) Barge (per inspection)	10.25
(D) Ship (per ship) [3]	82.00
(E) All other lots (per inspection) [2 4]	0.50
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection) (maximum 2 factors) [5]	0.30
(B) Protein test (per inspection) [2 6]	0.25
(2) Stowage examination services:	
(A) Ship (per stowage certificate)	5.00
(B) Other carriers (per stowage certificate)	0.30
(3) Warehouseman's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate):	
(i) For official grade and official factor determinations (per inspection)	0.50
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection) (maximum 2 factor)	0.30
(B) Protein test (per inspection) [2 6]	0.25

TABLE 1—Continued

Inspection services (bulk or sacked grain)	Official inspection or reinspection services
(4) Reinspection services:	
(i) Truck, boxcar, hopper car, barge, ship, warehouseman's sample-lot, submitted sample, factor determination, and all other lots (per inspection)	0.50
(ii) Protein test (per inspection)	0.25

Note—The footnotes for table 1 are shown at the end of table 2.

TABLE 2

Official services (bulk or sacked grain)	Official weighing services (See also X)
(1) Official weighing services:	
(A) Truck or trailer (per carrier)	$.50
(B) Boxcar and hopper car (per carrier)	1.60
(C) Barge (per carrier)	10.25
(D) Ship (per carrier) [3]	82.00
(E) All other lots (per lot or part lot) [4]	.80

[1] The fees include the cost of supervision functions performed by the Service for the official inspection and weighing services performed by the delegated States and/or designated official agencies.

[2] A fee shall be assessed for each carrier or sample inspected if a combined lot certificate is issued or a uniform loading plan is used to determine grade.

[3] A fee shall be assessed per ship regardless of the number of lots or sublots loaded at a specific service point. A fee shall not be assessed for divided original certificates.

[4] All other lots inspection services include, but are not limited to sampling service, condition examinations, examination of grain in bins, and containers. For weighing services all other lots include, but are not limited to, seavans and in-house bin transfers.

[5] Fees shall be assessed for a maximum of 2 factors. If more than 2 factors are determined, fees are assessed at rates in Table 1 (1)(i) or (3)(i) above, as applicable, based on carrier or type sample represented.

[6] Fees shall be assessed for each sample tested for protein.

* * * * *

4. Section 800.72 is revised to read as follows:

§ 800.72 Explanation of service fees and additional fees.

(a) *Costs included in the fees.* Fees for official inspection, Class X or Class Y weighing, and related services performed in the United States and Canada include: (1) The cost of performing the service and related supervision and administration costs; (2) the cost of per diem or subsistence during travel and the cost of transportation to perform the service; (3) the cost of first-class mail service; (4) the cost of overtime and premium pay; and (5) the cost of certification, except as provided in section 800.72(b) (1) and (2).

(b) *Additional fees.* Fees in addition to the hourly or unit fee will be assessed when an applicant requests: (1) More than the original and three copies of a certificate; (2) onsite typing of certificates or typing of certificates at the FGIS field office during other than normal office working hours; and (3) the use of express-type mail or courier mail service.

5. Section 800.73 is amended by revising paragraph (a), revising paragraph (b), revising paragraphs (c)(1) and (c)(2), redesignating the entire paragraph (c) as (d), and adding a new paragraph (c), revising paragraph (d) and redesignating paragraph (d) as (e), revising paragraph (e) and redesignating paragraph (e) as (f), removing the current paragraph (f), and revising paragraph (g). Section 800.73 is revised to read as follows:

§ 800.73 Computation and payment of service fees; general fee information.

(a) *Computing hourly rates.* Hourly fees will be assessed in quarter hour increments for: (1) Travel from the FGIS field office or assigned duty station to the service point and return; and (2) the performance of the requested service, less mealtime.

(b) *Application of fees when service is delayed by the applicant.* Hourly fees will be assessed for the entire period of scheduled service when: (1) Service has been requested at a specified location; (2) a Service representative is on duty and ready to provide service but the Service representative is unable to do so because of a delay not caused by the Service; and (3) FGIS officials determine that the Service representative cannot be utilized to provide service elsewhere or cannot be released without cost to the Service.

(c) *Application of fees when an application for service is withdrawn or dismissed.* Hourly fees will be assessed to the applicant for the entire period of scheduled service if the request is withdrawn or dismissed after the Service representative departs for the service point, or if the service request is not cancelled by 2 p.m., local time, *the business day preceding* the date of scheduled service. However, hourly fees will not be assessed to the applicant if FGIS officials determine that the Service representative can be utilized elsewhere or released without cost to the Service or under the provisions set forth in § 800.47(b).

(d) *Definitions relating to fees.* The following definitions shall apply to the terms used in §§ 800.71 through 800.73.

(1) Regular workday shall mean any Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday that is not a holiday.

(2) Nonregular workday shall mean any Sunday or holiday.

(3) Holiday shall mean the legal public holidays specified in paragraph (a) of Section 6103, Title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal statute or Executive Order. Under Section 610 and Executive Order No. 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

(4) Service representative shall mean an authorized salaried employee of the Service; or a person licensed by the Administrator under a contract with the Service.

(5) Contract service shall mean an inspection or weighing service performed under a contract between an applicant and the Service.

(e) *To whom fees are assessed.* Fees for inspection, weighing, and related services performed by Service representatives, including additional fees as provided in section 800.72(b), shall be assessed to and paid by the applicant for the services.

(f) *Advance payment.* As necessary, the Administrator may require that fees shall be paid in advance of the performance of the requested Service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by the applicant.

(g) *Form of payment.* Bills for fees assessed under the regulations for official services performed by FGIS shall be paid by check, draft, or money order, payable to the U.S. Department of Agriculture, Federal Grain Inspection Service.

(Secs. 8, 9, 18, Pub. L. 94–582, 90 Stat. 2873, 2877, 2884 (7 U.S.C. 79(j), 79a(1), 87(e) as amended by Pub. L. 97–35, 95 Stat. 371, 372)

Dated: June 18, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84–17207 Filed 6–27–84; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation fixes free and restricted percentages applicable to cherries acquired by handlers during the 1984–85 fiscal period. This action is necessary to promote orderly marketing

in the interest of producers and consumers.

DATE: Final rule effective May 1, 1984, through April 30, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Marketing Order No. 930, as amended (7 CFR Part 930), regulating the handling of cherries grown in eight designated states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon information submitted by the Cherry Administrative Board, established under the order, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

The committee met on June 21, 1984, to consider supply and market conditions and other factors affecting the need for regulation. It recommended setting free and restricted percentages for cherries acquired by handlers. The free percentage fixed for a fiscal period represents the percentage of a particular crop which would meet the expected demand for processed cherries during that year. A quantity of cherries in excess of the estimated demand is represented by the restricted percentage. Restricted percentage cherries may be processed and stored in a reserve pool for the benefit of the growers, or the producer may divert such cherries to dried or juice products, export them to certain foreign countries, or leave such cherries unharvested. Reserve cherries which are pooled are processed and held in storage for later release into normal commercial outlets.

The free and restricted percentages for the 1984–85 fiscal period adopted by the Cherry Administrative Board were based on the production estimate released by the Crop Reporting Board of USDA on June 20, 1984, and other estimates developed by the Cherry Administrative Board relative to potential demand, carryover, etc. Total U.S. production of tart cherries is estimated by the Board to be 283 million pounds, with 263 million pounds of the total expected from the area regulated under the order. The Cherry Administrative Board recommended free and restricted percentages based upon the following estimates:

	Million pounds
Supply:	
(1) Estimated U.S. production	283
(2) Less fresh sales and quantity set aside for additional market growth	18
(3) Total	265
Demand:	
(4) Total (frozen, canned, other)	226
Percentages:	
(5) Total supply less total demand (item 3 minus item 4)	39
(6) Available for processing from regulated area	263
(7) Restrict percentage	15
(8) Free percentage (100 percent minus restricted percent—item 7)	85

The estimated demand of 226 million pounds plus the amount set aside for additional market growth would make available for sale a quantity of tart cherries for processing substantially in excess of 110 percent of average sales in recent years. It is hereby found that this action will tend to effectuate the declared policy of the Act.

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at open meetings. It is necessary to effectuate the declared policy of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 930

Marketing agreements and orders, Cherries.

Therefore, a new § 930.300 is added to Subpart—Rules and Regulations which reads as follows:

§ 930.300 Free and restricted percentages.

The free and restricted percentages applicable to all cherries acquired during the fiscal period May 1, 1984, through April 30, 1985, shall be 85 percent and 15 percent, respectively.

(Secs. 1–19. 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 25, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–17280 Filed 6–27–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Aerostar Airlines, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of carriers which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States by adding the name of Aerostar Airlines, Inc.

EFFECTIVE DATE: June 18, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Aerostar Airlines, Inc. on June 18, 1984 to provide for the preinspection of its passengers and crews as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds an air carrier's name to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Air carriers, Airlines, Aliens, Government contracts, Inspections.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

Section 238.4 is amended by adding the name "Aerostar Airlines, Inc." under "At Freeport" and "At Nassau".

(Sections 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228))

Dated: June 21, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-17311 Filed 6-27-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 84-056]

Animals Destroyed Because of Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the tuberculosis indemnity regulations in 9 CFR Part 50 to make the provisions that apply to cattle also apply to bison. This action is necessary to help eradicate an outbreak of bovine tuberculosis in bison.

DATES: The effective date of this document is June 25, 1984. Written comments must be received on or before August 27, 1984.

ADDRESS: Written comments concerning this interim rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell Essey, Cattle Diseases Staff, VS, APHIS, USDA, Room 819, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease of cattle, bison, and other species, including humans. Tuberculosis in affected animals is characterized by weight loss and general debilitation. Also, the disease can be fatal.

The regulations in 9 CFR Part 50 (referred to below as the regulations) contain provisions for the payment of indemnities to owners of cattle (and under very limited circumstances to owners of swine) destroyed because of bovine tuberculosis. Under these regulations indemnity is paid to an owner of such animals destroyed because of tuberculosis to encourage the owner to cooperate in the timely removal of infected animals from the herd or, in the case of herd depopulation, to remove foci of infection in an otherwise clean area and thereby prevent transmission of tuberculosis to nearby susceptible herds. This document amends the regulations on an emergency basis to make the provisions that apply to cattle also apply to bison.

This action is necessary to help eradicate an outbreak of bovine tuberculosis originating from bison in South Dakota. Laboratory confirmation of *Mycobacterium bovis*, the cause of bovine tuberculosis, was made on June 8, 1984. Bison know to have been exposed to tuberculosis have been traced from two infected herds in South Dakota to at least 80 premises in 20 States. Bison affected with tuberculosis present a significant risk of spreading the disease to other bison and to cattle.

The regulations were designed to provide an indemnity program which would be effective in helping to eradicate tuberculosis in cattle. Cattle and bison are both of the bovine family. These animals are raised and marketed under similar management practices and the provisions in the regulations for cattle apply equally well for bison.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579-0001.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule upon signature. It is necessary to make this interim rule effective immediately in order to allow for proper payment of indemnities to owners of bison destroyed because of tuberculosis, thereby encouraging the elimination of these bison as a disease source.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days following publication and a final document discussing comments received and any amendments required will be published in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

This emergency action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the interim rule will affect less than one percent of the bison in the United States.

Under the circumstances explained above, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 50

Animal diseases, Cattle, Hogs, Indemnity payments, Tuberculosis.

PART 50—[AMENDED]

Under the circumstances referred to above, 9 CFR Part 50 is amended as follows:

1. The heading for Part 50 is revised to read "ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS".

§ 50.1 [Amended]

2. Section 50.1(j) is amended by adding "or bison" after "cattle".

3. Section 50.1(m) is amended by adding "or bison" after "cattle".

4. Section 50.1(n) is amended by adding "and bison" after "cattle".

5. Section 50.1(o) is amended by revising " 'Registered Cattle': Cattle" to read " 'Registered Cattle or Bison': Cattle or bison".

6. Section 50.1(p) is amended by adding "or bison" after "cattle".

7. Section 50.1(q) is amended by adding "or bison" after "cattle".

§ 50.2 [Amended]

8. Section 50.2 is amended by adding "or bison" after "cattle".

§ 50.3 [Amended]

9. Section 50.3(a) is amended by revising the heading to read *"Affected cattle or bison"*, and by adding "or bison" after "cattle" in the body of the paragraph.

10. Section 50.3(b) is amended by revising the heading to read *"Herd depopulation-cattle and bison"*, and by adding "and bison" after "cattle" each of the three times it appears in the body of the paragraph.

11. Section 50.3(c) is amended by revising the heading to read *"Exposed cattle or bison"*, and by adding "or bison" after "cattle" each of the three times it appears in the body of the paragraph.

12. Section 50.3(d) is amended by adding "or bison" after "cattle".

§ 50.4 [Amended]

13. Section 50.4 is amended by adding "and bison" after "cattle" each of the three times it appears.

§ 50.5 [Amended]

14. Section 50.5 is amended by revising "When any animal in a herd of cattle is" to read "When any cattle or bison in a herd is".

§ 50.6 [Amended]

15. Section 50.6(a) is amended by revising the heading to read *"Reactor cattle and bison"*, and by adding "or bison" after "cattle" in the body of the paragraph.

16. Section 50.6(b) is amended by revising the heading to read *"Exposed cattle and bison"*, and by adding "and bison" after "cattle" in the body of the paragraph.

§ 50.8 [Amended]

17. Section 50.8 is amended by adding "and bison" after "cattle" both times it appears.

§ 50.9 [Amended]

18. Section 50.9 is amended by adding "or bison" after "cattle".

§ 50.10 [Amended]

19. Section 50.10 is amended by adding "or bison" after "cattle".

§ 50.11 [Amended]

20. Section 50.11 is amended by adding "or bison" after "cattle" both times it appears.

§ 50.12 [Amended]

21. Section 50.12 is amended by adding "and bison" after "cattle" both times it appears.

§ 50.14 [Amended]

22. Section 50.14 is amended by adding "or bison" after "cattle" the first, fifth, sixth, seventh, and eighth times it appears, and by adding "and bison" after "cattle" the second, third, and fourth times it appears.

Authority: Secs. 3, 4, 5, 11, and 13, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 3, 76 Stat. 130; 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 25th day of June 1984.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-17289 Filed 6-25-84; 4:30 pm]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-15-AD; Amendment 39-4885]

Airworthiness Directives; Fairchild Models SA226-TC, SA227-AT, SA227-TT, and SA227-AC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Fairchild Models SA226-TC, SA227-AT, SA227-TT, and SA227-AC airplanes which supersedes AD 84-05-01, Amendment 39-4822. The superseded AD required visual inspection and modification of hydraulic, oxygen and electrical system components in the cockpit area on the aforementioned airplanes. Subsequent to issuance of AD 84-05-01, the manufacturer has developed improved inspection procedures and airplane modifications which increase the reliability and level of safety of these systems. These modify the inspection requirements of the existing AD. The superseding AD incorporates provisions for these changes.

DATE: Effective July 5, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Fairchild Service Bulletins 24-003 (SA227 series) dated March 21, 1983, 24-021 (SA226) dated May 21, 1983, 32-013 (SA227) dated March 16, 1984, 226-32-046 dated March 19, 1984, 226-35-002, 227-35-003, and 227-25-004 all dated April 23, 1984, applicable to this AD may be obtained from Fairchild Aircraft Corporation, P.O. Box 32486, San Antonio, Texas 78284. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Schilling, Airplane Certification Branch, ASW-150, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2598.

SUPPLEMENTARY INFORMATION: The FAA issued AD 84-05-01, Amendment 39-4822, FR 44-7984, 7985) applicable to Fairchild (Swearingen) Models SA226-TC, SA227-AT, SA227-TT, and SA227-AC airplanes which required repetitive visual inspections of the hydraulic lines, the flammable fluid bags, the brake reservoir vent area, the oxygen lines and the electrical wires in the forward cockpit and modification of the generator control junction box.

Subsequent to the issuance of this AD, the manufacturer has developed a means for detecting hydraulic leaks and fluid in the containment bags without unzipping the bags. The manufacturer also has developed and made available instructions and kits for modification of the brake master cylinder and oxygen system installation which, when incorporated, preclude the conditions the presently required inspections of the hydraulic and oxygen system are intended to control.

Therefore, the FAA has determined that a substantial portion of the action required by AD 84-05-01 is now either inappropriate, inadequate or not necessary and that this AD should be replaced with a new AD incorporating some requirements of AD 84-05-01 and other more appropriate action as follows:

(1) Require a one-time inspection of the hydraulic lines by opening the flammable fluid containment bags and if fluid contamination is found, cleaning following a new cleaning procedure. Subsequent repetitive inspections will use a procedure which requires feeling the bags for fluid.

(2) The repetitive inspection of the bag is discontinued when Fairchild Service Bulletins 226-32-046 or 32-013 are accomplished on the applicable airplanes.

(3) Require a 200-hour repetitive inspection of the brake reservoir vent area for hydraulic contamination and

cleaning, if necessary, on all applicable SA226–TC (S/N 398 and up) and SA227 (all models and serial numbers) that do not have an optional anti-skid system installed.

(4) Discontinue oxygen system repetitive inspections required by AD 84–05–01 when nylon oxygen lines are replaced by aluminum lines in accordance with Fairchild Service Bulletins 226–35–002, 227–35–003 or 227–35–004 as applicable.

(5) Discontinue repetitive inspections of electrical wire bundles in forward cockpit area after initial inspection is accomplished and adequate support and separation of the bundles incorporated.

Since FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued superseding AD 84–05–01 which incorporates the requirements of AD 84–05–01 in part and new appropriate inspection procedures on Fairchild Models SA226–TC, SA227–AC, SA227–AT and SA227–TT airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good causes exist for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Fairchild (Swearingen): Applies to Models SA226–TC, (S/N 398 and up); SA227–AC; SA227–AT and SA227–TT (all serial numbers) airplanes certificated in any category.

Note.—The model prefix has been omitted from serial numbers listed in this AD to simplify the AD. Use the sequential number to determine AD applicability. Compliance: Required as indicated, unless already accomplished.

To prevent cockpit fires, accomplished the following:

(a) On all applicable models and serial numbers, within the next 50 hours' time-in-service after the effective date of this AD, modify and inspect the generator control junction box (J-box) and wire terminations in accordance with Fairchild SB's 24–003 (SA227 series) dated March 21, 1983, or 24–021 (SA226–TC) dated March 21, 1983.

(b) Within 200 hours time-in-service since new or the last inspection per AD 84–05–01 or 50 hours time-in-service after the effective date of this AD, whichever occurs later, and within each 200 hours time-in-service thereafter.

(1) On Models SA226–TC (S/N 398 and up) and SA227–AC, –AT, –TT (S/Ns 406, 415, 416 and 420 and through 583) airplanes;

(i) Verify that all 3 flammable fluid external drains are open.

(ii) Feel the bottom of flammable fluid bag for pockets of oil. If oil is detected, push up lower spot in bag toward either the right or left drain. Verify that oil comes out of one or all of the drains.

Temporarily place rags in lower left bag just forward of the open area to prevent fluid from draining into belly of aircraft.

Remove instruments as necessary to allow access to the bag. Unzip a small portion of the bag to determine cause of leak. Correct cause of leak. Clean bag with rags using Brulin Super 816 detergent in 3 parts water to 1 part detergent or an equivalent industrial cleaner (detergent) per AMS 1526 or 1547 or 1550.

Use rags to clean out any residue that may have collected in the lower left bag. Close all opened flammable fluid protection bags and handshape the bags to encourage flow of leakage toward the bag drains.

(iii) The inspections required by paragraph (b)(1) (i) and (ii) above are not required when improved brake master cylinders are incorporated per Fairchild Service Bulletins 226–32–046 applicable to the Models 226 series airplanes or 32–013, Option 2, applicable to the Model 227 series airplanes.

(2) On Models SA226–TC (S/N TC–398 thru TC–419) and SA227–AC, –AT, and –TT (S/N 406, 415, 416 and 420 thru 609 except AC–580, AC–582 and AC–583) airplanes;

(i) Visually check oxygen lines for separation from moving components and for leakage using MIL–L–25567B leak detector solution or equivalent as specified in Fairchild Maintenance Manual. Minimum clearance between oxygen lines and all moving parts must be at least 2 inches. Give particular attention to the fittings in the vicinity of the cockpit side panels and instrument panel area and the fittings on the oxygen supply line from the oxygen bottle to the cockpit. If leaks are found, prior to further flight, correct as necessary. See Fairchild Maintenance Manual Section 35–00–06 (SA226) and Section 35–00–05 (SA227) for proper maintenance of lines and fittings.

Note.—FAA Advisory Circular 43.13–1A, Chapter 10, paragraph 393, Chapter 8, paragraph 363, contains additional guidance pertaining to these inspections and corrective action.

(ii) The inspections required by paragraph (b)(2)(i) above are not required when Fairchild Service Bulletin SB 226–35–002, 227–35–003 or 227–35–004 as applicable to the Models 226 or 227 series airplanes are incorporated.

(3) On Models SA226–TC (S/Ns 398 and up) and SA227 (all models and S/Ns) airplanes not equipped with optional antiskid system:

(i) Visually inspect the brake reservoir vent area located on the forward pressure bulkhead in front of the pilot for signs of hydraulic fluid contamination.

(ii) Before further flight, clean or replace as necessary any hydraulic fluid-contaminated structure, insulation, or soundproofing.

(c) On Models SA226–TC (S/N TC398 and up) and Models SA227–AC, –AT, –TT (S/Ns 415, 416, and 420 thru 599) airplanes, within 200 hours' time since new or within 50 hours' time-in-service after the effective date of this AD whichever occurs later, visually inspect the electrical wires and their supports in the vicinity of the cockpit side panels and behind the instrument panel on both sides of the aircraft for contact or inadequate clearance between the wires and adjacent components including hydraulic and oxygen lines or structure. It is desirable to maintain a 6-inch clearance between oxygen tubing and electrical wires. If this is not possible, fasten all electrical wires securely so that they cannot come to within 2 inches of oxygen tubing. If 2 inches cannot be maintained, reroute oxygen line or wires as necessary to get the maximum possible clearance and then add additional support and/or "butterfly" clamp as necessary to prevent contact between oxygen lines and electrical wires bundles. Accomplishment of paragraph (a)(4) of AD 84–05–01 satisfies this requirement.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) The intervals between repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(f) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW–150, Southwest Region, FAA, Fort Worth Texas 76101; Telephone (817) 877–2070.

This AD supersedes AD 84–05–01, Amendment 39–4822.

This amendment becomes effective on July 5, 1984.

(Sec. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on June 20, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-17196 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 84-ACE-02]

Alteration of Transition Area—Hampton, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Hampton, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Hampton Municipal Airport, Hampton, Iowa, utilizing the Hampton Nondirectional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage a new instrument approach procedure to the Hampton Municipal Airport, Hampton, Iowa, is being established utilizing the Hampton NDB as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of a transition area at Hampton, Iowa, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 14968 of the Federal Register dated April 16, 1984, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Hampton, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT August 30, 1984, by altering the following transition area:

Hampton, Iowa

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Hampton Municipal Airport (latitude 42°43'35" N; longitude 93°13'35" W); and within 3 miles each side of the Mason City, Iowa, VORTAC 166° radial extending from the 5-mile radius area to 6 miles southeast of the Hampton Municipal Airport; excluding that airspace which overlies the Mason City, Iowa, transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69)).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on June 20, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-17198 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AWP-10]

Alteration of a Transition Area and VOR Federal Airways, Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action changes the descriptions of the Elko, NV, Transition Area and three VOR Federal Airways in the State of Nevada as necessitated by the imminent name change of a navigation aid. That name change was initiated in connection with a general policy to change the name of navigation aids bearing the same name as the airports which they serve.

DATES: Effective date—August 30, 1984.

Comments must be received on or before August 13, 1984.

ADDRESSES: Send comments on the rule in triplicate to:

Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWP-10, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule that was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.123 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to change the descriptions of the Elko, NV, Transition Area, V–293, V–32 and V–465 to reflect the new name, Bullion, NV, which heretofore, was referred to as Elko, NV. This action is part of a system-wide effort to rename each navigational aid that bears the same name as the airport which it serves, if the navigational aid is not located on the airport. Sections 71.123 and 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

Without this amendment, the descriptions of the Elko, NV, Transition Area, V–293, V–32 and V–465 will contain an erroneous reference to a navigational aid after August 30, 1984. The FAA, therefore, concludes that there is an immediate need for a regulation. Accordingly, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective on August 30, 1984, which is coincident with the navigational aid name change.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.123 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (49 FR 19293) is further amended, effective 0901 GMT, August 30, 1984, as follows:

§ 71.123 [Amended]

V–293 [Amended]

By deleting the word "Elko" and substituting the word "Bullion".

V–32 [Amended]

By deleting the word "Elko" and substituting the word "Bullion".

V–465 [Amended]

By deleting the word "Elko" and substituting the word "Bullion".

§ 71.181 [Amended]

Elko, NV [Amended]

By deleting the word "Elko VORTAC" wherever they appear and substituting the words "Bullion VORTAC".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on June 21, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84–17195 Filed 6–27–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 133

[T.D. 84–133]

Customs Regulations Amendments Concerning Recordation of Trademarks, Copyrights and Patents

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the number of copies of trademark or copyright certificates required for recordation with Customs. The document provides that the number of required copies is now reduced from 1,000 to 5. This document also amends the Customs Regulations relating to the number of copies of a patent registration required when a patent owner believes his patent is being infringed and he seeks Customs assistance in taking appropriate action. The document provides that the number of required patent registration copies is now reduced from 600 to 3. These changes, which were brought about because of a change in the procedure by which Customs reprints notices of recordation and advises Customs offices throughout the United States, will impose less of a burden on the public.

EFFECTIVE DATE: July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Darrell D. Kast, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5765).

SUPPLEMENTARY INFORMATION:

Background

Part 133, Customs Regulations (19 CFR Part 133), sets forth the procedure to be followed for the recordation with Customs of trademarks and copyrights. Specifically, holders of trademarks registered by the Patent and Trademark Office of the Department of Commerce, and holders of copyrights registered by the Copyright Office of the Library of Congress, may record their trademark or copyright with Customs provided the application for recordation is accompanied by a fee of $190 for each trademark or copyright they wish to record.

Sections 133.3 and 133.33, Customs Regulations (19 CFR 133.3, 133.33), set forth the requirements concerning the documents that must accompany applications for the recordation of trademarks and copyrights, respectively. Both sections presently provide that 1,000 copies of the certificate of registration must accompany the application to record. These copies are used to notify Customs personnel throughout the United States of the trademark or copyright recordation.

However, after review of this matter, it has been determined that only 5 copies are actually required. This change, brought about a change in the procedure by which Customs reprints notices of recordation and advises Customs offices in the field, will impose less of a burden on the public.

Section 12.39a, Customs Regulations (19 CFR 12.39a), sets forth the procedure to be followed when the owner of a patent registered with the Patent and Trademark Office believes that merchandise is being imported into the United States which infringes on the registered patent and requests Customs assistance in taking appropriate action. Specifically, section 12.39a(b) presently provides that the patent owner must make an application for a survey (which provides the patent owner with the names and addresses of importers of merchandise which appear to infringe the registered patent), provide a certified copy of the patent registration issued by the Patent and Trademark Office showing ownership to be in the name as claimed, submit 600 copies of the patent registration for distribution to the various ports of entry, and a check or money order to cover the fee

prescribed by § 24.12(a)(3), Customs Regulations (19 CFR 24.12(a)(3)).

Customs has reviewed this procedure and, in addition to the previously mentioned changes in §§ 133.3 and 133.33, has determined that the number of copies of the patent registration that must be submitted to Customs should be reduced as well. Accordingly, only 3 copies of the patent registration will now be required. Although this change will reduce the required number of documents a holder of a patent must submit to Customs, it will not impair the notification process. All Customs offices will still be notified of the patent registration so that appropriate action may be taken.

Executive Order 12291

It has been determined that these amendments are not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, the document contains a certification pursuant to section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendments will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Inapplicability of Public Notice Requirement

Because this document reduces a recordation requirement and imposes no additional duties or responsibilities on the public, it has been determined that good cause exists for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B).

List of Subjects

19 CFR Part 12

Patents.

19 CFR Part 133

Copyrights, Trademarks.

Amendments to the Regulations

Part 12, Customs Regulations (19 CFR Part 12), and Part 133, Customs Regulations (19 CFR Part 133), are amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

Section 12.39a(b) is revised to read as follows:

§ 12.39a Registered patent owners; import survey.

* * * * *

(b) The application may be made by letter addressed to the Commissioner of Customs, U.S. Customs Service, Washington, D.C. 20229. It shall state the name and address of the patent owner; and if available, a description of the merchandise believed to infringe the registered patent and the country of manufacture of the merchandise. A certified copy of the patent registration issued by the Patent and Trademark Office showing ownership to be in the name as claimed, 3 additional copies of the patent registration for Customs files, and a check or money order to cover the fee prescribed by section 24.12(a)(3) of this chapter for the survey selected shall be submitted with the application.

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72 (5 U.S.C. 301, 19 U.S.C. 66, 1624, Gen. Hdnote, 11, Tariff Schedules of the United States))

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

Section 133.3(a)(2) is revised to read as follows:

§ 133.3 Documents and fee to accompany application.

* * * * *

(2) Five copies of this certificate, or of a Patent and Trademark Office facsimile. The copies may be reproduced privately and shall be on paper approximately 8" x 10½" in size. If the certificate consists of two or more pages, the copies may be reproduced on both sides of the paper.

* * * * *

Section 133.33(a)(2) is revised to read as follows:

§ 133.33 Documents and fee to accompany application.

* * * * *

(2) Five photographic or other likenesses reproduced on paper approximately 8" x 10½" in size of any copyrighted work. An application shall be excepted from this requirement if it covers a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author or if it covers a sound recording. Five likenesses of a component part of a copyrighted work, together with the name or title, if any, by which the part depicted is identifiable, may accompany an application covering an entire copyrighted work.

* * * * *

(R.S. 251, as amended, sec. 109, 61 Stat. 664, sec. 624, 46 Stat. 759 (17 U.S.C. 109, 19 U.S.C. 66, 1624))

William von Raab,

Commissioner of Customs.

Approved: June 8, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-17238 Filed 6-27-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 80N-0314]

Food Labeling; Declaration of Sodium Content of Foods and Label Claims for Foods on the Basis of Sodium Content; OMB Approval and Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Office of Management and Budget (OMB) has approved the information collection requirements in the final rule amending the food labeling regulations to specify that sodium content of foods be included in nutrition labeling information whenever nutrition labeling appears on food labels (49 FR 15510; April 18, 1984). FDA is also announcing the effective date of the requirements.

DATES: Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun April 18, 1984.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFF-204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3117.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 18, 1984 (49 FR 15510), FDA published a final rule amending the food labeling regulations

to: (1) Establish definitions for the terms "sodium free," "low sodium," "moderately low sodium," and "reduced sodium"; (2) provide for the proper use of these terms in the labeling of foods; (3) provide for the inclusion of potassium content information in the nutrition labeling format on a voluntary basis; (4) provide for the appropriate use of such terms as "without added salt," "unsalted," and "no salt added"; and (5) specify that sodium content of foods be included in nutrition labeling information whenever nutrition labeling appears on food labels. The agency also issued a policy statement on the appropriate use of comparative labeling statements, and is continuing to permit the declaration of sodium content in isolation.

OMB Approval

In the preamble to the final rule, FDA stated that the information collection requirements were submitted to OMB for approval under the Paperwork Reduction Act of 1980. FDA also stated that § 101.9(c)(8)(i) would not be effective until OMB approved these requirements and that it would publish a notice in the **Federal Register** regarding the effective date of these requirements once the approval has been obtained.

On June 12, 1984, OMB approved without change the information collection requirements in § 101.9(c)(8)(i), under OMB control number 0910–0198. The effective date of compliance for this section is July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun April 18, 1984.

List of Subjects in 21 CFR Part 101

Food labeling, Collection of information, Incorporation by reference, Misbranding, Nutrition labeling, Warning statements.

PART 101—FOOD LABELING

§ 101.9 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 403, 701, 52 Stat. 1040–1042 as amended, 1047–1048 as amended, 1055–1056 as amended (21 U.S.C. 321, 343, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), compliance with the final rule, including any required labeling changes, may have begun April 18, 1984. Furthermore, all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1985, shall comply fully with the final rule. In addition, Part 101 is amended in § 101.9 *Nutrition labeling of food* by adding to the end of the section the parenthetical statement "(Collection of information requirements were approved by the Office of Management and Budget under OMB control number 0910–0198)."

Dated: June 22, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–17192 Filed 6–27–84; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 9H5202/R686; PH–FRL 2615–6]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency; Fluridone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends an established food additive regulation to permit residues of the herbicide fluridone in potable water, in connection with an experimental use program requested by Elanco Products Co. Such residues may be present only as a result of application of fluridone to lakes and ponds under an experimental use program that expires June 1, 1985.

EFFECTIVE DATE: May 31, 1984.

ADDRESS: Written objections may be submitted to the Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
Office location and telephone number: Rm. 237, CM #2, Registration Division (TS–767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued § 193.219 *Fluridone* (21 CFR 193.219) published in the **Federal Register** of March 17, 1981 (46 FR 17015), establishing a regulation permitting residues of the herbicide fluridone (1-methyl-3-phenyl-5-[3-(trifluromethyl)phenyl]-4(1*H*)-pyridinone) at 0.01 part per million in potable water. The regulation is being extended to June 1, 1985, to permit the continued use of fluridone in water while further data are collected on fluridone.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the herbicide may be safely used in accordance with the provisions of the experimental use permit (1471–EUP–67) that was concurrently extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. It is concluded that the herbicide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA, as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 135(a) *et seq.*) and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24954).

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

§ 193.219 [Amended]

Therefore, § 193.219 *Fluridone* is amended in paragraph (b) by changing the date "June 1, 1984" to "June 1, 1985".

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

Dated: June 21, 1984.

Douglas D. Campt,

Acting Director, Office of Pesticide Programs.

[FR Doc. 84–17222 Filed 6–27–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 83N-0241]

Neurological Devices; Premarket Approval of the Implanted Cerebellar Stimulator

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application or a notice of completion of a product development protocol for the implanted cerebellar stimulator, a medical device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Robert F. Munzner, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, (301) 427-7226.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 4, 1979 (44 FR 51770), FDA published a final rule (21 CFR 882.5820) classifying into class III (premarket approval) the implanted cerebellar stimulator. Section 882.5820 applies to any implanted cerebellar stimulator that was in commercial distribution before May 28, 1976, and to any device that FDA has found to be substantially equivalent to an implanted cerebellar stimulator that was in commercial distribution before May 28, 1976.

In the **Federal Register** of September 6, 1983 (48 FR 40273), FDA published a proposed rule to require that manufacturers or importers of the implanted cerebellar stimulator file under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)) a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the device. In the preamble to the September 6, 1983 proposal, FDA published the agency's proposed findings on the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements, and on the benfits to the public from use of the device. The preamble to the proposal also provided an opportunity for interested persons to submit comments on the proposed rule and on the agency's proposed findings, and, under section 515(b)(2)(B) of the act, provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The comment period closed on November 7, 1983. Any petition requesting a change in the classification of the implanted cerebellar stimulator was required to be submitted by September 21, 1983.

FDA did not receive any comments on the September 6, 1983 proposed rule or on FDA's proposed findings with regard to the risks or the benefits of the implanted cerebellar stimulator. Further, FDA did not receive any petitions requesting a change in the classification of the device.

I. Findings With Respect to Risks and Benefits

In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the September 6, 1983 proposal (48 FR 40275) the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the implanted cerebellar stimulator to have an approved PMA or declared completed PDP, and the benefits to the public from the use of the device. FDA's proposed findings, as stated in the September 6, 1983 proposal, are summarized below.

A. Degree of Risk

1. *Surgical procedures.* Implantation of cerebellar electrodes requires that the patient's skull be opened under anesthesia. As with any surgical procedure, complications, such as infection, hemorrhage, and hematoma, may occur.

2. *Injury to neural tissue.* The electrical current used for stimulation and the pressure that the electrodes of an implanted cerebellar stimulator exert may injure or destroy brain tissue.

3. *Cerebrospinal fluid leakage.* The cerebrospinal fluid that surrounds the brain may leak out where the electrode wires pass through the dura and the skull. If leakage occurs, reoperation is required to correct the condition.

4. *Tissue toxicity.* The surface of the implanted device, lead wires, or electrodes may contain material that is not biocompatible. The implanted cerebellar stimulator is made of materials that are generally recognized to be biocompatible. There have not been any reports of patient injuries due to improper materials used in the device. It is possible, however, that contaminants may be introduced during manufacture of the device, or that some of the materials may have unknown constituents that may cause subtle changes that have not been recognized in the reported studies.

FDA concludes that these risks could be eliminated or reduced by requiring the implanted cerebellar stimulator to undergo premarket approval.

B. Benefits of the Device

The implanted cerebellar stimulator has been reported by some investigators to provide benefit in the treatment of intractable epilepsy and of some movement disorders. However, other studies have failed to show that the device is of significant benefit to patients suffering from these conditions.

FDA concludes that the effectiveness of the device for its intended use has not been established.

II. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the proposed findings as published in the **Federal Register** of September 6, 1983 (48 FR 40275) and is issuing a final rule to require premarket approval of the generic type of device, the implanted cerebellar stimulator.

Under the final rule, a PMA or notice of completion of a PDP is required to be filed on or before September 26, 1984, for any implanted cerebellar stimulator that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before September 26, 1984. Also, an approved PMA or a declared completed PDP is required to be in effect for any such device on or before March 26, 1985. If FDA finds that continued availability of a device for which a PMA has been timely filed is necessary for the public health, FDA may, under section 515(d)(1)(B)(i) of the act, extend the 180-day period for taking action on the PMA. Any implanted cerebellar stimulator that was not in commercial distribution before May 28, 1976, or that has not on or before September 26, 1984 been found by FDA to be substantially equivalent to an implanted cerebellar stimulator that was in commercial distribution before May 28, 1976 is required to have an approved PMA or declared completed PDP in effect before entering the market.

If a PMA or a notice of completion of a PDP for an implanted cerebellar stimulator is not filed on or before September 26, 1984, that device will be considered adulterated under section 501(f)(1)(A)(ii)(I) of the act (21 U.S.C. 351(f)(1)(A)(ii)(I)), and commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (21 CFR Part 812) are met. Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c) (1) and (2) will no longer apply, as of the effective date of this regulation, to clinical investigations of any implanted cerebellar stimulator (1) which is not legally in commercial distribution on or before that date, or (2) which is legally in commercial distribution on or before that date, but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval is denied or withdrawn. Further, FDA concludes that investigational implanted cerebellar stimulators are significant risks devices as defined in § 812.3(m), and advises that the requirements of the IDE regulations regarding significant risk devices will apply as of the effective date of this rule to any clinical investigation of any implanted cerebellar stimulator to which the exemptions in § 812.2(c) do not apply. For any such device, therefore, an IDE submitted to FDA, under § 812.20, is required to be in effect under § 812.30 before an investigation is initiated or continued on or after September 26, 1984. FDA advises all persons who intend to sponsor any clinical investigation involving the implanted cerebellar stimulator to submit an IDE application to FDA not later than August 27, 1984 to avoid the interruption of ongoing investigations.

III. Environmental Impact

The agency has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

FDA has examined the economic consequences of this final rule in accordance with the criteria in section 1 (b) of Executive Order 12291 and found that the rule will not be a major rule as specified in the Order. The agency believes that only one or two small firms will be affected by this rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96-354) that the rule will not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of this final rule has been placed on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 882

Medical devices, Neurological devices.

PART 882—NEUROLOGICAL DEVICES

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 501, 513, 515, 520(g), 701(a), 52 Stat. 1049–1050 as amended, 1055, 90 Stat. 540–546, 552–559, 569–571 (21 U.S.C. 351, 360c, 360e, 360j(g), 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 882 is amended in § 882.5820 by adding new paragraph (c), to read as follows:

§ 882.5820 Implanted cerebellar stimulator.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before September 26, 1984. Any implanted cerebellar stimulator that was not in commercial distribution before May 28, 1976, or that has not on or before September 26, 1984 been found by FDA to be substantially equivalent to an implanted cerebellar stimulator that was in commercial distribution before May 28, 1976 shall have an approved PMA or declared completed PDP in effect before beginning commercial distribution.

Effective date. This regulation is effective September 26, 1984.

(Secs. 501, 513, 515, 520(g), 701(a), 52 Stat. 1049–1050 as amended, 1055, 90 Stat. 540–546, 552–559, 569–571 (21 U.S.C. 351, 360c, 360e, 360j(g), 371(a)))

Dated June 12, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-17191 Filed 6-27-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 202

[Docket No. N-84-1404; FR-1972]

Property Improvement and Manufactured Home Programs—Approval of Lending Institutions—Fee Schedule

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: General Notice—listing of Application and Annual fees to be paid to HUD by Title I lenders.

SUMMARY: This Notice establishes application and annual fees to be paid to HUD by Title I lenders. They are established under the regulations at 24 CFR Part 202 which were published in the **Federal Register** on June 19, 1984 (49 FR 24989).

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Andrew Zirneklis, Office of Program Compliance, Room 9154, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 426-3976. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 19, 1984 (49 FR 24989), the Department published a final rule for the approval of Title I lenders (24 CFR Part 202). Section 202.4(a)(9) of the rule requires a Title I lender, other than a Government Institution or National Mortgage Association described in 24 CFR 202.3(a), to pay an application and annual fee to HUD, including fees for each branch office authorized to originate and report Title I loans to HUD for insurance registration. The fees are a new requirement established by HUD to help defray the cost of approving and monitoring lenders participating in the Title I program.

This Notice sets forth the schedule of fees to be paid by Title I lenders and takes effect upon the effective date of the regulations at 24 CFR Part 202.

Application Fee

All Title I lenders, other than Government Institutions or National Mortgage Associations described in 24 CFR 202.3(a) or lenders that currently operate under a valid Contract of Insurance, that apply for HUD approval must submit a nonrefundable application fee of $250 for their main office and $50 for each branch office authorized to originate and report Title I loans to HUD for insurance registration.

These fees must be submitted, with the application, to the local HUD Field Office having jurisdiction over the lender's main office and branch office facility. Application forms may be obtained from HUD Field Offices. Applications submitted without the required fees or with an incorrect payment will be returned to the applicant.

Annual Fees

All Title I lenders, other than Government Institutions or National Mortgage Associations described in 24 CFR 202.3(a), must pay an annual fee of $150 to HUD to retain their approved status and $50 for each branch office authorized to originate and report Title I loans to HUD for insurance registration. Payment of the annual fees must be submitted with Form HUD–92001LV, Yearly Verification Report, which will be mailed to all lenders annually by the Department. Lenders must send the annual fee, along with the Yearly Verification Report, to: Department of Housing and Urban Development, P.O. Box 100170, Atlanta, Georgia 30384.

Failure to pay the main office annual fee of $150 may result in termination of the lender's Contract of Insurance. Failure to pay the $50 annual fee for a branch office will be treated as a voluntary request by the lender to terminate that branch office's authority to originate and report Title I loans for insurance registration.

Form HUD–92001LV is used by the Department to verify information for each lender and for mailing HUD publications. This form has been approved under OMB approval number 2502–0017. Lenders must correct any erroneous data contained on the form before returning it to HUD. Government Institutions and National Mortgage Associations as described in 24 CFR 202.3(a) must submit Form HUD–92001LV, Yearly Verification Report, even though they are exempt from paying the annual fee.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

The Catalog of Federal Domestic Assistance Program numbers are:

14.110, Manufactured (Mobile) Home Insurance-Financing Purchases of Mobile Homes as Principal Residences of Borrowers;

14.142, Property Improvement Loan Insurance for Improving all Existing Structures and Building of New Nonresidential Structures; and

14.162, Mortgage Insurance-Combination and Mobile Home Lot Loans.

Authority: Sec. 7(d), Department of Housing and Urban Development, 4 U.S.C. 3535(d).

Date: June 20, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84–17296 Filed 6–27–84; 8:45 am]

BILLING CODE 4210–27–M

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24 CFR Part 882

[Docket No. R–84–988; FR–1521]

Section 8 Housing Assistance Payments Program—Existing Housing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule removes § 882.120 of the Section 8 Existing Housing Program regulations (and makes certain technical changes to 24 CFR Part 882) to eliminate the authority to use higher fair market rents (FMRs) for recently completed housing. This action contains the costs of the Program, and thereby allows the Department to assist as many families as possible under the Section 8 Existing Housing Program with the limited funding that is available.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Existing Housing Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–5353. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: HUD published a proposed rule on June 28, 1982 (47 FR 27869) to amend 24 CFR Part 882 to eliminate the use of higher fair market rents (FMRs) for recently completed housing. Twenty four comments were received. Nineteen were from or on behalf of public housing agencies (PHAs), three from management companies, one from a development company and one from a Member of Congress.

Twenty two commenters opposed the rule. One commenter agreed with the rule and one PHA stated that it had not taken advantage of the provisions being eliminated and remained neutral; however, this PHA asked for an increase in its Section 8 Existing Housing FMRs.

In general, the comments expressed concern that elimination of § 882.120 would reduce the availability of acceptable housing for lower income families. The comments stated that families are having difficulty finding housing which meets Housing Quality Standards and which is within the Section 8 Existing Housing FMRs. They believe the proposal would make this problem worse.

A large increase in the construction of rental housing occurred during the early 1970's. This caused a high vacancy rate in recently completed rental housing in some local markets. The original purpose of § 882.120 was to take advantage of these vacancies in unique areas where the availability of existing housing that was more than six years old was relatively limited during this period. To do this, the Department amended the program regulations to permit PHAs to approve gross rents up to 75 percent of the Section 8 New Construction FMRs for units in projects qualifying as "recently completed housing." This enabled lower income families with Section 8 Existing Certificates to lease units in recently completed projects with extended vacancies at a greater cost to the Existing Housing Program. The construction of rental units has leveled off and there still remains a significant amount of rental units available in market areas within the FMRs for the Section 8 Existing Housing Program. For this reason, this higher rent is no longer needed.

Some comments stated that recently completed housing constituted a substantial portion of the rental units in rapidly growing areas, and argued that the rule change would create an extreme shortage of suitable rental housing in those areas in which there is little older rental housing in comparison to the number of units needed. This should not occur. To date, FMRs have been established from a survey of all standard quality rental units in the housing market area, including newly constructed units. We published a final rule (48 FR 43578) on September 23, 1983 which excludes from the local data base any unit completed in the two years before the Annual Housing Survey dates. We included all recently completed units that are more than 2 years old in the data base for the calculation of FMRs. Hence, any housing market which has a substantial number of recently completed units in its rental inventory would benefit by a higher FMR and thereby enable Section 8

families to rent units in the "middle of the market."

Several commenters asserted that the Section 8 Existing Housing FMRs tend to limit lower income families to housing located in low-income neighborhoods, whereas § 882.120 increased the access of participating families, especially large families, to housing located in other neighborhoods where large housing units are more available. HUD intends to maintain FMRs at a level that will ensure an adequate supply of housing and permit housing choice within the individual market areas. Even though we are eliminating the special FMRs for recently completed housing, the regulations at 24 CFR 882.106(a) (3) and (4) permit the use of higher rents up to 120% of the published FMRs for the higher cost portions of a market area. These higher rents for "exception areas" provide participants with access to housing throughout most of a given market area and assist larger families by expanding the areas in which they can look for housing.

Finally, we believe that elimination of higher FMRs for recently completed housing will not significantly reduce the availability of housing for program participants, but will contain the costs of the program so that the available funding can benefit a greater number of families.

After the effective date of this final rule, no additional units may be placed under lease or Housing Assistance Payments (HAP) Contract using the recently completed FMRs. For families occupying units originally leased using the recently completed FMRs, this regulatory change does not affect the rent during the term of the HAP Contract, so long as the family remains in occupancy. At the expiration of the HAP Contract term, if the same family continues in occupancy the PHA may determine the rent for the new term by applying the Section 8 Annual Adjustment Factor to the contract rent. This adjustment process is not subject to the FMR limitations, and it is therefore not affected by the amendment. However, if a unit formerly approved as recently completed is selected by a new Certificate holder, the unit is subject to the FMR limit, with the exception allowed under § 882.106 to increase that limit within regulatory controls.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on the competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because FMRs do not change the rent charged for housing which is not in the Section 8 Program. Landlords participating in the Program will continue to receive rent adjustments under the terms of their HAP contracts as long as the family remains in the same unit and participates in the Section 8 Existing Housing Program.

No environmental finding is required with respect to this amendment since the Section 8 Existing Housing Program is categorically excluded from the National Environmental Policy Act review procedures under 24 CFR 50.20(d).

This rule is listed as item H–36–82 in the Department's Semiannual Agenda of Regulations published at 48 FR 47452 on October 17, 1983, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.156 (Lower Income Housing Assistance Program).

List of Subjects in 24 CFR Part 882

Grant programs: Housing and community development, Housing, Mobile homes, Rent subsidies.

Accordingly, the Department amends 24 CFR Part 882 as follows:

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

1. In § 882.102, by removing the definition of *"Recently Completed Housing"*.

2. By revising § 882.117(c)(4) to read as follows:

§ 882.117 Responsibilities of the owner.

* * * * *

(c) * * *

(4) *Contract rents.* Notwithstanding the provisions of § 882.106(a)(2), a PHA may not approve, without prior HUD approval, rents which exceed the appropriate Fair Market Rent for a unit for which it provides the management functions under this section.

* * * * *

3. By removing and reserving § 882.120.

4. By revising § 882.204(a)(1) to read as follows:

§ 882.204 Submission of applications.

* * * * *

(a) * * *

(1) Indicate the types of Existing Housing (e.g., elevator, non-elevator) likely to be utilized in the proposed project.

* * * * *

Authority: Sec. 8, United States Housing Act of 1937, 42 U.S.C. 1437f, Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 20, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84–17297 Filed 6–27–84; 8:45 am]

BILLING CODE 4210–27–M

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24 CFR Part 3282

[Docket No. R–84–1077; FR–1699]

Manufactured Home Procedural and Enforcement Regulations

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule allows the Secretary to establish the manufactured home monitoring inspection fee by placing a notice of the new fee in the **Federal Register.** Any fee change will be made in accordance with the Department's methodology expressly set out in this final rule. Accordingly, the fee amount will no longer be subject to prior public notice and comment procedures.

The Department is authorized by law to inspect newly manufactured homes, to ensure that each home is properly and safely designed before it can be purchased by a prospective homeowner. The law also authorizes the Department to impose fees necessary to offset the costs of conducting its inspection program. Therefore, the actual fee established should result in revenues that are adequate to offset the total costs of properly conducting the inspection program.

However, expenses related to conducting an inspection program vary over time. In order to keep the level of revenues collected commensurate with the level of program costs, the Department needs to be able

expeditiously to react to cost variations. This final rule enables the Secretary to make timely adjustments to the fee, thereby ensuring that the public interest in the conduct of meaningful inspections is continuously served.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: James C. McCollom, Director, Manufactured Housing Standards Division, Room 3234, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6920. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 20, 1983, the Department published in the **Federal Register** a proposed revision of 24 CFR 3282.454 (48 FR 16910). That proposed revision would enable the Secretary to revise the manufactured home monitoring inspection fee by notice in the **Federal Register**, rather than by the more time-consuming rulemaking procedure. The fee must be adjusted from time to time in order to maintain a reasonable working surplus of funds.

Section 614(a) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act), 42 U.S.C. 5413(a), authorizes the Secretary to conduct such inspections and investigations as may be necessary to promulgate or enforce Federal manufactured home construction standards. Section 620 of the Act, 42 U.S.C. 5419, provides that "the Secretary may establish and impose on manufactured home manufacturers, distributors and dealers such reasonable fees as may be necessary to offset the expenses incurred by him" in carrying out the inspections required under the Act.

Under this authority, the Secretary has established a fee—currently $19 per manufactured home. However, the Department recognizes that increases and decreases in the number of homes produced and changes in the extent of the work supported by the fee warrant making adjustments to the fee from time to time.

Discussion of Comments

The Department received three submissions in response to its invitation for comments on the proposed rule. Concerns raised by persons commenting fall into the four basic categories discussed below. In response to public comments, the Department has revised the proposed rule. Notably, the final rule sets out the method that is employed by the Department for arriving at new fee determinations.

I. Elimination of Notice and Comment Procedures

(a) *Legal basis:* Objection to the rule has been raised on the grounds that it is contrary to HUD's general practice of allowing prior notice and comment on the establishment of inspection fees, and deprives manufacturers of property without due process of law.

The Department's determination to establish the inspection fee by notice does not contravene manufacturers' rights of due process. This is because the legal right to participate in rule making proceedings derives, if at all, from statute, and not the Constitution itself. Here, HUD's fee-setting enabling legislation, at 42 U.S.C. 5419, does not require that inspection fees be established through rulemaking. Thus, as relevant to this action, the salient issue is whether or not notice and comment procedures are mandated by the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553.

In general, the APA requires a Federal agency that engages in rulemaking to afford interested persons the opportunity to participate in the formulation of its policies through notice and comment procedures. However, the APA also contains exceptions to this general rule. These delineated exceptions recognize instances in which the need for agency flexibility in serving the public interest warrants a departure from the general rule.

Both the APA, at 5 U.S.C. 553(b)(B), and the Department's corresponding regulation governing its policy and procedures in the area of rulemaking (24 CFR 10.1 ("policy")), provide that unless required by statute, notice and public procedure will be omitted if it is determined in a particular case or class of cases, "that notice and public procedure are *impracticable, unnecessary or contrary to the public interest*" (emphasis added). Where such a finding is made, the reasons for the determination are to be stated in the rulemaking document. The Department has determined that these provisions constitute the legal basis for establishing and modifying inspection fees in the future without resort to the rulemaking process.

In this case, resort to rulemaking procedures would prove "impracticable, unnecessary or contrary to the public interest." The Department's decision to establish fees by notice is fully warranted, because only by acting promptly can the Department continuously maintain the income generated by the fees and the (changing) costs of its inspection program at approximately equal levels. The maintenance of an appropriately funded, cost-based program is essential to ensuring that manufactured homes are properly and safely designed. The past practice of adjusting inspection fees through notice-and-comment rulemaking was adopted before the Department had any experience with the program, and before it had specific knowledge of the costs of inspection activity and how they are subject to change. Over ensuing years, the Department's need for the capacity to adjust the inspection fee promptly has become clear.

Resort to notice and comment is impracticable because it would frustrate the Department's ability to carry out its legislative mandate in this area, particularly during periods of rapidly changing economic conditions. Moreover, there is no necessity for a full-fledged proceeding, given that any new fee established will constitute a technical revision to an existing fee, based upon the insertion of new and readily documented cost figures into the Department's methodology for establishing the fee. This methodology correlates the various components of the Department's inspection program that give rise to costs with the number of housing units inspected, for the purpose of arriving at the appropriate fee per unit. This methodology, which is set out in the final rule at 24 CFR 3282.454, is discussed at length below. Because fee adjustments will be of a technical nature, and the public interest will be served best by the exercise of prompt agency action in this area, the waiver of notice and comment procedures is warranted.

(b) *Methodology for establishment of the fee:* In its notice of proposed rulemaking, the Department stated that the amount of the inspection fee has been revised on two occasions since 1976, and that further revisions will be necessitated by changes in the costs and revenues related to the inspection program. Past resort to the rulemaking process has proved cumbersome. Continuation of this procedure would frustrate the Department's future ability to react in a timely manner to changing costs and revenue. Since the basic components of the program are readily identifiable, making reasonable adjustments to the fee amount is a technical process performed in accordance with an established methodology.

The inspection fee charged for each housing unit is determined by dividing the total number of homes (anticipated) to be manufactured into the total (anticipated) costs of the inspection

program, as reflected in the following equation:

$$\frac{\text{total program expenses}}{\text{total housing units}} = \text{fee/unit}$$

To determine the total cost of conducting the inspection program (the numerator in the above equation), the Department must first calculate the costs of each basic component of the program. The components of the program, and a brief description of each activity, are as follows:

(1) Funding for State administrative agency activities: In carrying out inspections, the Department is specifically authorized by statute to contract with State and local governments and private inspection organizations. See 42 U.S.C. 5413(b)(2). A substantial portion of the Department's total expenditures is directed to State Administrative Agencies (SAAs) to fund SAA activities. Among other things, SAA personnel routinely conduct inspections in the field (e.g., at home sites and dealerships), and also investigate consumer complaints;

(2) Funding for inspection activities performed by HUD personnel: Funds are applied to support the activities of HUD employees that are engaged in a number of inspection-related activities including enforcement operations, the handling of consumer complaints, and making on-site inspections.

(3) Funding for the monitoring inspection contractor: HUD contracts with the National Conference of States on Building Codes and Standards (NCSBCS), a private organization, to assist in the inspection program. Among other things, NCSBCS is responsible for monitoring the activities of In-Plant Inspection Agencies (IPIAs) and Design Approval Primary Inspection Agencies (DAPIAs). IPIAs and DAPIAs are selected by home manufacturers, and are responsible for ensuring that homes manufactured comply with Federal safety and design standards. In order to monitor these activities, NCSBCS personnel routinely make on-site inspections at plant sites (*i.e.*, actually observing the manufacture of homes);

(4) Expenses for miscellaneous activities: The Department also incurs expenses to accommodate such other activities as *ad hoc* inspections. Other such activities may include the provision of training for personnel involved specifically in inspection work, and HUD-sponsored conferences attended by SAA, IPIA, and DAPIA representatives. The latter activity is fundamental to a meaningful inspection program, since conferences provide a national forum for the exchange of valuable information on inspection activities; and

(5) Reserve funds: In addition to the expenditure of funds to support the above-described activities, the Department needs to continuously maintain reserve funds adequate to insure that funds are readily available for these inspection-related activities. In determining the costs necessary to conduct the inspection program, the Department shall consider the amount of its reserve funds on hand. To the extent that the Department determines that the amount of reserve funds are excessive, the fee amount will be reduced accordingly.

Once the total (estimated) cost of the program is calculated for the foreseeable future, the Department must determine the estimated number of homes that will be manufactured over that period (the denominator in the equation above). Estimates are based on the most recently available annual production figures for the manufactured homes industry. The fee per unit can then be calculated (*i.e.*, the quotient in the above-described equation).

The fee, once established, shall remain in effect until such time as the Secretary determines that, because of rising or decreasing program costs or revenues, a fee change is warranted. Any change shall reflect specific changes in program costs or in the number of homes manufactured, in accordance with the Department's methodology for fixing the inspection fee. The effect of a change will be to maintain the level of funds that are necessary to conduct the Department's program.

II. Availability of Underlying Data Supporting the Fee Structure

A comment from manufactured home producers requested that HUD make available for public inspection the data and other information on which any monitoring inspection fee is determined.

All such data and information are available to the public under the Freedom of Information Act with the exception of documents which may be withheld from public disclosure under that Act.

III. Amount and Use of the Fee

Comments have expressed concern over (a) the current amount of the fee (*i.e.*, that $19 per unit may be excessive, generating surplus funds), and (b) whether certain components of the inspection program, supported by the fees, are in accordance with the Department's enabling legislation at 42 U.S.C. 5419.

The reasonableness of the current fee was addressed when it was established. The fact that excesses can accumulate as a result of production fluctuations is an argument in favor of a more timely method of adjusting the fee, not against it. Moreover, this final rule provides the most practical method of avoiding the accrual of excessive surpluses. It will permit more timely coordination of fee collections with actual cost experience under the inspection program.

The Department is publishing a notice of the fee amount simultaneously with the notice of this final rule. The notice states that, for the time being, the current fee of $19 per manufactured home shall continue in effect. However, the Department is examining the current fee in accordance with its fee establishment methodology discussed in Part I(b) above, and will revise the fee if such action is found to be warranted.

The Department's actual use of inspection fee funds has been called into question by commenters, who have identified specific aspects of the program as (allegedly) being unauthorized by 42 U.S.C. 5419 and inappropriate. In particular, these commenters question expenditures that support: (1) The Department's research, testing, development and training programs, and (2) NCSBCS' coordination activities of IPIAs, quarterly meetings, training seminars, advisory committees and newsletters.

The basic components of the Department's inspection program, supported by the fees collected, are described in the "methodology section" of this preamble. Activities that do not fall within these categories—including research, testing, development and training activities contemplated under 42 U.S.C. 5407—will not be funded from the inspection fee fund, to the extent that such activities are not inspection related.

Specifically with respect to NCSBCS, inspection fee funds are used expressly to support activities, other than newsletter issuances, necessary to carry out its functions as a monitoring contractor. Because the NCSBCS activities at issue here are necessary to the proper performance of its contractual duty and are specifically authorized by statute, the use of inspection fee funds to support these activities is entirely appropriate.

IV. Economic Impact on Small Entities

The proposed rule, a commenter suggested, would have a significant economic impact on a substantial

number of small entities if the fee is increased; therefore, it should include a regulatory flexibility analysis.

The economic impact of the rule will be extremely small. The fee is now $19 per unit, or less than 1/10 of 1% of the total cost of the average manufactured home. The Department is publishing a notice, simultaneously with this final rule, that indicates that, for the time being, the inspection fee shall remain at $19 for manufactured home. Any justifiable change in the fee would have very little effect on the price of the home or its attractiveness to customers. In any event, the rule itself does not change any fee. It merely changes the procedure by which a fee can be adjusted. The Department has thus concluded that a regulatory flexibility analysis is not required.

This rule does not constitute a "major rule" as that term is defined in sec. 1(b) of Executive Order 12291 of Federal Regulation issued February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 24 CFR 50.20(1), a Finding of No Significant Impact with respect to the environment in unnecessary because the rule is purely administrative in nature, is clearly unrelated to environmental concerns and has no potential for significantly affecting the human environment.

This rule was listed in the Department's Semi-Annual Agenda of Regulations published on April 19, 1984 (49 FR 15938) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.804.

List of Subjects in 24 CFR Part 3282

Administrative practice and procedures, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Mobile homes.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

Accordingly, the Department amends 24 CFR Part 3282 by revising § 3282.454 to read as follows:

§ 3282.454 Monitoring inspection fee.

(a) The Secretary may establish by notice in the **Federal Register** a monitoring inspection fee which is to be paid by manufacturers for each manufactured home manufactured in nonapproved and conditionally approved states as described in § 3282.210. In determining the amount of the inspection fee to be paid for each manufactured home, the Secretary shall divide the estimated number of manufactured homes (based on recent industry production figures) into the anticipated aggregate cost of conducting the inspection program. In determining the aggregate cost of conducting the inspection program, the Secretary shall calculate the sum necessary to support: (1) Inspection-related activities of State Administrative Agencies; (2) inspection-related activities performed by the Department of Housing and Urban Development; (3) inspection-related activities performed by monitoring inspection contractor(s); (4) miscellaneous activities involving the performance of inspection-related activities by the Department, including on-site inspections on an ad-hoc basis; and (5) maintenance of adequate reserve funds.

(b) The monitoring inspection fee to be established by approved states under § 3282.307(a) shall be in the same amount as the fee established under (a) above.

(c) The Secretary may at any time revise the amount of the fees established under this section by placing a notice of the amount of the new fee in the **Federal Register.**

Authority: Sec. 620, National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5419); Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: June 15, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-17160 Filed 6-27-84; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 3282

[Docket No. N-84-1402; FR-1699]

Manufactured Home Procedural and Enforcement Regulations

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Rule-related notice.

SUMMARY: This Notice states that the monitoring inspection fee for each manufactured housing unit shall continue to be $19.00 until the Department decides to adjust the fee. Any adjustments will be published in the **Federal Register.**

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: James C. McCollom, Director, Manufactured Housing Standards Division, Room 3234, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6920. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has adopted a final rule published elsewhere in today's issue of the **Federal Register** amending 24 CFR 3282.454. This rule revision enables the Secretary to set the manufactured home monitoring inspection fee by notice in the **Federal Register** rather than by rulemaking. The fee now in effect is $19.00 per manufactured housing unit. However, once the rule change becomes effective, there will be no reference to the actual fee amount in 24 CFR 3282.454. By this notice the Department is announcing that the inspection fee amount shall remain at $19.00 until such future time as the Department publishes an adjustment in the **Federal Register.**

Authority: National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5419); Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: June 15, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-17159 Filed 6-27-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulation at 28 CFR 2.60 on superior program achievement to include an interpretative instruction presently contained in the Commission's Rules and Procedures Manual. The regulation governs the reduction of a prisoner's presumptive release date for superior program achievement at proceedings subsequent to the initial parole hearing. The amendment defines the date which the Commission utilizes to determine the

amount of the reduction and the base from which the reward is deducted for a prisoner whose initial parole decision was to "continue him to expiration."

DATE: June 28, 1984.

ADDRESS: Rockne Chickinell, Attorney, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5960.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Telephone (301) 492–5960.

SUPPLEMENTARY INFORMATION: In its regulation at 28 CFR 2.60, the Parole Commission seeks to govern the advancement of a presumptive release date for "superior program achievement" at interim parole hearings and record reviews conducted pursuant to 28 CFR 2.14 after the initial parole determination. The regulation provides a schedule of permissible reductions (ranging from 1 month to 13 months) which are tied to the total number of months required by the prisoner's original presumptive release date set at his initial parole determination.

The Commission pointed out in its publication of the final rule at § 2.60 that for those prisoners originally "continued to expiration" the prisoner's statutory release date with automatic good time deductions under 18 U.S.C. 4161 would be used for purposes of determining the amount of the permissible reduction and as the base from which the reduction would be subtracted. See 44 FR 55002–05 (Sept. 24, 1979). The final rule publication specifically stated that:

> If this date [statutory release date with deductions under 4161] has been reduced due to the earning of extra good time [granted pursuant to 18 U.S.C. 4162], and such reduction is already equal to or exceeding the allowable reduction for superior program achievement, the Commission will not give an additional reduction for superior program achievement.
>
> (44 FR at 55004)

This interpretative instruction was carried over into the Commission's Rules and Procedures Manual. The Commission's intent behind this rule was to ensure that such a prisoner (who originally was denied any parole date) would not receive a double benefit for the same positive behavior, *viz.*, a reduction in the statutory release date due to discretionary, extra good time credits under 18 U.S.C. 4162 from the Bureau of Prisons and a further reduction from the Parole Commission under 28 CFR 2.60. By subtacting the permissible reduction for superior program achievement from the statutory release date obtained only with the good time credits granted under 18 U.S.C. 4161, the Commission guaranteed that the prisoner would not receive the double benefit.

The Bureau of Prisons provides the Parole Commission with a calculation of the two-thirds point of a prisoner's sentence in order that the Parole Commission may comply with 18 U.S.C. 4206(d), which requires that a prisoner serving a sentence of five years or more be paroled at that point unless the agency finds that the offender has not substantially observed the rules of the institution or presents a risk of future criminal behavior if paroled. In its 1982 Rules and Procedures Manual, the Commission instructed its staff and members that the two-thirds point should be used in determining the amount of a reduction under 28 CFR 2.60 and the date from which the permissible reduction should be subtracted if the prisoner was serving a sentence of five years or more. The two-thirds point never exceeds (and is often less than) the prisoner's statutory release date with automatic good time deductions under 18 U.S.C. 4161.

The Commission has decided to amend 28 CFR 2.60 to include in the regulation the instruction concerning the grant of a superior program achievement reduction in "continue to expiration" cases. The Commission hopes that publication of this instruction in the regulation will clarify any misapprehension as to the agency's implementation of the regulation in such cases. The Commission is not seeking public comment and is publishing this amendment as a final rule to be effective immediately, since the modification is an interpretative rule that simply clarifies the Commission's use of § 2.60.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), the Commission is amending 28 CFR Part 2, by adding the following as paragraph (f):

PART 2—[AMENDED]

§ 2.60 Superior program achievement.

* * * * *

(f) For cases originally continued to expiration, the statutory good time date (calculated under 18 U.S.C. 4161) will be used for computing the maximum reduction permissible and as the base from which the reduction is to be subtracted for prisoners serving sentences of less than five years. For prisoners serving sentences of five years or more, the two-thirds date (calculated pursuant to 18 U.S.C. 4206(d)) will be used for these purposes. If the prisoner's presumptive release date has been further reduced by extra good time (18 U.S.C. 4162) and such reduction equals or exceeds the reduction applicable for superior program achievement, the Commission will not give an additional reduction for superior program achievement.

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 15, 1984.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 84-17228 Filed 6-27-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Modification of Public Comment Period and Time for Public Notice of Public Hearing on Proposed Federal Program for the State of Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is adding a new rule at 30 CFR Part 942 to govern the promulgation of a proposed Federal program for the State of Tennessee. New § 942.736 establishes public notice and comment requirements specifically for the purpose of the Director's promulgation of Federal program for the State of Tennessee. The new rule is intended to provide OSM adequate time to consider and respond to public comments on the Federal program proposed for implementation in the State of Tennessee since there is a limited time within which to promulgate the Federal program.

EFFECTIVE DATE: June 28, 1984.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant to the Assistant Director, Program Operations and Inspection, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone: 202–343–4225.

SUPPLEMENTARY INFORMATION: New § 942.736(a) provides that, prior to

promulgation of a Federal program for the State of Tennessee, the Director shall publish notice in the **Federal Register** at least 30 days before the date of the public hearing required under 30 CFR 736.13. This provision also requires the published notice to conform to the requirements in subsections (1) through (7) of 30 CFR 736.12(a). Under new § 942.736(b), prior to promulgation of a Federal program for the State of Tennessee, the Director must provide an opportunity for persons to submit, in writing, data and comments on the proposed promulgation of the Federal program for Tennessee within 40 days after publication of the notice in the **Federal Register**. New § 942.736(c) states that the public hearing required under 30 CFR 736.13 shall be held between 30 and 40 days after publication of the **Federal Register** notice. Under new § 942.736(d), the provisions of this rule supersede any contradictory requirements in 30 CFR 736.12 and 736.13.

Rules governing the procedures for promulgation or revision of a Federal program for a State were initially published as rules proposed for public comment on September 18, 1978 (43 FR 41814) and adopted as final rules on March 13, 1979 (44 FR 15330). Amendments to the rules at 30 CFR Part 736 were published as rules proposed for public comment on December 14, 1981 (46 FR 59482) and adopted as final rules on June 17, 1982 (47 FR 26356).

Section 736.12(a) provides that, prior to the promulgation or revision of a Federal program for a State, the Director shall publish notice of the public hearing to be held on the Federal program proposed for a State in the **Federal Register** at least 60 days before the date of the hearing required under § 736.13(c). Section 736.13(b) specifies a public comment period of 60 days. Thus, the standard scheme has the public hearing taking place on the last day of the public comment period. New § 942.736(a) provides, instead, that notice of such a public hearing on the proposed Federal program for the State of Tennessee shall be published in the **Federal Register** at least 30 days before the date of the hearing.

Under the new rule adopted by OSM, the requirement for prior published notice of the public hearing to be held on the proposed Federal program for the State of Tennessee is changed from 60 to 30 days. This change is intended to ensure that adequate time is provided to the Director to consider and respond to public comments on the Federal program which OSM proposes to implement within the State of Tennessee. The new rule also changes the minimum public comment period to allow for a period of at least 40 days.

OSM will propose a Federal program for the State of Tennessee because the State's legislature has repealed the regulatory program statute and regulations effective October 1, 1984. *See* 49 FR 15496 (April 18, 1984) for the announcement of the Federal enforcement of the state regulatory program. If 60 days' notice were required before the public hearing, there would not be adequate time to consider the comments after the close of the comment period and promulgate a program by October 1, 1984.

Affording the Director Flexibility to set a comment period of at least 40 days gives OSM needed time in promulgating a Federal program for Tennessee under exigent circumstances—conditions that were never contemplated at the time the initial rules for Federal program promulgation were drafted. Under the revised rule, the public hearing will be set for a time during the comment period so that it will allow OSM to begin considering the testimony presented at the public hearing as soon as possible, but still afford sufficient notice to the public. It would also allow persons to supplement any testimony presented at the hearing by submitting written comments and would allow persons in attendance at the hearing to submit comments based on testimony presented at the hearing.

The sources of authority for §§ 736.12(a) and 736.13(b) are Sections 102(i) and 504(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* Section 102(i) includes an assurance that appropriate procedures are provided for public participation, revision, and enforcement of Federal programs as one of the purposes of SMCRA. 30 U.S.C. 1202(i). More importantly, under section 504(c) of SMCRA, the Secretary of the Interior must give adequate public notice prior to promulgation and inplementation of any proposed Federal program. 30 U.S.C. 1254(c). Neither the Act nor its legislative history defines "adequate public notice" in terms of a fixed time period. Instead, these authorities commit the task of defining "adequate public notice" to the Secretary's administrative discretion. Accordingly, OSM has determined that a public comment period of at least 40 days and 30 days' notice of the Director's intent to hold a public hearing on the Federal program proposed for the State of Tennessee are consistent with the mandates expressed in sections 102(i) and 504(c) of SMCRA. Under the new rule, there will be a public comment period of at least 40 days, and a period of 30 days from the date of publication of the **Federal Register** notice is the minimum amount of public notice that will be provided for the public hearing to be held on the proposed Federal program for the State of Tennessee. Forty days is sufficient to allow interested persons to submit written comments and thirty days is sufficient time to allow persons to request to testify and to prepare and present their testimony at the public hearing.

The Administrative Procedure Act (APA), 5 U.S.C. 553, as amended, imposes on Federal agencies the duty to provide the public with general notice of their proposed rulemakings and opportunity to comment thereon. 5 U.S.C. 553 (b), (c). A Federal agency may dispense with the APA's public notice requirement for good cause upon determining that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

In the present case, there is good cause justifying OSM's decision to adopt new § 942.736, absent prior public notice and opportunity for public comment. The Tennessee State Legislature, by statute signed by the Governor, has rescinded the State's regulatory program for surface and underground coal mining operations conducted within its borders effective October 1, 1984. Given these developments, OSM's compliance with the APA's procedural requirements would prolong the process of promulgating a Federal program for the State of Tennessee beyond the October 1, 1984 deadline. Consequently, unless OSM implements a Federal program in Tennessee by October 1, 1984, OSM would have to enforce the program for Tennessee that now exists at 30 CFR Part 942. *See* 47 FR 34753, August 10, 1982, as amended at 48 FR 8059, February 28, 1983; 48 FR 23636, May 26, 1983. This situation would cause considerable confusion inasmuch as there would not be an orderly transition from the State's program to the Federal program. Because OSM's compliance with the APA's procedural requirements ultimately would frustrate OSM's efforts to promote an orderly transition from the State's program to the Federal program, good cause exists to forego prior public notice and opportunity for comment on OSM's adoption of new § 942.736.

Furthermore, in accordance with the exemption provided in section 553(b)(B) of the APA, OSM has determined that prior public notice on the promulgation of new § 942.736 is unnecessary, impracticable, and contrary to public interest. In the case of promulgation of a Tennessee Federal program, prior notice of the amendment of § 942.736 would unduly delay the promulgation and implementation of a Federal program for Tennessee which has to be adopted by October 1, 1984, to facilitate an orderly transition from the State's program to the Federal program. Prior notice would also make it impracticable for OSM to conduct a public hearing on the Federal program to be proposed for Tennessee and to adequately consider the comments within the short period before repeal of the state program legislation and regulations take effect. Such delays would be contrary to the public interest which Congress sought to advance and protect by enacting sections 504(a)(3) and 504(c) of SMCRA. 30 U.S.C. §§ 1254 (a)(3), (c). OSM has also found prior notice to be unnecessary in the present case since no substantive rights are affected by OSM's adopting of new § 942.736.

The discussion in the preceding paragraph constitutes good cause under 5 U.S.C. 553(d) for the rule (which partially relieves a restriction on the Director) to be effective less than 30 days from the date of publication in the **Federal Register.**

For the reasons discussed above, OSM is adopting 30 CFR 942.736, effective immediately.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), OSM has determined that no environmental impact statement must be prepared on this rulemaking.

2. *Executive Order No. 12291:* The Department of the Interior (DOI) has examined this rulemaking according to the criteria provided in Executive Order 12291 (February 17, 1981). DOI has determined that this is not a major rule and hence does not require a regulatory impact analysis since it amends established procedures which the Director of OSM must follow in promulgating, implementing, or revising Federal regulatory programs for States. This rule does not significantly change any substantive requirements.

3. *Regulatory Flexibility Act:* In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, DOI has determined that this rule will not have a significant economic impact on a substantial number of small entities. The rule establishes procedural requirements for the promulgation, implementation, and revision of Federal regulatory programs for States and these requirements only have an impact on State regulatory authorities and OSM.

4. *Paperwork Reduction Act:* This rule does not contain information collection requirements for which approval by the Office of Management and Budget (OMB) is mandatory under the Paperwork Reduction Act, 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 942

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 942 of Title 30 of the Code of Federal Regulations is amended as set forth herein.

(Sec. 102(i), 201(c)(2) and 504(c) of Pub. L. 95–87 (30 U.S.C. 1202(i) 1211(c)(2) and 1254(c)))

Dated: June 21, 1984.

J. Steven Griles,

Acting Assistant Secretary for Land and Minerals Management.

PART 942—[AMENDED]

1. A new 30 CFR 942.736 is added to read as follows:

§ 942.736 Modification of public comment period and time for public notice of public hearing on proposed Federal program for the State of Tennessee.

Prior to promulgation of a Federal program for the State of Tennessee:

(a) The Director shall publish notice in the **Federal Register** at least 30 days before the date of the hearing required under § 736.13 of this chapter. The notice shall conform to the requirements in paragraphs (a) (1) through (7) of § 736.12 of this chapter.

(b) The Director shall provide an opportunity for persons to submit, in writing, data and comments on the proposed promulgation of the Federal program for Tennessee within 40 days after publication of the notice in the **Federal Register.**

(c) The public hearing required under § 736.13 of this chapter shall be held between 30 and 40 days after publication of the **Federal Register** notice.

(d) These provisions shall supersede any contradictory requirements in §§ 736.12 and 736.13 of this chapter.

[FR Doc. 84–17298 Filed 6–27–84; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 84–037]

Boston/Providence Marine Inspection Zone and Captain of the Port Zone Boundary Realignments

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes new boundary lines separating the Boston Marine Inspection Zone and Captain of the Port Zone, from the Providence Marine Inspection Zone and Captain of the Port Zone. This change is being made to simplify adminstrative and operational activities. The Coast Guard offices having jursidiction in these areas will remain located in Boston, Massachusetts and Providence, Rhode Island.

EFFECTIVE DATE: July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Paul J. Howard, Port Safety Branch, First Coast Guard District, 150 Causeway Street, Boston, Massachusetts 02114, (617) 223–6915.

SUPPLEMENTARY INFORMATION: Since these amendments are matters relating to agency organization, they are exempt from the notice of proposed rulemaking requirements in 5 U.S.C. 553(b)(3)(A), and since these amendments are not substantive, they may be made effective in less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d)(3).

Executive Order 12291 does not apply to matters of agency organization (section 1(a)(3)). These amendments are editorial in nature and are considered to be nonsignificant under DOT Order 2100.5 of May 22, 1980. No additional requirements will be imposed on the public as a result of this rulemaking. This rule simply redefines existing areas of Coast Guard responsibility and jurisdiction. The only changes which may affect the public, are the specific Coast Guard offices having jurisdiction over a particular area, and the location from which the Coast Guard will enforce that jurisdiction.

Drafting Information

The principal persons involved in drafting this amendment are: Lieutenant Commander Paul J. Howard, Project Officer, Port Safety Branch, First Coast Guard District and Lieutenant Susan M. Krupanski, Project Attorney, Legal Staff, First Coast Guard District.

Economic Assessment and Certification

An economic evalutaion of the final rule has not been conducted since its impact is expected to be minimal. As existing requirements and responsibilities will not be altered, the overall cost to the public will not change. This rulemaking imposes no burdens on the public as it is solely organizational in nature. It will not affect the economy to any measurable degree, result in any increase in price for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or result in any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Likewise, it is hereby certified that this final rule will not have any economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601 et seq.). This certification is made in accordance with section 605 of Title 5 of the United States Code.

The Coast Guard has determined that this rule does not constitute a major Federal action significantly affecting the quality of human environment, and therefore no environmental assessment or environmental impact statement was prepared.

List of Subjects in 33 CFR Part 3

Marine safety, Organization and functions (government agencies).

PART 3—[AMENDED]

In consideration of the foregoing, Subchapter A, Chapter I, Title 33 of the Code of Federal Regulations is amended as follows:

1. By revising § 3.05–10(b) to read as follows:

§ 3.05–10 Boston Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the Boston Marine Inspection Zone and Captain of the Port Zone starts at 42°55′ N. latitude, 70°47.7′ W. longitude; thence due West to the New York-Vermont Boundary; thence South along the New York State line to the southern boundary of Massachusetts, except the waters of Congamond Lakes, to 42°04.1′ N. latitude, 71°06′ W. longitude; thence Southeast to Manomet Pt. at 41°55′ N. latitude, 70°33′ W. longitude; thence Northeast to 42°08′ N. latitude, 70°11′ W. longitude; thence due East to the Search and Rescue boundary between the United States and Canada at 67° W. longitude.

(5 U.S.C. 552; 49 U.S.C. 108; 49 CFR 1.45 and 1.46)

2. By revising § 3.05–20(b) to read as follows:

§ 3.05–20 Providence Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the Providence Marine Inspection Zone and Captain of the Port Zone starts at 41°18.2′ N. latitude, 71°51.6′ W. longitude, and proceeds North along the Rhode Island State line, including the waters of Beach Pond, to the Massachusetts State line; thence East to 42°04.1′ N. latitude, 71°06′ W. longitude; thence Southeast to Manomet Pt. at 41°55′ N. latitude, 70°33′ W. longitude; thence Northeast to 42°08′ N. latitude, 70°11′ W. longitude; thence due East to the Search and Rescue boundary between the United States and Canada at 67° W. longitude.

(5 U.S.C. 552; 49 U.S.C. 108; 49 CFR 1.45 and 1.46)

Dated: June 18, 1984.

R. L. Brown,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 84–17251 Filed 6–27–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 4

[CGD 84–050]

OMB Control Numbers

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Paperwork Reduction Act of 1980 (Pub. L. 96–511; 44 U.S.C. 3501 et seq.), requires, generally, that all regulations which contain recordkeeping or reporting requirements must be approved by the Director, Office of Management and Budget (OMB). Once approved, these regulations are assigned an OMB Control Number. This rule establishes Part 4 of Title 33, Code of Federal Regulations to display OMB Control Numbers which have been assigned to Coast Guard regulations contained therein.

EFFECTIVE DATE: June 28, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, (202) 426–1477.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking and is being made effective in less than 30 days. This rule merely displays existing OMB Control Numbers pertaining to specific Coast Guard Regulations for the public's information. Therefore the Coast Guard has determined that notice and public procedure are unnecessary in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)). Also, delaying the effective date would preclude publication in the revised Code of Federal Regulations. Therefore, it is in the public's best interest and good cause exists to make this rule effective in less than thirty days in accordance with 5 U.S.C. 553(d)(3).

Drafting Information

The drafters of this regulation are Mr. Bruce Novak, Project Manager, Deputy Executive Secretary, Marine Safety Council and LT Dave Shippert, Project Attorney, Office of the Chief Counsel.

Discussion

The purpose of the Paperwork Reduction Act of 1980 (Pub. L. 96–511; 44 U.S.C. 3501 et seq.) is to reduce the burden placed upon the public by recordkeeping and reporting requirements imposed by federal agencies. To achieve this goal, the Act requires that agencies must, generally, obtain approval from the Director, Office of Management and Budget (OMB), before promulgating regulations which impose recordkeeping or reporting requirements. When a recordkeeping or reporting requirement is approved as necessary, an OMB Control Number is assigned to the regulation.

The Coast Guard has imposed certain recordkeeping and reporting requirements through many of the regulations contained in Title 33 of the Code of Federal Regulations (CFR). While, the Coast Guard has continually strived to minimize the burden imposed upon the public, the existing paperwork requirements have been approved as necessary to fulfill the Coast Guard's roles and missions.

The regulations containing essential recordkeeping and reporting requirements have been assigned OMB Control Numbers. The Coast Guard has compiled a list of OMB Control Numbers which pertain to regulations within Title 33 of the CFR. This rule publishes the list in table format. The display of OMB Control Numbers in the CFR will provide assurance to the public that the paperwork requirements have been carefully reviewed and determined to be necessary. Moreover, publication in the CFR is an efficient method of displaying OMB Control Numbers as required by the Paperwork Reduction Act (44 U.S.C. 3512).

This table of 33 CFR cites and relevant OMB Control Numbers is not an exclusive list of all recordkeeping and reporting requirements within the Title. The regulatory process is an ongoing one and changes are frequent in response to current conditions. Therefore, recently assigned OMB Control Numbers may not be included in the table. The Coast Guard also utilizes other methods to display applicable OMB Control Numbers to affected parties and many may have not been included in this compilation. As a service to the public and in an effort to achieve the goals of the Paperwork Reduction Act, the Coast Guard will revise and update the table when additional OMB Control Numbers are assigned and compiled. The OMB Control Number may also be displayed within the regulation to which it pertains.

Regulatory Analysis

This regulation is considered to be non-major under Executive Order 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. This rule merely displays existing OMB Control Numbers for the public's information and imposes no new requirements. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 4

Reporting and recordkeeping requirements.

Accordingly, Title 33, Code of Federal Regulations is revised to add Part 4, to read as follows:

PART 4—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

Sec.
4.01 Purpose.
4.02 Display.

Authority: Pub. L. 96—511 (44 U.S.C. 3501 et seq.), 49 CFR 1.46(b).

§ 4.01 Purpose.

This part collects and displays the control numbers assigned to information collection requirements of the Coast Guard by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, (Pub. L. 96–511, 44 U.S.C. 3501 et seq.). The Coast Guard intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

§ 4.02 Display.

33 CFR part or section where identified and described	Current OMB control number
Part 66	2115 to 0002.
Part 67	2115 to 0038.
Part 89	2115 to 0074.
Part 100	2115 to 0017.
Part 125	2115 to 0039.
Section 126.15(c)	2115 to 0054.
Section 126.15(o)(7) (VII)	2115 to 0507.
Section 126.17	2115 to 0013.
Section 135.215	2115 to 0041.
Part 141	2115 to 0143.
Part 146	2115 to 0003.
Part 151	2115 to 0025 and 0526.
Section 153.303	2115 to 0137.
Section 154.107	2115 to 0097.
Section 154.110	2115 to 0077.
Section 154.300	2115 to 0083 and 0078.
Section 154.300 through 154.325	2115 to 0078.
Section 154.740	2115 to 0077.
Part 157	2115 to 0518 and 0503.
Section 157.23	2115 to 0520.
Section 157.37	2115 to 0520.
Section 157.49	2115 to 0520.
Section 173.23	2115 to 0009.
Section 173.25	2115 to 0009.
Section 173.27	2115 to 0009.
Section 173.71	2115 to 0009.
Section 173.55	2115 to 0010.
Section 179.13	2115 to 0035.
Section 179.15	2115 to 0035.
Section 181.21 through 181.31	2115 to 0055

Dated: June 22, 1984.

A. F. Bridgman, Jr.,

Chief, Regulations and Administrative Law Division.

[FR Doc. 84–17239 Filed 6–27–84; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD3 84–17]

Regatta; Night in Venice, Great Egg Harbor Bay, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Night in Venice Regatta. This Marine Parade will be held on July 14, 1984 on Great Egg Harbor Bay in Ocean City, NJ. This regulation is needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This regulation becomes effective on July 14, 1984 at 4:30 p.m. and terminates the same day at 10:00 p.m.

FOR FURTHER INFORMATION CONTACT: LTJG D.R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: On May 3, 1984 the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (49 FR 18872). Interested persons were requested to submit comments and no comments were received. The regulation is being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LTJG D.R. Cilley, Project Officer, Boating Safety Office and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The annual Night in Venice Boat Parade is a Marine Parade to be held on Great Egg Harbor Bay on July 14, 1984. It is sponsored by the City of Ocean City, New Jersey and is well known to the boaters and residents of this area. Approximately 800 spectator craft are expected to watch the 125 participating vessels in the boat parade. The sponsor is providing in excess of 6 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the marine parade area and will establish special anchorages for what is expected to be a large spectator fleet. The parade route has not been altered from that of previous years and there have not been any problems in the past with the Special Local Regulations issued by the Coast Guard; therefore, this regulation remains virtually unchanged from the one issued last year. The Coast Guard has made certain changes to the navigational aids system in the regulated area. Accordingly, the descriptions of the regulated area and the spectator areas in final rule have been corrected to reflect these changes.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11031; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should easily compensate area merchants for the slight inconvenience of having navigation restricted.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary section 100.35–301 to read as follows:

§ 100.35–301 Night in Venice, Great Egg Harbor Bay, City of Ocean City, NJ

(a) *Regulated Area.* The southwest side of Ship Channel from Buoy C, seaward to Broad Thorofare Buoy No. 17 (Black can) to Ocean City Longport Bridge, thence south to Great Egg Waterway Daybeacon 28.

(b) *Effective Period.* This regulation will be effective from 4:30 p.m. to 10:30 p.m. on July 14, 1984. In case of postponement, the raindate will be July 15, 1984 and this regulation will be in effect for the same time period.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No person or vessel may enter or remain in the regulated area unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(3) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with mariners transiting Great Egg Harbor Bay. The spectator fleet shall be held behind buoys or committee boats provided by the sponsor in the following areas:

(i) Northwestward of a line marked by a patrol vessel in position 39 degrees 17 minutes 45 seconds N latitude; 074 degrees 33 minutes 45 seconds W longitude to the 9th Street Route 52 Bridge in Ocean City, New Jersey, including Great Egg Waterway Red Buoy No. 2, but shall not extend northwestward of the Great Egg Waterway Point Buoy.

(ii) Westward of a line of buoys between Great Egg Waterway Buoys 10 and 14.

(iii) within the area around the shoals and islands in Beach Thorofare between Great Egg Waterway buoys 15 and 21. This area shall at no point be closer than 150 yards from the line of bulkheads and lagoon entrances in Ocean City, New Jersey.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: June 19, 1984.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 84–17241 Filed 6–27–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD3 84–20]

Regatta; Connecticut River Raft Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Connecticut River Raft Race. This event will be held on July 28, 1984 on the Connecticut River between Hurd and Haddam Meadows State Parks. This regulation is needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: This regulation becomes effective on July 28, 1984 at 9:45 a.m. and terminates the same day at 2:00 p.m.

FOR FURTHER INFORMATION CONTACT: LTJG D.R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: On May 10, 1984 the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (49 FR 19847). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of this regulation are LTJG D.R. Cilley, Project Officer, Boating Safety Office and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The annual Connecticut River Raft Race is a raft race event to be held on the Connecticut River between Hurd and Haddam Meadows State Parks on July 28, 1984. It is sponsored by the Connecticut River Raft Race Inc., of Norwich CT. It is the Tenth Annual Connecticut River Raft Race and is well known to the boaters and residents of this area. Nearly 100 self-propelled homemade rafts will cruise down a 2.5 mile section of the Connecticut River. Vessels provided by the State of Connecticut State Police, and the Department of Environmental Protection will work in conjunction with approximately 12 vessels provided by the sponsor to patrol this event. Specific requirements have been imposed upon the sponsor to ensure that all participants wear personal flotation devices throughout the event for their own safety. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement prior to and during this event in this section of the river. A Coast Guard patrol vessel will be located at strategic locations on the river both above and below the regulated area to stop vessel traffic.

Discussion of Comments

One comment was received from the sponsor advising the Coast Guard of a change in the date for this event from July 29 to July 28, 1984.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a large number of spectator craft into the area for the duration of the event. This should easily compensate area merchants for the slight inconvenience of having navigation restricted. Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended by adding a temporary § 100.35–303 to read as follows:

§ 100.35–303 Connecticut River Raft Race.

(a) *Regulated Area:* That section of the Connecticut River between Salmon River (Marker No. 48) and Middle Haddam (Marker No. 72).

(b) *Effective Period:* This regulation will be effective from 9:45 a.m. to 2:00 p.m. on July 28, 1984.

(c) *Special Local Regulations.* (1) The regulated area shall be closed to all vessel traffic in excess of 20 meters (65.6 feet) in length during the effective period. No person or vessel may move within the regulated area unless participating in this event or authorized by the sponsor or patrol personnel.

(2) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(3) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: June 19, 1984.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 84–17243 Filed 6–27–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD2 84–09]

Special Local Regulations: 1984 Indiana Governor's Cup

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 556.5 to 558.3, on the Ohio River.

Marine events will be held between the dates July 4 thru 8, 1984, at Madison, Indiana. These special local regulations are needed to provide for the safety of life and property on navigable waters during the events.

EFFECTIVE DATES: These regulations will be effective on the following dates: July 4, 5, 6, 7, and 8, 1984.

These regulations will also be effective on July 9, should inclement weather cause the races scheduled on July 8, to be cancelled.

All Times Listed Are Local Time

FOR FURTHER INFORMATION CONTACT: CDR. R. B. Bower, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103, (314) 425–5971.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Ohio River between miles 556.5 and 558.3 during the "1984 Indiana Governor's Cup", July 4 thru 8, 1984.

These events will consist of a Fireworks Display on July 4, between the hours of 8:30 p.m. and 9:30 p.m. (local time) and Powerboat Races on July 5, 6, and 7, between the hours of 9:00 a.m. and 7:00 p.m. (local time) each day, and on July 8, between the hours of 9:00 a.m. and 5:15 p.m. (local time), which could pose hazards to navigation in the area. Should inclement weather cancel the races on July 8, they will be rescheduled on July 9, between the hours of 9:00 a.m. and 5:15 p.m. (local time). Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The revised applications and schedules to hold the event were not received until April 24, 1984, and there was insufficient time remaining to publish proposed rules in advance of the event, or to provide for a delayed effective date.

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W. L. Giessman, USCGR, Project Officer, Boating Technical Branch, and LT. R. E. Kilroy USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary section 100.35–0209 to read as follows:

§ 100.35–0209 Ohio River, miles 556.5 through 558.3.

(a) *Regulated Area:* The area between Mile 556.5 and 558.3 Ohio River is designated the regatta area, and may be closed to commercial navigation or mooring during the following dates and (local) times:

July 4, 8:30 p.m. to 9:30 p.m.
July 5, 6, and 7, 9:00 a.m. to 7:00 p.m.
July 8, 9:00 a.m. to 5:15 p.m.
July 9, 9:00 a.m. to 5:15 p.m., should inclement weather prevent the races scheduled on July 8, to be held.

The above times represent a guideline for possible intermittent river closures not to exceed Four (4) hours in duration each. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations:* Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the

event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(1) The Patrol Commander may be reached on Channel 16 (156.8MHZ) when required, by the call sign "Coast Guard Patrol Commander".

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the marine event area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This section 100.35–0209 will be effective on the following dates and times;

July 4, 8:30 p.m. to 9:30 p.m.
July 5, 6, and 7, 9:00 a.m. to 7:00 p.m.
July 8, 9:00 a.m. to 5:15 p.m.
July 9, 9:00 a.m. to 5:15 p.m., should inclement weather prevent the races scheduled on July 8, to be held.
All Time Listed Are Local Time

Authority: 33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b); 33 CFR 100.35.

Dated: June 14, 1984.

S. B. Vaughn,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 84–17255 Filed 6–27–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 110

[CGD7 83–15]

Anchorage Grounds/Special Anchorage Area, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the anchorage regulations for Charleston, SC, harbor. This rule is needed to provide an orderly scheme for vessels to anchor in Charleston harbor and it will make more efficient use of space within the harbor. The existing regulation provides anchorage grounds for general use by small craft and commercial vessels. The new rule provides designated anchorages for commercial vessels and estabishes a special anchorage area for small craft. This will satisfy the demand for commercial anchorage space and will consolidate minimal usage by small craft into a special anchorage area.

EFFECTIVE DATE: July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Lieutenant (J.G.) Harry Craig at (305) 350–5651.

SUPPLEMENTARY INFORMATION: On January 5, 1984 the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (49 FR 649). Interested persons were requested to submit comments and four comments were received.

Drafting Information

The drafters of this notice are Lieutenant (J.G.) Harry Craig, project officer, Seventh Coast Guard District Port Safety Branch, and Lieutenant Commander Kenneth E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

The comments received supported revision of the harbor anchorage areas. The Charleston Branch Pilots' Association and South Carolina State Ports Authority commented that increased vessel size had rendered the present regulations for Charleston harbor obsolete and that the proposed rule would be particularly helpful from a safety viewpoint, for the need to officially recognize the actual practices, and to have the commercial anchorage defined. The National Ocean Survey commented on several minor position corrections in the proposed rule. It was noted that vessels in the Special Anchorage in § 110.173(a)(3)(ii) of the existing regulation and in Commercial Anchorage D in § 110.173(a)(4) of the proposed rule could possibly swing within the 400 foot exclusion area along the eastern waterfront of Charleston. The final rule was changed so that this provision applies only to vessels not using the designated commercial anchorages, therefore not applying to vessels using Commercial Anchorage D. The question was received whether the anchorage in § 110.173(a)(i) was to be retained since it is not mentioned in the proposed rule. The Coast Guard is deleting this anchorage as a part of the revision of § 110.173. The anchorage areas for small craft should be sufficient based on past usage. No request for a public hearing was received and one was not held.

Economic Assessment and Certification

This proposed regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal because it permits local practices to continue, but with existing conditions defined within the federal regulations. Little usage of anchorage grounds by small vessels exists, but there is a large demand for commercial anchorage space. Based upon this assessment it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 110

Anchorages.

PART 110—[AMENDED]

Final Regulation

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations is amended, by revising § 110.173 and adding § 110.72d to read as follows:

§ 110.173 Port of Charleston, SC.

(a) *The anchorage grounds.* (1) *Commercial Anchorage A.* This anchorage is located adjacent to the western edge of Folly Island Channel and southwest of Rebellion Reach and is bounded by the following coordinates:

32°45′34″ N., 79°52′12″ W.; to
32°46′17″ N., 79°53′21″ W.; to
32°45′51″ N., 79°53′23″ W.; to
32°45′34″ N., 79°52′55″ W.; thence back to
32°45′34″ N., 79°52′12″ W.

(2) *Commercial Anchorage B.* This anchorage is located adjacent to the south side of South Channel and bounded by the following coordinates:

32°45′28″ N., 79°53′40″ W.; to
32°45′28″ N., 79°54′46″ W.; to
32°45′19″ N., 79°54′46″ W.; to
32°45′12″ N., 79°54′06″ W.; to
32°45′16″ N., 79°53′40″ W.; thence back to
32°45′28″ N., 79°53′40″ W.

(3) *Commercial Anchorage C.* This anchorage is located 1600 yards, 118° true from St. Michaels Church Spire and has a diameter of 500 yards. Vessels

using this anchorage must anchor in the center.

(4) *Commercial Anchorage D.* This anchorage is located 51°30′ true, 1375 yards from St. Michaels Church Spire and has a diameter of 1400 feet. The use of this anchorage is limited to loaded vessels for a period of not more than 24 hours.

(b) *The regulations.* (1) Except in cases of great emergency, no vessel shall be anchored in the main ship channels as defined by broken lines marking their boundaries on NOAA Chart 11524. Vessels must be anchored in such a way as not to interfere with the free navigation of channels in the port, including Cooper, Ashley, Wando Rivers, and Town Creek, nor to obstruct the approach to any pier or entrance to any slip, nor to impede the movement of any vessel or craft.

(2) Vessels using the anchorages opposite the eastern waterfront of Charleston shall place their anchors as near as possible in the center of the anchorage. Vessels not using a designated commercial anchorage shall not place their anchors within the main ship channels, nor shall be so anchored as to swing within 400 feet of any wharf or pier on the eastern waterfront of Charleston. Vessels may be so anchored as to swing into the main ship channels only if they are so placed with reference to the customary winds, tides, and currents of the harbor, as to swing only during slack water, and that during this period there shall remain in the waters adjacent to the channel an area of sufficient depth as to permit the safe passage of loaded vessels.

(3) No vessel may anchor within the designated anchorages for more than 72 hours without the prior approval of the Captain of the Port.

(4) No vessel may anchor unless it maintains a bridge watch, guards and answers Channel 16 FM. and maintains an accurate position plot.

(5) If any anchored vessel is so close to another that a collision is probable, each vessel must communicate with the other vessel and the Captain of the Port on Channel 16 FM and shall act to eliminate the close proximity situation.

(6) No vessel may anchor unless it maintains the capability to get underway within 4 hours.

(7) No vessel may anchor in a "dead ship" status (propulsion or control unavailable for normal operations) without the prior approval of the Captain of the Port.

(8) Dragging of anchors in or across main ship channels and cable areas is prohibited.

(9) Vessels which, through force of great emergency, are anchored contrary to the foregoing regulations in this section shall be shifted to new berths in accordance with such regulations at the earliest opportunity.

(10) A vessel, upon notification from the Captain of the Port to shift its position in anchorage grounds must get underway at once or signal for a tug, and must change position as directed with reasonable promptness.

(11) No vessel may conduct lightering operations in an anchorage without permission from the Captain of the Port.

(12) When the use of an anchorage is required by naval vessels, the vessels anchored therein shall move when the Captain of the Port directs them.

(13) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from the penalties of law for obstructing navigation, or for obstructing or interfering with range lights, or for not complying with the navigation laws in regard to lights, fog signals, etc.

§ 110.72d Ashley River, Charleston, SC.

The waters lying within an area bounded by the outer end of Municipal Marina bulkhead latitude 32°46′35″ N., longitude 79°57′05″ W.; thence 129° true to latitude 32°46′30″ N., longitude 79°56′57″ W.; thence 090° true to the shoreline; thence northwest along the shoreline to the shore end of City Marina bulkhead.

Authority: 33 U.S.C. 471, 2030, 2035, 2071; 49 U.S.C. 1655(g)(1)(B); 49 CFR 1.46(c)(1); and 33 CFR 1.05–1(g).

Dated: June 11, 1984.

A. D. Breed,

Acting Commander, Seventh Coast Guard District.

[FR Doc. 84-17244 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-84-20]

Drawbridge Operation Regulations: Steinhatchee River, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the State Road 358 drawbridge, mile 2.2, because the bridge has been replaced by a fixed bridge. Notice and public procedure have been omitted from this action due to removal of the bridge concerned.

EFFECTIVE DATE: June 28, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, telephone (305) 350–4108.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a swingbridge that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant effect on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by revoking Section 117.331.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: June 11, 1984.

A. D. Breed,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 84-17252 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Memphis, TN, Regulation 84-02]

Safety Zone Regulations; Arkansas River Mi. 287 to Mi. 293

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Arkansas River between Mi. 287 to Mi. 293. The zone is needed due to ribbon bridge exercise being conducted by the Missouri Army National Guard. Certain safety precautions are required to reduce and mitigate the possibility of human injury or death, as well as the possibilities of damage to, or loss of property, and to protect the Marine environment. Entry into this zone is prohibited unless authorized by the Captain of the Port Memphis, TN.

EFFECTIVE DATES: This regulation becomes effective from 1200 to 1800, 10 July 1984, and 0500 to 1300 on 12, 14, 16 July 1984.

FOR FURTHER INFORMATION CONTACT: Commander R. J. O'Pezio, Captain of the Port, Memphis, TN, Marine Safety

Office, 100 N. Main Street, Suite 1134, Memphis, TN 38103. Telephone: (901) 521–3941.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential hazard to the river involved.

Drafting Information

The drafters of this regulation is ENS Scott J. Ferguson, project officer for the captain of the port.

Discussion of Regulation

The events requiring this regulation involve ribbon bridge construction and river crossing operations during a field training exercise being conducted by the Missouri Army National Guard. Subject regulation is felt necessary to enforce the protection of life and property in the area during the event.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new section to read as follows:

§ 165.T0211 Safety zone: Arkansas River Mi. 287 to Mi. 293.

(a) *Location.* The following area is a safety zone: All the waters of the Arkansas River from Mi. 287 to Mi. 293.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited, unless authorized by the captain of the Port, Memphis, TN or his representative. Coast Guard authority may be contacted for instructions by telephoning the Captain of the Port, Memphis, TN at (901) 521–3941.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: May 4, 1984.

R. J. O'Pezio,

Captain of the Port, Memphis, TN.

[FR Doc. 84–17246 Filed 6–27–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Memphis, TN Regulation 84–03]

Safety Zone Regulations; Mississippi River Mi. 734–Mi. 738

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Mississippi River between Mi 734 to Mi 738. The zone is needed due to a fireworks display in conjunction with the WMC, Memphis Arts Council Star Spangled Celebration. Certain safety precautions are required to reduce and mitigate the possibility of human injury or death, as well as the possibilities of damage to, or loss of property, and to protect the Marine environment. Entry into this zone is prohibited unless authorized by the Captain of the Port, Memphis, TN.

EFFECTIVE DATES: This regulation becomes effective on 2030 (CDT) on 4 July 1984

It terminates on 2200 (CDT) 4 July 1984.

FOR FURTHER INFORMATION CONTACT: Commander R. J. O'Pezio, Captain of the Port, Memphis, TN, Marine Safety Office, 100 No. Main St., Suite 1134, Memphis, TN 38103. Telephone: (901) 521–3941.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential hazard to the river involved.

Drafting Information

The drafters of this regulation are ENS Scott J. Ferguson, project officer for the captain of the port.

Discussion of Regulation

The events requiring this regulation is a fireworks display on the Memphis waterfront. This event is in conjunction with the WMC, Memphis Arts Council Star Spangled Celebration. Subject regulations is felt necessary to enforce the protection of life and property in the area during the event.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new section to read as follows:

§ 165.T 0210 Safety Zone: Mississippi River Mi. 734 to Mi. 738.

(a) *Location.* The following area is a safety zone: All the waters of the Mississippi River from Mi 734 to Mi 738 including that between the Hernando Desoto Bridge and the Memphis-Arkansas Highway Bridge.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited, unless authorized by the Captain of the Port, Memphis, TN, or his representative. Coast Guard authority may be contacted for instructions by telephoning the Captain of the Port, Memphis, TN, at (901) 521–3941.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: May 4, 1984.

R. J. O'Pezio,

Captain of the Port.

[FR Doc. 84–17245 Filed 6–27–84; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD3–84–39]

Safety Zone Regulations; New York, East River

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in New York Harbor, East River. This zone is needed to protect vessels from possible safety hazards associated with the fireworks display in the East River. Entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation is effective at 8:00 p.m. e.d.s.t. July 4, 1984 and terminates at 10:00 p.m. e.d.s.t. July 4, 1984.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, New York, (212)–668–7917.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication.

Publishing and NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are Lieutenant G. W. Chappell, Project Officer for the Captain of the Port, and Ms. M. A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display in the East River.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding § 165.T303 to read as follows:

§ 165.T303 Safety Zone: New York, New York Harbor, East River.

(a) *Location.* The following area is a Safety Zone: the waters of the East River, New York, New York from the northern end of the Consolidated Edison Pier at 15th Street Manhattan, thence easterly on a course of 087 degrees true to the northern end of the Noble Street Pier Brooklyn, thence north along the Brooklyn shoreline including Newtown Creek to the Kosciusko Bridge, thence along the Queens shoreline to the Hell Gate Light at Hallets Point (LL# 1275), thence on a westerly course of 261 degrees true to the Fireboat Station Pier at Horns Hook Manhattan, thence south along the Manhattan shoreline to the starting point.

(b) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 160.5)

Dated: June 13, 1984.

J. L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 84-17257 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD3-84-38]

Safety Zone Regulations; New York, New Jersey, Upper New York Harbor

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Upper New York Harbor. This zone is needed to protect vessels from the possible dangers and hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation is effective from 8:00 p.m. e.d.s.t. to 10:00 p.m. e.d.s.t. 04 July 1984.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, New York, (212)-668-7917.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are Lieutenant G.W. Chappell, Project Officer for the Captain of the Port, and Ms. M.A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display at Liberty State Park, Jesey City, New Jersey.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding § 165.T302 to read as follows:

§ 165.T302 Safety Zone: New York, New Jersey, Upper New York Harbor.

(a) *Location.* The following area is a Safety Zone: starting from the southeastern corner of Pier seven at Liberty State Park, Jersey City, New Jersey thence southeast on a course of 106 degrees true to position 40°41'12" N 74°02'18" W thence northeast on a course of 027 degrees true to position 40° 42'08" N 74°01'42" W thence northwest on a course of 312 degrees true to the tower on the Morris Canal Pier thence south along the Jersey City shoreline to the starting point at Pier seven.

(b) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 160.5)

Dated: June 13, 1984.

J. L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 84-17256 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This rule makes technical changes in the present Forest Service administrative appeal procedures to make explicit that procedural decisions cannot be appealed to an administrative level higher than that available for the initial substantive decision from which the procedural matter arises. In short, a procedural decision may be appealed only if another level is available.

The change is necessary to avoid further misinterpretation of the present rule, that procedural decisions are initial decisions. This rule also corrects a typographic error and a minor omission made when the rule was published in the **Federal Register.**

EFFECTIVE DATE: July 30, 1984.

ADDRESS: Comments or suggestions on this final rule may be addressed to Chief (1570), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Phillip Haug, Staff Assistant, National Forest System, (703) 235-1797.

SUPPLEMENTARY INFORMATION:

Background

Paragraph (o)(4) of 36 CFR 211.18 states that "Levels of appeal for decisions on procedural matters cannot

exceed the levels available for the original decision." This has been misinterpreted as meaning that procedural matters are initial decisions and therefore subject to two levels of review. As explained in the Analysis of Public Comment which accompanied the final rule (48 FR 13424), the intent was to provide, if available, no more than one level of appeal for decisions on requests for stay or dismissal. This intent was first described in a Discussion Paper made available for public comment on September 23, 1981, at 46 FR 46969. Subsequently, the intent to limit appeals of procedural decisions was addressed in the Supplementary Information section preceding the proposed rule (47 FR 36564) and was codified in the final rule as paragraph (o)(4).

Streamlining the appeal process was one of the purposes for revising the Department's policies and procedures by which individuals or groups may appeal decisions made by Forest Service officials concerning management of the National Forest System. Because the present language of paragraph (o)(4) has proven ambiguous, the Forest Service hereby revises the text to provide precise language that clarifies the level of appeal available for procedural decisions.

Therefore, in accordance with expections to rulemaking procedures in 5 U.S.C. 553 and Department of Agriculture policy (36 FR 13804), it has been determined that advance notice and request for comments are unnecessary.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12291, and it has been determined that this final rule is not a major rule and does not require a regulatory impact analysis. The final rule is a technical amendment and will have no effect on the Nation's economy or substantial numbers of individuals or businesses.

Small Entity Impact

The Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore a regulatory flexibility analysis is not required.

Environmental Impact

The final rule does not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Burden

The final rule does not contain an information collection or recordkeeping requirement as defined in the Paperwork Reduction Act of 1980.

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, National forests.

Therefore, for the reasons set forth above, Subpart B—Appeal of Decisions Concerning the National Forest System, of Part 211—Administration of Title 36 of the Code of Federal Regulations is amended as follows:

PART 211—ADMINISTRATION

Subpart B—Appeal of Decisions Concerning the National Forest System

1. The authority citation for Part 211, Subpart B, is as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

2. Section 211.18 is amended by revising paragraphs (f)(1), (f)(6), (h)(2), (i)(3), and (o)(4) to read as follows:

§ 211.18 Appeal of decisions of forest officers.

* * * * *

(f) *Levels of Appeal.* (1) The available levels of appeal are in sequence according to the National Forest System line officer relationship. A decision made within delegated authority by any officer who serves as staff to a line officer listed below is considered a decision made by the line officer. A procedural decision cannot be appealed to a level higher than that available for the initial substantive decision from which the procedural matter arises.

* * * * *

(6) Decisions at the final level of review constitute the final administrative determination of the Department of Agriculture.

* * * * *

(h) * * *

(2) Decisions to grant or to deny stay requests are appealable, if a level is available as set forth in paragraph (f) of this section.

(i) * * *

(3) Dismissals are appealable, if a level is available as set forth in paragraph (f) of this section.

* * * * *

(o) * * *

(4) Appeal of decisions on procedural matters cannot exceed the highest level available for the initial substantive decision appealed.

* * * * *

Dated: June 8, 1984.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 84-17210 Filed 6-27-84; 8:45 am]

BILLING CODE 3410-11-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

[Docket No. FEMA-FIA]

National Flood Insurance Program; Standard Flood Insurance Policy Interpretations

AGENCY: Federal Insurance Administration (FIA) Federal Emergency Management Agency (FEMA).

ACTION: Interpretive rule.

SUMMARY: The Federal Insurance Administrator, pursuant to 44 CFR 61.14, is publishing Appendix C to the regulations in Part 61, interpretations, which may be issued from time to time by the Administrator, as to the scope of coverage afforded by the Standard Flood Insurance Policy. This document sets out an interpretive rule on coverage for expenses incurred in constructing dikes or installing "rip-rap":

DATE: Effective June 28, 1984.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 C Street, S.W. Washington, D.C. 20472, telephone number (202) 287-0740.

SUPPLEMENTARY INFORMATION: As this is an interpretive rule, notice and public comments are not required and the rule can be made effective immediately.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, Part 61 of Subchapter B of Chapter I of Title 44 is amended by adding Appendix C as follows:

PART 61—[AMENDED]

* * * * *

Appendix C—Interpretative Rulings

[1984-1]

Coverage for expenses incurred in constructing dikes or installing "rip-rap."

The Dwelling Form of the Standard Flood Insurance Policy (SFIP) has two provisions which require an insured to mitigate damage to the property. Article III.B.1 requires the insured to use reasonably accessible means to save the insured property from loss

resulting from a flood and to preserve it after a flood, while Article VIII.I.2 requires the insured, should a flood loss occur, to protect the insured property from further damage.

Recovery for expenses incurred under these provisions is available only under certain conditions. Article III.B.1 only provides coverage for expenses incurred "after a flood" and further provides such coverage at the "sole option" of FEMA. Article VIII.H provides coverage for expenses incurred under Article VIII.I.2 only for expenses incurred "following a loss by flood." Thus, both Articles III.B.1 and Article VIII.H and I.2 limit coverage for mitigation expenses to expenses incurred after a flood to mitigate damages from that flood, thereby precluding any coverage for the construction of dikes or the installation of "rip-rap." Article VIII.H has other conditions that must be met before there is coverage for expenses incurred under Article VIII.I.2. The expenses must be for repairs that are: (1) "Reasonable," (2) made to property "damaged by flood," and (3) made to "insured property." In regard to the third of these three additional conditions, it should be noted that neither the construction of dikes nor the installation of "rip-rap" could constitute repairs to insured property, as land is not insurable under the SFIP.

Finally, any possibility that expenses for the construction of dikes or the installation of "rip-rap" might be considered "Direct Physical Loss by or From Flood" is ruled out by the existence of the two provisions regarding coverage for mitigation expenses already discussed (Article III.B.1 and Article VIII.H and I.2). Having expressly provided the conditions under which mitigation expenses are covered, the policy limits coverage to exactly those conditions.

(National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128; Reorganization Plan No. 3 of 1978 (43 FR 41934); E.O. 12127, dated March 31, 1979 (44 FR 19367); E.O. 11988, dated May 24, 1977, and 44 CFR Part 9; Delegation of Authority of Federal Insurance Administrator, 44 CFR Part 2)

Issued at: Washington, D.C., May 11, 1984.

Jeffrey S. Bragg,

Federal Insurance Administrator.

[FR Doc. 84–17050 Filed 6–27–84; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 64

[Docket No. FEMA 6609]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 287–0222, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Office that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subject in 44 CFR Part 64

Flood Insurance, Flood Plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table

PART 64—[AMENDED]

§ 64.6 List of Eligible Communities.

* * * * *

State and county	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Connecticut: New Haven	Madison, town of	090079B	July 19, 1973, emergency; Sept. 15, 1978, regular; July 5, 1984, suspension.	May 31, 1974 and Sept. 15, 1978	July 5, 1984
Maine: York	Old Orchard Beach, town of	230153B	Aug. 23, 1974, emergency; July 5, 1984, regular; July 5, 1984, suspension.	Aug. 23, 1974 and Nov. 19, 1976	Do.
Massachusetts:					
Middlesex	Burlington, town of	250185B	June 2, 1976, emergency; July 5, 1984, regular; July 5, 1984, suspension.	Aug. 9, 1977	Do.
Hampden	Holland, town of	250141B	July 18, 1975, emergency; July 5, 1984, regular; July 5, 1984, suspension.	June 7, 1974 and Apr. 8, 1977	Do.
Worcester	Milford, town of	250317B	Aug. 11, 1975, emergency; July 5, 1984, regular; July 5, 1984, suspension.	July 26, 1974 and Dec. 17, 1976	Do.
Region II					
New Jersey: Monmouth	Atlantic Highlands, borough of	340286C	June 19, 1975, emergency; Sept. 3, 1981, regular; July 5, 1984, suspension.	Dec. 21, 1975, Feb. 20, 1976, and Aug. 3, 1981.	Do.
New York:					
Dutches	Clinton, town of	361334C	Mar. 1, 1976, emergency; July 5, 1984, regular; July 5, 1984, suspension.	Dec. 20, 1974, Aug. 20, 1976, and July 1, 1977.	Do.
Ulster	Esopus, town of	360855B	Oct. 9, 1974, emergency; July 5, 1984, regular; July 5, 1984, suspension.	May 31, 1974 and Jan. 9, 1976	Do.
Region III					
Pennsylvania: Bucks	West Rockhill, township of	421123B	June 1, 1979, emergency; July 5, 1984, regular; July 5, 1984, suspension.	Sept. 13, 1974	Do.
West Virginia: Kanawha	Handley, town of	540279A	Dec. 3, 1975, emergency; July 5, 1984, regular; July 5, 1984, suspension.	Jan. 17, 1975	Do.
Region V					
Wisconsin: Dodge	Beaver Dam, city of	550095D	May 16, 1975, emergency; Apr. 3, 1984, regular; July 5, 1984, suspension.	Dec 17, 1973, Oct. 10, 1975, Sept. 24, 1976, and Jan. 27, 1978.	Do.
Illionis: Lawrence	Birds, village of	170410A	Nov. 20, 1975, emergency; July 5, 1984, regular; July 5, 1984, suspension.	Dec. 27, 1974	Do.
Region VI					
Louisiana:					
Jefferson Parish	Harahan, city of	225200C	Apr. 19, 1973, emergency; June 15, 1973, regular; July 5, 1984, suspension.	June 15, 1973, July 1, 1974, and July 11, 1975.	Do.
Calcasieu Parish	Lake Charles, city of	220040C	Feb. 9, 1973, emergency; Oct. 16, 1979, regular; July 5, 1984, suspension.	Nov. 1, 1974, Feb. 18, 1977, and Oct. 16, 1979.	Do.
Region VII					
Missouri: Saline	Miami, city of	290404A	Nov. 3, 1975, emergency; July 5, 1984, suspension.	Feb. 6, 1976	Do.
Region IX					
California:					
San Mateo	Unincorporated areas	060311B	Aug. 27, 1975, emergency; July 5, 1984, regular; July 5, 1984, suspension.	Nov. 1, 1974 and Apr. 15, 1977	Do.
Contra Costa	Concord, city of	065022B	July 24, 1970, emergency; July 5, 1984, regular; July 5, 1984, suspension.	June 28, 1974 and Apr. 9, 1976	Do.
Solano	Fairfield, city of	060370B	Jan. 17, 1975, emergency; July 5, 1984, regular; July 5, 1984, suspension.	Oct. 18, 1974 and Nov. 28, 1975	Do.
Region X					
Washington: King	Snoqualmie, town of	530090A	July 7, 1974, emergency; July 5, 1984 regular; July 5, 1984, suspension.	Dec. 21, 1976	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Adminstrator, Federal Insurance Administrational)

Issued: June 22, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84–17211 Filed 6–27–84; 8:45 am]

BILLING CODE 6718–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 42

[CGD 79–023]

Subdivision and Stability Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an amendment in final regulations which transfer the subdivision and stability regulations for merchant vessels to a new Subchapter S. The regulations were published on November 4, 1983 (48 FR 50996).

FOR FURTHER INFORMATION CONTACT: Mr. Frank Perrini, (202) 426–2606. In FR Doc. 83–29910 at page 51006 of the **Federal Register** of November 4, 1983, paragraph 11 of the amendments is corrected to read as follows:

11. In § 42.20–3, by revising paragraph (b) to read as follows:

§ 42.20–3 Freeboard assignment: Type "A" vessels.

* * * * *

(b) A vessel that meets the requirements of Subpart D, F, or G of Part 172 of this Chapter is considered by the Coast Guard as meeting the flooding standard referenced in paragraph (a) of this section.

Dated: June 25, 1984.

L. N. Hein,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 84–17250 Filed 6–27–84; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83–15; RM–4061]

Signal Coverage Requirements Over Community Business and Factory Areas; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction and clarification.

SUMMARY: On June 1, the Commission released a *Report and Order* in MM Docket No. 83–15, concerning Signal Coverage Requirements (June 6, 1984; 49 FR 23345). Appendix A of that *Report and Order* inadvertently contained asterisks between subparagraphs (b)(2) and (c) of § 73.188 of the Commission's rules. This *Erratum* deletes those asterisks. Also, this *Erratum* clarifies licensing obligations for permittees of directional AM facilities. In the *Report and Order*, the Commission relieved permittees of directional AM facilities from taking *certain* field strength measurements in connection with their covering license application—specifically § 73.151(a)(3) of the Commission's rules. Permittees of directional AM facilities are still required to take field strength measurements in accordance with Sections 73.151 (a)(1), (a)(2) and (a)(4).

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 632–6302.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–17114 Filed 6–27–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1]

[OST Docket No. 1; Amdt. 1–195]

Organization and Delegation of Powers and Duties; Authority to Classify Information

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates to officials of the Maritime Administration authority to classify information in the interest of national security; it also incorporates terminology used in the current Executive Order on classification and reflects organizational changes within DOT.

DATE: The effective date of this amendment is June 28, 1984.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–50, Department of Transportation, Washington, DC, (202) 426–4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

The transfer of the Maritime Administration (MARAD) from the Department of Commerce to the Department of Transportation (August 3, 1981; Pub. L. 97–31) requires amendment of DOT's delegations to include certain officials of MARAD among those authorized to classify national security information. Furthermore, the currently-applicable Executive Order on classification of national security information is Executive Order 12356 (47 FR 14874; April 6, 1982). It uses different terminology from its predecessor, Executive Order 12065 (43 FR 28949; July 3, 1978). This amendment makes those changes in terminology within DOT's delegations. Finally, the titles of certain positions delegated authority to classify national security information have changed; those changes are made by this amendment.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies); Organization and functions (government agencies); Transportation Department.

PART 1—[AMENDED]

In consideration of the foregoing, § 1.65 of Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

§ 1.65 Authority to classify information.

(a) E.O. 12356 confers upon the Secretary of Transportation authority to originally classify information as Secret and Confidential with further authorization to delegate this authority. (No official of the Department of Transportation has authority to originally classify information as Top Secret.)

(b) The following delegations of this authority, which may not be redelegated, are hereby made:

(1) *Office of the Secretary (OST).* Chief, Security Staff.

(2) *U.S. Coast Guard (USCG).* The Commandant; Chief, Office of Operations.

(3) *Federal Aviation Adminstration (FAA).* The Administrator; Director of Civil Aviation Security.

(4) *Maritime Administration (MARAD).* The Administrator; Associate Administrator for Policy and Administration (Confidential only); Director, Office of International Activities (Confidential only); Chief, Division of National Security Plans (Confidential only).

(c) Authority of originally classify information as Secret or Confidential is delegated to the following officials to become effective automatically upon declaration of civil readiness level Initial Alert or the comparable military readiness level. If invoked, this authority is automatically terminated when both civil and military levels return to the level of Communications Watch or comparable readiness state.

(1) *OST.* Deputy Secretary; Assistant Secretary for Policy and International Affairs; Assistant Secretary for Administration.

(2) *USCG.* Vice Commandant; Chief of Staff; Commander, Atlantic Area; Commander, Pacific Area; Commanders, Coast Guard Districts; Commander, Coast Guard Activities, Europe; Chief, Intelligence and Security Division.

(3) *FAA.* Deputy Administrator; Directors, FAA Regions and Centers.

(4) *MARAD.* Deputy Administrator; Region Directors; Heads of ALFA, BRAVO, and CHARLIE Emergency Teams when activated.

(d) Although the delegations of authority are expressed above in terms of positions, the authority is personal and is vested only in the individual occupying the position. The authority may not be exercised "by direction of" a designated official. The formal appointment or assignment of an individual to one of the identified

positions, a designation in writing of an individual to act in the absence of one of these officials, or the exercise by an individual of the powers of one of these officials by operation of law, however, conveys the authority to originally classify information.

(e) Previous delegations of authority to Department of Transportation officials to originally classify information as Secret and Confidential are hereby rescinded.

Authority: 49 U.S.C. 322.

Issued in Washington, DC, on June 7, 1984.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 84-17219 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-62-M

Proposed Rules

Federal Register
Vol. 49, No. 126
Thursday, June 28, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 9007 and 9038

[Notice 1984-10]

Repayments by Publicly Financed Presidential Candidates

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on proposed rules revising the formula used to determine certain kinds of repayments by publicly-financed Presidential candidates. The proposed regulations would provide for a pro-rata, rather than 100%, repayment of funds used for non-qualified campaign expenses, in accordance with the recent decision by the U.S. Court of Appeals for the D.C. Circuit in *Kennedy for President Committee* v. *Federal Election Commission*, No. 83-1521 (D.C. Cir. May 15, 1984) and *Reagan for President Committee* v. *Federal Election Commission*, No. 83-1666 (D.C. Cir. May 15, 1984). It is intended that the new formula, if ultimately promulgated as a final rule, would be applied to publicly financed Presidential candidates in the 1984 elections. Further information on the proposed revisions, and additional issues on which the Commission seeks comment, is found in the **SUPPLEMENTARY INFORMATION** which follows:

DATE: Comments must be received on or before July 30, 1984 to ensure consideration.

ADDRESSES: Comments should be sent to: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street NW., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On May 15, 1984, the U.S. Court of Appeals for the D.C. Circuit held that repayments by publicly-financed Presidential primary candidates for non-qualified campaign expenses should be "limited to the amount of federal funds that the Commission reasonably determines were spent" by the candidates for such purposes. *Kennedy for President Committee et al.* v. *Federal Election Commission*, No. 83-1521 (D.C. Cir. May 15, 1984); *Reagan for President Committee* v. *Federal Election Commission*, No. 83-1666, slip op. at 2 (D.C. Cir. May 15, 1984). In accordance with the court's order, the Commission seeks comment on its proposed alternative to the current regulations, which require repayment of the total amount spent on non-qualified campaign expenses. *See*, 11 CFR 9007.2(b)(2) and 9038.2(b)(2). The proposed regulations would implement a pro-rata formula based on the proportion of federal funds to total funds received by the candidate. The amount of any repayment sought would then be a similar proportion of the total amount spent on non-qualified campaign expenses. In the case of Presidential primary candidates, the proportion of federal funds certified would be determined as of the candidate's date of ineligibility. In the general election, a pro-rata formula would only be used for major party candidates who had received private contributions to make up a deficiency in the Fund and for minor or new party candidates receiving partial Federal funding. The ratio for the general election would be determined as of December 31 of the Presidential election year.

The Commission seeks comments on the proposed formula and welcomes suggestions for alternative formulas that would not pose undue administrative burdens on the candidates or the Commission in their application. The Commission notes, however, that the court's opinion does not require a mathematically precise determination of the amount of Federal funds spent improperly but only a reasonable determination of the amount of federal matching funds so used. *Kennedy* slip op. at 7.

In addition, the proposed formula would essentially adopt the pro-rata approach found in 26 U.S.C. 9038(b)(3), concerning repayment of surplus funds. As section 9038(b)(2) does not contain a similar formula, the Commission would welcome comments on whether this pro-rata approach is within the agency's statutory authority.

The Commission also seeks comments on what effect the court's decision may have on the relationship between the current enforcement and repayment processes. While the court has disapproved the Commission's practice of seeking 100% repayments, the opinion does raise the question of initiating enforcement proceedings against federally funded candidates for matters formerly resolved solely through the repayment process. *Id.* at 14.

A number of procedural issues must be considered in the event repayment and enforcement proceedings are conducted concerning the same or similar sets of circumstances. Several of these issues involve the question of timing. For example, should repayment and enforcement proceedings be conducted concurrently or sequentially? Under either alternative, how should the Commission balance the confidentiality requirements of the Act with the need to conclude the audit and repayment process as quickly as possible and place that information on the public record? *Compare*, 2 U.S.C. 437g(a)(12)(A) with 26 U.S.C. 9039(a) and 9009(a). The Commission seeks comments on the advisability of conducting enforcement proceedings in appropriate cases, what issues might be raised by that practice, and how the competing requirements of the Act might be reconciled while enabling the Commission to carry out its statutory mandates in a timely fashion and to encourage federally funded candidates to adhere to the Act's requirements.

Finally, as a result of these decisions, the Commission may have to re-examine other aspects of its administration of public financing. The Commission seeks comments on whether these decisions have any impact on other areas of public financing that have been developed through the regulatory and administrative process, such as permitting candidates to use matching funds for winding down costs and certifying additional funds after a candidate's date of ineligibility based on a statement of net outstanding campaign obligations.

Authority: 26 U.S.C. 9007, 9038.

List of Subjects in 11 CFR Parts 9007 and 9038

Campaign funds, Administrative practice and procedure, Political candidates.

PART 9007—[AMENDED]

It is proposed to amend 11 CFR Part 9007 by revising §9007.2(b)(2) (i),(ii)(B), (C) and (D); and adding (b)(2)(iii) as follows:

§ 9007.2 Repayments.

* * * * *

(b) * * *

(2) * * *

(i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than those described in 11 CFR 9007.2 (b)(2)(i) (A) through (C), it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

(ii) * * *

* * * * *

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s), or agent(s) from the Fund were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund was expended in violation of State of Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund was used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.

(iii) In case of a candidate who has received contributions pursuant to 11 CFR 9003.3(b) or (c), the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total amount of deposits of contributions and federal funds, as of December 31 of the Presidential election year.

* * * * *

PART 9038—[AMENDED]

It is proposed to amend 11 CFR Part 9038 by revising §9038.2 (b) (i) adding (b)(2) (iii) and revising (b) (3) as follows:

§ 9038.2 Repayments.

* * * * *

(b) * * *

(2) * * *

(i) The Commission may determine that amounts of any payments made to a candidate from the matching payment account were used for purposes other than those set forth in 11 CFR 9038.2 (b)(2)(i)(A)–(C):

* * * * *

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

(3) *Failure to Provide Adequate Documentation.* The Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 CFR 9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 CFR 9038.2(b)(2)(iii).

* * * * *

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act].

I certify that the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certication is that no small entities are affected by the proposed rules.

Dated: June 22, 1984.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 84–17102 Filed 6–27–84; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Docket No. R–0522]

Federal Reserve Bank Check Collection System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board of Governors is requesting public comment on an amendment to Regulation J that would strengthen the current requirement that payor depository institutions provide notice when they are returning unpaid large dollar checks presented through the Federal Reserve. The amendment would require the payor institution to provide timely notice to the depository institution at which the check was originally deposited that the check is being returned unpaid. The Federal Reserve Banks would enhance the notification service they currently provide to assist payor institutions in meeting this requirement, and also would make the service available to depository institutions for checks collected outside the Federal Reserve.

DATE: Comments must be received by August 31, 1984.

ADDRESS: Comments, which should refer to Docket No. R–0522, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551, or delivered to Room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected at Room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding the Availability of Information, 12 CFR 261.6(a).

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202–452–2231), or Bill Brown, Manager (202–452–3760), Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202–452–3625), Joseph R. Alexander, Attorney (202–452–2489), or Robert G. Ballen, Attorney (202–452–3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

Significant attention has been focused in recent months on the issue of delayed availability, that is, the practice of some depository institutions to delay a depositor's ability to withdraw funds deposited by check for extended periods of time. Although the risk of loss to depository institutions associated with returned items is relatively small in the aggregate, many institutions point to the potential losses they could incur on particular returned checks as the reason for their delayed availability policies. The Board, in conjunction with other federal banking regulators, recently urged institutions to review their policies on making funds available to customers and to consider taking into account factors that indicate the degree to which a given situation presents a risk of loss. (See joint release of Federal Financial Institutions Regulators, March 22, 1984.) These factors include the length of time the account has been maintained, the past experience with the depositor, the identity of the drawer, the type of check, and the location of the payor institution. The Board recognizes that many institutions may be unwilling to modify their hold policies unless

some effort is made to reduce what these institutions believe is their exposure to potential losses as a result of returned checks.

The procedure for returning unpaid checks is cumbersome, labor intensive and time consuming. As a rule, depository institutions return unpaid checks to their immediate endorsers rather than directly to the institution at which the item was first deposited. This practice exists because of several factors, including legal obstacles to direct returns in five jurisdictions [1] and operational considerations such as lack of transportation and settlement arrangements between the institution returning the check and the institution of first deposit.

The Reserve Banks have been considering possible enhancements to the return item process as a part of the Federal Reserve's responsibility for improving the efficiency of the payments mechanism. For example, the Dallas Reserve Bank has been experimenting with enhancements to its return item service that include returning unpaid checks directly to institutions of first deposit that are located in the Dallas Reserve Bank's District. It is anticipated that it will take some time to complete the analysis of the ongoing Dallas experiment and to determine whether it would be cost effective to offer the direct return service in other Districts. At this juncture, modification to the Federal Reserve's current requirement that payor institutions provide notification when they return unpaid large dollar checks appears to be an effective way of reducing risk to institutions of first deposit.

Current Requirement

Federal Reserve Bank operating circulars currently require a payor institution returning a check in the amount of $2500 or more that has been presented to it by a Reserve Bank to provide a notification of nonpayment to the presenting institution, which is generally the Reserve Bank. When the Reserve Bank receives a notification from a payor institution, the Reserve Bank initiates a notification to the institution that sent the check to the Reserve Bank for collection.

The current procedure is not entirely satisfactory for several reasons. There is no requirment that the payor institution notify the institution of first deposit directly that the check is being returned, and there are no time periods specified for providing a notification. As a result, often the returned check gets to the institution of first deposit at the same time as or before the notification. In addition, Regulation J and the operating circulars do not specify the liability an institution incurs if it fails to provide a notification. As a result, the Board understands that notices are given for fewer than half of the large dollar checks returned through the Federal Reserve. Finally, even when a notification is provided, the information contained in the notification is often not sufficiently helpful to the institution of first deposit.

Proposed Notification Requirement

The Board believes that an enhanced notification of nonpayment requirement can provide the institution of first deposit with meaningful information about the check that is being returned unpaid. This information would enable the institution of first deposit that receives such a notice to take steps to protect itself from potential loss. (Such measures may include extending a hold it may have placed on the account or placing a hold on other funds of the depositor.)

The information that would be required to be provided in the notification would be specified. The information could include: (1) The name of the payor institution, (2) the name of the payee, (3) the amount of the check, (4) the reason for return, (5) the date of the endorsement of the institution of first deposit, (6) the account number of the depositor, (7) the branch at which the check was first deposited and (8) the trace number on the check. The account number of the depositor, the branch at which the check was deposited and the trace number on the check could be provided in the notification only if the institution of first deposit had placed such information on the check. In cases where the Federal Reserve initiated the notification through the Federal Reserve's Communications System, the notification would follow a standard format.

Under the proposal, the payor institution would be required to provide a notification of nonpayment to be received by the institution of first deposit by midnight of the second banking day following the banking day by which the payor institution is required to dishonor the check. For example, if the Federal Reserve presents a check to a payor institution on Monday, that institution generally is required to determine whether to pay or return the check by midnight Tuesday. If the institution determines to return the check, it must take steps to ensure that notification of return is received by the institution of first deposit by midnight Thursday. The Board believes this time frame is appropriate in order to provide payor institutions time to take advantage of the most cost-effective means of providing notice.

Under the proposal, a payor institution could satisfy the notification requirement in one of four ways. First, the payor institution could return the unpaid check such that it is received by the institution of first deposit by midnight of the second banking day following the payor institution's midnight deadline for dishonor of the check. This alternative would generally be feasible when the payor institution is returning a check to a nearby institution of first deposit, either directly or perhaps through a local clearinghouse. Second, the payor institution could itself provide a notification directly to the institution of first deposit. The notice could be given by telephone or other telecommunications network such as BankWire, SWIFT, Telex or the Federal Reserve's Communications System, which would pass the message on to the institution of first deposit. Third, the payor institution could provide its Reserve Bank with all of the required information concerning the unpaid check. The Reserve Bank would then advise the institution of first deposit that the check is being returned and provide it with the appropriate information. Fourth, for checks collected through the Federal Reserve, a payor institution could return the check to the Reserve Bank with instructions that the Reserve Bank initiate a notification to the institution of first deposit. The Reserve Bank would then provide the appropriate information on the check to the institution of first deposit.

Institutions exercising either of these latter two options would be required to provide the information or the check (as the case may be) to the Reserve Bank in advance of the time by which notification would have to be received by the institution of first deposit. These deadlines would be specified in the Reserve Bank's operating circular.

Under the proposal, if a payor institution that had received a large dollar check from a Reserve Bank fails to exercise ordinary care in providing timely and accurate notification to the institution of first deposit, the payor institution would be liable for losses incurred by the institution of first deposit up to the amount of the item if timely and accurate notification would have enabled the institution of first deposit to take steps to avoid a loss. (Several courts already have applied

[1] Nevada, New Jersey, Oregon, Wisconsin, and the District of Columbia have not adopted section 4–212(2) of the Uniform Commercial Code, which authorizes the payor institution to return an unpaid check directly to the institution of first deposit.

this standard in cases involving the failure of a payor institution to provide notification of return.) On the other hand, a payor institution that did not provide timely and accurate notification would not incur liability if, after exercising ordinary care, it had not been able to determine the identity of the institution of first deposit because of an illegible endorsement.

Similarly, in cases where the Reserve Bank assists the payor institution in providing notification, the Reserve Bank would be liable for a loss incurred by the institution of first deposit up to the amount of the item if the loss would have otherwise been avoided had the Reserve Bank exercised ordinary care in providing the notification. If the payor institution returns the check to the Reserve Bank in accordance with established deadlines and requests the Reserve Bank to initiate the notification, the Reserve Bank would incur the same liability to the institution of first deposit as would the payor institution.

It is proposed that a three tiered fee structure apply to the services offered by the Reserve Bank. If the institution provides notification through the use of an online Fedwire message, a fee of $2.25 per advice would be charged. This fee is based upon the estimated cost of providing the service, including any notifications that the Reserve Bank must make by telephone to the institution of first deposit. If the payor institution telephones the Reserve Bank and requests it to provide the required information to the institution of first deposit, a fee of $4.25 would be charged. This fee reflects additional labor costs involved in transcribing the information provided by the payor institution and potential liability Reserve Banks may incur as a result of possible errrs in transcription. Finally, if the payor institution returns a check collected through the Federal Reserve to the Reserve Bank with instructions to provide notification to the institution of first deposit, a fee of $4.25 would be charged. This fee includes the costs of sorting, reading the endorsements, initiating the wire advice, and potential Reserve Bank liability. It is appropriate to charge the payor institution for these services because the Reserve Bank is assisting the payor institution in fulfilling its responsibility to provide notification and because its customer is usually responsible for the returned check.

When the payor institution makes use of the Federal Reserve's notification service, the institution of first deposit would be able to specify to the Reserve Bank whether the institution desires to receive notification of dishonor via the telephone or the Federal Reserve's Communication System. The institution of first deposit would also be able to specify the department (or other entity) that should receive the notice.

It is proposed that the notification requirement apply to returned checks of $2,500 and above. The current notification requirement applies to checks $2,500 and above. Although checks in amounts of $2,500 and above comprise approximately 2 percent of all returns, they account for over 50 percent of the dollars associated with returned checks. Finally, when the Board proposed to strengthen the liability provisions of the current notification requirement in May, 1981, many of the public commenters opposed raising the dollar cut off to which the notice requirement would apply. Although the Board is recommending that the notification requirement initially apply to returned checks of $2,500 or more, the impact of the proposal will be evaluated over time to determine the feasibility of lowering the $2,500 cut off.

It should be noted that the proposed notification requirement could only apply to the checks originally collected through the Federal Reserve. (It is estimated that approximately one-third of all checks written are collected through the Federal Reserve.) Legislation would be necessary to extend the notification requirement to checks originally collected outside the Federal Reserve.

The Board expects that the notification requirement will provide significant improvements in the return item process in the near term. At the same time, the Board recognizes that this is an interim solution, and further initiatives will be required to achieve long term comprehensive solutions to the processing of return items. These initiatives are likely to include development and implementation of endorsement standards, evaluation of extension of the midnight deadline for small dollar checks, assessment of technology to substitute automation for the largely manual handling of returns, and consideration of electronic means to speed the flow of payment information. The Federal Reserve intends to continue to take an active role in working with the industry and Congress to pursue these improvements.

In addition to other aspects of the proposal, the Board specifically requests comment on the following questions:

(1) Should a payor institution be required to provide notification of nonpayment such that it is received by the institution of first deposit by midnight of the payor institution's *next* banking day, rather than by midnight of the *second* banking day as proposed, following the banking day by which the payor institution is required to dishonor the check?

(2) Should the notice be required to be received by the institution of first deposit by the close of the institution's business day (*i.e.*, 2:00 p.m.) rather than by midnight of the banking day?

(3) Will the information specified in the proposal to be required be useful to the institution of first deposit? Is there any information other than that specificed in the proposal that should be included in the notification?

(4) For notifications that are not handled by the Federal Reserve, should the institution of first deposit be permitted to specify the department of the institution (or other entity) that should receive the notification? Should this information be required to be placed on the check?

(5) If the day the payor institution provides notice to the institution of first deposit is not a business day for the institution of first deposit, should the regulation provide that receipt of notice on the institution of first deposit's next business day constitutes timely notice?

(6) Is $2.500 and over the appropriate cut off?

(7) What is the appropriate standard of payor institution liability for failure to comply with the notification requirements?

(a) The proposal adopts the current standards of liability contained in the Uniform Commercial Code for failure to exercise ordinary care (i.e. liability up to the amount of the item) or failure to act in good faith (i.e. liability for consequential damages). Should the proposal adopt the U.C.C. standards or should some other standards of liability apply?

(b) Should the payor institution be liable for the institution of first deposit's court costs and reasonable attorney's fees?

(8) What impact will the proposal have on institutions' delayed availability policies?

(9) What do institutions of first deposit and payor institutions estimate will be their internal costs resulting from this proposal? What do intermediary institutions estimate will be their savings because they will no longer be required to pass notifications to their prior endorsers?

(10) Is it desirable to enact legislation establishing a notification requirement for all checks above a certain amount and not just those collected through the Federal Reserve.

(11) In view of the information required, is it desirable to establish an endorsement standard to identify better institutions of first deposit?

The impact of this proposal on small entities has been considered in accordance with the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 603). The proposal should not result in a significant burden on small depository institutions because all depository institutions currently are required to provide notification of nonpayment of checks of $2,500 or more collected through the Federal Reserve. That is, a payor institution currently is required to incur the cost of providing notice of nonpayment of such checks to the presenting institution. Under the proposal, a payor institution would be required to provide this notice of nonpayment directly to the institution of first deposit rather than to the presenting institution. Moreover, it is proposed that the Reserve Banks would provide an enhanced notification service which would serve to reduce the operational effect the proposal may have. Finally, the proposal imposes no new reporting or recordkeeping requirements on depository institutions.

List of Subjects in 12 CFR Part 210

Banks, banking, Federal Reserve System.

Pursuant to its authority under section 13 of the Federal Reserve Act (12 U.S.C. 342); section 16 of the Federal Reserve Act (12 U.S.C. 248(o), 360); and section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)), the Board proposes to amend 12 CFR Part 210 (Regulation J) as follows:

PART 210—[AMENDED]

In § 210.12, the last sentence of paragraph (b) is designated as paragraph (d), and new paragraph (c) is added after paragraph (b) to read as follows:

§ 210.12 Return of cash items.

* * * * *

(c) *Notification of Nonpayment.* (1) A paying bank that receives a cash item in the amount of $2,500 or more directly or indirectly from a Reserve Bank (other than an item indorsed by, or for credit to, the U.S. Treasury) shall provide notice to the first bank to which the item was transferred for collection ("depositary bank") that the paying bank is returning the item unpaid.

(2) The paying bank shall provide the notice specified above such that it is received by the depositary bank by midnight of the second banking day of the paying bank following the deadline for return of the item as specified in paragraph (a) of this section. Such notice may be provided through any means, including return of the cash item so long as the cash item is received by the depository bank by midnight of the second banking day of the paying bank following the deadline for return of the item as specified in paragraph (a) of this section.

(3) The information contained in the notice shall be in accordance with uniform standards and procedures specified by the operating circular of the Reserve Bank from which the item was received.

(4) A paying bank that fails to exercise ordinary care in meeting the requirements of this paragraph shall be liable to the depositary bank for losses incurred by the depositary bank, up to the amount of the item, reduced by the amount of the loss that the depositary bank would have incurred even if the paying bank had used ordinary care. A paying bank that fails to act in good faith in meeting the requirements of this paragraph may be liable for other damages, if any, suffered by the depositary bank as a proximate consequence. A paying bank providing notice under this paragraph shall not be liable for mistake, neglect, negligence, misconduct, insolvency or default of any other bank or person.

(5) Notwithstanding the provisions of § 210.6 of this subpart, a Reserve Bank that fails to exercise ordinary care in undertaking to provide the notice required in this paragraph on a paying bank's behalf shall be liable to the depositary bank for losses incurred by the depositary bank, up to the amount of the item, reduced by the amount of the loss that the depositary bank would have incurred even if the Reserve Bank had used ordinary care. A Reserve Bank that fails to act in good faith in undertaking to provide the notice required in this paragraph on a paying bank's behalf may be liable for other damages, if any, suffered by the depositary bank as a proximate consequence. A Reserve Bank providing notice under this paragraph shall not be liable for mistake, neglect, negligence, misconduct, insolvency or default of any other bank or person, including the paying bank.

* * * * *

By order of the Board of Governors, June 22, 1984.

[FR Doc. 84-17199 Filed 6-27-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ASW-26]

Proposed Alteration of Transition Area; Freeport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to alter the transition area at Freeport, TX. The intended effect of the proposed action is to provide additional controlled airspace for helicopters executing a new standard instrument approach procedure (SIAP) to a point in space. This action is necessary since there is a new point in space helicopter approach being developed for the Air Logistics landing area.

DATE: Comments must be received by July 30, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G 71.181 as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area at Freeport, TX, will necessitate an amendment to this subpart. This amendment will be required at Freeport, TX, since there is a proposed SIAP for helicopters landing at Air Logistics landing area.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ASW–26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 877–2630. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Transition areas, aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by adding the following:

Freeport, TX Revised

And within 2.5 miles each side of the Scholes VORTAC 233° radial at a point beginning 19.5 miles southwest of the VORTAC and extending to 26.5 miles southwest.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on June 18, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84–17197 Filed 6–27–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ACE–09]

Transition Area—Eureka, Kansas; Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to designate a 700-foot transition area at Eureka, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Eureka Municipal Airport, Eureka, Kansas, utilizing the Emporia, Kansas VORTAC as a navigational aid. This proposed action will change the airport status from VFR to IFR.

DATE: Comments must be received on or before August 4, 1984.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Eureka, Kansas. To enhance airport usage a new instrument approach procedure is being developed for the Eureka, Kansas Municipal Airport utilizing the Emporia, Kansas VORTAC as a navigational aid. This navigational aid will provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Eureka, Kansas, at and above 700 feet

above ground level (AGL) within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Sec. 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), by designating the following transition area:

Eureka, Kansas

That airspace extending upwards from 700 feet above the surface within a 5-mile radius of the Eureka Municipal Airport (latitude 37°51'02"N, longitude 96°17'33"W) and within 1.5 miles each side of the Emporia, Kansas, VORTAC, 195° radial extending from the 5-mile radius area to 6 miles north-northeast of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983); and Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on June 20, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-17193 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 84-AWP-5]

Proposed Realignment of Jet Route J-65, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign a segment of Jet Route J-65 to facilitate a more efficient utilization of the airspace and conserve aviation fuel.

DATE: Comments must be received on or before August 13, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWP-5, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing resoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWP-5". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to move the segment between Palmdale, CA, and Bakersfield, CA, of Jet Route J-65 eastward approximately 8 miles. This action would: (1) Make that route segment a more direct path between those two locations and thereby contribute to aviation fuel conservation; (2) reduce controller workload by removing the need for air traffic controllers to utilize radar vectoring and route monitoring procedures along the proposed route segment alignment; and (3) provide more airspace for high performance aircraft departing northbound from Burbank, CA, and Los Angeles, CA. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of Part 75 of the Federal

Aviation Regulations (14 CFR Part 75) as follows:

J-65 [Amended]

By deleting the words "INT Palmdale 291° and Bakersfield, Ca, 149° Radials;" and substituting the words "INT Palmdale 310°T(295°M) and Bakersfield, CA. 140°T(124°M) radials;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65.)

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on June 21, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-17194 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 93

[Docket No. 24105; Notice 84-6]

Slot Transfer Methods

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public hearing.

SUMMARY: The public hearing on Slot Transfer Methods (NPRM 84-6), published in the **Federal Register** on June 7, 1984, (49 FR 23788)), scheduled for June 21, 1984, in the Federal Aviation Administration (FAA) Building at 800 Independence Avenue SW., Washington, D.C., is rescheduled for July 9, 1984. The FAA is still considering the requests for extension of the comment period (closes on July 9, 1984) on the NPRM submitted by a number of organizations. Other Public Hearings on the NPRM were/are being held in Rosemont, Illinois (June 26, 1984) and in San Francisco California (June 28, 1984).

DATES: Public Hearing: July 9, 1984.

ADDRESS: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, (202) 426-3773.

SUPPLEMENTARY INFORMATION:

Public Hearing Schedule

The schedule for the hearing is as follows: July 9, 1984, Federal Aviation Administration, 800 Independence Avenue SW., 3rd Floor Auditorium, Washington, D.C.

9:00-9:15—Presentation of Meeting Procedures.
9:15-10:00—DOT Presentation.
10:15-12:15—Public Presentation and Discussion.
12:15-1:30—Lunch Break.
1:30-5:00—Public Presentation and Discussion.

Interested persons are invited to attend the public hearing and to participate by making oral or written statements. Written statements should be submitted in duplicate and will be made a part of the rules docket. Requests to make an oral presentation at the public hearing should identify the docket number and the time required (time may be limited depending upon the number of presentations), and be sent to Denise D. Hall, Office of the Chief Counsel, Regulations and Enforcement Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-3080. Requests must be received on or before July 6, 1984. Presentations will be scheduled on the first-come first-served basis as time may permit within the meeting schedule.

Hearing Procedures

The following procedures will apply at the hearing:

(a) The hearing will be informal in nature and will be conducted by the designated representative of the Administrator under 14 CFR 11.33. Each participant will be given an opportunity to make a presentation.

(b) The hearing will begin at 9:00 a.m. There will be no admission fee or other charge to attend and participate. All sessions will be open to all persons on a space available basis. The presiding officer may accelerate the hearing agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) All hearing sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the hearing may be accepted at the discretion of the presiding officer. Participants submitting handout materials must present an original and two copies to the presiding officer before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by DOT participants at the hearing should not be taken as expressing a final DOT position.

Issued in Washington, D.C., on June 25, 1984.

Edward P. Faberman,

Acting Chief Counsel.

[FR Doc. 84-17312 Filed 6-26-84; 2:55 pm]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21088, File No. S7-877]

Records Not Obtained by the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of proposed rule 24a-1.

SUMMARY: Proposed Rule 24a-1, pending since February 27, 1981,[1] would have provided a definition of documents "otherwise obtained" by the Commission within the meaning of section 24(a) of the Securities Exchange Act of 1934, which defines agency records for purposes of the Freedom of Information Act. The Commission is withdrawing the proposal since it has chosen instead to seek legislation amending Section 24(a).

EFFECTIVE DATE: June 28, 1984.

FOR FURTHER INFORMATION CONTACT: Kevin S. Fogarty, Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2419.

SUPPLEMENTARY INFORMATION: The Commission has recently transmitted to Congress a proposal to amend Section 24 of the Exchange Act in order to exempt from the FOIA certain material submitted to the Commission in its inspections and investigations, as well as information submitted subject to a valid assertion of a legal privilege, such as the attorney-client privilege or the work product doctrine.[2] This legislation,

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[1] Release Nos. 33-6295, 34-17582, 35-21937, 39-613, IC-11651, IA-751, 46 FR 15176 (Mar. 4, 1981).

[2] *See* letters of Chairman John S.R. Shad to the Honorable Timothy E. Wirth, Chairman, House Subcommittee on Telecommunications, Consumer Protection and Finance, Committee on Energy and Commerce, and the Honorable Alfonse M. D'Amato, Chairman, Senate Securities Subcommittee, Committee on Banking, Housing, and Urban Affairs, February 22 and 28, 1984, respectively.

if enacted, would accomplish the same objectives as proposed Rule 24a–1 which the Commission published for comment in 1981. In light of the Commission's legislative proposal and of the comments received on proposed Rule 24a–1,[3] the Commission hereby withdraws the proposed rule.[4]

By the Commission.

Dated: June 22, 1984.

George A. Fitzsimmons,

Secretary.

The full text of the proposed rule the Commission is withdrawing is as follows:

§ 240.24a–1 Records not obtained by the Commission.

A "record" received by the Commission, other than in connection with a filing with the Commission, shall not be considered to have been "otherwise obtained" by the Commission, within the meaning of Section 24(a) of the Act, 15 U.S.C. 78x(a), unless such record is used as an exhibit by the Commission or its staff in the law enforcement activities of the Commission, including investigations and judicial or administrative proceedings, or in proceedings by the Commission conducted pursuant to its Rules of Practice or under its Conduct Regulation. This section does not affect the status of records created by, or at the direction of, the Commission or its staff.

[FR Doc. 84–17307 Filed 6–27–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Proposed Customs Regulations Amendment Relating to Payment of Estimated Duties and Other Charges

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The Customs Regulations provide that an uncertified check drawn by an interested party on a national or state bank or trust company shall be accepted as payment for Customs duties, taxes and other charges owing, provided a bond securing payment of these obligations is on file with Customs, or if no bond has been filed, provided prior approval has been obtained. This document proposes to amend the regulations to provide that importers or interested parties who are currently delinquent in the discharge of any obligations to Customs be required to pay estimated duties and other charges by a certified check, money order, or cash with each subsequent entry or entry summary, before the merchandise is released from Customs custody. Importers or interested parties whose names are placed on any of the Customs regions' sanction lists would be required to submit payment in this form for all subsequent payments until the delinquent debt is satisfied. This proposal would guarantee that the check is covered by sufficient funds in the banking institution on which it is drawn, thereby relieving Customs of the burden of attempting to collect against checks returned for insufficient funds.

DATE: Comments must be received on or before August 27, 1984.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Remigio Ferrara, Chief, Revenue Branch, Accounting Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–2596).

SUPPLEMENTARY INFORMATION:

Background

Section 24.1(a)(3), Customs Regulations (19 CFR 24.1(a)(3)), provides that an uncertified check drawn by an interested party on a national or state bank or trust company of the United States shall be accepted by Customs for payment of duties, taxes, or other charges if there is on file with the district director of Customs an entry bond or other bond to secure the payment of the duties, taxes, or other charges. If a bond has not been filed, the organization or individual drawing and tendering the uncertified check must have been approved by the district director to make payment in this manner. It is also provided in this section that in determining whether an uncertified check shall be accepted in the absence of a bond, the district director shall use available credit data obtainable without cost to the Government, such as that furnished by banks, local business firms, better business bureaus, or local credit exchanges, sufficient to satisfy him of the credit standing or reliability of the drawer of the check.

The above procedures for the most part have facilitated the prompt payment of duties, fees and other charges to Customs. In a significant number of cases, however, uncertified checks submitted in payment of duties and other obligations have been returned unpaid by the banking institution because the importer or interested party's account did not have sufficient funds to cover the check. If the obligation remains unsatisfied, the debtor is designated a delinquent payor and his name is placed on a sanction list published on a semi-monthly basis by Customs Financial Management Division of the region in which the debt is incurred. This listing is furnished to import specialists, inspectors, and other Customs officials with instructions (1) not to release the delinquent payor's merchandise unless a duty-paid entry is filed and (2) not to provide reimbursable services unless cash payment is first tended.

Although a duty-paid entry is required from a delinquent importer or interested party, this has not proved to be an adequate method of ensuring payment of duty inasmuch as the importer or interested party may continue to submit uncertified checks that are dishonored because of insufficient funds. Moreover, it is very likely that the imported merchandise will have been released before the check is returned to Customs unpaid by the banking institution.

Customs attempts to collect the duty from either delinquent importers or parties in interest or, in the event that these attempts are unsuccessful, from the surety on the importer's bond have resulted in unnecessary administrative expense and loss of revenue. In failing to satisfy their obligations to Customs, the delinquent importers and parties in interest have also exposed the surety on the importer's bond to increased liability. The continuation of this system of allowing delinquent importers or interested parties to present uncertified checks is very likely to lead to the assessment of higher bond charges by surety companies, much to the detriment of the great majority of importers who consistently submit payment of all due amounts promptly.

By requiring delinquent importers or interested parties to submit a certified check for all subsequent payments until the delinquent debt is satisfied, Customs would be relieved of the time and

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[3] There were twenty-three commentators, including bar association groups, securities firms, law firms, industrial companies, trade associations, the Freedom of Information Clearinghouse, a member of Congress and an individual. Copies of all comments are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549. *See* File No. S7–877.

[4] Section 24(a) of the Exchange Act defines the term "records" to include, for FOIA purposes, all applications, statements, reports, contracts, correspondence, notices, and other documents filed with or otherwise obtained by the Commission pursuant to this title or otherwise.

resource-consuming burden of attempting to collect duty and other charges from delinquent payors or the surety whose bond secures payment of the duty. It would benefit Customs by ensuring effective and prompt collection of duty and other charges, the surety companies by reducing claims against them, and the importing public by decreasing the overall costs relating to the importation of merchandise.

Customs believes that it is necessary to incorporate this proposal into § 24.1, Customs Regulations, to ensure uniformity of application by district directors of Customs and to provide importers, interested parties, and surety companies with notification of this practice.

Comments

Before adopting this proposal, consideration will be given to written comments (preferably in triplicate) that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed regulation set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Susan S. Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Authority

This amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 1, 19 Stat. 247, 249 (19 U.S.C. 197); section 1, 36 Stat. 965 (19 U.S.C. 198); section 624, 46 Stat. 759 (19 U.S.C. 1624), section 641, 46 Stat. 759, as amended (19 U.S.C. 1641), section 648, 46 Stat. 762 (19 U.S.C. 1648).

List of Subjects in 19 CFR Part 24

Customs duties and inspection, Imports, Accounting.

Proposed Amendment

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

It is proposed to amend § 24.1(a), Customs Regulations (19 CFR 24.1(a)), by redesignating paragraph (a)(3) as paragraph (a)(3)(i) and adding new paragraph (a)(3)(ii) to read as follows:

§ 24.1 Collection of Customs duties, taxes, and other charges.

(a) * * *

(3) * * *

(ii) Where the importer or party in interest is delinquent in the payment of duties or any other obligation to Customs, the district director shall require a certified check, money order, or cash from the importer, party in interest, or agent for each subsequent payment until the delinquent debt in satified.

William von Raab,

Commissioner of Customs.

Approved: June 8, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury

[FR Doc. 84–17237 Filed 6–27–84; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Consideration of Amendments to the Kentucky Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening of public comment period.

SUMMARY: OSM is reopening the period for review and comment on certain amendments submitted by the Commonwealth of Kentucky to its program for the regulation of surface coal mining and reclamation in the State. The amendments related to Kentucky's civil penalty program and hearings provisions and its administrative rules of procedure pertaining to discovery and burden of proof.

DATES: Written comments, data or other relevant information must be received on or before 4:00 p.m. July 30, 1984 to be considered. Comments submitted after this date may not necessarily be considered.

ADDRESS: Comments should be sent or hand/delivered to: W. H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION: By a letter dated October 31, 1983, OSM received, pursuant to the 30 CFR 732.17 State program amendment procedures, revised regulations intended to satisfy certain conditions of the Secretary's approval of the Pennsylvania regulatory program. On November 17, 1983, OSM published a notice in the **Federal Register** announcing receipt of the amendments to the Kentucky program and inviting public comments thereon (48 FR 42333–52334). The public comment period ended December 19, 1983. The public hearing scheduled for December 12, 1983, was not held because no one expressed a desire to present testimony.

On May 14, 1984, OSM received additional material from Kentucky pertaining to conditions (k) and (d). This material consists of revised regulations at 405 KAR 7:090, 405 KAR 1:040 and 405 KAR 1:050. The revisions pertain to Kentucky's civil penalty program and hearings procedures, and its administrative rules of procedure for discovery and burden of proof.

OSM is reopening the comment period for an additional 30 days to allow the public sufficient time to review and comment on the above Kentucky amendments. Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations of why the commenter believes or does not believe that the proposed amendment includes the same or similar procedural requirements as provided in 30 CFR Part 845, 43 CFR Part 4 and consistent with sections 518 and 521 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This announcement is made in keeping with OSM's commitment to public participation as a vital component in fulfilling the purposes of the SMCRA.

Authority: Pub. L. 95–87 Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

Dated: June 21, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84-17347 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 84-43]

Regatta; National Sweepstakes Regatta, Redbank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: Special Local Regulations are being proposed for the National Sweepstakes Regatta being sponsored by the National Sweepstakes Regatta Association of Redbank, NJ to be held on August 18–19, 1984 between the hours of 8:00 a.m. and 6:00 p.m. The Coast Guard is considering the issuance of this regulation to provide for the safety of participants and spectators on navigable waters during the event.

DATE: Comments must be received on or before July 30, 1984.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York , NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG D. R. Cilley, (212) 668–7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written views, data, or arguments. Persons submitting written comments should include their names and addresses, identify this notice (CGD3 84–43) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The comment period for this proposed rule making is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information

The drafters of this notice are LTJG D. R. Cilley, Project Officer, Boating Safety Office, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The annual National Sweepstakes Regatta is a powerboat race event to be held on the Navesink River on August 18–19, 1984. It is sponsored by the National Sweepstakes Regatta Association, sanctioned by the American Powerboat Association and is well known to the boaters and residents of this area. The race track oval will be approximately 1.25 miles in length. Races will be held on both days on a section of the Navesink River just east of the N.J. Route 35 Bridge. Race heats will run both days from approximately 10:00 a.m. to 6:00 p.m. with 100 inboard/hydroplane powerboats participating each day. The sponsor will place several temporary buoys on the river to mark both the race course and spectator areas. There will be 2 race committee boats anchored within the oval course, one on each end with turn judges and press onboard. The U.S. Coast Guard will assist the sponsor and local authorities in providing a safety patrol during this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement and establish spectator areas prior to and during the races. Vessels desiring to transit the area will be given an opportunity to do so several times during each day in between race heats as directed by the Coast Guard Patrol Commander.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the races. This should easily compensate area merchants for the slight inconvenience of having navigation restricted.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations by adding a temporary § 100.35–309 to read as follows:

§ 100.35–309 National Sweepstakes Regatta, Redbank, NJ.

(a) *Regulated Area.* That portion of the Navesink River in Redbank, N.J. between the N.J. Route 35 Bridge and a line running across the Navesink River connecting Guyon and Lewis Points.

(b) *Effective Period.* This proposed regulation will be effective from 8:00 a.m. to 6:00 p.m. on both August 18 and 19, 1984.

(c) *Special Local Regulations.* (1) The regulated area shall be intermittently closed to all vessel traffic during the effective period, except as may be allowed by the Coast Guard Patrol Commander.

(2) No person or vessel shall enter or remain in the regulated area while it is closed unless participating in or authorized by the event sponsor or Coast Guard patrol personnel.

(3) Vessels awaiting passage through the regulated area shall be held in unmarked anchorages in the area to the east of the N.J. Route 35 Bridge and in the vicinity of Lewis Point.

(4) No transiting vessels shall be allowed out onto or across the regulated area without Coast Guard escort.

(5) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event. The following are established as spectator areas:

(i) Spectator vessels shall be held behind (north of) a line of buoys provided by the sponsor running approximately west to east starting .25 miles east of the N.J. Route 35 Bridge.

(ii) A second spectator area shall be marked by a curved line of sponsor provided buoys centered on a line drawn approximately due south from

Jones Point, running through Can Buoy #21. All spectator craft shall stay to the east of this string of buoys.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxilliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: June 15, 1984.

R. L. Johanson,

Captain, U.S. Coast Guard, Commander, Third Coast Guard District, Acting.

[FR Doc. 84-17240 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CCGD-82-01]

Anchorage Regulations, Western Florida

AGENCY: Coast Guard, DOT.

ACTION: Cancellation of rulemaking.

SUMMARY: The Coast Guard is withdrawing the proposed anchorage regulations calling for the establishment of anchorage grounds in Pensacola Bay and in St. Andrew Bay, because there is no longer a demonstrated need for the archorage at this time.

FOR FURTHER INFORMATION CONTACT: LCDR A. J. SABOL, c/o Captain of the Port, Mobile, Alabama, Suite 1900, First National Bank Building, Mobile, AL 36652, Tel: (504) 690-2201.

SUPPLEMENTARY INFORMATION: On December 2, 1982 the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** for this regulation (47 FR 54310). Interested persons were requested to submit comments. Ten comments were received.

Drafting Information

The principal persons involved in drafting this notice are LCDR M. W. Brown, USCG, Project officer, c/o Commander, Eighth Coast Guard District (mps), and LCDR W.B. Thomas, USCG, Project Attorney, c/o Commander, Eighth Coast Guard District (dl), Hale Boggs Federal Bldg., 500 Camp Street, New Orleans, LA 70130.

Discussion of Comments

Comments were received from the State of Florida Department of Commerce, the State of Florida Department of Environmental Regulation, the State of Florida Department of Natural Resources, the Mayor of Panama City, the Escambia County Board of Commissioners, the National Marine Fisheries Service, the U.S. Army Corps of Engineers and the National Oceanic and Atmospheric Administration. Six of the comments received were in response to the Environmental Assessment for the project prepared by the Commander, Eighth Coast Guard District. Comments were also received from Mobile Ferry Lines and the Port of Pensacola, the original requesters for the anchorage, withrawing their request.

Two commenters were concerned with the potential aesthetic degradation at the St. Andrew Bay site. The proposed anchorage was located adjacent to an area that was scheduled for extensive residential development. Establishment of the anchorage area could cause property values to decrease, as one of the desirable features of the property is an unobstructed view of the bay.

One commenter expressed concern over the possibility of "wave shadow" at the St. Andrew Bay site. This wave shadow could adversely affect the shoaling characteristics of the area and could cause the need for increased maintenance dredging.

Three commenters expressed concern over the possiblity of oil spills, especially at the St. Andrew Bay site. This site is in close proximity to the St. Andrew Bay Aquatic Preserve. A spill here could have a significant impact on the area. The commenters were concerned with what measures would be initiated to prevent oil spills. In addition, there was concern that ship breaking activities would be conducted in the anchorages.

The Coast Guard had evaluated the probability of spills of any type at the achorages, had they been established, as "slight" for the following reasons:

a. The primary users of the anchorage would have been vessels in a laid up status. Such vessels, regardless of type, i.e. tanker, cargo, etc., would have been in ballast and in a gas free condition. There would have been no cargo aboard.

b. No activity other than minor repairs and routine maintenance would normally have been conducted. There would have been no ship breaking or major repair work conducted.

c. All vessels would have required a permit from the Captain of the Port, Mobile prior to occupying the anchorage. That permit would have insured that the vessel was adequately moored, in sound material condition, adequately manned, and in compliance with all applicable Federal Regulations, particularly the Pollution Prevention Regulations. This control on vessels utilizing the anchorage would have minimized the risk of spills, as well as any other type of accident.

Five of the commenters expressed concern over the limitations of access that the anchorages would cause. The Coast Guard determined that in view of the light water traffic in the area, the small area of navigable water that would be obstructed, and the fact that water traffic in the area could have easily rerouted around the anchorage areas, any disruption to navigation would be insignificant. The sea bottom in the affected area is public lands and is currently unused. The safety benefits of having a layup anchorage would have outweighed any potential losses, especially given the relatively small area involved (less than one-tenth square mile in St. Andrew Bay, and less than one-quarter square mile in Pensacola Bay).

Two commenters expressed concern with the effect on wildlife and aquatic life in the area. Given the small area involved, the type of vessels most likely to occupy the anchorages and the permit requirement, the Coast Guard does not believe that there would have been any adverse effect on the flora or fauna of the area.

One commenter expressed concern over the "general negative impact to the natural environment" that the Pensacola Anchorage could have but did not specify what the concerns were.

One commenter initially supported the Pensacola Anchorage indicating that positive economic benefits would accrue. This commenter later reversed position, and indicated that there would be no economic benefit.

NOAA commented that the coordinates as published for the anchorages did not make perfect rectangles. They provided corrected

coordinates for one point at each anchorage to make a perfect rectangle.

The Coast Guard has decided to withdraw the St. Andrew Bay proposed anchorage because of its proximity to an aquatic preserve, the aesthetic consideration, and the potential problems with wave shadow.

The Coast Guard does not believe that the Pensacola Bay Anchorage would have had any significant negative effects. However, because the original requesters have withdrawn their requests, and most importantly, there is no longer a demonstrated need for the anchorage at this time, the Coast Guard is withdrawing the proposed regulation. The Coast Guard has determined that at this time, establishment of the Pensacola Bay Anchorage is not required by the maritime or commercial interests of the United States for safe navigation.

Dated: June 25, 1984.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard Commander Eighth Coast Guard District.

[FR Doc. 84-17334 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-84-21]

Drawbridge Operation Regulations: Savannah River, South Carolina

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Seaboard System Railroad, the Coast Guard is considering a change to the regulations governing the railroad bridge near Hardeeville, South Carolina by requiring that advance notice of openings be given. This proposal is being made because of a steady decrease in requests for opening the draw. The action should relieve the bridge owner of the burden of having someone constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before August 13, 1984.

ADDRESS: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW 1st Avenue, Miami, FL, 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, telephone (305) 350-4108.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The Commander, Seventh Coast Guard district, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Bridge Administration Specialist, Mr. Walt Paskowsky, project officer and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

The drawbridge is presently tended by a full time bridgetender who leaves the draw in the last manipulated position. Twelve scheduled trains cross the bridge daily. The bridge was opened 33 times in 1983 for the passage of vessels for an average of once every 11 days which is not considered justification for maintaining constant bridgetender service.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so mininal that a full regulatory evaluation is unnecessary. The major commercial user of the waterway, Koch Fuels, which transported petroleum products from Savannah to Augusta, ceased operations on the waterway in April 1981.

Since the economic impact of this proposal is expected to be mininal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by amending § 117.371 by reserving paragraph (a); redesignating paragraphs (a) and (b) as paragraphs (c) and (d) without change and adding a new paragraph (b) immediately after (a) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.371 Savannah River

(a) [Reserved]

(b) The draw of the Seaboard System Railroad bridge, mile 27.4, near Hardeeville, South Carolina. The draw shall open on a signal if at least three hours advance notice is given. Radiotelephone communication will be maintained at the railroad's chief dispatcher's office in Savannah.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: June 13, 1984.

A.D. Breed,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 84-17253 Filed 6-27-84; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-84-23]

Drawbridge Operation Regulations: AIWW Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Town of Jupiter, the Coast Guard is considering a change to the regulations governing the State Road 706, Indiantown Road drawbridge, mile 1006.2, Palm Beach County by permitting the number of openings to be limited during certain periods. This proposal is being made because periods of peak vehicular traffic have increased. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before August 13, 1984.

ADDRESS: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW 1st Avenue, Miami Florida 33130. The comments and other materials referenced in this notice

will be available for inspection and copying at 51 SW 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, telephone (305) 350–4108.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments data, or agruments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Bridge Administration Specialist, Mr. Walt Paskowsky, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

Vehicular traffic across the bridge is light in summer and moderate in winter with an average daily vehicular traffic count of 8450 vehicles, from 7:00 a.m. to 6:00 p.m., in the summer and 9700 vehicles in the winter. The bridge which presently is required to open on signal at all times is opened infrequently during the summer and early autumn months, but has an increase in openings during the late winter and spring months reflecting the seasonal migration of vessels to and from southern waters. Accordingly, we propose to place the bridge on timed openings during the winter and spring months, since this is the period when the bridge openings have the greatest impact on vehicular traffic. The proposed rule will provide for three draw openings per hour, if necessary, which is about the same number that actually occurred in 1983. This schedule should provide for the needs of navigation while eliminating multiple, back to back, openings which are a source of vehicular traffic congestion.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary since the proposed rule will exempt tugs with tows and regularly scheduled cruise vessels. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Lists of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by redesignating paragraph (i) of § 117.261 as (i)(1) and adding a new paragraph (i)(2) immediately after (i)(1) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

* * * * *

(i)(2) AIWW, State Road 706, Indiantown Road, Jupiter, Palm Beach County, Florida.

From 1 November through 30 April, from 7:00 a.m. to 6:00 p.m., the draw need not open except on the hour, 20 minutes after the hour, and 40 minutes after the hour to pass all accumulated vessels. At all other times, the draw shall open on signal. Public vessels of the United States, tugs with tows, cruise vessels operated on a regular schedule, and vessels in distress shall be passed at any time.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: June 13, 1984.

A. D. Breed,

Captain, U.S. Coast Guard, Chief of Staff, Seventh Coast Guard District.

[FR Doc. 84–17254 Filed 6–27–84; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 21

Dependents' Educational Assistance; Entitlement

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: These regulations address an eligible person's entitlement to dependents' educational assistance. They update terminology and cross references. There are no policy changes in this proposal.

DATES: Comments must be received on or before July 27, 1984. It is proposed to make these regulations effective the date of final approval.

ADDRESSES: Send written comments to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until August 6, 1984. Anyone visiting VA Central Office in Washington, D.C. for the purpose of inspecting any of these comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, Washington, D.C. 20420 (202–389–2092).

SUPPLEMENTARY INFORMATION: Section 21.3044, Title 38, Code of Federal Regulations is amended update to show that people who have been rehabilitated to the point of employability receive employment adjustment allowance, not subsistence allowance. Section 21.3045, Title 38, Code of Federal Regulations is amended to show which paragraphs of 38 CFR 21.1045 apply to someone receiving dependents' educational assistance.

The VA has determined that these proposed regulations are not major rules as that term is defined by Executive Order 12291, entitled "Federal Regulation". The proposal will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity,

innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because entitlement affects only payments made directly to individuals. This proposal addresses calculation of entitlement. Furthermore, the changes are technical in nature, and should have a small impact.

The Catalog of Federal Domestic Assistance number for the program affected by this regulations is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 12, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

It is proposed to amend 38 CFR Part 21 to read as set forth below:

1. Section 21.3044 is revised as follows:

§ 21.3044 Entitlement.

(a) *Limitations on entitlement.* Each eligible person is entitled to educational assistance not in excess of 45 months, or the equivalent thereof in part-time training. The Veterans Administration will not authorize an extension of entitlement except as provided in paragraph (c) of this section. The period of entitlement when added to education or training received under any or all of the laws cited in § 21.4020 will not exceed 48 months of full-time educational assistance. The period of entitlement will not be reduced by any period during which employment adjustment allowance was paid after the eligible person completes a period of rehabilitation and reaches a point of employability. (38 U.S.C. 1711(a))

(b) *Continuous pursuit is not required.* The 45-month period of entitlement is any 45 months within the period of eligibility. The eligible person is not required to pursue his or her program for 45 consecutive months. (38 U.S.C. 1711(a))

(c) *Exceeding the 45 months limitation.* The 45 months limitation may be exceeded only in the following cases:

(1) Where no charge against the entitlement is made based on a course or courses pursued by a spouse or surviving spouse under the special assistance for the educationally disadvantaged program (See § 1.237(d)); or

(2) Where special restorative training authorized under § 21.3300 exceeds 45 months. (38 U.S.C. 1741(b), 1733(b))

2. Section 21.3045 is revised as follows:

§ 21.3045 Entitlement charges.

Charges against the period of entitlement of an eligible person pursuing a program of education will be made in accordance with § 21.1045 (a) through (d) and (f) through (k). (38 U.S.C. 1661, 1677(b), 1682(e), 1691, 1712, 1733, 1786(a), 1787)

[FR Doc. 84-17083 Filed 6-27-84; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 218 and 225

[FRA Docket No. RSOR-6, Notice No. 4]

Control of Alcohol and Drug Use in Railroad Operations; Notice of Proposed Rulemaking

Correction

In FR Doc. 84–15479 beginning on page 24252 in the issue of Tuesday, June 12, 1984, make the following corrections:

1. On page 24252, second column, in "**FOR FURTHER INFORMATION CONTACT:**", first line, "Assistance" should have read "Assistant".

2. On the same page, third column, ninth line from the bottom, "48 FR 4590" should have read "48 FR 44590".

3. On page 24253, first column, first complete paragraph, last line, "thems" should have read "themes".

4. On the same page, third column, second complete paragraph, fourth line from the bottom, "report" should have read "reports".

5. On page 24268, third column, fifth line from the bottom, "delivery" should have read "delivering".

6. On page 24273, first column, second complete paragraph, fourth line, "inpaired" should have read "impaired".

7. On page 24279, second column, fifth line, "sereens" should have read "screens".

8. On the same page, same column, second complete paragraph, last line, "slcohol" should have read "alcohol".

9. On page 24280, second column, seventh line from the bottom, "th" should have read "the".

10. On page 24282, first column, fourth complete paragraph, ninth line, "and" should have read "an".

11. On the same page, same column, sixth line from the bottom, "emergency" should have read "emergence".

12. On page 24283, first column, third complete paragraph, second line from the bottom, "consequence" should have read "consequences".

13. On page 24284, third column, second line, "from" should have read "for".

14. On page 24289, second column, fourth paragraph, seventh line, "inpaired" should have read "impaired".

15. On the same page, third column, second paragraph, second line from the bottom, "oprational" should have read "operational".

16. On page 24292, first column, second complete paragraph, eighteenth line, "internt" should have read "intent".

17. On page 24297, third column, twenty-one lines from the bottom, "are" should have read "and".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Astragalus Humillimus (Mancos milk-vetch) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list a plant, *Astragalus humillimus* (Mancos milk-vetch), as an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. *Astragalus humillimus* is presently known from three populations west of Waterflow, New Mexico (San Juan County). The Mancos milk-vetch was also collected in Montezuma County, Colorado, in 1875; however, the species has not been recollected there since that time.

This species is vulnerable due to a low number of plants, restricted

distribution, a low tolerance for disturbance, and close proximity to powerline corridors, roads, and oil wells. A final determination of *Astragalus humillimus* to be an endangered species will implement the protection provided by the Endangered Species Act of 1973, as amended. Critical habitat is not being proposed at this time. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by August 27, 1984. Public hearing requests must be received by August 13, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, S.W., Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Dr. Russell L. Kologiski, Botanist, Region 2 Endangered Species staff (See **ADDRESSES** above) (505/766–3972).

SUPPLEMENTARY INFORMATION:

Background

Astragalus humillimus Gray ex Brandegee is in the pea family. The species was collected once by Brandegee in 1875 and was described by Asa Gray in 1876. Kuntze named this plant *Tragacantha humillima* in 1891, Rydberg changed the name to *Phaca humillima* (1905), and Barneby placed it in the genus *Astragalus* in 1964 (Barneby, 1964; Knight, 1981).

Astragalus humillimus has short stems measuing 0.5 to 1 centimeter tall. It is a perennial species with compound leaves (having many leaflets) measuring 8 to 15 millimeters long. The leaflets are pubescent, 0.7 to 2 millimeters long, light green, and oval shaped. The flowers are lavender with white veins, are about 1 centimeter long, and have a sweet pungent smell. The fruit is an oblong pod about 5 millimeters long. This species grows in low, tufted mats 31–45 centimeters in diameter. These clumps are often covered with butterflies, and *Vanessa cardui* (painted lady butterfly) has been identified as a pollinator of *Astragalus humillimus* (Knight, pers. comm. 1983). Flowering occurs only for a short time, between late April and early May. Most fruits have ripened by early June.

Astragalus humillimus is known only from a ridge west of Waterflow, New Mexico. The 3 known populations occur on Navajo Indian Reservation land and contain approximately 7,000 plants. The plants are restricted to Point Lookout sandstone, a tan cretaceous sandstone of the Mesa Verde series, at an elevation of 1,545 to 1,645 meters. The *Astragalus* forms rings in depressed pockets of sandy soil. Two of the populations are on Point Lookout sandstone mesas and one is on island outcrops of Point Lookout sandstone. Dominant associated plants are *Oryzopsis hymenoides, Gutierrezia sarothrae, Yucca angustissima,* and *Artemesia tridentata.* The plants occur in the vicinity of utility corridors, drilling pads, oil wells, pipelines, and roads; additional construction and maintenance of these could destroy or severely impact the populations.

Astragalus humillimus was first collected in 1875 in Montezuma County, Colorado, but the type population has never been relocated. The first Federal action involving *Astragalus humillimus* was on June 16, 1976, when the Service published a proposed rule in the **Federal Register** (41 FR 24524) to determine approximately 1,700 vascular plant species to be endangered pursuant to Section 4 of the Act. *Astragalus Humillimus* was included in the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17910).

The Endangered Species Act amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals which had expired (44 FR 70796).

Astragalus humillimus was included as a category 1 species in a list of plants under review for threatened or endangered classification published in the December 15, 1980, **Federal Register** (42 FR 82480). Category 1 is comprised of taxa for which the Service presently has sufficient biological information to support their being listed as endangered or threatened species. The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982 be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to have been petitioned, and the deadline for a finding on those species, including *Astragalus humillimus,* was October 13, 1983.

On October 13, 1983, the petition finding was made that listing *Astragalus humillimus* was warranted but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the January 20, 1984, **Federal Register** (49 FR 2485). Such a finding requires a recycling of the petition, pursuant to Section 4(b)(3(C)(i) of the Act. Therefore, a new finding must be made; this proposed rule constitutes the finding that the petitioned action is warranted and proposes to implement the action in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provision of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 amendments) set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to *Astragalus humillimus* Gray ex Brandegee (Mancos milk-vetch) are follows:

A. The Present or Threatened Destruction, Modification or Curtailment of its Habitat or Range

Astragalus humillimus was collected in 1875 in Montezuma County, Colorado, near Mancos Canyon; however, it has not been collected there since 1875. Rupert O. Barneby, the authority on *Astragalus,* has searched for the species in the Four Corners area and was unable to locate the type locality or any other populations of the plant. William C. Weber and S. L. Welsh also conducted extensive searches for this species (Knight, 1981).

Astragalus humillimus had not been seen or collected since 1875 when Betty Kramp collected it on the Hogback in 1980. Paul Knight surveyed similar habitat from Mancos Canyon, Colorado, south to the southern end of the Hogback. He discovered two more populations north of Kramp's population. The plant is restricted to the Point Lookout sandstone, although it is not known what chemical or physical properties of this substrate the species is responding to (Knight, pers. Comm. 1983).

Presently, *Astragalus humillimus* occurs along a 10-mile section of the Hogback, west of Waterflow, New Mexico. The Northernmost population is the largest with approximately 5,000 plants. The species is located on an

extensive mesa top of Point Lookout sandstone in an area being actively explored and drilled for energy-related minerals. The estimated acreage of this population is approximately 21 acres. The Navajo Indian Tribe owns the land and the surface rights to it; the leasable mineral rights are privately owned. The population is situated in an oil field and is flanked on three sides by active oil wells. The number of roads, oil wells, and piplines is increasing. The entire area is dissected by an unorganized assemblage of roads associated with the oil development.

A second population occurs on the west side of the Hogback about 2 miles south of the first population. There are approximately 1,000 plants scattered throughout this population, which is situated on island outcrops of Point Lookout sandstone. This population is bisected by the Glen Canyon-Shiprock 230kV and the Curicanti-Shiprock 230kV transmission lines which were constructed in 1962 and 1963, respectively. The U.S. Bureau of Reclamation contracted the construction of both lines and tansferred ownership, operation, and maintenance responsibilities to Western Area Power Administration in 1977 when the Department of Energy was organized (Gabiola, pers. comm. 1983).

During construction of these two transmission lines, the National Environmental Policy Act (NEPA) was not in effect, and impacts to the environment were mitigated only as deemed prudent during construction (Gabiola, pers. comm. 1983). *Astragalus humillimus* is a very localized species and it does not tolerate disturbance very well. The land directly under the powerline towers was extensively disturbed during the original construction, and in the 20 years since, the plant has not repopulated the disturbed areas of suitable habitat.

The plants underneath the powerline have been driven over by either maintenance vehicles or off-road recreational vehicles. The damage caused by the vehicles is not yet extensive, but could become so in the future. An uprate of the transmission line is scheduled to be in service by 1987. This would involve the addition of two more legs for each tower along the line and reconductoring of the entire line. Work will probably begin in 1985 (McBride, pers. comm. 1983). The Western Area Power Administration is aware of the presence of *Astragalus humillimus* in the right-of-way and is considering the species in its planning process.

The land is owned by the Navajo Indian Tribe. The Bureau of Land Management (BLM) is the managing agency and is leasing the mineral estate. At present, there are no existing oil wells.

The smallest population of *Astragalus humillimus* is on the east side of the Hogback south of Highway 550. This population occurs on sandstone ledges on the Navajo Reservation. Some of the mineral rights in the area in which this population occurs are under the jurisdiction of the BLM; however, there are currently no oil wells in the area. It is possible that the area will be explored within the next year prior to the expiration date of the leases that have been granted by BLM.

The Bureau of Land Management must be notified before exploration, drilling, or construction occurs on lands leased by them. Most of the land around the *Astragalus* populations is leased; thus, the possibility of future exploration and drilling is high (Knight, 1981 and pers. comm. 1983; Moore, pers. comm. 1983).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Astragalus humillimus is not currently sought for commercial, recreational or educational purposes. However, it is sought for scientific purposes. This species has eluded the repeated searches of many botanists and there are very few good specimens in herbaria throughout the country. The species' existence is very vulnerable because of the low number of plants and any taking would be detrimental to the populations. The plants are easily accessible by road to takers and vandals.

C. Disease or Predation

There is no evidence that disease, predation, or grazing have adverse impacts on *Astragalus humillimus*. Sheep are grazed in the vicinity of two of the populations, but grazing of the plants themselves probably does not occur because of the spinescent nature of the petioles (Knight, pers. comm. 1983).

D. The Inadequacy of Existing Regulatory Mechanisms

Astragalus humillimus is not protected by Federal law or New Mexico law. A permit, however, is needed from the Navajo Tribe for plant study or collection on the Reservation. Tribal protection is not enough to ensure survival since it offers no habitat protection.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The low number of plants in only three known populations increases the possibility that one catastrophic disturbance could destroy a significant portion of the species. The disturbance could result from natural or manmade causes, such as a construction project (Knight, 1981).

The proposed action has been chosen after the careful assessment of the best scientific and commercial information available, as well as the best assessment of past, present, and future threats faced by this species. Based on this evaluation, the proposed action is to list *Astragalus humillimus* as endangered without critical habitat. Endangered status seems appropriate because there are only three populations of this species and they exist in an area being developed intensively for energy resources (Knight, pers. comm. 1983). Also, *Astragalus humillimus* is not afforded any protection from the State of New Mexico. Not to propose *Astragalus humillimus* is unacceptable because of the low number of plants and the threats to its existence; threatened status does not sufficiently emphasize the situation of this species. Therefore, no action or listing as threatened would be a violation of the Act's intent.

Critical Habitat

The Endangered Species Act in section 4(a)(3), as amended, requires that to the maximum extent prudent and determinable the Secretary must designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved. In the present case, the Service finds that designation of critical habitat is not prudent because no benefit to the species can be identified that would outweigh the threats of taking or vandalism that might be exacerbated by the required publication of detailed critical habitat maps. The Navajo Indian Tribe, BLM, and the Western Power Administration have been informed of this proposed action, are aware of the locations of the populations, have acknowledged the threats to the Mancos milk-vetch, and are actively considering the species during planning. Therefore, no further benefits would accrue to *Astragalus humillimus* by critical habitat designation. Because of the low number of plants, the easily accessible

populations, and the scientific curiosity regarding *Astragalus humillimus*, it would be detrimental to the species to publish critical habitat maps.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species following listing. The protection required by Federal agencies, and the taking prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If this listing is published as a final rule, section 7 would require Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of *Astragalus humillimus*. If an effect is expected, the responsible Federal agency must enter into consultation with the Service.

Astragalus humillimus is known to occur only on Navajo Indian Reservation lands. Known Federal activities that may be affected by this proposal are maintenance of existing transmission lines and authorization of the planned uprate of the existing 230 kV transmission lines by the Western Area Power Administration, Department of Energy. The Bureau of Land Management controls leasing of minerals in much of the area and such activities would be subject to section 7 consultation.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions which apply to all endangered plant species. With respect to *Astragalus humillimus*, all trade prohibitions of section 9(a)(2) of the Act, as implemented by § 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commerce in *Astragalus humillimus* is not known to exist. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisdiction. This prohibition would apply to *Astragalus humillimus*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this prohibition were published July 8, 1983 (48 FR 31417) and these will be finalized following public comment. *Astragalus humillimus* is known only from the Navajo Indian Reservation. It is anticipated that few taking permits for the species will ever be requested.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

If this species is listed under the Act, the Service will review it to determine whether it should be considered for placement upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to *Astragalus humillimus*;

(2) The location of any additional populations of *Astragalus humillimus* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Astragalus humillimus*.

Final promulgation of the regulation on *Astragalus humillimus* will take into consideration the comments and any additional information received by the Service, and such communications may lead to the adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

Barneby, R. C. 1964. *Atlas of North American Astragalus*. Memoirs of the New York Botanical Garden. Vol 13. Part II.

Knight, P. J. 1981. Rare, Threatened, endangered, and other plants of concern in the BLM Chaco-San Juan Planning area of northwestern New Mexico. Department of Natural Resources, Heritage Program, Santa Fe, New Mexico.

Rydberg. 1905. *Astragalus* and its segregates in Colorado. *Bulletin of the Torrey Botanical Club*. 32: 657–665.

Authors

The primary authors of this proposed rule are Sandra Limerick and Margaret Olwell, Endangered Species staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972). The editor is E. LaVerne

Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975). Status information was provided by Mr. P. J. Knight, New Mexico Department of Natural Resources, Heritage Program, Santa Fe, New Mexico 87501.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend Section 17.12(h) by adding the following, in alphabetical order, under the family Fabaceae, to the List of Endangered and Threatened Plants.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Fabaceae—Pea family:						
Astragalus humillimus	Mancos milk-vetch	U.S.A. (NM, CO)	E		NA	NA.

Dated: June 7, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–17161 Filed 6–27–84; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 49, No. 126
Thursday, June 28, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Third Quarterly Estimate

Pub. L. 88–482, enacted August 22, 1964, as amended by Pub. L. 96–177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25. 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1984 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As published on December 30, 1983 (48 FR 57576), the estimated aggregate quantity of meat articles prescribed by subsection 2(c), as adjusted by subsection 2(d) of the Act for calendar year 1984, is 1,117 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate for 1984 of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1984, is 1,190 million pounds.

Done at Washington, D.C., this 25th day of June, 1984.

John R. Block,
Secretary.

[FR Doc. 84–17217 Filed 6–27–84; 8:45 am]
BILLING CODE 3410–10–M

Agricultural Marketing Service

[Marketing Agreement 146]

Budget of Expenses of Administrative Committee and Rate of Assessment for the 1984 Year

Pursuant to Marketing Agreement 146, regulating the quality of domestically produced peanuts (30 FR 9402), and upon recommendation of the Peanut Administrative Committee established pursuant to such agreement and other information, it is hereby found and determined that the expenses of said Committee and the rate of assessment applicable to peanuts produced in 1984 and for the crop year beginning July 1, 1984, shall be as follows:

(a) *Administrative expenses.* The budget of expenses for the Committee for the crop year beginning July 1, 1984, shall be in the amount of $663,600, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee, and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee for indemnification payments, pursuant to the Terms and Conditions of Indemnification Applicable to 1984 Crop Peanuts, effective July 1, 1984, are estimated at, but may exceed $3.5 million, such amount being reasonable and likely to be incurred.

(c) *Rate of assessment.* Each handler shall pay to the Peanut Administrative Committee, in accordance with section 48 of the marketing agreement, an assessment at the rate of $2.17 per net ton of farmers stock peanuts received or acquired other than those described in § 31 (c) and (d) ($0.42 for administrative expenses and $1.75 for indemnification expenses).

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1985 crop year pursuant to § 48 of the marketing agreement, shall continue. That portion of the total assessment funds accrued from the $1.75 rate and not expended in providing indemnification on the 1984 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The expenses and rate of assessment are, under the agreement, on a crop year basis and will automatically be applicable to all assessable peanuts from the beginning of such crop year. The handlers of peanuts who will be affected hereby have signed the marketing agreement authorizing approval of expenses that may be incurred and the imposition of assessments; they are represented on the Committee which has submitted the recommendation with respect to such expenses and assessment for approval; and handlers have had knowledge of the foregoing in their recent industry-wide discussions and will be afforded maximum time to plan their operations accordingly.

Dated: June 22, 1984.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84–17206 Filed 6–27–84; 8:45 am]
BILLING CODE 3410–02–M

Commodity Credit Corporation

African Food Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it will issue Invitations for Offers for the purchase by the U.S. private trade from CCC of wheat, corn and rice for export to certain African countries to meet emergency food requirements.

DATE: Invitations for Offers will be issued no later than August 31, 1984.

ADDRESS: Copies of Invitations for Offers and CCC Announcement No. KC–AAP–1 may be obtained from the Kansas City ASCS Commodity Office, P.O. Box 205, Kansas City, Missouri 64141. Phone (816) 926–6421. Offers by

the U.S. private trade to purchase the CCC commodities must be submitted to the same address.

Comments may be submitted to the General Sales Manager, Foreign Agricultural Service or to the Deputy Administrator, Commodity Operations, Agricultural Stablization and Conservation Service, USDA, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Fuell (202) 382–9241. Lawrence D. Ackland (202) 447–3995.

SUPPLEMENTARY INFORMATION: Pub. L. 98–248, 98 Stat. 115, March 30, 1984, directed CCC to make available commodities from its inventory, in an amount not to exceed $90,000,000, for sale on a competitive bid basis or barter to African countries requiring emergency food assistance or any country for use in assisting in emergency food assistance in Africa. CCC will furnish wheat, corn, and rice from its stocks on a competitive bid basis to the U.S. private trade which will required to export or cause the exportation to eligible African destinations of (1) the identical commodity purchased, (2) free market stocks of the same kind and equivalent quantity of the commodity purchased, (3) a product produced from the identical commodity purchased form CCC or from free market stocks of the same kind and equivalent quantity of the commodities purchased or (4) a combination of the foregoing.

Details of the program procedures are contained in CCC Announcement No. KC–AAP–1 and applicable Invitations of Offers. Generally, the Invitation for Offers will set forth the eligible African country destinations and the kinds of commodities eligible for sale to such country. Offerors will be required to submit two prices for each lot designated in the Invitation for Offers. One price to CCC will reflect shipment on U.S. flag vessels and one price will reflect shipment on foreign flag vessels.

At least 50 percent of the quantity of all commodities exported as a result of purchases from CCC under each Invitation for Offers will be exported on U.S. flag vessels to the extent such vessels are available at fair and reasonable rates. CCC will accept offers which are the most advantageous to CCC, giving consideration to, among other factors, the kind and location of the commodity, the return to CCC and the requirement for shipment on U.S. flag vessels.

The total quantity of wheat, corn, and rice available for purchase under the program will not exceed a value of $90,000,000 as determined by CCC's acquisition cost.

Offerors need not be the entity which makes a sale to a buyer in an eligible country and exports the commodity but, in any event, the offeror will be held solely responsible to CCC for any failure to meet the export requirements provided in Announcement No. KC–AAP–1.

CCC invites the public to comment on this system and to propose alternative systems at any time during the course of this program.

Signed at Washington, D.C., on June 8, 1984

Melvin E. Sims,

General Sales Manager and Vice President, Commodity Credit Corporation

[FR Doc. 84–17236 Filed 6–27–84; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Rights-of-Way Authorizations; Proposed Fee Policy Changes

AGENCY: Forest Service, USDA.

ACTION: Extension of public comment period on proposed policy.

SUMMARY: On April 20, 1984, at 49 FR 16823, the Forest Service published a proposed policy on changes in determining fees for rights-of-way authorizations. The comment period was to expire on June 19. Several interested parties have requested additional time in order to coordinate their resposes on the Forest Service proposal with those being presented to the Bureau of Land Management, U.S. Department of Interior on the same subject. Therefore, the Forest Service is extending the public comment period on proposed right-of-way fee policies until July 3, 1984.

DATES: Public comments must be received on or before July 3, 1984.

ADDRESS: Comments may be mailed to R. Max Peterson, Chief (2720) Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: William C. Wakefield, Forest Service, Lands Staff, (703) 235–2594 or Ruben M. Williams, Forest Service, Lands Staff, (703) 235–2412.

Dated: June 20, 1984.

F. Dale Robertson,

Associate Chief.

[FR Doc. 84–17200 Filed 6–27–84; 8:45 am]

BILLING CODE 3410–11–M

CIVIL AERONAUTICS BOARD

Air America, Inc., et al. Enforcement Proceeding, Assignment of Proceeding

[Docket 42294]

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated Washington, D.C. June 25, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84–17268 Filed 6–27–84; 8:45 am]

BILLING CODE 6320–01–M

[Order 84–6–74]

Tokyu World Transport (USA), Inc.; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order To Show Cause: Order 84–6–74.

SUMMARY: The Board proposes to deny authority to operate as a foreign freight forwarder in interstate and overseas air transportation to Tokyu World Transport (USA), Inc., a Japanese air freight forwarder, because the Government of Japan does not allow U.S. citizens to obtain like authority in that country. The foreign air transportation portion of the applicant's registration was granted on March 19, 1984, and continues in effect.

Objections

All interested persons having objections to the Board's tentative findings and conclusions as described in the order cited above, shall, no later than July 19, 1984, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, to the Ambassador of Japan in Washington, D.C., and to the Departments of State and Transportation.

A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Board may enter an order which would make final the Board's tentative findings and conclusions and deny the requested foreign freight forwarder registration to the applicant.

Addresses for Objections

Docket 42304, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428

Hiroshi Kimura, Tokyu World Transport (USA), Inc., 9111 South LaCienega Blvd., Suite 201, Inglewood, California 90301

To obtain a copy of the complete order, contact the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Dean L. Johnson, (202) 673–5134, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 25, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–17287 Filed 6–27–84; 8:45 am]

BILLING CODE 6320–01–M

Announcement of Proposed Collection of Information Under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35)

Agency clearance officer from whom a copy of the collection of information and supporting documents is available: Robin A. Caldwell (202) 673–5922.

Extension

Title of the Collection of Information: Report of Aircraft Operating Expenses and Related Statistics
Agency Form Number: None
How Often the Collection of Information Must Be Filed: Quarterly
Who is Asked or Required to Report: Small Certificated Carriers
Estimate of Number of Annual Responses: 176
Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 352

Dated: June 20, 1984.

Robin A. Caldwell,

Chief, Information Management Division, Office of Comptroller.

[FR Doc. 84–17289 Filed 6–27–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. 611]

Hiroshi Minabe; Order Denying Export Privileges

The U.S. Department of Commerce (the "Department") initiated a proceeding against Mr. Hiroshi Minabe, 5–1, Kita-Aoyama 2-chome, Minato-ku, Tokyo, Japan, respondent, through the service on him March 25, 1981 of a charging letter signed by the Director of the Department's Office of Export Administration. Minabe was charged with violating the Export Administration Act of 1969, as amended (50 U.S.C. app. 2401, *et seq.* (1976)) (the "Act") and the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1983)) (the "Regulations") by reexporting three U.S.-origin video recorders to Cuba without the required U.S. authorization.

Minabe answered the charging letter; and the Department moved for a decision on the record, both parties having waived the right to a hearing. After the Department's motion was granted, it moved for implementation of the order granting the motion, and that motion also was granted. The undersigned Hearing Commissioner has now considered the evidence, and my findings are set forth below.

During 1975–76, Minabe was an employee of Ataka & Co., Ltd. ("Ataka"). In 1975 Ataka had a contract to buy from Toshiba Ampex Company, Ltd. ("TOAMCO") three U.S.-origin video recorders for reexport to Cuba. A U.S. authorization was required for this proposed reexport, and it was applied for in September 1975. In November 1975 TOAMCO was notified that the Department's Office of Export Administration had denied the application. Ataka and TOAMCO rescinded their contract; and in early 1976 TOAMCO instead sold the three video recorders, one each, to three other companies, two of which then sold their recorders to the third, which then sold all three to Ataka. Minabe subsequently engaged in Ataka's reexport of the three recorders to Cuba.

The evidence indicates that Minabe was aware of the U.S. requirement for, and of the U.S. denial of, an authorization for the reexport of these recorders to Cuba. The evidence further indicates that Minabe knowingly participated in the arrangement whereby, after such denial, transfer of the three recorders from TOAMCO to Ataka was accomplished by their sale through three intermediary companies, and that Minabe then actively engaged in Ataka's reexport of them to Cuba.

Based on the foregoing, I find that Minabe knowingly acted to cause, aid, and abet this reexport, and knowingly engaged in the reexport, in violation of the Act and the Regulations. I find that an Order denying export privileges to Mr. Hiroshi Minabe for a period ending June 21, 1989 is reasonably necessary to protect the public interest and to achieve effective enforcement of the Act and the Regulations.

Therefore, pursuant to the authority delegated to me under Part 388 of the Regulations, it is

Ordered

I. All outstanding export licenses in which respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondent is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or which are otherwise subject to the Export Administration Act and the Regulations. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application; (b) in the preparation or filing of any export license application or reexportation authorization, or of any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control documents; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondent but also to his agents, employees, representatives, and partners, and to organizations with which he is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or services connected therewith.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall do any of the following acts, directly or indirectly, or carry on negotiations, with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or

whereby the respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for said respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. This order shall remain in effect against Mr. Hiroshi Minabe for a period ending June 21, 1989.

This Order is effective immediately.

Dated: June 22, 1984; 3:15 pm E.D.T

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 84-17229 Filed 6-27-84; 8:45 am]

BILLING CODE 3510-DT-M

[Case No. 612]

Saburo Soejima; Order Denying Export Privileges

The U.S. Department of Commerce (the "Department") initiated a proceeding against Mr. Saburo Soejima, 8-3 Miyamoto-cho, Kawasaki-ku, Kawasaki, Japan, respondent, through the service on him March 4, 1981 of a charging letter signed by the Director of the Department's Office of Export Administration. Soejima was charged with violating the Export Administration Act of 1969, as amended (50 U.S.C. app. 2401, *et seq.* (1976)) (the "Act") and the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1983) (the "Regulations") by knowingly acting to cause, aid, and abet a reexport of three U.S.-origin video recorders to Cuba without the required U.S. authorization.

Soejima answered the charging letter, and the Department moved for a decision on the record, both parties having waived the right to a hearing. After the Department's motion was granted, it moved for implementation of the order granting the motion, and that motion also was granted. The undersigned Hearing Commissioner has now considered the evidence, and my findings are set forth below.

During 1975-76, Soejima was marketing and sales manager for Toshiba Ampex Company, Ltd. ("TOAMCO"). In 1975 TOAMCO had a contract to sell to Ataka & Co, Ltd. ("Ataka") three U.S.-origin video recorders for reexport to Cuba. A U.S. authorization was required for this proposed reexport, and it was applied for in September 1975. In November 1975 TOAMCO was notified that the Department's Office of Export Administration had denied the application. TOAMCO and Ataka rescinded their contract; and in early 1976 TOAMCO instead sold the three video recorders, one each, to three other companies, two of which then sold their recorders to the third, which then sold all three to Ataka. The three recorders were subsequently reexported to Cuba.

The evidence indicates that Soejima was aware of the U.S. requirement for, and of the U.S. denial of, authorization for the reexport of these recorders to Cuba. The evidence further indicates that Soejima knowingly participated in the arrangement whereby, after such denial, tranfer of the three recorders from TOAMCO to Ataka was accomplished by their sale through three intermediary companies, thereby intentionally enabling Ataka to reexport the recorders to Cuba.

Based on the foregoing, I find that Soejima knowingly acted to cause, aid, and abet that reexport, in violation of the Act and the Regulations. I find that an Order denying export privileges to Mr. Saburo Soejima for a period ending June 21, 1989 is reasonably necessary to protect the public interest and to achieve effective enforcement of the Act and the Regulations.

Therefore, pursuant to the authority delegated to me under Part 388 of the Regulations, it is

Ordered

I. All outstanding export licenses in which respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondent is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or which are otherwise subject to the Export Administration Act and the Regulations. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application; (b) in the preparation or filing of any export license application or reexporation authorization, or of any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control documents; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondent but also to his agents, employees, representatives, and partners, and to organizations with which he is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or services connected therewith.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall do any of the following acts, directly or indirectly, or carry on negotiations, with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for said respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. This order shall remain in effect against Mr. Saburo Soejima for a period ending June 21, 1989.

This Order is effective immediately.

Dated: June 22, 1984, 3:15 pm E.D.T.

Thomas E. Hoya,

Hearing Commissioner.

[FR Doc. 84-17230 Filed 6-27-84; 8:45]

BILLING CODE 3410-DT-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance; RBS Fabrics, Ltd., et al.

Petitions have been accepted for filing from the following firms: (1) RBS Fabrics, Ltd., 149 Madison Avenue, New York, New York 10016, producer of fabrics (accepted April 26, 1984); (2) M. Smith Company, Inc., 2615 W. Hunting Park Avenue, Philadelphia, Pennsylvania 19129, producer of luggage (accepted May 1, 1984); (3) Habitant Corporation, P.O. Box 111, Bay City, Michigan 48706, producer of wood fence (accepted May 1, 1984); (4) New Jersey Tool and Die Company, Inc., 800 Colfax Avenue, Kenilworth, New Jersey 07033, producer of plastic injection molds (accepted May 2, 1984); (5) Amtech, Inc., 845 EAst 25th Street, Paterson, New Jersey 07513, producer of gear motors, turning gears and parts (accepted May 4, 1984); (6) Princeton Electronic Products, Inc., P.O. Box 101, North Brunswick, New Jersey 08902, producer of electronic terminals and component assemblies (accepted May 4, 1984); (7) Shieldalloy Corporation, West Boulevard, Newfield, New Jersey 08344, producer of ferroalloys and other metals (accepted May 7, 1984); (8) Kelsco Manufacturing Company, Inc., P.O. Box 5041, Alexandria, Louisiana 71301, producer of agricultural spraying equipment (accepted May 7, 1984); (9) Ladin Industries, Inc., P.O. Box 1936, Des Moines, Iowa 50309, producer of fabric (accepted May 7, 1984); (10) Dorson-Fleisher, Inc., P.O. Box 4250, Manchester, New Hampshire 03108, producer of women's footware (accepted May 9, 1984); (11) LuPaul Industries, Inc., 503 East Biddle, Jackson, Michigan 49203, producer of tools and dies and automotive stampings (accepted May 9, 1984); (12) C. Ray Randall Manufacturing Company, 426 Mount Hope Street, North Attleboro, Massachusetts 02760, producer of jewelry and ornamental metal products (accepted May 9, 1984); (13) Ansari Abrasives Manufacturing Company, Inc., 4811 Dusharme Drive, Minneapolis, Minnesota 55429, producer of griding wheels, abrasives and cutting tools (accepted May 9, 1984); (14) Addison Machine Engineering, Inc., 424 Interstate Road, Addison, Illinois 60101, producer of tube mill rolls (accepted May 9, 1984); (15) Brich-Rowe, Inc., P.O. Box 2024, Carson City, Nevada 89701, producer of parts for milking machines (accepted May 9, 1984); (16) Inter Binding? Company, Inc., 16015 W. 4th Avenue, Unit #3, Golden, Colorado 80401, producer of plastic notebook bindings (accepted May 9, 1984); (17) Spectron Instrument Corporation, 1342 West Cedar Avenue, Denver, Colorado 80223, producer of photographic and scientific test instruments (accepted May 9, 1984); (18) Ed Cholakian Enterprises, Inc., 12811 Foothill Boulevard, Sylmar, California 91342, producer of T-shirts, caps, wallets, key cases and decals (accepted May 10, 1984); (19) Executive Travelware, Inc., 900 Passaic Avenue, East Newark, New Jersey 07029, producer of luggage and tote bags (accepted May 10, 1984); (20) Polytech, Inc., 708 W. Madison, Owensville, Missouri 65066, producer of acrylic sheets (accepted May 10, 1984); (21) Jos. Dyson & Sons, Inc., 33300 Lakeland Boulevard, Eastlake, Ohio 44094, producer of forklift truck parts, fasteners and and other forgings (accepted May 10, 1984); (22) F. Ronci Company, Inc., 1800 Smith Street, North Providence, Rhode Island 02911, producer of metal stampings, buckles, jewelry chain, footwear components and printing machine parts (accepted May 11, 1984); (23) P & B Manufacturing Company, 185 Jefferson Boulevard, Warwick, Rhode Island 02888, producer of jewelry (accepted May 11, 1984); (24) Seafoods West, Inc., P.O. Box 846, Vashon, Washington 98070, producer of seafood (accepted May 15, 1984); (25) Sano Design and Machine Company, Inc., 150 Dayton Avenue, Passaic, New Jersey 07055, producer of plastics processing equipment (accepted May 16, 1984); (26) Del-Rich Mushroom, Inc., P.O. Box 178, Avondale, Pennsylvania 19311, producer of mushrooms (accepted May 21, 1984); (27) Marine Safety Equipment Corporation, P.O. Box 465, Farmingdale, New Jersey 07727, producer of boats, davits and winches (accepted May 21, 1984); (28) Kessler Shoe Manufacturing Company, Inc., 191 Shaeffer Avenue, Westminster, Maryland 21157, producer of children's shoes (accepted May 21, 1984); (29) All American Toy Company, 420 West 1700 South, Salt Lake City, Utah 84115, producer of stuffed toys and puppets (accepted May 21, 1984); (30) Microwave Consultants and Manufacturers, Inc., 7501 I-30, Suite 30, Little Rock, Arkansas 72209, producer of antenna accessories (accepted May 22, 1984); (31) House of Rattan, Inc., Morton Grove, Illinois 60053, producer of rattan furniture (accepted May 22, 1984); (32) Loma Manufacturing Company, Inc., 107 South Main Street, Winchester, Kentucky 40391, producer of women's blouse and dresses (accepted May 24, 1984); (33) Sponge Clean Products Company, Inc., 2201 74th Street, North Bergen, New Jersey 07047, producer of tablecovers, napkins and place mats (accepted May 25, 1984); (34) Garvey Corporation, Route 73, Blue Anchor, New Jersey 08037, producer of conveyor systems and fabricated metal parts (accepted May 25, 1984); (35) Dawson Steel, Inc., 2853 Cherry Avenue, Long Beach, California 90806, producer of steel castings (accepted May 25, 1984); (36) Century Heel Corporation, 1708 North Tyler Avenue, South El Monte, California 91733, producer of footwear components (accepted May 31, 1984); (37) Carolina Casuals, Inc., Route 6, Box 991, Georgetown, South Carolina 29440, producer of men's women's and children's apparel tops (accepted May 31, 1984); (38) Webco Forest Products, Inc., 16204 Williams Highway, Grants Pass, Oregon 97527, producer of softwood lumber (accepted June 1, 1984); (39) Marilyn Belts and Bags, Inc., 111 North Main Street, Ferris, Texas 75125, producer of handbags (accepted June 6, 1984); (40) Grano Steel Corporation, 14420 South Bloomfield Avenue, Santa Fe Springs, California 90670, producer of steel fabrications (accepted June 6, 1984); (41) Royal Sportswear Manufacturers, Inc., 459 West 15th Street, New York, New York 10011, producer of men's and boys' bathing suits (accepted June 6, 1984); (42) Versaponents, Inc., 226 North Fehr Way, North Bay Shore, New York 11746, producer of lighting fixtures and parts (accepted June 6, 1984); (43) Lenape Forge, Inc., 1280 Lenape Road, West Chester, Pennsylvania 19382, producer of steel and aluminum forgings (accepted June 7, 1984); (44) Jenkins Bros., 510 Main Street, Bridgeport, Connecticut 06601, producer of valves (accepted June 7, 1984); (45) Computer System Associates, Inc., 7562 Trade Street, San Diego, California 92121, producer of microcomputer systems (accepted June 8, 1984); (46) North American Ceramics, Inc., 666 Hawthorne, Glendale, California 91204, producer of ceramic giftware (accepted June 8, 1984); and (47) Solfa Shoe Products, Inc., 136 South Ann Street, Baltimore, Maryland 21231, producer of footwear components (accepted June 8, 1984).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the United States Department of Commerce has initiated

separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.308, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 84-17231 Filed 6-27-84; 8:45 am]

BILLING CODE 3510-DR-M

Decision on Application for Duty-Free Entry of Scientific Instrument; National Institute of Environmental Health Sciences

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 84-141. Applicant: National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709. Instrument: Tandem Double-Focusing Mass Spectrometer and Data System. Manufacturer: VG Analytical, United Kingdom. Intended use: See notice at 49 FR 14156.

Comments: none received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (August 2, 1982).

Reasons: The foreign instrument provides a resolution of 100,000 (10% valley) and a mass range at full accelerating voltage of 1 to 3000 atomic mass units. The National Bureau of Standards advises in its memorandum dated June 21, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-17232 Filed 6-27-84; 8:45 am]

BILLING CODE 3510-DS-M

Issuance of Export Trade Certificate of Review; Equinomics, Inc.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review of Equinomics, Inc. ("Equinomics"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certification of Review, application number 84-00013".

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202-377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595-10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-15940 (April 13, 1983).

Description of Certified Conduct

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Equinomics on March 20, 1984. The application was deemed submitted on March 26, 1984. A summary of the application was published in the **Federal Register** on April 10, 1984 (49 FR 14160). Based on analysis of the information contained in the application and other information in their possession, the Department of Commerce has determined, and the

Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Equinomics meet the four standards of the Act.

Export Trade

Products

The products that Equinomics intends to export or represent for export will be all-inclusive and limited only by the laws of the United States.

Related Services

Consulting, international market research, product research and design, transportation, freight forwarding, trade documentation, customs brokerage, finance, foreign exchange transactions, advertising, marketing, foreign order processing, insurance, licensing of foreign manufacturers, modification of products for export resale, warehousing, provision of barter and countertrade assistance, legal and translation aid, provision of accounting and collection services, and export counseling for minority programs exporters.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in the Export Trade in the Export Markets, equinomics is certified:

1. To enter into nonexclusive agreements with individual suppliers to act as an Export Intermediary for Products and Services in Export Trade.

2. To enter into agreements with individual suppliers of Products and Services wherein:

(a) Equinomics may agree to serve as the exclusive Export Intermediary for Products and Services in any Export Market and, in addition, may agree not to represent any competitors of such supplier for Products and Services in any Export Market unless authorized by the supplier; and/or

(b) the supplier may agree not to sell, directly or indirectly through any other Export Intermediary, into the Export Markets in which Equinomics exclusively represents the supplier as an Export Intermediary.

The agreements described in this paragraph may contain price, territorial, quantity and customer restrictions for the Export Markets.

3. To enter into agreements with individual Export Intermediaries whereby:

(a) Equinomics may agree to deal in Products and Services in Export Markets exclusively through such Export Intermediaries; and/or

(b) such Export Intermediaries may not agree not to represent Equinomics' competitors in the sale of Products and Services in any Export Markets or not to buy Products and Services from Equinomics' competitors for resale in any Export Markets.

The agreements described in this paragraph may contain price, territorial, quantity and customer restrictions for the Export Markets.

4. To enter into agreements with individual end-users of Products and Services located in any Export Market under which such end-users may agree to purchase all or part of their requirements of Products and Services from Equinomics.

5. To terminate from time to time any of the agreements described in paragraphs 1 through 4.

6. With respect to invitations to bid or sales opportunities in the Export Markets to:

(a) Contact individual suppliers of the Products and Services specified in the invitation to bid or the purchase specifications; and/or

(b) Distribute to each supplier bid requirements, bidding dates, purchase specifications and any other information provided by the prospective purchaser; and/or

(c) Solicit and receive independent quotations for the Products and Services from individual suppliers; and/or

(d) Enter into agreements with individual suppliers whereby Equinomics will submit a response to the invitiation to bid or purchase specifications that proposes the supply of such supplier's Products and Services.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copies in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202–377–3031.

Dated: June 25, 1984.

Michael A. Levitt,

Acting General Counsel.

[FR Doc. 17274 Filed 6–27–84; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Receipt of Permit Applications; Government of Japan et al.

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*).

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, Ma 01906, 617–231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19901, 302–674–2331

David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803–571–1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809–753–6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813–228–2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management

Council, 526 S.W. Mill Street, Portland, OR 97201, 503–221–6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 605 W. Fourth Avenue, Anchorage, AK 99510, 907–271–4064

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1608, Honolulu, HI 96813, 808–523–1368

For further information contact Shirley Whitted or John D. Kelly (Fees, Permits and Regulations Division, 202–634–7432).

The Magnuson Act requires the Secretary of State of publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1984 have been received between June 15 and June 20, 1984, from the Government(s), shown below.

Dated: June 26, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Code and fishery	Regional fishery management councils
ABS Atlantic Billfishes and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA Bering Sea and Aleutian Islands.	North Pacific
GOA Gulf of Alaska	North Pacific.
NWA Northwest Atlantic Ocean.	New England, Mid-Atlantic
SMT Seamount Groundfish	Western Pacific
SNA Snails (Bering Sea)	North Pacific
WOC Pacific Groundfish (Washington, Oregon and California).	Pacific
PBS Pacific Billfishes and Sharks.	Western Pacific

Activity codes which specify categories of fishing operations applied for are as follows:

Activity Code and Fishing Operations

1—Catching, processing and other support
2—Processing and other support only
3—Other support only
4—"Joint venture" in support of U.S. vessels

Nation, vessel name, vessel type	Application No.	Fishery	Activity
Government of Japan			
Shoshin Maru No. 88, Longline Fishing Vessel	JA–84–1566	ABS	1
Sumi Maru No. 18, Longline Fishing Vessel	JA–84–1491	ABS	1
Takatoyo Maru No. 18, Longline Fishing Vessel	JA–84–1331	ABS	1
Shoshin Maru No. 82, Longline Fishing Vessel	JA–84–1308	ABS	1
Government of Poland			
Kapitan Ledochowski, Cargo/Transport Vessel	PL–84–0087	BSA, GOA, WOC, NWA	3
Gdynski Kosyniar, Cargo Transport Vessel	PL–84–0090	BSA, GOA, NWA, WOC	[illegible]
Dzieci Polskie, Cargo/Transport Vessel	PL–84–0091	NWA, BSA, GOA, WOC	3
Antoni Garmuszewski, Trading—Cargo Vessel	PL–84–0106	BSA, GOA, WOC, NWA	[illegible]
Likodyn, Large Stern Trawler	PL–84–0025	NWA	[illegible]
Aquarius, Large Stern Trawler	PL–84–0103	WOC, GOA, BSA	1 (4)
Zonda, Reefer Vessel	PL–84–0102	GOA, BSA, WOC, NWA	[illegible]
Kulbak, Large Stern Trawler	PL–84–0104	NWA	1
Harmatan, Reefer Vessel	PL–84–0101	GOA, BSA, WOC, NWA	[illegible]
Libra, Large Stern Trawler	PL–84–0105	WOC, GOA, BSA	1 (4)
Delfin, Large Stern Trawler	PL–84–0065	GOA, BSA	1 (4)

Poland

Joint Venture—In addition to the Polish vessels listed above, a notice of receipt of permit applications for Polish vessels was published on April 23, 1984, at volume number FR 17083 and on June 19, 1984, at volume number 25021. The June 19 notice also published the Government of Poland's request that two or three Polish processing vessels be authorized for joint venture activities in the Washington, Oregon and California Trawl (WOC) fishery and the Bering Sea and Aleutian Islands (BSA) groundfish fishery.

The Polish Government has asked to receive authorizations for all of the processing vessels to receive fish from U.S. fishermen. This request was made because the fishing seasons are already well underway and such authorizations would allow flexibility to choose the two or three joint venture vessels according to their efficiency and close proximity to the grounds being fished by U.S. vessels.

[FR Doc. 84–17444 Filed 6–27–84; 9:31 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes to the Textile Category System

The Correlation, Textile and Apparel Categories with the Tariff Schedules of the United States, Annotated, provides for placement of Tariff Schedules of the United States, Annotated (T.S.U.S.A.) numbers in the Textile Category System. Amendments to the T.S.U.S.A., reflecting certain administrative changes, require changes to the Correlation. These changes are cited in the list which follows this notice.

EFFECTIVE DATE: June 21, 1981.

FOR FURTHER INFORMATION CONTACT: Claire McDermott, International Agreements and Monitoring Division, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230, (202–377–4212).

Dated: June 22, 1984.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

June 21, 1984 changes to the Correlation.

Category	New T.S.U.S.A. numbers effective June 21, 1984
335	Change 383.3450 to 383.3456.
	Change 383.3451 to 383.3457
	Change 383.3453 to 383.3459.
	Change 383.3454 to 383.3461.
	Change 383.3455 to 383.3462.
	Change 383.3458 to 383.3463.
337	Add 379.0824
	Add 379.0826.
	Add 383.0831
	Add 383.0836.
	Change 383.0830 to 383.0833.
347	Add 379.3509.
348	Add 383.2551.
359	Add 379.0822.
337	Add 379.0885.
	Add 379.3513.
	Add 383.0828.
	Add 383.0895.
	Add 383.2553.
637	Add 383.2329.
	Add 383.2333.
	Change 383.2330 to 383.2331.
647	Add 379.3549.
648	Add 383.2577.
659	Add 379.3325
	Add 379.3385.
	Add 379.3553
	Add 383.2327.
	Add 383.2395.
	Add 383.2579.

[FR Doc. 84–17235 Filed 6–27–84; 8:45 am]

BILLING CODE 3510–DR–M

Requesting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong To Review Trade in Categories 359pt. (Vests) and 637 (Playsuits)

June 22, 1984.

On June 7, 1984 the Government of the United States requested consultations with the Government of Hong Kong with respect to Category 359pt. (vests). A similar request was made on June 8 regarding playsuits in Category 637. These requests were made on the basis of the agreement of June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may request the Government of Hong Kong to limit exports in Categories 359pt. and 637, produced or manufactured in Hong Kong and exported to the United States during 1984. The Government of the United States reserves the right to control imports in these categories at the established limits.

Anyone wishing to comment or provide data or information regarding the treatment of these categories under the bilateral agreement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-17233 Filed 6-27-84; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With Korea To Review Trade in Category 352

June 22, 1984.

On June 5, 1984, the Government of the United States requested consultations with the Government of the Republic of Korea with respect to underwear in Category 352. This request was made on the basis of the agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that if no solution is agreed upon in consultations with Korea, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Category 352, produced or manufactured in Korea and exported to the United States during the twelve-month period which began on January 1, 1984.

Anyone wishing to comment or provide data or information regarding the treatment of Category 352 from Korea under the bilateral agreement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U S. Department of Commerce, 14th an Constitution Avenue NW., Washington, D.C. and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which consititute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chariman, Committee for the Implementation of Textile Agreements

[FR Doc. 84-17234 Filed 6-27-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

The Defense Industrial Facilities Protection Program (DIFPP) develops and promotes industrial protection within the U S. and its possessions by providing management of selected critical industrial facilities, voluntarily participating in the program, with advice and guidance concerning the application of physical security and emergency preparedness measures designed to reduce the vulnerability to, and increase the protection of, its facilities against sabotage, espionage, and other hostile or destructive acts to include minimization of attack damage. A basic tenet of the DIFPP is that the responsibility for the protection of property is inherent in ownership. Accordingly, the Department of Defense does not assume primary

responsibility for the physical security of privately-owned facilities, of federally-owned facilities under the control of any other Federal department or agency, or of facilities owned by any State or political subdivision of any State.

Forward comments to Edward Springer, OMB Desk, Room 3235, NEOB, Washington, DC 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Fred Schonert, DIS, HQ Administrative Services Division, 1900 Half Street SW, Washington, DC 20324, telephone (202) 693–0881.

Dated: June 25, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–17284 Filed 6–27–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Department of Defense has submitted to OMB for approval a request for an extension of a currently approved collection of information. The request contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the extension request may be obtained.

Reinstatement

Application for Enlistment—Armed Forces of the United States

DD Form 1966, Application for Enlistment—Armed Forces of the United States is the basic form (media) used by all four Services for obtaining data used in determining eligibility of applicants for enlistment in the Armed Forces of the United States and for establishing records for those enlisted.

Male and female applicants, 17 to 26 years of age, who desire to enlist in the Armed Forces of the United States; 1,000,000 respondents; 617,000 hours.

Forward comments to Mr. Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, DC 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L(PI), Room 3C800, Pentagon, Washington, DC 20301, telephone (202) 695–0643. This is a revision and not for contract.

Dated: June 25, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–17283 Filed 6–27–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

New

ARI Enlistment Decision Surveys

As the recruiting environment stiffens, policies are needed that will increase the proportion of qualified individuals who enter the Army. These surveys address two sources of qualified individuals currently being lost to the Army: (a) losses at the point of contracting (Qualified but Not Enlisted) and (b) losses during the Delayed Entry Program (DEP dropouts).

Individuals: 2,000 respondents, 1,000 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from David O. Cochran, DAAG–OPI, Room 1D667, Pentagon, Washington, D.C. 20310, telephone (202) 695–5111.

Dated: June 25, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 17285 Filed 6–27–84; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Meeting Changes

The following changes have occurred for the meeting of the Army Science Board Ad Hoc Subgroup on AVRADA (U.S. Army Avionics Research and Development Activity, an Army laboratory) Effectiveness Review, which was originally announced in the **Federal Register** issue of Monday, 18 June 1984 (49 FR 24914), FR Doc #84–16173:

Meeting Dates: Wednesday & Thursday, 18 & 19 July 1984 (instead of on Tuesday & Wednesday, 10 & 11 July 1984).

Place: Environmental Research Institute of Michigan's Arlington, Virginia office, instead of at Fort Monmouth, New Jersey.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84–17280 Filed 6–25–84; 3:43 pm]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: Friday, 20 July 1984.

Time: 0830–1700 hours (Open).

Place: The Pentagon, Washington, D.C.

Agenda: The Leadership Subpanel of the Army Science Board 1984 Summer Study on Leading and Manning Army 21 will meet all day in an Executive Session to review study progress to date, to include emerging recommendations, and prepare for the Summer Study writing session. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 84–17281 Filed 6–27–84; 8:45 am]

BILLING CODE 3710–08–M

Privacy Act of 1974; Deletion of and Amendments to Notices for Systems of Records

AGENCY: Department of the Army, DoD.

ACTION: Deletion of and amendments to notices for systems of records.

SUMMARY: The Department of the Army proposes to delete 2 and amend 1 system notices for systems of records subject to the Privacy Act of 1974, as amended. Following identification of changes, amended notice is printed below in its entirety.

DATES: Actions shall be effective in 30 days.

ADDRESSES: Comments may be submitted to Headquarters, Department of the Army, ATTN: DAAG–AMR–S, 2461 Eisenhower Avenue, Alexandria, VA 22331.

FOR FURTHER INFORMATION CONTACT: Mrs. Dorothy Karkanen, Office of The Adjutant General, Headquarters, Department of the Army, at the above address; telephone: 703/325–6163.

SUPPLEMENTARY INFORMATION: The Army's system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** as follows:

FR Doc 83–12048 (48 FR 25502), June 6, 1983
FR Doc 83–18883 (48 FR 32046), July 13, 1983
FR Doc 83–24181 (48 FR 40291), September 6, 1983
FR Doc 83–28792 (48 FR 49086), October 24, 1983
FR Doc 84–1118 (49 FR 2006), January 17, 1984
FR Doc 84–2331 (49 FR 3506), January 27, 1984
FR Doc 84–3683 (49 FR 5170), February 10, 1984
FR Doc 84–6438 (49 FR 8993), March 9, 1984
FR Doc 84–11652 (49 FR 18600), May 1, 1984
FR Doc 84–14035 (49 FR 22122), May 25, 1984
FR Doc 84–15558 (49 FR 24045), June 11, 1984
FR Doc 84–16178 (49 FR 24914), June 18, 1984
FR Doc 84–16520 (49 FR 25499), June 21, 1984

The proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

M. S. Healy,
OSD Federal Register Liaison Officer, Department of Defense.
June 25, 1984.

DELETIONS

A0225.01aDAPE

System name:

Military Police Management Information System (MPMIS)—Correctional Reporting System (CRS) (48 FR 25555), June 6, 1983.

Reason:

Records are described in proposed revised system notice A0720.04aDAPE appearing in this edition of the **Federal Register.**

A0721.11aDAPE

System name:

Individual Correctional Treatment Files (48 FR 25686), June 6, 1983.

Reason:

Records are described in proposed revised system notice A0720.04aDAPE appearing in this edition of the **Federal Register.**

AMENDMENTS

A0720.04aDAPE

System name:

Individual Correctional Treatment Files.

Changes:

System Identification:

Delete suffix "a".

System name:

Delete present name; insert: "Army Correctional System: Correctional Treatment Records".

System location:

Delete entry; substitute therefor: "Army installation detention facilities; US Army Correctional Activity, Ft Riley, KS; US Disciplinary Barracks, Ft Leavenworth, KS.

"An automated extract of selected data from individual correctional treatment records at Army facilities is stored on computer media at five Regional Data Centers located in the Washington, DC area and near Ft McPherson, GA; Ft Knox, KY; Ft Hood, TX; and Ft Ord, CA.

"The Army Clemency Board, Office, Assistant Secretary of the Army, Manpower and Reserve Affairs, Washington, DC 20310 (for decisions on clemency recommendations, parole actions, and restoration to duty)."

Categories of records in the system:

Delete entry; substitute therefor: "Documents related to the administration of individual military prisoners; courts-martial orders, release/confinement orders, medical examiner's reports, requests and receipts for health and comfort supplies, reports and recommendations relating to disciplinary actions, clothing and equipment issue records; forms authorizing correspondence by prisoner, mail records; personal history records; individual prisoner utilization records; requests for interview; fingerprint cards; military police reports; prisoner identification records; parolee agreements; inspections; documents regarding custodianship of personal funds and property of prisoners; former commanding officer's report; parents' report; spouse s report; classification recommendations; request to transfer prisoner; social history, clemency actions; psychologist's report; psychiatric and sociologic reports; certificate of parole; certificate of parole; certificate of release from parole; assignment progress reports; and similar relevant documents."

After "Authority for maintenance of the system", add:

"Purpose:

Correctional treatment records are used to determine prisoner's custody classifications, work assignments, educational needs, adjustment to confinement, areas of particular concern, and, as the basis for clemency, parole, and restoration to duty considerations. Automated records provide pertinent information required for proper management of confinement facility population, demographic studies, status of discipline and responsiveness of personnel procedures, as well as confinement utilization factors such as population turnover, recidivism, etc."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete both paragraphs; add the following: "Information may be disclosed (a) to local, state, and federal law enforcement and investigatory agencies for investigation and possible criminal prosecution, civil court actions or regulatory order; (b) to confinement/correctional agencies for use in the administration of correctional programs, including custody classification, employment, training and educational assignments, treatment programs, clemency, restoration to duty or parole actions, verification of offender's

criminal records, employment records and social histories."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retrievability:

Delete period and add: "and/or SSN/ Register number."

Safeguards:

Delete entry; substitute the following: "All records are maintained in areas accessible only to designated personnel having official need therefor. Automated data base and output are managed through comprehensive procedures and policies prescribed in system functional users manuals.

"Regional Data Centers are contractor-operated. Contractor personnel are security screened; employees receive a security briefing and participate in an on-going security education program under the Regional Data Security Officer. Regional Data Centers are connected through a communications network to 44 distributed data processing centers at Army installations. Technical, physical, and administrative safeguards required by Army Regulation 380–380 are met at installation data processing centers and information is secured in locked rooms with limited/controlled access. Data are available only to installation personnel responsible for system operation and maintenance. Terminals not in the data processing center are under the supervision of a terminal area security officer at each remote location protecting them from unauthorized use. Access to information is controlled further by a system of assigned passwords for authorized users of terminals."

Retention and disposal:

Delete entry; substitute therefor: "Individual correctional treatment records for prisoners in the US Army Correctional Activity (USACA) or US Disciplinary Barracks (USDB) are retained for 90 days following expiration of sentence/completion of parole/ maximum release date, following which they are retired to the National Personnel Records Center for 25 years; destruction is by shredding. Similar records for prisoners in local Army confinement and correctional facilities are destroyed 4 years following release of prisoner from confinement.

Note.—Transfer of a prisoner from one facility to another is not construed as release from confinement. When a prisoner is transferred to another facility, his/her file is transferred with him/her

Information on tape/disc is erased after 3 years.

"Army Clemency Board case files are returned on completion of Board action to USACA or USDB, as appropriate where they are retained for 90 days after prisoner's release from confinement or return to duty, following which they are retired to the National Personnel Records Center and maintained for 25 years before being destroyed by shredding."

Systems exempted from certain provisions of the act:

Add: "(See 32 CFR Part 505.9.)"

System A0720.04 DAPE reads as follows:

A0720.04DAPE

SYSTEM NAME:

Army Correctional System: Correctional Treatment Records

SYSTEM LOCATION:

Army installation detention facilities: US Army Correctional Activity, Ft Riley, KS US Disciplinary Barracks, Ft Leavenworth, KS.

An automated extract of selected data from individual correctional treatment records at Army facilities is stored on computer media at five Regional Data Centers located in the Washington, DC area and near Ft McPherson, GA; Ft Knox, KY; Ft Hood, TX; and FT Ord, CA.

The Army Clemency Board, Office, Assistant Secretary of the Army, Manpower and Reserve Affairs, Washington, DC 20310 (for decisions on clemency recommendations, parole actions, and restoration to duty).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any military member confined at an Army confinement or correctional facility as a result of, or pending, trial by courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to the administration of individual military prisoners; courts-martial orders, release/confinement orders, medical examiner's reports, requests and receipts for health and comfort supplies, reports and recommendations relating to disciplinary actions, clothing and equipment issue records; forms authorizing correspondence by prisoner, mail records; personal history records; individual prisoner utilization records; requests for interview; fingerprint cards; military police reports; prisoner identification records; parolee agreements; inspections; documents regarding costodianship of personal funds and property of prisoners; former commanding officer's report; parents' report; spouse's report; classification recommendations; request to transfer prisoner; social history clemency actions; psychologist's report; psychiatric and sociologic reports; certificate of parole; certificate of release from parole; assignment progress reports; and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U S.C., sections 951–953.

PURPOSE:

Correctional treatment records are used to determine prisoner's custody classifications, work assignments, educational needs, adjustment to confinement, areas of particular concern, and, as the basis for clemency, parole, and restoration to duty considerations. Automated records provide pertinent information required for proper management of confinement facility population, demographic studies, status of discipline and responsiveness of personnel procedures, as well as confinement utilization factors such as population turnover, recidivism, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed (a) to local, state, and federal law enforcement and investigatory agencies for investigation and possible criminal prosecution, civil court actions or regulatory order; (b) to confinement/ correctional agencies for use in the administration of correctional programs, including custody classification, employment, training and educational assignments, treatment programs, clemency, restoration to duty or parole actions, verification of offender's criminal records, employment records, and social histories.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, punch cards, magnetic tape and disc.

RETRIEVABILITY:

By prisoner's surname and/or SSN/ Register number.

SAFEGUARDS:

All records are maintained in areas accessible only to designated personnel having official need therefor. Automated data base and output are managed through comprehensive procedures and

policies prescribed in system functional users manuals.

Regional Data Centers are contractor-operated. Contractor personnel are security screened; employees received a security briefing and participated in an on-going security education program under the Regional Data Security Officer. Regional Data Centers are connected through a communications network to 44 distributed data processing centers at Army installations. Technical, physical, and administrative safeguards required by Army Regulation 380–380 are met at installation data processing centers and information is secured in locked rooms with limited/controlled access. Data are available only to installation personnel responsible for system operation and maintenance. Terminals not in data processing centers are under the supervision of a terminal area security officer at each remote location protecting them from unauthorized use. Access to information is controlled further by a system of assigned passwords for authorized users of terminals.

RETENTION AND DISPOSAL:

Individual correctional treatment records for prisoners in the US Army Correctional Activity (USACA) or US Disciplinary Barracks (USDB) are retained for 90 days following expiration of sentence/completion of parole/ maximum release date, following which they are retired to the National Personnel Records Center for 25 years; destruction is by shredding. Similar records for prisoners in local Army confinement and correctional facilities are destroyed 4 years following release of prisoner from confinement.

Note.—Transfer of a prisoner from one facility to another is not construed as release from confinement. When a prisoner is transferred to another facility, his/her file is transferred with him/her.

Information on tape/disc is erased after 3 years.

Army Clemency Board case files are returned on completion of Board action to USACA or USDB, as appropriate, where they are retained for 90 days after prisoner's release from confinement or return to duty, following which they are retired to the National Personnel Records Center and maintained for 25 years before being destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

The Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be sought by writing to the commander of the confinement/ correctional facility, or to the Deputy Chief of Staff for Personnel, ATTN: DAPE–HRE, The Pentagon, Washington, DC 20310.

RECORD ACCESS PROCEDURE:

Individuals desiring access to their records may write to the Commander of the confinement/correctional facility where a prisoner, furnishing full name, SSN, present address, and dates of confinement. Request must bear signature of the individual whose record it is.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; witnesses; victims; Military Police/US Army Criminal Investigation Command personnel and/or reports; informants; various Federal, state, and local investigative and law enforcement agencies; foreign governments; any other individual or organization that may supply pertinent information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All portions of this system which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (c) (4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). (See 32 CFR 505.9)

[FR Doc. 84–17271 Filed 6–27–84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TC84–7–000]

Algonquin Gas Transmission Co.; Tariff Filing

June 22, 1984.

Take notice that on June 5, 1984, Algonquin Gas Transmission Company (Algonquin Gas), 1284 Soldiers Field Rd., Boston, MA 02135, filed in Docket No. TC84–7–000, pursuant to Part 154 of the Commission's Regulations (18 CFR Part 154) First Revised Sheet Nos. 701 and 711 to its FERC Gas Tariff, Second Revised Volume No. 1, with proposed effective date of July 15, 1984, all as more fully set forth in the filing which is on file with the Commission and open to public inspection.

Said revised tariff sheets include, in Article I of the Form of Service Agreement (Rate Schedules F–1 and WS–1), revisions filed by Texas Eastern Transmission Corporation (Texas Eastern) in its Form of Service Agreement in accordance with a settlement of Docket No. TC82–42–000.

The following *caveat* is to be added:

It is understood that Seller (Texas Eastern) does not now have, and notwithstanding Seller's good faith efforts, may not have in the future sufficient gas supplies to supply Buyer (Algonquin Gas Transmission Company) with quantities of gas specified in the Service Agreement for the term of such agreement.

It is stated that since Algonquin Gas obtains its entire supply of natural gas for resale under Rate Schedules F–1 and WS–1 by purchase from Texas Eastern, it must flow through the condition which Texas Eastern imposes on Algonquin Gas.

Algonquin Gas proposes the effective date of such revised tariff sheets be July 15, 1984.

Algonquin Gas states that copies of the filing were served on its customers and public utility commissions for Connecticut, Massachusetts, New Jersey, New York and Rhode Island.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before July 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–17183 Filed 6–27–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-474-000]

American Distribution Co. (Alabama Division); Application

June 25, 1984.

Take notice that on June 8, 1984, American Distribution Company (Alabama Division) (Applicant), 1234 Capital Bank Plaza, Houston, Texas 77002, filed in Docket No. CP84-474-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities to be located in Alabama and the transportation of natural gas by means of these facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it is a division of American Distribution Company (ADC), which is a newly organized local distribution company. Applicant indicates that ADC would soon complete construction of its distribution facilities located in Texas. Applicant states that ADC has entered into an agreement to purchase 5,000 Mcf of residue gas per day from a sour gas processing plant now being constructed by Collet Ventures, Inc. (Collet), in Washington County, Alabama. Applicant proposes to construct a 40-mile 6-inch pipeline from the tailgate of the Collet plant to a point of interconnection with the facilities of Florida Gas Transmission Company (FGT). Applicant indicates it would transport up to 5,000 Mcf per day for Collet through those facilities and that ADC would take title to the gas at the interconnection of the proposed facilities with those of FGT. Appplicant states that FGT will then transport the tas to Texas Eastern Transmission Corporation, which would then transport the gas to ADC's distribution facilities in Texas. Applicant explains that all of the gas purchased in Alabama would be delivered to ADC's sole customer, the Big Three Industries, Inc., which operates a cogeneration plant.

Applicant states that the proposed project would cost approximately $2.1 million. Applicant proposes to charge Collet a transportation fee of $0.45 per Mcf for the first 4,500,000 Mcf of gas delivered through the new system and $0.25 per Mcf thereafter.

Except for the proposed activities of Applicant, it is alleged that ADC's operations are exempt from the provisions of the Natural Gas Act. Accordingly, Applicant requests that simultaneously with the issuance of the authorization herein sought, the Commission also affirmatively and explicity declares that the jurisdiction of the Commission under the Natural Gas Act over Applicant and the transactions in which it is engaged would extend solely to the acts and services authorized by the requested certificate and that the jurisdiction of the Commission under the Natural Gas Act specifically would not extend to any transaction which, but for the acts and services authorized to be performed pursuant to the requested certificate, would not be subject to such jurisdication.

In addition, Applicant indicates that based upon revenue projections it would appear that Applicant would be classified as a Clas C natural-gas company under 18 CFR Part 204. Applicant asserts that imposition of the Part 204 regulations would be unduly burdensome and requests waiver of those regulations. Applicant also requests that it be required to submit only an annual report as a Class C company and that other reporting requirements under Parts 158, 160, 216 and 225 of the Commission's regulations be waived.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filled with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17184 Filed 6-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-18-000]

Arkansas Power & Light Co.; Petition of Arkansas Power & Light Co. for Declaratory Order Waiving Section 35.13 Requirement, so as To Allow Abbreviated Rate Filings

Arkansas Power & Light Co.;

June 22, 1984.

Take notice that on June 13, 1984, Arkansas Power and Light Company (AP&L or Company) submitted for filing its petition for declaratory order waiving Section 35.13 requirement so as to allow abbreviated rate filings.

In support of this request, AP&L states that under section 35.13(a)(1)(B) a utility may make an abbreviated rate filing consisting of the information required in paragraphs (b), (c) and (h)(37) of Section 35.13 provided that the increase requested is less than $1,000,000 for Period I and the affected customers consent to the increase.

AP&L further states that due to the nature of its contractual relationship with Arkansas wholesale customers that take service under the Company's Resale Service Rate Schedule, a full Section 35.13 filing:

(1) Is unnecessary for fair and reasonable ratemaking for these customers;

(2) Places an inefficient and needless burden on the Company, the customers, and the FERC Staff; and

(3) Results in higher rates to these customers because of the costs incurred by the Company in preparing such filings.

The Company requests that the Commission waive the $1,000,000 limit requirement for making an abbreviated filing in all the Company's future rate filings concerning service to the customers listed where an executed settlement agreement with them can be presented to the Commission at the time of filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington,

D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 19, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17185 Filed 6-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-70-001]

East Tennessee Natural Gas Co.; Petition To Amend

June 25, 1984.

Take notice that on May 25, 1984, East Tennessee Natural Gas Company (Petitioner), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP84-70-001 a petition to amend the order issued February 27, 1984, pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner on or after July 1, 1984, to reduce its rate to its customer Laurel Fuel Company (Laurel) to Petitioner's then current Zone 1 commodity rate, plus the GRI surcharge, plus a transportation fee of 1.0 cent per Mcf, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is submitted that pursuant to the order issued February 27, 1984, Petitioner was authorized to make an off-system sale of up to 7 million Btu equivalent of natural gas per day to Laurel, a local distribution company located in the State of Mississippi. Petitioner states that the order of February 27, 1984, was conditioned to require Petitioner to make the sale to Laurel during the twelve-month period commencing on December 6, 1983, at Petitioner's system average load factor sale rate which is currently $3.3790 per million Btu including a GRI surcharge and a 1.0-cent per Mcf charge for transportation service provided by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee).

Petitioner states that it has been advised by its pipeline supplier, Tennessee, that a semi-annual purchased gas adjustment (PGA) filing would be made shortly to become effective July 1, 1984, which would have the effect of increasing Petitioner's system average load factor sale rate by approximately 50.0 cents per million Btu. Petitioner further states that it has been advised by Laurel that such an increase would make Laurel unable to market Petitioner's gas and would result in Laurel's ceasing to purchase gas from Petitioner after June 30, 1984.

Petitioner, therefore, requests that the Commission amend its order of February 27, 1984, so as to authorize Petitioner to reduce its rate to Laurel on or after July 1, 1984, to Applicant's then current Zone 1 commodity rate, plus the GRI surcharge of 1.25 cents per million Btu, plus the Tennessee transportation fee of 1.0 cent per Mcf.

Petitioner alleges that it would actually incur minimum bill charges from Tennessee in May 1984, notwithstanding its current sales to Laurel. Petitioner estimates its minimum bill exposure from Tennessee for the period, June through November 1984, to be 7,338,000 Mcf. Petitioner states that its customers would save $2.7834 per Mcf for each Mcf sold to Laurel and that its customers would additionally benefit from the crediting to Account No. 191 of the jurisdictional portion of the revenues received from the sale to Laurel.

Petitioner alleges that it has no other market available to it, either on-system or off-system, in which it can dispose of the volumes necessary to avoid the incurrence of minimum bill charges.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17186 Filed 6-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-161-005; Docket No. CP79-141-002]

Midwestern Gas Transmission Co. and Great Lakes Gas Transmission Co.; Petition To Amend

June 25, 1984.

Take notice that on June 8, 1984, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77001, and Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, jointly referred to as Petitioners, filed in Docket Nos. CP79-161-005 and CP79-141-002, a joint petition to amend further the orders issued September 25, 1979, in Docket Nos. CP79-161 and CP79-141, as amended, pursuant to section 7(c) of the Natural Gas Act, so as to extend to November 1, 1986, Petitioners' authorization to transport and sell natural gas imported from Canada, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners submit that by order issued August 9, 1979, as amended, Midwestern was authorized in Economic Regulatory Administration (ERA) Docket No. 79-04-NG to import 114,000,000 Mcf of natural gas at a point near Emerson, Manitoba, at daily volumes up to 350,000 Mcf and that on October 17, 1980, in ERA Docket No. 80-17-NG Midwestern was authorized to import up to 80,000 Mcf per day of such gas at an additional import delivery point near Niagara Falls, New York. By subsequent ERA orders, Midwestern's import authorization has been extended for a term ending October 31, 1984, it is explained.

Petitioners further submit that by order issued July 11, 1979, in ERA Docket No. 78-011-NG, Great Lakes was authorized to import 18,000,000 Mcf of natural gas at a point near Emerson, Manitoba, and that by subsequent ERA orders, Great Lakes' import authorization has been amended to extend the term until October 31, 1984.

It is stated that companion authorizations for such importing of natural gas were obtained from the Commission by Midwestern in Docket No. CP66-121 and by Great Lakes in Docket No. CP66-112.

It is further stated that by order issued by the Commission on September 25, 1979, in Docket No. CP79-141, Great Lakes was authorized to resell to Midwestern the 18,000,000 Mcf of gas imported and purchased by Great Lakes from TransCanada PipeLines Limited

and that Great Lakes was also authorized to transport for Midwestern from the point near Emerson, Manitoba, to points of interconnection of the Great Lakes facilities with the facilities of ANR Pipeline Company, the total volumes of gas imported by Great Lakes and Midwestern. It is submitted that by subsequent orders, the Great Lakes authorization has been extended through October 31, 1984.

Petitioners submit that by order issued by the Commission on September 25, 1979, in Docket No. CP79–161, Midwestern was authorized to sell to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), Northern Natural Gas Company, Division of Inter-North, Inc. (Northern), and Natural Gas Pipline of America (Natural) up to 350,000 Mcf of such natural gas per day. Midwestern's authorization for sales to Northern and Natural have terminated through subsequent amendments and Midwestern is presently authorized to sell up to 600,000 Mcf per day to Tennessee, through the period ending October 31, 1984, it is stated.

Petitioners further submit that by instant petition Great Lakes seeks extension for a two-year period ending October 31, 1986, of the authorization issued in Docket No. CP79–141 so as to permit Great Lakes to resell to Midwestern on an interruptible basis the volumes to be imported during that period by Great Lakes. Further, Great Lakes seeks extension for the period through October 31, 1986, of its authorization to transport for Midwestern on an interruptible basis the total volumes to be imported by Midwestern and by Great Lakes. Midwestern, by this petition, seeks extension for a two-year period ending October 31, 1986, of the authorization issued in Docket No. CP79–161 to permit Midwestern to sell up to 600,000 Mcf per day of such imported gas to Tennessee.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–17187 Filed 6–27–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–501–000]

National Fuel Gas Supply Corp.; Application

June 25, 1984.

Take notice that on June 18, 1984, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP84–501–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to replace and/or enlarge existing facilities. National Fuel also requests, pursuant to section 7(b) of the Natural Gas Act, permission and approval to abandon the deteriorated facilities which would be replaced. National Fuel's proposals are more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel proposes to replace four compressor units that have a total horsepower of 800, install new gas piping, new cooling equipment, new compressor and metering buildings, and upgrade an existing dehydration plant at its Tuscarora Storage Station in Tuscarora, Steuben County, New York. It is stated that the proposed station would be constructed on existing company property on a site adjacent to the existing station.

National Fuel estimates the cost of the proposed project to be $1,800,165 which would be financed with internally generated funds and/or interim short-term bank loans.

It is asserted that the age and high maintenance costs as well as high fuel gas consumption of the four existing compressors has necessitated the request for replacement. The replacement compressors would consist of two 800 horsepower units which require 20 percent less fuel gas consumption. It is stated that the additional horsepower would provide National Fuel with greater flexibility in its gas purchasing and dispatching operations during the 200-day injection period at the Tuscarora Storage Field.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 13, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–17190 Filed 6–27–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–362–007]

Northwest Pipeline Corp.; Petition To Amend

June 25, 1984.

Take notice that on June 11, 1984, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP82–362–007 a petition to amend further the order issued September 30, 1982, as amended, in Docket No. CP82–362–000 pursuant to section 7(c) of the Natural Gas Act so as to authorize an extension of the term of the transportation service provided for the account of Phillips Pacific Chemical

Company (Phillips), all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

Northwest requests that the Commission amend its orders dated September 30, 1982, and May 13, 1983, so as to authorize the transportation service until June 20, 1986.

Northwest indicates that it would continue to receive up to 10 billion Btu of natural gas purchased by Phillips Pacific from Southern Union Gathering Company and redeliver gas to Phillips Pacific near Kennewick, Washington. Northwest states that Phillips Pacific continues to require natural gas in the operation of its Kennewick, Washington, plant.

It is asserted that other than the extension of term Northwest proposes no changes to the transportation service as previously authorized by the Commission in this proceeding.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 16, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17189 Filed 6-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-464-000]

Northwest Central Pipeline Corp.; Application

June 22, 1984.

Take notice that on June 5, 1984, Northwest Central Pipeline Corporation (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP84-464-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by reclaim certain facilities on its transmission system and the transportation of natural gas through those facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to discontinue the sale of gas to Bruce E. Rigdon, d/b/a Rigdon's Mobile Home Acres, in Knob Noster, Johnson County, Missouri, and reclaim the meter and regulator facilities used to make this sale. The sale commenced in 1967 pursuant to budget-type authorization issued in Docket No. CP67-99, it is explained. Applicant states that Mr. Rigdon has refused to pay for gas delivered to it and now owes Applicant $36,902.44 and that the account started becoming deliquent on September 1, 1982. Applicant asserts that action was taken against Mr. Rigdon in the Circuit Court of Johnson County to collect this delinquent account and that a judgment was granted to Applicant on April 23, 1984.

It is stated that the salvage value of the facilities to be reclaimed is approximately $2,770 with a cost to reclaim of $2,180.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 3, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17188 Filed 6-27-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AAA-FRL-2615-7]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Debarred, Suspended, or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determinng a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of June 18, 1984.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475-8025.

Dated: June 20, 1984.

Frederick Meadows,

Acting Director, Grants Administration Division (PM-2161).

EPA Master List of Debarred, Suspended and Voluntarily Excluded Persons

Name and jurisdiction	File No.	Status[1]	From	To	Grounds
A. C. Lawrence Leather Company, Inc. (Danvers, MA)	83-0007-00	D	04-12-84	04-11-87	§ 32.200(a)(c)(i)
Anderson, Scott (Walnut Creek, CA)	83-0004-01	D	06-17-84	06-16-86	§ 32.200(a)(b)(e)(f)
Ashland-Warren, Inc. (McMinnville, TN)	82-0401	D	09-22-82	05-06-85	§ 32.200(a)(e).
Atlas Prestressing Corp. (Panorama City, CA)	83-0050-00	D	08-02-83	08-01-86	§ 32.200(a).
Averill, Ernest Jr. (Fort Myers, FL)	83-0066-06	S	12-02-83	(2)	§ 32.300(b).
Barber, Lawrence (Hazelwood, NC)	83-0007-05	D	04-12-84	04-11-87	§ 32.200(a)(c)(i).
Bowe, Walsh and Associates, Inc. (Melville, NY)	83-0040-00	D	04-14-83	04-13-86	§ 32.200(a)(e).
Bowers Excavating and Fencing, Inc. (Klamath Falls, OR)	83-0058-00	D	06-27-83	12-27-84	§ 32.200(b)(e)(i)
Bowers, Joe (Klamath Falls, OR)	83-0058-01	D	06-27-83	12-27-84	§ 32.200(b)(e)(i)
Bowers, John (Klamath Falls, OR)	83-0058-02	D	06-27-83	12-27-84	§ 32.200(b)(e)(i).
Christen, Burl Gene (Denver, CO)	83-0050-02	VE	11-03-83	11-02-84	§ 32.200(a).
Emchetti, Angelo J (Camden, NJ)	83-0040-04	D	04-14-83	04-13-86	§ 32.200(a)(b).
Fredrich, Rene (Saratoga, CA)	83-0003-01	VE	12-23-83	12-22-84	§ 32.200(a).
Gabay, Marlan (Northport, NY)	83-0040-02	D	12-16-83	12-15-86	§ 32.200(a).
Goodspeed, Robert (North Hampton, NH)	83-0007-02	D	04-12-84	04-11-87	§ 32.200(c)(i).
Harry Johnson Plumbing Company, Inc. (Walla Walla, WA)	83-0060-00	D	07-22-83	07-21-86	§ 32.200(b)(c)(e)(i).
Herbert G. Whyte, Associates, Inc. (Gary, IN)	82-0501	D	10-20-82	10-19-85	§ 32.200(b)(e)
Hunter, James C. (Gardena, CA)	83-0002-02	D	07-07-83	07-06-86	§ 32.200(a).
Jackson, Manly (San Jose, CA)	83-0048-02	D	06-27-83	06-26-86	§ 32.200(a).
Johnson, Mark (Walla Walla, WA)	83-0060-01	D	07-22-83	07-21-86	§ 32.200(b)(c)(e)(i)
Johnson, Richard (Hinsdale, NH)	83-0007-03	D	04-12-84	04-11-87	§ 32.200(c)(i)
Keller, John (Timonium, MD)	83-0048-01	D	09-08-83	03-08-85	§ 32.200(a).
L.A. Reynolds Company (Winston Salem, NC)	83-0036-00	D	07-01-83	06-30-86	§ 32.200(a).
Long, Harold Delmar (Los Gatos, CA)	83-0050-01	D	07-07-83	07-06-86	§ 32.200(a).
Marshall, Weymouth (Gloucester, MA)	83-0007-01	D	04-12-84	04-11-87	§ 32.200(c)(i).
Meyer, Gary (North Platte, NE)	83-0031-01	VE	04-18-84	10-17-84	§ 32.200(a).
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA)	82-0501	D	10-07-82	02-16-87	§ 32.200(b)(c)(e)(i)
	82-0408				
Newman, Fred M. (Vienna, VA)	83-0072-01	D	09-30-83	09-29-86	§ 32.200(i).
Newman, Richard Gordon (Pierre, SD)	83-0041-00	D	11-29-83	11-28-86	§ 32.200(a).
Paulsen Building and Supply, Inc. (Cozad, NE)	83-0029-00	VE	04-03-84	07-02-84	§ 32.200(a).
Paulsen, Ivan L. (Cozad, NE)	83-0029-01	VE	04-03-84	07-02-84	§ 32.200(a).
Post-Tensioning Service Corporation (Saratoga, CA)	83-0001-00	D	07-08-83	07-07-86	§ 32.200(a).
Reynolds, Jon R. (Winston Salem, NC)	83-0036-01	D	07-01-83	06-30-86	§ 32.200(a).
Richmond, Elwood P. (Grand Forks, ND)	83-0006-01	D	06-06-83	06-05-86	§ 32.200(a)(f).
Richmond Engineering, Inc. (Grand Forks, ND)	83-0005-00	D	06-06-83	06-05-86	§ 32.200(a)(f).
Richmond, Lloyde W., Jr. (Grand Forks, ND)	83-0005-02	D	06-06-83	06-05-86	§ 32.200(a)(f).
Rothrock Construction, Inc. (Murrells Inlet, NC)	83-0064-00	D	05-17-84	05-16-87	§ 32.200(a).
Rothrock, Steve D. (Murrells Inlet, NC)	83-0064-01	D	05-18-84	05-17-87	§ 32.200(a).
Shephard, Frank A. (Sevennah, TN)	83-0048-01	D	07-15-83	11-03-85	§ 32.200(a).
Stone, Francis (Swanzey, NH)	83-0007-04	D	04-12-84	04-11-87	§ 32.200(a)(c)(i)
Streesteel Corporation (Wilkes-Barre, PA)	83-0051-00	D	08-02-83	02-01-86	§ 32.200(a).
Suburban Grading & Utilities, Inc. (Norfolk, VA)	83-0022-00	D	03-29-83	03-28-86	§ 32.200(a).
Swanson, David (Los Gatos, CA)	83-0003-02	VE	11-03-83	11-02-84	§ 32.200(a)(f).
Vanderhurst, William (Saratoga, CA)	83-0001-01	D	07-08-83	07-07-86	§ 32.200(a).
Walsh, Charles T. (Huntington Bay, NY)	83-0040-01	D	04-14-83	04-13-86	§ 32.200(a)
Walstad, Merrill (Huntington Beach, CA)	83-0003-03	D	06-27-83	06-26-86	§ 32.200(a).
Watts, Richard (Los Gatos, CA)	83-0003-04	VE	11-03-83	11-02-84	§ 32.200(a).
Whyte, Herbert G. (Gary, IN)	82-0501	D	10-20-82	10-19-85	§ 32.200(b)(e).
Wirt, David (Douglasville, GA)	82-0501	D	10-07-82	02-16-87	§ 32.200(b)(c)(e)(i)
	82-0408				
Wirt, Gordon D. (Douglasville, GA)	82-0408	D	12-07-82	02-16-87	§ 32.200(c)(e).
Wirt, Judith C. (Douglasville, GA)	82-0408	D	12-07-82	02-16-87	§ 32.200(c)(e)(i)
Womack, Jerry T. (Norfolk, VA)	83-0022-01	D	03-29-83	03-28-85	§ 32.200(a).
Young, Frederick M. (Fayetteville, TN)	83-0025-01	VE	07-19-83	07-18-84	§ 32.200(a).
Zeigler, Beaty Stevens (Sumter, SC)	83-0045-01	VE	07-15-83	08-31-86	§ 32.200(a).

[1] D = Debarred; S = Suspended; VE = Voluntarily Excluded.
[2] Open.

[FR Doc. 84-17221 Filed 6-27-84; 8:45 am]
BILLING CODE 6560-05-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Notification of Performance of Bank Services (OMB No. 3064–0029).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4351.

SUMMARY: The FDIC is requesting OMB to extend the expiration date of the FDIC form used by insured state nonmember banks to notify the FDIC of the existence of a relationship with a bank service corporation within thirty days after the making of a service contract or the performance of the service, whichever occurs first. The form provides for identifying the name and location of the reporting bank and the servicer, and a brief description of the services provided. The form FDIC 6120/06 (OMB No. 3064–0029, expiring September 30, 1984) implements the notification requirements of section 7 of the Bank Service Corporation Act (12 USC 1867). It is estimated that the

annual burden for the reporting bank is approximately one-half hour.

Dated: June 18, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-17182 Filed 6-27-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202-000014-052.

Title: Trans-Pacific Freight Conference (Hong Kong).

Parties:

American President Lines, Ltd.
Barber Blue Sea Line
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
United States Lines, Inc.
Japan Line, Ltd.
Nippon Yusen Kaisha
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would delete the "Guidelines for Independent Action" which formerly required a 30 day notice period from the appendix of the agreement and establish provisions for independent action with a minimum of 10 days' notice.

Agreement No. 202-000150-075.

Title: Trans-Pacific Freight Conference of Japan/Korea.

Parties:

American President Lines, Ltd.
Barber Blue Sea Line
Hapag-Lloyd AG
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Marine Transport Co., Ltd.
Lykes Bros. Steamship Co., Inc.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would add new articles with provisions governing consultation, shipper's requests and complaints and independent action with a minimum notice period of 10 days to the basic agreement.

Agreement No. 202-003103-074.

Title: Japan/Korea Atlantic & Gulf Freight Conference.

Parties:

Barber Blue Sea Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Korea Shipping Corporation
Lykes Bros. Steamship Co., Inc.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would add new articles with provisions governing consultation, shipper's requests and complaints and independent action with a minimum notice period of 10 days to the basic agreement.

Agreement No. 202-005600-048.

Title: Philippines North America Conference.

Parties:

American President Lines, Ltd. Hapag-Lloyd AG, Lykes Bros. Steamship Co., Ltd. A.P. Moller (Maersk Line), Sea-Land Service, Inc.

Synopsis: The proposed amendment would make changes relating to independent action providing for a reduction in the 30 day notice period to a minimum of 10 days.

Agreement No. 202-005700-035.

Title: New York Freight Bureau Conference Agreement.

Parties:

Barber Blue Sea Line, Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Line, Ltd., A.P. Moller-Maersk Line, Nippon Yusen Kaisha, United States Lines, Inc., Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment substitutes a new article relating to independent action with a minimum notice period of 10 days in the basic agreement.

Agreement No. 202-008190-014.

Title: Japan-Puerto Rico and Virgin Islands Freight Conference.

Parties:

Japan Line, Ltd. Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would add new articles with provisions governing consultation, shipper's requests and compliants and independent action with a minimum of 10 days' notice to the basic agreement.

Dated: June 25, 1984.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 84-17216 Filed 6-27-84; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the The Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, The Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 213-010601.

Title: NOL—OOCL Sailing and Space Charter Agreement.

Parties:

Neptune Orient Lines, Ltd.
Orient Overseas Container Line, Inc.

Synopsis: The proposed agreement provides for the rationalization of sailing schedules and service levels, the exchange of container space, mutual determination of container liner services to be initiated by the parties, joint advertising, and the joint use of (and negotiation for) terminal facilities and services in the trade between ports and points in the United States, on the one hand, and ports and points in Korea, the Republic of China, the Peoples' Republic

of China, Hong Kong, Japan, Thailand, Malaysia, Singapore, Indonesia, the Philippines and Australia, on the other.

Agreement No.: 207–010602.

Title: Westwood Transpacific Service.

Parties:

Partrederiet Hoegh Minerva.
Partrederiet Hoegh Miranda.
Westwood Shipping Lines, Inc.

Synopsis: The proposed agreement establishes a joint cargo service in the trade between various inland points in the United States via ports in the northwest United States to British Columbia range, on the one hand, and ports in the Japan to Korea range, on the other.

Agreement No.: 217–010603.

Title: Star/ACS Space Charter Agreement.

Parties:

Star Shipping A/S.
Atlantic Cargo Services AB.

Synopsis: The proposed agreement establishes an agreement in the trade between ports in Northern Europe and the United Kingdom, on the one hand, and ports on the United States Gulf and Atlantic coasts, on the other, whereby Star, on a "space available" basis, will make space available to ACS for the carriage of containers and general cargo.

By Order of the The Federal Maritime Commission.

Dated: June 25, 1984.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 84–17286 Filed 6–27–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citicorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 18, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage *de novo* in acting as agent or broker for the sale of unemployment insurance directly related to extensions of credit by Citicorp subsidiaries at the locations throughout the United States.

Board of Governors of the Federal Reserve System, June 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–17201 Filed 6–27–84; 8:45 am]

BILLING CODE 6210–01–M

Fishkill National Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 20, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Fishkill National Corporation*, Beacon, New York; to be come a bank holding company by acquiring 95 percent of the voting shares of The Fishkill National Bank, Beacon, New York.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Riverlands Banschares, Inc.*, LaPlace, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Riverlands National Bank in LaPlace, LaPlace, Louisiana.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *NorBanc Group, Inc.*, Pine River, Minnesota; to acquire 94 percent of the voting shares of State Bank of Boyd, Boyd, Minnesota.

Board of Governors of the Federal Reserve System, June 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–17202 Filed 6–27–84; 8:45 am]

BILLING CODE 6210–01–M

United Banks of Colorado, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company list in this notice has applied under § 225.14 of the Board's Regulation Y (49 FR 794) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company

Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engate in such an activity. Unless other wise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonable be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as under concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in despute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding this application must be received not later than July 20, 1984.

A Federal Reserve Bank of Kansas City (Thomas M. Hoening, Vice President), 925 Grand avenue, Kansas City, Missouri 64198:

1. *United Banks of Colorado, Inc.*, Denver, Colorado; to acquire 100 percent of the voting shares of United Bank of Aurora-South, Aurora, Colorado (a *de novo* bank); and to acquire Lincoln Agency, Denver, Colorado, thereby engaging in offering credit life and credit health and accident insurance in connection with credit extensions made by existing and future credit granting subsidiaries of United Banks of Colorado, Inc.

Board of Governors of the Federal Reserve System, June 22, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-17203- Filed 6-27-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Eligibility to Use GSA Sources of Supply and Services

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Federal Property and Administrative Services Act of 1949, as amended, authorizes the Administrator to procure and supply personal property and nonpersonal services for executive agencies and certain other eligible activities. The definitions of those activities and the criteria to determine eligibility are contained in the following order. (ADM 4800.2).

ADDRESS: Office of Federal Supply and Services (FFY), General Services Administration, Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Bonnie Collings (FFY) telephone (703) 557-7990.

SUPPLEMENTARY INFORMATION: The following GSA order provides guidelines and procedures for various activities using GSA sources of supply and services. Only those activities determined eligible under the criteria contained in this order may use GSA contracts. Except for the District of Columbia, State and local governments and municipalities may not use GSA sources of supply unless they qualify for eligibility pursuant to paragraph 7 d or e of this order.

Dated: June 18, 1984.

James J. Grady, Jr.,

Director of Policy and Agency Assistance.

GSA Order

SUBJECT: Eligibility to use GSA sources of supply and services

1. *Purpose.* This order provides definitions and listings of those agencies and other activities eligible to use GSA sources of supply and services, and identifies those that may be made mandatory users.

2. *Cancellation.* FSS 4800.11G is canceled.

3. *Nature of revision.* This revision expands the definition in par. 5, below, to include all GSA sources of supply and services and updates the listings of organizations determined eligible to use these sources.

4. *General.* The Federal Property and Administrative Services Act of 1949, as amended, authorizes the Administrator to procure and supply personal property and nonpersonal services for Federal agencies, mixed-ownership Government corporations, as identified in the Government Corporation Control Act, and the District of Columbia. Additional activities eligible to use GSA sources include certain Government contractors which are authorized to do so by the Federal agencies controlling or administering their contracts, certain forest firefighting organizations which hold cooperative agreements with the U.S. Department of Agriculture, and certain international organizations which have been determined eligible by the Department of State. Other activities or organizations may be eligible by reason of enabling statutes or special authority.

5. *Definition.* GSA sources of supply and services are defined as those support programs administered by GSA and prescribed in the Federal Property Management Regulations (FPMR) Parts 101-26 Procurement Sources and Programs, 101-39 Interagency Motor Pools, 101-40 Transportation and Traffic Management, 101-42 Property Rehabilitation Services and Facilities, 101-43 thru 101-46, 101-48, and 101-49 Utilization and Disposal Programs, and 101-35 thru 101-37 ADP and Telecommunications, and in the Federal Information Resources Management Regulation (FIRMR) Parts 201-4, 205-35, 201-36, and 201-37.

6. *Authority to use GSA sources of supply and services.* The authority to use, or to be made a mandatory user of, GSA sources of supply and services is founded in statute (see par. 7).

7. *Eligible activities.* The majority of organizations eligible to use GSA sources of supply and services are covered by the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereafter known as the Property Act. Definitions of these organizations follow. It should be noted however, that because an organization may be eligible to use these sources of supply and services, it does not necessarily mean that it would always be practical for GSA to make them available.

a. *Executive agencies.* Sections 201(a) and 211(b) of the Property Act provide that executive agencies may use GSA sources of supply and services, and that they may be made mandatory users. Executive agencies, as defined in sec. 3(a), include:

(1) *Executive departments.* These are the cabinet departments defined in 5 U.S.C. 101 and are listed in appendix A.

(2) *Wholly-owned Government corporations.* These are defined in 31 U.S.C. 9101 and are listed in appendix A.

(3) *Independent establishments in the executive branch of the Government.* These are generally defined by 5 U S.C. 104. However, it is often necessary to

consult specific statutes, legislative histories, and other references to determine whether a particular establishment is within the executive branch. To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in appendix A.

b. *Other Federal agencies, mixed-ownership Government corporations, and the District of Columbia.* Sections 201(b) and 211(b) of the Property Act authorize the Administrator of General Services to provide GSA sources of supply and services to these organizations upon request. These organizations may not be made mandatory users. However, supply and services covered by the provisions of Section 111 of the Property Act (automatic data processing) may be made mandatory.

(1) *Other Federal agencies.* Other Federal agencies are those defined in section 3(b) of the Property Act which are not in the executive branch; i.e., any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under their direction). To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in appendix B.

(2) *Mixed-ownership Government corporations.* These are included in sections 201(b) and 211(b) of the Property Act and are defined in 31 U.S.C. 9101. They are listed in appendix B.

(3) *District of Columbia.* The Government of the District of Columbia is eligible to use GSA sources of supply and services. The Government of the District of Columbia, and those parts thereof which have been determined by GSA to be eligible to use its sources of supply and services, are listed in appendix B.

c. *The Senate, House of Representatives, and activities under the direction of the Architect of the Capitol.* These organizations are eligible to use GSA sources of supply and services, pursuant to sec. 602(e) of the Property Act, upon request. They may not be made mandatory users. To the extent that GSA has determined that various activities qualify under this authority, they are listed in appendix B.

d. *Other organizations authorized pursuant to the authority of the Property Act.* GSA has further determined, pursuant to the Property Act, that three other types of organizations are eligible to use its sources of supply and services.

(1) *Cost reimbursement-type contractors (and their subcontractors) as properly authorized.* Part 51 of the Federal Acquisition Regulations provides that agencies may authorize certain prime contractors (generally cost reimbursement contractors) to use GSA schedules and GSA stock. In turn, such contractors may authorize their subcontractors. In each case, the written authorization must conform to the requirements of FAR Part 51. Subpart 51.2 prescribes policies and procedures governing Federal agencies in authorizing cost reimbursement contractors to obtain interagency motor pool vehicles and related services.

(2) *Fixed-price contractors (and subcontractors) purchasing security equipment.* Pursuant to sec. 201 of the Property Act, the Administrator has determined that fixed-price contractors and lower tier subcontractors who are required to maintain custody of security classified records and information may purchase security equipment from GSA. Procedures regarding these organizations are set forth in FPMR 101–26.507 and 101–26.407.

(3) *Non-Federal firefighting organizations cooperating with the Forest Service.* Pursuant to sec. 201 of the Property Act, it has been determined that certain non-Federal firefighting organizations may purchase wildfire suppression equipment and supplies from FSS (Article V, Agreement No. FSS 79–1, August 27, 1979).

(4) *Department of the Interior, Bureau of Indian Affairs.* Pursuant to a Memorandum of Understanding between the Department of the Interior and the General Services Administration (FSS–83–3) and Pub. L. 93–638, tribal Government grantees of the Bureau of Indian Affairs may use GSA sources of supply and services.

e. *Other statutes.* Other statues authorize specific organizations to use GSA sources of supply and services. These organizations are listed in appendix B, with appropriate annotations. The major categories of such organziations include:

(1) *Certain charitable institutions.* Pursuant to Pub. L. 95–355, the following activities are eligible to use GSA supply sources and are also listed in appendix B:

(a) Howard University;
(b) Gallaudet College;
(c) National Technical Institute for the Deaf; and
(d) American Printing House for the Blind.

(2) *Certain territories.* Certain territories of the United States, as indicated in appendix B, are eligible to use GSA sources of supply and services. (Note: This authority has historically depended on the authorizing provisions being reenacted in the annual Appropriations Act for the Department of Interior; should any questions arise, consult with the GSA Procurement Law Division (LP) to ascertain the current status of such authority.)

(3) *Foreign entities.* Section 607 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2357, provides that the President may authorize certain countries and organizations to use GSA sources of supply and services as part of the foreign policy of the United States. To the extend that the Department of State has made determinations of behalf of the President, they are included in appendix C. Purchases made by international organizations through GSA sources of supply and services shall be for civilian use only.

(4) *Nonappropriated fund activities.* FPMR 101–26 provides that military commissaries and nonappropriated fund activities may use GSA sources of supply and services for their own use, not for resale, unless otherwise authorized by the individual Federal agency and concurred in by GSA.

8. *Ineligible activities.* Except for the acquisition of excess personal property through sponsoring agencies, Federal grantees are ineligible to use GSA sources of supply and services.

9. *Excess, surplus, and forfeited property.* The eligibility of activities and organizations to obtain supplies and services from GSA's personal property utilization and disposal programs is governed by FPMR Parts 101–43 thru 101–46, 101–48 and 101–49, and not by this order.

10. *Determination of eligibility.* Activities or organizations other than those covered in the appendices to this order may be eligible to use GSA sources of supply and services. Requests to use these services received from activities or organizations whose eligibility is in question shall be forwarded to the Office of Policy and Agency Assistance (FF), Attention: Regulations Management Division (FFY), for determination.

Ray Kline,

Acting Administrator.

Appendix A—Executive Agencies

The following have been determined to be "Executive agencies," or parts thereof, for the purpose of using GSA sources of supply and services. This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of these will be ruled upon by GSA on a case-by-case basis (see par. 10). Listed here are major Federal activities and their subordinate entities about which we have received inquiries.

Action
Agency for International Development (AID)
Agriculture, Department of
Air Force, Department of the
Alaska Natural Gas Transportation System
American Battle Monuments Commission
Army Corps of Engineers
Army, Department of the
Board for International Broadcasting
Bureau of Land Management
Central Intelligence Agency
Civil Aeronautics Board
Commerce, Department of
Commission on Civil Rights
Commission of Fine Arts
Commodity Credit Corporation
Commodity Futures Trading Commission
Consumer Product Safety Commission
Defense, Department of
Defense Agencies and Joint Service Schools
Education, Department of
Energy, Department of
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-import Bank of the U.S.
Farm Credit Administration
Federal Communications Commission
Federal Crop Insurance Corporation
Federal Election Commission
Federal Emergency Management Agency
Federal Home Loan Bank Board
Federal Labor Relations Authority
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Mine Safety and Health Review Commission
Federal Prison Industries, Inc.
Federal Savings and Loan Insurance Corporation
Federal Trade Commission
Forest Service, U.S.
General Services Administration
Government National Mortgage Association
Health and Human Services, Department of
Housing and Urban Development, Department of
Inter-American Foundation
Interior, Department of the
Interstate Commerce Commission
Justice, Department of
Kennedy Center
Labor, Department of
Legal Services Corporation (not its grantees)
Merit Systems Praotection Board
National Aeronautics and Space Administration
National Credit Union Administration (not individual credit unions)
National Endowment of the Arts
National Endowment for the Humanities
National Labor Relations Board
National Mediation Board
National Science Foundation
National Transportation Safety Board
Navy, Department of the
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Office of Personnel Management
Overseas Private Investment Corporation
Panama Canal Commission
Pennsylvania Avenue Development Corporation
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
St. Elizabeths Hospital
St. Lawrence Seaway Development Corporation
Securities and Exchange Commission
Selective Service System
Small Business Administration
Smithsonian Institution
State, Department of
Tennessee Valley Authority
Transportation, Department of
Treasury, Department of the
U.S. Arms Control and Disarmament Agency
U.S. Information Agency
U.S. International Development Cooperation Agency
U.S. International Trade Commission
Veterans Administration

Appendix B—Other Eligible Users

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendices A and C. An asterisk indicates that special limitations may apply (see subpar. 7e(2)). This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of these will be ruled upon by GSA on a case-by-case basis (see par. 10).

Administrative Conference of the U.S.
Administrative Office of the U.S. Courts
Advisory Commission on Intergovernmental Relations
American Printing House for the Blind
American Samoa, Territorial and Local Governments of*
Architect of the Capitol
Central Bank for Cooperatives
Certain Non-Appropriated Fund Activities (generally, not for resale)
Coast Guard Auxiliary (through the Coast Guard)
Contractors and Subcontractors—Cost-Reimbursement Type (as authorized)
Contractors and Subcontractors—Fixed Price (security equipment only)
Courts, Federal (not court reporters)
Delaware River Basin Commission
District of Columbia, Government of
Farm Credit Banks (each case must be individually reviewed)
Federal Deposit Insurance Corporation
Federal Home Loan Banks
Federal Intermediate Credit Banks
Federal Land Banks
Federal Reserve Board of Governors
Firefighters, Non-Federal (as authorized by Forest Service)
Gallaudet College
General Accounting Office
Government Printing Office
Guam, Territorial and Local Governments of*
House of Representatives, U.S.
Howard University (including hospital)
Library of Congress
National Building Museum
National Consumer Cooperative Bank
National Gallery of Art
National Guard Activities (only through U.S. Property and Fiscal Officers)
National Railroad Passenger Corporation (i.e., AMTRAK)
Northern Mariana Islands, Commonwealth of the Territorial and Local Governments*
Regional Banks for Cooperatives
Senate, U.S.
Susquehanna River Basin Commission
Trust Territory of the Pacific Islands, Government of*
U.S. Postal Service
U.S. Railway Association
U.S. Representative, Office of Joint Economic Commission, CENPRO Project, Saudi Arabia (when Saudi Government cannot supply)
U.S. Soldiers' and Airmen's Home
U.S. Synthetic Fuels Corporation
Virgin Islands, Territorial and Local Governments of (including Virgin Islands Port Authority)*
Washington Metropolitan Area Transit Authority

Appendix C—International Organizations

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendices A and B. This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of these will be ruled upon by GSA on a case-by-case basis (see par. 10).

African Development Fund
Asian Development Bank
Caribbean Organization
Customs Cooperation Council
Food and Agriculture Organization of the United Nations
Great Lakes Fishery Commission
Inter-American Defense Board
Inter-American Development Bank
Inter-American Institute of Agricultural Sciences
Inter-American Statistical Institute
Inter-American Tropical Tuna Commission
Intergovernment Maritime Consultive Organization
International Atomic Energy Agency
International Bank for Reconstruction and Development (World Bank)
International Boundary Commission-United States and Canada
International Boundary and Water Commission-United States and Mexico
International Center for Settlement of Investment Disputes
International Civil Aviation Organization
International Coffee Organization
International Cotton Advisory Committee
International Development Association
International Fertilizer Development Center
International Finance Corporation
International Hydrographic Organization
International Joint Commission-United States and Canada
International Labor Organization
International Monetary Fund
International Pacific Halibut Commission
International Pacific Salmon Fisheries Commission-Canada
International Telecommunications Satellite Organization
International Telecommunication Union
International Wheat Council
Lake Ontario Claims Tribunal
Organization of African Unity (OAU)
Organization of American States
Organization for Economic Cooperation and Development
Pan American Health Organization

Radio Technical Commission for Aeronautics
South Pacific Commission
United International Bureau for the Protection of Intellectual Property
United Nations
United Nations Educational, Scientific and Cultural Organization
Universal Postal Union
World Health Organization
World Intellectual Property Organization (WIPO)
World Meteorological Organization

[FR Doc. 84-17181 Filed 6-27-84; 8:45 am]
BILLING CODE 4820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83D-0360]

Radioactive Drugs; Revocation of Interim Enforcement Policy and Notice of Availability of a Guideline for Nuclear Pharmacies Describing Activities That Require Registration as a Drug Establishment

Correction

In FR Doc. 84-16160 beginning on page 24949, in the issue of Monday, June 18, 1984, make the following correction.

On page 24950, third column, line 4, the date, "September 6, 1984." should read "December 17, 1984."

BILLING CODE 1505-01-M

National Institutes of Health

National Cancer Institute; Meetings for the Review of Grant Applications and Contract Proposals

Pursuant to Pub. L. 92-463, notice is hereby given for meetings of several committees of the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for review, discussion and evaluation of individual grant applications or contract proposals. These applications or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will furnish summaries of meetings and rosters of committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Cancer Regional Studies Review Committee.
Dates: July 12-13, 1984.
Place: National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20205.
Times: Open: July 12, 8:30 a.m.-9:00 a.m.
Agenda: A review of administrative details.
Closed: July 12, 9:00 a.m.—recess. July 13, 8:30 a.m.—adjournment.
Closure reason: To review grant applications.
Executive Secretary: Ms. Cynthia Sewell, Westwood Building, Room 821, National Institutes of Health, Bethesda, MD 20205, Phone: 301/496-2853.

Name of Committee: Clinical Trials Committee.
Dates: July 23-25, 1984.
Place: National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20205.
Times: Open: July 23, 9:00 a.m.-9:30 a.m.
Agenda: A review of administrative details.
Closed: July 23, 9:30 a.m.—recess. July 24, 9:00 a.m.—recess July 25, 9:00 a.m.—Adjournment.
Closure reason: To review contract proposals.
Executive Secretary: Dr. Richard A. Rhoden, Westwood Building, Room 804, National Institutes of Health, Bethesda, MD 20205 Phone: 301/496-7030.

Name of Committee: Biometry and Epidemiology Contract Review Committee.
Dates: July 26-27, 1984.
Place: National Institutes of Health, Building 31C, Conference Room 7, 9000 Rockville Pike, Bethesda, MD 20205.
Times: Open: July 26, 9:00 a.m.-9:30 a.m.
Agenda: A review of administrative details.
Closed: July 26, 9:30 a.m.—recess. July 27, 9:00 a.m.—adjournment.
Closure reason: To review contract proposals.
Executive Secretary: Dr. Wilna Woods, Westwood Building, Room 807, National Institutes of Health, Bethesda, MD 20205 Phone: 301/496-7153.

Name of Committee: Cancer Therapeutics Program Project Review Committee.
Dates: August 6-7, 1984.
Place: National Institutes of Health, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, MD 20205.
Times: Open: August 6, 8:30 a.m.-9:00 a.m.
Agenda: A review of administrative details.
Closed: August 6, 9:00 a.m.—recess. August 7, 8:30 a.m.—adjournment.
Closure reason: To review grant applications.
Executive Secretary: Dr. Eric R. Jurrus, Westwood Building, Room 834, National Institutes of Health, Bethesda, MD 20205 Phone: 301/496-2330.

Dated: June 18, 1984.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 84-17347 Filed 6-27-84; 8:45 am]
BILLING CODE 4140-01-M

Ad Hoc Working Group To Develop Radioepidemiological Tables; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the National Institutes of Health announces the reestablishment of the Ad Hoc Working Group to Develop Radioepidemiological Tables.

Section 7(b) of Pub. L. 97-414 directs the Secretary, HHS, to devise and publish radioepidemiological tables that estimate the likelihood that persons with any radiation-related cancer who received specific radiation doses before the onset of the cancer developed the disease as a result of such exposure.

In carrying out this mandate, the Secretary has reestablished the Ad Hoc Working Group to Develop Radioepidemiological Tables comprised of scientific experts whose qualifications will insure a thorough, competent, and timely completion of the task.

Authority for this committee shall terminate on May 15, 1985, unless the Secretary, HHS, formally determines that continuance is in the public interest.

Dated: June 21, 1984.

James B. Wyngaarden, M.D.,
Director, National Institutes of Health.

[FR Doc. 84-17348 Filed 6-27-84; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Office of Manufactured Housing and Regulatory Functions; Order of Suspension; Interstate Land Sales

[Docket No. N-84-1403; FR-1991]

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, Office of Manufactured Housing and Regulatory Functions, HUD.

ACTION: Order of Suspension.

SUMMARY: The Department is issuing an Order of Suspension to each developer listed on the attached Appendix. These developers have failed to either file amendments to their registrations or file documentation establishing that no such amendments were necessary. The Order of Suspension is issued pursuant to the Interstate Land Sales Full Disclosure Act.

EFFECTIVE DATE: June 28, 1984.

FOR FURTHER INFORMATION CONTACT: Roger G. Henderson, Chief, Land Sales Enforcement Branch, Department of Housing and Urban Development, Room 4116, Washington, D.C. 20410. Telephone: (202) 755–5989.

SUPPLEMENTARY INFORMATION: The Office of Manufactured Housing and Regulatory Functions gives public notice of its attempt to serve upon certain persons at their last known address a notice requiring revisions to their Statement of Record. Although service of notice by certified mail was attempted in accordance with 24 CFR 1720.170, it was not possible. Consequently, on February 9, 1984, the Department of Housing and Urban Development, pursuant to 44 U.S.C. 1508, published in the **Federal Register** a Notice of Proceedings and Opportunity for Hearing (49 FR 4993) effecting constructive notice on certain developer respondents. The notice informed these persons of omissions of material provisions required by law in their Statement of Record and Proberty Reports, and advised them of their rights to request a hearing within 15 days of publication of the notice. More than 15 days have now elapsed since the publication of the notice and the persons listed in the attached Appendix and referred to in the Order of Suspension as "Developer" have not requested a hearing; therefore, the Department is required to issue this Order of Suspension.

Order of Suspension

1. The developer being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90–448) (15 U.S.C. 1701 et seq.) and the Rules and Regulations lawfully promulgated thereto pursuant to 15 U.S.C. 1718, has filed its Statement of Record and Property Report covering its subdivision which became effective pursuant to 24 CFR 1710.21 of the Interstate Land Sales Regulations. Said statement is still in effect.

2. Pursuant to lawful delegation, as authorized by 15 U.S.C. 1715, the authority and responsibility for administration of the Interstate Land Sales Full Disclosure Act has been vested in the Secretary or designee.

3. Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), if it appears to the Secretary or designee at any time that a Statement of Record, which is in effect, includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statement therein not misleading, the Secretary or designee may, after notice, and after an opportunity for a hearing requested within 15 days of receipt of such notice, issue an order suspending the Statement of Record.

4. A Notice of Proceedings and Opportunity for Hearing was published in the **Federal Register** on February 9, 1984 informing the developer of information obtained by the Office of Manufactured Housing and Regulatory Functions stating an untrue statement of a material fact or an omission of a material fact required to be stated therein or necessary to make the statements therein not misleading in the developer's Statement of Record. The developer was constructively notified of its right to request a hearing and that if it failed to request a hearing it would be deemed in default and proceedings would be decided against it, the allegations of which would be determined to be true. The developer has failed to answer or to request a hearing pursuant to 24 CFR 1720.220 within 15 days of publication of said Notice of Proceedings and Opportunity for Hearing.

Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1) the Statement of Record filed by the developer covering its subdivision is hereby suspended, effective as of June 28, 1984. This Order of Suspension shall remain in full force and effect until the Statement of Record has been properly amended as required by the Interstate Land Sales Full Disclosure Act and the implementing Regulations.

Pursuant to 44 U.S.C. 1508, service of this order upon the respondent is constructively noticed by publication of this order in the **Federal Register**.

Unless otherwise exempt any sales or offers to sell made by the developer or its agents, successors, or assigns while this Order of Suspension is in effect will be in violation of the provisions of said Act.

Dated: June 20, 1984.

Shirley M. Wiseman,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix

The captioned matters in this Appendix are listed alphabetically by subdivision in each State. The list contains the name of the subdivision, developer, representative and title, OILSR number and Land Sales Enforcement Branch Docket number.

Arizona

Sunset Hills, M. W. Longstreth, Vice-President and Village of Oak Creek, Respondent, OILSR No. 0–03567–02–695, 82–86–IS.

Colorado

Glens of Dacona, Emco Development Co., Inc., Respondent,OILSR No. 0–02605–05–281, 83–66–IS.

Florida

Blue Water Trailer Village Section 4, Andrew Murphy, Authorized Agent-Respondent OILSR No. 0–04458–09–116, 83–62–IS.

Citrus Lakes, Interlachen Lakes Estates, Inc., S. Philip Malspeis, President-Respondent, OILSR No. 0–01529–09–446 and (A), 82–98–IS.

Kentucky

Agape Shores, John L. & Katherine E. O'Banion, Owners, OILSR No. 0–03955–20–62, 82–109–IS.

Anderson Shores, Anderson Shores, Inc., Buddy Spann, President, OILSR No. 0–04231–20–71, 83–51–IS.

Missouri

Pine Hill Subdivision, Neil Land Development Company, Inc., Edward M. Welton, President-Respondent, OILSR No. 0–01504–29–62, 82–57–IS.

North Carolina

Land of Lakes, First American Land Corporation, Martin I. Price, President-Respondent, OILSR No. 0–02539–38–123, 82–115–IS.

Oregon

Malheur Lake Ranches, Malheur Lake Ranches, Co., Norman B. Conkle, President-Respondent, OILSR No. 0–03617–43–47, 83–7–IS.

Pennsylvania

Wilderness Acres, Dupont Mutual, Inc., Donald C. Simpson, President-Respondent, OILSR No. 0–03321–44–232, 83–57–IS.

Texas

Kerrville Hills Country Club, Kerrville Hills Development Company, Robert E. Owens, President-Respondent, OILSR No. 0–01460–49–54, 83–8–IS.

Villa Conquistador No. 1, NCOA Communities, John L. Griffins, Jr., President-Respondent, OILSR No. 0–02824–49–261, 83–12–IS.

Utah

Scottsville Subdivision, Bonneville Investments, Inc., L. M. Sproul, President-Respondent, OILSR No. 0-04777-52-106, 83-68-IS.

Washington

Paradise Lakes Country Club, Gulf Land Company, Thomas E. Isenhart, President-Respondent, OILSR No. 0-00423-56-5 and (A). (B), (XA), 83-3-IS.

Reintree, Reintree Corporation, George Samuels, President-Respondent, OILSR No. 0-04395-56-141, 83-22-IS.

[FR Doc. 84-17291 Filed 6-27-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Presidential Commission on Indian Reservation Economies; Working Session

AGENCY: Presidential Commission on Indian Reservation Economies.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463 as amended), the Presidential Commission on Indian Reservation Economies (PCIRE) announces its forthcoming work session.

DATE: July 14-21, 1984. Work sessions will generally begin at 9:00 a.m.

Place: Keystone Center, Keystone, Colorado.

Purpose: To review hearing transcript analyses and other staff work products analyzing obstacles to Indian economic development.

Status: Work sessions will be open to the public but limited to the space available.

SUPPLEMENTARY INFORMATION: The Presidential Commission on Indian Reservation Economies is authorized under Executive Order 12401 and as amended by Executive Order 12442.

FOR FURTHER INFORMATION CONTACT: Further information may be obtained by contacting Eric Rudert, Deputy Director, PCIRE, at 1717 H Street, Northwest, Suite 765, Washington, D.C. 20006. Telephone: 202-653-2436.

Eric Rudert,

Deputy Director, Presidential Commission on Indian Reservation Economies.

[FR Doc. 84-17028 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[A-18606]

Arizona; Exchange of Mineral Estate; Correction

By publication in the **Federal Register** Vol. 49, No. 98 of Friday, May 18, 1984, on pages 21122-21124, notice was given of the exchange of mineral estate between the United States and the State of Arizona, and the opening of the mineral estate received by the United States to location and entry under the United States mining laws. The opening is to be effective at 10:00 a.m. on June 22, 1984.

The purpose of this notice is to correct the May 18, 1984 notice to specify that section 16, T. 20 N., R. 20 W., does not become open to location and entry under the United States mining laws on June 22, 1984.

Dated: June 21, 1984.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-17167 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-32-M

[A-18606]

Arizona; Exchange of Mineral Estate; Correction

The following corrections are made in **Federal Register** Document No. 84-13437 appearing on pages 21122-21124 in the issue of May 18, 1984:

1. On Page 21123, lower half of the third column, the legal description should read as follows:

T. 23 N., R. 19 W.,
Sec. 2, Lots 1-4, incl., S½†NW¼, S½;
T 24 N., R. 20 W.,
Sec. 32, All.

2. On Page 21124, first column, the third and fourth lines are corrected to read as follows:

Sec. 32, N½, SW¼, N½†SE¼, SW¼†SE¼;
Dated: June 21, 1984.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-17166 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-32-M

Idaho Conveyance of Public Lands

June 20, 1984.

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), patents were issued to the following:

Whitworth Ranches, Inc., for the following-described public land:

Boise Meridian, Idaho

T. 15 N., R. 22 E.,
Sec. 7, lot 4.
Containing 39.78 acres.

Jack W. Klossner and June M. Klossner for the following-described public land:

Boise Meridian, Idaho

T. 3 S., R. 41 E.,
Sec. 12, SE¼NW¼.
Containing 40.00 acres.

R.C. Rich Sheep Company for the following-described public land:

Boise Meridian, Idaho

T 5 S., R. 40 E.,
Sec. 9, NE¼NE¼.
Containing 40.00 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the conveyances.

Louis B. Bellesi,

Deputy State Director for Operations

[FR Doc. 84-17165 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-GG-M

Combined Hydrocarbon Development; Intent To Prepare an Environmental Assessment for Tar Sand Development in the Pariette Special Tar Sand Area, Bookcliffs Resource Area, Vernal District, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental assessment for tar sand development in the Pariette Special Tar Sand Area, Bookcliffs Resource Area, Vernal District, Utah.

SUMMARY: This notice announces the intent of the Vernal District, Utah, Bureau of Land Management, to prepare an environmental assessment for potential tar sand development in the Pariette Special Tar Sand Area. The developer would be Enserch Exploration, Inc. Enserch proposes to recover 150 barrels of oil per day using in-situ combustion methods. The development would occur on the following locations:

Salt Lake Meridian, T.9S, R.17E, Section 3, Lots 2-4, S½N½; Salt Lake Meridian, T.8S, R.17E, Section 30, NW¼NE¼; Section 33, SE¼NE¼, NE¼NW¼; Section 34, NE¼SW¼, SE¼SE¼; containing a total of 479.57 acres.

The potential effects upon the following resources will be analyzed: air quality, cultural resources, minerals, paleontology, socioeconomics, soils,

vegetation, visual resources, watershed and wildlife.

The above is a tentative list of the general issues to be addressed. Written comments regarding additional general or specific issues will be received through August 15, 1984.

The address for comments or information is: Bureau of Land Management, Area Manager, Bookcliffs Resource Area, 170 South 500 East, Vernal, Utah 84078, (801) 789-1362.

The Draft Environmental Assessment is scheduled for publication on January 15, 1985. Copies will be available upon request.

Dated: June 22, 1984.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 84-17164 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-DQ-M

New Mexico: Realty Action; Conveyance

AGENCY: Bureau of Land Management (BLM), Las Cruces District, New Mexico.

ACTION: Conveyance of Public Lands Purchased by Competitive Sale.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the Act of October 21, 1976 (90 Stat. 2743, 2750; 43 U.S.C. 1701, 1713), William and Margaret Kambitch, Rodeo, New Mexico 88056, purchased by competitive sale, public lands in Hidalgo County described as:

New Mexico Principal Meridian, New Mexico

T. 30 S., R. 22 W.,
Sec. 11: Lots 1 to 4, inclusive;
Sec. 14: Lots 1 to 4, inclusive.

The parcel contains 96.00 acres. The purpose of the Notice is to inform the public and interested State and local governmental officials of the issuance of conveyance document to Mr. and Mrs. Kambitch on December 28, 1983.

Tim Read,

Acting Area Manager, Las Cruces/Lordsburg Resource Area.

[FR Doc. 84-17163 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-FB-M

[A-18822]

Public Land Sale; Mohave County, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Sale, Public Lands in Mohave County, Arizona.

SUMMARY: Through the Bureau of Land Management planning process the following described lands have been identified as suitable for disposal under section 203(a) of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750, 43 U.S.C. 1713). The lands will be offered for sale at not less than the appraised fair market value indicated below:

Gila and Salt River Meridian

Parcel	Legal description	Acres	Appraised value
U	T. 21 N., R. 18 W., Sec. 34, NE¼	160	$16,000
V	T. 21 N., R. 18 W., Sec. 34, NW¼	160	12,000
W	T. 21 N., R. 18 W., Sec. 34, SW¼	160	12,000
X	T. 21 N., R. 18 W., Sec. 34, SE¼ (except W½SW¼ >SW¼SE¼)	155	11,625
Y	T. 20 N., R. 18 W., Sec. 13, SW¼SW¼	40	10,000
Z	T. 20 N., R. 18 W., Sec. 13, SE¼SW¼	40	10,000
AA	T. 20 N., R. 18 W., Sec. 13, SW¼SE¼	40	10,000
AB	T. 20 N., R. 18 W., Sec. 13, SE¼SE¼	40	7,000
AC	T. 20 N., R. 18 W., Sec. 14, E½SE¼SE¼, E½W½ SE¼SE¼	30	7,500
AD	T. 19 N., R. 18 W., Sec. 8, NE¼, E½NW¼, S½	560	56,000
AE	T. 18 N., R. 18 W., Sec. 2, lots 1-4, S½N½, S½	624.32	68,800
AF	T. 25 N., R. 19 W., Sec. 6, lots 1-5, S½NE¼, SE¼NW¼	316.00	85,400
AG	T. 25 N., R. 19 W., Sec. 6, lots 6, 7, E½SW¼, SE¼	317.78	63,500
AH	T. 25 N., R. 19 W., Sec. 8, N½	320	64,000
AI	T. 25 N., R. 19 W., Sec. 8, W½SW¼	80	20,000
AJ	T. 25 N., R. 19 W., Sec. 8, E½SW¼	80	20,000
AK	T. 25 N., R. 19 W., Sec. 8, W½SE¼	80	20,000
AL	T. 25 N., R. 19 W., Sec. 8, E½SE¼	80	22,000

Comprising 3,283.80 acres, more or less.

The mineral estate under all parcels except Parcel AE, is owned by the United States. The mineral estate under Parcel AE, is owned by the State of Arizona. Mineral reports indicate that the lands have no known mineral value except possibly for oil and gas. Oil and gas will be reserved to the United States in the patents where applicable. The declared high bidders will be required to submit a $50.00 non-returnable filing fee for the acquisition of the remainder of the mineral estate.

The method of sale will be by sealed bid. Sealed bids must be received in the BLM Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401, not later than 4:30 p.m. on September 4, 1984. Bids must be accompanied by not less than twenty percent (20%) of the bid price. Parcels not sold by close of business September 4, 1984, will be available for purchase over-the-counter at the above location and at the BLM Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

All parcels will be patented subject to the following reservations:

Excepting and reserving to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

2. All the oil and gas in the land, and to it or persons authorized by it, the right to prospect for, mine, and remove the same (except parcel AE).

The following reservations will apply to the indicated parcels:

1. Subject to such restrictions as may be imposed by the County Floodplain Administrator in accordance with the "Amended Floodplain Regulation for the Unincorporated Area of Mohave County, Arizona," as adopted by the Mohave County Board of Supervisors by Resolution No. 82-1 of May 17, 1982, and recorded in Book 824, page 895 of Official Records, Mohave County, Arizona (Parcels: U, V, W, X, AB, AD, AE, AF, AI, AJ, AK, AL).

2. Subject to a right-of-way for road purposes for the Mohave County Board of Supervisors under R.S. 2477 (43 U.S.C. 932), as adopted by the Mohave County Board of Supervisors by Resolution No. 947 of August 19, 1974, and recorded in Book 380, page 874 of Official Records, Mohave County, Arizona (Parcels: AA, AB, AI, AJ, AK, AL).

3. Subject to a right-of-way for road purposes for the Mohave County Board of Supervisors under R.S. 2477 (43 U.S.C. 932), as adopted by the Mohave County Board of Supervisors by Resolution No. 348 of October 3, 1966, and recorded in Book 125, pages 271-273 of Dockets, Mohave County, Arizona (Parcels: U, V, W, X).

4. Reserving right-of-way A-16998, for electric transmission line purposes for Citizens Utilities Company under Title V, Section 501 of the Act of October 21, 1976 (43 U.S.C. 1767) (Parcels Y, Z, AA).

5. Subject to right-of-way PHX-034352, for electric transmission line purposes for Citizens Utilities Company under the Act of February 15, 1901 (31 Stat. 790, as amended; 43 U.S.C. 959) (Parcels Y, Z, AA).

6. Subject to right-of-way PHX-079765, for telephone purposes for Citizens Utilities Rural Company, Inc., under the Act of March 4, 1911 (36 Stat. 1253, as amended; 43 U.S.C. 961) (Parcels AA, AB).

7. Subject to right-of-way A-19018, A-19019, A-19020, and A-19006 for road purposes for the Mohave County Board of Supervisors under Title V, Section 501 of the Act of October 21, 1976 (43 U.S.C. 1767) (Parcel AD).

8. Subject to right-of-way A–19021 and A–19022 for road purposes for the Mohave County Board of Supervisors under Title V, section 501 of the Act of October 21, 1976 (43 U.S.C. 1767) (Parcel AE).

9. Subject to right-of-way A–19013, for road purposes for the Mohave County Board of Supervisors under Title V, section 501 of the Act of October 21, 1976 (43 U.S.C. 1767) (Parcel AF).

10. Subject to right-of-way A–19014, for road purposes for the Mohave County Board of Supervisors under Title, section 501 of the Act of October 21, 1976 (43 U.S.C. 1767) (Parcels AG, AH).

11. Subject to right-of-way A–19015, for road purposes for the Mohave County Board of Supervisors under Title, section 501 of the Act of October 21, 1976 (43 U.S.C. 1767) (Parcels AF, AG).

12. Subject to right-of-way A–19016, for road purposes for the Mohave County Board of Supervisors under Title, section 501 of the Act of October 21, 1976 (43 U.S.C. 1767) (Parcels AF, AG, AH, AI).

13. Subject to right-of-way A–19017, for road purposes for the Mohave County Board of Supervisors under Title, section 501 of the Act of October 21, 1976 (43 U.S.C. 1767) (Parcels AH, AL).

14. Subject to right-of-way A–6178, for water pipeline purposes for the Mount Tipton Water Company, Inc., under the Act of February 15, 1901 (31 Stat. 790, as amended; 43 U.S.C. 959) (Parcel AL).

Patents will also be issued subject to the right of the grazing lessee to continue the grazing use for a period of two years from the date of notification of sale or until the current grazing permit expires. Grazing will be in accordance with the terms and conditions of the existing grazing authorization. Grazing fees will be paid to the patentee but will not be more than the BLM grazing fee scheduled for a given year. This grazing use authorization may be modified only by mutual agreement between the range user and the patentee. The expiration dates for the grazing use are as follows:

Parcels U, V, W, X, AE, AF, AG, AH, AI, AJ, AK, AL, use right waived
Parcels Y, Z, AA, AB, AC, AD, September 29, 1985

Additional information concerning these parcels, terms and conditions of the sale, and bidding instructions may be obtained by calling the Kingman Resource Area Manager at (602) 757–3161, or by writing the BLM Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

For a period of forty-five (45) days from the date of this Notice, interested parties may submit comments regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the District Manager, this action will become the final determination of the Department of the Interior.

Dated: June 21, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84–17162 Filed 6–27–84; 8:45 am]

BILLING CODE 4310–32–M

[Serial Nos. I–1542, I–2835]

Idaho; Termination of Classification for Multiple-Use Management

Correction

In FR Doc. 84–12630 beginning on page 19906 in the issue of Thursday, May 10, 1984, make the following corrections:

1. On page 19906, column two, **Powder County**, line ten from the bottom should read "Sec. 25, W½NE¼, NW¼, N½SW¼SW¼,".

2. On the same page, column three, **Bingham County**, line fifteen from the bottom should read "Sec. 34, N½, SW¼, W½SE¼;".

3. On page 19907, column one, line twenty-five should read "Sec. 8, NE¼NE¼, S½NE¼, W½, SE¼;".

4. On the same page, column one, line thirty-three should read "Sec. 27, W½NW¼, SW¼;".

5. On the same page, column two, **Bonneville County**, line four should read "Sec. 1, lots 2, 3, 4, S½N½, S½;

6. On the same page, column two, **Bonneville County**, line fifteen should read "Sec. 29, NE¼, N½SE¼;".

BILLING CODE 1505–01–M

[C–39155]

Colorado; Invitation for Coal Exploration License Application; McCoalex Inc.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with McCoalex Inc., a Colorado corporation, in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Rio Blanco County, Colorado:

T. 2 N., R. 92 W., 6th P.M.
Sec. 5, lots 3 and 4, S½NW¼, and SW¼;
Sec. 6, all;
Sec. 7, all;
Sec. 8, SW¼SW¼;
Sec. 17, lots 1 and 3, and N½NW¼;
Sec. 18, lots 5, 8, and 9, NE¼NE¼, W½E½, and E½W½;
Sec. 19, lots 6 and 7, and W½NE¼

T. 3 N., R. 92 W., 6th P.M.
Sec. 29, lot 8, W½SW¼, and SE¼SW¼;
Sec. 30, SE¼;
Sec. 31, lots 1 to 4, inclusive, and E½;
Sec. 32, W½

The application for Federal Coal Exploration License is available for public inspection during normal business hours under serial number C–39155 at the BLM Colorado State Office, 1037 20th Street, Denver, Colorado and at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate. Written Notice of Intent to Participate should be addressed to the following and must be received by them within thirty (30) days after the publication of this Notice of Invitation in the **Federal Register**:

Chief, Mineral Leasing Section,
Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202, and
McCoalex Inc., P.O. Box 2186, Littleton, Colorado 80161.

Evelyn W. Axelson,

Chief, Mineral Leasing Section.

[FR Doc. 84–17168 Filed 6–27–84; 8:45 am]

BILLING CODE 4310–J6–M

[OR–36685 C, OR–36685 D]

Oregon; Conveyance

Notice is hereby given that, pursuant to Section 203 and 209 of the Act of October 21, 1976 (90 Stat. 2743, 2750 and 2757; 43 U.S.C. 1701, 1713, and 1719), the following described public land in Gilliam County, was purchased by modified competitive sale and conveyed to the party shown:

Mr. and Mrs. David L. Whitehead, P.O. Box 531, Pasco, WA 99301.

Willamette Meridian, Oregon

T. 2 S., R. 22 E.,
Sec. 34, SW¼SE¼;
Sec. 35, SE¼NW¼.

The purpose of this Notice is to inform the public and interested State and local governmental officials of the issuance of the conveyance document to Mr. Mr. and Mrs. Whitehead.

Dated: June 22, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-17172 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-33-M

[OR-36612D (Wa)]

Washington; Conveyance

Notice is hereby given that, pursuant to Section 203 of the Act of October 21, 1976 (90 Stat. 2743, 2750; 43 U.S.C. 1701, 1713), the following described public land in Douglas County, was purchased by competitive sale and conveyed to the party shown:

Mr. & Mrs. Carl J. Malone, Star Route, Box 32, Mansfield, WA 98830.

Willamette Meridian, Washington

T. 28 N., R. 28 E.,
Sec. 28, SE¼SW¼;

The purpose of this Notice is to inform the public and interested State and local governmental officials of the issuance of the conveyance document to Mr. & Mrs. Malone.

Dated: June 22, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-17173 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-33-M

[OR-36612-E (Wa)]

Washington; Conveyance

Notice is hereby given that, pursuant to Section 203 of the Act of October 21, 1976 (90 Stat. 2743, 2750; 43 U.S.C. 1701, 1713), the following described public land in Douglas County, was purchased by direct sale and conveyed to the parties shown:

Mr. Mrs. Richard S. Rice, Star Route, Grand Coulee, WA 99133.

Willamette Meridian, Washington

T. 29 N., R. 30 E.
Sec. 19, Lot 2.

The purpose of this Notice is to inform the public and interested State and local governmental officials of the issuance of the conveyance document to Mr. & Mrs. Rice.

Dated: June 22, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-17174 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-33-M

Proposed Designation of an Area of Critical Environmental Concern; Ukiah District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed designation of public lands within the Clear Lake Resource Area as the Indian Valley Brodiaea Area of Critical Environmental Concern (ACEC).

SUMMARY: Pursuant to the authorities in the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (Section 202(c)(3)), I hereby propose the following lands to be designated as the Indian Valley Brodiae Area of Critical Environmental Concern.

Mount Diable Meridian, California

T. 15 N., R. 6 W.,
Section 4, NW¼ SW¼.

The proposed Indian Valley Brodiaea ACEC contains 40 acres of public land.

SUPPLEMENTARY INFORMATION: The establishing of an ACEC at the north end of Indian Valley Reservoir would protect the only known habitat of Indian Valley Brodiaea (*Brodiaea coronaria* ssp. *rosea*). The proposed designation would restrict some uses such as off-road vehicles and camping but would facilitate protection of this plant taxa which is a U.S. Fish and Wildlife Service candidate for possible addition to the Federal List of Endangered and Threatened Plants. The recommendation to develop an ACEC for the Indian Valley Brodiaea was put forth in the Management Framework Plan for the Clear Lake Resource Area.

FOR FURTHER INFORMATION CONTACT: Stanley R. Whitmarsh, Clear Lake Resource Area Manager, Bureau of Land Management, Ukiah District, P.O. Box 940, Ukiah, California 95482, (707) 462-3873.

Stanley R. Whitmarsh,

Clear Lake Area Manager.

[FR Doc. 84-17170 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-84-M

Califorina Desert District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the California Desert District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 and 94-579 that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally on August 20 and 21, 1984, at the University of California Conference Center in Lake Arrowhead, CA. The meeting will begin at 3:30 p.m., August 20, and adjourn for the day at approximately 9:00 p.m. The meeting will reconvene at at 8:00 a.m., August 21, and will adjourn no later than 3:30 p.m.

The agenda will focus on one major item: preliminary evaluation of the past four years of implementing the California Desert Plan within each of the five Resource Areas in the California Desert District according to each of the 12 Plan elements. Preliminary reports will be presented by a representative from each of the resource Areas and from the District Office with Council discussion to follow each report.

All formal Council meetings are open to the public and time will be allocated for public comment. Because of the nature of the meeting and its agenda, public input and comments will only be received from 2:15 p.m. until 2:45 p.m. on August 21, 1984. Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Frank W. DeVore, c/o Bureau of Land Management Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507. Persons who have already submitted comments on the Plan evaluation to BLM need not resubmit or send additional comments unless they wish to submit new information to supplement that already submitted.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management, California Desert District Public Affairs Office, 1695 Spruce Street, Riverside, California 92507 (714) 351-6398.

Dated: June 21, 1984.

Gerald E. Hillier,

District Manager

[FR Doc. 84-17169 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-40-M

[I-19957, I-19958, I-19959]

Competitive Sale of Public Land in Ada County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described land has been examined, and through land use planning and public input has been determined to be suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976. Fair Market value will be available no less than 30 days prior to the sale date. Sealed bids only will be accepted.

Boise Meridian, Idaho

T. 5 N., R. 1 E. (I–19957),
Sec. 27, SW¼SW¼; containing 40 acres.
T. 5 N., R. 1 E. (I–19958),
Sec. 28, SE¼NW¼; containing 40 acres.
T. 5 N., R. 1 E. (I–19959),
Sec. 33, NW¼NE¼; containing 40 acres.

The land when patented, will be subject to the following reservations to the United States:

1. Ditches and canals.
2. Geothermal resources and oil and gas.
3. All valid, existing rights and reservations of record.

Sale of the land will be subject to temporary continued use of an existing grazing privilege, road rights-of-way I–20529 and I–20630, and a right-of-way 50 feet wide for the Old Pearl Highway.

The land is hereby segregated from all appropriation under the public land laws including the mining laws until sold or September 25, 1984.

Sealed bids must be received in this office no later than September 17, 1984. Bids for less than the fair market value will not be accepted. A bid will constitute an application for conveyance of mineral interests of no known value. A $50 non-returnable filing fee for processing such conveyance, along with one-fifth of the full bid price must accompany each bid. We will offer any unsold parcel every Tuesday until sold or until September 25, 1984.

Date and address: The sale offering wil be held on September 18, 1984, at 10:00 a.m. in the Boise District Office, 3948 Development Ave., Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale terms and conditions, bidding procedures and other details can be obtained by contacting Mike Berch at the above address, or by calling (208) 334–1582.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Boise District Manager at the above address.

Dated: June 20, 1984.

J. David Brunner,

Associate District Manager.

[FR Doc. 84–17171 Filed 6–27–84; 8:45 am]

BILLING CODE 4310–GG–M

Proposed Withdrawal; Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service proposes to withdraw 338.06 acres of public land as an addition to the Pine Island and Matlacha Pass National Wildlife Refuges which includes all or part of 22 mangrove islands and keys. This notice closes these lands for 2 years from operation of the public land laws, including mineral leasing.

ADDRESS: Inquiries concerning the land should be sent to: Eastern States Office, Director, 350 South Pickett Street, Alexandria, Virginia 22304.

FOR FURTHER INFORMATION CONTACT: Bettie C. Coombs, Eastern States Office, (703) 235–2855.

On June 8, 1984, a petition was approved allowing the U.S. Fish and Wildlife Service to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general public land laws including mineral leasing, subject to valid existing rights:

Addition to Matlacha Pass National Wildlife Refuge

Tallahassee Meridian, Florida

T. 44 S., R. 22 E.,

Name of Island and Tract No.

N. W. McCardle Island, Tr. 37
Kite Island, Tr. 38
Wood Stork Island, Tr. 39
Lumber Island, Tr. 40
Tern Key, Tr. 41
Gull Island, Tr. 42
Brown Pelican Island, Tr. 43
Nonpareil Island, Tr. 44
Frigate Island, Tr. 45
Grackle Island, Tr. 46
Bird Rookery Key, Tr. 47
Heron Island, Tr. 48
Ibis Island, Tr. 49
Lanier Key, Tr. 50
Deer Key, Tr. 51
Bear Key, Tr. 52
T. 44 S., R. 23 E.,
N. E. McCardle Island, Tr. 37
Egret Island, Tr. 38
Lumkin Island, Tr. 39

This area described aggregates approximately 267.61 acres.

Addition to Pine Island National Wildlife Refuge

Tallahassee Meridian, Florida

T. 44 S., R. 22 E.,
Big Panther Key, Tr. 53
Anhinga Key, Tr. 54
T. 45 S., R. 22 E.,
Cork Island, Tr. 37

This area described aggregates approximately 70.45 acres.

The purpose of the proposed withdrawal is to reserve the land as an addition to the Pine Island and Matlacha Pass National Wildlife Refuges. The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregated period are providing loafing, feeding and nesting areas for colonial birds.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the U.S. Fish and Wildlife Service.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 84–17175 Filed 6–27–84; 8:45 am]

BILLING CODE 4310–GJ–M

[F–19735]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14 (h)(5) opf the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(5), will be issued to Betty M. Huffmon, for approximately 60 acres. The lands involved are within T. 8 S., R. 66 W., Seward Meridian, Alaska.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the THE TUNDRA DRUMS upon issuance of the decision. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the

Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until July 30, 1984 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Betty M. Huffmon, Goodnews Bay, Alaska 99589

Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501

U.S. Fish and Wildlife Service, Division of Realty, 1011 East Tudor Road, Anchorage, Alaska 99503

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-17242 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-JA-M

Las Cruces District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM) Las Cruces District, New Mexico.

ACTION: Notice of Meeting.

SUMMARY: Agenda.

DATE: July 26, 1984, 9:30 a.m.

ADDRESS: Regents Room, Educational Services Center, East University Avenue (immediately west of the Pan Am Center) New Mexico State University, Las Cruces, New Mexico.

FOR FURTHER INFORMATION CONTACT: Daniel C. B. Rathbun, District Manager, Las Cruces District, Bureau of Land Management, P.O. Box 1420, Las Cruces, New Mexico 88004 Phone: (505) 524-8551.

SUPPLEMENTARY INFORMATION: Agenda.

1. Approval of minutes.
2. Status of FY-83 Carryover Range Improvement Projects.
3. Status of FY-84, 85 Range Improvement Project.
4. Present Range Improvement Projects for FY-86.
5. Discussion of Wild Horse Herd Plan.
6. Other Business.

Public comment will be heard by the Board at 1:30 p.m.

Robert R. Calkins,

Associate District Manager.

[FR Doc. 84-17272 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-FB-M

[ES-33062]

Realty Action; Public Land Sale in Randolph County, Alabama

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action ES-33062, Modified Competitive Sale of Public Land in Randolph County, Alabama.

SUMMARY: The following described land has been identified as suitable for disposal by sale under the provisions of section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713). The minimum acceptable bid is $12,505. Sealed bids only will be accepted.

Huntsville Meridian, Alabama

T. 20 S., R. 10 E.,
Sec. 34, SE¼NE¼.
Containing approximately 39.70 acres.

The land, when patented, will be subject to the following reservations to the United States:

1. The United States reserves all minerals in the lands subject to this conveyance, including, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act and the Geothermal Steam Act.

2. All valid existing rights and reservations of record. The land will be offered for sale subject to to a preference bidding designation to allow Mr. Herman Needham to meet the highest bid based on historical use, adjacent land ownership, and certain other equities. Refusal or failure to meet the highest bid within 30 days of this sale offering shall constitute a waiver of such bidding provisions and the land will be offered to the highest bidder. Mr. Needham shall submit a bid, at or above the minimum acceptable bid, by the date of sale to qualify for this preference designation.

Sealed bids must be received in this office no later than 1:00 p.m. on September 17, 1984. Bids sent by mail must be in sealed envelopes accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than one-fifth of the amount of the bid. All sealed envelopes must be marked in the lower left hand corner, "Sealed Bid, Public Land Sale, ES-33062". If two or more valid sealed bids in the same amount are received and they are the high bid, the determination of which bid is to be considered the highest bid shall be by a drawing. The drawing, if required, shall be held immediately following the opening of the bids. The highest qualifying sealed bid shall then be announced. The successful high bidder will be required to submit the remainder of the payment by cash, certified check, bank draft, money order, or combination thereof, within thirty (30) days after receipt of the decision accepting the highest bid.

If the parcel is not sold pursuant to this Notice of Realty Action, it will be offered over-the-counter for not less than the minimum acceptable bid. Over-the-counter availability will not exceed 2 years from the date of this notice. Subsequent purchase will be transacted at the Jackson District Office.

Date and Address: The sale will be held on September 17, 1984, at 1:00 p.m. in the Jackson District Office, Suite 326, 300 Woodrow Wilson Blvd., P.O. Box 11348, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Carl Gammon at the above address or telephone (601) 960-4405.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this Notice, interested parties may submit comments to the Jackson District Manager at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this Notice of Realty Action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior."

Henry Beauchamp,

Acting District Manager.

[FR Doc. 84-17301 Filed 6-27-84; 8:45 am]

BILLING CODE 4310-GJ-M

Minerals Management Service

Development Operation Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6836, Block 309, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on June 21, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147 Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Williamson; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: June 21, 1984.

John L. Rankin,

Regional Manager Gulf of Mexico OCS Region.

[FR Doc. 84–17303 Filed 6–27–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that McMoRan Offshore Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1982, Block 315, Eugen Island Area, Offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on June 19, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 1,47, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805

FOR FURTHER INFORMATION CONTACT: Mr Emile H. Simoneaux, Jr., Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review Additionally, this Notice it to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: June 19, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–17304 Filed 6–27–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6766, Block 51, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on June 22, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a

copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert, Minerals Management Service, Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: June 22, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–17305 Filed 6–27–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:30 p.m., CST, on August 8, 1984, at the Jefferson Parish Council Chambers, 3330 North Causeway Boulevard, Metairie, Louisiana.

The Delta Region Preservation Commission was established pursuant to Pub. L. 95–265, section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the development and implementation of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Contracting under A–76
—Status of construction projects
—Chalmette interpretive facility.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-serve basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact James Isenogle, Superintendent, Jean Lafitte National Historical Park, U.S. Customs House, 423 Canal Street, Room 206, New Orleans, Louisiana 70130, telephone 504 589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Date: June 20, 1984.

Donald A. Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 84–17299 Filed 6–27–84; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity

Agency for International Development (A.I.D.) has authorized guaranties of a loan to Zimbabwe (Borrower) as part of A.I.D.'s overall development assistance program. The proceeds of the loan will be used to finance shelter projects for low income families residing in the country of the Borrower. The following is the address of the Borrower and the loan amount for projects that will soon be ready to receive financing and for which the borrower will be requesting proposals from U.S. lenders or investment bankers:

Zimbabwe

Project: 613–HG–002—$25,000,000

Austin Copeland, Undersecretary of Treasury Ministry of Finance, Salisbury, Zimbabwe, Telex: 2141

By this notice of investment opportunity, the Borrower is soliciting expressions of interest from U.S. lenders or investment bankers and counsel on market conditions, loan timing and structure and other features, appropriate for the loans or underwritings. Interested investment bankers or lenders should contact the Borrower indicated above. Selection of investment bankers and/or lenders and the terms of the loans are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. will enter into a Contract of Guaranty covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in implementation agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D housing guaranty program can be obtained from: Director, Office of Housing and Urban Programs, Agency for International Development, Room 625, SA/12, Washington, D.C. 20523, Telephone: (202) 632-9637.

Dated: June 21, 1984.

John T. Howley,

Deputy Director, Office of Housing.

[FR Doc. 84-17178 Filed 6-27-84; 8:45 am]

BILLING CODE 4710-02-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-218 and 219 (Preliminary)]

Certain Carbon Steel Structural Shapes and Cold-Rolled Carbon Steel Sheet From the Republic of Korea

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations and scheduling of a conference to be held in connection with the investigations.

Effective date. June 18, 1984.

SUMMARY: The Commission gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-218 and 219 (Preliminary), under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports from the Republic of Korea of certain carbon steel angles, shapes and sections having a maximum cross-sectional dimension of 3 inches or more, provided for in item 609.40 of the Tariff Schedules of the United States (TSUS), and of cold-rolled carbon steel sheet as provided for in item 607.83, of the TSUS, upon which bounties or grants are alleged to be paid.

FOR FURTHER INFORMATION CONTACT: Judith Zeck, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0339.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on June 18, 1984, by the United States Steel Corp., Pittsburgh, Pa. The Commission must make its determination in these investigations within 45 days after the date of the filing of the petitions, or by August 2, 1984 (19 CFR 207.17).

Participation

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Pactice and Procedure (19 CFR § 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service of Documents

The Secretary will compile a service list from the entries of appearance filed in these investigations. Any party submitting a document in connection with the investigations shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigations. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b)).

Written Submissions

Any person may submit to the Commission on or before July 12, 1984, a written statement of information pertinent to the subject matter of these investigations (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on July 10, 1984, at the U.S. International Trade Commission Building, 701 E Street, NW, Washington, D.C. Parties wishing to participate in the conference should contact Judith Zeck (202-523-0339), not later than 12:00 noon, July 9, 1984, to arrange for their appearance. Parties in support of the imposition of countervailing/duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public Inspection

A copy of the petitions and all written submissions, except for confidential business data, will be available for public inspection during regular hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: June 25, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-17176 Filed 6-27-7020; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Charges for Tariff Filings

Effective July 2, 1984, the Commission will begin charging for Tariff filings in accordance with Ex Parte No. 246 (Sub 2), served May 1, 1984. The cost is four ($4.00) per series transmitted. Tariff series means all tariff publications (new tariffs, supplements or looseleaf page amendments) bearing the same standard ICC designation and file with one letter of transmittal.

(1) Tariffs, Tariff Supplements and loose page Amendments (49 U.S.C. 10762).

(2) Freight Forwarder Contracts and Amendments thereto (49 U.S.C. 10766).

(3) Rail Contracts and Amendments thereto (49 U.S.C. 10713).

In hopes of relieving major Tariff publishers from the burden of attaching a check to each Tariff submitted, the Commission announces that we have established a billing process which will allow major Tariff filers to file their tariffs and be billed by the agency monthly.

In order to participate, when submitting Tariffs, the Account Number (which will be assigned upon receipt of application) must appear in top left corner of the Transmittal letter under the Account Number. The number of

Series enclosed must be clearly indicated.

For application or additional information contact: Mr. E. C. Fernandez at (202) 275–7307.

James H. Bayne,

Secretary.

[FR Doc. 84–17225 Filed 6–27–84; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–43 (Sub-114X)]

Illinois Central Gulf Railroad Company—Abandonment Exemption—West Feliciana Parish, LA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMAMRY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Illinois Central Gulf Railroad Company of 7.1 miles of track in West Feliciana Parish, LA, subject to standard labor protective conditions.

DATES: This exemption shall be effective on July 30, 1984. Petitions to stay must be filed by July 9, 1984. Petitons for reconsideration must be filed by July 18, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB–43 (Sub-No. 114X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative, John H. Doeringer, 233 N. Michigan Avenue, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additonal information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: June 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84–17223 Filed 6–27–84; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–83 (Sub–5X)]

Maine Central Railroad Company—Abandonment Exemption—Washington County, ME

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 *et seq.* the abandonment by the Maine Central Railroad Company of 0.84 miles of track between milepost 269.62 and milepost 270.46 in Calais, ME, subject to standard labor protective conditions.

DATES: This exemption will be effective on July 30, 1984. Petitions for reconsideration must be filed by July 18, 1984. Petitions for stay must be filed by July 9, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB–83 (Sub–No. 5X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC. 20423

(2) Petitioner's representative Stephen H. Shook, 242 St. John Street, Portland, ME 04102.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC. 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: June 21, 1984

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84–17224 Filed 6–27–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated March 23, 1984, and published in the **Federal Register** on March 30, 1984 (49 FR 12771), Pharmaceuticals Division, Ciba-Geigy Corporation, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 22, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84–17228 Filed 6–27–84; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue. NW., Washington, D.C. 20506.

Date: July 17, 1984.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review Challenge Grant applications from Media Organizations.

Date: July 24–25, 1984.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review Challenge Grant applications from Museums and Historical Organizations.

Date: July 23–24, 1984.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Orgranizations program, Division of General Programs, for projects beginning after January 1, 1985.

The proposed meetings are for the purpose of panel review discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider

information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman s Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr Stephen J. McCleary, Advisory Committee Management Officer National Endowment for the Humanities, Washington, D.C. 20506; or call (202) 786–0322.

Stephen J. McCleary

Advisory Committee Management Officer

[FR Doc. 84–17270 Filed 6–27–84; 8:45 am]

BILLING CODE 7536–01–M

NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

Northern Mariana Islands Commission on Federal Laws; Meeting

The Northern Mariana Islands Commission on Federal Laws, established pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub L. 94–241, 48 U.S.C. 1681 note), will meet on Thursday, July 12, 1984, at 9:00 a.m., in the Supervisors Conference Room on the fourth floor of the Santa Barbara County Administration Building, at 105 East Anapamu Street in Santa Barbara, California. The meeting may extend into the following day, at the same location.

The purpose of the Commission is "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and what manner."

The intended agenda for this meeting is a review of the Commission s work to date on its final report to Congress, and consideration of pending staff recommendations on the application of particular federal laws in the Northern Mariana Islands.

The meeting will be open to the public. Attendance by the public will be limited to space available.

For further information about this meeting contact Daniel H. MacMeekin, Executive Director, Northern Mariana Islands Commission on Federal Laws, Washington, D.C. 20240, (202) 343–5617.

Interested persons may make oral presentations to the Commission or file written statements with respet to particular federal laws. Persons desiring to make oral presentations should make arrangements with Mr MacMeekin at least seven days prior to the meeting.

Dated: June 15, 1984.

James A. Joseph,

Chair

[FR Doc. 84–17179 Filed 6–27–84; 8:45 am]

BILLING CODE 4310–93–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Alabama Power Co.; (Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2); Order Confirming Licensee Commitments on Emergency Response Capability

I

Alabama Power Company (the licensee or APCo) is the holder of Facility Operating Licenses Nos. NPF–2 and NPF–8 which authorizes the operation of the Farley Nuclear Plant, Unit Nos. 1 and 2 (the facility) at steady-state power level not in excess of 2652 megawatts thermal. The facility consists of two pressurized water reactors (PWR s) located at the licensee s site near the City of Dothan, Alabama.

II

Following the accident at Three Mile Island Unit No 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident.

The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

APCo responded to Generic Letter 82–33 by letter dated April 15, 1983. By letter dated August 5, September 22, and December 15, 1983, and April 6, April 19, 1984 APCo modified several dates as a result of negotiations with the NRC staff. In these submittals, APCo made commitments to complete the basic requirements. The following Table summarizing APCo s schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by APCo

APCo s commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order

The NRC staff reviewed APCo s April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these negotiations, the licensee modified certain dates by letters dated August 5, September 22, and December 15, 1983, and April 6, 1984. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the

licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of APCo's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in this Order in the manner described in APCo's submittals noted in section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensees may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning the Order, the issue to be considered at the hearing shall be whether the licensees should comply with the requirements set forth in section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Complete (Nov. 30, 1983).
	1b. SPDS fully operational and operators trained	September 1987.[1]
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete (Oct. 31, 1983).
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Schedule date will be provided by November 1984.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Mar. 30, 1984—Unit 2 (complete) June 1984—Unit 1.
	3b. Implement (installation or upgrade) requirements	March 1986—Unit 1, October 1987—Unit 2.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete (July 29, 1983).
	4b. Implement the upgraded EOPs	July 1984.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	ERF's were operable in October 1982.
	5b. Operational Support Center fully functional	However, licensee's schedule date when EFR's would be upgraded with additional instrumentation of Supplement 1 will be provided to NRC in November 1984.
	5c. Emergency Operations Facility fully functional	

[1] A refined schedule to be provided in November 1984. Alabama Power Company has established a goal for completion of the five year schedule to be three and one-half years based on the "Farley ERC Integrated Implementation Schedule" dated December 15, 1983.

[FR Doc. 84-17071 Filed 6-27-84; 8:45 am]

BILLING CODE 7590-01

[Docket No. 70-1113]

Finding of No Significant Impact; Renewal of Special Nuclear Material License No. SNM-1097, General Electric Co., Wilmington Manufacturing Department, Wilmington, North Carolina

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Special Nuclear Material License No. SNM-1097 for the continued operation of the General Electric Company Nuclear Fuel Fabrication Facility at Wilmington, North Carolina.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License No. SNM-1097. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed license renewal action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment (NUREG-1078) is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of NUREG-1078 may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Silver Spring, MD this 22nd day of June 1984.

For the Nuclear Regulatory Commission.

R. G. Page,

Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 84-17279 Filed 6-27-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-237/249]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Units 2 and 3); Order Confirming Licensee Commitments on Emergency Response Capability

I

Commonwealth Edison Company, (CECo) (the licensee) is the holder of Provisional Operating License No. DPR-19 and Facility Operating License No. DPR-25 which authorize operation of the Dresden Nuclear Power Station, Units 2 and 3, respectively (the facilities) at steady-state power levels not in excess of 2527 megawatts thermal. The

facilities are boiling water reactors (BWRs) located in Grundy County, Illinois.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operationol Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

CECo responded to Generic Letter 82-33 by letter dated April 14, 1983. By letters dated July 20 and 28, August 25, November 15, and December 15, 1983, CECo modified several dates as a result of negotiations with the NRC staff. In these submittals, CECo made commitments to complete the basic requirements. The following Table summarizing CECo's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by CECo.

CECo's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed CECo's April 14, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee modified certain dates by letters dated July 20 and 28, August 25, November 15, and December 15, 1983. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of CECo's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall: Implement the specific items described in this order in the manner described in CECo's submittals noted in section III herein no later than the dates in the Table.

Extenions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12 day of June, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Dec. 31, 1983.[1]
	1b. SPDS fully operational and operators trained	Jan. 1, 1985.[1]
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Submitted Apr. 14, 1983.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	May 1, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Aug. 1, 1985
	3b. Implement (installation or upgrade) requirements	Provide an implementation schedule by Feb. 1, 1986.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Nov. 30, 1984.
	4b. Implement the upgraded EOPs	Nov. 30, 1986.
5 Emergency Response Facilities	5a. Technical Support Center fully functional	Complete.[2]
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	Jan. 1, 1985.[2]

[1] "Consistent with Items I.a.1 and I.b of Attachment A of the November 15, 1983 letter from Cordell Reed to Harold Denton"

[2] The modifications and construction of the structures are finished but the TSC and EOF are not considered to be fully functional until the changes resulting from the R.G. 1.97 and human factors reviews are implemented and all testing and training are completed

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co. (Haddam Neck Plant); Order Confirming Licensee Commitments on Emergency Response Capability

I

Connecticut Yankee Atomic Power Company (CYAPCo) is the holder of Facility Operating License No. DPR-61 which authorizes the operation of the Haddam Neck Plant at steady-state power levels not in excess of 1825 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Middlesex County, Connecticut.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

Connecticut Yankee Atomic Power Company responded to Generic Letter 82-33 by letter dated April 15, 1983. By letter dated August 11, November 28, December 20, 1983, and April 9, 1984, CYAPCo modified several dates as a result of negotiations with the NRC staff. In these submittals, CYAPCo made commitments to complete the basic requirements. The following Table summarizing CYAPCo's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by CYAPCo.

The licensee's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed CYAPCo's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, CYAPCo modified certain dates by letters dated August 11, November 28, December 20, 1983, and April 9, 1984. The NRC staff finds that the modified dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of its emergency response capability.

In view of the foregoing, I have determined that the implementation of CYAPCo commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that CYAPCo shall: Implement the specific items described in this order in the manner described in CYAPCo's submittals noted in section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether CYAPCo should comply with the requirements set forth in section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

HADDAM NECK PLANT—LICENSEE'S COMMITMENTS OF SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	May 13, 1986.
	1b. SPDS fully operational and operators trained	Submit schedule by May 13, 1986.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Feb. 28, 1986.

HADDAM NECK PLANT—LICENSEE'S COMMITMENTS OF SUPPLEMENT 1 TO NUREG-0737—Continued

Title	Requirement	Licensee's completion schedule (or status)
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Submit schedule by Feb. 28, 1986.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Complete Feb. 29, 1984.
	3b. Implement (installation or upgrade) requirements	Submit schedule by July 17, 1984.
Upgrading Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete Sept. 1, 1983.
	4b. Implement the upgraded EOPs	Prior to start of Cycle 14 (Outage schedule to start November 1985.
Emergency Response Facilities	5a. Technical Support Center fully functional	Complete.[1]
	5b. Operational Support Center fully functional	Complete.[1]
	5c. Emergency Operations Facility fully functional	Complete.[1] (OEF Backup siting relief requested by CYAPCo letter dated Aug. 3, 1983.)[2]

[1] Except for any additional changes that may be required as a result of other items in this Order.
[2] This will be subject to further licensing action.

[FR Doc. 84-17277 Filed 6-27-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co., (Palisades Plant); Order Confirming Licensee Commitments on Emergency Response Capability

I

Consumers Power Company (CPC) (the licensee) is the holder of Provisional Operating License No. DPR-20 which authorizes the operation of the Palisades Plant (the facility) at steady-state power levels not in excess of 2530 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Van Buren County, Michigan.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

CPC responded to Generic Letter 82-33 by letter dated April 14, 1983. By letters dated September 13 and 16, 1983, and April 2, 1984 CPC modified several dates as a result of negotiations with the NRC staff. In these submittals, CPC made commitments to complete the basic requirements. The following Table summarizing CPC's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by CPC.

CPC's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed CPC's April 14, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee provided certain dates by letters dated September 13 and 16, 1983, and April 2, 1984. The NRC staff finds that these dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedules proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of CPC's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall: Implement the specific items described in this order in the manner described in CPC's submittals noted in section III herein no later than the dates in the Table.

Extention of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order

designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

PALISADES PLANT—LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Item	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	July 1984.
	1b. SPDS fully operational and operators trained	Date to be provided with implementation plan in July 1984.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete (licensee's ltrs. dated Mar. 16, 1982 and June 7, 1983.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Date to be provided by June 1984.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	August 1984.[1]
	3b. Implement (installation or upgrade) requirements	Plan and schedule to be provided with report in August 1984.[1]
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	June 1984.
	4b. Implement the upgraded EOPs	Date to be provided by June 1984.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	End of refueling outage which commenced August 1983.[1]
	5b. Operational Support Center fully functional	Complete.[1]
	5c. Emergency Operations Facility fully functional	Complete.[1]

[1] Except for any additional changes that may be required as a result of the other items in this order.

[FR Doc. 84–17278 Filed 6–27–84; 8:45 am]
BILLING CODE 7590–01–M

Establishment of Local Public Document Room and Toll-Free Service Numbers

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Establishment of Local Public Document Room and Toll Free Service Numbers in the High-Level Waste Pre-Licensing Program.

SUMMARY: Passage of the Nuclear Waste Policy Act of 1982, signed on January 7, 1983, was a signficant development in the federal relations with states for the safe management of spent fuel and high-level radioactive wastes. The Nuclear Regulatory Commission is developing a system of communication with state and tribal representatives and the public, through establishment of local public document rooms as well as tool free telephone service for the waste management program.

The first NRC Local Public Document Room (LPDR) in the high-level waste area has been established for the Basalt Waste Isolation Project (BWIP) at the Richland Public Library, Swift and Northgate Streets, Richland, WA 99352, Telephone 509/943–0117. Members of the public may now inspect and copy documents related to BWIP at this library; the file designation for this material is Project WM–10. For further information, interested parties in the Richland area may contact the LPDR directly. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, Telephone 202/634–3273.

In addition, a telephone recording service has been established for the announcement of upcoming meetings related to the NRC waste management program. This number is 1/800/368–5242, ext. 79002. For further meeting information, you may wish to call the Department of Energy, Office of Civilian Radioactive Waste Management, toll free service. For calls originating in Maryland, the number is 800/492–4610; all other callers should use 800/368–2235. This service was noticed in the **Federal Register** on March 20, 1984, 49 FR 10517.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Still, Division of Waste Management, Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 1/800/368–5642, Ext. 74426.

Dated at Silver Spring, Maryland, this 18th day of June 1984.

For the Nuclear Regulatory Commission.

Robert E. Browning,

Director, Division of Waste Management.

[FR Doc. 84–17286 Filed 6–27–84; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 70–25]

Finding of No Significant Impact, Renewal of Special Nuclear Material License No. SNM–21, Energy Systems Group, Rockwell International Corporation, Simi Hills, Ventura County, California

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Special Nuclear Material License No. SNM–21 for the continued operation of the Energy Systems Group facility at Simi Hills, Ventura County, California.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License No SNM–21. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed license renewal action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment (NUREG–1077) is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of NUREG–1077 may be purchased by calling (301) 492–9530 or by writing to the Publication Services

Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Silver Spring, MD, this 21st day of June 1984.

For the Nuclear Regulatory Commission.

R. G. Page,

Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 84-17286 Filed 6-27-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power and Light Co. (Oyster Creek Nuclear Generating Station); Order Confirming Licensee Commitments on Emergency Response Capability

I

GPU Nuclear Corporation (GPUNC) and Jersey Central Power and Light Company (the licensees) are the holders of Provisional Operating License No. DPR-16 which authorizes the operation of the Oyster Creek Nuclear Generating Station (the facility) at steady-state power levels not in excess of 1930 megawatts thermal. The facility is a boiling water reactor (BWR) located in Ocean County, New Jersey.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control from design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

GPUNC responded to Generic Letter 82-33 by letter dated April 15, 1983, and provided supplemental information by letter dated July 18, 1983, March 9 and April 9, 1984. In these submittals, GPUNC made commitments to complete the basic requirements. The following Table summarizing GPUNC schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by GPUNC.

GPUNC commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed GPUNC's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee provided additional information and a detailed schedule of interim events in letters dated July 18, 1983, March 9 and April 9, 1984. The NRC staff finds that the dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of GPUNC commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this ORDER in the manner described in GPUNC's submittals noted in Section III herein no later than the dates specified in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensees may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensees should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12 day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

OYSTER CREEK NUCLEAR GENERATING STATION—LICENSEE'S COMMITMENT ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Safety Analysis Complete Implementation Plan April 1984.
	1b. SPDS fully operational and operators trained	November 1985.[1]
2. Detailed Control Room Design	2a. Submit a program plan to the NRC	Complete.

OYSTER CREEK NUCLEAR GENERATING STATION—LICENSEE'S COMMITMENT ON SUPPLEMENT 1 TO NUREG-0737—Continued

Title	Requirement	Licensee's completion schedule (or status)
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	April 1984.
3. Regulatory Guide 1.97 Application to Emergency Response Facilities	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	May 1984.
	3b. Implement (installation or upgrade) requirements	Date will be provided in the May 1984 report.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete.
	4b. Implement the upgraded EOPs	January 1986 (Prior to restart from Cycle 11 outage).
5. Emergency Response Facilities	5a. Technical Support Center fully functional	November 1985 (SPDS Dependent).
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	November 1985 (SPDS Dependent).

[1] Beginning of Cycle 11 outage. Basic SPDS will be available at end of outage. Future Enhancements will be made along with the development of additional soft ware.

[FR Doc. 84-17280 Filed 6-27-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-322-OL-4 (Low Power)]

Long Island Lighting Co. (Shoreham Nuclear Generating Plant, Unit 1); Order Scheduling Oral Arguments

June 21, 1984.

Before administrative judges Marshall E. Miller, chairman, Glenn O. Bright, Elizabeth B. Johnson.

Oral argument of all parties regarding discovery in this proceeding shall be heard on Friday, June 22, 1984, at 9:00 a.m. in the U.S. Nuclear Regulatory Commission Hearing Room, 4350 East West Highway, 5th Floor, Bethesda, Maryland. Counsel shall come prepared to discuss Suffolk County's first and second discovery requests, LILCO's response to the first such request and objections to and motion for protective order concerning the second. All parties are to provide status reports on all pending discovery issues.

It is so ordered.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,
Administrative Judge.

[FR Doc. 84-17281 Filed 6-27-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co., et al. (Millstone Nuclear Power Station, Unit No. 1); Order Confirming Licensee Commitments on Emergency Response Capability

I

Northeast Nuclear Energy Company (NNECo), Connecticut Light and Power Company and Western Massachusetts Electric Company (the licensees) are the holders of Provisional Operating License No. DPR-21 which authorizes the operation of the Millstone Nuclear Power Station, Unit No. 1 at steady-state power levels not in excess of 2011 megawatts thermal. The facility is a boiling water reactor (BWR) located in New London County, Connecticut.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and intergration of emergency response activities including training.

III

Northeast Nuclear Energy Company responded to Generic Letter 82-33 by letter dated April 15, 1983. By letters dated August 11, November 28, December 20, 1983, and January 31, 1984 and April 9, 1984, NNECo modified several dates as a result of negotiation with the NRC staff. In these submittals, NNECo made commitments for completion of the basis requirements. The following Table summarizing NNECo's schedular commitments or status was developed by the NRC from the Generic Letter and the information provided by NNECo.

The licensee commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed NNECo's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee modified certain dates by letters dated August 11, November 28, and December 20, 1983, January 31, 1984 and April 9, 1984. The NRC staff finds that the modified dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the NNECo will provide timely upgrading of its emergency response capability.

In view of the foregoing, I have determined that the implementation of NNECo's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensees shall:

Implement the specific items described in this ORDER in the manner described in NNECo's submittals noted in Section III herein no later than the dates in the table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12 day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

MILLSTONE UNIT NO. 1—LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Apr. 9, 1987.
	1b. SPDS fully operational and operators trained	Submit schedule by Apr. 9, 1987.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Mar. 2, 1987.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Submit schedule by Mar. 2, 1987.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Complete Feb. 29, 1984.
	3b. Implement (installation or upgrade) requirements	Submit schedule by July 17, 1984.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC.	Complete May 13, 1983.
	4b. Implement the upgraded EOPs	Complete June 29, 1983.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Interim TSC operational.*•
	5b. Operational Support Center fully functional	Complete.*
	5c. Emergency Operations Facility fully functional	Complete.* (**EOF Backup siting, relief requested by NNECo letter dated Aug. 3, 1983.)

* Except for any additional changes that may be required as a result of other items in this Order.
** This will be subject to further licensing action.
• Operational TSC temporarily relocated to EOF pending completion of Millstone site TSC (tentatively mid-1985).

[FR Doc. 84-17282 Filed 6-27-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-275]

Pacific Gas & Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-76, issued to Pacific Gas and Electric Company (the Licensee) for operation of the Diablo Canyon Nuclear Power Plant, Unit 1 located in San Luis Obispo, California.

The amendment would revise the Technical Specification concerning mechanical and hydraulic snubbers in accordance with the licensee's application for amendment dated March 30, 1984.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind or accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

This change will revise the Technical Specifications concerning mechanical and hydraulic snubbers to reflect changes in piping supports that resulted from the Independent Design Verification Program and the Internal Technical Program which have been extensively evaluated by the staff as documented in Supplements 18, 19 and 20 to the NRC's Safety Evaluation Report. These modifications were necessary to assure that the affected systems were designed to meet the accepted seismic design criteria. This change will update the listing of mechanical and hydraulic snubbers in two tables of the Technical Specification and will change the administrative controls accordingly. Without such updating, the identification of snubbers in Tables 3.7-3 and 3.7-4 of the Technical Specifications is no longer accurate and would not, in part reflect the as built condition of the plant.

The Commission has provided guidance in the form of examples about the application of three standards set out in 10 CFR 50.92 for determining whether license amendments involve no significant hazards considerations (48 FR 14870). These example are not applicable to the issue addressed in the proposed amendment. The basis for proposing that the proposed amendment does not involve a significant hazards consideration is that by assuring that the Tables accurately reflect the snubbers at the plant (with attendant change in the administrative controls), the previously approved licensing criteria are met with no effect on any accident proviously evaluated, any safety related design basis of the facility or its operation, or any margin of safety.

Therefore, the three standards are met because operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident, or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By July 30, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition of leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under considertion. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, and have the opportunity to present evidence and cross-examine witnesses.

If hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Mr. George W. Knighton, (301) 492–7161: date petition was mailed; plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Philip A. Crane, Jr., Esq. Pacific Gas & Electric Company, 77 Beale Street, San Francisco, California 94106 and Norton, Burke, Berry & French P.C., Attn: Bruce Norton, Esq., 202 East Osborn Road, Phoenix, Arizona 85016, attorneys for the licensee.

Nontimely filings of petions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petiton and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Bethesda, Maryland, this 20th day of June, 1984.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

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[Docket No. 50-275]

Pacific Gas & Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-76, issued to Pacific Gas and Electric Company (the Licensee) for operation of the Diablo Canyon Nuclear Power Plant, Unit 1 located in San Luis Obispo, California.

The amendment would revise the Technical Specifications concerning (1) frequency of auditing the emergency plan and the security plan and associated implementing procedures, (2) limits of working hours for unit staff, (3) prompt notification of failure of pressurizer power operated relief valves (PORVs) or pressurizer safety valves, and (4) administrative controls in accordance with the licensee's applications for amendment dated December 17, 1982, January 11, 1983, January 11, June 6, and June 8, 1984.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance for the application of these criteria by providing examples that are considered not likely to involve a significant hazards consideration (48 FR 14870). One such example is (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, for example a more stringent surveillance requirement.

The proposed amendment, in regard to the emergency plan, the security plan and their implementing procedures, would require a more stringent surveillance program by requiring auditing of the above cited plans and procedures once every twelve months instead of the 24 month interval currently allowed by the Technical Specifications. Moreover, this change is required to conform with the regulations, i.e. 10 CFR 50.54(t) and 10 CFR 73.40(d), respectively. Since 10 CFR 50.54(t) and 10 CFR 73.40(d) require that auditing of both the emergency plan and security plan and their implementing procedures be conducted on a twelve month interval, the licensee by letter dated June 8, 1984 requested that reference to the frequency of auditing of the above plans in the Technical Specifications be deleted since they are required by law. Thus, this change is also of a type described in example (vii) of changes not likely to involve a significant hazards consideration (48 FR 14870). Accordingly, based on these considerations and the three criteria given above, we have made a proposed determination that this portion of the amendment request involves no significant hazards consideration. We also conclude that deletion of the reference to the frequency of auditing in the above areas in the Technical Specifications is acceptable.

In regard to the requested amendment on working hours and the requirement to notify the Commission within 24 hours of a failure of a PORV or a pressurizer safety valve and submit a written report withi 14 days of the occurrence, these are representative of changes shown in example (ii) above. That is, the addition of these changes imposes more stringent controls on the number of hours an individual is permitted to work and the new requirement to notify the Commission within 24 hours and submit a written report within 14 days after the occurrence of a failure of a PORV or pressurizer safety valve. Based on these considerations and the three criteria given above, we have made a proposed determination that this portion of the amendment request involves no significant hazards consideration.

With regard to administrative controls, the proposed amendment would revise Figure 6.2-1 to indicate that:

1. The Senior Vice President, Facilities Development is now the "Executive Vice President, Facilities and Electric Resources Development", reporting to the Chairman of the Board and Chief Executive Officer.

2. The Manager, Quality Assurance reports to the Executive Vice President, Facilities and Resources Development.

3. The position of Manager, Nuclear Projects is deleted, and the Onsite Safety Review Group reports to the Technical Assistant to the Vice President, Nuclear Power Generation.

Figure 6.2-2 would be revised to indicate that:

4. The Onsite Safety Review Group reports to the Technical Assistant to the Vice President, Nuclear Power Generation. This group previously reported to the Manager of Nuclear Projects.

5. A new senior-reactor-operator position called "Senior Operations Supervisor" is added, reporting to the Operations Manager.

6. The "Power Plant Engineer" is now the "Assistant Plant Manager, Technical Services," reporting to the Plant Manager.

7. The "Quality Control Supervisor" is now the "Quality Control Manager," reporting to the Plant Manager.

8. The "Technical Assistant to the Plant Manager" is now the "Assistant Plant Manager, Support Services".

9. A new position called "Personnel and General Services Manager" is added.

10. The titles of various supervisors have been upgraded to "Manager".

Section 6.2.3.4, "Onsite Safety Review Group (OSRG), Authority", would be revised to show that:

11. The OSRG reports to the Technical Assistant to the Vice President, Nuclear Power Generation; it previously reported to Manager, Nuclear Projects.

Section 6.5.1.2, "Plant Staff Review Committee (PSRC), Completion", would be revised to indicate that:

12. The members' titles agree with their new titles in Figure 6.2-2.

13. The I&C Maintenance Manager and the Engineering Manager have been added to the Committee.

Section 6.5.2, "General Office Nuclear Power Plant Review and Audit Committee (GONPRAC)", would be revised to indicate that:

14. In Section 6.5.2.2, "Composition", the title "Manager, Nuclear Projects" is replaced with "Project Manager, Diablo Canyon".

15. In Sections 6.5.2.9, "Authority", and 6.5.10, "RECORDS', the title "Senior Vice President, Facilities Development" is replaced with "Executive Vice President, Facilities and Electric Resources Development" (see also change 1).

The new title of "Executive Vice President, Facilities and Electric Resources Development", and the new

reporting relationship with the Chairman of the Board (changes 1 and 15) are the result of a realignment of responsibility at the executive level at PG&E.

The rise in reporting level of the Manager, Quality Assurance (change 2) further strengthens the licensee's commitment to quality assurance for Diablo Canyon by increasing the independence of the QA function.

The deletion of references to the Manager, Nuclear Projects (changes 3, 4, 11 and 14) was made necessary when the Manager of Nuclear Projects' position was incorporated into the overall PG&E/Bechtel Project Organization and no longer existed as a separate entity. In the GONPRAC organization, the change from "Manager, Nuclear Projects" to "Project Manager, Diablo Canyon" has no effect on operations, since the individual involved and his responsibilities are the same.

The new Senior Operations Supervisor (change 5) will supplement the Operations Manager in his duties. He will not assume any authority of the Operations Manager or his responsiblities unless delegated. This change allows the overall facility organization to maintain a better and closer control of the operators, and will provide a quicker response to operator questions and problems.

The remaining changes in Unit organization (changes 6 through 9, 12 and 13) area necessary because of the significant increase in plant staff over the last three years and the addition of several new functions and work groups at the plant. At the same time, the changes simplify and streamline the reporting relationships, promoting safety and efficiency of operation.

The Commission has provided guidance in the form of examples about the application of three standards set out 10 CFR 50.92 for determining whether license amendments involve no significant hazards considerations (48 FR 14870). These examples are not applicable to the issues addressed in this portion of the proposed amendment. The basis for proposing that the proposed amendment does not involve a significant hazards consideration is that the administrative controls change, which relate solely to organizational structure, do not have any direct bearing on the operation of the facility and would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident, or (3) involve a significant reductin in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By July 30, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The Nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with

the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Mr. George W. Knighton, (301) 492–7161: date petition was mailed; plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Philip A. Crane, Jr., Esq. Pacific Gas & Electric Company, 77 Beale Street, San Francisco, California 94106 and Norton, Burke, Berry & French P.C., Attn: Bruce Norton, Esq., 202 East Osborn Road, Phoenix, Arizona 85016, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a later petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Bethesda, Maryland, this 20th day of June, 1984.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 84–17284 Filed 6–27–84; 8:45 am]
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[Docket No. 50–244]

Rochester Gas & Electric Corp. (R. E. Ginna Nuclear Power Plant); Order Confirming Licensee Commitments on Emergency Response Capability

I

Rochester Gas and Electric Corporation (EG&E) (the licensee) is the holder of Provisional Operating License No. DPR–18 which authorizes the operation of the R. E. Ginna Nuclear Power Plant (the facility) at steady-state power levels not in excess of 1520 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Wayne County, New York.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI–2 and the official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

RG&E responded to Generic Letter 82–33 by letter dated April 15, 1983. By letters dated August 3, 1983, November 28, 1983; April 6 and April 9, 1984 RG&E modified several dates as a result of negotiations with the NRC staff. In these submittals RG&E made commitments to complete the basic requirements. The following Table summarizing RG&E's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by RG&E.

RG&E's commitments include (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed RG&E's April 15, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG–0737. As a result of these negotiations, the licensee modified certain dates by letters dated August 3, 1983, November 28, 1983, April 6 and 9, 1984. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of RG&E's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this ORDER in the manner described in RG&E's submittals noted in Section III herein no later than the dates in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal**

Register. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12 day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

R. E. GINNA—LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Nov. 30, 1984.
	1b. SPDS fully operational and operators trained	June 30, 1986.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Aug. 31, 1984.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Dec. 31, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Complete.
	3b. Implement (installation or upgrade) requirements	Provide schedule on Feb. 28, 1985.
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Feb. 28, 1985.
	4b. Implement the upgraded EOPs	Dec. 31, 1985.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	June 30, 1986.
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	June 30, 1986.

[FR Doc. 84-17285 Filed 6-27-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-29]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station;) Order Confirming Licensee Commitments on Emergency Response Capability

I

Yankee Atomic Electric Company (YAEC) (the licensee) is the holder of Facility Operating License No. DPR-3 which authorizes the operation of the Yankee Nuclear Power Station (the facility) at steady-state power levels not in excess of 600 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Franklin County, Massachusetts.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission's (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

Yankee Atomic Electric Company responded to Generic Letter 82-33 by letter dated April 19, 1983. By letters dated August 1, September 1, October 21, December 16, 1983, March 28, 1984 and April 3, 1984, YAEC modified some of the dates as a result of schedular changes. In these submittals, YAEC made commitments to complete the basic requirements. The following Table summarizing YAEC's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by YAEC.

The licensee commitments include (1) dates for providing required submitals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. These latter implementation dates will be reviewed, negotiated and confirmed by a subsequent order.

The NRC staff reviewed YAEC's April 19, 1983, letter and entered into negotiations with the lciensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of schedular changes, the licensee modified certain dates by letters dated Aaugust 1, September 1, October 21, and December 16, 1983, March 28, 1984 and April 3, 1984. The NRC staff finds that the modified dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of YAEC's commitments are required in the interest of the public health and safety and should, therefore, be

confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that the licensee shall:

Implement the specific items described in this ORDER in the manner described in YAEC's submittals noted in Section III herein no later than the dates specified in the Table.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

V.

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of June 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

YANKEE NUCLEAR POWER STATION—LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirement	Licensee's Completion Schedule (or status)
1. Safety Parameter Display System (SPDS)	1a. Submit a safety analysis and an implementation plan to the NRC.	Complete.
	1b. SPDS fully operational and operators trained	Complete.
2. Detailed Control Room Design Review (DCRDR)	2a. Submit a program plan to the NRC	Complete.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	Jan. 15, 1985.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG-0737 have been or will be met.	Complete.
	3b. Implement (installation or upgrade) requirements	Start of Cycle XVIII operation (Estimate late 1985).
4. Upgrade Emergency Operating Procedures (EOPs)	4a. Submit a Procedures Generation Package to the NRC	Complete.
	4b. Implement the upgraded EOPs	Schedule to be submitted by August 1984.
5. Emergency Response Facilities	5a. Technical Support Center fully functional	Complete.
	5b. Operational Support Center fully functional	Complete.
	5c. Emergency Operations Facility fully functional	Complete.[1]

[1] EOF habitability provisions currently under review. Present EOF does not meet requirements of Table 1 of Supplement 1 to NUREG-0737.

[FR Doc. 84-17287 Filed 6-27-84; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on July 12-14, 1984, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on May 21, 1984.

The agenda for the subject meeting will be as follows:

Thursday, July 12, 1984

8:30 A.M.-8:45 A.M.: Chairman's Report (Open)—The ACRS Chairman will report to the Committeee regarding items of current interest.

8:45 A.M.-10:45 A.M.: Application of Generic Safety and Licensing Issues (Open)—The Committee will hear and discuss proposed NRC plans for characterization of generic safety and licensing issues and their application to standardized nuclear power plants.

10:45 A.M.-12:30 P.M. and 1:30 P.M.-3:30 P.M.: River Bend Nuclear Power Station (Open)—The members will consider the request for an operating license for this nuclear station.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this project and information related to the security arrangements for this station.

3:30 P.M.-6:30 P.M.: Consideration of Severe Accidents (Open)—The members will discuss the proposed NRC policy statement regarding consideration of severe accidents in the regulation of nuclear power plants.

Friday, July 13, 1984

8:30 A.M.-9:00 A.M.: Topics for Meeting with NRC Commissioners (tentative) (Open)—The members will discuss matters related to ACRS recommendations to the NRC Commissioners on safety-related matters.

9:00 A.M.-10:00 A.M.: Meeting with NRC commissioners (tentative) (Open)—The members will meet with the NRC Commissioners to discuss ACRS recommendations related to safety-related matters.

10:00 A.M.-12:00 Noon: Decay Heat Removal (Open)—The members will hear and discuss a report from the NRC Staff regarding the status of the program for evaluation of decay heat removal systems in nuclear power plants.

1:00 P.M.-3:00 P.M.: Qualification of Nuclear Power Plant Personnel (Open)—The members will consider a proposed NRC policy for educational requirements of on-shift personnel at nuclear power plants.

3:00 P.M.-5:30 P.M.: Consideration of Severe Accidents (Open)—The members will continue discussion of the proposed NRC policy statement regarding consideration of severe accidents in the regulation of nuclear power plants.

5:30 P.M.-6:00 P.M.: Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS activities and proposed items for full Committee consideration including the proposal for nodular review of the Westinghouse Electric Corporation advanced standardized LWR.

Saturday, July 14, 1984

8:30 A.M.-11:30 A.M.: Preparation of ACRS reports to NRC (Open)—The members will discuss proposed reports to the Nuclear Regulatory Commission regarding items considered during this meeting. Portions of this session will be closed to discuss Proprietary

Information related to the matters being considered and information related to the security arrangements of the River Bend Nuclear Station. Portions will also be closed to discuss matters that will be involved in an adjudicatory proceeding.

11:30 A.M.–12:30 P.M. and 1:30 P.M.–and 4:00 P.M.: Consideration of Severe Accidents (Open)—The members will complete their consideration of the proposed NRC policy statement regarding consideration of severe accidents and will discuss a proposed report to the NRC regarding this matter.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1983 (48 FR 44291). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)], information specifically exempted from disclosure by statute [5 U.S.C. 552b(c)(3)], and information involved in an adjudicatory proceeding [5 U.S.C. 552b(c)–(10)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. EDT.

Dated: June 25, 1984

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–17275 Filed 6–27–84; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–21075; File No. SR–AMEX–84–12]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Exchange Equities Specialist Allocations Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Propoosed Rule Change

The American Stock Exchange, Inc. (the "Exchange") hereby files for Commission approval two policies relating to the Exchange's equities allocation procedures. Pursuant to these policies, the Exchange proposes that (i) in cases where a security has been relisted following a hiatus due to delisting and certain specified criteria are met, it will be automatically allocated to the Specialist who was previously registered as specialist in that security; and (ii) certain newly listed securities which are deemed by the Exchange to be closely related to a security in which a specialist is currently registered will be automatically allocated to that specialist. Other related securities would be allocated in accordance with a modified procedure which takes into consideration a staff recommendation as to whether the securities should be allocated to a specialist in a related security.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The Exchange has previously filed and is awaiting Commission approval of procedures for the evaluation of equities specialist performance and for the allocation and reallocation of equities (File Nos. SR–AMEX–83–27 and SR–AMEX–84–9). The purpose of this proposed rule change is to supplement the allocation procedures by the addition of two policies.

The first concerns allocation policy in the situation where a company which was previously listed on the Exchange relists after a hiatus due to delisting. Although this has been a relatively rate occurrence, Exchange practice has been to automatically allocate the returning security to the specialist who was previously registered to it. This is done for purposes of continuity, in view of the specialist's prior relationship with the company. While the Exchange believes that this practice should be adopted as policy, we believe that it should be qualified in order to assure that the benefits of continuity in the specialist/listed company relationship will be preserved without sacrificing performance-based criteria. The Exchange therefore proposes that a specialist be allocated a previously listed security in which he was registered without the participation of the Committee on Equities Allocations [1] only if all of the following criteria are met: the company relists within two years of delisting; the company is substantially the same entity as prior to delisting; the company has no objection; and the specialist is qualified to receive the listing under the Exchange's performance-based allocations criteria.

A second, similar, practice has been followed where a security is listed which is related to another listed security. This may be the security of a partially-owned subsidiary of a listed

[1] The Committee on Equities Allocations ("Allocations Committees"— has been delegated authority by the Board to allocate securities, and to reallocate securities on the recommendation of the Committee on Specialist and Registered Trader Performance.

company; a spin-off (wholly-owned subsidiary); a convertible or non-convertible senior security; a security into which a listed security is convertible; or what is known as a "substitution listing", which involves a name change or reverse split.

Practice has been for the one related security to automatically be allocated to the specialist registered in another related security, without the participation of the Allocations Committee, since a related security's trading may affect and be affected by trading in the "primary" security. The Exchange proposes to continue this practice as policy with respect to convertible securities and substitution listings. These closely related issues would not be considered "new listings" and would not be subject to the allocation process, since their trading characteristics require that they be handled by the same specialist. However, the Exchange proposes a modified policy with respect to the securities of partially-owned subsidiaries and spin-offs, and non-convertible senior securities of an existing listed security, which may be less closely related. In these cases, the question of whether there should be a formal allocation will be referred to the Allocations Committee, accompanied by a staff recommendation based on trading characteristics as to whether the security should be assigned to the specialist in the related security. In cases where the staff recommends the security be allocated to that specialist, and the Allocations Committee concurs, the specialist woud be registered in the new security. Where the Allocation Committee determines that the security does not require assignment to a specialist in a related security, regular allocations procedures would be followed.

The Exchange believes that these two additions to its allocations policies strike an appropriate balance betwen trading efficiency and perfromance-based allocation criteria.

(2) *Basis.* The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that the Exchange's procedures are designed to promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not create a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 19, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

June 20, 1984.

[FR Doc. 84-17215 Filed 6-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21072; File No. SR-MCC-84-5 and SR-MSTC-84-5]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corp. and Midwest Securities Trust Co. Relating to Dial-Up Access Option in MST Communications System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 8, 1984 the Midwest Clearing Corporation and Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A are the procedures for the MST Communications System "dial-up" access option.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will enhance the MST Communications System ("MST System") by providing a "dial-up" access option to Participants. Dial-up access will give smaller, lower volume Participants an economical and direct connection to the MST System. The dial-up system will be operated as a pilot program until the Commission approves these procedures.

Through dial-up access smaller Participants may enjoy the communications advantages now available to other Participants through

dedicated telephone lines. Dial-up access Participants may utilize the MST System terminal functions of Report Retrieval, Data Entry and Inquiry. Under the Report Retrieval function, Participants may have selected MST System daily reports, such as Activity or Net Position Reports printed by their own hardware. Through Data Entry, Participants can input commands for same-day security or cash movements such as depository delivery instructions or withdrawal instructions. Finally, by using the Inquiry function, Participants may ascertain their current positions or activity.

In designing dial-up access, MCC/MSTC has taken into consideration the concerns previously expressed by the Commission in approving clearing agency communications systems. *See, e.g.* Rel. 34–20519 (Dec. 30, 1983) (hereinafter "Release"). The Commission noted that there may be certain security problems under dial-up access that would not be found in a dedicated line system. Specifically, the Commission cautioned against unauthorized access to Participant funds and securities. *See* Release at 5–6.

In response to these concerns, MCC/MSTC's dial-up access includes several security safeguards. As detailed in the procedures attached as an Exhibit to the Filing, the system includes an elaborate password mechanism to prevent unauthorized access. The system also imposes various time limits for expected Participant responses: if the time limits are violated, access will be denied or terminated. Additionally, MCC/MSTC will actively monitor transactions input via dial-up access. If an unusual number of "faults" are detected, Participants will be contacted promptly.

Dial-up access should result in an improved communications system for smaller Participants, while minimizing the costs associated with such systems. Thus, MCC/MSTC's dial-up access represents the type of efficient, yet secure, communications system contemplated by the Commission's Release.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, in that it will further the efficient handling of securities transactions. Specifically, the rule change utilizes new data processing and communications techniques available for securities processing, resulting in cost savings to Participants acting on behalf of investors. *See* Sections 17A(a) (1) (B), (C).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation and Midwest Securities Trust Company do not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 19, 1984.

Dated: June 20, 1984.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–17214 Filed 6–27–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21078; File No. SR–MSRB–84–11]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board

June 21, 1984.

The Municipal Securities Rulemaking Board ("MSRB") on May 24, 1984, submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend the requirements of rules G–12(f) and G–15(d) to exempt transactions in public housing authority project notes ("project notes") from automated confirmation and comparison requirements until January 1, 1985.

The United States Department of Housing and Urban Development ("HUD"), the Federal Reserve Bank of New York, and the Bankers Trust Company recently have developed a system for issuing and trading project notes in pure book-entry form. Because CUSIP numbers have been assigned to these projects notes, they are subject to rules G–12(f) and G–15(d) pertaining to the use of automated systems for comparison and confirmation of transactions. The proposed rule change is intended to ease the implementation of the book-entry system by providing traders of project notes an opportunity to conform to the new system.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons submitting written comments would file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Comments should refer to File No. SR–MSRB–84–11.

Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room,

450 Fifth Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the office of the MSRB.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17213 Filed 6-27-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

The Boston Stock Exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Alexander's Inc.
Common Stock, $1 Par Value (File No. 7-7529)
Atlas Van Lines
Common Stock, No Par Value (File No. 7-7530)
Ahmanson (H.F.) & Co., Inc.
Common Stock, No Par Value (File No. 7-7531)
Fischback Corp.
Common Stock, $1 Par Value (File No. 7-7532)
Interco, Inc.
Common Stock, No Par Value (File No. 7-7533)
Nucor Corp.
Common Stock, $.40 Par Value (File No. 7-7534)
Western Digital Corp.
Common Stock, $.10 Par Value (File No. 7-7535)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 12, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17212 Filed 6-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21089; File Nos. SR-NASD-80-10; Amex 83-33; CBOE-83-53; NYSE-84-4; PSE-84-2; and Phlx 83-27; and NYSE 84-3]

Self-Regulatory Organizations; Extension of Deadline for Submitting Comments With Respect To Proposed Rule Changes; National Association of Securities Dealers, et al.

On June 12, 1980, the National Association of Securities Dealers, Inc. ("NASD") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") submitted to the Commission a proposed rule change to establish an over-the-counter ("OTC") market in standardized put and call options on certain individual securities.[1] On June 28, 1982, the NASD submitted to the Commission Amendment No. 1 to this proposed rule change. Amendment No. 1, among other things, proposed to establish and OTC market in standardized put and call options on certain stock indices.[2] On December 1, 1982, the NASD submitted to the Commission Amendment No. 2 to the proposed rule change. Amendment No. 2 provided for the OTC trading of additional stock indices.[3] In addition, on December 22, 1983, the NASD submitted to the Commission several documents describing the proposed rule change, as amended; proposing certain changes to the proposal; and discussing certain issues raised in previous comments on the proposal.[4]

From November 1983 to February 1984, the Chicago Board Options Exchange, Incorporated ("CBOE"); American Stock Exchange, Inc. ("Amex"); Pacific Stock Exchange, Inc. ("PSE"); Philadelphia Stock Exchange, Inc. ("Phlx"), and New York Stock Exchange, Inc. ("NYSE") filed with the Commission pursuant to Section 19(b)(1) of the Act proposed rule changes to permit the listing and exchange trading of standardized options on securities that are not listed and registered on a national securities exchange under Section 12(a) of the Act ("OTC securities") but are designated as national market system securities under Rule 11Aa2-1(b)(1) under the Act ("NASDAQ/NMS tier I securities").[5] On April 12, 1984, the Commission issued a release extending to June 15, 1984 the period for public comment on the NASD and exchange proposals and to solicit additional written submission of data, views and comments from interested persons.[6]

On January 17, 1984, the NYSE filed with the Commission pursuant to Section 19(b)(1) of the Act a proposed rule change to establish an options trading program for standardized put and call options on individual listed stocks.[7] On May 2, 1984, the Commission issued a release extending the period for comment on this proposal and requesting additional comment from interested persons.[8]

Since issuance of the April and May Releases, the Commission has received several requests to extend the period for comment on these proposals beyond June 15, 1984.[9] These requests suggest

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[1] 17 CFR 200.30-3(a)(12).

[1] Notice of the proposed rule change was given in Securities Exchange Act Release No. 16979, July 15, 1980; 45 FR 53295, August 11, 1980.

[2] Notice of Amendment No. 1 was given in Securities Exchange Act Release No. 18917, July 26, 1982; 47 FR 33575, August 3, 1982.

[3] Notice of Amendment No. 2 was given in Securities Exchange Act Release No. 19330, December 13, 1982; 47 FR 57812, December 28, 1982.

[4] Submission of December 22, 1983, accompanied by letter dated December 22, 1983, from Gordon Macklin, President, NASD, to Douglas Scarff, Director, Division of Market Regulation, SEC (the "December submission").

[5] Notice of CBOE's proposal was given in Securities Exchange Act Release No. 20471, December 9, 1983; 48 FR 55939, December 16, 1983; notice of Amex's proposal was given in Securities Exchange Act Release No. 20498, December 16, 1983; 48 FR 56875, December 23, 1983; notice of PSE's proposal was given in Securities Exchange Act Release No. 20538, January 6, 1984; 49 FR 1606, January 13, 1984; notice of Phlx's proposal was given in Securities Exchange Act Release No. 20690, February 23, 1984; 49 FR 4684, March 1, 1984; and notice of NYSE's proposal was given in Securities Exchange Act Release No. 20691, February 23, 1984; 49 FR 7682 March 1, 1984.

[6] *See* Securities Exchange Act Release No. 20853 April 12, 1984, 49 FR 15291, April 18, 1984 ("April Release").

[7] Notice of this NYSE proposal was given in Securities Exchange Act Release No. 20613 January 31, 1984, 49 FR 5481, February 7, 1984.

[8] Securities Exchange Act Release No. 20821, May 2, 1984; 49 FR 19590, May 8, 1984 ("May Release").

[9] *See* letter dated June 12, 1984, from Arne Rode, General Counsel, Chicago Board Options Exchange Inc. ("CBOE"), to George A. Fitzsimmons, Secretary, SEC; letter dated June 13, 1984, from Barbara Rothenberg, Senior Vice President and General Counsel, Philadelphia Stock Exchange, Inc. ("Phlx"); and letter dated June 18, 1984, from Robert J. Birnbaum, President Amex, to Richard T. Chase, SEC. The Commission has also received numerous informal requests for extensions of these coment periods.

more time is needed to analyze and respond to the numerous and complex issues raised in the April and May Releases. The Phlx requests an extension of time to September 15, 1984 for comment on the NYSE listed options proposal, and an extension of time for a "reasonable" period after September 15, 1984 to comment on the options on over-the-counter securities proposals. The CBOE requests an extension of time to comment on both the options on over-the-counter securities proposals and the NYSE listed options proposal to August 31, 1984. Amex requests an extension of time to August 1, 1984 to respond to the NYSE listed options proposal.

While the Commission agrees that the issues discussed in the April and May Releases are both numerous and complex, we also note that, for the most part, these issues have been raised previously in one form or another. As described above, the NASD proposal was noticed in 1980. In addition, as early as 1977 the NYSE proposed to offer options on listed stocks.[10] On balance, the Commission believes that 90 days is both an adequate and necessary length of time within which to analyze and respond to the complex but not entirely new issues discussed in the April and May Releases.[11]

For these reasons, the Commission is extending the time for comment on the above-captioned rule proposals to July 16, 1984.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17308 Filed 6-27-84; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

The Philadelphia Stock Exchange ("Phlx") has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities and Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Rollins Communications, Inc.
Common Stock, $0.10 Par Value (File No. 7-7536)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 16, 1984 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washingon, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17309 Filed 6-27-84; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

The Philadelphia Stock Exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Tambrands, Inc.
Common Stock, $.25 Par Value (File No. 7-7537)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 16, 1984 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17310 Filed 6-27-84; 8:45 am]

BILLING CODE 8010-01-M

[10] Proposals to trade options on the NYSE and over-the-counter were commented on by members of the industry and discussed in detail in the Report of the Special Study of the Options Market to the SEC, H.R. Rep. No. 1FC-3, 96th Cong., 1st Sess. (Comm. Print 1978).

[11] The Commission has today also extended to July 16, 1984 the time for comment upon proposed amendments to Rule 11Aa2-1 under the Act, which amendments would, if adopted, expand the number of stocks eligible for designation as national market system stocks. Because the NASD and exchange options proposals both would establish eligibility criteria for underlying stocks based in part upon national market system designation, the Commission feels that it is appropriate for the comment periods on these separate proposals to run concurrently.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Environmental Impact Statement; Cities of Newport News and Suffolk, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement will be prepared for a proposed Bridge/Tunnel Complex across Hampton Roads between Newport News Point and the South Shore at Suffolk, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, Telephone (804) 771-2380 Comm., 925-2380 FTS.

SUPPLEMENTARY INFORMATION: The Virginia Department of Highways and Transportation proposes to construct a Bridge/Tunnel Complex across Hampton Roads between Newport News and Suffolk. The Highway Department proposes to obtain 2.25 million yards of backfill material for two tunnel island complexes and for tunnel trench from Thimble Shoal Channel located in the lower Chesapeake Bay. The project will impact two Federal Project Channels and is in an area of productive shellfish beds. The purpose of the project is to provide additional capacity for crossing Hampton Roads by completion of I-664 to the South Shore of Hampton Roads. The FHWA prepared an FEIS for the entire I-664 route from I-64 in Hampton to Route 17 in Suffolk which was approved on January 24, 1974. The purpose of the supplement is to update the existing document by providing additional studies for the Bridge/Tunnel Complex to comply with existing regulations that were not in effect when the original document was prepared.

Alternatives which will be investigated include but will not be limited to other locations for the borrow site and no project.

The Council on Environmental Quality Regulations for implementing the Procedural Provisions of the National Environmental Policy Act do not require scoping for supplemental EIS's. However, the project has been closely coordinated with State and Federal agencies on numerous occasions. Significant issues which have already been identified include the impact to shellfish beds and to the Newport News Creek and Newport News Channel Federal project channels.

The Draft Supplement will be available for public and agency review and comments. No public hearing will be held.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: June 22, 1984.

M. J. Deale,

Engineering Coordinator, Richmond, Virginia.

[FR Doc. 84-17180 Filed 6-27-84; 8:45 am]
BILLING CODE 4910-22-M

Environmental Impact Statement; Baton Rouge, Louisiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth A. Perret, Project Development Engineer, Federal Highway Administration, Louisiana Division, P.O. Box 3929, Baton Rouge, Louisiana 70821, Telephone: (504) 389-0466; or Mr. Vincent Pizzolato, Public Hearings and Environmental Impact Engineer, Louisiana Department of Transportation and Development, Office of Highways, P.O. Box 44245, Capitol Station, Baton Rouge, Louisiana 70804, Telephone: (504) 342-7542.

SUPPLEMENTARY INFORMATION: The FHWA, is cooperation with the Louisiana Department of Transportation and Development, Office of Highways (LDOTD), intends to prepare an environmental impact statement (EIS) on a proposal to improve the intersection of College Drive at I-10 in Baton Rouge. The proposed action would include widening College Drive in the vicinity of the interchange, a new access ramp for southbound College Drive traffic onto the westbound lane of I-10, an additional lane on westbound I-10 between College Drive and South Acadian Thruway, and realignment of each of the existing College Drive I-10 entrances and exits. The purpose of the proposed improvements is to relieve the congestion and hazardous intersection conditions that presently exist.

Alternatives under consideration include (1) no action; and (2) three additional interchange configuarations, all of which would include widening College Drive in the vicinity of the interchange and an additional lane on westbound I-10 between College Drive and South Acadian Thruway.

In a related but independent action the city of Baton Rouge proposes to extend Bawell Street (two lanes) northerly to intersect South Acadian Thruway, thus providing additional access between College Drive and Acadian Thruway in the immediate area of the proposed action. Another related but independent action in the immediate area involves the extension of Corporate Boulevard (four lanes) southerly from College Drive to the existing intersection of Old Hammond and Jefferson Highways. These street extensions are separate and independent actions with regard to the proposed improvements at College Drive and I-10 but may affect the traffic pattern in the vicinity of the interchange.

There are currently no plans to hold a formal scoping meeting for the proposed action. A public hearing will be held at a convenient time and place for persons in the project area after the draft environmental impact statement has been circulated. The hearing will be announced through the local news media.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or Louisiana Department of Transportation and Development at the addresses provided above.

Issued on: June 18, 1984.

Kenneth A. Perret,

Project Development Engineer, Louisiana Division, Baton Rouge, Louisiana.

[FR Doc. 84-17302 Filed 6-27-84; 8:45 am]
BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 128
Thursday, June 28, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, June 27, 1984, 9:00 a.m.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED: FY 1985 Operating Plan.

The Commission will continue its discussion on issues related to the Operating Plan for Fiscal Year 1985, which began on Monday, June 25th.

For a recorded message containing the latest agenda information call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

June 26, 1984.

Sheldon Butts,

Deputy Secretary.

[FR Doc. 84-17377 Filed 6-26-84; 1:37 pm]

BILLING CODE 6355-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 am. (Eastern Time), Tuesday, July 3, 1984.

PLACE: Commission Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street N.W. Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Freedom of Information Act Appeal No. 84-3-FOIA-45-BA, concerning a request for copies of documents from a charge file.
4. Freedom of Information Act Appeal No. 84-3-FOIA-62-CL, Concerning a request for a document from closed Title VII/ ADEA file.
5. Recommendation for Processing Charges Alleging Unequal Benefits Based on Sex-Based Mortality Tables
6. Proposed FY 1984 Title VII Contract to the Anchorage Equal Rights Commission

Closed

1. Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva McCall, Executive Secretary to the Commission at (202) 634–6748.

Dated: June 26, 1984.

Treva McCall,

Executive Secretary to the Commission.

[FR Doc. 84-17376 Filed 6-26-84; 1:37 pm]

BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, June 25, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,056-L (amended)—City and County Bank of Knox County, Knoxville, Tennessee, United Southern Bank of Nashville, Nashville, Tennessee, United American Bank in Hamilton County, Chattanooga, Tennessee, City and County Bank of Roane County, Kingston, Tennessee, City and County Bank of Anderson County, Lake City, Tennessee, First Peoples Bank of Washington County, Johnson City, Tennessee, First Commerce Bank of Hawkins County, Rogersville, Tennessee, City and County Bank of Jefferson County, White Pine, Tennessee

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: June 25, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84-17363 Filed 6-26-84; 12:22 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, June 25, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter: Application of Federal Finance & Mortgage, Ltd., an operating noninsured industrial bank located at 911 Keeaumoku Street, Honolulu, Hawaii, for Federal deposit insurance.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject

matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: June 25, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84-17354 Filed 6-26-84; 12:22 pm]

BILLING CODE 6714-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published June 26, 1984.)

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 28, 1984, 10:00 a.m.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No. and Company

CAG-35—ST82-322-002 and ICP82-356-002 Dow Intrastate Gas Company.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17346 Filed 6-26-84; 10:35 am]

BILLING CODE 6717-02-M

6

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 2:00 p.m., Monday, July 2, 1984.

PLACE: Board Room, 6th Floor, 1700 G St., N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6970).

MATTERS TO BE CONSIDERED: Limitations on Acceptance of Brokered Deposits, Recordkeeping for Insurance of Accounts.

J. J. Finn,

Secretary.

[FR Doc. 84-17374 Filed 6-26-84; 1:17 pm]

BILLING CODE 6720-01-M

7

FEDERAL HOME LOAN BANK BOARD

Note.—This document supersedes Document No. 84-17258 which was published June 27, 1984.

TIME AND DATE: 2:00 p.m., Friday, June 29, 1984.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6970).

MATTERS TO BE CONSIDERED: The following item has been withdrawn from the open portion of the Bank Board meeting scheduled for Friday, June 29, 1984, at 2:30 p.m., and added to the open portion of the Bank Board meeting scheduled for Monday, June 2, 1984, at 2:00 p.m.

Finance Subsidiaries

J. J. Finn,

Secretary.

[FR Doc. 84-17375 Filed 6-26-84; 1:17 pm]

BILLING CODE 6720-01-M

8

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 25, 1984.

TIME DATE: 10;00 a.m., Tuesday, July 3, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor, ex rel. Roy Logan v. Bright Coal Company, Inc., and Jack Collins, Docket No. KENT 81-162-D. (Issues include whether the ALJ erred in concluding that the Secretary would be required to disclose to the respondents certain investigating material.)
2. Westmoreland Coal Company, Docket No. WEVA 82-152-R. (Issues include whether the ALJ erred in concluding that the operator violated 30 CFR 75.202, a mandatory safety standard dealing with roof control.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-17330 Filed 6-26-84; 10:35 am]

BILLING CODE 6753-01-M

9

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission held the following closed meeting on Friday, June 22, 1984, at 10:45 a.m. at 450 5th Street, NW., Washington, D.C. to consider the following item.

Litigation matter.

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Kohn at (202) 272-3195.

George A. Fitzsimmons,

Secretary.

June 26, 1984.

[FR Doc. 84-17355- Filed 6-26-84; 12:23 pm]

BILLING CODE 8010-01-M

Federal Register

Thursday
June 28, 1984

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Part 3

Animal Welfare, Marine Mammals; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 83-122]

Animal Welfare, Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the humane handling, care, treatment, and transportation of marine mammals. The amendments are necessary in order to update the regulations and to provide more appropriate requirements with regard to marine mammals held in captivity.

DATE: The effective date of this rule is July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. R. L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7833.

SUPPLEMENTARY INFORMATION:

Background

In a document published in the **Federal Register** on July 29, 1983 (48 FR 34710-34721) and corrected on August 5, 1983 (48 FR 35654), the Department proposed to amend the "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" regulations (contained in 9 CFR 3.100 *et seq.* and referred to below as the regulations). The amendments were proposed to update the regulations and to provide more appropriate requirements for the humane handling, care, treatment, and transportation of marine mammals.

The document of July 29, 1983, invited the submission of written comments on or before August 29, 1983, and a document published in the **Federal Register** on August 29, 1983 (48 FR 39078) extended the comment period until September 30, 1983.

A final rule published in the **Federal Register** on August 29, 1983 (48 FR 39035-39036) amended § 3.100 of the regulations to allow facilities operating under variances that had been scheduled to expire on September 20, 1983, to continue operating under such variances until this rule becomes effective. A variance is written permission from the Deputy Administrator to operate as a licensee or registrant under the Act without being in full compliance with one or more specified provisions of the regulations.

Twenty-one comments were received in response to the proposal. These comments were from representatives of aquariums, zoological parks, humane associations, and other persons from the marine mammal industry. Except as explained below, the provisions in the proposal have been adopted in the final rule as proposed.

Space Requirements

This document amends the regulations concerning space requirements for cetaceans, pinnipeds, sirenians, polar bears, and sea otters.

Space requirements for primary enclosures for certain marine mammals are calculated by using specified formulas based on the average adult lengths of classes of such animals. Table III in § 3.104(b), captioned "Average Adult Lengths of Marine Mammals Maintained in Captivity," is intended to list species, common names, and average adult lengths of certain marine mammals known by the Department to be maintained in captivity or likely to be maintained in captivity.

For certain marine mammals the primary enclosures may consist entirely of a pool of water, but for others, in addition to a pool of water, the primary enclosures must include certain dry areas. Space requirements for primary enclosure pools are measured by specified criteria which may include minimum horizontal dimension (sometimes referred to below as MHD), depth, pool volume, and surface area. MHD is defined in 9 CFR 1.1(tt) as the diameter of a circular pool of water, or in the case of a square, rectangular, oblong, or other shape pool, the diameter of the largest circle that can be inserted within the confines of such a pool of water.

Cetaceans

Cetaceans are an order of marine mammals which includes whales, dolphins, and porpoises. The regulations provide that primary enclosures housing cetaceans shall contain a pool of water and may consist entirely of a pool of water.

The regulations divide cetaceans into two groups for purposes of determining space requirements. With respect to criteria for the two groups of cetaceans, the proposal stated as follows (48 FR 34710):

> The regulations divide cetaceans into two groups for purposes of determining space requirements. Group I cetaceans, mostly animals that usually inhabit waters near land, are animals for which considerable information has been developed concerning space requirements. Group II cetaceans, animals that live near the surface of the ocean far from land, are animals for which less information has been developed concerning space requirements. Accordingly, the formulas are designed to allow more space for Group II cetaceans than for Group I cetaceans as a precautionary measure in order to help assure that Group II cetaceans have sufficient space in their primary enclosures.

In order to more clearly reflect the intent with respect to the two groups of cetaceans, the criteria is changed as follows:

> Group I cetaceans, mostly animals that usually inhabit waters near land, are animals for which it has been determined that they should be able to be adequately maintained under Group I conditions. In general, it was intended that Group I include the slower moving cetaceans and those cetaceans which inhabit coastal waters since coastal animals would be used to shallower waters and more confined space than pelagic (living in open waters) animals. Group II cetaceans, mostly animals that live near the surface of the ocean far from land, are animals for which it has been determined that they should be provided more space than Group I animals. In general, it was intended that this group include the faster moving cetaceans. Most pelagic cetaceans should be included in Group II since pelagic cetaceans are usually faster moving cetaceans.

In addition, prior to the effective date of this document, the regulations in § 3.104(b)(1) (i) and (ii) provided for the determination of the MHD of a pool for cetaceans based, among other things, on a measurement from the tip of the lower jaw to the notch in the tail fluke. However, the Department has been advised that instead it is the standard practice to measure from the tip of the upper jaw or from the most anterior portion of the head in bulbous headed animals. Therefore, the final rule reflects this change.

Table III for Cetaceans

The Department proposed to add the Minke whale (*Balaenoptera acutorostrata*) to the list of Group I cetaceans. Two commenters recommended that the Minke whale be included in the list of Group II cetaceans, based on the assertion that, even though the species is semi-coastal rather than pelagic, the scientific community's experience and understanding of their needs in captivity is extremely limited. No changes are made based on these comments. Although the Department is not aware of any Minke whales in captivity in the United States, information furnished to the Department by the Marine Mammal Advisory Committee of the American Association of Zoological Parks and

Aquariums (AAZPA) indicates that the Minke whale has been successfully maintained in captivity in Japan under conditions similar to Group I requirements. Further, the Department is not aware of any information to indicate otherwise.

The Department proposed to add the Narwhale (*Monodon monoceros*) to the list of Group I cetaceans. One commenter recommended that the Narwhale be included in Group II based on the assertion that although a few have been captured and maintained in captivity for brief periods of time, they have not been successfully maintained and not enough information or experience has been gained to reliably judge their needs for space in captivity. No changes are made based on this comment. The Narwhale is a slow swimmer that inhabits a limited range in Arctic waters. These characteristics indicate that the Narwhale should be included in Group I.

The Department proposed to add the pygmy sperm whale (*Kogia breviceps*) and the dwarf sperm whale (*Kogia simus*) to the list of Group I cetaceans. One commenter recommended that these animals be added to the list of Group II cetaceans based on the assertion that there is no record of such live-captured animals having been maintained in captivity successfully and that the little that is known suggests that they are pelagic species. Based upon a reevaluation, the Department agrees with the commenter's statements and has included the pygmy sperm whale and the dwarf sperm whale in the list of Group II cetaceans.

The Department proposed to amend the listing for Group I cetaceans by changing the specified average adult length of the killer whale (*Orcinus orca*) from 6.86 meters (22.5 feet) to 7.32 meters (24.0 feet). One commenter stated that data in the literature indicates sexual dimorphism should be considered and that the average adult length of males should be 6.4 meters (21.0 feet) and females 6.1 meters (20.0 feet). In support of his recommendation, the commenter cited two studies. However, he indicated that the studies may contain errors. No changes are made based on this comment. There is not sufficient information available to recognize sexual dimorphism for any cetaceans. Information available to the Department, including data concerning known mature adults in captivity in the United States, indicates that the average adult length of the killer whale is 7.32 meters (24.0 feet).

The Department proposed to amend the listing for Group I cetaceans by changing the specified average adult length of the false killer whale (*Pseudorca crassidens*) from 5.64 meters (18.5 feet) to 4.35 meters (14.3 feet). One commenter recommended that the average adult length remain at 5.64 meters, based on measurements of a school of these animals which was stranded in Scotland. In that sample, the largest animal was 5.69 meters and there were 8 aminals in excess of 4.9 meters. The mean length was 5.2 meters (16.1 feet). Also, the commenter stated that records indicate that the range of lengths for the false killer whale is from 4.4 to 5.8 meters. No changes are made based on this comment. It appears that the commenter's suggested average adult length is representative of an isolated group, but not representative of the species as a whole. Field measurements from a large sampling indicate that the statement of the average adult length should be reduced to 4.35 meters (14.3 feet), as proposed.

Both the false killer whale (*Pseudorca crassidens*) and the killer whale (*Orcinus orca*) are currently listed as Group I cetaceans. No changes were proposed with respect to their group listing. One commenter suggested that both be changed to Group II. It was asserted that the false killer whale has been observed feeding on dead porpoises spilling out of tuna purse seine nets thousands of miles from the nearest land. With respect to the killer whale, it was asserted that recent evidence indicates that these animals are pelagic in nature and that the "conventional wisdom" about killer whales inhabiting primarily coastal cold water regions might not be true. No changes are made based on these comments. Although isolated sightings have been made of false killer whales and killer whales in the open sea, family groups are customarily observed in offshore waters, bays and sounds. Further, the large number of these animals successfully maintained in captivity under Group I conditions confirms that they should continue to be listed as Group I cetaceans.

The beluga (*Delphinapterus leucas*) is listed as a Group I cetacean with an average adult length of 4.27 meters (14.0 feet). No changes were proposed with respect to the grouping or the average adult length of the beluga. One commenter recommended that data from the Churchill River (Hudson's Bay) population be used to determine the average adult length of the beluga, based on the assertion that it is likely that future belugas will come from there. The commenter further recommended that sexual dimorphism be considered and that the modal maximal lengths of 3.70 meters (12.1 feet) for males and 3.10 meters (10.2 feet) for females, as given by Sergeant and Brodie (1969), be adopted.

Also, the long-finned pilot whale (*Globicephala melaena*) is listed as a Group I cetacean with an average adult length of 5.79 meters (19.0 feet). No changes were proposed with respect to the grouping or the average adult length of the long-finned pilot whale. One commenter suggested that the average adult length be listed as 4.88 meters (16.0 feet) for males and 3.66 meters (12.0 feet) for females, based on the assertion that the listed length exceeds the lengths at functional maturity and does not account for the marked sexual dimorphism characteristic of the species.

No changes are made with respect to the beluga or the long-finned pilot whale based on these comments. As noted above, there is not sufficient information available to recognize sexual dimorphism for any cetaceans. With respect to the beluga, while the commenter's suggested average adult length may be representative of one group of belugas, it does not appear, based on large samplings, that it is representative of the species as a whole. Further, it would be inappropriate to base average adult length solely on the Churchill River population since the source of future belugas will not necessarily be confined to the Churchill River population. With respect to the long-finned pilot whale, the Department acknowledges that the statement of average adult length may exceed the length at functional maturity. However, the animals may reach full growth in captivity. Therefore, it is necessary that the average adult length represent the average length of a species that has reached its full growth rather than merely the average length at functional maturity.

Group II Cetaceans

The Department proposed to add the Greys white-sided dolphin (*Lagenorhynchus thicolea*) to the list of Group II cetaceans. One commenter recommended that the Greys white-sided dolphin not be added to the list of Group II cetaceans based on the assertion that the species does not exist. The commenter further indicated that the species identification was founded only upon limited skull findings that have since been identified as either the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*) or the Northern right whale dolphin (*Lissodelphis borealis*), both of which are in the current list of cetaceans. The Department agrees with the commenter

and the Greys white-sided dolphin is not included in the list of cetaceans in the final rule.

The Department proposed to add the Commerson's dolphin (*Cephalorhynchus commersonii*) to the list of Group II cetaceans. One commenter supported the inclusion of this dolphin in Group II based on the assertion that there is limited knowledge and experience concerning its needs in captivity. Two commenters recommended that the Commerson's dolphin be included in the list of Group I cetaceans based on research indicating that the animal's behavior is more characteristic of Group I cetaceans. The Department has determined, based on information provided by AAZPA, that this animal inhabits harbors and coastal areas. Further, based on observation it has been determined that this animal can be adequately maintained under Group I conditions. Accordingly, Commerson's dolphin is included in the list of Group I cetaceans in the final rule.

The Department proposed to add the Atlantic white-sided dolphin (*Lagenorhrhynchus acutus*) to the list of Group II cetaceans. One commenter recommended that this animal be included in the list of Group I cetaceans based on the assertion that experience indicates that the space requirements for Group I cetaceans would be more than sufficient to allow the Atlantic white-sided dolphin adequate freedom of movement. No changes are made based on this comment. It has been determined that the Atlantic white-sided dolphin is a pelagic species. Further, based on observation it has been determined it should be maintained under Group II conditions in order to be adequately maintained.

The Department proposed to transfer the harbor porpoise (*Phocoena phocoena*) from the list of Group I cetaceans to the list of Group II cetaceans. One commenter supported including the harbor porpoise in Group II, based on the assertion that there is limited knowledge and experience concerning their needs in captivity. Five commenters recommended that the harbor porpoise remain listed as a Group I cetacean based on documentation that the animal is normally found in harbors, estuaries, and coastal rivers. Data available to the Department indicate that the harbor porpoise is normally found in harbors, estuaries, and coastal rivers. Further, based on observation the Department has determined that the harbor porpoise can be adequately maintained under Group I conditions. Therefore, the harbor porpoise is included in the list of Group I cetaceans in the final rule.

One commenter recommended that a re-analysis of the average adult lengths for cetaceans be made, giving consideration to wild adult cetaceans as well as adults in capitivity and substantiating the listing with an appendix which lists the range of lengths for each species and which divides the species by sex where applicable. No changes are made based on this comment. The average adult lengths are based on information available concerning the animals both in capitivity and in the wild. Further, as more information becomes available, the Department will consider amending the stated average adult lengths. In addition, as noted above, there is not sufficient information available to recognize sexual dimorphism for any cetaceans. Also, there does not appear to be a need for establishing a range of lengths for cetaceans under the regulations.

Sirenians

No changes were proposed concerning the space requirements for primary enclosures for housing sirenians. One commenter requested that the 24 feet MHD and the 20 percent MHD adjustment that were proposed for cetaceans also apply to sirenians. Another commenter suggested that the minimum depth requirement for sirenians be greater than that for similar length cetaceans, based on their different behavioral needs. In this connection it was asserted that a considerable portion of the daily activity of sirenians (especially resting time) is spent with their bodies in a vertical position whereas cetaceans spend relatively more time in a horizontal position. No changes are made based on these comments. Information available to the Department indicates that, compared to most cetaceans, sirenians are docile, slow moving animals. Further, sirenians normally inhabit and feed in shallow areas and spend much time resting at the surface. Additionally, there have been no apparent problems with the present standards for sirenians. It appears that the current requirements provide the minimum space requirements that would generally allow sirenians sufficient space, both horizontally and vertically, so that they would be able to make normal postural and social adjustments with adequate freedom of movement.

Pinnipeds

Prior to the effective date of this document, Table III in § 3.104(b) listed the average adult length of *Phoca vitulina* (harbor seal) as 1.68 meters (5.5 feet). The Department proposed to change the average adult length to 1.70 meters (5.6 feet) for males and 1.50 meters (4.9 feet) for females. The Department also proposed to add to the list of Group I pinnipeds another species of harbor seal, *Phoca larga*, with the same average adult lengths as proposed for *Phoca vitulina*. One commenter objected to these proposed lengths for both *Phoca vitulina* and *Phoca larga*, based on his experience as an exhibitor of three adult females, all under 4.6 feet in length, and one adult male, under 5 feet in length. No changes are made based on these comments. Although a limited sampling of harbor seals may indicate lengths shorter than those proposed, it appears, based on a large sampling, that the statement of average adult lengths of these animals should be adopted as proposed.

The Department proposed to change the statement of the average adult length of the Northern elephant seal *(Mirounga angustirostris)* from 5.18 meters (17.0 feet) for both males and females to 5.00 meters (16.4 feet) for males and 3.00 meters (9.8 feet) for females. Three commenters asserted that the proposed lengths should be changed to 3.96 meters (13.0 feet) for males and 2.49 meters (8.2 feet) for females, based on data from extensive field measurements taken over a period of 15 years. The lengths stated in the proposal were in error and the Department agrees with the commenters. Therefore, the average adult lengths of the Northern elephant seal are changed accordingly.

The Department proposed to separate pinnipeds into Groups I and II. Group I pinnipeds would consist of those pinnipeds generally considered to be gregarious and social animals. Group II would consist of those pinnipeds that are considered to be more aggressive animals. One commenter specifically supported the division because it would provide additional space for the more aggressive species. Another commenter objected to dividing pinnipeds into two groups based on the assertion that many pinnipeds are social only at certain times of the years, such as the breeding season, and are solitary the rest of the time. No changes are made based on this comment. Some pinnipeds are more aggressive at certain times of the year; other pinnipeds are aggressive year round. However, they are maintained in the same facility year round. Therefore, it is necessary to ensure that they have sufficient space year round so that they will have sufficient space for the times they are aggressive.

The Department proposed to include the following animals, among others, in the list of Group I pinnipeds:
Ribbon seal *(Phoca fasciata)*,
Harbor seal *(Phoca larga)*,
Baikal seal *(Phoca sibirica)*,
Crabeater seal *(Lobodon carcinophagus)*,
Ross seal *(Ommatophoca rossi)*, and
Leopard seal *(Hydrurga leptonyx)*.

One commenter recommended that these animals be included as Group II species, based on the assertion that their patterns of dispersion during breeding, and to some degree outside of breeding, are more similar to the three Group II species than to the other Group I species. No changes are made based on this comment. There may be some similarity in patterns of dispersion in the wild between Group I and Group II pinnipeds. However, observations indicate that the sociability level of these pinnipeds fits with the Group I classification.

In Table III as proposed, some of the Group I pinnipeds were marked with a double asterisk (**). It was proposed that any Group I pinnipeds maintained together be considered as Group II when the animals maintained together include two or more sexually mature males from species marked with a double asterisk (**) regardless of whether the sexually mature males come from the same species. The California sea lion *(Zalophus californianus)* was listed in the proposal as a Group I pinniped but was not marked with a double asterisk. Two commenters recommended that this animal be included among those species for which two or more sexually mature males housed together would change their status to Group II. The recommendation was based on the assertion that all the evidence of their aggressive behavior is comparable to that seen in other otariids and that all the other otariids listed in Table III change to Group II when two or more males are put together. No changes are made based on these comments. Extensive numbers of California sea lions, with two or more sexually mature males housed together, have been maintained in captivity under Group I conditions. Observation of their level of sociability indicates that they are properly classified in Group I.

Prior to the effective date of this document, § 3.104(d)(2) of the regulations provided that the dry resting or social activity area of the primary enclosure for all pinnipeds (exclusive of the pool of water) shall be calculated as follows:

> The minimum size of the dry resting or social activity area of the primary enclosure for pinnipeds (exclusive of the pool of water) shall be based on the average adult length of each pinniped contained therein, as measured in a horizontal or extended position in a straight line from the tip of its nose to the tip of its tail. The minimum size of the dry resting and social activity area shall be computed using the following method: List all pinnipeds contained in a primary enclosure by average adult length in descending order from the longest species of pinniped to the shortest species of pinniped. Square the average adult length of each pinniped. Multiply the average adult length squared of the longest pinniped by 1.5, the second longest by 1.4, the third longest by 1.3, the fourth longest by 1.2, and the fifth longest by 1.1, as indicated in the following examples. Square the average adult length of the sixth pinniped and all additional pinnipeds. Add the figures obtained for all the pinnipeds in the primary enclosure to determine the required minimum dry resting and social activity area required for such pinnipeds. * * *

The Department proposed to retain these provisions for calculating the dry resting or social activity area for the primary enclosures housing Group II pinnipeds, or for a mixture of Group I and Group II pinnipeds. It was further proposed that if only a single Group II pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area must be computed for a minimum of two pinnipeds.

The Department further proposed to calculate the dry resting or social activity area for Group I pinnipeds as follows:

> Square the average adult length of each pinniped to be contained in the primary enclosure. Add the figures obtained for each of the pinnipeds in the primary enclosure to determine the dry resting or social activity area required for such pinnipeds. If only a single Group I pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area is twice the square of the average adult length of that single Group I pinniped.

Two commenters suggested that the proposed sizes of the dry resting area (DRA) for pinnipeds would be too large. One commenter asserted that pinnipeds need a DRA of no more than 10 square feet per animal, based on experience with 14 seals using 32 square feet for years with no ill effects. The other commenter asserted that a DRA is not necessary because the animals would not use it for its intended purpose. It was suggested that the DRA for 1 pinniped should be the average length squared and the DRA for each additional pinniped should be twice its average adult length. No changes are made based on these comments. Based on observation, it is clear that pinnipeds do use DRA's as a social activity area, and that the DRA sizes should be adopted as proposed. Although at times pinnipeds do pile up in one area, they also often spend time separate from other pinnipeds. The DRA sizes as proposed are necessary to accommodate them.

Polar Bears

The regulations provide that primary enclosures housing polar bears shall consist of a pool of water, a dry resting and social activity area, and a den.

Prior to the effective date of this document, § 3.104(e) provided, among other things, that the pool of water for one or two polar bears shall be at least 2.44 meters (8.0 feet) by 3.66 meters (12.0 feet) with a minimum depth of 1.52 meters (5.0 feet). It was proposed that these provisions be amended to provide that the pool of water for one or two polar bears shall have a minimum horizontal dimension (MHD) of not less than 2.44 meters (8.0 feet), a surface area of at least 8.93 square meters (96.0 square feet), and a minimum depth of 1.52 meters (5.0 feet). One commenter supported the proposed changes in space requirements. Another commenter opposed these requirements, based on the assertion that he kept polar bears in a pool smaller than required by the proposed regulations without any apparent damage to the animals. No changes are made based on these comments. Observation indicates that the space requirements set forth in the final rule are necessary in order to allow polar bears sufficient space, both horizontally and vertically, so that they would be able to make normal postural and social adjustments with adequate freedom of movement.

Another commenter suggested that polar bears be removed from the list of marine mammals based on the assertion that they are not marine mammals. No changes are made based on this comment. These regulations are issued under the Animal Welfare Act. Polar bears are subject to regulation under this Act regardless of whether they are classified as marine mammals. Although there may be some disagreement, the polar bear is generally recognized by the scientific community as a marine mammal. It should also be noted that Congress specifically recognized the polar bear as a marine mammal in the Marine Mammal Protection Act (16 U.S.C. 1362(5)).

Sea Otter

Prior to the effective date of this document, § 3.104(f) provided, among other things, that the minimum horizontal dimension (MHD) of the pool of water for sea otters shall be at least

twice the length of the average adult sea otter contained therein and that the pool shall not be less than 0.91 meters (3.0 feet) deep. The Department proposed to amend these provisions to provide that the MHD of the pool of water for sea otters shall be at least four times the average adult length of the sea otter and that the pool shall not be less than 1.22 meters (4.0 feet) deep. Two commenters recommended that the MHD be changed to three times the average adult length of the sea otter and that the pool be not less than .91 meters (3.0 feet) deep. The proposed MHD and the proposed depth of the pool were in error and were intended to be the same as those recommended by the commenters. The commenters' recommended changes are included in the final rule. Based on observation, it has been determined that this will allow sufficient space to make postural and social adjustments with adequate freedom of movement.

The minimum dry resting area for sea otters is based on their average adult length. Prior to the effective date of this document, the regulations in § 3.104(f)(3) provided that "when the enclosure is to contain more than two sea otters, the dry resting area for each additional animal shall be computed by multiplying one-half of the square of the sea otter's average adult length by 3.14." It was proposed that this provision be amended to require that "when the enclosure is to contain more than two sea otters, the dry resting area for each additional animal shall be computed by multiplying one-half of the sea otter's average adult length by 3.14." One commenter opposed any reduction in DRA for sea otters, based on the assertion that the current DRA is not excessively large. No changes are made based on this comment. Based on observations over the past few years, it appears that the previously required DRA was excessively large and that the proposed DRA would be adequate. Further, it should be noted that sea otters spend 90 percent or more of their time in the water.

Variances

Proposed § 3.100 set forth provisions for the granting of variances. Proposed paragraph (b) of that section set forth application procedures for certain variances. Proposed paragraph (g) contained provisions concerning variances for research facilities as follows:

> (g) A research facility may be granted a variance from specified requirements of this Subpart when such variance is necessary for research purposes and is fully explained in the experimental design. Any time limitation stated in this section shall not be applicable in such case.

One commenter questioned whether the application procedures in paragraph (b) were applicable to research facilities. Under the provisions of § 3.100 (b) and (g) the application procedures are applicable to research facilities.

Proposed § 3.100(b) stated that an application for a variance, among other things, must specify "[t]he age and health status of the animals involved," and "[t]he specific reasons why a variance would be in the best interest of the marine mammals involved."

Two commenters suggested that the application include information from the attending veterinarian concerning the health status of the animals involved, and whether the granting of the variance requested would be detrimental to the animals involved. The Department agrees that obtaining this information from the attending veterinarian would be helpful for determining whether a variance should be granted. Therefore, the provisions in § 3.100(b) are amended accordingly.

One commenter suggested that the proposed requirement concerning age and health status be amended to read "age and health status of the animals involved, if known." This suggestion was based on the assertion that the ages of marine mammals rarely are known and the assertion that health status ordinarily is determined from clinical criteria and therefore relative. The Department agrees that the exact age of a marine mammal may not be known and that the health status is relative and a matter of opinion. However, it is necessary that this information be submitted and that it be as accurate as possible in order to help the Department to make a determination concerning a variance. As noted above, the final rule provides that the application include a statement from the attending veterinarian concerning the health status of the animals involved. It appears that the attending veterinarian would also be best able to determine the age of the animals involved. Therefore, the final rule is changed accordingly.

Proposed § 3.100(b) also stated that an application for a variance, among other things, must include information concerning "[t]he specific reasons why a variance would be in the best interest of the marine mammals involved." One commenter suggested that this be changed to ask for reasons why the facility cannot comply based on the assertion that, with the possible exception of old and infirm animals, any variance would not be "in the best interest of the marine mammals involved." It was intended that the response to this request for information in the application would provide specific reasons in support of granting the variance. Therefore, § 3.100(b) of the final rule is rewritten to request "Specific reasons why a variance is requested."

Another commenter suggested that a new entry should be added to the application provisions, requesting "such other information as the Deputy Administrator may require." No changes are made based on this comment. It does not appear that it is necessary to request any information for the application other than that included in the final rule.

With respect to consideration of an application for a variance, proposed § 3.100(c) provided:

> (c) After receipt of an application for a variance, the Deputy Administrator may require the submission in writing of a recommendation by two experts recommended by the American Association of Zoological Parks and Aquariums and approved by the Deputy Administrator concerning whether and for how long the marine mammals involved could be housed in the facility in question without causing a situation detrimental to the health and well-being of such marine mammals. Such a recommendation will be required only in those cases when the Deputy Administrator determines that such expertise is necessary to determine whether the granting of a variance would cause a situation detrimental to the health and well-being of the marine mammals involved. The cost of such recommendation is to be paid by the applicant.

One commenter asserted that the AAZPA constitutes an industry group and further asserted that getting all the advice from the industry is highly questionable. The commenter also recommended that one of the two experts should be selected by the environmental and humane groups who make up the Monitor consortium and who jointly possess a wide expertise. No changes are made based on this comment. The AAZPA is an association with a wide range of membership including highly competent professionals from industry, academia, and government. Also, the AAZPA has access to a broad spectrum of expertise regarding marine mammals. The recommendation of experts by the AAZPA would not preclude the use of experts from the Monitor consortium. Further, it should be noted that the experts must be approved by the Deputy Administrator.

Another commenter suggested that proposed § 3.100(c) be modified to allow the Deputy Administrator the necessary

latitude to get expert advice on the potential adverse impacts of such maintenance from as many and whichever experts the Deputy Administrator deems necessary. No changes are made based on this comment. The regulations would not prevent the Deputy Administrator from seeking advice as he deems necessary.

As noted above, proposed § 3.100(c) provided that the recommendations of experts would concern "whether and for how long the marine mammals involved could be housed in the facility in question without causing a situation detrimental to the health and well-being of such marine mammals." One commenter suggested that this language should be reworded so that the recommendation would concern, "potential adverse impacts on the animals involved or on other matters relating to the effects of the requested variance on the health and well-being of the animals involved." The Department accepts this suggestion as more accurately stating the intended purpose of the experts' recommendation. The final rule reflects this change.

With respect to the length of time for which variances may be granted, proposed § 3.100 (d) and (f) provided:

(d) Variances granted for facilities because of ill or infirm marine mammals that cannot be moved without placing their well-being in jeopardy or for facilities within 0.3048 meters (1 foot) of compliance with any space requirement may be granted for up to the life of the marine mammals involved. Otherwise, variances shall be granted for a period not exceeding September 20, 1985, *Provided, however,* That under circumstances deemed justified by the Deputy Administrator, a maximum extension of 1 year may be granted to attain full compliance. A written request for the extension must be received by the Deputy Administrator by July 20, 1985. Consideration for extension by the Deputy Administrator will be limited to unforeseen or unusual situations such as when necessary public funds cannot be allocated in an appropriate time frame for a facility to attain full compliance by September 20, 1985.

(f) Any facility housing marine mammals that does not meet all of the space requirements as of September 20, 1983, must meet all of the requirements by November 20, 1983, or may operate without meeting such requirements until action is taken on an application for a variance if the application is submitted to the Deputy Administrator on or before November 20, 1983.

One commenter suggested that the date of September 20, 1985, in § 3.100(d) be changed to March 31, 1986, in order to allow additional time to build facilities. It was intended that variances, other than those granted for up to the life of the marine mammals involved, expire two years after the effective date of the final rule. Therefore, the final rule provides that such variances shall be granted for a period not exceeding July 30, 1986.

Another commenter suggested that the proposed variance period be for three years, rather than two as was intended, based on the assertion that institutions may require several years to meet the requirements. The final rule provides, as proposed, that under circumstances deemed justified by the Deputy Administrator, a maximum extension of one year may be granted to attain full compliance. Consideration for the one-year extension is limited to unforeseen or unusual situations such as when necessary public funds cannot be allocated in an appropriate time frame for a facility to attain full compliance. If an extension were granted the variance period would be for up to three years. It does not appear necessary to allow a three-year variance period except under these circumstances.

Another commenter asserted that any extension of the variance deadline or the allowance of a variance for ill or infirm marine mammals would not be fair to those persons who already comply with the regulations without a variance. No changes are made based on this comment. Although the granting of variances may not seem fair to some persons, the variance system in the final rule is necessary in order to avoid situations detrimental to the health and well-being of the marine mammals affected by the regulations.

It was also intended that § 3.100(f) provide that any facility housing marine mammals that does not meet all of the space requirements by the effective date of the final rule, must meet all of the requirements within 60 days after the effective date of the final rule, or may operate without meeting such requirements until action is taken on an application for a variance if the application is submitted to the Deputy Administrator on or before 60 days after the effective date of the final rule. Section 3.100(f) is changed to reflect this intent.

Miscellaneous

Section 3.101(a) sets forth construction requirements for facilities housing marine mammals. Prior to the effective date of this document, § 3.101(a)(3) provided that:

Any primary enclosure pool, including ramps for entering or leaving the pool, shall be constructed of materials having a nonporous, waterproof finish, which shall facilitate proper cleaning and disinfection, and which shall be maintained in good repair as part of a regular ongoing maintenance program.

The Department proposed to delete "having a nonporous, waterproof finish." However, the Department did not propose to delete the requirement that the primary enclosure pool, including ramps for entering or leaving the pool, be constructed of materials which facilitate proper cleaning and disinfection and it is necessary to retain these provisions. It appears that only ramps and haulout areas and natural sea water pools subject to tidal action could have other than a nonporous, waterproof finish and still be adequately cleaned and disinfected. Ramps and haulout areas are customarily constructed of materials that can be readily cleaned and disinfected, or feasibly replaced. Further, tidal action naturally would have a cleaning and disinfecting effect on natural seawater pools. However, it appears that pools not subject to tidal action must be constructed of materials having a nonporous, waterproof finish in order to facilitate proper cleaning and disinfection. Therefore, the provisions of § 3.101(a)(3) are clarified to provide that any primary enclosure pool, except for a natural seawater pool subject to tidal action, must be constructed of materials having a nonporous, waterproof finish.

Prior to the effective date of this document, § 3.116(a) provided that:

An employee or attendant of the shipper or receiver of cetaceans or sirenians being transported, in commerce, knowledgeable in the area of marine mammal care, shall accompany cetaceans, sirenians, and sea otters during periods of transportation to provide for their good health and well-being, to observe such marine mammals and to determine whether they need veterinary care and to obtain any needed veterinary care as soon as possible.

The Department proposed to extend these provisions to pinnipeds. Seven commenters supported the proposed requirement that pinnipeds be accompanied during transportation, based on the record of 15 cases of pinniped mortalities during transit in 1983, and based on the assertion that such an employee or attendant would be able to provide for the health and well-being of the animal by taking a variety of steps that do not require the presence of a veterinarian. Two commenters objected to this proposed requirement. In support of their objections, it was asserted: (1) That such a requirement would be a financial burden; (2) that there is no evidence that the presence of an attendant would reduce mortality; (3) that an individual accompanying a pinniped shipment by commercial air transport would not be allowed to travel in the same compartment and would.

therefore, be unable to determine any need for immediate veterinary care; and (4) that most pinnipeds can be shipped by air in a manner similar to the shipment of many land mammals with no extraordinary complications during shipment. No changes are made based on these comments. The physiology and anatomy of pinnipeds is different from that of most land animals and these animals require special conditions for shipment. Even though it could increase the cost of transporting pinnipeds, an employee or attendant of the shipper or receiver of pinnipeds being transported, in commerce, who is knowledgeable in the area of marine mammal care, should accompany pinnipeds during periods of transportation. This is necessary to provide for their good health and well-being, to observe such marine mammals in order to determine whether they need veterinary care, and to obtain any needed veterinary care as soon as possible. Even though in some instances an individual accompanying a pinniped shipment by air would not be allowed to travel in the same compartment, that individual would be available in the event of delays or unusual circumstances to bring the plight of the animal to the attention of appropriate officials and arrange for any necessary care as soon as possible.

With respect to polar bears, the regulations (§ 3.116(d)) specify that they need not be accompanied by an employee or attendant of the shipper or receiver, unless the period of transportation will exceed 24 hours in duration. No changes were proposed. Four commenters suggested that polar bears also be required to be accompanied by an employee or attendant during transportation even for short periods of time. These comments were based on the assertion that the same rationale for requiring that other marine mammals be accompanied is equally applicable to polar bears. No changes are made based on these comments. The Department disagrees with the assertion that the rationale for requiring that other marine mammals be accompanied by an employee or attendant is equally applicable to polar bears. The requirements that certain marine mammals be accompanied by such an employee or attendant were designed to help prevent heat build-up in the marine mammals. Polar bears are better able to tolerate heat and regulate heat loss over short periods of time than are other marine mammals.

One commenter suggested that the regulations should require that a veterinarian accompany marine mammals on long or complicated flights. No changes are made based on this comment. The major concern for these animals during transportation is heat build-up. Non-veterinarians can provide care to avoid excess heat build-up.

Prior to the effective date of this document, § 3.116(b) required, among other things, that:

> An employee or attendant of the shipper or receiver of cetaceans or sirenians being transported, in commerce, shall provide for such cetaceans and sirenians during periods of transport by (1) keeping the skin moist with intermittent spraying of water or protecting it by applying a nontoxic emollient, such as lanolin, to prevent drying of the skin. * * *

The Department proposed to amend these provisions to indicate that these methods are examples of ways to keep the skin moist, but that employees or attendants would not be limited to these methods. One commenter supported the proposal to provide latitude in selection of methods for keeping the skin moist and recommended that language be included to caution that the use of petroleum jelly or other products may have the effect of sealing the skin, preventing cutaneous evaporative cooling, and exacerbating overheating problems. No changes are made based on this comment. The Department recognizes that marine mammals are subject to overheating and that their skin is subject to drying. However, it does not appear necessary to include the suggested caution in the final rule. The person accompanying the animal is required to be knowledgeable in marine mammal care and should be aware of the effects of the use of emollients and able to exercise discretion in their use.

Section 3.117 contains provisions for holding areas for marine mammals in terminal facilities. Prior to the effective date of this document, this section, among other things, provided that.

> The air temperature around any marine mammal in any animal holding area shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time: *Provided, however,* That no marine mammal shall be subjected to surrounding air temperatures which exceed 23.9° C. (75° F.) for more than 4 hours at any time.

The requirements that such air temperature not be allowed to exceed 29.5° C. (85° F.) at any time, and that such air temperatures not be allowed to exceed 23.9° C. (75° F.) for more than 4 hours at any time were designed to prevent the animals from becoming overheated. The Department proposed to retain these provisions for polar bears since they would not necessarily be accompanied by an employee or attendant but to delete them for all other marine mammals. Two commenters opposed the proposed change. In this connection, it was asserted that the change could allow heat build-up for animals with heavy fat layers regardless of whether they are kept moist. No changes are made based on these comments. Regardless of the surrounding air temperature, the employee or attendant can take action to facilitate heat loss. It appears that air temperatures in certain terminal facilities at times may exceed 29.5° C. (85° F.). However, it appears that compliance with the current provisions which require that the skin of cetaceans, sirenians, and sea otters be kept moist during periods of transport (see § 3.116 (b) and (c)), and that marine mammals not be held in a terminal facility for more than 6 hours (see § 3.112(a)) would be sufficient in most cases to prevent excess heat buildup in these animals on those occasions when higher temperatures may occur in terminal facilities. Further, when necessary, the employee or attendant can help facilitate heat loss by such methods as increasing ventilation, icing the flippers, or covering the pinnipeds with damp towels.

One comment suggested that it would be advisable to express maximum and minimum allowable temperatures in terminal facilities in terms of "humiture" rather than temperature alone, based on the assertion that humidity can make a marginally acceptable situation totally unacceptable with regard to temperature. No changes are made based on this comment. Currently, insufficient information is available to establsh criteria for marine mammals based on "humiture."

This document also makes certain nonsubstantive changes for purposes of clarity.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980, (44 U.S.C. 3504(h)), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the control number 0579–0036.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Alternatives were considered with respect to this rule.

Consideration was given whether to change space requirements as explained in the proposed rule and this document. The changes made in the space requirements are made because it appears that such changes would be the minimum space requirements that would generally allow affected animals sufficient space, both horizontally and vertically, so that they would be able to make normal postural and social adjustments with adequate freedom of movement.

Consideration was given concerning whether to propose to eliminate provisions for variances or to propose to allow variances under conditions explained in the proposed rule and this document. Further, consideration was given as to the length of time that should be allowed for variances. The final rule allows variances for up to the life of the animals involved if the animals are so old, ill, or infirm that they could not be moved without placing their well-being in jeopardy, and for facilities within 0.3048 meters (1 foot) of compliance with any space requirement. It appears that if a facility houses animals that are so old, ill, or infirm that they could not be moved without placing their well-being in jeopardy, the facility must be granted a variance for those animals in order to accomplish the purposes of the Act. Further, in some cases it would appear unreasonable to require renovations if the facilities were within 0.3048 meters (1 foot) of compliance. However, if a facility is more than 0.3048 meters (1 foot) from being in compliance and it is not out of compliance because of such old, ill, or infirm animals, it appears that it is necessary to require that adjustments be made within a reasonable amount of time.

Consideration was also given concerning whether a pinniped being transported in commerce should be required to be accompanied by an employee or attendant of the shipper or receiver. The final rule establishes such a requirement. This appears to be necessary in order that persons are available to observe whether the pinnipeds need veterinary care, and to obtain any needed veterinary care as soon as possible.

It is not anticipated that the adoption of these changes will have a significant impact. Many of the changes will lessen restrictions. Further, it appears that few facilities will have to make changes because of the final rule. Also, the adoption of the proposal to require pinnipeds to be accompanied by an employee or attendant of the shipper or receiver during transportation in commerce will not cause a significant impact because this is already a general industry practice.

Under these circumstances, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Humane animal handling.

PART 3—STANDARDS

Subpart E—Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals

Accordingly, Subpart E of 9 CFR Part 3 is amended as follows:

1. Section 3.100 is revised to read as follows:

§ 3.100 Special considerations regarding compliance and/or variance.

(a) All persons subject to the Animal Welfare Act who maintain or otherwise handle marine mammals in captivity must comply with the provisions of this subpart, except that they may apply for and be granted a variance,[1] by the Deputy Administrator, from one or more specified provisions of § 3.104. The provisions of this Subpart shall not apply, however, in emergency circumstances where compliance with one or more requirements would not serve the best interest of the marine mammals concerned.

(b) An application for a variance must be made to the Deputy Administrator in writing. The request must include:

(1) The species and number of animals involved,

(2) A statement from the attending veterinarian concerning the age and health status of the animals involved, and concerning whether the granting of a variance would be detrimental to the marine mammals involved,

(3) Each provision of the regulations that is not met,

(4) The time period requested for a variance,

(5) The specific reasons why a variance is requested, and

(6) The estimated cost of coming into compliance, if construction is involved.

(c) After receipt of an application for a variance, the Deputy Administrator may require the submission in writing of a report by two experts recommended by the American Association of Zoological Parks and Aquariums and approved by the Deputy Administrator concerning potential adverse impacts on the animals involved or on other matters relating to the effects of the requested variance on the health and well-being of such marine mammals. Such a report will be required only in those cases when the Deputy Administrator determines that such expertise is necessary to determine whether the granting of a variance would cause a situation detrimental to the health and well-being of the marine mammals involved. The cost of such report is to be paid by the applicant.

(d) Variances granted for facilities because of ill or infirm marine mammals that cannot be moved without placing their well-being in jeopardy, or for facilities within 0.3048 meters (1 foot) of compliance with any space requirement may be granted for up to the life of the marine mammals involved. Otherwise, variances shall be granted for a period not exceeding July 30, 1986, *Provided, however,* That under circumstances deemed justified by the Deputy Administrator, a maximum extension of 1 year may be granted to attain full compliance. A written request for the extension must be received by the Deputy Administrator by May 30, 1986. Consideration for extension by the Deputy Administrator will be limited to unforeseen or unusual situations such as when necessary public funds cannot be allocated in an appropriate time frame for a facility to attain full compliance by July 30, 1986.

(e) The Deputy Administrator shall deny any application for a variance if he determines that it is not justified under the circumstances or that allowing it will be detrimental to the health and well-being of the marine mammals involved.

(f) Any facility housing marine mammals that does not meet all of the space requirements as of July 30, 1984, must meet all of the requirements by September 28, 1984, or may operate without meeting such requirements until action is taken on an application for a variance if the application is submitted to the Deputy Administrator on or before September 28, 1984.

[1] Written permission from the Deputy Administrator to operate as a licensee or registrant under the Act without being in full compliance with one or more specified provisions of § 3.104.

(g) A research facility may be granted a variance from specified requirements of this Subpart when such variance is necessary for research purposes and is fully explained in the experimental design. Any time limitation stated in the section shall not be applicable in such case.

2. Sections 3.101(a) (3) and (4) are revised to read as follows:

§ 3.101 Facilities, general.

(a) * * *

(3) Any primary enclosure pool, except for natural seawater pools subject to tidal action, shall be constructed of materials having a nonporous, waterproof finish, which facilitate proper cleaning and disinfection, and shall be maintained in good repair as part of a regular ongoing maintenance program. Any ramps or haul-out areas for primary enclosure pools, and any natural seawater pools subject to tidal action, shall be constructed of materials which facilitates proper cleaning and disinfection and shall be maintained in good repair as part of a regular ongoing maintenance program.

(4) Facilities which utilize natural water areas, such as tidal basins, bays, or estuaries (subject to natural tidewater action) used for housing marine mammals shall be exempt from the drainage requirements of paragraph (c)(1) of this section, but they must meet the minimum standards with regard to space, depth, and sanitation. The water must be monitored for coliforms and for ph and chemical content, if chemicals are added.

* * * * *

3. The introductory text in § 3.104(b) and § 3.104 (b)(1), (b)(2), (b)(3)(i), and (b)(3)(ii), (c), and (d) is revised to read as follows:

§ 3.104 Space requirements.

* * * * *

(b) *Cetaceans.* Primary enclosures housing cetaceans shall contain a pool of water and may consist entirely of a pool of water. In determining the minimum space required in a pool holding cetaceans, four factors must be satisfied. These are MHD, depth, volume, and surface area. For the purposes of this Subpart, cetaceans are divided into Group I cetaceans and Group II cetaceans as shown in Table III in this section.

(1)(i) *The required minimum horizontal dimension* (MHD) of a pool for Group I cetaceans shall be 7.32 meters (24.0 feet) or two times the average adult length of the longest species of Group I cetacean housed therein (as measured in a parallel or horizontal line, from the tip of its upper jaw, or from the most anterior portion of the head in bulbous headed animals, to the notch in the tail fluke [2]), whichever is greater; except that such MHD measurement may be reduced from the greater number by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle and if the minimum volume and surface area requirements are met based on an MHD of 7.32 meters (24.0 feet) or two times the average adult length of the longest species of Group I cetacean housed therein, whichever is greater.

(ii) The MHD of a pool for Group II cetaceans shall be 7.32 meters (24.0 feet) or four times the average adult length of the longest species of cetacean to be housed therein (as measured in a parallel or horizontal line from the tip of its upper jaw, or from the most anterior portion of the head in bulbous headed animals, to the notch in the tail fluke), whichever is greater; except that such MHD measurement may be reduced from the greater number by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle and if the minimum volume and surface area requirements are met based on an MHD of 7.32 meters (24.0 feet) or four times the average adult length of the longest species of Group II cetacean housed therein, whichever is greater.

(iii) In a pool housing a mixture of Group I and Group II cetaceans, the MHD shall be the largest required for any cetacean housed therein.

(iv) Once the required MHD has been satisfied, the pool size may be required to be adjusted to increase the surface area and volume when cetaceans are added. Examples of MHD and volume requirements for Group I cetaceans are shown in Table I, and for Group II cetaceans in Table II.

[2] The body length of a *Monodon monoceros* (narwhale) is measured from the tip of the upper incisor tooth to the notch in the tail fluke. If the upper incisor is absent or does not extend beyond the front of the head, then it is measured like other cetaceans, from the tip of the upper jaw to the notch in the tail fluke. Immature males should be anticipated to develop the "tusk" (usually left incisor tooth) beginning at sexual maturity.

TABLE I.[1]—GROUP I CETACEANS

Representative average adult lengths		Minimum horizontal dimension (MHD)		Minimum required depth		Volume of water required for each additional cetacean in excess of two	
Meters	Feet	Meters	Feet	Meters	Feet	Cubic meters	Feet
1.68	5.5	7.32	24	1.83	6	8.11	284.05
2.29	7.5	7.32	24	1.83	6	15.07	529.87
2.74	9.0	7.32	24	1.83	6	21.57	763.02
3.05	10.0	7.32	24	1.83	6	26.73	942.00
3.51	11.5	7.32	24	1.83	6	35.40	1,245.79
3.66	12.0	7.32	24	1.83	6	38.49	1,356.48
4.27	14.0	8.53	28	2.13	7	50.97	2,154.04
5.49	18.0	10.97	36	2.74	9	129.65	4,578.12
5.64	18.5	11.28	37	2.82	9.25	140.83	4,970.33
5.79	19.0	11.58	38	2.90	9.50	152.64	5,384.32
6.71	22.0	13.41	44	3.36	11	237.50	8,358.68
6.86	22.5	13.72	45	3.43	11.25	253.42	8,941.64
7.32	24.0	14.63	48	3.66	12	307.89	10,851.84
8.53	28.0	17.07	56	4.27	14	487.78	17,232.32

[1] All calculations are rounded off to the nearest hundredth. In converting the length of cetaceans from feet to meters, 1 foot equals .3048 meter. Due to rounding of meter figures as to the length of the cetacean, the correlation of meters to feet in subsequent calulations of MHD and additional volume of water required per cetacean, over two, may vary slightly from a strict feet to meters ratio. Cubic meters is based on: 1 cubic foot = 0.0283 cubic meter.

TABLE II.[1]—GROUP II CETACEANS

Representative average adult length.		Minimum horizontal dimension (MHD)		Minimum required depth		Volume of water required for each additional cetacean in excess of four	
Meters	Feet	Meters	Feet	Meters	Feet	Cubic meters [1]	Cubic feet
1.52	5.0	7.32	24	1.83	6	13.25	471.00
1.68	5.5	7.32	24	1.83	6	16.22	569.91
1.83	6.0	7.32	24	1.83	6	19.24	679.24
2.13	7.0	8.53	28	1.83	6	26.07	923.16
2.29	7.5	9.14	30	1.83	6	30.13	1,059.75
2.44	8.0	9.75	32	1.83	6	34.21	1,205.76
2.59	8.5	10.36	34	1.83	6	38.55	1,361.19
2.74	9.0	10.97	36	1.83	6	43.14	1,526.04

[1] Converting cubic feet to cubic meters is based on: 1 cubic foot = 0.0283 of a cubic meter.

TABLE III.—AVERAGE ADULT LENGTHS OF MARINE MAMMALS MAINTAINED IN CAPTIVITY [1]

Species	Common name	Average adult length	
		In meters	In feet
Group I Cetaceans:			
Balaenoptera acutorostrata	Minke whale	8.50	27.8
Cephalorhynchus commersonii	Commerson's dolphin	1.52	5.0
Delphinapterus leucas	Beluga whale	4.27	14.0
Monodon monoceros	Narwhale	3.96	13.0
Globicephala melaena	Long-finned pilot whale	5.79	19.0
Globicephala macrorhynchus	Short-finned pilot whale	5.49	18.0
Grampus griseus	Risso's dolphin	3.66	12.0
Orcinus orca	Killer whale	7.32	24.0
Pseudorca crassidens	False killer whale	4.35	14.3
Tursiops truncatus (Atlantic)	Bottlenose dolphin	2.74	9.0
Tursiops truncatus (Pacific)	Bottlenose dolphin	3.05	10.0
Inia geoffrensis	Amazon porpoise	2.44	8.0
Phocoena phocoena	Harbor porpoise	1.68	5.5
Pontoporia blainvillei	Franciscana	1.52	5.0
Sotalia fluviatilis	Tucuxi	1.68	5.5
Platnista, all species	River dolphin	2.44	8.0
Group II Cetaceans:			
Delphinus delphis	Common dolphin	2.59	8.5
Feresa attenuata	Pygmy killer whale	2.44	8.0
Kogia breviceps	Pygmy sperm whale	3.96	13.0
Kogia simus	Dwarf sperm whale	2.90	9.5
Lagenorhynchus acutus	Atlantic white-sided dolphin	2.90	9.5
Lagenorhynchus cruciger	Hourglass dolphin	1.70	5.6
Lagenorhynchus obliquidens	Pacific white-sided dolphin	2.29	7.5
Lagenorhynchus albirostris	White-beaked dolphin	2.74	9.0
Lagenorhynchus obscurus	Dusky dolphin	2.13	7.0
Lissodelphis borealis	Northern right whale dolphin	2.74	9.0
Neophocaena phocaenoides	Finless porpoise	1.83	6.0
Peponocephala electra	Melon-headed whale	2.74	9.0
Phocenoides dalli	Dall's porpoise	2.00	6.5
Stenella longirostris	Spinner dolphin	2.13	7.0
Stenella coeruleoalba	Striped dolphin	2.29	7.5
Stenella attenuata	Spotted dolphin	2.29	7.5
Stenella plagiodon	Spotted dolphin	2.29	7.5
Steno bredanensis	Rough-toothed dolphin	2.44	8.0

[1] This table contains the species of marine mammals known by the Department to be presently in captivity or that are likely to become captive in the future. Anyone who is subject to the Animal Welfare Act having species of marine mammals in captivity which are not included in this table should consult the Deputy Administrator with regard to the average adult length of such animals.

Species	Common name	Average adult length			
		In meters		In feet	
		Male	Female	Male	Female
Group I Pinnipeds:					
*Arctocephalus gazella***	Antarctic Fur Seal	1.80	1.20	5.9	3.9
*Arctocephalus tropicalis***	Amsterdam Island Fur Seal	1.80	1.45	5.9	4.75
*Arctocephalus australis***	South American Fur Seal	1.68	1.42	5.5	4.7
*Arctocephalus pusillis***	Cape Fur Seal	2.73	1.83	9.00	6.0
*Callorhinus ursinus***	Northern Fur Seal	2.20	1.45	7.2	4.75
*Eumetopias jubatus***	Steller's Sea Lion	2.86	2.40	9.4	7.9
Hydrurga leptonyx	Leopard Seal	2.90	3.30	9.5	10.8
*Mirounga angustirostris***	Northern Elephant Seal	3.96	2.49	13.0	8.2
*Mirounga leonina***	Southern Elephant Seal	4.67	2.50	15.3	8.2
*Odobenus rosmarus***	Walrus	3.15	2.60	10.3	8.5
*Otaria flavescens***	South American Sea Lion	2.40	2.00	7.9	6.6
Phoca caspica	Caspian Seal	1.45	1.40	4.75	4.6
Phoca fasciata	Ribbon Seal	1.75	1.68	5.7	5.5
Phoca large	Harbor Seal	1.70	1.50	5.6	4.9
Phoca vituline	Habor Seal	1.70	1.50	5.6	4.9
Zalophus californianus	California Sea Lion	2.24	1.75	7.3	5.7
*Halichoerus grypus***	Grar Seal	2.30	1.95	7.5	6.4
Phoca sibirica	Baikal Seal	1.70	1.85	5.6	6.1
Phoca groenlandica	Harp Seal	1.85	1.85	6.1	6.1
*Leptonychotes weddelli***	Weddell Seal	2.90	3.15	9.5	10.3

Species	Common name	Average adult length			
		In meters		In feet	
		Male	Female	Male	Female
*Lobodon carcinophagus***	Crabeater Seal	2.21	2.21	7.3	7.3
*Ommatophoca rossi***	Ross Seal	1.99	2.13	6.5	7.0
Group II Pinnipeds:					
Erignathus barbatus	[illegible]	2.33	2.33	7.6	7.6
Phoca hispida	Ringed Seal	1.35	1.30	4.4	4.3
Cystophora cristata	Hooded Seal	2.60	2.00	8.5	6.6

NOTE.—** Any Group I animals maintained together will be considered as Group II when the animals maintained together include two or more sexually mature males from species marked with a double asterick (**) regardless of whether the sexually mature males from the same species.

Species	Common name	Average adult length	
		In meters	In feet
Sirenia:			
Dugong dugong	Dugong	3.35	11.0
Trichechus manatus	West Indian Manatee	3.51	11.5
Trichechus inunguis	Amazon Manatee	2.44	8.0
Mustelidae:			
Enhydra lutris	Sea Otter	1.25	4.1

(2) *The minimum depth requirement* for primary enclosure pools for all cetaceans shall be one-half the average adult length of the longest species to be housed therein, regardless of Group I or Group II classification, or 1.83 meters (6.0 feet), whichever is greater, and can be expressed as d=L/2 or 6 feet, whichever is greater. Those parts of the primary enclosure pool which do not meet the minimum depth requirement cannot be included when calculating space requirements for cetaceans.

(3) * * *

(i) The minimum volume of water required for up to two Group I cetaceans is based upon the following formula:

$$\text{Volume} = \left(\frac{\text{MHD}}{2}\right)^2 \times 3.14 \times \text{ depth.}$$

When there are more than two Group I cetaceans housed in a primary enclosure pool, the additional volume of water required for each additional Group I cetacean in excess of two is based on the following formula:

$$\text{Volume} = \left(\frac{\text{Average Adult Length}}{2}\right)^2 \times 3.14 \times \text{ depth.}$$

See Table I for required volumes.

(ii) The minimum volume of water required for up to four Group II cetaceans is based upon the following formula:

$$\text{Volume} = \left(\frac{\text{MHD}}{2}\right)^2 \times 3.14 \times \text{ depth.}$$

When there are more than four Group II cetaceans housed in a primary enclosure pool, the additional volume of water required for each additional Group II cetacean in excess of four is based on the following formula:

$$\text{Volume} = (\text{Average Adult Length})^2 \times 3.14 \times \text{depth}$$

See Table II for required volumes.

* * * * *

(c) *Sirenians.* Primary enclosures housing sirenians shall contain a pool of water and may consist entirely of a pool of water.

(1) The required MHD of a primary enclosure pool for sirenians shall be two times the average adult length of the longest species of sirenian to be housed therein. Calculations shall be based on the average adult length of such sirenians as measured in a horizontal line from the tip of the muzzle to the notch in the tail fluke of dugongs and from the tip of the muzzle to the most distal point in the rounded tail of the manatee.

(2) The minimum depth requirements for primary enclosure pools for all sirenians shall be one-half the average adult length of the longest species to be housed therein, or 1.52 meters (5.0 feet), whichever is greater. Those parts of the primary enclosure pool which do not meet the minimum depth requirements cannot be included when calculating space requirements for sirenians.

(3) A pool which satisfies the required MHD and depth shall be adequate for one or two sirenians. Volume and surface area requirements for additional animals shall be calculated using the same formula as for Group I cetaceans, except that the figure for depth requirement for sirenians shall be one-half the average adult length or 1.52 meters (5.0 feet), whichever is greater.

(d) *Pinnipeds.* (1) Primary enclosures housing pinnipeds shall contain a pool of water and a dry resting or social activity area that must be close enough to the surface of the water to allow easy access for entering or leaving the pool. For the purposes of this subpart, pinnipeds have been divided into Group I pinnipeds and Group II pinnipeds as shown in Table III in this section. In certain instances some Group I pinnipeds shall be considered as Group II pinnipeds. (See Table III).

(2) The minimum size of the dry resting or social activity area of the primary enclosure for pinnipeds (exclusive of the pool of water) shall be based on the average adult length of each pinniped contained therein, as measured in a horizontal or extended position in a straight line from the tip of its nose to the tip of its tail. The minimum size of the dry resting or social activity area shall be computed using the following methods:

(i) *Group I pinnipeds.* Square the average adult length of each pinniped to be contained in the primary enclosure. Add the figures obtained for each of the pinnipeds in the primary enclosure to determine the dry resting or social activity area required for such

pinnipeds. If only a single Group I pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area shall be twice the square of the average adult length of that single Group I pinniped. Examples:

(average adult length)² of 1st Group I pinniped + (average adult length)² of 2nd Group I pinniped = Total DRA for two pinnipeds

DRA for one pinniped = 2 × (average adult length of Group I pinniped)²

(ii) *Group II pinnipeds.* List all pinnipeds contained in a primary enclosure by average adult length in descending order from the longest species of pinniped to the shortest species of pinniped. Square the average adult length of each pinniped. Multiply the average adult length squared of the longest pinniped by 1.5, the second longest by 1.4, the third longest by 1.3, the fourth longest by 1.2, and the fifth longest by 1.1, as indicated in the following example. Square the average adult length of the sixth pinniped and each additional pinniped. Add the figures obtained for all the pinnipeds in the primary enclosure to determine the required minimum dry resting or social activity area required for such pinnipeds. If only a single Group II pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area must be computed for a minimum of two pinnipeds.

Examples: DRA for 1 Group II Pinniped = [(Average adult length)² × 1.5] + [(Average adult length)² × 1.4]

1st pinniped (avg. adult length)² × 1.5 = social and DRA required
2nd pinniped (avg. adult length)² × 1.4 = social and DRA required
3rd pinniped (avg. adult length)² × 1.3 = social and DRA required
4th pinniped (avg. adult length)² × 1.2 = social and DRA required
5th pinniped (avg. adult length)² × 1.1 = social and DRA required
Each pinniped over 5 (avg. adult length)² = social and DRA required

Total minimum social activity and dry resting area required for all pinnipeds housed in a primary enclosure.

If all the pinnipeds in the primary enclosure are of the same species, the same descending order of calculation shall apply. Example: Hooded seal—average adult length of male = 8.5 feet and female = 6.6 feet. In a primary enclosure containing 2 males and 2 females, the social or DRA required would be the sum of $[(8.5)^2 \times 1.5] + [(8.5)^2 \times 1.4] + [(6.6)^2 \times 1.3] + [(6.6)^2 \times 1.2]$.

If two or more sexually mature males are maintained together in a primary enclosure, the dry resting or social activity area shall be divided into two or more separate areas with sufficient visual barriers (such as fences, rocks, or foliage) to provide relief from aggressive animals.

(iii) *Mixture of Group I and Group II pinnipeds.* In a primary enclosure where a mixture of Group I and Group II pinnipeds is to be housed, the dry resting or social activity area shall be calculated as for Group II pinnipeds. The dry resting or social activity area shall be divided into two or more separate areas with sufficient visual barriers (such as fences, rocks, or foliage) to provide relief from aggressive animals.

(3)(i) The minimum surface area of a pool of water for pinnipeds shall be at least equal to the dry resting or social activity area required.

(ii) The MHD of the pool shall be at least one and one-half (1.5) times the average adult length of the largest species of pinniped to be housed in the enclosure; except that such MHD measurement may be reduced by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle.

(iii) The pool of water shall be at least 0.91 meters (3.0 feet) deep or one-half the average adult length of the longest species of pinniped contained therein, whichever is greater. Parts of the pool that do not meet the minimum depth requirement cannot be used in the calculation of the dry resting and social activity area, or as part of the MHD or required surface area of the pool.

* * * * *

4. The fourth sentence in § 3.104(e) is revised to read as follows:

§ 3.104 Space requirements.

* * * * *

(e) * * * The pool of water shall have an MHD of not less than 2.44 meters (8.0 feet) and a surface area of at least 8.93 square meters (96.0 square feet) with a minimum depth of 1.52 meters (5.0 feet) with the exception of any entry and exit area.

5. Section 3.104(f) is revised to read as follows:

§ 3.104 Space requirements.

* * * * *

(f) *Sea otters.* (1) Primary enclosures for sea otters shall consist of a pool of water and a dry resting area. The MHD of the pool of water for sea otters shall be at least three times the average adult length of the sea otter contained therein (measured in a horizontal line from the tip of its nose to the tip of its tail) and the pool shall be not less than .91 meters (3.0 feet) deep. When more than two sea otters are housed in the same primary enclosure, additional dry resting area as well as pool volume is required to accommodate the additional sea otters. (See Table V).

(2) The minimum volume of water required for a primary enclosure pool for sea otters shall be based on the sea otter's average adult length. The minimum volume of water required in the pool shall be computed using the following method: Multiply the square of the sea otter's average adult length by 3.14 and then multiply the total by 0.91 meters (3.0 feet). This volume is satisfactory for one or two otters. To calculate the additional volume of water for each additional sea otter above two in a primary enclosure, multiply one-half of the square of the sea otter's average adult length by 3.14, then multiply by 0.91 meters (3.0 feet). (See Table V).

(3) The minimum dry resting area required for one or two sea otters shall be based on the sea otter's average adult length. The minimum dry resting area for one or two sea otters shall be computed using the following method: Square the average adult length of the sea otter and multiply the total by 3.14. When the enclosure is to contain more than two sea otters, the dry resting area for each additional animal shall be computed by multiplying one-half of the sea otter's average adult length by 3.14. Using 1.25 meters or 4.1 feet (the average adult length of a sea otter), the calculations for additional space will result in the following figures:

TABLE V.—ADDITIONAL SPACE REQUIRED FOR EACH SEA OTTER WHEN MORE THAN TWO IN A PRIMARY ENCLOSURE

Average adult length of sea otter		Resting area		Pool Volume	
Meters	Feet	Square meters	Square Feet	Cubic meters	Cubic feet
1.25	4.1	1.96	6.44	2.23	79.17

§ 3.116 [Amended]

6. By amending § 3.116(a) by adding "pinnipeds," immediately after "sirenians,".

7. By amending § 3.116(b)(1) by removing the words "with intermittent spraying of water or protecting it by applying a nontoxic emollient, such as lanolin, to prevent drying of the skin;" and inserting in lieu thereof "or preventing the drying of the skin by such methods as intermittent spraying of water or application of a nontoxic emollient, such as lanolin;".

8. By amending § 3.116(d) by removing "and pinnipeds" in each of the three places it appears, by removing "pinnipeds and" and by removing "or pinniped".

9. The sixth sentence in § 3.117 is revised to read as follows:

§ 3.117 Terminal facilities.

* * * The air temperature around any marine mammal in any animal holding area shall not be allowed to fall below 7.2° C. (45° F.). The air temperature around any polar bear shall not be allowed to exceed 29.5° C. (85° F.) at any time and no polar bear shall be subjected to surrounding air temperatures which exceed 23.9° C. (75° F.) for more than 4 hours at any time.

* * * * *

§ 3.118 [Amended]

10. By removing § 3.118(a)(2) and by redesignating § 3.118(a)(3) as § 3.118(a)(2)

Authority: Secs. 3, 5, 6, 10, 11, 12, 16, 17, 21, 80 Stat. 351, 352, 353, 84 Stat. 1561, 1562, 1563, 1564, 90 Stat. 418, 419, 420, 423; 7 U.S.C 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151; 7 CFR 2.17, 2.51, 371.2(d)

Done at Washington, D.C., this 21st day of June, 1984.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-17061 Filed 6-22-84; 1:10 pm]

BILLING CODE 3410-34-M

federal register

Thursday
June 28, 1984

Part III

Department of Education

Office of Bilingual Education and Minority Language Affairs

Application Notice and Interpretations for Fiscal Year 1984 Grants to State Educational Agencies for Emergency Immigrant Education Assistance; Notice

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Grants to State Educational Agencies for Emergency Immigrant Education Assistance; Application and Interpretations

AGENCY: Department of Education.

ACTION: Application Notice and Interpretations for Fiscal Year 1984 Grants to State Educational Agencies for Emergency Immigrant Education Assistance.

Applications are invited for grants that provide financial assistance for educational services and costs for immigrant children enrolled in elementary and secondary public and nonpublic schools.

The authority for these awards is contained in section 101(g) of the Further Continuing Appropriation for Fiscal Year 1984 (Pub. L. 98–151).

Eligible applicants are State educational agencies (SEAs).

Because the Department has not issued any specific regulations for this program, and because the program is being funded for the first time, the award of grants is governed by the regulations in 34 CFR Part 76 for programs without specific regulations and by the interpretations given in this application notice. Section 76.1(b) provides that if a State-administered program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in Part 76. Therefore, the following govern the award of grants: Title V of H.R. 3520 (made applicable by Section 101(g) of Pub. L. 98–151); the General Education Provisions Act, as amended (20 U.S.C. 1221–1234e); and the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 76, 77, 78, and 79.

Effective Date: The provisions in this notice will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these provisions, call or write the Department of Education contact person.

Closing Date for Transmittal of Applications: To be assured of consideration for funding, an applicant SEA must mail or hand deliver its application for a grant by August 10, 1984. In the event that an applicant SEA is unable to mail or hand deliver its application by August 10, 1984, the applicant SEA must request an extension of time, stating in the request the reason that an extension is necessary. The applicant SEA is advised, however, that any delay in submitting its application may prevent the processing and awarding of its fiscal year 1984 grant.

Applications Delivered by Mail: An applicant SEA that sends its application by mail should address its application to the U.S. Department of Education, Application Control Center, Attention: 84. 162, Washington, D.C. 20202.

An applicant SEA must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping lable, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an applicant SEA sends its application through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant SEA should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

The Secretary encourages applicants to use registered or at least first class mail. The Secretary notifies a late applicant that its application will not be considered unless that SEA has been granted an extension of the closing date.

Applications Delivered by Hand: An applicant SEA that hand delivers its application must take the application to the U.S. Department or Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

The Application Control Center will not accept an application that is hand delivered after 4:30 p.m. on the closing date—unless that SEA has been granted an extension of the closing date.

Program Information: Application requirements, eligible activities, definitions governing the count of eligible children, and other information on the program may be found in Title V of H.R. 3520. For an applicant's better understanding of the program, several of the provisions in H.R. 3520 are summarized in the following paragraphs.

I. *Definitions.*

A. *"Immigrant children."* Title V uses the term "immigrant children" to describe children eligible to be counted for emergency immigrant education assistance. Title V defines "immigrant children" as children who were not born in a State and who have been attending schools in any one or more States for less than three complete academic years.

B. *"Immigrant"—Interpretation.* As a matter of interpretation (See 5 U.S.C. 553(b)), the Secretary has determined that the term "immigrant" in Title V only includes persons who are "immigrants" under the Immigration and Nationality Act, as amended. 8 U.S.C. 1101(15). If the term "immigrant" were not interpreted in accordance with the Immigration and Nationality Act, persons could be counted and served contrary to the purpose of the program and Congressional intent, including United States citizens' children who were born abroad, e.g., while their parents were traveling abroad or serving with the armed forces overseas; and the children of persons temporarily residing in the United States, e.g., children of foreign diplomats. Thus, the term "immigrant children" will include only the children of lawful permanent resident aliens, refugees, asylees, parolees, persons of other immigrant status, and immigrant residents in the United States without proper documentation. The term will exclude children of foreign diplomats, United States citizens' children who were born abroad, and children of foreign residents temporarily in the United States for business or pleasure. This is not an exhaustive list of exclusions and only provides examples of the children who are not eligible for assistance under this program. For additional categories of ineligible children, please review the definition of "immigrant" under the Immigration and Nationality Act. A copy of the definition will be included in the application package.

C. *Terms defined in accordance with section 198(a) of the Elementary and Secondary Education Act of 1965.* Title V provides that the following terms used in Title V have the meanings that are given to the terms under Section 198(a) of the Elementary and Secondary Education Act of 1965 (ESEA): "elementary school"; "local educational agency"; "secondary school"; "State"; and "State educational agency." The definitions in ESEA are codified at 34

CFR Part 77 (Definitions That Apply to Department Regulations) of EDGAR.

A copy of 34 CFR Part 77 will be included in the application package.

However, to prevent confusion regarding the counting of immigrant children who were not born in a State, the EDGAR definition of "State" is repeated here. "State," as defined in ESEA and 34 CFR 77.1(c), means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

D. *"Elementary or secondary nonpublic schools."* Title V defines the term "elementary or secondary nonpublic schools" to mean schools which comply with the applicable compulsory attendance laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

II. *Determining the Number of Eligible Immigrant Children.*

A. *Counting immigrant children who have been attending schools for less than three complete academic years.* In counting immigrant children, an SEA must count children who are or were enrolled in schools during the 1983–1984 school year and who were eligible to be counted as "immigrant children" at the time of their enrollment.

B. *Local educational agency enrollment threshold.* In determining the number of immigrant children eligible for assistance under this program, an SEA first must determine the number of immigrant children who are enrolled in elementary and secondary public and nonpublic schools under the jurisdiction of, or within the districts served by, those local educational agencies (LEAs) in which the number of immigrant children who are enrolled in these schools is equal to at least 500 or is equal to at least 5 percent of the total number of students enrolled. An SEA receives funds under this program only for immigrant children in those LEAs that meet this threshold of 500 eligible students enrolled or eligible students totalling 5 percent of the total student enrollment.

III. *Determining the Amount of Award to a State*—Title V provides that in determining the amount of an award to an SEA, the Secretary multiplies by $500 the number of immigrant children reported by a State who are enrolled in schools in LEAs that meet the enrollment threshold. Thereafter the Secretary makes reductions to SEA grants based on funds made available under other Federal laws as described in section IV below. Then the Secretary ratably reduces the allocations to the SEAs, to the extent necessary to bring the total amount of awards to the SEAs within the limit of the amount appropriated for the fiscal year.

IV. *Reductions to SEA Grants Based on Funds Made Available Under Other Federal Laws—Interpretation.* Title V provides for a reduction in the amount of a grant to an SEA based on the amounts made available to the SEA for the same fiscal year, under any other Federal law for expenditure within the State and for the same purpose for which this assistance is made available, provided that (1) the funds were made available specifically because of the refugee, parolee, asylee, or other immigrant status of the individuals eligible for assistance, and (2) the funds were made available to provide assistance to individuals eligible for services under this program.

The Secretary has determined that this provision applies to FY 1984 funds made available under the Refugee Act of 1980, as amended (8 U.S.C. 1522), and to FY 1984 funds made available under Section 501(a) of the Refugee Education Assistance Act, as amended (8 U.S.C. 1522 (note)), for services to children who are also included in an SEA's count as eligible for assistance under Title V. Therefore, in addition to reporting the total number of immigrant children in LEAs that meet the enrollment threshold of 500 or 5 percent immigrant enrollment, an SEA must also report the numbers of those children, counted in the State's total, who were also counted as eligible children for FY 1984 assistance under either the Transition Program for Refugee Children (authorized under the Refugee Act of 1980, as amended) or as eligible children for FY 1984 assistance under section 501(a) of the Refugee Education Assistance Act, as amended. The Secretary will then reduce the amount of a State's award by the amount the State receives for these children.

V. *State Allocations*

A. *State administrative costs.* Title V provides that an SEA may expend up to 1.5 percent of the amount of the award to the State for the proper and efficient administration of its functions under Title V.

B. *Allocations to LEAs.* An SEA distributes the funds not reserved for State administrative costs to the LEAs in the State that met the threshold of 500 or 5 percent enrollment of immigrant children. The SEA distributes the funds on the basis of the number of immigrant children counted by each such LEA, with adjustments to an LEA's award to reflect any reductions made to the State award, based on FY 1984 funds received under other Federal laws to serve immigrant children, that are attributable to that LEA.

VI. *Eligible Activities.* Title V provides that the following activities may be supported with assistance provided under this program to meet the costs of providing supplementary educational services to immigrant children:

(1) Supplementary educational services necessary to enable those children to achieve a satisfactory level of performance, including the following:

(A) English language instruction.

(B) Other bilingual educational services.

(C) Special materials and supplies.

(2) Additional basic instructional services which are directly attributable to the presence in the school district of immigrant children, including the costs of providing additional classroom supplies, overhead costs, costs of construction, acquisition or rental of space, costs of transportation, or such other costs as are directly attributable to such additional basic instructional services.

(3) Essential inservice training for personnel who will be providing instruction to immigrant children.

Application Requirements. To receive a grant under this program, Title V provides that an SEA must submit an application that—

(1) Provides that the educational programs, services, and activities made available with this assistance will be administered by or under the supervision of the SEA;

(2) Provides assurances that this assistance will be used to meet the costs of providing the educational sevices authorized under Title V to immigrant children;

(3) Provides assurance that this assistance will be distributed among LEAs within the State on the basis of the number of immigrant children counted for the LEAs that meet the enrollment threshold of 500 or 5 percent (See Section II, above), with each LEA's award adjusted to reflect any reductions that were made to the SEA's award based on the numbers of children eligible for FY 1984 assistance under other Federal laws, which attributable to that particular LEA;

(4) Provides assurances that the SEA will not finally disapprove in whole or in part any application for funds received from an LEA without first affording the LEA submitting an application for funds reasonable notice and opportunity for a hearing;

(5) Provides for making such reports as the Secretary may reasonably require;

(6) Provides assurances—

(A) That to the extent consistent with the number of immigrant children enrolled in the elementary or secondary nonpublic schools within the district served by an LEA, the LEA, after consultation with appropriate officials of the nonpublic schools, shall provide for the benefit of those children secular, neutral, and nonideological services, materials, and equipment necessary for the education of those children;

(B) That the control of funds provided under this program and the title to any materials, equipment, and property repaired, remodeled, or constructed with those funds shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer these funds and property; and

(c) That provision of services to immigrant children enrolled in elementary and secondary nonpublic schools shall be provided by employees of a public agency or through contract by that public agency with a person, association, agency, or corporation who or which, in the provision of such services, is independent of that elementary or secondary nonpublic school and of any religious organization; and any employment or contract shall be under the control and supervision of that public agency, and these funds shall not be commingled with State or local funds.

A copy of Title V of H.R. 3520; the definition of "immigrant" contained in the Immigration and Nationality Act, as amended, and published at 8 U.S.C. 1101(5); applicable definitions from 34 CFR Part 77; and a copy of this notice will be included in the application package to be sent to SEAs.

Intergovernmental Review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158–29168) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why not; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects which do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The Emergency Immigrant Education Assistance Program is a new program, and States have not made a determination as to whether it will be included or excluded from review under the State review process. Therefore, immediately upon receipt of this notice, an applicant SEA should contact the appropriate State single point of contact to see if this assistance will be included under its State's review process and to comply with the State's process under Executive Order 12372. A list containing the single point of contact for each State will be included in the application package for this program.

In States that have not established a process, or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by August 24, 1984 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (84.162) 400 Maryland Avenue, SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

Available Funds: An amount of $30 million has been appropriated for FY 1984 for grants for emergency immigrant education assistance under Title V of H.R. 3520. The Secretary estimates that these funds will support 57 State programs. These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms: The Office of Bilingual Education and Minority Languages Affairs will mail application forms and instructions to all SEAs. A copy of the application package may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 421, Reporters Building) Washington, D.C. 20202.

An applicant SEA must prepare and submit its application in accordance with the forms and instructions included in the program information package. However, the program information package is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations governing this program.

Applicable Regulations: The following regulations are applicable to this program:

The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 76, 77, 78, and 79.

Further Information: For further information, contact Mr. Vidal A. Rivera, Jr., Office of Bilingual Education and Minority Language Affairs, Department of Education, 400 Maryland Avenue, SW., (Room 421, Reporters Building), Washington, D.C. 20202. Telephone (202) 245–2600.

(Sec. 101(g) of Pub. L. 98–151)

(Catalog of Federal Domestic Assistance No. 84.162; Emergency Immigrant Education Assistance)

Dated: June 25, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84–17282 Filed 6–27–84; 8:45 am]

BILLING CODE 4000–01–M

federal register

Thursday
June 28, 1984

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 7

Equal Employment Opportunity; Final Rule and Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 7

[Docket No. R-84-1182; FR-1922]

Equal Employment Opportunity; Policy and Procedures

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes technical changes to the Department's regulations on equal employment opportunity by updating (1) the title of the Assistant Secretary for Fair Housing and Equal Opportunity, and (2) the list of HUD officials involved. The rule also permits the Assistant Secretary for Fair Housing and Equal Opportunity in the capacity of Director of Equal Employment Opportunity, to designate the Deputy Director of Equal Employment Opportunity and the Equal Employment Opportunity Officers for the Department.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Manuel E. Crawley, Director, Public Employment Division, Office of HUD Progam Compliance, Office of Fair Housing and Equal Opportunity, Room 5234, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-6415. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department's current regulations in 24 CFR Part 7, Equal Employment Opportunity, are in need of several technical changes. This final rule makes the necessary changes.

Sections 7.2 and 7.4 are amended to remove reference to the Federal Insurance Administrator, who is no longer a member of the HUD administration, and to add to that list of involved officials the Inspector General, the President of the Government National Mortgage Association, and the President of the Solar Energy and Energy Conservation Bank. References to the Field Offices are also corrected.

Section 7.3 is amended to update the title of the Assistant Secretary for Fair Housing and Equal Opportunity and to remove the designations of the Deputy Director of Equal Employment Opportunity and the Department's Equal Employment Opportunity Officers from the Code of Federal Regulations. In this way, the Assistant Secretary for Fair Housing and Equal Opportunity, in the capacity of the Director of Equal Employment Opportunity, may make and change these designations without initiating a rule change. The Assistant Secretary for Fair Housing and Equal Opportunity, in the capacity of Director of Equal Employment Opportunity, is publishing these designations in a separate document in the **Federal Register** under his delegated authority.

The subject matter of this rulemaking action relates to Department organization and is therefore exempt from the notice and public requirements of Section 553 of the Administrative Procedure Act.

An environmental assessment, which is made routinely in accordance with HUD regulations in 24 CFR Part 50, pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, is unnecessary because this rule is clearly unrelated to environmental concerns and is considered to have no potential for significantly affecting the quality of the human environment.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it relates only to internal Departmental matters.

This rule was listed at 49 FR 15953 as item FHEO-3-84 in the Department's Semiannual Agenda of Regulations published on April 19, 1984, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 7

Administrative practice and procedure, Equal employment opportunity, Organization and functions (Government agencies).

PART 7—[AMENDED]

Accordingly, §§ 7.2 through 7.4 of 24 CFR Part 7 are revised to read as follows:

§ 7.2 Definitions.

(a) For the purpose of this subpart, "organizational unit" means the jurisdictional area of the Office of the Secretary, each Assistant Secretary, the General Counsel, the Inspector General, the President of the Government National Mortgage Association, the President of the Solar Energy and Energy Conservation Bank, and each Regional Administrator-Regional Housing Commissioner. For the purpose of this subpart the jurisdictional area of each Regional Administrator-Regional Housing Commissioner includes all HUD Field Offices within the Region.

(b) The term "EEO," as used herein, means Equal Employment Opportunity.

§ 7.3 Designations.

(a) *Director of Equal Employment Opportunity.* The Assistant Secretary for Fair Housing and Equal Opportunity is designated the Director of EEO, except that with respect to complaints naming the Director and/or Deputy Director of EEO as the alleged discriminating official(s) and complaints arising in the Office of the Assistant Secretary for Fair Housing and Equal Opportunity, the Executive Assistant to the Secretary shall be Director of EEO.

(b) *Deputy Director of Equal Employment Opportunity.* The Director of Equal Employment Opportunity shall designate a HUD official to be Deputy Director of Equal Employment Opportunity.

(c) *Equal Employment Opportunity Officers.* The Director of Equal Employment Opportunity shall designate appropriate HUD officials to be Equal Employment Opportunity Officers for their respective organizational units, except that, with respect to the Office of Inspector General, the Inspector General shall be the Equal Employment Opportunity Officer.

(d) *Equal Employment Opportunity Counselors.* Each EEO Officer, with the concurrence of the Director of EEO, shall designate a sufficient number of EEO Counselors for his or her organizational unit.

§ 7.4 Affirmative action programs.

Each Assistant Secretary, the General Counsel, the Inspector General, the President of the Government National Mortgage Association, the President of the Solar Energy and Energy Conservation Bank, the Executive

Assistant to the Secretary, each Regional Administrator-Regional Housing Commissioner and each Field Office Manager shall establish, maintain, and carry out a plan of affirmative action to promote equal opportunity in every aspect of employment policy and practice. Each plan shall be specifically designated to recognize conditions, situations, and needs of the particular office, community characteristics, and problems of the particularly locality. Each plan is subject to approval by the Director of EEO and shall be developed within the framework of Departmentwide guidelines published by the Director of EEO.

Authority: Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: June 20, 1984.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 84-17294 Filed 6-27-84; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D-84-765; FR-1786]

Designations of Deputy Director of Equal Employment Opportunity and Equal Employment Opportunity Officers

AGENCY: Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Designations.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity, in the capacity of Director of Equal Employment Opportunity for HUD, is designating the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity to be the Deputy Director of Equal Employment Opportunity. The Assistant Secretary is also updating and correcting the list of HUD Officials designated as Equal Employment Opportunity Officers for the several organizational units of HUD.

EFFECTIVE DATE: June 28, 1984.

FOR FURTHER INFORMATION CONTACT: Manuel E. Crawley, Director, Public Employment Division, Office of HUD Program Compliance, Office of Fair Housing and Equal Opportunity, Room 5234, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6415 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 27, 1970, HUD published in the **Federal Register** (35 FR 13682) a Designation and Delegation of Authority in which the Secretary of Housing and Urban Development, among other things, designated HUD officials to serve as the Deputy Director of Equal Employment Opportunity and as Equal Employment Opportunity Officers for the several organizational units of HUD.

In Section C of that document, the Secretary designated the Deputy Assistant Secretary for Equal Employment Opportunity to be the Deputy Director of Equal Employment Opportunity for HUD. Since the publication of that document, the title of the Assistant Secretary for Equal Opportunity has been changed to Assistant Secretary for Fair Housing and Equal Opportunity, and there is now more than one Deputy Assistant Secretary.

In a separate document published in today's **Federal Register**, the Secretary has delegated to the Assistant Secretary, in the capacity of Director of Equal Employment Opportunity, the authority to designate the Deputy Director. The Assistant Secretary, pursuant to that authority, is designating the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity to be the Deputy Director of Equal Employment Opportunity.

In section D of the document published on August 27, 1970, the Secretary designated a number of HUD Officials to be the Equal Employment Opportunity Officers for the several organizational units of HUD. Since that publication, HUD has undergone several organizational changes, including the creation of new units and the abolishment of old units, and a number of the HUD officials listed in that designation have had changes in title and/or organizational responsibility. Therefore, the list of HUD officials is being corrected to reflect those changes.

In the separate document published in today's **Federal Register**, the Secretary reasserts the delegation of authority to the Assistant Secretary, in the capacity of Director of Equal Employment Opportunity, to designate HUD officials to be Equal Employment Opportunity Officers.

Accordingly, the Assistant Secretary for Fair Housing and Equal Opportunity, pursuant to his authority as Director of Equal Employment Opportunity for HUD, designates as follows:

Section 1. *Designation of Deputy Director of Equal Employment Opportunity.* The General Deputy Assistant Secretary for Fair Housing and Equal Opportunity is designated to be the Deputy Director of Equal Employment opportunity for HUD.

Section 2. *Designation of Equal Employment Opportunity Officers.* In accordance with regulations of the Equal Employment Opportunity Commission set forth at 29 CFR 1613.204(c):

(a) Each of the HUD officials listed below is designated to be the Equal Employment Opportunity Officer for the organizational unit under his or her jurisdiction:

1. Assistant Secretary for Community Planning and Development
2. General Counsel
3. Assistant Secretary for Housing—Federal Housing Commissioner
4. Assistant Secretary for Public and Indian Housing
5. Inspector General
6. President, Government National Mortgage Association
7. Assistant Secretary for Fair Housing and Equal Opportunity
8. Assistant Secretary for Policy Development and Research
9. Assistant Secretary for Administration
10. Assistant Secretary for Legislation and Congressional Relations
11. President, Solar Energy and Energy Conservation Bank
12. Assistant Secretary for Public Affairs
13. Each Regional Administrator—Regional Housing Commissioner for his or her Regional Office and all other HUD Field Offices within the Region.

(b) The Executive Assistant to the Secretary is designated to be the Equal Employment Opportunity Officer for all Headquarters organizations not under the jurisdiction of an Equal Employment Opportunity Officer listed in paragraph (a) of this section 2.

3. Section 3. *Supersedure.* This document supersedes the designation of Deputy Director of Equal Employment Opportunity and the designation of Equal Employment Opportunity Officers contained respectively in sections C and D of the Designation and delegation of Authority published at 35 FR 13682 on August 27, 1970.

Authority: E. O. 11478, 3 CFR, 1969 Comp., p.133; regulations of the Equal Employment Opportunity Commission, 29 CFR 1613.204; Delegation of Authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Fair Housing and Equal Opportunity—Director of Equal Employment Opportunity published in this day's issue of the **Federal Register**.

Dated: June 22, 1984.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity—Director of Equal Employment Opportunity.

[FR Doc. 84-17293 Filed 6-27-84; 8:45 am]

BILLING CODE 4210-26-M

Office of the Secretary

[Docket No. D-84-764; FR-1923]

Designation of Director of Equal Employment Opportunity and Delegations of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Designation and delegation of authority.

SUMMARY: The Secretary of Housing and Urban Development is updating the designation of the Director of Equal Employment Opportunity for HUD and is delegating to the Director the authority to designate a HUD official to be Deputy Director and EEO Officers for the Department.

EFFECTIVE DATE: June 28, 1984.

FOR FURTHER INFORMATION CONTACT: Manuel E. Crawley, Director, Public

Employment Division, Office of HUD Program Compliance, Office of Fair Housing and Equal Opportunity, Room 5234, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755–6415 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 27, 1970, HUD published in the **Federal Register**, at 35 FR 13682, a document entitled "Designation and Delegation of Authority," in which the Secretary designated the Assistant Secretary and Deputy Assistant Secretary for Equal Opportunity, respectively, to be the Director and Deputy Director of Equal Employment Opportunity for HUD. In this document, the Secretary delegated certain authority to the Director and Deputy Director with respect to HUD's equal employment opportunity functions.

Since the publication of the Designation and Delegation of Authority in 1970, the title of the Assistant Secretary for Equal Opportunity has been changed to Assistant Secretary for Fair Housing and Equal Opportunity. Thus, it is necessary to update the designation of the Assistant Secretary to be the Director of Equal Employment Opportunity for HUD. Moreover, there is now more than one Deputy Assistant Secretary for Fair Housing and Equal Opportunity, causing a problem in the designation of the Deputy Director, and the Secretary has decided to delegate to the Director the authority to designate a Deputy Director.

In addition, several technical corrections to the 1970 document are needed. First, the 1970 document refers to "regulations of the Civil Service Commission", which have been recodified as regulations of the Equal Employment Opportunity Commission. These references are updated in this document. Second, the delegation of authority to the Deputy Director contains an erroneous reference to "the Equal Employment Opportunity Officer", which is corrected in this document.

With the corrections and the additional delegation described above, all of the delegations of authority contained in the 1970 document are republished herein. However, the designation of the Deputy Director (see discussion above) and the designation of Equal Employment Opportunity Officers, contained in Section D of the 1970 document, are not republished in this document; the Assistant Secretary for Fair Housing and Equal Opportunity, in the capacity of Director of Equal Employment Opportunity, is publishing these designations in a separate document in today's **Federal Register**, pursuant to his delegated authority.

Accordingly, the Secretary of Housing and Urban Development designates and delegates as follows:

Section A. *Designation of Director of Equal Employment Opportunity.* The Assistant Secretary for Fair Housing and Equal Opportunity is hereby designated to be the Director of Equal Employment Opportunity for HUD, pursuant to the regulations of the Equal Employment Opportunity Commission at 29 CFR 1613.204(c).

Section B. *Delegations of Authority.*

1. The Director of Equal Employment Opportunity is authorized to:

a. Designate a HUD official to be Deputy Director of Equal Employment Opportunity for HUD and assign functions to the Deputy Director.

b. Designate HUD officials to be Equal Employment Opportunity Officers and assign functions to such officers.

c. Make changes in programs and procedures designed to eliminated discriminatory practices and improve HUD's program for equal employment opportunity.

2. The Director of Equal Employment Opportunity and (under the general supervision of the Director) the Deputy Director are authorized to exercise the functions of the Director of Equal Employment Opportunity specified in the regulations of the Equal Employment Opportunity Commission at 29 CFR 1613.204(d), including making the decision under 29 CFR 1613.221 for the Secretary on complaints of discrimination and ordering such corrective measures as the Director or Deputy Director may consider necessary.

Section C. *Supersedure.* This document supersedes the designations and delegations contained in Sections A and C of the Designation and Delegation of Authority published at 35 FR 13682 on August 27, 1970.

Authority: E.O. 11478, 3 CFR, 1969 Comp., p. 133; regulations of the Equal Employment Opportunity Commission, 29 CFR 1613.204; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: June 22, 1984.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 84–17292 Filed 6–27–84; 8:45 am]

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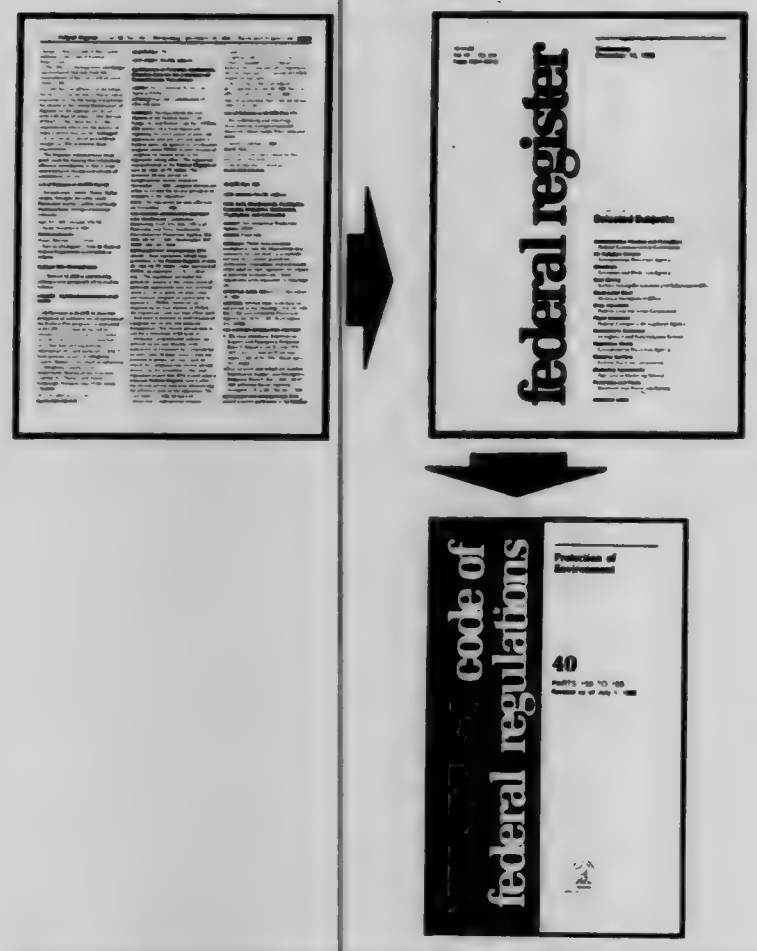
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H.R. 1723 / Pub. L. 98–327
To authorize appropriations through fiscal year 1986 for the Great Dismal Swamp, Minnesota Valley, and San Francisco Bay National Wildlife Refuges. (June 25, 1984; 98 Stat. 270) Price: $1.50

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Appeals Arbitration/Voluntary Expedited Appeals Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Amendment of interim rules with request for comments.

SUMMARY: The Merit Systems Protection Board amends it interim rules governing its appeals arbitration procedures for resolving matters subject to the appellate jurisdiction of the Board. The amendments change the interim regulations published on March 18, 1983 at 48 FR 11399–11403 in several respects. The primary change amends 5 CFR 1201.220 to provide that the standards for filing petitions for review under the expedited process reflect the same standards as those that apply to the formal procedure. This change accommodates the Board's intent to ensure that both procedures reach the same result regardless of the forum. The second amendment changes the title of the procedure from Appeals Arbitration to Voluntary Expedited Appeals Procedure. This change is made to reflect the increased similarity to the Board's formal procedure brought on by the amendment to the petition for review criteria. Furthermore, the title change will eliminate possible confusion between the Board's expedited process and labor or grievance labor arbitration practices.

The third changes concerns the time allotted to the Board for the adjudication of timely filed petitions for review. 5 CFR 1201.221 is amended to provide the Board thirty-five days to adjudicate the appeal, from the date of the certification of the file to the date of issuance of the final Board order.

Technical changes necessary to conform the above amendments are also included in this notice.

DATES: Interim rule effective June 29, 1984 through September 18, 1984; comments must be received on or before July 30, 1984. Appeals postmarked June 29, 1984, or after will be subject to these amended regulations.

ADDRESS: Comments may be mailed or delivered to: Paul E. Trayers, Legislative Counsel, Office of the Legislative Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Paul E. Trayers, Legislative Counsel, (202) 653–7175.

SUPPLEMENTARY INFORMATION:

Background

Upon publication of this notice, the Merit Systems Protection Board modifies its interim rules published on March 18, 1983 at 48 FR 11399–11403. That notice inaugurated the Board's Appeals Arbitration Pilot Project which was designed to test the feasibility of providing for an expedited, cost-effective and efficient alternative dispute resolution system for the adjudication of routine, nonprecedential appeals. The pilot project was designed to run for a minimum of one year, and in a minimum of four regional offices: Chicago, Denver, Seattle and San Francisco.

Based on comments solicited through that notice, training seminars and the Board's own internal analysis of the pilot project, this notice amends the interim regulations and further provides that as of this date the Boston Regional Office is subject to these regulations. Dallas Regional Office came into the pilot program in October, 1983. The pilot project is also extended to September 18, 1984, at which time the Board will review the desirability of maintaining or modifying this procedure.

Voluntary Expedited Appeals Procedure

All appeals filed as of this date will be subject to these regulations upon mutual agreement of the parties.

The amendments include a fundamental legal change in the criteria used to satisfy the petition for review requirements contained at 5 CFR 1201.115 of Subpart B and a change in the title of the pilot project from Appeals Arbitration to Voluntary Expedited Appeals Procedure. These changes are made based on recurring comments solicited from the general public and from the Board's own internal review of the pilot program. The comments and evaluations showed that the different criteria for petitions for review raised concerns as to whether the appeals arbitration alternative would produce the same results had the appeal been processed under the formal procedure. The purpose of the original expedited review criteria was not to promote different results but rather to provide the Board with an expedited process for the issuance of a final decision. A review of the awards and final orders to date reflect the consistency of the deliberative process regardless of the procedure used. Nonetheless, the Board agrees with the commentators that separate standards of review could suggest different results. Further, the regulations are amended to extend the Board's decisional time on petitions for review of expedited initial decisions from 15 days to 35 days from the date the file is certified as complete to issuance of a final decision. This time period is extended to provide Headquarters attorneys and support staff additional time to prepare appropriate draft final orders for the Board members.

The third substantive change deals with the title of the pilot project. Most commentators, including the OPM, Defense, HHS as well as AFGE, NFFE and NAGE, noted that use of the term arbitration would be confused with the labor relations arbitration process. Although it is recognized that the concept of arbitration is not unique to labor management relations, nonetheless the weight of arbitration experience in the Federal government is primarily derived from the collective bargaining obligation.

In addition, the amended petition for review criteria lessens the perceptions of adjudication distinction between the Board's formal process and the expedited system. Combining this change with the elimination of the term "arbitration" permits the Board to describe the pilot project in a generic fashion. The term "voluntary" means that both parties to an appeal must volunteer to use the procedure; if either party chooses not to participate in the process, the formal procedure will

automatically be used. The term "expedited" means that the original design feature of a 60-day decisional deadline for the issuance of an initial decision remains as it had under the appeals arbitration procedure. These amended procedures still draw from several aspects of administrative practice as well as traditional arbitration concepts to provide a practical alternative in the resolution of routine appeals.

By offering the benefits of reduced costs and an expedited time, the voluntary expedited appeals procedure should continue to present an attractive alternative to both appellants and agency management. As a primary characteristic, its goal will be the issuance of an expedited initial decision within 60 days from the date of the acknowledgment order. The program is being conducted on a pilot basis in the Chicago, Dallas, Denver, San Francisco and Seattle regional offices. Upon publication of these regulations, the Pilot Project will be extended to the Boston Regional Office. The experience under the new procedure is being evaluated to determine whether it should be modified, terminated, or extended to other regions.

Filing requirements with respect to timeliness and content of the appeal are the same as those provided by § 1201.22(b) of the Board's appellate regulations. In addition, the filing may include a statement by the appellant or representative specifically requesting that the matter be processed under this voluntary expedited appeals procedure. The appeal and election will be filed with the appropriate regional office of the Merit Systems Protection Board. The appellant may, however, elect to use the expedited procedure anytime within ten days of the date of the Board's order of acknowledgment.

The agency will have 15 days from the date of Board's order of acknowledgment to file its designation of representative and consent form, or to decline use to the voluntary expedited appeals procedure. Included in the consent form will be a summary of the facts and legal issues. Following receipt of the designation of representative form, the regional director will then decide whether to accede to the request to use the expedited procedure. While the parties' request will be given great weight, factors influencing the decision are whether it appears likely that formal discovery will be needed for a fair resolution of the appeal, whether the petition presents novel questions of law, whether the issues are overly complex or whether the region's caseload and staffing prohibit further processing of cases under the expedited procedure. The regional director or his designee may at any time prior to the issuance of the expedited initial decision convert the appeal to the formal MSPB appeal process.

If the agency consents to use the expedited procedure, the parties will jointly prepare the Joint Appeals Record (JAR) including, but not limited to, statements of issues, each party's statement of position with respect to those issues limited to three pages, requests for hearing, witness lists with a synopsis of proposed testimony, the agency file required by 5 CFR 1201.25 and two dates mutually agreed upon for the hearing. This Record will be filed with the regional office within 30 days from the date of the Board's order of acknowledgment.

If the case is accepted for processing through this new procedure, a specially trained presiding official from the regional office will adjudicate the appeal. The hearing, if requested by the appellant, may be held at the employment site and be scheduled within a 15-day period following expiration of the time limit for the filing of the Joint Appeals Record; otherwise the Record will close on a date specified by the presiding official. In any event, the Record will close within 15 days from expiration of the time limit for the filing of the Joint Appeals Record.

The Director of the Office of Personnel Management and the Special Counsel may intervene as a matter of right in those appeals that meet the criteria of 5 U.S.C. 7701(d) and 1206(i), respectively.

Rules of procedure are to be liberally construed to promote the ultimate goal of an expedited resolution of the appeal, with full disclosure of pertinent information by both parties in the presentation of their respective sides of the appealed action. Therefore, formal rules as to admissibility of evidence, motions, filings of briefs, etc., will not strictly apply to the voluntary expedited process. While the burdens of proof will not be altered in any way by the new procedure, determinations as to relevance, reliability, and fairness shall be the primary consideration for admission of evidence. While formal discovery is not available, the parties must include all known relevant materials with their submissions. Every Federal agency is obligated to make its employees available on official duty status to furnish sworn statements or to appear as witnesses when requested to do so. The presiding official may request the production of additional information or witnesses if he has a reasonable basis to believe it will aid in the resolution of the matter. In the event a party fails to cooperate, the presiding official may impose appropriate sanctions.

The voluntary expedited appeals procedure is intended to foster an environment conducive to the informal settlement of disputes prior to the issuance of an expedited initial decision. The presiding official is authorized to explore the possibility of a settlement agreement at any time up to the actual hearing. However, if either party does not wish to discuss settlement, the presiding official will terminate his involvement in these discussions and the appeal will be adjudicated. If a hearing is conducted, it will be informal in nature.

If a settlement agreement has been achieved, the parties may enter such agreement into the record which will stand as the resolution of the appeal. The Board will retain jurisdiction to ensure compliance. If the parties choose not to enter the settlement into the record, the Board does not have jurisdiction to enforce the settlement.

The presiding official will issue an order dismissing the appeal with prejudice when settlement occurs. If settlement is not achieved, the presiding official will adjudicate the appeal and issue an initial decision that summarizes the basic issues, findings of fact and conclusions of law, and upholds, sets aside, or modifies the appealed action. These decisions will be based on authoritative legal precedents, including Board decisions, but will not be precedential in and of themselves and, therefore, may not be cited as authority in subsequent cases.

This expedited decision is subject to full review by the Board. The standards of review are the same as those under the formal appeals process, namely, that new and material evidence, despite due diligence, was not available when the record closed, or the initial decision was based on an erroneous interpretation of statute or regulation. Any party to the proceeding may file a petition for review under these standards. The petition for review must be filed and received by the Board within 35 days of the expedited initial decision and a supporting brief limited to 15 pages must accompany the petition. Opposition briefs of no more than 10 pages may be filed within 15 days of the Board's forwarding of the petition for review. The Board will issue a final decision 35 days from the date the file is certified for review.

The appellant retains the right of filing an appeal from the Board's decision in

the U.S. Court of Appeals for the Federal Circuit.

The Board has found that good cause exists for publication of these regulations for interim effect in view of the public interest served by the immediate availability of a voluntary expedited appeals procedure. The Board invites public comments on these regulations through July 30, 1984.

Regulatory Flexibility Act

The Chairman, Merit Systems Protection Board, certifies that the Board is not required to prepare initial or final regulatory analysis of this proposed rule, pursuant to section 603 or 604 of the Regulatory Flexibility Act, Because of his determination that this rule would not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

List of Subjects in 5 CFR Part 1201

Government employees.

Accordingly, the Merit Systems Protection Board proposes to amend the interim regulations at 5 CFR 1201.21 through 1202.25, and Subpart G, § 1201.200 through 1201.221, as follows:

1. The authority for Part 1201 reads as follows:

Authority: 5 U.S.C. 1101 et seq., unless otherwise noted.

2. Section 1201.21 is amended by revising paragraphs (c) and (e) to read as follows:

§ 1201.21 Notice of appeal rights.

* * * * *

(c) A copy of the appeal form contained in:

(1) Appendix I of this part, if the appeal will be filed in a regional office where the voluntary expedited appeals procedure is not in effect, or

(2) Appendix I–A of this part, if the appeal will be filed in a regional office where the voluntary expedited appeals procedure is in effect.

* * * * *

(e) In regions offering the use of the voluntary expedited appeals procedure, notice of the opportunity to request such procedure set forth at § 1201.200 through § 1202.222, including a description of the procedure.

3. Section 1201.24 is amended by revising paragraphs (a)(10), (b) and (c) to read as follows:

§ 1201.24 Content of petition for appeal, right to hearing.

(a) * * *

(10) A request that the matter be processed under the voluntary expedited appeals procedure set forth at § 1201.200 through § 1201.222 if such procedure is available.

(b) *Use of the form.* Completion of the form in Appendix I of this part, or Appendix I–A of this part, if appropriate, shall constitute compliance with paragraph (a) of this section and § 1201.31 if a representative is designated in the form. In regions allowing the use of the voluntary expedited appeals procedure, the amended form in Appendix I–A of this part containing an entry for the election of expedited process and an explanation thereof will be used.

(c) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing. Alternatively, the appellant may choose to have the determination based on the record. If the parties choose to utilize the voluntary expedited appeals procedure, the procedures for a hearing shall be in accordance with § 1201.205.

4. In § 1201.25, paragraph (a)(6) is revised to read as follows:

§ 1201.25 Content of agency response, request for hearing.

(a) * * *

(6) A declination by the agency, if the voluntary expedited appeals procedure has been requested by the appellant and the agency declines to use the process;

* * * * *

5. 5 CFR Part 1201, Subpart G is revised to read as follows:

* * * * *

General

Sec.
1201.200 Scope and policy.

Election of and Filing for Voluntary Expedited Appeals Procedure

1201.201 Election of voluntary expedited appeals procedure.
1201.202 Filing of request for voluntary expedited appeals procedure; contents; time limits.
1201.203 Joint appeals record.
1201.204 Procedures for cases involving allegations of discrimination.

Presiding Official and Hearing

1201.205 Selection and authority of presiding official.
1201.206 Hearing.

Parties and Witnesses

1201.207 Witnesses.
1201.208 Intervenors.

Evidence

1201.209 Service of documents.
1201.210 Admissibility.
1201.211 Production of evidence or witnesses by request of presiding official.
1201.212 Stipulations.
1201.213 Official notice.

Sanctions

Sec.
1201.214 Sanctions.

Hearing Procedure; Settlement; Expedited Initial Decision

1201.215 Burden of proof.
1201.216 Closing the record.
1201.217 Settlement.
1201.218 Expedited Initial Decision.

Petitions for Review

1201.219 Petitions for Review.
1201.220 Standard of Review.
1201.221 Final Decision.
1201.222 Judicial Review.

Authority: 5 U.S.C. 7701(j).

Subpart G—Voluntary Expedited Appeals Procedure

General

§ 1201.200 Scope and policy.

(a) The rules in this subpart apply to the voluntary expedited appeals procedures of the Board. It is the objective of the Board to establish a simplified alternative dispute resolution procedure which will provide employees and agencies with a faster, less costly process than Subpart B procedures to resolve appealed actions, while also assuring an impartial third-party forum with full concern for fairness and the rights of all parties.

(b) This pilot program will be conducted until September 18, 1984, and be available in six regional offices—Boston, Chicago, Dallas, Denver, San Francisco and Seattle. These amended regulations will apply to appeals postmarked on or after June 29, 1984.

Election of and Filing for Voluntary Expedited Appeals Procedure

§ 1201.201 Election of voluntary expedited appeals procedure.

(a) The appellant may request the voluntary expedited appeals procedure at the time of filing a petition for appeal. In the event the appellant has not elected the voluntary expedited appeals procedure at the time of filing, appellant will be allowed 10 days from the date of the Board's order of acknowledgment to elect this alternate procedure. Such election must be in writing. The date of filing shall be determined by the date of mailing indicated by the postmark date.

(b) Notice of election of the voluntary expedited appeals procedure will be served on the agency in the Board's order of acknowledgment. Within 15 days from the date of the Board's order, the agency will file either a consent to use the voluntary expedited process and a designation of representative form or a declination. Included in the consent will be a summary of facts and legal issues raised in the appeal. In the event the

agency declines to use the expedited process, it must timely file its response to the petition for appeal in accordance with § 1201.25 and note its declination of the process.

(c) The regional director or designee of the MSPB office having jurisdiction over the appeal retains final discretion to process the case under the voluntary expedited appeals procedure or the formal MSPB procedure. Such decision will be made after receipt of the agency's consent and summary of the case. The regional director or designee also retains the right to convert the case to adjudication under Subpart B procedures in the event circumstances warrant, such as whenever it appears that discovery is required, novel questions of law are raised at the hearing or in briefs, or issues arise that do not lend themselves to resolution in an expedited process.

§ 1201.202 Filing of request for the voluntary expedited appeals procedure; contents; time limits.

(a) The filing, time limits and content requirements of the petition for appeal processed under this subpart shall comply with the provisions of §§ 1201.22–1201.26 of Subpart B, unless these regulations expressly provide otherwise.

(b) Within 15 days from the date of the Board's order of acknowledgment, the agency will file a designation of representative and consent form, including a summary of facts and legal issues raised in the case or decline to use the process.

§ 1201.203 Joint appeals record.

(a) Within 30 days from the date of the Board's order of acknowledgment, the parties will file a Joint Appeals Record including, but not limited to:

(1) Each party's statement of issues;

(2) Each party's statement of position with respect to those issues limited to three pages;

(3) Requests for hearing;

(4) Witness lists, including a statement of the anticipated testimony of each witness;

(5) Any objections to the appearance of any witness requested by the opposing party;

(6) The agency file required by § 1201.25; and

(7) Two dates, mutually agreed upon by the parties for the hearing, no later than 15 days beyond the day the Joint Appeals Record is to be received by the Regional Office.

(b) The parties must submit all known relevant material in the Joint Appeals Record. Evidence may not be submitted at the hearing unless the presiding official determines that good cause is shown for the late submission.

§ 1201.204 Procedures for cases involving allegations of discrimination.

The provisions for the processing of cases involving discrimination are not abridged by the use of the voluntary expedited appeals procedure. Section 1201.152, however, does not apply to the adjudication of cases involving allegations of discrimination if they are processed under this alternate expedited process.

Presiding Official and Hearing

§ 1201.205 Selection and authority of presiding official.

(a) The regional director will appoint the presiding official taking due account of scheduling difficulties, workload requirements or conflicts of interest.

(b) The presiding official shall have the authority to rule on parties' procedural requests. However, the presiding official shall issue the expedited initial decision no later than 30 days from the date the Joint Appeals Record is received by the Board.

(c) The presiding official shall have the authority to take all necessary action to avoid delay in the disposition of the proceeding and to conduct a fair and impartial hearing including the authority to regulate the hearing, maintain decorum and exclude from the hearing any disruptive person.

(d) Unless these regulations expressly provide otherwise, the presiding official will follow the regulations under 5 CFR Part 1201, Subpart B.

§ 1201.206 Hearing.

(a) If the appellant requests a hearing, or if the presiding official approves any agency request for a hearing, the hearing will be scheduled within 15 days following the due date or receipt of the Joint Appeals Record, whichever is earlier.

(b) The hearing will be informal. Election of the voluntary expedited appeals procedure constitutes a waiver by the parties of a verbatim record.

(c) The hearing will be held at the employment site.

Parties and Witnesses

§ 1201.207 Witnesses.

Every Federal agency will make its employees available to furnish sworn statements or to appear as witnesses at the hearing when requested by the presiding official. Witnesses are on official duty status when providing such statements or testimony.

§ 1201.208 Intervenors.

(a) The Director of the Office of Personnel Management may intervene as a matter of right pursuant to 5 U.S.C. 7701(d)(1). Such intervention shall be made at the earliest practicable time.

(b) The Special Counsel may intervene as a matter of right pursuant to 5 U.S.C. 1206(i). Such intervention shall be made at the earliest practicable time.

Evidence

§ 1201.209 Service of documents.

Any documents submitted to the presiding official shall be served upon all parties to the proceeding.

§ 1201.210 Admissibility.

Formal rules as to admissibility of evidence will not be applied although they will be used as guidance for the conduct of the proceeding. Rules of procedure shall be liberally construed to facilitate full and frank disclosure by both parties. Parties have the duty of including all known relevant materials in their submissions.

§ 1201.211 Production of evidence or witnesses by request of Presiding Official.

The presiding official may request the production of information or witnesses if he or she has a reasonable basis to believe that it will be germane to the case.

§ 1201.212 Stipulations.

The parties may stipulate to any matter of fact.

§ 1201.213 Official notice.

The presiding official, on his or her own motion or on motion of a party, may take official notice of matters of common knowledge or matters that can be verified. Official notice taken of any fact satisfies a party's burden of proving the fact noticed.

Sanctions

§ 1201.214 Sanctions.

The presiding official may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in paragraphs (a), (b), and (c) of this section.

(a) *Failure to comply with a request.* If a party fails to comply with a presiding official's request for information or witnesses within the party's control which the presiding official believes to be necessary to resolve the issues, or a party fails to cooperate or act in good faith, the presiding official may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with such request from introducing evidence concerning or otherwise relying upon testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; or

(4) Strike any part of the submissions of the party failing to comply with such request dealing with the subject matter of the request.

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the presiding official may dismiss the action with prejudice or rule for the appellant.

(c) *Failure to make timely filing.* The presiding official may refuse to consider any information which is not filed in a timely fashion in compliance with this subpart or with his or her request.

Hearing Procedure; Settlement; Expedited Initial Decision

§ 1201.215 Burden of proof.

Section 1201.56 of Subpart B applies.

§ 1201.216 Closing the record.

(a) When a hearing is convened, the record will close at the conclusion of the hearing unless otherwise specified by the presiding official.

(b) When a hearing is not convened, the record will close on the date set by the presiding official as the final date for the receipt of submissions of the parties.

(c) In any event, the record will be closed no later than 15 days from the due date of the Joint Appeals Record.

(d) Once the record is closed, no additional evidence or argument will be accepted unless, in the presiding official's discretion, he or she determines that the party seeking such admission has shown that new and material evidence has become available which was not readily available prior to the closing of the record.

§ 1201.217 Settlement.

(a) *Settlement discussion.* Informal settlement of the dispute will be raised by the presiding official with the parties prior to the hearing or, if no hearing is requested, within 15 days after the filing of the Joint Appeals Record. Prohibitions against ex parte communications during settlement discussions will be waived by the parties. If either party does not wish to discuss settlement or the matter cannot be settled informally, the presiding official will proceed with the hearing if one has been requested. At any time until the issuance of an expedited initial decision the parties may enter into a settlement agreement.

(b) *Agreement.* If the parties agree to resolve the dispute without a decision on the merits of the case, the settlement agreement will be the final and binding resolution of the appeal, and the presiding official will dismiss the appeal with prejudice.

(1) If the agreement is offered into the record by the parties and approved by the presiding official, it will be made a part of the record, and the Board will retain jurisdiction to ensure compliance with the agreement;

(2) If the agreement is not entered into the record, the Board will not retain jurisdiction to ensure compliance.

§ 1201.218 Expedited initial decision.

(a) If settlement is not reached, the presiding official will adjudicate the appeal and issue a written decision within 15 days after the record is closed. The decision will include a summary of the basic issues, findings of fact and conclusions of law, a holding affirming, reversing or modifying the appealed action and order appropriate relief.

(b) Expedited initial decisions are not precedential.

(c) This expedited initial decision will become final after 35 days and is binding upon the parties if no petition for review is filed.

Petitions for Review

§ 1201.219 Petitions for review.

(a) Any party may file a petition for review with the Board of the expedited initial decision.

(b) Petitions for review must be filed within 35 days from the date of the decision. Supportive briefs must accompany the petitions for review and be limited to 15 pages. Opposition briefs must be received by the Board within 15 days from the date of the Board's forwarding of a copy of the petition for review to the opposing party and be limited to 10 pages. The record shall close at the time the brief in opposition is scheduled to be received by the Board.

§ 1201.220 Standard of review.

Section 1201.115 of Subpart B shall apply.

§ 1201.221 Final decision.

The Board will issue a final decision no later than 35 days from the date the file is certified as complete for review.

§ 1201.222 Judicial review.

Any employee or applicant for employment adversely affected by a final order or decision of the Board may obtain judicial review under the provisions of 5 U.S.C. 7703.

6. Appendix I–A is added to Part 1201 to read as follows:

BILLING CODE 7400-01-M

APPENDIX I-A

UNITED STATES MERIT SYSTEMS PROTECTION BOARD	AGENCY USE ONLY
APPEAL	

INSTRUCTIONS: The purpose of this form is to help you provide valuable information to the U.S. Merit Systems Protection Board ("The Board") when you file an appeal. You are not required to use this form, and you are not limited to answering the questions on the form if you feel there is other information you wish to provide. However, if you do not use the form, your appeal documents must comply with the Board's regulations. Your agency's personnel office will provide you with a copy of these regulations upon request and the Board advises you to review them.

All appellants who elect to use this form should complete Parts I through III. Only those who are appealing Reduction-in-Force (RIF) actions are required to complete Part IV. ALL APPELLANTS should also sign and date the form in the space provided at the end of Page 4 indicating approval of the contents of the entire form.

In filling out this form, wherever the space provided is insufficient you may add additional pages. If you do so, please put your name and Social Security Number at the top of the page, and indicate by number which question you are answering.

WHERE TO FILE—You or your representative are required to file one original and three copies of this form, together with its attachments with the Board's field office identified in the decision notice provided by the Agency. Filing must be made either by personal delivery during normal business hours to the appropriate Board field office or by mail addressed to that office. The Board recommends but does not require that you use certified mail.

PRIVACY ACT STATEMENT

The form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

PART I. APPELLANT IDENTIFICATION

1. NAME *(Last, first, middle)*	2. SOCIAL SECURITY NUMBER
3. PRESENT ADDRESS *(Number and street, city, state, and ZIP code)*	4. HOME PHONE *(Include area code)*
	5. OFFICE PHONE *(Include area code)*

PART II. APPEALED ACTION

6. BRIEFLY DESCRIBE *AGENCY ACTION* YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS

6A. VOLUNTARY EXPEDITED APPEALS PROCEDURE. FOR A MATTER APPEALABLE TO THE BOARD, ANY APPELLANT MAY ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE AS AN ALTERNATIVE TO THE FORMAL MSPB APPEALS PROCESS. (A detailed explanation of the Voluntary Expedited Appeals Procedure is attached to this form.) PLEASE CHECK ONE OF THE BOXES BELOW.

☐ YES, I ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE

☐ NO, I DO NOT ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE

7. NAME AND ADDRESS OF ACTING AGENCY *(Including Bureau, or other Division as well as street address, city, state, and ZIP code)*	8. APPELLANT'S POSITION TITLE AT TIME OF ACTION	
	9. GRADE AT TIME OF ACTION	10. SALARY AT TIME OF ACTION $ PER
11. ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN? ☐ NO ☐ YES	12. TYPE OF APPOINTMENT ☐ Temporary ☐ Applicant ☐ Permanent ☐ Term	13. TYPE OF SERVICE ☐ Competitive ☐ Excepted
14. LENGTH OF GOVERNMENT SERVICE	15. LENGTH OF SERVICE WITH ACTING AGENCY	
16. ARE YOU RETIRED? ☐ NO ☐ YES	16A. IF YES, DATE OF RETIREMENT *(Month, day, year)*	17. WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT TIME ACTION WAS TAKEN BY THE AGENCY? ☐ NO ☐ YES
18. DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED *(Month, day, year) (Attach copy)*	19. DATE FINAL DECISION NOTICE RECEIVED *(Month, day, year)*	20. EFFECTIVE DATE OF ACTION *(Month, day, year)*

21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? *(Explain briefly)*

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

23. HAVE YOU, OR ANYONE ON YOUR BEHALF, FILED A FORMAL GRIEVANCE OR COMPLAINT, INCLUDING AN UNFAIR LABOR PRACTICE CHARGE, WITH YOUR AGENCY OR ANY OTHER AGENCY CONCERNING THIS MATTER?

☐ NO ☐ YES *(Attach copy)*

23A. IF YES, DATE FILED *(Month, day, year)*	23B. PLACE FILED *(Agency and location)*	23C. HAS DECISION BEEN ISSUED? ☐ NO ☐ YES
23D. IF YES, DATE ISSUED *(Month, day, year)*	23E. NAME OF ISSUING OFFICIAL	23F. TITLE OF ISSUING OFFICIAL

24. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST.

25. HAVE YOU FILED A DISCRIMINATION COMPLAINT WITH YOUR AGENCY OR ANY OTHER AGENCY? ☐ NO ☐ YES *(Attach copy)*

25A. IF YES, DATE FILED *(Month, day, year)*	25B. PLACE FILED *(Agency and location)*	25C. HAS THERE BEEN A DECISION? ☐ NO ☐ YES

PART III. HEARING

26 YOU HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENTS YOU AND THE AGENCY SUBMIT. DO YOU WANT A HEARING?

☐ NO ☐ YES

IF YOU CHOOSE TO HAVE A HEARING, THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

27 YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL IF HE/SHE AGREES TO DO SO. THIS PERSON DOES NOT HAVE TO BE AN ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MAY CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A "I HEREBY DESIGNATE _____ TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF THIS APPEAL. I UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

27B YOUR SIGNATURE	27C DATE	27D REPRESENTATIVE'S SIGNATURE *(if any)*	27E DATE

27F REPRESENTATIVE'S ADDRESS	27G. REPRESENTATIVE'S EMPLOYER

28 YOU MAY BE PERMITTED TO CALL WITNESSES AT A HEARING UPON THE APPROVAL OF THE PRESIDING OFFICIAL. IF YOU INTEND TO DO SO, PROVIDE THEIR NAMES AND A BRIEF STATEMENT OF THEIR RELATIONSHIP TO THE CASE. YOU WILL BE PERMITTED TO REQUEST OTHER WITNESSES LATER IF YOU DO NOT LIST THEM NOW.

A. NAME	B. RELATIONSHIP TO CASE

PART IV. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS. FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CAN FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW.

29 TENURE OF SUB-GROUP	30 SERVICE COMPUTATION DATE	31 HAS YOUR AGENCY OFFERED YOU ANOTHER POSITION RATHER THAN SEPARATING YOU? ☐ NO ☐ YES

32 TITLE OF OFFERED POSITION	33 GRADE OF POSITION OFFERED	34 SALARY OF POSITION OFFERED $ PER

35 LOCATION OF OFFERED POSITION	36 DID YOU ACCEPT THIS POSITION? ☐ NO ☐ YES

37 EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE. *(Explanations could include: You were placed in the wrong tenure subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower tenure subgroup; or any other reasons. Please provide as much information as possible regarding each reason.)*

(Continue on the next page)

57 (Continued from Page 3.)

ATTENTION—THIS APPEAL MUST BE SIGNED		
I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief.	SIGNATURE OF APPELLANT	DATE SIGNED

* U.S. GOVERNMENT PRINTING OFFICE : 1981 0 - 341-526 (6462)

BILLING CODE 7400-01-C

Attachment to Appendix I—A: Voluntary Expedited Appeals Procedure

Employees or applicants for employment who are entitled to file an appeal before the Board may elect the voluntary expedited procedure as an alternative to the formal Board procedures. The goal of this expedited process is the issuance of a nonprecedential award in routine cases within 60 days of the election of the voluntary expedited appeals procedure.

If an employee or an applicant for employment elects to use this alternative procedure, the employing agency will be allowed to elect or decline the procedure as well. In the event the employing agency does not wish to use the expedited procedure, the appeal will be processed in accordance with the existing Board procedures.

If the agency also elects the voluntary expedited appeals procedure, the regional director will review the summary of the case filed by the agency and determine whether the case is appropriate for the alternative procedure. The standards used in making this determination will be the routine, non-precedential nature of the appeal as well as workload requirements and availability of resources in the regional office.

If the case is processed under this expedited process, the parties will be notified by an Order of Acknowledgment of their obligation to file a Joint Appeals Record containing statements of issues and positions with respect to those issues, requests for hearing, witness lists, the agency's file and two dates agreed upon by the parties for the hearing. A presiding official specially trained in informal dispute resolution will contact the parties during this time to ensure that the parties understand their obligations and help promote an environment conducive to informal settlement.

In the event settlement is not achieved, a hearing, if requested will be held at *the employment site* within 15 days from the date the Joint Appeal Record is due. The presiding official will then issue an expedited initial decision no later than 15 days from the close of the hearing. If no hearing is requested, a decision on the record will be issued within 30 days from the date of the Joint Appeals Record.

Any party may file a petition for Board review of the expedited initial decision 35 days from the date of the decision. The criteria for review are the same under both the voluntary expedited appeals procedure and the formal appeals procedure.

Dated June 22, 1984.
For the Board.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 84-17025 Filed 6-28-84; 8:45 am]
BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Carrots for Processing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the voluntary U.S. Standards for Grades of Carrots for Processing. Industry requested a revision to bring them in line with current cultural and processing practices by taking into account new technology used to harvest and prepare raw carrots for processing. The Agricultural Marketing Service has the responsibility, in cooperation with industry, to maintain the currency of its standards.

EFFECTIVE DATE: July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Michael V. Morrelli, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2011.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA Procedures and Executive Order 12291 and has been designated as "nonmajor." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

This revision makes the following changes:

(1) Provides for the grading of carrots delivered in both topped and crowned form. The original standards applied to topped carrots only.

(2) Brings the U.S. No. 2 grade in line with current contractural arrangements by reducing from 25 to 15 percent the amount of unusable material allowed on carrots that are badly misshapen, excessively rough, or seriously damaged by any cause.

(3) Provides specific definitions for scoring watercore, oil spray, growth cracks, air cracks, freezing and soft rot.

(4) Specifies that carrots under 2 inches in length shall be considered unusable material.

(5) Updates the format of the standards.

A proposal to revise these standards was published in the **Federal Register** on January 5, 1984 (49 FR 603-605). Copies were widely distributed to interested growers, processors, and industry organizations for review and comment.

The period for comments ended on March 16, 1984 and written comments were received from two processing companies and a growers' cooperative. Respondents were in agreement with the proposal except on the scoring of uncrowned carrots, and the definitions of growth cracks and air cracks.

The growers' cooperative indicated that crowns or portions of crowns remaining attached to crowned carrots should not be removed and scored as unusable material, but that such carrots should be segregated from the crowned carrots and the percentage reported. Grower payments are based on the overall percentage of crowned carrots delivered.

A processing company pointed out that growth cracks more than one-eighth inch in width would not materially detract from the processing quality of the carrots. They also suggested that a specific definition for damage by air cracks be included in the standards. The foregoing minor changes from the proposal are incorporated in this final rule.

After careful review of comments presented by interested persons, the U.S. Department of Agriculture has determined that the issuance of these revised standards will benefit users in that they will be more in line with current cultural and processing practices.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

PART 51—[AMENDED]

Accordingly, in Subpart—United States Standards for Grades of Carrots for Processing, §§ 51.4146 through 51.4157 are removed and §§ 51.4140 through 51.4145 and the table of contents for this Subpart are revised to read as follows:

Subpart—United States Standards for Grades of Carrots for Processing

Sec.
51.4140 General.
51.4141 Grades.
51.4142 Crowning or topping requirements.
51.4143 Size.
51.4144 Tolerances.
51.4145 Definitions.

Subpart—United States Standards for Grades of Carrots for Processing

§ 51.4140 General.

(a) Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

(b) The accompanying grades for carrots are intended to facilitate transactions between growers and processors who may wish to use a purchasing system based upon the quality of carrots delivered.

(c) In the application of these standards it is assumed that in most instances sellers will not sort their carrots into lots of U.S. No. 1 and U.S. No. 2 grades before delivery to the buyer. Upon delivery, the inspector will select representative samples and determine the percentage of each grade. Under such a procedure, there is no need for tolerances.

§ 51.4141 Grades.

(a) "U.S. No. 1" consists of carrots which meet the following requirements:

(1) Basic requirements:

(i) Similar varietal characteristics;

(ii) Firm;

(iii) Fairly well colored;

(iv) Fairly well formed;

(v) Fairly smooth; and,

(vi) Not woody.

(2) Free from: Unusable material.

(3) Free from damage by:

(i) Soft rot;

(ii) Growth cracks;

(iii) Sunburn;

(iv) Green core;

(v) Pithy core;

(vi) Watercore;

(vii) Internal discoloration;

(viii) Oil spray;

(ix) Freezing;

(x) Dry rot;

(xi) Other disease;

(xii) Insects; and,

(xiii) Mechanical or other means.

(4) Free from serious damage by: Soft rot.

(b) "U.S. No. 2" consists of carrots which meet the following requirements:

(1) Basic requirements:

(i) Similar varietal characteristics;

(ii) Firm;

(iii) Fairly well colored;

(iv) Not badly misshapen;

(v) Not excessively rough; and,

(vi) Not woody.

(2) Free from: Unusable material.

(3) Free from damage by: Soft rot.

(4) Free from serious damage by:

(i) Soft rot; and,

(ii) Any other cause.

(c) For crowning and topping requirements see § 51.4142.

(d) For size requirements see § 51.4143.

(e) For tolerances see § 51.4144.

§ 51.4142 Crowning or topping requirements.

(a) Carrots shall be specified as crowned or topped.

(1) Crowned carrots shall have the crowns cut off the root reasonably perpendicular to the longitudinal axis. All uncrowned carrots shall be separated from crowned carrots and the percentage of such carrots determined.

(2) Topped carrots shall have the tops or sprouts cut, snapped, or twisted off to within three-fourths inch of the crown of the root, or to any other specified length. All portions of leaf stems or sprouts over three-fourths inch long, or any other specified length, shall be considered as unusable material (section 51.4145).

§ 51.4143 Size

(a) Unless otherwise specified, the minimum length shall be not less than 3 inches, provided that roots under 2 inches in length shall be considered unsable material.

(b) The minimum and maximum diameters for U.S. No. 1 and U.S. No. 2 grades may be specified by agreement between the buyer and the seller.

§ 51.4144 Tolerances.

In the application of these standards to determine the percentages of carrots in the lot which meet the requirements of the respective grades, no tolerances apply. However, for the purpose of determining compliance with one of the foregoing grades the following tolerances, by weight, are provided in order to allow for variations incident to proper grading and handling:

(a) For defects. Ten percent for carrots in any lot which fail to meet the requirements of the specified grade, including therein not more than 3 percent for carrots which are damaged by soft rot and included in this latter amount not more than 1 percent for carrots which are seriously damaged by soft rot.

(b) For unusable material. Two percent in any lot.

(c) For size. Ten percent for carrots in any lot which fail to meet the specified size requirements, included therein not more than 5 percent for carrots which fail to meet the specified minimum diameter or length.

§ 51.4145 Definitions.

(a) "Similar varietal characteristics" means that the carrots are of the same general type.

(b) "Firm" means that the carrot is not soft, flabby or shriveled.

(c) "Fairly well colored" means that the outside and inside color of the carrot is orange, orange red, or orange scarlet but not a pale orange or distinct yellow color.

(d) "Fairly well formed" means that the carrot is not forked, or materially crooked, or otherwise misshapen to the extent that, in the process of trimming, a loss of over 5 percent, by weight, of the root is incurred in excess of that which would occur if the root were perfect.

(e) "Fairly smooth" means the carrot is not rough, ridged, or covered with secondary rootlets to the extent that, in the process of trimming, a loss of over 5 percent, by weight, of the root is incurred in excess of that which would occur if the root were perfect.

(f) "Woody" means that the flesh of the carrot is tough and fibrous.

(g) "Unusable material" means pieces of carrots under 2 inches in length, loose tops, loose dirt, adhering caked dirt, weeds or other foreign matter, portions of attached tops or sprouts in excess of the specified length or, loose crowns or portions of crowns. Carrots with adhering caked dirt, and tops or sprouts longer than the required or specified length shall not be scored against U.S. No. 1 or U.S. No. 2 grades, but such material shall be removed from the carrot and scored as unusable material.

(h) "Diameter" means the greatest dimension of the root taken at right angles to the longitudinal axis.

(i) "Badly misshapen" means that the carrot is forked or misshapen to the extent that, in the process of trimming, a loss of over 15 percent, by weight, of the root is incurred in excess of that which would occur if the root were perfect.

(j) "Excessively rough" means that the carrot is rough or ridged to the extent that in the process of trimming, a loss of over 15 percent, by weight, of the root is incurred in excess of that which would occur if the root were perfect.

(k) "Damage" means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the processing quality of the carrot, or which cannot be removed in the process of trimming without a loss of more than 5 percent, by weight, in excess of that which would

occur if the root were perfect. The following specific defects shall be considered as damage:

(1) Watercore when moderately discolored.

(2) Oil spray when materially detracting from the processing quality of the carrot, or causing an oily flavor.

(3) Growth cracks when not smooth or not shallow, or when materially detracting from the processing quality of the carrot.

(4) Air cracks when excessively deep or wide, or when materially detracting from the processing quality of the carrot.

(5) Freezing when any amount affects the root.

(6) Soft rot when any amount affects the root.

(l) "Serious damage" means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the processing quality of the carrot, or which cannot be removed in the process of trimming without a loss of more than 15 percent, by weight, in excess of that which would occur if the root were perfect. The following specific defects shall be considered as serious damage:

(1) Watercore when severely discolored.

(2) Oil spray when seriously detracting from the processing quality of the carrot, or causing an oily flavor.

(3) Freezing when any amount affects the root.

(4) Soft rot when affecting more than 15 percent of the total weight of the root.

(Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended [7 U.S.C. 1622, 1624])

Done in Washington, D.C. on June 26, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc 84-17428 Filed 6-28-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 470]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period July 1–7, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: July 1, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on June 26, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.770 is added as follows:

§ 910.770 Lemon Regulation 470.

The quantity of lemons grown in California and Arizona which may be handled during the period July 1, 1984, through July 7, 1984, is established at 300,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 27, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-17515 Filed 6-28-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 989

Raisins Produced From Grapes Grown in California; Suspension of Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends a sentence in § 989.67(j) of the Federal marketing order for California raisins dealing with the pricing of reserve raisins offered to handlers for free use. The suspension permits the value of handlers' 1983 crop free tonnage inventory to be adjusted downward closer to current world price levels. The California raisin industry is faced with a large supply of free raisins valued above the level warranted by current marketing conditions. A downward adjustment in the value of this supply will permit more aggressive marketing and increased product movement and help the industry become price competitive with foreign-produced raisins. To accomplish the adjustment, the Raisin Administrative Committee will offer handlers one ton of 1983–84 crop reserve at $100 per ton for each ton of free raisins held by them on July 31, 1984. The suspended sentence required reserve raisins to be offered for free use at a price well above the $100 level and thus would not have allowed accomplishment of the necessary price adjustments. This action is part of an overall proposal recommended by the Raisin Administrative Committee, which works with the USDA in administering the order.

EFFECTIVE DATE: July 30, 1984. This suspension action will continue until July 31, 1986, the end of the 1985–86 crop year, at which time it will terminate and

the suspended sentence will be operational again.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Corps Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will have an impact on a substantial number of small entities. The net proceeds to equity holders resulting from the sale of reserve raisins under the Raisin Administrative Committee's proposal will be reduced to a point well below the cost of producing raisins. To the extent that such entities are equity holders in the reserve pool, this impact will be proportional to the size of their equities therein. However, it is recognized that the effects of this action on individual entities will vary depending on their financial conditions, but the impact is not expected to be significant. In the long-term, the benefits of becoming more competitive under current marketing conditions should outweigh any adverse short-term impact and result in benefits to both small and large entities. The domestic inventory adjustment accomplished through this action will permit an overall price reduction for raisins enabling the industry to compete more effectively with lower-priced foreign-produced raisins, and to more aggressively market raisins generally so as to maintain and expand existing domestic markets and develop new markets. With respect to small businesses that are not raisin producers or handlers, the impact of this action is difficult to quantify but is not expected to be significant. To the extent there is an effect on such individuals, it is likely to be positive as a result of increased raisin marketings at reduced prices.

Notice of this action was published in the June 5, 1984, issue of the **Federal Register** (49 FR 23193), and interested persons were afforded opportunity to submit written comments. Numerous comments were submitted, both for and against the proposal, in response to the notice. In addition, some comments in opposition to the Raisin Administrative Committee's (RAC) proposal were received before the notice was issued. These, too, were considered in this rulemaking action.

This action suspends the penultimate sentence in § 989.67(j) of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The sentence follows: "However, such raisins shall not be sold at a price below that which the committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interest; *Provided*, That, where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the committee."

The California raisin industry currently is facing a serious supply and marketing problem. The 1983 production of Natural (sun-dried) Seedless (NS) raisins totalled about 345,000 tons, 46 percent over the 4 year average (1979–1982) of 236,982 tons. At the same time, carrying of 1982 crops NS raisins on August 1, 1983 (the beginning of the 1983–84 crop year), was 84,503 tons or 49,503 tons more than considered desirable under the formula prescribed in § 989.54(a) for the computation of the trade demand for the 1983–84 crop year. Thus, the available supply of NS raisins totalled about 429,500 tons, 97 percent above the 4-year (1979–80 through 1982–83) average of shipments to all outlets of 217,500 tons. A major contributor to the excessive 1983 supply of raisins was the decision last year by several major wineries not to crush Thompson Seedless grapes. The raisin industry estimated that this resulted in the production of about 140,000 tons of raisins above what would otherwise have been expected. A number of commenters stated that during 1976–82, approximately 55 percent of the raisin variety grape production was dried into raisins, 29 percent was crushed for winemaking, and 16 percent was canned or shipped as fresh table grapes. However, in 1983, 74 percent of the raisin variety grape crop was dried into raisins, 14 percent was crushed for winemaking, and 12 percent canned or shipped fresh.

Another major factor affecting the marketing of raisins in domestic outlets thus far in the 1983–84 season has been a price level above that warranted by supply conditions. This price level was reached on the basis of prices paid to growers in 1982 when rain damage to the crop was originally estimated to be much greater than the actual outturn, coupled with the decision by the RAC not to invoke volume regulation that season because of the potential damage. The heavy holdings of high priced raisins from 1982 production contributed to the establishment of 1983 prices at a similar level. The 1983 free tonnage field price was $1,300 per ton.

Excessive supplies of raisins are not confined to the United States. One commentator estimated that world production of currants and raisins this year could exceed one million tons, whereas world consumption is slightly more than 600,000 tons. Some foreign raisins currently are available at prices of $550–650 per ton, f.o.b.

This differential between the price for California raisins and foreign raisins has existed for several years, and California raisins therefore have had difficulty competing in world markets. To counter this, RAC instituted an export incentive program during the 1982–83 crop year to make California raisins more competitive in world markets. Under this program, RAC sold 1983 crop reserve raisins to packers for $100 per ton to replace part of the raisins they exported. As a result, the value of exported raisins was averaged down and improved California's competitive position in most world markets. This program was continued into the 1983–84 season. However, competing in world markets is only one facet of the problem.

The high domestic price for California raisins is inducing imports of lower-priced foreign produced raisins. U.S. Bureau of Census data indicate that about 5,400 tons of raisins and currants were imported into the United States during the 1982–83 crop year (beginning August 1, 1982). This compares with 510 tons imported during the 1981–82 crop year and about 6 tons during 1980–81. Through April 1984, a little more than 2,700 tons were imported during the current 1983–84 crop year. The burdensome supply and the availability of cheap imported raisins caused a break in the domestic market during the 1983–84 crop year, and some handlers have been selling raisins in this year at a loss.

Commenters favoring suspension of the provision in § 989.67(j) admitted that the industry is in the worst economic position ever due to the large production domestically, as well as world-wide. The points most frequently raised by commenters were that the suspension was necessary (1) to compete with foreign price competition and protect the domestic market from foreign competition, (2) to cut back to reasonable levels on tonnage held in crop reserve pool and free tonnage inventory, (3) to encourage buyers to begin to make forward purchases which have ceased under the current uncertain conditions, and (4) to allow for the development of workable marketing plans for the September through December period which must be done as soon as possible. Other points raised included (1) no alternative plan has been offered, (2) without this plan, packers would begin purchasing raisins on a consignment basis with prices falling to world market levels, (3) high raisin prices have encouraged large plantings of Thompson Seedless grapes which produced more raisins than markets could use, (4) alternative disposal of raisins is limited to cattle feed providing growers with no return, (5) this action will help keep the distribution system intact, and (6) this action will prevent a substantial number of packers from going out of business.

The most frequent points raised by commenters opposed to the suspension of the sentence in question (and the remainder of RAC's proposal pertaining to the adjustment) were that it (1) will bring financial disaster and ruin to many growers, (2) will reward processors who have been poorest at marketing their raisins, since their inventories will be greatest on July 31, 1984, while punishing those who have been most efficient and therefore have a low inventory on July 31st, (3) is needed for survival of the packers, but will prompt the demise of a great number of growers, (4) will result in an overall price for raisins well below the cost of production, and (5) is not in the best interests of the producers and, therefore, the sentence should not be suspended without producers being given a formal hearing and the opportunity of voicing their opinions. One commenter made the statement that this single action would do more damage to growers than any other action under the marketing order since its beginning.

Other points raised by those in opposition included the following: (1) The July 31 inventory is to include unprocessed, as well as packaged raisins, making it possible to continue processing while holding packed raisins off the market, (2) if the suspension provision is approved, these packed raisins will flood the market even though they could have been sold over a longer period of time, many before July 31, 1984, (3) the industry should have a chance to develop an alternative just as the proponents had time in which they were able to prepare this proposal, (4) the prices being offered will not provide an opportunity to repay funds borrowed from lenders, (5) the matter is not an emergency because excess inventory has existed since October 1983, (6) the existing regulations provides some insurance for the grower if the new crop is destroyed, whereas the proposal gives title of reserve raisins to processors on August 1 with the possibility of a windfall profit for them in the event of rain damage this fall, (7) an equivalent reduction in prices could be accomplished without the proposed change, and (8) the farmer could sell the raisins himself at a price higher than what is being offered, and (9) the inventory adjustment program is contrary to § 989.67(d)(1) which provides for the sale of reserve to handlers in a manner so as to maximize producer returns.

Currently, uncommitted tonnage in the 1983–84 NS reserve pool approximates 95,000 natural condition tons. Projections by the industry are that carryout of free tonnage NS raisins on July 31, 1984, could approximate 80,000 tons. A sale of 80,000 tons of NS raisins from the 1983 reserve at $100 certainly will have a serious economic impact on the equity holders in that pool. Since all equity holders share pro rata in the distribution of the net proceeds, the impact would be in proportion to the size of their equity. Furthermore, it is recognized that the net return from the pool on this quantity will be well below the cost of production. Most recent data indicate that the cost of producing one ton of NS raisins is about $630.

However, the proposal would not be the first sale of 1983–84 NS reserve at below-production costs. About 100,000 tons of NS raisins have been released or are committed for release. Of that quantity, 30,000 tons is for livestock feed at $71.55 per ton, and about 70,000 tons for the export incentive program at $100 per ton. Consequently, season average grower returns for California raisins may average below $600 per ton for the 1983–84 season, and may be about one-third of the season average parity price.

Several alternatives to RAC's proposal were offered in the comments including delaying the decision to sell reserve raisins as proposed by RAC until October 1984. This would give the industry an opportunity to assess the crop and determine whether or not it had sustained any rain damage during harvest. However, any delay now would create uncertainty as to the disposition of the raisins in question and defeat the objective of the proposal. That is, packers and the trade must know with certainty soon whether or not the RAC proposal will be adopted in order to enable them to plan their sales operations accordingly. As indicated in the comments, the market is weak and few sales are being made now.

Another alternative proposal would allocate low-priced reserve raisins to packers who have aggressively sold their 1983 free tonnage raisins. This, too, would defeat the objective of the proposal; namely, to average down the value of packers' free tonnage inventory to the grower price established through negotiations between independent packers and the Raisin Bargaining Association for 1984 crop NS raisins. The field price has been established at $700 per ton.

A third proposed alternative would be to sell reserve raisins at $500 per ton rather than $100 per ton to equalize the loss between packers and growers. The problem inherent in the second proposal also applies to this proposal.

A fourth alternative proposed that RAC seek other outlets for reserve raisins, such as wineries. It was contended that wineries typically have paid $250 to $350 per ton for raisins. However, such prices were achieved under different circumstances and a sale of raisins this late in the season could impact negatively on sales of grapes to wineries this fall, with the result that any such unwanted grapes would be made into raisins.

A fifth alternative proposed was that §§ 989.65, 989.66, and 989.67 of the order be suspended. These provisions deal with the holding and disposition of reserve raisins. However, the commenter made no recommendation with respect to the disposition of the remainder of the 1983–84 reserve. An immediate release of the reserve could prove disastrous from the standpoint of the orderly marketing of California's 1984 raisin production. Furthermore, there is no assurance that handlers would be willing to pay more for that tonnage than the amount ($100 per ton) in the RAC's proposal.

Pursuant to § 989.67 (a) and (d)(1) the RAC is charged with responsibility of disposing of all reserve tonnage in such manner as to achieve, as nearly as may be practical, maximum disposal of such raisins by the time reserve tonnage raisins from the subsequent crop year are available. Paragraph (d)(1) also charges the RAC with selling reserve to handlers at prices and in a manner intended to maximize producer returns. Some opponents contended that, under this provision, RAC should have offered the reserve raisins to wineries, which have traditionally paid more than $100 per ton for raisins. However, RAC must look to the long-term, as well as short-term, consequences of its proposals. In this case, RAC had to balance the short-term objective of maximizing producer returns from disposition of the 1983–84 against the long-term objective of orderly marketing of raisins. As indicated previously, a sale of reserve to wineries this late in the season could impact negatively on the orderly marketing of the 1984 crop.

Therefore, after consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by RAC, the comments, and other information, it is determined that (1) there has been a change of economic or marketing conditions so as to warrant sale of reserve raisins to handlers to provide them with raisins to sell as free tonnage, pursuant to § 989.67(j), and (2) under the conditions presently existing in the raisin industry, the penultimate sentence in § 989.67(j) does not now tend to effectuate the declared policy of the act and is hereby suspended pursuant to § 989.91(b). However, such suspension shall continue only through July 31, 1986, at which time it shall terminate and the suspended sentence will become operative again beginning August 1, 1986.

§ 989.67 [Amended]

Therefore, the penultimate sentence in § 989.67(j) is hereby suspended through July 31, 1986.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: June 27, 1984.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–17461 Filed 6–28–84; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 53

[Docket No. 84–044]

Lethal Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations in 9 CFR Part 53 by authorizing the Department to cooperate with States in the control and eradication of lethal avian influenza (a disease of poultry caused by any form of H5 influenza virus that has been determined by the Deputy Administrator, Veterinary Services, to have spread from the 1983 outbreak in poultry in Pennsylvania) and to pay up to 100 percent of the expenses of "purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to" lethal avian influenza. The rule is necessary in order to help prevent the spread of lethal avian influenza.

DATE: Effective date is June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. William W. Buisch, Chief, National Emergency Field Operations Staff, VS, APHIS, USDA, Room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 53 (referred to below as the regulations), among other things, provide for a Federal-State cooperative program for the "purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to" communicable diseases of livestock or poultry under certain emergency situations. On January 27, 1984, an interim rule was published in the **Federal Register** (49 FR 3446–3448) which amended § 53.1 of the regulations to provide that the regulations would apply to lethal avian influenza and to allow the Department to pay up to 100 percent of the expenses of purchase, destruction, and disposition of poultry and materials required to be destroyed because of lethal avian influenza. Also, for purposes of clarification, the document of January 27, 1984, amended the regulations to define the term "bird" as "any member of the class of aves other than poultry" and to define the term "poultry" as "chickens, ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl."

The interim rule was made effective on the date it was signed, January 25, 1984. Comments were solicited for 60 days following publication of the interim rule. No comments were received. The factual situation which was set forth in the document of January 27, 1984, still provides a basis for the amendments.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant annual effect on the economy, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of Part 53, indemnity has been authorized for the expenses of purchase, destruction, and disposition of poultry and materials required to be destroyed because of being contaminated by or exposed to lethal avian influenza. Approximately $5,820,000 in indemnity has been paid in Maryland and Virginia pursuant to these provisions. This indemnity was paid for the destruction of poultry and materials from one flock in Maryland and 62 flocks in Virginia. It is anticipated that the total amount paid in indemnity pursuant to these provisions will be less than $10,000,000 and that the total number of poultry flocks for which indemnity will be paid pursuant to these provisions will be significantly less than 0.5 percent of the poultry flocks in the United States.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Under these circumstances, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 53

Animal diseases, Indemnity payments, Livestock and livestock products, Poultry and poultry products, Exotic newcastle disease, Foot-and-mouth disease, Highly pathogenic avian influenza, Pleuropneumonia.

Accordingly, the interim rule concerning lethal avian influenza which was published at 49 FR 3446–3448 on January 27, 1984, is adopted without change as a final rule.

Authority: Sec. 3, 23 Stat. 32, as amended, sec. 2, 32 Stat. 792, as amended, sec. 11, 58 Stat. 734, as amended; 21 U.S.C. 111, 114, 114a, unless otherwise noted; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 26th day of June 1984.

W. E. Ketter,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-17427 Filed 6-28-84; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ACE-5]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Realignment of VOR Federal Airways V-73 and V-256

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule realigns VOR Federal Airway V-73 from the Tulsa VORTAC direct to the Wichita VORTAC. It also realigns VOR Federal Airway V-256 from Tulsa direct to the FRAKS Intersection direct to the Pioneer VORTAC. This action is taken to reestablish a lower minimum en route altitude (MEA) and more effectively utilize available airspace.

DATES: Effective date—August 30, 1984. Comments must be received on or before August 13, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 84-ACE-5, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves a minor realignment of two VOR Federal Airways and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to realign two VOR Federal Airways to achieve more efficient use of available airspace. The Wichita, KS, VORTAC was relocated and commissioned on November 4, 1983. When the associated airways were realigned, it was decided to change only that portion of V-73 between FRAKS Intersection and the Wichita VORTAC. V-73 from FRAKS to the Tulsa VORTAC remained in the original position. As a result, the airway now has a one degree dogleg in it at FRAKS and it was necessary to increase the MEA from 3,400 feet to 6,500 feet. The increase was required because the navigational changeover point was established at FRAKS Intersection rather than the midpoint location. The realignment affecting V-73 and FRAKS Intersection also creates a need to realign V-256. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6 dated January 3, 1984.

This action reduces a burden on airspace users and is so minor in nature that the FAA does not anticipate significant public interest. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary and that good cause exists for making this amendment effective coincident with the next charting date.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, August 30, 1984, as follows:

§ 71.123 [Amended]

V-73 [Amended]

By deleting the words "via INT Tulsa 319° and Wichita, KS, 136° radials;" and substituting the words "Wichita, KS;"

V-256 [Amended]

By deleting the word "319°" and substituting the word "318°"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on June 22, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-17331 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 77N-0132]

GRAS Status of Calcium Hydroxide and Calcium Oxide

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that calcium hydroxide and calcium oxide are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Effective July 30, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 184.1205 and 184.1210 effective on July 30, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 16, 1977 (42 FR 41299), FDA published a proposal to affirm that calcium hydroxide and calcium oxide are GRAS for use as direct human food ingredients, and that calcium hydroxide is GRAS for use as an indirect human food ingredient. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients. However, the proposal failed to propose to delete calcium hydroxide from Part 182 (21 CFR Part 182). Consequently, in the **Federal Register** of June 25, 1982 (47 FR 27818), FDA published a tentative final rule in which the agency announced its intention to delete calcium hydroxide as well as calcium oxide from Part 182. The tentative final rule explained that the statement of intent to remove calcium hydroxide from Part 182 had inadvertently been omitted from the August 16, 1977 proposal. In addition, the tentative final rule proposed not to include a separate listing of the indirect uses of calcium hydroxide and calcium oxide in 21 CFR Part 186 because the indirect uses of these substances are authorized under §§ 184.1205, 184.1210, and 184.1(a) (21 CFR 184.1205, 184.1210, and 184.1(a)). However, the tentative final rule made no changes in the conditions of use in the proposed GRAS affirmation regulations for these substances. Both proposed § 184.1205 and proposed § 184.1210 contained food categories, maximum use levels, and technical effects. FDA provided an opportunity for public comment on the contents of the tentative final rule.

Two comments were submitted in response to the tentative final rule.

1. Both comments requested that FDA delete the description of the current good manufacturing practice conditions of use for calcium hydroxide and calcium oxide from the GRAS affirmation regulations. One of the comments asserted that in similar cases, the agency had adopted GRAS affirmation regulations that stated only that the ingredients were to be used in food in accordance with current good manufacturing practice. The comments further pointed out that the Select Committee on GRAS Substances (the Select Committee) of the Federation of American Societies for Experimental Biology (FASEB) had concluded that calcium oxide and calcium hydroxide are safe, and that FDA had concurred with that conclusion. One comment asserted that listing specific conditions of use in the regulation restricts innovative uses of these ingredients. The comment requested that if FDA did decide to deny the request for no use limitation other than current good manufacturing practice, it should increase the maximum use levels for calcium hydroxide in dairy product analogs from 0.45 percent to 1.5 percent.

FDA has reviewed these comments. In the **Federal Register** of October 19, 1983 (48 FR 48457, 48458), FDA published a final rule that amended the GRAS procedural regulations to clarify the circumstances in which the agency would describe the current good manufacturing practice conditions of use for a substance in a GRAS affirmation regulation. Based on the considerations discussed in that document, the agency has determined that it is appropriate to delete the food categories, maximum use levels, and technical effects from the GRAS affirmation regulations for calcium hydroxide and calcium oxide. Both the Select Committee and the agency have concluded that a large margin of safety exists for the use of these ingredients, and that a reasonably foreseeable increase in the level of consumption of these ingredients will not adversely affect human health. Further, both of these ingredients have multiple purposes in food and are used in a large number of food categories. Accordingly, the agency has concluded that listing conditions of use for these ingredients is not necessary to ensure their safe use. Therefore, the agency has modified §§ 184.1205 and 184.1210 by deleting the conditions of use other than current good manufacturing practice from these regulations in accordance with § 184.1(b)(1).

With regard to innovative or increased uses of these ingredients, the agency concludes that the listing of these ingredients in Part 184 with no conditions of use other than current good manufacturing practice gives ample latitude for innovative or increased uses of these ingredients.

2. One comment requested that calcium hydroxide not be deleted from Part 182.

FDA has reviewed this request. FDA finds that the comment has not provided any basis for continuing to list this substance as GRAS in Part 182 instead of affirming it as GRAS in Part 184. Accordingly, the agency is denying this request.

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follow:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 182.90 [Amended]

a. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing "Calcium hydroxide (lime)" from the list of substances.

§§ 182.1205, 182.1210, 182.8210 [Removed]

b. By removing § 182.1205 *Calcium hydroxide*, § 182.1210 *Calcium oxide*, and § 182.8210 *Calcium oxide*.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended:

a. By adding new § 184.1205, to read as follows:

§ 184.1205 Calcium hydroxide.

(a) Calcium hydroxide ($Ca(OH)_2$, CAS Reg. No. 1305–62–0) is also known as slaked lime or calcium hydrate. It is produced by the hydration of lime.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 52, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

b. By adding new § 184.1210, to read as follows:

§ 184.1210 Calcium oxide.

(a) Calcium oxide (CaO, CAS Reg. No. 1305–78–8) is also known as lime, quick lime, burnt lime, or calx. It is produced from calcium carbonate, limestone, or oyster shells by calcination at temperatures of 1,700–2,450 °F.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 55, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation is effective July 30, 1984.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: June 18, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–17318 Filed 6–28–84; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Trimethoprim and Sulfadiazine Oral Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Syntex Agribusiness, Inc., providing for safe and effective oral use in horses of a combination antibacterial drug containing trimethoprim and sulfadiazine.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, filed NADA 136–342 providing for oral use of Di–Trim® 400 Oral Paste (67 milligrams of trimethoprim and 333 milligrams of sulfadiazine per gram of paste) for treating certain bacterial infections in horses. The firm also holds approval for use of Di-Trim® Tablets and Di-Trim® 24% injection in dogs, and Di-Trim® 48% injection in horses. Use of the drug in horses is indicated where control of bacterial infections is required during treatment of acute strangles, respiratory infections, acute urogenital infections, wound infections, and abscesses. The NADA is approved, and the regulations are amended to reflect the approval. The basis of approval of the NADA is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.2611 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 520.2611 *Trimethoprim and sulfadiazine oral paste* is amended in paragraph (b) by adding before the number "017220" the phrase "000033 and."

Effective date. June 29, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 19, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-17320 Filed 6-28-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Furosemide Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Med-Tech, Inc., providing for a safe and effective use of furosemide injection for treating horses for acute noninflammatory tissue edema.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Med-Tech, Inc., P.O. Box 338, Elwood, KS 66024 filed NADA 127-034 providing for use of furosemide injection for treating horses for acute noninflammatory tissue edema. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval of this NADA is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 522.1010 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 522.1010 *Furosemide injection* is amended in paragraph (b) by inserting after "000864" the phrase "and 013983."

Effective date. June 29, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 25, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-17317 Filed 6-28-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Fenprostalene Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Syntex Agribusiness, Inc., providing for use of fenprostalene solution as an estrus synchronizer for beef and nonlactating dairy cattle in addition to use as an abortifacient in pregnant feedlot heifers. FDA is also establishing safe concentrations for fenprostalene residues in edible cattle tissues.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, filed supplemental NADA 128-549 providing for subcutaneous use of Bovilene™ (fenprostalene) solution for estrus synchronization in beef and nonlactating dairy cattle. The product is currently approved for use as an abortifacient in pregnant feedlot heifers. The supplement is approved, and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Additionally, the regulations are amended to establish the safe concentrations for fenprostalene residues in edible tissues of cattle. The safe concentrations refer to the concentrations of total residues considered safe in edible tissues. The agency has determined that a tolerance for a markert residue in a target tissue is not necessary because the level of residues in the edible tissues would not exceed the safe concentrations even with any foreseeable misuse of the drug.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742) may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 522

Animal drugs, Injectable.

21 CFR Part 556

Animal drugs, Foods, Residues.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. Part 522 is amended in § 522.914 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), by adding new paragraph (c), and by revising redesignated paragraph (e), to read as follows:

§ 522.914 Fenprostalene solution.

* * * * *

(c) *Related tolerances.* See § 556.277 of this chapter.

* * * * *

(e) *Conditions of use.* (1) *Amount.* 1 milligram (2 milliliters) subcutaneously per animal.

(2) *Indication for use.* For feedlot heifers to induce abortion when pregnant 150 days or less. For beef or nonlactating dairy cattle for estrus synchronization.

(3) *Limitations.* Subcutaneous use in cattle only. Feedlot heifers to induce abortion, single dose. Beef or nonlactating dairy cattle for estrus synchronization, a single dose or two doses 11 to 13 days apart. Do not use in pregnant animals unless abortion is desired. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

2. Part 556 is amended by adding new § 556.277, to read as follows:

§ 556.277 Fenprostalene.

A tolerance for marker residue of fenprostalene in cattle is not needed. The safe concentrations for the total residues of fenprostalene in the uncooked edible tissues of cattle are 10 parts per billion in muscle, 20 parts per billion in liver, 30 parts per billion in kidney, 40 parts per billion in fat, and 100 parts per billion in the injection site. As used in this section "tolerance" refers to a concentration of a marker residue in the target tissue selected to monitor for total residues of the drug in the target animal, and "safe concentrations" refer to the concentrations of total residues considered safe in edible tissues.

Effective date. June 29, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 19, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-17319 Filed 6-28-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin, Bacitracin Zinc, and Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by International Minerals & Chemical Corp., providing for increasing the ranges of bacitracin zinc and roxarsone which may be combined with monensin in manufacturing finished broiler feeds. The feeds are used for improved pigmentation and feed efficiency and for prevention of coccidiosis.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: International Minerals & Chemical Corp., P.O. Box 207, Terre Haute, IN 47808, filed supplemental NADA 123-154 which provides for increasing the ranges of bacitracin zinc and roxarsone which may be combined with monensin in manufacturing finished broiler feeds. In the two currently approved three-drug combinations, the range of bacitracin zinc permitted by paragraph (f)((1) (xvi) and (xvii) of 21 CFR 558.355 is 30 to 50 grams per ton (g/ton) of feed. There are two ranges for roxarsone: 15 to 35 g/ton and 35 to 45 g/ton, respectively. This supplemental NADA increases the bacitracin zinc range to 4 to 50 g/ton and the roxarsone ranges to 15 to 45.4 g/ton. The supplemental NADA is approved. Amending paragraph (f)(1)(xvi) and (xvii) to reflect the increased ranges of bacitracin and roxarsone would result in repetition of drug concentrations. Therefore, paragraph (f)(1)(xvii) is being removed to avoid this situation. Paragraph (f)(1)(xvi) is amended appropriately. In addition, 21 CFR 558.78 and 558.530 are being amended by adding entries to reflect this approval. The entries should have been codified upon publication of the original approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(ii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEED

1. In § 558.78 by adding new paragraph (e)(3)(ix) to read as follows:

§ 558.78 Bacitracin zinc.

* * * * *

(e) * * *

(3) * * *

(ix) Monensin and roxarsone as in § 558.355.

2. In § 558.355 by revising the introductory text of paragraph (f)(1)(xvi), and by removing paragraph (f)(1)(xvii) and marking it reserved, as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(1) * * *

(xvi) *Amount per ton.* Monensin, 90 to 110 grams, plus bacitracin zinc, 4 to 50 grams, and roxarsone, 15 to 45.4 grams (0.0017) percent to 0.005 percent).

* * * * *

(xvii) [Reserved]

* * * * *

3. In § 558.530 by adding new paragraph (f)(3)(xxii) to read as follows:

558.530 Roxarsone.

* * * * *

(f) * * *

(3) * * *

(xxii) Monensin and Bacitracin zinc as in § 558.355.

* * * * *

Effective date June 29, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 22, 1984.

Joseph A. Settepani,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-17315 Filed 6-28-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 610

[Docket No. 82N-0029]

Hepatitis Requirements; Amendment to Permit Shipment of Certain Blood Products Before Test for Hepatitis B Surface Antigen Is Completed

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to permit, where written approval is obtained from the agency, shipment of certain blood products for further manufacturing, such as source leukocytes for manufacturing interferon, before the test for hepatitis B surface antigen (HB_sAg) is completed and the test results are received by the collection facility. This action is expected to ensure the continued availability of new and valuable blood products that are important to the medical community.

EFFECTIVE DATE: July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN-368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 14, 1983 (48 FR 46815), FDA proposed to amend § 610.40 (21 CFR 610.40) of the biologics regulations to allow the shipment of certain blood products for further manufacturing before the test for HB_sAg is completed and the test results are received by the collection facility. FDA expects that promulgation of this rule will ensure the continued availability of new and valuable blood products, such as interferon, that are important to the medical community.

According to current information, the optimum production of interferon from source leukacytes is achieved within 24 hours after the collection of the source leukocytes. Consequently, there is a need to use the source leukocytes for manufacturing interferon as soon after collection as possible.

FDA proposed to amend § 610.40(b)(3) by deleting the last sentence which currently provides that, "Except for emergencies, blood, plasma or serum shall not be used as a biological product or issued for use in manufacturing a biological product, until the hepatitis B surface antigen testing is completed and the written results are in the possession of the collection facility." In place of the last sentence, FDA proposed to add new § 610.40(b)(4) to make clear that shipments of blood, plasma, serum or other blood products are permitted under certain conditions with written approval of FDA.

To obtain such an approval from FDA, the agency proposed that both the collection facility and manufacturing facility be required to establish specific procedures for collection, shipment, and quarantine of a product before testing is completed. These procedures are similar to the procedures described in the source leukocytes guideline that FDA made available in January 1981. The procedures include:

1. A system for communicating the test results to the manufacturing facility;

2. Procedures for quarantine at the collection facility of the untested or incompletely tested blood product and for quarantine of the blood product at the manufacturing facility until test results have been received;

3. Procedures at the manufacturing facility for identification and disposal of any blood product that is found HB_sAg reactive; and

4. Specific labeling warnings for the possibly infectious blood product while it is being shipped to ensure that persons handling such a blood product know that it may be infectious.

Use of control procedures such as those described above, where approved by FDA, will permit the shipment of blood, plasma, serum or other blood products for further manufacturing before test results for HB_sAg are received, while ensuring that such a product will be quarantined and will not be used in manufacturing until the test results are received by the manufacturing facility.

Interested persons were given 60 days to submit written comments regarding the proposed rule. FDA received one comment on the proposal and the comment fully supported the proposed rule.

As stated in the proposal, the amendment of § 610.40(b) is consistent with past agency practice regarding shipment of biological products. The agency currently interprets § 610.40(b)(3) as permitting the issuance of certain blood products, such as source leukocytes, from a collection facility to a manufacturing facility provided that the manufacturing facility does not use the product for further manufacturing until receipt of the hepatitis test results. However, by requiring the written approval of the Director, Office of Biologics Research and Review, and for such shipments, and by establishing specific procedures for the collection, shipment, and quarantine of the product before testing is completed, the amendment will better ensure the safety of all such shipments.

Accordingly, FDA is adopting the proposed regulation with a minor clarifying change. The agency is replacing the phrase "Director, Office of Biologics" with the phrase "Director, Office of Biologics Research and Review, Center for Drugs and Biologics," consistent with a recent reorganization within FDA (March 19, 1984; 49 FR 10168).

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Section 610.40 of this rule contains collection of information requirements that were submitted for review and approval to the Director, Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned control number 0910-0168.

The agency has examined the economic impact of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). In emergency situations or with written approval of the Director, Office of Biologics Research and Review, Center for Drugs and Biologics, the final rule would permit the shipment of any blood product for further manufacturing before the test for HB_sAg is completed and written test results are received by the collection facility. Thus, the final rule will relieve an apparent restriction on a specific segment of the biologics industry, which is expected to result in the increased production of a new and valuable resource (interferon) that is important to the medical community. Therefore, the agency concludes that the final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the final rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 610

Biologics, Labeling.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner

of Food and Drugs (21 CFR 5.10), Part 610 is amended in § 610.40 by removing the last sentence in paragraph (b)(3) and adding new paragraph (b)(4) to read as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

§ 610.40 Test for hepatitis B surface antigen.

* * * * *

(b) * * *

(4) Except as provided in this paragraph (b)(4), a collection facility shall not ship any blood product as a biological product or ship such a blood product where it is intended for use in manufacturing a biological product until the test for hepatitis B surface antigen is completed and the written test results are received by the collection facility. Notwithstanding the provisions of § 610.1 of this chapter, in the case of an emergency, or as otherwise approved in writing by the Director, Office of Biologics Research and Review, a collection facility may ship a blood product before the test for hepatitis B surface antigen is completed. To obtain approval for such shipments, the collection facility shall submit a description of the control procedures to be used by both the collection facility and the manufacturing facility to the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205. The control procedures to be used by the collection facility and the manufacturing facility shall include, but may not be limited to, a system of communicating the test results to the manufacturing facility, use of specific labeling warnings for the product to ensure that persons handling the shipment know that it may be infectious, procedures for quarantine of the untested or incompletely tested product both at the collection facility and at the manufacturing facility, and a procedure at the manufacturing facility to identify, preclude use of, and dispose of any blood product that is received and later found to be reactive for hepatitis B surface antigen.

* * * * *

(Collection of information requirements approved by the Office of Management and Budget (OMB) under control number 0910–0168)

Effective date. July 30, 1984.

Dated: June 15, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–17316 Filed 6–28–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 800, 813, 880, 881, 882, 883, 884, 886, and 889

[Docket No. R–84–981; FR–1599]

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Section 8 Housing Assistance Payments Programs; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared in the **Federal Register** on Thursday, May 10, 1984 (49 FR 19925), which implements a definition of income, establishes income limits for admission, sets rental payment levels and provides for reexamination of income for certain housing assistance programs. The action is necessary to correct typographical errors and other inadvertent minor errors.

FOR FURTHER INFORMATION CONTACT: Sally Warner Watts, Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, Washington, D.C. 20410, (202) 755–7084. (This is not a toll-free telephone number.)

Accordingly, the Department is correcting 24 CFR Part 813 and the accompanying preamble published on May 10, 1984 as follows:

1. On page 19927, column two, second paragraph, § 813.107(b)(3)" is corrected to read "§ 813.104(b)(3)", and in column three, the first full paragraph, "producting" is corrected to read "producing".

2. On page 19931, column two, first paragraph, the words "date of conversion" are corrected to read "day before conversion".

3. On page 19933, column three, the first full paragraph, "throughout the PHA's assisted housing projects" is corrected to read "throughout an owner or a State Agency's assisted housing projects".

4. On page 19934, column one, first paragraph, the words "or applying for the Program" are inserted between the words "Program" and "that".

5. On page 19936, column one, the second full paragraph, "final rule published today" is corrected to read "final rule to be published soon".

6. On page 19937, in § 813.102, in the definition of Elderly Family, "living with another person" is corrected to read "living with one or more persons".

7 On pages 19938 and 19939, in §§ 813.104 and 813.105, "June 1, 1984" is corrected in all six places where it appears to "July 1, 1984".

8. On page 19938, in § 813.105(c)(1), "882," is corrected to read "882, Existing Housing," and "§ 882.209(e)" is corrected to read "882.209(m)".

9. On page 19940, in §§ 813.107(c)(3) and (4), "September 30, 1984" in the two places where it appears, is corrected to read "June 30, 1984".

10. On page 19941, in § 813.107(c)(10), "July 1, 1984" is corrected to read "June 30, 1984", and "September 30, 1984" is corrected to read "July 1, 1984".

11. In § 813.107(c)(7), "paragraphs (b)(2)—(6)" is corrected to read "paragraphs (c)(1)—(6)".

12. In § 813.107(c)(8), (9), (10), and (11), "paragraphs (b)(2)" is corrected to read "paragraphs (c)(2)" in all five places where it appears.

13. On page 19941, in the second column, the section heading for § 813.109 appeared as part of the text of § 813.108. It should have been displayed as follows:

§ 813.109 Initial determination, verification, and reexamination of family income and composition.

14. On page 19942, in § 813.110(d), "Tenant Total Payments" is corrected to read "Total Tenant Payment".

15. In § 813.110(f), the heading is corrected to read *"Calculation of Retroactive Adjustment"*.

16. In § 813.110(g), the heading is corrected to read *"Actual Adjustments"*.

17. In §§ 880.603(c)(2), 881.603(c)(2), 883.704(c)(2), 884.218(b), and 886.124(b), "the Owner must make" is corrected to read "the Owner must consult with the Family and make".

Dated: June 26, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations, Department of Housing and Urban Development.

[FR Doc. 84–17351 Filed 6–28–84; 8:45 am]

BILLING CODE 4210–27–M

24 CFR Parts 904, 905, 913, 960, and 965

[Docket No. R-84-1144; FR-1882]

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Public and Indian Housing Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared in the **Federal Register** on Monday, May 21, 1984 (49 FR 21475), which implements a definition of income, establishes income limits for admission, sets rental payment levels, and provides for reexamination of income for certain housing assistance programs. The action is necessary to correct typographical errors and other inadvertent minor errors.

FOR FURTHER INFORMATION CONTACT: Sally Warner Watts, Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, Washington, D.C. 20410, (202) 755-7084. (This is not a toll-free telephone number.)

Accordingly, the Department is correcting 24 CFR Part 913 and the accompanying preamble published on May 21, 1984 as follows:

1. On page 21476, column three, last paragraph, "Title 24 of the regulations" is corrected to read "Title 24 for the regulations".

2. On page 21480, column two, line seven, "case" is corrected to read "cases".

3. On page 21482, column one, the first full paragraph, "annual and interim reexaminations" is corrected to read "annual reexaminations".

PART 913—[AMENDED]

4. On page 21483, column one, the first full paragraph, "§ 913.107(c)(ii)" is corrected to read "§ 913.107(c)(1)(ii)".

5. On page 21485, column one, the first full paragraph, "file rule published today" is corrected to read "final rule published on May 10, 1984".

6. On page 21485, in § 913.102, in the definition of Elderly Family, "another person" is corrected to read "one or more persons".

7. On page 21486, in § 913.105(b), "request for a PHA" is corrected to read "request by a PHA".

8. On page 21488, in §§ 913.107 (c)(3) and (c)(6), "occupancy on July 1, 1984" is corrected to read "occupancy on June 30, 1984".

9. In § 913.107(c)(6), "Annual Income and Annual Income After Allowances" is corrected to read "Total Family Income and Family Income".

10. In § 913.109(a), "Tenant Rent" is corrected to read "Total Tenant Payment".

11. On page 21489, in § 913.110(b), "for who" is corrected to read "for whom".

12. In § 913.110(c), "Annual Income" is corrected to read "income for eligibility".

13. In § 913.110(d), "Tenant Total Payment" is corrected to read "Total Tenant Payment".

14. In § 913.110(f)(1), "Annual Income" is corrected to read "Total Family Income".

PART 904—[AMENDED]

15. On page 21490, in § 904.107(j)(2), the last sentence is removed and the following two sentences are inserted in its place to read as follows: "If the LHA receives information concerning a change in the Family's income or other circumstances between regularly scheduled reexaminations, the LHA must consult with the Family and make any adjustments determined to be appropriate. Any change in the Family's income or other circumstances that results in an adjustment in the Total Tenant Payment and Tenant Rent must be verified."

Dated: June 26, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations, Department of Housing and Urban Development.

[FR Doc. 84-17350 Filed 6-28-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 697

Industries in American Samoa; Wage Order

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: Under the Fair Labor Standards Act, minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. After such a committee has investigated conditions in American Samoa, it recommends minimum wage rates which must be published in the **Federal Register** and which become the new wage rates. Industry Committee No. 16 for American Samoa has completed its review and established new minimum wage rates, which are published herewith.

EFFECTIVE DATES: The wage rates specified in § 697.1 shall be effective as follows:

Paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (n) are effective on July 1, 1984.

Paragraph (m) is effective on October 1, 1984.

FOR FURTHER INFORMATION CONTACT: James L. Valin, Assistant Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S3502, Washington, DC 20210, Telephone: 202-523-8353.

SUPPLEMENTARY INFORMATION: Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064), an amended (29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 657 (49 FR 8313), the Secretary of Labor appointed and convened Industry Committee No. 16 for Industries in American Samoa, referred to the Committee the question of the mimimun rate or rates of wages to be paid under section 8 of the act of such employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950 and 29 CFR 511.18, the recommendations of Industry Committee No. 16 are hereby published, revising §§ 697.1 and 697.3 of Part 697, Title 29, Code of Federal Regulations.

Because, under sections 5, 6, and 8 of the Fair Labor Standards Act and 29 CFR 511.18, the Department has no authority to disapprove the recommended rates set by the industry committee, the Department finds, pursuant to 5 U.S.C. 553(b)(3)(B), that notice and public procedure thereon under the Administrative Procedure Act are not necessary.

The wage rates for government employees apply only to employees of the Government of American Samoa and its political subdivisions who are engaged in nontraditional activities. In *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), the Supreme Court held that the minimum wage and overtime provisions of the Fair Labor Standards

Act are not constitutionally applicable to the integral operations of the States and their political subdivisions in areas of traditional governmental functions. According to the Court, such functions include among others, schools and hospitals, fire prevention, police protection, sanitation, public health, and parks and recreation. Nontraditional functions, however, continue to be covered by the Fair Labor Standards Act. While this decision dealt with the 50 States and their political subdivisions, it is apparent, as a matter of statutory interpretation, that the restrictions imposed as a result of *National League of Cities* should be the same in American Samoa.

Determinations of whether particular functions are traditional will be made by the Courts or by the U.S. Department of Labor on a case-by-case basis. Determinations that particular functions are nontraditional will be published in the **Federal Register** in the form of amendments to Title 29 CFR 775.3. A determination was issued by the Wage and Hour Division of the Department of Labor on August 14, 1979, that American Samoa Government's communication system, electric utility, marine railway and liquor store should be considered nontraditional activities since these operations appear to be essentially no different from regular commercial operations in the United States. The amendment to Regulations Part 775.3 incorporating these earlier decisions was published in the **Federal Register** on December 21, 1979.

The rates set forth herein for government workers apply only to such activities as are determined to be nontraditional. This document was prepared under the direction and control of Deputy Administrator Herbert J. Cohen, Wage and Hour Division.

Classification

This rule is not classified as a "rule" under Executive Order 12291 on Federal Regulations because the Department is simply complying with the statutory requirement of publishing the recommendations of an industry committee in accordance with sections 5, 6, and 8 of the Fair Labor Standards Act. Pursuant to such sections, the Department is required to approve the recommendations of such industry committee and to publish such recommendations in the **Federal Register**. The performance of such a ministerial act by the Department does not constitute the promulgation of a "rule" under E.O. 12291.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b) the requirements of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See: 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 697

Minimum wages, American Samoa.

Accordingly, Part 697 of Chapter V of Title 29, Code of Federal Regulations, is amended as set forth below.

PART 697—INDUSTRY IN AMERICAN SAMOA

Part 697 of Title 29 CFR is amended as follows:

1. The authority citation for Part 697 reads as follows:

Authority: Secs. 5, 6, 8, 52 Stat., 1062, 1064; 29 U.S.C. 205, 206, 208.

2. Section 697.1 (a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1), (n)(1), is revised to read as follows:

§ 697.1 Wage rates and industry definitions.

* * * * *

(a) *Fish canning and processing and can manufacturing industry.* (1) The minimum wage for this industry is $2.67 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.82 an hour thereafter.

* * * * *

(b) *Shipping and transportation industry.* (1) The minimum wage for classification A, stevedore, lighterage and maritime shipping agency activity, is $2.65 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.80 an hour thereafter. The minimum wage for classification B, all other activities, is $2.53 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.67 an hour thereafter.

* * * * *

(c) *Tour and travel service industry.* (1) The minimum wage for this industry is $2.23 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.35 an hour thereafter.

* * * * *

(d) *Petroleum marketing industry.* (1) The minimum wage for this industry is $2.65 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.80 an hour thereafter.

* * * * *

(e) *Construction industry.* (1) The minimum wage for this industry is $2.25 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.38 an hour thereafter.

* * * * *

(f) *Hotel industry.* (1) The minimum wage for this industry is $1.68 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $1.77 thereafter.

* * * * *

(g) *Retailing, wholesaling and warehousing industry.* (1) The minimum wage for this industry is $1.94 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.05 and hour thereafter.

* * * * *

(h) *Laundry and dry cleaning industry.* (1) The minimum wage for this industry is $1.38 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $1.46 an hour thereafter.

* * * * *

(i) *Bottling and dairy products industry.* (1) The minimum wage for this industry is $1.93 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.04 an hour thereafter.

* * * * *

(j) *Printing and publishing industry.* (1) The minimum wage rate for this industry is $2.19 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.31 an hour thereafter.

* * * * *

(k) *Finance and insurance industry.* (1) The minimum wage rate for this industry is $2.42 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.56 an hour thereafter.

* * * * *

(l) *Private hospital and education institutions industry.* (1) The minimum wage rate for this industry is $1.74 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $1.84 an hour thereafter.

* * * * *

(m) *Government employees industry (nontraditional activities).* (1) The minimum wage rate for this industry is $1.87 an hour for a period of 1 year following the October 1, 1984 effective date specified in § 697.3 and $1.97 an hour thereafter.

* * * * *

(n) *Miscellaneous activities industry.* (1) The minimum wage rate for this industry is $1.75 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $1.85 an hour thereafter.

* * * * *

3. Section § 697.3 is revised to read as follows:

§ 697.3 Effective dates.

The wage rates specified in § 697.1 shall be effective as follows:

(a) Paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (n) of § 697.1 are effective on July 1, 1984.

(b) Paragraph (m) of § 697.1 is effective on October 1, 1984.

Signed at Washington, D.C. this 25th day of June 1984.

William M. Otter,

Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc. 84-17326 Filed 6-28-84; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Ch. XII

[DLA Reg. 4105.1]

Removal of the Defense Logistics Procurement Regulation

AGENCY: Defense Logistics Agency, DOT.

ACTION: Final rule.

SUMMARY: The Defense Logistics Procurement Regulation (DLPR) published in Title 32, Subtitle B, Chapter XII of the Code of Federal Regulations is being removed from the Code of Federal Regulations. The DLPR in the CFR has been superseded both by a later March 1983 edition and an April 1984 edition under the Federal Acquisition Regulations System (see 48 CFR Ch. 1). The April 1984 edition retitles the DLPR to the Defense Logistics Acquisition Regulation. The removal of the outdated edition of the DLPR from the CFR will preclude use of the regulation for DLA contracting purposes.

EFFECTIVE DATE: February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret J. Janes, 202-274-6431.

SUPPLEMENTARY INFORMATION: The April 1984 edition of the Defense Logistics Acquisition Regulation has not yet been printed. It has been distributed within the Defense Logistics Agency only with an effective date for use in the Agency's contracting actions of 1 April 1984. It is anticipated that copies of the Defense Logistics Acquisition Regulation will be available from the Superintendent of Documents, Government Printing Office, Washington D.C. 20402 in the September 1984 time frame.

Removed. For reasons set out in the preamble, Subtitle B, Chapter XII, consisting of Parts 1200 through 1250 and Appendix E, are removed.

Authority: 10 U.S.C. Ch. 137.

Raymond F. Chiesa,

Executive Director, Contracting, Defense Logistics Agency.

[FR Doc. 84-17300 Filed 6-28-84; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 82-025]

Drawbridge Operation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: On April 24, 1984, the entire part containing Coast Guard regulations on drawbridge operations was revised and the sections renumbered. Since that time, three rules were published which amend the old regulations rather than those in the April 24, 1984 version. This action corrects these discrepancies and republishes the rules in the new format without substantive change.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Alfred T. Meschter, 202-426-0942.

SUPPLEMENTARY INFORMATION: On April 24, 1984 the Coast Guard published a final rule in the **Federal Register** (49 FR 17450) completely revising its drawbridge operation regulations in 33 CFR Part 117. Three rules were published after April 24 which amend certain sections as they existed before April 24. The three rules are being corrected to fit the new numbering system and format without substantive change.

Coast Guard Docket No. 13-84-01 (49 FR 17940; April 26, 1984) amended old § 117.795 by changing the Lake Washington Ship Canal bridges opening times from "12 midnight to 6 a.m." to "11 p.m. to 7 a.m." This provision now appears in § 117.1051(d)(1) in the revision.

Also, this docket added a paragraph (3) to old § 117.795(b) concerning posting of bridge operating rules. This provision is already contained in § 117.55 of the revision and is, therefore, deleted as redundant.

Coast Guard Docket No. 7-83-04 (49 FR 17939; April 26, 1984) amended old § 117.245 adding rules for the Mathers Bridge across the Banana River in Indian Harbor Beach, Florida. This bridge would now be placed in § 117.263(a) of the revision and NASA Causeway bridge moved to paragraph (b).

Coast Guard Docket No. 7-83-21 (49 FR 19818; May 10, 1984) amended old § 117.245(h)(12-b) to require advance notice of openings during certain periods for the Houlihan (US17) Bridge across the Savannah River in Savannah, Georgia. This provision would now appear in § 117.371(a) of the revision.

This rulemaking also corrects the citation for 33 CFR Part 117 by deleting 49 U.S.C. 1655(g)(2) which has been repealed.

This rulemaking action is purely administrative in nature and merely corrects section numbering and format without substantive change in order to facilitate the July 1, 1984 codification of Title 33, Code of Federal Regulations. Therefore, the Coast Guard finds that notice and public procedure thereon are unnecessary and contrary to the public interest and that the rule may be made effective in less than 30 days under 5 U.S.C. 553(d).

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE REQUIREMENTS

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 117 is revised to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46(c)(5).

§ 117.245 [Amended]

2. Amend § 117.245 by removing the section heading and paragraph (h)(12-b) (see 49 FR 19818, May 10, 1984) and paragraph (h)(27a) (see 49 FR 17940, April 26, 1984).

3. By revising § 117.263 to read as follows (see 49 FR 17465, April 24, 1984):

§ 117.263 Banana River.

(a) The draw of the Mathers (SR A-1-A) Bridge, mile 0.5 at Indian Harbor Beach, shall open on signal; except that, from 10 p.m. to 6 a.m. Monday through Friday except Federal holidays, the draw shall open on signal if at least two hours notice is given.

(b) The draw of the NASA Causeway bridge, mile 27.6 at Cape Canaveral, shall open on signal if at least four hours notice is given to the NASA Security Office by telephone or in person.

4. By revising § 117.371 to read as follows (see 49 FR 17468, April 24, 1984):

§ 117.371 Savannah River.

(a) The draw of the Houlihan (US17) Bridge, mile 21.6 at Savannah, shall open on signal from 6 a.m. to 11 a.m. and from 12 noon to 3 p.m. At all other times, the draw shall open on signal if at least three hours notice is given. Contact may be made by VHF radiotelephone maintained at the bridge tender's house during the hours of operation and at the Thunderbolt Bridge 24 hours daily.

(b) The draw of the Seaboard System Railroad bridge, mile 60.9, shall open on signal from 6 a.m. to 11 a.m. and from 12 noon to 3 p.m. At all other times, the draw shall open on signal if at least three hours notice is given. Contact may be made by VHF radiotelephone maintained at the bridge tender's house and the dispatcher's office in Savannah.

(c) The draw of the Seaboard System Railroad bridge, mile 135.4 near Augusta, shall open on signal if at least three hours notice is given.

117.795 [Amended]

5. By removing the section heading and paragraphs (b)(2) and (b)(3) of § 117.795 (see 49 FR 17940, April 26, 1984).

6. By revising paragraph (d)(1) of § 117.1051 to read as follows (see 49 FR 17492, April 24, 1984):

117.1051 Lake Washington ship canal.

* * * * *

(d) * * *

(1) The draws shall open on signal; except that, the draws need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. monday through Friday except Federal holidays for vessels of less than 1,000 tons, unless the vessel has a vessel in tow of over 1,000 tons, except under emergency conditions when the Seattle City Engineer is notified. The draws shall open on signal from 11 p.m. to 7 a.m. if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Avenue bridge at mile 2.6.

* * * * *

Dated: June 26, 1984.

T. J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 84-17386 Filed 6-28-84; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 162

[CGD 78-151]

Inland Waterways Navigation Regulations; Connecting Waters From Lake Huron to Lake Erie; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published at 49 FR 18297 on April 30, 1984 which established navigation regulations for the connecting waters from Lake Huron to Lake Erie. Certain of the names which describe geographic points and features in the regulations are technically incorrect. This correction will insure that the descriptions of physical points within the navigation regulations are wholly consistent with descriptions contained in the Coast Guard Light Lists, the U.S. Coast Pilot and navigational charts of the area.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Larue, U.S. Coast Guard, Office of Marine Environment and Systems, (202) 426-4958.

SUPPLEMENTARY INFORMATION: In response to the Notice of Proposed Rulemaking (NPRM) which preceded the final rule (48 FR 25231, June 6, 1983), the Coast Guard received comments from the National Ocean Service which pointed out certain misnomers in the proposed rule. The final rule incorporated the suggested revisions. Subsequently however, the National Ocean Service has notified the Coast Guard that the final rule contains technical errors in the description of certain geographic points which were overlooked in the NPRM.

The Coast Guard is correcting the final rule to provide the technically proper names for geographic points within the rule. This will insure that the names given for specific points in the navigation regulations remain consistent with those in charts, the U.S. Coast Pilot and other publications relied on by mariners.

PART 162—[AMENDED]

Accordingly, the Coast Guard is correcting FR Doc. 84-11615 appearing in the **Federal Register** on Monday, April 30, 1984 at page 18297, as follows:

(1) On page 18301:

In § 162.130(a), "Rouge River" is corrected to read "River Rouge"

In § 162.130(c), "Rouge River" is corrected to read "River Rouge" in each place it appears (2 places).

In the table within § 162.132(e) "port Huron Traffic Buoy" is corrected to read "Port Huron Traffic Lighted Buoy".

In § 162.132(f)(3)(i) through (f)(3)(iii), "Rouge River" is corrected to read "River Rouge" at each place (three places) it appears.

(2) On Page 18302:

In § 162.134(a)(3) "Fighting Island South Light" is corrected to read "Fighting Island Channel South Light".

In § 162.134(a)(4) "Peach Island" is corrected to read "Peche Island"

In § 162.134(b) "Rouge River" is corrected to read "River Rouge" at each place it appears (two places).

In § 162.134(c)(2) "Lake Huron Cut Light Buoy" is corrected to read "Lake Huron Cut Lighted Buoy".

In § 162.134(c)(2) "Port Huron Traffic Buoy" is corrected to read "Port Huron Traffic Lighted Buoy".

In § 162.134(c)(2)(iv) "Port Huron Traffic Buoy" is corrected to read "Port Huron Traffic Lighted Buoy" at each place it appears (two places).

In § 162.138(a)(2) "Peach Island" is corrected to read "Peche Island".

In § 162.138(a)(3) "Rouge River" is corrected to read "River Rouge".

In the note following § 162.138(a) "Peach Island" is corrected to read "Peche Island".

Dated: June 26, 1984.

R. L. Brown,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 84-17385 Filed 6-28-84; 8:45 am]
BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 83-3A]

Compulsory License for Cable Systems

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing final regulations, amending 37 CFR 201.17. These regulations implement portions of section 111 of the Copyright Act of 1976, title 17 of the United States Code. That section prescribes conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works by filing periodic Statements of Account and by paying copyright royalties, based on rates originally established by the Copyright Act and subsequently adjusted by the Copyright Royalty Tribunal. The purpose of these final regulations is to

implement the Tribunal's October 20, 1982 cable rate adjustment (47 FR 52146; November 19, 1982) by notifying cable systems of revised forms and procedures and by providing guidance to cable systems regarding payment of royalties. Interim rules published April 16, 1984 at 49 FR 14944 are hereby made final with minor changes.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287–8380.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Copyright Act of 1976, title 17 of the United States Code, establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirement that cable systems deposit statutory royalties with the Copyright Office. Cable systems whose semiannual gross receipts for secondary transmissions total $214,000 or more determine their royalty obligations by applying specified percentages of such gross receipts (royalty rates) to their number of distant signal equivalents. In Docket No. CRT 81–2, the Copyright Royalty Tribunal considered adjustments in the royalty rates for cable systems in light of the repeal by the Federal Communications Commission (FCC) of certain distant signal and syndicated exclusivity restrictions *(Report and Order in Docket Nos. 20988 and 21284, 79 FCC 2d 663 (1980))*. The FCC's Order was upheld by the U.S. Court of Appeals for the Second Circuit, *Malrite T.V. of New York* v. *Federal Communications Commission*, 652 F.2d 1140 (2d Cir. 1981), *cert. denied*, 102 S. Ct. 1002 (1982), and entered into force on June 25, 1981, when a stay pending appeal was vacated.

After consideration of the issues raised by the interested parties, at a public meeting on October 20, 1982, the Tribunal adopted its final rule in CRT Docket No. 81–2, Cable Television Royalty Fee Adjustment Proceeding. The text of the Tribunal's amendments to 37 CFR Part 308 were published in the **Federal Register** of Friday, November 19, 1982 (47 FR 52146–52159).

The Tribunal made two types of royalty rate adjustments and set January 1, 1983, as the effective date for both. One adjustment may be identified as a "surcharge" on certain distant signals to compensate copyright owners for the carriage of syndicated programming formerly prohibited by the FCC's syndicated exclusivity rules in effect on June 24, 1981 (former 47 CFR 76.151 et seq.) (hereafter, "syndicated exclusivity surcharge" or "surcharge"). The second adjustment raises the royalty rate to 3.75% of gross receipts per additional distant signal equivalent resulting from carriage of distant signals not generally permitted to be carried under the FCC's distant signal rules prior to June 25, 1981 (hereafter, the "3.75% rate"). [1]

Both rate adjustments were appealed in the U.S. Court of Appeals for the District of Columbia Circuit. The Court affirmed the Tribunal's rate adjustment in all respects on December 30, 1983. *NCTA* v. *Copyright Royalty Tribunal*, No. 82–2389 (D.C. Court of Appeals).

In late 1982 and early 1983, the Copyright Office received numerous requests from representatives of cable systems for advice or interpretive rulings regarding the application of the 3.75% rate in specific instances. The Office's urgent guidance was requested before March 15, 1983, the date the legislative stay would expire. In response, the Office initiated this proceeding (Docket RM 83–3) by publishing a Notice of Inquiry (48 FR 6372; February 11, 1983), in which we summarized the issues presented to us for guidance, and requested public comment on four general issues: substitution of nonspecialty independent stations for specialty stations; carriage of the same signals carried on a part-time or substitute basis under the former FCC rules before June 25, 1981; and signals for which waivers were pending with the FCC on June 23, 1981, and later dismissed as mooted by the FCC deregulation ("ungranted waiver requests").

The Office also consulted with the Tribunal in March 1983, pursuant to 17 U.S.C. 111(d). Pending the appeal of the rate adjustment, however, the Tribunal took the position it could not comment on the issues covered by the Notice of Inquiry.

The Office concluded that only a tentative, limited response could be made to the questions posed in the Notice of Inquiry. These comments were expressed initially in a letter of opinion, dated March 11, 1983, which was mailed to all who had contacted the Office directly. Subsequently, on March 30, 1983, the Office published a Statement of Views (48 FR 13166) regarding interpretation of the Trubunal's 1982 cable rate adjustment. The Office observed that, to give the guidance requested by the cable systems, it would be necessary to interpret the rules of another governmental body at time when those rules were under appeal, and before the Office itself would take affirmative steps to collect royalties due under the 1982 rate adjustment. [2] The Office stated that the tentative views published in the Statement of Views would be reexamined following the final decision by the Court of Appeals, based upon an analysis of the opinion and a reconsideration of the comments submitted in response to our Notice of Inquiry RM 83–3.

In order to implement the 1982 cable rate adjustment following the decision in *NCTA* v. *CRT*, *supra*, the Office consulted with the Tribunal regarding interpretation and implementation of the rate adjustment pursuant to 17 U.S.C. 111(d). The Tribunal's response by letter of March 30, 1984 [3] was published as an Appendix to interim regulations issued April 16, 1984 by the Office [49 FR 14944]. Although these regulations are interpretive [4] of the Copyright Act and the Tribunal's rules and were put into effect immediately upon publication, the Office invited comment before issuing the regulations in final form.

The Office received comments from five different representatives of cable system operators. No comments were received from representatives of copyright owners. These commentators objected principally to the Office's

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[1] The Tribunal determined that the 3.75% royalty rate would be applicable in all instances of distant signal carriage except for:

"(1) Any signal which was permitted (or, in the case of cable systems commencing operations after June 24, 1981, which would have been permitted) under the rules and regulations of the Federal Communications Commission in effect on June 24, 1981, or

"(2) A signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or

"(3) A signal which was carried pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules were in effect on June 24, 1981." (37 CFR 308.2(c); 47 FR 52159).

In section 143 of House Joint Resolution 631, Pub. L. 97–377 (December 1982) Congress stayed the effective date of the 3.75% rate until March 15, 1983.

[2] In accordance with the usual practice, the Office stated in the Notice of Inquiry that no affirmative steps would be taken to implement the 1982 rate adjustment pending a final decision by the Court of Appeals. The Office accepted royalty payments based on the 1982 rate adjustment when proffered by cable systems during the pendency of the appeal, deferring examination of the Statements of Account until an appropriate time.

[3] Before responding to the Office, the Tribunal invited written comment from all parties who had participated in the Tribunal's 1982 rate adjustment proceeding.

[4] The functions of the Copyright Office under the compulsory license for cable are limited. The Office has no power to fix or establish substantive rights and liabilities under the compulsory license; its regulations are primarily interpretive. The Copyright Office issues such regulations on points necessary for the Office to discharge its function of collecting the royalties and preparing forms for that purpose, and in response to requests for guidance from the public.

decision to follow the Tribunal's stated intention not to allow substitution of "grandfathered" signals (those authorized by the FCC and carried by a cable system before March 31, 1972) beyond the market quota for nonspecialty independent stations. Three comments objected to the similar decision of the Office regarding substitution for specialty stations. One new issue was presented for consideration: expanded geographic carriage of a signal on a distant basis that was formerly carried only as a local signal.

For a full discussion of the issues concerning the 1982 cable rate adjustment, see the explanation accompanying the interim regulations of April 16, 1984 (49 FR 14944). As explained below, the Office has concluded that it should adhere to the interpretations of the Copyright Act and the Tribunal's regulations announced in the interim regulations for the reasons given in that announcement, subject to an adjustment regarding administrative implementation of the rate applied to substitutions for grandfathered signals and to clarification of two points. The Office also addresses the single new issue raised by the comments: expanded geographic carriage of a previously local-only signal into distant communities.

1. *Substitution for "grandfathered" signals.* The basic arguments of the commentators are that the application of the 3.75% rate to signals substituted for "grandfathered" signals is contrary to the plain meaning of section 801(b)(2)(B) of the Copyright Act, that it undercuts Congressional intent, and that "retroactive application" of the Office's interpretation violates principles of equity and fairness.

Section 801(b)(2)(B))(i) provides that the Tribunal may not adjust the cable royalty rates for any DSE's represented by carriage of a signal of the same type substituted for any signal permitted by the FCC rules in effect on April 15, 1976. The commentators argue that "grandfathered" signals were among the "FCC-permitted signals" referred to in that clause, and therefore any signal of the same type as the "grandfathered" signal can be substitued for it without triggering the 3.75% rate. The comments also contended that, in any event, cable systems were misled by the Office's remarks in the March 1983 Statement of Views, and that the Office should not adopt an interpretation of the Act based on the "conclusory views" of the Tribunal. Finally, one commentator contended that the Office should have taken account, pursuant to section 801(b)(2)(B), of the economic impact of its interpretation on copyright users.

Addressing the latter point first, the Office clearly does not have the authority to assess the economic impact of a rate adjustment duly established by the Tribunal. It is the Tribunal, not the Copyright Office, that is directed to consider "among other factors, the economic impact on copyright owners and users" when adjusting the rates. That consideration occurred during the Tribunal's proceeding that resulted in the 1982 cable rate adjustment.

With respect to the Office's reliance on the clear statement by the Tribunal of its intention in fixing the new cable rates, the Office continues to believe that, given the complexity of the cable compulsory license and of the FCC cable carriage rules over a period of 10 years, and given the enormous difficulty of the cable rate-making process, it cannot decline to accept the Tribunal's interpretation of its own rules unless the Office were certain that the Tribunal lacked authority to fix the rate in a given case. While the Office had doubts about substitution for "grandfathered" signals, we are not persuaded that the Tribunal lacked authority to establish the 3.75% rate in this case.

Our decision is based upon the fundamental principle that an administrative agency's stated interpretation of its rules is the best indicator of their meaning. *United Steelworkers of America* v. *Weber*, 443 U.S. 193 (1979); *United States* v. *American Trucking Association, Inc.* 310 U.S. 534, 543 (1940); *Rucker* v. *Wabash Railroad Company*, 418 F.2d 146 (7th Cir. 1969). Moreover, that Office does not find in Section 801(b)(2)(B) any "plain meaning" contrary to the Tribunal's position. The very complexity of this section and the FCC's rules referenced therein allow few "plain meanings." Finally, on this point, if the Office had declined to accept and follow the Tribunal's interpretation, only confusion would have resulted; and litigation would be necessary to resolve the issue.[5]

One point about substitution for "grandfathered" signals needs clarification. The Office understands the Tribunal's position to be the same on substitution for "grandfathered" signals as on substitution for specialty stations. Substitution *may be made* within the limits of the FCC's former distant signal market quotas for nonspecialty independent stations (that is, three distant independents in the top fifty markets except if there are one or more local independents in the market the limit is two distant independents; two distant independents in the second fifty markets; and one distant independent in smaller markets, unless there is a local independent). In the final regulations, the Office has revised § 201.17(h)(9) to refer explicitly to the FCC's market quotas.

Finally, with respect to the comments about retroactive application of the interpretation concerning substitution for "grandfathered" signals, the Office has decided to modify its policy concerning implementation of the rate adjustment in this single case. The Office attempted in the Statement of Views in March 1983 both to give cable systems "some guidance" and to make clear that *any* views expressed were tentative and subject to revision after conclusion of the then pending judicial appeal. Based upon the comments, however, the Office is concerned that we may not have succeeded in expressing the very tentative nature of its views. The Office does not believe that a position was stated regarding substitution for "grandfathered" signals, but the commentators asserted that the Office's views were misunderstood by a number of cable systems.

In the Statement of Views, in the interim regulations, and in these final regulations, the Office has attempted to give guidance regarding interpretation of the Copyright Act. The Office cannot alter the copyright liabilities of cable systems by any interpretation of the Act. It is the Act, complemented by the Tribunal's rate adjustment, that controls whatever royalties are owing under the compulsory license. Nevertheless, since cable systems may have been misled by the Office's expression of tenative views on substitution of "grandfathered" signals, the Office has decided not to take affirmative steps to collect royalties based on the Tribunal's interpretation on this point before the accounting period beginning July 1, 1984, unless it is ordered to do so by a court of competent jurisdiction. The CS/SA–3 Statement of Account forms reflect this modification of the implementation of the rate adjustment. The Office has not changed its position regarding interpretation of the Act and the Tribunal's regulations. We have taken cognizance of the arguments regarding fairness and equity, and will not retroactively seek to collect at the 3.75% rate for substitution of grandfathered signals in excess of the quota for nonspecialty independents until ordered to do so by a court. Cable system

[5] As entities of the United States, both the Copyright Office and the Tribunal would be represented in any litigation by the same counsel: the Department of Justice.

operators must take full responsibility for any decision not to pay royalties in accordance with the stated intention of the Tribunal.

2. *Substitution for specialty stations.* Three commentators objected to the conclusion in the interim regulations that cable systems may not substitute a nonspecialty independent station for a specialty station in excess of the FCC's former market quotas for nonspecialty independents. The comments contend that specialty stations have the same DSE value as nonspecialty independents and should be freely substitutable if actually carried before June 25, 1981. Again, the interim regulations are criticized for following the Tribunal's position, which the commentators argue violates the plain meaning of the Act. Cable systems, however, were apparently not misled by our tentative Statement of Views and understood that the Office did not say that substitution of a nonspecialty independent for a specialty station would be permitted on any basis without incurring the 3.75% rate.

For reasons given in the interim regulations and in point one above, the Office continues to believe that it should follow the Tribunal's clear statement of its intention in setting the 3.75% rate and issuing its regulations. Under that position, substitution of a nonspecialty independent station for a specialty station is permitted but only within the limits of the FCC's former market quotas for distant nonspecialty independents. This limited substitution gives meaning to the critical language of the Copyright Act regarding substitution of a signal of the "same type" and avoids untrammelled substitutions that would or could nullify the 3.75% adjustment.

3. *Application of the surcharge rate to "grandfathered" signals.* The interim regulations provide that the surcharge rate does not apply to "carriage of a particular signal first carried prior to March 31, 1972." See, for example, § 201.17(h)(3)(ii)(A). One comment suggested that the language of the interim regulations should parallel the language of the FCC's grandfather clause in its exclusivity rules, 47 CFR 76.159 (1980). That provision exempts from the exclusivity rules signals carried in a community prior to March 31, 1972 by a particular cable system or any cable system in that community. The commentator was concerned that the Office's regulation might be read to exempt a system from the surcharge rate only if the signal was carried by *that* system before March 31, 1972.

The Office interprets the Copyright Act and the Tribunal's rules to mean that the surcharge rate would not apply to "grandfathered" signals whether carried by a particular cable system or by any cable system in the community. The Office confirms that interpretation of the interim regulations and sees no need to revise the language since the phrase "carriage of a particular signal first carried prior to March 31, 1972" covers carriage by a particular cable system and the possibility of carriage by any other cable system within community.

4. *Expanded distant carriage of formerly local-only stations.* The comments presented one new issue, not considered in the interim regulations: Carriage after June 24, 1981 on a distant signal basis of a signal carried before June 25, 1981 *only* as a local signal. The expanded carriage after June 24, 1981 would mean that the signal is partly within and partly without the local service area of the retransmitted station. Clearly, allocation of the gross receipts would be permitted by section 111(d)(2)(B). The larger question, however, is whether the 3.75% rate applies to the first-time carriage on a distant signal basis.

In considering this issue, the Office notes that in a very few cases we had expressed the view in correspondence that where the only carriage was as a local signal within part of a cable system, the "partly within-partly without" allocation of gross receipts was nevertheless required as though *some* carriage on a distant basis had occurred in fact. The Office rejects this interpretation of the Act since it is clear from the definition of "distant signal equivalent value" in section 111(f) that no DSE value can be assigned for secondary transmission of local signals. [6]

The Office will upon request refund any overpayments of copyright royalties that may have resulted from a request to apply the "partly within-partly without" allocation in cases of local-only carriage, where more than the minimum royalty is due. The Office, as stated, believes this occurred in only two or three cases. One has been brought to our attention; and similar cases should be presented to the Office promptly.

The question remains: which rate applies to expanded carriage after June 24, 1981 that constitutes distant signal carriage of the signal for the first time. This is a new issue, and the Statement of Account form does not specifically make provision for application of the 3.75% rate in cases of "partly within-partly without" carriage. At this point the Office assumes that the case will seldom arise, and we decline to provide any specific guidance. Cable system operators should consider the Tribunal's letter to this Office of March 30, 1984, published as an Appendix to the interim regulations on April 16, 1984, and the general comments of the Office in the interim regulations concerning application of the 3.75% rate. The Office will not question application of the non-3.75% rate on this narrow point until review of the Statement of Account forms for the second half of 1984.

For the foregoing reasons, the Copyright Office is issuing in final form the interim regulations amending 37 CFR 201.17 as published on April 16, 1984 [49 FR 14944], with one minor change in the last paragraph (h)(9).

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress in the legislative branch. Neither the Library of Congress nor the Copyright Office is an agency within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the federal government that are agencies as defined in the Administrative Procedure Act.[7] In addition, since these final regulations are interpretive, moreover, they are not subject to the Regulatory Flexibility Act, in any event.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an agency subject to the Regulatory Flexibility Act, and that the final rules are not solely interpretive, the Register of Copyrights has determined that the regulations will have no significant impact on small businesses. The Tribunal's rate adjustment and these final regulations affect only large cable systems whose gross receipts total $214,000 or more semiannually.

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[6] The fact that section 111(d)(2)(B)(i) establishes a minimum royalty for large systems even if there is no distant signal carriage should not confuse the point that beyond this minimum royalty, only distant signal carriage triggers a DSE value.

[7] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (*i.e.*, "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

List of Subjects in 37 CFR Part 201

Cable television, Copyright.

Final Regulations

PART 201—[AMENDED]

In consideration of the foregoing, Part 201 of 37 CFR Chapter II is amended in the manner set forth below.

Section 201.17 is amended as follows:

§ 201.17 Statements of account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

1. Paragraphs "(h)" and "(i)" are redesignated paragraphs "(i)" and "(j)," respectively, and any references to paragraph "(i)" in the text of the redesignated paragraph (j) are redesignated paragraph "(j)."

2. A new paragraph (h) is added to read as follows:

* * * * *

(h) *Computation of the copyright royalty fee pursuant to the 1982 cable rate adjustment.* (1) For the purposes of this paragraph, in addition to the definitions of paragraph (b) of this section, the following definitions shall also apply:

(i) "Current base rate" means the applicable royalty rates in effect on December 31, 1982, as reflected in 37 CFR 308.2(a).

(ii) "Surcharge" means the applicable syndicated exclusivity surcharge established by 37 CFR 308.2(d), in effect on January 1, 1983.

(iii) The "3.75% rate" means the rate established by 37 CFR 308.2(c), in effect on March 15, 1983.

(iv) "Top 100 television market" means a television market defined or interpreted as being within either the "top 50 television markets" or "second 50 television markets" in accordance with 47 CFR 76.51, in effect on June 24, 1981.

(v) The "1982 cable rate adjustment" means the rate adjustment adopted by the Copyright Royalty Tribunal on October 20, 1982 (CRT Docket No. 81–2, 47 FR 52146, November 19, 1982).

(vi) The terms "DSE" or "DSE's" mean "distant signal equivalent(s)" as defined in 17 U.S.C. 111(f) and any fraction thereof.

(2) A cable system whose semiannual gross receipts for secondary transmissions total $214,000 or more shall compute its royalty fee for carriage after June 30, 1983, in the following manner:

(i) The cable system shall first determine those DSE's to which the 3.75% rate established by 37 CFR 308.2(c) applies.

(ii) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972.

(iii) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(3) A cable system whose semiannual gross receipts for secondary transmissions total $214,000 or more shall compute its royalty fee for carriage during the period January 1, 1983, through June 30, 1983, in the following manner:

(i) Copyright royalty fees must be paid on the basis of carriage for the entire accounting period except where proration of the DSE is permitted as described in paragraph (f)(3) of this section.

(ii) Where a distant signal was carried at any time only between January 1, 1983, and March 14, 1983;

(A) In the case of a cable system located wholly or in part within a top 100 television market, the current base rate, together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972.

(B) In case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(iii) Where a distant signal was carried at any time after March 14, 1983;

(A) The cable system shall first determine those DSE's to which the 3.75% rate established by 37 CFR 308.2(c) applies.

(B) If the 3.75% rate is applicable to a particular DSE, it shall be applied against the per centum .5967 (representing the number of days from March 15, 1983, through June 30, 1983, inclusive, in relation to the entire accounting period); and either

(*1*) In the case of cable system located wholly or in part within a top 100 television market, the current base rate, together with the surcharge, applied against the per centum .4033 (representing the number of days from January 1, 1983, through March 14, 1983, inclusive, in relation to the entire accounting period); however, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972; or

(*2*) In the case of a cable system located wholly outside a top 100 television market, the current base rate applied against the per centum .4033.

(C) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972.

(D) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(4)(i) Separate Supplemental DSE Schedules as prescribed by the Copyright Office shall be completed and filed by a cable system affected by the 1982 cable rate adjustment for the accounting periods January 1, 1983, through June 30, 1983 (83–1), and July 1, 1983, through December 31, 1983 (83–2). Each Supplemental DSE schedule shall contain the information required by that form and its accompanying instructions.

(ii) The Supplemental DSE Schedule will be mailed to all cable systems whose gross receipts for secondary transmissions total $214,000 or more either for accounting period 83–1 or for 83–2, and shall be completed and returned to the Copyright Office with the supplemental royalty fee due, if any, within sixty-five (65) days from the date of mailing by the Copyright Office.

(iii) Cable systems located wholly outside all major and smaller television markets as defined by the FCC are not affected by the 1982 cable rate adjustment. Such systems shall complete a certifying statement provided in the Supplemental DSE Schedule and return in within sixty-five days from the date of mailing by the Copyright Office.

(iv) Revised Statement of Account form CS/SA–3 shall be completed and filed for the accounting periods January 1, 1984, through June 30, 1984, *et seq.*, by a cable system whose semiannual gross receipts for secondary transmissions total $214,000 or more in accordance with paragraph (c) of this section. The Statement shall contain the information required by that form and its accompanying instructions.

(5)(i) It shall be presumed that the 3.75% rate of 37 CFR 308.2(c) applies to DSE's accruing from newly added distant signals, carried for the first time by a cable system after June 24, 1981.

(ii) The presumption of paragraph (h)(5)(i) of this section can be rebutted in whole or in part:

(A) By actual carriage of a particular distant signal prior to June 25, 1981, as

reported in Statements of Account duly filed with the Copyright Office ("actual carriage"), unless the prior carriage was not permitted by the FCC; or

(B) By carriage of no more than the number of distant signals which was or would have been allotted to the cable system under the FCC's quota for importation of network and nonspecialty independent stations [47 CFR 76.59(b), 76.61 (b) and (c) and 76.63, referring to 76.61 (b) and (c), in effect on June 24, 1981].

(6) To qualify as an FCC-permitted signal on the ground of individual waiver of the FCC rules (47 CFR 76.7 in effect on June 24, 1981), the waiver must have actually been granted by the FCC, and the signal must have been first carried by the cable system after April 15, 1976.

(7) Expanded geographic carriage after June 24, 1981, of a signal previously carried within only certain parts of a cable system is governed by the current base rate and the surcharge, if applicable.

(8) In cases of expended temporal carriage of the same signal, previously carried pursuant to the FCC's former part-time or subsitute carriage rules [47 CFR 76.61(b)(2), 76.61 (e)(1) and (e)(3), and 76.63, referring to 76.61 (e)(1) and (e)(3), in effect on June 24, 1981], the 3.75% rate shall be applied to any additional fraction of a DSE accruing from the expanded temporal carriage of that signal. To identify such additional DSE's, a comparison shall be made of DSE's reported for that signal in any single accounting period prior to the July 1, 1981, to December 31, 1981, period (81–2), as designated by the cable system, with the DSE's for that same signal reported in the current relevant accounting period.

(9) Substitution of like signals pursuant to 37 CFR 308(c)(2) is possible at the relevant non-3.75% rate (the surcharge together with the current base rate, or the current base rate alone) only if the substitution does not exceed the number of distant signals which was or would have been allotted to the cable system under the FCC's television market quota for importation of network and nonspecialty independent stations (47 CFR 76.59(b), 76.61 (b) and (c), and 76.63, referring to 76.61 (b) and (c), in effect on June 24, 1981.

* * * * *

(17 U.S.C. 111, 702)

Dated: June 26, 1984.

David Ladd,

Register of Copyrights.

[FR Doc. 84–17455 Filed 6–28–84; 8:45 am]

BILLING CODE 1410–03–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1

[OA–FRL 2619–3]

Statement of Organization and General Information

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document updates the statement of organization and general information to reflect the current organization of the U.S. Environmental Protection Agency.

EFFECTIVE DATE: June 28, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Gary M. Katz, Director, Management and Organization Division, Office of Administration, 202–382–5000.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 1

Organization and functions (Government agencies).

Dated: June 26, 1984.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

Part 1 of Title 40 of the Code of Federal Regulations is revised as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Subpart A—Introduction

Sec.

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1.3 Purpose and functions.
1.5 Organization and general information.
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Sec.
1.61 Regional Offices.

Authority: 5 U.S.C. 552.

Subpart A—Introduction

§ 1.1 Creation and authority.

Reorganization Plan 3 of 1970, established the U.S. Environmental Protection Agency (EPA) in the Executive branch as an independent Agency, effective December 2, 1970.

§ 1.3 Purpose and functions.

The U.S. Environmental Protection Agency permits coordinated and effective governmental action to assure the protection of the environment by abating and controlling pollution on a systematic basis. Reorganization Plan 3 of 1970 transferred to EPA a variety of research, monitoring, standard setting, and enforcement activities related to pollution abatement and control to provide for the treatment of the environment as a single interrelated system. Complementary to these activities are the Agency's coordination and support of research and antipollution activities carried out by State and local governments, private and public groups, individuals, and educational institutions. EPA reinforces efforts among other Federal agencies with respect to the impact of their operations on the environment.

§ 1.5 Organization and general information.

(a) The U.S. Environmental Protection Agency's basic organization consists of Headquarters and 10 Regional Offices. EPA Headquarters in Washington, D.C. maintains overall planning, coordination and control of EPA programs. Regional Administrators head the Regional Offices and are responsible directly to the Administrator for the execution of the Agency's programs within the boundaries of their Regions.

(b) EPA's Directives System contains definitive statements of EPA's organization, policies, procedures, assignments of responsibility, and delegations of authority. Copies are available for public inspection and copying at the Management and Organization Division, 401 M Street SW., Washington, D.C. 20460. Information can be obtained from the Office of Public Affairs at all Regional Offices.

(c) EPA conducts procurement pursuant to the Federal Property and Administrative Services Act, the Federal Procurement Regulations, and implementing EPA regulations.

§ 1.7 Location of principal offices.

(a) The EPA Headquarters is in Washington, D.C. The mailing address is 401 M Street SW., Washington, D.C. 20460.

(b) The addresses of (and States served by) the EPA Regional Offices (see § 1.61) are:

(1) Region I, U.S. Environmental Protection Agency, Room 2203, John F. Kennedy Federal Building, Boston, MA 02203. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.)

(2) Region II, U.S. Environmental Protection Agency, Room 1009, 26 Federal Plaza, New York, NY 10278. (New Jersey, New York, Puerto Rico, and the Virgin Islands.)

(3) Region III, U.S. Environmental Protection Agency, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106. (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia.)

(4) Region IV, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, GA 30365. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.)

(5) Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604. (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.)

(6) Region VI, U.S. Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, TX 75270. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.)

(7) Region VII, U.S. Environmental Protection Agency, 324 East Eleventh Street, Kansas City, MO 64106. (Iowa, Kansas, Missouri, and Nebraska.)

(8) Region VIII, U.S. Environmental Protection Agency, Lincoln Tower, 1860 Lincoln Street, Denver, CO 80295. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.)

(9) Region IX, U.S. Environmental Protection Agency, 215 Freemont Street, San Francisco, CA 94105. (Arizona, California, Hawaii, Nevada, American Samoa, Trust Territories of the Pacific Islands, Guam, Wake Island, and the Northern Marianas.)

(10) Region X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 93101. (Alaska, Idaho, Oregon, and Washington.)

Subpart B—Headquarters

§ 1.21 General.

EPA Headquarters is comprised of (a) the Office of the Administrator; (b) two Associate Administrators and four staff offices which advise the Administrator on cross-cutting Agency headquarters and regional issues and conduct programs with respect to EPA's interface with other national and international governmental organizations; (c) the Office of Inspector General; (d) the Office of General Counsel; (e) and nine operational offices, each headed by an Assistant Administator, responsible for carrying-out EPA's major environmental and administrative programs.

§ 1.23 Office of the Administrator.

The Environmental Protection Agency is headed by an Administrator who is appointed by the President, by and with the consent of the Senate. The Administrator is responsible to the President for providing overall supervision to the Agency, and is assisted by a Deputy Administrator also appointed by the President, by and with the consent of the Senate. The Deputy Administrator assists the Administrator in the discharge of Agency duties and responsibilities and serves as Acting Administrator in the absence of the Administrator.

§ 1.25 Staff Offices.

(a) *Office of Administrative Law Judges.* The Office of Administrative Law Judges, under the supervision of the Chief Administrative Law Judge, is responsible for presiding over and conducting formal hearings, other hearings, and issuance of initial decisions, if appropriate, in such proceedings. The Office provides supervision of the Administrative Law Judges, who operate as a component of the Office of Administrative Law Judges, in certain Agency Regional Offices. The Office provides the Agency Hearing Clerk.

(b) *Office of Civil Rights.* The Office of Civil Rights, under the supervision of a Director, serves as the principal adviser to the Administrator with respect to EPA's civil rights programs. The Office develops policies, procedures, and regulations to implement the Agency's civil rights responsibilities, and provides direction to Regional and field activities in the Office's area of responsibilities. The Office implements and monitors the Agency's equal employment opportunity program; provides advice and guidance to EPA program officials and Regional Administrators on EEO matters; serves as advocate for furthering career opportunities for minorities and women; and processes complaints of discrimination for Agency disposition. The Office assures: (1) Maximum participation of minority business enterprises under EPA contracts and grants; (2) equal employment opportunity under Agency service contracts, construction contracts, and grants; (3) compliance with the Davis-Bacon Act and related acts; (4) compliance with the provisions of laws affecting Agency programs requiring nondiscrimination on account of age and physical handicap and; (5) services or benefits are dispensed under any program or activity receiving Agency financial assistance on a nondiscrimination basis.

(c) *Science Advisory Board.* The Science Advisory Board, under the direction of a Director, provides expert and independent advice to the Administrator on the Scentific and technical issues facing the Agency. The Office advises on broad, scientific, technical and policy matters; assesses the results of specific research efforts; assists in identifying emerging environmental problems; and advises the Administrator on the cohesiveness and currency of the Agency's scientific programs.

(d) *Office of Small and Disadvantaged Business Utilization.* The Office of Small and Disadvantaged Business Utilization, under the supervision of a Director, is responsible for developing policy and procedures implementing the Agency's business utilization responsibilities. The Office provides information and assistance to components of the Agency's field offices responsible for carrying out related activities. The Office develops and implements a program to provide the maximum utilization of women-owned business enterprises in all aspects of EPA contract work; in collaboration with the Procurement and Contracts Management Division, develops programs to stimulate and improve involvement of small and minority business enterprises; and provides technical advisers to assist designated Procurement Center Representatives of the Small Business Administration in their duties. The Office represents EPA at hearings, interagency meetings, conferences and other appropriate forums on matters related to the advancement of these cited business enterprises in EPA's Federal Contracting Program.

§ 1.27 Offices of the Associate Administrators.

(a) *Office of International Activities.* The Office of the International Activities, under the supervision of an Associate Administrator, provides direction to and supervision of the activities, programs, and staff assigned to the Office of International Activities.

All of the functions and responsibilities of the Associate Administrator are Agencywide, and apply to all international activities of the Agency. The Office develops policies and procedures for the direction of the Agency's international programs and activities, subject to U.S. foreign policy, and assures that adequate program, scientific, and legal inputs are provided. It conducts continuing evaluations of the Agency's international activities and makes appropriate recommendations to the Administrator. The Office advises the Administrator and principal Agency officials on the progress and effect of foreign and international programs and issues. It serves as the Administrator's representative in contacts with the Department of State and other Federal agencies concerned with international affairs. It negotiates arrangements or understandings relating to international cooperation with foreign organizations. Coordinates Agency international contacts and commitments; serves as the focal point for responding to requests for information relating to EPA international activities; and provides an initial point of contact for all foreign visitors. The Office maintains liaison with all relevant international organizations and provides representation where appropriate. It establishes Agency policy, and approves annual plans and modifications for travel abroad and attendance at international conferences and events. It provides administrative support for the general activities of the Executive Secretary of the U.S. side of the US–USSR/PRC agreements on environmental protection and of the U.S. Coordinator for the NATO Committee on the Challenges of Modern Society. The Office supervises these programs with respect to activities which are completely within the purview of EPA.

(b) *Office of Regional Operations.* The Office of Regional Operations, under the supervision of an Associate Administrator, reports directly to the Administrator and Deputy Administrator. The Office serves as the primary communications link between the Administrator/Deputy Administrator and the Regional Administrators. It provides a Headquarters focus for ensuring the involvement of Regions, or consideration of Regional views and needs, in all aspects of the Agency's work. The Office is responsible for assuring Regional participation in Agency decision-making processes, assessing the impact of Headquarters actions on Regional operations, and acting as ombudsman to resolve Regional problems on behalf of the Administrator. The Associate Administrator coordinates Regional issues, organizes Regional Administrator meetings and work groups; and coordinates Regional responses to specific issues. In addition, the Office is responsible for working with the Regional Offices to further the consistent application of national program policies by reinforcing existing administrative, procedural, and program policy mechanisms as well as through initiation of reviews of significant Regional issues of interest to the Administrator. It continually monitors responsiveness and compliance with established policies and technical needs through formal and informal contact and free dialogue. The Office initiates and conducts on-site field visits to study, analyze, and resolve problems of Regional, sectional, and national scale.

§ 1.29 Office of Inspector General.

The Office of Inspector General assumes overall responsibility for audits and investigations relating to EPA programs and operations. The Office provides leadership and coordination and recommends policies for other Agency activities designed to promote economy and efficiency and to prevent and detect fraud and abuse in such programs and operations. The Office of the Inspector General informs the Administrator, Deputy Administrator, and Congress of serious problems, abuses and deficiencies relating to EPA programs and operations, and of the necessity for and progress of corrective action; and reviews existing and proposed legislation and regulations to assess the impact on the administration of EPA's programs and operations. The Office recommends policies for, and conducts or coordinates relationships between, the Agency and other Federal, State and local government agencies, and nongovernmental entities on all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered by the Agency.

§ 1.31 Office of General Counsel.

The General Counsel serves as the primary legal adviser to the Administrator; provides legal service to all organizational elements of the Agency with respect to all Agency programs and activities; provides legal opinions, legal counsel, and litigation support; and assists in the formulation and administration of the Agency's policies and programs as legal adviser.

§ 1.33 Office of Administration and Resources Management.

The Office of Administration and Resources Management is under the supervision of the Assistant Administrator for Administration and Resources Management who provides services to all of the programs and activities of the Agency, except as may be specifically noted. In addition, the assistant administrator has primary responsibility Agencywide for policy and procedures governing the functional areas outlined below. The major functions of the Office include resources management and systems (including budget and financial management), personnel services, occupational health and safety, administrative services, organization and management analysis and systems development, information management and services, automated data processing systems and procurement through contracts and grants. This Office is the primary point of contact and manages Agencywide internal controls, audit resolution and follow-up, and government-wide management improvement initiatives. In the performance of the above functions and responsibilities, the Assistant Administrator for Administration and Resources Management represents the Administrator in communications with the Office of Management and Budget, Office of Personnel Management, General Accounting Office, General Services Administration, Department of the Treasury, and other Federal agencies prescribing requirements for the conduct of Government budget, fiscal management and administrative activities.

(a) *Office of Administration and Resources Management, Research Triangle Park, NC (RTP).* The Office of Administration and Resources Management (OARM) RTP, under the supervision of a Director, provides services to all of the programs and activities at RTP and certain financial and automated data processing services Agencywide. The major functions of the Office include personnel services, financial management, procurement through contracts, library and other information services, general services (including safety and security, property and supply printing, distribution, facilities and other administrative services) and providing both local RTP and Agencywide automated data processing systems services. The Director, OARM, RTP, supervises the Offices of Administration, Financial Management and Data Processing, RTP.

(b) *Office of Administration, Cincinnati, Ohio.* The Office of

Administration at Cincinnati, Ohio, under the supervision of a Director, provides and administers personnel, procurement, safety and security, property and supply, printing, distribution, facilities, and other administrative service programs at Cincinnati and other specified geographic locations.

(c) *Office of the Comptroller.* The Office of the Comptroller, under the supervision of the Comptroller, is responsible for Agencywide budget, resources management and financial management functions, including program analysis and planning; budget formulation, preparation and execution; funding allotments and allocations; and developing and maintaining accounting systems, fiscal controls, and systems for payroll and disbursements. The Assistant Administrator's resource systems responsibilities are administered by this Office.

(d) *Office of Administration.* The Office of Administration, under the supervision of a Director, is responsible for the development and conduct of programs for personnel policies, procedures and operations; organization and management systems, control, and services; facilities, property and space management; personnel and property security; policies, procedures, and operations related to procurement through grants, contracts, and interagency agreements; and occupational health and safety.

(e) *Office of Information Resources Management.* The Office of Information Resources Management (OIRM), under the supervision of a Director, provides for an information resource management program (IRM) consistent with the provisions of Pub. L. 96–511. The Office establishes policy, goals and objectives for implementation of IRM; develops annual and long-range plans and budgets for IRM functions and activities; and promotes IRM concepts throughout the Agency. The Office coordinates IRM activities; plans, develops and operates information systems and services in support of the Agency's management and administrative functions, and other Agency programs and functions as required. The Office oversees the performance of these activities when carried out by other Agency components. The Office performs liaison for interagency sharing of information and coordinates IRM activities with OMB and GSA. The Office ensures compliance with requirements of Pub. L. 96–511 and other Federal laws, regulations, and guidelines relative to IRM; and chairs the Agency's IRM Steering Committee. The Office develops Agency policies and standards; and administers or oversees Agency programs for library systems and services, internal records management, and the automated collection, processing, storage, retrieval and transmission of data by or for Agency components and programs. The Office provides national program policy and technical guidance for: the acquisition of all information technology, systems and services by or for Agency components and programs, including those systems and services acquired by grantees and contractors using Agency funds; the operation of all Agency computers and telecommunications hardware and facilities; and establishment and/or application of telecommunications and Federal information processing standards. The Office reviews and evaluates information systems and services, including office automation, which are operated by other Agency components; and sets standards for and approves the selection of Agency personnel who are responsible for the technical management of these activities. The Office coordinates its performance of these functions and activities with the Agency's information collection policies and budgets managed by the Office of Policy, Planning and Evaluation.

(f) *The Office of Human Resources Management.* The Office of Human Resources Management, under the supervision of a Director, designs strategies, plans, and policies aimed at developing and training all employees, revitalizing EPA organizations, and matching the right people with the right jobs. The Office is responsible for developing and assuring implementation of policies and practices necessary for EPA to meet its present and future workforce needs. This includes consideration of the interrelationships between the environmental protection workforce needs of EPA and State governments. For Senior Executive Service (SES) personnel, SES candidates, Presidential Executive Interchange Participants, and Management Interns, OHRM establishes policies; assesses and projects Agency executive needs and workforce capabilities; creates, establishes, and implements training and development strategies and programs; provides the full range of personnel functions; supports the Performance Review Board (PRB) and the Executive Resources Board (ERB); and reassigns SES personnel with the concurrence of the ERB. For the areas of workforce management and employee and organizational development, OHRM develops strategies, plans, and policies; coordinates Agencywide implementation of those strategies, plans, and policies; and provides technical assistance to operating personnel offices and States. OHRM, in cooperation with the Office of the Comptroller, evaluates problems with previous workyear use, monitors current workyear utilization, and projects future workyear needs in coordination with the Agency's budget process. The Office is the lead office for coordination of human resources management with the Agency's Strategic Planning and Management System. The Office develops methodologies and procedures for evaluations of Agency human resources management activities; conducts evaluations of human resources management activities Agencywide; and carries out human resources management projects of special interest to Agency management. The Office coordinates its efforts with the Office of Administration (specifically the Personnel Management Division and the Management and Organization Division), the Office of the Comptroller, the Office of Information Resources Management, and the Office of Policy, Planning and Evaluation.

§ 1.35 Office of Enforcement and Compliance Monitoring.

The Office of Enforcement and Compliance Monitoring, under the supervision of the Assistant Administrator for Enforcement and Compliance Monitoring, serves as the principal adviser to the Administrator in matters concerning enforcement and compliance; and provides the principal direction and review of civil enforcement activities for air, water, waste, pesticides, toxics, and radiation. The Assistant Administrator reviews the efforts of each Assistant and Regional Administrator to assure that EPA develops and conducts a strong and consistent enforcement and compliance monitoring program. The Office manages the national criminal enforcement program and provides technical expertise for enforcement activities.

§ 1.37 Office of External Affairs.

The Office of External Affairs, under the supervision of the Assistant Administrator for External Affairs, serves as the senior adviser to the Administrator for the functional areas within this Office. The functions and responsibilities assigned to the Assistant Administrator are Agencywide, and except as specifically

noted, apply to the provision of advice and direct support to the Administrator as well as policy direction and assistance to all of the programs and activities of the Agency. The major functions of the Office include public information, press services and audiovisual support; congressional liaison; communication and coordination with State and local governmental groups; preparation, review, and clearance of proposed legislation and reports on legislation; and serving as the EPA focal point for Environmental Impact Statement (EIS) functions and activities involving interaction with other Federal agencies. The Office staff consults on and provides assistance to senior policy and program officials and other offices in the Agency. In addition to the performance at Headquarters of the functions assigned to them, each of the offices within the Office of External Affairs is responsible for the policy and operational guidance for the performance of those functions at Agency field establishments.

(a) *Office of Federal Activities.* The Office of Federal Activities is headed by a Director who reports to the Assistant Administrator for External Affairs and supervises all the functions of the Office. The Director acts as national program manager for five major programs that include: (1) The review of other agency environmental impact statements and other major actions under the authority of section 309 of the Clean Air Act, (2) implementation of EPA's responsibilities under section 404 (dredge and fill permits) of the Clean Water Act, (3) EPA compliance with the National Environmental Policy Act (NEPA) and related laws, directives, and Executive policies concerning special environmental areas and cultural resources, (4) compliance with Executive policy on American Indian affairs and the development of programs for environmental protection on Indian lands, and (5) the development and oversight of national programs and internal policies, strategies, and procedures for implementing Executive Order 12088 and other administrative or statutory provisions concerning compliance with environmental requirements by Federal facilities. The Director chairs the Standing Committee on Implementation of Executive Order 12088. The Office serves as EPA's principal point of contact and liaison with other federal agencies and provides consultation and technical assistance to those agencies relating to EPA's areas of expertise and responsibility. The Office administers the filing and information system for all federal Environmental Impact Statements under agreement with the Council on Environmental Quality (CEQ) and provides liaison with CEQ on this function and related matters of NEPA program administration. The Office provides a central point of information for EPA and the public on environmental impact assessment techniques and methodologies.

(b) *Office of Public Affairs.* The Office of Public Affairs is under the supervision of a Director who serves as chief spokesperson for the Agency and as a principal adviser, along with the Assistant Administrator for External Affairs, to the Administrator, Deputy Administrator, and Senior Management Officials, on public affairs aspects of the Agency's activities and programs. The Office of Public Affairs provides to the media adequate and timely information as well as responses to queries from the media on all EPA program activities. It assures that the policy of openness in all information matters, as enunciated by the Administrator, is honored in all respects. Develops publications to inform the general public of major EPA programs and activities; it also develops informational materials for internal EPA use in Headquarters and at the Regions, Labs and Field Offices. It maintains clearance systems and procedures for periodicals and nontechnical information developed by EPA for public distribution, and reviews all publications for public affairs interests. The Office of Public Affairs provides policy direction for, and coordination and oversight of EPA's community relations program. It provides a system for ensuring that EPA educates citizens and responds to their concerns about all environmental issues and assures that there are opportunities for public involvement in the resolution of problems. The Office supervises the production of audio-visual materials, including graphics, radio and video materials, for the general public and for internal audiences, in support of EPA policies and programs. The Office provides program direction and professional review of the performance of public affairs functions in the Regional Offices of EPA, as well as at laboratories and other field offices. The Office of Public Affairs is responsible for reviewing interagency agreements and Headquarters purchase request requisitions expected to result in contracts in the areas of public information and community relations. It develops proposals and reviews Headquarters grant applications under consideration when public affairs goals are involved.

(c) *Office of Legislative Analysis.* The Office of Legislative Analysis, under the supervision of a Director who serves in the capacity of Legislative Counsel, is responsible for legislative drafting and liaison activities relating to the Agency's programs. It exercises responsibility for legislative drafting; reports to the Office of Management and Budget and congressional committees on proposed legislation and pending and enrolled bills, as required by OMB Circular No. A–19 and Bulletin No. 72–6; provides testimony on legislation and other matters before congressional committees; and reviews transcripts of legislative hearings. It maintains liaison with Office of Congressional Liaison on all Agency activities of interest to the Congress. The Office works closely with the staffs of various Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors in accordance with established Agency procedures, in the development of the Agency's legislative program. The Office assists the Assistant Administrator for External Affairs and the Agency's senior policy officials in guiding legislative initiatives through the legislative process. It advises the Assistant Administrator for Administration and Resources Management in matters pertaining to appropriations legislation. It works closely with the Office of Federal Activities to assure compliance with Agency procedures for the preparation of environmental impact statements, in relation to proposed legislation and reports on legislation. The Office coordinates with the Office of Management and Budget, other agencies, and congressional staff members on matters within its area of responsibility; and develops suggested State and local environmental legislative proposals, using inputs provided by other Agency components. The Legislative Reference Library provides legislative research services for the Agency. The Library secures and furnishes Congressional materials to all EPA employees and, if available, to other government agencies and private organizations; and it also provides the service of securing, upon request, EPA reports and materials for the Congress.

(d) *Office of Congressional Liaison.* The Office of Congressional Liaison is under the supervision of a Director who serves as the principal adviser to the Administrator with respect to congressional activities. All of the functions and responsibilities of the

Director are Agencywide and apply to the provision of services with respect to all of the programs and activities of the Agency. The Office serves as the principal point of congressional contact with the Agency and maintains an effective liaison with the Congress on Agency activities of interest to the Congress, and, as necessary, maintains liaison with Agency Regional and field officials, other Government agencies, and public and private groups having an interest in legislative matters affecting the Agency. It assures the provision of prompt response to the Congress on all inquiries relating to activities of the Agency; and monitors and coordinates the continuing operating contacts between the staff of the Office of the Comptroller and staff of the Appropriations Subcommittees of Congress.

(e) *Office of Intergovernmental Liaison.* The Office of Intergovernmental Liaison is under the supervision of a Director who serves as the principal point of contact with public interest groups representing general purpose State and local governments, and is the principal source of advice and information for the Administrator and the Assistant Administrator for External Affairs on intergovernmental relations. The Office maintains liaison on intergovernmental issues with the White House and OMB; identifies and seeks solutions to emerging intergovernmental issues; recommends and coordinates personal involvement by the Administrator and Deputy Administrator in relations with State, county and local government officials; coordinates and assists Headquarters components in their handling of broad-gauged and issue-oriented intergovernmental problems. It works with Regional Administrators and the Office of Regional Operations to encourage the adoption of improved methods for dealing effectively with State and local governments on specific EPA program initiatives; works with the Immediate Office of the Administrator, Office of Congressional Liaison, Office of Public Affairs, and the Regional Offices to Develop and carry out a comprehensive liaison program; and tracks legislative initiatives which affect the Agency's intergovernmental relations.

§ 1.39 Office of Policy, Planning and Evaluation.

The Assistant Administrator for Policy, Planning and Evaluation serves as principal adviser to the Administrator on Agency policy and planning issues and as such is responsible for supervision and management of the following: Policy analysis; standards and regulations; and management strategy and evaluation. The Assistant Administrator represents the Administrator with Congress and the Office of Management and Budget, and other Federal agencies prescribing requirements for conduct for government management activities.

(a) *Office of Policy Analysis.* The Office of Policy Analysis is under the supervision of a Director who performs the following functions on an Agencywide basis: economic analysis of Agency programs, policies, standards, and regulations, including the estimation of abatement costs; research into developing new benefits models; benefit-cost analyses; impact assessments; intermediate and long-range strategic studies; consultation and analytical assistance in the areas described above to senior policy and program officials and other offices in the Agency; development and coordination proposals for major new Agency initiatives; liaison with other agencies; universities, and interest groups on major policy issues and developement of a coordinated Agency position; and development of integrated pollution control strategies for selected industrial and geographical areas.

(b) *Office of Standards and Regulations.* The Office of Standards and Regulations is under the supervision of a Director who is responsible for: involving the Office of Policy, Planning and Evaluation (OPPE) in regulatory review; conducting technical and statistical analysis of proposed standards, regulations and guidelines; serving as the Agency focal point for identifying, developing and implementing alternatives to conventional "command and control" regulations; conducting analyses of Agency activities related to chemical substances and providing mechanisms for establishing regulatory priorities and resolving scientific issues affecting rulemaking; ensuring Agency compliance with the Paperwork Reduction Act; evaluating and reviewing all Agency information collection requests and activities, and, in cooperation with the Office of Administration and Resources Management and the Office of Management Systems and Evaluation, evaluating Agency management and uses of data for decision-making.

(c) Office of Management Systems and Evaluation. The Office of Management Systems and Evaluation is under the supervision of a Director who directs and coordinates the development, implementation and administration of Agencywide systems for plannings, tracking, and evaluating the accomplishments of Agency programs. In consultation with other offices, the Office develops a long-range policy framework for Agency goals, and objectives, identifies strategies for achieving goals, establishes timetables for objectives, and ensures that programs are evaluated against their accomplishments of goals.

§ 1.41 The Office of Air and Radiation.

The Office of Air and Radiation is under the supervision of the Assistant Administrator for Air and Radiation who serves as principal adviser to the Administrator in matters pertaining to air and radiation programs, and is responsible for the management of these EPA programs: program policy development and evaluation; environmental and pollution sources' standards development; enforcement of standards; program policy guidance and overview, technical support or conduct of compliance activities and evaluation of Regional air and radiation program activities; development of programs for technical assistance and technology transfer; and selected demonstration programs.

(a) *Office of Mobile Sources.* The Office of Mobile Sources, under the supervision of a Director, is responsible for the mobile source air pollution control functions of the Office of Air and Radiation. The Office is responsible for: characterizing emissions from mobile sources and related fuels; developing programs for their control, including assessment of the status of control technology and in-use vehicle emissions; for carrying out, in coordination with the Office of Enforcement and Compliance Monitoring as appropriate, a regulatory compliance program to ensure adherence of mobile sources to standards; and for fostering the development of State motor vehicles emission inspection and maintenance programs.

(b) *Office of Air Quality Planning and Standards.* The Office of Air Quality Planning and Standards, under the supervision of a Director, is responsible for the air quality planning and standards functions of the Office of Air and Radiation. The Director for Air Quality Planning and Standards is responsible for emission standards for new stationary sources, and emission standards for hazardous pollutants; for developing national programs, technical policies, regulations, guidelines, and criteria for air pollution control; for assessing the national air pollution control program and the success in

achieving air quality goals; for providing assistance to the States, industry and other organizations through personnel training activities and technical information; for providing technical direction and support to Regional Offices and other organizations; for evaluating Regional programs with respect to State implementation plans and strategies, technical assistance, and resource requirements and allocations for air related programs; for developing and maintaining a national air programs data system, including air quality, emissions and other technical data; and for providing effective technology transfer through the translation of technological developments into improved control program procedures.

(c) *Office of Radiation Programs.* The Office of Radiation Programs, under the supervision of a Director, is responsible to the Assistant Administrator for Air and Radiation for the radiation activities of the Agency, including development of radiation protection criteria, standards, and policies; measurement and control radiation exposure; and research requirements for radiation programs. The Office provides technical assistance to States through EPA Regional Offices and other agencies having radiation protection programs; establishes and directs a national surveillance and investigation program for measuring radiation levels in the environment; evaluates and assesses the impact of radiation on the general public and the environment; and maintains liaison with other public and private organizations involved in environmental radiation protection activities. The Office coordinates with and assists the Office of Enforcement and Compliance Monitoring in enforcement activities where EPA has jurisdiction. The Office provides editorial policy and guidance, and assists in preparing publications.

§ 1.43 Office of Pesticides and Toxic Substances.

The Office of Pesticides and Toxic Substances is under the supervision of the Assistant Administrator for Pesticides and Toxic Substances who serves as the principal adviser to the Administrator in matters pertaining to assessment and regulation of pesticides and toxic substances. The Assistant Administrator is responsible for managing the Agency's pesticides and toxic substances programs, and for promoting coordination of all Agency programs engaged in toxic substances activities; for establishing Agency strategies; for implementation and integration of the pesticides and the toxic programs under applicable Federal statutes; for developing and operating Agency programs and policies for assessment and control of pesticides and toxic substances; for developing recommendations for Agency priorities for research, monitoring, regulatory, and information gathering activities relating to pesticides and toxic substances; for developing scientific, technical, economic, and social data bases for the conduct of hazard assessments and evaluations in support of toxic substances and pesticides activities; directing pesticides and toxic substances compliance programs; for providing toxic substances and pesticides program guidance to Regional Offices; and for monitoring, evaluating and assessing pesticides and toxic substances program operations in Headquarters and Regional Offices.

(a) *Office of Pesticide Programs.* The Office of Pesticide Programs is under the management of a Director who is responsible for leadership of the overall pesticide activities of the Agency, including the development of strategic plans for the control of the national environmental pesticide situations. Such plans are implemented by the Office of Pesticide Programs, other EPA components, other Federal agencies, or by State, local and private sectors. The Office is responsible for the establishment of tolerance levels for pesticide residues which occur in or on food; registration and reregistration of pesticides; special review of pesticides suspected of posing unreasonable risks to human health or the environment; monitoring of pesticide residue levels in food, humans, and nontarget fish and wildlife; preparation of pesticide registration guidelines; development of standards for the registration and reregistration of pesticide products; provision of program policy direction to technical and manpower training activities in the pesticides area; development of research needs and monitoring requirements for the pesticide program and related areas; review of impact statements dealing with pesticides; and carrying out assigned international activities.

(b) *Office of Toxic Substances.* The Office of Toxic Substances, under the management of a Director, is responsible for the toxic substances activities of the Agency. The Office is responsible for developing and operating Agency programs and policies for new and existing chemicals. In these areas the Office is responsible for information collection; data development; health, environmental and economic assessment; and negotiated or regulatory control actions. The Office provides operational guidance to EPA Regional Offices, reviews and evaluates toxic substances activities at EPA Headquarters and Regional Offices, and coordinates TSCA activities with other EPA offices and Federal and State agencies. The Office is also responsible for coordinating communication with the industrial community on matters relating to implementation of TSCA and managing the joint planning of toxics research and development under the auspices of the Chemical Testing and Assessment Research Committee (CTARC).

§ 1.45 Office of the Assistant Administrator for Research and Development.

The Office of Research and Development is under the supervision of the Assistant Administrator for Research and Development who serves as the principal science adviser to the Administrator, and is responsible for the development, direction, and conduct of a national research, development and demonstration program in: pollution sources, fate, and health and welfare effects; pollution prevention and control, and waste management and utilization technology; environmental sciences; and monitoring systems. The Office participates in the development of Agency policy, standards, and regulations and provides for dissemination of scientific and technical knowledge, including analytical methods, monitoring techniques, and modeling methodologies. The Office serves as coordinator for the Agency's policies and programs concerning carcinogenesis and related problems and assures appropriate quality control and standardization of analytical measurement and monitoring techniques utilized by the Agency. The Office exercises review and concurrence responsibilities on an Agencywide basis in all budgeting and planning actions involving monitoring which require Headquarters approval.

(a) *Office of Monitoring Systems and Quality Assurance.* The Office of Monitoring Systems and Quality Assurance, under the supervision of a Director, is responsible for planning, managing and evaluating a comprehensive program for: (1) Development and demonstration of techniques and methods to measure exposure and to relate ambient concentrations to exposure by critical receptors; (2) research development and demonstration of new monitoring methods, systems, techniques and equipment for detection, identification and characterization of pollutants at the source, in the ambient environment, and

for use as reference or standard monitoring methods; (3) establishment, direction and coordination of Agencywide quality assurance programs; and (4) development and provision of quality assurance methods, techniques and materials including validation and standardization of analytical methods, sampling, techniques, quality control methods, standard reference materials, and techniques for data collection, evaluation and interpretation. The Office identifies specific research, development, demonstration and service needs and priorities; establishes program policies and guidelines; develops program plans, including objectives and estimates or resources required to accomplish objectives; administers the approved program and activities; assigns approved program and activities; assigns program responsibility and resources to the laboratories; directs and supervises assigned laboratories in program administration; and conducts reviews of program progress and takes action as necessary to assure timeliness, quality and responsiveness of outputs.

(b) *Office of Environmental Engineering and Technology.* The Office of Environmental Engineering and Technology, under the supervision of the Director, is responsible for planning, managing and evaluating a comprehensive program for the: (1) development and demonstration of cost-effective methods for control and management of operations with environmental impacts associated with the extraction, processing, conversion, and transportation of energy, minerals, and other resources; and with industrial processing and manufacturing facilities; (2) development and demonstration of cost-effective methods for the prevention or management of pollution discharge or waste disposal into the environment from public sector activities, including publicly-owned waste water and solid waste facilities; (3) improvement of drinking water supply and system operations, including improved understanding of water supply technology and water supply criteria. The Office develops program plans including objectives and justifies these resources, and, after receiving them, carries out the approved program and activities; (4) Assigns objectives and resources to the laboratories assigned to the Office. The Office conducts appropriate reviews to assure the quality, timeliness and responsiveness of outputs, and (5) analysis of the relative environmental and socio-economic impacts of energy, minerals, and other resource extraction, transportation, processing, conversion, and utilization systems, and of other industry operations. The Office is the focal point for providing liaison with the rest of the Agency and with the Department of Energy on issues associated with energy development (excluding issues of research planning and implementation of the measurement, fate, and effects of energy pollutants that are conducted under the Interagency Energy/Environment Program), and liaison with the rest of the Agency on issues related to controlling pollutant discharges.

(c) *Office of Environmental Processes and Effects Research.* The Office of Environmental Processes and Effects Research, under the supervision of the Director, is responsible for planning, managing, and evaluating a comprehensive research program to develop the scientific and technological methods and data necessary to understand ecological processes, and predict broad ecosystems impacts, and to manage the entry, movement, and fate of pollutants upon nonhuman organisms and ecosystems. The comprehensive program includes: (1) The development of organism and ecosystem level effect data needed for the establishment of standards, criteria or guidelines for the protection of nonhuman components of the environment and ecosystems integrity and the prevention of harmful human exposure to pollutants; (2) the develoment of methods to determine and predict the fate, transport, and environmental levels which may result in human exposure and exposure of nonhuman components of the environment, resulting from the discharge of pollutants, singly or in combination into the environment, including development of source criteria for protection of environmental quality; (3) the development and demonstration of methods for the control or management of adverse environmental impacts from agriculture and other rural nonpoint sources; (4) the development and demonstration of integrated pest management strategies for the management of agriculture and urban pests which utilize alternative biological, cultural and chemical controls; (5) the development of laboratory and fieldscale screening tests to provide data that can be used to predict the behavior of pollutants in terms of movement in the environment, accumulation in the food chain, effects on organisms, and broad ecosystem impacts; (6) coordination of interragency research activities associated with the health and environmental impacts of energy production and use; and (7) development and demonstration of methods for restoring degraded ecosystems by means other than source control.

(d) *Office of Health Research.* The Office of Health Research, under the supervision of the Director, is responsible for the management of planning, implementing and evaluating a comprehensive, integrated human health research program which documents acute and chronic adverse effects to man from environmental exposure to pollutants and determines those exposures which have a potentially adverse effect on humans. The Office is responsible for criteria development and scientific assessments in support of the Agency's regulating and standard-settting activities. It develops methodology and conducts laboratory and field research studies; and develops interagency programs which effectively use pollutants. The Office is the Agency's focal point for providing liaison relative to human health effects and related human exposure issues (excluding issues related to the planning and implementation of research on the human health effects of energy pollutants which is conducted under the Interagency Energy/Environment Program). It responds to changing requirements of the Regions, program offices and other offices for priority technical assistance. In close coordination with Agency research and advisory committees, other agencies and offices, and interaction with academic and other independent scientific bodies, the Office develops health science policy for the Agency. Through these relationships and the scientific capabilities of its laboratories and Headquarters' staffs, the Office provides a centrum for matters pertaining to the effects of human exposure to environmental pollutants.

§ 1.47 Office of Solid Waste and Emergency Response.

The Office of Solid Waste and Emergency Response, under the supervision of the Assistant Administrator for Solid Waste and Emergency Response, provides Agencywide policy, guidance, and direction for the Agency's solid waste and emergency response programs. In addition to managing those programs, the Assistant Administrator serves as principal adviser to the Administrator in matters pertaining to them. The Assistant Administrator's responsibilities include: Program policy development and evaluation;

development of appropriate hazardous waste standards and regulations; ensuring compliance with applicable laws and regulations; program policy guidance and overview, technical support, and evaluation of Regional solid waste and emergency response activities; development of programs for technical, programmatic, and compliance assistance to States and local governments; development of guidelines and standards for the land disposal of hazardous wastes; analyses of the recovery of useful energy from solid waste; development and implementation of a program to respond to uncontrolled hazardous waste sites and spills (including oil spills); long-term strategic planning and special studies; economic and long-term environmental analyses; economic impact assessment of RCRA and CERCLA regulations; analyses of alternative technologies and trends; and cost-benefit analyses and development of OSWER environmental criteria.

(a) *Office of Waste Programs Enforcement.* The Office of Waste Programs Enforcement (OWPE), under the Supervision of a Director, manages a national program of technical compliance and enforcement under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). The Office provides guidance and support for the implementation of the CERCLA and RCRA compliance and enforcement programs. This includes the development of program strategies, long-term and yearly goals, and the formulation of budgets and plans to support implementation of strategies and goals. Resource requirements are estimated and allocated to the Regions based on workload models developed under the direction of OWPE. The Office provides program guidance through the development and issuance of policies, guidance and other documents and through training and technical assistance. It develops annual workplans which set forth activity goals, milestones and completion dates with resource requirements for the RCRA and CERCLA compliance and enforcement programs. These plans are then transmitted to the Regions and accountability measures are identified and agreed upon for inclusion in the Agency Management Accountability System (AMAS), the Action Tracking System (ATS) and the OSWER Workplans system. The Office oversees and supports Regions and States in the Implementation of the CERCLA and RCRA enforcement programs; accomplishes oversight through automated tracking systems, periodic field reviews, analysis of reports and other monitoring techniques; and provides support through the Office's scientific and engineering staff and contractual resources. The Office may assume responsibility for direct management of a limited number of CERCLA and RCRA enforcement actions which are multiregional in nature or are cases of national significance. However, management is normally exercised through planning, resource allocation, monitoring and review. The Office serves as the national technical expert for all matters relating to CERCLA and RCRA compliance and enforcement. OWPE relates closely to the Regions; the Office of Emergency and Remedial Response (OERR); the Office of Solid Waste (OSW); the Immediate Office to the Assistant Administrator (IO-OSWER); the Office of External Affairs (OEA); the Office of Enforcement and Compliance Monitoring (OECM); and other EPA offices as necessary. It represents the interests of the CERCLA and RCRA enforcement programs to other offices of the Agency and normally is represented on task forces, work groups and at meetings where issues relating to the programs are under consideration. In coordination with the Office of External Affairs (OEA) and IO-OSWER, represents the program to external organizations, including the Office of Management and Budget (OMB), Congress, the U.S. Department of Justice and other Federal Agencies, the media, public interest and industry groups, State and local governments and their associations and the public.

(b) *Office of Solid Waste.* The Office of Solid Waste, under the supervision of a Director, is responsible for the solid waste activities of the Agency. In particular, this Office is responsible for implementing the Resource Conservation and Recovery Act. The Office provides program policy direction to and evaluation of such activities throughout the Agency and establishes solid waste research requirements for EPA.

(c) *Office of Emergency and Remedial Response.* The Office of Emergency and Remedial Response, under the supervision of a Director, is responsible for the emergency and remedial response functions of the Agency. The Office is specifically responsible for: (1) Developing national strategy, programs, technical policies, regulations, and guidelines for the control of abandoned hazardous waste sites, and response to and prevention of oil and hazardous substance spills; (2) providing direction, guidance, and support to the Environmental Response Teams and overseeing their activities; (3) providing direction, guidance, and support to the Agency's nonenforcement emergency and remedial response to environmental emergencies; (4) providing direction, guidance, and support to the Agency's non-enforcement emergency and remedial response programs, including emergency and remedial responses to hazardous waste sites; (5) developing national accomplishment plans and resources; (6) scheduling the guidelines for program plans; (7) assisting in the training of personnel; (8) monitoring and evaluating the performance, progress, and fiscal status of the Regions in implementing emergency and remedial response program plans; (9) maintaining liaison with concerned public and private national organizations for emergency response; (10) supporting State emergency response programs; and (11) coordinating Office activities with other EPA programs.

§ 1.49 The Office of Water.

The Office of Water, under the supervision of the Assistant Administrator for Water who serves as the principal adviser to the Administrator in matters pertaining to water programs, is responsible for management of EPA's water programs, including program policy development and evaluation; environmental and pollution sources standards development; program policy guidance and overview; technical support; and evaluation of Regional water activities; the conduct of enforcement activities as they relate to water programs; development of programs for technical assistance and technology transfer; and development of selected demonstration programs.

(a) *Office of Water Enforcement and Permits.* The Office of Water Enforcement and Permits, under the supervision of a Director, implements program policy developed by the Office of Enforcement and Compliance Monitoring as it relates to the water and water supply enforcement activities of the Agency, including direct supervision of those enforcement activities reporting directly to the Office of Water Enforcement and Permits and technical program direction to the Regional water enforcement activities. The Office develops objectives and programs for water enforcement activities, including the development of procedures, regulatory material, guidelines, criteria, and policy statements designed to bring about actions by individuals, private

enterprise, and governmental bodies to improve the quality of water.

(b) *Office of Water Regulations and Standards.* The Office of Water Regulations and Standards, under the supervision of a Director, is responsible for the Agency's water regulations and standards functions. The Office is responsible for developing an overall program strategy for the achievement of water pollution abatement in cooperation with other appropriate program offices. The Office assures the coordination of all national water-related activities within this water program strategy, and monitors national progress toward the achievement of water quality goals and is responsible for the development of effluent guidelines and water quality standards, and other pollutant standards, regulations, and guidelines within the program responsibilities of the Office. It exercises overall responsibility for the development of effective State and Regional water quality regulatory control programs. The Office is responsible for the development and maintenance of a centralized water programs data system including compatible water quality, discharger, and program data files utilizing, but not displacing, files developed and maintained by other program offices. It is responsible for developing national accomplishment plans and resource and schedule guidelines for monitoring and evaluating the performance, progress, and fiscal status of the organization in implementing program plans. The Office represents EPA in activities with the Water Resources Council and other Federal agencies concerned with water quality regulations and standards.

(c) *Office of Water Program Operations.* The Office of Water Program Operations, under the supervision of a Director, is responsible for the Agency's water program operations functions. The Office is responsible for developing national programs, technical policies, regulations, and guidelines for the municipal wastewater treatment construction grants program and for water quality management and control of pollution from point and nonpoint sources; for providing technical direction and support to Regional Offices and other organizations; and for evaluating Regional and State programs with respect to municipal point and nonpoint source abatement and control, and manpower development for water-related activities. The Office is responsible for developing national accomplishment plans and resource and schedule guidelines for program plans required of the Divisions; for monitoring and evaluating the performance, progress, and fiscal status of the divisions in implementing program plans.

(d) *Office of Drinking Water.* The Office of Drinking Water, under the supervision of a Director, is responsible for water supply activities of the Agency, including the development of an implementation strategy which provides the national policy direction and coordination for the program. This Office establishes standards, develops regulations, policies, and guidelines for drinking water quality and treatment requisite to protect the public health and welfare and to protect existing and future groundwater sources of drinking water; provides guidance and technical information to State agencies, local utilities, and Federal facilities through the Regional Offices on program planning and phasing; evaluates the national level of compliance with the regulations; plans and develops policy guidance for response to national, Regional, and local emergencies; reviews and evaluates, with Regional Offices, technical data for the designation of sole-source aquifers; designs a national program of public information to encourage citizen participation aimed at the goal, "Safe Drinking Water for All Americans"; provides program policy direction for technical assistance and manpower training activities in the water supply area; identifies research needs and develops monitoring requirements for the national water supply program; develops national accomplishments' plans and resource schedule guidelines for monitoring and evaluating the program plans, and program performance, and fiscal status; develops program plans, and budget and program status reports for the water supply program; coordinates water supply activities with other Federal agencies as necessary; and serves as liaison with the National Drinking Water Advisory Council.

(e) *Office of Groundwater Protection.* The Office of Groundwater Protection, under the supervision of a Director, oversees implementation of the Agency's Groundwater Protection Strategy. This Office coordinates support of Headquarters and regional activities to develop stronger State government organizations and programs which foster groundwater protection. The Office directs and coordinates Agency analysis and approaches to unaddressed problems of groundwater contamination; and is principally responsible for establishing and implementing a framework for decisionmaking at EPA on groundwater protection issues, and serves as the focus of internal EPA policy coordination for groundwater.

Subpart C—Field Installations

§ 1.61 Regional offices.

Regional Administrators are responsible to the Administrator, within the boundaries of their Regions, for the execution of the Regional programs of the Agency and such other responsibilities as may be assigned, and serve as the Administrator's principal representatives in the Regions in contacts and relationships with Federal, State, interstate and local agencies, industry, academic institutions, and other public and private groups. Regional Administrators are responsible for accomplishing national program objectives within the Regions as established by the Administrator, Deputy Administrator, Associate Administrators, Assistant Administrators, and Heads of Headquarters Staff Offices. Regional Administrators develop, propose, and implement an approved Regional program for comprehensive and integrated environmental protection activities. Regional Administrators are responsible for total resource management in the Regions within guidelines provided by the Headquarters, and are responsible for translating technical program direction and evaluation, provided by the various Associated Administrators, Assistant Administrators and Heads of Headquarters Staff Offices, into effective operating programs at the Regional level, and assuring that such programs are executed efficiently. Regional Administrators exercise approval authority for proposed State standards and implementation plans; and provide for overall and specific evaluations of Regional programs, both internal Agency and State activities.

[FR Doc. 84-17443 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[OAR-FRL 2616-2]

Approval and Promulgation of Implementation Plans; State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: A revision to the Nevada State Implementation Plan (SIP) was

submitted to EPA by the Governor of Nevada on May 30, 1984 and is intended to provide for the attainment and maintenance of the Lead National Ambient Air Quality Standard (NAAQS) in Washoe County. This notice approves the submitted revisions with respect to section 110 of the Clean Air Act and incorporates them into the State Implementation Plan (SIP)

EFFECTIVE DATE: August 28, 1984.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Director, Air Management Division, Region 9, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Attn: Thomas Rarick, (415) 974–7641, FTS 454–7641.

ADDRESSES: A copy of the Washoe County revision to the Nevada State Implementation Plan (SIP) for Lead is located at the Region 9 Office and the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

The Office of the Federal Register, 1100 "L" Street, N.W., Room 8401, Washington, D.C. 20408

Department of Conservation and Natural Resources, Division of Environmental Protection, Capitol Complex, Carson City, NV 89770

Washoe County District Health Department, Division of Environmental Health Services, 1001 E. 9th, P.O. Box 11130, Reno, Nevada 89520–0027

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1980, the State of Nevada submitted a revision to their Lead SIP for Clark County. This revision provided a county-wide plan for attainment and maintenance of the Lead NAAQS. On February 12, 1981 (46 FR 12020) EPA proposed to approve Clark County's revision to the Nevada Lead SIP and on June 30, 1982 (47 FR 28374) the Clark County portion of the Nevada Lead SIP was approved. On November 5, 1981 the Governor of Nevada submitted a revision to the SIP for Lead covering all areas except Clark and Washoe Counties. Actions approving this revision were published on February 10, 1983 (48 FR 6105). On May 30, 1984 the Governor of Nevada submitted a revision to the SIP for Lead covering Washoe County. A public hearing was held by the State on April 26, 1984.

Discussion

The May 30, 1984, Washoe County revision to the Nevada Lead SIP was compared with the applicable requirements of 40 CFR Part 51, including emission inventory, control strategy, modeling, and new source review. Although the County has developed a separate Lead plan, the State maintains jurisdiction over certain types of sources, including power plants and all mobile sources. There are no significant stationary sources of Lead located in the County.

The Lead air quality data is taken from a single total suspended particulate (TSP) monitoring station located in the City of Sparks. The air quality data indicates that there have been no violations of the Lead Standard since 1975. Although past monitoring efforts have been hampered due to budget constraints, the County intends to commence analyzing TSP filters from 1982 onward for Lead and to establish another monitoring station in Sparks. The county has indicated, and EPA will ensure, that these sites will be located and operated according to the requirements of 40 CFR Part 58. Once these sites are established, a description will be available at the EPA Region 9 office, the address of which is listed above. Since automobile generated Lead emissions are the only notable Lead emission sources in Washoe County, the evaluation contained in the SIP submittal centers on these sources. The County relies upon Federal regulations which mandate the reduction of Lead in gasoline to achieve and maintain the Lead NAAQS. The SIP revision employs a rollback analysis which demonstrates maintenance of the Lead Standard.

New Source Review

Presently there are no sources located within Washoe County that emit 5 tons or more of Lead per year. In order to protect the County's attainment status, Section 030.010 of their Air Pollution Control Regulations was adopted. This Section provides a preconstruction review program for new sources, including stationary sources of Lead (regardless of size). The review program ensures that no project will be approved if it will result in violations of the Lead Standard. The above SIP elements satisfy the requirements of 40 CFR Part 51 for Lead.

EPA Actions

As a result of the above evaluation, EPA is taking final action under Section 110 of the Clean Air Act to approve the revision to the Nevada Lead SIP.

EPA's approval is being done without prior proposal because the revisions are noncontroversial, have limited impact, and no comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse comments, the approval will be withdrawn and a subsequent notice will be published.

The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Incorporation by reference of the State Implementation Plan for the State of Nevada was approved by the Director of the Federal Register on July 1, 1982.

Authority: Sections 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601 (a)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: June 21, 1984.

Alvin L. Alm,

Acting Administrator.

PART 52—[AMENDED]

Subpart DD of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart DD—Nevada

Section 52.1470 is amended by adding paragraph (c)(31)(i) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(31) The following amendments to the plan were submitted on May 30, 1984, by the Governor.

(i) Washoe County, Nevada Lead SIP Revision.

[FR Doc. 84-17393 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL 2617-6]

Standards of Performance for Stationary Sources; Amendments to Equipment Leaks Standard; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects portions of 40 CFR Part 60, Subpart VV, that were published May 30, 1984 (49 FR 22598).

This action is necessary to correct typographical errors that appeared in the May 30, 1984, publication of 40 CFR Part 60, Subpart VV.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert Wood, Standards Development Branch, ESED (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

Dated: June 22, 1984.

Sheldon Meyers,

Acting Assistant Administrator for Air and Radiation.

The following corrections are made in FR Document 84-13949 appearing on 22598 in the issue of May 30, 1984:

1. On page 22598, column two, the document title "Equipment Leaks of VOC in Petroleum Refining Industry—Background Information for Promulgated Standards of Performance (EPA-450/3-80-033b)" is corrected to "Petroleum Fugitive Emissions—Background Information for Promulgated Standards (EPA-450/3-81-015b)."

§ 60.481 [Corrected]

2. On page 22607, columns two and three, in the definition of "Capital expenditure," paragraph (a)(2) is corrected to read "The percent Y is determined from the following equation: $Y = 1.0 - 0.575 \log X$, where X is 1982 minus the year of construction; and"

[FR Doc. 84-17389 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 204 and 205

[A-FRL 2619-1]

Noise Emission Standards for Portable Air Compressors, Medium and Heavy Trucks, Motorcycles and Motorcycle Replacement Exhaust Systems, Truck Mounted Solid Waste Compactors, and Noise Labeling Requirements for Hearing Protectors Final Rule: Revocation of Product Verification Testing, Reporting and Recordkeeping Requirements; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: This document corrects a final regulation published December 28, 1982 (47 FR 57709) which implemented a revocation of product verification testing, reporting and recordkeeping requirements for noise emission standards for portable air compressors, medium and heavy trucks, motorcycles and motorcycle replacement systems, truck mounted solid waste compactors, and noise labeling requirements for hearing protectors. The action is necessary to correct minor inconsistencies.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Louise Giersch, Office of Air and Radiation (AR-445), Environmental Protection Agency, Washington, D.C. 20460, (202) 382-2935.

Corrections

PART 204—NOISE EMISSION STANDARDS FOR CONSTRUCTION EQUIPMENT

Subpart B—Portable Air Compressors

§ 204.55-2 [Corrected]

1. In §204.55-2, paragraph (a)(3) is revised to read as follows:

(3) At any time with respect to a configuration under this subpart, the Administrator may require that the manufacturer ship test compressors to an EPA test facility in order for the Administrator to perform the tests required for production verification.

§ 204.55-4 [Corrected]

2. In §204.55-4, paragraph (a)(4)(iii) is revised to read as follows:

(iii) Date of manufacture, which may consist of a serial number or code in those instances where records are specified and maintained.

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

Subpart D—Motorcycles

§ 205.170 [Corrected]

1. In § 205.170, paragraph (c)(5) is revised to read as follows: (5) In addition to any exhaust systems included in paragraphs (c)(2), (3), or (4) of this section, testing of up to 10 percent of the manufacturer's exhaust systems for a model year if the Administrator determines testing these exhaust systems at the EPA test site is necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

(42 U.S.C. 4905; 86 Stat. 1237 and Secs. 6, 10, 11, 13, Pub. L. 92-574, 86 Stat. 1234 (42 U.S.C. 4905, 4909, 4910, 4912))

Dated: June 19, 1984.

John O. Hidinger,

Office of Program Management, Operations, Office of Air and Radiation.

[FR Doc. 84-17391 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 421

[OW-FRL 2289-1]

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

Correction

In FR Doc. 84-5738 beginning on page 8742 in the issue of Thursday, March 8, 1984, make the following corrections:

1. On page 8743, column three, the second paragraph under Best Conventional Pollutant Control Technology (BCT), in the next to last sentence, "American Paper Institute v. EPA, 660 f.2d 954 (4th Cir., 1981)" is corrected to read, "American Paper Institute v. EPA, 660 F.2d 954 (4th Cir., 1981)".

2. On page 8747, column one, under Anode-cathode rinse water, in the second sentence, "lo pH" is corrected to read "low pH".

3. On page 8750, column three, in the first paragraph "Truck washing" is corrected to read "(7) Truck washing".

4. On page 8753, column three, in the first complete paragraph, the fourth sentence, "columbiumtantalum" is corrected to read "columbium-tantalum".

5. On page 8755, column one, in the first complete paragraph, the second

sentence, "APT coversion" is corrected to read "APT conversion".

6. On page 8755, column two, the first sentence, "technology bais for the BPT" is corrected to read "technology basis for the BPT".

7. On page 8756, column two, in the second paragraph, the second sentence, "$684.000" is corrected to read "$684,000".

8. On page 8769, column one, in the fourth paragraph, the second sentence, "segreagation costs" is corrected to read "segregation costs".

9. On page 8769, column one, in the sixth paragraph, the second sentence, "subcategory do no undergo" is corrected to read "subcategory do not undergo".

10. On page 8772, column one, in the second paragraph, in the third sentence, "battry manufacturing" is corrected to read "battery manufacturing".

11. On page 8780, column three, in the first complete paragraph, the third sentence, "20 mg/1" is corrected to read "20 mg/l".

12. On page 8789, Appendix E, column two, secondary silver subcategory, "38. ethybenzene" is corrected to read "38. ethylbenzene".

13. On page 8789, Appendix F, column two, primary aluminum smelting subcategory, "20. 2-chlornaphthalene" is corrected to read "20. 2-chloronaphthalene".

14. In the table to § 421.24 (c), on page 8794, column two, "anodes cast" is corrected to read "anodes baked".

15. In § 421.26, introductory text, on page 8795, column two, under Pretreatment Standards for New Sources, "introduced" is corrected to read "introduces".

16. In the table to § 421.33 (c), on page 8797, column two, "drossed" is corrected to read "dross".

17. In § 421.43, introductory text, on page 8801, column one, "best aviable technology" is corrected to read "best available technology".

18. In § 421.53, on page 8801, column three, "(c) Subpart E—Casting Wet Air Pollution Control" is corrected to read "(d) Subpart E—Casting Wet Air Pollution Control".

19. In § 421.62(d), table on page 8803, column two, under the effluent limitations, "Metric Units (mg/1)" is corrected to read "Metric Units (mg/l)".

20. In § 421.72 (a), table on page 8804, column one, the Maximum for Monthly Average for Zinc, "219.000" is corrected to read "219.600".

21. In § 421.72 (f), on page 8804, column two, the Maximum for Monthly Average for Zinc, "259.000" is corrected to read "259.900".

22. In § 421.82, in the table, on page 8808, column three, under Effluent Limitations, the Maximum for Any One Day for Selenium, "0.608" is corrected to read "0.08".

23. In § 421.84(e) on page 8809, column three, the Maximum for Any One Day for Total Suspended Solids, "11270." is corrected to read "11.270".

24. In § 421.102(h), on page 8812, column three, "Coversion to Oxides" should be corrected to read "Conversion to Oxides".

25. In § 421.102(h), on page 8812, column three "sodium tungstate" should be removed.

26. In § 421.120, on page 8821, column three, "protographic" is corrected to read "photographic".

27. In § 421.126(e), page 8825, column three, the pollutant Ammonia (as N) is listed twice. This table is corrected so that Ammonia (as N) appears only once. The Maximum for Monthly Average for Ammonia (as N), "5.099.711.400" is corrected to read "711.400".

28. The term "Mg/kg (pounds per million pounds)" is replaced with "mg/kg (pounds per million pounds)" each time it appears. This term appears in the following sections and tables as shown below.

Subcategory	Section	Table
Primary Aluminum	421.23	All tables.
	421.24	All tables.
	421.26	All tables.
Secondary Aluminum	421.33	All tables.
	421.34	All tables.
	421.35	All tables.
	421.36	All tables.
Primary Electrolytic Copper Refining	421.53	All tables.
	421.54	All tables.
	421.56	All tables.
Primary Zinc	421.83	All tables.
	421.84	All tables.
	421.85	All tables.
	421.86	All tables.
Metallurgical Acid Plants	421.93	
	421.94	
	421.95	
	421.96	
Primary Tungsten	421.102	All tables.
	421.103	All tables.
	421.104	All tables.
	421.105	All tables.
	421.106	All tables.
Primary Columbium-Tantalum	421.112	All tables.
	421.113	All tables.
	421.114	All tables.
	421.115	All tables.
	421.116	All tables.
Secondary Lead	421.132	All tables.
	421.133	All tables.
	421.134	All tables.
	421.135	All tables.
	421.136	All tables.

29. The term "Mg/kkg (pounds per billion pounds)" is replaced with "mg/kkg (pounds per billion pounds)" each time it appears in Subpart G—Primary Lead Subcategory. This term appears in Tables in paragraphs (a) through (l) of §§ 421.72, 421.73, 421.74, 421.75, and 421.76.

30. The term "Mg/troy ounce" is replaced with "mg/troy ounce" each time it appears in Subpart L—Secondary Silver. This term appears in the tables in §§ 421.122, 421.123, 421.124 (a), (b), (d), (e), (f), (g), (h), (i), (j), (k), 421.125 and 421.126.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 81-704]

Earth Station Antenna Performance Standards for Newly Installed Antennas

AGENCY: Federal Communications Commission.

ACTION: Order deferring effective date of rule revisions.

SUMMARY: This action defers until further notice the effective date of compliance with the revisions of 47 CFR 25.209 pertaining to antenna performance standards. The reason for this action is to spare users what may be unnecessary expenses should the Commission ultimately adopt any changes proposed by petitions on reconsideration of its order in *Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations*, published in the **Federal Register** on September 6, 1983, 48 FR 40233.

EFFECTIVE DATE: June 27, 1984.

FOR FURTHER INFORMATION CONTACT: Rosalee C. Gorman, Common Carrier Bureau, (202) 634-1624.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 25

Communications equipment, Satellite radio communications.

Order

In the matter of effective date of the revised rules concerning earth station antenna performance standards for newly installed antennas, (47 CFR 25.209) CC Docket No. 81-704.

Adopted: June 22, 1984.
Released: June 27, 1984.

By the Common Carrier Bureau.

1. In *Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations* [1] we adopted

[1] 54 Rad. Reg. 2d (P&F) 577 (1983) (hereinafter cited as *Reduced Orbital Spacing*).

certain revisions in the rules governing earth station antenna performance standards.[2] These changes are scheduled to take effect on July 1, 1984 with respect to newly constructed antennas and on January 1, 1987 for existing equipment.

2. We are currently reviewing a number of petitions for reconsideration of *Reduced Orbital Spacing* in which parties express concerns about their ability to comply with certain technical aspects of the new rules, and request various modifications of the regulations specified in § 25.209.[3] We are also considering a request for a waiver of that section for noncomplying equipment.[4]

3. None of the parties requesting reconsideration of § 25.209 opposes 2° orbital spacing or the concomitant improvements in antenna performance necessary to render reduced spacing efficient and effective. They do, however, question certain technical details of the improved performance specifications and assert that these requested revisions would enable us to achieve our policy objectives with less cost and disruption to their operations and services.

4. One of our stated objectives in *Reduced Orbital Spacing* is to minimize costs to users in achieving 2° spacings. If in fact this objective can be met utilizing the changes requested by petitioners, we see little purpose to be served in requiring absolute compliance with the revised rules at this time before we have considered the merits of the petitions for reconsideration. We anticipate Commission action on the petitions in the near future. Therefore, a delay in the compliance date is warranted to spare users what may prove to be unnecessary expenses should the Commission ultimately adopt some or all of the proposed changes. Even if the rule ultimately adopted does not include any changes, a short delay in the implementation of the technical rules will not substantaially affect the 2° spacing plan. In order to perform a careful analysis, we deem it advisable to delay the effective compliance date until action on reconsideration is complete.

5. Accordingly, it is ordered that, in accordance with 47 CFR 1.102(b)(2), the effective date of compliance with the revised Section 25.209 of the rules concerning the antenna performance of newly installed antennas is deferred until further order.[5]

(Secs. 4(i), 303(r) of the Communications Act of 1934, 47 U.S.C. 154(i) and 303(r))

Federal Communications Commission.

William F. Adler,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 84-17457 Filed 6-28-84; 8:45 am]

BILLING CODE 6712-01-M

[2] 47 CFR 25.209.

[3] *See, e.g.*, Petitions for Reconsideration filed by Alascom, Inc.; Equatorial Communications Services; Group W Cable, Inc.; and Vitalink Communications Corp.

[4] *In the Matter of Vitalink Communications Corp.*, File No. 806-DSE-MI-84.

[5] This order is effective June 27, 1984 pursuant to § 1.102(b) of the Commission's rules. 47 CFR 1.102(b).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 15, 17, 31, 52, and 53

[Federal Acquisition Circular 84-3]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-3 amends the Federal Acquisition Regulation (FAR) with respect to the following:

- Revision of the prescriptive language in FAR Subpart 4.1, Contract Execution, pertaining to the contract clause at FAR 52.204-1, Approval of Contract, and revision of the preface to the contract clause at FAR 52.204-1;
- Revision of FAR Part 15, Contracting by Negotiation, with respect to requirements for competition, circumstances permitting noncompetitive acquisitions, and requirements for justifying noncompetitive acquisitions, in order to implement in the FAR the requirements of the Office of Federal Procurement Policy Letter 84-2, subject "Noncompetitive Procurement Procedures," and the related restrictions contained in Pub. L. 98-72;
- Revision of FAR Subpart 17.2, Options, to provide a more realistic basis for making a determination that will permit a contracting officer to consider an option quantity in an award evaluation for a firm-fixed-price contract or a fixed-price contract with economic price adjustment;
- Revision of FAR Part 31, Contract Cost Principles, to include a cost principle that makes unallowable the costs associated with goodwill, including the cost of money resulting from including goodwill in the facilities capital employed base; and
- Revision of the language in FAR Part 53, Forms, to conform the prescriptive language concerning Standard Form 33, Solicitation, Offer, and Award, with the requirements for the form's use that are specified in FAR Part 15, Contracting by Negotiation.

Also included in FAC 84-3 is a statement that the requirements of Pub. L. 98-72 dealing with the publicizing of acquisition actions will be published in a later FAC.

EFFECTIVE DATE: October 1, 1984, but may be observed sooner.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular (FAC) 84-3 amends the Federal Acquisition Regulation (FAR). The following is a summary of the amendments:

Item I—"Approval of Contract" Clause

The language in FAR Part 4, Administrative Requirements, that prescribes the contract clause at FAR 52.204-1, Approval of Contract, has been erroneously interpreted to require the use of the clause in certain situations in which the use of the clause is inappropriate. Accordingly, the prescriptive language is revised.

Additionally, the preface to the clause is revised to eliminate instructions from FAR Part 52, Solicitation Provisions and Contract Clauses, that repeat instructions that are specified in the FAR text that governs the use of the clause. The revision of the preface results from a decision that all prefaces to the solicitation provisions and contract clauses prescribed by the FAR will be revised to eliminate (a) the repetition of prescriptive language that is specified elsewhere in the FAR, and (b) the possibility that the prefaces will be incorporated into the language of the solicitation provisions and contract clauses.

Item II—Noncompetitive Procurement Procedures

Consistent with the requirements of the Office of Federal Procurement Policy Letter 84-2, subject "Noncompetitive Procurement Procedures," FAR Part 15, Contracting by Negotiation, is amended with respect to the following: (1) Requirements for competition; (2) Circumstances permitting noncompetitive acquisitions; (3)

Requirements for justifying noncompetitive acquisitions; (4) Review and approval requirements for noncompetitive acquisitions; (5) Additional restrictions on noncompetitive acquisitions from Pub. L. 98–72; and (6) Requirements for forwarding certain noncompetitive acquisition justifications to the agency's point of contact with the Office of the United States Trade Representative.

The remaining requirements of Pub. L. 98–72 dealing with the publicizing of acquisition actions will be published in a future Federal Acquisition Circular.

Item III—Options

The language in FAR Subpart 17.2, Options, concerning consideration of an option quantity in an award evaluation for a firm-fixed-price contract or a fixed-price contract with economic price adjustment, is unduly restrictive in that it requires a determination, before the solicitation is issued, concerning factors that may not be definitively known at that time. Accordingly, the FAR is revised to provide a more realistic basis for making the required determination before the solicitation is issued.

Item IV—New Cost Principle on Goodwill

FAR Part 31, Contract Cost Principles and Procedures, is amended to include a cost principle that makes unallowable the costs associated with goodwill, including the cost of money resulting from including goodwill in the facilities capital employed base.

Item V—Use of Standard Form 33, Solicitation, Offer, and Award

The language in FAR Part 53, Forms, that prescribes the use of Standard Form 33, Solicitation, Offer, and Award, does not reflect the full range of requirements for the form's use as specified in FAR Part 15, Contracting by Negotiation. Accordingly, FAR Part 53 is revised to conform with the requirements in FAR Part 15.

List of Subjects in 48 CFR Ch. I

Government procurement.

Eugene M. Feinberg,

Acting Director, FAR Secretariat.

June 27, 1984.

Federal Acquisition Circular

[Number 84–3]

Unless otherwise specified, all Federal Acquisition Regulation and other directive material contained in this Federal Acquisition Circular is effective October 1, 1984.

John A. Mittino,

Acting Deputy Under Secretary (Acquisition Management).

June 27, 1984.

Ray Kline,

Acting Administrator.

June 27, 1984.

S. J. Evans,

Assistant Administrator for Procurement, NASA.

June 27, 1984.

Therefore, 48 CFR ch. I is amended as set forth below.

PART 4—ADMINISTRATIVE MATTERS

1. Section 4.103 is revised to read as follows:

4.103 Contract clause.

The contracting officer shall insert the clause at 52.204–1, Approval of Contract, in solicitations and contracts if required by agency procedures.

PART 15—CONTRACTING BY NEGOTIATION

2. The table of contents for Part 15 is revised to read as follows:

* * * * *

15.101 Definitions.

* * * * *

15.105–1 General.
15.105–2 Competition exceptions and justification.
15.105–3 Acquisitions subject to the Agreement on Government Procurement.

* * * * *

3. Section 15.101 is revised to read as follows:

15.101 Definitions.

"Follow-on acquisition" means a new acquisition, whether placed by a separate new contract or by a supplemental agreement, placed with a particular contractor to continue or augment a specific program in instances where such placement was necessitated by prior acquisition decisions.

"Follow-on after competition acquisition" means a follow-on acquisition subsequent to an acquisition in which the contractor was selected following price, design or technical competition.

"Negotiation" means contracting without formal advertising. Any contract awarded without the use of formal advertising procedures is a negotiated contract (see 14.101).

"Noncompetitive acquisition" means an acquisition in which the contractor is not expected to be selected through price, design, or technical competition and includes follow-on acquisitions in which the original selection of the contractor was on a noncompetitive basis.

4. Section 15.105 is revised to read as follows:

15.105 Competition.

15.105–1 General.

Negotiated contracts shall be awarded on a competitive basis to the maximum practical extent. To this end:

(a) Offers shall be solicited from the maximum number of qualified sources consistent with the nature of and the need for the supplies or services being acquired. Acquisition information shall be publicized in accordance with 5.101.

(b) Before negotiating a contract on a noncompetitive basis, the contracting officer is responsible not only for ensuring that competition is not feasible and practicable under the existing conditions and circumstances but also for acting whenever possible to avoid the need for subsequent noncompetitive contracts. This process shall include—

(1) Examining the reasons precluding competition of the current requirement;

(2) Taking steps to foster competition in the future, particularly with respect to the availability of complete and accurate data, reasonableness of delivery requirements, and possible breakout of components for competitive contracting; and

(3) Complying with the further requirements specified in 15.105–2 and 15.105–3.

(c) Contracts in excess of the small purchase limitation in Part 13 shall not be negotiated on a noncompetitive or follow-on after competition basis without prior review and approval at a level above the contracting officer in accordance with 15.105–2(c).

15.105–2 Competition exceptions and justifications.

This subsection does not apply to modifications to existing contracts for other than new work or to orders under existing contracts described in Subpart 16.5.

(a) *Competition exceptions.* For acquisitions of supplies or services in excess of the small purchase limitation in Part 13, competition shall be obtained unless valid justification for a noncompetitive acquisition exists (see also 15.104). In addition, one or more of the following circumstances must apply:

(1) The supplies or services required by the Government are available from only one source and there is no competitive alternative (i.e., there is only one source that because of unique capabilities is the only source able to meet the Government's minimum requirements) nor can competition be

developed in time to satisfy the requirements of the Government.

(2) The supplies or services required by the Government are urgently needed under unusual and compelling circumstances, caused by other than a lack of advance planning or funding concerns. Urgency in itself does not necessarily justify a noncompetitive acquisition decision unless fully supported by the facts of the acquisition situation.

(3) An award must be made to a specified source or sources—

(i) When it is necessary to—

(A) Maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency;

(B) Achieve industrial mobilization in the case of such an emergency; or

(C) Maintain an essential research capability to be provided by an educational or other nonprofit institution or a Federally Funded Research and Development Center;

(ii) To establish or maintain an alternative source which will likely increase or maintain competition and will likely result in lower overall cost to the Government; or

(iii) For follow-on acquisitions, in order to avoid—

(A) Substantial duplication of cost to the Government for the supplies or services being acquired that cannot be expected to be recovered through competition, or

(B) Unacceptable delays in accomplishing the agency's mission objectives.

(4) The contract to be awarded results from acceptance of an unsolicited proposal that demonstrates a unique or innovative concept which fills a requirement or general mission need of the Government, and that meets all of the other requirements of Subpart 15.5.

(5) A specific source is required by the terms of an international agreement or treaty between the United States Government and a foreign government or for the directed acquisition for a foreign government that is reimbursing the U.S. Government for the cost of the acquisition.

(6) The supplies or services are authorized or required by statute to be obtained from or through another Federal agency; e.g., mandatory Federal Supply Schedules or the SBA under section 8(a) of the Small Business Act, or required by statute to be obtained from a specified source; e.g., the National Industries for the Blind, the National Industries for the Severely Handicapped, or Federal Prison Industries.

(7) Disclosure of the supplies or services required by the Government to more than one source would jeopardize the national security.

(8) For circumstances not within 15.105–2(a) (1) through (7), the approval of the Agency Senior Procurement Executive has been obtained.

(b) *Justification for noncompetitive or follow-on after competition acquisitions.* For each noncompetitive or follow-on after competition acquisition exceeding the small purchase limitation in Part 13 (see 13.106 for competition and price reasonableness requirements for small purchases), the contracting officer shall document the contract file with a written justification that sets forth the facts and circumstances substantiating that competition is not feasible and practicable. Technical and requirements personnel are responsible for providing all necessary data to support their recommendation that competition is not feasible and practicable.

(1) The written justification shall—

(i) Describe the requirement the acquisition is intended to satisfy;

(ii) Cite one or more of the circumstances set forth in 15.105–2(a) that permit use of a noncompetitive acquisition or follow-on after competition acquisition; and, except for those under 15.105–2 (a)(5) and (a)(6),

(iii) Describe the unique capabilities possessed by the prospective contractor that make it the only source capable of meeting the minimum needs of the Government;

(iv) Describe the extent of attempts made to ascertain whether there are other qualified sources capable of satisfying the Government's requirement. This testing of the marketplace may range from written or oral contacts with knowledgeable experts regarding similar or duplicate requirements and the resuts of any formal market test recently undertaken, to the more formal sources-sought announcements in pertinent publications (e.g., technical/scientific journals or the Commerce Business Daily). If no such attempts were made, explain why;

(v) Provide any other facts supporting (A) citation of one or more of the circumstances set forth in 15.105–2(a) that permit use of a noncompetitive acquisition or follow-on after competition acquisition, or (B) other reasons for not obtaining competition. Other types of supporting facts include—

(*1*) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for competitive acquisition have not been developed or are not available;

(*2*) Data, estimated cost, or other rationale as to the extent and nature of the harm to the Government if a competitive acquisition is initiated or attempted;

(*3*) When either circumstance 15.105–2(a)(3)(ii) or (a)(3)(iii)(A) is cited, a description of the estimated cost avoidance and how the estimates were derived.

(2) All supporting data which is the responsibility of technical or requirements personnel (e.g., verification of the Government's minimum needs or the schedule requirements; recommendation that competition is not feasible and practicable) shall be certified as accurate by the requirements or technical personnel.

(c) *Review and approval requirements.*

(1) The written justification prepared in accordance with 15.105–2(b) shall be reviewed and approved at a level above the contracting officer in accordance with agency procedures. However, this review and approval is not required under the circumstances described in 15.105–2(a)(5) and (a)(6) or for acquisitions of electric power or energy, gas (natural or manufactured), water, or other utility services, or educational services from nonprofit institutions. Acquisitions of such public utility services shall comply with Subpart 8.3, Acquisition of Utility Services. Competition should be obtained in the case of bottled gas distributors.

(2) Any justification under 15.105–2(a)(8) shall be reviewed and approved by the Agency Senior Procurement Executive. This function may not be delegated.

(3) Notwithstanding subparagraphs (c)(1) and (2) above, the following additional requirements from Pub. L. 98–72 apply.

(i) For purposes of this subparagraph only, "sole source contract" means a contract for the purchase of supplies or services that is entered into or proposed to be entered into after soliciting and negotiating with only one source.

(ii) When a synopsis is required under 5.201, the contracting officer may not commence negotiations for award of a sole source contract until at least 30 days after publication of the synopsis with the required notice of intent to contract.

(iii) Except when exempted by subparagraph (c)(3)(iv) below, the contracting officer shall not commence negotiations for the award of a sole source contract with a value in excess of $1,000,000 in fiscal year 1984, $500,000 in fiscal year 1985, and $300,000 in fiscal

year 1986 and each year thereafter unless—

(A) The head of the contracting activity or deputy has approved the authority to enter into such contract (this authority is not delegable), and

(B) When synposis is required under 5.201, the contracting officer has evaluated the responses to the notice of intent to contract on a sole source basis.

(iv) Subparagraph (c)(3)(iii) above does not apply to acquisitions—

(A) Made under section 8(a) of the Small Business Act (15 U.S.C. 637(a));

(B) Made under section 9 (Research and Development) of the Small Business Act (15 U.S.C. 638) (the "Small Business Innovation Development Act"); or

(C) If the agency's need for the supplies or services is of such unusual and compelling urgency that the Government would be seriously injured if the requirements of subparagraph (c)(3)(iii) above were complied with.

15.105–3 Acquisitions subject to the Agreement on Government Procurement.

Acquisitions subject to the Agreement on Government Procurement (Subpart 25.4) may be made on a noncompetitive basis only when permitted and justified pursuant to this 15.105. If, in such an acquisition, one of the circumstances set forth in 15.105–2(a)(3)(i)(A) or (B), or in 15.105–2(a)(3)(ii) is being cited as a basis for not obtaining competition, or if the noncompetitive acquisition justification is being reviewed and approved pursuant to 15.105–2(c)(2), the justification shall also be forwarded, in accordance with agency procedures, to the agency's point of contact with the Office of the United States Trade Representative.

5. Section 15.501 is amended by revising the definition for "Unsolicited proposal" as follows:

15.501 Definitions.

* * * * *

"Unsolicited proposal" means a written proposal that is submitted to any agency on the initiative of the submitter for the purpose of obtaining a contract with the Government, and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interest to the agency).

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

6. Section 17.206 is amended by revising the first sentence of paragraph (a)(2) to read as follows:

17.206 Evaluation.

(a) * * *

(2) Competition for the option quantity may be impracticable once the initial contract is awarded. * * *

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

7. The following is added to the table of contents for Part 31:

* * * * *

31.205–49 Goodwill.

* * * * *

8. Subsection 31.205–10 is amended by adding paragraph (a)(5) to read as follows:

31.205–10 Cost of money.

(a) * * *

(5) The cost of money resulting from including goodwill (however represented) in the facilities capital employed base is unallowable.

* * * * *

9. Subsection 31.205–49 is added to read as follows:

31.205–49 Goodwill.

Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. The contract clause preface in subsection 52.204–1 is revised to read as follows:

52.204–1 Approval of contract

As prescribed in 4.103, insert the following clause:

* * * * *

PART 53—FORMS

11. Subsection 53.215-1 is amended by revising paragraph (d) to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations (SF's 18, 26, 30, 33, 36, 129)

* * * * *

(d) SF 33, Solicitation, Offer, and Award. SF 33, prescribed in 53.214(c), shall be used in connection with negotiated acquisitions when it appears advantageous to begin negotiations by soliciting written offers that, if accepted by the Government, would create a binding contract without further action. Award of such contracts may be made by either SF 33 or SF 26, as specified in 15.406–1(b) and 15.414.

* * * * *

(40 U.S.C. 486(c), Chapter (37, 10 U.S.C.; and 42 U.S.C. 2453(c))

[FR Doc. 84–17545 Filed 6–28–84; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

48 CFR Part 970

Department of Energy Acquisition Regulation; Technical Amendment

AGENCY: Department of Energy.

ACTION: Final rule: Technical amendment.

SUMMARY: Paragraph (d) of § 970.3102–2 (Compensation for personal services) of the Department of Energy Acquisition Regulation (DEAR) provides internal procedural guidance requiring Department of Energy (DOE) contracting officers to review and approve individual management and operating contractor employee compensation of $50.000 or more. As a result of the Department's continuing review of its system of control covering approval levels of contractor employee compensation, § 970.3102–2(d) is revised to increase the amount of individual contractor employee compensation which the contracting officer is required to review and approve from $50.000 to $60.000.

EFFECTIVE DATE: June 29, 1984.

ADDRESS: Comments, if any, should be addressed to the Department of Energy, Procurement Policy Branch, MA–421.2, Forrestal Building, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen L. Feinsilber, Business and Financial Policy Branch, Department of Energy, (202) 252–8173.

SUPPLEMENTARY INFORMATION: DOE finds that advance notice and comment, which are generally required by the Administrative Procedure Act, are unnecessary for this technical amendment. This finding is based on the facts that the change is limited to internal procedural guidance concerning contracting officers' review requirements and that this change will

not adversely affect the public or impose any additional burden on the public.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC, on June 22, 1984.

Thomas J. Davin, Jr.,

Acting Director, Procurement and Assistance Management Directorate.

Subpart 970.31—Contract Costs Principles and Procedures

Section 970.3102–2(d) is revised to increase the amount of individual contractor employee compensation requiring contracting officer review and approval from $50,000 to $60,000. The text of 970.3102–2(d) is revised to read as follows:

970.3102–2 Compensation for personal services.

* * * * *

(d) *DOE Review and approval of compensation paid individual employees.* In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subjected to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of DOE-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for groups of employees. However, all compensation due an individual of $60,000 or more shall require the contracting officer's or designee's review and approval. In addition, it will often be necessary that employee compensation be subjected to review and approval on an individual basis at a level below $60,000, when the contracting officer finds it appropriate for the particular situation. The contract shall specifically provide for the approval by the contracting officer of the cost of compensating an individual contractor employee above the level determined by the contracting officer, if a total of 50 percent or more of such compensation is reimbursed under DOE cost-type contracts. For purposes of determining the level for individual review and approval, total compensation as used in this paragraph includes only the employee's salary and bonus or incentive compensation. As in the case of other personnel and compensation costs, it is intended that contracting officer review and approval of individual compensation normally will be prior to incurrence of costs.

(Sec. 161 of the Atomic Energy Act of 1954, 42 U.S.C. 2201, Sec. 644 of the DOE Organization Act, 42 U.S.C. 7254)

[FR Doc. 84–17442 Filed 6–28–84; 8:45 am]
BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 23

[FRA Docket No. SA–3, Notice No. 10]

Safety Appliance Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule eliminates the requirement that railroads and other freight car owners remove the roof running boards from box and other house cars by June 30, 1984. It responds to a petition from the Association of American Railroads (AAR) that FRA eliminate this requirement.

EFFECTIVE DATE: July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Principal Program Person: Philip Olekszyk; Office of Safety, Federal Railroad Administration, Washington, D.C. 20590; Telephone (202) 426–0897.

SUPPLEMENTARY INFORMATION:

Background

In 1966 the Interstate Commerce Commission (ICC), which was then responsible for administration of the Federal railroad safety program, amended its regulations concerning the arrangement of safety appliances on box cars and other freight cars of similar design, *i.e.*, "house cars." The ICC amendment reflected changes in railroad operating practices and increases in the size of certain types of freight cars by eliminating the requirement for installation of roof running boards on newly constructed cars unless that car was to be equipped with roof hatches. Additionally, the ICC directed the removal of roof running boards and modification of ladders and handholds of existing box and house cars unless equipped with roof hatches.

The regulation adopted by the ICC is contained in the first sentence of the Note in § 321.1 of the Safety Appliance Standards (49 CFR 231.1) and is now administered by FRA. The original regulation contained a compliance date of April 1, 1974, for the removal of roof running boards and completion of the related changes in the associated ladders and handholds for all box and other house cars built on or before April 1, 1966, or under construction prior to that date and placed in service before October 1, 1966. That compliance date has been extended by FRA until June 30, 1984.

The AAR has filed a petition requesting that FRA delete this provision and eliminate the requirement for modifying cars placed in service built prior to October 1, 1966. AAR estimates that at the time the rule was initially adopted there were aproximately 700,000 cars that required modification. That number has steadily and substantially diminished over the years, and the AAR estimates that only 30,000 unmodified cars are still in service. Because of the large number of cars that are stored in serviceable condition, AAR states that it is particularly difficult and expensive to ensure that the retrofit program is completed. Additionally, a large portion of these cars is scheduled for retirement in the next few years.

AAR's position is that the difficult and expensive task of modifying the remaining cars cannot be supported as necessary for safety. AAR suggests that the universal existence of railroad operating rules, which prohibit engine and train crews from going on the roof of freight cars, and of a like rule prohibiting other employees from going on the roof of a moving freight car, means that the safety of personnel will not be jeopardized by eliminating the requirement for continued removal of the roof running boards. AAR estimates that the cost of locating, moving, and modifying the remaining cars would exceed $10 million.

FRA accident data indicate that there is no accident or injury in which FRA can identify unmodified equipment as a causal factor in incidents involving on-duty railroad personnel. In the absence of such data, FRA has repeatedly granted extensions of the compliance deadline and on October 27, 1983, (48 FR 49666) issued a notice of proposed rulemaking to delete this requirement. Only the AAR responded to this notice and it urged prompt adoption of the proposed amendment. Consequently, FRA has decided to adopt the amendment as proposed.

List of Subjects in 49 CFR Part 231

Railroad safety.

Regulatory Impact

This final rule has been evaluated in accordance with existing regulatory policies. It is considered to be nonmajor under Executive Order 12291 and nonsignificant under the DOT policies

and procedures (44 FR 11034, February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary.

It is estimated that fewer than 30,000 freight cars remain to be brought into compliance and that the cost of the retrofit program would total approximately $10 million. This final rule will have a positive economic impact by permitting those costs to be avoided since it eliminates any retrofit requirement.

Although this final rule may affect some small entities that own or lease a minimal number of these cars, that economic impact will not be significant. Based on these facts, FRA certifies that the final rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

The final rule will not have any environmental impact and does not involve directly or indirectly any information collection requirements.

The Final Rule

PART 231—[AMENDED]

In consideration of the foregoing, Part 231 of Title 49, Code of Federal Regulations, is amended as set forth below:

1. In § 231.1 the section heading, the introductory language, and paragraph (a)(1) are revised to read as follows:

§ 231.1 Box and other house cars built or placed in service before October 1, 1966.

Except for box and other house cars that comply with either § 231.27 or § 231.28, each box and other house car shall be equipped to meet the following specifications:

(a) *Handbrake.* (1) Number—One efficient handbrake which shall operate in harmony with the power brake installed on the car. Each such handbrake shall (i) provide the same degree of safety as the design shown on plate A, or (ii) provide the same degree of safety as that specified in § 231.27.

* * * * *

2. In § 231.27, the section heading is revised to read as follows:

§ 231.27 Box and other house cars without roof hatches or placed in service after October 1, 1966.

* * * * *

3. In § 231.28, the section heading is revised to read as follows:

§ 231.28 Box and other house cars with roof hatches built or placed in service after October 1, 1966.

Authority: Secs. 2, 4, and 6, 27 Stat. 531, as amended; secs. 1 and 3, 32 Stat. 943, as amended; sec. 6(e) and (f), 80 Stat. 939; 45 U.S.C. 2, 4, 6, 8, and 10, 11–16; and 49 U.S.C. 103(c)(1).

Issued in Washington, D.C. on June 26, 1984.

John H. Riley,

Administrator.

[FR Doc. 84-17401 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-06-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-18)]

Exemption From Regulation; Poultry, Meat and Dairy Products

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules (exemption).

SUMMARY: The Commission is exempting from regulation all rail transportation of poultry, meat, and dairy products. Regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power by railroads, and the service is of limited scope. This proceeding is aimed at essentially completing the exemptions process (other than for grain and sunflower seeds) within the general area of agricultural and food products.

DATES: The exemption is effective on July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245, or Gerald Proger, (202) 275–7957.

SUPPLEMENTARY INFORMATION: The specific commodities exempted are listed in the Appendix. Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area) or toll free (800) 424–5403.

Regulatory Flexibility, Environment, and Energy

The Commission certifies that the exemption will not have a significant economic impact on a substantial number of small entities, since the commodities move predominantly by motor carriers, and since no new reporting requirements are being imposed. Also, this action will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

Authority: 49 U.S.C. 10505, 5 U.S.C. 553.

Decided: June 22, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

Appendix

PART 1039—[AMENDED]

Title 49 of the Code of Federal Regulations, § 1039.10, is amended by adding the following commodities in alphabetical order to the list of miscellaneous commodities exempt from regulation.

§ 1039.10 Exemption of agricultural commodities except grains, soybeans, and sunflower seeds.

* * * * *

20	11	.....	Fresh meat.
20	15	.....	Fresh dressed poultry
20	17	.....	Processed poultry.
20	21	.....	Creamery Butter.
20	23	.....	Condensed, Evaporated or Dried Milk
20	25	.....	Cheese and Special Dairy Products.
20	26	.....	Processed Whole Milk.
20	141	.....	Hides and Skins.
20	144	.....	Animal refuse, tankage, or meat meal
20	999	29	Butter and honey mixed
20	999	76	Freeze-dried poultry
20	999	77	Freeze-dried meat.
20	999	78	Freeze-dried salad ingredients.
20	999	93	Fresh and salted meat and products mixed, not hung.
20	999	94	Fresh and salted meat and products mixed, hung and not hung.

* * * * *

[FR Doc. 84-17413 Filed 6-28-84; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 49, No. 127
Friday, June 29, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Guidelines on Apportionment From Civil Service Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Guidelines on apportionment from Civil Service Retirement Benefits.

SUMMARY: The Office of Personnel Management is publishing for public information and comment, guidelines which it developed through adjudication of claims, for interpreting State court orders dividing civil service retirement benefits. These guidelines are intended to assist the legal community in drafting orders dividing benefits to ensure that the orders will be interpreted to carry out the intent of the court and the parties.

DATE: Comments must be received on or before August 28, 1984.

ADDRESS: Send comments to Lucretia F. Myers, Assistant Director for Pay and Benefits Policy, Compensation Group, P.O. Box 57, Washington DC. 20044, or deliver to Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–4684.

SUPPLEMENTARY INFORMATION: Pub. L. 95–366, enacted September 15, 1978, authorized the Office of Personnel Management to pay a portion of a former employee's civil service retirement benefits to an estranged spouse in accordance with certain State court orders. Final rules implementing this statute were published in the **Federal Register** on March 7, 1980 (45 FR 14835).

The Office of Personnel Management has received approximately 1,200 State court orders dividing civil service retirement benefits. In implementing these orders, the Office has been forced to interpret many terms which are capable of more than one meaning. To insure consistency in interpretation and to simplify the task of interpreting ambiguous terms which are frequently used, the Office of Personnel Management has developed a set of guidelines which it will use in interpreting State court orders.

The legal community has attempted to draft orders dividing civil service retirement benefits to minimize the potential confusion generated in interpreting the orders. However, without knowledge that a term used in a decree has a technical meaning within the civil service retirement law, unclear orders frequently resulted. The guidelines for interpreting these technical terms should assist the legal community in drafting orders that will be interpreted by the Office of Personel Management to produce the intended result.

These guidelines contain no regulatory language.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management is giving notice that it will use the following set of guidelines in interpreting State court orders which divide civil service retirement benefits:

United States of America Office of Personnel Management Compensation Group

Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits

Recent inquiries and controversies resulting from ambiguous court orders seeking to divide civil service retirement benefits have demonstrated a need for written guidelines explaining the interpretation which the Office of Personnel Management will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of the Office of Retirement Programs, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which the Office of Personnel Management will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Cost-of-Living and Salary Adjustments

A. Unless the court directly and unequivocally orders otherwise, decrees which divide annuities either on a percentage basis or by use of a formula will be interpreted as subject to adjustment for cost-of-living and salary adjustments occurring after the issuance of the decree.

B. On the other hand, decrees which award a former spouse a specific dollar amount from the annuity will be interpreted as excluding cost-of-living and salary adjustments unless the court expressly orders their inclusion.

C. Orders which contain both a formula or percentage instruction and a corresponding fixed dollar amount will be interpreted as including the fixed amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction will control in cases where conflicting instructions appear.

D. A formula containing an instruction to calculate the former spouse's share effective at the time of divorce will not be interpreted to prevent cost-of-living or salary adjustments. To award a fixed dollar amount based on the rate of annuity which woud have been paid if retirement occurred at the date of divorce, the decree must either state the dollar amount of the award or explain with sufficient clarity that salary adjustments, as well as service, after the date of the decree are to be disregarded in computing the former spouse's share.

II. Types of Annuity

A. Gross annuity will be interpreted as the amount shown as gross annuity on civil service annuity master record printouts, i.e., the annuity payable after any applicable survivor deduction but before any other deduction.

B. To divide an annuity before any applicable survivor deduction, the decree must contain language to the effect that the division is to be made on the life rate annuity, or the annuity unreduced for survivor benefit, or equivalent language. A division of "gross annuity" will not accomplish this purpose.

C. Net annuity or disposable annuity will be interpreted to mean the amount remaining after the deductions listed in § 831.1705(a) of Title 5, Code of Federal Regulations, have been subtracted from the gross annuity (defined above).

D. Orders which fail to state the type of annuity which they are dividing will be interpreted as dividing gross annuity (defined above).

III. Calculating Time

A. The smallest unit of time which will be used in computing a formula in a decree is a month.

1. This policy is based on the provision of section 8332 to title 5, United States Code, which allows credit for service for years or twelfth parts thereof. Requests to calculate smaller units of time will not be honored.

2. Smaller periods of time stated in terms of decimal fractions of a year contained in a decree will be limited in application to simple numerical operations performed using the extra precise number. Time calculations by the Office of Personnel Management will be no more precise than years and twelfth parts. For example, the share of a former spouse awarded a portion of the annuity equal to ½ of the fraction whose numerator is 12.863 years and whose denominator is the total service on which the annuity is based would be computed by taking ½ of the quotient obtained by dividing 12.863 by the total service measured *in years and twelfth parts.*

B. The term "military service" will generally be interpreted to include only periods of service within the definition of military service contained in section 8331(13) of title 5, United States Code, i.e., active duty military service. Civilian service with military organizations will not be included as "military service," except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order.

C. When a decree contains a formula for dividing annuity which requires computation of service, and unused sick leave has been used in the annuity computation, the amount of credit attributable to the unused sick leave will be computed as service if the formula instructs the use of "creditable service" (or other phrase using "credit" or its equivalent), but will exclude the time attributable to unused sick leave if the formula is based on "years of service" or "total service." Credit for unused sick leave always accrues on the date of separation for immediate retirements; it is never apportioned over the time when earned.

IV. Distinguishing Between Divisions of Annuity and Contributions

A. Orders which are unclear about whether they are dividing an annuity or contribution will be interpreted as dividing an annuity.

B. Orders using "annunities," "pensions," "retirement, benefits," or similar terms will be interpreted as dividing an annuity and whatever other employee benefits become payable, such as refunds. Orders which divide "contributions," "deductions," "deposits," "retirement accounts," "retirement funds," or similar terms will be limited to division of the amount which the employee has paid into the Fund.

Orders Directing the Annuitant To Make Payment

A. Orders which specifically direct the annuitant to pay a portion of retirement benefits to a former spouse will be honored unless the annuitant objects to direct payment by the Office of Personnel Management, but will not be honored even if the annuitant raises only a general objection to payment by the Office of Personnel Management.

B. Orders which direct or imply that the Office of Personnel Managment is to make payment of a portion of retirement benefits, or are neutral about the source of payment, will be honored unless the annuitant can demonstrate that the order is invalid.

[FR Doc. 84-17345 Filed 6-28-84; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-84-AD]

Airworthiness Directives: Boeing Model 757-200 and 767-200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD) applicable to Boeing Model 757-200 and 767-200 aircraft which requires periodic checks of the Fuel Quantity Indicating System (FQIS). This amendment would require replacement of the FQIS processor unit and termination of the repetitive checks. Failure of the FQIS may result in fuel exhaustion.

DATE: Comments must be received on or before August 21, 1984.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to The Boeing Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, Federal Aviation Administration, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone 206-431-2969. Mailing address: Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notce may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket, Docket No. 84-NM-48-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The Federal Aviation Administration is proposing to amend Part 39 of the Federal Aviation Regulations by revising AD 83-15-05, Amendment 39-4696, applicable to Boeing Model 757 and 767 airplanes. This revision would require replacement of the Fuel Quantity Indication System (FQIS) processor.

During a delivery flight, the crew noted a 4,300 pound variance between FQIS readings and the calulated values shown by the Flight Management Computer (FMC). This error was traced to an FQIS fault. Subsequent investigation by Boeing showed that specific faults in the P/N S345T002-310 (757-200) and S345T002-41 (767-200) FQIS processor units can affect the fuel

quantity readings in both main tanks equally. Fault insertion tests resulted in total fuel readings in the Model 757 which were 2,000 pounds high. Similar tests on the Model 767 resulted in total fuel readings which were 3,400 pounds high.

If the subject FQIS fault is present during fueling, the aircraft can be significantly underfueled. This underfueling and the associated erroneous flight deck display and FMC initialization signal, combined with an inflight delay for any reason, have the serious potential to cause inflight fuel exhaustion.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive was issued which required periodic checks of the fuel quantity indication system. It was recognized that the periodic check implied that there was a risk time in which there was small probability that an undetected fault might exist. A new FQIS processor design has now been certificated. The new design makes it possible to eliminate the risk of undetected processor failure between periodic checks. The FAA is therefore proposing to revise the AD to require installation of the new FQIS processor units and, after installation of the new units, to delete the periodic check requirement of the FQIS.

It is estimated that 114 U.S. registered airplanes would be affected by this AD, that it would take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The replacement components will be provided without cost. Based on these figures, the total cost impact of this AD to the U.S. operators is estimated to be $4560. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by revising Amendment 39–4696 (48 FR 34731; August 1, 1983, AD 83–15–05, the read as follows:

§ 39.13 [Amended]

Boeing: Applies to Boeing Model 757 and 767 series airplanes certificated in all categories. To prevent loss of engine power due to fuel exhaustion resulting from erroneous fuel quantity indications, accomplish following:

A. For Model 757 aircraft, replace Fuel Quantity Indicating System (FQIS) processor part number S345T002–310 with part number S345T002–350 in accordance with Boeing Service Bulletin 757–28A7 dated March 23, 1984, or later FAA approved revision, prior to April 1, 1985.

B. For Model 767 aircraft, replace Fuel Quantity Indicating System (FQIS) processor part number S345T002–41 with part number S345T002–42 in accordance with Boeing Service Bulletin 767–28A5 dated March 15, 1984, or later FAA approved revision, prior to April 1, 1985.

C. For Model 757 aircraft, continue an inspection program in accordance with Boeing Alert Service Bulletin 757–28A7, dated June 17, 1983, or later FAA approved revision, until FQIS processor part number S345T002–350 is installed.

D. For Model 767 aircraft, continue an inspection program in accordance with Boeing Alert Service Bulletin 767–28A5, dated June 12, 1983, or later FAA approved revision, until FQIS processor part number S345T002–42 is installed.

E. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Moutain Region.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.85))

Note.—For the reasons discussed earlier in the preamble: The FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transporation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have significant economic impact on a substantial number of small entities because few, if any, Model 757 and 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington on June 22, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–17333 Filed 6–28–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 84–NM–18–AD]

Airworthiness Directives: British Aerospace Model DH–114 Heron Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require modification of the horizontal stabilizer upper pick-up eyebolt holes and replacement of the eyebolts on all British Aerospace Model DH–114 Heron series airplanes. One case of in-service eyebolt failure has occurred. The upper eyebolts are the main attachment points for the upper spar chord of the horizontal stabilizer. Failure of these eyebolts could lead to loss of the stabilizer.

DATES: Comments must be received no later than August 20, 1984.

ADDRESSES: The applicable service information may be obtained from British Aerospace Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767–2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public

contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–18–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition on DH–114 airplanes which must be corrected by complying with British Aerospace Technical News Sheet No. F. 21.

There has been one reported case in which a horizontal stabilizer upper pick-up eyebolt was found fractured. Investigation revealed that fatigue was the cause of the failure. An adverse tolerance build-up may have caused the fatigue failure. British Aerospace Technical News Sheet No. F.21 requires the removal and discarding of existing pick-up eyebolts, modification to the eyebolt holes to elimate mismatch, and the installation of new pick-up eyebolts.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the previously mentioned corrective action.

It is estimated that 45 U.S. registered airplanes would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $400 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $90,000. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

§ 39.13 [Amended]

British Aerospace Inc.: Applies to Model DH–114 Heron series 2A, 2DA, and 2X airplanes certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent fatigue failure of the tailplane upper pick-up eyebolts, accomplish the following within 90 days after the effective date of this AD, unless already accomplished:

A. Remove the eyebolts, modify the eyebolt holes, and install new eyebolts in accordance with paragraphs 4.1, 4.2, and 4.3, respectively, of British Aerospace, Aircraft Group Technical News Sheet No. F.21, Issue: 1, dated January 8, 1979.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DH–114 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on June 21, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–17327 Filed 6–28–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 71 and 73

[Airspace Docket No. 84–ANM–11]

Proposed Alteration of VOR Federal Airways and Restricted Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces extension of the comment period on an NPRM which proposes to redescribe several Restricted Areas, alter the Continental Control Area in connection with these Restricted Areas and alter the descriptions of V–253 and V–200 in the vicinity of the Utah, NV, test range to widen the corridor west of Salt lake City, UT, (ASD No. 84–ANM–11 (49 FR 23392; June 6, 1984)). This action will extend the comment period closing date to allow for a 60-day comment period instead of the existing 45-day comment period.

DATES: Comments must be received on or before August 6, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84–ANM–11, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (AAT–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments

are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this Correction to NPRM must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ANM–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Correction to Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this Correction. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Background

ASD No. 84–ANM–11, published on June 6, 1984 (49 FR 23392), proposed to redescribe several Restricted Areas, alter the Continental Control Area in connection with these Restricted Areas and alter the descriptions of V–253 and V–200 in the vicinity of the Utah, NV, test range to widen the corridor west of Salt Lake City, UT. This action will extend the comment period closing date to allow for a 60-day comment period instead of the existing 45-day comment period on ASD No. 84–ANM–11.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, VOR Federal airways, Continental control area and restricted areas.

Extension of Comment Period

The comment period for ASD No. 84–ANM–11 is extended to close on August 6, 1984.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65.)

Note.—This document extends the comment period for a notice of proposed rulemaking to afford the public and industry with additional time in which to review and respond to the notice. Therefore, this document is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) as no regulatory or economic burden is imposed on any person by this action. A full regulatory evaluation will be prepared if further rulemaking is warranted based on the comments received as a result of the Notice.

Issued in Washington, D.C., on June 22, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84–17330 Filed 6–28–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 83–AWP–17]

Proposed Alteration of Jet Route, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign a segment of Jet Route J–7 in the State of California to facilitate a more efficient use of the navigable airspace.

DATES: Comments must be received on or before August 13, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 83–AWP–17, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83–AWP–17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to delete the segment of Jet Route J–7 between Oakland, CA,

Sacramento, CA, and Reno, NV, and establish a segment between Los Angeles, CA, and Reno, NV. Efficiency is improved through the codification of a route that is presently being requested routinely by pilots. Also, a reduction of air traffic controllers' workload is realized by eliminating the need for radar vectoring and route monitoring procedures along the route. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

§ 75.100 [Amended]

J–7 [Amended]

By deleting the words "Oakland, CA, via Sacramento, CA;" and substituting the words "Los Angeles, CA, via INT Los Angeles 319°T(304°M) and Avenal, CA, 145°T(129°M) radials; INT Avenal 145°T(129°M) and Friant, CA, 161°T(164°M) radials; Friant;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, DC., on June 22, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84–17329 Filed 6–28–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

15 CFR Part 377

[Docket No. 40677–4077]

Request for Public Comment of Lifting the Short Supply Validated Licensing Requirement for Exports of Linear Alpha Olefins and Other Products Without a Likely Energy End Use

AGENCY: Office of Industrial Resource Administration, International Trade Administration, Department of Commerce.

ACTION: Advanced notice of proposed rulemaking and request for public comment.

SUMMARY: A number of exporters have requested that the Department of Commerce consider the removal of linear alpha olefins as a product subject to short supply licensing controls (15 CFR 377.6). Such commodities are included in Group N of Supplement No. 2 to Part 377 of the Export Administration Regulations and are included within an outdated Schedule B Number (431.0290). In 1982 the Census Bureau assigned a new number to linear alpha olefins (431.0270).

Linear alpha olefins do not have a likely end-use as an energy source. At present, linear alpha olefins require validated export licenses as refined petroleum products under Group N. If these products are removed from Group N, validated licensing requirements would be eliminated. Accordingly, the Department is soliciting comments from the public as to whether these commodities and comparable commodities in Group N without a likely energy end-use should continue to be included in the list of refined petroleum products subject to licensing.

DATE: Comments must be received by July 13, 1984.

ADDRESS: Comments may be mailed to: Department of Commerce, Resource Assessment Division, PO Box 663, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: John Richards, Director, Office of Industrial Resource Administration, International Trade, Administration (Telephone: 202/377–4506).

SUPPLEMENTARY INFORMATION: After receiving public comments the International Trade Administration will make a decision regarding this matter and issue an appropriate notice in the **Federal Register**. The period for submission of comments will close two weeks from the publication of this notice. All comments received before the close of the comment period will be considered by the Department. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured.

Public comments will become a matter of public record, and will be available for public inspection and copyinig. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning this Notice will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230. Records in this facility may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202/377–3031.

Authority: Secs 203, 206, Pub. L. 95–223, as amended (50 U.S.C. 1702, 1704); E.O. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Sec. 103, Pub. L. 94–163 as amended (42 U.S.C. 6212); E.O. 11912 of April 13, 1976 (41 FR 15825, as amended); Section 201 (10), Pub. L. 94–258 amending 10 U.S.C. 7430.

Dated: June 25, 1984.

John A. Richards,

Director, Office of Industrial Resource Administration.

[FR Doc. 84–17313 Filed 6–28–84; 9:45 am]

BILLING CODE 3510–DT–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–21079; S7–24–84]

Two-Tier Tender Offer Pricing and Non-Tender Offer Purchase Programs—Advance Notice of Possible Commission Actions

AGENCY: Securities and Exchange Commission.

ACTION: Request for public comment.

SUMMARY: The Commission is studying two-tier pricing in tender offers and non-tender offer purchase programs. This review has evolved from recommendations proposed to the Commission by its Advisory Committee on Tender Offers. The Commission is requesting public comment on these

recommendations as well as on other proposals, issues and data described in this release. This initiative will assist the Commission in its review of the tender offer regulatory scheme. The Commission will review comments made in response to this release with a view toward possible rulemaking and legislative proposals.

DATE: Comments should be received on or before September 14, 1984.

ADDRESS: Comment letters should refer to File S7–24–84 and be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Joseph G. Connolly, Jr. or Robert E. Burns, ((202) 272–3097), Office of Tender Offers, Division of Corporation Finance, or, regarding the Report that is an annex to this release, Gregg A. Jarrell ((202) 272–7102), Chief Economist, Securities and Exchange Commission 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Securities and Exchange Commission (the "Commission") is considering two practices in the change of control area that have raised serious concerns and have come under increased scrutiny. The first is an acquisition, initiated by a tender offer, where the per share consideration is higher for one portion of the shares to be acquired than for the other portion ("two-tier pricing" or a "two-tier bid").[1] The second is the acquisition of a significant percentage of stock through open market or privately negotiated purchases.

The issues surrounding two-tier pricing and non-tender offer acquisition programs have been focused recently by the Report of Recommendations of the Commission's Advisory Committee on Tender Offers.[2] The Advisory Committee identified concerns with these practices and made proposals to address those concerns.[3] The Commission expressed reservations with those recommendations and has initiated a study of the issues in this area.[4] As part of the study, this release discusses concerns regarding two-tier bids and open market or privately negotiated purchase plans. It identifies possible solutions to alleviate these concerns, including the Advisory Committee's recommendations, and requests pubic comment.

Finally, as a further part of the Commission's study, the Office of the Chief Economist ("OCE") has compiled data regarding successful tender offers in calendar years 1981–1983. This study covers 91 any-or-all, 32 two-tier, and 25 partial tender offers. The data show that the average premium for the any-or-all tender offers is 63.4 percent, compared with an average blended premium of 55.1 percent for two-tier offers, and 31.3 percent for partial tender offers. A closer comparison of any-or-all uniform premiums with two-tier blended premiums shows that 68 percent of the any-or-all offers have premiums above 40 percent, while 72 percent of the two-tier offers have blended premiums above 40 percent. This study is attached as an annex to this release and provides complete detailing of the sample studied and the methodology used. Commentators are requested to comment upon the OCE Report and suggest further research directions.

II. Concerns With the Practices and Recommendations of the Advisory Committee on Tender Offers

A. Two-Tier Pricing

The two-tier bid is a recent practice that has evolved from the partial tender offer. The partial tender offer itself is not new. As a bidding practice it has been used for many years in a variety of ways—standing alone or as part of a series of transactions such as an open market acquisition, followed by a partial tender offer, followed by a final merger.[5] As noted above, of the 148 successful tender offers included in OCE's three-year sample, 32 are two-tier offers, 25 are partial offers and 91 are any-or-all offers. Recently, the partial offer has been amplified by the two-tier bidding strategy where a proposed second step, lower priced acquisition of the minority interests is disclosed in the first step partial tender offer.[6]

Concerns with two-tier pricing pivot principally around what many see as coercion or pressure on shareholders to tender into the first step cash tender offer.[7] The alternative of not accepting the tender offer is virtual assurance that, if the offer is successful, the shares will have to be sold in the lower priced, second step.[8] Given that pressure, it is

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[1] A two-tier bid usually involves an acquisition that is accomplished in two steps. In the first step, the bidder uses a tender offer to buy, at a premium price and generally for cash, enough shares to establish a controlling position in the target. Once control is established, the offeror will take the second step in the acquisition, a merger of the target into the bidder or a subsidiary, freezing out minority shareholders with a forced acceptance of cash or securities valued at a lower price than the original tender offer. The second step merger generally is disclosed in the tender offer materials and usually involves securities of the bidder.

[2] Advisory Committee on Tender Offers, *Report of Recommendations* (July 8, 1983) ("Advisory Committee Report"). The Advisory Committee was established by the Commission to examine the tender offer process and other techniques for acquiring control of public issuers and to recommend to the Commission appropriate or necessary legislative and regulatory changes. *See* Release No. 34–19528 (February 25, 1983) [48 FR 9111, March 3, 1983]. Members of the public may obtain copies of the Advisory Committee Report, on a one per request basis, by sending a self-addressed 9×12 inch envelope with prepaid postage of $3.20 affixed, to Securities and Exchange Commission, Publications Section, Public Reference Branch, Stop 1–2, 450 Fifth Street, NW., Washington, D.C. 20549.

[3] Advisory Committee Recommendation 16 proposed that a partial offer have a longer minimum offer period than a bid for all shares. That regulatory disincentive would tend to mitigate what the Committee saw as the coercive elements of partial and two-tier bids. Recommendation 14 proposed that any acquisition resulting in total ownership of over 20 percent of the voting power of an issuer be made by tender offer. Such a provision was intended to assure equal opportunity for all shareholders be benefit from any premium associated with a control acquisition, an opportunity the Advisory Committee believed was not available where control passed through a non-tender offer acquisition program.

[4] The Commission considered all of the Advisory Committee's recommendations at its open meeting on March 13, 1984. Chairman Shad testified as to the Commission's positions on March 28, 1984 before the Subcommittee on Telecommunications, Consumer Protection and Finance of the House Committee on Energy and Commerce. The Commission is now engaged in a three part response to the Advisory Committee's Report: first, proposed legislation (*see* Tender Offer Reform Act of 1984 (H.R. 5693, 98th cong., 2d Sess. (1984)) submitted by the Commission to Congress on May 21, 1984 and introduced on May 22, 1984); second, proposed rulemaking; and third, further study on certain issues.

[5] *See, e.g.*, Freund & Easton, *The Three-Piece Suitor: An Alternative Approach to Negotiated Corporate Acquisitions*, 34 Bus. Law. 1679 (1979).

[6] Some, including certain members of the Advisory Committee, argue that even the pure partial offer is a two-tier bidding strategy, where the first step is a cash tender offer and the second step is the open market.

[7] The OCE Report computes the first- and second-tier premium in two-tier offers to determine if first-tier premiums encourage shareholders to tender into an offer with a lower second-tier premium. OCE finds that the second-tier premium equals at least 80 percent of the first-tier premium in over three-fourths of the cases and most second-tier premiums are equal to at least 90 percent of the first-tier premium. The average first-tier premium in two-tier offers is 63.5 percent, and the average second-tier premium is 47.1 percent. The average bid premium in partial tender offers is 45.9 percent. The Commission notes, however, that the OCE Report does not attempt to determine the extent to which "market professionals" or any other group of shareholders of a target may receive a disproportionately high percentage of the first tier premium.

[8] The pressure based on price differential in the first and second step can be accentuated where the consideration in the second step is securities whose market value may be less than stated value.

argued that there is no realistic means for shareholders to reject a two-tier bid, even where they believe the combined, or blended, first and second step price for the target is too low.[9]

The Commission's Advisory Committee on Tender Offers identified many of these concerns with coercive effects of two-tier bids. Indeed, the Advisory Committee considered these concerns to be applicable to partial offers as well. The Committee proposed that a regulatory disincentive be placed on all partial offers. That disincentive would be substantially longer minimum offering period than that applicable for an offer for all shares ("full bid").[10] This was expected not only to encourage the use of the full bid but also of offset to some degree the advantage of a two-tier bid.

The Advisory Committee envisioned an extension of the offering period for a partial bid beyond the current, 20 business day minimum offering period for a full bid.[11] The concept of different time periods for partial and full bids, however, could also be implemented by reducing the full bid period and leaving partial offers on the current time schedule. For instance, the minimum offering period for a full bid could be reduced to 10 business days, and the partial offer could be left at 20 business days. Commentators are specifically requested to address this alternative along with that of the Advisory Committee.

The Commission is sensitive to the Committee's concerns regarding two-tier and partial offers. At its meeting on March 13, however, the Commission stated that it did not think the Committee's recommendation is the best way to address these concerns. The Commission's reservation is based on a number of points.

First, the Commission is not satisfied that the case for the supposed coercion in a two-tier bid has been made with sufficient precision. In this regard, the Commission notes that any tender offer, and particularly any partial tender offer, involves an element of coercion or pressure. The Commission requests commentators to address specifically cases in which two-tier bids have created pressure on shareholders which is different than that present in other tender offers.

Second, assuming that the two-tier bid is unduly coercive, the Commission is not certain that the two week extension of the minimum offering period for the partial offer recommended by the advisory Committee is a strong enough response. Currently, there is a timing disincentive for the partial bid. This arises from the ability of a bidder in a full bid to begin purchases upon the termination of the withdrawal rights. With a partial offer, purchases cannot commence until the expiration of the offer.[12] Notwithstanding this disparity, however, it is not clear that it has discouraged bidders from using the two-tier bidding strategy. Commentators are requested to address this point specifically in their comment letters.[13]

Third, aside from questions about the effectiveness of the proposal, the Commission in concerned with any regulation that does not distinguish the two-tier bid from the partial offer. The partial tender offer has long been an accepted bidding practice which can serve valid business purposes.[14] The Commission specifically requests commentators to discuss whether it is appropriate to regulate two-tier bids in a way that would also regulate partial offers. Further, it requests comments on whether in is possible to formulate regulation that distinguishes between partial and two-tier offers.

Fourth, the Commission believes that any restriction on two-tier pricing must appreciate the impact of the regulation on broader corporate control transfer issues. For instance, if two-tier bidding is restricted, will there be fewer bids made? Or, alternatively, will restrictions on two-tier bidding simply force bidders into pure partial tender offers with no second step into which minority shareholders can sell? The OCE study shows that any-or-all tender offers are common for small target firms, while partial and two-tier offers predominate among larger targets, as measured by the market value of equity. If two-tier bidding is restricted, will the distribution of tender offers by firm size change?

Finally, the Commission believes there is some indication that recent regulatory changes and proposals may effectively reduce the appeal of two-tier pricing for bidders. Since the Commission adopted Rule 14d–8 (*see* Release No. 34–19336 (December 15, 1982)), which eliminated the use of multiple proration pools by requiring that proration rights be extended throughout the offering period of any partial offer, there has been a decline in the use of two-tier pricing in tender offers. *See* OCE Report. Futher, the Advisory Committee proposed, and the Commission concurred, that cash and exchange offers be placed on a more equal regulatory footing.[15] Under current regulations, because of the need to register securities to be offered in exchange, the Advisory Committee found that there was major disincentive to using securities as consideration in a tender offer. To the extent that regulatory disincentives are reduced for exchange offers,[16] the Commission requests comment on whether bidders may find it less necessary to structure bids with a high cash front end and a lower priced securities back end or whether bidders may have greater flexibility to design other forms of two-tier bids.

B. Open Market or Privately Negotiated Purchase Programs

The second area the Commission is studying involves the acquisition of a

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[9] So effective is the pressure of the two-tier bid, some have theorized, that it is possible for a two-tier bid with a lower blended price to prevail over a higher priced offer for all the shares. This may result because the risk of proration in a two-tier offer is reduced by the likelihood of shareholders tendering into the competing bid and the fact that a percentage of shareholders may not tender into either offer. On the basis of the 1961–1983 data in the OCE Report, there is no evidence of a two-tier bid with a lower blended price prevailing over a higher priced offer for all the shares. *See* section V of OCE Report.

[10] *See* Advisory Committee Report at Recommendation 16 which provides as follows:

The minimum offering period for a tender offer for less than all the outstanding shares of a class of voting securities should be approximately two weeks longer than that prescribed for other tender offers.

[11] *See* Rule 14e–1 (17 CFR 240.14e–1).

[12] Under Rule 14d–7 (17 CFR 240.14d–7) any person who has deposited securities in a tender offer has a right to withdraw those shares for the first 15 business days of the tender offer. Thus, after that, the bidder in an offer for all the oustanding securities may commence purchasing. Where the offer is for less than all the shares, however, Rule 14d–8 (17 CFR 240.14d–8) requires proration rights to be extended throughout the offering period. The bidder, therefore, cannot commence purchases until the expiration of the offer because it cannot determine the proration factor until the offer expires.

[13] In addressing this point, commentators should note that the Advisory Committee recommended, and the Commission concurred, that withdrawal rights be extended throughout the offering period. *See* Advisory Committee Report at Recommendation 17. The Commission will make this the subject of a separate rulemaking proposal.

[14] There was substantial sentiment on the Advisory Committee itself that partial tender offers are important to the economy. The Report cited six valuable roles for partial offers. *See* Report at pp. 24–25.

[15] *See* Advisory Committee Report at Recommendations 5, 11, and 12.

[16] The Commission has proposed for comment a new form, Form S–4, for registration of securities in business combinations which, if adopted, would implement the Advisory Committee's proposal to extend principles underlying the integrated disclosure system to exchange offers. *See* Release No. 33–6534 (May 9, 1984) [49 FR 20833]. Another element of the Advisory Committee's recommendation which involves commencing bids and receiving tenders prior to the effective date of the registration statement will be the subject of a separate rulemaking project.

significant position through open market or privately negotiated purchases. Concern here is raised by the fact that where such purchases do not involve a tender offer [17] and where control passes as a result of the purchases, there are not the same substantive protections as would be present if the acquisition had been by tender offer. In a tender offer, the bidder must provide disclosure about the offer, keep the offer open for a minimum period of time, provide the substantive protections of withdrawal, proration and the best price rule, and make the offer to all shareholders. The tender offer procedure and regulations will assure that market forces will price the premium and that this premium is offered to all shareholders. Those same assurances do not exist in ordinary open market or privately negotiated purchase programs which are regulated essentialy from a disclosure standpoint.[18] Thus, although it may have substantially the same effect as a tender offer, the open market or negotiated acquisition program has the tendency to proceed with the lowest control premium and to pass that premium to a selective group of shareholders.[19]

Additional regulation of these acquisitions has been proposed form time to time by the Commission [20] and was addressed by the Advisory Committee specifically. The Advisory Committee proposed that any acquisition resulting in total ownership over 20 percent of the voting power of an issuer be required to be made by a tender offer.[21] Above the 20 percent threshold, this proposal would eliminate concerns of those who believe open market or privately negotiated purchase programs unfairly and unevenly set and distribute control premiums. The recommendation is founded on the premise that control is a corporate asset and that shareholders should have an equal opportunity to share in the premium paid for that asset.[22]

At its meeting on March 13, the Commission expressed serious reservations about the Committee's proposal. Principal among the drawbacks with such a proposal is the regulatory burden that it would place on all forms of acquisition that result in more than percent ownership, even those where control is not the ultimate objective. For instance, the proposal could inhibit such acquisitions as those for investment or technology transfer purposes by increasing the expense of assembling such holdings and by decreasing the alienability of blocks in excess of 20%. The proposal, which would represent a fundamental change in the current system, could have significant impact on capital formation and corporate governance. The Advisory Committee itself acknowledged the difficult issues that such a proposal would present, noting its own "extended debate" on the question.

III. Alternative Proposals

In addition to the proposals of the Advisory Committee and the legislative and rulemaking proposals of the Commission in 1979 and 1980,[23] three alternative proposals have been made to address two-tier bids and non-tender offer acquistion programs. The first would require a bidder to make a tender offer for all the shares of a class once holdings in that exceed a certain threshold. The key determinant with this suggestion is the level of the trigger threshold. Various proposals have ranged from as low as 10 percent to as high as 30 percent. As noted by the Advisory Committee, under the regulation of takeover bids in the United Kingdom, the City Code on Take-overs and Mergers ("City Code") imposes a general obligation to make an offer for all shares if the amount owned or sought exceeds 30% of the outstanding shares.[24]

Consequences of this type of regulation, which combines certain policy elements of the Advisory Committee's Recommendations 14 and 16, are similar to those already described. A system that requires the tender offer to be used above a certain threshold could increase the costs of toe-hold acquisitions and restrict the alienability of blocks. Moreover, a system that requires a tender offer for all the shares above a certain threshold could limit partial ownership of companies, an economic consequence of uncertain limits. In addressing this alternative commentators are requested, if they believe a threshold is appropriate, to indicate at what level they would place it and why.

The second proposal also derives from the British system of regulation. Under the City Code, a letter of transmittal by which target company shareholders respond to an offer must provide an opportunity to approve or disapprove an offer for less than all of the outstanding shares.[25] The tender offer reply form thus permits the shareholder to exercise two choices in response to the bid. First, the shareholder may tender or not tender shares that are the subject of the offer. Second, the shareholder is permitted to vote for or against the offer. If a majority of the shareholders vote against the offer, the shares will be returned and the bid will not be permitted to proceed. Thus, in the case of a partial offer, including an explicit two-tier priced offer, a shareholder may tender shares and vote against the transaction at the same time.

This type of provision appears to eliminate effectively the perceived coercive aspects of the two-tier bid that have evoked concern. A shareholder who is not satisfied with the price of the offer, in either the first or the second step, but who feels compelled to tender shares into the first step tender offer, may at the same time protect his or her position by voting against the offer. To the extent that the market as a whole concurs, the regulatory system would

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[17] Courts have found that certain purchase programs constitute tender offers. *See, e.g., Wellman* v. *Dickinson*, 475 F.Supp. 783 (S.D.N.Y. 1979); *S–G Securities, Inc.* v. *Fuqua Investment Co.*, 466 F. Supp. 1114 (D.Mass. 1978); *Cattlemen's Investment Co.* v. *Fears*, 343 F.Supp. 1248 (W.D.Okla. 1972).

[18] *See* 10(b) and 13(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Exchange Act"). Section 10(b) is the general antifraud provision of the Exchange Act. Section 13(d) requires certain disclosure within 10 days after an acquisition that results in a beneficial ownership of more than 5% of an issuer's registered equity securities. Recently, the Commission has proposed legislation that would empower it to close the 10-day window period in section 13(d). *See* H.R. 5693, 98th Cong., 2d Sess. (1984). That legislative proposal was in direct response to Advisory Committee Recommendation 13.

[19] For a general discussion of the impact on target shareholders of the open market or privately negotiated acquisition program, *see* Maiwurm & Tobin, *Beachhead Acquisitions: Creating Waves in the Marketplace and Uncertainty in the Regulatory Framework*, 38 Bus. Law. 419, 425–26 (1983).

[20] In 1979, the Commission proposed a regulatory structure that would require the use of a tender offer for an acquisition above a specified threshold of beneficial ownership. *See* Release No. 34-16384 (November 29, 1979). These rules were not adopted. In 1980, the Commission proposed legislation that would have effected a similar result. *See* S. 3188, 96th Cong., 2d Sess. (1980). The legislation was not enacted. *See also* note 17.

[21] *See* Advisory Committee Report at Recommendation 14 which provides as follows: No person may acquire voting securities of an issuer, if, immediately following such acquisition, such person would own more than 20% of the voting power of the outstanding voting securities of that issuer unless such purchase were made (i) from the issuer, or (ii) pursuant to a tender offer. The Commission should retain broad exemptive power with respect to this provision.

[22] The question whether control should be deemed a corporate asset has been debated for some time. *See, e.g.*, Andrews, *The Stockholder's Right to Equal Opportunity in the Sale of Shares*, 78 Harv. L. Rev. 505 (1965); Berle, *"Control" in Corporate Law*, 58 Columb. L. Rev. 1212 (1958). *See also Perlman* v. *Feldmann*, 219 F.2d 173 (2d Cir.), *cert. denied*, 349 U.S. 952 (1955).

[23] *See* note 19.

[24] *See* Rule 34 of the City Code.

[25] Under the City Code, partial offers are permitted under certain circumstances. *See* Rule 27 of the City Code.

provide a mechanism for the coalescence of that estimate.

A third approach would permit partial offers but would require any second-step acquisition within a specified period to be of at least equal per share value. Under this proposal, a bidder could make a partial tender offer. Any further acquisitions within a specified period, two years for instance, whether by merger, tender offer, or non-tender offer purchases, would only be permitted if the consideration was of at least equal value per share as that given in the first step partial tender offer. This proposal would mitigate against the perceived coercive effects of both partial and two-tier offers by eliminating the price differential between the initial tender offer and the second step take-out merger or the open market absorption of minority interests.

IV. Specific Questions

In addition to Advisory Committee Recommendations 14 and 16, the alternative proposals described in Part III, and other specific inquiries in Parts II and III, commentators are requested to consider the following questions.

1. Is two-tier pricing an acceptable means to induce tendering?

2. Is a two-tier offer coercive, and, if so, how and in what situations is it most coercive?

3. Does the partial offer with no stated second step involve less certainty and more coercion than the explicity two-tier bid, and if so, explain how?

4. Is it possible to regulate two-tier offers without also regulating partial offers, and, if so, how?

5. Is a partial offer inherently more complicated than an offer for all shares, and, if so, is it necessary to keep a partial offer open longer than a full offer in order to give shareholders time to evaluate its terms?

6. If regulation restricted bidders to using only tender offers for all shares, would this have a chilling effect on takeover activity and, if so, how?

7. As a conceptual matter, should "control" in any form be deemed a corporate asset, and why?[*] If so, for what form of "control" is that premise most apt?

8. Should federal regulation be structured around the premise that "control" is a corporate asset, and, if so, what system of regulation is most appropriate?

9. What are the principal benefits and detriments to an open market or privately negotiated acquisition program to obtain control?

10. If a non-tender offer acquisition program occurs over a long period of time and incremental acquisitions are fully disclosed, are there still adverse consequences that require additional regulation?

11. Should the regulatory scheme assure that the tender offer is the fastest means to acquire a substantial percentage of an issuer's equity?

12. What would be the economic consequences of a regulation that prohibited open market acquisitions above a certain threshold, and required that above that threshold any acquisition be made by a tender offer?

13. Some reason that, from an economic standpoint, the partial offer should always have a higher premium than the full offer. Assuming this is true, if the initial bid is two-tier priced, will the high premium in the first step partial tender offer necessarily force a subsequent competing bidder to use a two-tier bid, as opposed to a full bid. If so, why? If not, why not?

14. It has been argued that the partial offer can induce shareholders to accept less than the best alternative. Is that argument apt and if so, would a requirement that target company shareholders approve a partial tender offer in the manner described in Part III resolve the predicament?

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Dated: June 21, 1984.
By the Commission.

George A. Fitzsimmons,
Secretary.

The Economics of Partial and Two-Tier Tender Offers

Concern over partial and two-tier tender offers is very evident. The Securities and Exchange Commission's Advisory Committee on Tender Offers noted those concerns and suggested possible regulatory changes. Recent legislative proposals would severely hinder the use of partial or two-tier tender offers. Before regulatory changes are pursued however, a comprehensive economic analysis of partial and two-tier tender offers is required. In this paper, we consider tender offers in 1981, 1982 and 1983, and relate empirical information on partial and two-tier tender offers to the controversy surrounding them.

Our attention is focused on the premiums paid to target shareholders in partial or two-tier offers as opposed to any-or-all offers. A predominant concern when any-or-all offers are not used is that target shareholders may be encouraged to tender in the first tier when the offer price of the second tier is substantially lower (or nonexistent in partial offers). We compare the overall "blended" premium in partial and two-tier tender offers (a weighted average of first- and second-tier premiums) to any-or-all premiums to determine relative premiums paid to target shareholders in each case. In addition, we note other characteristics of partial and two-tier offers. Frequency of these offers over time and possible rationale for such offers are considered.

This memorandum is organized into several sections. The first section is a brief overview of the criticism of partial and two-tier offers. The second section describes our data and empirical methodology. The third section considers some theoretical explanations of partial and two-tier tender offers. The fourth section relates our empirical information to the controversy. Section five reviews multiple bidder contests. A summary and conclusion ends the paper.

Our study reveals these characteristics of any-or-all two-tier and partial tender offers in 1981, 1982 and 1983:

- Any-or-all offers are more frequent than partial and two-tier offers (91 as opposed to 57). However, the incidence of any-or-all offers is much higher among smaller targets while partial and two-tier offers predominate among medium-size and large targets.
- Any-or-all offers yield a higher overall premium (63.4 percent) than the blended premiums in two-tier (55.1 percent) and partial (31.3 percent) offers. Any-or-all premiums and two-tier blended premiums are very similar in magnitude—72 percent of two-tier premiums exceed 40 percent while 68 percent of any-or-all premiums do so.
- The first-tier of a two-tier offer is virtually equal to the overall premium of an any-or-all offer at 63.5 percent. However, the offer premium of partial offers is lower at 45.9 percent.
- Nearly three-fourths of the 32 two-tier offers have less than a 20 percent difference between the first- and second-tier premiums. In contrast, less than half of the 25 partial offers have less than a 20 percent difference between the offer price and the post-offer trading price.

I. The Controversy Behind Partial and Two-Tier Tender Offers

In Release No. 34–21079, the Commission describes the concerns surrounding partial and two-tier offers. Central to these concerns is that target shareholders may be induced to tender

[*] *See* note 21.

to a partial or two-tier offer when an alternative any-or-all offer may have a higher overall premium. A two-tier offer might be accepted over an any-or-all offer in this case because shareholders tender to a high first tier to avoid a relatively low second tier. Though shareholders would be better off on an overall basis if they tendered to the any-or-all offer rather than tendering to the two-tier offer, shareholders are not certain which offer will be accepted. A situation is created where shareholders may tender to the first tier of the two-tier bid because of fear of being forced to accept a lower second-tier offer if the bidder obtains control in the two-tier offer. Commentators suggest that this process is coercive and encourages shareholders to tender when the overall two-tier premium is not as attractive as existing or potential any-or-all offers.

Our research focuses on identifying partial and two-tier offers and computing any-or-all, first-tier and "blended" premiums (which combine first-tier and second-tier premiums).

These premiums are compared for evidence of shareholders accepting relatively low overall bids in partial or two-tier offers or indications of coercive behavior. In addition, the frequency of such offers and the role of these offers in takeovers are studied. It is hoped that the evidence presented will provide a springboard for further discussion and reserach.

II. Data and Methodology

The debate surrounding partial and two-tier offers lacks empirical evidence. Although commentators from investment banking firms and other industry sources are very knowledgeable about partial and two-tier offers, there has been no data compiled to specifically address the empirical questions arising in this issue.

The Austin data base compiles all tender offer filings at the Commission and provides details on offer terms and target characteristics.[1] From this data base, we take all "successful" cash offers (defined as those in which some target shares were purchased) in 1981, 1982 and 1983.[2] For these offers, we compile a data base detailing offer terms, pre- and post-offer prices of target shares, and other information such as total number of target shares and number of shares held and sought by the bidder.[3]

In general, tender offers may be divided into two basic groups depending on whether prorationing is a factor in the bid. An any-or-all offer states that the bidder will buy any-or-all tendered shares of the target firm, as long as some minimum conditions are met. In general, such conditions related to a minimum number of tendered shares to insure control. In an any-or-all offer, the target shareholder knows that all of his tendered shares will be purchased at the offered premium as long as the minimum conditions are met.

The second type of tender offer is one in which the bidder states a maximum number of shares to be purchased in addition to a minimum condition. If the offer is oversubscribed, the tendered shares will be subject to prorationing. When the offer is executed under prorationing, each tendering account has the same fraction accepted. Prorationing requirements insure that each target shareholder receives proportionate share of the terms of the tender offer.

This second type of offer may be divided into several subgroups. A *pure partial offer* we define as one in which there is no announced second-tier offer during the tender offer and no clean-up merger of tender offer closely following the execution of the tender offer. Assuming the partial offer is for control off the target firm and is successful, a minority interest is left trading the target firm's shares in the market. Following the execution of the tender offer, it should be noted that the trading price is generally lower than the offer price. This trading price of the target shares is essentially the second tier of a partial offer.

A two-tier offer combines a partial tender offer for control with an offer for remaining shares following the execution of the original tender offer. In an *explicit two-tier* offer, the bidder, at the time of the first-tier offer, agrees with target management to purchase the remaining shares following the execution of the first-tier. The first tier usually is for controlling interest in the target firm and almost always offers cash for the target shares. The second tier is more likely to offer securities for the remaining shares after the cash first-tier offer closes successfully. The first-tier price is offered to shareholders on a prorata basis and the value of the second-tier offer is less than the first-tier offer on a per-share basis.

An *implicit two-tier* offer lies between the pure partial offer and the explict two-tier offer. Though no second tier is agreed to at the time of the original offer for control, a second tier is revealed shortly after the execution of the offer. The second-tier price in implicit two-tier offers is again generally lower than the first-tier price and offers securities for the target shares. The second-tier offer often takes the form of a merger.

Central to our research is the determination of premiums paid in the various categories of tender offers. The premium of the any-or-all offer is simply the precentage difference between the tender offer price and the pre-offer price:

$$(1)\ P_A = (P_T - P_M)/P_M$$

Where:

P_A = any-or-all tender offer premium,
P_T = price offered for target shares, and
P_M = pre-offer market price of target shares.

The premium of partial and two-tier tender offers is more difficult to determine. The "blended" premium we compute reflects the overall premium paid to all outstanding shares, where the premium paid to each tier is weighted by the fraction of shares receiving that premium. This blended premium is applicable to pure partial, explicit two-tier and implicit two-tier offers. In a pure partial offer, the price of the remaining traded shares is essentially the second-tier price. We express the blended premium as:

$$(2)\ P_B = (F \times T_1) + ((1-F) \times T_2).$$

Where:

P_B = the blended price of the offer,
T_1 = the per-share, first-tier offer price,
T_2 = the per share, second-tier offer price,
F = the fraction of outstanding shares demanded through the first tier of the offer,
$T_1 = (T_1 - P_M)/P_M$,
$T_2 = (T_2 - P_M)/P_M$, and
P_M = pre-offer market price of target shares.

Most of the needed data is readily available. The tender offer price in any-or-all offers (P_T) and the first-tier price (T_1) in partial and two-tier offers is stated in the terms of the tender offer. The fraction of outstanding shares sought (F) is measured as the fraction of

[1] *Tender Offer Statistics, 1971–1983*, Douglas Austin & Associates, 3178 Republic Blvd. N., Suite 2, Toledo, Ohio 43615, 1984.

[2] In our study, we do not distinguish explicitly between "friendly" and "hostile" offers. In many cases, the target management has agreed to the bidding firm's offer terms. This is especially true in the case of two-tier offers when the second-tier terms are stated at the time of the first-tier offer.

[3] For our study, we augment the Austin data base with more detailed information from the *Wall Street Journal*. In a few cases it was necessary to eliminate a tender offer from our sample due to lack of contemporaneous price informatin about the target firm. Tendor offers were also excluded if they were clean-up offers after the bidder had already obtained control of the firm. A list of excluded offers is available upon request.

Mergers, as opposed to tender offers, are specifically excluded from our sample. For example, in the complicated Martin Marietta/Bendix case, we include only the various tender offers in which shares were purchased. These offers include Martin Marietta's offer for Bendix and Bendix's offer for Martin Marietta. United Technologies friendly tender offer for Martin Marietta is not included because no shares were purchased under it and Allied's merger with Bendix is also excluded since no tender offer was involved.

outstanding shares purchased in the first round of the tender offer. The pre-offer market price of the target shares (P_M) is measured 20 trading days before the announcement of the initial offer of the contest. This earlier price is used to lower the probability that leakage of information about an impending tender offer has raised P_M above its value in the case of no tender offer.

The second-tier or clean-up price (T_2) is more difficult to determine. In cases where the second-tier offer is composed of securities, the actual security value may not equal that stated by the bidder. In implicit two-tier offers, the value of T_2 is not known until the second-tier offer is made. In pure partial offers, the second-tier price is essentially the post-offer trading price of the target shares. For uniformity in comparing these offers, we estimate T_2 in each type of offer as the market price of target shares 20 trading days after the execution of the initial offer.[4]

III. Why Bidders Use Partial and Two-Tier Tender Offers

The formula for the blended premium of a partial or two-tier offer can be used to show that any partial offer has a matching any-or-all offer in which target shareholders receive the algebraically equivalent premium. For example, a two-tier offer of $20 for 50 percent of the outstanding shares and $10 for the other 50 percent is algebraically equivalent to a uniform offer of $15 for any-or-all shares outstanding. The premium of the any-or-all offer equals the blended premium of the two-tier bid. Total outlay to the acquiring firm is equal under these bids assuming both induce 100 percent tenders. What are the economic differences, then, between partial and two-tier offers and any-or-all offers, and why are partial or two-tier tender offers preferred by some bidders? Several explanations have been suggested:

1. A partial tender offer leaves outstanding a minority equity interest in the target firm with the value of the outstanding shares determined in a competitive exchange market. In its report, the SEC Advisory Committee on Tender Offers cites several benefits of partial offers in addition to those listed below.[5]

[4] In the case of exchange offers, it is especially important to use the market value of the target stock rather than the stated value of the securities offered. Shareholders will base their decisions on the market value of the securities, not the value as stated by the bidder.

[5] SEC Advisory Committee on Tender Offers, *Report of Recommendations*, July 8, 1983, pp. 24–25.

2. The acquirer wishes to limit the financial risk of the takeover bid. An any-or-all tender offer exposes the bidder to finanical risk because it is difficult to predict with precision how many shares will be tendered in response to a particular offer. The total outlay required to obtain control depends on the offer price and the number of shares purchased. Because the bidder must choose the offer price before he knows the number of shares tendered, and because an any-or-all offer requires the bidder to purchase all tendered shares as long as the minimum conditions are met, the total outlay for the bidder seeking control cannot be known precisely in advance.

In contrast, a partial tender offer obligates the bidder to purchase only up to a pre-set maximum number of shares regardless of how many shares are tendered, as long as the minimum conditions are met. The partial offer sets an upper bound on the total outlay required for control and eliminates this source of financial risk to the bidder.[6]

3. A two-tier offer can increase the incentive for target shareholders to tender by offering a high first-tier premium and a relatively low second-tier premium. The greater the difference between the first-tier premium and the second-tier premium, the greater is the opportunity cost to target shareholders of not tendering if the offer succeeds. Under certain conditions, target shareholders can be induced to tender into a two-tier offer even though its blended premium is less than the uniform premium of an alternative any-or-all offer that is forthcoming. As identified by Professor Bradley, this situation is analogous to the classic prisoner's dilemma.[7]

[6] Uncertainty about how many shares will be tendered in response to an any-or-all offer can create considerable risk. For example, the total outlay for control doubles if 100 percent of outstanding shares are tendered compared with 50 percent. In view of the large per share premiums offered and the large investments represented by many tender offers the incentive can be great for the bidder to put a ceiling on the total outlay required by the tender offer.

[7] Michael Bradley, "Interfirm Tender Offers and the Market for Corporate Control," *Journal of Business*, 1980, pp. 345–376. See especially pp. 355–356. The prisoner's dilemma is created by placing two suspected perpetrators of a crime in separate rooms and presenting each with the following proposition. If you confess and your partner does not, he receives the harshest punishment and you go free. If he confesses and you do not, then you receive the harshest punishment and he goes free. If both confess, then both receive moderate punishment. The rational prisoner will confess to avoid the harshest punishment, even though no confession results in both going free.

The prisoner's dilemma analysis as applied to two-tier tender offers is clearer with an example. Suppose a target firm with 1,000 outstanding shares has a market value of $10 per share before the tender offer, for a total equity value of $10,000. Assume that a bidder is willing to pay $5,000 above this market value for control of the target firm. Therefore, the bidder is willing to pay $15 per-share in an any-or-all offer. Let us further assume that there is a strong expectation that in the near future (say 50 days) another bidder will offer $18 per share through an any-or-all offer.

Despite the expectation of a higher offer in the near future, the first bidder can fashion a two-tier offer to pressure target shareholders into responding while still paying only a $5,000 premium. Specifically, the first bidder offers $20 per-share for 500 shares on a proration basis, and $10 per share for the other 500 shares, to be paid after the first offer is executed. The blended price is $15, which equals the outlay in an any-or-all offer of $15 per share.

Faced with this offer, each target shareholder will reason that: (i) If other shareholders tender, then I should tender to avoid receiving only $10 for my shares; (ii) if other shareholders hold, then I should tender to receive the first-tier price of $20 per-share, with little prorationing risk if the offer succeeds. This reasoning will lead rational shareholders to tender. The result holds even though all shareholders know that concerted, organized refusal to tender would be the best strategy since it would allow by assumption all to receive $18 per share in the near future from an alternative bidder. The prisoner's dilemma that is created by the two-tier offer causes the shareholders to accept the lower-valued offer having a $15 blended price.

We studied all control contests involving partial or two-tier offers in 1981, 1982 and 1983 for evidence that any-or-all offers are disadvantaged relative to partial or two-tier offers in contests or that shareholders may be accepting a lower return by approving a partial or two-tier offer. As detailed in section V, there are no cases which support the suggestion that two-tier or partial offers can defeat competing any-or-all offers while providing lower premiums to target shareholders. Thus, though theoretically a two-tier offer can force the acceptance of a lower-valued offer, we find no cases where this actually happened.

4. Under SEC regulations in effect before December 15, 1982, a two-tier or partial tender offer forced shareholders to commit to tender their shares earlier

than they would under an any-or-all tender offer. This incentive resulted from the SEC's increase in the minimum offer period from 10 calendar days to 20 business days in 1979. At the same time, the minimum period for the proration pool remained at 10 calendar days. Therefore, while an any-or-all offer gave target shareholders 20 business days to make their tendering decisions, the partial or two-tier offer forced target shareholders to decide within 10 calendar days or forfeit their right to prorata acceptance of their tendered shares.

Earlier commitments by target shareholders benefit the bidding firm because target shareholders have less time to consider alternatives or wait for additional offers. This advantage to bidders of prorated offers have been eliminated since December 15, 1982, when the SEC extended proration rights throughout the offering period. We measure a moderate reduction in the incidence of two-tier and partial tender offers relative to any-or-all offers following this rule change.

IV. Empirical Results

A. Frequency of Tender Offers

Table 1 presents a breakdown by year and type of 148 tender offers in 1981, 1982 and 1983. There are 91 any-or-all offers accounting for 61 percent of the total. There are 57 partial and two-tier offers accounting for the remaining 39 percent. The relative incidence of any-or-all offers is roughly constant across the three years, with a modest increase ot 66.7 percent of the total in 1983. Two-tier and partial tender offers accounts for at least one-third of the total in each of the three years.

B. Size of Target Firms

Table 2 reports the average size of target firms by type of tender offer. Any-or-all offers are used generally for smaller target firms than either two-tier or pure partial offers. Target firms of any-or-all offers average $113.7 million in total equity value, as measured using the pre-contest stock price times the fully diluted number of shares. In contrast, targets of two-tier offers average $631 million and targets of pure partial offers average $353.8 million.

Tables 3a, 3b and 3c provide more detailed information on the distribution of target size by type of offer. Table 3a shows the absolute distribution of target size by type of offer and Table 3b reports the relative distribution of the same information. These tables reveal that 87.5 percent of two-tier offers and 60 percent of pure partial offers are for target firms of more than $40 million in equity value. On the other hand, only 46.2 percent of any-or-all offers are for these larger firms.

Table 3c reports the percentage of each type of offer in each class of target size. As the size of the target firm increases, two-tier and pure partial offers become increasingly prevalent and any-or-all offers play a lesser role. For target firms with less than $5 million in equity value, 93 percent of the 14 tender offers made are any-or-all offers. For the very largest firms (more than $320 million in equity value), only 25 percent of the 20 offers are any-or-all offers, while 75 percent are two-tier and pure partial tender offers. Clearly, two-tier and pure partial tender offers play an important role in takeover contests for medium-sized and large targets while any-or-all offers are used mainly for smaller targets.

C. Premiums in Tender Offers

1. *Any-or-All and Blended Premium.* The any-or-all and blended premiums for the three different types of tender offers are compared by year in Table 4. The three year average show that the mean premiums for any-or-all offers is hughest at 63.4 percent, compared with a moderately lower blended premium of 55.1 percent for two-tier offers. Partial offers yield a much lower blended premium of 31.3 percent.

Through the average premium for any-or-all offers is higher than the average blended premium for two-tier offers, a closer look at the distribution of premiums (Tables 5a and 5b) reveals the similarity between the magnitude of any-or-all and two-tier premiums. For example, 72 percent of two-tier blended premiums are greater than 40 percent while 68 percent of the any-or-all offers exceed 40 percent premiums. Therefore, we do not find a substantial difference between any-or-all premiums and blended two-tier premiums.

2. *Bid Premiums.* The bid premium is defined as the overall premium in any-or-all offers and the first-tier premium for tow-tier and partial offers. As shown in Table 6, the bid premium is virtually identical for any-or-all and two-tier offers at 63 percent. The pure partial offer premium is 45.9 percent. Referring back to blended premiums, it is clear that the blended premiums in two-tier and pure partial offers are less than the corresponding bid premiums. Clearly, the generally lower second-tier price pulls down the blended premium, especially for partial offers.

3. *First-Tier and Second-Tier Premiums.* Table 7 divides the blended premiums of two-tier and pure partial offers into its components—the first-tier and second-tier premiums. In every year the mean second-tier premium is positive for both two-tier and for pure partial offers, indicating that the market value of the second tier generally exceeds the pre-offer market price of the target. The average second-tier premium is 47.1 percent for two-tier offers and 18.6 percent for pure partial offers. These second-tier premiums are clearly substantial on average.[8]

Table 8 reports data on the difference in magnitude between first-tier and second-tier premiums. This computation addresses the concern that target shareholders are induced to tender to two-tier and partial offers because of large differences between the values of the two tiers. The first-tier premium is 14.5 percent larger than the second-tier premium for two-tier offers on average. For partial offers, the first-tier premium is 28.7 percent larger than the second-tier premium on average. In two-tier offers, this difference between the value of the two tiers is not very large, especially when compared to the difference in pure partial offers.

Table 8 provides a detailed breakdown of the relative difference between the value of the two tiers in two-tier and pure partial offers. The second-tier premium is no more than 20 percent less than the first-tier premium for 72 percent of the two-tier offers. For partial offers, the second-tier premium is no more than 20 percent less than the first-tier premium in 48 percent of the cases.

V. Multiple Bidder Contests

We survey the outcomes of multiple-bidder contests for corporate control between 1981 and 1983 with a view toward the question of whether partial or two-tier offers have an unfair advantage vis-a-vis other kinds of offers. Table 9 lists a total of 26 contests, in alphabetical order of the target firm's name. This table accounts for all multiple-bidder control contests between 1981 and 1983 in which at least one offer was a partial or two-tier tender offer.[9] There are a total of 62

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[8] The second-tier price of target shares has not been purged of overall market trends. T_2 will more accurately reflect changes in share value due strictly to the tender offer when the market model is used to extract out overall market influences.

[9] There is one notable control case which is not included in this table—the Bendix case. There were two tender offers simultaneously on the table in that contest. United Technologies made a formal tender offer for Bendix which was exactly the same as the Martin Marietta bid in terms of percent sought and price per share. However, it was made as a fallback bid rather than as a competing bid despite the fact that its effective date was only eight days later than the Martin Marietta withdrawal date. The United Technologies offer was specifically designed so as not to lure any shares away from the Martin Marietta proration pool, i.e., so as not to compete.

bidders, for an average of 2.4 bidders per target. Seventeen of these bidders (27 percent) made any-or-all offers. For these purposes, we count a merger proposal that treats all shareholders equally as an any-or-all bid even if part or all of the consideration involves securities of the bidder. We are interested in cases that force shareholders to choose between a partial or a two-tier tender offer, on the one hand, and a uniform-bid tender offer or merger that does not involve pro-rationing, on the other hand. Therefore, we identify those cases in which partial or two-tier offers are subscribed to by target shareholders despite the availability of a more lucrative uniform-bid merger proposal or any-or-all tender offer.

Table 9 highlights such cases by the indication of a "No" response to the column (4) question "Winner Was Any-or-All?", and a "No" response to the column (5) question "Offer with Highest Value Won?" Of the 16 targets that received at least one any-or-all offer, the any-or-all bid loses to a competing partial or two-tier tender offer in only four cases. In three of these cases, it is clear that the rejected any-or-all bid provided less overall compensation to target shareholders than did the competing tender offer. In the remaining case (Conoco), what appears to be the best offer (Mobil's any-or-all bid) was rendered ineffective by the Justice Department's preliminary injunction. Therefore, the any-or-all offer did not have to be topped by the competing bidders.

This investigation of control contests occurring between 1981 and 1983 produces no case supporting the hypothesis that a two-tier or partial tender offer, because of its potentially coercive nature, can dominate a competing any-or-all tender offer or merger bid without offering greater overall compensation. The evidence is that: (i) 12 of 16 head-to-head contests between any-or-all and partial of two-tier offers are won by any-or-all bids, (ii) in three of the four exceptions, the partial or two-tier bid clearly offered greater compensation, and (iii) in the remaining case (Conoco), the losing any-or-all bid, although apparently higher-valued, was ineffective because of antitrust opposition.

VI. Conclusion

This study of 148 tender offers between 1981 and 1983 has several noteworthy results. In general, any-or-all offers are more frequent than partial and two-tier offers, with the former accounting for 91 of the total 148 offers. However, the incidence of any-or-all offers is much higher among smaller targets, while partial and two-tier offers predominate among moderate and large targets. This empirical regularity may reflect an underlying economic difference between any-or-all and two-tier or partial offers, with the latter types favored by bidders for relatively large targets. This implies that any regulatory disincentives currently under consideration to partial and two-tier offers may have more important effects for larger takeover targets than smaller targets.

We present detailed comparisons of uniform premiums in any-or-all offers with blended premiums in two-tier and partial offers. The average premium for the 91 any-or-all offers is highest at 63.4 percent relative to the pre-offer market price. (Note that this is for generally smaller targets.) The 32 two-tier offers yield an average blended premium of 55.1 percent, while the 25 pure partial offers yield 31.3 percent. Any-or-all premiums and two-tier blended premiums are very similar in magnitude—72 percent of two-tier premiums exceed 40 percent while 68 percent of any-or-all premiums do so.

The two-tier offer yields an average first-tier premium of 63.5 percent, virtually identical to the average uniform premium for any-or-all offers. The average second-tier premium of 47.1 percent for two-tier offers is less than the first-tier premium, but it is considerably larger than the "implicit" second-tier premium of 18.6 percent afforded by the 25 partial tender offers. Indeed, the average second-tier premium for two-tier offers (47.1 percent) exceeds the average blended premium for pure partial offers (45.9 percent). Therefore, two-tier "blended" offers are nearly as beneficial to target shareholders as any-or-all offers, and two-tier offers are significantly more beneficial than pure partial offers which have no second-tier purchases by the bidders.

The study also investigates the relative differences between first-tier and second-tier premiums for two-tier and partial tender offers. Nearly three-fourths of the 32 two-tier offers have less than a 20 percent difference between the first and second-tier premiums. In contrast, less than half of the 25 pure partial offers have less than a 20 percent difference between the first- and second-tier premiums. Therefore, while the second tier of a two-tier offer generally provides a lower premium than does the first-tier, the difference in magnitude between the two premiums is not large, especially when compared to pure partial offers. The average first-tier premium is 14.5 percent larger than the second-tier premium for two-tier offers, while it is 28.7 percent larger than the implicit second-tier premium in pure partial offers.

In view of these results, it probably would not be beneficial to adopt regulatory changes which would encourage the use of partial tender offers instead of two-tier offers. The second-tier premium in two-tier offers is on average twice as large as the implicit second-tier value in partial offers. Any substitution of partial offers for two-tier offers would deprive target shareholders of this greater return.

Also, these results suggest that it is problematic whether target shareholders would benefit from regulatory inducements to use any-or-all instead of two-tier offers. First, such a switch increases the returns to target shareholders only modestly, since any-or-all premiums on average exceed the blended premiums for two-tier offers by a relatively small margin. Second, in veiw of this data it is likely that forcing the use of any-or-all offers will deter some takeovers, especially of larger targets. The losses to target shareholders from such foregone transactions, even if they are few, can outweigh the benefits of higher any-or-all premiums. This conclusion is strengthened by the expectation that shareholders of large targets are the likely losers in deterred transactions and these large transactions account for much of the dollar gains to target shareholders.

Although it is necessary for policymakers to consider carefully the possible deterrence effects of proposed regulatory changes, the data required for the task is not complete. Specifically, this study does not measure the returns to the acquiring firms so we can only speculate about how regulatory changes such as increased minimum offer periods will reduce takeover activity. Since deterrence effects can have important consequences for shareholder welfare, it is a critical consideration. It is our intention to pursue research that will help one understand better the deterrence effects of takeover regulations.

A second caveat to keep in mind is that the study does not (as yet) utilize the market model of finance to purge the data of the effects of general market movements. This adjustment for market-wide movements in stock prices is especially needed in the computation of the second-tier premiums, which equal the percentage change of the stock price twenty days after the close of the first-tier offer relative to the market price of

the target twenty days before the first offer. These two prices are separated by a few months, during which time the changes in the general level of stock prices could cause these two prices to change significantly. Ignoring the adjustment for general market movements should not greatly affect the overall averages, but it can make important differences in certain cases. Therefore, we are currently in the process of statistically adjusting the value of the second-tier premiums to abstract from general market movements.

A final caveat is that the sample includes only 1981, 1982 and 1983 tender offers. It is desirable to enlarge this sample by including offers over a longer period of time. Future research will incorporate tender offers from the 1970s as well as 1980.

TABLE 1.—Number of Tender Offers, By Type and Year, 1981–83

[Type of tender offer]

Year	Any-or-all[1]	Two-tier[2]	Pure partial[3]
1981	37	12	15
1982	32	12	7
1983	22	8	3
Total	91	32	25

[1] Any-or-all offers are for all tendered shares, as long as minimum conditions are met.
[2] In two-tier offers, the offer for shares is in two steps. In an explicit two-tier offer, the bidding firm agrees at the time of the initial offer with target management to purchase the remaining shares following the execution of the first-tier partial offer. In implicit two-tier offers, a second tier is revealed shortly after the execution of the tender offer.
[3] Pure partial offers are for less than all shares. There is no clean-up merger or tender offer closely following the execution of the tender offer.

Source: *Tender Offer Statistics, 1971–1983,* Douglas Austin & Associates Inc., 1984 and the *Wall Street Journal.*

TABLE 2.—AVERAGE SIZE [1] OF TARGETS, BY TYPE OF TENDER OFFER AND YEAR, 1981–83

[Type of tender offer—in millions of dollars]

Year	Any-or-All	Two-tier	Pure partial
1981	125.6	965.4	517.2
1982	67.9	581.2	119.8
1983	160.2	204.2	192.6
Total	113.7	631.0	353.8

[1] Size is measured as the market value of target's equity. It is computed as the number of fully diluted common shares multiplied by the pre-offer market price of those shares.

TABLE 3A.—ABSOLUTE DISTRIBUTION OF TARGET SIZE, BY TYPE OF TENDER OFFER, 1981–83

[Type of tender offer]

Range of target size (in dollars)	Any-or-all	Two-tier	Pure partial
Less than 5m	13	0	1
5m to 10m	11	1	2
10m to 20m	9	1	6
20m to 40m	16	2	1
40m to 80m	12	7	5
80m to 160m	11	2	3
160m to 320m	14	9	2
Greater than 320m	5	10	5
Total	91	32	25

TABLE 3b.—RELATIVE DISTRIBUTION OF TARGET SIZE, BY TYPE OF TENDER OFFER, 1981–83

[Type of tender offer—in percentages]

Range of target size (in dollars)	Any-or-all	Two-tier	Pure partial
Less than 5m	14.3	0.0	4.0
5m to 10m	12.1	3.1	8.0
10m to 20m	9.9	3.1	24.0
20m to 40m	17.6	6.3	4.0
40m to 80m	13.2	21.9	20.0
80m to 160m	12.1	6.3	12.0
160m to 320m	15.4	25.1	8.0
Greater than 320m	5.5	31.2	20.0
Total	100.0	100.0	100.0

TABLE 3c.—PERCENTAGE OF TENDER OFFERS ACCOUNTED FOR BY EACH TYPE OF OFFER, BY TARGET SIZE, 1981–83

[Type of tender offer]

Range of target size (in dollars)	Any-or-all	Two-tier	Pure partial
Less than 5m	92.8	0.0	7.2
5m to 10m	78.6	7.2	14.2
10m to 20m	56.2	6.2	37.5
20m to 40m	84.2	10.5	5.3
40m to 80m	50.0	29.2	20.8
80m to 160m	68.8	12.5	18.7
160m to 320m	56.0	36.0	8.0
Greater than 320m	25.0	50.0	25.0

TABLE 4.—AVERAGE PERCENT PREMIUMS FOR ANY-OR-ALL OFFERS,[1] AND PERCENT BLENDED PREMIUMS FOR TWO-TIER AND PARTIAL OFFERS,[2] BY YEAR, 1981–83

[Type of tender offer]

Year	Any-or-all	Two-Tier	Pure partial
1981	65.2	55.4	15.4
1982	70.7	47.3	37.5
1983	49.6	50.4	45.4
Total	63.4	55.1	31.3

[1] The any-or-all offer premium equals: $P_A = (P_T - P_m)/P_m$.
[2] The blended offer premium equals: $P_B = (F \times T_1) \times ((1-F) \times T_2)$.

TABLE 5A.—ABSOLUTE DISTRIBUTION OF ANY-OR-ALL PREMIUMS AND BLENDED PREMIUMS, BY TYPE, 1981–83

[Type of tender offer]

Range of percent premium	Any-or-all	Two-tier	Pure partial
Less than 0	3	1	2
0 to 20	12	2	9
20 to 40	11	8	7
40 to 60	21	14	4
60 to 80	16	8	0
80 to 100	12	2	2
100 to 120	9	0	1
Greater than 120	7	1	0
Total	91	32	25

TABLE 5b.—RELATIVE DISTRIBUTION OF PREMIUMS AND BLENDED PREMIUMS, BY TYPE OF TENDER OFFER, 1981–83

[Type of tender offer—in percentages]

Range of percent premium	Any-or-all	Two-tier	Pure partial
Less than 0	3.3	3.1	8.0
0 to 20	13.2	6.2	36.0
20 to 40	12.1	25.8	28.0
40 to 60	23.1	43.8	16.0
60 to 80	17.6	18.8	0.0
80 to 100	13.2	6.2	8.0
100 to 120	9.9	0	4.0
Greater than 120	7.7	3.1	0.0
Total	100	100	100

TABLE 6.—AVERAGE PERCENT BID PREMIUMS[1], BY TYPE AND YEAR, 1981–83

[Type of tender offer]

Year	Any-or-all	Two-tier	Pure partial
1981	65.2	69.0	30.2
1982	70.7	51.8	72.9
1983	49.6	73.2	61.5
Total	63.4	63.5	45.9

[1] The bid premium is the overall premium in any-or-all offers and the first-tier premium in two-tier and pure partial offers.

TABLE 7.—FIRST- AND SECOND-TIER PREMIUMS IN TWO-TIER AND PURE PARTIAL OFFERS, 1981–83

Year	Two-tier			Pure partial		
	First tier	Second tier	Blended premium	First tier	Second tier	Blended premium
1981	59.0	41.5	55.4	30.2	8.5	15.4
1982	51.8	46.4	47.3	72.9	30.3	37.5
1983	73.2	56.4	56.4	61.5	41.9	49.4
Total	63.5	47.1	55.1	45.9	18.6	31.3

TABLE 8.—ABSOLUTE AND RELATIVE FREQUENCIES OF PERCENT DIFFERENCES BETWEEN FIRST- AND SECOND-TIER VALUES,[1] for Two-Tier and Partial Tender Offers, 1982–1983 [2]

Range of percent difference in tiers	Absolute frequency		Relative frequency	
	Two-tier	Partial	Two-tier	Partial
Less than 0	7	6	21.9	24.0
0 to 10	10	5	31.3	20.0
10 to 20	6	1	18.8	4.0
20 to 30	2	3	6.2	12.0
30 to 40	1	1	3.1	4.0
40 to 50	4	4	12.5	16.0
50 to 60	0	1	0.0	4.0
60 to 70	1	1	3.1	4.0
70 to 80	0	1	0.0	0.0
80 to 90	0	0	0.0	0.0
90 to 100	0	0	0.0	0.0
Greater than 100	1	2	3.1	8.0
Total	32	25	100	100

[1] The percent difference in tier values equals: $(T_1 - T_2)/T_2 \times 100$.
[2] The mean percent difference between first- and second-tier values is 14.5 percent for two-tier offers and 28.7 percent for pure partial offers.

TABLE 9.—TENDER OFFER AUCTION CONTESTS FOR CONTROL 1981–83

(1) Target	(2) No. of bidders	(3) No. of any-or-all bidders	[A] Winner was any-or-all?	(5) Offer with highest value won?	(6) Reason if (5) is "No"
Brookwood Health	2	2	Yes	Yes	
Brunswick	2	0	No	Yes	
Buffalo Forge	2	1	Yes	Yes	
Cities Service	3	0	No	No	July 28, 1982, FTC authorized the issuance of a preliminary injunction of Gulf acquisition. Gulf then abandoned its bid.
Conoco	4	1	No	No	In Nov. of 1981 the Justice Dept issued a preliminary injunction against a Mobil Corp. Acquisition of Conoco.
Fisher Scientific Corp.[1]	2	1	No	Yes	
General American Oil	3	1	Yes	Yes	
General Steel Industries [2]	2	1	Yes	Yes	
Gray Drug Stores	2	1	Yes	Yes	
HMW Industries	2	1	No	Yes	
Interpace	2	1	No	Yes	
Lightolier	2	0	No	Yes	
Manufacturers Bancorp	2	0	No	Yes	
Marathon	3	0	No	Yes	
Means Services, Inc.	2	0	No	Yes	
National Mine Service	2	0	No	Yes	
Norton Simon	3	0	No	Yes	
Pabst	4	0	No	Yes	
Property Investors of Colorado	2	1	Yes	Yes	
Richardson	2	1	Yes	Yes	
Standard Coosa Thatcher	2	1	Yes	Yes	
St. Joe Minerals	2	1	Yes	Yes	
Stokely Van Corp	3	1	Yes	Yes	
Sunbeam	2	0	No	Yes	
Texas Gas Resources	2	1	Yes	Yes	
Union Commerce	3	1	Yes	(3)	

[1] This is nominally a contest. In April of 1981 a merger proposal was turned down by management. This offer was never made to shareholders. Then in July, when the first offer was long gone, a successful partial tender offer was launched by another firm. The partial offer won, however, it was clearly the better offer.

[2] This is another case where an any-or-all beats a partial. However, it should be pointed out that the partial bid ran into legal problems because of prior open market purchases.

[3] In this case Central Bancorp had the highest per share price on its partial offer. However, it lost to Huntington Bankshares' any-or-all offer when the Federal Reserve blocked Central's bid. Since we don't know what Central Bancorp's second tier would have been, and since the offers were otherwise close, it is difficult to determine whether the best offer won.

[FR Doc. 84-17306 Filed 6-28-84; 8:45 am]

BILLING CODE 6310-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151 and 158

[CGD 78-035]

Reception Facilities

Correction

In FR Doc. 84-16287 beginning on page 25196 in the issue of Tuesday, June 19, 1984, make the following correction.

On page 25198, first column, the seventh complete paragraph, line three, "thermal" should read "terminal".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAR-FRL-2616-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA proposes to disapprove a revision to the ozone Ohio State Implementation Plan (SIP) for Volatile Organic Compounds (VOC). This revision is an alternative emission reduction plan (bubble) for Senco Products, Inc. which is located in Cincinnati, Ohio. This action is consistent with EPA's January 20, 1984, SIP revision policy regarding averaging times for compliance with VOC emission limits.

DATE: Comments on this revision and on the proposed EPA action must be received by July 30, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearbon Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit

an original and five copies, if possible)
Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On January 20, 1984, EPA revised its SIP revision policy for "Averaging Times for Compliance with VOC Emission Limits." This policy memorandum contains certain air quality considerations that were not previously included in EPA's April 15, 1983, policy memorandum on long-term averaging. (Long-term averaging refers to determining compliance by averaging emissions over more than a 24-hour period) One aspect of the revised policy states that sources in areas lacking approved SIPs or in areas with approved SIPs but showing measured violations, cannot be considered for longer averaging periods until the SIP has been revised to provide for attainment and maintenance of the national ambient air quality standard for ozone. In addition, the State must demonstrate that reasonable further progress (RFP) is being maintained with respect to the maximum daily emissions from the source with long-term averaging.

This policy affects the Senco Products, Inc., proposed VOC SIP revision which was submitted by the Ohio Environmental Protection Agency (OEPA). This revision request consists of a bubble with monthly averaging for the source's miscellaneous metal products coating lines. EPA cannot approve this monthly averaging proposal because there have been measured violations of the ozone National Ambient Air Quality Standard in Cincinnati, and this area lacks an approved 1982 ozone SIP. In a separate **Federal Register** notice, EPA is proposing to disapprove the Ohio 1982 ozone SIP for the Cincinnati area based on the 1983 air quality data. Until Ohio's 1982 ozone SIP for Cincinnati is approved, EPA cannot approve a site-specific SIP revision for a source in that area if it might lead to increased daily VOC emissions. Therefore, EPA is proposing to disapprove the revision to the Ohio ozone SIP for the Senco Products, Inc.

Moreover, EPA might be unable to approve this bubble even if it used 24-hour compliance averaging, because the pre-trade baseline it uses is actual emissions, rather than the emissions associated with reasonable available control technology (RACT). For the reasons described in EPA's August 31, 1983 notice soliciting comment on emissions trading in nonattainment areas without approved attainment demonstrations, expiration of the July 1982 deadline for submitting ozone extension area SIPs prevents the continued use of actual emissions as the trading baseline in ozone extension areas whose extension SIPs have not received EPA approval (48 FR 39584, col. 3, last paragraph through 39585, col. 1, second paragraph). The Clean Air Act now requires use of a RACT trading baseline for *all* sources in these areas. Thus, where the existing SIP does not already specify EPA-approved RACT for sources in these areas, the State must establish a RACT trading baseline for the sources. If the State of Ohio were to specify RACT for the lubricant, which is providing credit in this bubble, and RACT-level emissions were lower than the actual emissions now used in this trade, only a portion of the reduction resulting from the switch from the original lubricant to the lubricant with exempt solvent would be creditable. This smaller amount of credit might be insufficient to offset the emissions increases that the bubble currently would allow.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities because it affects only one source. In addition, this action imposes no additional requirements on the source.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments form OMB to EPA, and any EPA response, are available for public inspection at the EPA Region V office listed above.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: March 27,1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–17362 Filed 6–28–84; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 52

[OAR-FRL-2617-3]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The State of Wisconsin submitted a State Implementation Plan (SIP) for lead on September 20, 1983. Additional information was submitted on February 14, 1984, and March 14, 1984. This revision to the SIP is designed to provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for lead.

The purpose of this notice is to announce receipt of Wisconsin's lead SIP, discuss the results of EPA's review, and propose rulemaking action. EPA is today proposing to approve the plan because it meets all applicable Federal requirements.

DATE: Comments on this revision and on the proposed EPA action must be received by July 30, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Anne E. Tenner, at (312) 886–6036 before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, EPA promulgated National Ambient Air Quality Standards (NAAQS) for lead (43 FR 46258). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu g/m^3$), maximum arithmetic mean as averaged over a calendar quarter. Section 110 (a)(1) of the Clean Air Act (Act),

requires each State to submit a SIP which provides for the attainment and maintenance of the primary and secondary NAAQS.

The general requirements for a SIP are outlined in section 110(a)(2) of the Act and EPA regulations at 40 CFR Part 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E, and in the Supplementary Guidelines for Lead Implementation Plans (EPA–450/2–78–038, August 19, 1970; revised July 1979). These provisions require the submission of air quality data, emissions data, air quality modeling, a control strategy, a demonstration that the NAAQS will be attained within the time frame specified by the Act, and provisions for insuring maintenance of the NAAQS.

An attainment demonstration is required: (1) In the vicinity of primary lead smelters, secondary lead smelters, primary copper smelters, lead gasoline additive plants, and lead-acid storage battery manufacturing plants that produce 2,000 or more batteries per day, [that emit 5 or more tons of lead per year;] (2) In the vicinity of any other stationary source that emits 25 or more tons of lead per year; or (3) in any other area that has had measured lead concentrations in excess of the NAAQS for lead since January 1, 1974. (See 40 CFR 51.80(a) and 51.81)

In addition, EPA established lead monitoring and data handling requirements (46 FR 44159) in a September 3, 1981, notice, codified at 40 CFR Part 58. Wisconsin's responses to all of these requirements are also addressed in this notice.

The State of Wisconsin submitted a SIP for the attainment and maintenance of the lead NAAQS to EPA on September 20, 1983. Additional information was submitted on February 14, 1984, and March 14, 1984 based on EPA's letter dated January 23, 1984 which requested additional data from the State. Wisconsin's plan includes a discussion of air quality data measured since 1974, an emissions inventory of lead sources, atmospheric dispersion modeling analyses, and the necessary control strategies.

II. Air Quality Data

The State of Wisconsin has monitored ambient levels of lead in several areas of the State, including Milwaukee and Madison, since 1974. The State has submitted all available lead monitoring data for the period 1974 to 1982. Four monitoring locations showed violations of the lead ambient air quality standard during this period.

Three of these lead monitors are mobile-source related and are located near the Milwaukee downtown expressway (711 W. Wells, 845 N. 35th Street, and 814 W. Wisconsin Avenue). The fourth monitor is located in Madison (City-County Building, 202 Monona Avenue), and is also apparently mobile-source related. The lead monitor located at 711 W. Wells showed three exceedances, which occurred in the 2nd and 3rd quarters of 1975, and the 4th quarter of 1977. This monitor is located in the downtown area near two expressways (at the Marquette Interchange) and is primarily a mobile-source related site. Violations were also recorded at two other mobile-source related sites: 845 N. 35th Street (1st quarter of 1974) and 814 W. Wisconsin Avenue (4th quarter of 1975). The Wisconsin Avenue site is very close to the Wells Street site and the 35th Street, site is located near two expressways (at the County Stadium Interchange).

An additional exceedance of the lead NAAQS was recorded in Madison at the City-County Building, 202 Monona Avenue, in the 4th quarter of 1975. However, EPA believes that this data is not representative, since the quarterly average was obtained from a single composite analysis. The recent air quality data demonstrates that the lead NAAQS are being attained in Madison.

III. Emission Inventory

The State developed an emission inventory for all lead stationary, point, area, and mobile sources in Milwaukee County, Wisconsin. Based on this emission inventory, the State identified two significant lead stationary sources. These sources are:

1. Minerals Reclamation Corporation (a secondary lead smelter at 5116 W. Lincoln Avenue, Milwaukee.

2. Globe Battery, Division of Johnson Controls (a lead acid battery manufacturer) at 900 East Keefe Avenue, Milwaukee.

The Minerals Reclamation Corporation was closed down in March, 1979. On February 14, 1984, the State confirmed in a submittal to EPA that this shutdown is permanent. The State also indicated that Minerals Reclamation has been shutdown for almost six years. There is a chain link and sheet metal fence surrounding the premises. In addition, the State indicated that if this source planned to start up again, it would be subject to the State New Source Review requirements under Section NR 154.04 of the Wisconsin Administrative Code, a part of the Federally approved SIP.

The Globe Battery Division was initially considered a point source (a lead acid battery manufacturer emitting more than 5 tons of lead per year—see 40 CFR 51.81). However, most of the processes at this facility that have the potential to emit lead have been shutdown in recent years, reducing the annual lead emissions to less than 5 tons/year.

On February 14, 1984, the State submitted additional information showing evidence of permanent shutdowns of many Globe processes. Globe, however, refused to acknowledge the shutdown of the lead oxide mill line. Therefore, the State added this operation back into the inventory contained in the September 20, 1983, SIP submittal. In its February 14, 1984 letter, the State said that the other processes that have been shut down will be subject to the New Source Review procedures required under 40 CFR 51.18, if they resume operation in the future.

IV. Dispersion Modeling

According to the State's SIP emission inventory, the Globe Battery Division, the largest stationary lead emitter in the State, presently emits less than 5 tons per year. The State elected to perform a limited dispersion modeling analysis, based on the Climatological Dispersion Model (CDM). The State of Wisconsin used the CDM instead of the Industrial Source Complex Model (ISC), which is considered to be the reference model for lead SIP's. This was determined to be acceptable because the Globe Battery Division was not required to be included in the inventory and the inventory did not contain the detailed information needed to take advantage of a sophisticated model like ISC (i.e., for the inventory at hand, CDM and ISC will give similar results).

The results of the modeling analysis indicate that the lead emissions from Globe will not result in a violation, or interfere with maintenance of the NAAQS for lead. The maximum predicted quarterly average was 1.10 $\mu g/m^3$.

In the only area of valid representative monitored violations (i.e., downtown Milwaukee area), a modified rollback modeling approach must be applied as a minimum requirement. However, the State exceeded this requirement and performed a limited dispersion modeling analysis instead, using the same general approach as for Globe. In addition, the State modeled several foundries located south, southwest, and west of downtown Milwaukee with the limited dispersion modeling approach. The maximum predicted quarterly average in downtown Milwaukee was 0.72 $\mu g/m^3$, and in the vicinity of the foundries was 0.47 $\mu g/m^3$.

The analysis of the excursion of the lead standard in the Madison area indicates that it is due to mobile-related sources, since there are not significant lead stationary sources in Madison. Recent lead ambient data indicates attainment of the NAAQS for lead in Madison, therefore, verifying the effectiveness of the Federal lead gasoline phase-down program.

V. Control Strategy

The State of Wisconsin's control strategy to regulate the emissions of lead from existing sources consist of: (a) The existing TSP strategies associated with lead emitting sources, (b) the existing sources of lead will be tracked and controlled through the State's monitoring and permit review program, under Section NR 154.145 of the Wisconsin Administrative Code, and (c) the federal programs to improve fuel economy and the phase-down of lead as an additive in gasoline to control the lead emitted from motor vehicles. In addition, to control lead emitted due to misfueling (the use of leaded gasoline in vehicles certified for use of unleaded gasoline only), Section 144.42(6) of the Wisconsin statute prohibits the tampering of the catalytic converters in motor vehicles that burn unleaded gasoline. Based on the existing control measures and the corresponding demonstrations of attainment, EPA proposes to approve this portion of the Wisconsin lead plan.

VI. New Source Review

40 CFR Part 51.18 requires that the State demonstrate that it has procedures for controlling emissions from new sources and from modifications to existing sources. All lead SIPs must provide for preconstruction review of new lead sources that would emit lead in excess of 5 tons per year, and of modifications to existing point sources that would result in new emission increases of 0.6 tons of lead or more per year (see 40 CFR 51.18).

The New Source Review (NSR) requirement for the lead SIP is satisfied by Section NR 154.04 of the Wisconsin Administration Code, and other statutory and regulatory sections, which require permits for the construction of new sources and modifications of existing sources. Section NR 154.05 provides for review of application for permits. None of the proposed sources exempted from NR 154.04 would have the potential to emit lead. Based on its review, EPA has determined that the Wisconsin's lead SIP has an adequate New Source Review program for lead. Therefore, EPA proposes to approve this portion of the Wisconsin lead plan.

VII. Monitoring Plans

On September 3, 1981, EPA published its final rules pertaining to ambient lead monitoring and data handling (46 FR 44159), codified at 40 CFR Part 58. The rules call for the development of a State monitoring plan for lead and its inclusion into the surveillance and ambient monitoring programs. These plans must meet the requirements detailed in the September 3, 1981, notice and must include scheduling requirements as well as requirements concerning the establishment of a monitoring network, and data handling and reporting procedures.

On July 30, 1982, the State of Wisconsin submitted to EPA a revision to the SIP which provided for the establishment of an air quality surveillance network for lead that meets the requirement of 40 CFR Part 58. The submittal included the designation of two proposed National Air Monitoring Station (NAMS) sites in the Milwaukee urban area. These NAMS sites have been in operation for two years. The NAAQS lead network for Wisconsin was approved by EPA on July 1, 1983. In addition, the State proposed to monitor for lead in the vicinity of Globe Battery. This lead monitor is located at the Northeast corner of the plant and will run for 2 years in order to confirm that the lead NAAQS is continuing to be maintained around Globe. This monitor commenced operation on April 1, 1984.

The lead monitoring system will be reviewed on an annual basis and modified, as needed, to eliminate any unnecessary sites or to correct inadequacies indicated by the annual review. All changes to the network will be submitted to EPA for prior written approval. The annual NAMS report will be submitted to EPA by July 1 of each calendar year.

EPA reviewed the Wisconsin lead monitoring plan and has determined that it meets the requirements of sections 110 and 319 of the Act. Therefore, EPA is proposing approval of the revised Air Quality Surveillance Plan in today's **Federal Register** notice.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110, and 301 and 319 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601 and 7619)

Dated: May 10, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-17387 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[OAR-FRL 2609-2]

Approval and Promulgation of Implementation Plans; 1979 Plan Conditions for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The State of California submitted to EPA nonattainment area plans concerning ozone, carbon monoxide, total suspended particulate matter (TSP), sulfur dioxide (SO_2), and nitrogen dioxide (NO_2). During 1981 and 1982 EPA took final actions on California's 1979 plans. As part of these final actions, EPA imposed a number of conditions of plan approval where deficiencies in the plans needed to be corrected. EPA specified due dates for these conditions ranging from May of 1981 to January of 1983.

This notice addressed 1979 plan conditions for California which have not yet been submitted to EPA and are past due. Specifically, this notice proposes to remove several 1979 plan conditions and to extend the due dates on certain other 1979 conditions of plan approval.

DATE: Comments may be submitted until July 30, 1984.

ADDRESSES: Comments may be sent to: Regional Administrator, ATTN: Air Management Division, SIP Section (A-2-3), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Thomas Rarick, Chief, SIP Section, Air Programs Branch, Air Management Division, EPA, Region 9, (415) 974-7641, (FTS) 454-7641.

SUPPLEMENTARY INFORMATION:

Background

The 1977 Clean Air Act Amendments (CAA or Act) required states to submit to EPA State Implementation Plan (SIP) revisions by January 1, 1979 for all areas designated nonattainment under Section 107 of the CAA. These SIP revisions or nonattainment area plans were to insure

attainment of the National Ambient Air Quality Standards (NAAQS) by December 31, 1982. For areas that demonstrated they could not attain the ozone (O_3) or carbon monoxide (CO) standards by the 1982 deadline, even with the implementation of all reasonably available control measures, Section 172(a)(2) of the CAA allowed EPA to extend the attainment deadline to December 31, 1987.

The State of California submitted to EPA nonattainment area plans concerning ozone, carbon monoxide, total suspended particulate matter (TSP), sulfur dioxide (SO_2), and nitrogen dioxide (NO_2). During 1981 and 1982 EPA took final actions on California's 1979 plans. As part of these final actions, EPA imposed a number of conditions of plan approval where deficiencies in the plans needed to be corrected. EPA specified due dates for these conditions ranging from May of 1981 to January of 1983.

On February 3, 1983 (48 FR 4972) EPA published a notice of proposed rulemaking which outlined the statutory actions that can be imposed for failure to meet any of a number of requirements of the CAA. The notice indicated that many areas in the country were subject to sanctions because outstanding 1979 conditions remained unfulfilled. Appendix D of the February 3 notice lists those areas in each state which were not requesting an extension of the attainment deadline to 1987, yet were not anticipated to meet the requirements of the CAA because of failure to comply with 1979 plan conditions. Under section 110(a)(2)(I) of the CAA, the notice proposed to impose a construction moratorium on all areas listed in Appendix D.

On November 2, 1983 (48 FR 50691) EPA published a policy statement which included a delineation of EPA's intended actions on outstanding plan conditions. The November 2 notice indicated EPA's intention of reviewing all outstanding conditions to determine whether they are still germane to attainment and maintenance of the NAAQS or to meeting Part D requirements. For conditions which are no longer considered germane to attainment and maintenance of the NAAQS or Part D requirements, the policy indicated that EPA would propose to revoke the conditions.

Where EPA finds that a condition remains necessary, the November 2 notice outlines EPA's policy for addressing unmet conditions which are germane to attainment or maintenance of the standards. First, where an unmet condition involves a serious plan deficiency, EPA may impose a construction ban under section 110(a)(2)(I). EPA would take this action in a final rulemaking notice. For an unmet condition which is considered necessary, but less serious, EPA will propose to extend the due date if the State commits to the new due date. Final actions on these less serious conditions are then deferred until the new due date. If a State makes a submittal intended to satisfy a condition before the new due date, EPA will continue to defer action while it reviews the submittal. If EPA disapproves the submittal, EPA may disapprove the plan thereby imposing a construction ban pursuant to section 110(a)(2)(I) of the CAA.

Where serious or less serious unmet conditions result in plan disapproval, EPA may proceed with a proposal for funding limitations pursuant to either section 176(a) or section 176(b) of the Act as appropriate. For further information on EPA's policy regarding funding restrictions and the construction moratorium as they apply to both unfulfilled 1979 plan conditions and other CAA requirements, please refer to the November 2, 1983 notice and to EPA's January, 1984 "Guidance Document for Correction of Part D SIP's for Nonattainment Areas."

Evaluation

There are nineteen conditions for which the State of California has, to date, not submitted the required plan revisions. Five of the nineteen outstanding conditions concern adopted new source review (NSR) rules which EPA expects to be submitted shortly. Since the State Air Resources Board is in the process of submitting these five NSR rules to EPA, EPA is not acting on them in today's notice. As is the case with those plan revisions already submitted to EPA in response to conditions, action on these five adopted NSR rules will be taken in other rulemaking notices.

Today's notice addresses the remaining fourteen unsubmitted conditions. As discussed further below, one of the fourteen conditions is serious, eleven are less serious and two are no longer germane to attainment or maintenance of the NAAQS or Part D requirements.

Serious Plan Deficiency

The one serious and germane condition requires a revised NSR rule in Kern County. EPA considers this condition serious since considerable new source permitting activity is expected in this area and the deficiencies in the existing NSR rule could allow significant deviations from the requirements of the CAA. EPA will take final rulemaking action on the Kern NSR condition in a separate notice. EPA intends to disapprove the Kern plan and impose a construction moratorium on major sources in the Kern County portion of the San Joaquin Valley Air Basin. EPA also intends to propose funding limitations pursuant to section 176(a) and/or section 176(b) when final action is taken on this condition.

Due Date Extensions

Of the eleven less serious conditions, five involve NSR deficiencies in El Dorado, Placer, San Bernardino, San Joaquin, and Yolo-Solano Counties, four pertain to Kern County's ozone control strategy, and two are conditions requiring volatile organic compound (VOC) rules for Ventura (valves and flanges) and Santa Barbara Counties (cutback asphalt).

The conditions calling for revised NSR rules in El Dorado, Placer, San Bernardino, San Joaquin and Yolo-Solano Counties are considered less serious at this time. Therefore, EPA proposes to extend the due date of NSR SIP conditions until October 30, 1985. This date is chosen to match the approximate due date for SIP revisions expected to be contained in a forth-coming national schedule for making NSR rule updates. If the rule revision due date contained in the national schedule for NSR rule updates that is eventually issued is later than October 30, 1985, then EPA will extend through subsequent rulemaking the condition accordingly.

The O_3 plan conditions in Kern County are: (1) A revised control strategy demonstrating attainment of the ozone standard; (2) a revised demonstration of reasonable further progress (RFP); (3) revised emission reduction estimates (EREs) for control tactic SSI, "Steam Drive Controls," based on refined emission inventory estimates; and (4) emission estimates and adequate documentation of emissions from tertiary oil production operations for VOC emission sources. On February 24, 1984 EPA issued a call for a revised O_3 control strategy for Kern County pursuant to section 110(a)(2)(H) of the CAA. The revised control strategy must demonstrate attainment by 1987 and will be due to EPA by February 24, 1985. Since the SIP call requires the development of plan revisions that will satisfy the four conditions noted above, EPA is proposing in today's notice to extend the due for these Kern County conditions to February 24, 1985.

The conditions requiring Ventura County to include pumps, compressors

and pressure relief valves in their refinery fugitive rule and the condition requiring a cutback asphalt rule for Santa Barbara are both less serious because the emission reductions associated with the correction of these deficiencies are relatively small compared with the overall emission inventories for the two areas. EPA is proposing to extend the due date on these two less serious VOC conditions to August 1, 1984. The ARB in a letter dated March 20, 1984 has committed to submit to EPA revised rules by this new due date.

Removal of Conditions

The two conditions which are no longer germane to attainment of the standards or Part D requirements require a revised CO control strategy in Kern County and replacement measures equivalent to inspection and maintenance (I/M) in Kern County for CO. These two conditions are no longer germane since Kern County currently has eight quarters of violation-free CO data, and therefore a revised control strategy does not appear to be necessary at this time. Today's notice proposes to remove these two non-germane Kern County conditions.

EPA Proposed Action

The due dates for the 1979 plan conditions requiring revised NSR rules in El Dorado, Placer, San Barnardino, San Joaquin, and Yolo-Solano Counties are proposed to be extended to a date consistent with forthcoming national SIP requirements relating to the conformity of all NSR rules with EPA's revised permit program requirements (40 CFR 51.18, August 7, 1980).

The due date for the 1979 plan condition requiring revised valve and flange rule for Ventura County is proposed to be extended to August 1, 1984. The due date for the 1979 plan condition requiring a revised cutback asphalt rule for Santa Barbara County is proposed to be extended to August 1, 1984.

The due date for the following 1979 plan conditions for Kern County's O_3 plan proposed to be extended to February 24, 1985:

- revised attainment demonstration.
- revised demonstration of RFP.
- ERE for "Steam Drive Control".
- oil production emission estimates.

Today's notice also proposes to remove the following 1979 plan conditions for Kern County's CO plan:

- revised attainment demonstration.
- replacement measures for I/M.

Regulatory Process

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at EPA's Region 9 office in San Francisco.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

Authority: Secs. 110, 171 to 178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7501 to 7508 and 7601(a)).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Particulate matter, Ozone, Sulfur oxides, Nitrogen oxides, Hydrocarbons, Carbon monoxide, Lead.

Dated: March 27, 1984.

John Wise,

Acting Regional Administrator.

[FR Doc. 84-17451 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 251

Implementation procedures for the National Defense Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Withdrawal of Advance Notice of Proposed Rulemaking.

SUMMARY: The Maritime Administration (MARAD) is withdrawing an advance notice of proposed rulemaking published on September 10, 1981. It would authorize, when funds become available, payments to United States ship operators for installing communications equipment on existing U.S.-flag vessels that are suitable for use in time of war or national emergency.

FOR FURTHER INFORMATION CONTACT: Mr. James J. McCoy, Jr., Office of Naval Architecture and Engineering (Code M-721), Maritime Administration. Department of Transportation, 400 7th Street, SW., Washington, DC 20590 Telephone: (202) 426-5727.

SUPPLEMENTARY INFORMATION: Pursuant to authority in section 502 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1152), the Secretary of Transportation may enter into a contract with an operator of a U.S.-flag vessel to pay for the fitting or retrofitting of national defense features (NDF) on ships under construction or existing ships in the U.S.-flag fleet, after the "Secretary of the Navy approves such plans, specifications or proposals submitted." In the advance notice of proposed rulemaking (46 FR 45164), MARAD proposed to pay to operators of U.S.-flag vessels, when funds become available, for the purchase and installation of specified NDF communications equipment on vessels likely to be involved in national security support operations. Funding contemplated would be under MARAD's Construction-Differential Subsidy Program (CDS). No funding has been provided for CDS in the Agency's appropriations since fiscal 1981, and is not likely to occur with respect to fiscal 1985. Accordingly, MARAD has decided to terminate rulemaking action on this proposal.

Authority: 46 U.S.C. 1114(b), 1152; Pub. L. 97-31, August 6, 1981; 49 CFR 1.66.

Dated: June 26, 1984.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 84-17408 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-81-M

Notices

Federal Register
Vol. 49, No. 127
Friday, June 29, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Cash in Lieu of Commodities; Value of Donated Commodities for School Year 1984

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that, since the value of agricultural commodities and other foods provided meets the level of assistance authorized under the National School Lunch Act, there will be no shortfall cash payments to States for the National School Lunch Program for the 1984 school year. The Secretary of Agriculture has determined that the annually programmed level of assistance was met in food donations by June 30, 1984.

FOR FURTHER INFORMATION CONTACT: Gwena Kay Tibbits, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3660.

SUPPLEMENTARY INFORMATION: Classification: This action, which implements a mandatory provision of Section 6(b) of the National School Lunch Act, has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified as "nonmajor." It meets none of the three criteria in the Executive Order; the action will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs, and will not have a significant impact on competition, employment, productivity, innovation, or the ability of U.S. enterprises to compete.

The action has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act of 1980. Robert E. Leard, Administrator, Food and Nutrition Service has determined that it will not have a significant economic impact on a substantial number of small entities. The primary purpose of the action is to notify States that the amount of foods donated will meet the programmed level for the school year 1984; therefore, no payment of cash in lieu of donated foods will be necessary.

Section 6(b) of the National School Lunch Act (the Act), as amended (7 U.S.C. 1755) and the regulations governing cash in lieu of donated foods (7 CFR Part 240) require the Secretary of Agriculture by May 15 of each school year to estimate the value of agricultural commodities and other foods that will be delivered to States during that school year. Under the food distribution regulations (7 CFR Part 250), these foods are used by schools participating in the National School Lunch Program. If the estimated value is less than the total level of commodity assistance authorized under section 6(e) of the Act, the Secretary is required by June 15 of that school year to pay to each State administering agency funds equal to the difference between the value of programmed deliveries and the total level of authorized assistance for each State.

For school year 1984 the adjusted minimum national average value of donated foods or payment of cash in lieu thereof per lunch has been established under Section 6(e) at 11.50 cents per lunch (48 FR 32841). In accordance with this requirement, a national entitlement of $432,178,070 in commodities was established for school year 1984. The Secretary has determined that at least that amount was available for delivery nationally by June 30, 1984, to meet the mandated level of assistance.

Notice is hereby given, therefore, that no shortfall cash payments will be made for the school year ending June 30, 1984.

This notice contains no reporting or recordkeeping provision necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance No. 10.550)

Dated: June 22, 1984.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 84–17418 Filed 6–28–84; 8:45 am]
BILLING CODE 3410–30–M

Fiscal Year 1984; Food Stamp Program State and Local Demonstration Project Initiatives

AGENCY: Food and Nutrition Service, USDA.

ACTION: General Notice.

SUMMARY: With this Notice the Food and Nutrition Service (FNS) announces the award of funds by Cooperative Agreement to assist State and local Food Stamp Program administrative jurisdictions in demonstrating improved practices for reducing error in certification of program benefits. These projects are conducted under the authority of Section 17 of the 1977 Food Stamp Act, as amended. Public comment is invited.

This Notice is divided into two parts. Part I explains General Considerations such as background information, the selection process, and public comments. Part II is a Description of Demosntration Project Activities which discusses the specific projects and their basis and purpose.

DATE: Comments must be received by July 30, 1984 to ensure consideration.

ADDRESS: Comments should be submitted to Ms. Patricia Warner, Chief; Legislative Policy Planning and Demonstration Branch; Program Planning, Development and Support Division; Family Nutrition Programs, Food and Nutrition Service, USDA; 3101 Park Center Drive; Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Jacobs; Legislative Policy Planning and Demonstration Branch; Program Planning, Development and Support Division; Family Nutrition Programs; Food and Nutrition Service, USDA; 3101 Park Center Drive; Alexandria, Virginia 22302 (703) 756–3383.

SUPPLEMENTARY INFORMATION: In accordance with 7 CFR 282.5, this General Notice establishes the specific operational procedures and explains the basis and purpose for the funded demonstration projects. If comments received in response to this notice result, in the opinion of the Department, in a need for significantly changed operational procedures, an amended General Notice advising of such changes will be published in the **Federal Register.**

Part I—General Considerations

A. Background

In Fiscal Year 1981, FNS funded an initial group of State and local error reduction research and demonstration projects. The findings concerning these error reduction strategies have been shared among State agencies both directly and through professional groups such as the American Public Welfare Association. These final reports increase States' contributions to the literature and the process of improving program administration.

In Fiscal Year 1984, FNS is funding State and local demonstration projects to test strategies to improve management practices for reducing error and abuse occurring in the certification process. This is the second cycle of solicitations intended to provide a systematic mechanism for improving Food Stamp Program (FSP) certification operations through demonstration activities, and it continues the framework of the earlier grants in providing opportunities for new developments in controlling error through sound managerial strategies. This is also one of many FNS actions under the "Operation Awareness" campaign to reduce program losses due to fraud, waste and abuse.

B. Preapplication Selection

Thirty-seven preapplications were received by FNS in response to the Notice of Intent published in the **Federal Register** on July 8, 1983 (Vol. 48, No. 132, page 31424). The preapplications dealth with specific topics within one or more of the following areas:

(1) Fraud and Error Prevention
—Client/public education
—Development of error/fraud/abuse-prone profiles
—Application/interview investigative skills
—Intensive verification/prevention strategies
—Computer match at application

(2) Fraud and Error Detection
—Computer assisted verification and matching techniques
—Intensive verification/detection strategies
—Advanced training for eligibility technicians

(3) Fraud Prosecution
—Fraud referral, prosecution and collection
—Alternatives to financial restitution for prosecuted food stamp fraud.

FNS compared and ranked the preapplications according to the technical criteria stated in the July 8, 1983, Notice. The State agencies which had preapplications ranked in the top 15 were invited to submit full applications.

C. Application Selection

Fourteen full applications were received by FNS in response to the invitation to submit. FNS compared and ranked the applications based on criteria stated in the July 8, 1983, Notice. The final selection of three proposals was made based on technical merit and available funds.

D. Public Comments

In response to the Notice of Research, Demonstration and Evaluation projects published in the **Federal Register** on June 28, 1983, which solicited comments on these proposed demonstration projects, FNS received several comments in favor of such efforts. One commenter said that the practices being developed to combat fraud are not actually new approaches but are applications of ideas that have been tried elsewhere. This person went on to say that because it is common for a lapse in time to occur between the performance of a study and the publication of results, there is a need to develop ways to facilitate the sharing of this information on both a regular and timely basis. FNS is fully cognizant of this problem and will make every effort to disseminate the results of all demonstration project findings and evaluations.

One commenter urged a focus upon prevention-oriented projects in order to reduce the impact of losses to fraud. FNS agrees that preventive strategies are effective weapons against fraud and is testing projects which incorporate prevention. This person also name three administrative factors which might be causing some administrative problems for State and local agencies: turnover among caseworkers, investigators and other field staff; shifts of organizational structures and responsibilities; and slow channels of communication among Federal, State and local agencies. If a State or local agency has identified a strategy which may remedy or eliminate the effects of one or more of these factors, FNS invites that agency to submit a suggestion at any time.

E. Classification

This Notice has been reviewed under Executive Order 12291. The Notice will not result in annual economic impacts of more than $100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment productivity, investment, or foreign trade. Further, the Notice is unrelated to the ability of United States based enterprises to compete with foreign based enterprises. Therefore, the Notice has been classified as "non-major".

This Notice also has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities.

This Notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget.

F. Statutory Authorities

Subsection 17(b)(1) of the Food Stamp Act of 1977, as amended, gives the Secretary of Agriculture the authority to "conduct on a trial basis in one or more areas of the United States, pilot or experimental projects designed to test program changes that might increase the efficiency of the Food Stamp Program and improve the delivery of food stamp benefits to eligible household. . . . The Secretary may waive the requirements of this Act to the degree necessary for such projects to be conducted, except that no project . . . shall be implemented or provided waivers which would lower or further restrict the income or resource standards or benefit levels provided pursuant to sections 5 and 8 of this Act."

Subsection 18(a)(1) of the Act, as amended, authorizes the Secretary of Agriculture to use funds not in excess of one-fourth of one percentum of the previous year's appropriations to carry out the provisions of section 17 of the Act.

G. Governing OMB Circulars for Grant Administration

The FNS grant process is governed by USDA Uniform Federal Assistance Regulations (7 CFR Part 3015 **Federal Register** Volume 46, No. 217 55636) which primarily implement OMB Circular A–102 "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments", as well as A–87, A–21, and A–122. The application, reporting and recordkeeping, performance monitoring, and payment procedures established for these demonstration projects follow the requirements of 7 CFR Part 3015. Cooperators have been reminded of their obligations under this section in the text of the Cooperative Agreements.

H. Evaluation

FNS has contracted for a national evaluation of this demonstration project

effort. Such evaluation will not replace the requirement for each individual project to evaluate its own demonstration project effort. Cooperators will cooperate with the contractor by arranging convenient access to project staff and operations, and to records for data collection purposes. Additionally, FNS or its contractor may deliver technical assistance for project design methodologies and report writing as needed for maximum utility and transferability of project results.

Part II—Description of Demonstration Project Activities

In seeking State and local initiatives to fund, FNS has put a priority on new, innovative ideas which have not yet been attempted, have been tried only on a very limited basis, or have yet to be rigorously evaluated. The agency does not provide assistance through Section 17 demonstration monies to supplement the costs of normal program operations.

A. North Carolina State Agency—"A Computer-Assisted Food Stamps Eligibility Interview to Reduce Errors and Detect Fraud"

The goal of the North Carolina proposal is to reduce the Food Stamp Program error rate by improving the eligibility interview process. The methodology is the development, testing, and comparison of a structured interview format, a microcomputer-assisted structured interview format, and a traditional unstructured interview. A structured interview format is a data collection instrument that aids interviewers in obtaining all necessary information to make eligibility and allotment level determinations.

The structured interview format offers several potential advantages over the traditional eligibility interview: (1) It asks relevant questions of the applicant; (2) it requests information in a clear and consistent manner; (3) the format can be tailored to the circumstances of the individual househol; (4) it ask follow-up questions based upon prior responses to verify internal consistency and eliminate logical errors; (5) it aids more efficient and effective time management by directing the flow of questions; and (6) it captures all necessary information without wandering from topic to topic. The proposed computer-assisted structured interview employs data processing techniques to check for logical errors and internal consistency. It will also provide a hard copy record and a list of needed verifications on a printout for the applicant.

The demonstration design is a test and comparison of results in three counties, with three groups per county and each containing an equivalent caseload. Group One applicants will be interviewed using the structured interview format. Group Two will be interviewed using the microcomputer-assisted structured interview format. Group Three will be interviewed using the current unstructured interview techniques. The groups will be compared according to several criteria: case error rate; time per interview; cost per interview; and cost/effectiveness of treatments. Worker attitudes toward the interview format will also be considered in assessing the treatments.

The results of this project will give State agencies across the country the information they need to determine whether implementing this or similar interview techniques, software and equipment will reduce Federal benefit dollar losses while lowering local administrative costs.

B. Vermont State Agency—"Error Reduction Project"

The Vermont Department of Social Welfare (DSW) proposes to develop and test a performance evaluation and error reduction program to decrease errors detected in the quality control process and increase the number of fraud referrals. The project will include the following measures to reduce fraud and error in the food stamp household certification process: (1) Training for eligibility staff in "assertive" interviewing focused toward more accurate eligibility and allotment determination; (2) the development of quality circles for District Office eligibility staff and their superviors to make ongoing improvements in error and fraud reduction; (3) the implementation of a computer-assisted supervisory case review system to provide information on case determinations by unit and individual staff; and (4) based upon the supervisory review system findings, the establishment of performance standards consisting of quantitative performance goals for line staff and their supervisors. These measures represent an integrated program for improving line staff effectiveness in identifying and eliminating Food Stamp Program errors.

These strategies will be tested in three Vermont district offices with high or moderate error rates. Using a pretest/post-test comparison group framework, any resulting change in quality control error rates in the three experimental offices will be compared with any change in error rates in a control group of three similar district offices. An augmented quality control review will be conducted in the experimental and control offices to provide sufficient data for a statistically valid comparison. From this data, DSW will determine whether these techniques have the effect of reducing quality control error levels, and, based on the observable error rate effects and administrative costs, will assess their overall cost-effectiveness. Interviews conducted with district office staff will also provide evidence on the effects of fraud and error reduction training and quality circles on staff perceptions and morale.

C. Maryland State Agency—"A Communications Strategy for the Reduction of Client Error and Fraud in Food Stamps"

This project will test whether an intensive multi-media educational effort regarding food stamp application rules will result in a reduction of food stamp client error and fraud. The demonstration design encompasses the following techniques: (1) The messages communicated to clients are geared to correct errors due to a lack of information, misinterpretation or misrepresentation; (2) an advertising agency will be engaged to develop brochures and audio/visual materials; (3) the brochure(s) and audio/visual materials will be used in conjunction and separately at different sites; (4) quality control findings and other evaluation measures will be used for establishing which method or combination of methods reduces the error rate to the greatest extent.

In their proposal, Maryland projected that 560 applicants will (1) read a written brochure or a pictorial-style brochure, or (2) view a videotape, or (3) receive exposure to combinations of treatments. The communications will stress requirements expected of food stamp applicants and recipients and the possible penalties for failing to meet requirements. Project evaluation will include the extent to which client error rates are reduced. The results of this study will prove whether these interventions are useful in reducing food stamp client error and fraud.

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Program No. 10.551 Food Stamps)

Dated: June 22, 1984.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 84–17436 Filed 6–28–84; 8:45 am]

BILLING CODE 3410-30-M

CIVIL RIGHTS COMMISSION

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 12:00 noon, on July 21, 1984, at the Conoco, Inc., Conference Room, 555 17th Street, 9th Floor, Denver, Colorado 80202. The purpose of the meeting is to plan for future activities and to receive information on the comparable pay issue.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 26, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–17419 Filed 6–28–84; 8:45 am]

BILLING CODE 6335–01–M

District of Columbia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 2:00 p.m. and will end at 3:30 p.m., on July 19, 1984, at the U.S. Commission on Civil Rights, Mid-Atlantic Regional Office, 2120 L Street, NW., Room 510, Washington, D.C. 20037. The purpose of the meeting is to discuss a proposed project on race and sex discrimination in housing.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Mid-Atlantic Regional Office at (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 26, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–17420 Filed 6–28–84; 8:45 am]

BILLING CODE 6335–01–M

Utah Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 11:00 a.m. and will end at 4:00 p.m., on July 19, 1984, at the Howard Johnson Motor Lodge, Lisa Room, 122 W. South Temple Street, Salt Lake City, Utah 84101. The purpose of the Meeting is to discuss current projects and to plan for future activities. There will also be a mini-forum of persons interested in civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 26, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–17421 Filed 6–28–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 33–84]

Foreign-Trade Zone 74, Baltimore, Maryland; Application for a Subzone at Bethlehem Steel's Sparrows Point Shipyard

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Baltimore, Maryland, grantee of Foreign-Trade Zone 74, requesting special-purpose subzone status for the shipyard of Bethlehem Steel Corporation at Sparrows Point, Maryland, within the Baltimore Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 18, 1984. The applicant is authorized to make this proposal under Article 23, Section 466–469 of the Annotated Code of Maryland.

The proposed subzone is on a 215-acre facility located on the lower east bank of the Patapsco River, on the west side of the Sparrows Point Peninsula, some 6 miles southeast of Baltimore. It is a major U.S. shipyard used for the construction, conversion, and repair of oceangoing vessels such as oil tankers, bulk cargo carriers, container ships, and roll on/roll off cargo ships, as well as offshore oil drilling platforms. The facility currently has orders for the conversion of 3 container ships into 3 Maritime Prepositioning (TAKX) vessels to be leased to the Navy. It is also bidding for construction of six container ships. Some 21 percent of the finished product material value (exclusive of steel) on the TAKX vessel involves foreign sourced components such as diesel generators, boilers, pumps, air conditioning equipment, anchors, chain, cranes, deck machinery, hatches, electrical gear and control consoles. About 27 percent of the material value (exclusive of steel) of the container ships is expected to be sourced abroad and will include components similar to those of the TAKX vessel.

Zone procedures will help Bethlehem to reduce costs on its current orders and to compete internationally on bids for new projects. The benefits are related to the fact that most of the components are subject to significant duties, and that the finished products, as oceangoing vessels' are duty free.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer Street, Boston, MA 02110; and Colonel Gerald C. Brown, District Engineer, U.S. Army Engineer District Baltimore, P.O. Box 1715, Baltimore, MD 21203.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 31, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 415 U.S. Customhouse, Gay and Lombard Streets, Baltimore, MD 21202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm. 1872, 14th and Pennsylvania Avenue, NW., Washington, D.C. 20230

Dated: June 26, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-17434 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-25-M

[Docket No. 32-84]

Foreign-Trade Zone 26, Shenandoah, Georgia (Atlanta Port of Entry); Application for Subzone at Ford's Auto Plant in Hapeville, Georgia

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, requesting special-purpose subzone status for Ford Motor Company's automobile assembly plant in Hapeville, Georgia, within the Atlanta Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 18, 1984. The applicant is authorized to make this proposal under Chapter 10, Title 52 of the Official Code of Georgia Annotated.

The subzone will be located at Ford's Atlanta area auto assembly plant on a 110-acre site at 340 Henry Ford II Avenue, Hapeville, Fulton County. Ford is in the process of renovating the plant, which employs 1650 persons, to produce a new line of front-wheel drive cars. Although most of the parts and material used at the plant are produced domestically, about 3 percent of the components such as engines, transaxles and radios are imported.

Zone procedures will exempt Ford from paying duties on foreign components used for its exports. On its domestic sales, the company will be able to defer duty and to take advantage of the same duty rate available to importers of finished autos. The averge duty rate for the foreign components Ford uses at its Atlanta plant is 4.9 percent whereas the rate for finished autos is 2.7 perent. The savings from zone procedures are expected to contribute to Ford's efforts to reduce plant costs, helping to make it more competitive with auto production facilities offshore.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committeee consists of: Dennis Puccinelli (Chairman), U.S. Department of Commerce, Washington, D.C. 20230; Ralph C. Muser, Acting Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 S.E. 5th Street, Miami, FL 33131; and Colonel Daniel W. Christman, District Engineer, U.S. Army Engineer District Savannah, P.O. Box 889, Savannah, GA 31402.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 31, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 1365 Peachtree St., N.E., Suite 600, Atlanta, GA 30309

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: June 26, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-17433 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

[A-588-035]

Cadmium From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On April 5, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on cadmium from Japan. The review covers the seven known exporters of this merchandise to the United States and the period August 1, 1982, through July 31, 1983. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Edward Haley or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 13566) the preliminary results of its administrative review of the antidumping finding on cadmium from Japan (37 FR 15760, August 4, 1972). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of cadmium, currently classifiable under items 632.1420 and 632.1440 of the Tariff Schedules of the United States Annotated.

The review covers the seven known exporters of Japanese cadmium to the United States and the period August 1, 1982, through July 31, 1983. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results.

Further, the Department shall not require a cash deposit of estimated antidumping duties, as provide for § 353.48(b) of the Commerce Regulations, on any shipment of Japanese cadmium entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect unitl publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C.

1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 18, 1984.

[FR Doc. 84-17342 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-023]

Clear Sheet Glass From Taiwan; Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke in Part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on clear sheet glass from Taiwan. The review covers three time periods. The first involves two of the three known manufacturers and/or exporters and one known third-country reseller of Taiwanese clear sheet glass to the United States for the period July 1, 1976, through July 31, 1980. The second and third cover all four firms generally for consecutive periods from August 1, 1981, through July 31, 1983. We are covering the period July 1, 1976, through July 31, 1980, because of a remand from the Court of International Trade for reconsideration of the results of the first administrative review. The review indicates the existence of dumping margins in particular periods for certain firms.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each firm's sales during the periods.

Where no information was received in response to our questionnaire we have used best information available to determine the assessment and estimated antidumping duties cash deposit rates. The Department has also tentatively determined to revoke the finding with respect to Hsinchu Glass Works, Inc.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/1130.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 42769-70) the final results of its last administrative review of the antidumping finding on clear sheet glass from Taiwan (36 FR 16508, August 31, 1971) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review. The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all entries made prior to January 1, 1980.

On July 21, 1983, the Court of International Trade issued an order in *PPG* v. *United States*, No. 81-9-01273, Slip Op. 83-75, for the Department to reconsider the results of its first administrative review of the finding. The Department published the final results of that review on August 20, 1981 (46 FR 42315), covering the period July 1, 1979, through July 31, 1980. In compliance with the Court's order, we have enlarged the review period to cover the period July 1, 1976, through July 31, 1980.

Scope of the Review

Imports covered by the review are shipments of clear sheet glass, currently classifiable under items 542.3120 through 542.4835 of the Tariff Schedules of the United States Annotated.

The review covers three time periods. The first involves two of the three known manufacturers and/or exporters and one known third-country reseller of Taiwanese clear sheet glass to the United States for the period July 1, 1976, through July 31, 1980. The second and third cover all four firms generally for consecutive periods from August 1, 1981, through July 31, 1983.

One firm, Taiwan Glass Corporation, did not ship Taiwanese sheet glass to the United States in any period. The other two Taiwanese firms, Yotak Trading Co., and Hsinchu Glass Works, Inc., did not ship this merchandise during the periods from August 1, 1981, through July 31, 1983. Yotak Trading was not an exporter in the first period. The cash deposit rate for these firms will be the most recent rate for each firm. The third-country reseller, Israeli International Trade Co., Ltd., failed to respond to our questionnaire for any period. For this non-responsive firm we used the best information available for cash deposit and assessment purposes. The best information available is the fair value rate.

Purchase Price

The Department used purchase price, as defined in section 203 of the 1921 Act. Purchase price was based on the packed f.o.b. price to the unrelated purchasers in the United States with a deduction for foreign inland freight. In accordance with section 203 of the 1921 Act, we accounted for taxes imposed in Taiwan but rebated or not collected by reason of the exportation of the merchandise to the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 205 of the 1921 Act. Home market price was based on the packed delivered price with adjustments for inland freight, and differences in stamp taxes and packing costs. We denied claims for breakage and differences in credit costs because of the lack of quantification, and for differences in physical characteristics of the merchandise since we determined the merchandise sold to the United States is identical to that sold in the home market. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Tentative Determination to Revoke in Part

As a result of our review, we preliminarily determine that the following margins exist:

	Time period	Margin (percent)
Manufacturer/exporter		
Hsinchu Glass Works, Inc.	7/1/76-7/31/80	14.88
	8/1/81-7/31/82	[1] 14.88
	8/1/82-7/31/83	[1] 14.88
Taiwan Glass Corporation	7/1/76-7/31/80	[1] 1.6
	8/1/81-7/31/82	[1] 1.6
	8/1/82-7/31/83	[1] 1.6
Yotak Trading Company	8/1/81-7/31/82	[1] 7.0
	8/1/82-7/31/83	[1] 7.0
Third-country reseller (country)		
Israeli International Trade Co., Ltd. (Israel)	7/1/76-7/31/80	14.88
	8/1/80-7/31/82	14.88
	8/1/82-7/31/83	14.88

[1] No shipments during the period.

Hsinchu Glass Works, Inc. requested revocation as provided for in § 353.54(e) of the Commerce Regulations. Hsinchu has agreed in writing to an immediate suspension of liquidation and

reinstatement in the finding if circumstances develop which indicate that clear sheet glass manufactured by Hsinchu Glass Works, Inc. and thereafter imported into the United States is being sold by Hsinchu at less than fair value. There have been no shipments of this merchandise by Hsinchu since September 1979, a period of four years.

Therefore, we tentatively determine to revoke the finding on clear sheet glass from Taiwan with regard to Hsinchu Glass Works, Inc. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all approriate entries with purchase dates during the periods. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the above margins shall be required for these firms. For future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after July 31, 1983, and who is unrelated to any reviewed firm, a cash deposit of 14.88 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese clear sheet glass entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53 and 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 19, 1984.

[FR Doc. 84-17343 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-001]

Sorbitol From France; Revocation in Part of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of revocation in part of antidumping duty order.

SUMMARY: The United States Court of International Trade has affirmed the International Trade Commission's negative determination on remand of material injury to a United States industry with respect to imports of liquid sorbitol from France.

As a result, the Department of Commerce is revoking the antidumping duty order on sorbitol from France with respect to liquid sorbitol.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Amy F. Dale or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 15391-2) an antidumping duty order on sorbitol from France.

Imports covered by the order were all shipments of sorbitol. Sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is commercially available in two forms: (1) Crystalline sorbitol, used in the production of sugarless gum, candy, groceries, and pharmaceuticals, and (2) liquid sorbitol, used in cosmetics and toiletries (such as toothpaste). Sorbitol is currently classifiable under item 493.8820 of the Tariff Schedules of the United States Annotated.

On May 7, 1982, Roquette Freres initiated a court challenge to the Department's final affirmative determination and the International Trade Commission's ("ITC") final affirmative determination of material injury (47 FR 14981, March 29, 1982). *See Roquette Freres and Roquette Corporation v. United States,* USCIT No. 82-5-00636.

The Court of International Trade ("CIT") granted the government's motion for remand to enable the ITC to consider in full all relevant information then presently before it, or which would be submitted during the remand, to determine whether an industry was materially injured by reason of imports of sorbitol from France being sold at less than fair value.

On remand, the ITC determined that an industry in the United States was materially injured by reason of imports of crystalline sorbitol, and was not being materially injured, or threatened with material unjury, by reason of imports of liquid sorbitol.

On March 19, 1984, the CIT affirmed the ITC's remand results.

Revocation in Part of Antidumping Duty Order

The Department, therefore, revokes the antidumping duty order with respect to liquid sorbitol from France. In view of the injunction and the Court's order of March 19, 1984, this revocation in part applies to all unliquidated entries of French liquid sorbitol. The Department will instruct the Customs Service to proceed with liquidation of entries of liquid sorbitol without regard to antidumping duties.

This revocation is in accordance with the order of the CIT, *Roquette Freres and Roquette Corporation v. United States,* Slip. Op. 84-22, March 19, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 18, 1984.

[FR Doc. 84-17341 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held July 17, 1984, 3:00 p.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, N.W., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of progress on Committee's 1984 annual plan.

4. Report on current work program of the subcommittees:
   a. Foreign Availability,
   b. Hardware, and
   c. Licensing Procedures.
5. New Business.
6. Action items underway.
7. Action items due at next meeting.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217. For further information on copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Dated: June 26, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84–17400 Filed 6–28–84; 8:45 am]
BILLING CODE 3510–DT–M

[A–580–011]

Final Determination of Sales at Less Than Fair Value: Carbon Steel Plate from the Republic of Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final determination of sales at less than fair value: Carbon steel plate from the Republic of Korea.

SUMMARY: We have determined that carbon steel plate from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each such entry in an amount equal to 5.0 percent of the f.o.b. value of the merchandise.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; Telephone: (202) 377–5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that carbon steel plate from Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). We have determined the weighted-average margin of sales at less than fair value to be 5.0 percent.

Case History

On October 31, 1983, we received a petition from counsel for Gilmore Steel Corporation on behalf of the domestic carbon steel products industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that imports of carbon steel plate from Korea are being, or are likely to be, sold in the United States at less that fair value within the meaning of section 731 of the Act, and that these imports are materially injuring or are threatening to materially injure a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on November 19, 1983 (48 FR 53588). On December 15, 1983, the ITC determined that there is a reasonable indication that imports of carbon steel plate are materially injuring a U.S. industry (48 FR 56450).

On December 7, 1983, we presented an antidumping questionnaire to counsel for the Pohang Iron and Steel Co., Ltd. (POSCO). On January 26, 1984, we received POSCO's response to the questionnaire. From March 5 through March 12, 1984, we verified POSCO's questionnaire response.

On April 9, 1984, we preliminarily determined that carbon steel plate from Korea is being, or is likely to be, sold in the United States at less than fair value (49 FR 14779).

Scope of Investigation

The merchandise covered by this investigation is carbon steel plate. The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad, 0.1875 inch or more in thickness and over 8 inches in width; and currently provided for in items 607.6620 and 607.6625 of the *Tariff Schedules of the United States Annotated.*

Semifinished products of solid rectangular cross sections with a width at least four times the thickness in the cast condition or processed only through primary mill hot-rolling are not included.

Since we believe that POSCO accounts for well over 95 percent of the exports of this merchandise to the United States, we limited our investigation to this one firm. We investigated all sales of carbon steel plate by POSCO during the period June 1 through November 30, 1983.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by POSCO because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price for each United States sale on the packed, f.o.b. or c. & f. prices to unrelated customers in the United States. We made deductions for trucking and handling charges in Korea and, where appropriate, for ocean freight. We made an addition for duties rebated upon exportation of the merchandise to the United States. We also added the

amount of countervailing duty currently being imposed on POSCO's imports of this merchandise into the United States to offset an export subsidy, pursuant to section 772(d)(1)(D) of the Act.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on POSCO's home market prices. We used POSCO's home market prices because POSCO made sufficient sales in the Korean home market to form a viable basis for fair value comparisons.

Bethlehem Steel Corp. (Bethlehem), which entered an appearance as a party to this proceeding within the meaning of § 353.12(i) of our regulations (19 CFR 353.12(i)), alleged that POSCO made home market sales at less than the cost of producing this merchandise within the meaning of section 773(b) of the Act. Information that we received form POSCO and verified indicates that all sales prices in the home market were greater than the cost of producing this merchandise.

For POSCO, we calculated home market price on the basis of the packed f.o.b. Pohang or delivered price to unrelated customers in the Korean home market. We made deductions for handling costs and inland freight, where appropriate. We made adjustments for differences in merchandise in accordance with section 773(a)(4)(C) of the Act. Because POSCO was unable to break out the cost of various steel extras that accounted for all differences between the U.S. and home market merchandise, we used our Trigger Price extra amounts announced on November 19, 1981 (47 FR 56841). We determined that the Trigger Price extra amounts were the best available information of POSCO's cost of each extra, because POSCO actually used our Trigger Price extra amounts in pricing all carbon steel plate sold to the United States. We made circumstances of sale adjustments, where appropriate, for differences in credit terms, and for differences in inspection costs. These circumstance of sale adjustments were made in accordance with section 353.15 of our regulations (19 CFR 353.15).

Verification

In accordance with section 776(a) of the Act, we verified all information used in reaching the determination in this investigation by using standard verification procedures, including on-site inspection of the manufacturer's operations and an examination of accounting records and randomly selected documents containing relevant information.

Submitted Comments

The following written comments were submitted by Bethlehem in response to our preliminary determination:

Comment 1

Bethlehem compares POSCO's reported f.o.b. export prices with average, monthly f.o.b. values derived from the Department of Commerce import statistics and claims that POSCO's reported prices are significantly higher. Bethlehem argues that this comparison raises the likelihood either that POSCO has reported inflated U.S. prices, or that the general trading companies through which POSCO exports to the United States are reselling carbon steel plate in the United States for less than the reported prices between POSCO and the trading companies. Bethlehem also cities the indictment of a Korean trading company, Daewoo Industrial Co., Ltd. (Daewoo), on charges of false invoicing (with respect to entries tendered to U.S. Customs) as further evidence of such a likelihood.

DOC Position

We received this allegation after our verification and preliminary determination. Therefore, we subjected the allegation to more rigorous scrutiny than if it had been contained in the petition or raised early in the investigation. Because we have more information against which to test a new allegation, and because of the time factor, we must have a higher threshold of support for allegations made late in an investigation as this was.

Bethlehem's comparisons do not take into account the lag time between the purchase date, the subsequent exportation date of the merchandise, and the date these exports are recorded as import statistics by the Department. This lag time is substantial and has a distorting effect with respect to the comparisons made by Bethlehem. In an effort to make such comparisons more meaningful, the Department realigned its import statistics according to date of purchase and found that POSCO's reported prices were not significantly above the average monthly import values. We found that the average monthly import values were comparable to POSCO's average monthly prices. The reason for this is that the Department's import statistics largely reflect POSCO's prices to general trading companies, as opposed to the prices of general trading companies to their customers.

Also, the Department reviewed actual Customs documentation from which the statistical data were derived and found no evidence that general trading companies were selling at lower prices than those paid to POSCO. Based on a through verification of POSCO's export prices, the Department is satisfied that these prices are not inflated. With respect to the indictment of Daewoo, it is irrelevant to this investigation. The charges stem from alleged activities which took place prior to the period under investigation and do not involve the product under investigation. We have no evidence of any fraudulent practices involving the subject product during the period under investigation.

Comment 2

Bethlehem argues that the Department connot automatically permit adjustments for differences in credit costs absent evidence establishing that such costs are directly related to the sales under consideration. Bethlehem further contends that, absent evidence that differences in price are caused by differences in credit terms, no adjustment should be allowed.

DOC Position

The actual payment terms for each individual transaction sufficiently established a direct relationship for credit costs. Our calculation of the credit costs incurred by POSCO for sales in the home and U.S. markets is based upon verified data from POSCO. For the purposes of this investigation, we have used the short-term borrowing rate to calculate actual credit costs. We do not agree with Bethlehem's agrument that no adjustment should be made absent evidence that the differences in credit costs have affected the price (i.e., the value) of the merchandise. Because POSCO has allowed certain home market customers additional time to pay, POSCO has borne additional costs. The fact that POSCO has not directly linked this cost to price, does not dispose of the fact that POSCO has had differing credit experiences in the two markets. To the contrary, it indicates that POSCO is absorbing its costs in other markets relative to the Korean market, an occurrence which the Act was intended to address. Since use of the cost criterion provides a means by which to redress this situation, we have used the differences in credit costs in the two markets to calculate a circumstance of sale adjustment.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we instructed the United States Customs Service to suspend liquidation of all entries of carbon steel plate from Korea which are entered or withdrawn

from warehouse, for consumption, on or after Apil 13, 1984 (48 FR 14779). Suspension of liquidation will continue for entries of this merchandise. In addition, as of the date of publication of this notice in the **Federal Register**, the Customs Service shall require a cash deposit or the posting of a bond equal to the new estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price. This amount is 5.0 percent of the f.o.b. value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relting to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicy or under an administrative protective order, without the written consent of the Deputy Assistant Secretry for Import Administration.

The ITC will make its determination on whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury does not exist, this proceeding will terminate and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on carbon steel plate, entered or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: June 25, 1984.

Alan F. Holmer,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-17398 Filed 6-28-84; 8:45 am]
BILLING CODE 3510-DS-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held July 18, 1984, 9:30 a.m., Herbert C. Hoover Building, Room 7808, 14th Street and Constitution Avenue NW., Washington, D.C. The Subcommittee meeting will continue to its conclusion on July 19, in Conference Room C, Herbert C. Hoover Building. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (1) maintenance of the processor performance tables and further investigations of total systems performance; and (2) investigation of array Processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The Subcommittee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information contact Mrs. Margaret A. Cornejo (202) 377–2583.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84-17399 Filed 6-28-84; 8:45 am]
BILLING CODE 3510-DT-M

[C-508-401]

Potassium Chloride From Israel; Preliminary Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Affirmative Countervailing Duty Determination.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Israel of potassium chloride, as described in the "Scope of Investigation" section below. The estimated net bounty or grant is 8.71 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of potassium chloride from Israel which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on these products in the amount equal to the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination by September 10, 1984.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: John R. Binkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–4929.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Israel of potassium chloride. For purposes of this investigation, the following programs are preliminarily found to confer bounties or grants:

- Investment Grants under the Encouragement of Capital Investment Law 5719–1959 (ECIL).
- Export Credit Funds.

For this preliminary determination, we have used the unverified information provided in response to our questionnaires. We will verify all information used in our final determination.

The estimated bounty or grant is 8.71 percent *ad valorem*.

Case History

On March 29, 1984, we received a petition filed by AMAX Chemicals Inc., Lakeland, Florida, and Kerr-McGee Chemical Corporation, Oklahoma City, Oklahoma, on behalf of U.S. producers of potassium chloride who represent a major portion of that industry. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Israel of potassium chloride receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Act and that these imports are materially injuring, or threatening to materially injure, a U.S. industry.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation and, on April 18, 1984, we initiated such an investigation (49 FR 18001). We stated that we expected to issue a preliminary determination by June 25, 1984.

Israel is not a "country under the Agreement" within the meaning of section 701(b) of the Act; therefore, section 303 of the Act applies to this investigation. Since this merchandise enters the United States duty-free and since the international obligations of the United States so require, section 303(a)(2) of the Act, provides that an injury determination shall be made by the United States International Trade Commission (ITC).

We presented questionnaires concerning the allegations to the government of Israel and to Dead Sea Works Ltd. (DSW), the only known Israeli producer of potassium chloride, in Washington, D.C., on April 23, 1984, and requested a response by May 23, 1984. In a letter dated May 2, 1984, DSW requested an extension until June 6 to submit its response. We granted an extension until May 29. On that date we received responses from the Israeli government and DSW. On May 17, 1984, we denied a government of Israel request that we consider this case extraordinarily complicated.

Scope of Investigation

The product covered by this investigation is potassium chloride, currently provided for under item 480.5000 of the *Tariff Schedules of the United States Annotated.*

The period for which we are measuring benefits is April 1, 1982, through March 31, 1983. In their responses, the government of Israel and DSW provided data for the applicable period. We are including information in those responses in this preliminary countervailing duty determination.

Analysis of Programs

Based upon our analysis to date of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to DSW under the following programs:

A. ECIL Investment Grants

The purpose of "The Encouragement of Capital Investments Law, 5719–1959 (ECIL)" is to attract capital to Israel with a view toward developing the productive capacity of the national economy, improving the balance of payments, absorbing immigration, and offsetting the economic disadvantages in Israel's development areas.

Investment grants are given as a percentage of the investment. The percentage varies according to the location of a project. "Approved projects" located in Zone A are entitled to recieve a grant amounting to 30 percent of the total investment in fixed assets; "approved projects" in Zone B are entitled to receive a grant amounting to 15 percent of the total investment; and those in Zone C are not entitled to receive grants. Any company located in Zone A, regardless of the industry, is eligible for grants. Only projects that demonstrate economic viability are approved. The Investment Center approves a project and provides the commercial development banks with the approved funds. The banks then give the grants to the company, upon presentation of a letter of approval of the investment.

The DSW response states that DSW, which is located in Zone A, received various ECIL grants from fiscal years (April 1–March 31) 1977 through 1982 for the purposes of plant enlargement and the construction of dikes and canals used in the production of potassium chloride. The DSW response also claims that DSW received additional ECIL grants from fiscal years 1979 through 1982 for the expansion of potassium chloride production under its Makleff Stage A and Stage B projects, but that the product from these projects cannot be sold to the United States.

Because ECIL investment grants are limited to companies located in specific regions, we preliminarily determine that grants benfitting the production of potassium chloride of the grades marketable by DSW in the United States confer countervailable bounties or grants. We have not included those portions of the grants for the plant expansion, machinery, and equipment received for Stages A and B of the Makleff Project as countervailable benefits since DSW has provided support for its contention that it cannot export potassium chloride produced by its "cold crystallization" process to the U.S. We plan to seek additional information on this matter during verification. However, we have included those portions of the Makleff grants used for the construction of dikes, evaporating ponds and canals since these investments do not exclusively benefit the production of potassium chloride by the Makleff project.

We calculated the countervailable benefit of these grants by using the grant methodology set out in the "Subsidies Appendix," 49 FR 18016 (April 26, 1984). In determining the discount rate, we concluded that suitable company specific borrowing rates were not available. Consequently, we used the national average bond rate and the national average rate of return on equity. These numbers were based on Bank of Israel statistics. We allocated the grants over ten years, the average useful life of depreciable assets used in mining, as determined by Internal Revenue Service tables. We then allocated the benefits during the period of investigation over the total sales (less the sales from the Makleff plant) by DSW during the period of review. We thus determined a bounty or grant in the amount of 1.46 percent *ad valorem* exists.

We have information which states that the ECIL law now contains requirements that a certain percentage of the merchandise produced as a result of the investment must be exported in order for the plant that receives a grant to be considered an "approved project". Thus, grants currently received under the ECIL program would constitute export subsidies. However, this change was not in effect when the grants mentioned above were received.

B. Export Credit Funds.

During the period of review the Bank of Israel provided short-term financing to DSW through three export credit funds: The Export Production Fund (for working capital loans), the Export Shipments Fund (for accounts receivable), and the Imports-for-Exports Fund (to finance imported materials used for export production). We calculated the countervailable benefit of these export credit funds using the short-term loan methodology set out in the "Subsidies Appendix," (49 FR 18016 (April 26, 1984)).

We find short-term export loans (one year or less) to be countervailable to the extent that they are given at rates less than those for comparable commercial loans. To determine the amount of the bounty or grant for short-term loans, we compare the terms of the loan at issue with a benchmark; that is, a comparable commercial loan. Since short-term loans are received and repaid within a year, we allocate any benefits to one year only. For our benchmark, we used the terms and rates of the most appropriate national average commercial method of short-term financing. The benchmark used for each of the export funds is included in our description of each program. We obtained the benchmark interest rates used from official Bank of Israel publications.

1. *Export Production Fund*

Preferential financing is provided in Israeli shekels and in certain foreign currencies to exporters through the Export Production Fund to finance the production process for items to be exported. The Bank of Israel manages this fund. Financial institutions which offer credit to exporters according to the terms established for this fund by the Bank of Israel may receive credit from the Bank of Israel for the financing which they provide.

DSW stated in its response that during the period of review it received Export Production Fund loans only in shekels at an interest rate of 10.5 percent per quarter. As our benchmark interest rate on comparable commercial loans we used the effective interest rate during the period of review for shekel overdraft accounts. Since the Export Production Fund provides loans for export-related purposes at interest rates significantly less than those prevailing for comparable commercially available loans, we preliminarily determine that this program confers a bounty or grant upon the exportation of potassium chloride.

We determined the benefits from these loans based on a comparison of the cost of the Export Production Fund financing and the cost of the comparable commercially available financing. This benefit was allocated over the value of DSW's total potassium chloride exports during the review period. On this basis, we calculated a bounty or grant in the amount of 4.49 percent *ad valorem.*

2. *Export Shipments Fund*

The preferential financing designed to afford exporters the possibility of extending credit in foreign currency to their customers abroad is provided by the Export Shipments Fund. The Bank of Israel manages this fund. Financial institutions which offer credit to exporters according to the terms established for this fund by the Bank of Israel are discharged from certain payment obligations to the Bank of Israel and are exempt from the credit ceiling fixed by the Bank of Israel.

The government of Israel's response indicates that exporters are required to pay the Euro-currency interest rate plus 1.5 percent on loans obtained through the Export Shipments Fund. Financing is granted after the merchandise is shipped upon the presentation by the exporter of particular export documents. Up to 90 percent of the export value of the merchandise shipped may be financed through this fund for a period not to exceed 6 months. Credit from this fund is provided in the currency indicated on the export documents.

DSW's response to our questionnaire indicates that it was exempt from the surcharge which the government of Israel generally requires borrowers of foreign currency to pay. Such exemptions are granted for foreign currency loans obtained through an export credit fund. Therefore, consistent with the position we have taken in the first and second administrative reviews of *Fresh Cut Roses from Israel* (48 FR 36635 (1983) and 49 FR 924 (1984)), we consider that DSW's exemption from payment of the surcharge on its foreign currency borrowings during the period of review to be a countervailable export subsidy.

To represent the interest rate on comparable United States dollar denominated commercial loans, we used as our benchmark the sum of the applicable surcharge and the interest rate, in dollar terms, available in Israel on non-directed United States dollar credit. We were not able to obtain the interest rates available in Israel on non-directed credit in other foreign currencies. For loans provided to DSW in currencies other than United States dollars, we used as the benchmark interest rates on comparable commercial loans, the interest rates DSW received on foreign currency loans adjusted (on a quarterly basis) by the percentage difference by which the interest rate on the non-directed United States dollar benchmark (surcharge excluded) exceeded the interest rates DSW received on United States dollar loans. The applicable surcharge was then added to the foreign currency benchmark interest rates.

We calculated the benefit of the loans by comparing the appropriate benchmark to the preferential rates of interest obtained by DSW on its Export Shipments Fund loans. This benefit was allocated over the value of DSW's total potassium chloride exports during the review period. On this basis, we calculated a bounty or grant in the amount of 2.55 percent *ad valorem.*

3. *Imports-for-Exports Fund*

Through the Imports-for-Exports Fund, preferential financing is provided in foreign currency to exporters in order to finance imported material used for export production. The Bank of Israel manages this fund. Financial institutions which offer credit to exporters through this fund may receive credit from the bank of Israel for the financing which they provide. In its response, the government of Israel states that financial institutions grant credit to exporters in foreign currency at a rate of interest equal to 60 percent of the Euro-currency interest rate for the currency in which the loan is given for a period not to exceed 1 year. The Bank of Israel then credits the financial institution's account with an amount equal to the difference between the rate of interest paid by the exporter (60 percent of the Euro-currency rate) and the Euro-currency rate plus 1.

To represent the interest rate on comparable commercial loans, we used as our benchmark the United States dollar and foreign currency benchmarks described in the "Export Shipments Fund" section.

We calculated the benefit of these loans by comparing the appropriate benchmark to the preferential rates of interest obtained by DSW on its Imports-for-Exports Fund loans. This benefit was allocated over the value of DSW's total potassium chloride exports during the review period. On this basis, we calculated a bounty or grant in the amount of 0.21 percent *ad valorem.*

II. Programs Preliminarily Determined Not To Confer Bounties or Grants

We preliminarily determine that boundies or grants are not being provided to DSW under the following programs:

A. Exchange Insurance Scheme.

During the period for which we are measuring bounties or grants, DSW's exports were covered under the "Exchange Rate Risk Insurance Scheme" (EIS) offered by the Government-owned "Israel Foreign Trade Risks Insurance Corporation Ltd." (IFTRIC). EIS, which is optional for all exporters, is a mixture of exchange rate risks, insurance, and cost escalation coverage. It is designed to insure the exporter against decreased payments in its foreign currency receivables resulting from a delay in devaluation of the shekel with respect to a market basket of exchange rates, relative to the appropriation of the consumer price index. Under EIS, if the change in the consumer price index is larger than the changes in the rate of the shekel depreciation, the exporter is indemnified by an amount equal to the difference between the changes multiplied by the "added value" of the exports. When the rate of depreciation is higher than the change in the consumer price index, the exporter compensates IFTRIC.

EIS premiums are the same for all industries and are based on two indicators: (a) The average anticipated inflation rate in the buyers' countries: And (b) the forward relation between currencies which constitute the market

basket of exchange rates. based on these indicators, the weighted premium rates to the United States were higher than to other countries.

While no specific information is available at this time to determine whether the premiums charged by IFTRIC for the EIS program are sufficient to cover its long-term operating expenses, our review of the 1981/82 and 1982/83 annual reports of IFTRIC shows that in each year the company showed an overall profit as well as a profit from its insurance activities. This pattern of operating profits on its overall insurance activities indicates that IFTRIC does charge premiums sufficient to cover long-term operating costs and losses. Therefore, we preliminarily determine that the EIS program does not confer a bounty or a grant.

B. ECIL Partial Non-Payment of Employer's Tax

The petition alleges that DSW benefits from the partial non-payment of the employer's tax which normally amounts to 7 percent of payroll. The extent of non-payment depends on the ratio between "approved" assets and total assets.

The response states that on January 1, 1980, the employer's tax law was amended. Since April 1, 1980, the employer's tax has not been applicable to the productive sectors, including industrial manufacturing firms, agricultural farms, operation of hotels, and the building of housing or civil engineering related to the above activities. As a result, DSW has not paid an employer's tax since 1980.

Consequently, we preliminarily determine this domestic program is not provided by government action to a specific enterprise or industry, or a group of enterprises or industries; thus it does not confer a countervailable benefit.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs were not used by DSW:

A. ECIL Reduction of Corporate Tax Liability

The petition alleges that DSW's corporate tax liability is limited to 30 percent instead of the normal 60 percent rate and that the benefit lasts 7 years and is prorated according to the ratio between "approved" assets and total assets.

The response states that "approved projects" under ECIL are liable to pay a 30 percent corporate tax on the portion of the "approved" fixed assets, while the regular corporate rate for an industrial corporation is 40 percent, and not 60 percent as alleged. The program is administered by the Investment Center. The response indicates that even though DSW had profits, DSW did not receive benefits from this program during the period of review. Under Israeli tax law, DSW's tax liability is consolidated with its parent, Israel Chemicals Ltd. (ICL). Since ICL had losses, DSW paid no taxes.

B. Property Tax Exemption on Buildings

The petitioner alleges that DSW may continue to benefit from the ECIL provisions that allow eligible enterprises a 5 year exemption from payment of ⅔ of property taxes on building. The petiton states that this program was repealed by Amendment 17 of the ECIL on August 1, 1978.

The response states that the last year that DSW used this program was 1980. The property tax on buildings was abolished for all taxpayers on April 1, 1981.

C. Property Tax Exemption on Equipment

The petition alleges that the government of Isreal provides a 10 year exemption from payment of ⅙ of the property taxes on equipment approved prior to repeal of this program. The petition states the program was repealed by Amendment 17 of ECIL on August 1, 1978. The response states the last year for which DSW used this program was 1980. This program was abolished for all taxpayers as of April 1, 1981.

IV. Programs for Which Additional Information Is Required

We preliminarily determine that additional information is needed on the following programs:

A. Preferential Ocean Freight Rates

The petition alleges that most potassium chloride exported from Israel to the United States (back-haul) is shipped by Zim Navigation, which is 40 percent owned by the government of Israel, at rates which are far lower than the rates it charges on bulk shipments from the United States to Israel (front-haul). Petitioners add that the enormous difference between the front-haul and back-haul rates cannot be accounted for simply as the result of the imbalance in shipments into and out of Israel. They are deliberately structured, at the government of Israel's direction, to cross-subsidize lower freight rates on potassium chloride exports to the United States by higher freight rates on grain imports (by the government of Israel) from the United States.

The responses of DSW and the government of Israel state that Zim Navigation structures its ocean freight rates on a purely commercial basis without government of Israel intervention and that DSW ships most of its potassium chloride to the United States with several private carriers at rates equal to those it is charged by Zim Navigation. Before determining whether DSW has benefited from bounties or grants due to preferential ocean freight rates we will require additional information.

B. Preferential Wharfage Charges

The petition alleges that the Israel Ports Authority (IPA) subsidizes exports by disproportionately raising wharfage revenue from imports while vastly undercharging exports and by basing wharfage charges on value, not volume of shipments, which favors low value exports such as potassium chloride.

IPA was established by statute in 1961 as a state corporation to plan, build, develop, manage, maintain, and operate the ports of Israel as self-supporting enterprises. The Department noted in Certain Steel Products from Belgium (47 FR 39304), that government ownership of separate companies does not necessarily preclude them from conducting transactions on an arm's-length basis and that our examination of such relationships should focus on whether prices actually charged were at prevailing market rates. In this case, DSW alleges that it did not benefit from the alleged bounty or grant during the period of review since it built and operates its own port facilities (wharf, terminal, conveyor and loader) and thus does not incur any wharfage charge by IPA on export shipments. DSW does, however, pay to IPA an annual rent for using the port territory for its terminal as well as general operating charges on a cost plus basis. We will examine the rental arrangement and operating costs paid by DSW to IPA to determine whether or not they were at arm's-length and at prevailing market rates as well the source of financing for the construction of the wharf facilities.

Verification

In accordance with section 776(a) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of potassium chloride from

Israel which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise from Israel in the amount of 8.71 percent *ad valorem*.

Public Comment

In accordance with § 355.35 of our regulations, and pursuant to a request by a party to this proceeding, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on July 11, 1984, at the U.S. Department of Commerce, Conference Room A, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in this hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address by July 3, 1984. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Prehearing briefs must be submitted to the Deputy Assistant Secretary by July 5, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34 within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: June 25, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-17396 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-009]

Tubes for Tires, Other Than for Bicycle Tires, From the Republic of Korea: Final Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that tubes for tires, other than for bicycle tires, from the Republic of Korea (Korea) are not being, nor are likely to be, sold in the United States at less than fair value. In addition, since we have determined that inner tubes have not been sold at less than fair value, the issue of "critical circumstances" is moot in this determination. We have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202 377-1776 or 0161..

SUPPLEMENTARY INFORMATION: .

Final Determination

We have determined that tubes for tires, other than for bicycle tires (inner tubes) from Korea are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). We have found either no margins, or *de minimis* margins, on sales of inner tubes by all of the firms investigated. In addition, since we have determined that inner tubes have not been sold at less than fair value, the issue of "critical circumstances" is moot in this case.

We have found that the foreign market value of inner tubes exceeded the United States price on 0.54 percent of the sales we compared. These margins ranged from 0.12 percent to 20.30 percent. The overall weighted-average margin on all sales compared is 0.02 percent.

Case History

On August 1, 1983, we received a petition filed by counsel for Carlisle Tire & Rubber Company; Cooper Tire & Rubber Company; Cupples Company, Manufacturers; The Firestone Tire & Rubber Company; The B. F. Goodrich Company; The Indianapolis Rubber Company; and the Robbins Tire & Rubber Company, on behalf of the U.S. industry producing inner tubes.

In accordance with the filing requirements of section 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioners alleged that inner tubes from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry. The petitioners also alleged that "critical circumstances" exist in this case.

After reviewing the petition, we determined that it contained sufficient ground upon which to initiate an antidumping investigation. We notified the ITC of our action and inititated such an investigation on August 1, 1983 (48 FR 36637). The ITC subsequently found, on August 25, 1983, that there is a reasonable indication that imports of inner tubes are materially injuring, or are threatening to materially injure, a United States industry.

The petitioner alleged that at least 18 Korean Companies either produce for export, or export, inner tubes to the United States. However, we identified 2 producers whose exports account for approximately 90 percent of the exports of inner tubes to the United States. We presented questionnaires in Korea to these producers and exporters on September 9, 1983. We received responses from Heung-Ah Tire Ind. Co., Ltd. (Heung-Ah) and Dong Ah Tire Ind., Co., Ltd. (Dong Ah) on October 24, 1983. In addition, Shin Hung Rubber Co., Ltd. (Shin Hung) and Hung-A Ind. Co., Ltd. (Hung-A) voluntarily submitted responses to the Department's questionnaire.

On November 18, 1983, we received a letter from counsel for petitioners requesting that the Department postpone its preliminary determination, pursuant to section 733(c)(1)(A); and on November 22, 1983, we postponed our preliminary determination until not later than February 6, 1984 (48 FR 53740).

On November 28, 1983, counsel for petitioners alleged that Heung-Ah and Dong Ah were selling the subject merchandise in the home market at less than the cost of production. On November 29, 1983, we presented cost of production questionnaires to Heung-Ah and Dong Ah and responses to the questionnaires where received on December 27, 1983. Verification of all information submitted to the Department was conducted in Pusan and Seoul, Korea during the period January 5-14, 1984. On February 10, 1984, we published our preliminary determination of sales at not less than fair value (48 FR 5155). The notice stated that, if requested, we would hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination. Neither counsel for petitioners nor respondents requested a hearing. On March 23, 1984, based on a request from counsel for petitioners, we postponed our final determination until not later than June 25, 1984 (48 FR 12733) in accordance with section 735(a)(2)(B) of the Act.

Scope of Investigation

The merchandise covered by this investigation is all tubes of rubber or plastic for tires other than bicycle tires, currently classified, under Items 772.59 and 772.60 of the *Tariff Schedules of the United States* (1983) (TSUS).

We investigated sales of inner tubes by these respondents during the period from February 1, 1983 to July 31, 1983.

Fair Value Comparision

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price for each type of inner tube based on the C&F, CIF, or FOB, packed price to unrelated customers in the United States. We made deductions, where appropriate, for wharfage, brokerage and handling charges, foreign inland freight, marine insurance, U.S. customs duties, and U.S. inland freight. We made an addition for import duties and taxes, assessed upon the importation of materials used in the manufacture of inner tubes, which were later rebated by reason of the exportation of the merchandise to the United States, pursuant to section 772(d)(1)(B) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales.

Petitioners alleged that sales in the home market by Heung-Ah and Dong Ah were at prices below the cost of production. We examined production costs, which included all appropriate costs for materials, fabrication and general expenses. Sales below the cost of production were found to be made within certain size categories of inner tubes. Where sales within any of the size categories were made over an extended period of time and in substantial quantities, and were at prices which did not permit recovery of all costs within a reasonable period of time in the normal course of trade, we disregarded these sales in our analysis in accordance with section 773(b) of the Act. Disregarding those sales, we found for certain size categories of inner tubes that sufficient sales of the particular size were made at or above the cost of production in the home market. Therefore, we used those sales to determine foreign market value. If, within a particular size category, insufficient home market sales of such or similar merchandise were made above the cost of production, we used sales of the next most similar home market merchandise made at or above the cost of producton for comparison to United States sales, after making the appropriate adjustments for differences in merchandise.

We calculated the home market prices for each size of inner tube on the basis of delivered packed prices to unrelated purchasers. From these prices we deducted foreign inland freight and unloading charges, where appropriate. We made adjustments, where appropriate, for credit expenses, advertising expenses, sales promotional activities, and warranty/servicing expenses, in accordance with § 353.15 of the Commerce Regulations. We also made adjustments, where appropriate, for the cost of materials, labor and direct factory overhead associated with differences in the merchandise in accordance with § 353.16 of the Commerce Regulations. An adjustment was also made, where appropriate, for the differences between commissons on sales to the United States and indirect selling expenses in the home market used as an offset to U.S. commissions, in accordance with § 353.15(c) of the Commerce Regulations. We also deducted home market packing costs and added packing costs incurred on sales to the United States.

The following claims were disallowed in calculating foreign market value. Heung-Ah claimed a circumstance of sale adjustment for an end-of-year rebate paid to one of its customers in the home market. In our preliminary determination, we allowed this adjustment. Further analysis indicates that during the period of investigation, the rebate had not yet been paid. Since this was the first year that the rebate had been offered by Heung-Ah, there was no history of past payments, nor any evidence that the rebate would be paid. Therefore, the adjustment has been disallowed. In our preliminary determination, we also made adjustments to both Heung-Ah's and Dong Ah's home market prices for costs relating to product liability insurance. Further analysis reveals that these costs are general in nature, and not directly related to specific sales. Therefore, we have not made the adjustments for the final determination. Both Hung-A and Dong Ah requested a circumstance of sale adjustment for sales promotional expenses incurred in the home market. However, we did not make the adjustments because neither company provided sufficient information directly relating these expenses to sales of the products under investigation. Dong Ah also requested a circumstance of sale adjustment for selling expenses incurred in the home market. However, we did not make the adjustment because the company did not provide sufficient information directly relating these expenses to home market sales of the products under investigation.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making this determination by using standard verification procedures. These included on-site inspection of the manufacturers' operations and examination of accounting records and selected documents containing relevant information.

Negative Determination of "Critical Circumstances"

Petitioners alleged that imports of inner tubes present "critical circumstances", as defined by section 733(e) of the Act. Since we have determined that inner tubes have not been sold in the United States at less than fair value, the issue of "critical circumstances" is moot in this determination.

Petitioners' Comments

1. The Department should make a level of trade adjustment with respect to Heung-Ah's home market sales to original equipment manufacturers (OEM's) because petitioners argue that these sales were at a different level of trade than export sales to the United States. In those instances where home market sales of a particular model inner tube were made exclusively to OEM's, the Department should adjust those prices for rebates and/or unloading charges not involved in sales to other customers. For sales of all other model inner tubes, all OEM sales should be disregarded when calculating a weighted-average home market price.

DOC Position

We have examined Heung-Ah's home market sales and have found (1) no correlation between price and class of customer, (2) no evidence indicating that pricing differentials are due to differences in selling costs at different levels of trade, and (3) no significant differences in quantities sold between "OEM's" in the home market and "wholesalers" in the U.S. market. Our verification indicates that Heung-Ah's prices to each of its home market customers were established through negotiation with the customer. Rebates and the payment of unloading charges are not provided to every OEM customer, but only to the one that

happens to be Heung-Ah's largest customer. Petitioners' argument is inconsistent. While they would have us exclude sales to OEM customers, they do not argue that we should exclude sales to Heung-Ah's other customers that are not called wholesalers. Therefore, we have determined that a level of trade adjustment is not warranted, and we have based the weighted-average home market prices on sales to all classes of customers, including OEM's.

2. When determining whether sales in the home market were made at prices less than the cost of production, Commerce erroneously compared Heung-Ah's and Dong Ah's costs of production with the home market prices that included value added tax (VAT). The VAT should be subtracted from the home market prices in order to properly perform the cost/price comparison.

DOC Position

We agree. For purposes of this final determination, we compared the cost of production for each model of inner tube with the home market price of that particular model less VAT.

3. Petitioners' contend that when determining weighted-average home market prices, Commerce should disregard all home market sales of inner tubes sold at prices that were less than COP; and if after disregarding those sales there are no sales of such or similar merchandise made above cost, then the Department should use constructed value.

DOC Position

The statutory requirements of section 773(b) of the Act provide that sales at less than COP shall be disregarded in the determination of foreign market value if (1) the sales at issue were made over an extended period of time and in substantial quantities, and (2) such sales were not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. In practice, the Department has generally applied a 10 percent rule—i.e. the Department will not disregard below COP sales if they constitute 10 percent or less of total home market sales of the such or similar category of merchandise. *See, Certain Steel Wire Nails from the Republic of Korea*, 42 FR 27392 (1982). In this case, we have considered all the subject merchandise to be such or similar, within the meaning of section 771(16) of the Act. Moreover, it should be noted that the Court of International Trade specifically rejected an argument similar to the petitioners', in *Southwest Florida Winter Vegetable Growers Association, et. al.* v. *United States*, Slip. Op. 84–23 (March 21, 1984), finding that Commerce had properly included below cost sales (50 percent of home market sales) in its determination of foreign market value.

In this case, we found that for Dong Ah, less than 10 percent of its total home market sales were made at prices that were less than COP. Therefore, for Dong Ah we included all home market sales in our calculation of weighted-average home market prices. With respect to Heung-Ah, more than 10 percent of its home market sales were made at prices that were less than COP. Disregarding those sales, we found for certain sizes of inner tubes that sufficient sales of the particular size were made at or above the cost of production in the home market. Therefore, we used those sales to determine foreign market value. If, within a particular size category, an insufficient number of home market sales were made above the cost of production, we used sales of the next most similar home market merchandise made at or above the cost of production for comparison to United States sales, after making the appropriate adjustments for differences in merchandise.

4. In its calculation of constructed value, the Department should determine the amount of SG&A expenses by reference to home market sales.

DOC Position

The issue is moot. We have found that there were sufficient home market sales of such or similar merchandise on which to base foreign market value, and therefore the use of constructed value was not necessary.

5. Petitioners contend that both Dong Ah and Heung-Ah have understated the rubber part material weight of the inner tubes exported to the United States. They base this contention on a comparison of data contained in the respondents' submissions with information contained in documents purported to be respondents' pricelists—Dong Ah's pricelist indicating the declared Federal Excise Tax (FET) (which is based on weight) and Heung-Ah's pricelist indicating tube weight. Petitioners believe that the information contained in the purported pricelists is more reliable than that reported to the Department by respondents because the pricelist information constitutes admissions against respondents' business interests. Accordingly, the Department should use that information in calculating differences in merchandise adjustments. In addition, petitioners claim that Dong Ah has understated the weights of its smaller radial tubes and wants the Department to reject Dong Ah's claimed weights of radial tire inner tubes with rim sizes less than 20 inches. This claim is based on the following: (a) Petitioners' information indicates that a radial inner tube contains a more costly rubber mix and usually weighs more than a bias tube of comparable size, (b) Dong Ah's radial tubes with rim sizes greater than 20 inches are heavier than bias tubes of similar rim size, but its radial and bias tubes with rim sizes less than 20 inches are reported to weigh the same, and (c) all sizes of Heung-Ah's radial tubes are heavier than its bias tubes of similar rim diameter.

DOC Position

We preface our reply to this comment by pointing out that both Heung-Ah and Dong Ah refute the authenticity of the documents petitioners submitted as pricelists, and each states that it does not issue published pricelists in either the domestic or U.S. markets. They speculate that these pricelists may have been distributed by their unrelated trading companies in the United States and, if that is the case, respondents should not be held accountable for the information contained in those pricelists.

We have no reason to believe that the weights reported by either respondent have been understated. Counsel for Dong Ah claims, and we agree, that even assuming the authenticity of the pricelists and the information contained therein, the weights reported on those pricelists do not represent the same weights reported by respondents. In their responses, Heung-Ah reported the rubber part material weight and Dong Ah reported the valveless tube weight. Petitioners' pricelists indicate *total* tube weight including the weight of the valve. Regarding FET and the weight used as its basis, it is our understanding that when weighing products to determine FET, averaging may be used and therefore variances can be expected. In reply to petitioners' claim that Dong Ah's smaller size radial tubes should weigh more than comparably sized bias tubes, counsel for Dong Ah states that: (a) All of its tubes (both bias and radial) are made with the same rubber compound, and (b) its smaller sized bias and radial tubes do weigh the same. They feel that it is improper to compare the weight of a Dong Ah tube to the weight of a Heung-Ah tube because the two companies employ different manufacturing processes. We have no reason to reject this explanation. Finally, at verification, Commerce officials selected sample tubes and weighed them as a check on the

accuracy of the responses. No significant discrepancies were found.

For the reasons cited above, we reject petitioners' claim and have based difference in merchandise adjustments on the weights reported in the questionnaire responses.

6. The Department's adjustments for differences in merchandise for Heung-Ah and Dong Ah should also include adjustments for the use of dissimilar valves whenever the exported inner tubes involved a non-standard valve. In addition, in the case of Dong Ah, differences in merchandise adjustments should be based on the verified cost of production worksheets.

DOC Position

We agree and have made the appropriate adjustments.

7. The Department should check the accuracy of the computerized data base and correct all data entry errors.

DOC Position

We have checked the data base and have made the appropriate corrections.

8. Petitioners contend that we should further investigate the accuracy of the questionnaire responses submitted by Heung-Ah and Dong Ah because, based on information contained in a market research study conducted by an independent Korean research firm engaged by petitioners, they have reason to believe that these respondents have attempted to conceal or underreport both costs and home market prices by significant amounts.

DOC Position

We have not found any evidence of concealment on the part of the two Korean respondents, nor have petitioners submitted any documentation (e.g., sales invoices, customer receipts, payment records, etc.) to support these allegations. Commerce officials verified the information submitted by Heung-Ah and Dong Ah and were satisfied that the information submitted to the Department by these two respondents was accurate. Accordingly, we determined that no further investigation was warranted.

9. While petitioners agree that Heung-Ah properly allocated mixing stage costs based on inner tube weight, they claim that it was unreasonable for Heung-Ah to allocate certain portions of direct labor and factory overhead strictly according to the time required to vulcanize the various tube sizes. Since the vulcanizing department is only one of several departments involved in the manufacture of the products under investigation, costs could easily be distorted among various tube sizes. Accordingly, petitioners believe that all processing costs excluding those costs associated with the mixing stage should be allocated according to department-specific time records.

DOC Position

After receiving clarification regarding the allocation methodology, we have determined that Heung-Ah did, in fact, allocate labor and overhead expenses according to department-specific time records for each stage of production except for the mixing stage.

10. Petitioners agree that Dong Ah properly allocated direct labor costs for most departments (i.e., extrusion, building-up, valving, vulcanizing and inspection). However, they contend that it was unreasonable for Dong Ah to allocate direct labor costs for the mixing stage according to time, and believe that direct labor costs at this stage should be allocated according to inner tube weight.

DOC Position

It is our opinion that, in this particular case, either weight or time are acceptable methods of allocating direct labor at the mixing stage. Dong Ah's records are maintained on a time basis. There does not appear to be any justification in changing the company's method of allocation for that one particular department since any such adjustments would have an immaterial effect on total cost of production.

11. Petitioners state that it is not reasonable for the Department to allocate world-wide SG&A expenses between home market and export sales on the basis of sales proportionality because, in the cases of both Heung-Ah and Dong Ah, certain home market SG&A expenses were higher as a percentage of home market sales value than export SG&A expenses were as a percentage of export sales value. They submit that the amount of SG&A expenses included in respondent's costs of production should not be a lower percentage of such price which was claimed by respondents to be eligible as adjustments to foreign market value.

DOC Position

After comparing certain cost elements to those claimed as circumstance of sale adjustments, we determined that neither Heung-Ah's nor Dong Ah's methodology sufficiently allocated certain SG&A expenses to home market sales of inner tubes. After adjusting SG&A expenses to reflect the proper allocation of these costs, the amount of SG&A expenses included in respondent's costs of production was reconciled with the expenses claimed as adjustments to foreign market value.

12. Petitioners allege that there are additional costs of material, direct labor, and/or factory overhead incurred in the production of radial tire tubes, as opposed to bias tire tubes; and believe that these differences should be reflected in our difference in merchandise adjustments.

DOC Position

This claim is based solely on the experience of a few domestic inner tube manufacturers. We cannot assess domestic manufacturers' production processes and/or resulting cost changes that are connected to the production of radial vs. bias tire tubes. However, even if a few domestic manufacturers' costs are as stated by petitioners, we have no reason to believe, nor evidence that, respondents' cost experiences should be the same in this particular case. We have made adjustments for differences between radial and bias tire tubes on the basis of tube weight, which we believe adequately reflects any additional differences in costs.

Respondent Dong-Ah's Comments

1. The Department should make a circumstance of sale adjustment for selling and sales promotion expenses incurred in the home market.

DOC Position

As previously stated, we did not make the adjustments because Dong Ah did not provide sufficient information directly relating these expenses to home market sales of the products under investigation.

2. In its response to the Department's questionnaire, Dong Ah provided cost of production information on a quarterly basis. For the preliminary determination, we used the cost of production information for whichever of Dong Ah's two reported quarters was higher in order to determine whether sales were made at prices that were less than the cost of production.

Dong Ah submits that the Department should use the cost of production information for the quarter in which the sale was made, or a weighted-average of the two quarters' costs. In response to Dong Ah's argument, petitioners believe that, given the fact that short-term data were used, the Department was correct in using the higher of the two quarters' cost of production for Dong Ah.

Petitioners further argue that the use of short-term accounting data in our cost of production analyses was contrary to the Department's practice. They believe that since short-term accounting data

does not accurately and completely represent costs and expenses, nor reflect revisions and adjustments, long-term data should have been used in our cost of production analyses.

DOC Position

It has been the Department's practice to use weighted-average costs in a cost of production analyses. Thus, it was not appropriate to use the higher of the two quarters' costs for Dong Ah in the preliminary determination. We have, therefore, corrected our calculation to reflect this practice.

With respect to petitioners' argument concerning the use of long- vs short-term data, the Department normally selects the period it determines is most representative of the costs incurred by a respondent for the period of investigation. In some cases, we have used short-term data in our COP analyses. *See, Hot-Rolled Carbon Steel Plate and Hot-Rolled Carbon Steel Sheet from Brazil,* 49 FR 3102–3107 (1948) and *Lightweight Polyester Filament Fabrics from the Republic of Korea,* 49 FR 49679–49684 (1983). In this particular case, we selected the period January to June, 1983 as being representative because there does not appear to be a cyclical nature to the inner tube industry. Financial statements were not yet available at the time of verification because fiscal year 1983 had not been finalized. Nonetheless, we verified the accuracy of the cost information for the six-month period by reviewing respondents' journals and ledgers.

Respondent Heung-Ah's Comments

1. In calculating financing expenses for the cost of production, Heung-Ah deducted prepaid interest expense as well as the interest associated with an export loan, and submits that the Department should not include these expenses in calculating cost of production.

DOC Position

The Department allocates the cost of all corporate debt to the production of the firm's total output. We consider the total financing costs in the cost of production of the merchandise. Regarding prepaid interest, the expense appears to be a normal business expense of the company; and, being so, we include it in our costs in the year in which the company makes such payments.

Summary of Final Results

The weighted-average margins for the companies investigated are as follows:

Firm	Weighted-average margin percentage
Heung-Ah Tire Ind. Co., Ltd	[illegible]
Dong Ah Tire Ind. Co., Ltd	0.01
Shin Hung Rubber Co., Ltd	0.00
Hung-A Ind. Co., Ltd	0.00
All other producers/manufacturers/or exporters	0.02

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination.

This notice is being published pursuant to section 735(d) of the Act.

Dated: June 25, 1984.

Alan F. Holmer,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-17397 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-403]

Potassium Chloride From Spain: Preliminary Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Affirmative Countervailing Duty Determination.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Spain of potassium chloride. The estimated net subsidy is 7.54 percent *ad valorem.* Therefore, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of potassium chloride from Spain which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or bond on this product in the amount equal to the estimated net subsidy. If this investigation proceeds normally, we will make our final determination by September 10, 1984.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Terry Link, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–0189.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the act are being provided to manufacturers, producers, or exporters in Spain of potassium chloride. The following programs are preliminarily determined to confer subsidies:

- Short-term preferential loans (provided under the Privileged Circuit Exporter Credits Program as working-capital loans and export credits)
- Excessive rebates of indirect taxes on exports under the Desgravacion Fiscal a la Exportacion (DFE)

We estimate the net subsidy to be 7.54 percent *ad valorem.*

Case History

On March 30, 1984, we received a petition from Amax Chemical, Inc. and Kerr-McGee Chemical Corporation filed on behalf of the U.S. industry producing potassium chloride. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), petitioners alleged that manufacturers, producers, or exporters in Spain of potassium chloride receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports are materially injuring, or threatening to materially injure, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 19, 1984, we initiated an investigation (49 FR 18149). We stated that we expected to issue a preliminary determination by June 25, 1984.

Since Spain is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. On May 14, 1984, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that these imports are materially injuring, or threatening to materially injure, a U.S. industry (49 FR 21813).

We presented questionnaries concerning the allegations to the government of Spain at its embassy in Washington, D.C. on April 23, 1984. On June 4, 1984, we received a response to the questionnaire from the related exporter, Comercial de Potasas, S.A., on behalf of Minas de Potasa de Suria, S.A., (Suria).

Scope of Investigation

The product covered by this investigation is potassium chloride. For the purpose of this investigation, the term "potassium chloride" covers potassium chloride, otherwise known as muriate of potash, as currently provided for in item 480.50 of the *Tariff Schedules of the United States*.

There is one known firm in Spain which produces potassium chloride for export to the United States. We have received information from Suria, which produced 100 percent of the potassium chloride exported to the United States during the period of investigation, calendar year 1983. Since we have not received a response from the government of Spain, we have used Suria's response for the purposes of this preliminary determination.

Analysis of Programs

Based upon our analysis of the petition and Suria's response to our questionnaire, we have preliminarily determined the following:

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Spain of potassium chloride under the programs discussed below:

A. Privileged Circuit Exporter Credits Program

Petitioners alleged benefits which constitute subsidies in the form of short-term preferential loans. We requested information on all short-term loans outstanding during the period for which we are measuring subsidization. The only preferential short-term borrowing reported by Suria was that obtained under the Privileged Circuit Exporter Credits Program.

The government of Spain requires all Spanish commercial banks to maintain a specific percentage of their lendable funds in privileged circuit accounts. These funds are made available to exporters at preferential interest rates through a variety of credit programs. While there is no direct outlay of government funds, the benefits conferred on the companies are the result of a government-mandated program to promote exports. Of the four privileged circuit programs available to companies, we preliminarily determine that the respondent potassium chloride producer benefited from the working-capital loans and short-term export credit programs.

1. *Working Capital Loans.* Under the privileged circuit program, firms may obtain working-capital loans for one year, the total of which is not to exceed a specified percentage of their previous year's exports. During the period of investigation, Suria received three working-capital loans under this program. In 1983, the privileged circuit working-capital loan interest rate ceiling mandated by the government was 10 percent, including fees and commissions.

We chose as our benchmark for 1983 the national average commercial interest rate, which was calculated as the average prime interest rate for one-year loans, 17.15 percent, plus two percentage points (reflecting average borrowing experience). Since the 10 percent working-capital loan interest rate includes fees and commissions, we also made an addition of 0.5 percent to the commercial rate, which by Spanish law is the maximum allowable charge for fees and commissions. Based on this data, we preliminarily determine the national average commercial interest rate to average borrowers to be 19.65 percent for one-year loans, including fees and commissions.

To determine the benefit, we compared the preferential interest rate of 10 percent with the national average commercial interest rate of 19.65 percent. This interest differential of 9.65 percent was multiplied by the total amount of Suria's privileged circuit working-capital loans.

The resulting product was then allocated over the total sales value of all exports of Suria in 1983. We preliminarily determine that the *ad valorem* subsidy for short-term working capital loans to Suria is 0.61 percent.

2. *Short-Term Export Credit.* The short-term export credit program provides loans for up to 90 percent of the value of a company's export shipments at a 10 percent interest rate for a maximum of one year. Suria stated that it obtained 90-day loans under this program in 1983 to finance exports of potassium chloride.

We chose as our 1983 benchmark the average national prime interest rate, which was calculated as the average prime interest rate for loans of 90 days, 16.04 percent, plus two percentage points (reflecting average borrowing experience). As the 10 percent export credit rate includes fees and commissions, we also made an addition of 0.5 percent to the commercial rate, which is the legally established charge for fees and commissions. Based on this data, we preliminarily determine the national average commercial interest rate to average borrowers to be 18.54 percent for 90-day loans, including fees and commissions.

We multiplied the difference between the government-mandated interest rate of 10 percent and the national average commercial interest rate by the amount of privileged circuit export credit loans to determine Suria's interest savings. The interest savings were allocated over the total sales value of all exports of Suria during 1983. We preliminarily determine that the *ad valorem* subsidy for short-term export credit to Suria is 1.09 percent.

B. Desgravacion Fiscal a la Exportacion (DFE)

Spain employs a cascading tax system. Under this system, the government levies a turnover tax ("IGTE") on each sale of a product through its various stages of production, up to (but not including) the final sale in Spain. Upon exportation of the product, the government, under the DFE, rebates both these accumulated IGTE indirect taxes and certain final stage taxes.

Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs which are physically incorporated in the exported product (see Annex 1.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2 of part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes decribed above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy.

In this case, we preliminarily determine that there are no physically incorported inputs upon which indirect taxes are paid. The rebate of a final stage tax, the tax on freight, is, however, allowable when calculating whether or not there is an overrebate of indirect taxes under the DFE. Based on our analysis, we preliminarily determine that the DFE rebate, less the final stage tax, confers an *ad valorem* subsidy of 5.84 percent.

II. Programs Preliminarily Determined Not To Be Used

We have preliminarily determined that potassium chloride manufacturers, producers, or exporters in Spain do not use the following programs that were identified in the notice of "Initiation of Countervailing Duty Investigation of Potassium Chloride from Spain."

A. Certain Benefits Under the Privileged Circuit Export Credits Program

In our analysis of the Privileged Circuit Export Credits Program earlier in this notice, we found that two programs, short-term working capital loans and short-term export credits, did provide subsidies to the respondent. We preliminarily determine that the two remaining programs identified in our notice of initiation are not used. They are:

(1) Commercial services loans, and
(2) Prefinancing exports

B. Medium- and Long-Term Preferential Loans

Petitioners alleged that producers of potassium chloride are receiving medium- and long-term preferential financing either directly from the government of Spain or from banks instructed by the government of Spain. Suria stated that it had no outstanding medium- or long-term loans during the period of investigation.

C. Government Equity Purchases

Petitioners alleged that producers of potassium chloride benefited from government of Spain purchases of equity on terms inconsistent with commercial considerations. Suria stated that it has not benefited from any government purchase of equity.

Verification

In accordance with section 776(a) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of potassium chloride from Spain which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond for each such entry of this merchandise in the amount of 7.54 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination of whether these imports are materially injuring, or threatening to materially injure, a U.S. industry before the latter of 120 days after the Department makes its preliminary affirmative determination or 45 days after the Department makes its final affirmative determination.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on August 9, 1984, at the United States Department of Commerce, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a written request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submited to the Deputy Assistant Secretary by August 3, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 7 days after the hearing date, at the above address and in at least 10 copies.

Dated: June 25, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-17435 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held July 16, 1984, at 9:30 a.m., Federal Building Room 2007, 450 Golden Gate Avenue, San Francisco, California. The meeting will continue to its conclusion on July 17, 1984, in Room 2007, the Federal Building. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Technical Overview of Magnetic Recording—Dr. G Bate, Verbatim. This is intended as a general technical overview for all PTAC members and nominees.
4. Overview of the Export Control and the TACs—Jim Hower, Eagle Research. This is intended as a general overview for new and prospective members.
5. Report on the drive for Committee membership.
6. Report by Commerce on the distribution license.
7. Task Group on Arrays of Knowhow, John Jory, Chairman. Work session on the content of the first pass of technical data.
8. Task Group on Foreign Availability, Paul Humphrey, Chairman. Status report by Chairman.
9. New business.
10. Develop agenda for August 7 & 8 meeting.
11. Action items underway.
12. Action items due at next meeting.

Executive Session

13. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meeting of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

Dated: June 26, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84-17441 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting to review the effectiveness of the Spiny Lobster Fishery Management Plan (FMP), stock assessment and provisions of the Swordfish FMP and the Council budget. The public meeting will convene on July 18, 1984, at 8:30 a.m., recess at approximately 5 p.m.; reconvene on July 19, 1984, at 8:30 a.m., and adjourn at approximately noon, at the Marriott's Casa Marina Resort, Reynolds Street on the Ocean, Key West, FL. For further information contact the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: June 22, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84–17382 Filed 6–28–84; 8:45 am]

BILLING CODE 3510–22–M

National Marine Fisheries Service; Issuance of Permit

On May 4, 1984, Notice was published in the **Federal Register** (49 FR 19097) that an application had been filed with the National Marine Fisheries Service by the Cascadia Research Collective, Waterstreet Building, Suite 201, 218½ West Fourth Street, Olympia, Washington 98501 to take up to 1,000 harbor seals (*Phoca vitulina*) for scientific research.

Notice is hereby given that on June 22, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C 1361–1407), the National Marine Fisheries Service issued a Scientific Research Permit to the Cascadia Research Collective for the above taking subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington D.C.; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E. BIN C15700, Seattle, Washington 98115.

Dated: June 22, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–17384 Filed 6–28–84; 8:45 am]

BILLING CODE 3510–22–M

National Marine Fisheries Service; Modification No. 1 to Permit No. 415

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the Regulations Governing Endangered Species Permits (50 CFR Part 222), Scientific Research Permit No. 415 issued to Mr. Jeffrey D. Goodyear, Moss Landing Marine Laboratories, P.O. Box 223, Moss Landing, California 95039 on May 3, 1983 (48 FR 20784) is modified as follows:

Accordingly, Section A.1 is changed to read:

Up to one hundred eighty (180) humpback whales (*Megaptera novaeangliae*) and ninety (90) fin whales (*Balaenoptera physalus*) may be harassed in the course of skin sampling and radio tagging activities. Of the number of whales authorized, forty-five (45) humpback whales may be radio tagged and 30 skin sampled and twenty (20) fin whales may be radio tagged and skin sampled. Of the number of whales authorized to be taken, fifteen (15) humpback whales and ten (10) fin whales may be approached once to obtain a skin sample. This authorization is over a two (2) year period as described in the application and modification request.

This modification becomes effective upon publication in the **Federal Register**. The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, Southwest Region, National Marine Fisheries, Service, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, Northeast Region, National Marine Fisheries, Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: June 20, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–17383 Filed 6–28–84; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to AgBioChem, Inc. of Orinda, California and Cetus Corporation of Emeryville, California a coexclusive right to practice the invention embodied in U.S. Patent Application S.N. 6–436,487, "T–1–R9, A New Strain of *Trichoderma viride.*" The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquires, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 84–17338 Filed 6–28–84; 8:45 am]

BILLING CODE 3510–04–M

Patent and Trademark Office

Current Membership of Performance Review Board

June 25, 1984.

This notice announces the renewal of Richard J. Wieland's appointment for an additional term to expire July 12, 1987, and names a new contact person, Ms. Carolyn P. Acree, to succeed Aaron W. Deitch who has retired.

The current membership of the Board is as follows:

Donald J. Quigg, Chairman, Deputy Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—permanent

Rene D. Tegtmeyer, Member, Assistant Commissioner for Patents, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—permanent

Margaret M. Laurence, Member, Assistant Commissioner for Trademarks, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—permanent

Bradford R. Huther, Member, Assistant Commissioner for Finance and Planning, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—permanent
Theresa A. Brelsford, Member, Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—permanent
Samuel S. Matthews, Member, Director, Examining Group 250, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—expires January 31, 1986
Richard J. Wieland, (Outside) Member, Assistant General Counsel for Litigation, HQ National Aeronautics and Space Administration, Washington, D.C. 20546. Term—expires July 12, 1987
Samih N. Zaharna, Member, Director, Patent Examing Group 160, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—expires January 31, 1986

Persons desiring any further information about the membership of the PRB may contact Ms. Carolyn P. Acree, Personnel Officer, U.S. Patent and Trademark Office, Washington, D.C. 20231. Telephone (703) 557–2662.

Dated: June 25, 1984.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 84–17418 Filed 6–28–84; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Consultations With the Government of the People's Republic of China

June 25, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 28, 1984. For further information contact Diana Bass, International Trade Specialist, (202) 377–4212.

Background

On May 30 and 31, 1984, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983 between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of apparel products in Categories 436 (wool dresses) and 369pt. (shop towels in TSUSA number 366.2740), produced or manufactured in China and exported to the United States. Summary market disruption statements concerning each of these categories follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

Anyone wishing to comment or provide data or information regarding the treatment of these categories under the agreement with the People's Republic of China, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Pursuant to the terms of the bilateral agreement, the People's Republic of China is obligated under the consultation provision to limit its exports to the United States of these products during the indicated ninety-day periods to the following amounts:

Category	90-day level
436	2,227 dozen [1]
369pt	1,283,112 pounds [1]

[1] May 30, 1984–August 27, 1984.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve-months following the ninety-day consultation periods to the following amounts:

Category	12-month level
436	6,320 dozen [1]
369pt	4,296,657 pounds [1]

[1] August 28, 1984–August 27, 1985.

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Categories 436, 359pt. and 369pt. exported during the ninety-day period at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

In the event the limits established for Categories 436 and 369pt. for the ninety-day periods are exceeded, such excess amounts, if allowed to enter at the end of the restraint period shall be charged to the levels (described above) defined in the agreement for the subsequent twelve-month periods.

Supplementary Information: On December 22, 1983 a letter to the Commissioner of Customs was published in the **Federal Register** (48 FR 56626) from the Chairman of the Committee for the Implementation of Textile Agreements which established levels or restraint for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1984. The notice document which proceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Categories 436 and 369pt. which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile and apparel products in Categories 436, and 369pt., produced or manufactured in the People's Republic of China and exported during the indicated ninety-

day period, in excess of the designated levels.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 436—Wool Dresses

May 1984.

U.S. imports of wool dresses, Category 436, from China were 6,362 dozen during the year ending March 1984. This compares with 35 dozen a year earlier. Imports during the first quarter of 1984 were 2,557 dozen (an annual rate of 10,228 dozen); there were no imports during the same period in 1983. China was the second largest, supplier of Category 436 during the first quarter of 1984 when it accounted for 12.5 percent of the total imports. Exports of the largest supplier, Hong Kong, are subject to a specific limit under a bilateral textile agreement.

Domestic production of Category 436 has declined steadily since 1977 and totaled 295,000 dozen in 1982, down 5.1 percent from 1981. Imports totaled ony 33,000 dozen in 1982 but rebounded to 85,000 dozen in 1983. Imports for the year ending March 1984 were 102,000 dozen. During the first quarter of 1984, imports surged to 20,480 dozen, a five-fold increase compared with the first quarter of 1983. Although the import to production ratio was down in 1982, it probably returned to about the 1981 level in 1983.

Eighty-one percent of the Category 436 imports from China are entered under TSUSA No. 383.6330—knit wool dresses. The items being imported from China are being entered at duty-paid values below U.S. producer prices for comparable items.

Category 369pt.—Cotton Shop Towels

U.S. imports of Category 369pt.—Cotton Shop Towels from China were 23.5 million towels during the first quarter of 1984. This was more than double the imports of the fourth quarter of 1983 and five times the amount imported during the second quarter of 1983. During the first quarter of 1984, China was the largest supplier, accounting for 49.6 percent of the total imports.

These imports from China are entered at duty-paid landed values which are below the U.S. producer price for comparable towels. These and other factors lead the United States Government to conclude that imports from China are disrupting the market in the United States for such towels.

Domestic consumption of shop towels has been severely depressed since 1981. Production plus imports of shop towels declined by 19 percent from 1981 to 1983. The number of production workers engaged in the production of shop towels declined 29 percent from 1981 to 1983; man-hours worked declined 34 percent. Capacity utilization in the shop towel industry decreased from 40.8 percent in 1981 to 33.6 percent in 1983. In spite of a two percent increase, domestic production in 1983 was 20 percent below 1981.

Although imports declined during the years 1982 and 1983, due in part to the soft domestic market and the action taken by the United States on antidumping and countervailing duty cases with specific major suppliers of shop towels, imports increased substantially in 1984. Imports during the first three months of 1984 reached 47 million units, up 52 percent from the same period in 1983. Imports during January-March 1984 were higher than in any previous three month period and on an annual basis imports would reach an all time high, 69 percent higher than the 1981 peak import level. The import to production ratio reached 151.6 percent during the first two months of 1984.

The duty-paid value of these imports from China are below the U.S. producer price for comparable towels.

June 25, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 28, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in Categories 436 and 369pt.[1, 2], produced or manufactured in the People's Republic of China and exported during the indicated ninety-day periods, in excess of the following levels of restraint:

Category	90-day level[3]
436	2,227 dozen[4]
369pt.[1]	1,283,112 pounds[4]

[1] In Category 369pt., only TSUSA number 366.2740.
[2] The levels of restraint have not been adjusted to reflect any imports exported after May 29 (Cats. 436 and 369pt.[2]).
[3] May 30, 1984–August 27, 1984.

Textile products in Categories 436 and 369pt.[1] which have been exported to the United States prior to the first day of the indicated ninety-day period shall not be subject to this directive.

Textile products in Categories 436 and 369pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1985 (49 FR 13397).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the People's Republic of China and with respect to imports to cotton and wool textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-17432 Filed 6-28-84; 8:45 am]
BILLING CODE 3510-DR-M

[1] In Category 369pt., only TSUSA number 366.2740.

[2] The levels of restraint have not been adjusted to reflect any imports exported after May 29 (Cats. 436 and 369pt.[2]).

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Serverly Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1984 services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before August 1, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Commttee aproves the proposed additions, all entities of the Federal Goverment will be required to procure the sevices listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1984, October 18, 1983 (48 FR 48415):

SIC 7349

Janitorial Service, John E. Moss Federal Building, 650 Capitol Mall, Sacramento, California
Janitorial Service, Federal Building, 51 S.W. First Avenue, Miami, Florida
Janitorial Service, Federal Building and Courthouse, 110 South 4th Street, Minneapolis, Minnesota
Janitorial Service, New Border Station Complex, Administration Building, Champlain, New York
Janitorial Service, United States Mission to the United Nations, 799 United Nations Plaza, New York, New York
Janitorial Service, U.S. Courthouse, Broadway and Maine, Portland, Oregon
Janitorial Service, Jack Brooks Federal Building, Post Office—Courthouse, Willow and Broadway Streets, Beaumont, Texas
Janitorial Service, Federal Building, 431 Crawford Street, Portsmouth, Virginia
Janitorial Service, Richard H. Poff Federal Building, 210 Franklin Road, S.W., Roanoke, Virginia
Janitorial Service, U.S. Courthouse, 1010 Fifth Avenue, Seattle, Washington
Janitorial Service for the following buildings:
Federal Building and Courthouse, Fifth and Ninth Streets
Federal Building, 502 Eighth Street
Hampton Warehouse, 25th and Guyan
O.L. Building/GSA Motor Pool, 720 6th Avenue
Huntington, West Virginia

C. W. Fletcher,
Executive Director.

[FR Doc. 84-17122 Filed 6-28-84; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

Strengthening Research Library Resources Program; Application

AGENCY: Department of Education.
ACTION: Application notice.

Applications are invited for new projects under the Strengthening Research Library Resources Program for fiscal year 1985.

Authority for this program is contained in sections 201, 231, and 232 of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 U.S.C. 1021 *et seq*).

The Secretary may award a grant to a public or private nonprofit institution, including the library resources of an institution of higher education, an independent research library, or a State or other public library.

The purpose of the awards is to promote research and education of high quality throughout the United States by providing financial assistance that helps the Nation's major research libraries maintain and strengthen their collections and make their holdings available to other libraries whose users have need for research materials.

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered on or before November 1, 1984.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.091, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail.

Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center, (Room 5673, Regional Office Building 3), 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

An application that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program information: Evaluation criteria and eligibility requirements for the Strengthening Research Library Resources Program appear in the Code of Federal Regulations at 34 CFR Part 778.

Intergovernmental Review

On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance,
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated, and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review:

State	
Alabama	Nevada
Arkansas	New Hampshire
California	New Jersey
Connecticut	New Mexico
Delaware	New York
Florida	North Dakota
Georgia	Ohio
Hawaii	Oklahoma
Indiana	Oregon
[illegible]	Pennsylvania
Kentucky	South Carolina
Louisiana	South Dakota
Maine	Tennessee
Massachusetts	Vermont
Michigan	Virginia
Mississippi	Washington
Missouri	Wisconsin
Montana	Wyoming
Nebraska	Guam

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate

State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicant's proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by January 3, 1985, to the following address:

The Secretary, U.S. Department of Education, Room 4181, 84.003R, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone Number (202) 245–7913. (Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available funds: For fiscal year 1985, the Department of Education has not requested funds for the Strengthening Research Library Resources Program. However, applications are invited to allow for sufficient time to evaluate applications and complete processing prior to the end of the fiscal year in the event that funds are appropriated for the program. At the present time there are no multi-year projects under this program.

In fiscal year 1984, 53 grants were awarded to major research libraries either directly or through joint applications. With a fiscal year 1984 appropriation of $6,000,000 each institution received an average of $113,000. However, the U.S. Department of Education is not bound to a specific number of grants or to the amount of any grant unless that number is specified by statute or regulations.

Application forms: Application forms and program information packages are expected to be ready for mailing by July 25, 1984. They must be obtained by writing to the Library Education, Research and Resources Branch, Attn: HEA II–C, U.S. Department of Education (Room 613, Brown Building), 400 Maryland Avenue, SW., Washington, D.C. 20202.

An application must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying in for assistance. Nothing in the package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulating governing this program. The Secretary urges that applicants not submit information that is not requested. (Approved OMB #1850–0054).

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the strengthening Research Library Resources Program (34 CFR Part 778).

(b) Eduation Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Frank A. Stevens or Ms. Louise Sutherland, Library Education, Research and Resources Branch, Division of Library Programs, Center for Libraries and Education Improvement, U.S. Department of Education (Room 613, Brown Building), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 254–5090.

(20 U.S.C. 1021 *et seq.*)

(Catalog of Federal Domestic Assistance Program No. 84.091, Strengthening Research Library Resources Program)

Dated: June 26, 1984.

Donald J. Senese,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 84–17412 Filed 6–28–84; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Bilingual Education; Meeting

AGENCY: Department of Education.

ACTION: Notice of planning meeting—Ad Hoc Subcommittee for Policies and Procedures.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Advisory Council on Bilingual Education. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is to notify the general public of their opportunity to attend.

DATES: July 27 and 28, 1984—Planning Meeting—9:00 a.m.–4:30 p.m., Planning Meeting will be held at: The U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, Room 421 Reporter's Building, 400 Maryland Avenue SW., Washington, D.C. 20202. Also, on August 17 and 18, 1984—Planning Meeting—will be held at the same place and time as above.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Room 421, Reporter's Building, 400 Maryland Avenue SW., Washington, D.C. 20202 (202–245–2600).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 3242). The Council is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations.

The July 27 and 28, 1984, meeting will be held in order that the Ad Hoc Subcommittee for Policies and Procedures can develop an integrated first draft of the National Advisory Council on Bilingual Education Policies and Procedures Handbook.

The August 17 and 18, 1984, meeting agenda will consist of two tasks:

(1) Finalizing the proposed Policies and Procedures Handbook.

(2) Preparing a sample calendar and agenda for Council meetings.

Records are kept of all council proceedings, and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Room 421, Reporter's Building, 400 Maryland Avenue SW., Washington, D.C. 20202 from 9 a.m. to 5:30 p.m.

Dated: June 22, 1984.

Jesse M. Soriano,

Director, Office of Bilingual Education, and Minority Languages Affairs.

[FR Doc. 84–17417 Filed 6–28–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP76-91-018 and TC84-6-001]

Montana-Dakota Utilities Co.; Filing

June 26, 1984.

Take notice that on June 22, 1984, in Docket Nos. RP76-91-018 and TC84-6-001 pursuant to Part 154 of the Commission's Regulations, Montana Dakota Utilities Co. (MDU), 400 North Fourth Street, Bismarck, North Dakota 58501, tendered for filing Seventh Revised Sheet No. 110 to its FERC Gas Tariff, First Revised Volume No. 1, all as more fully set forth in the filing which is on file with the Commission and open to public inspection.

On May 25, 1984, MDU pursuant to the Commission's Order Approving Settlement issued November 30, 1979, in Docket No. RP76-91-000 and pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act filed revised tariff sheets for filing and inclusion in MDU's FERC Gas Tariff, First Revised Volume No. 1. Included in that filing was a sheet entitled "Sixth Revised Sheet No. 110." MDU states that the sheet was erroneously labeled and should have been entitled "Seventh Revised Sheet No. 110". The instant filing submits "Seventh Revised Sheet No. 110" as a supplement to the May 25, 1984, filing and requests that this sheet be substituted for the sheet previously submitted. MDU states that there are no other changes on the tariff sheet and the proposed effective date is July 1, 1984.

MDU submits that copies of the filing have been submitted to all customers and persons listed on the official service list.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before June 29, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-15824 Filed 6-28-84; 8:45 am]

BILLING CODE 6717-01-M

Southeastern Power Administration

Order Confirming and Approving Power Rates on an Interim Basis

AGENCY: Department of Energy, Southeastern Power Administration (SEPA).

ACTION: Notice of approval on an interim basis of Cumberland Basin Projects' rates.

SUMMARY: On June 21, 1984, the Deputy Secretary confirmed and approved, on an interim basis, seven rate schedules, CBR-1-A, CSI-1-A, CEK-1-A, CC-1-A, CM-1-A, CK-1-A and CTV-1-A, for Cumberland Basin Projects' power. The rates were approved on an interim basis through June 30, 1984, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective on July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued October 26, 1983, in Docket No. EF83-3021 confirmed and approved Wholesale Power Rate Schedules CR-1-E and CR-2-E and CR-2-E through June 30, 1984. On August 31, 1983, the Federal Energy Regulatory Commission confirmed and approved Wholesale Rate Schedule LP-1-A through June 30, 1984. Rate Schedules CBR-1-A, CEK-1-A, CSI-1-A, and CTV-1-A replace CR-1-E, CR-2-E and LP-1-A.

Issued in Washington, D.C., June 21, 1984.

Danny J. Boggs,

Deputy Secretary.

In the matter of: Southeastern Power Administration—Cumberland Basin Projects' Power Rates, Order Confirming and Approving Power Rates on an Interim Basis; Rate Order No. SEPA-19.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983, 48 FR 55664 (December 14, 1983), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Deputy Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued pursuant to the delegation to the Deputy Secretary.

Background

Power from the Cumberland Basin Projects is presently sold under Wholesale Power Rate Schedules CR-1-E and CR-2-E confirmed and approved through June 30, 1984. These rate schedules were approved by the Federal Energy Regulatory Commission by order issued October 26, 1983, for a period beginning July 1, 1983, and ending June 30, 1984.

Power from the Laurel Project is presently sold under Wholesale Power Rate Schedule LP-1-A confirmed and approved through June 30, 1984. This rate schedule was approved by the Federal Energy Regulatory Commission by Order issued August 31, 1983, for a period beginning July 1. 1983, and ending June 30, 1984.

Public Notice and Comment

Opportunities for public review and comment on revised Rate Schedules CBR-1-A, CSI-1-A, CEK-1-A, CC-1-A, CM-1-A, CK-1-A, and CTV-1-A, proposed for use during the period July 1, 1984, through June 30, 1989, were announced by Notice published in the **Federal Register** on March 12, 1984, and all customers were notified by mail. A Public Information and Comment Forum was held in Nashville, Tennessee, on April 18, 1984, and written comments were invited by the Notice through May 11, 1984. Oral comments were presented at the forum and written comments were received prior to May 12, 1984. Exhibit A-4 is a transcript of the hearing which includes the oral comments. Exhibit A-5 includes the written comments and a review of all of the comments.

Discussion

System Repayment

An examination of SEPA's system power repayment study, prepared in

April 1984, for the Cumberland Basin Projects, reveals that with an annual revenue increase of $7,670,000 over the current revenues shown in a previous March 1984 SEPA repayment study, all system power costs are paid within their repayment life. Additionally, it appears that Rate Schedules CBR–1–A, CSI–1–A, CEK–1–A, CC–1–A, CM–1–A, CK–1–A, and CTV–1–A, are designed so as to produce revenue adequate to recover on a timely basis all system power costs. The Administrator of SEPA has certified that the rates are consistent with the applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Rate Design

The rate schedules were designed after giving careful consideration to five major areas. These areas are the allocation of revenues between capacity and energy, the Barkley-Kentucky Canal situation, wheeling, capacity reduction beyond the Administrator's control, and losses. A detailed revenue recovery study is shown as Exhibit C–11.

Environmental Impact

SEPA has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samual Elbert Building, Elberton, Georgia 30635, and in the Office of the Executive Assistant to Deputy Secretary, Forrestal Building, Washington, D.C.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning July 1, 1984, and ending no later than June 30, 1989.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective July 1, 1984, attached Wholesale Power Rate Schedules CBR–1–A, CSI–1–A, CEK–1–A, CC–1–A, CM–1–A, CK–1–A, and CTV–1–A. The rate schedules shall remain in effect on an interim basis through June 30, 1989, unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

Issued in Washington, D.C., this 21st day of June 1984.

Danny J. Boggs,

Deputy Secretary.

Wholesale Power Rate Schedule CBR–1–A

Availability

This rate schedule shall be available to Big Rivers Electric Corporation and includes the city of Henderson, Kentucky, (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission systems of the Customer.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereinafter be agreed upon by the Government and TVA.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy to be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of the customers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged

for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

July 1, 1984.

Wholesale Power Rate Schedule CSI–1–A

Availability

This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission systems of Big Rivers Electric Corporation.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy to be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

July 1, 1984.

Wholesale Power Rate Schedule CEK–1–A

Availability

This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and power available from the Laurel Project and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

Points of Delivery

The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule from the Cumberland Projects shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy To Be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for

each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equiment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880.000 kilowatts}}$$

July 1, 1984.

Wholesale Power Rate Schedule CM–1–A

Availability

This rate schedule shall be available to the South Mississippi Electric Power Association and Municipal Energy Agency of Mississippi (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,00 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery

The points of delivery will be at interconnection points of the Tennessee Valley Authority system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy to be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

July 1, 1984.

Wholesale Power Rate Schedule CC–1–A

Availability

This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & Light Company, Western Division.

Points of Delivery

The points of delivery will be at interconnecting points of the Tennessee Valley Authority system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy to be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Wholesale Power Rate Schedule CK–1–A

Availability

This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects begin hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161;000 volts to the transmission systems of Kentucky Utilities Company.

Points of Delivery

The points of delivery will be at interconnecting points between the Tennessee Valley Authority system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy to be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to intitial delivery of such capacity.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Wholesale Power Rate Schedule CTV–1–A

Availability

This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

Applicability

This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the "Cumberland Projects") and the Laurel Project sold under agreement between the Department of Energy and TVA.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 Hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Monthly Rates

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $.96 per kilowatt of total demand as determined by the agreement between the Department of Energy and TVA.

Energy charge: 5.3 mils per kilowatt-hour.

Energy to be Made Available

The Department of Energy shall determine the energy that is available from the projects for declaration in the billing month.

To meet the energy requirements of the Department of Energy's customers outside the TVA area (hereinafter called Other Customers), 749,400 megawatt-hours of net energy shall be available annually (including 36,900 megawatt-hours of annual net energy to supplement energy available at Laurel Project) provided, that if additional energy is required to make a marketing arrangement viable for other customers which do not own generating facilities and which are within service areas of Kentucky Utilities Company and Carolina Power & Light Company, Western Division, such additional energy required shall be made available from the Cumberland Projects and shall not exceed 300 kilowatt-hours per kilowatt per year. The energy requirement of the Other Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 220 hours per kilowatt of total Other Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Other Customers demand.

In the event that any portion of the capacity allocated to Other Customers is not initially delivered to the Other Customers as of the beginning of a full contract year (July through June), the 1500 hours, plus any such additional energy required as discussed above, shall be reduce 1/12 for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) an adjustment for fast or slow meters, if any, (2) an adjustment for Barkley-Kentucky Canel of 15,000 megawatt-hours of energy each month which is delivered to TVA under the agreement from the Cumberland Projects without charge to TVA, (3) the energy scheduled by the Department of Energy in said month for the Other Customers plus losses of two (2) percent, and (4) station service energy furnished by TVA.

For all such energy and for other benefits TVA realizes from the agreement, TVA shall pay the Department of Energy.

Billing Month

The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Service Interruption

When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system which are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to TVA will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula;

$$\text{Number of Kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{Number of days in billing month}} \times \frac{\text{Agreement Capacity}}{880{,}000 \text{ kilowatts}}$$

The agreement capacity related to the 76,000 kilowatts of capacity allocated to the Other Customers in the Carolina Power & Light Company and Kentucky Utilities service areas shall, irrespective of sale to Other Customers, remain in effect in the formula throughout the term of this rate schedule.

Power Factor

TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairmant of such facilities.

July 1, 1984.

[FR Doc. 84–17365 Filed 6–28–84; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Pick-Sloan Missouri Basin Program; Proposed Power Rate Adjustment

AGENCY: Department of Energy, Western Area Power Adminstration.

ACTION: Notice of Proposed Power Rate Adjustment—Pick-Sloan Missouri Basin Program.

SUMMARY: The power repayment study for the Pick-Sloan Missouri Basin Program (P–SMBP), based on historical data through FY 1982, shows that existing power rates are not adequate to meet repayment requirements. To meet those requirements, the rates for firm power, peaking power, and Western Division transmission service are proposed to be increased as follows:

Class of power	Present rate	Proposed rate
	Eastern Division	
Firm capacity (kW)	$1.35/kW—month	$1.65/kW—month.
Firm energy (kWh) up to and including 60-percent monthly load factor	3.62 mills/kWh	4.41 mills/kWh.
Above 60-percent monthly load factor	7.00 mills/kWh	7.79 mills/kWh.
Peaking capacity (kW)	$8.10/kW—season	$9.90/kW—season.
Peaking energy (kWh)	3.62 mills/kWh	4.41 mills/kWh.
Seasonal firm	Same as firm power rate	
	Western Division	
Firm power (kW)	$1.43/kW—month	$1.65/kW—month.
Firm energy (kWh)	4.3 mills/kWh	5.1 mills/kWh.
Peaking capacity (kW)	$1.43/kW—month	$1.65/kW—month.
Transmission charge	1.1 mills/kWh or $9.60/kW—year	1.3 mills/kWh or $11.40/kW—year.

Eastern Division

The wide diversity of types of load in the service area results in customers having widely divergent load factors and patterns. A split reasonably close to a 50/50 division between the demand component and the energy component of the rate is as equitable an arrangement for all customers as can be provided. The existing rate is based on such a split, and so the proposed monthly demand charge was proportioned in accordance with the overall ratio of increase and rounded to an even $1.65/kW. The energy component was assigned the balance of the required increase.

An analysis was made to identify the energy that must be purchased to meet firm load and assign those associated costs to the higher portion of the energy rate. The analysis indicates that both the monthly load factors on our system and the cost of energy in this area have remained relatively stable over the past 2 years and that we have no reason to expect a significant change in the near future. Therefore, at this time there is no need to increase that part of the energy rate required for purchasing energy to meet firm load, and the differential between the charge for 60-percent load factor energy and the charge for that above 60-percent load factor has not changed.

Western Division

Firm Power

Based upon the load characteristics of the Western Division's firm power obligation, a monthly capacity charge of $1.65 per kW, together with an energy charge of $.0051 per kWh, will yield the revenue required.

Peaking Power

An increase from $1.43/kW-month to $1.65/kW-month is proposed for the new peaking power schedule.

Transmission Service

Using the ratio of increase in the firm service from 7.2 mills/kWh to 8.54 mills/kWh with the present transmission service rate, and rounding to the nearest ten-thousandth of a dollar, a new transmission service rate is obtained:

$0.0011×8.54/7.2=$0.001304=$0.0013/kWh

To develop a capacity charge commensurate to the $0.0013/kWh considering the reservation of capacity for a year's time, and rounding to the nearest hundredth of a dollar, the following was done:

$0.0013/kWh×8760 hours=$11.388/kW-year ($11.388/kW-year)/(12 Months/year)=$0.949/kW-month=$0.95/kW-month

or

$0.95/W-month×12 months/year=$11.40/kW-year

A brochure explaining the need for a rate increase will be distributed to all P–SMBP customers and other interested parties; and public information and public comment forums will be held in accordance with current procedures for public participation in general rate adjustments. After public discussion and review of public comments, the Western Area Power Administration (Western) will finalize the proposed rates and submit them to the Deputy Secretary to be placed into effect on an interim basis pending final approval by the Federal Energy Regulatory Commission.

DATES: The consultation and comment period will begin with the publication of this notice in the **Federal Register** and will end not less than 90 days thereafter. The proposed rates are expected to go into effect on an interim basis with the beginning of the January 1985 billing period.

Public information forums during which Western will explain the need for an increase and answer questions will be held at the following places and times:

July 16, 1984—10 a.m.—The Holiday Inn, Thornton, Colorado

July 17, 1984—9 a.m.—The City Centre Holiday, Sioux Falls, South Dakota

July 18, 1984—9 a.m.—The Doublewood Inn, Fargo, North Dakota

July 19, 1984—9 a.m.—The Northern Hotel, Billings, Montana

Public comment forums, during which comments for the record concerning the proposed rate increase will be accepted, will be conducted at the following times and places:

August 20, 1984—10 a.m.—The Holiday Inn, Thronton, Colorado

August 21, 1984—9 a.m.—The City Centre Holiday, Sioux Falls, South Dakota

August 22, 1984—9 a.m.—The Holiday Inn, Fargo, North Dakota

August 23, 1984—9 a.m.—The Northern Hotel, Billings, Montana

Persons planning to speak at any of the August comment forums should send their names and organization affiliation to the address noted below to arrive by August 1, 1984, so that a speaker list can be developed. Other persons will also be allowed to comment as time permits. Written comments may be submitted to the following address throughout the entire consultation and comment period: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box EGY, Billings MT 59101, Telephone: (406) 657–6532.

Data, studies, reports, and other documents used in developing the proposed rates will be available for inspection and copying in the Billings Area Office.

SUPPLEMENTARY INFORMATION: Power rates for the P–SMBP are established pursuant to the Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101, et seq.); the Reclamation Act of 1902 (43 U.S.C. 372, et seq.), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the acts specifically applicable to the project system involved.

A new Delegation Order No. 0204–108 was issued on December 14, 1983 (48 FR 55664, December 14, 1983). The order contains several provisions including

delegating to the Administrator, on a nonexclusive basis, the authority to develop power and transmission rates, and delegating to the Deputy Secretary, on a nonexclusive basis, the authority to confirm, approve, and place in effect on an interim basis power and transmission rates. Rate adjustments for P–SMBP are conducted consistent with procedural rules applicable to Western. Procedures for public participation in rate adjustments for power marketed by Western are at 10 CFR Part 903. The procedures were published prior to issuance of Delegation Order No. 0204–108, and will be departed from as necessary as a result of the order.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) and Department of Energy (DOE) Regulations published in the **Federal Register** on March 28, 1980 (45 FR 20694–20701), as amended, Western normally prepares environmental assessment for proposed rate adjustments which exceed the rate of inflation in the period since the last adjustment.

Western will make a determination of the size of the rate increase. If an environmental assessment is required, Western will complete an environmental assessment of the proposed rate increase prior to its implementation. If the environmental assessment indicates the rate increase could result in significant impacts on the human environment, an environmental impact statement will be prepared.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for P–SMBP relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates of service of particular applicability are not considered "rules" within the meaning of the Act. Since the rate for P–SMBP power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, June 20, 1984.

Robert L. McPhail,

Administrator.

[FR Doc. 84–17364 Filed 6–28–84; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59157A/158A]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Enviromental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of six applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–84–49, TME–84–50, TME–84–51, TME–84–52, TME–84–53 and TME–84–54. The test marketing conditions are described below.

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Joe B. Boyd, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Enviromental Protection Agency, Rm. E–202, 401 M St., SW., Washington, DC 20460, (202–382–3739).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–84–49, TME–84–50, TME–84–51, TME–84–52, TME–84–53, and TME–84–54. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, numbers of workers exposed to the new chemicals, and the levels and durations of exposure must not exceed those specified in the applications. All other conditions and restrictions described in the applications and this notice must be met.

TME 84–49

Date of Receipt: May 8, 1984.

Notice of Receipt: May 16, 1984 (49 FR 21112).

Applicant: Confidential.

Chemical: (G) Modified, maleated metal resinate.

Use: (S) Industrial publication gravure printing inks.

Production Volume: Confidential.

Number of Customers: 1.

Worker Exposure: Manufacturer: dermal, a total of 6 workers, up to 2 days/year.

Test Marketing Period: 8 months.

Commencing on: June 20, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

TME 84–50

Date of Receipt: May 9, 1984.

Notice of Receipt: May 16, 1984 (49 FR 21112).

Applicant: Confidential.

Chemical: (G) Dithiocarbamate salt.

Use: (G) Water treatment chemical.

Product Volume: Confidential.

Number of Customers: 1.

Worker Exposure: Confidential.

Test Marketing Period: 2 months.

Commencing on: June 20, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

TME 84–51

Date of Receipt: May 10, 1984.

Notice of Receipt: May 8, 1984 (49 FR 21112).

Applicant: Hercules Incorporated.
Chemical: (G) Organometallic polymer.
Use: (S) Liquid or gas purifier for use in the manufacture of silicon and microelectronic components for the electronics industry, in the purification of feedstreams for polyolefin manufacture, and as a carrier gas purifier for analytical instrumentation.
Production Volume: 1,999 kg.
Number of Customers: 12.
Workers Exposure: Confidential.
Testing Marketing Period: 1 year.
Commencing on: June 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.

TME 84-52

Date of Receipt: May 11, 1984.
Notice of Receipt: May 25, 1984 (49 FR 21132).
Applicant: Texaco Chemical Company.
Chemical: (G) Mixed glycol oligoesters of a dicarboxylic acid.
Use: (G) For production of rigid polyurethane foams and polyisocyanurate foams.
Production Volume: 1,000,000 lbs.
Number of Customers: 10.
Workers Exposure: Manufacture, processing and use: dermal, up to 79 workers.
Testing Marketing Period: 18 months.
Commencing on: June 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.

TME 84-53

Date of Receipt: May 11, 1984.
Notice of Receipt: May 25, 1984 (49 FR 21132).
Applicant: Confidential.
Chemical: (G) Vinly acetate-acrylant copolymer.
Use: (S) Polymer base for water-borne caulks and carpet tile adhesives; an adhesive for pressure sensitive tapes, decal stock and automobile headliners.
Production Volume: Confidential.
Number of Customers: 10.
Workers Exposure: Processing: dermal, a total of 2,550 workers for up to 250 days/year.
Testing Marketing Period: 2 to 12 months (depending on specific use).
Commencing on: June 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.

TME 84-54

Date of Receipt: May 15, 1984.
Notice of Receipt: May 25, 1984 (49 FR 21132).
Applicant: Confidential.
Chemical: (G) Substituted benzocyazoleydine.
Use: (G) Industrial coating component.
Production Volume: Confidential.
Number of Customers: Confidential.
Workers Exposure: Manufacture and processing: up to 10 workers.
Testing Marketing Period: 6 months.
Commencing on: June 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restricitons of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 20, 1984.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 84-17373 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-51525; TSH-FRL-2618-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84-851, 84-852, 84-853, 84-854, 84-855, 84-856, 84-857 and 84-858—September 12, 1984
PMN 84-859 September 15, 1984
PMN 84-860, 84-861, 84-862, and 84-863—September 16, 1984
PMN 84-864, 84-865, 84-866, 84-867, and 84-868—September 17, 1984
PMN 84-869, 84-870, and 84-871—September 18, 1984

Written comments by:

PMN 84-851, 84-852, 84-853, 84-854, 84-855, 84-856, 84-857 and 84-858—August 13, 1984
PMN 84-859—August 16, 1984
PMN 84-860, 84-861, 84-862 and 84-863—August 17, 1984
PMN 84-864, 84-865, 84-866, 84-867 and 84-868—August 18, 1984
PMN 84-869, 84-870, and 84-871—August 19, 1984

ADDRESS: Written comments, identified by the document control number "[OPTS-51525]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-851

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphate amine salts.
Use/Production. (G) Oil additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–852

Manufacturer. Confidential.

Chemical. (G) Functional polymer of mixed acrylate and methacrylate based monomers.

Use/Production. (G) Industrial coatings with an open use. Prod. range: 250,000–500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 93 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 1–50 kg/batch released to land. Disposal by publicly owned treatment works (POTW) and incineration.

PMN 84–853

Manufacturer. Confidential.

Chemical. (G) Aromatic sulfonate of substituted phenylazo substituted heteromonocycle.

Use/Production. (G) Industrial textile dye. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 84–854

Importer. Confidential.

Chemical. (S) (1,1':3,1''-terphenyl)-2'-ol,5'-(octadecyloxy), 4-n-octadecyloxy-2,6-diphenylphenol.

Use/Import. (S) Industrial processing and end-use stabilizer for polyolefins (polypropylene and polyethylene). Import range: Confidential.

Toxicity Data. Acute oral: Males and females—> 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight.

Exposure. Use: dermal and inhalation, a total of 50–100 workers, up to 1–2 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. Less than 100 kg/yr released to air.

PMN 84–855

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate.

Use/Production. (G) Intermediate for electrical insulation. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–856

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate.

Use/Production. (G) Intermediate for electrical insulation. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–857

Manufacturer. Confidential.

Chemical. (S) Polymer of: epichlorohydrin-bisphenol-A polymer, bisphenol-A, ethyltriphenylphosphonium iodine, formaldehyde, n-butyl alcohol, triethyl amine and phthalic anhydride.

Use/Production. (S) Industrial baking enamel (protective coating). Prod. range: 28,338–35,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 6 hrs/da, up to 24 da/yr.

Environmental Release/Disposal. Less than 5 kg/batch released to land. Disposal by landfill.

PMN 84–858

Manufacturer. Morton Thiokol Inc.

Chemical. (G) Polyalkylene glycol ether acrylate.

Use/Production. (S) Industrial diluent in printing ink, coatings and adhesives. Prod. range: 50,000–150,000 kg/yr.

Toxicity Data. Acute oral: Males—>5.0g/kg, Females—<5.0; Acute dermal: > 2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Slight.

Exposure. Manufacture: dermal, a total of 6 workers, up to 8 hrs/da, up to 30 da/yr.

Environmental Release/Disposal. 105–962 kg/batch released to air, with 962–4,200 kg/batch and 15,229 kg/campaign to water, and 7–111 kg/batch to land. Disposal by on-site landfill and on-site deep well injection.

PMN 84–859

Importer. Confidential.

Chemical. (G) Halophthalimide.

Use/Production. (S) Industrial flame retardant additive for plastics. Prod. range: 2,270–4,540 kg/yr.

Toxicity Data. No data submitted.

Exposure. Use: inhalation, a total of 4 workers, up to 1 hr/da, up to 30 da/yr.

Environmental Release/Disposal. 0.1 kg/batch released to water. Disposal by POTW, biological treatment system and navigable waterway.

PMN 84–860

Manufacturer. Confidential.

Chemical. (G) Disubstituted nitrobenzene.

Use/Production. (G) Chemical intermediate. Prod. range: 4,500–8,500 kg/yr.

Toxicity Data. Acute oral: Males and females—>3,200 mg/kg; Acute dermal: >1 g/kg; Irritation: Eye—Slight; Skin sensitization: Normal.

Exposure. Manufacture and use: a total of 13 workers, up to 1.5 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. No release. Less than 0.5 to 3 kg/batch incinerated.

PMN 84–861

Manufacturer. American Hoechst Corporation.

Chemical. (S) 2[(2-hydroxyl-1 1-bis(hydroxymethyl)ethyl)-aminol-ethansulfonic acid, sodium salt (1:1).

Use/Production. (S) industrial and commercial buffer for reagents. Prod. range: Confidential.

Toxicity Data. Acute oral: Males and females—>5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; DOC: 280 mg c/g; COD: 730 mg O_2/g; BOD: <10 mg O_2/g; EC_0 24 hrs (Daphnes): >2,000 mg/l; EC_{50} 24 hrs (Daphnes): >2,500 mg/l; LC_{50} 48 and 96 hrs. (Zebra fish): >500 mg/l.

Exposure. Manufacture: dermal and inhalation, a total of 9 workers, up to 10 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 84–862

Manufacturer. American Hoechst Corporation.

Chemical. (S) 4-(2-hydroxyethyl)piperazine-1-ethanesulfonic acid, sodium salt (1:1).

Use/Production. (S) Buffer for reagents. Prod. range: Confidential.

Toxicity Data. Acute Oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; LC_{50} 48 and 97 hrs (Zebra fish): 500 mg/l.

Exposure. Manufacture: dermal and inhalation, a total of 9 workers, up to 10 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 84–863

Manufacturer. Confidential.

Chemical. (G) Protein crosslinked by a poly(aliphatic) isocyanate.

Use/Production. (G) Open non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–864

Importer. Confidential.

Chemical. (G) Vinyl acetate—acrylate copolymer..

Use/Import. (G) Emulsion pressure sensitive adhesive. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Use: a total of 2–8 persons/shift, 1–3 shifts/day, up to 365 da/yr.

Environmental Release/Disposal. No release. Disposal by landfilled.

PMN 84–865

Importer. Confidential.

Chemical. (G) [(Alkyl)(alkyl)amino]polyakoxy ether sulfate halfester.

Use/Import. (S) Industrial textile auxiliary. Import range: Confidential.

Toxicity Data. Acute oral: >15.0 ml/kg; Irritation: Skin—Slight, Eye—Non-irritant; IC 14 Hrs (Levciscus idus): 20 mg/l; IC 3 days (Levciscus idus): 10 mg/l.

Exposure. Processing: dermal, a total of 1 person/shift, less than 5 min/weighing.

Environmental Release/Disposal. No release to air, water and land. Disposal by POTW and wastewater treatment facility.

PMN 84–866

Importer. Albright and Wilson Inc.

Chemical. (G) Alkyl methacrylate polymer.

Use/Import (S) Viscosity index improver for lubricating oils for industrial, commercial and consumer use. Import range: Confidential.

Toxicity Data. Acute oral: >5 to 15 g/kg; Acute dermal: >4 g/kg; Irritation: Skin—Mild, Eye—Irritant.

Exposure. Import and use: a total of 5 to 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Negligible release to air with residual product to water. Disposal by incineration and approved landfill.

PMN 84–867

Importer. Albright and Wilson Inc.

Chemical. (G) Alkyl methacrylate polymer.

Use/Import. (S) A pour point depressant for lubricants in industrial, commercial and consumer use. Import range: Confidential.

Toxicity Data. Acute oral: >5 to 15 g/kg; Acute dermal: >4 g/kg; Irritation: Skin—Mild, Eye—Irritant.

Exposure. Import and use: a total of 5 to 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Negligible release to air with residual product to water. Disposal by incineration and approved landfill.

PMN 84–868

Importer. Albright and Wilson Inc.

Chemical. (G) Alkyl methacrylate polymer.

Use/Import. (S) Viscosity index improver for lubricating oils in industrial, commercial and consumer use. Import range: Confidential.

Toxicity Data. Actue oral: Male and female—>15 ml/kg; Irritation: Skin—Mild, Eye—Irritant.

Exposure. Import: dermal, a total of 1–50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Negligible release to air with residual product to water. Disposal by incineration and approved landfill.

PMN 84–869

Manufacturer. Confidential.

Chemical. (S) 4-(Acetylamino)-3-nitrobenzoic acid.

Use/Production. (G) Chemical intermediate. Prod. range: 1,600–2,900 kg/yr.

Toxicity Data. Acute oral: Males—2,540 mg/kg, females—2,263 mg/kg; Acute dermal: >1 g/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Normal.

Exposure. Manufactures and use: dermal and inhalation, a total of 30 workers, up to 0.8 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. Less than 0.01 kg/batch released to air with 0–4 kg/batch to water. Less than 8 kg/batch disposed of by biological treatment system with less than 80 kg/batch incinerated.

PMN 84–870

Manufacturer. Confidential

Chemical. (G) Disubstituted nitrobenzoic acid.

Use/Production. (G) Chemical intermediate. Prod. range: 1,500–2,600 kg/yr.

Toxicity Data. Acute oral: Males and females—>3,200 mg/kg; Acute dermal: >1 g/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Normal.

Exposure. Manufactures and use: dermal and inhalation, a total of 18 workers, up to 0.5 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. 0–0.5 kg/batch released to water. Disposed of by navigable waterway with less than 1 kg/batch disposed of by biological treatment system with less than 10 kg/batch incinerated.

PMN 84–871

Manufacturer. Confidential

Chemical. (G) Disubstituted benzotriazole.

Use/Production. (G) Chemical intermediate. Prod. range: 1,300–2,300 kg/yr.

Toxicity Data. No. data on the PMN substance submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 10 workers, up to 0.5 hr/da, up to 6 da/yr.

Environmental Release/Disposal. No release. Less than 4 kg/batch disposed of by biological treatment system.

Dated: June 25, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–17372 Filed 6–28–84; 8:45 am]

BILLING CODE 6560–50–M

[PP 4G2977/T451; PH–FRL 2618–1]

E.I. du Pont de Nemours and Co.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the herbicide DPX–Y6202 (ethyl 2[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanoate and its metabolite 2-[4-(6-chloroquinoxolin-2-yl oxy) phenoxy] propanic acid in or on the raw agricultural commodity cotton. This temporary tolerance was requested by E.I. du Pont de Nemours and Co.

DATE: This temporary tolerance expires December 31, 1885.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1800).

SUPPLEMENTARY INFORMATION: E. I. Dupont de Nemours and Co., Wilmington, DE 19898, has requested, in pesticide petition PP 4G2977 the establishment of a temporary tolerance for the combined residues of the herbicide DPX–Y6202 (ethyl 2[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanoate and its metabolite 2-[4-(6-chloroquinoxolin-2-yl oxy) phenoxy] propanic acid in or the raw agricultural commodity cotton at 0.05 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 352–EUP–114 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the

public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. DuPont must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires December 31, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: June 22, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-17368 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

[PP 4G2978/T450; PH-FRL 2618-3]

E. I. du Pont de Nemours and Co.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the herbicide DPX-Y6202 (ethyl 2[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanoate and its metabolite 2-[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanic acid in or on the raw agricultural commodity soybeans. This temporary tolerance was requested by E. I. du Pont de Nemours and Co.

DATE: This temporary tolerance expires December 31, 1985.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1800).

SUPPLEMENTARY INFORMATION: E. I. du Pont de Nemours and Co., Wilmington, DE 19898, has requested, in pesticide petition PP 4G2978 the establishment of a temporary tolerance for the combined residues of the herbicide DPX-Y6202 (ethyl 2[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanoate and its metabolite 2-[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanic acid in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 352-EUP-115 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishemnt of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be use must not exceed the quantity authorized by the experimental use permit.

2. DuPont must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires December 31, 1985. Residues not in excess of this amount remaining in or on the raw acricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950.)

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: June 21, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-17366 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

[PP 8G2079/T449; PH-FRL 2618-2]

EM Industries, Inc.; Renewal of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed a temporary tolerance for residues of the growth regulator methyl 2-chloro-9-hydroxyfluorene-9-carboxylate, methyl 9-hydroxyfluorene-9-carboxylate, and methyl 2,7-dichloro-9-hydroxyfluorene-9-carboxylate in or on the raw agricultural commodity cucumbers.

DATE: This temporary tolerance expires May 8, 1985.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245 CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of May 25, 1983 (48 FR 23476), stating that a temporary tolerance had been extended for residues of the growth regulator methyl 2-chloro-9-hydroxyfluorene-9-carboxylate, methyl 9-hydroxyfluorene-9-carboxylate, and methyl 2,7-dichloro-9-hydroxyfluorene-9-carboxylate in or on the raw agricultural commodity cucumbers at 0.1 part per million (ppm).

This tolerance was renewed in response to pesticide petition PP 8G2079, submitted by EM Industries, Inc., Plant Protection Division, 5 Skyline Drive, Hawthorne, NY 10532.

The company has requested a 1-year renewal of the temporary tolerance to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 21137–EUP–3, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. EM Industries, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires May 8, 1985. Residues not in excess of this amount remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: June 21, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–17367 Filed 6–28–84; 8:45 am]

BILLING CODE 4560–50–M

[OPP–50617; PH–FRL 2616–6]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241-EUP-104. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 1,220 pounds of the herbicide pendimethalin on dry bulb onions and garlic to evaluate the control of various grasses and broadleaf weed species. A total of 1,210 acres are involved; the program is authorized only in the States of Arizona, California, Colorado, Nebraska, New Mexico, Oregon, Texas, and Washington. The experimental use permit is effective from May 1, 1984 to May 1, 1985. Temporary tolerances for residues of the active ingredient in or on bulb onions and garlic have been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800).)

100–EUP–83. Issuance. Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419. This experimental use permit allows the use of 3,750 pounds of the insecticide chlordimeform in a tank mix with synthetic pyrethroid and vegetable oil on cotton to evaluate the control of bollworms and tobacco budworm eggs and larvae. A total of 5,000 acres are involved; the program is authorized only in the States of Mississippi and Texas. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386).)

100–EUP–84. Issuance. Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419. This experimental use permit allows the use of 1,250 pounds of the insecticide chlordimeform in a tank mix with synthetic pyrethoid and vegetable oil on cotton to evaluate the control of bollworms and tobacco budworm eggs and larvae. A total of 5,000 acres are involved; the program is authorized only in the States of Mississippi and Texas. This permit and the one above are effective from May 17, 1984 to May 17, 1985. The permits will use the same active ingredient but different formulations. (Jay Ellenberger, PM 21, Rm. 229, CM #2, (703–557–2386).)

1471–EUP–75. Amendment. Elanco Products Company, 740 S. Alabama St., Indianapolis, IN 46285. A notice was published in the **Federal Register** of July 27, 1983 (48 FR 34115) pertaining to the amendment of an experimental use permit, 1471–EUP–75, issued to Elanco Products Company. At the request of the company, the permit has been amended to add 11 States, and to reduce the acreage and the amount of the active ingredient. This experimental use permit now allows the use of 320 pounds of the fungicide fenarimol on apples and grapes to evaluate the control of cedar rust, powdery mildew, and scab. A total of 720 acres are involved; 480 acres of apples to be treated and 240 acres of grapes to be treated. The program is authorized in the States of California, Connecticut, Georgia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, North Carolina, New Hampshire, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Virginia, Vermont, and West Virginia for apples and California,

Michigan, New York, Ohio, Oregon, and Washington for grapes. The experimental use permit is effective from April 18, 1984 to March 19, 1985. Temporary tolerances for residues of the active ingredient in or on apples and grapes have been established. (Henry Jacoby, PM 21, Rm. 229, CM#2, (703–557–1900).)

618–EUP–10. Extension. Merck and Company, Inc., P.O. Box 2000, Rahway, New Jersey 07065. This experimental use permit allows the use of 250 grams of the insecticide Avermectin B_1 on non-cropland and pastures to evaluate the control of the imported fire ant. A total of 5,000 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The experimental use permit is effective from March 23, 1984 to March 23, 1985. This permit is issued with the limitation that cattle will not be allowed on treated pastures within seven days of application. (George T. LaRocca, PM 15, Rm. 204, CM#2, (703–557–2400).)

748–EUP–18. Extension. PPG Industries, Inc., P.O. Box 31, Barberton, OH 44203. This experimental use permit allows the use of 2,526 pounds of the herbicide 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate on soybeans to evaluate the control of various weeds. A total of 12,630 acres are involved; the program is authorized in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. The experimental use permit is effective from April 22, 1984 to April 30, 1985. This permit is issued with the limitation that treated plants are not used for feed or forage. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703–557–1830).)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; 92 Stat. 828 (7 U.S.C. 136(c))

Dated: June 22, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–17371 Filed 6–28–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50619; PH–FRL–2616–8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

1471–EUP–67. Extension. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 8,700 pounds of the herbicide fluridone on aquatic plant management systems to evaluate the control of various weeds. A total of 4,350 acres are involved; the program is authorized in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. The experimental use permit is effective from June 1, 1984 to June 1, 1985. A temporary tolerance for residues of the active ingredient in or on fish has been established. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703–557–1830).)

3125–EUP–168. Extension. Mobay Chemical Corporation, P.O. Box 4913, Kansas City, MO 64120. This experimental use permit allows the use of 402.5 pounds of the fungicide beta-([1,1'-biphenyl]-4-yloxy)-Alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol on apples to evaluate the control of various apple diseases. A total of 115 acres are involved; the program is authorized only in the States of Georgia, Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, and West Virginia. The experimental use permit is effective from June 1, 1984 to December 31, 1984. A temporary tolerance for residues of the active ingredient in or on apples has been established. (Henry Jacoby, PM 21, Rm. 229, CM#2, (703–557–1900).)

3125–EUP–181. Extension. Mobay Chemical Corporation, P.O. Box 4913, Kansas City, MO 64120. This experimental use permit allows the use of 3,187.5 pounds of the fungicide beta-([1,1'-biphenyl]-4-gloxy)-Alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol on apricots, nectarines, peaches, and plums to evaluate the control of various diseases of stone fruit. A total of 425 acres are involved (150 acres to be treated in 1984 and 275 acres to be treated in 1985); the program is authorized only in the States of California, Georgia, Michigan, New Jersey, North Carolina, Oregon, Pennsylvania, South Carolina, Virginia, Washington, and West Virginia. Temporary tolerances for residues of the active ingredient in or on apricots, nectarines, peaches, and plums have been established. (Henry Jacoby, PM 21, Rm. 229, CM#2, (703–557–1900).)

45639–EUP–20. Issuance. NOR–AM Chemical Company, 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 5,000 pounds of the insecticide chlordimeform in a tank mix with vegetable oil on cotton to evaluate the control of bollworms, larvae, and tobacco budworm eggs. A total of 5,000 acres are involved; the program is authorized only in the States of Mississippi and Texas. The experimental use permit is effective from June 7, 1984 to June 7, 1985. A permanent tolerance for residues of the active ingredient in or on cottonseed has been established (40 CFR 180.285). (Jay Ellenberger, PM 12, Rm. 202, CM# 2, (703–557–2386).)

876–EUP–43. Issuance. Velsicol Chemical Corporation, 341 East Ohio St., Chicago IL 60611. This experimental use permit allows the use of 150 pounds of the herbicide prodiamine on nonbearing almonds, grapes, walnuts, and woody

ornamental nursery stock to evaluate the control of annual grasses and broadleaf weeds. A total of 125 acres are involved; the program is authorized only in the States of Arizona, Arkansas, California, Michigan, New York, Pennsylvania, and Washington. The experimental use permit is effective from September 1, 1984 to September 1, 1985. This permit is issued with the limitation that treated crops will bear fruit within one year after application. (Richard Mountfort, PM 23, Rm. 253, CM# 2, (703–557–1830).)

2724–EUP–19. Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 50,000 pounds of the insecticide dioxathion in ear tags on beef cattle to evaluate the control of Gulf Coast ticks, face flies, horn flies, spinose ear ticks, and stable flies. A total of 500 head of cattles are involved; the program is authorized only in the States of California, Florida, Indiana, Kentucky, Mississippi, New Mexico, Oklahoma, Pennsylvania, and Texas. The experimental use permit is effective from May 25, 1984 to May 25, 1986. A permanent tolerance for residues of the active ingredient in or on cattle has been established (40 CFR 180.171)). (George LaRocca, PM 15, Rm. 204, CM# 2, (703–5777–2400).)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: June 21, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–17370 Filed 6–28–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180652; PH–FRL 2616–7]

Montana; Specific Exemption for Use of Dyed Compound 1080-Treated Grain Bait To Control The Columbian Ground Squirrel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Montana Department of Agriculture for use of dyed Compound 1080-treated grain bait to control the Columbian ground squirrel. This specific exemption was issued pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA).

DATES: This specific exemption is effective from April 20, 1984, through August 31, 1984.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA has granted a specific exemption for the use of the pesticide chemical sodium fluoroacetate (Compound 1080) in dyed grain baits to control the Columbian ground squirrel on crop and improved pastureland.

After reviewing the application and other available information EPA has determined that:

1. Columbian ground squirrels, if not controlled, will cause significant damage to western Montana's staple crops, small grains, and hay crops. Damage from this pest could result in an economic loss of up to $13 per acre. This represents a loss of up to $582,000 for the acreage involved.

2. Monitoring of past emergency exemptions indicates there has been minimal adverse effects to nontarget species.

Accordingly, Montana has been granted a specific exemption to use the pesticide noted above until August 31, 1984. The specific exemption is also subject to the following conditions:

1. The Montana Department of Agriculture is responsible for ensuring that all provisions of this specific exemption are met. It is also responsible for providing information in accordance with 40 CFR 166.5. This information must be submitted to EPA Headquarters through the EPA Regional Office.

2. Up to 17,910 pounds of 0.05 percent bait (159 ounces of technical grade Compound 1080, 90 percent pure), prepared in accordance with the formula proposed in Appendix B of Montana's application, are authorized.

3. Labeling accepted under Montana's 1981 exemption for this use must be used.

4. Under the specific exemption, the Compound 1080 grain bait shall be used only to control the Columbian ground squirrel (*Spermophilus columbianus*) in crop and improved pastureland areas. No more than 23,622 acres of hay and small grains and 21,153 acres of improved pasture may be treated in the following 16 counties: Beaverhead, Broadwater, Deer Lodge, Flathead, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, and Silver Bow. This acreage includes a 250-yard peripheral treatment around small grains, improved pasture and hayfields.

5. The Compound 1080 bait is to be scattered, not piled or placed in holes, along active burrow entrances at a rate of no more than 0.16 ounce bait/active entrance using a calibrated dipper. Each active burrow is to be treated no more than once per year.

Cropland or improved pastureland which has been treated with Compound 1080 shall not be grazed for a period of 14 days with the exception of cattle which may be grazed after a period of 7 days.

6. Compound 1080 grain shall be used only under the on-site supervision of certified government pesticide applicators trained by the Montana Department of agriculture. Each applicator shall be trained in:

a. The biology and ecology of the Columbian ground squirrel.

b. Safe handling of the toxic grain baits to include bandaging of open wounds and washing hands after bait application before eating or smoking.

c. Proper placement of the bait.

d. Consideration of environmental conditions before baiting is begun.

e. Necessary recordkeeping.

f. Other competency standards, including first-aid training for Compound 1080 poisoning, toxicology of Compound 1080, and chemistry of Compound 1080.

7. Each certified government pesticide applicator shall keep records dealing with the placement of Compound 1080 grain bait. Such records shall include but not be limited to:

a. The approximate number of acres upon which bait is applied.

b. The amount of bait applied.

c. The date of each application.

d. All accidents or injuries to humans, domestic animals, or nontarget species.

e. Names of certified government applicator and crew members making each application.

f. Approximate location of each treated field and the owner of treated acreage.

8. All persons authorized to possess and use Compound 1080 and grain bait treated with this toxicant shall keep such toxicant and treated bait in locked containers during storage and transport.

a. All preparation of baits must be done at a central formulation site; persons preparing the formulation from the dry concentrates must wear gloves and an appropriate respirator.

b. Equipment used to handle and mix Compound 1080 must be identified and used only for this purpose.

c. All containers of Compound 1080 or Compound 1080-treated baits must be clearly labeled. Baits must not take the form of any food normally consumed by humans.

9. All bait removed from locked containers for use shall be carried only in zippered canvas pouches marked in red letters "Poison Grain." The bag shall remain closed at all times except when bait is actually being applied.

10. Bait acceptance trials will be conducted before treatment to determine whether Columbian ground squirrels are accepting grain baits.

11. Both Montana Fish and Game personnel and regional U.S. Fish and Wildlife Endangered Species personnel will be consulted to insure that areas where treatment is proposed are not occupied by threatened or endangerd species.

12. White gloves shall be worn by all persons handling Compound 1080 grain bait as indicators of dermal exposure.

13. Washing facilities shall be made readily available by the supervising certified government pesticide applicator.

14. Compound 1080 grain bait shall be applied only during seasons when Columbian ground squirrels are accepting grain and the majority of the population is active above ground. The seasons shall be determined locally by the certified government pesticide applicator in consultation with the Department of Agriculture's verterbrate pest control biologists.

15. Compound 1080 grain bait shall not be used in situations where threatened endangered species (bald eagle, grizzly bear, Northern Rocky Mountain wolf) may be adversely affected. Compound 1080 grain is not to be applied in prairie dog towns or in areas where the blackfooted ferret or their signs have been sighted.

16. Compound 1080 bait is not to be applied in areas frequented by children.

17. The general public will be informed of the areas to be treated via the most appropriate means of communication for announcements. These announcements will provide specific telephone numbers where individuals can obtain exact information on areas that are being treated, and also medical assistance for cases of Compound 1080 poisoning. A county or city-county official will be assigned the responsibility for the Compound 1080 program in each county and will be available for communication with the general public and the Montana Department of Agriculture.

18. Treatment crews will post warning signs at the main entrance to fields immediately following treatment.

19. The government pesticide applicators will instruct each landowner, administrator, or lessee, whose land is to be treated, that he must notify his adjacent neighbors before the actual treatment occurs. The landowner, administrator, or lessee should instruct his neighbors: (1) To keep their dogs confined for a minimum of 10 days, (2) to keep cattle out of treated areas for 7 days and keep all other domestic livestock out of treated areas for 14 days, and (3) that, if any of their exposed domestic animals become sick or begin acting strangely, they should contact their local veterinarian, Department of Agriculture, or Department of Livestock.

20. It is recommended that landowners create periodic nightly disturbances near treated field for several days following treatment. The purpose is to keep nontarget species such as coyotes, domestic dogs, and others out of the treated areas during immediate post-treatment period. These disturbances could be created by the use of loud radios, firecracker ropes, or firing of rifles, etc. Such disturbances should ot be carried out to extremes (i.e., use of acetylene guns).

21. Any suspected or reported nontarget species problem reported to, or discovered by, an applicator shall be immediately reported to the Montana Department of Agriculture in Helena.

22. No lands will be treated within one mile of incorporated or unincorporated cities and towns except those areas approved for treatment by the county commission or city-county commission in consultation with the Montana Department of Agriculture.

23. The Montana Department of Agriculture is responsible for insuring that all of the provisions of this specific exemption are adhered to, records of applicators will be checked, and a reasonable number of applications checked.

24. The EPA Montana Office shall be immediately informed of any adverse effects resulting from the use of Compound 1080 under this specific exemption.

25. Crew supervisors will instruct landowners that all animal carcasses found above ground must be placed individually down burrows and covered with dirt or buried individually. Alternatively, carcasses may be burned.

26. Federal land must not be treated with Compound 1080.

27. A final report must be submitted to the EPA by the end of December 1984.

Dated: June 21, 1984.

Douglas D. Campt,

Acting Director, Office of Pesticide Programs.

[FR Doc. 84-17369 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

[AD-FRL-2617-1]

National Air Pollution Control Techniques Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the National Air Pollution Control Techniques Advisory Committee will be held on August 29 and 30, 1984, at the Sheraton University Center, Greenbriar Ballroom (2nd Floor), 2800 Middleton Avenue at Morreene Road and 15-501, Durham, North Carolina 27705. The Commercial telephone number is (919) 383-8575.

The tentative agenda for the meeting is as follows:

August 29 (Wednesday)—9:00 a.m.

Petroleum Refinery Wastewater Systems, New Source Performance Standards (Section 111 of the Clean Air Act)
Magnetic Tape, New Source Performance Standards (Section 111 of the Clean Air Act)
Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, New Source Performance Standards (Section 111 of the Clean Air Act)
Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF) Area Source Air Emissions Program, Status Report to the Committee

August 30 (Thurday)—9:00 a.m.

Continuation of August 29—As Required
Portland Cement Plants, Review of Standards of Performance for New Stationary Sources (Section 111 of the Clean Air Act)
Vinyl Chloride, Revision of National Emission Standards for Hazardous Air Pollutants (Section 112 of the Clean Air Act)

All meetings are open to the public. Anyone wishing to make a presentation should contact Ms. Mary Jane Clark at the Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, by August 20, 1984. The commercial telephone number is (919) 541-5571, and the FTS number is 629-5571.

The dockets containing material relevant to petroleum refinery wastewater systems (A–83–07), magnetic tape (A–82–45), SOCMI reactor processes (A–83–29), portland cement plants (A–84–08), and vinyl chloride (81–21) are located in the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby-Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. The dockets may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

[FR Doc. 84–17361 Filed 6–28–84; 8:45 am]
BILLING CODE 6560–50–M

[SAB–FRL–2617–7]

Science Advisory Board; Clean Air Scientific Advisory Committee Open Meeting—July 19–20, 1984

Under Pub. L. 92–463, notice is hereby given of a meeting of the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board. The meeting will be held July 19–20 in Room 1112, U.S. Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia. The meeting will begin at 1:30 p.m. on July 19 and the estimated time of adjournment is 12:00 noon on July 20.

The purpose of the meeting is to allow CASAC to review and provide its advice to the EPA on the Agency's proposed rule to reaffirm the National Ambient Air Quality Standards (NAAQS) for Nitrogen Dioxide (NO_2). The proposed rule was published in the **Federal Register** on February 23, 1984 (49 FR 6866).

Individuals wishing background information may order the revised Criteria Document, "Air Quality Criteria for Oxides of Nitrogen" (EPA–600/8–82–026F, December 1982; PB–83–163337, $53.50 paper copy), and the final revised OAQPS Staff Paper, "Review of the National Ambient Air Quality Standards for Nitrogen Oxides: Assessment of Scientific and Technical Information" (EPA–450/5–82–002, August 1982; PB 83–132829, $13.00 paper copy and $4.00 microfiche), which are available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

The agenda for this meeting will include: (a) briefing on comments submitted by the public in response to the proposed rulemaking; (b) review of new studies published since CASAC's previous review of the scientific evidence for nitrogen dioxide in 1982.

The Committee will also discuss exposure assessment information needs for use in setting ambient standards.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Mr. Robert Flaak, Executive Secretary, or Ms. Carolyn Osborne, Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A–101F), U.S.. EPA, 401 M Street, S.W., Washington, D.C. 20460, (202) 382–2552 by close of business July 16, 1984.

Dated: June 22, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 84–17360 Filed 6–28–84; 8:45 am]
BILLING CODE 6560–50–M

[SAB–FRL–2618–7]

Science Advisory Board SAB, Executive Committee, Open Meeting—July 18–19, 1984

Under Pub. L. 92–463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board. The meeting will be held July 18–19 in room 1101 West Tower, EPA Headquarters, 401 M Street, SW, Washington, D.C. The meeting will begin at approximately 9:15 on July 18 and will adjourn at approximately noon of July 19.

The major purpose of the meeting is to enable the Executive Committee to review and decide whether to transmit to the Administrator several reports of SAB subcommittees. These include a draft report of the Subcommittee on Risk Assessment for Radionuclides which reviewed the scientific basis of EPA's proposed standards for airborne radionuclides; and a draft report of the Office of Research and Development's Research Centers' Program by the Subcommittee on Strategic and Long-Term Research. The Committee will also receive a briefing on the status of EPA activities in biotechnology in addition to planning future SAB review activities.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board, (202) 382–4126 before close of business July 11, 1984.

Dated: June 25, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 84–17379 Filed 6–28–84; 8:45 am]
BILLING CODE 6560–50–M

[SAB–FRL–2618–6]

Science Advisory Board Environmental Health Committee; Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Environmental Health Committee (EHC) of the Science Advisory Board will be held on July 24–25, 1984, in Conference Room 3906–3908, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 9:15 a.m. on July 24, 1984, and adjourn not later than 4:30 p.m. on July 25, 1984.

The principal purposes of the meeting will be first on July 24, 1984 (1) to update the EHC on a draft paper, prepared by EPA's Office of Toxic Substances, describing design options for a retrospective validation study of PMN health hazard assessments; (2) to review and comment on the scientific adequacy of a draft Asbestos Health Assessment Update prepared by the Office of Health and Environmental Assessment (OHEA) of EPA's Office of Research and Development (ORD). The HAD is dated February 1984 (EPA–600/8–84–003A); and (3) to discuss the EHC views regarding generic issues in the draft Health Assessment Documents (HADs) for vinylidene chloride, trichloroethylene, and perchloroethylene in line with earlier EHC reviews. Second, on July 25, 1984 (4) to reviews a jointly prepared OHEA-Office of Air Quality Planning and Standards staff paper on "Estimation of the Public Health Risk from Exposure to Gasoline Vapor via the Gasoline Marketing System;" (5) to receive briefings from the Ad-Hoc Subcommittees for New Business and for Improving the Quality of HAD reviews; and (6) to discuss upcoming issues and to receive brief reports and informational items of current interest to the Members.

For information on how to obtain copies of the draft HADs or the asbestos update please write the ORD Publications Office, Center for Environmental Research Information, U.S. EPA, Cincinnati, Ohio 45268 or call (513) 684–7562. For copies of the staff paper on gasoline vapor, please write the ORD Librarian (MD–35), Research Triangle Park, North Carolina 27711 or call (919) 541–2777.

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a paper, or wishing further information should contact Dr. Daniel Byrd, Executive Secretary to the EHC, or Mrs. Patti Howard, by telephone at (202) 382–

2552 or by mail at: Science Advisory Board (A–101), U.S. Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460 before c.o.b. July 16, 1984.

Dated: June 25, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84–17378 Filed 6–28–84; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2616–1]

Availability of Environmental Impact Statements Filed June 18 Through June 22, 1984, Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information (202) 382–0–5073 or (202) 382–5075.

EIS No. 840273, Final, FHW, OR, US 20/ Corvallis-Newport Highway, Reconstruction, Benton and Lincoln Counties, Due: July 30, 1984, Contact: Martin Convisser (202) 462–4357.

EIS No. 840274, Draft, FHW, AK, Raspberry Road Reconstruction, between Jewel Lake Road and Minnesota Drive, Due: August 13, 1984, Contact: Keith Morberg (907) 266–1502.

EIS No. 840275, Final, FHW, NY, NY–394 Upgrading, NY–474 to Prendergast Avenue, Chautauqua County, Due: July 30, 1984, Contact: V. E. Taylor (518) 472–3616.

EIS No. 840276, Draft, COE, MI, Great Lakes Connecting Channels and Harbors Study, Due: August 13, 1984, Contact: Jim Galloway (313) 226–7590.

EIS No. 840278, Draft, SFW, MT, Charles M. Russell National Wildlife Refuge, Due: August 13, 1984, Contact: Bruce Blanchard (202) 343–3891.

EIS No. 840279, Draft, EPA, REG, Benzene Emissions from Coke By-Product Recovery Plants, Due: August 13, 1984, Contact: Gilbert Wood (919) 541–5578.

EIS No. 840280, Final, EPA, WI, Geneva Lake Area WWT Facilities (Regional Management Plan) Construction/ Upgrading/Expansion, Grant, Walworth County, Due: July 30, 1984, Contact; William Spaulding (312) 886–0215.

EIS No. 840281, Draft, NOA, MXG, SATL, Coastal Migratory Pelagic Resources (Mackerel) Fishery Management Plant, Amendment, Due: August 13, 1984, Contact: Jack Brawner (813) 893–3141.

EIS No. 840282, DSuppl, BLM, NV, Lahontan Resource Area, Resource Management Plan, Churchill, Lyon, Mineral, Nye and Storey Counties, Due: August 29, 1984, Contact: Bruce Blanchard (202) 343–3891.

EIS No. 840283, Final, FHW, IL, Elgin North End Bridge Project, Construction, Big Timber Road at State Street (IL–31) to Summit Street at Dundee Avenue, (IL–58), Kane County, Due: July 30, 1984, Contact: Jay Miller (217) 492–4600.

EIS No. 840284, Draft, FHW, PA, Newtown Bypass Extension, Completion, Newtown Pike to I–95 Interchange, Bucks County, Due: August 14, 1984, Contact: Louis Papet (717) 782–2222.

Amended Notices:

EIS No. 840245, Draft, OSM, MT, Westmoreland Resources/Absaloka Mine Operation, Permit, Big Horn County, Due: August 3, 1984, Published FR 6/15/84—Review extended.

EIS No. 840265, Final, EPA, MO, Greene County Wastewater Treatment Facilities Plan, Approval, Grant, Due: July 23, 1984, Published FR 6/22/84—Incorrect State.

Dated: June 26, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84–17436 Filed 6–28–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Statement of Policy Regarding the Availability and Use of Financial and Other Information by Depositors and Other Creditors of Banks and Thrifts

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed issuance of statement of policy.

SUMMARY: The FDIC has a vital interest in minimizing the level of risk to the deposit insurance fund and in promoting the discipline of the marketplace to achieve this objective. Therefore, this statement of policy is being issued to notify depositors and creditors of insured banks and thrifts of information that is publicly available and to encourage the public to use that information when making decisions regarding the placement of their funds. The statement of policy also sets forth certain types of information which the FDIC believes would be relevant to these customers in their evaluation of bank or thrift condition and performance.

DATE: Comments on the proposal must be received by July 30, 1984.

ADDRESS: Comments regarding the proposed statement of policy should be submitted to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429 or delivered to Room 6108 at the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days. Comments may also be inspected in Room 6108 between 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Examination Specialists Robert F. Storch or Stephen G. Pfeifer, Planning and Program Development Branch, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, telephone 202/389–4761.

SUPPLEMENTARY INFORMATION: In our 1983 study of the current system of deposit insurance, *Deposit Insurance in a Changing Environment*, as well as in many other forums, the FDIC has endorsed the continuation of deregulation of the banking industry. Given this posture, the FDIC has implemented or recommended several approaches to expand the role of the marketplace in imposing discipline on the industry to limit destructive competition and excessive risk-taking. Motivation for expanded market discipline flows from depositors and other creditors being at risk in their dealings with insured banks and thrifts. To accomplish this, the FDIC has introduced modified payoff procedures and has limited the insurance coverage of brokered deposits. Additionally, the FDIC has prepared a legislative proposal that would allow us to exclude financial institutions and governmental agencies from deposit insurance coverage. These actions are designed to encourage funds flows to the fast majority of insured institutions that are prudently run instead of to the small percentage of institutions that are marginal and engage in destructive competition or abusive practices.

Critical to the process of increasing marketplace discipline is an informed public. In order to work toward this objective, the FDIC proposes to issue a statement of policy that encourages depositors and other creditors to periodically request information that would facilitate prudent judgments in evaluating the financial condition of depository institutions. The policy statement describes the minimum information that the FDIC believes relevant to the decisions of depositors and other creditors regarding the placement of their funds.

The text of the proposed statement of policy follows:

Statement of Policy Regarding the Availability and Use of Financial and Other Information by Depositors and Other Creditors of Banks and Thrifts

Deregulation of the financial services industry is removing deposit interest rate controls and other restrictions that previously constrained the actions of many institutions. Because of the greater freedom within which financial institutions can operate, the FDIC believes the supervisory efforts of the regulatory agencies must be supplemented by market discipline to promote sound bank and thrift management. Critical to the process of increasing marketplace discipline is an informed public. Market participants must seek adequate and relevant information if they are to make informed judgments concerning the lending or deposit of funds to or with a particular banking or thrift organization. A well-informed public is the best protection for well-run banks and thrifts and is essential to the maintenance of a strong, stable financial system in a deregulated environment. At issue, therefore, is the nature and extent of information needed by the marketplace to facilitate rational financial decisions.

Banks and thrifts report a considerable amount of financial and managerial information for regulatory and financial reporting purposes. Additionally, there is other financial information that a depositor or creditor can request and disclosure of which is not prohibited by federal law.

This information can be useful in evaluating a bank's or thrift's operations and financial condition and in assisting depositors and other creditors in their financial decision regarding the placement of their funds with a particular organization. Others may also have an interest in the continued viability of an institution when establishing customer relationships. The purpose of this policy statement is to inform depositors and creditors of some of the information that is relevant to their decisionmaking regarding the placement of their funds.

The credit evaluation process depends upon the availability of relevant information. Such information may be in the public domain or may be requested by the depositor or creditor. Depositors and other creditors should not feel inhibited from requesting relevant information regarding a bank's or thrift's condition and these institutions should not feel inhibited from supplying the appropriate information.

The FDIC is not prescribing a uniform document or format for depositors and other creditors to use when seeking information on the financial condition of banks and thrifts. Rather, depositors and other creditors should have the flexibility to determine the nature and method of dissemination of information appropriate for the bank's or thrift's size and operations. The adequacy of the information received from each institution will then be judged by its users. Nevertheless, the FDIC believes that it is appropriate for depositors and other creditors to periodically seek relevant information, including the information discussed below:

I. *Financial statements* that are available upon request from the FDIC, the Federal Reserve Board, or the Office of the Comptroller of the Currency, but which may also be voluntarily furnished by the bank or thrift, including:

A. *Reports of Condition and Income*, including all publicly available schedules and sections, filed with the bank's or thrift's federal regulatory agency. These financial statements are commonly referred to as Call Reports and are filed quarterly. The Report of Condition contains "balance sheet" data regarding the bank's assets, liabilities, and capital accounts as of the specified report date, as well as selected information concerning the volume of lending to certain related parties of the bank or thrift. The Report of Income presents "income statement" information, including the institution's revenue, expenses, net income, and other changes in capital that have occurred over a specified period of time ending with the report date. Additionally, the bank or thrift or its parent holding company may have prepared financial statements in connection with filings required by federal securities laws which are in many ways comparable with the Reports of Condition and Income. These reports would also include informative disclosures in footnotes to financial statements and generally contain a narrative discussion of the results of operations. Such financial statements, which accompanied with an independent opinion by a certified public accountant, may also prove to be of value.

B. The most recent *Uniform Bank Performance Report* for commercial banks and *Savings Bank Performance Report* for savings banks that have been furnished by the bank's or thrift's federal regulatory agency. These reports, commonly referred to as UBPRs, contain financial data in both dollar amount and ratio formats. The information, most of which has been generated from data appearing on the institution's Reports of Condition and Income, provides a comparison of the bank's or thrift's financial condition and performance over the past five years to that of other banks operating under similar conditions. The federal bank regulatory agencies have also prepared a User's Guide to the UBPR to aid in the understanding of these reports.

C. *A Country Exposure Information Report* which is available from a small number of banks with large dollar amounts of loans to foreign borrowers. This report is prepared quarterly and was first available as of March 31, 1984.

II. A factual discussion of the bank's or thrift's financial condition, including information regarding significant problems or weaknesses and such other material factors of which a prudent depositor or other creditor ought reasonably to be informed before placing funds in the institution.

A. The publicly available reports mentioned in Part I normally do not contain narrative discussions of the reported data. The discussion of the institution's financial condition, as suggested in this section of the policy statement, provides depositors and creditors with information on the salient aspects of this data.

General topics that would be of interest to depositors and creditors may include, but are not limited to, a factual discussion of capital adequacy, asset quality, earnings, liquidity, concentrations of risk, interest rate sensitivity, and foreign lending exposure. However, FDIC regulations prohibit disclosure of the content of Reports of Examination.

B. Information on any final formal *administrative enforcement action* or informal *supervisory action* that has been imposed by the institution's state or federal regulatory is also important to an informed depositor or creditor. An example of a formal administrative action is a cease-and-desist order issued against a bank or thrift due to the existence of unsafe or unsound practices or violations of laws and regulations. Such an order is normally issued when the continuance of the existing practices or violations would pose an excessive degree of financial risk exposure to the federal deposit insurance fund. An example of an informal supervisory action is the implementation of a memorandum of understanding between the institution and its state or federal regulator. These informal supervisory actions are entered into when the bank's or thrift's condition warrants more than normal supervisory concern but has not deteriorated to the point where a formal cease-and-desist order is necessary.

In either the formal or informal proceeding, the final document signed

by the bank or thrift sets forth certain provisions that are geared toward the remedy of the deficiencies.

(It should be noted that the great majority of banks and thrifts are managed in such a manner that the implementation of these types of actions is unnecessary.) Thus, whenever any final action has been imposed on a bank or thrift, whether it be a formal administrative enforcement action or an informal supervisory action, a description of the action is appropriate.

C. A discussion of financial transactions between the insured bank or thrift and its related parties is essential to a creditor's overall analysis of the institution's condition and performance.

Discussion of related party transactions should include information on outstanding extensions of credit to directors, principal shareholders, executive officers and affiliates. This information should include loans to these related parties that are carried on a nonaccrual basis, are past due 90 days or more, or have been charged off by the institution within the last 24 months.

Under existing federal bank regulations, institutions are required to make available to the public certain disclosures upon written request as of the end of the previous quarter. These regulations require disclosure of the names of any executive officers or principal shareholders whose outstanding extensions of credit, when combined with those of related interests, equal or exceed the lesser of $500,000 or five percent of the institution's capital stock and unimpaired surplus.

The federal regulatory agencies will neither approve nor disapprove the disclosures; nor will the agencies pass upon the accuracy or adequacy of the information requested or received. Bank and thrift depositors and other creditors are encouraged to request and review the aforementioned information from the banks and thrifts in which they intend to deposit or loan funds. In this regard, the information should be requested as frequently as circumstances dictate, but probably at least on an annual basis. The FDIC encourages depositors and other creditors to place their funds only in banks and thrifts that are willing to furnish the information necessary for a complete evaluation of their condition.

The FDIC recognizes that some depositors and other creditors may wish to request and some banks and thrifts may wish to provide additional data about the institution. This statement of policy encourages depositors and other creditors to seek whatever additional information may be considered relevant for their assessment of the financial condition of banks and thrifts (with the exception of confidential customer information, examination reports, and ratings by supervisory agencies).

In addition to the information needed for evaluating an institution's condition, the FDIC recommends that depositors and other creditors request information about policies bearing on other aspects of their actual or expected customer relationships with the bank or thrift. Depositors and other creditors should inquire about the bank's or thrift's policies on funds availability (*i.e.*, the availability for withdrawal of funds deposited by check) and on service charges (*i.e.*, the charges imposed on deposit accounts and the fees for other services offered by the institution).

By order of the Board of Directors, June 25, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84-17352 Filed 6-28-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 212-009848-012.

Title: U.S. Gulf—Brazil Pooling Agreement.

Parties:

Delta Steamship Lines, Inc.
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or additions to those provisions relating to participants and quotas, cargo subject to the pool, the calculation of the revenues from pooled cargo, pool accounting and settlement, cancellation, of the agreement, pool committee consultation, effectiveness and extension, initiation of the agreement and the delegation of authority; and restates the agreement in its entirety.

Agreement No. 212-009873-005.

Title: U.S. Pacific—Brazil Pooling Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Delta Steamship Lines, Inc.

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or additions to those provisions relating to participants cargo subject to the pool, the calculation of the revenues from pooled cargo, pool accounting and settlement, cancellation, of the agreement, pool committee, effectiveness and extension, initiation of the agreement and the delegation of authority; and restates the agreement in its entirety.

Agreement No. 212-010320-007.

Title: Brazil—U.S. Gulf Pooling Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Delta Steamship Lines, Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I. e I.
Transportacion Maritima Mexicana S.A.
Cylanco S.A.
A/S Ivarans Rederi

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or additions to those provisions relating to participants, cargo subject to the pool, minimum sailings and cargo capacity, the calculation of the revenues from pooled cargo, pool accounting and settlement, cancellation and withdrawal, pool committee consultation, effectiveness and extension, initiation of the agreement and the delegation of authority; and restates the agreement in its entirety.

Agreement No. 212-010330-003.

Title: Brazil-U.S. Pacific Pooling Agreement.

Parties:

Delta Steamship Lines, Inc.
Companhia de Navegacao Lloyd Brasileiro

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or

additions to those provisions relating to cargo subject to the pool, minimum sailings and cargo capacity, the calculation of revenues from pooled cargo, pool accounting and settlement, cancellation of the agreement, pool committee consultation, effectiveness and extension, initiation of the agreement and the delegation of authority; and restates the agreement in its entirety.

Agreement No. 212–010382–005.
Title: Argentina-U.S. Gulf Pooling Agreement.
Parties:
A. Bottacchi S.A. de Navegacion C.F.I.I.
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Delta Steamship Lines, Inc.
Empresas Lineas Maritimas Argentinas S.A.
Reefer Express Lines Pty., Ltd.
Transportacion Maritima Mexicana S.A.
Cylanco S.A.

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or additions to those provisions relating to participants, cargo subject to the pool, minimum sailings and cargo capacity, the calculation of revenues from pooled cargo, pool accounting and settlement, cancellation of the agreement, vessel operating and scheduling, successors, notification, pool committee, effectiveness and extension, initiation of the agreement, amendments and the delegation of authority; and restates the agreement in its entirety.

Agreement No. 212–010389–002.
Title: U.S. Gulf-Argentina Pooling Agreement.
Parties:
Delta Steamship Lines, Inc.
Empresas Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or additions to those provisions relating to participants, cargo subject to the pool, minimum sailings and cargo capacity, the calculation of revenues from pooled cargo, pool accounting and settlement, cancellation of the agreement, pool committee, effectiveness and extension, initiation of the agreement, amendments and the delegation of authority; and restates the agreement in its entirety.

By order of the Federal Maritime Commission.

Dated: June 26, 1984.
Bruce A. Dombrowski,
Assistant Secretary.
[FR Doc. 84–17426 Filed 6–28–84; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Henderson Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of the fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 20, 1984.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Henderson Financial Corporation,* Henderson, Kentucky; to become a bank holding company by acquiring 80 percent or more of the voting shares of Henderson County States Banks, Corydon, Kentucky.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Prairie Bancorporation, Inc.,* Walnut Grove, Minnesota; to become a bank holding company by acquiring 77.85 percent of the voting shares of Citizens States Bank of Walnut Grove, Walnut Grove, Minnesota.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 Sount Akard Street, Dallas, Texas 75222:

1. *Shreveport Banchares, Inc.,* Shreveport, Louisana; to become a bank holding company by acquiring 100 percent of the voting shares of Shreveport Bank & Trust Company, Shreveport, Louisiana.

Board of Governors of the Federal Reserve System, June 25, 1984
James McAfee,
Associate Secretary of the Boards.
[FR Doc. 84–17335 Filed 6–28–84; 8:45 am]
BILLING CODE 6210–01–M

Maryland National Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than July 20, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Maryland National Corporation*, Baltimore, Maryland; to engage through a national bank subsidiary, Maryland National Bank/Virginia, Fairfax County, Virginia, in deposit-taking, consumer lending, and other banking services. These activities would be conducted in Fairfax County, and surrounding area.

Board of Governors of the Federal Reserve System, June 25, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-17336 Filed 6-28-84; 8:45 a.m.]

BILLING CODE 6210-01-M

National Bankshares of LaJolla; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *National Bankshares of LaJolla*, LaJolla, California; to engage *de novo* through its subsidiary, National Bankshares Mortgage, Inc., San Diego, California, in mortgage banking activities including originations, servicing, and secondary marketing. These activities would be conducted in the state of California.

Board of Governors of the Federal Reserve System, June 25, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-17337 Filed 6-28-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management System, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve an existing information collection.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ethel Theis, Information Security Oversight Office (202-535-7251).

SUPPLEMENTARY INFORMATION:

a. *Purpose* The form serves as a contractual agreement between the U.S. Government and cleared employees and helps to prevent the disclosure of classified information to unauthorized persons.

b. *Annual reporting burden.* This is estimated as follows: Respondents and responses 5200, hours 433.

c. *Obtaining copies of proposal.* Requestors may obtain copies of the proposal from the Directives and Reports Management Branch (ATRAI), Room 3007, GS Building, Wahsington, DC 20405, telephone (202-566-0666).

Dated: June 22, 1984.

William W. Hiebert,

Acting Director, Information Management Division.

[FR Doc. 84-17404 Filed 6-28-84; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on June 22.

Public Health Service

Centers for Disease Control

Subject: Case Control Study of End Stage Renal Disease and Occupational Exposure—New
Respondents: Individuals
Subject: Laryngeal Cancer Incidence in Workers Exposed to Sulfuric Acid—New
Respondents: Individuals

Office of the Assistant Secretary for Health

Subject: Evaluation of the Data Provided for the National Vital Statistics Program (0937-0114)—Revision
Respondents: State Vital registration and statistics persons, State health officers, users of vital statistics data
Subject: Monthly Vital Statistics Report Forms (0937-0002; 0937-0007)—Extension/No Change
Respondents: State and local vital statistics officials
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Applications and Discontinuances for Aid to Families with Dependent Children (AFDC) and

Medicaid SSA–3800 (0960–0148)—Extension/No Change
Respondents: State and local governments
OMB Desk Officer: Milo Sunderhauf.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: June 22, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84–17291 Filed 6–28–84; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 84G–0218]

American Feed Manufacturers Association, Inc.; Selenium; filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the American Feed Manufacturers Association, Inc., has filed a petition proposing affirmation that selenium is generally recognized as safe (GRAS) when added to animal feeds as a nutritional supplement.

DATE: Comments by August 28, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV–221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5362.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 570.35 (21 CFR 570.35), notice is given that a petition (GRASP MF3891) has been filed by American Feed Manufacturers Association, Inc., 1701 North Fort Myer Dr., Arlington, VA 22209, proposing (1) affirmation that selenium (as sodium selenite or selenate) is GRAS when used in animal feeds as a nutritional supplement in accordance with current good manufacturing and feeding practices and (2) removal of the selenium food additive regulations at 21 CFR 573.920.

Any petition that meets the format requirements outlined in § 570.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as preliminary indication of suitability for affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Interested persons may, on or before August 28, 1984 review the petition and/or file comments (two copies, except that individuals may submit single copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 19, 1984

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84–17322 Filed 6–28–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 83A–0339]

Enforcement Action Under the New Drug Provisions of the Federal Food, Drug, and Cosmetic Act; Certain OTC Drug Products; Advisory Opinion; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending its advisory opinion announced in the November 18, 1983 **Federal Register**. This Action is necessary to end an exception to enforcement actions for certain over-the-counter (OTC) drug products containing caffeine in combination with phenylpropanolamine. The intended effect of this action is to ensure that the product combination, like the other products subject to the November 18, 1983 advisory opinion, is indeed no longer available for sale.

EFFECTIVE DATES: Effective on June 29, 1984 for amendment; effective on October 29, 1984 for the end of the exception to enforcement actions.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Center for Drugs and Biologics (HFN–364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION:

A Introduction

In the **Federal Register** of November 18, 1983 (48 FR 52513), FDA announced an advisory opinion about certain OTC drug products. The November 18 advisory opinion states that the agency is prepared to take immediate enforcement action under the new drug provisions of the Federal Food, Drug, and Cosmetic Act (the act) against certain OTC drug products to eliminate their widespread abuse and misuse. There are two basic groups of OTC drug products covered by the November 18 advisory opinion.

The first group consists of OTC drug products labeled as stimulants and containing any ingredients other than caffeine as the active ingredient. The second group consists of OTC drug products labeled for any purpose and containing as their sole active ingredient any of the following combinations of ingredients (including the salts of those ingredients): (1) Caffeine in combination with ephedrine or pseudoephedrine, (2) phenylpropanolamine and combination with ephedrine or pseudoephedrine, (3) phenylpropanolamine in combination with caffeine.

The November 18 advisory opinion also states that the agency is prepared to establish in court the new drug status of the OTC drug products referred to.

B. Background

The November 18 advisory opinion contains an exception to the announced immediate enforcement action for certain caffeine plus phenylpropanolamine combinations. The November 18 advisory opinion states that the agency would not commence enforcement action with respect to the sale of products meeting all of the following four factors: (1) The products contain caffeine and phenylpropanolamine as their sole active ingredients; (2) the products are

labeled solely as appetite suppressants, diet aids, or diet aid/stimulants; (3) the products were manufactured before November 18, 1983, or as part of a batch of products actually in process on November 18, 1983, provided that manufacturers or other holders of those drugs provide FDA sufficient information to allow it to determine the date of manufacture of such products encountered on the market; and (4) the products have never been labeled for any purposes other than as an appetite suppressant, diet aid, or diet aid/stimulant.

The November 18 advisory opinion also states that the agency would monitor the market for these excepted caffeine plus phenylpropanolamine combinations to determine whether to set a final date after which the sale of these products would no longer be allowed.

C. Establishment of Cut-off Date

The agency has monitored the market for the excepted caffeine plus phenylpropanolamine combinations and has determined that it is in the public interest to establish a final cut-off date after which the sale of these products would no longer be allowed. The agency will then initiate enforcement action against these products to ensure that they, like the others covered by the November 18 advisory opinion, are no longer available on the market.

In the November 18 advisory opinion the agency stated that any cut-off date that is set will extend at least 4 months after the announcement of such a date. Consistent with that statement, therefore, on October 29, 1984, the agency will be prepared to take immediate enforcement action against all OTC drug products labeled for any purpose and containing as their sole active ingredients, including their salts, the combination of caffeine and phenylpropanolamine.

D. Statement of Facts and Conclusions

This notice is an amendment to the advisory opinion announced by FDA in the **Federal Register** of November 18, 1983 (48 FR 52513). This notice is also an advisory opinion by the agency under 21 CFR 10.85. Any statement by the agency, in its Compliance Policy Guide or otherwise, that suggests in any way that enforecement actions will not be taken against products referred to in this notice is revoked to the extent that statement applies to such products.

The agency has concluded that, with respect to all products covered by this notice, substantial public interest considerations preclude continued acceptance of any action in alleged conformity with previously articulated agency policy (see 21 CFR 10.85(h)) beyond the cut-off day noted above.

The agency has considered whether there is a need to undertake notice and comment rulemaking to state its position on these drug products in the **Federal Register** and has concluded that no such requirement exists. This statement, which is arguably a revocation of a prior advisory opinion, is in accordance with FDA's regulations that do not require notice and comment rulemaking for publication of such revocation (see 21 CFR 10.85(g)). In addition, this statement of agency policy with respect to these drugs is not a substantive rule because it does not have, in and of itself, the force and effect of law. *Cf. Burroughs Wellcome Co.* v. *Schweiker*, 649 F.2d 221, 225 (4th Cir. 1981).

This statement is not a "declaration" that a drug is a new drug made after appropriate administrative proceedings. Rather, it is a statement of the official position of FDA and an announcement that the agency is prepared to initiate enforcement actions in which the government would, if called upon to do so, establish in court the new drug status of the products referred to.

E. Summary of Status of Drugs Subject to this Notice

1. This notice ends, effective October 29, 1984, the previously allowed exception as announced in the November 18 advisory opinion for the sale of certain caffeine plus phenylpropanolamine combination drug products discussed above under "B. Background."

2. This notice does not affect the status as announced in the November 18 advisory opinion of any of the other OTC drug products subject to that advisory opinion. That is, this notice reaffirms the November 18 advisory opinion for those other products.

3. In summary, as amended by this notice, the FDA advisory opinion on this subject is as follows: FDA is prepared to take enforcement action under the new drug provisions of the act against OTC drug products (a) labeled as stimulants and containing anything other than caffeine as the active ingredient and (b) labeled for any purpose and containing as their sole active ingredients any of the following combinations of ingredients (including the salts of those ingredients): Caffeine in combination with ephedrine or pseudoephedrine, phenylpropanolamine in combination with ephedrine or pseudoephedrine, and (after October 29, 1984) phenylpropanolamine in combination with caffeine.

Dated: June 22, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-17321 Filed 6-28-84; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services; Public Health Service.

ACTION: Notification of establishment of a new Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to establish a new Privacy Act system of records: 09–20–0162, "Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/CEH." We are also proposing routine uses for this system.

The Center for Environmental Health (CEH), Centers for Desease Control (CDC), will use this system of records to support studies of the health effects of human exposure to the herbicide Agent Orange and to other environmental factors associated with service in Vietnam, and to assess the risks for selected cancers among Vietnam veterans.

PHS invites interested persons to submit comments on the proposed routine uses on or before July 30, 1984.

DATE: PHS has sent a Report of New System to the Congress and to the Office of Management and Budget (OMB) on June 21, 1984. The system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESS: Comments should be addressed to the CDC Privacy Act Officer at the address listed below. Comments received will be available for inspection between 9 a.m. to 3 p.m. - Monday through Friday, in Room B–68, at that address.

FOR FURTHER INFORMATION CONTACT: Sara S. Owens, Privacy Act Officer, Centers for Disease Control, 1600 Clifton Road, NE, Room B–68, Atlanta, Georgia 30333 or call (404) 329–3121. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: CDC proposes to establish a new system of records: 09–20–0162 "Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers

Studies, HHS/CDC/CEH." This proposed system of records will comprise records generated in research projects supported by CDC in fulfilling the legislated responsibility for conducting epidemiologic studies of the health of Vietnam veterans. The research will include:

a. A cohort [1] study to determine long-term health effects of exposure to Agent Orange in Vietnam (Agent Orange Study).

b. A cohort study to determine the long-term health effects of military service in Vietnam (Vietnam Experience Study).

c. A case-control to determine the risks for selected cancers among Vietnam veterans (Seleacted Cancers Study).

Data from death certificates will also be assessed for possible relationship of the cause of death to herbicide exposure or Vietnam service status. Since the specific cohort or exposure status of the deceased veteran, as for all living veterans, will be known, analysis of mortality data will be related to that exposure or service status.

Data that will enable the study veterans to be selected and located will be provided by the Department of Defense. The Army and Joint Services Environmental Support Group will provide CDC with lists of names, social security numbers or military service numbers, and selected demographic data needed to locate the 43,000 study veterans meeting eligibility requirements for being included in the Agent Orange and Vietnam Experience Studies. Other Federal agencies (such as the Social Security Administration, Veterans Administration, Internal Revenue Service) will be used to supplement locating data furnished by the Defense Department because in many cases, this information, based on discharge data, is outdated. This coordination will be done so that the greatest number of eligible veterans can participate in the study and will better ensure that valid conclusions can be drawn from the study results. Surveillance, Epidemiology, and End Results Centers and the random digit dialing method will provide the cases and controls respectively for the Selected Cancers Study.

Such research will involve scientists on the staff of CDC and other researches working under contracts awarded by CDC. These contracts will include: (1) Locating and interviewing of veterans with varying exposure to Agent Orange and with service in Vietnam other countries; (2) comprehensive medical examinations of a subset of the veterans interviewed; and (3) a case-control study determining if men who served in Vietnam are at increased risk or developing selected cancers (specifically, lymphomas, soft tissue sarcomas, nasal and nasopharyngeal, and primary liver).

CDC will collect all data under an Assurance of Confidentiality authorized by Section 308(d) of the Public Health Service Act. The records in this system will be safeguarded in accordance with the requirements of this confidentiality statute. When data are entered into te computer, separate files will be set up for identifying information (i.e., names of veterans, social security number or military service number, etc.) and for epidemiologic data (i.e., questionnaire responses, medical information, pathology results, etc.). The epidemiologic file indexed only by code number will be the file used in data analysis. The epidemiologic file will be linked with individually identified data only in rare instances such as followup interviews. Both files will remain under CDC control, and only designated employees of CDC or its authorized contractors will have access to the individually identified information.

CDC will require that confidentiality and Privacy Act provisions appear in these data collection contracts. Such contracts will contain stipulations to assure confidentiality and physical security of the information, to specify the appropriate safeguards to be employed in the performance of the contract, and to assure that the contractor's employees abide by the stipulations.

Whenever CDC or its authorized contractors collect information under an Assurance of Confidentiality, the person supplying the data will be advised of the uses to be made of such information and that CDC or its authorized contractors will not otherwise release individually identifiable information without the advance, explicit approval of the person supplying the information.

The identifiable data will be given security priority to avoid inadvertent disclosure. Such information, in whatever form (medical records, questionnaire data, keypunch cards, magnetic tapes, computer printouts), will be clearly labeled and subject to security procedures that include password access, and storage in locked filing cabinets within a locked room with access limited only to authorized personnel. Employees will receive special orientation and supervision to assure their awareness of and compliance with security requirements. Such appropriate storage and security provisions will apply throughout these studies. By a specified date, which may be no later than the date of completion of the contract, the contractor shall return all study data to CDC or destroy all such data, as specified in the particular contract. The CDC Project Director, project officers and contract officers oversee compliance with these requirements.

CDC has examined a number of alternative means of accomplishing the program requirements, including the option to maintain no Privacy Act system of records. Considering the large number of subjects necessary for comprehensive assessment of the health concerns of Vietnam veterans and the need for followup interviews, CDC has concluded that it would be impossible to carry out the required activities without collecting individual indentifiers.

Name, social security number (supplied voluntarily), and military service number will be some of the indices used to retrieve records from the system. Other retrieval methods may be utilzied as individual research dictates.

The proposed routine use which permits disclosures of portions of records to other Federal agencies is intended only to aid in locating veterans because in many cases Defense Department information, based on discharge data, is outdated. This disclosure is compatible with the system's purposes in that the greater the number of eligible veterans who participate in the study, the greater the validity of the results.

The proposed routine use which permits disclosure of information to contractors to enable them to locate, interview, and medically examine individuals will ensure a more adequate assessment of the health of Vietnam veterans as compared with men of similar age.

Therefore, these routine uses will increase CDC's efficiency and effectiveness in carrying out the legislative mandate of Pub. L. 96–151 "Veterans Health Programs Extension and Impovements Act of 1979" (38 U.S.C. 219 note) and Pub. L. 97–72 "Veterans' Health Care, Training, and Small Business Loan Act of 1981" (38 U.S.C. 219 note), and are, therefore, considered compatible with the system's purposes.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish

[1] *cohort* is defined as a group of idividuals having a statistical factor in common in a demographic study (i.e., exposure to herbicides, geogreptic area of military service).

the notice after the system has become effective.

Dated: June 22, 1984.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-20-0162

SYSTEM NAME:

Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/CEH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Chronic Diseases Division, Center for Environmental Health, Centers for Disease Control, Chamblee Building 5–A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, Georgia 30344.

Data are located at contractor sites as data are collected. A list of contractor sites where individually identified data currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected male U.S. Army veterans at grade E–5 or below who enlisted or were drafted for one tour of duty in Vietnam or other countries during 1966–1972; males with birthdates 1929–1953 who have cases of selected cancers (specifically, lymphomas, soft tissue sarcomas, nasal and nasopharyngeal, and primary liver) diagnosed between July 1, 1984 to June 30, 1988; also included are control group participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying the participants (such as name, address, social security number, military service number, telephone number, date of birth), interview questionnaire responses, medical, laboratory, and psychological test result data, and records on biological specimens (e.g. blood, tumor, urine, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 96–151, "Veterans Health Programs Extension and Improvement Act of 1979" (38 U.S.C. 219 note); Pub. L. 97–72, "Veterans' Health Care, Training, and Small Business Loan Act of 1981" (38 U.S.C. 219 note); Public Health Service Act, Sections 304, 306, and 308(d), (42 U.S.C. 242b, 242k, and 242m(d)).

PURPOSE(S):

Records in this system are used to support studies to assess the health of Vietnam veterans relative to the health of other men of similar age. Specifically this information should enable the Centers for Disease Control (CDC) to:

1. Evaluate the relationship of documented exposure to herbicides used in Vietnam (primarily Agent Orange) to possible adverse health consequences. Such possible effects to be evaluated include dermatologic, neurological, psychological, immunological, carcinogenic, reproductive, gastrointestinal, and others.

2. Assess the health effects of service in Vietnam (including factors other than herbicide exposure) as opposed to the experiences of veterans who served in other countries.

3. Evaluate the risk of selected cancers among Vietnam veterans in contrast to men of similar age who did not serve in Vietnam.

Portions of records (i.e., name, social security number or military service number, date of birth) may be disclosed to the National Center for Health Statistics for obtaining a determination of vital status. Death certificates stating the cause of death will then be obtained from the appropriate Federal, State, or local agency to enable CDC to evaluate whether excess mortality is occurring among Vietnam veterans. Portions may also be disclosed to the Social Security Administration who will provide additional sources of information for locating veterans involved in the study.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed to Department of Health and Human Services contractors to locate veterans, cancer cases and controls, conduct interviews, perform medical examinations, analyze pathology specimens, and similar medical services, so that the research purposes for which the records are collected may be accomplished. The contractor must comply with the requirements of the Privacy Act with respect to such records.

Portions of records (i.e., name, social security number or military service number) may be disclosed to other Federal agencies such as the Veterans Administration and Internal Revenue Service only to obtain information to aid in locating veterans involved in the study. These disclosures will be made to update locating information provided by the Army and Joint Services Environmental Support Group.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfilm, computer tapes, disks, and punch cards.

RETRIEVABILITY:

By name, social security number or military service number (when supplied voluntarily or contained in existing records used in studies under this system), or other identifying number.

SAFEGUARDS:

Records in this system are collected under an Assurance of Confidentiality authorized by section 308(d) of the Public Health Service Act. To comply with this Assurance, the following special safeguards are necessary:

A. *Authorized users:* Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC or its contractors, as authorized by the Project Director to accomplish the stated purposes for which the data in this system has been collected.

B. *Physical safeguards:* Questionnaires and other source data are maintained in locked fire-resistant cabinets in locked rooms. When entered into the computer, individually identified information is kept separate from data used for analysis. Tape data are stored in fire-resistant safes.

C. *Technical safeguards:* Protection for computerized records includes card-access control equipment at the computer room, programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission. Names and others details necessary to identify individuals are not included in data files used for analysis. These files are indexed by code numbers which are linked with complete identifiers only if there is a specific need such as data verification or followup interviews. Keys which link identification numbers to names are stored separately with access limited to CDC project officers and authorized staff.

CDC and contractor employees who maintain records are instructed in specific rules of conduct to protect the security and confidentiality of records in accordance with section 308(d) of the Public Health Service Act. When individually identified records are being used in a room at a contractor site, admittance to the room is restricted to employees pledged to confidentiality under this statute. All data will be either

returned to CDC or destroyed, as specified by the contract.

Appropriate Privacy Act provisions and confidentiality provisions under section 308(d) of the Public Health Service Act are included in contracts. The CDC Project Director, contract officers, and project officers oversee compliance with these requirements.

The particular safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

CDC retains research records in accordance with the CDC Records Control Schedule Item 37, which allows the system manager to keep the records for 20 years unless needed for future reference. Because five-year mortality updates are planned until the study population expires, and health information from the questionnaire will be correlated with the mortality data, the computerized records to which questionnaire data will be converted may be kept as long as research needs dictate. Contractors will retain the records only as long as necessary to complete data collection and verify CDC's receipt of the data in usable form.

Records may be transferred to a Federal Records Center for storage when no longer needed for evaluation or analysis and will be retained there subject to statutory confidentiality requirements. Disposal methods include the paper recycling process, shredding hardcopy records, and erasing computer tapes and disks.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Agent Orange Projects, Chronic Diseases Division, Center for Environmental Health, Centers for Disease Control, Chamblee Building 5–A, Atlanta, Georgia 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself by contacting the System Manager at the address above. Persons who knowingly and willfully request or acquire a record pertaining to an individual under false pretenses are subject to a $5,000 fine for this criminal offense. Requesters in person must provide photo identification (such as driver's license) or other positive identification (i.e., place of birth, etc.) that would authenticate the identity of the individual making the request. Individuals who do not appear in person must submit a notarized request to verify their identity. A guardian who requests notification of, or access to, a mentally imcompetent or severely physically imparied person's record must provide a birth certificate (or notarized copy), court order, or other competent evidence of guardianship. An individual who requests notification of, or access to, a medical record shall at the time the request is made, designate in writing a responsible representative (who may be a physician, other health professional, or other responsible individual) who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

In addition, the following information must be provided when requesting notification: (1) Full name and social security or military service number; (2) nature of the study in which the requester participated.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individuals, Department of Defense (Army and Joint Services Environmental Support Group), Surveillance, Epidemiology, and End Results Centers (cancer registries). Records are derived from U.S. Army system of records: A0708.02aDAPC, "Official Military Personnel File."

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–17332 Filed 6–28–84; 8:45 am]
BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–84–1401; FR–2006]

Housing Development Grant Program

Correction

In FR Doc. 84–16471, beginning on page 25396, in the issue of Wednesday, June 20, 1984, make the following corrections:

1. On page 25396, in the third column, in the second line from the bottom, "to advanced" should read "to advance a particular neighborhood preservation purpose that cannot be advanced".

2. On page 25400, in the third column, the FR Doc. number should read "84–16471".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of the Supplement to the Draft Resource Management Plan/ Environmental Impact Statement for the Lahontan Resource Area, Nevada

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of the Supplement to the Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) for the Lahontan Resource Area, Carson City District, Nevada.

SUMMARY: The BLM Carson City District has prepared a supplement to the RMP/EIS for the Lahontan Resource Area in Neveda, pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and Section 202 of the Federal Land Policy and Management Act of 1976.

SUPPLEMENTARY INFORMATION: The Draft Lahontan RMP/EIS is a comprehensive land use planning document which establishes management actions and objectives for resource condition and use levels, the standards for monitoring and evaluating the plan's effectiveness, and the need for more detailed management plan(s) and support actions. It also is an environmental impact statement which analyzes the effects of implementing a multiple use resource management plan on 2.4 million acres of public land in the east half of the Carson City District in Nevada.

The Supplement to the Draft Lahontan RMP/EIS additionally documents consideration of designating right-of-way corridors and designing Soda Lake an Area of Critical Environmental Concern.

FOR FURTHER INFORMATION CONTACT: Tom Owen, District Manager, Attn.: RMP/EIS Team Leader, Carson City District Office, 1050 E. William St., Ste. 335, Carson City, NV 89701 (702) 882–1631.

Copies of the Supplement are available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, 18th and C Streets, Washington, D.C. 20240
Bureau of Land Management, Nevada State Office, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520, (702) 784–5448
Bureau of Land Management, Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada 89102, (702) 385–6403
Bureau of Land Management, Winnemucca District Office, 705, East 4th Street, Winnemucca, Nevada 89445, (702) 623–3676
Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, Nevada 89801
Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89801 (702) 289–4865
Bureau of Land Management, Carson City District Office, 1050 E. William Street, Carson City, Nevada 89701, (702) 635–5181
Bureau of Land Management, Battle Mountain District Office, North 2nd and Scott Streets, Battle Mountain, Nevada 89820, (702) 635–5181.

Also, copies are available for review at the following public libraries.

Carson City Library, 900 N. Roop St., Carson City, Nevada 89701
Churchill County Library, 553 South Maine Street, Fallon, Nevada 89406
Government Publications Dept., University of Nevada, Reno, Reno Library, Reno, Nevada 89557
Nevada State Library, Library Building, Carson City, Nevada 89710
Lyon County Library, Yerington, Nevada
University of Nevada, Reno, Getchall Library, Reno, Nevada 89507
University of Nevada, Las Vegas, James R. Dickinson Library, 4505 Maryland Parkway, Las Vegas, Nevada 89154
Mineral County Library, 1st and D Streets, Hawthorne, Nevada 89415
Nye County Library, Tonopah, Nevada 89049
Washoe County Library, 1301 South Center Street, Reno, Nevada 89505.

A copy of the Supplement will be sent to all individuals, agencies, and groups who have expressed interest in the Lahontan Resource Area planning process, and limited copies are available upon request to the District Manager at the above address.

Dates: Written comments concerning issues pertinent to the Lahontan Resource Area RMP/EIS will be accepted until August 29, 1984.

Dated: June 20, 1984.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 84-17088 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-HC-M

District Advisory Councils; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for district advisory councils.

SUMMARY: The purpose of this notice is to solicit public nominations to fill those positions for which terms expire this year on each of the Bureau of Land Management's 52 district advisory councils. Each council has three such positions to fill, except the California Desert District Advisory Council, which has five such positions to fill.

Each affected council comprises 10 members, except the California Desert District Advisory Council, which comprises 15 members. Under the staggered-term arrangement instituted by the Secretary of the Interior in 1982, the terms of five members on the California Desert District Advisory Council and the terms of three members on each of the remaining 51 councils will expire on December 31, 1984. Current council members may be reappointed or new members may be appointed. Appointments made by the Secretary pursuant to this call will assure continued representation of specific categories of interest on each council. The new terms will expire December 31, 1987.

To ensure council membership that is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas identified with each council position now up for appointment. Categories for specific councils will be announced through local news releases in the appropriate States and Districts and will include the following:

Elected General Purpose Government
Environmental Protection
Recreation
Renewable Resources (livestock, forestry, agriculture)
Non-Renewable Resources (mining, oil and gas, extractive industries)
Transportation/Rights-of-Way
Wildlife
Public-at-Large.

The purpose of the councils is to provide informed advice to the respective District Managers on the management of the public lands. members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Each council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on a district advisory council should contact the appropriate District Manager of the Bureau of Land Management to ascertain which categories of interest are to be represented. They should then provide the District Manager with the names, addresses, professions, and other biographic data of qualified nominees.

DATE: All nominations should be received by July 31, 1984.

ADDRESSES: The mailing address of each Bureau District Manager is as follows:

Alaska

Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska 99507
Fairbanks District Office, North Post of Fort Wainwright, P.O. Box 1150, Fairbanks, Alaska 99707

Arizona

Arizona Strip District Office, 196 East Tabernacle, St. George, Utah 84770
Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027
Safford District Office, 425 East 4th Street, Safford, Arizona 85546
Yuma District Office, 2450 Fourth Avenue, P.O. Box 5680, Yuma, Arizona 85364

California

Bakersfield District Office, 800 Truxton Avenue, Room 302, Bakersfield, California 93301
California Desert District Office, 1695 Spruce Street, Riverside, California 92507
Susanville District Office, 705 Hall Stret, P.O. Box 1090, Susanville, California 96130
Ukiah District Office, 555 Leslie Street, Ukiah, California 95482

Colorado

Canon City District Office, 3080 East Main Street, Canon City, Colorado 81212
Craig District Office, 455 Emerson Street, P.O. Box 248, Craig, Colorado 81625
Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81501
Montrose District Office, 2465 South Townsend, Montrose, Colorado 81401

Idaho

Boise District Office, 3948 Development Avenue, Boise, Idaho 83705 Burley District Office, Route 3, Box 1, Burley, Idaho 83318
Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814
Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401 Salmon District Office, P.O. Box 430, Salmon, Idaho 83467

Shoshone District Office, 400 West F Street, P.O. Box 2B, Shoshone, Idaho 83352

Montana

Butte District Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702
Dickinson District Office, 204 Sims Street, P.O. Box 1229, Dickinson, North Dakota 58601
Lewistown District Office, Airport Road, Lewistown, Montana 59457
Miles City District Office, West of Miles City, P.O. Box 940, Miles City, Montana 59301

Nevada

Battle Mountain District Office, P.O. Box 1420, Battle Mountain, Nevada 89820
Carson City District Office, 1050 East Williams Street, Suite 335, Carson City, Nevada 89701
Elko District Office, P.O. Box 831, Elko, Nevada 89801
Ely District Office, Star Route 5, Box 1, Ely Nevada 89301
Las Vegas District Office, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126
Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445

New Mexico

Albuquerque District Office, 3550 Pan American Freeway, N.E., P.O. Box 6770, Albuquerque, New Mexico 87194
Las Cruces District Office, 317 North Main, P.O. Box 1420, Las Cruces, New Mexico 88004
Roswell District Office, 1717 West Second Street, Featherstone Farms building, P.O. Box 1397, Roswell, New Mexico 88201

Oregon

Burns District Office, 74 South Alvord Street, Burns, Oregon 97720 Coos Bay District Office, 333 South 4th Street, Coos Bay, Oregon 97420
Eugene District Office, 1255 Pearl Street, P.O. Box 10226, Eugene, Oregon 97440
Lakeview District Office, 1000 South 9th, P.O. Box 151, Lakeview, Oregon 97630
Medford District Office, 3040 Biddle Road, Medford, Oregon 97501
Prineville District Office, 185 East 4th Street, P.O. Box 550, Prineville, Oregon 97754
Roseburg District Office, 777 N.W. Garden Valley Boulevard, Roseburg, Oregon 97470
Salem District Office, 1717 Fabry Road, S.E., P.O. Box 3227, Salem, Oregon 97302
Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202
Vale District Office, 100 East Oregon Street, P.O. Box 700, Vale, Oregon 97918

Utah

Cedar City District Office, 1579 North Main Street, P.O. Box 724, Cedar City, Utah 84720
Moab District Office, 125 West 2nd South, P.O. Box 970, Moab, Utah 84532
Richfield District Office, 150 East 900 North, Richfield, Utah 84701
Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119
Vernal District Office, 170 South 500 East, Vernal, Utah 84078

Wyoming

Casper District Office, 951 Ranch road, Casper, Wyoming 82601
Rawlins District Office, 1300 3rd Street, P.O. Box 670, Rawlins, Wyoming 82301
Rock Springs District Office, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901
Worland District Office, 1700 Robertson Avenue, P.O. Box 119, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: The respective District Managers.

Dated: June 12, 1984.

Robert F. Burford,

Director.

[FR Doc. 84-17259 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Alaska, National Wildlife Refuges in Alaska; Description of Boundaries; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice will correct an omission in the boundary description for the Koyukuk National Wildlife Refuge in the FR notice of February 24, 1983.

EFFECTIVE DATE: December 2, 1980.

FOR FURTHER INFORMATION CONTACT: William Mattice, Alaska Regional Office, at 907–786–3498.

Correction: Section 103(b) of the Alaska National Interest Lands Conservation Act required publication of legal descriptions of the boundaries of national wildlife refuge established by that Act. Such a description for the Koyukuk National Wildlife Refuge was published in the **Federal Register** February 24, 1983 (48 FR 7969–7975). The following paragraph was omitted from the description:

On page 7973, first column, insert a new third paragraph, reading: "Thence on an approximate forward bearing of S 35° E., approximately 5285 feet to the section corner of sections 5, 6, 31 and 32, Tps. 2 and 3 S., R. 16 E., Kateel River Meridian;"

Dated: June 26, 1984.

F. Eugene Hester,

Acting Director.

[FR Doc. 84-17314 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice is to remind Federal agencies, State and local governments, private organizations, and the public of the need to test the adequacy of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation,* published in the **Federal Register** on September 29, 1983. The *Standards and Guidelines* provide performance standards and technical advice about archeological and historic preservation activities and methods. Users and other interested parties are encouraged to test and evaluate the *Standards and Guidelines* and to submit written suggestions to the National Park Service about improvements.

DATE: Comments should be submitted by September 29, 1984.

ADDRESS: Comments should be submitted to the Chief, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, DC 20240 (202–343–9500).

FOR FURTHER INFORMATION CONTACT: Stephen M. Sheffield, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, DC 20240 (202–343–9500).

SUPPLEMENTARY INFORMATION: The Department of the Interior suggests that the *Standards and Guidelines* be used by:

(1) Federal, State and local agencies responsible for preparation of historic and archeological preservation plans;

(2) Agencies responsible for the review of preservation plans;

(3) Agencies involved in the identification, evaluation, registration, documentation and treatment of historic and archeological properties;

(4) Public and private agencies, organizations, and individuals acquiring, protecting, stabilizing, preserving, restoring, or reconstructing historic properties. (Comments on the *Secretary of the Interior's Standards and Guidelines for Rehabilitation* are not being sought because these have undergone extensive evaluation in recent years);

(5) Federal and State agencies for dissemination to prospective users, particularly local governments and preservation commissions;

(6) Agencies and organizations providing preservation information in response to requests from individuals involved with or interested in preservation;

(7) Agencies and organizations providing training in preservation activities;

(8) Those preparing preservation documents, including professional publications, technical manuals, regulations and procedures. (Such documents should reference the *Standards and Guidelines* and/or include them as supporting materials); and,

(9) agencies preparing environmental impact statements and environmental assessments in the preparation of such documents.

Early in fiscal year 1985 the National Park Service will thoroughly review the results of the first full year of use of the *Standards and Guidelines*, evaluate comments received and make any necessary modifications to the *Standards and Guidelines*.

Dated: June 21, 1984.

Mary Lou Grier,

Director, National Park Service.

[FR Doc. 84-17323 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-70-M

Intention To Renew Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 696; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Anacostia Marina, Inc., authorizing it to continue to provide marina services which include boat repair, wet and dry storage facilities and services for the public at Anacostia Park, Washington, D.C., for a period not to exceed fifteen (15) years from September 30, 1984.

"An assessment of the environmental impact of this proposed action has been made and it has been determined that it is not a major Federal action having significant impact on the quality of the human environment, and that no detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 is required. The environmental assessment and finding of no significant impact may be reviewed in the Office of the Superintendent, National Capital Parks-East, 1900 Anacostia Drive, S.E., Washington, D.C. 20020."

The foregoing concessioner is performing its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on September 30, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract. This provision, in effect, grants Anacostia Marina, Inc., the opportunity to meet the terms and conditions of any other proposal submitted in response to this Notice which the Secretary may consider better than the proposal submitted by Anacostia Marina, Inc. If Anacostia Marina, Inc., amends its proposal and the amended proposal is substantially equal to the better offer, then the proposed renewal of the contract will be negotiated with Anacostia Marina, Inc.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, National Capital Parks-East, 1900 Anacostia Drive, S.E., Washington, D.C. 20020, for information as to the requirements of the proposed contract.

Dated: June 21, 1984.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 84-17324 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-70-M

Gateway National Recreation Area; Advisory Commission Meeting

AGENCY: National Park Service—Gateway Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Gateway Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 14, 1984, commencing at 3 p.m.

ADDRESS: Gateway National Recreation Area, Sandy Hook Unit, Highlands, New Jersey 07732.

FOR FURTHER INFORMATION CONTACT: Robert W. McIntosh, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building No. 69, Floyd Bennett Field, Brooklyn, New York 11234, (212) 338-3578.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by Public Law 92-592, to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area. The agenda for the meeting will include: (1) Request to extend landfill permit at Fountain Avenue; (2) Overview of Sandy Hook Unit.

The meeting will be open to the public. The facility at which the meeting will be held is considered physically accessible. If interpretive services for the deaf or hearing impaired will be needed, they should be requested within five working days before the meeting. Facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first-served basis.

Any member of the public may file with the Commission a written statement concerning agenda items to be discussed. The statement should be addressed to the Commission, c/o Gateway National Recration Area, Buliding No. 69, Headquarters, Floyd Bennett Field, Brooklyn, New York 11234. Minutes of the meeting will be available for inspection four weeks after the meeting at Gateway National Recreation Area Headquarters Building in Brooklyn, New York.

Dated: June 21, 1984.

Robert W. McIntosh, Jr.,

Superintendent, Gateway National Recreation Area.

[FR Doc. 84-17415 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Lee Campbell (202) 275-7238. Comments regarding this information collection should be addressed to Lee Campbell, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: New
Bureau/Office: Office of Managing Director
Title of Form: Solicitation for Unique Services and Supplies
OMB Form No.: NA
Agency Form No.: NA
Frequency: On Occasion
Respondents: Business or Non-profit Institutions
No. of Respondents: 21

Total Burden Hrs: 105

James H. Bayne,

Secretary.

[FR Doc. 84-17414 Filed 6-28-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-204X)]

Burlington Northern Railroad Company—Abandonment and Discontinuance of Trackage Rights—Exemption

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt abandonments and discontinuances of service and trackage rights,*[1] for (1) the abandonment of its line of railroad between milepost 122.00, near Mertz and milepost 124.02, near Mulberry, a total distance of 2.02 miles in Crawford County, KS, and (2) the discontinuance of its trackage rights over a line of railroad owned by the Kansas City Southern Railway Company between BN milepost 124.02, near Mulberry and BN milepost 136.7, at Pittsburg, a total distance of 12.68 miles [2] in Crawford County, KS.

BN has certified (1) that no local or overhead traffic has moved over the lines for at least 2 years and (2) that no formal complaint filed by a user of rail service on the lines or a state or local governmental entity acting on behalf of a user, regarding cessation of service over the lines, either is pending with the Commission or has been decided in favor of a complainant within the 2-year period preceding this notice. The Public Service Commission (or equivalent agency) in Kansas has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment or discontinuance of trackage rights shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 366 I.C.C. 91 (1979).

The exemption will be effective on July 29, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by July 9, 1984, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed by July 19, 1984, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent BN's representative:

Douglas J. Bab, 176 East Fifth Street, St. Paul, MN 55101

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be used if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 20, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-17408 Filed 6-28-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-205X)]

Burlington Northern Railroad Company—Abandonment—In Okmulgee County, OK; Exemption

The Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments.* The line to be abandoned is between milepost 468.0 near Okmulgee, and milepost 470.9, near Okmulgee, a distance of 2.9 miles in Okmulgee County, OK.

BN has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, (2) that no formal complaint filed by a user or rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Oklahoma has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to the use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonmnent—Goshem.* 360 I.C.C. 91 (1979).

The exemption will be effective on July 29, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by July 9, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 19, 1984, with:

Office of the Secertary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representative:

Mr. Douglas J. Babb, 176 East Fifth Street, St Paul, MN 55101

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 20, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-17406 Filed 6-28-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-36 (Sub-20)]

Oregon Short Line Railroad Company and Union Pacific Railroad Company—Discontinuance of Trackage Rights—in Silver Bow County, MT; Findings

The Commission has issued a certificate authorizing Oregon Short Line Railroad Company and Union Pacific Railroad Company to discontinue trackage rights over a 7.55-mile rail line between Silver Bow (milepost 390.02), and Butte (milepost 397.57) in Silver Bow County, MT. The discontinuance certificate will become effective 30 days after this publication.

James H. Bayne,

Secretary.

[FR Doc. 84-17409 Filed 6-28-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-108)]

Seaboard System Railroad, Inc.—Abandonment—in DeSoto and Hardee Counties, FL; Findings

The Commission has issued a certificate authorizing the Seaboard System Railroad, Inc. to abandon its 21.54-mile rail line between milepost AX 892.00 near Wauchula and milepost AX 913.54 near Arcadia in DeSoto and Hardee Counties, FL. The abandonment certificate will become effective 30 days after this publication unless the

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[1] Service and trackage rights discontinuances were added to the exemption provisions of 49 CFR Part 1152 Subpart F by Ex Parte No. 274 (Sub-No. 8A), *Exemption of Out of Service Lines (Discontinuance of Service and Trackage Rights)* (not printed), served April 20, 1984. A petition for reconsideration of that decision was filed May 10, 1984, and is pending.

[2] BN incorrectly computed the distance to be 12.48 miles.

Commission also finds that (1) financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84–17410 Filed 6–28–84; 8:45 am]
BILLING CODE 7035–01–M

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: The Signal Companies, Inc., 11255 North Torrey Pines Road, La Jolla, CA 92037.

Wholly-owned subsidiaries which will participate in the operations and State of incorporation:

2. Subsidiaries and State of Incorporation:

Ampex Corporation, Post Office Box 190, Opelika, AL 36803–0190—Alabama

Neptune Water Meter Co., Highway Number 229, Tallassee, AL 36078—Alabama

1. Parent Corporation and Address of Principal Office: Wykstra Oil Company, 917 East Allegan Street, Martin, Michigan 49070.

2. Wholly owned subsidiary which will participate in the operations and State of incorporation: Dwar Oil Company, a Michigan corporation, 3910 South Division Avenue, Grand Rapids, Michigan 49508.

James H. Bayne,

Secretary.

[FR Doc. 84–17405 Filed 6–28–84; 8:45 am]
BILLING CODE 7035–01–M

[I.C.C. Order No. P–75]

Union Pacific Railroad Co.; Passenger Train Operation

June 27, 1984.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Seattle, Washington, and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks at Dunsmuir, California, are temporarily out of service because of a derailment. An alternate route is available via the Union Pacific Railroad Company between Bieber, and Sacramento, California.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided April 29, 1982, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), the Union Pacific Railroad Company (UP), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Bieber, California, and a connection with Southern Pacific Transportation Company (SP) at Sacramento, California.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 1:20 a.m., EDT, June 17, 1984.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., EDT, June 18, 1984, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company and upon National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., June 17, 1984.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 84–17411 Filed 6–28–84; 8:45 am]
BILLING CODE 7035–10–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Order No. 1060–84]

1984 Merger Guidelines

AGENCY: Attorney General Office, Justice.

ACTION: Notice.

SUMMARY: This notice announces the release of the Department's 1984 antitrust Merger Guidelines, replacing Guidelines issued by the Department on June 14, 1982 (published in the **Federal Register** June 30, 1982 (47 FR 28492)). The Guidelines have been revised to clarify the Department's enforcement policy. The Guidelines will be used by attorneys in the Antitrust Division in deciding whether particular mergers violate Section 7 of the Clayton Act or Section 1 of the Sherman Act. Publication of the Guidelines is intended to assist businesses in complying with the applicable antitrust laws.

DATE: Issued: June 14, 1984.

ADDRESS: 10th & Constitution Avenue, NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Charles F. Rule, Deputy Assistant Attorney General, U.S. Department of Justice, Antitrust Division, Room 3113, Washington, D.C. 20530, (202) 633–2411, or Deborah A. Garza, Special Assistant to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Room 3113, Washington, D.C. 20530, (202) 633–1157.

Dated: June 22, 1984.
William French Smith,
Attorney General.

U.S. DEPARTMENT OF JUSTICE

Statement Accompanying Release of Revised Merger Guidelines

June 14, 1984.

The U.S. Department of Justice ("Department") today issued revisions to its 1982 Merger Guidelines. The revisions reflect the Department's experience in applying the 1982 Guidelines during the past two years and, in addition, incorporate numerous suggestions made by various knowledgeable observers, both inside and outside the government. Although the revisions make some important refinements and clarifications, the Department believes that the 1982 Merger Guidelines provide a sound framework for applying the antitrust laws to mergers and do not require extensive modification.

During the 14 years following the original publication of the Merger Guidelines in 1968, antitrust enforcers and the courts made great strides in improving and refining the way they analyzed mergers. Over time, the Department's merger policy changed so much that there was little similarity between that policy and the policy described in 1968 Guidelines. The 1982 revisions eliminated the resulting confusion by accurately describing the Department's actual merger enforcement policy.

The 1982 Guidelines did not simply clarify the Department's merger policy, however; they also represented an important advance in merger analysis. The 1982 Guidelines recognized that most mergers do not threaten competition and that many are in fact procompetitive and benefit consumers. Moreover, the 1982 Guidelines reflected for the first time the important role that foreign competition plays in the Department's merger analysis. They thus provided a flexible analysis that proscribed only those mergers that—on the basis of sound economic and legal analysis—threaten competition. At the same time, the Guidelines set out clear standards enabling businesses to avoid antitrust problems when planning mergers.

The Department's experience in applying the Guidelines during the last two years has reaffirmed the soundness of their underlying principles. Nevertheless, the Department recognizes that unless its analysis is as dynamic and vital as the economy to which it is applied, that analysis may unnecessarily impede the efficiency of the economy, restrict the efforts of American businesses to compete internationally, and, thus, reduce the well-being of American consumers. Thus, over the past two year, the Department has continued to refine its merger analysis to incorporate new insights and to ensure the continued relevance of that analysis to a changing economic environment. The Department also has discovered that certain aspects of the 1982 Guidelines either are ambiguous or have been interpreted by observers in ways that are not fully consistent with the Department's actual policy. With today's revisions, the Department intends to refine further its merger analysis at the same time it clears up any misunderstanding about those aspects that remain unchanged.

Today's revisions principally address five key areas: (1) Market definition and measurement; (2) factors that may affect the significance of concentration and market share data in evaluating horizontal mergers; (3) the treatment of foreign competition; (4) the treatment of efficiencies; and (5) the treatment of failing divisions of healthy firms. Generally, the revisions are intended to correct any misperception that the Guidelines are a set of rigid mathematical formulas that ignore market realities and rely solely on a static view of the marketplace. The revisions also make a number of stylistic and technical changes. Many important points have been moved from footnotes to the text to emphasize their importance, and other footnotes have been deleted because they were redundant or potentially confusing. However, no change in policy should be inferred from the deletion of a footnote.

The following is an explanation of the revisions made in the five key areas listed above.

1. Market Definition and Measurement

Perhaps the single most important contribution of the 1982 Guidelines was the development of a clear, economically sound framework for defining markets within which to analyze mergers. Market definition has historically played a crucial role in merger analysis; however, before the 1982 Guidelines, markets often were defined largely on an *ad hoc* basis. The 1982 Guidelines developed a general framework for market definition that can be objectively applied to a myriad of factual circumstances.

The Guidelines define a market as a group of products and a geographic area such that a hypothetical firm that is the only present and future seller of those products in that area would possess market power—the power profitably to restrict output and to raise prices. A firm that is the only present seller of those products in that area would not be able to exercise market power, if its attempt to impose a small but significant and nontransitory price increase would cause buyers to switch to other products or to products in other areas or would induce other firms to begin selling the particular products. Firms that sell products to which consumers would switch and that would begin selling the particular products would prevent the exercise of market power and should be included in the market.

The Guidelines translate these principles of market power into a market-definition standard that has become known as the "five-percent test". Markets are delineated by postulating a "small but significant and nontransitory" price increase—generally an increase of five percent for one year—for each product of each merging firm at that firm's location and examining the likely responses of buyers, sellers of other products, and sellers in other areas. If these competitive responses would cause the price increase to be unprofitable, then the area and group of products are expanded to include additional products and areas until the price increase would be profitable to impose. At that point—when it would be profitable for a hypothetical firm that was the only seller of the products in that area to impose a "small but significant and nontransitory" increase in price—the group of products and the area are considered to be a market.

Many apparently have attributed an unwarranted rigidity to the "five-percent test." Today's revisions clarify that the "five-percent test" is not an inflexible standard that will be used regardless of the circumstances of a given case. Rather, it is an analytical tool with which to analyze traditional types of probative evidence, such as those listed in the Guidelines. In addition, although in most contexts it will be appropriate to use five percent as a "small but significant" increase in price, in other contexts using five percent may result in markets that are defined either too narrowly or too broadly for the purpose of evaluating the potential exercise of market power. Therefore, the Department may at times postulate a price increase that is much larger or smaller than five percent, depending on the nature of the industry involved. (See Guidelines Section 2.11)

The 1982 Guidelines did not define the "price" for which an increase would be postulated. Today's revisions clearly state that the Department will consider

the relevant price to be whatever is considered to be the price of the product at the stage of the industry being examined. For example, the relevant price at the retailing stage of an industry is generally the retail price. On the other hand, in certain transportation industries in which products are transported for a fee, the price is the price of the transportation services sold, or the tariff.

The Guidelines also clarify a number of other points relating to market definition:

—The Department generally will consider the relevant market to be the smallest group of products and geographic area that could be subjected to the exercise of market power. (See Guidelines Section 2.11)

—In defining markets the Department generally will use prevailing prices. However, likely future prices may be used instead of prevailing prices when changes in the prevailing price can be predicted with reasonable reliability. (See Guidelines Sections 2.12, 2.32)

—If all the necessary data were available, evidence of similarities or differences in price movements would be the best evidence that products are good substitutes for one another. However, similarities in price movements often occur for reasons that do not reflect substitutability. Therefore, the Department will deem relevant only those similarities in price movements that are not explainable by common or parallel changes in factors such as costs of common inputs, income, or other variables. (See Guidelines Section 2.11)

—The best base for measuring market shares often will depend on the availability of data. Assuming the relevant data are available, the Department generally will prefer to use dollar sales or shipments if branded or relatively differentiated products are involved and physical capacity, reserves, or dollar production if relatively homogeneous, undifferentiated products are involved. This rule-of-thumb reflects the fact that, if a product is relatively homogeneous and undiffereniated, the capacity to produce and distribute the product generally provides the best indication of a firm's likely supply response. On the other hand, if the relevant product is branded or differentiated, the firm's supply response will depend of factors other than capacity. For example, even if other perfume manufacturers raised their prices, a manufacturer of a different brand of perfume with a great deal of excess capacity may nevertheless be unable to utilize that capacity because it cannot sell the addition output of perfume. (See Guidelines Section 2.4)

—The period for determining whether production substitution by other firms is likely to occur in response to a "small but significant and nontransitory" increase in price has been changed from six months to one year to conform with the time period that is used to identify firms that are in the relevant geographic market. (See Guidelines Sections 2.2, 2.3)

2. Factors Affecting the Significants of Concentration and Market Share Data

Several revisions have been made in the Guidelines' discussion of horizontal mergers to clarify the degree to which factors other than simple concentration and market share data influence the Department's consideration of mergers. The 1982 Guidelines may have created the perception that they were a set of strict mathematical rules—that the Department collects historical data, plugs this data into a series of formulas, and then slavishly adheres to resulting answers without regard to qualitative factors that may affect the significants of the concentration and market share data. The following changes were made to correct any such misperception.

First, the discussion of the HHI thresholds has been modified to clarify that the Department will not challenge mergers solely on the basis of concentration and market share data without considering other relevant factors. The revisions make it clear that the Department will not challenge mergers with a post-merger HHI of less than 1000 points, except in extraordinary circumstances.

For mergers resulting in an HHI of between 1000 to 1800, the Department is unlikely to sue if the increase in the HHI is less than 100 points. The Department is likely to challenge mergers in this region that product an increase in the HHI of more than 100 points, unless the Department concludes on the basis of the post-merger HHI, the increase in the HHI, and the presence on absence of the factors discussed in Section 3.2, 3.3, 3.4, and 3.5 of the Guidelines that the merger is not likely substantially to lessen competition.

For mergers resulting in an HHI of more than 1800, the Department is unlikely to sue if the increase in the HHI is less than 50 points. The Department is likely to challenge mergers in this region that product an increase in the HHI of more than 50 points, unless the Department concludes, on the basis of the post-merger HHI, the increase in the HHI, and the presence or absence of the factors discussed in Section 3.2, 3.3, 3.4, and 3.5 that the merger is not likely substantially to lessen competition. However, if the increase in the HHI exceeds 100 and the post-merger HHI substantially exceeds 1800, only in extraordinary cases will such factors establish that the merger is not likely substantially to lessen competition. Despite this fact, the Department will never ignore other factors when they are relevant. (See Guidelines Section 3.11)

Second, a new section has been added that discusses several factors that will be taken into account in interpreting concentration and market share data. The new subsection indicates that the Department will consider a number of factors that may indicate that a firm's current market share either understates or overstates it future competitive significance. One such factor is a recent or ongoing change in market conditions. For example, if a new technology that it important to long-term competitive viability is not available ot a particular firm, the Department may conclude that the historical market share of that firm overstates its future competitive significance. The Department will consider the reasonably predictable effects of such recent or ongoing changes in market conditions in interpreting market concentration and market share data. (See Guidelines Section 3.2)

Another consideration is the financial condition of a merging firm or any firm in the relevant market, to the extent that the firm's financial condition reflects underlying structural weaknesses of the firm and is not explainable as a phenomenon of, for example, the business cycle. In such a case, the firm's chronic financial weakness may indicate that its current market share overstates its future competitive significance. The 1982 Guidelines indicated in footnote 54 that the Department would consider the financial condition of a firm to the extent it was relevant to the competitive analysis. The revisions explain in greater detail the circumstances under which the Department will consider the financial condition of a firm to be a reliable indicator of that firm's future competitive significant. (See Guidelines Section 3.22) It is important to distinguish consideration of a firm's financial condition under Section 3.22 from the Guidelines' treatment of failing firms and failing divisions, however. Those doctrines will continue to be interpreted very strictly.

A third consideration is factors that may affect the competitive importance of foreign firms. These factors are discussed below in connection with the

general discussion of foreign competition.

The revisions also add a new "other factor" to Section 3.4 relating to the ability of small or fringe firms to increase sales in response to a "small but significant and nontransitory" increase in price. (See Guidelines Section 3.43) The ability of fringe firms with excess capacity to expand output quickly and easily can substantially reduce the likelihood of collusion. Therefore, the Department is less likely to challenge a merger if small or fringe firms are currently able to expand significant their sales at incremental costs that are approximately equal to their incremental costs at current levels of output.

Finally, the section on ease of entry has been revised to clarify how the Department considers this factor. For example, the revisions recognize that "entry" may occur as firms outside the market enter or as fringe firms currently in the market significant expand their current capacity. (See Guidelines Section 3.3)

3. Treatment of Foreign Competition

One of the important advances of the 1982 Guidelines was their explicit recognition of foreign competition and world markets. The presence of foreign firms frequently makes it impossible for American firms to collude because any attempt to fix prices will attract increased imports. Although the 1982 Guidelines recognized the importance of foreign competition, they were somewhat unclear as to how imports and foreign capacity would actually be treated in specific circumstances.

Today's revisions clarify that, in general, the Guidelines' standards relating to the definition of markets and the calculation of market shares will apply equally to foreign and domestic firms. Moreover, no foreign firm will be excluded from the market solely because its sales in the United States are subject to import quotas. This is due to the fact that it is generally difficult to assess the effectiveness and longevity of a particular quota or to measure the likely offsetting supply response from firms in countries that are not subject to a quota. A quota that applies to only some countries and not others may have only a limited effect on the foreign competition that domestic firms face, because a country subject to a quota may divert its exports to a country that is not subject to the quota and that country in turn may divert an equivalent quantity of the product to the United States. Given the limitations on available data, the problems associated with trying to quantify the effects of such trade restraints often are insuperable.

To the extent permitted by available data, market shares generally will be assigned to foreign firms in the same way they are assigned to domestic firms. When dollar sales or shipments are used to measure the shares of domestic firms, the market shares of foreign firms will be measured using dollar sales in, or shipments to, the relevant market. If physical capacity, reserves, or dollar production is used for domestic firms, the market shares of foreign firms will be measured in terms of the capacity, reserves, or production that is likely to be devoted to the relevant United States market in response to a "small but significant and nontransitory" increase in price. If a quota would prevent a foreign competitor from increasing the amount of its shipments to the United States in response to such a price increase, the market shares assigned to the foreign competitor will not exceed the amount of imports permitted to be shipped to the United States under the quota. Although shares ordinarily will be assigned on a firm-by-firm basis, a single market share may be assigned to a country or to a group of countries if firms in the country or group of countries act in coordination, or if necessitated by the lack of relevant data. (See Guidelines Section 2.4)

Because of limitations on data, market shares of foreign firms may inaccurately reflect the firms' competitive significance. As noted above, foreign firms may be included in the market even though their U.S. imports are subject to quotas. In such cases, as well as others, the resulting market shares may overstate the competitive significance of the firms. Conversely, the Department may use shipment data because it may be impossible to measure foreign capacity that would be devoted to the United States in response to a "small but significant and nontransitory" increase in price. In such cases, the foreign firm's market share may understate its competitive significance. In general then, the Department will consider, where appropriate, qualitative evidence relating to the competitive significance of foreign firms in interpreting market share and concentration data. (See Guidelines Section 3.23)

4. Efficiencies

One of the important advances of the 1982 Guidelines was the increased freedom they gave to American industries to enhance efficiency through mergers. Implicit throughout the Guidelines is the recognition that the efficiency-enhancing potential of mergers can increase the competitiveness of firms and result in lower prices to consumers.

The language of the 1982 Guidelines, however, had a restrictive, somewhat misleading tone and indicated that the Department would explicitly consider efficiency claims only in "extraordinary cases." In practice, the Department never ignores efficiency claims. Rather, as the revisions now make clear, the Department considers and gives appropriate weight to efficiency claims in all cases in which they are established by clear and convincing evidence. In addition, the revisions clarify that efficiencies do not constitute a defense to an otherwise anticompetitive merger but are one of many factors that will be considered by the Department in determining whether to challenge a merger.

The revisions are intended not only to correct any misimpressions as to when the Deparatment will consider efficiencies but also to provide guidance as to how efficiencies will be evaluated. The Guidelines indicate that the Department will consider various types of efficiencies including economies of scale, better integration of production facilities, plant specialization, and lower transportation costs. The Deparatment also will consider general selling, administrative and overhead expenses; however, as a practical matter, these types of efficiencies may be difficult to demonstrate. In addition, the department will reject claimed efficiencies if equivalent or comparable savings can reasonably be achieved by the parties by other means. Moreover, the greater the competitive concerns that the merger raises under the other standards of Section 3 of the Guidelines, the greater will be the level of expected efficiencies that the parties must establish. (See Guidelines Section 3.5)

5. Failing Divisions of Healthy Firms

The dynamic nature of our economy underscores the necessity of a merger policy that facilitates the ability of firms to respond to structural changes in the economy. The Department has considered several suggestions that the Guidelines should contain a declining industries defense or that the failing firm defense should be relaxed. However, the Department has concluded that, as revised, the basic framework of the Guidelines provides firms with adequate leeway for any needed restructuring. For example, the Department will consider the financial condition of firms in evaluating the competitive significance of their market shares. (See Guidelines Section 3.22) In addition, if the

acquisitions of a failing firm significantly increases efficiency, that fact will be considered. (See Guidelines Section 3.5)

Although the Department did not relax the failing firm defense or create a declining industries defense, the Department did conclude that it was appropriate to clarify the Guidelines' analysis of mergers involving a "failing division" of an otherwise healthy firm. The 1982 Guidelines stated only that although the standards applicable to failing firms are more difficult to apply to an unincorporated part of a larger parent firm, the Department would recognize the defense "in appropriate cases of that type." The revisions clarify that, in general, a division will be considered to be "failing" only if it would be sold or liquidated in the near future and if there is no competitively preferable purchaser available. (See Guidelines Section 5.2)

U.S. DEPARTMENT OF JUSTICE

Merger Guidelines

Dated: As of June 14, 1984.

1. Purpose and and Underlying Policy Assumptions
2. Market Definition and Measurement
  2.1 Product Market Definition
  2.2 Identification of Firms that Produce the Relevant Product
  2.3 Geographic Market Definition
  2.4 Calculating Market Shares
3. Horizontal Mergers
  3.1 Concentration and Market Shares
  3.2 Factors Affecting the Significance of Market Shares and Concentration
  3.3 Ease of Entry
  3.4 Other Factors
  3.5 Efficiencies
4. Horizontal Effect From Non-Horizontal Mergers
  4.1 Elimination of Specific Potential Entrants
  4.2 Competitive Problems from Vertical Mergers
5. Defenses
  5.1 Failing Firm
  5.2 Failing Division

1. Purpose and Underlying Policy Assumptions

These Guidelines state in outline form the present enforcement policy of the U.S. Department of Justice ("Department") concerning acquisition and mergers ("mergers") subject to section 7 of the Clayton Act[1] or to section 1 of the Sherman Act.[2] They describe the general principles and specific standards normally used by the Department in analyzing mergers.[3] By stating its policy as simply and clearly as possible, the Department hopes to reduce the uncertainty associated with enforcement of the antitrust laws in this area.

Although the Guidelines should improve the predictability of the Department's merger enforcement policy, it is not possible to remove the exercise of judgment from the evaluation of mergers under the antitrust laws. Because the specific standards set forth in the Guidelines must be applied to a broad range of possible factual circumstances, strict application of those standards may provide misleading answers to the economic questions raised under the antitrust laws. Moreover, the picture of competitive conditions that develops from historical evidence may provide an incomplete answer to the forward-looking inquiry of the Guidelines. Therefore, the Department will apply the standards of the Guidelines reasonably and flexibly to the particular facts and circumstances of each proposed merger.

The Guidelines are designed primarily to indicate when the Department is likely to challenge mergers, not how it will conduct the litigation of cases that it decides to bring. Although relevant in the latter context, the factors contemplated in the standards do not exhaust the range of evidence that the Department may introduce in court.[4]

The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance "market power" or to facilitate its exercise. A sole seller (a "monopolist") of a product with no good substitutes can maintain a selling price that is above the level that would prevail if the market were competitive. Where only a few firms account for most of the sales of a product, those firms can in some circumstances either explicitly or implicitly coordinate their actions in order to approximate the performance of a monopolist. This ability of one or more firms profitably to maintain prices above competitive levels for a significant period of time is termed "market power." Sellers with market power also may eliminate rivalry on variables other than price. In either case, the result is a transfer of wealth from buyers to sellers and a misallocation of resources.

"Market power" also encompasses the ability of a single buyer or group of buyers to depress the price paid for a product to a level that is below the competitive price. The exercise of market power by buyers has wealth transfer and resource misallocation effects analogous to those associated with the exercise of market power by sellers.

Although they sometimes harm competition, mergers generally play an important role in a free enterprise economy. They can penalize ineffective management and facilitate the efficient flow of investment capital and the redeployment of existing productive assets. While challenging competitively harmful mergers, the Department seeks to avoid unnecessary interference with that larger universe of mergers that are either competitively beneficial or neutral. In attempting to mediate between these dual concerns, however, the Guidelines reflect the congressional intent that merger enforcement should interdict competitive problems in their incipiency.

2. Market Definition and Measurement

2.0 Using the standards stated below, the Department will define and measure the market for each product or service (hereinafter "product") of each of the merging firms. The standards in the Guidelines are designed to ensure that the Department analyzes the likely competitive impact of a merger within economically meaningful markets—i.e., markets that could be subject to the exercise of market power. Accordingly, for each product of each merging firm, the Department seeks to define a market in which firms could effectively exercise market power if they were able to coordinate their actions. Formally, a market is defined as a product or group of products and a geographic area in which it is sold such that a hypothetical, profit-maximizing firm, not subject to price regulation, that was the only present and future seller of those products in that area would impose a "small but significant and nontransitory" increase in price above prevailing or likely future levels. The group of products and geographic area that comprise a market will be referred to respectively as the "product market" and the "geographic market."

In determining whether one or more firms would be in a position to exercise market power, it is necessary to evaluate both the probable demand responses of consumers and the

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[1] 15 U.S.C. 18 (1982). Mergers subject to section 7 are prohibited if their effect "may be substantially to lessen competition, or to tend to create a monopoly."

[2] 15 U.S.C. 1 (1982). Mergers subject to section 1 are prohibited if they constitute a "contract, combination . . . , or conspiracy in restraint of trade."

[3] They *update the* Guidelines issued by the Department in 1982. The Department may from time to time revise the Merger Guidelines as necessary to reflect any significant changes in enforcement policy or to clarify aspects of existing policy.

[4] Parties seeking more specific advance guidance concerning the Department's enforcement intentions with respect to any particular merger should consider using the Business Review Procedure. 28 CFR 50.6.

probable supply responses of other firms. A price increase could be made unprofitable by any of four types of demand or supply responses: (1) Consumers switching to other products; (2) consumers switching to the same product produced by firms in other areas; (3) producers of other products switching existing facilities to the production of the product; or (4) producers entering into the production of the product by substantially modifying existing facilities or by constructing new facilities. Each type of response is considered under the Guidelines.

In determining whether any of these responses are probable, the department usually must rely on historical market information as the best, and sometimes the only, indicator of how the market will function in the future. It is important to note, however, that the Guidelines are fundamentaly concerned with probable future demand or supply responses.

Sections 2.1 through 2.4 described how product and geographic markets will be defined under these Guidelines and how market shares will be calculated.

2.1 Product Market Definition

2.11 General Approach

The Department will first determine the relevant product market with respect to each of the products of each of the merging firms. In general, the Department will include in the product market a group of products such that a hypothetical firm that was the only present and future seller of those products ("monopolist") could profitably impose a "small but significant and nontransitory" increase in price. That is, assuming that buyers could respond to an increase in price for a tentatively identified product group only by shifting to other products, what would happen? If readily available alternatives were, in the aggregate, sufficiently attractive to enough buyers, an attempt to raise price would not prove profitable, and the tentatively identified product group would prove to be too narrow.

Specifically, the Department will begin with each product (narrowly defined) produced or sold by each merging firm and ask what would happen if a hypothetical monopolist of that product imposed a "small but significant and nontransitory" increase in price.[5] If the price increase would cause so many buyers to shift to other products that a hypothetical monopolist would not find it profitable to impose such an increase in price, then the Department will add to the product group the product that is the next-best substitute for the merging firm's product and ask the same question again. This process will continue until a group of products is identified for which a hypothetical monopolist could profitably impose a "small but significant and nontransitory" increase in price. The Department generally will consider the relevant product market to be the smallest group of products that satisfies this test.

In the above analysis, the Department will use prevailing prices of the products of the merging firms and possible substitutes for such products. However, the Department may use likely future prices when changes in the prevailing prices can be predicted with reasonable reliability. Changes in price may be predicted on the basis of, for example, expected changes in costs or demand caused by changes in environmental regulations or expected changes in regulations that directly affect price.

In general, the price for which an increase will be postulated will be whatever is consider to be the price of the product at the stage of the industry being examined.[6] In attempting to determine objectively the effect of a "small but significant and nontransitory" increase in price, the Department in most contexts will use a price increase of five percent lasting one year. However, what constitutes a "small but significant and nontransitory" increase in price will depend on the nature of the industry, and the Department at times may use a price increase that is larger or smaller than five percent.[7] For the purposes of its analysis, the Department will assume that the buyers and sellers immediately become aware of the price increase.

2.12 Relevant Evidence

Although direct evidence of the likely effect of a future price increase may sometimes be available, it usually will be necessary for the Department to infer the likely effects of a price increase from various types of reliable, circumstantial evidence. The postulated "small but significant and nontransitory" price increase provides an objective standard by which to analyze the available evidence. Thus, in evaluating product substitutability, the Department will consider all relevant evidence but will give particular weight to the following factors:

(1) Evidence of buyers' perceptions that the products are or are not substitutes, particularly if those buyers have actually considered shifting purchases between the products in response to changes in relative price or other competitive variables;

(2) Differences in the price movements of the products or similarities in price movements over a period of years that are not explainable by common or parallel changes in factors such as costs of inputs, income, or other variables;

(3) Similarities or differences between the products in customary usage, design, physical composition, and other technical characteristics; and

(4) Evidence of sellers' perceptions that the products are or are not substitutes, particularly if business decisions have been based on those perceptions.

2.13 Price Discrimination

The analysis of product market definition to this point has assumed that price discrimination—charging different buyers different prices for products having the same cost, for example—would not be possible after the merger. Existing buyers sometimes will differ significantly in their assessment of the adequacy of a particular substitute and the ease with which they could substitute it for the product of the merging firm. Even though a general increase in price might cause such significant substitution that it would not be profitable, sellers who can price discriminate could raise price only to groups of buyers who cannot easily substitute away.[8] If such price discrimination is possible, the Department will consider defining additional, narrower relevant product markets consisting of particular uses of the product for which a hypothetical monopolist could profitably impose a "small but significant and nontransitory" increase in price.

2.2 Identification of Firms that Produce the Relevant Product

In most cases, the Department's evaluation of a merger will focus primarily on firms that currently produce and sell the relevant product. In

[5] Although discussed separately, product market definition and geographic market definition are interrelated. In particular, the extent to which buyers of a particular product would shift to other products in the event of a "small but significant and nontransitory" increase in price must be evaluated in the context of the relevant geographic market.

[6] For example, in a merger between retailers, the relevant price would be the retail price of a product to consumers. In the case of a merger among oil pipelines, the relevant price would be the tariff—the price of the transportation service.

[7] For example, a larger increase may be appropriate if the "price" to be increased is a tariff or commission that constitutes a small fraction of the price of the product being transported or sold.

[8] Price discrimination requires that sellers be able to identify those buyers and that other buyers be unable profitably to purchase and resell to them.

addition, the Department may include other firms in the market if their inclusion would more accurately reflect probable supply responses. The following are examples of circumstances in which such additional firms would be included in the market.

2.21 Production Substitution

The same productive and distributive facilities can sometimes be used to produce and sell two or more products that buyers do not regard as good substitutes. Production substitution refers to the shift by a firm in the use of facilities from producing and selling one product to producing and selling another. Depending upon the cost and speed of that shift, production substitution may allow firms that do not currently produce the relevant product to respond effectively to an increase in the price of that product.[9]

If a firm has existing productive and distributive facilities that could easily and economically be used to produce and sell the relevant product within one year in response to a "small but significant and nontransitory" increase in price, the Department will include that firm in the market.[10] In this context, a "small but significant and nontransitory" increase in price will be determined in the same way in which it is determined in product market definition. In many cases, a firm that could readily convert its facilities from the production of one product to another would have significant difficulty distributing or marketing the new product or for some other reason would find the substitution unprofitable. Such firms will not be included in the market. The competitive significance of such firms, as well as those that will not be included in the market because they must construct significant new productive and distributive facilities, will be considered in evaluating entry conditions generally. See Section 3.3 (Ease of Entry).

[9] Under other analytical approaches, production substitution sometimes has been reflected in the description of the product market. For example, the product market for stamped metal products such as automobile hub caps might be described as "light metal stamping," a production process rather than a product. The Department believes that the approach described in the text provides a more clearly focused method of incorporating this factor in merger analysis. If production substitution among a group pf products is nearly universal among the firms selling one or more of those products, however, the Department may use an aggregate description of those markets as a matter of convenience.

[10] The amount of sales or capacity to be included in the market is a separate question discussed in Section 2.4, below.

2.22 Durable Products

Some long-lived products may continue to exert competitive influence after the time of original sale. If, under the standards stated in Section 2.1, recycled or reconditioned products represent good substitutes for new products, the Department will include in the market firms that recycle or recondition those products.

2.23 Internal Consumption

Captive production and consumption of the relevant product by vertically integrated firms are part of the overall market supply and demand. Such firms may respond to an increase in the price of the relevant product in either of two ways. They may begin selling the relevant product, or alternatively, they may continue to consume all of their production but increase their production of both the relevant product and products in which the relevant product is embodied. Either kind of supply response could frustrate collusion by firms currently selling the relevant product. If a firm would be likely to respond either way to a "small but significant and nontransitory" increase in price, the Department will include that firm in the market. In this context, a "small but significant and nontransitory" increase in price will be determined in the same way in which it is determined in product market definition.

2.3 Geographic Market Definition

2.31 General Approach

For each product market of each merging firm, the Department will determine the geographic market or markets in which that firm sells. The purpose of geographic market definition is to establish a geographic boundary that roughly separates firms that are important factors in the competitive analysis of a merger from those that are not. Depending on the nature of the product and the competitive circumstances, the geographic market may be as small as part of a city or as large as the entire world. Also, a single firm may operate in a number of economically discrete geographic markets.

In general, the Department seeks to identify a geographic area such that a hypothetical firm that was the only present or future producer *or seller* of the relevant product in that area could profitably impose a "small but significant and nontransitory" increase in price. That is, assuming that buyers could respond to a price increase within a tentatively identified area only by shifting to firms located outside the area, what would happen? If firms located elsewhere readily could provide the relevant product to the hypothetical firm's buyers in sufficient quantity at a comparable price, an attempt to raise price would not prove profitable, and the tentatively identified geographic area would prove to be too narrow.

In defining the geographic markets or market affected by a merger, the Department will begin with the location of each merging firm (or each plant of a multiplant firm) and ask what would happen if a hypothetical monopolist of the relevant product at that point imposed a "small but significant and nontransitory" increase in price. If this increase in price would cause so many buyers to shift to products produced in other areas that a hypothetical monopolist producing or selling the relevant product at the merging firm's location would not find it profitable to impose such an increase in price, then the Department will add the location from which production is next-best substitute for production at the merging firm's location and ask the same question again. This process will be repeated until the Department identifies an area in which a hypothetical monopolist could profitably impose a "small but significant and nontransitory" increase in price. The "smallest market" principal will be applied as it is in product market definition. Both the price in which an increase will be postulated and what constitutes a "small but significant and nontransitory" increase in price will be determined in the same way in which it is determined in product market definition.

2.23 Relevant Evidence

Although direct evidence of the likely effect of a future price increase may sometimes be available, it usually will be necessary for the Department to infer the likely effects of a price increase from various types of reliable, circumstantial evidence. The postulated "small but significant and nontransitory" increase in price provides an objective standard by which to analyze the available evidence. Thus, in evaluating geographic substitutability, the Department will consider all relevant evidence but will give particular weight to the following factors:

(1) The shipment patterns of the merging firm and of those firms with which it actually competes for sales;

(2) Evidence of buyers having actually considered shifting their purchases among sellers at different geographic locations, especially if the shifts

corresponded to changes in relative price or other competitive variables;

(3) Differences in the price movements of the relevant product or similarities in price movements over a period of years that are not explainable by common or parallel changes in factors such as the cost of inputs, income, or other variables in different geographic areas;

(4) Transportation costs;

(5) Costs of local distribution; and

(6) Excess capacity of firms outside the location of the merging firm.

2.33 Price Discrimination

The analysis of geographic market definition to this point has assumed that geographic price discrimination—charging different prices net of transportation costs for the same product to buyers in different locations, for example—would not be possible after the merger. As in the case of product market definition, however, where price discrimination is possible,[11] the Department will consider defining additional, narrower geographic markets consisting of particular locations in which a hypothetical monopolist could profitably impose a "small but significant and nontransitory" increase in price.

2.34 Foreign Competition

In general, the foregoing standards will govern market definition, whether domestic or international. Although voluntary or involuntary quotas may pervent foreign competitors from increasing their imports into the United States in response to a domestic price increase, the Department will not exclude foreign competitors from the relevant market solely on the basis of the quotas. This is primarily because it frequently is difficult to determine and measure the effectiveness and longevity of a particular quota or any offsetting supply response from firms in countries not subject to the quota. The Department will consider the effects of a quota as a separate factor in interpreting the significance of market shares and market concentration. See Section 3.23 (Special Factors Affecting Foreign Firms).

2.4 Calculating Market Shares

The Department normally will include in the market the total sales of capacity of all domestic firms (or plants) that are identified as being in the market under Sections 2.2 and 2.3. Market shares can be expressed either in dollar terms through measurement of sales, shipments, or production, or in physical terms through measurement of sales, shipments, production, capacity, or reserves. As a practical matter, the availability of data often will determine the measurement basis. When the availability of data allows a choice, dollar sales or shipments generally will be used if branded or relatively differentiated products are involved, and physical capacity, reserves, or dollar production generally will be used if relatively homogeneous, undifferentiated products are involved.

In some cases, however, total sales or capacity may overstate the competitive significance of a firm. The Department will include only those sales likely to be made or capacity likely to be used in the market in response to a "small but significant and nontransitory" increase in price, for example, with respect to firms included in the market under Sections 2.21 (Production Substitution) and 2.23 (Internal Consumption). Similarly, a firm's capacity may be so committed elsewhere that it would not be available to respond to an increase in price in the market. In such cases, the Department also may include a smaller part of the firm's sales or capacity.

To the extent available information permits, market shares will be assigned to foreign competitors in the same way in which they are assigned to domestic competitors. If dollar sales or shipments are used to measure shares of domestic firms, the market shares of foreign firms will be measured using dollar sales in, or shipments to, the relevant market.[12] If physical capacity, reserves, or dollar production is used for domestic firms, the shares of foreign firms will be measured in terms of the capacity or reserves likely to be used to supply, or production that is likely to be shipped to, the relevant market in response to a "small but significant and nontransitory" price increase. If shipments from a particular country to the United States are subject to a quota, the market shares assigned to firms in that country will not exceed the amount of shipments by such firms allowed under the quota. Current shipments rather than capacity or reserves may be used for foreign firms if it is impossible reliably to quantify the proportion of the firms' capacity, reserves, or production that would be devoted to the relevant market in response to a "small but significant and nontransitory" increase in price because of, for example, the lack of available data regarding foreign capacity or the commitment of such capacity to other markets. Finally, a single market share may be assigned to a country or group of countries if firms in that country or group of countries act in coordination or if necessitated by data limitations.

3. Horizontal Mergers

3.0 Where the merging firms are in the same product and geographic market, the merger is horizontal. In such cases, the Department will focus first on the post-merger concentration of the market and the increase in concentration caused by the merger. For mergers that result in low market concentration or a relatively slight increase in concentration, the Department will be able to determine without a detailed examination of other factors that the merger poses no significant threat to competition. In other cases, however, the Department will proceed to examine a variety of other factors relevant to that question.

3.1 Concentration and Market Shares

Market concentration is a function of the number of firms in a market and their respective market shares.[13] Other things being equal, concentration affects the likelihood that one firm, or a small group of firms, could successfully exercise market power. The smaller the percentage of total supply that a firm controls, the more severely it must restrict its own output in order to produce a given price increase, and the less likely it is that an output restriction will be profitable. If collective action is necessary, an additional constraint applies. As the number of firms necessary to control a given percentage of total supply increases, the difficulties and costs of reaching and enforcing consensus with respect to the control of that supply also increase.

As an aid to the interpretation of market data, the Department will use the Herfindahl-Hirschman Index ("HHI") of market concentration. The HHI is calculated by summing the squares of the individual market shares of all the firms included in the market under the standards in Section 2 of these

[11] Geographic price discrimination against a group of buyers is more likely when other buyers cannot easily purchase and resell the relevant product to them. Such arbitrage is particularly difficult where the product is sold on a delivered basis and where transportation costs are a significant percentage of the final cost.

[12] If exchange rates fluctuate significantly, making comparable dollar calculations for different firms difficult, then the volume of unit sales may be a better measure of market share than dollar sales and may be used instead.

[13] Markets can range from atomistic, where very large numbers of firms that are small relative to the overall size of the market compete with one another, to monopolistic, where one firm controls the entire market. Far more common, and more difficult analytically, is the large middle range of instances where a relatively small number of firms accounts for most of the sales in the market.

Guidelines.[14] Unlike the traditional four-firm concentration ratio, the HHI reflects both the distribution of the market shares of the top four firms and the composition of the market outside the top four firms. It also gives proportionately greater weight to the market shares of the larger firms, which probably accords with their relative importance in any collusive interaction.

The Department divides the spectrum of market concentration as measured by the HHI into three regions that can be broadly characterized as unconcentrated (HHI below 1000), moderately concentrated (HHI between 1000 and 1800), and highly concentrated (HHI above 1800). An empirical study by the Department of the size dispersion of firms within markets indicates that the critical HHI thresholds at 1000 and 1800 correspond roughly to four-firm concentration ratios of 50 percent and 70 percent, respectively. Although the resulting regions provide a useful format for merger analysis, the numerical divisions suggest greater precision than is possible with the available economic tools and information. Other things being equal, cases falling just above and just below a threshold present comparable competitive concerns. Moreover, because concentration and market share data present a historical picture of the market, the Department must interpret such data in light of the relevant circumstances and the forward-looking objective of the Guidelines—to determine likely future effects of a given merger.

3.11 General Standards

In evaluating horizontal mergers, the Department will consider both the post-merger market concentration and the increase in concentration resulting from the merger.[15] The link between concentration and market power is explained above. The increase in concentration is relevant to several key issues. Although mergers among small firms increase concentration, they are less likely to have anticompetitive consequences. Moreover, even in concentrated markets, it is desirable to allow firms some scope for merger activity in order to achieve economies of scale and to permit exit from the market. However, market share and concentration data provide only the starting point for analyzing the competitive impact of a merger. Before determining whether to challenge a merger, the Department will consider all other relevant factors that pertain to its competitive impact.

The general standards for horizontal mergers are as follows:

(a) Post-Merger HHI Below 1000. Markets in this region generally would be considered to be unconcentrated. Because implicit coordination among firms is likely to be difficult and because the prohibitions of section 1 of the Sherman Act are usually an adequate response to any explicit collusion that might occur, the Department will not challenge mergers falling in this region, except in extraordinary circumstances.

(b) Post-Merger HHI Between 1000 and 1800. Because this region extends from the point at which the competitive concerns associated with concentration are raised to the point at which they become quite serious, generalization is particularly difficult. The Department, however, is unlikely to challenge a merger producing an increase in the HHI of less than 100 points.[16] The Department is *likely* to challenge mergers in this region that produce an increase in the HHI of more than 100 points, unless the Department concludes, on the basis of the post-merger HHI, the increase in the HHI, and the presence or absence of the factors discussed in Sections 3.2, 3.3, 3.4, and 3.5 that the merger is not likely substantially to lessen competition.

(c) Post-Merger HHI Above 1800. Markets in this region generally are considered to be highly concentrated. Additional concentration resulting from mergers is a matter of significant competitive concern. The Department is unlikely, however, to challenge mergers producing an increase in the HHI of less than 50 points.[17] The Department is likely to challenge mergers in this region that produce an increase in the HHI of more than 50 points, unless the Department concludes, on the basis of the post-merger HHI, the increase in the HHI, and the presence or absence of the factors discussed in Sections 3.2, 3.3, 3.4, and 3.5 that the merger is not likely substantially to lessen competition. However, if the increase in the HHI exceeds 100 and the post-merger HHI substantially exceeds 1800, only in extraordinary cases will such factors establish that the merger is not likely substantially to lessen competition.

3.12 Leading Firm Proviso

In some cases, typically where one of the merging firms is small, mergers that may create or enhance the market power of a single dominant firm could pass scrutiny under the standards stated in Section 3.11. Notwithstanding those standards, the Department is likely to challenge the merger of any firm with a market share of at least one percent with the leading firm in the market, provided the leading firm has a market share that is at least 35 percent. Because the ease and profitability of collusion are of little relevance to the ability of a single dominant firm to exercise market power, the Department will not consider the presence or absence of the factors discussed in Section 3.4 because they relate to the likelihood of collusion. The Department will consider, however, the factors in Sections 3.2, 3.3, and 3.5 because they are relevant to the competitive concerns associated with a leading-firm merger.

3.2 Factors Affecting the Significance of Market Shares and Concentration

In a variety of situations, market share and market concentration data may either understate or overstate the likely future competitive significance of a firm or firms in the market. The following are examples of such situations.

3.21 Changing Market Conditions

Market Concentration and market share data of necessity are based on historical evidence. However, recent or on-going changes in the market may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive significance. For example, if a new technology that is important to long-term competitive viability is not available to a particular firm, the Department may conclude that the

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[14] For example, a market consisting of four firms with market shares of 30 percent, 30 percent, 20 percent and 20 percent has an HHI of 2600 ($30^2+30^2+20^2+20^2=2600$). The HHI ranges from 10,000 (in the case of a pure monopoly) to a number approaching zero (in the case of an atomistic market). Although it is desirable to include all firms in the calculation, lack of information about small fringe firms is not critical because such firms do not affect the HHI significantly.

[15] The increase in concentration as measured by the HHI can be calculated independently of the overall market concentration by doubling the product of the market shares of the merging firms. For example, the merger of firms with shares of 5 percent and 10 percent of the market would increase the HHI by 100 ($5\times10\times2=100$). The explanation for this technique is as follows: In calculating the HHI before the merger, the market shares of the merging firms are squared individually: $(a)^2+(b)^2$. After the merger, the sum of those shares would be squared: $(a+b)^2$, which equals $a^2+2ab+b^2$. The increase in the HHI therefore is represented by 2ab.

[16] Mergers producing increases in concentration close to the 100 point threshold include those between firms with market shares of 25 percent and 2 percent, 16 percent and 3 percent, 12 percent and 4 percent, 10 percent and 5 percent, 8 percent and 6 percent, and 7 percent and 7 percent.

[17] Mergers producing increases in concentration close to the 50 point threshold include those between firms with market shares of 12 percent and 2 percent, 8 percent and 3 percent, 6 percent and 4 percent, and 5 percent and 5 percent.

historical market share of the firm overstates the firm's future competitive significance. The Department will consider reasonably predictable effects of recent or on-going changes in market conditions in interpreting market concentration and market share data.

3.22 Financial Condition of Firms in the Relevant Market

The Department will consider the financial condition of a merging firm or any firm in the relevant market, to the extent that it is relevant to an analysis of the firm's likely future competitive significance.[18] If the financial difficulties of a firm cannot be explained as phenomena of, for example, the business cycle but clearly reflect an underlying structural weakness of the firm, the firm's current market share may overstate its likely future competitive significance. For example, a firm's current market share may overstate its future competitive significance if that firm has chronic financial difficulties resulting from obsolete productive facilities in a market experiencing a long-term decline in demand.

3.23 Special Factors Affecting Foreign Firms

Actual import sales, shipment data, or capacity in some cases may tend to overstate the relative competitive significance of foreign firms. This will be the case, for example, if foreign firms are subject to quotas (imposed either by the United States or by their own country) that effectively limit the volume of their imports into this country. Foreign firms that are subject to such quotas generally cannot increase imports into the United States in response to a domestic price increase. In the case of restraints that limit imports to some percentage of the total amount of the product sold in the United States (i.e., percentage quotas), a domestic price increase that reduces domestic comsumption would actually reduce the volume of imports into the United States. Thus, actual import sales and shipment data will tend to overstate the competitive significance of firms in countries subject to binding quotas.[19]

Less significant, but still important factors, such as other types of trade restraints and changes in exchange rates, also may cause actual import sales and shipment data to overstate the future competitive significance of foreign firms. To the extent that the relative competitive significance of imports is overstated by the current market shares of foreign firms, the relative competitive significance of domestic firms concomitantly will be understated.

In addition, limitations on available data concerning the amount of foreign capacity that could be devoted to the United States in response to a "small but significant and nontransitory" increase in price may require the Department to use market share data that understate the true competitive significance of foreign competitors. Despite the inability to obtain data to quantify precisely the supply response of foreign competitors, the Department will consider strong qualitative evidence that, for example, there is significant worldwide excess capacity that could readily be devoted to the United States. To the extent market shares based on the best available evidence tend to understate the competitive significance of foreign competitors, the relative competitive significance of domestic firms may be overstated.

In all cases addressed by this section of the Guidelines (Section 3.23), the Department will make appropriate adjustment in its analysis of the available data to reflect more accurately actual competitive concerns.

3.3 Ease of Entry

If entry into a market is so easy that existing competitors could not succeed in raising price for any significant period of time, the Department is unlikely to challenge mergers in that market. Under the standards in Section 2.21, firms that do not currently sell the relevant product, but that could easily and economically sell it using existing facilities, are included in the market and are assigned a market share. This section considers the additional competitive effects of (1) production substitution requiring significant modifications of existing facilities and (2) entry through the construction of new facilities.[20]

In assessing the ease of entry into a market, the Department will consider the likelihood and probable magnitude of entry in response to a "small but significant and nontransitory" increase in price.[21] Both the price to be increased and what constitutes a "small but significant and nontransitory" increase in price will be determined as they are in product market definition, except that a two-year time period generally will be used.[22] The more difficult entry into the market is, the more likely the Department is to challenge the merger.

3.4 Other Factors

A variety of other factors affect the likelihood that a merger will create, enhance, or facilitate the exercise of market power. In evaluating mergers, the Department will consider the following factors, among others, as they relate to the ease and profitability of collusion. Where relevant, the factors are most likely to be important where the Department's decision whether to challenge a merger is otherwise close.

3.41 Nature of the Product and Terms of Sale

3.411 Homogeneity-Heterogeneity of the Relevant Product Generally

In a market with a homogeneous and undifferentiated product, a cartel need establish only a single price—a circumstance that facilitates reaching consensus and detecting deviation. As the products which constitute the relevant product market become more numerous, heterogeneous, or differentiated, however, the problems facing a cartel become more complex. Instead of a single price, it may be necessary to establish and enforce a complex schedule of prices corresponding to gradations in actual or perceived quality attributes among the competing products.[23]

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[18] This factor is distinguished from the failing company doctrine, which is an affirmative defense to an otherwise unlawful merger and which, as noted in Section 5.1, the Department will construe strictly.

[19] For example, in the extreme situation where there is an effective trade restraint that places a fixed or percentage limitation on the quantity of goods that can be imported into the United States from all or almost all foreign sources, market shares of foreign sources would usually be accorded little, if any, weight.

[20] "Entry" may occur as firms outside the market enter for the first time or as fringe firms currently in the market greatly expand their current capacity.

[21] In general, entry is more likely to occur when the additional assets necessary to produce the relevant product are short-lived or widely used outside the particular market. Conversely, entry is less likely to occur when those assets are long-lived and highly specialized to the particular application. Entry is generally facilitated by the growth of the market and hindered by its stagnation or decline. Entry also is hindered by the need for scarce special skills or resources, or the need to achieve a substantial market share in order to realize important economies of scale. See also Section 4.212 (Increased Difficulty of Simultaneous Entry to Both Markets).

[22] Although this type of supply response may take longer to materialize than those considered under section 2.21, its prospect may have a greater deterrent effect on the exercise of market power by present sellers. Where new entry involves the dedication of long-lived assets to a market, the resulting capacity and its adverse effects on profitability will be present in the market until those assets are economically depreciated.

[23] A similar situation may exist where there is rapid technological change or where supply arrangements consist of many complicated terms in addition to price.

Product variation is arguably relevant in all cases, but practical considerations dictate a more limited use of the factor. There is neither an objective index of product variation nor an empirical basis for its use in drawing fine distinctions among cases. As a result, this factor will be taken into account only in relatively extreme cases where both identification and effect are more certain. For example, when the relevant product is completely homogeneous and undifferentiated, the Department is more likely to challenge the merger. Conversely, when the relevant product is very heterogeneous or sold subject to complex configuration options or customized production, the Department is less likely to challenge the merger.[34] Over a significant middle range of the spectrum of product variation, this factor is less likely to affect the Department's analysis.

3.412 Degree of Difference Between the Products and Locations in the Market and the Next-Best Substitutes

The market definition standards stated in Section 2 of these Guidelines require drawing relatively bright lines in order to determine the products and sellers to be considered in evaluating a merger. For example, in defining the relevant product, all "good substitutes" in demand are included. The profitability of any collusion that might occur will depend in part, however, on the quality of the next-best substitute. That is, it matters whether the next-best substitute is only slightly or significantly inferior to the last product included in the relevant product. Similarly, it matters whether the next-most-distant seller is only slightly or significantly farther away than the last seller included in the geographic market. The larger the "gap" at the edge of the product and geographic markets, the more likely the Department is to challenge the merger.

3.413 Similarities and Differences in the Products and Locations of the Merging Firms

There also may be relevant comparisons among the products or sellers included in the market. Where products in a relevant market are differentiated or sellers are spatially dispersed, individual sellers usually compete more directly with some rivals than with others. In markets with highly differentiated products, the Department will consider the extent to which consumers perceive the products of the merging firms to be relatively better or worse substitutes for one another than for other products in the market. In markets with spatially dispersed sellers and significant transportation costs, the Department will consider the relative proximity of the merging firms. If the products or plants of the merging firms are particularly good substitutes for one another, the Department is more likely to challenge the merger.

3.42 Information About Specific Transactions and Buyer Market Characteristics

Collusive agreements are more likely to persist if participating firms can quickly detect and retaliate against deviations from the agreed prices or other conditions. Such deviations are easiest to detect, and therefore least likely to occur, in markets where detailed information about specific transactions or individual price or output levels is readily available to competitors. The Department is more likely to challenge a merger if such detailed information is available to competitors, whether the information comes from an exchange among sellers, public disclosure by buyers, reporting by the press or a government agency, or some other source.

Certain buyer market characteristics also may facilitate detection of deviation from collusive agreements. If orders for the relevant product are frequent, regular and small relative to the total output of a typical firm in the market, collusion is more likely to succeed because the benefits of departing from the collusive agreement in any single transaction are likely to be small relative to the potential costs. In order to increase its sales significantly in such circumstances, a seller would have to depart from the collusive agreement on a large number of orders. Each such sale takes customers away from other parties to the agreement, a fact that is particularly evident when demand is stable or declining. As a result, the chances of detection and effective response by other sellers increase with the number of such sales. The Department is more likely to challenge a merger where such buyer market characteristics exist.

3.43 Ability of Small or Fringe Sellers to Increase Sales

Collusion is less likely to occur if small or fringe sellers in the market are able profitably to increase output substantially in response to a "small but significant and nontransitory" increase in price and thus to undermine a cartel. The Department is less likely to challenge a merger if small or fringe firms currently are able to expand significantly their sales at incremental costs that are approximately equal to their incremental costs experienced at current levels of output.

3.44 Conduct of Firms in the Market

The Department is more likely to challenge a merger in the following circumstances:

(a) Firms in the market previously have been found to have engaged in horizontal collusion regarding price, territories, or customers, and the characteristics of the market have not changed appreciably since the most recent finding. The additional concentration resulting from the merger could make explicit collusion more difficult to detect or tacit collusion more feasible.

(b) One or more of the following types of practices are adopted by substantially all of the firms in the market: (1) Mandatory delivered pricing; (2) exchange of price or output information in a form that could assist firms in setting or enforcing an agreed price; (3) collective standardization of product variables on which the firms could compete; and (4) price protection clauses. Although not objectionable under all circumstances, these types of practices tend to make collusion easier, and their widespread adoption by the firms in the market raises some concern that collusion may already exist.

(c) The firm to be acquired has been an unusually disruptive and competitive influence in the market. Before invoking this factor, the Department will determine whether the market is one in which performance might plausibly deteriorate because of the elimination of one disruptive firm.

3.45 Market Performance

When the market in which the proposed merger would occur is currently performing noncompetitively, the Department is more likely to challenge the merger. Noncompetitive performance suggests that the firms in the market already have succeeded in overcoming, at least to some extent, the obstacles to effective collusion. Increased concentration of such a market through merger could further facilitate the collusion that already exists. When the market in which the proposed merger would occur is currently performing competitively, however, the Department will apply its ordinary standards of review. The fact that the market is currently competitive casts little light on the likely effect of the merger.

[34] This conclusion would not apply, however, where the significance of heterogeneity is substantially reduced through detailed specifications that are provided by the buyer and that form the basis for all firms' bids.

In evaluating the performance of market, the Department will consider any relevant evidence, but will give particular weight to the following evidence of possible noncompetitive performance when the factors are found in conjunction:

(a) Stable relative market shares of the leading firms in recent years;

(b) Declining combined market share of the leading firms in recent years; and

(c) Profitability of the leading firms over substantial periods of time that significantly exceeds that of firms in industries comparable in capital intensity and risk.

3.5 Efficiencies

The primary benefit of mergers to the economy is their efficiency-enhancing potential, which can increase the competitiveness of firms and result in lower prices to consumers. Because the antitrust laws, and thus the standards of the Guidelines, are designed to proscribe only mergers that present a significant danger to competition, they do not present an obstacle to most mergers. As a consequence, in the majority of cases, the Guidelines will allow firms to achieve available efficiencies through mergers without interference from the Department.

Some mergers that the Department otherwise might challenge may be reasonably necessary to achieve significant net efficiencies. If the parties to the merger establish by clear and convincing evidence that a merger will achieve such efficiencies, the Department will consider those efficiencies in deciding whether to challenge the merger.

Cognizable efficiencies include, but are not limited to, achieving economies of scale, better intergration of production facilities, plant specialization, lower transportation costs, and similar efficiencies relating to specific manufacturing, servicing, or distribution operations of the merging firms. The Department may also consider claimed efficiencies resulting from reductions in general selling, administrative, and overhead expenses, or that otherwise do not relate to specific manufacturing, servicing, or distribution operations of the merging firms, although, as a practical matter, these types of efficiencies may be difficult to demonstrate. In addition, the Department will reject claims of efficiencies if equivalent or comparable savings can reasonably be achieved by the parties through other means. The parties must establish a greater level of expected net efficiencies the more significant are the competitive risks identified in Section 3.

4. Horizontal Effect From Non-Horizontal Mergers

4.0 By definition, non-horizontal mergers involve firms that do not operate in the same market. It necessarily follows that such mergers produce no immediate change in the level of concentration in any relevant market as defined in Section 2 of these Guidelines. Although non-horizontal mergers are less likely than horizontal mergers to create competitive problems, they are invariably innocuous. This section describes the principal theories under which the Department is likely to challenge non-horizontal mergers.

4.1 Elimination of Specific Potential Entrants

4.11 The Theory of Potential Competition

In some circumstances, the non-horizontal merger [25] of a firm already in a market (the "acquired firm") with a potential entrant to that market (the "acquiring firm") [26] may adversely affect competition in the market. If the merger effectively removes the acquiring firm from the edge of the market, it could have either of the following effects:

4.111 Harm to "perceived Potential Competition"

By eliminating a significant present competitive threat that constrains the behavior of the firms already in the market, the merger could result in an immediate deterioration in market performance. The economic theory of limiting pricing suggests that monopolists and groups of colluding firms may find it profitable to restrain their pricing in order to deter new entry that is likely to push prices even lower by adding capacity to the market. If the acquiring firm had unique advantages in entering the market, the firms in the market might be able to set a new and higher price after the threat of entry by the acquiring firm was eliminated by the merger.

4.112 Harm to "Actual Potential Competition"

By eliminating the possibility of entry by the acquiring firm in a more procompetitive manner, the merger could result in a lost opportunity for improvement in market performance resulting from the addition of a significant competitor. The more procompetitive alternatives include both new entry and entry through a "toehold" acquisition of a present small competitor.

4.12 Relation Between Perceived and Actual Potential Competition

If it were always profit-maximizing for incumbent firms to set price in such a way that all entry was deterred and if information and coordination were sufficient to implement this strategy, harm to perceived potential competition would be the only competitive problem to address. In practice, however, actual potential competition has independent importance. Firms already in the market may not find it optimal to set price low enough to deter all entry; moreover, those firms may misjudge the entry advantages of a particular firm and, therefore, the price necessary to deter its entry.[27]

4.13 Enforcement Standards

Because of the close relationship between perceived potential competition and actual potential competition, the Department will evaluate mergers that raise either type of potential competition concern under a single structural analysis analogous to that applied to harizontal mergers. The Department first will consider a set of objectives factors designed to identify cases in which harmful effects are plausible. In such cases, the Department then will conduct a more focused inquiry to determine whether the likelihood and magnitude of the possible harm justify a challenge to the merger. In this context, the Department will consider any specific evidence presented by the merging parties to show that the inferences of competitive harm drawn from the objective factors are unreliable.

The factors that the Department will consider are as follows:

4.131 Market Concentration

Barriers to entry are unlikely to affect market performance if the structure of the market is otherwise not conducive to monopolization or collusion. Adverse competitive effects are likely only if overall concentration, or the largest firms's market share, is high. The Department is unlikely to challenge a potential competition merger unless overall concentration of the acquired firm's market is above 1800 HHI (a somewhat lower concentration will suffice if one or more of the factors discussed in Section 3.4 indicate that

[25] Under traditional usage, such a merger could be characterized as either "vertical" or "conglomerate," but the label adds nothing to the analysis.

[26] The terms "acquired" and "acquiring" refer to the relationship of the firms to the market of interest, not to the way the particular transaction is formally structured.

[27] When collusion is only tacit, the problem of arriving at and enforcing the correct limit price is likely to be particularly difficult.

effective collusion in the market is particularly likely). Other things being equal, the Department is increasingly likely to challenge a merger as this threshold is exceeded.

4.132 Conditions of Entry Generally

If entry to the market is generally easy, the fact that entry is marginally easier for one or more firms is unlikely to affect the behavior of the firms in the market. The Department is unlikely to challenge a potential competition merger when new entry into the acquired firm's market can be accomplished by firms without any specific entry advantages under the conditions stated in Section 3.3. Other things being equal, the Department is increasingly likely to challenge a merger as the difficulty of entry increases above that threshold.

4.133 The Acquiring Firm's Entry Advantage

If more than a few firms have the same or a comparable advantage in entering the acquired firm's market, the elimination of one firm is unlikely to have any adverse competitive effect. The other similarly situated firm(s) would continue to exert a present restraining influence, or, if entry would be profitable, would recognize the opportunity and enter. The Department is unlikely to challenge a potential competition merger if the entry advantage ascribed to the acquiring firm (or another advantage of comparable importance) is also possessed by three or more other firms. Other things being equal, the Department is increasingly likely to challenge a merger as the number of other similarly situated firms decreases below three and as the extent of the entry advantage over non-advantaged firms increases.

If the evidence of likely actual entry by the acquiring firm is particularly strong,[28] however, the Department may challenge a potential competition merger, notwithstanding the presence of three or more firms that are objectively similarly situated. In such cases, the Department will determine the likely scale of entry, using either the firm's own documents or the minimum efficient scale in the industry. The Department will then evaluate the merger much as it would a horizontal merger between a firm the size of the likely scale of entry and the acquired firm.

[28] For example, the firm already may have moved beyond the stage of consideration and have made significant investments demonstrating an actual decision to enter.

4.134 The Market Share of the Acquired Firm

Entry through the acquisition of a relatively small firm in the market may have a competitive effect comparable to new entry. Small firms frequently play peripheral roles in collusive interactions, and the particular advantages of the acquiring firm may convert a fringe firm into a significant factor in the market.[29] The Department is unlikely to challenge a potential competition merger when the acquired firm has a market share of five percent or less. Other things being equal, the Department is increasingly likely to challenge a merger as the market share of the acquired firm increases above that threshold. The Department is likely to challenge any merger satisfying the other conditions in which the acquired firm has market share of 20 percent or more.

4.135 Efficiencies

As in the case of horizontal mergers, the Department will consider expected efficiencies in determining whether to challenge a potential competition merger. See Section 3.5 (Efficiencies).

4.2 Competitive Problems from Vertical Mergers

4.21 Barriers to Entry from Vertical Mergers

In certain circumstances, the vertical integration resulting from vertical mergers could create competitively objectionable barriers to entry. Stated generally, three conditions are necessary (but not sufficient) for this problem to exist. First, the degree of vertical integration between the two market must be so extensive that entrants to one market (the "primary market") also would have to enter the other market (the "secondary market")[30] simultaneously. Second, the requirement of entry at the secondary level must make entry at the primary level significantly more difficult and less likely to occur. Finally, the structure and other characteristics of the primary market must be otherwise so conducive to non-competitive performance that the increased difficulty of entry is likely to affect its performance. The following standards state the criteria by which the Department will determine whether these conditions are satisfied.

[29] Although a similar effect is possible with the acquisition of larger firms, there is an increased danger that the acquiring firm will choose to acquiesce in monopolization or collusion because of the enhanced profits that would result from its own disappearance from the edge of the market.

[30] This competitive problem could result from either upstream or downstream integration, and could affect competition in either the upstream market or the downstream market. In the text, the termn "primary market" refers to the market in which the competitive concerns are being considered, and the term "secondary market" refers to the adjacent market.

4.211 Need for Two-Level Entry

If there is sufficient unintegrated capacity [31] in the secondary market, new entrants to the primary market would not have to enter both markets simultaneously. The Department is unlikely to challenge a merger on this ground where post-merger sales (purchases) by unintegrated firms in the secondary market would be sufficient to service two minimum-efficient-scale plants in the primary market. When the other conditions are satisfied, the Department is increasingly likely to challenge a merger as the unintegrated capacity declines below this level.

4.212 Increased Difficulty of Simultaneous Entry to Both Markets

The relevant question is whether the need for simultaneous entry to the secondary market gives rise to a substantial incremental difficulty as compared to entry into the primary market alone. If entry at the secondary level is easy in absolute terms, the requirement of simultaneous entry to that market is unlikely adversely to affect entry to the primary market. whatever the difficulties of entry into the primary market may be, the Department is unlikely to challenge a merger on this ground if new entry into the secondary market can be accomplished under the conditions stated in Section 3.3.[32] When entry is not possible under those conditions, the Department is increasingly concerned about vertical mergers as the difficulty of entering the secondary market increases. The Department, however, will invoke this theory only where the need for secondary market entry significantly increases the costs (which

[31] Ownership integration does not necessarily mandate two-level entry by new entrants to the primary market. Such entry is most likely to be necessary where the primary and secondary markets are completely integrated by ownership and each firm in the primary market uses all of the capacity of its associated firm in the secondary market. In many cases of ownership integration, however, the functional fit between vertically integrated firms is not perfect, and an outside market exists for the sales (purchases) of the firms in the secondary market. If that market is sufficiently large and diverse, new entrants to the primary market may be able to participate without simultaneous entry to the secondary market. In considering the adequacy of this alternative, the Department will consider the likelihood of predatory price or supply "squeezes" by the integrated firms against their unintegrated rivals.

[32] Entry into the secondary market may be greatly facilitated in that an assured supplier (customer) is provided by the primary market entry.

may take the form of risks) of primary market entry.

More capital is necessary to enter two market than to enter one. Standing alone, however, this additional capital requirement does not constitute a barrier to entry to the primary market. If the necessary funds were available at a cost commensurate with the level of risk in the secondary market, there would be no adverse effect. In some cases, however, lenders may doubt that would-be entrants to the primary market have the necessary skills and knowledge to succeed in the secondary market and, therefore, in the primary market. In order to compensate for this risk of failure, lenders might charge a higher rate for the necessary capital. This problem becomes increasingly significant as a higher percentage of the capital assets in the secondary market are long-lived and specialized to that market and, therefore, difficult to recover in the event of failure. In evaluating the likelihood of increased barriers to entry resulting from increased cost of capital, therefore, the Department will consider both the degree of similarity in the essential skills in the primary and secondary markets and the economic life and degree of specialization of the capital assets in the secondary market.

Economies of scale in the secondary market may constitute an additional barrier to entry to the primary market in some situtaitons requiring two-level entry. The problem could arise if the capacities of minimum-efficient-scale plants in the prmary and secondary markets differ significantly. For example, if the capacity of a minimum-efficient-scale plant in the secondary market were significantly greater than the needs of a minimum-efficient-scale plant in the primary market, entrants would have to choose between ineffecient operation at the secondary level (because of operating an efficient plant at an inefficient output or because of operating an efficiently small plant) or a larger than necessary scale at the primary level. Either of these effects could cause a significant increase in the operating costs of the entering firm.[33]

4.213 Structure and Performance of the Primary Market

Barriers to entry are unlikely to affect performance if the structure of the primary market is otherwise not conducive to monopolization or collusion.[34] The Department is unlikely to challenge a merger on this ground unless overall concentration of the primary market is above 1800 HHI (a somewhat lower concentration will suffice if one or more of the factors discussed in Section 3.4 indicate that effective collusion is particularly likely). Above that threshold, the Department is increasingly likely to challenge a merger that meets the other criteria set forth above as the concentration increases.

4.22 Facilitating Collusion Through Vertical Mergers

4.221 Vertical Integration to the Retail Level

A high level of vertical integration by upstream firms into the associated retail market may facilitate collusion in the upstream market by making it easier to monitor price. Retail prices are generally more visible than prices in upstream markets, and vertical mergers may increase the level of vertical integration to the point at which the monitoring effect becomes significant. Adverse competitive consequences are unlikely unless the upstream market is generally conducive to collusion and a large percentage of the products produced there are sold through vertically integrated retail outlets.

The Department is unlikely to challenge a merger on this ground unless (1) overall concentration of the upstream market is above 1800 HHI (a somewhat lower concentration will suffice if one or more of the factors discussed in Section 3.4 indicate that effective collusion is particularly likely), and (2) a large percentage of the upstream product would be sold through vertically-integrated retail outlets after the merger. Where the stated thresholds are met or exceeded, the Department's decision whether to challenge a merger on this ground will depend upon an individual evaluation of its likely competitive effect.

4.222 Elimination of a Disruptive Buyer

The elimination by vertical merger of a particularly disruptive buyer in a downstream market may facilitate collusion in the upstream market. If upstream firms view sales to a particular buyer as sufficiently important, they may deviate from the terms of a collusive agreement in an effort to secure that business, thereby disrupting the operation of the agreement. The merger of such a buyer with an upstream firm may eliminate that rivalry, making it easier for the upstream firms to collude effectively. Adverse competitive consequences are unlikely unless the upstream market is generally conducive to collusion and the disruptive firm is significantly more attractive to sellers than the other firms in its market.

The Departrment is unlikely to challenge a merger on this ground unless (1) overall concentration of the upstream market is 1800 HHI or above (a somewhat lower concentration will suffice if one or more of the factors discussed in Section 3.4 indicate that effective collusion is particularly likely), and (2) the allegedly disruptive firm differs substantially in volume of purchases or other relevant characteristics from the other firms in its market. Where the stated thresholds are met or exceeded, the Department's decision whether to challenge a merger on this ground will depend upon an individual evaluation of its likely competitive effect.

4.23 Evasion of Rate Regulation

Non-horizontal mergers may be used by monopoly public utilities subject to rate regulation as a tool for circumventing that regulation. The clearest example is the acquisition by a regulated utility of a supplier of its fixed or variable inputs. After the merger, the utility would be selling to itself and might be able arbitrarily to inflate the prices of internal transactions. Regulators may have great difficulty in policing these practices, particularly if there is no independent market for the product (or service) purchased from the affiliate.[35] As a result, inflated prices could be passed along to consumers as "legitimate" costs. In extreme cases, the regulated firm may effectively preempt the adjacent market, perhaps for the purpose of suppressing observable market transactions, and may distort resource allocation in that adjacent market as well as in the regulated market. In such cases, however, the Department recognizes that genuine economies of integration may be involved. The Department will consider challenging mergers that create substantial opportuities for such abuses.[36]

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[33] It is important to note, however, that this problem would not exist if a significant outside market exists at the secondary level. In that case, entrants could enter with the appropriately scaled plants at both levels, and sell or buy in the market as necessary.

[34] For example, a market with 100 firms of equal size would perform competitively despite a signficant increase in entry barriers.

[35] A less severe, but nevertheless serious, problem can arise when a regulated utility acquires a firm that is not vertically related. The use of common facilities and managers may create an insoluble cost allocation problem and provide the opportunity to charge utility customers for non-utility costs, consequently distorting resource allocation in the adjacent as well as the regulated market.

[36] Where a regulatory agency has the responsibility for approving such mergers, the Department may express its concerns to that agency in its role as competition advocate.

4.24 Efficiencies

As in the case of horizontal mergers, the Department will consider expected efficiencies in determining whether to challenge a vertical merger. See Section 3.5 (Efficiencies). An extensive pattern of vertical integration may constitute evidence that substantial economies are afforded by vertical integration. Therefore, the Department will give relatively more weight to expected efficiencies in determining whether to challenge a vertical merger than in determining whether to challenge a horizontal merger.

5. Defenses

5.1 Failing Firm

The "failing firm defense" is a long-established, but ambiguous, doctrine under which an anticompetitive merger may be allowed because one of the merging firm is "failing." Because the defense can immunize significantly anticompetitive mergers, the Department will construe its elements strictly.

The Department is unlikely to challenge an anticompetitive merger in which one of the merging firms is allegedly failing when: (1) The allegedly failing firm probably would be unable to meet its financial obligations in the near future; (2) it probably would not be able to reorganize successfully under Chapter 11 of the Bankruptcy Act; [37] and (3) it has made unsuccessful good faith efforts to elicit reasonable alternative offers of acquisition of the failing firm [38] that would both keep it in the market and pose a less severe danger to competition than does the proposed merger.

5.2 Failing Division

A similar argument can be made for "failing" divisions as for failing firms. A multidivisional firm may decide to leave a particular line of business by selling or liquidating a division. If the specific conditions set out below are met, the Department will consider the "failure" of the division as an important factor affecting the likely competitive effect of the merger. First, the proponents of a merger involving a "failing" division must establish, not based solely on management plans, which could be prepared simply for the purpose of creating evidence of intent, that the division would be liquidated in the near future if not sold. Second, the proponents of the merger also must demonstrate compliance with the competitively preferable purchaser requirement of the "failing firm" defense.

[37] 11 U.S.C. 1101–1174 (1982).

[38] The fact that an offer is less than the proposed transaction does not make it unreasonable.

[FR Doc. 84–17402 Filed 6–28–84; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place:
July 10, 1984
9:30 a.m.
Rm. S4215 A & B Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210

Purpose: to discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565, June 20, 1984.

Signed at Washington, DC, this 21st day of June 1984.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 84–17325 Filed 6–28–84; 8:45 am]
BILLING CODE 4510–28–M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of forms under review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Deprtment of Labor, 200 Constitution Avenue, NW., Room S–5526, Washington, DC. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics
Labor Market Information
Labor Market Information Cooperative Agreement
1220–0079, BLS–LMI 83–1, SF 424, LBS–LMI 83–2, ET 362, ADP Cost Estimate Detail Form, Pay Raise Justification
Quarterly (ET 362); Annually (all others)
State or local governments
53 responses; 1,705 hours; 7 forms

Cooperative Agreements will be entered into annually between BLS and the State Employment Security Agencies (SESAs) to provide labor market information statistics.

Extension

Employment and Training Administration
Interstate Arrangement for Combining Employment and Wages
1205–0029; ETA 586
Quarterly
State or local governments
212 responses; 636 hours; 1 form
Pub. L. 91–373 requires the Secretary of Labor be given responsibility for operation of an arrangement for the payment of compensation on the basis of combining wages from more than one State. This report from the 53 jurisdictions is needed to measure the scope of this program and monitor the operation and effectiveness.

Employment Standards Administration
DBRA/CWHSSA Recordkeeping and Reporting Requirements, 29 CFR Part 5 1215–0140; WH–600
On occasion
State or local governments; Businesses or other for profit; Federal agencies or employees; Small businesses or organizations
2,505 responses; 630 hours
Recordkeeping and incidental reporting requirements incurred by employers under DBRA/CWHSSA Regulations, 29 CFR Part 5.
Declaration of Citizenship
1215–0091, WH–509
On occasion
Individuals or households; State or local governments
15,000 responses; 3,750 hours
The Migrant and Seasonal Agricultural Worker Protection Act provides that no farm labor contractor may knowingly employ illegal aliens. This optional form ensures that citizens are not denied employment because they lack documentary proof of citizenship and provides evidence that a contractor has made a bona fide attempt to verify citizenship.

Signed at Washington, D.C. this 26th day of June, 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84–17407 Filed 6–28–84; 8:45 am]
BILLING CODE 4510–24–4510–27–M

Pension and Welfare Benefit Progams

[Prohibited Transaction Exemption 84–82; Exemption Application No. D–3840 et al.]

Grant of Individual Exemptions; Kimball International, Inc., Retirement Plan et al.

AGENCY: Pension and Welfare Benefit Progams, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notice were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Kimball International, Inc. Indirect Retirement Plan (the Indirect Plan) and Kimball International, Inc. Direct Retirement Plan (the Direct Plan; collectively, the Plans) Located in Jasper, Indiana

[Prohibited Transaction Exemption 84–82; Exemption Application Nos. D–3840 and D–3841]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)((1) (A) through (E) of the Code, shall not apply: (1) To the continuation past June 30, 1984 of a lease by the Indirect Plan of certain improved real property to Kimball International, Inc. (the Employer), the sponsor of the Plans; (2) effective January 1, 1975 to October 5, 1982, to the past lease by the Direct Plan of certain improved real property (the Warehouse Property) to the Employer; and (3) effective October 6, 1982, to the lease of the Warehouse Property by the Direct Plan to the Employer.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18637.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Western Conference of Teamsters Pension Trust Fund (the Plan) located in Seattle, Washington

[Prohibited Transaction Exemption 84–83; Exemption Application Nos. D–3960]

Exemption

The restrictions of section 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective August 1, 1982, to the acquisition or holding on behalf of the Plan of a security issued by an employer of employees covered by the Plan, an affiliate of such an employer as defined in section 407(d)(7) of the Act, or a person who is a party in interest with respect to the Plan by virtue of a relationship described in Act, section 3(14) (E), (G), (H) or (I) to such an employer, provided that the fiduciary responsible for the Plan's engaging in the transaction is the Equitable Life Assurance Society of the United States, the Aetna Life Insurance Company or the Prudential Insurance Company of

America, and further provided that the Plan pays no greater than the fair market value of the security at the time of acquistion.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18639.

Effective Date: This exemption is effective August 1, 1982.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Drs. Jensen, Shroyer and Anderson, P.C. Employees Pension Trust (the Plan) Located in Big Rapids, Michigan

[Prohibited Transaction Exemption 84–84; Exemption Application No. D–4249]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the sale of a parcel of real estate (the Property) from the Plan to Drs. L.J. Jensen, R.C. Shroyer and E.W. Anderson (the Trustees) at the higher of (a) its appraised fair market value or (b) the total expenditures incurred by the Plan in connection with the acquisition and holding of the Property through the date of sale. In addition, the Trustees will assume the unpaid balance due on the land contract (the Contract) which encumbers the Property; and (2) the assignment of the Contract by the Plan to the Trustees.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18640.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

First Federal Savings and Loan Association of Toledo, Amended and Restated Retirement Income Plan (the Plan) Located in Toledo, Ohio

[Prohibited Transaction Exemption 84–85; Exemption Application No. D–4344]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of certain mortgages to the Plan by First Federal Savings and Loan Association of Toledo (the Employer) and to the guarantee by the Employer to repurchase any mortgages which are in default and the repurchase by the Employer of such mortgages, provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated person.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 4, 1984 at 49 FR 19159.

Temporary Nature of Exemption: This exemption is temporary and will expire 5 years after the date of grant. Should the Employer wish to continue to sell mortgages to the Plan beyond the 5 year period, the Employer may submit another application for exemption. Repurchase of mortgages by the Employer may take place after the 5 year period provided the mortgages were purchased by the Plan during the 5 year period.

For Further Information Contract: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

J.C. Penney Co., Inc., Located in New York, New York

[Prohibited Transaction Exemption 84–86; Exemption Application No. D–4740]

Exemption

The restrictions of section 406 (a) and (b) of the Act shall not apply, effective December 29, 1982 through December 31, 1984, to the reinsurance of risks and the receipt of premiums therefrom by J.C. Penney Life Insurance Company (Penney Life) from the life insurance contracts sold by the Great American Reserve Insurance Company to provide benefits to various employee benefit plans maintained by Penney Life and J.C. Penney Casualty Insruance Company, provided the conditions set forth in the notice of proposed exemption are satisfied.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18644.

Effective Date: This exemption is effective from December 29, 1982 through December 31, 1984.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Profit Sharing Plan and Trust of J. Gordon Gaines, Inc. (the Plan) Located in Akron, Ohio

[Prohibited Transaction Exemption 84–87; Exemption Application No. D–4788]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan to J. Gordon Gaines, Inc. (the Employer) of a $100,000 obligation (the Debenture) of Bayse & Associates for $100,000 cash provided that the amount paid by the Employer is no less than the fair market value of the Debenture as of the date of sale. In addition, the Employer shall pay the Plan all accrued interest due on the Debenture through the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18646.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

The First National Bank of Atlanta Restricted Plan and Trust for Self-Employed Individuals Located in Atlanta, Georgia

[Prohibited Transaction Exemption 84–88; Exemption Application No. D–4798]

Exemption

The application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of five years, to the contributions of common stock of First Atlanta Corporation to seven individual Keogh plans (the Plans) by parties in interest with respect to the Plans. Because each sponsor of a Plan is the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 25.10.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17615.

Temporary Nature of Exemption: This exemption is temporary in nature and will be effective with respect to contributions of stock made within five years from the date of this grant.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Buchanan, Ingersoll, Rodewald, Kyle and Buerger Pension Plan and the Buchanan, Ingersoll, Rodewald, Kyle and Buerger Profit Sharing Plan (collectively, the Plans) Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 84–89; Exemption Application Nos. D–4823 and D–4824]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the purchase, sale and contribution of certain securities (the Securities) between the Plans and participants (the Participants) maintaining self-directed accounts in the Plans, provided all purchases and sales of the Securities are conducted at fair market value and all Participant contributions are valued at their fair market value on the date of contribution.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18647.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Watson C.S.R. Inc. Employee Profit Sharing Plan and the Watson C.S.R. Inc. Employee Pension Plan (collectively, the Plans) Located in Santa Monica, California

[Prohibited Transaction Exemption 84–90; Exemption Application Nos. D–4905 and D–4906]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plans of certain real property (the Real Property) for $114,788 in cash, to Mr. and Mrs. Michael Watson, provided the sale price for the Real Property is not less than its fair market value at the time the sale is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18648.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Alaska Teamsters—Employer Pension Trust (the Plan) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 84–91; Exemption Application No. D–4919]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the grant of memberships by the Plan in the Desert Horizons Country Club (the Club) to parties in interest (including fiduciaries) and the payment by said party in interest members of all fees, dues and other levies for the use of the Club's facilities; and (2) the eventual conversion of these nonproprietary memberships into proprietary ownerships when the Club is sold to its members, provided that the terms of the transactions are no less favorable to the Plan than similar transactions with unrelated third parties.*

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1984 at 49 FR 15163.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Shelly's Tall Girl Shops, Inc. Defined Benefit Pension Plan (the Plan) Located in Los Angeles, California

[Prohibited Transaction Exemption 84–92; Exemption Application No. D–4932]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan by the Plans of amounts not to exceed 25 percent of its total assets to Shelly's Tall Girl Shops, Inc., the Plan sponsor, on a recurring basis over a five-year period and the guarantee of the repayment of those loans by Messrs. Sheldon Kort, Irving Kellogg and Sherman Andelson, parties in interest with respect to the Plan, provided that the terms of the loans are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Temporary Nature of Exemption: If granted, this exemption will be effective for five years from the date a grant of an individual exemption is published in the **Federal Register** on behalf of the transactions. Subsequent to the expiration of the exemption, the Plan may hold the loans provided they were made during the five year period.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17621.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

McKay of California, Inc. Defined Benefit Pension Plan (the Plan) Located in Los Angeles, California

[Prohibited Transaction Exemption 84–93; Exemption Application No. D–4933]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan by the Plan of amounts not to exceed 25% of its total assets to McKay of California, the Plan Sponsor, on a recurring basis over a five-year period, and the guarantee of the repayment of these loans by Messrs. Sherman L. Andelson, Irving Kellogg, and Sherman Kort, parties in interest with respect to the Plan, provided the terms of the loans are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

Temporary Nature of Exemption: This exemption will be effective for five years from the date a grant of an individual exemption is published in the **Federal Register** on behalf of the transactions. Subsequent to the expiration of the exemption, the Plan may hold the loans provided they were made during the five-year period.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

*The granting of this exemption does not constitute an opinon or approval by the Department with regard to the appropriateness or prudence of the Plan's decision to invest its assets in Desert Horizons, Inc. or in the development of the Desert Horizons' properties. Nor does the granting of this exemption indicate the Department's opinion or approval with respect to any future decision by the Plan to construct additional residential units in the Desert Horizons development.

proposed exemption published on April 24, 1984 at 49 FR 17621.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Dayton Animal Hospital Association, Inc. Profit Sharing Plan (the Plan) Located in Clayton, Ohio

[Prohibited Transaction Exemption 84–94; Exemption Application No. D–5034]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan to Dayton Animal Care, Inc., an affiliate of the Plan sponsor, of a parcel of land adjacent to the offices of the Plan sponsor, provided the sales price is not less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18650.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 26th day of June, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84–17440 Filed 6–28–84; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–4855 et al.]

Proposed Exemptions; Mark A. Levine, M.D. and Thomas G. Swanson, M.D. P.C. Money Purchase Pension and Profit Sharing Plans et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, Apr. 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Mark A. Levine, M.D., and Thomas G. Swanson, M.D., P.C. Money Purchase Pension (the Money Purchase Plan) and Profit-Sharing Plan (the Profit-Sharing Plan; Collectively, the Plans) Located in Englewood, Colorado

[Application Nos. D–4855 and D–4856]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, Apr. 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of a limited partnership interest (the Interest) by the Plans to Dr. Mark A. Levine, a party in interest with

respect to the Plans, provided the sale price is not less than the fair market value of the Interest at the time the sale is consummated.

Summary of Facts and Representations

1. The Plans are a money purchase plan and a profit sharing plan with total assets of approximately $57,000 as of November 30, 1983. There are two participants in each of the Plans, Drs. Mark A. Levine (Dr. Levine) and Thomas G. Swanson. The trustee of the Plans is Dr. Levine, an owner of Mark A. Levine, M.D., and Thomas G. Swanson, M.D., P.C. (the Plan Sponsor).

2. On August 4, 1981 the Plans purchased the Interest, which is a limited partnership interest in a venture known as Platte Valley Business Center (the Limited Partnership) from an unrelated party. The Limited Partnership's purpose was to purchase and hold real property for investment and ultimate resale. The Limited Partnership purchased an 18-acre parcel of undeveloped real property located at 72nd and Washington Streets in Adams County, Colorado (the Property). The Limited Partnership purchased the Property for $1.80 per square foot or a total of approximately $1,440,000. A down payment of 20% of the purchase price was made, with the balance in the form of a money purchase mortgage with a 10 year term. The Money Purchase Plan purchased 75% of the Interest and the Profit-Sharing Plan purchased 25% of the Interest. The Money Purchase Plan has invested a total of $28,500 in the Property and the Profit-Sharing Plan has invested a total of $9,500. The Property was at that time, and remains unimproved.

3. The applicant represents that the economy in the Denver, Colorado area where the Property is located has deteriorated so that the Property has shown little measurable appreciation. As a result, the general partner in the Limited Partnership has negotiated with another entity to become a 50 percent joint venturer, and develop the Property. The Limited Partnership will contribute the Property to the joint venture and the other entity will contribute the cash needed for the development of the Property. In view of the change of objectives of the Limited Partnership, Dr. Levine as trustee of the Plans believes that the Interests no longer fit within the Plans' investment scheme.

4. Dr. Levine has offered to purchase the Plans' Interest. The purchase price will be the fair market value of the Plans' equity in the Property. By letter of November 4, 1983, Mr. Steven P. Levine (Mr. Levine is unlrelated to the Plans and the Plans' Sponsor), who is the general partner in the limited Partnership and a realtor in the Denver, Colorado area, represented that the Limited Partnership received a bona fide offer to purchase the Property during the past two months for $2.50 per square foot. This would, according to Mr. Levine, indicate a fair market value of $2,000,000 for the Property, less sales expenses and mortgages to be assumed of $1,350,000 or a net equity of approximately $650,000. Mr. Levine represents that the fair market value of the Money Purchase Plan's interest in the Property is $30,469, and the fair market value of the Profit Sharing Plan's interest in the Property is $10,156.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) It will be a one-time cash transaction;

(2) The Plans will be able to divest themselves of an asset which has changed its objectives since its initial purchase and no longer fits the Plans' investment scheme;

(3) The Plans will receive fair market value for the Interest and such amount will exceed the amount of the Plans' investment in the Interest; and

(4) The Plans' Trustee has determined that the proposed transaction is in the interests of and protective of the Plans and their participants and beneficiaries.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Tasty Baking Company Pension Plan (the Plan) Located in Philadelphia Pennsylvania

[Application No. D–4961]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, Apr. 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lease of certain real property by the Plan to Tasty Baking Company (the Employer) and the possible future cash sale of the Property by the Plan to the Employer, provided the terms and conditions of the transactions are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party, and that any purchase by the Employer is at no less than fair market value at the date of sale.

Effective Date: If granted, the proposed exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with approximately 2,020 active participants and an additional 514 former participants and beneficiaries who are now receiving benefits or who are entitled to receive benefits in the future. The Plan had total assets of approximately $37,338,000 as of December 31, 1983.

2. The Employer is a holding company incorporated in Pennsylvania in 1914. The employer has three operating subsidiaries—Tastykake, Inc., Buckeye Biscuit Company and Philips & Jacobs, Inc. These subsidiaries are engaged in the manufacture and sale of a variety of small single portion cakes and pies and cookies, under the well-established trade name of TASTYKAKE.

3. The Central Penn National Bank was the corporate co-trustee of the Plan under a Deed of Trustee dated January 5, 1960, as amended, and is currently the trustee of the Plan (the Trustee) under a Pension Plan Deed of Trust as restated on December 20, 1976. The Trustee has the authority to invest and manage the assets of the Plan except under certain limited circumstances unrelated to the subject proposed transaction. The Trustee is generally independent of the Employer. However, the Trustee and the Employer have an existing banking relationship which is of a de minimis nature. The employer's current line of credit with the Bank only constitutes 0.57 percent of the Trustee's commercial loan business. Also, an executive officer of the Trustee is a director of the employer, but has not and will not take any part either directly or indirectly on behalf of the Trustee in approving the proposed lease of the Property.

4. On December 1, 1960, the Employer contributed the building and land (the Property) at 2801–45 Hunting Park Avenue, Philadelphia, Pennsylvania, to the Plan. The Property has been continuously leased to the Employer since December 1, 1960 and has been utilized as the Employer's main baking facility and for corporate offices. At the time of the contribution of the Property, its value was determined by an independent appraisal to be $2,000,000 with the land valued at $150,000 and the building valued at $1,850,000.

5. Simultaneously with the transfer of the Property to the Plan, a 20-year lease (the Lease) was entered into between

the Plan and the Employer providing for an annual rental of $172,000 to be paid by the Employer. The Lease was supplemented and amended in April, 1962; December, 1966; and December, 1967. The basic annual rental was increased to $247,000 commencing January 1, 1968 to reflect additions and improvements to the Property made during the years 1961 through 1966. On December 21, 1973, a new lease (the New Lease) was entered into between the Plan and the Employer to increase the annual rental to reflect improvements and additions to the Property which had been made since 1966 and to provide a rental which was consistent with the fair market appraisal obtained from an independent appraisal performed by Jackson Cross Company.

6. The principal provisions of the New Lease are as follows:

(1) The basic annual rental is $388,000 as based upon the independent appraisal;

(2) As provided by the Lease, the Employer would pay all real estate taxes, water and sewer rents, fire and casualty insurance premiums, public liability insurance, all utilities, and the cost of maintaining the building in good order and repair;

(3) The New Lease is for an initial term of approximately 25 years, beginning on December 1, 1973, and expiring on January 2, 1999. The Employer has an option to renew the New Lease for two additional terms of five years each;

(4) The Employer has the right to make improvements to the Property as the Employer deems necessary or desirable in connection with the requirements of its business so long as such improvements do not devalue the Property;

(5) The Employer has the right to purchase the Property from the Plan at any time prior to the expiration of the original term of the New Lease or any optional renewal term which has been exercised by the Employer. The Trustee will approve the Employer's actual exercise of either the right to purchase the Property or right of first refusal only if it is in the best interests of the Plan and its participants and beneficiaries. The Employer has to give at least 120 days notice to the Plan of its intention to purchase the Property, such purchase price being the fair market value of the Property as determined by an independent real estate appraiser selected by the Trustee;

(6) During the initial term of the New Lease and during each of the two five-year renewal terms, the Employer has a right of first refusal to purchase the Property on the same terms and conditions as made in a bona fide offer by any third party; and

(7) In the event the Employer defaults in fulfilling any of the covenants of the New Lease, including the covenants for the payment of basic rent, the Plan has the right to terminate the New Lease and upon such termination the Employer is required to quit and surrender the Property to the Plan.

7. The applicant represents that the New Lease was not a prohibited transaction at the time entered into within the meaning of section 503(b) of the Internal Revenue Code of 1954 and the New Lease will not be prohibited until June 30, 1984 because it was pursuant to a binding contract in effect on July 1, 1974, and the New Lease remains at least as favorable to the Plan as an arm's-length transaction with an unrelated party would be.[1]

8. The applicant requests an exemption to permit the Employer to continue leasing the Property from the Plan beyond June 30, 1984. If this exemption is granted, the parties intend to enter into another lease (the Future Lease). The terms of the Future Lease will be substantially identical to those of the New Lease. The principal provisions which differ from those of the New Lease are as follows:

(1) An independent appraisal of the Property was performed by the Biswanger Company (Biswanger), a notionwide real estate company that specializes in valuing commercial and industrial property. Biswanger has determined that the fair market value (value in exchange) of the Property as of July 5, 1983 was $1,300,000 and the fair rental value (value in exchange) of the Property is $156,000 per year as of July 5, 1983. Biswanger further represents that the market value (value in use) of the Property was $3,300,000 as of July 5, 1983 and the rental value (value in use) was $396,000 per year as of this date. The Trustee has contacted Biswanger and was informed that the value of the Property had not changed since its July 5, 1983 appraisal. Biswanger will advise the Trustee if the value of the Property would be different as of July 1, 1984. (Biswanger specifies that the fair market value is synonymous with value in exchange and is defined as "the price which a willing seller would sell and a willing buyer would buy, neither being under abnormal pressures.") The basic annual rental for the Property will be the greater of the fair market rental value or the rental value in use.

(2) The Future Lease will be for an initial term of 15 years, which would be renewable by the Employer for five additional three-year periods. The Trustee must approve each renewal of the Future Lease to assure that the renewal will be in the interests of and protective of the Plan. If the Future Lease is renewed, the annual rental value will be the greater of the fair rental value or the rental value in use as determined at the time of the renewal of the lease and at each optional renewal period. The annual rental will be based upon an appraisal to be performed by an independent real estate appraiser approved by the Trustee.

9. The Trustee has reviewed the terms of the Future Lease and the appraisal of the Property. The Trustee has represented that in its opinion the Future Lease would be in the best interests of and protective of the Plan and its participants and beneficiaries. The Trustee believes that the terms of the Future Lease are at least as favorable to the Plan as those it could obtain from an unrelated third party. The Trustee also represents that it will monitor and enforce the provisions of the Future Lease in order to protect the interests of the Plan and its participants and beneficiaries.

10. The Trustee has also represented that the retention of the Property as an investment is in the best interests of the Plan and its participants and beneficiaries because: (1) It represents less than 10 % of total Plan assets and is in line with the Plan's policy of a total portfolio strategy of diversification; (2) the return of a minimum of 12 % is favorable to the Plan because it is tied to the greater of the fair market value or the value in use, and (3) a minimum of 12 % return over a 15-year period compares favorably with the historic indices of other types of investments.

11. The Trustee has represented that it has determined that the provisions of the Future Lease which set forth the Employer's right to purchase the Property from the Plan at any time prior to the expiration of the Future Lease and the Employer's right of first refusal are in the best interests of and protective of the Plan. The Trustee represents that the Employer's rights to purchase the Property and its right of first refusal, while providing some benefit to the Employer, serves to benefit the Plan because the repurchase rights require the Employer to pay the highest value for the Property in that the price paid will be the greater of the fair market value or the value in use. The Employer's right of first refusal will serve to encourage any potential third

[1] In this proposed exemption, the Department expresses no opinion as to whether the New Lease satisfies the requirements of section 414 of the Act.

party buyer in making a "best offer" to make it based on the higher of the fair market value or value in use. The Trustee states that this provision clearly deters potential buyers from making below market offers. The Trustee also states that the repurchase and right to first refusal provisions are not uncommon in leases of real estate. As stated above, the Trustee must approve any actual exercise of these provisions. With regard to the Employer's right to purchase the Property, the Trustee will assure that the purchase price will be paid in cash and that it will be the greater of the fair market value (without diminution because of the Employer's purchase right or right to first refusal) or the value in use of the Property. With regard to the Employer's right of first refusal, the Trustee also must approve any actual exercise of this provision and will assure that any offer of purchase by a third party will be an acceptable bona fide offer only if such offer is in cash and in an amount not less than the greater of the fair market value (without diminution because of the Employer's purchase right or right to first refusal) or the value in use of the Property.

12. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) The proposed transaction involves a relatively small percentage of the assets of the Plan;

(2) The Plan's independent Trustee will monitor and enforce the terms and conditions of the New Lease;

(3) The Plan will be permitted to make an excellent investment that will insure a stable source of income, and thereby further its investment objectives and funding needs; and

(4) The Plan's independent Trustee has reviewed all of the terms of the New Lease and has determined that it is favorable to the Plan and in the best interests and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Jamestown Clinic, Ltd. Employees' Retirement Plan (the Plan) Located in Jamestown, North Dakota

[Application No. D–5274]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, Apr. 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed lease, effective July 1, 1984, of certain improved real property (the Property) by the Plan to the Jamestown Clinic, Ltd. (the Employer), the sponsor of the Plan, provided that such lease is on terms and conditions at least equivalent to those which the Plan would receive in an arm's-length transaction with an unrelated party.

Effective Date: If granted, this exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with 65 participants and total assets of $2,640,061.68 as of December 31, 1983. The Employer is a North Dakota professional corporation functioning as a multi-purpose clinic for the general practice of medicine. Among the Plan's assets is the Property, a 48,146 square foot parcel of real property improved with a one-story medical clinic and office building and adjacent parking lots located at 401 Third Street Southeast in Jamestown, North Dakota and used by the Employer as its principal place of business. As of February 29, 1984, the Property had a fair market value of $645,800, according to an appraisal performed by Harry R. Arneson, Jr., M.A.I. (Arneson), an independent professional real estate appraiser whose office is located in Fargo, North Dakota. The Property has been leased by the Employer from the Plan continuously since May 1, 1972 under a lease (the Original Lease) which was renewed and extended on May 1, 1982 to expire April 30, 1987. The Employer represents that the Original Lease constitutes a lease as defined under section 414(c)(2) of the Act, and is statutorily exempt until June 30, 1984 from the prohibitions of sections 406 and 407 of the Act.[2] The Employer recognizes that the statutory exemption for the Original Lease expires on June 30, 1984, and therefore proposes that the Plan and the Employer terminate the Original Lease as of June 30, 1984 and enter into a new lease (the New Lease) of the Property by the Plan to the Employer, effective July 1, 1984. The Employer is requesting an exemption to permit the New Lease under the terms and conditions proposed herein.

2. The interests of the Plan for all purposes under the New Lease will be represented by Norwest Bank Minneapolis, N.A. (Norwest), a national bank located in Minneapolis, Minnesota which has acted as trustee of all other Plan assets since the Plan's inception in 1962 and which represents itself to be independent of and unrelated to the Employer. Prior to June 30, 1984, the Property will be transferred from Trust I of the Plan, of which directors of the Employer are trustees, into Trust II of the Plan, of which Norwest is trustee. The New Lease is a triple net lease for a term of three years effective July 1, 1984, with renewal options for four additional three-year terms requiring approval of Norwest. Under the New Lease the Employer assumes responsibility for all taxes, all costs of maintenance and repair, and full fire and extended coverage insurance on the Property. The New Lease requires the Employer to indemnify the Plan and hold the Plan harmless against all claims, demands and liabilities resulting from the Employer's use of the Property. Rental during the initial and any renewal terms will be negotiated between the Employer and Norwest, but in no event will such rental be less than the fair market rental value of the Property. The proposed annual rental for the initial term will be $85,200, which is slightly in excess of the Property's annual fair market rental value as of February 29, 1984 as determined by Arneson. On July 1, 1984, Norwest will conduct an independent inquiry to determine whether the fair market value of the Property as of that date has increased since Arneson's appraisal of February 29, 1984, and the rental for the initial term of the New Lease will be increased to reflect any increase in the Property's annual fair market value above $85,200. At the commencement of each renewal term, if any, Norwest shall cause the Property to be appraised for its annual fair market rental value by an independent, qualified real estate appraiser chosen by Norwest, and the annual rental for such renewal term shall not be less than the Property's annual fair market rental value as appraised. Other than the amount of rental, all terms and conditions of the New Lease for any renewal term shall remain the same as those of the New Lease for its initial term.

3. Norwest will represent the Plan in the enforcement of all terms and conditions of the New Lease and on behalf of the Plan will monitor the Employer's performance thereunder for the duration of the New Lease and any renewal thereof. The proposed New Lease of the Property by the Plan to the Employer has been reviewed and

[2] The Department expresses no opinion as to whether the Original Lease satisfies the requirements of section 414 of the Act.

evaluated by Everett A. Hellickson (Hellickson), assistant vice-president in the Trust Real Estate Division of Norwest. Hellickson, who will be directly responsible for management of the Property under the New Lease, represents that the proposed New Lease will constitute a favorable investment which is in the best interests and protective of the participants and beneficiaries of the Plan. Hellickson notes that the New Lease will provide to the Plan a return of approximately 13.2 percent on its investment in the Property, a return which is net of all expenses. Hellickson also notes that the Property constitutes 24.4% of the Plan's assets and that the Plan's continued holding of the Property allows the Plan to maintain adequate liquidity and sufficient diversity of assets.

4. In summary, the Employer represents that the New Lease will satisfy the criteria of section 408(a) of the Act because: (1) The New Lease is a triple net lease under which the Employer wil pay all expenses related to the Property and will protect the Plan's investment in the Property with full fire and extended coverage insurance; (2) the Plan's interests under the New Lease will be represented by an independent fiduciary, Norwest, which is unrelated to the Employer; (3) the New Lease ensures the Plan a return from the Property of no less than the Property's fair market rental value; and (4) Norwest has determined that the New Lease will constitute an appropriate investment for the Plan and will be in the best interests and protective of the participants and beneficiaries of the Plan.

For Further Information Contact: Ron Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 26th day of June, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-17439 Filed 6-28-84; 8:45 am]

BILLING CODE 4510-29-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Options Steering Committee; Regular Meeting Notice

AGENCY: Options Steering Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Resolution of Council Action Item 14.1
- Report on status of NEPA strategy and how it relates to options
- Process for acquiring options
- Public comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Options Steering Committee.

DATE: Monday, July 30, 1984. 1 p.m.

ADDRESS: The meeting will be held at the Council Hearing Room at 700 S.W. Taylor; Suite 200, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Tom Foley, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-17349 Filed 6-28-84; 8:45 am]

BILLING CODE 0000-00-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-400]

Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency; Receipt of Antitrust Information

Carolina Power & Light Company has submitted antitrust information related to its application for an operating license for a pressurized water reactor (Shearon Harris Nuclear Power Plant, Unit 1) located in Wake and Chatham Counties, North Carolina, approximately 20 miles southwest of Raleigh. The data submitted contains antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage. The construction permit holders for Shearon Harris are Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency.

On completion of the staff's antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, D.C. and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** notice. The results of any reevaluation that is requested will also be published in the **Federal Register** and copies sent to the Washington, D.C. and local public document room.

A copy of the general information portion of the application for an operating license and the antitrust information is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the local public document room at the Wake County Library, 104

Fayetteville Street, Raleigh, North Carolina 27601.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the applicant's activities since the construction permit antitrust review should submit such requests for information of views to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Site Analysis Branch, Office of Nuclear Reactor Regulation, on or before July 30, 1984.

Dated at Bethesda, Maryland, this 15th day of June, 1984.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Branch Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc 84-17422 Filed 6-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

South Carolina Electric & Gas Co. and South Carolina Public Service Authority; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensee), for operation of the Virgil C. Summer Nuclear Station, Unit 1, located in Fairfield County, South Carolina.

The amendment would change the spent fuel pool storage capacity listed in Technical Specification 5.6 from 682 fuel assemblies to 1276 fuel assemblies in a three region storage design with a maximum initial enrichment of 4.3 weight percent U-235. The nominal center-to-center distance between spent fuel assemblies listed in Technical Specification 5.6 would be changed from 14 inches to slightly greater than 10 inches. A new Technical Specification ¾.9.12 would be added describing the combination of initial enrichment and cumulative exposure for spent fuel assemblies necessary for storage in Regions 2 and 3. Technical Specifications 5.3.1 and 5.6.1.2 would be changed to reflect storage in the new fuel storage racks of new fuel assemblies for reload enriched up to a maximum of 4.3 weight percent U-235 instead of 3.5 weight percent U-235.

This amendment was requested in the licensee's application for amendment dated January 23, 1984.

Before issuance of the proposed license amendement, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The expansion of the spent fuel pool storage consists of replacing existing racks with racks which allow closer spacing between stored spent fuel assemblies. The storage expansion method does not involve rod consolidation or double tiering. The storage expansion will create three regions of storage. Regions 2 and 3 will require fuel burnup (exposure) for storage of fuel assemblies. Region 1 will allow storage with no exposure requirements. Also, the reracked spent fuel pool will allow storage a maximum of 4.3 weight percent U-235 initially enriched fuel assembles. However, the K_{eff} of the reracked spent fuel pool will be maintained less than or equal to 0.95, which is the current requirement. The additional heat load created by the increase in spent fuel assemblies is small and within the capacity of the spent fuel pool cooling system such that the requirement for the temperature of the spent fuel pool to be ≤ 140°F is still met. No new technology or unproven technology is utilized in either construction or analysis of the storage expansion. The structural design margin of the spent fuel pool will not be significantly reduced by the rerack. Therefore, the integrity of the spent fuel pool is maintained and as a result no new means of losing cooling water, such that cooling flow can not be maintained, can be postulated beyond those addressed in the staff's earlier reviews the led to the issuance of the operating license. A discussion of fuel pool integrity is contained in the licensee's Final Safety Analysis Report and the staff's Safety Evaluation Report. Also, reload fuel and new fuel pool storage requirements are being changed to reflect fuel assemblies initially enriched to 4.3 vice 3.5 weight percent U-235. However, the K_{eff} of the new fuel pool will not change from its current requirement of less than or equal to 0.98; and, also, for reload fuel usage, the Technical Specification requirements remain the same.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples relates to a change which may reduce in some way a safety margin, but where the results of the change are clearly within all acceptalbe criteria with respect to the system or component. The change from a maximum of 3.5 to 4.3 weight percent U-235 for new fuel storage and use is similar to this example because the enrichment of the fuel is increased, but all of the Technical Specification safety requirements are still met. Spent fuel pool reracking was specifically excluded from the list of examples considered likely to involve a significant hazards consideration. Pending further study of this matter, the Commission is making a finding on the question of no significant hazards consideration for each reracking application such as this on a case-by-case basis, giving full consideration to the technical circumstances of the case, using the standard of § 50.92 (48 FR 14869).

The licensee's submittal of January 23, 1984, included a discussion of the proposed action with respect to the issue of no significant hazards consideration. This discussion has been reviewed and the Commission finds it acceptable. Specifically, with regard to the first standard of 10 CFR 50.92, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The design requirements of spent fuel storage remain the same and are met by the rerack design; therefore, the probability of an accident previously evaluated is not significantly increased. Accident analyses regarding criticality, fuel handling, seismic, and loss of forced cooling have been performed and the consequences are acceptable with no significant increases.

With regard to the second standard of 10 CFR 50.92, this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The storage expansion just involves replacing existing racks with racks which allow closer spacing between stored spent fuel assemblies; and, therefore, applicable accidents remain

the same. Also, since the integrity of the spent fuel pool is maintained, no new means of losing cooling water, such that cooling flow cannot be maintained, can be postulated and therefore, the proposed action does not create the possibility of a new or different accident from any accident previously evaluated.

With regard to the third standard of 10 CFR 50.92, this amendment does not involve a significant reduction in a margin of safety. Even with more spent fuel assemblies and higher enriched fuel, spent fuel storage Technical Specifications and Standard Review Plan requirements are still met with regard to K_{eff}, spent fuel pool cooling capability, and structural strength.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By July 30, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed inaccordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner is required to file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity, pursuant to 10 CFR 2.714(b). Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one concentration will not be permitted to participate as a party.

The Commission hereby provides notice that this proceeding is on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any petitioner or party to the proceeding, is required to employ hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." Section 134 procedures provide for oral argument on those issues "determined to be in controversy", proceeded by discovery under the Rules of Practice, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law to be resolved at an adjudicatory hearing. Actual adjudicatory hearings are to be held only on those issues found to meet the criteria of section 134 and set for hearing after oral argument on the proposed issues. However, if no petitioner or party requests the use of the hybrid hearing procedures, then the usual 10 CFR Part 2 procedures apply.

(At this time, the Commission does not have effective regulations implementing section 134 of the NWPA although it has published proposed rules. See Hybrid Hearing Procedures for Expansion of Onsite Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors, 48 FR 54499 (December 5, 1983).)

Subject to the above requirements, and any limitations in the order granting leave to intervene those permitted to intervene become parties to the proceeding, have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period. Where petitions are filed during the last ten (10) days of the notice period, it is requested

that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missour (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Randolph R. Mahan, P.O. Box 764, Columbia, South Carolina 29218, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Dated at Bethesda, Maryland, this 25th day of June 1984.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84–17424 Filed 6–28–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Panel for the Decontamination of Three Mile Island, Unit 2; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI–2) will be meeting on July 12, 1984, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 South Second Street, Harrisburg, Pennsylvania 17101. Less than 15 days notice is being given for this meeting because of difficulties associated with the coordination of individual Committee members' schedules. The meeting will be open to the public.

At this meeting the Panel will be briefed by W. Kirk, EPA, on the results of the interagency radiation monitoring program review. Representatives from General Public Utilities Corporation will discuss facility decontamination alternatives after fuel removal and funding for the cleanup for 1985 and beyond. The status of the Edison Electric Institute TMI–2 voluntary contribution program will also be presented.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492–7466.

Dated: June 27, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–17508 Filed 6–28–84; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21039; File No. SR–OCC–84–4]

Options Clearing Corp.; Filing of Proposed Rule change

Correction

In FR Doc. 84–16345 appearing on page 25057 in the issue of Tuesday, June 19, 1984, the docket number in the heading was inaccurate, and should have appeared as set forth above.

BILLING CODE 1505–01–M

[Release No. 23339; 70–6965]

American Electric Power Co., Inc.; Proposal of Parent To Act as Indemnitor, Guarantor and/or Surety

June 22, 1984.

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed an application with this Commission pursuant to Section 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("ACT") and Rule 45 thereunder.

From time to time AEP has or may for the convenience, economy, and in some cases necessity, acted or may act as indemnitor, guarantor or surety on behalf of companies in the EPA System by reason of law, regulation, ordinance, or otherwise. AEP proposes that it be given authority, when such circumstances arise, to act as surety, indemnitor or guarantor for companies in the AEP System in an aggregate amount not in excess of $75 million. This dollar amount is in addition to any previous authorization or authorization granted in this filing. In support of this request, AEP notes that in the past companies in the AEP System either have been unable to obtain bonds from insurance companies without AEP acting as surety, indemnitor or guarantor and/or in having AEP acting in such a capacity, these companies were able to save substantially in insurance premiums. AEP will charge no fee to the companies when it acts as surety, indemnitor or guarantor.

AEP is also requesting permission to execute a supersedeas bond, as surety, in an amount up to $22 million. This request arises as a result of a January 9, 1984 final judgment entered in favor of Terre Haute Industries, Inc. and against AEP subsidiaries American Electric Power Service Corporation ("AEPSC") and Indiana and Michigan Electric Company ("I&M") in the sum of $16,933,700 with partial pre-judgment interest in the approximate amount of $567,000 and costs. AEPSC and I&M have represented to the Court that they intend to appeal the judgment. In order to supercede the judgment, AEPSC and I&M have obtained a supersedeas bond. It was determined, in order to obtain a favorable premium for such bond, that AEP would agree to indemnify the bond company with respect to the bond, thus AEP's reason for this request to execute a supersedeas bond as surety. AEP will charge no fee to I&M or AEPSC for acting in the capacity of surety.

AEP also proposes to guarantee or to enter into an agreement or agreements of indemnity or to act as surety with one or more surety bonding companies providing for idemnification by AEP of liabilities incurred by any such surety bonding company or companies in connection with the issuance of self-insurance pneumoconiosis (black lung) disability bonds that are required by AEP subsidiary coal companies. The AEP System companies have not been able to purchase or renew such surety bonds without indemnification by AEP of the corporate surety bonding company issuing such surety bonds. The maximum amount of guaranty by AEP or indemnity from AEP to a bonding company at any one time out-standing with respect to self-insurance pneumoconiosis disability benefits will not exceed $10 million.

Finally, AEP notes that under its existing authorizations, it is indemnifying Safeco Insurance

Company of America with respect to posting bonds for various purposes on behalf of AEP System Companies. AEP in this application requests permission, when appropriate, to enter into indemnity agreements, or to act as surety, indemnitor or guarantor with other surety bond companies in all insances where the Commission has in the past, or will in the instant matter, permit AEP to enter into such arrangements.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 16, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17356 Filed 6-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14005; 812-5780]

Mortgage Bankers Financial Corp I; Filing of Application

June 25, 1984.

Notice is hereby given, That Mortgage Bankers Financial Corporation I ("Applicant"), c/o Chapman and Cutler, 111 West Monroe Street, Chicago, IL 60603, a limited purpose finance corporation organized to facilitate the financing of long-term residential mortgages on single family residences, filed an application on February 28, 1984, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below, and to the Act for the text of all applicable sections.

According to the application, Applicant will be formed as a Delaware Corporation and is expected to be owned by companies engaged in the mortgage banking business. Applicant states that its purpose will be to facilitate the financing of long-term residential mortgages on single family residences and that it will not engage in any other unrelated business or investment activities.

Applicant intends to issue bonds in series ("Bonds") and lend the proceeds to various single purpose finance companies ("Finance Companies"), each of which will be wholly-owned by a home building company and have a mortgage banker as its agent. Applicant states that each series of Bonds will be separately secured by a pledge by the Finance Companies to Applicant and by Applicant to a trustee of collateral consisting of guaranteed mortgage pass-through certificates issued by the Federal National Mortgage Association ("FNMA Certificates"), Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), guaranteed fully-modified pass-through mortgage-backed certificates issued by the Government National Mortgage Association ("GNMA Certificates") or conventional first mortgage notes secured by mortgages on single-family residences (collectively "Mortgage Related Collateral"). Each series of Bonds will also be secured by a supplemental debt service fund established under an indenture and each GNMA, FNMA and FHLMC Certificate will evidence an interest in a pool of mortgage loans on single family residences.

Applicant states that each series of Bonds will be issued pursuant to an indenture ("Indenture") between Applicant and an independent trustee ("Trustee"). Each series of Bonds will be sold to institutional or retail investors through one or more investment banking firms. Applicant represents that certain series of the Bonds will be registered under the Securities Act of 1933 and others will be sold in private placements. Applicant further represents that Indentures for public offerings will be subject to the provisions of the Trust Indenture Act of 1939.

Applicant states that the proceeds of the sale of each series of Bonds will be loaned to the various Finance Companies. Each Finance Company will use the proceeds to repay indebtedness to lenders or others incurred in connection with the funding or acquisition of mortgage loans owned by the Finance Company on single-family residences constructed primarily by its respective home builder. Applicant states that the Finance Companies will repay the loans made to them by Applicant by making or causing payments to be made directly to the Trustee on behalf of Applicant in amounts that are necessary to pay the principal of and interest on the Bonds as they become due. Each Finance Company will pledge the Mortgage-Related Collateral to Applicant as security for its loans and Applicant will assign to the Trustee its entire right, title and interest in the Mortgage-Related Collateral pledged as security. Applicant states that payments on first mortgage loans on single-family residences will be the primary source of funds for payments of principal and interest due on the Bonds.

Applicant Believes that it does not fall within the definition of an investment company as set forth in Section 3(a) of the Act. Applicant states that its primary activity will be the facilitation of the sales of single-family residences through the financing of whole residential mortgages and that it filed this application to eliminate any possible ambiguity concerning the applicability of the Act to Applicant.

Applicant also asserts that its proposed activities could be carried out directly by each of the Finance Companies without registering under the Act due to the exemption provided in Section 3(c)(5)(C) of the Act. Applicant submits that it is only facilitating the financing efforts of a number of small builders to achieve economies of scale.

Notice is further given, That any interested person wishing to request a hearing on the application may, not later than July 17, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17360 Filed 6-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21085; SR-NYSE-84-13]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

June 22, 1984.

The New York Stock Exchange, Incorporated ("NYSE"), Eleven Wall Street, New York, New York 10005, submitted on April 25, 1984, copies of a proposed rule change pursuant to Section 19((b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to provide for a minimum fractional change in premium bids or offers for index options of one sixteenth of $100 (or $6.25) regardless of the size of the premium. Under existing rules, the minimum fractional change in premium bids or offers for index options is one sixteenth of $100 only when the premium is less than $300 and is one-eighth of $100 (or $12.50) when the premium is equal to or greater that $300.

The NYSE contends that the smaller premium increments will encourage investor activity and will permit members to more readily use index options to hedge or speculate where the larger premium increments might have discouraged them. In its view, the increased trading flexibility will improve the index options market by increasing its liquidity and will thereby produce a more efficient and competitive marketplace.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20937, May 7, 1984) and by publication in the **Federal Register** (49 FR 20589, May 15, 1984). No comments were received with respect to the proposed rule filing.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

[1] The Exchange does not intend to implement this rule change until it completes a survey or market data vendors to determine their capabilities to handle the reduced minimum risk. Accordingly, the exchange may postpone the effectiveness of the rule change pending completion of the survey.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to the delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17361 Filed 6-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21086; File No. SR-PSDTC-84-5]

The Pacific Securities Depository Trust Co.; Filing of Proposed Rule Change

June 22, 1984.

On May 29, 1984, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The proposed rule change would establish a program ("Units Program") through which PSDTC would offer participants depository services for eligible unit issues. A unit issue is a combination of two to four component securities issued and traded as a single security for a specified period of time. The Commission is publishing this notice to solicit your comments on the proposed rule change.

PSDTC's proposed Units Program would establish general procedures governing the deposit, withdrawal and transfer of unit issues and/or their component parts to or from participants' classified, unclassified or loan free positions through the separation date. The separation date for eligible unit issues is the date that component securities become separately transferable and the unit ceases to be transferable by the issuer's agent. As a result, participants that desire to deposit to or withdraw those units from their classified, unclassified or loan free positions would have to do so prior to the separation date. After the separation date, deposits and withdrawals would be limited to component parts of unit issues. Nevertheless, if the market in a particular unit issue remained active after the separation date, PSDTC participants, if they so desired, would be permitted to carry the component securities as units.

PSDTC initially has approved 25 unit security issues as eligible for deposit in the Units Program, but intends to increase the number of eligible unit issues on a regular basis thereafter. PSDTC notes that since the separation dates for the unit issues initially eligible for its Unit Program have already passed, only the component securities of those units would be accepted for deposit.

PSDTC proposes to institute a change for each book-entry movement effected pursuant to its Units Program. PSDTC has determined that the initial charge will be $3.00 per book-entry movement.

PSDTC states in its filing that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 in general and with Sections 17A(b)(3)(F) and 17A(b)(3)(D) of the Act in particular. Specifically, PSDTC maintains that this proposed rule change is consistent with Section 17A(b)(3)(F) of the Act because it will facilitate the safeguarding of securities on deposit at PSDTC and will enable its participants to more efficiently handle their security positions. In addition, PSDTC states that its Units Program is consistent with Section 17A(b)(3)(F) of the Act because it provides for the allocation of reasonable fees and changes among its participants.

To assist the Commission in determining whether to approve the proposed rule change or to institute disapproval proceedings, you are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. If you decide to comment on this filing, please file six copies of your views in writing with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-PSDTC-84-06.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17389 Filed 6-28-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-21094; File No. SR-PSE-11]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 4, 1984, the Pacific Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange, Inc. ("PSE") proposes to amend several sections of Rule VI of the Rules of the Board of Governors, and Options Floor Procedure advice ("OFPA") B-5. These proposals redefine the obligations of market-makers and create a zone system for market-making. The Statement of Purpose in Item II(A) below contains a description of the terms of substance of the proposed rule changes.

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

The purpose of the rule change is to revise the Exchange's system of regulating Market Maker obligations, to more effectively accomplish the intended goals. To implement this system, some of the existing language of Rule VI, Section 79 must be amended, and new language will be added to Sections 75 and 79. Options Floor Procedure Advice B-5 will also be amended to reflect the changes made to Section 79.

Proposed Commentary .03 of Section 75 authorizes the Options Appointment Committee to create primary zones consisting of several posts, each post containing several classes of options. Under the new Commentary, a Market Maker's principal assignment will extend to a primary zone consisting of several posts, rather than a single post. The zone system will increase the number of Market Makers primarily assigned to each option, which will have the effect of improving liquidity.

Section 79(b)(1) of Rule VI and Commentary .02 will be amended to reduce the maximum bid-ask differentials in all series of options, to create tighter markets. The practice of doubling the maximum bid-ask differential for the far term series is eliminated.

Commentary .03 of Section 79, which required that no more than 25% of a Market Maker's trading activity in any quarter be in classes of options contracts to which the Market Maker holds neither a Principal nor Supplemental Appointment, is being completely eliminated. In its place, the following Commentaries to Section 79 are being added.

Proposed Commentaries .03(a) and .03(b) will obligate a Market Maker who represents the best market in the crowd to inform the Order Book Official when he is leaving the post, and state that a market Maker must inform the crowd when he changes a market he has recently given. These measures are intended to reduce crowd disruption and ensure that the displayed bids and offers accurately reflect the current best market in the crowd.

Proposed Commentary .06 of Section 79 formalizes the obligation of every Market Maker who is present at a post to trade one contract at the established price, in response to a Floor Broker's call for a market in an option at that post. If a Market Maker at the post either bids lower or offers higher than the established market, such Market Maker shall be obligated to trade one contract at the price quoted by the Market Maker. This Commentary states an affirmative obligation that Market Makers currently have under Section 79, and will aid Floor Brokers in filling orders at one price in an option with liquidity problems.

Proposed Commentary .07 formalizes the existing obligation of Market Makers to honor a quotation just given. This amendment is intended to reduce crowd disruption and assist in the maintenance of a fair and orderly market.

The Exchange's Market Maker attendance requirements, currently contained in OFPA B-5, are being eliminated, and are replaced with the requirement that Market Makers must execute 40% of their total transactions in-person. The Options Floor Trading Committee, which unanimously approved this proposed rule change, believes that the in-person trading requirement is a better method of enforcing Market Maker obligations than the existing attendance rules.

The proposed rule change is consistent with the requirements of Section 6(b)(5) of the Securities Exchange Act of 1934, in that it promotes just and equitable principles of trade by improving the Exchange's methods of regulating Market Maker obligations.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change imposes no burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments on the proposed rule change were neither solicitated nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the PSE. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 22, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17363 Filed 6-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21084; File No. SR-NYSE-84-21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc.

June 22, 1984.

The New York Stock Exchange, Inc. ("NYSE") submitted on June 8, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to implement certain enhancements to the NYSE's Designated Order Turnaround ("DOT") and Limit ("LMT") systems as well as an Immediate Reporting Service for specified securities. In this release the Commission is both providing notice of the proposed rule change and soliciting public comment on several specific issues raised by the proposed procedures.

The proposed rule change provides as follows: (i) The order-size eligibility in the DOT system would be increased from 599 shares to 1,099 shares for market orders, and the order eligibility size in LMT would be increased to 5,099 shares for all LMT orders;[1] (ii) marketable limit orders up to 1,099 shares would be treated as market orders for the purposes of DOT;[2] (iii) market orders up to 1,099 shares and marketable limit orders up to 1,099 shares would (in such security issues as the NYSE may from time to time determine) by quaranteed execution at a single price; (iv) the NYSE's policy of specialists' not charging a commission on DOT orders would be extended to both market orders and marketable limit orders up to 1,099 shares, but due to the greater service required on short sales, specialists would be authorized to charge commission fot both market and marketable limit orders to sell short; (v) the specialists' existing ½ point price guarantee (with certain exceptions as provided in NYSE Rule 123A.47) for execution prices reported through DOT would apply to market and marketable limit orders up to 1,099 shares,[3] and a new exception would be created providing that the specialist's guarantee would not apply to an erroneous execution report on a limit order if, in fact, the subject security never reached the limit price on that trading day; (vi) the time parameter within which a specialist must report an execution or a "stop" on a DOT order (or cause a system generated report to be issued) would be reduced from five minutes to 30 seconds, on a phased-in basis as the Exchange deems appropriate; and (vii) the NYSE's proposed "Immediate Reporting Service" would be used for certain stocks (to be selected by the NYSE) to provide for immediate execution and report through DOT for market and marketable limit orders up to 1,099 shares when the spread between the bid and the offer in the subject stock is ⅛ point and the NYSE quotation is the best Intermarket Trading System ("ITS") quotation in that stock.[4] The NYSE states that the proposed modifications to its DOT system will increase the operating efficiency of the Exchange and have become necessary due to substantial increases in its volume of transactions and in its average order size since 1976, when DOT was introduced.

Publication of the submission is expected to be made in the **Federal Register** during the week of June 25, 1984. In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-84-21.

As noted above, the NYSE's Immediate Reporting Service would provide immediate executions to orders entered into the DOT system when the NYSE quotation spread in the subject stock was no more than ⅛ point and the NYSE quote equaled the best ITS quotation. In all other cases, however, DOT market orders would be assigned a reference price based on the NYSE's most recent last sale price in the subject stock preceding the order, and, if not executed within the specified time after receipt, the DOT order would be automatically executed at this reference price. Marketable limit orders would be assigned the prevailing NYSE quote at time of receipt as a reference price, and would be similarly executed at the reference price if not executed by a specialist within the specified time period. The NYSE proposes to reduce the time parameter preceding system execution of these orders from the existing five minute period to as little as thirty seconds, on a phased-in basis.

The NYSE's proposed immediate Reporting Service would be the first fully automated execution system for round-lots introduced on the NYSE.[5] Other exchanges, including the Pacific ("PSE"), Midwest ("MSE"), and Philadelphia ("Phlx") Stock Exchanges have offered automated executions for small orders in listed stocks for a

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[1] Currently, the order eligibility size in LMT is 599 shares for day limit orders, and 5,099 shares for GTC ("good 'til cancelled") limit orders. The NYSE proposes to further raise the eligibility standard to 30,099 shares for all LMT orders, as further system enhancements are made.

[2] The NYSE defines a "marketable limit order" as a limit order that is immediately executable because the price of the subject security at the time the order is entered is equal to or better than the limit price on the order.

[3] Under NYSE Rule 123A.47(b) an erroneous execution report sent by a specialist through DOT shall be binding unless the report is more than ⅛ point away from the execution price, in which case the execution price shall be binding.

[4] The ITS is an intermarket communications facility operated jointly by certain national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD").

[5] The NYSE previously has implemented its Registered Representative Rapid Response Service ("R4"), currently approved on a temporary basis until November 10, 1984. *See* Securities Exchange Act Release No. 20350 (November 4, 1983). R4 allows participating broker-dealers to execute small customer orders in certain NYSE stocks at the best ITS quotation and then send reports of those executions for acceptance by the specialist. Although R4 provides immediate executions, it does so through allowing reports of off-floor executions to be forwarded to the Exchange rather than through an on-floor execution system such as the Immediate Reporting Service.

number of years. These systems execute orders automatically on a derivative basis at the best ITS quote;[6] that is, even if the exchange's own quotation does not equal the best ITS quote, customers are assured an execution in these automated systems at this price. The NYSE's immediate Reporting Service similarly would assure an execution at the best ITS quote in stocks included in the service.[7]

In view of the significance of the introduction of an automated execution system on the NYSE, the commission solicits comments on the NYSE's proposed immediate Reporting Service. The Commission especially solicits comment on any possible structural implications of the immediate Reporting Service, as well as on possible execution efficiencies afforded by this system.

The Commission also requests comments on the NYSE's proposal to reduce the time parameters for system generated executions of DOT and marketable limit orders to as short as thirty seconds. The Commission notes that, with a thirty second parameter, this DOT system would be equivalent in many respects to the PSE's SCOREX and the MSE's MAX automated execution systems, in which orders are exposed to the specialist for thirty seconds prior to execution. The NYSE's DOT system would differ from these systems, however, in that the DOT system, which uses as reference prices the preceding NYSE last sale and quote, would not assure customer executions at the best ITS quote or even an execution based on the consolidated last sale price. Use of a last sale reference price could result at times in executions of DOT orders at prices better than the best ITS quote, if the preceding trade occurred between the ITS spread. However, it also could result in trades outside the best ITS quotation if, for instance, the last NYSE trade involved a block at a price away from the market or the market had moved since the last trade. Moreover, use of the NYSE quote would result in inferior executions whenever the NYSE quote did not equal the best ITS quote. Accordingly, the Commission particularly requests comment concerning the potential impact on the quality of customer executions of DOT orders at the NYSE Last sale or the NYSE quote after a period as short as thirty seconds.[8]

Copies of the submission,[9] all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C.

Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

Exhibit A

In the matter of proposed rule change by New York Stock Exchange, Inc. relating to enhancements to the DOT and LMT systems and the introduction of an Immediate Reporting Service. Comments requested within 21 days after the date of this publication.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 8, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of enhancements to the Exchange's DOT and LMT Systems and the introduction of an Immediate Reporting Service for specified securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the rule change proposed herein is to increase the efficiency of Exchange systems by providing more rapid and cost-effective reports to subscriber member organizations. The proposed rule changes consist essentially of the following:

(i) Raising order-size eligibility in the Designated Order Turnaround (DOT) and Limit (LMT) Systems.

(ii) Providing that marketable limit orders up to 1,099 shares be treated as market orders for purposes of the DOT System rules and procedures.

(iii) Providing for a single-priced execution of DOT orders and marketable limit orders up to 1,099 shares.

(iv) Extending the Exchange's policy on the specialist not charging a commission on DOT market orders to marketable limit orders up to 1,099 shares, and clarifying that the specialist may charge a commission on DOT market orders to sell short and marketable limit orders to sell short.

(v) Providing that, subject to specified exceptions, the specialist shall be liable for erroneous execution reports of limit orders up ½ point for orders up to 1,099 shares.

(vi) Changing the time parameter for system-generated reports for DOT market orders whenever the specialist fails to report an execution or a "stop" to 30 seconds, to be implemented over a period of time as the Exchange deems appropriate, and extending the concept of system-generated reporting to marketable limit orders up to 1,099 shares subject to the same "timer" as for DOT market orders.

[6] The PSE, however, currently does not include certain NASD quotes in its automated execution system.

[7] It should be noted that the NYSE's proposed immediate Reporting Service, while offering automated executions at the best quote, would not be a derivative system like the other exchange automated systems, because the NYSE quote must match the best ITS quote before orders are automatically executed in this system.

[8] The NYSE staff has indicated that it intends to move eventually to using the best ITS quote as the reference price for execution of DOT and marketable limit orders, after the NYSE's internal systems have been modified to allow pricing in these systems off the best ITS quote.

[9] The NYSE's submission for publication in the **Federal Register** is appended as Exibit A to this notice.

(vii) Providing that a member firm shall receive an immediate report of execution of a DOT market order or marketable limit order in a stock eligible for the Exchange's "Immediate Reporting Service" when the spread between the bid and offer in the stock is ⅛ point and the NYSE quotation is the best Intermarket Trading System ("ITS") quotation in that stock.

Increase in Order Size Eligibility. The Exchange proposes that the size of orders eligible for transmission to the Floor via the DOT System be increased from 599 shares to 1,099 shares. The Exchange notes that the size of the average trade has been increasing since the DOT System was introduced in 1976. In that year, DOT order eligibility was 199 shares, and the size of the average trade on the NYSE was 559 shares. Last year, the size of the average trade was more than 1,300 shares. In 1983, there were more than 37,000 trades per day in the range of 100 to 900 shares. The increase in the eligibility size of DOT orders represents an attempt by the Exchange to handle such orders as efficiently as possible in light of overall market trends toward larger size orders and trades.

In addition to increasing DOT order eligibility to 1,099 shares, the Exchange is also proposing to increase the size of orders eligible for its LMT System. Currently, the order eligibility size in LMT is 599 shares for day limit orders, and 5,099 shares for GTC ("good till cancelled") limit orders. The Exchange wants to raise the order eligibility size to 5,099 shares for *all* orders in the LMT System, and, in several months as system enhancements are made, to further raise the eligibility standards to 30,099 shares for all LMT orders. The Exchange believes that these enhancements are appropriate to ensure the efficient functioning and utilization of the LMT System.

"Marketable" Limit Orders. The Exchange is proposing that "marketable" limit orders (i.e., limit orders that are immediately executable because the price of the subject security at the time the orders are entered into the LMT System is equal to or better than the limit price specified on the order) up to 1,099 shares be handled in the same manner as DOT market orders, and be subject to all DOT trading rules and procedures, including the Immediate Reporting Service discussed below. In Exchange's view, a marketable limit order is, for all intents and purposes, the equivalent of a market order, and therefore may be appropriately handled in the same manner as conventional DOT market orders. The Exchange believes that this will result in the more efficient handling and processing of marketable limit orders.

Single-Price Execution. The Exchange is proposing that DOT market orders and marketable limit orders up to an order size of 1,099 shares, in selected issues as the Exchange shall from time to time determine, be guaranteed an execution at a single price, and would not be "split up" into two or more segments, with each part of the order receiving a different price. The Exchange notes that currently 98% of all DOT orders are executed at a single price, and that automated execution systems on regional exchanges, such as PACE (Philadelphia), SCOREX (Pacific), and MAX (Midwest) guarantee single-price executions to their subscriber organizations. The Exchange believes that a single-price guarantee for DOT orders and marketable limit orders up to 1,099 shares will provide efficient handling and processing of such orders, and meet the expressed needs of subscriber organizations, who prefer single-price executions of such orders.

Commissions on DOT and Marketable Limit Orders to Sell Short. It is Exchange policy that the specialist not charge a commission for executing DOT market orders. Basically, such orders are of an important, but relatively routine, nature, and do not require the degree of service that might be called for in handling larger orders, or orders with special instructions. Thus, the Exchange believes that a "no commission" policy is appropriate. The Exchange also believes it is appropriate to extend the "no commission" policy to marketable limit orders since such orders are for all intents and purposes the equivalent of immediately executable market orders. However, DOT market orders to sell short and marketable limit orders to sell short do require a degree of service greater than that called for in executing simple buy or sell orders. Therefore, the Exchange has determined that the "no commission" policy shall not apply to DOT market orders to sell short and marketable limit orders to sell short. Any commissions or other charges in regard to the execution of such orders are subject to negotiation between the specialist and the subscriber member organization. The Exchange notes that orders to sell short are not elibible for system-generated reporting or for the Immediate Reporting Service, both of which are discussed below.

Specialist's Liability for Erroneous Limit Order Execution Reports. In SR-NYSE-82-17, the Exchange submitted an amendment to NYSE Rule 123A.47 to provide essentially that the specialist must guarantee the execution prices he reports through the DOT System, except that (i) if the erroneous report is at a price which is more than one-half point away from the execution price, then the price of the execution shall be binding, and (ii) if the DOT subscribing member organization requests a correction from the specialist prior to the opening on the third business day following the day of the transaction, the specialist shall correct the execution report to the price of the execution and that price shall be binding. The Exchange is now proposing to amend Rule 123A.47 to extend the concept of specialists guaranteeing execution reports to orders up to 1,099 shares in the LMT System, subject to the two exceptions enumerated above. In addition, a third exception would be added in the case of LMT orders when an execution report is sent but the stock price never reached, on that trading day, the limit price specified on the order. In the Exchange's view, it would be inappropiate to have the specialist guarantee an execution price when, under the terms of the order, the order could not have been properly executed, and the subscriber member organization could not really have expected a report of execution. The error experience of specialists generally in handling small-size orders, and the efficiences achieved by the ½ point price guarantee, are discussed in detail in SR-NYSE-82-17, and are herein reiterated.

System-Generated Reports When Specialist Fails to Report Execution. In SR-NYSE-83-20, the Exchange submitted a proposal to provide system-generated reports for DOT orders whenever the specialist fails to report an execution or a "stop" once five minutes have elapsed after such order reaches the Floor. As the Exchange noted in that 19b-4 filing, system-generated reporting is designed to ensure that *all* DOT orders are responded to on a timely basis. In Amendment No. 1 to SR-NYSE-83-20, the Exchange subsequently agreed that the time parameter for system-generated reporting would be not less than three minutes unless the Exchange first obtained SEC approval under the 19b-4 process.

At this time, the Exchange is hereby requesting that the time parameter for system-generated reports be reduced to 30 seconds. The Exchange intends to gradually "phase in" this time parameter over a period of several months, consistent with the implementation of new display-oriented technology. The Exchange is also proposing to extend system-generated reporting to marketable limit orders up to 1,099

shares, subject to the same "timer" as for DOT market orders.

The Immediate Reporting Service. The Exchange's proposed Immediate Reporting Service would be used for certain stocks to be selected based on the stock's activity, price, the percentage of time the NYSE quotation represents the minimum price variation (i.e., a "⅛ market"), the percentage of time the NYSE quotation represents the best Intermarket Trading System ("ITS") quotation in the stock, and such other competitive considerations as the Exchange may deem appropriate.

When a Service-eligible stock is trading in a ⅛ point market and the NYSE quotation is the best ITS quotation, a market order entered through the DOT System, or a marketable limit order up to 1,099 shares entered through the LMT System, would be immediately priced and reported by the system to the originating member organization. Buy orders are priced at the NYSE offer and sell orders are priced at the NYSE bid. Orders would be executed at a single price. The Service would be used *only* when a Service-eligible stock is trading at a ⅛ point, ITS best-quotation market. If the market is not ⅛ point, or the NYSE quotation is not the best ITS quotation, the order would not be immediately priced and reported, but rather would be transmitted to the specialist's post for execution pursuant to the usual DOT procedures.

Upon receipt of a report of an order priced and reported by the Service, the specialist shall accept such report as the report of an execution that has already taken place.

If a bid or offer on which the report of execution is based is on behalf of the book or the Crowd, the specialist would give up the book or the Crowd, based on priority. If the specialist has priority over an order in the Crowd, he may retain priority and accept the Service report for his own account. If the execution report is not at the prevailing quote when the report is received on the Floor, the execution is allocated to the contra-side interest which was responsible for the bid or offer at the time of the Service execution. If that interest has been filled by an intervening transaction, or has been withdrawn from the market, the specialist shall guarantee the execution price as a matter of last resort.

The Exchange believes that the Service offers a distinct benefit to member organizations by providing them with immediate, guaranteed execution reports. The Service also uses the universal contrast that are employed in the DOT System, and thus provides for automatic submission of trade data to comparison. Thus, the Service should eliminate errors and omissions and provide a fully compared trade on trade date.

(2) Statutory Basis

The DOT and LMT Order System enhancements proposed herein are designed to facilitate transactions involving orders on the Exchange and to provide for efficient clearance and settlement of these transactions. Implementation of these enhancements will be consistent with those provisions of the Securities and Exchange Act of 1934 (the "Act") which encourage use of new data processing and communications techniques and more efficient market operations. It will also advance the prompt and accurate clearance and settlement of securities transactions. See Sections 11A(a)(1) and 17A(a)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17362 Filed 6-28-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on July 20, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street N.W., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Approval of Minutes of Meeting Held on May 10, 1984; (2) Chairman's Report on RTCA Administration and Activities; (3) Special Committee Activities Report for May and June, 1984; (4) Consideration of Establishing New Special Committees; (5) Approval of Special Committee 135 Recommended Revisions to RTCA Document DO-160A "Environmental Conditions and Test Procedures for Airborne Equipment"; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA

Secretariat, One McPherson Square, 1425 K Street, N.W., Suite 500, Washington, D.C. 20005, (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on June 21, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-17329 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Cultural Property Advisory Committee; Meeting Agenda

The Cultural Property Advisory Committee will conduct a meeting at Room 840, 301 4th Street, SW., Washington D.C. on July 11 and 12. Agenda for the two day session is as follows:

Wednesday, July 11

9:00 a.m.—Committee Chairman, Michael J. Kelly, convenes meeting. New member, James Berry Hill takes the oath of office.
9:30 a.m.—Report by the Executive Director, Ann Guthrie, regarding the status of outstanding issues from March meeting.
9:45 a.m.—Presentation and discussion of proposed "Committee Organization."
1:15 a.m.—Presentation by Anne Raidl of the Cultural Heritage Division of UNESCO, Paris.
12:00 p.m.—Break for lunch.
1:30 p.m.—Presentation and discussion of Committee's procedures for considering a State Party request.
5:00 p.m.—Adjourn.

Thursday, July 12

9:00 a.m.—Chairman convenes meeting. Consideration of Committee's internal procedures and operations.
12:30 p.m.—Adjournment (time approximate)

Afternoon session of July 11 and morning of July 12 will be closed to the public in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b(c)(7)(E)). Discussion will involve investigative techniques and procedures. The session will also be closed because the discussion will involve internal personnel rules and practices (5 U.S.C. 552b(c)(2)), and information the premature disclosure of which would be likely to frustrate significantly by implementation of proposed actions (5 U.S.C. 552b(c)(9)(B)).

Members of the public wishing to attend the open session on Wednesday, July 11, should contact Ms. Vicki Rose on 485-7319, for the exact location of Committee activities. Public attendance will be limited due to the size of the meeting room, and must be arranged in advance because of controlled access to the USIA Building.

Dated: June 26, 1984.

Charles N. Canestro,

Federal Register Liaison.

Determination To Close Advisory Committee Meeting; July 11-12, 1984

Based on information provided to me by the Cultural Property Advisory Committee, I hereby determine that the sessions of the meeting scheduled for the afternoon of July 11 and the morning of July 12, may be closed to the public.

The Committee has requested that these portions of the July 11-12 meeting be closed, because it will be discussing investigative techniques and procedures (5 U.S.C. 552b(c)(7)(E)). It will also involve discussion of internal personnel rules and practices (5 U.S.C. 552b(c)(2)) and information, premature disclosure of which, would be likely to frustrate significantly implementation of proposed actions and policies (5 U.S.C. 552b(c)(9)(B)).

Charles Z. Wick,

Director.

[FR Doc. 84-17346 Filed 6-28-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for reveiw the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions and lists the following information: (1) The Department or Staff Office issuing the form; (2) the title of the form; (3) the agency form number if applicable; (4) how often the form must be filled out; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form; and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-6880.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: June 25, 1984.

By direction of the Administrator.

Dominick Onorator,

Associate Deputy Administrator for Information Resources Management.

Extension

1. Department of Veterans Benefits
2. Farm Survey and Overall Farm and Home Plan Self-Proprietor/ Manager—Chapter 31, Title 38, United States Code
3. VA Form 28-1905n
4. On occasion
5. Individuals or households
6. 30 responses
7. 60 hours
8. Not applicable

Extension

1. Department of Veterans Benefits
2. Monthly Certification of Flight Training
3. VA Form 22-6553c
4. On occasion; Monthly
5. Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
6. 615 responses
7. 1800 hours
8. Not applicable

[FR Doc. 84-17357 Filed 6-28-84; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Medical Center, Sepulveda, California, Chevron Drilling Lease; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed lease of ½ acre of VA land, with access, for a period of 18 months and has determined that the potential environmental impacts will be minimal as a result of the issuance of the lease.

Chevron, Inc., proposes to use the leased land as the site for drilling an exploratory corehole by directional drilling. This will not be a production oil well. It is only for exploratory information gathering purposes.

Development of the project will cause minor short term impacts in the form of air pollution and generation of noise

during construction and drilling operations. Chevron will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A Finding of No Significant Impact has been reached based upon the information presented in this assessment. The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20420, (202) 389–3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: June 25, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 84–17356 Filed 6–28–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 127
Friday, June 29, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ELECTION COMMISSION

Federal Register No. 84–1663

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 28, 1984, 10:00 a.m.

Pursuant to 11 CFR 3.5(d)(1), the Commission is adding the following matter to the open meeting agenda:

Financial Control and Compliance Manual for General Election Candidates Receiving Public Financing

* * * * *

The meetings scheduled for the dates of July 3, 1984, and July 5, 1984, have been cancelled.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84–17458 Filed 6–27–84; 10:45 am]

BILLING CODE 6715–01–M

2

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 26, 1984, 49 FR 26181.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 28, 1984.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CAG–6: RP84–16–0002 and RP84–21–000, Locust Ridge Gas Company
CAG–14: RP84–42–000 and RP72–133–000, *et al.*, United Gas Pipe Line Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–17454 Filed 6–27–84; 10:27 am]

BILLING CODE 6717–02–M

3

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 49 Page No.—None at this time. Date to be Published—Thursday, June 28, 1984.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6970).

CHANGES IN THE MEETING: The following items have been withdrawn from the Bank Board Meeting scheduled Monday, July 2, 1984, at 2:00 p.m.

Limitations on Acceptance of Brokered Deposits, Recordkeeping for Insurance of Accounts
Finance Subsidiaries
No. 88, June 27, 1984.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84–17493 Filed 6–27–84; 2:44 pm]

BILLING CODE 6720–01–M

federal register

Friday
June 29, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA84–5007	May 18, 1984.
Delaware: DE82–3015	June 4, 1982.
Illinois:	
IL83–2035	Apr. 8, 1983.
IL 83–2066	Aug. 12, 1983.
Iowa: IA84–4011	Feb. 24, 1984.
Kansas: KS84–4026	Apr. 27, 1984.
Louisiana: LA84–4010	Mar. 9, 1984.
Oklahoma:	
OK84–4033	May 18, 1984.
OK84–4034	Do.
Texas:	
TX82–4045	Sept. 24, 1982.
TX84–4002	Janu. 27, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Nevada: NV82–5115(NV84–5017)	Aug. 6, 1982.
New Mexico NM83–4074 (NM84–4041)	Oct. 21, 1983.

Signed at Washington, D.C., This 22nd day June 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION #CA84-5007-MOD#4 (49 FR 21245-May 18, 1984) Imperial, Inyo, Kern, etc., Counties, California	Basic Hourly Rates	Fringe Benefits
CHANGE		
Bricklayers; Stonemasons:		
Area 3	$20.75	$3.52
Area 4	19.75	3.95
Area 7	20.50	3.22
Divers:		
Diver, Wet	38.41	6.745
Diver, Stand-by	19.205	6.745
Diver, Tender	18.205	6.745
Plasterers:		
Area 2	25.40	
Terrazzo Workers:		
Area 2	17.50	4.80
ADD:		
Carpenters:		
Area 1:		
Piledrivers	19.275	7.275
Area 2:		
Piledrivers	17.275	7.275
Marble Setters:		
Area 3	20.75	3.52
Area 4	19.75	3.95
Area 5	20.50	3.22
The area descriptions will read:		
Area 3: Los Angeles County		
Area 4: Riverside and San Bernardino Counties		
Area 5: Orange County		
Tile Setters:		
Area 6	16.45	4.55
The area description will read:		
Area 6: Fresno, Kings, Madera, Mariposa, Merced and Tulare Counties		

DECISION NO. DE82-3015 - MOD. #17 (47 FR 24526 - June 4, 1982) State of Delaware	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PLUMBERS & STEAMFITTERS:		
New Castle & Kent Counties (north of southern boundary of Dover City)	19.47	3.60
Sussex & Kent (Remainder of County) Counties	17.40	2.55

DECISION #KS84-4026-MOD.#2 (49 FR 18217-April 27, 1984) DOUGLAS, JEFFERSON, LEAVENWORTH, MIAMI, AND SHAWNEE COUNTIES, KANSAS	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Laborers: Zone 3		
Group 1	$8.85	$2.25
Group 2	9.00	2.25
Group 3	9.10	2.25
Group 4	9.25	2.25
Laborers: Zone 4		
Group 1	7.65	2.30
Group 2	7.80	2.30
Group 3	7.90	2.30
Group 4	8.05	2.30

DECISION NO. IL83-2035 - Mod #3 (48 FR 15413 - April 8, 1983) Bureau, Carroll, Henry, Jo-Daviess, Lee, Ogle, Rock Island Stephenson, Whiteside & Winnebago Counties, Illinois	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS:		
Area 1	$17.30	$2.71
Area 2	16.62	2.49
Area 3	16.93	3.08
Area 4	17.52	2.49
Area 5	15.35	4.59
Area 6	17.00	1.70
CEMENT MASONS:		
Area 3	14.90	1.35
LINE CONSTRUCTION:		
Area 1:		
Linemen	18.10	1.00+8½%
Groundmen Equipment perator	16.89	1.00+8½%
Groundmen Truck Driver with Winch	12.85	1.00+8½%
Groundmen Truck Driver without winch	12.10	1.00+8½%
Groundmen	11.54	1.00+8½%
Area 2:		
Linemen; Digger Op, Crane Op (15 tons or over)	17.40	.65+11½% +a
Equipment Operator, Semi-Truck Driver	14.78	
Truck Drivers	11.78	.65+11½% +a
Groundmen	11.39	.65+11½% +a
LABORERS:		
Area 5:		
Unskilled	13.92	2.65
Semi-skilled	14.12	2.65
Skilled	14.32	2.65
Area 6:		
Unskilled	13.18	2.70
Semi-skilled	13.43	2.70
Skilled	13.68	2.70
TRUCK DRIVERS:		
Area 1:		
Group 1	14.275	1.90 + b
Group 2	14.675	1.90 + b
Group 3	14.875	1.90 + b
Group 4	15.125	1.90 + b
Area 2:		
2-3 Axles	14.87	4.00
4 Axles	15.02	4.00
5 Axles	15.22	4.00
6 Axles	15.42	4.00
FOOTNOTE:		
b. $55.00 per week per employee		

DECISION NO. IL83-2066 - Mod #3 (48 FR 36780 - Aug. 12, 1983) Bond, Calhoun, Clinton, Greene Jersey, Macoupin, Madison, Monroe, Montgomery, St. Clair & Washington Counties, Illinois	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS & PILEDRIVERMEN:		
Area 1	$16.785	$2.90
TRUCK DRIVERS:		
Group 1	14.275	1.90+a
Group 2	14.675	1.90+a
Group 3	14.875	1.90+a
Group 4	15.125	1.90+a
FOOTNOTE:		
a. $55.00 per week per employee		

DECISION NO. IA84-4011 - MOD. #4 (49 FR 7068 - 2/24/84) Scott County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayers & stonemason	$15.11	2.97
Carpenters:		
The frame construction or repair of nursing & retirement homes & apartments over 4 stories:		
The City of Davenport	9.10	1.43
Remainder of County	6.10	1.43
All other work:		
Carpenters	14.91	3.08
Millwrights	16.28	3.57
Piledrivermen	15.41	3.08

MODIFICATIONS P. 3

DECISION #OK84-4033-MOD.#3 (49 FR 21257-May 18, 1984)	Basic Hourly Rates	Fringe Benefits
Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, Mcintosh, Mayes, Muskogee, Nowata, Okfusgee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Tulsa, Sequoyah, Wagoner, and Washington Cos., Oklahoma		
CHANGE:		
Roofers	$12.40	$1.39
Tile Layers, Terrazzo Workers, & Marble Masons		
Area 1	16.25	1.30
Area 2	15.09	3.10

DECISION #OK84-4034-MOD.#3 (49 FR 21252-May 18, 1984)	Basic Hourly Rates	Fringe Benefits
Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods, & Woodward Counties, Oklahoma		
CHANGE:		
Roofers	$12.40	$1.39
Asbestos Workers		
Area 1	15.20	2.37
Area 2	17.76	2.33
Area 3	17.16	2.76

DECISION #OK84-4034 (cont'd)	Basic Hourly Rates	Fringe Benefits
Carpenters - Area 3		
Carpenters	$11.25	$1.74
Millwrights	11.50	1.74
Piledrivermen	11.50	1.74
Carpenters - Area 4		
Carpenters	12.45	1.50

DECISION NO. LA84-4010 - MOD. #7 (49 FR 9064 - 3/9/84) Statewide Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Elevator constructors:		
Zone 2:		
Mechanics	$13.03	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	
Plumbers & pipefitters:		
Zone 2	13.42	2.58

DECISION NO. TX82-4045 - MOD. #4 (47 FR 42257 - 9/24/82) Taylor County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians	$13.50	1.55+ 3-1/4%

DECISION NO. TX84-4002 - MOD. #4 (49 FR 3575 - 1/27/84) Lubbock County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayers & stonemasons	13.50	.50

SUPERSEDEAS DECISION

STATE: Nevada COUNTY: Washoe
DECISION NUMBER: NV84-5017 DATE: Date of Publication
Supersedes Decision No. NV82-5115 dated August 6, 1982, in 47 FR 34314
DESCRIPTION OF WORK: Residential Projects consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS; Stonemasons	$14.30	2.06
BRICK HOD CARRIERS	13.56	2.60
CARPENTERS	11.48	5.47
CEMENT MASONS:		
Lake Tahoe Area:		
Cement masons	17.22	5.43
Mastic, Magnesite and all Composition Masons	17.47	5.43
Troweling Machine; Grinder Operator and Kelly Float	17.62	5.43
Remainder of Washoe Co. Cement Masons	15.47	5.43
Mastic, Magnesite and all Composition Masons	15.72	5.43
Troweling Machine; Grinder Operator and Kelly Float	15.97	5.43
DRYWALL INSTALLERS	15.55	5.47
ELECTRICIANS	12.00	3.74+ 3%
INSULATION INSTALLER	8.50	
IRONWORKERS:		
FENCE Erectors	18.99	5.95
Ornamental; Reinforcing; Structural	19.88	5.95
PAINTERS	14.45	1.25
PLASTERERS	15.47	3.21
PLUMBERS	12.67	
ROOFERS	18.75	2.32
SHEET METAL WORKERS	16.48	5.67
SOFT FLOOR LAYERS	16.74	1.58
TERRAZZO WORKERS; TILE SETTERS	15.04	2.28
LABORERS:		
Group 1	13.92	2.80
Group 2	14.02	2.80
Group 3	14.17	2.80
Group 4	14.42	2.80
Group 5	14.72	2.80
Group 6-A	14.72	2.80
Group 6-B	14.42	2.80
Group 6-C	14.07	2.80

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits
Piledriving:		
Group 1	13.62	9.14
Group 1-A	14.11	9.14
Group 1-B	14.41	9.14
Group 2-A	14.41	9.14
Group 2-B	15.24	9.14
Group 2-C	15.49	9.14
Group 2-D	15.70	9.14
Group 3	15.92	9.14
Group 3-A	16.54	9.14
Group 4	17.34	9.14
Group 5	17.58	9.14
Group 6	19.23	9.14
Steel Erection:		
Group 1	14.31	9.14
Group 2	14.84	9.14
Group 3	16.31	9.14
Group 4	16.52	9.14
Group 4-A	16.96	9.14
Group 5	17.68	9.14
Group 6	18.30	9.14
Group 7	18.73	9.14
Group 8	19.15	9.14
Group 9	20.65	9.14
TRUCK DRIVERS:		
GROUP 1	12.97	5.28
Group 2	13.02	5.28
Group 3	13.13	5.28
Group 4	13.19	5.28
Group 5	13.24	5.28
Group 6	13.29	5.28
Group 7	13.40	5.28
Group 8	13.46	5.28
Group 9	13.51	5.28
Group 10	13.54	5.28
Group 11	13.57	5.28
Group 12	13.68	5.28
Group 13	13.73	5.28
Group 14	13.99	5.28
Group 15	14.01	5.28
Group 16	14.17	5.28
Group 17	14.34	5.28

POWER EQUIPMENT OPERATORS
(Except Pile Driving and Steel Erection)

GROUPS	AREA 1	AREA 2	AREA 3	AREA 4
1-A	$13.64	$15.14	$15.64	$16.64
2	14.17	15.67	16.17	17.17
3	14.44	15.94	16.44	17.44
4	15.18	16.68	17.18	18.18
5	15.48	16.98	17.48	18.48
6	15.65	17.15	17.65	18.65
7	15.90	17.40	17.90	18.90
8	16.49	17.99	18.49	19.49
9	16.81	18.31	18.81	19.81
10	17.16	18.66	19.16	20.16
10-A	17.35	18.85	19.35	20.35
11	17.59	19.09	19.59	20.59
11-A	19.23	20.73	21.23	22.23

FRINGE BENEFITS PAYMENTS:
$9.14

AREA DEFINITIONS:

AREA 1: Area within 50 road miles of either the Carson City Courthouse or the Washoe County Courthouse

AREA 2: Area between 50 and 150 road miles of the Washoe County Courthouse

AREA 3: Area between 150 and 300 road miles of the Washoe County Courthouse

AREA 4: Area over 300 road miles of the Washoe County Courthouse

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

FOOTNOTE:
a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Seven Paid Holidays: A thru G.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Friday after Thanksgiving Day; G-Christmas Day

LABORERS

Group 1: All cleanup work of debris, grounds and buildings including Brushloader and windows and tile; Dumpman or Spotter (other than asphalt); General Laborer; Gardeners and Landscape Laborers; Limber, Brushloader and Piler

Group 2: Choker Setter or Rigger (clearing work only); Pittsburgh Chipper and similar type Brush Shredders; Concrete Worker (wet or dry) - all concrete work not listed in Group 3; Crusher or Grizzly Tender; Guinea Chaser (Stakeman); Panel Forms (wood or metal) - handling, cleaning and stripping of; Loading and unloading, carrying and handling of all rods and materials for use in reinforcing concrete; Railroad Trackmen (maintenance, repair or builders); Sloper; Semi-skilled Wreckers (salvaging of building materials other than those listed in Group 3); Greasing Dowels

Group 3: Asphalt Workers (Ironers, Shoveler, Cutting Machine); Buggymobile; Chainsaw, faller, logloader and bucker; Compactor (all types); Concrete Mixer, under 1/2 yard; Concrete pan work (breadpan type) (handling, cleaning, stripping); Concrete Saw, Chipping, grinding, sanding, Vibrator; Cribbing, shoring, Lagging, trench jacking, handguided Lagging Hammer; Curbing or Divider Machine; Curb Setter (pre-cast or cut); Ditching Machine (hand guided); Driller's Tender, Chuck Tender; Form Raiser, Slip forms; Grouting of concrete walls, windows and door jams; Headerboardman; Jackhammer, Pavement Breaker, Air Spade; Mastic Workers (wet or dry); Pipe Wrapper, Kettleman, Potman, and Men applying asphalt, creosote and similar type materials; All power tools (air, gas or electric not listed in Group 5); Pipejacking; Posthole Digger (air, gas or electric); Post Driver; Riprap-stonepaver and Rock Slinger, including placing of sack concrete wet or dry; Rototiller; Rigger and signaling in connection with Laborers' work; Sandblaster, Potman, Gunman or Nozzleman; Vibra-screed; Skilled Wrecker (removing and salvaging of sash, windows, doors, plumbing and electrical fixtures)

LABORERS (Cont'd)

Group 4: Burning and Welding in connection with Laborer's work; Joy Drill Model TWM-2A, Gardner Denver Model DN 143 and similar type drills; Track Drillers, Diamond Core Drillers, Wagon Drillers, Mechanical Drillers on multiple units; High Scalers; Concrete Pump; Heavy Duty Vibrator with stinger 5" diameter or over; Pipelayer, Caulker and Bander; Pipelayer - waterline, sewerline, gasline, or conduit; Asphalt Rakers

Group 5: Blasters and Powdermen, all work of loading, placing and blasting of all powder and explosives of any type, regardless of method used for such loading and placing

Group 6-A: Nozzleman

Group 6-B: Gunman, Materialman

Group 6-C: Reboundman

POWER EQUIPMENT OPERATORS
(Except Piledriving and Steel Erection)

Group 1: Brakeman; Deckhand; Fireman; Oiler; Switchman; Tar Pot Fireman

Group 2: Compressor; Material Loader and/or Conveyor (handling building materials); Pumps; Tar Pot Fireman (power agitated)

Group 3: Box Operator (bunker); Concrete Curing Machine (streets, highways, airports, canals); Conveyor Belt (tunnel); Engineer Generating Plant (500 K.W.); Fireman Hot Plant; Hydraulic Monitor; Mixer Box Operator (concrete plant); Motorman; Oiler (truck crane); Rotomist; Screedman (except asphalt or concrete paving); Bobcat or similar Loader, 1/4 cu. yd. or less

Group 4: Ballast Jack Tamper; Ballast Regulator; Ballast Tamper (multi-purpose); Boxman (asphalt plant); Concrete Mixer, skip type; Dinky; Fork Lift (construction jobsite); Line Master; Ross Carrier; Skip Loader (under 1 cu. yd.); Tie Spacer

Group 5: Concrete Mixer (over 1 cu. yd.); Concrete Pumps or Pumpcrete Guns; Elevator and Material Hoist (1 drum); Shuttle Car; Signalman; Screedman (Barber-Greene and similar) (asphalt or concrete paving)

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection) (Cont'd)

Group 6: Boom Truck or Dual Purpose "A" Frame Truck; R.L.H. Lima Road Pactor or similar; Chip Box Spreader (Flaherty type or similar); Concrete Batch Plant (wet or dry); Concrete Saws (highways, streets, airports, canals); Highline Cableway Signalman; Locomotive (over 30 tons); Lubrication and Service Engineer (mobile and grease rack); Maginnis International Full Slab Vibrator (airports, highways, canals, warehouses); Mechanical Burn, Curb and/or Curb and Gutter Machine (concrete or asphalt); Pavement Breaker, truck mounted, with compressor combination; Pavement Breaker or Tamper (with or without compressor combination); Power Jumbo (setting slip-forms, etc., in tunnels); Roller (except asphalt); Self-propelled Tape Machines; Self-propelled Compactor (single engine); Slip Form Pump (power-driven by hydraulic, electric, air, gas, etc., lifting device for concrete forms); Small rubber-tired tractors; Snapper Crane, Paxton-Mitchell or similar; Stationary Pipe Wrapping, Cleaning, and Bending Machine; Auger-type drilling equipment up to and including 30 ft. depth drilling capacity M.R.C.

Group 7: Bit Sharpener; Compressor (over 2); Concrete Conveyor or Concrete Pump, truck or equipment mounted (boom length to apply); Deck Engineer; Drilling and Boring Machinery, vertical and horizontal (not to apply to Waterliners, Wagon Drills or Jackhammers); Crusher Plant Engineer; Generator; Kolman Loader; Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Pipe Bending Machines (pipelines only); Pipe Cleaning Machines (tractor propelled and supported); Pipe Wrapping Machines (tractor propelled and supported); Portable Crushing and Screening Plants; Pumps (over 2); Refrigeration Plants; Roller Operator (asphalt); Self-propelled Boom-type Lifting Device (center mount) (10 ton capacity or less); Slusher; Soil Tester (certified); Surface Heater and Planer; Trenching Machine (maximum digging capacity 3 ft. depth); Post Driller and/or Driver; Auger-type drilling equipment over 30 ft. depth digging capacity M.R.C.

Group 8: Asphalt Milling Machine; Asphalt Plant Engineer; Car Passer; Cast-in-place Pipe Laying Machine; Combination Slusher and Motor; Concrete Batch Plant (multiple units); Dozer; Drill Doctor; Elevating Grader; Gradesetter, Grade Checker; Grooving and Grinding Machine (highways); Heavy-duty Repairman and/or Welder; Ken-seal; Loader (up to and including 2½ cu. yds.); Mechanical Trench Shield; Mixer-mobile; Push Cats; Road Oil Mixing Machine (wood-mixer and other similar Pugmill equipment); Rubber-tired earth-moving equipment (up to and including 35 cu. yds. "struck" M.R.C., Euclid, T-Pulls, DW's 10, 20, 21 and similar); Self-propelled Compactor with Dozer; Hyster 450 or Cat 825 or similar; Sheepfoot; Small Tractor (with boom); Soil Stabilizer (P & H or equal); Timber Skidder (rubber-tired or similar equipment); Tractor-drawn Scraper; Tractor; Tractor-mounted Compressor Drill Combination; Trenching Machine (over 3 ft. depth); Tri-batch Paver; Tunnel Badger or Tunnel Boring Machine; Tunnel Mole Boring Machine; Vermeer T-600B Rock Cutter

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IPOWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection) (Cont'd)

Group 9: Chicago Boom; Combination Backhoe and Loader (up to and including 3/8 yds.); Combination Mixer and Compressor (Gunite); Lull Hi-lift (20 ft. or over); Mucking Machine; Subgrader (Gurries or other types); Tractor (with boom) (D6 or larger); Track-laying-type earthmoving machine (single engine with tandem scrapers)

Group 10: Boom-type Backfilling Machine; Bridge Crane; Cary-lift or similar; Chemical Grouting Machine; Derricks; Derrick Barges (except excavation work); Euclid Loader and similar types; Heavy-duty Rotary Drill Rigs; Lift-slab (Vagtborg and similar types); Loader (over 2½ cu. yds. up to and including 4 cu. yds.); Locomotive (over 100 tons) (single or multiple units); Multiple engine Earth-moving Machines (Euclid, Dozers, etc.); Pre-stress Wire-wrapping Machines; Rubber-tired Scraper, self-loading; Single-engine Scraper (over 35 cu. yds.); Self-propelled Reservoir-debris equipment floating (200 H.P. and over); Shuttle Car (reclaim station); Train Loading Station; Trenching Machine, multi-engine with sloping attachments (Jefco or similar); Vacuum Cooling Plant; Whirley Crane (up to and including 25 tons)

Group 10-A: Backhoe (up to and including 1 cu. yd. Hydraulic); Backhoe (up to and including 1 cu. yd. cable); Cranes (not over 25 tons) (Hammerhead and Gantry); Grade-alls (up to and including 1 cu. yd.); Motor Patrol; Power Shovels, Clamshells, Draglines, Cranes (up to and including 1 cu. yd.); Rubber-tired Scraper, self-loading (twin-engine); Self-propelled boom-type lifting device (center mount)(over 10 tons up to and including 25 tons); CMI Dual-lane, Auto-grades SP300 and similar

Group 11: Automatic Asphalt or Concrete Slip-form Paver; Automatic Railroad Car Dumper; Canal Trimmer; Cary Lift, Campbell or similar; Cranes (over 25 tons); Highline Cableway Operator; Loader (over 4 cu. yds. up to and including 12 cu. yds.); Multiple-engine Scraper (when used to push pull); Power Shovels, Clamshells, Draglines, Backhoes, Gradealls (over 1 cu. yd. and up to and including 7 cu. yds. M.R.C.); Self-propelled Compactor (with multiple-propulsion power units); Self-propelled boom-type lifting device (over 25 tons M.R.C.); Single-engine Rubber-tired earth-moving machine (with tandem scraper); Slip Form Paver (concrete or asphalt); Tandem Cats and Scrapers; Tower Crane Mobile (including rail-mounted); Universal Liebher and Tower Cranes and similar types; Wheel Excavator (up to and including 750 cu. yds. per hour); Whirley Cranes (over 25 tons); Euclid Loader when controlled from the Pullcat

Group 11-A: Band Wagon (in conjunction with wheel excavators); Loader (over 12 cu. yds.); Multi-engine earthmoving equipment (over 75 cu. yds. "struck" M.R.C.); Operator of Helicopter (when used in construction work); Power Shovels, Clamshells, Draglines, Backhoes, and Gradealls (over 7 cu. yds. M.R.C.); Remote-controlled earth-moving equipment; Wheel Excavator (over 750 cu. yds. per hour)

POWER EQUIPMENT OPERATORS (Cont'd)
PILEDRIVING

Group 1: Fireman; Oilman; Deckhand

Group 1-A: Compressor Operator

Group 1-B: Truck Crane Oiler

Group 2-A: Operator of Tugger Hoist (hoisting material only)

Group 2-B: Fork Lift Operator

Group 2-C: A-Frames

Group 2-D: Compressor Operator (over 2); Generator Operator; Pump Operator (over 2); Welding Machine Operator (powered other than by electricity)

Group 3: Deck Engineer; Self-propelled boom-type lifting device (center mount) (10 ton capacity or less M.R.C.)

Group 3-A: Heavy-duty Repairman/Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending Boiler or Compressor attached to Crane Piledriver; Operator of Piledriving Rigs, skid or floating and Derrick Barges; Operator of diesel or gasoline powered Crane Pile-driver (without boiler) (up to and including 1 cu. yd. rating); Self-propelled boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Truck Crane Operator (up to and including 25 tons) (hoisting material only)

Group 5: Operator of diesel or gasoline powered Crane Pile-driver (without boiler) (over 1 cu. yd. rating); Operator of Crane (with steam, flash boiler, pump or compressor attached); Operator of steam-powered Crawler, or Universal-type driver (Raymond or similar type); Truck Crane Operator (over 25 tons) (hoisting material or performing piledriving work); Self-propelled boom-type lifting device (center mount) (over 25 tons); Truck-mounted hydraulic Crane when remote-control equipped (over 10 tons up to and including 25 tons)

Group 6: Cranes (over 125 tons)

POWER EQUIPMENT OPERATORS (Cont'd)
STEEL ERECTION

Group 1: Oiler

Group 2: Compressor Operator; Generator, gasoline or diesel driven (100 K.W. or over) (Structural Steel or Tank Erection only); Truck Crane Oiler

Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6) (Structural Steel or Tank Erection only); Deck Engineer; Signalman (using mechanical equipment); Forklift

Group 4: Heavy-duty Repairman; Tractor Operator

Group 4-A: Combination Heavy-duty Repairman/welder

Group 5: Boom Truck or Dual Purpose A-Frame Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons M.R.C. or less); Self-propelled boom-type lifting device (center mount) (10 ton capacity or less M.R.C.); Single drum Hoist; Tugger Hoist

Group 6: Cary Lift, Campbell or similar; Crawler Cranes and Truck Cranes (over 15 tons M.R.C.); Derricks; Gantry Rider (or similar equipment); Highline Cableway; Self-propelled boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Tower Cranes Mobile; Universal Liebher and Tower Cranes (and similar types); Two or more drum Hoist

Group 7: Self-propelled boom-type lifting device (center mount) (over 25 tons); Truck-mounted Hydraulic Crane when remote-control equipped (over 10 tons up to and including 25 tons)

Group 8: Cranes (over 125 tons)

Group 9: Operator of Helicopter

TRUCK DRIVERS

Group 1: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, under 4 yds.

Group 2: Bus and Manhaul Drivers, single units, up to 18,000 lbs.

Group 3: Bus and Manhaul Drivers, single unit, 18,000 lbs. and over; Winch Trucks and A-Frame Drivers, under 18,000 lbs.; Road Oil Trucks or Bootman; Fuel Truck Drivers; Fuel Man and Fuel Island Man

Group 4: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 4 yards and under 8 yards; Water Truck and Jetting Trucks, up to 2,500 gallons; Flatrack, includes Industrial Lift with mechanical tailgate, single unit 2-axle

Group 5: Lift Jitneys and Forklift

Group 6: Flatrack, includes Industrial Lift with mechanical tailgate, single unit 3-axle

Group 7: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 8 yds. and under 18 yds.; Transit Mix under 8 yds.; Water Trucks and Jetting Trucks, 2,500 gallons and over; Tire Repairman

Group 8: Bootman, combination; Bootman and Road Oiler

Group 9: Transit Mix, 8 yds. and including 12 yds.

Group 10: Winch Truck and A-Frame Drivers, 18,000 lbs. and over

Group 11: Dump (single or multiple unit including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 18 yds. and under 25 yds.; Heavy Duty Transport (Highbed); Heavy Duty Transport (Gooseneck Lowbed); Tiltbed or Flatbed Pull Trailers

Group 12: DW 20's and 21's and other similar Cat type, Terra Cobra, LeTourneau Pulls, Tournerocker, euclid and similar type Equipment when pulling Aqua/Pak; Water Tank Trailers and Fuel and/or Grease Tank Trailer, or other miscellaneous Trailers (except as defined under Dump Trucks)

Group 13: Transit Mixer Over 12 yards; Truck Repairman

TRUCK DRIVERS (Cont'd)

Group 14: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 25 yds. and under 60 yds.

Group 15: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 60 yds. and under 75 yds.; Helicopter Pilot (when transporting men or materials)

Group 16: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 75 yds. and under 100 yds.

Group 17: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 100 yds. and over

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NEW MEXICO
DECISION NO. NM84-4041
SUPERSEDES DECISION NO. NM83-4074 dated October 21, 1983 in 48 FR 48905.
DESCRIPTION OF WORK: STREETS, HIGHWAY, UTILITY AND LIGHT ENGINEERING CONSTRUCTION shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridle paths, athletic fields, highway bridges, median channels and grade separations involving highways; parks, golf courses, viaducts; uncovered reservoirs and uncovered sewage and water treatment facilities; canals, ditches and channels (including linings other than concrete linings); earth dams under one million (1,000,000) cubic yards; well drilling telephone and electrical transmission lines and site preparations which are part of streets, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, gas lines, including appurtenances thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stubouts), providing such utility construction is outside the property line or more than five (5) feet from a building or heavy engineering structure, including the Navajo Indian Reservation.

COUNTY: STATEWIDE
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 8.11	$ .48
CEMENT MASONS	7.08	.26
IRONWORKERS:		
Reinforcing	7.45	.50
Structural	8.25	1.29
LABORERS:		
GROUP I	4.92	.35
GROUP II	5.22	.35
GROUP III	5.62	.35
COMMERCIAL LINE WORK:		
AREA A		
Linemen-Technicians:		
Zone I	17.00	3.00+ 3-1/2%
Zone II	18.53	2.00+ 3-1/2%
Zone III	19.55	2.00+ 3-1/2%
Zone IV	21.42	2.00+ 3-1/2%
Cable Splicers:		
Zone I	18.70	2.00+ 3-1/2%
Zone II	20.33	2.00+ 3-1/2%
Zone III	21.35	3.00+ 3-1/2%
Zone IV	23.12	2.00+ 3-1/2%
COMMERCIAL LINE WORK (CONT'D):		
Equipment Ops. (includes helicopter op.):		
Zone I	$16.15	2.00+ 3-1/2%
Zone II	17.68	2.00+ 3-1/2%
Zone III	18.70	2.00+ 3-1/2%
Zone IV	20.57	2.00+ 3-1/2%
Equipment Mechanic (includes helicopter mechanic) & Powderman:		
Zone I	14.79	2.00+ 3-1/2%
Zone II	16.32	2.00+ 3-1/2%
Zone III	17.34	2.00+ 3-1/2%
Zone IV	19.21	2.00+ 3-1/2%
Groundman & Jackhammer:		
Zone I	12.07	2.00+ 3-1/2%
Zone II	13.60	2.00+ 3-1/2%
Zone III	14.62	2.00+ 3-1/2%
Zone IV	16.49	2.00+ 3-1/2%

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	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK (CONT'D):		
AREA B		
Linemen-Technicians:		
Zone I	$14.20	.80+ 3-1/2%
Zone II	15.65	.80+ 3-1/2%
Cable Splicers:		
Zone I	14.45	.80+ 3-1/2%
Zone II	15.90	.80+ 31/2%
Equipment Op. & Mechanic (includes helicopter op. & helicopter mechanic):		
Zone I	12.35	.80+ 3-1/2%
Zone II	13.62	.80+ 3-1/2%
Powderman:		
Zone I	11.93	.80+ 3-1/2%
Zone II	13.15	.80+ 3-1/2%
Groundman-Jackhammer:		
Zone I	10.08	.80+ 3-1/2%
Zone II	11.11	.80+ 3-1/2%
AREA C:		
Linemen-Technicians:		
Zone I	17.10	.80+ 3-1/2%
Zone II	17.55	.80+ 3-1/2%
Zone III	17.70	.80+ 3-1/2%
Zone IV	17.95	.80+ 3-1/2%
Cable Splicers:		
Zone I	17.45	.80+ 3-1/2%
Zone II	17.90	.80+ 3-1/2%
Zone III	18.05	.80+ 3-1/2%
Zone IV	18.30	.80+ 3-1/2%

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	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK (CONT'D):		
Equipment Op. & Mechanic (includes helicopter op. & helicopter mechanic):		
Zone I	$14.88	.80+ 3-1/2%
Zone II	15.33	.80+ 3-1/2%
Zone III	15.48	.80+ 3-1/2%
Zone IV	15.73	.80+ 3-1/2%
Powderman:		
Zone I	14.36	.80+ 3-1/2%
Zone II	14.81	.80+ 3-1/2%
Zone III	14.96	.80+ 3-1/2%
Zone IV	15.21	.80+ 3-1/2%
Groundman-Jackhammer:		
Zone I	12.14	.80+ 3-1/2%
Zone II	12.59	.80+ 3-1/2%
Zone III	12.74	.80+ 3-1/2%
Zone IV	12.99	.80+ 3-1/2%
LINE CONSTRUCTION-UTILITY FOR ELECTRIC & TELEPHONE UTILITIES, REA CO-OPS, RAILROADS & MUNICIPALITIES:		
Linemen-Technicians	15.47	1.80+ 3-1/2%
Cable Splicers	16.55	1.80+ 3-1/2%
Equipment op. & mechanic (includes helicopter op. & helicopter mechanic)	13.46	1.80+ 3-1/2%
Powderman	12.99	1.80+ 3-1/2%
Groundman-Jackhammer	10.52	1.80+ 3-1/2%

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	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Brush	$ 8.64	$ .44
Spray	7.74	.20
POWER EQUIPMENT OPERATORS:		
GROUP I	7.32	.26
GROUP II	7.52	.26
GROUP III	8.10	.26
GROUP IV	8.12	.26
GROUP V	8.12	.26
GROUP VI	8.27	.26
GROUP VII	8.32	.26
GROUP VIII	8.47	.26
GROUP IX	8.97	.26
GROUP X	9.77	.26
TRUCK DRIVERS:		
Pick-up truck 3/4 ton or under; warehouseman; dump truck under 8 cu. yds.; flat bed, 1½ ton or under	5.97	.26
Dump truck, 8 to 16 cu. yds.; flat bed over 1½ ton	6.17	.26
Distributor (asphalt); transit-mix; lowboy, light equipment; off-highway hauler; dump truck over 16 cu. yds.; trailer semi-trailer dump	6.37	.26
Diesel-powered transport; lowboy heavy equipment	6.57	.26

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

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DECISION NO. NM84-4041

CLASSIFICATION AREA AND ZONE DEFINITIONS

LABORERS:
GROUP I - Common laborer; carpenter tender; concrete buggy op. (hand); concrete workers
GROUP II - Air & power tool man; asphalt heaterman; asphalt jointman; asphalt raker; batching plant scaleman; tenders (to cement mason & plasterer); chain sawman; concrete power buggyman; concrete touchup man; concrete sawman; curbing machine, asphalt or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer & mason tender; powderman or blaster tender; sandblaster; scaler; vibratorman (hand type); vibrator compactor (hand type); wagon air tract, drill & diamond driller (outside) & tender
GROUP III - Gunite pumperete & nozzleman; multiplate setter; manhole builder; pipelayer; powderman-blaster-make-up

COMMERCIAL LINE WORK (excluding work done for electric & telephone utilities, REA co-ops, railroad & municipalities):
AREA A - Also applies to switching stations & substations adjacent to power plants. Bernalillo, Catron, Chaves, Cibola, Colfax, Curry, Debaca, Grant, Guadalupe, Harding, Lincoln, Los Almos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia, White Sands Missile Range & that portion of Fort Bliss in New Mexico
ZONE 1 - Cities & Towns Basing Points & Miles from Main Post Office

*Albuquerque - 25 miles	Roswell - 12 miles
Santa Fe - 10 miles	Ruidoso - 12 miles
Las Vegas - 8 miles	Portales - 12 miles
Farmington - 6 miles	Carrizozo - 12 miles
Raton - 6 miles	Clovis - 12 miles
Tucumcari - 6 miles	Gallup - 10 miles
Aztec - 6 miles	**Pojoaque - 2 miles

*The eastern edge of the Albuquerque zone extends no further than the western boundary of the Village of Tijeras
**All areas adjacent to Pojoaque that are 2 miles distance from the main post office in that town will be zoned out of Santa Fe.
ZONE II - Extending up to 20 miles beyond Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 9% of the journeyman rate of Zone I
ZONE III - Extending up to 30 miles beyond Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 15% of the journeyman rate of Zone I
ZONE IV - Anything beyond 30 miles from Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 26% of the journeyman rate for Zone I
For establishing the outlying free zones from the Albuquerque free zone only, Zone II shall extend up to 10 miles beyond Zone I, Zone III shall extend up to 20 miles beyond Zone I and Zone IV anything beyond 20 miles from Zone I
FOR WORK IN LOS ALAMOS COUNTY - USE THE ZONE III RATE.

CLASSIFICATION AREA AND ZONE DEFINITIONS - CONT'D

COMMERCIAL LINE WORK (Cont'd):
AREA B - Applies to switching stations & substations adjacent to power plants in Zone I & Zone II in Luna, Dona Ana, Otero & Hildalgo Cos., exclusive of White Sands Missile Range & that part of Fort Bliss in New Mexico.
ZONE I - that area within 25 miles radius from the downtown Post Office of El Paso, Texas. Fort Bliss & Biggs Field; the area within a 5 mile radius of any city, town or municipality within which an employer establishes or maintains his place of business; the area within 10 mile radius from the Post Office in Alamogordo, New Mexico.
ZONE II - all other areas of the jurisdiction except those specified in Zone I
AREA C - applies to switching stations adjacent to power plants in Eddy & Lea Cos.; the following zones listed shall be designated from the Main Post Office of Artesia, Carlshad, Hobbs & Lovington:
Zone I - 0 to 12 miles Zone II - 12 to 22 miles
Zone III - 22 to 40 miles Zone IV - 40 miles & beyond

POWER EQUIPMENT OPERATORS
GROUP I - Concrete paving curing machine
GROUP II - Belt type conveyors (material & concrete); broom (self-propelled); fork lift; grease truck op.; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attachment); industrial locomotive brakeman; front end loader (2 CY or less); fireman; oiler; screedman; roller (pull type); mulching machine; roller (self-propelled)
GROUP III - Concrete paving form grader; concrete paving gang vibrator; concrete paving joint or saw machine; concrete paving subgrader; tractor with backhoe attachment; subgrade or base finisher; power plant (electric, general or welding machine)
GROUP IV - Bulldozer (including self-propelled roller with dozer attachment; batch or continuous mix plant (concrete soil-cement or asphalt); roller (steel wheel); front end loader (2 CY thru 10 CY); scraper; motor grader
GROUP V - Asphalt distributor; asphalt paving or laydown machine; asphalt; retort heater; mixer, heavy duty, asphalt or soil cement; trenching machine; clam type shaftmucker; backhoe, clamshell, dragline, gradall, shovel (under 3/4 CY); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM & over); crushing, screening & washing plants; drilling machine (cable, core or rotary); mixer, concrete (1 CY & less); pump (6" intake or over); winch truck; hoist (1 drum); industrial locomotive motorman; lumber stacker; tractor (50 drawbar HP or over)
GROUP VI - Concrete paver mixer; hoist (2 drum & over); side boom; travelling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 CY to 3 CY); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 CY); mixer concrete (over 1 CY); mechanic and/or welder
GROUP VII - Concrete slip-form paving machine; concrete paving finishing machine; concrete paving longitudinal float; gunite machines; refrigerator; jumbo form or drilling; stage; slusher; concrete paving spreader; pumpcrete machine; grout pump op.
GROUP VIII - Mine hoist; bulldozer (multiple units); scraper (multiple units); mucking machines; backhoe, clamshell, dragline, gradall, shovel (over 3 CY); cranes (crawler or mobile)
GROUP IX - Belt loader (CMI type) op.; derrick cableway
GROUP X - Pipemobile op., mole op.

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June 29, 1984

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Flexible Vinyl and Urethane Coating and Printing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL 2510–6]

Standards of Performance for New Stationary Sources; Flexible Vinyl and Urethane Coating and Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for flexible vinyl coating and printing operations were proposed in the **Federal Register** on January 18, 1983 (48 FR 2276). On October 11, 1983, the proposal was extended (48 FR 46224) to cover coating and printing of urethane webs. The source category is being renamed "flexible vinyl and urethane coating and printing." The standard implements Section 111 of the Clean Air Act and is based on the Administrator's determination that rotogravure printing and coating of flexible vinyl and urethane causes, or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of this standard is to require all new, modified, and reconstructed printing lines used for rotogravure printing and coating of flexible vinyl and urethane to achieve emission limitations reflecting the best demonstrated system of emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: June 29, 1984.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Flexible Vinyl and Urethane Coating and Printing—Background Information for Promulgated Standards," EPA–450/3–81–016b. The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement which summarizes the impacts of the standard.

Docket. A docket, number A–80–8, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning development of the standard should be directed to Doug Bell, Standards Development Branch, telephone (919) 541–5624. Questions concerning the background information document for the industry should be directed to Mr. Jim Berry, Chemicals and Petroleum Branch, telephone (919) 541–5605. The address for both contacts is Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The affected facility to which the promulgated standard applies is each rotogravure printing line used to print or coat flexible vinyl or urethane products. Construction, reconstruction or modification of the printing line must have begun after January 18, 1983 for the standard to be applicable. Existing facilities are not subject to the standard unless modified or reconstructed as defined in 40 CFR 60.14 or 60.15. The term "printing" is used in this preamble to include printing and coating processes. Similarly, the term "inks" is used to mean inks and coatings.

The owner or operator of each affected facility is required either to reduce gaseous VOC emissions by 85 percent or to use waterborne inks with an average VOC content of less than 1.0 kilogram (kg) VOC per kg ink solids. The Agency has identified as the best demonstrated technology the use of either waterborne inks, fixed-bed carbon adsorption systems, or thermal or catalytic incineration systems. Carbon adsorbers and incineration systems must be operated in conjunction with an efficient vapor capture system. Currently, low VOC-content or waterborne inks are in the developmental stage in the flexible vinyl printing industry, and therefore, their present use is limited. Industry spokespersons expect their use to increase significantly in the next 5 years.

Reference Methods 1, 2, 3, 4, and 25A will be used during the performance test to measure the gaseous VOC emissions from affected facilities using add-on control equipment to comply with the standard. Reference Method 24 or the ink manufacturer's formulation data will be used to determine compliance for affected facilities using waterborne inks. The average VOC content of waterborne inks (the weighted average mass (kg) of VOC per unit mass (kg) of ink solids) must be calculated over a time period that does not exceed one calendar month, or over a time period based on quarters consisting of two 28 calendar day periods and one 35 calendar day period. Use of the latter averaging period must be documented in the initial performance test. The weighted average VOC content of waterborne inks may also be determined using plant blending records (if plant blending is done) or inventory/purchase records in combination with Reference Method 24 or ink manufacturers' formulation data. Dilution solvent added at the rotogravure printing station must be included in the calculation of the weighted average. Each monthly average VOC content of the inks constitutes a performance test. The initial performance test results must be reported to the Administrator. Semiannual reports of exceedances of the average VOC content are also required. These data must be retained at the source for a period of 2 years.

The standard of 85 percent reduction is based on an overall gaseous VOC emission reduction. The overall gaseous reduction for a control system is calculated by multiplying the efficiency of the control device by the efficiency of the vapor capture system. The result is the overall gaseous VOC emission reduction achieved by the control system. Fixed-bed carbon adsorption systems or thermal or catalytic incineration systems will meet the

standard when operated in conjunction with an efficient vapor capture system.

There are monitoring requirements for facilities using inks with an average VOC content of 1.0 kg VOC per kg ink solids or greater. For facilities controlled by a solvent recovery emission control device, the continuous monitoring requirements will not apply until EPA has promulgated performance specifications. If a thermal or catalytic incinerator is used to control emissions, monitoring requirements include continuous measurement and recording of the temperature of the thermal incinerator exhaust gases, or of the gas temperature upstream and downstream of the catalytic incineration catalyst bed. Deviations in these parameters beyond specified limits serve as indicators to the Administrator and to the owner or operator that the control system may not be reducing emissions to performance test levels. Such deviations must be reported to the Administrator semiannually. Owners or operators are required to maintain for 2 years the records of the control device operating parameters that must be monitored, as specified in 40 CFR 60.7(d).

Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of this new source performance standard (NSPS) are expressed as incremental differences between the impacts for facilities complying with the standard and for those facilities if no NSPS were promulgated. In the absence of an NSPS, it is assumed that facilities would comply with the applicable State implementation plan (SIP) for VOC emissions. This SIP control level is referred to as the baseline and is based on the 65 percent overall emission reduction requirement in the control techniques guideline (CTG) document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography" (EPA–450/2–78–033). It is expected that States would impose this level of control for any new plants locating in nonattainment areas. This level of control may or may not be required in attainment areas, however, and would depend on the particular plant and State agency involved. Thus, to the extent that State requirements in attainment areas differ from the requirements of a typical SIP, the actual impacts may differ from the impacts presented in the following discussion.

The flexible vinyl and urethane printing industry is composed of approximately 112 plants, many of which have multiple rotogravure printing lines. EPA estimates that the promulgated standard will affect three to six new printing lines within the first 5 years after the standard is effective. Extensive equipment modifications and reconstructions are not expected to occur.

The growth rate and projection that three to six new printing lines would be installed by 1987 reflects a recent reevaluation. This was done in response to recent comments and information received from two trade associations. The results of the reevaluation indicate that a growth rate of at least 8.9 percent is still expected for the vinyl wallcovering industry. The reevaluation results indicate that about three new sources would be constructed. This is a conservative estimate based upon a capacity utilization rate of between 70 and 80 percent which was suggested by one of the trade associations. During the initial development of the standard, EPA estimated a 60 percent capacity utilization factor. Growth rate estimates based on this lower factor would be greater. As such, the calculated impacts of the standard which are presented below may be somewhat overstated since they are based on a projected six new printing lines.

The standard would reduce VOC emissions by about 57 percent beyond the levels achievable under the baseline level. Nationwide in 1987, the standard would reduce VOC emissions from new, modified, or reconstructed flexible vinyl printing lines by 790 megagrams (870 tons) beyond the emission level required by the baseline.

Potential wastewater pollution from a controlled flexible vinyl printing line results from the use of a carbon adsorption emission control system. National wastewater discharges would increase by 36 percent or 4,800,000 liters (1,300,000 gallons) in 1987 as a result of the standard if all affected facilities used carbon adsorption. Incineration systems generate no wastewater.

Nationwide in 1987, the solid waste load (spent carbon from carbon adsorption) associated with standard would be 5.4 megagrams (6.0 tons) or 25 percent greater than the load associated with typical SIP control if all affected facilities used carbon adsorbers as the control device. No solid waste is generated by incineration.

Carbon adsorption was the predominant VOC control technique found to be operating in the flexible vinyl printing industry, and therefore it was used to estimate energy impacts associated with standard. By comparing the potential national energy savings resulting from reusing recovered solvent with the energy required to operate emission control devices, a potential net national energy impact can be estimated. Fuels and organic solvents can both be derived from crude oil. A decrease in the demand for solvent due to solvent recovery will thus increase the potential for fuel availability by offsetting the need for additional crude oil. On a national basis in 1987, the standard would result in an energy savings of 41,000 GJ (39 billion Btu). The standard would save about 15 percent more energy than if all facilities were controlled at the baseline level.

A typical new flexible vinyl printing line producing about 9 million square meters (10.8 million square yards) of material annually would require approximately 970 GJ (270,000 kwh) of electrical energy and approximately 9,700 GJ (9.2 billion Btu) of fuel oil energy to meet the standard. If the typical line were controlled to the level of the standard, the total energy demand would be approximately 10,700 GJ. The amount of solvent potentially recoverable under the standard could be calculated to be equivalent to about 17,500 GJ of energy. Thus, the net energy impact per print line would be a savings of approximately 6,800 GJ annually.

The energy requirements for a typical plant controlled by incineration to the level required by the standard would be approximately 37,200 GJ (35 billion Btu) per year.

The capital cost for a typical new printing line is $1 million and the annualized costs are $6.1 million. The initial capital cost of a control system (carbon adsorption) capable of achieving the baseline control level is $1 million and a control system (carbon adsorption) capable of achieving the level of the standard would cost $1.2 million. Because of the value of potentially recoverable solvent, annualized costs for control system operation represent about 1 percent of the total annualized cost for the controlled plant. At a typical new plant controlled to the baseline level by carbon adsorption, this annualized cost is about $69,000. At a plant controlled at the level of the standard, because more solvent could be recovered, the annualized costs decrease to approximately $48,000.

Although incineration was not being used during development of the standard, some vinyl printers anticipate the use of incineration to achieve the standard. At a typical plant, the total capital cost for an incinerator capable of achieving the standard would be

$669,000 with an annual operating cost of $358,000.

Projections show a growth rate of more than 8 percent per year for vinyl wallcovering products and little growth in the other sections of the industry through 1987. At this growth rate, the cumulative capital cost of control is approximately $6.2 million for baseline control and $7.4 million for the control level of the standard. Annualized costs (i.e., control system operation costs less recovered solvent value) are approximately $414,000 for baseline control and $289,000 for the control level of the standard.

The expected worst case maximum price increase, based on the use of carbon adsorption, would be 0.05 percent. If incineration were selected as the control device, the worst case price increase would be 0.67 percent. No major impacts are expected on geographical regions or local governments.

The environmental, energy, and economic impacts associated with the use of carbon adsorption are discussed in greater detail in the background information document for the proposed standard ("Rotogravure Printing and Coating of Flexible Vinyl and Urethane—Background Information for Proposed Standards," EPA–450/3–81–016a). Inpacts resulting from the use of incineration are discussed in a separate document which has been added to the docket (IV–B–8).

Public Participation

Prior to proposal of the standard, interested parties were advised by public notice in the **Federal Register** (46 FR 42910, August 25, 1981) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the flexible vinyl printing standard recommended for proposal. This meeting was held on September 22, 1981. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standard was proposed and published in the **Federal Register** on January 18, 1983 (48 FR 2276). The preamble to the proposed standard discussed the availability of the background information document (BID), "Flexible Vinyl Coating and Printing Operations-Background Information for Proposed Standards," EPA–450/3–81–016a, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. The proposal notice stated that a public hearing would be held if requested to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standard. There were no requests for a public hearing and, therefore, no hearing was held. The public comment period was from January 18, 1983 to April 1, 1983.

Twelve comment letters were received concerning issues relative to the proposed standard for flexible vinyl coating and printing operations. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standard.

During the comment period, a letter was received from a major manufacturer of flexible urethane products who recommended that flexible urethane coated products be regulated under this standard. The Administrator issued a supplemental notice to the proposed rule on October 11, 1983 (48 FR 46224), to include the printing and coating of flexible urethane products. A 30-day public comment period ending November 10, 1983, was held for receipt of comments concerning urethane only. No comment letters were received. The promulgated standard includes the printing and coating of flexible urethane along with flexible vinyl.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standard were received from four vinyl printers, an ink manufacturer, a printer of urethane products, a manufacturer of flexible packaging, a manufacturer of carbon adsorbers and two vinyl printing trade associations. A detailed discussion of these comments and responses can be found in the background information document which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions which have been made to the standard between proposal and promulgation. Six major comments and responses are summarized in this preamble.

In response to public comments received on the proposed rulemaking and as a result of EPA reevaluation, six major changes were made in the proposed standard prior to promulgation. The changes involved (1) expanding the applicability of the standard to include printing on urethane sheets or urethane coated webs as well as on vinyl sheets or vinyl coated webs, (2) the addition of considerations for petitioning the administrator to show compliance using an inventory-type system to account for VOC content of waterborne inks, (3) the addition of compliance provisions for incineration, (4) the addition of semiannual reporting of exceedances of the waterborne ink limitation or deviations from the monitored parameters for carbon adsorption or incineration, (5) the redefinition of the averaging period for waterborne inks, and (6) redefining "flexible vinyl and urethane products" to exempt flexible packaging.

Most of the comment letters contained multiple comments. In the BID, the comments have been divided into the following areas: Selection of Source Category, Emission Control Technology, Modification and Reconstruction, Economic Impact, Selection of Best Demonstrated Technology, Selection of Format, Selection of Emission Limits, Legal Considerations, Test Methods and Monitoring, and Reporting and Recordkeeping. The six major comments summarized in this preamble involve application of the standard to printing on urethane sheets or urethane coated webs, the exemption of flexible packaging, test data on capture system efficiency, compliance provisions for incineration, the selection of best demonstrated technology, and the use of inventory records to determine compliance with the waterborne ink provisions.

Docket entry numbers referenced in each comment refer to docket number A–80–8. Access to this docket is described in the **ADDRESSES** section of this preamble.

Printing of Urethane Products

One commenter (IV–D–1) felt that it was a serious oversight that the proposed regulation covered the printing of flexible vinyl coated webs without reference to printing or finishing flexible urethane coated webs. The commenter, whose company produces both vinyl and urethane coated products, pointed out that the major difference between the two webs is the chemistry of the coating compounds composing the web. In one instance, these are plasticized polyvinyl chloride (PVC) compounds and in the other, flexible thermoplastic urethane polymers. The commenter noted that, regardless of the chemical composition of the coating, the webs are finished by printing with solvent solutions of PVC, urethanes, and/or acrylic resins. The commenter stated that his company knew of no technical or scientific reasons why the printing of polyurethane coated fabrics should be regulated differently from the printing of flexible polyvinyl coated fabrics. He

concluded by suggesting that the proposed standards for printing of flexible vinyl be revised to specifically include the printing of urethane coated fabrics.

After some discussion of this issue with the commenter (IV–E–1, IV–E–7) to get more information on the process of printing on urethane webs, the Administrator believes that urethane product manufacturers can achieve the proposed emission standard at reasonable costs. Since the Agency had not performed an extensive investigation of the environmental, energy, and economic impacts of the standard upon urethane product manufacturers, notice of this proposed change appeared in the **Federal Register** on October 11, 1983, at 48 FR 46224. This notice allowed for a 30-day public comment period and specifically requested comments regarding the impacts of the standard upon urethane printers. No comments were received. The Administrator has concluded that the promulgated standard should include the coating and printing of both flexible vinyl and flexible urethane.

Exemption of Flexible Packaging

One commenter (IV–D–4, IV–E–4), a producer of flexible packaging, felt that the proposed regulation could be errroneously viewed to apply to sources producing flexible packaging products such as products consisting of a thin vinyl coating applied to aluminum or paper based substrates on rotogravure printing equipment. He gave facial tissue boxes as an example of this. He noted that EPA staff members had told him that the standard did not apply to flexible packaging. He said that the definitions of "affected facility" and "flexible vinyl products" hinged on a minimum thickness of 50 micrometers (0.002 inches), but that some of his company's flexible packaging products exceeded that thickness. He urged EPA to revise the final regulation to clearly state that it does not apply to the manufacture of flexible vinyl packaging. He suggested that this be done by specifically excluding "flexible packaging" in the definition of "flexible vinyl products."

After receiving this comment, EPA contacted the Flexible Packaging Association (IV–E–5) to ask for a definition of "flexible packaging." Although the Association representative explained that there was some disagreement within the Association about an exact definition, he gave the following definition: "Flexible packaging is the use of paper, film, or foil to package a product in such a manner that the packaging material itself generally takes the shape of its contents." The Association representative stated that most flexible packaging is less than 50 micrometers (0.002 inches) thick, but noted that some Association members have products up to 0.010 inches thick.

Although it appears that the flexible vinyl coating and printing process is similar to the flexible packaging process described by the commenter (IV–E–4), EPA did not obtain the technical or economic information to determine whether best demonstrated technology (BDT) for the flexible vinyl industry is also BDT for this segment of the flexible packaging industry. Therefore, the definition of "flexible vinyl and urethane products" has been revised to specifically exempt flexible packaging from this standard. However, the Agency is beginning to develop new source performance standards for the flexible packaging industry and the packaging process described by the commenter will be investigated in the near future. If the investigation shows that BDT for flexible vinyl is also applicable to this segment of the flexible packaging industry, then this standard will be revised to include this segment of the packaging industry.

Test Data on Capture System Efficiency

Two commenters (IV–D–6, IV–D–8), both representing producers of vinyl coated products and vinyl printed products, disagreed with EPA's treatment of the test data on capture efficiency. One of the commenters (IV–D–6) explained that during the second test which indicated a capture efficiency in excess of 90 percent, the room air supply fan was not operating and the wall exhaust fan was only operational during times that the print head fans were off. He stated that machines cannot be run with the room air supply fans off, and therefore he felt that the test was not valid or representative. The other commenter (IV–D–8) felt that the "turbulence" or "disruption of air distribution" cited in the BID due to operation of the room air supply fan and the wall exhaust fan were legitimate operating conditions, and he felt their effects should not be ignored in determining capture efficiency. He felt that EPA had "discarded all lower but real world" capture efficiency data. He urged EPA to discard the test data cited in the BID and conduct a new series of tests on a new printer. A trade association (IV–D–7) concurred with these views. In addition, the trade association stated that the emission testing program was not conducted under normal operating conditions and referred to the General Provisions, 40 CFR 60.8(c), which requires that performance tests be "based on representative performance of the affected facility." The association noted that techniques such as turning off the fans or total enclosure of the print line may be necessary during the performance test. The association, however, maintained that enclosure of a print line creates conditions which are not representative of the capture efficiency achieved at a print line under normal operating conditions. In other words, it is not clear that any new source in this industry could achieve 90 percent capture efficiency during ordinary operations. The commenter elaborated that total print line enclosure is not practicable during operation, and the efficiency of air management around the print line depends on a number of factors over which the operator may not have control, even in the design of a new print line. For example, where a new print line is installed in a large building containing other processes, major capital expenditures could be required to achieve 90 percent capture efficiency during normal operation. Another commenter (IV–D–6) agreed that a total enclosure of the print line is not practical because of operator accessibility and the high concentrations of solvent encountered with the enclosures that in some places could exceed the lower explosive level (LEL). The trade association (IV–D–7), therefore, concluded that EPA should conduct further capture efficiency tests for a new vinyl print line during normal operation. Another commenter (IV–D–10) stated that the emission test that verified 90 percent capture efficiency was conducted under contrived conditions, and therefore questioned the results and appropriateness of a 90 percent capture regulation.

In order to respond to the comments on the performance tests and the representativeness of test conditions, it is important first to make clear that the performance test procedure is, in effect, an integral part of the standard. For this reason, the test procedures and test conditions used by EPA during the development of the standard must be the same as or have a known relationship to the test procedures which will be used and the performance test conditions which may be encountered during the testing of sources which are subject to this standard.

In this standard, the test procedures to be used by a plant operator for determining compliance will be the same as or equivalent to those used by EPA in developing the standard. The performance conditions may differ

depending, for example, on the configuration of the plant and the number of lines. However, the EPA tests were, and subsequent performance tests will be, conducted in conformance with the same criteria, thereby assuring that the standard is achievable during any performance test.

In conducting a performance test, the plant owner must demonstrate that his new line can achieve the performance standard when tested under operating conditions which are representative of normal production and/or which reflect the air change conditions during the EPA test (as specified below). One important feature of the performance test is that all fugitive VOC emissions from the printing area must be captured and vented through stacks suitable for measurement. For a new line(s) in a new plant, emissions from the room in which the line(s) is (are) located can be measured with no special arrangements. For a new line in a plant with existing lines, the owner or operator may desire to isolate emissions associated with the new line from those associated with existing lines. In this case, he has three options:

(1) Build a permanent enclosure around the affected facility;

(2) Build a temporary enclosure around the affected facility (the enclosure has to be ventilated at a rate which approximates the rate to which the affected facility is exposed without the enclosure up to 20 air changes per hour); or

(3) Shut down all other sources of VOC and continue to exhaust fugitive emissions from the affected facility through any building ventilation system and other room exhausts such as print line ovens and embossers.

The industry has argued that a total enclosure restricts operator access and would allow VOC concentrations to increase to unacceptable levels. It is the Agency's position that it is possible to construct a total enclosure which provides the necessary operator access while also preventing the buildup of high concentrations of solvent. The EPA test results show that an increase in solvent concentration is not the inevitable product of a total enclosure.

The two tests performed during the development of the standard were conducted at a new facility which had installed only the first of a total of three print lines within a building. Thus, the building itself served as a permanent total enclosure housing only one line.

The industry would disregard results of the test at this plant because it alleges that EPA "contrived" the operating conditions. Air management is a critical aspect of any pollution control system. EPA did indeed alter the old normal air management scheme within the building in an attempt to attain the best operating conditions for pollution control. As a consequence of what was learned, the plant adopted new normal operating conditions, the conditions under which the EPA tests were actually conducted.

During the first test, the room containing the printing line had two ventilation fans, one in the ceiling and one on the wall. Only the wall fan was operating prior to the first test. (The test data revealed its discharge was much less than design.) A large intake ventilation fan mounted directly above the operating line was turned on at EPA's request in an attempt to assure that the test took place under normal operating conditions. It was assumed that the ventilation fan would normally be operated when the plant ultimately had three lines. It was not until after the first test was complete that the owner explained that normal operation was usually with the overhead ventilation fan off. Because of the fan's location, it discharged directly on the print heads, causing premature drying of the inks on the gravure cylinders and adversely affecting the quality of much of the material printed during the test. The plant personnel subsequently had to turn the fan off in order to produce a product within specification. It was because EPA had inadvertently tested the plant under abnormal conditions that the decision was made to return for a second test.

The wall exhaust fan was not operated during the second test based on the Agency's judgment that the best air management for capture of VOC emissions from the plant required that the fan not operate. That judgment was based on the following reasoning. The fan was originally installed to ensure that the threshold limit value (TLV) would not be exceeded within the building. On the first day of the second test, however, air flow measurements revealed that although the fan motor was running, the fan was essentially operating at a zero discharge rate because of loose drive belts. After EPA arranged to have the belts adjusted, the fan's operation caused turbulent drafts of air through and around the printing press.

Results of the second day's test showed that the drafts interfered with the print line's fugitive capture system. The data showed that significantly less VOC was captured than during the tests conducted the previous day when the belts were loose. The plant personnel and the test team jointly concluded that the fan's location (directly adjacent to and above the press) created drafts which adversely affected the capture system. Since the fan had previously been operating ineffectively (because of the maladjusted drive belts), there obviously was some question regarding the need for it. It was then decided to run the print line with the fan off to confirm that it was not critical to the operation of the line. If the VOC concentrations did not increase and exceed the TLV, the fan was unnecessary. The subsequent test confirmed that the exhaust systems associated with the press and embosser provided sufficient ventilation to keep the VOC concentrations below the TLV, and the wall exhaust fan was not needed during normal operation. Plant personnel concluded that the wall fan would subsequently be used only when the print line fans were off or in the event of an unusual occurrence, such as a solvent spill.

This mode of operation was advantageous for the plant because it increased the amount of solvent captured, thereby improving the return on the investment for the carbon adsorber. Obviously, this printing press could, did (because of the loose belts), and would continue to operate with ventilation provided only by the evacuation systems associated with the press and embosser exhaust systems. The results of monitoring conducted during the second test showed that with the wall exhaust fan off, the 11,700 SCFM evacuated from the vicinity of the printing press by the print head ovens and embosser ventilation system was sufficient to ensure that concentrations did not increase to unacceptable levels and that the 8-hour average concentration in working areas did not exceed the TLV. This draft would provide air changes approximately every 3 minutes to a room with dimensions of 20′ x 20′ x 90′, more than adequate to house the print line and, coincidentally, about one-third the volume of the room which housed this print line. This is consistent with good ventilation practice for a clean room as discussed in *Industrial Ventilation—A Manual of Recommended Practices* (Committee on Industrial Ventilation), 1976, p. 5–112.

Should the operator decide to conduct his performance test with the print line contained in a total enclosure, he has two options: to construct either a permanent enclosure or a temporary enclosure which would be removed upon completion of the performance test. The cost of a permanent enclosure would be relatively small, less than 2 percent of the total capital required for

the new line (IV–B–9). A temporary enclosure would be even less expensive.

If an operator chooses to conduct the performance test with a temporary enclosure, the only constraint the Agency places on the test is that the plant operator must approximate the ventilation conditions expected to be in effect when the enclosure is removed or create conditions that would represent good ventilation practice as recognized by authoritative sources such as *Industrial Ventilation*. However, it is not necessary to ventilate the enclosed space at a rate greater than 20 air changes per hour. This rate is consistent with that of the test conducted by the Agency.

As an alternative to the total enclosure, a plant operator may elect to shut down other sources of VOC in the room which contains the affected facility. The fugitive emissions from the print line must continue to be exhausted through any area or building ventilation system and other room exhausts, such as print line ovens and embossers, that would operate under normal conditions.

At some plants, the work area may be ventilated only by the drafts of ovens and embossers. At other plants, high levels of fugitive emissions from existing facilities may require that separate ventilation fans be operated. In this latter situation, the operator should consider two of the advantages of reducing the amount of ventilation used for the existing facilities. First, the costs of circulating, pumping, heating, and conditioning large quantities of air through a plant can be significant. Secondly, poorly designed ventilation systems (as evidenced during testing of the reference plant) can interfere with the VOC capture system, increase the fugitive emissions within the building, and perhaps thereby create a need for even more ventilation air.

If a new line is installed in the same room with existing lines, there are ways to design and install or alter building ventilation systems which would minimize its effect on the efficiency of the capture system of all lines, but especially the line subject to the NSPS. For example, if a building ventilation draft fan must be used, the intake can be manifolded with the suction inlets located around the work stations of the existing lines where the fugitive VOC concentrations could be expected to be highest. If a forced air fan is used, the ventilation air can be manifolded to a number of outlets located such that they do not compete with the solvent recovery system but may actually improve it. Such a thoughtfully designed dispersion system would likely permit operating with much smaller volumes of ventilation air.

Another improvement in air management techniques was developed by the plant that EPA tested when a second line was installed after the test program was completed. The duct work for a second new print line was constructed so that oven make-up air is collected from between the print heads by "floor sweeps", rather than above the print heads as was done by the first print line which EPA tested. This should further reduce fugitive emissions and improve overall capture efficiency. The cost of making the type of air management changes discussed above would likely not exceed 2 percent of the control cost for the new line. The potential savings to the owner in reduced utility costs and increased solvent recovery would offset some and perhaps all of the incremental control cost.

The final standard gives the plant operator a great deal of latitude in deciding how to demonstrate compliance. A new line could be constructed within a permanent enclosure, thereby simulating the conditions under which EPA conducted its tests. Alternatively, the line could be installed in a room with existing sources. If the ventilation system in the existing room is expected to affect the performance of the new line's capture system, the performance test may be conducted with the existing sources shut off or a temporary enclosure may be installed to isolate the new line from the existing plant equipment. If a temporary enclosure is constructed, the building ventilation system (to which the new line will normally be subject) must be approximated, but only up to a maximum of 20 air changes an hour. This is consistent with conditions under which EPA tests were conducted and representative of good ventilation practices.

For the reasons previously discussed, it is the Administrator's judgment that the results from the second test show that high capture efficiency can be attained and worker exposure limited if a print line and its adjunct vapor capture and work space ventilation systems are properly designed. The adjustments made to the plant's air management system during testing were needed in order to best represent the plant's normal operating conditions, but more importantly, the adjustments were made to ensure that the test was conducted under conditions which were representative of the best demonstrated technology. Also, the capture efficiency data were obtained under conditions that could be normally and routinely maintained by properly designed new print lines and were representative of capture efficiency that could be achieved by any new print line even when installed in existing plants. Therefore, further capture efficiency tests were not conducted as requested.

Compliance Provisions for Incineration

Several commenters noted that incineration is being considered by some vinyl printers as an alternative to carbon adsorption due to certain technical difficulties with carbon adsorption. They felt that the NSPS should address incineration as a control alternative and that EPA should investigate the economic, environmental, and energy impacts associated with incineration.

During the development of this standard, carbon adsorption was the only control device in use in this industry and, thus, the analysis for development of the NSPS was based on carbon adsorption. Incineration was described in the BID and was mentioned as a possible control technique although it was not in use at the time.

Due to the several comments received on the use of incineration, the Agency reviewed the current status of this control technology in the vinyl printing industry (IV–E–10, 11, 12) by contacting the three plants listed in one commenter's letter (IV–D–7). Of these three plants, one is considering the use of incineration, one has considered it but has no current plans to install incineration, and one has firm plans to install an incinerator.

The Clean Air Act requires that each NSPS reflect "application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, * * *) the Administrator determines has been adequately demonstrated." Such technology is often referred to as "best demonstrated technology" or simply BDT. After studying the comments received, the Agency had to determine if there were some circumstances described where carbon adsorption could not be used and could not be considered BDT as it had been during the development of the standard. Because EPA found no vinyl printers using a control technology other than carbon adsorption, the only information available on which to base such a determination has come from contacts with vinyl printers who were or had considered incineration in favor of carbon adsorption and the comments received concerning incineration.

Based on this information, the Administrator has concluded that there are certain site-specific and process-specific conditions where carbon adsorption would not be BDT. Site-specific conditions include sites where only a single print line is to be controlled, where print line configuration prohibits control by a single carbon adsorber, and where the available space is insufficient for a carbon adsorber. Some of the possible process-specific conditions occur when high oven temperatures cause plasticizer emissions and when solvents with close distillation temperatures are used.

EPA developed estimates (IV–B–8) of capital and annualized costs and cost effectiveness for thermal incineration. Thermal rather than catalytic incineration was selected for the analysis because that is the type under consideration by the three plants contacted and because, since thermal incineration is more costly than catalytic, the test for reasonableness would be based on the "worst case." At a typical plant, Model Plant C described in the BID, the results of the analysis for thermal incineration showed an annualized operating cost of control of $358,000 and a total capital investment of $669,000. The cost effectiveness of control using incineration was determined to be approximately $530/ton VOC reduction. The cost effectiveness of control at the baseline level was determined to be approximately $600/ton VOC reduction or $70/ton more than the control level of the standard. Although this is higher than the cost of carbon adsorption ($75/ton VOC reduction), the Administrator considers this a reasonable cost and therefore compliance provisions for thermal and catalytic incineration have been added to the standard.

Energy demands of an incineration control system are greater than for carbon adsorption. At a typical plant such as Model Plant C in the BID, energy demand would be about 42×10^9 Btu per year greater for incineration than for carbon adsorption. In terms of environmental impacts, both systems can reduce VOC emissions by the required 85 percent. Noise wastewater, and solid waste are not generated from the use of incineration.

EPA's analysis indicates that there would be no adverse environmental, economic, or energy impacts resulting from the use of incineration. Based on this fact and indications that carbon adsorption would not be BDT in some circumstances, EPA has added compliance provisions for incineration. It has been adequately demonstrated that incineration can achieve a control efficiency comparable to that of carbon adsorption at a higher, yet reasonable cost.

Selection of Best Demonstrated Technology

The trade association commenter (IV–D–7) stated that the technology required to achieve the standard had not been demonstrated for most segments of the industry for the following reasons: (1) The emission testing program was not conducted under normal operating conditions and (2) the test data on residential wallcovering production did not adequately demonstrate that the control technology was applicable to the industry as a whole.

In regard to the applicability of the test data to the industry as a whole, the commenter questioned whether data and technology applicable to a residential wallcovering facility are transferable to or characteristic of other parts of the industry such as automotive trim, upholstery, and apparel. He cited several variables including solvents, raw materials, line speed, web widths, and coating applications which change depending on end-use of the product, stating that it is inadequate to use tests from one facility using one process to print one type of product as representative of the entire industry. Another commenter (IV–D–6) added that air management and testing of lines wider than 30 inches has not been demonstrated. He noted that the BID states that 30 inches would be a typical width for a new source but that the typical width for his lines is 57 to 60 inches. The trade association representative (IV–D–7) noted that solvents used to produce some products such as apparel are incompatible with carbon adsorption. He explained that incineration is probably the most flexible control option where process parameters are variable. Such variability would be desirable to enable a print line to produce different types of products. He listed three trade association members that use or plan to use incineration. The commenter felt that further study by EPA would be necessary to establish standards that reflect emissions reductions achievable through application of the best technological system demonstrated for the different categories of sources in the industry.

The discussion of EPA's emission testing program is included in the response to the comment on "Test Data on Capture System Efficiency." In regard to the applicability of carbon adsorption to the industry as a whole, EPA recognizes that there may be some technological limitations to carbon adsorption. Therefore, the Agency contacted the three plants this commenter listed as having incinerators in use or being installed (IV–E–10, 11, 12). Only one of these plants has firm plans to install an incinerator. Based on these contacts and on comments outlining potential technical advantages, EPA has included compliance provisions for incineration. It appears that there may be potential situations where carbon adsorption could not be used or would not be the control device of choice, and, in these cases, incineration can be used. Incineration control efficiencies of 98 percent have been demonstrated (IV–B–8). Since incinerators can achieve higher control efficiencies than carbon adsorbers, incinerators should be able to meet the standard. For those cases in which incineration would be the preferred control method, the standard includes compliance provisions for incineration.

The standard appropriately applies to the entire vinyl printing and coating industry. In regard to the commenter's remark that the only print line tested was printing wallcovering, the rotogravure printing processes are substantially the same with respect to fugitive emission generation and capture, regardless of the vinyl printed product produced. Factors which affect the emissions from a printing line include equipment design parameters such as configurations of the dryers and print stations, air velocities at the fugitive capture points, and process and product parameters such as solvent volatilities, resin types, web widths, line speeds, and run lengths. The most important equipment design factor in reducing VOC emission by improved capture efficiency is design of the print heads and dryer to minimize exposure of the wet web as it travels from the print head to the dryer. To accomplish this, the print head can be almost completely enclosed by moveable doors or panels that can be readily opened for operator access. If these doors are panels made of transparent material, the print head will still be visible to the operator. The dryer can be designed so that the opening is very close to the point where the wet web leaves the print head and enters the dryer to assure that emissions enter the dryer rather than escape at this point. EPA believes that proper design of the print head-dryer relationship and associated air velocities are the key to achieving the demonstrated control efficiencies and that other parameters such as product type, web widths, line speeds, etc., have little effect on performance.

In a 1981 meeting of the Chemical Film and Fabrics Association (CFFA) and EPA (II–E–101), there appeared to be agreement that the main factor which affects the emissions from any flexible vinyl printing and coating print line is the design of the capture system. If the capture system is properly designed and operated, other equipment design and product parameters become much less important. Since the affected facility which prints wallcovering is the same rotogravure print line used to print other flexible vinyl products, a wallcovering rotogravure print line is representative of the industry. Most CFFA members present at the meeting apparently agreed with this position, although disagreement was later expressed by CFFA (II–D–89). (EPA's response to the CFFA letter II–D–89 is found at II–C–73.) The information in the docket (IV–B–7) supports EPA's conclusion.

EPA visited several flexible vinyl coating plants (II–B–7, II–B–9, II–B–11, II–B–13 through 19, II–B–21, II–B–22, II–B–24, II–B–25) that manufactured a variety of vinyl printed products including wallcovering, furniture upholstery, autombile upholstery, window shades, and awnings. Information from these plant visits supported the conclusions that capture system design and operation is indeed the key to achieving 90 percent capture and that tests of a wallcovering print line are representative of the entire vinyl printing industry.

Use of Inventory Records

Two commenters (IV–D–2, IV–D–5) addressed compliance provisions for facilities using waterborne inks. One commenter (IV–D–2), an ink manufacturer, felt that calculating the VOC content of each ink would be meaningless, add to overhead, and thus decrease profits because they have thousands of formulations and because they change formulations to meet customers' specifications. He agreed with the need to measure or calculate VOC content in the inks and suggested that ink manufacturers be allowed to submit general type formulations for families of inks and use approximate figures (plus or minus a certain percent) for VOC content. The second commenter (IV–D–5) felt that it was physically and economically infeasible for a facility using inks with an average VOC content of less than 1 kg VOC per kg ink solids to demonstrate compliance by determining and recording the VOC content of each ink used at the print head. He had explained this in previous comments dated October 20, 1981 (II–D–100), and resubmitted those comments with this letter. He pointed out that the inks applied are a blend of recycled excess inks, solvent, water, and new inks. Due to recycling and addition of water and solvent, the commenter felt that ink manufacturer's data would be of little use to his company. He added that it would also be practically impossible to use Reference Method 24 for the large number of inks his company would apply per day. This would be 250 to 350 tests in on day for each of two plants.

The commenter suggested what he considered a more reasonable and more accurate compliance system where the average VOC content of the inks applied would be determined through the use of ink manufacturer's formulations, inventory and purchase records for new inks and diluents, the acceptance of recycled inks as being previously accounted for as new ink and diluent, and the measure of VOC content of discarded inks. This system was expressed by the following equation:

Emission VOC = Ink VOC + Solvent VOC − Discard VOC − Blending and Storage VOC

VOC diluent added at the press would be accounted for in the solvent inventory and purchase records. The commenter noted that a small amount of VOC would be lost from storage and blending of recycled inks, but that this loss would be of little significance to the compliance determination as the evaporation rate of the low VOC content inks would be slight and the resulting error would inflate the calculated VOC-to-solids ratio. He felt that this limited number of samples could be analyzed in outside laboratories and eliminate the creation of a need for analytical laboratories in printing facilities. He also pointed out that short-term use of solvent-based inks on primarily waterborne facilities would be accountable because the two systems are incompatible and will be easily differentiated in purchasing, inventory, and manufacturing records.

The commenter concluded by requesting that the requirement in § 60.583 (Test methods and procedures) to determine the VOC content of each ink as applied be deleted because it is not attainable for all facilities. He urged that the use of the weighted average be modified to provide credit for unused excess inks for determination of compliance. The commenter felt that the unreasonable cost of determining the VOC content of each waterborne ink, as applied, to comply with the proposed standard would discourage further development of waterborne inks.

EPA agrees that in some cases the method suggested in this comment would be preferable to the use of ink manufacturer's formulation data or Reference Method 24. Therefore, points to be covered in petitioning the Administrator to use such a method have been added to Section 60.583(c). Under such a method, the operator would account for the VOC and solids content of new inks and dilution solvent directed to the print line during the averaging period. Credit would be given for VOC in discarded ink. Credit would also be given for inks that are to be recycled but are not yet recycled during the averaging period. Credit for these recycled inks is not to be taken again during the next averaging period. As the commenter stated, however, no credit can be given for VOC lost during blending and storage of recycled inks since this quantity cannot be easily measured. This quantity would be of little significance in the compliance determination.

The ink manufacturer (IV–D–2) explained that calculating VOC content of every formulation would be an excessive requirement and asked that ink manufacturers be allowed to submit general type of formulations and to approximate VOC content. This standard places no requirements on ink manufacturers. However, it is anticipated that, by allowing operators of affected facilities to use inventory and purchase records to account for VOC content and by easing the requirement to account for the content of each ink as used at the print head, this commenter (IV–D–5) may find some relief.

Paperwork Reduction Act

The reporting and recordkeeping requirements of the regulation are assessed in Standard Form 83 and an accompanying supporting statement, which are included in the docket (IV–H–4) for public review. This documentation contains (1) a description of the reporting and recordkeeping required by the regulation and the General Provisions, (2) the reasons for the requirements, (3) an evaluation of the major alternatives considered (including the use of existing sources of information), and (4) an estimate of the labor-hour burden of the requirements.

The General Provisions and the standard would require three types of reports: (1) Notification requirements which enable the Agency to keep abreast of facilities subject to the standard, (2) reporting of initial performance test results and continuous monitoring system performance evaluations, and (3) semiannual reporting of exceedances of the waterborne ink limitation or deviations

from the monitored parameters for carbon adsorption or incineration. Analysis of these reporting requirements (IV–H–4) indicates that they are both necessary and reasonble considering the savings in Agency time and resources required for effective enforcement.

The resources needed by the industry to maintain records and to prepare the reports for the first 2 years average about 0.36 person-years per year. The resources required by EPA and State and local agencies to process the reports and to maintain records for the first 2 years would avarage about 0.05 person-years per year.

Information collection requirements associated with this regulation (40 CFR 60.7, 60.8, 60.583, 60.584, and 60.585) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0073.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is June 29, 1984. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (January 18, 1983).

As prescribed by Section 111, the promulgation of this standard was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this promulgated standard was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. For the purposes of the economic impact assessment, three regulatory alternatives were identified. Regulatory Alternatives I, II, and III called for 65, 75, and 85 percent overall reduction of VOC, respectively. All aspects of the assessment were considered in the formulation of the standards to insure that cost was carefully considered in determining BDT. The economic impact assessment is included in the background information document for the proposed standard.

Under Executive Order 12291, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not "major" because: (1) The national annualized compliance costs, including capital charges resulting from the standards, total less than $100 million; (2) the standards do not cause a major increase in prices or production costs; and (3) the standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to the EPA and any EPA response to those comments are included in docket number A–81–03. The docket is available for public inspection at the EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

Regulatory Flexibility Analysis

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant impact on a substantial number of small business entities. There are approximately 107 plants that manufacture vinyl products and about five companies that manufacture urethane products, one of which would be considered small. The economic analysis conducted for small vinyl manufacturers indicated no significant impacts. Similarly, it is not expected that the standard will significantly impact small urethane manufacturers. Further, this standard will have no impact on any other small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: June 15, 1984.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended by adding a new Subpart FFF to read as follows:

Subpart FFF—Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

Sec.

60.580 Applicability and designation of affected facility.
60.581 Definitions and symbols.
60.582 Standard for volatile organic compounds.
60.583 Test methods and procedures.
60.584 Monitoring of operations and recordkeeping requirements.
60.585 Reporting requirements.

Authority: Secs. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart FFF—Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

§ 60.580 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each rotogravure printing line used to print or coat flexible vinyl or urethane products.

(b) This subpart applies to any affected facility which begins

construction, modification, or reconstruction after January 18, 1983.

(c) For facilities controlled by a solvent recovery emission control device, the provisions of § 60.584(a) requiring monitoring of operations will not apply until EPA has promulgated performance specifications under Appendix B for the continuous monitoring system. After the promulgation of performance specifications, these provisions will apply to each affected facility under paragraph (b) of this section. Facilities controlled by a solvent recovery emission control device that become subject to the standard prior to promulgation of performance specifications must conduct performance tests in accordance with § 60.13(b) after performance specifications are promulgated.

§ 60.581 Definitions and symbols.

(a) All terms used in this subpart, not defined below, are given the same meaning as in the Act or in Subpart A of this part.

"Emission control device" means any solvent recovery or solvent destruction device used to control volatile organic compounds (VOC) emissions from flexible vinyl and urethane rotogravure printing lines.

"Emission control system" means the combination of an emission control device and a vapor capture system for the purpose of reducing VOC emissions from flexible vinyl and urethane rotogravure printing lines.

"Flexible vinyl and urethane products" mean those products, except for resilient floor coverings (1977 Standard Industry Code 3996) and flexible packaging, that are more than 50 micrometers (0.002 inches) thick, and that consist of or contain a vinyl or urethane sheet or a vinyl or urethane coated web.

"Gravure cylinder" means a plated cylinder with a printing image consisting of minute cells or indentations, specifically engraved or etched into the cylinder's surface to hold ink when continuously revolved through a fountain of ink.

"Ink" means any mixture of ink, coating solids, organic solvents including dilution solvent, and water that is applied to the web of flexible vinyl or urethane on a rotogravure printing line.

"Ink solids" means the solids content of an ink as determined by Reference Method 24, ink manufacturer's formulation data, or plant blending records.

"Inventory system" means a method of physically accounting for the quantity of ink, solvent, and solids used at one or more affected facilities during a time period. The system is based on plant purchase or inventory records.

"Plant blending records" means those records which document the weight fraction of organic solvents and solids used in the formulation or preparation of inks at the vinyl or urethane printing plant where they are used.

"Rotogravure print station" means any device designed to print or coat inks on one side of a continuous web or substrate using the intaglio printing process with a gravure cylinder.

"Rotogravure printing line" means any number of rotogravure print stations and associated dryers capable of printing or coating simultaneously on the same continuous vinyl or urethane web or substrate, which is fed from a continuous roll.

"Vapor capture system" means any device or combination of devices designed to contain, collect, and route organic solvent vapors emitted from the flexible vinyl or urethane rotogravure printing line.

(b) All symbols used in this subpart not defined below are given the same meaning as in the Act or in Subpart A of this part.

"a" means the gas stream vents exiting the emission control device.

"b" means the gas stream vents entering the emission control device.

"f" means the gas stream vents which are not directed to an emission control device.

"C_{aj}" means the concentration of VOC in each gas stream (j) for the time period exiting the emission control device, in parts per million by volume.

"C_{bi}" means the concentration of VOC in each gas stream (i) for the time period entering the emission control device, in parts per million by volume.

"C_{fk}" means the concentration of VOC in each gas stream (k) for the time period which is not directed to an emission control device, in parts per million by volume.

"G" means the weighted average mass of VOC per mass of ink solids applied, in kilograms per kilogram.

"M_{ci}" means the total mass of each ink (i) applied in the time period as determined from plant records, in kilograms.

"M_{dj}" means the total mass of each dilution solvent (j) added at the print line in the time period determined from plant records, in kilograms.

"Q_{aj}" means the volumetric flow rate of each effluent gas stream (j) exiting the emission control device, in standard cubic meters per hour.

"Q_{abi}" means the volumetric flow rate of each effluent gas stream (i) entering the emission control device, in standard cubic meters per hour.

"Q_{fk}" means the volumetric flow rate of each effluent gas stream (k) not directed to an emission control device, in standard cubic meters per hour.

"E" means the VOC emission reduction efficiency (as a fraction) of the emission control device during performance testing.

"F" means the VOC emission capture efficiency (as a fraction) of the vapor capture system during performance testing.

"W_{oi}" means the weight fraction of VOC in each ink (i) used in the time period as determined from Reference Method 24, manufacturer's formulation data, or plant blending records, in kilograms per kilogram.

"W_{si}" means the weight fraction of solids in each ink (i) used in the time period as determined from Reference Method 24, manufacturer's formulation data, or plant blending records, in kilograms per kilogram.

"W_{oj}" means the weight fraction of VOC in each dilution solvent (j) added at the print line in the time period determined from Reference Method 24, manufacturer's formulation data, or plant blending records, in kilograms per kilogram.

§ 60.582 Standard for volatile organic compounds.

(a) On and after the date on which the performance test required by § 60.8 has been completed, each owner or operator subject to this subpart shall either:

(1) Use inks with a weighted average VOC content less than 1.0 kilogram VOC per kilogram ink solids at each affected facility, or

(2) Reduce VOC emissions to the atmosphere by 85 percent from each affected facility.

§ 60.583 Test methods and procedures.

(a) Reference Methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance with § 60.582(a) as follows:

(1) Method 24 for analysis of inks. If nonphotochemically reactive solvents are used in the inks, standard gas chromatographic techniques may be used to identify and quantify these solvents. The results of Reference Method 24 may be adjusted to subtract these solvents from the measured VOC content.

(2) Method 25A for VOC concentration (the calibration gas shall be propane);

(3) Method 1 for sample and velocity traverses;

(4) Method 2 for velocity and volumetric flow rates;

(5) Method 3 for gas analysis;

(6) Method for stack gas moisture.

(b) To demonstrate compliance with § 60.582(a)(1), the owner or operator of an affected facility shall determine the weighted average VOC content of the inks according to the following procedures:

(1) Determine and record the VOC content and amount of each ink used at the print head, including the VOC content and amount of diluent solvent, for any time periods when VOC emission control equipment is not used.

(2) Compute the weighted average VOC content by the following equation:

$$G = \frac{\sum_{i=1}^{n} (W_{oi} M_{ci}) + \sum_{j=1}^{m} (W_{oj} M_{dj})}{\sum_{i=1}^{n} (M_{ci} W_{si})}$$

(3) The weighted average VOC content of the inks shall be calculated over a period that does not exceed one calendar month, or four consecutive weeks. A facility that uses an accounting system based on quarters consisting of two 28 calendar day periods and one 35 calendar day period may use an averaging period of 35 calendar days four times per year, provided the use of such an accounting system is documented in the initial performance test.

(4) Each determination of the weighted average VOC content shall constitute a performance test for any period when VOC emission control equipment is not used. Results of the initial performance test must be reported to the Administrator. Reference Method 24 or ink manufacturers' formulation data along with plant blending records (if plant blending is done) may be used to determine VOC content. The Administrator may require the use of Reference Method 24 if there is a question concerning the accuracy of the ink manufacturer's data or plant blending records.

(5) If, during the time periods when emission control equipment is not used, all inks used contain less than 1.0 kilogram VOC per kilogram ink solids, the owner or operator is not required to calculate the weighted average VOC content, but must verify and record the VOC content of each ink (including any added dilution solvent) used as determined by Reference Method 24, ink manufacturers' formulation data, or plant blending records.

(c) To demonstrate compliance with § 60.582(a)(1), the owner or operator may determine the weighted average VOC content using an inventory system.

(1) The inventory system shall accurately account to the nearest kilogram for the VOC content of all inks and dilution solvent used, recycled, and discarded for each affected facility during the averaging period. Separate records must be kept for each affected facility.

(2) To determine VOC content of inks and dilution solvent used or recycled, Reference Method 24 or ink manufacturers' formulation data must be used in combination with plant blending records (if plant blending is done) or inventory records or purchase records for new inks or dilution solvent.

(3) For inks to be discarded, only Reference Method 24 shall be used to determine the VOC content. Inks to be discarded may be combined prior to measurement of volume or weight and testing by Reference Method 24.

(4) The Administrator may require the use of Reference Method 24 if there is a question concerning the accuracy of the ink manufacturer's data or plant records.

(5) The Administrator shall approve the inventory system of accounting for VOC content prior to the initial performance test.

(d) To demonstrate compliance with § 60.582(a)(2), the owner or operator of an affected facility controlled by a solvent recovery emission control device or an incineration control device shall conduct a performance test to determine overall VOC emission control efficiency according to the following procedures:

(1) The performance test shall consist of three runs. Each test run must last a minimum of 30 minutes and shall continue until the printing operation is interrupted or until 180 minutes of continuous operation occurs. During each test run, the print line shall be printing continuously and operating normally. The VOC emission reduction efficiency achieved for each test run is averaged over the entire test run period.

(2) VOC concentration values at each site shall be measured simultaneously.

(3) The volumetric flow rate shall be determined from one Method 2 measurement for each test run conducted immediately prior to, during, or after that test run. Volumetric flow rates at each site do not need to be measured simultaneously.

(4) In order to determine capture efficiency from an affected facility, all fugitive VOC emissions from the affected facility shall be captured and vented through stacks suitable for measurement. During a performance test, the owner or operator of an affected facility located in an area with other sources of VOC shall isolate the affected facility from other sources of VOC. These two requirements shall be accomplished using one of the following methods:

(i) Build a permanent enclosure around the affected facility;

(ii) Build a temporary enclosure around the affected facility and duplicate, to an extent that is reasonably feasible, the ventilation conditions that are in effect when the affected facility is not enclosed (one way to do this is to divide the room exhaust rate by the volume of the room and then duplicate that quotient or 20 air changes per hour, whichever is smaller, in the temporary enclosure); or

(iii) Shut down all other sources of VOC and continue to exhaust fugitive emissions from the affected facility through any building ventilation system and other room exhausts such as print line ovens and embossers.

(5) For each affected facility, compliance with § 60.582(a)(2) has been demonstrated if the average value of the overall control efficiency (EF) for the three runs is equal to or greater than 85 percent. An overall control efficiency is calculated for each run as follows:

(i) For efficiency of the emission control device,

$$E = \frac{\sum_{i=1}^{n} (Q_{bi} C_{bi}) - \sum_{j=1}^{m} (Q_{aj} C_{aj})}{\sum_{i=1}^{n} (Q_{bi} C_{bi})}$$

(ii) For efficiency of the vapor capture system,

$$F = \frac{\sum_{i=1}^{n} (Q_{bi} C_{bi})}{\sum_{i=1}^{n} (Q_{bi} C_{bi}) + \sum_{k=1}^{p} (Q_{fk} C_{fk})}$$

(Sec. 114, Clean Air Act as amended [42 U.S.C. 7414])

§ 60.584 Monitoring of operations and recordkeeping requirements.

(a) The owner or operator of an affected facility controlled by a solvent recovery emission control device shall install, calibrate, operate, and maintain a monitoring system which continuously measures and records the VOC concentration of the exhaust vent stream from the control device and shall comply with the following requirements:

(1) The continuous monitoring system shall be installed in a location that is representative of the VOC concentration in the exhaust vent, at least two equivalent stack diameters from the exhaust point, and protected from interferences due to wind, weather, or other processes.

(2) During the performance test, the owner or operator shall determine and record the average exhaust vent VOC concentration in parts per million by volume. After the performance test, the owner or operator shall determine and, in addition to the record made by the continuous monitoring device, record the average exhaust vent VOC concentration for each 3-hour clock period of printing operation when the average concentration is greater than 50 ppm and more than 20 percent greater than the average concentration value demonstrated during the most recent performance test.

(b) The owner or operator of an affected facility controlled by a thermal incineration emission control device shall install, calibrate, operate, and maintain a monitoring device that continuously measures and records the temperature of the control device exhaust gases and shall comply with the following requirements:

(1) The continuous monitoring device shall be calibrated annually and have an accuracy of ±0.75 percent of the temperature being measured or ±2.5° C, whichever is greater.

(2) During the performance test, the owner or operator shall determine and record the average temperature of the control device exhaust gases. After the performance test, the owner or operator shall determine and record, in addition to the record made by the continuous monitoring device, the average temperature for each 3-hour clock period of printing operation when the average temperature of the exhaust gases is more than 28° C below the average temperature demonstrated during the most recent performance test.

(c) The owner or operator of an affected facility controlled by a catalytic incineration emission control device shall install, calibrate, operate, and maintain monitoring devices that continuously measure and record the gas temperatures both upstream and downstream of the catalyst bed and shall comply with the following requirements:

(1) Each continuous monitoring device shall be calibrated annually and have an accuracy of ±0.75 percent of the temperature being measured or ±2.5° C, whichever is greater.

(2) During the performance test, the owner or operator shall determine and record the average gas temperature both upstream and downstream of the catalyst bed. After the performance test, the owner or operator shall determine and record, in addition to the record made by the continuous monitoring device, the average temperatures for each 3-hour clock period of printing operation when the average temperature of the gas stream before the catalyst bed is more than 28°C below the average temperature demonstrated during the most recent performance test or the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test.

(d) The owner or operator of an affected facility shall record time periods of operation when an emission control device is not in use.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

(Approved by the Office of Management and Budget under the control number 2060–0073)

§ 60.585 Reporting requirements.

(a) For all affected facilities subject to compliance with § 60.582, the performance test data and results from the performance test shall be submitted to the Administrator as specified in § 60.8(a).

(b) The owner or operator of each affected facility shall submit semiannual reports to the Administrator of occurrences of the following:

(1) Exceedances of the weighted average VOC content specified in § 60.582(a)(1);

(2) Exceedances of the average value of the exhaust vent VOC concentration as defined under § 60.584(a)(2);

(3) Drops in the incinerator temperature as defined under § 60.584(b)(2); and

(4) Drops in the average temperature of the gas stream immediately before the catalyst bed or drops in the average temperature across the catalyst bed as defined under § 60.584(c)(2).

(c) The reports required under paragraph (b) shall be postmarked within 30 days following the end of the second and fourth calendar quarters.

(d) The requirements of this subsection remain in force until and unless the Agency, in delegating enforcement authority to a State under Section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected sources within the State will be relieved of the obligation to comply with this subsection, provided that they comply with requirements established by the State.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

(Approved by the Office of Management and Budget under the control number 2060–0073)

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Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Surface Mining and Reclamation Operations Under a Federal Program for Tennessee; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Surface Mining and Reclamation Operations Under a Federal Program for Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior proposes to promulgate a Federal program for regulation of coal exporation and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of Tennessee. This includes the surface effects of underground coal mining. This program is necessary in order to regulate surface coal mining activities because of the State Legislature's repeal of the Tennessee Coal Surface Mining Act and regulations effective October 1, 1984. OSM is also proposing to withdraw approval of the Tennessee regulatory program and to suspend Tennessee's Abandoned Mine Land Reclamation Plan. Approval of the State's regulatory program and Reclamation Plan on August 10, 1982, provided the State with exclusive responsibility for regulating surface coal mining activities and administering a reclamation program for restoring land and water resources adversely affected by past mining practices. The Federal Surface Mining Act, however, makes continued funding for the Reclamation Plan contingent on the state having an approved regulatory program.

DATES: Written comments will be accepted until 5:00 p.m. on August 8, 1984 at the administrative record address indicated below. A public hearing will be held on August 3, 1984 as indicated below under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments must be mailed to: Administrative Record Room (R & I–21), Office of Surface Mining, 530 Gay St. SW., Knoxville, TN 37902.

The public hearing will be held at the Hyatt House, 500 Hill Avenue SE., Knoxville, Tennessee 37901.

FOR FURTHER INFORMATION CONTACT: James A. Curry, Field Office Director, OSM, 530 Gay Street SW., Knoxville, TN 37902 (ph. 615–673–4504); and James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Rm. 222, 1951 Constitution Avenue, NW., Washington, DC 20240 (ph. 202–343–5361).

SUPPLEMENTARY IMFRORMATION:

Availability of Copies

Copies of the proposed Tennessee Federal regulatory program are available for inspection and may be obtained at the OSM offices listed above under **ADDRESSES.**

Public Comment Period

The comment period on this proposed program will extend until August 8, 1984. All comments must be received at the location listed above under **ADDRESSES** by the close of business on that date. All written comments received, summaries of public meetings held at the request of any person or organization to receive advice and recommendations concerning the program with representatives of OSM, and other documents comprising the administrative record on the Tennessee Federal program will be made available for public review during regular business hours at the OSM location listed above under **ADDRESSES.**

Comments should be as specific as possible, focus on the issues of this rulemaking, and provide reasons for any recommendations. OSM will not consider comments that do not pertain to the issues in this rulemaking. Nor can OSM ensure consideration of comments received after the comment period ends or those delivered to an address other than that specified.

A rulemaking notice appeared on June 28, 1984, adding a new § 942.736 which established a public comment period of 40 days for a Tennessee Federal program. The rule established an exception to the requirement of 30 CFR 736.13(b) in light of the need to have the Tennessee Federal program in effect by October 1, 1984.

Public Hearing

A public hearing is scheduled for August 3, 1984 at the Hyatt House, 500 Hill Aveune SE., Knoxville, Tennessee 37901. The hearing will be divided into daytime and evening sessions. The daytime hearing will begin at 9:00 a.m. and will continue until all persons then in attendance during the day wishing to present testimony have had an opportunity to do so. The evening session will begin at 7:00 p.m. to allow persons to present testimony who are unable to attend the daytime hearing.

The hearing will be legislative in nature. Persons wishing to present testimony should contact the Field Office Director at least five (5) days before the hearing date. A written statement submitted with oral presentation would be helpful to the presiding OSM officials.

A rulemaking notice appeared on June 28, 1984, adding a new § 942.736 which provided that a public hearing will be held between 30 and 40 days after publication of a proposed Tennessee Federal program. The rule established an exception to the requirement of 30 CFR 736.13(b) in light of the need to have the Tennessee Federal program in effect by October 1, 1984.

To assist the reader, this preamble is arranged as follows:

I. Proposed Withdrawal of State Program Approval
A. Withdrawal of Regulatory Program
B. Suspension of Abandoned Mine Land Plan
II. Federal Programs Generally
III. Tennessee Federal Program
A. Federal/State Program Interface and Transition
B. Content and Organization of the Program
C. Detailed Discussion of Program
Option 1
Option 2
IV. Other Information

I. Proposed Withdrawal of State Program Appoval

A. Withdrawal of Regulatory Program Approval

On August 10, 1982, the State of Tennessee received conditional approval of its permanent regulatory program. 47 FR 34753. Because of problems identified in the State's implementation, maintenance and enforcement of its program, the Director of OSM on April 8, 1983, notified the Governor of the problems and sought corrective measures pursuant to 30 CFR Part 733. See the notice of public hearing at 48 FR 22541 (May 19, 1983). The State failed to adequately indicate its intent and capability to implement, maintain and enforce its regulatory program. By final rulemaking notice published on April 18, 1984, 49 FR 15496, OSM assumed direct Federal enforcement of the inspection and enforcement portions of the Tennessee regulatory program pursuant to 30 CFR 733.12 because of the State's failure to adequately implement certain parts of its program. The State's statute and pertinent program regulations that OSM would be enforcing appeared in the **Federal Register** on May 18, 1984, 49 FR 21140.

By action of the State Legislature on May 16, 1984, most of the Tennessee Coal Surface Mining Law of 1980, Tennessee Code Annotated §§ 59–8–301–59–8–339, was repealed effective October 1, 1984. The legislation also repealed the implementing regulations for the regulatory program effective the same date.

With the action of the State Legislature, Secretarial withdrawal of state regulatory program approval would be a formality. Under Section 503(a)(1) of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or the "Act"), 30 U.S.C. 1253(a)(1), to achieve and retain primacy a coal-producing state must have a law which provides for the regulation of surface coal mining and reclamation operations in accordance with the Act. The State's failure to have a surface mining law cannot be cured by substitution of Federal enforcement. Pursuant to 30 CFR 733.12(g), the Secretary is to withdraw program approval if the failure of the state to administer or enforce its program cannot be remedied by substitution of Federal enforcement of the program.

Therefore, OSM proposes to withdraw approval of the Tennessee permanent regulatory program in full effective October 1, 1984. On and after that date, OSM would be the regulatory authority in Tennessee.

B. Suspension of Abandoned Mine Land Plan

Title IV of the Surface Mining Act establishes an Abandoned Mine Land (AML) program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or Federal law. Title IV provides that a state with an approved surface mining regulatory program may have an AML plan approved which gives it the responsibility and primary authority to implement the plan. On August 10, 1982, Tennessee's plan was approved. 47 FR 34757.

Section 405(c) of the Act provides that the Secretary shall not approve, fund or continue to fund a state AML unless that state has an approved state regulatory program pursuant to Section 503 of the Act. Regulation implementing this provision are found in 30 CFR 884.16 and 886.18. Upon withdrawal of regulatory program approval, the Director of OSM must suspend the AML plan.

If the Director determines that a state reclamation plan should be suspended and the AML grants terminated, the Director must notify the state by mail of the proposed action. The notice must state the reasons for the proposed action and provide the state 30 days to show caue why such action should not be taken. The Director will afford the state an opportunity for consultation, including a hearing, if requested, and performance of remedial action prior to suspension. The Director will notify the State of the proposed suspension of its Reclamation Plan. The State was informed that no further projects would be funded after assumption of Federal enforcement of the regulatory program. 49 FR 15505.

Formal suspension of a state's Reclamation Plan will have the following consequences: 1) the state will not longer be eligible to receive its 50% allocation of the AML funds collected within the state; 2) funds which have been allocated to the state but have remained unexpended for three years may be withdrawn by the Director and used in any eligible area in the country; and 3) OSM will conduct only limited reclamation efforts in the state addressing only the highest priority problems which threaten the public health and safety.

II. Federal Programs Generally

Under Section 504(a) of the Act, 30 U.S.C. 1254(a), the Secretary of the Interior (the Secretary) is required to promulgate a Federal program in a state for, among other reasons, the failure of a state granted primary regulatory responsibility to adequately implement, enforce or maintain its program. Upon promulgation of a Federal regulatory program, the Secretary becomes the regulatory authority. *Id.*

Once a decision is made that a Federal regulatory program is necessary for a state, the Secretary must make several determinations in promulgating a program. Section 504(a) of the Act requires that the Secretary take into consideration the nature of the state's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also set forth in the regulations for the promulgation of Federal programs, 30 CFR Part 736. The Act (Section 505(b)) and the regulations (30 CFR 736.22(a)(1)) also provide that if a state has more stringent land use and environmental protection laws or regulations, they shall not be construed to be inconsistent with the Act or the Secretary's regulations. The Secretary believes that the requirements of section 505(b) can best be met by identifying any state laws and regulations which may impose more stringent environmental controls and by then listing them in the Federal program. If the state's laws or regulations establish more stringent standards than those of the Act or the Secretary's regulations in 30 CFR Chapter VII, or if the state regulates any aspect of the environment which neither the Act nor the Secretary's regulations protect, the Secretary would then specifically preserve those state standards in the Federal program. By identifying any state laws as more stringent than Federal surface coal mining statutory and regulatory standards, however, the Secretary would not be assuming any responsibility to enforce such state laws.

Also, in promulgating a Federal program, section 504(g) of the Act specifies that any state statutes or regulations which regulate surface mining and reclamation operations are to be identified by the Secretary and will be superseded and preempted to the extent that they interfere with the achievement of the purposes and requirements of the Act and Federal program. This provision is reinforced by section 505(a) which states that only inconsistent state laws shall be superseded by any provision of the Act or regulation. State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which do not provide as much protection as do the Federal law and regulations are considered to interfere with achievement of the purposes of the Act. Accordingly, they must be identified and preempted.

Federal programs are based on the Secretary's permanent program regulations. 30 CFR Subchapters A, F, G, H, J, K, L, and M. The permanent program regulations implement five essential aspects of the surface coal mining regulatory program: permitting, performance standards, designation of lands as unsuitable for mining, bonding, and inspection and enforcement. These rules form the benchmark for state regulatory programs. In order for a state to have a regulatory program approved, section 503(a)(7) of the Act requires that the state's rules and regulations be consistent with the Secretary's regulations.

The permanent program rules refer to the "regulatory authority." Under a Federal program, that is the Secretary. Act, section 701(22). The Secretary has delegated all of his authority under the Act to the Assistant Secretary for Land and Minerals Management. Secretarial Order No. 3013 (Nov. 9, 1977); Order No. 3099 (Dec. 22, 1983). With limited exceptions, the Assistant Secretary has in turn redelegated all of this authority under the Act to the Director of OSM. 216 Departmental Manual 1 (November 9, 1977). Thus, the Director of OSM is the official directly responsible for the

implementation of a Federal regulatory program.

The parts of the permanent regulatory program rules that must be included in a Federal program are listed in 30 CFR 736.22(b). They include the general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands as unsuitable for surface mining (Parts 760, 761, 762, and 765), permits and permit applications (Subchapter G), small operator assistance (Subchapter H), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In addition, the provisions in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who, in the instance of a Federal regulatory program, are directly enforcing the Act.

Federal programs are promulgated by means of cross-referencing the permanent program rules which set the substantive standards. The proposed Federal regulatory program for Tennessee would replace the current 30 CFR Part 942. In the new program, sections on various topics would cross-reference the counterpart permanent program rules on those topics. For example, for general requirements for permits and permit applications, the proposed § 942.771 of the Tennessee Federal regulatory program would cross-reference 30 CFR Part 771 of the permanent program rules by stating that 30 CFR Part 771 shall apply to any person who makes application for a permit to conduct exploration of surface coal mining operations. Cross-referencing avoids duplication of the full text of the permanent regulatory program rules for each Federal program.

If a particular permanent program regulation needs to be modified for use in a Federal program, an additional paragraph of the Federal program rule would be added to modify the permanent regulatory program standard for the that Federal program state or to add additional requirements or standards. If more than one standard needs to be modified in any particular permanent program rule, additional paragraphs would be added to the Federal program section. For example, if an additional permit application requirement is identified for the Tennessee Federal program, a paragraph (b) would be added to the proposed § 942.771 to accomplish this. This is one means of implementing the mandate of Section 504(a) of the Act this in promulgating a Federal program the Secretary take into consideration relevant conditions in the state.

One effect of cross-referencing in a Federal program is that if a permanent program rule is revised, the corresponding Federal program rule would be similarly revised. However, the notice of proposed rulemaking would invite comments not only on the proposed rule generally, but also on how it might affect a particular Federal program. If certain changes were needed for a Federal program, then a separate provision would be added to the Federal program provision which is the counterpart to the permanent program rule.

Several provisions of the permanent program rules are already applicable to all Federal programs because they were fully promulgated for application to all regulatory programs and, therefore, need not be cross-referenced. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. 30 CFR Part 764—Designating Lands Unsuitable for Surface Coal Mining is included in this proposed Federal program by cross-reference under § 942.764 to provide a petition process on non-Federal lands in Tennessee. Also, Part 760 is not included because its provisions do not provide any substantive requirements. Instead, it imposes requirements on the Secretary and his delegates which need not be incorporated in each Federal program. Part 765 is not included because it is directly applicable to a Federal program state without being cross-referenced. Parts 810 and 840 are also not included because they are unnecessary to a Federal program.

III. Tennessee Federal Program

A. Federal/State Program Interface and Transition

The Federal program for Tennessee would be the first such permanent program for a state in which approval of the state regulatory program would be withdrawn. Previously, Federal programs have been promulgated for states which have chosen not to submit programs. See, e.g., the Washington Federal program, 48 FR 7883 (Feb. 24, 1983). In promulgating the previous Federal programs, state statutes and regulations which regulated an aspect of surface coal mining and reclamation were examined to determine whether there were any provisions which would either interfere with a Federal program or set more stringent environmental protection standards. In the case of Tennessee, however, except for retaining very limited authority to regulate (as explained below) surface coal mining and reclamation activities, the State, by passage of the repealing legislation, has chosen to remove itself from any regulatory function in that area. Therefore, on general review of state statutes and regulations has been undertaken in promulgating this proposed Federal regulatory program.

The Tennessee legislation repealing the state regulatory program statute and regulations establishes several areas of limited state jurisdiction. Criminal penalties are established for any person who willfully and knowingly mines more than 25 tons of coal in any 12 successive calendar months without first obtaining a permit from the "primary regulatory authority pursuant to [the Federal Act] or without a permit for such mine obtained * * * prior to [October 1, 1984] * * *." Exceptions are then set for the extraction of coal incident to government-financed construction and construction operations affecting less than one acre where coal removal is an incidental part of the project.

Under section 528(1) of the Federal Act, a landowner may remove coal for his noncommercial use free from regulation. Under section 528(2) of the Act, surface coal mining operations affecting two acres or less are not subject to the Act. Also, under section 528(3), the extraction of coal as an incidental part of government-financed construction is exempt from regulation. Because of these exemptions in the Act, OSM cannot exercise any jurisdiction over such operations. Therefore, OSM does not propose to preempt the State with respect to surface coal mining activities which remove more than 25 tons of coal during a 12 successive calendar month period, which affect areas larger than one acre and which are not part of government-financed construction projects. However, the provision in the repealing legislation mentions the "primary regulatory authority." The term is not defined. Presumably, on October 1, 1984, the Secretary, acting through OSM, would become the "primary" regulatory authority. But since OSM cannot exert jurisdiction over surface coal mining activities affecting two acres of less, government-financed construction projects incidently removed coal or extraction by a landowner for his noncommercial use, it cannot issue

permits for any such activities. Therefore, only those operations which have obtained a permit under the Tennessee program and come within the exceptions of section 528 of the Act could conceivably be allowed to continue without being in violation of the repealing legislation sanctions. Enforcement, nevertheless, would be a matter for the State to pursue where the operation is exempt under the Act. However, OSM retains the right to determine, on a case-by-case basis, whether any surface coal mining operation is affecting more than two acres, is incidental to a government-financed construction project or is conducted by a landowner for his noncommercial use. Furthermore, the Federal program would require a permit for any operations affecting more than two acres. Failure to have such a permit would be a violation of the Federal program and would be subject to enforcement action by OSM. The Secretary concludes preliminarily, subject to public comment on this proposed program, that the provisions of the repealing legislation discussed here would not interfere with achievement of the purposes of the Federal program. Therefore, they are not proposed to be preempted or superseded.

After promulgation of this Federal program, the State would also continue to regulate water quality under the National Pollution Discharge Elimination System (NPDES). Section 508(a)(9) of the Federal Act requires an applicant to demonstrate how he will comply with, *inter alia*, applicable water quality laws, and section 702(a)(3) provides that the Act shall not affect the Federal Water Pollution Control Act or any state laws enacted pursuant to that law. In the permanent program rules on water quality, 30 CFR 816.41(e) provides for surface water monitoring reporting consistent with the NPDES. Also, 30 CFR 816.42 requires compliance with applicable state and Federal water quality standards and effluent limitations set by the Environmental Protection Agency.

The State Board of Reclamation Review would continue to hear cases before it. Tenn. Code Ann. § 59-8-321. The repealing legislation modified its authority in only a limited way.

Under the repealing legislation, the Board retains jurisdiction over (1) all persons who conducted surface coal mining prior to May 3, 1978 and who have not had their bond fully released, and (2) all persons who have permits issued by the State and who have had bond forfeiture initiated against them. However, the legislation provides with respect to the latter category that if the Secretary exercises jurisdiction over such forefeitures, the retention of jurisdiction is removed. For the first category, OSM has no authority to assert jurisdiction; therefore, Tennessee jurisdiction would not constitute interference with the achievement of the Federal program's purposes. With respect to the second category, however, the assumption of Federal enforcement announced on April 18, 1984, 49 FR 15496, indicated that Federal inspectors would be conducting inspections on sites on which bond forfeiture had been initiated. In view of the fact that the State retains a bond made payable to it or has collateral in its possession, OSM will not assume jurisdiction over such sites for purposes of bond forefeiture so long as the State continues to proceed with bond collection and to undertake any reclamation work. Continued administrative action by the Board with respect to bond forfeitures would not interfere with the purposes of a Federal program.

For those interim program bonds for which the Tennessee Department of Health and Environment has not commenced forfeiture, OSM is considering whether it can assume any responsibility with respect to them. There is no requirement under the Act for a reclamation bond until a permament program permit is to be issued. SMCRA § 509(a). Therefore, OSM may lack authority to require an assignment of the bond. Nevertheless, such operations are subject to the interim program performance standards, as is being made clear by a proposed rule at § 942.701 and OSM will continue to inspect such sites. Should a violation be detected, the appropriate enforcement action will be taken. If the decision is made that the Act does authorize the regulatory authority to assume responsibility with respect to interim program bonds, then an assignment of those bonds to the United States would be required in order for OSM to take any action under them. The final rule notice will indicated what action, if any, OSM will take.

One important consequence of the promulgation of a Federal program is the triggering of Federal laws and regulations which are made applicable through Federal agency action. One such law is the National Environmental Policy Act (NEPA), 42 US.C. 4321 *et seq.* For certain OSM actions taken after the promulgation of the program NEPA compliance is required. Promulgation of program itself is exempt from compliance under section 702(d) of the Act. In addition to NEPA, OSM must comply with other Federal laws. Those laws are identified in 30 CFR 773.12. Compliance with the those laws, as well as NEPA, may require obtaining information from a permit applicant in addition to that specified in 30 CFR Chapter VII, Subchapter G. A provision is proposed to be added to § 942.773 to allow OSM to require a permit applicant to furnish any additional information. OSM invites comment on whether proposed § 942.773 should provide more specificity for those requirements.

Section 504(d) of the Act directs the Secretary to undertake, immediately after promulgation of a Federal program, the review of permits issued under the state program. With the assumption of Federal enforcement of the state program, intensive oversight of the State's permitting activities was initiated. Upon publication of the final rulemaking notice, that effort would be converted into a full review of each outstanding permit. OSM anticipates that discussions with the State will result in making all state records available to OSM to aid in the process. Should the decision be made that a permit revision is required, the permittee will be given adequate notice of the required change. The Federal rules in 30 CFR 774.11 now call for the review of a permit at least mid-way during its term. 30 CFR 773.11(a) establishes a procedure for review in the instance of promulgation of a Federal program. Therefore, a rule is proposed to be added at § 942.776 which would cover more specifically the review of the permits issued by Tennessee under its permanent regulatory program. However, for those permittees who have posted a reclamation bond made payable to the State of Tennessee only, OSM may require immediately upon the effective date of the Federal program that the payee be changed to include the United States.

Under the soon-to-be repealed State Coal Surface Mining Law of 1980, Tenn. Code Ann. § 59-8-335, operators in Tennessee were required to comply with the performance standards upon the effective date of the statute and regulations adopted pursuant to the statute. This scheme is different than that in the Act which requires operators to adhere to permanent program standards upon the issuance of permits, Act sections 515(a) and 516(b), which, depending on the delay in issuance of permanent program permits, can and has occurred much later than Secretarial approval of the regulatory program. Until final promulgation of a Federal program, OSM will enforce the performance standards of the Tennessee

program whether or not an operator has been issued a permanent program permit, as long as such an operator has filed an application timely. However, on and after the effective date of a Federal program, the permanent program performance standards will be applicable to those surface coal mining operations in Tennessee which have been issued permits—either by OSM or the State. Permanent program permits issued by Tennessee will be reviewed as indicated above and operators will be given adequate notice and opportunity to revise their permits should OSM determine that such revision is necessary. If there are any operators in Tennessee conducting surface coal mining and reclamation operations who have filed complete applications and have not had permits issued to them, then notwithstanding the provision of the repealed § 59–8–335 the permanent program performance standards will not be applicable to them until permit issuance. Nevertheless, the Federal interim program standards, 30 CFR Chapter VII, Subchapter B, will be applicable. A rule is proposed to be added at § 942.701 to make clear that the interim program rules are applicable to operations which do not have permanent program permits.

For operators who have posted reclamation bonds with the State under its permanent regulatory program or who have given the State collateral to guarantee reclamation, OSM will be reviewing the adequacy of those bonds in the permit review process. If it is determined that a bond amount is inadequate, the operator would be notified that additional bond must be posted. If notice has not previously been that the payee must be changed to include the Federal government, OSM will require that the permittee either post a new bond which is payable to "The United States or the State of Tennessee" or to provide an executed document from the surety adding the United States as payee. It was indicated in the decision to assume Federal enforcement of the program that all bonds accepted by the State after the Federal assumption of enforcement would have to be made payable to "The United States or the State of Tennessee." 49 FR 15505. This would continue to be a requirement in the meantime and during the Federal program in the event that the State reassumes primary regulatory authority. For all operators who have posted bonds with the State and against which forfeiture has not been initiated prior to October 1, 1984, they would have to execute assignments of the bonds or have to post new bonds. A provision is proposed to be added at § 942.800(b) to establish these requirements. OSM is considering making it mandatory upon the effective date of the Federal program that permittees change the payee of already-posted reclamation bonds to include the United States.

OSM will administer the Small Operator Assistance Program (SOAP) under Subchapter H, Part 795, of the permanent program rules which are proposed to be cross-referenced in § 942.795. See 48 FR 2272 (Jan. 18, 1983) and 48 FR 44780 (September 30, 1983). Complete assumption of administration of the SOAP is expected to occur no later than October 1, 1984. The State has already indicated that it would like OSM to assume Federal administration of the SOAP. A notice may appear in the **Federal Register** announcing OSM assumption of the state SOAP pursuant to the proceeding under 30 CFR Part 733. Even if that assumption does not take place, OSM expects that all prior SOAP contracts awarded by the State will be completed by that date. OSM plans to be in a position to receive applications for assistance after August 30, 1984. Applications for assistance can be secured from the Knoxville Field Office Director. Completed applications should also be submitted to that office. Should any small operator be notified through the OSM permit review that their permit needs revision in conection with the determination of the probable hydrologic consequences or the results of test borings, thay may apply for assistance in having the work done.

The State has considered and decided two petitions to designate lands as unsuitable for surface coal mining. One petition was granted, the other denied. However, both are under administrative review. The Federal Act provides no guidance on the extent to which a decision by a state on a petition must be recognized by OSM in the situation at hand. Comment is specifically invited on whether OSM should defer to the decisions on the petitions, especially in light of their present lack of administrative finality.

Final decisions have not been made as yet on many of the details of a Federal program for Tennessee, particularly administrative and other matters which need not be included in a regulation. By the time of final rulemaking notice, some of the decisions will have been made. The final rulemaking notice will provide as much information as possible on the details that have been resolved by that time. However, questions in the meantime should be directed to the Knoxville Field Office indicated above under **FOR FURTHER INFORMATION CONTACT.**

B. Content and Organization of the Federal Program

The content and organization of the Federal program for Tennessee follows the permanent program regulations. But, as discussed above, instead of the full text appearing, each section includes only a reference to the pertinent permanent program regulatory part. No provisions of Tennessee state law (other than those in the soon-to-expire Coal Surface Mining Law) have been identified as being more stringent than the Federal standards, and no state laws or rules have been identified as interfering with achievement of the purposes of the Federal program. However, several Tennessee laws are identified in § 942.762(b) which the Office will rely upon in considering petitions to designate or terminate lands as unsuitable for surface coal mining. Comment is specifically invited on whether there may be such state laws and regulations. If any are identified, the final rulemaking notice may add subsections to § 942.700 specifically preserving or preempting the state laws and regulations.

In instances where additional standards may provide concrete direction to an operator, the Tennessee surface coal mining regulations have been examined in order to determine where and how the State chose to establish additional standards. Only one such standard, involving revegation success standards for bond release, is proposed to be added. See § 942.816(b) and .817(b). Options for the addition of other standards are proposed to several performance standards and to the definition of the term "support facilities." Other such additions may be advocated by commenters or they may urge modification of the permanent program standard which is being adopted by cross-reference in the Federal program. If such changes are to be made in the final rule, the result would be an addition to the permanent program rule indicating additional or modified requirements applicable only to the Tennessee Federal program. Where additions are proposed to the permanent program rules in this program, the term "Office" is used. It means the Office of Surface Mining Control and Reclamation Enforcement—OSM.

The content and organization of the proposed Tennessee Federal program are based on the following provisions of the Federal permanent program regulations, 30 CFR Chapter VII:

Subchapter A—General

Subchapter F—Areas Unsuitable for Mining

Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems under Regulatory Program

Subchapter H—Small Operator Assistance

Subchapter J—Bond and Insurance Requirements for Bonding of Surface Coal Mining and Reclamation Operations

Subchapter K—Permanent Program Performance Standards

Subchapter L—Permanent Program Inspection and Enforcement Procedures

Subchapter M—Training Program for Blasters and Members of Blasting Crews, and Certification Programs for Blasters

Technical literature cited by OSM in the preambles to the permanent regulatory program (44 FR 14901–15309, March 13, 1979) and the regulatory reform rulemaking notices ending September 30, 1983, was relied upon in developing the Tennessee Federal program. The reader is referred to those preambles for a discussion of the basis and purpose of the permanent program rules referenced in the Tennessee program without substantive change.

The numbering system of the permanent program regulations has been incorporated into the numbering system for the Tennessee Federal program. Subchapter I in 30 CFR Chapter VII has been established to include regulatory programs by state in alphabetical order. Each state is assigned a part number; the regulatory program for Tennessee is assigned Part 942. The Federal program would replace the current contents of the part once promulgated in final. Program elements have been categorized under headings similar to the subchapter titles of the permanent program CFR parts.

C. Detailed Discussion of Program

Options

Two options are offered for public comment in the proposed Federal program. The first option consists of cross-referencing the Federal permanent program rules with a number of additions made to those rules as specified under each of the subject headings of the program parts. The second option consists of the first option with several additions made to those rules. The additions would add a limitation to the term "coal loading facility" for purposes of regulating support facilities in Tennessee and several detailed performance criteria on diversion desing, sedimentation ponds, underdrains in excess spoil fills, and timing for backfilling and grading. The second option appears in the rules section of this notice the first. Only those portions of the rules to be added are published. These options are proposed of soliciting public comment. OSM may adopt either option; some combination or steps between the options; or Option 2 with additions.

Option 1

General. Section 942.700 contains four subsections. They contain general statements on the scope and applicability of the program. No Tennessee laws are identified as setting standards which are either more stringent than those in the Federal permanent program regulations or which interfere with achievement of the purposes of a Federal program. If any such laws are identified they would be listed in separate additional paragraphs of this section.

A paragraph (b) is proposed to be added at § 942.701 to make clear that unless an operation has a permanent program permit, issued either by Tennessee or OSM, compliance with the interim program standards, Subchapter B of Chapter VII, is required. Compliance with the interim program standards can only be required under the Act until a permanent program permit is issued. SMCRA §§ 515(a) and 516(b). Although, as explained above, the Tennessee statute and regulations were made applicable to all operations upon program approval, there is no authority under the Act for OSM applying the permanent program standards until a permanent program permit is issued.

Section 942.701(d) requires OSM to make records available locally to the public at the county courthouse or other appropriate public office within the county of the surface coal mining operation. This requirement also applies to Sections 942.776(b) and 942.782(b).

Areas Unsuitable for Mining. Sections 942.761 through 942.764 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter F, Areas. Unsuitable for Mining. The effective date for implementing the petition process for designating lands unsuitable for surface mining or for terminating designations has already passed. Section 504(a) of the Act, which defers applicability of Sections 522(a), (c) and (d), is inapplicable since a state regulatory program was implemented in Tennessee. 30 CFR 736.15(b)(2). No separate section for Federal lands is proposed because 30 CFR Part 769 is directly applicable and need not be made a part of a Federal program.

A paragraph is proposed to be added to § 942.762 to indicate that the Office would consider lands in Tennessee placed on the State's Natural Areas Registry, designated Natural Areas or Scenic Areas and lands adjoining Scenic Rivers in considering a petition to designate lands as unsuitable for surface mining or termination of such a designation. The consideration would be given in the context of lands as defined as "fragile" under 30 CFR 762.5.

A paragraph has been proposed in § 942.764 to ensure that the State is notified on the designation of areas as unsuitable or for which designations are terminated. This notification would be provided as a courtesy since agencies in the State apparently will be regulating limited aspects of surface coal mining operations.

Permits and Coal Exploration Approvals. Sections 942.770 through 942.795 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems Under Regulatory Programs. Section 942.770 cross-references 30 CFR 770. Section 771.12 of the permanent program rules lists other laws with which the Secretary will coordinate permitting activities. That coordination is required pursuant to section 504(h).

In addition to the requirements under the permanent program rules, additional provisions are added for OSM permit review. More detail is necessary when OSM is the regulatory authority in order to provide direction to the permit applicant.

The proposed rule at § 942.773(b) would establish a procedure for the handling of permit applications. This is considered necessary in order to dispose of applications which are grossly deficient early in the processing, to provide a formal procedure for obtaining additional information, and to indicate the procedure for determinations of completeness.

The proposed rule at § 942.773(c) would authorized the Office to obtain additional permit information than that required under 30 CFR 773. Such additional information would be required in order to meet the obligations imposed on the Office under the Federal laws identified under 30 CFR 773.12. It would also allow the Office to obtain information in order to comply with the National Environmental Policy Act, as discussed above.

The proposed rule at § 942.774(b) would indicate that a significant revision of the permit is one requiring public notice and is subject to formal hearing if one is requested. Section 774.13(b) directs the regulatory authority to establish guidelines for a permit revision. Section 511(a)(2) of the Act authorizes the regulatory authority to establish such guidelines, but also provides that any significant alteration in the reclamation plan shall be subject to formal revision. The proposed rule provides that a change in the reclamation plan will be considered significant if it has the potential to affect the achievement of reclamation as set in the approved plan.

The proposed rule at § 942.774(c) would specify a period of 30 days within which to submit written comments on an application for approval of a transfer, assignment or sale of a permit. There is no period set in 30 CFR 774.17.

A section applicable only to the Tennessee Federal Program is proposed to be added at § 942.776 for the review of existing permanent program permits issued under the Tennessee state regulatory program. It is based on section 504(d) of the Act. Section 773.11(d) of the permanent program rules, in part, implement the provision in the Act. However, there is no specific procedure set out in that regulation; nor is there a provision for the permittee who is notified that a revision is required to obtain administrative review of that determination. There is also no provision for the permittee who fails to conform his or her operation to the Federal program requirements to have that permit revoked or suspended. The proposed rule would specify generally that a state-issued permit is valid, that such permits will be reviewed and if determined not to be in conformity with the Act, a notice will be given and a period of time set for conforming the operation to the requirements of the Act. It would also generally specify what a permittee could do to have such a determination reviewed and the procedure for the Office suspending or revoking the permit.

The proposed rule at § 942.776(a) would also specify the performance standards with which a permittee would have to comply. Such a provision is necessary in light of the repeal of the Tennessee statute and regulations under which the permit was issued. The rule would provide that if the permit specifies standards with which compliance is required, then that would control. However, if the permit is silent, then the Federal program standards would apply. For example, if the state-issued permit specified the seeding rate for revegetating reclaimed land, then that standard would be prevail. If, however, the permit does not so specify, then the standards set in the Federal program would be applicable. Such standards would be applicable unless and until they are modified through the permit review undertaken by OSM.

The permanent program rules for granting variances from approximate original contour requirements in 30 CFR 785.16 provide in paragraph (f) that variances may be granted only if the regulatory authority has established specific rules to govern them. The rules in 30 CFR 816.133(d) provide the specific criteria required by § 785.16(f). Therefore, no additional criteria are needed or proposed.

A permit fee is required under section 507(a) of the Act and 30 CFR 771.25. Section 942.771 cross-references the latter regulation. However, no fee schedule has been set for Federal programs generally, and one is not being proposed at this time for Tennessee. A rulemaking notice is expected to appear in the near future to set a fee schedule for Tennessee, other Federal programs and Federal lands permits.

OSM is currently developing permit application forms for use in Tennessee. In the meantime, a prospective permit applicant should contact OSM in order to determine the format for an application.

Small Operator Assistance. Section 942.795 would establish the same standards for the small operator assistance program as are found in Part 795 of the permanent program rules. OSM expects during its administration of the SOAP in Tennessee that Federal funds will be sufficient to provide for the authorized services, and does not expect to exercise its option at 30 CFR 795.11(b). That option allows OSM to establish a formula for allocating limited funds to provide the services pursuant to Part 795.

OSM will award SOAP contracts to qualified laboratories utilizing a streamlined procurement system that complies with the Federal Aquisition Regulations. Prior to issuing a Request for Proposal, OSM will announce its intention through publication in the Commerce Business Daily. Unlike the procedures currently used by Tennessee to develop an independent list of qualified labs, OSM will qualify labs as part of its contracting process.

Bonding. Section 942.800 establishes the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations.

A provision would be added as paragraph (b) of § 942.800 specifying the procedure that the Office would follow in reviewing the bonds posted by operators in order to obtain a permanent program permit from Tennessee. If a bond amount is determined to be inadequate, notice would be given and the operator would have the option of replacing the existing bond with an adequate one or of posting an additional bond for the amount of the shortfall.

OSM is considering adding a provision which would require all permittees within a period of time after the program effective date to submit an assignment of the bond which would include the United States. If added to the final rule, no actual notice would be given to an operator. By rule, in order to continue mining past a specified date, the operator would have to submit a document indicating that the United States was a payee of the bond, as well as the State. This would foreclose sending notice to operators as it is assumed that only those operators who would have obtained permits from the State after April 18, 1984, would have posted a bond made payable to the United States or the State.

Performance Standards. Except where specifically modified for the Tennessee Federal program, §§ 942.815 through 942.828 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter K, Permanent Program Performance Standards. An addition to those standards is proposed at §§ 942.816 and 942.817 with respect to the standards for revegetation success. Options are offered for other performance standards on which the Office is soliciting comment under Option 2.

The proposed addition for revegetation success is considered necessary because 30 CFR 816.116(a)(1) requires that the regulatory authority establish standards for success and statistically valid sampling techniques for measuring success. Proposed § 942.816(b) would set forth success standards and sampling techniques for use at the time of bond release for each major post-mining land use. For grazing land or pasture the Office is proposing a standard of 90% ground cover. In addition to satisfy this ground cover requirement, the production of living plants must be equal to or greater than the average county yield as determined by the U.S. Department of Agriculture soil survey. The 90% standard is a provision of the Tennessee regulatory program and is usually considered to be

the minimum acceptable level of cover for pasture land. A production standard is also being proposed because ground cover alone may not always indicate the capability of reclaimed land to support livestock.

For areas developed as cropland, the Office is proposing that average county yield be used as the standard for determining reclamation success. Such information would be taken from the U.S. Agriculture Department soil survey. Adjustments for local yield variation within the county would be made for disease, pests and weather-induced variations and differences in crop management practices. The Office is proposing that actual crop yields be used to demonstrate the restoration of cropland soils because there is insufficient research and experience to establish the reliability of other methods. The proposed rule would require crops to be grown on only a representative portion of the permit area that would be sufficient in size to demonstrate successful soil restoration. For the purposes of this rule, hayland would be included in the definition of cropland.

Another subparagraph of paragraph (b) would require 80% ground cover for areas developed for wildlife habitat, recreation, or forest products. The stocking requirement for woody plants would be approved by the Office on a case-by-case basis and specified in the mining and reclamation plan. In approving stocking rates, the Office would rely heavily upon recommendations of the State agencies responsible for the administration of forestry and wildlife programs. The Office believes that case-by-case approval would allow the flexibility necessary to accommodate the specialized requirements of various wildlife and forest management plans. Eighty percent ground cover is believed to be necessary to control erosion on steep terrain that is common to eastern Tennessee coal fields. In applying this and other ground cover standards, the Office would use the definition of ground cover that is in the permanent program rules at 30 CFR 701.5. By the definition, ground cover includes both the aerial parts of living vegetation and litter that is produced naturally on site.

Another subparagraph of paragraph (b) would adopt the existing requirement of Tennessee permanent program rules which prohibits bare areas larger than one-sixteenth of an acre in size and that total more than 10% of the area seeded. The Office believes that such a provision is necessary to avoid releasing bond on lands that meet the overall cover requirements of 80 or 90% ground cover, but still have localized areas that are not yet stabilized from soil erosion.

The next subparagraph of paragraph (b) would require the distribution of woody plants within the permit area to be consistent with the post-mining land use. This is to ensure that all growing space is effectively utilized for land uses such as timber production. It would require mine operators to replant areas where the survival of woody plants was uneven.

The final subparagrph of paragraph (b) would adopt by reference the sampling techniques for measuring wood plant stocking and ground cover that are contained in the Office's publication "Technical Guides on Use of Reference Areas and Technical Standards for Evaluation of Surface Mine Revegetation in OSM Regions I and II." It would also allow for alternative sampling techniques to be used if approved by the Office. The Office notes that the sampling techniques described in the above publication were developed by the Tennessee Valley Authority for use on mining operations common to the Appalachian region and are, therefore, believed to be well-suited to mines in eastern Tennessee. The proposed rule also provides for the use of quadrants and total crop yields where cropland is the post-mining land use.

The same standards would be added to paragraph (b) of § 942.817 for underground mining.

The Office specifically invites comments on any aspect of these proposed revegetation success rules.

The options provided in Option 2, discussed below, would add additional performance standards. OSM specifically invites comments on whether additional provisions of specificity should also be added to the performance standards. Such additions may be necessary because OSM is the regulatory authority and a greater level of detail could be helpful in adequately informing interested parties.

Inspection and Enforcement Procedures. Sections 942.842, 942,843 and 942.845 establish the same provisions as 30 CFR Chapter VII, Subchapter L, Permanent Program Inspection and Enforcement Procedures. No changes are proposed in those procedures for the Tennessee Federal program.

Blaster Training and Certification. Section 942.850 cross-references 30 CFR Part 850. However, there are no substantive standards for a Federal program for blaster training and certification at present. OSM has been developing such a program and will in the future be proposing one which, upon its adoption in final, would be applicable to the Tennessee Federal program.

Option 2

Option 2 would add several provisions to Option 1. The first would place a limitation on the definition of "Coal loading facilities" in the definition of "support facilities" in 30 CFR 701.5. The others would add specific detail to performance standards.

The limitation on the term "coal loading facilities" would make clear to all operators of such facilities whether they would be subject to regulation. If an operator of a tipple in Tennessee accepts raw coal from a mine, then the operation would be subject to regulation. The Act in Section 701(28)(A) defines "surface coal mining operations" as consisting of the loading of coal for interstate commerce at or near the mine site. The permanent program rules in § 701.5 define the term "support facilities" as those resulting from or incident to a surface coal mining operation. But there is no further indication of the outer parameters of OSM's jurisdiction. The functional test of the first or initial loading facility—one which does not process coal—would provide a limitation upon which an operator would be able to determine whether he was subject to OSM's jurisdiction.

As an alternative to the option of the first loading facility from a mine, OSM solicits comments on placing a geographic distance limitation for purposes of whether a tipple is subject to regulation. The definition in the Act indicates that a coal loading facility must be at or near the mine site, but no particular distance is specified. The definition of "support facility" indicates that the phrase "resulting from or incident to" connotes an element of proximity. Thus, OSM could set a particular distance from a mine as the limitation for asserting jurisdiction over coal tipples. OSM could also adopt a geographic limit in conjunction with the adoption of the functional test in the option.

The performance standards under Option 2 seek comment on the possible addition of detailed standards in four areas: Diversions, sedimentation ponds, underdrains in excess spoil fills, and backfilling and grading timing requirements. The revision of the permanent program rules resulted in flexibility being added to the rules. This affords the regulatory authority latitude in setting standards in its rules. The

regulatory authority also has the option of not adding any particular design criteria to its program rules and deferring to the qualified, registered professional engineer who is to certify many of the designs in the permit application. Thus, OSM would like to receive comment on the possible addition of the design criteria in three areas—ones which are considered important in surface mining operations.

The proposed criteria for diversions, sedimentation ponds and underdrains for excess spoil fills are for the most part taken from the Tennessee program regulations. In large part, those regulations are based on the previous Federal permanent program regulations. Borrowing the Tennessee regulations is appropriate since they would at least have had to meet the previous Federal rules and may have been modified for particular conditions in the State. Further, adoption of such rules would provide a measure of continuity from the state to the Federal program.

As an alternative to the adoption of the criteria set out in Option 2 §942.816(c), (d) and (d) OSM is considering not providing any additional standards in the rules than the revised permanent program rules, but instead issuing technical guidelines. If such guideline were issued, an operator or engineer could rely on the guidelines for the design of a structure. Having designs other than those in the guidelines would be approved on a case-by-case basis if the engineering is sound. Specific comment is solicited on the adoption of this alternative instead of the addition of design criteria.

These alternatives—diversions, sedimentation ponds and underdrains—would also be made applicable to the underground mining rule. § 942.817.

A fourth performance standard is offered under § 942.816(f) of Option 2. It would set timing requirements for backfilling and grading. They would be the same standards as the previous unrevised Federal permanent program rules in § 816.101(a). See 44 FR 15395 (March 13, 1979). They would establish the requirement for contour mining backfilling and regrading of 60 days or no more than 1,500 linear feet. This would be the most important for Tennessee operators. The current Federal program rule which would be cross-referenced in § 942.816 under Option 1 in § 816.102 does not establish particular timing requirements. The Act in section 515(b)((16) requires reclamation to proceed as contemporaneously as practicable with mining. A definite standard would remove any doubt as to the contemporaneous requirement. Comment is sought on the addition of such a timing requirement or of any other standards for the timing of backfilling and regrading. This option is not proposed to be added to the underground mining section, § 942.817. No timing requirement is necessary for underground mining.

IV. Other Information

OSM has examined these proposed rules according to the criteria of Executive Order 12291 (46 FR 3193, February 19, 1981) and has determined that they do not consititute a major rule. There would be no major economic impact through adoption of this rule. The coal mining industry in Tennessee is already subject to the regulatory standards similar to those the proposed Federal program would impose.

OSM has examined these proposed rules pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and determined that they will not have a significant impact on a substantial number of small entities. The impact is no different than the effect of the approval of the state regulatory program.

Section 702(d) of the Act provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. Thus, no Environmental Assessment is required for this rulemaking.

Office of Management and Budget Review

The recordkeeping and reporting requirements of this rule are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507.

Any forms which are developed by OSM for the Tennessee Federal program will be submitted to OMB for clearance under the Paperwork Reduction Act.

Drafting Information

These proposed regulations were drafted principally by David Jones, Office of the Solicitor, Interior Department.

List of Subjects in 30 CFR 942

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting requirements.

Accordingly, 30 CFR Part 942 is proposed to be amended as set forth herein.

Dated: June 22, 1984.

Leons A. Power,

Acting Assistant Secretary, Land and Minerals Management.

30 CFR Chapter VII is amended by revising Part 942.

Option 1 for New Part 942

1. Part 942 is revised to read as follows:

PART 942—TENNESSEE

Sec.

942.700 Tennessee federal program.
942.701 General.
942.707 Exemption for coal extraction incident to government-financed highway or other construction.
942.761 Areas designated unsuitable for surface coal mining by act of Congress.
942.762 Criteria for designating areas as unsuitable for surface coal mining operations.
942.764 Processes for designating areas unsuitable for surface coal mining operations.
942.770 General requirements for permit and exploration procedure systems under regulatory programs.
942.771 General requirements for permits and permit applications.
942.772 Requirements for coal exploration.
942.773 Requirements for permits and permit processing.
942.774 Revision, renewal, and transfer, assignment, or sale of permit rights.
942.775 Administrative and judicial review of decisions.
942.775 Review of Tennessee Permanent Program permits.
942.777 General content requirements for permit applications.
942.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
942.779 Surface mining permit applications—minimum requirements for information on environmental resources.
942.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
942.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
942.783 Underground mining permit applications—minimum requirements for information on environmental resources.
942.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
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942.819 Special performance standards—auger mining.
942.823 Special performance standards—operations on prime farmland.
942.824 Special performance standards—mountaintop removal.
942.827 Special performance standards—coal preparation plants not located within the permit area of a mine.
942.828 Special performance standards—in situ processing.
942.842 Federal inspections.
942.843 Federal enforcement.
942.845 Civil penalties.
942.8509 Blaster training and certification.

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

§ 942.700 Tennessee Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Tennessee which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) Certain of the rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a cross-referenced rule is in the permanent program rule cited under the relevant section of the Tennessee Federal program.

(c) The rules in this part apply to all surface coal mining operations in Tennessee conducted on non-Federal and non-Indian lands. To the extent required by Part 740 of this chapter, this part also applies to operations on Federal lands in Tennessee.

(d) The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance No. ——.

§ 942.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to coal exploration and surface coal mining and reclamation operations in Tennessee.

(b) Surface coal mining and reclamation operations in Tennessee which do not have a valid permanent program permit on the effective date of this program shall comply with subchapter B of this chapter until issuance of a permit under this program.

(c) Records required by § 700.14 of this chapter to be made available locally to the public shall be retained at the county recorder's office or another appropriate public office in the county in which an operation is located, and at the nearest OSM Field Office.

§ 942.707 Exemption for coal extraction incident to Government-financed highway or other construction.

Part 707 of this chapter, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 942.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, Areas Designated by Act of Congress, shall apply to surface coal mining and reclamation operations.

§ 942.762 Criteria for designating areas as unsuitable for surface coal mining operations.

(a) Part 762 of this chapter, Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mining and reclamation operations.

(b) In addition to the lands defined as fragile in § 762.5 of this chapter, the Office will consider lands included on the Tennessee Natural Areas Registry under Tennessee Code Annotated (TCA) § 11–14–112, Natural Areas designated by the Tennessee General Assembly under TCA 11–14–108, areas adjoining Tennessee Scenic Trails designated under TCA 11–13–101, and Scenic Trails under that same law.

§ 942.764 Process for designating areas unsuitable for surface coal mining operations.

(a) Part 764 of this chapter, State Process for Designating Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining and reclamation operations.

(b) The Secretary shall notify the Tennessee Department of Health and Environment of any area designated unsuitable or for which such designation has been requested or terminated.

§ 942.770 General requirements for permit and exploration procedure systems under regulatory programs.

Part 770 of this chapter, General Requirements for Permit and Exploration Procedure Systems Under Regulatory Programs, shall apply to surface coal mining operations and exploration.

§ 942.771 General requirements for permits and permit applications.

Part 771 of this chapter, General Requirements for Permits and Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.772 Requirements for coal exploration.

Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts coal exploration.

§ 942.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any permits for surface coal mining and reclamation operations.

(b) In addition to the requirements of 30 CFR Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a new permit shall submit seven copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office shall:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings, or

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted, or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 943.773(b)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant of its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) The Office shall visit the proposed permit area to determine whether the mining and reclamation plan is consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, and other significant features contained in the application marked by flagging.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C.

4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed for approval. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

§ 942.774 Revision, renewal, and transfer, assignment, or sale or permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved mining or reclamation plan will be subject to review and approval by the Office. A significant revision to the reclamation plan will be subject to the public notice and hearing provisions of the program prior to approval and implementation. A change in the reclamation plan will be considered significant if it has the potential to affect the achievement of reclamation as outlined in the approved plan.

(c) In addition to the requirements of 30 CFR Part 774, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty (30) days of either the publication of the newspaper advertisement required by 30 CFR 774.17(b)(2) or receipt of an administratively complete application, whichever is later.

§ 942.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 942.776 Review of Tennessee Permanent Program permits.

(a)(1) All permits issued under the approved State regulatory program by the Tennessee Department of Conservation or the Department of Health and Environment prior to the effective date of this program shall be valid, but subject to further action by OSM.

(2) The permittee shall comply with the specific terms of the permit. Where the permit does not specify specific standards with which compliance is required the permittee shall comply with the standards of the Federal program.

(b)(1) The Office will review all permanent program permits issued by the State of Tennessee beginning on the effective date of this program. If the Office determines that any State permit was granted contrary to the requirements of the Act, the permittee will be notified and periods of time specified within which to revise the permit and to conform any ongoing surface coal mining operations to the requirements of this part and the Act.

(2) If the permittee wants to have the decision that the State permit was granted contrary to the requirements of the Act reviewed, he or she shall file a petition for review with the Office of Hearings and Appeals pursuant 43 CFR 4.1280 within 30 days of notification.

(3) If a permittee fails to revise the permit and conform operations to the requirements of this part and the Act within reasonable periods of time as specified by the Office, the permittee will be issued an order to show cause as to why the permit should not be suspended or revoked. The notice shall be filed in accordance with 30 CFR 843.14. The Director shall promptly file a copy of the order to show cause with the Office of Hearings and Appeals. The permittee may file an answer to the order and request a hearing under 43 CFR Part 4. If a hearing is requested, the procedures provided in 43 CFR Part 4 for show cause hearings shall be applicable.

§ 942.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application to conduct underground coal mining and reclamation operations.

§ 942.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct underground coal mining and reclamation operations.

§ 942.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application for a permit to conduct underground coal mining and reclamation operations.

§ 942.785 Requirements for special categories of mining.

Part 785 of this chapter, Requirements for Special Categories of Mining, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 942.795 Small operator assistance.

Part 795 of this chapter, Small Operator Assistance, shall apply to any person making application for assistance under the small operator assistance program.

§ 942.800 Bond and insurance requirements for surface coal mining and reclamation operations.

(c) Except as provided in the following paragraph, Part 800 of this chapter, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to any person conducting surface coal mining and reclamation operations.

(b)(1) The Office shall review the adequacy of the bonds for those operators who posted reclamation bonds with the State of Tennessee under its permanent regulatory program prior to the effective date of this program or who gave the State collateral to guarantee reclamation.

(2) The Office shall notify any permittee that additional bond is required where it is determined that the bond amount is inadequate and shall require, within a reasonable period of time as specified, that any permittee either—

(i) Post a new bond in sufficient amount made payable to "The United States or The State of Tennessee"; or

(ii) Provide an executed assignment of the bond may payable to "The United States or The States of Tennessee" and an additional bond or bonds made payable in the same manner.

§ 942.815 Performance standards—coal exploration.

Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person who conducts coal exploration.

§ 942.816 Performance standards—surface mining activities.

(a) Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface coal mining and reclamation operations.

(b) The following success standards and sampling techniques shall be used by the Office for determining bond release.

(1) For areas developed for use as grazing land or pasture, the ground cover shall be at least ninety percent (90%) and production of living plants shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(3) For areas developed for wildlife habitat, recreational or forest products, the ground cover shall be at least 80 percent (80%) and the stocking of woody plants shall be at least equal the rate specified in the approved mining and reclamation plan.

(4) Bare areas shall not exceed one-sixteenth (1/16) acre in size and total not more than ten percent (10%) of the area seeded.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with the Office's publication "Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Revegetation in OSM Regions I and II" unless alternative techniques are approved by the Office. Quadrats or actual crop yields shall be used to determine production.

§ 942.817 Performance standards—underground mining activities.

(a) Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, shall apply to any person who conducts underground coal mining and reclamation operations.

(b) The following success standards and sampling techniques shall be used by the Office in determining bond release.

(1) For areas developed for use as grazing land or pasture, the ground cover shall be at least ninety percent (90%) and production of living plants shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(3) For areas developed for wildlife habitat, recreational or forest products, the ground cover shall be at least 80 percent (80%) and the stocking of woody plants shall be at least equal to the rate specified in the approval mining and reclamation plan.

(4) Bare areas shall not exceed one-sixteenth (1/16) acre in size and total not more than ten percent (10%) of the area seeded.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with the Office's publication "Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Revegetation in OSM Regions I and II" unless alternative techniques are approved by the Office. Quadrats or actual crop yields shall be used to determine production.

§ 942.819 Special performance standards—auger mining.

Part 819 of this chapter, Special Permanent Program Performance Standards—Auger Mining, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 942.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining operations on prime farmland.

§ 942.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, Special Permanent Program Performance Standards—Mountaintop Removal, shall apply to any person who conducts surface coal mining and reclamation operations constituting mountaintop removal.

§ 942.827 Special performance standards—coal preparation plants not located within the permit area of a mine.

Part 827 of this chapter, Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of a coal preparation plant not located within the permit area of a mine.

§ 942.828 Special performance standards—in situ processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts surface coal mining and reclamation operations which include the in situ processing of coal.

§ 942.842 Federal inspections.

Part 842 of this chapter, Federal Inspections, shall apply to all exploration and surface coal mining and reclamation operations.

§ 942.843 Federal enforcement.

Part 843 of this chapter, Federal Enforcement, shall apply when enforcement action is required for violations on coal exploration and surface coal mining and reclamation operations.

§ 942.845 Civil penalties.

Part 845 of this chapter, Civil Penalties, shall apply when civil penalties are assessed for violations on coal exploration and surface coal mining and reclamation operations.

§ 942.850 Blaster training and certification.

Part 850 of this chapter, Programs for Blaster Training and Certification, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

Option 2 for New Part 942

2. Proposed Part 942 as set forth under Option 1 is further amended by adding §§ 942.701(d), 942.816 (c), (d), (e), and (f), and 942.817 (c), (d), and (e) to read as follows:

§ 942.701 General.

* * * * *

(d) For purposes of the definition of the term "support facilities" in § 701.5 of this chapter, "Coal loading facilities" shall be limited to all facilities on a permit area and the first handling facility for raw coal after it leaves the permit area of the mine.

§ 942.816 Performance standards—surface mining activities.

* * * * *

(c) In lieu of the requirements of § 816.43(a)(4) of this chapter, diversion design shall incorporate the following:

(1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of § 816.71(b)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with §§ 816.71 through 816.74 of this chapter.

(5) Topsoil shall be handled in compliance with § 816.22 of this chapter.

(d) In lieu of the requirements of §§ 816.46(c)(1)(ii) through 816.46(c)(iii)(D) of this chapter, sedimentation ponds shall:

(1) Be located as near as possible to the disturbed area and one-hundred (100) feet from streams or streams with a biologic community; and be located on the flattest slope practicable, but in no case on a slope greater than 20 degrees.

(2) Provide a minimum storage volume equal to 0.2 acre feet per disturbed acre draining to the basin. The Office may approve lesser sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sediment from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per distributed acre.

(3) Provide adequate detention time to allow the effluent from the pond to meet the State and Federal effluent standards. Sedimentation ponds shall be designed to provide the required theoretical detention time for the water inflow or run-off entering the pond from a ten (10) year, twenty-four (24) hour precipitation event (design event).

(4) Provide a minimum surface area based on the following criteria:

(i) Physical properties of water at 4 degrees centigrade,

(ii) Particles with a diameter of 10 microns (1×10^{-6} meters), and

(iii) Particles with a specific gravity of 1.8. The Office may approve designs utilizing higher specific gravities based on the presentation of site specific data which supports the proposed value.

(5) Provide a nonclogging dewatering device or conduit spillway approved by the Office for the water storage resulting from inflow. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume and shall provide the detention time to allow the effluent from the pond to meet State and Federal effluent limitations.

(e) In lieu of the requirements of § 816.71(f)(3) of this chapter, underdrains shall consist of durable rock, be designed and constructed using current, prudent engineering practices, and meet the following design criteria: In constructing the underdrains, no more than ten percent (10%) of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five percent (25%) of the width of the drain. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd	Sandstone	10	4
Do	Shale	10	6
More than 1,000,000 yd	Sandstone	16	8
Do	Shale	16	16

Underdrains shall consist of non-degradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter.

(f) In lieu of the requirements of § 816.101(a) of this chapter, backfilling and grading shall proceed in accordance with the following timing requirements:

(1) *Contour mining.* Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under § 780.18(b)(3) of this chapter, that additional time is necessary.

(2) *Open pit mining with thin overburden.* Rough backfilling and grading shall occur in accordance with the time schedule approved by the Office, on the basis of the materials submitted under § 780.18(b)(3) of this chapter, which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.

(3) *Area strip mining.* Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through the detailed written analysis under § 780.18(b)(3) of this chapter, that additional time is necessary.

§ 942.817 Performance standards—underground mining activities.

* * * * *

(c) In lieu of the requirements of § 816.43(a)(4) of this chapter, diversion design shall incorporate the following:

(1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of

§ 816.71(b)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not necessary for diversion channel geometry or regarding of the channel shall be disposed of in accordance with §§ 816.71 through 816.74 of this chapter.

(5) Topsoil shall be handled in compliance with § 816.22 of this chapter.

(d) In lieu of the requirements of §§ 816.46(c)(1)(ii) through 816.46(c)(iii)(D) of this chapter, sedimentation ponds shall:

(1) Be located as near as possible to the disturbed area and one-hundred (100) feet from streams or streams with a biologic community; and be located on the flattest slope practicable, but in no case on a slope greater than 20 degrees.

(2) Provide a minimum storage volume equal to 0.2 acre feet per disturbed acre draining to the basin. The Office may approve lesser sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sediment from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per disturbed acre.

(3) Provide adequate detention time to allow the effluent from the pond to meet the State and Federal effluent standards. Sedimentation ponds shall be designed to provide the required theroretical detention time for the water inflow or run-off entering the pond from a ten (10) year, twenty-four (24) hour precipitation event (design event).

(4) Provide a minimum surface area based on the following criteria:

(i) Physical properties of water at 4 degrees centigrade,

(ii) Particles with a diameter of 10 microns ($1x10^{-5}$ meters), and

(iii) Particles with a specific gravity of 1.8. The Office may approve designs utilizing higher specific gravities based on the presentation of site specific data which supports the proposed value.

(5) Provide a nonclogging dewatering device or conduit spillway approved by the Office for the water storage resulting from inflow. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume and shall provide the detention time to allow the effluent from the pond to meet State and Federal effluent limitations.

(e) In lieu of the requirements of § 816.71(f)(3) of this chapter, underdrains shall consist of durable rock, be designed and constructed using current, prudent engineering practices, and meet the following design criteria: In constructing the underdrains, no more than ten percent (10%) of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five percent (25%) of the width of the drain. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd	Sandstone	16	4
Do	Shale	16	8
More than 1,000,000 yd	Sandstone	16	8
Do	Shale	16	16

Underdrains shall consist of non-degradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter.

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Part V

Nuclear Regulatory Commission

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste; Notice

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982, the Nuclear Regulatory Commission (NRC) published in the **Federal Register**, as final, certain amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

States	Part 71	Part 73
Alabama	Col. Byron Prescott, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36192-0501, (205) 261-4378*.	Same.
Alaska	Dr. Richard A. Nevé, Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, AK 99811, (907) 465-2600.	Same.
Arizona	Charles F. Tedford, Director, Arizona Radiation Regulatory Agency, 925 South 52nd Street, Suite 2, Tempe, AZ 85281, (602) 255-4845, After hours: (602) 998-4662.	Same.
Arkansas	E. F. Wilson, Director, Radiation Control and Emergency, Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72201, (501) 661-2301, After hours: (501) 661-2136 or 661-2000.	Same.
California	E. E. Kynaston, Chief, California Highway Patrol, P.O. Box 989, Sarsmento, CA 95804, (916) 445-6211.	Same.
Colorado	Captain Lonnie J. Westphal,* Officer in Charge, Staff Services Branch, Colorado State Patrol, 4201 E. Arkansas Denver, CO 80222, (303) 757-9422.	Same.
Connecticut	The Honorable Stanley J. Pac, Commissioner, Department of Environmental, Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06115,* (203) 566-2110.	Same.
Delaware	Edward J. Steiner,* Secretary, Department of Public Safety, Highway Administration Building, P.O. Box 818, Dover, DE 19903, (302) 736-4321.	Same.
Florida	Harlan Keaton,* Public Health Physicist Manager, Office of Radiation Control, Department of Health & Rehabilitative Services, P.O. Box 15490, Orlando, FL 32858, (305) 299-0580*.	Same.
Georgia	Ken M. Copeland, Director of the Office of Permits and Enforcement, Georgia Department of Transportation, 940 Virginia Avenue, Hapeville, GA 30354, (404) 656-5435.	Same.
Hawaii	George R. Ariyoshi, Governor, State of Hawaii, State Capitol, Honolulu, HI 96813, (808) 548-5420.	Same.
Idaho	Robert D. Funderburg, Manager, Radiation Control Section, Department of Health & Welfare Division of Environment, 450 W. State, 5th Floor, Statehouse, Boise, ID 83720, (208) 334-4107, After hours: (208) 382-5260.	Same.
Illinois	Don Etchison,* Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 546-8100.	Same.
Indiana	John T. Snettle, Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232-8248 (24 hours).	Same.
Iowa	John D. Crandall, Director, Office of Disaster Services, Hoover State Office Building, Des Moines, IA 50319, (515) 281-3231.	Same.
Kansas	Leon H. Hannell, P.E., Administrator, Radiological Systems, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C-300, Topeka, KS 66601, (913) 233-9253, Ext. 321.	Same.
Kentucky	Donald R. Hughes, Sr., Supervisor, Radiation Control, Department for Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564-3700.	Same.
Louisiana	Col. Wiley D. McCormick,* Head, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896, (504) 925-6112.	
Maine	Chief of the State Police,* Maine Dept. of Public Safety, Statehouse—Station #42, Augusta, ME 04333, (207) 289-2155.	Same.
Maryland	Lt. Colonel J. G. Lough, Chief, Field Operations Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486-3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 150 Tremont Street, 7th Floor, Boston, MA 02111, (617) 727-6214.	Same.
Michigan	Gene A. Booker, Captain, Commanding Officer, Operations Division, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 337-6100.	Same.
Minnesota	Deidre M. A. Krause, Operations Officer, Minnesota Division of Emergency Services, 85 State Capitol, St. Paul, MN 55155, (612) 296-0453, After hours: (612) 778-0800.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39216, (601) 352-9100*.	Same.
Missouri	Richard C. Rice, Director*, State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751-2321. After hours: (314) 751-2748.	Same.
Montana	Mr. Larry Lloyd, Chief, Occupational Health Bureau, Department of Health & Environmental Sciences, Room A113, Cogswell Bldg., Helena, MT 59620, (406) 444-3671.	Col. Carlyn L. Gilbertson, Administrator, Disaster & Emergency Services, Department of Military Affairs, P.O. Box 4789,* Helena, MT 59604, (406) 444-6911.*
Nebraska	Col. Elmer J. Kohmetscher, Superintendent, Nebraska State Patrol, P.O. Box 94907, State House, Lincoln, NE 68509, (402) 471-2406 or (402) 471-4545.	Same.
Nevada	John Vaden, Supervisor, Radiological Health, Division of Health, Consumer Health Protection Services, 505 East Kinkead Street, Room 103, Carson City, NV 89710, (702) 885-4750.	Same.
New Hampshire	Francis J. Donahue,* Sergeant, New Hampshire State Police, Hazen Drive, Concord, NH 03305, (603) 271-3636.	Same.
New Jersey	Frank Cocolito, Special Assistant, Division of Environmental Quality, Room 1109, CN-027, Trenton, NJ 08625, (609) 984-1503.	Same.
New Mexico	Thomas Buhl,* Health and Environment Department, P.O. Box 968, Santa Fe, NM 87504-0968, (505) 984-0020, ext. 279. After hours: (505) 471-0121*.	Same.
New York	Donald A. Devito, Director, Disaster Preparedness Program, Division of Military and Naval Affairs, Public Security Building, State Campus, Albany, NY 12226, (518) 457-2222.	Same.
North Carolina	Lt. Walter K. Chapman, Operations Officer, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-4030. After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, North Dakota State Department of Health, 1200 Missouri Avenue, Bismarck, ND 58501, (701) 224-2348.	Same.
Ohio	James R. Williams, Chief of Staff,* Disaster Services Agency, 2825 Granville Road, Worthington, OH 43085, (614) 889-7157.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Oklahoma	The Honorable Paul W. Reed, Jr., Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 N. Eastern Avenue, Oklahoma City, OK 73111, (405) 424-4011.	Same.
Oregon	William T. Dixon,* Administrator Siting and Regulation, Oregon Department of Energy, 102 Labor & Industries Building, Salem, OR 97310, (503) 378-6469.	Same.
Pennsylvania	Kenneth R. Lamison, Director of Response and Recovery, Pennsylvania Emergency Management Agency, B-151 Transportation and Safety Building, Harrisburg, PA 17120, (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator, Motor Carriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 758-7806, After Hours: (803) 758-5531.	Same.
South Dakato	Robert D. Gunderson, Division Director, Emergency and Disaster Services, Capitol Building, Basement, Pierre, SD 57501, (605) 773-3231.	Same.
Tennessee	J. A. Bill Graham, Radiological Physicist, Division of Radiological Health, Department of Public Health, 150 Ninth Ave., N., Terra Building, Nashville, TN 37219, (615) 741-7812.	Same.
Texas	Dr. Robert Bernstein, Commissioner, Texas Department of Health, Bureau of Radiological Health, 1100 West 49th Street, Austin, TX 78756, (512) 835-7000.	Col. James B. Adams, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, TX 78752, (512) 465-2000.
Utah	Larry F. Anderson,* Director,* Bureau of Radiation Control, 150 W. North Temple, P.O. Box 2500, Salt Lake City, UT 84110, (801) 533-6734.	Same.
Vermont	Patrick J. Garahan,* Secretary, Vermont Agency of Transportation, 133 State Street, Montpelier, VT 05602, (802) 828-2657.	Same.
Virgina	Norman McTague, Office of Emergency and Energy Services, Operations Director, 7700 Midlothian Turnpike, Richmond, VA 23235, (804) 323-2300.	Same.
Washington	Nicholas D. Lewis, Chairman, Energy Facility Site Evaluation Council, Mail Stop PY-11, Olympia, WA 98504, (206) 459-6490.	Same.
West Virginia	Lieutenant Colonel W. F. Donohoe,* Department of Public Safety, 725 Jefferson Road, South Charleston, WV 25309, (304) 746-2111.	Same.
Wisconsin	Carol Z. Hemersbach, Administrator, State of Wisconsin/Division of Emergency Government, 4802 Sheboygan Ave., Room 99A, P.O. Box 7865, Madison, WI 53707, (608) 266-3232.	Same.
Wyoming	Chief,* Radiological Health Services, Department of Health & Social Services,* Hathaway Building, Cheyenne, WY 82002, (307) 777-7956.	Same.
District of Columbia	Herbert T. Wood, Ph.D., Senior Public Health Advisor,* Department of Consumer and Regulatory Affairs, Room 1014, 614 H. Street, NW, Washington, DC 20001, (202) 724-7195, After hours: (202) 529-3349.	Same.
Puerto Rico	Pedro A. Gelabert, Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 725-8898 or (809) 725-5140.	Same.
Guam	Ricardo J. Bordallo,* Governor of Guam, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, 472-8931 or 472-8939.	Same.
Trust Territory of the Pacific Islands	R. Kent Harvey,* Attorney General, Trust Territory of the Pacific Islands, Saipan, CM 96950, Saipan 9325 or 9364*.	Same.
Virgin Islands	Honorable Juan Luis, Governor, Government House, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-0001.	Same.
American Samoa	Honorable Peter Coleman, Governor of American Samoa, Territorial Capitol, Pago Pago, American Samoa 96799, 633-4116.	Same.
Commonwealth of the Northern Mariana Islands.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Saipan, CM 96950, #9830 or #9834.	Same.

*Indicates amended material.

Questions regarding this matter should be directed to Mindy Landau at 301-492-9880.

Dated at Bethesda, Maryland this 20th day of June, 1984.

For the Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 84-17425 Filed 6-28-84; 8:45 am]

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Friday
June 29, 1984

Part VI

Department of the Interior

Bureau of Land Management

43 CFR Parts 3100 and 3110

Oil and Gas Leasing and Noncompetitive Leases; Amendment to Simultaneous Oil and Gas Leasing Program; Final Rule

Availability of Revised Automated Simultaneous Oil and Gas Lease Application Form; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2546]

43 CFR Parts 3100 and 3110

Oil and Gas Leasing and Noncompetitive Leases; Amendment to Simultaneous Oil and Gas Leasing Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will improve the simultaneous oil and gas leasing program by incorporating changes to correct problems that surfaced last year and led to the suspension of the simultaneous oil and gas leasing program. The changes should reduce the amount of speculation presently associated with the program.

EFFECTIVE DATE: July 30, 1984.

ADDRESS: Suggestions and inquiries should be sent to: Director (620), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:
Valliere Cacy, (202) 653–2190, or
Robert C. Bruce, (202) 343–8735

SUPPLEMENTARY INFORMATION: A proposed rulemaking changes in the simultaneous oil and gas leasing program was published in the **Federal Register** on March 15, 1984 (49 FR 9752), with a 30-day comment period. During the comment period, comments were received from 150 sources: 116 from individuals; 23 from corporations; 3 from attorneys, 7 from Federal agencies; and 1 from an association.

The vast majority of the comments, particularly those from the individuals, opposed the requirement for payment of the first year's rental in advance. Those opposing the requirement for payment of the first year's rental based their objection mainly on the point that this change would reduce the ability of the small filer to participate in the simultaneous oil and gas leasing program, leaving the field to wealthy individuals and large corporations. Most of the comments stated the view that the change would "destroy the opportunity of the 'little guy' to hit it big," which most felt was one of the aims of the program. This view represents a general misunderstanding of the simultaneous oil and gas leasing program on the part of individuals. The Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) and existing regulations provide for noncompetitive leasing for oil and gas of the public lands not located within any known geological structure of a producing oil and gas field. The simultaneous oil and gas leasing program provides an orderly method for reoffering public lands not in any known geological structure that were within relinquished, cancelled or terminated leases for lease to a broad spectrum of the public. The simultaneous oil and gas leasing program was developed to allow any qualified person or entity to file an application for lands posted for that purpose. However, the Secretary of the Interior will not exercise his discretionary authority and issue a lease until he is satisfied that the successful applicant has met the requirements of the Act and the regulations.

Many of the misconceptions relating to the operation of the simultaneous oil and gas program have arisen from a misinterpretation of the value of the parcels offered, sometimes resulting from the misrepresentations made to the public by disreputable individuals and firms who market their assistance in the program for a fee. The Department of the Interior has never guaranteed the value of any tract offered under the simultaneous oil and gas leasing program. The involvement of unscrupulous individuals and firms over the years has required changes in the porogram in order to maintain the program's intergrity as a valuable tool in the development of oil and gas resources on the public lands. It is unfortunate that the program must undergo these changes, but they have been required to prevent manipulation of the program by the few individuals and firms who engage in fraudulent practices and to assure that applicants are aware of the actual costs of obtaining a lease and are able to pay those costs.

Several of the comments applauded the Department of the Interior's efforts to police the program and make it operate in the way it was intended. However, some of those same comments questioned whether the policing of the program is the responsibility of the Department of the Interior or that of other agencies of the Federal Government, such as the Department of Justice and the the Federal Trade Commission. The Department of the Interior has the responsibility of providing an efficiently and fairly operated program and protecting its integrity, as well as cooperating with law enforcement agencies in their efforts to root out those that would subvert the program. A final comment on this subject indicated that the same purpose might be served by increasing the filing fee. Increasing the filing fee would not accomplish the goal of assuring that applicants are aware of the actual costs of obtaining a Federal lease and are willing and able to pay those costs. None of these suggested changes has been adopted by the final rulemaking.

Several modifications of the change requiring the payment of the first year's rental in advance were suggested by the comments. One suggested modification was to require submittal of the rental, but holding it until the selection process has been completed and depositing only the remittance of the successful applicant, returning the checks of those that were not selected. One of the comments that supported this modification suggested that the final rulemaking require that a postage paid envelope accompany each application form so that the rental check could be returned expeditiously. The Department of the Interior, as the receiving agency, is required by Department of the Treasury instructions to deposit within 24 hours all monies received. This Treasury requirement prevents the implementation of this suggestion and it has not been adopted.

One comment suggested that the Department of the Interior require the submission of a guaranteed remittance with each application. The procedure that will be put in place with the adoption of this final rulemaking removes the necessity for using a guaranteed remittance. There will be sufficient time between the time an application is received and the selection of the successful applicant is made to determine if the remittance is acceptable. If the remittance is uncollectable, the application that is covered by that remittance will be considered unacceptable and removed prior to the selection process. The requirement to obtain a guaranteed remittance is an unnecessary burden that need not be imposed on the public. This suggestion has not been adopted by the final rulemaking.

Several comments suggested establishing deposit or rollover accounts for all applicants, accounts that would be similar to the copy fee accounts that are presently maintained in many of the Bureau of Land Management State offices. A deposit of a minimum amount sufficient to cover the largest parcel that might be offered was suggested in the comments. There is no existing mechanism for handling accounts in this volume and these amounts, nor does the Bureau intend to establish such accounts. If such accounts were to be established, their maintenance would require many more hours of administrative effort than currently

involved with copy fee accounts to keep them current, and administrative effort that would be greater than that imposed by the handling of first year's advance rental checks for each applicant. This suggestion has not been adopted by the final rulemaking.

Several comments made suggestions regarding the posting of lease parcels, with some suggesting that no parcel offered should be larger than 640 acres and one suggesting that the Bureau of Land Management should offer only those public lands that have a possibility of being successfully developed. The sections of the existing regulations covering parcel size and offering were not included in the proposed rulemaking and cannot be made part of this final rulemaking because the public has not been given an opportunity to comment on these substantive changes. Finally, the policy of the Department of the Interior has been to consolidate small parcels into larger offerings, offerings that developers indicate are more attractive for development possibilities. If small parcels are offered, then the developer usually consolidates the parcels into an area large enough to justify development. For the reasons discussed above, the suggested changes have not been adopted by the final rulemaking.

A few comments used this proposed rulemaking to discuss changes made by the final rulemaking of March 27, 1984 (49 FR 11636), with particular emphasis on the issue of making subsequent payments to the Minerals Management Service and questions about the maintenance of the status file on current leases. The issues raised in these comments were not the subject of the proposed rulemaking and cannot be properly included in this final rulemaking. However, the language of the proposed rulemaking amending § 3103.1 has been deleted from the final rulemaking because it was included in the final rulemaking of March 27, 1984, and needs no further change.

Several comments were made on filing services, with suggestions about how they should be handled. One comment suggested that filing services should be licensed by the Federal Government, another suggested that filing services be limited to the furnishing of information services only, with each applicant being required to submit his/her application and check. Another suggested that each filing service be required to pay a $5,000 fee annually to be used to cover the cost of policing the services. One comment went so far as to suggest that steps be taken to abolish filing services.

The policy of the Department of the Interior has been to avoid direct involvement in the question of the necessity or availability of filing services. This is based upon a policy that the Federal Government should not involve itself in the licensing of businesses, such as filing services, unless the Federal Gvoernment has a direct interest in the operation of the business. The simultaneous oil and gas leasing program was intended to be a program where individuals and entities filed applications on their own behalf. Filing services have grown over the years to meet a need by those who did not wish to take the time and effort to personally file their applications. The filing services have apparently furnished a service that has been accepted by the public or they would not have continued to exist. The problem has been that a few of the filing services have engaged in unethical activities, raising questions about the propriety of the filing services in general. The law enforcement branches of the Federal Government and some States have increased their efforts to find and remove from the public arena those filing services that have engaged in unlawful activities.

Some of the comments suggested various changes to the simultaneous oil and gas leasing program, including the creation of an oral offering system. Another comment suggested provisions that would limit the filing of applications by partnerships, with several comments wanting a return to monthly offerings. The issue of creation of an oral bidding system and the limitation on filing of applications are issues that were not raised in the proposed rulemaking and cannot be made a part of the final rulemaking because they are substantive issues that the public has not had an opportunity to consider. The question of whether or not the offerings should be made on a monthly basis has again been reviewed and the final rulemaking has not adopted it. The administrative burden of monthly offerings, particularly the utilization of the computer time, makes the adoption of this suggestion unlikely now or in the foreseeable future.

Many of the comments raised the issue of payment of interest by the United States on the advance rental payments that are retained until the completion of the selection process. The Department of the Interior has neither the authority nor the appropriations with which to pay interest on these advance rental payments. As a result, the final rulemaking makes no provision for the payment of interest.

A few of the comments raised questions about the process that would be used to make the refunds of the advance rental payments to the unsuccessful applicants. The refunds will be handled by an automated system. When the checks are received, the names of those submitting the checks will be entered into the computer and the checks deposited in the Treasury of the United States. Once the selection process is completed, the computer will be preprogrammed to generate a repayment list that will be submitted to the office of the Department of the Treasury in San Francisco, California, for execution of individual repayment checks for unsuccessful applicants. A separate check will be issued for each part B application form. Once the selection process is completed, there should be very little delay in the issuance of the refund checks. The delay, if any, will come in the removal of unacceptable applications and the completion of the selection process, a process that will be handled as expeditiously as possible. The above described process is an internal administrative operation that is not appropriately the subject of rulemaking and has not been included in this final rulemaking. Another comment on this subject, requested that the final rulemaking provide a procedure under which an applicant might direct that the refund check be sent to a third party. This would provide a method under which refund checks could be sent to the financial institution that an applicant used as a source of credit. This suggestion would impose a substantial administrative burden on the Bureau of Land Management, a burden that would increase the cost of operation of the program to the taxpayers.

The procedure and the Department of the Interior's policy for identifying known geological structures was the subject of a number of comments. The proposed rulemaking did not include the provisions of the existing regulations that cover identification of a known geological structure, even though it was a basis for the recently imposed suspension of the simultaneous oil and gas leasing program. The question of identification of known geological structures has been carefully examined during the suspension and steps have been taken to resolve questions raised concerning the identification of known geological structures. The final rulemaking does not include any action on the comments on this issue.

Several of the comments requested that the language of § 3112.2–2 of the proposed rulemaking be clarified. Many

of those making comments expressed the view that the language of the proposed rulemaking seemed to indicate that a separate part B application was needed for each parcel. The final rulemaking has been changed to make it clear that a part B application form may cover several parcels, but that each part B application form must be accompanied by a single remittance for an amount equal to the total of the nonrefundable filing fee and the first year's rental for each parcel applied for on the part B application form.

One comment pointed out that § 3112.6–1 of the existing regulations, which was not included in the proposed rulemaking, would, unless changed, be in conflict with the changes made by the proposed rulemaking. The fact that § 3112.6–1 needed to be changed in order to conform to the other changes made by the proposed rulemaking was overlooked. The final rulemaking amends § 3112.6–1 by removing all pertinent references to the requirement for payment of the first year's rental at the time the lease is executed. The change made by the final rulemaking in paragraph (b)(1) is not intended to prevent an attorney-in-fact, or any other person, from submitting a part B application form and paying the first year's rental on an applicant's behalf.

Editorial and grammatical corrections as needed have been made.

The principal author of this final rulemaking is Valliere Cacy, Division of Fluid Mineral Leasing, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291. It could have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). In accordance with the requirements of the Regulatory Flexibility Act, a final regulatory flexibility analysis of the impact of the rulemaking on small entities was prepared and is available upon request from the above address.

An initial regulatory flexibility analysis was prepared and made available for public review and comment at the time the proposed rulemaking was published in the **Federal Register**. The comments on the initial regulatory flexibility analysis have been carefully reviewed as part of the decisionmaking process on this final rulemaking. No substantial evidence was presented that showed the impact on small entities to be any different than that set out in the initial regulatory flexibility analysis.

The final rulemaking contains no additional information collection requirements requiring approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects

43 CFR Part 3100

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3110

Administrative practice and procedure, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), and the Attorney General's Opinion of April 3, 1941 (40 Op. Atty. Gen. 41), Parts 3100 and 3110, Group 3100, Subchapter C, Chapter II of Title 43 is amended as set forth below.

Dated: May 31, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

§ 3102.4 [Amended]

1. Section 3102.4 is amended by removing the period at the end of the first sentence and inserting the phrase ", except that applications filed under Subpart 3112 of this title shall not be deemed unacceptable for the failure to be dated.

2. Section 3103.2–1 is amended by renumbering paragraph (b) as paragraph (c) and inserting a new paragraph (b) to read:

§ 3103.2–1 Rental requirements.

* * * * *

(b) Each application filed under subpart 3112 of this title shall be accompanied by full payment of the first year's rental based on the total acreage appearing in the Notice of Land Available for Oil and Gas Simultaneous Applications.

* * * * *

3. Section 3112.1–3 is revised to read:

§ 3112.1–3 Posting of parcel list notice.

At the start of business on the first working day of February, April, June, August, October and December, a list of lands for which applications will be received shall be posted in the proper BLM office. Any change in the bi-monthly schedule of offerings shall be announced by publication in the **Federal Register** at least 30 days in advance of the date of posting. Copies of the posted notice may be purchased from the proper BLM office.

§ 3112.2–1 [Amended]

4. Section 3112.2–1 is amended by:

A. Revising paragraph (c) to read:

"(c) The application shall be signed and dated in accordance with § 3102.4 of this title. If signed by someone other than the applicant, the application shall show the relationship of the signatory to the applicant."; and

B. Amending paragraph (g) by removing the phrase ", dated".

5. Section 3112.2–2 is revised to read:

§ 3112.2–2 Filing fees and rentals.

Each Part B application form shall, when filed, be accompanied by a single remittance. The remittance shall consist of an amount sufficient to cover for each parcel included on the Part B application form a nonrefundable filing fee of $75 and the first year's rental payment. Failure to submit either a separate remittance for each Part B application form or an amount sufficient to cover all the parcels on each Part B application form, or both, shall cause the entire filing to be deemed unacceptable.

§ 3112.3 [Amended]

6. Section 3112.3 is amended by:

A. Amending paragraph (c) by removing the phrase "an unacceptable remittance" and replacing it with the phrase "a remittance not meeting the requirements of § 3103.1–1 of this title"; and

B. Amending paragraph (h) by inserting after the phrase "the filing fee" the phrase ", the first year's rental".

§ 3112.6–1 [Amended]

7. Section 3112.6–1 is amended by:

A. Amending paragraph (a) by removing from the first sentence the phrase "together with a request for payment of the first year's rental", by removing the third sentence in its entirety and by removing from the fourth sentence the phrase "and rental payment"; and

B. Amending paragraph (b)(1) by removing the phrase "and pay the first year's rental".

[FR Doc. 84–17467 Filed 6–28–84; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Revised Automated Simultaneous Oil and Gas Lease Application Form

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Revised (April 1984 edition) Automated Simultaneous Oil and Gas Lease Application Form 3112–6 (Part A) and 3112–6a (Part B).

SUMMARY: The subject form has been revised and replaces the previous June 1981 edition of the Automated Simultaneous Oil and Gas Lease Application Form 3112–6 (Part A) and 3112–6a (Part B). The revised form institutes improvements ordered by the Secretary of the Interior in the simultaneous oil and gas leasing program. Therefore, the June 1981 edition of the Automated Simultaneous Oil and Gas Lease Application is declared obsolete.

EFFECTIVE DATE: The revised application form shall be effective on the same day as the effective date of the forthcoming final rulemaking for 43 CFR Parts 3100 and 3110, Noncompetitive Leases; Amendment to Simultaneous Oil and Gas Leasing Program.

ADDRESS: Inquiries or suggestions should be sent to Director (621), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240. Information with reference to where copies of the revised form may be obtained is located in the last two paragraphs of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jean Austin or Lois Mason at (202) 653–2190.

SUPPLEMENTARY INFORMATION: The Automated Simultaneous Oil and Gas Lease Application Form 3112–6 (Part A) and 3112–6a (Part B) was approved by the Office of Management and Budget on September 1, 1983, and assigned clearance number 1004–0065, with an expiration date of August 31, 1986, in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The subject form (April 1984 edition) is revised to reflect the required new expiration date and replaces the obsolete June 1981 edition of the form. Further, the revised form institutes improvements ordered by the Secretary of the Interior in the simultaneous oil and gas leasing program. The changes resulted from a general review of the program that took place during the most recent suspension of the program. In order to reduce the excessively speculative nature of the program and to correct problems that surfaced During 1983, changes are incorporated in the revised form that require an applicant to submit, for each parcel applied for, the first year's rental together with the nonrefundable filing fee. The instructions on the revised form also require that a separate remittance be submitted with each Part B application form for the total amount required for all parcels applied for on each separate Part B form rather than one remittance with a group of Part B forms. The Bureau of Land Management's experience in the operation of the simultaneous oil and gas leasing program has been that a mistake of a few dollars in the remittance submitted with a group of application forms has resulted in the disqualification of a considerable number of applications due to the insufficient payment rendering the entire group of forms disqualified. This revision should reduce the number of applications that are disqualified for each drawing, increasing the total number of acceptable applications.

Additional minor revisions clarify the instructions contained on both Part A and Part B, including removal of the single instruction reference to the requirement for the Social Security Number and substituting in its place an instruction reference to use of a nine-digit identification number. This identification number can be either a Social Security Number, or an Employee Identification Number, or a Bureau of Land Management-assigned applicant number.

Where the Form 3112–6 (Part A) previously filed with the Bureau of Land Management Wyoming State Office is still current and correct with respect to an applicant's name, address, and proper identification number, a replacement revised Form 3112–6 (Part A, April 1984 edition) need not be filed again in the Wyoming State Office. However, all future application filings must be submitted on the revised April 1984 edition of Form 3112–6a (Part B). The June 1981 edition of Form 3112–6 (Part A) and 3112–6a (Part B) is hereby declared obsolete and will not be acceptable for future participation in the Automated Simultaneous Oil and Gas Leasing Program.

A *maximum* of 5 copies each of the revised application form (Part A or Part B) per individual or entity are available on a one-time basis only from the Bureau of Land Management State Offices (see 43 CFR 1821.2–1 for office locations).

Larger quantities of the revised (April 1984 edition) Automated Simultaneous Oil and Gas Lease Application Form 3112–6 (Part A) and 3112–6a (Part B) are available for purchase directly only from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402. Part A and Part B each are available from the United States Government Printing Office in quantities of 100 per package at a charge of $5 per package. Orders made to the United States Government Printing Office must identify the specific stock number: Form 3112–6 (Part A) Stock Number 024–011–00159–0; 3112–6a (Part B) Stock Number 024–011–00160–3.

Dated: June 27, 1984.

Robert F. Burford,

Director.

[FR Doc. 84–17468 Filed 6–28–84; 8:45 am]

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June 29, 1984

Part VII

Department of Defense

32 CFR Parts 1-39

Defense Acquisition Circulars; Final Rules

DEPARTMENT OF DEFENSE

32 CFR Parts 1–39

[DAC 76–48]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76–48. Some of the changes include: limitations on price increases (spare parts); set-aside procedures; small business access to Federal procurement information; patent rights—small business firms and domestic nonprofit organizations; rights in technical data and computer software, and patent rights for contracts awarded under Pub. L. 97–219; contractor industrial labor relations; contract cost principles (Goodwill); novation agreements and change of name agreements; DAR Appendix O; and editorial changes. Also included in this document are the following items issued for information and guidance: (1) Information with respect to availability of DOD FAR Supplement; (2) reprint of a memorandum from the Deputy Under Secretary (Acquisition Management), dated 19 September 1983, which furnishes guidance in the phase-out of CWAS; (3) reprint of a memorandum from the Deputy Under Secretary (Acquisition Management), dated 19 September 1983, Subject: Fast Pay Procurements; and (4) reprint of a memorandum from the Deputy Secretary of Defense, dated September 29, 1983, Subject: Emphasis on Indian Business.

EFFECTIVE DATE: Upon receipt, in accordance with DAR 1–106.2(d).

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM) (DARS), OUSDRE (M&RS), Room 3D 139, Pentagon, Washington, D.C. 20301, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1–39, Volumes I, II, and III, of the Code of Federal Regulations (CFR). The July 1, 1983 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76–1 through 76–44.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the DAR would be published in the **Federal Register.**

Defense Acquisition Circular 76–48

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76–48, issued 25 January 1984. The following is a summary of the amendments:

Limitations on Price Increases (Spare Parts). In accordance with Section 1215(c) of the DOD Authorization Act, a new paragraph (e) is added to DAR 1–313 to provide policy with regard to limitations on price increases in the purchase of spare or replacement parts.

Set-Aside Procedures. Section 796 of the FY 1984 DOD Appropriation Act (Pub. L. 98–212) requires architectural and engineering services and construction design contracts for military construction projects in the amount of $85,000 and over, be open to all firms regardless of size. Changes have been made to DAR Section I, Part 7, to implement this requirement.

Small Business Access to Federal Procurement Information, Pub. L. 98–72. Pub. L. 98–72 requires changes to the manner in which the Government publicizes notices of intended procurement actions; establishes minimum periods before making contract awards; requires additional steps be taken in the approval of sole source contract awards; and requires additional approvals of contract awards based on unsolicited proposals. The act also defines "sole source contract" and "unsolicited proposals" for the purposes stated above. The act requires that the provisions of DAR 3–102 and 4–910(b)(3) be effective with respect to procurement actions initiated on or after 1 October 1983. The balance of the coverage is effective with respect to procurement actions initiated on or after 10 November 1983. To implement Pub. L. 98–72, changes have been made to Section I, most significantly at Part 10; to Sections II and III; to Section IV, Parts 9 and 11; and to Section XXI, as well as to 18–202(b).

Contractor Acquisition of Automatic Data Processing Equipment (ADPE). DAR 3–1100.2(a)(ii) is revised to reflect the correct address for Headquarters, Defense Logistics Agency.

Overseas Military Activities and Federal Supply Schedules. DAR 5–100 is revised to allow overseas military activities to place orders directly against Federal Supply Schedules, and that Services and Defense agencies may limit their respective overseas activities from exercising this option.

Davis-Bacon Act Regulations. Final new regulations (29 CFR Parts 1 and 2), implementing the Davis-Bacon Act and related acts, were published by the Department of Labor (DOL) in the **Federal Register** of 29 April 1983, and became effective 28 June 1983. Appropriate changes made to the DAR were disseminated by the Departments on 30 June 1983. Although certain changes to the institutional text in DAR Section XVIII are not yet in final DAR format, the material which has been approved is published to facilitate incorporation by reference of the lengthy contract clauses. These clauses are not expected to change, and publication in this DAC will simplify preparation of affected contract documents. Guidance and procedures below relative to DAR Section XVIII, Part 7, are to be followed in implementation of these changes. Publication of these clauses and text changes supersedes the direction issued previously by the Departments.

DAR 18–704.2(a)(5): In addition to requirements cited in this provision, if any modification to the general wage determination is published in the **Federal Register** subsequent to bid opening, award shall be made within 90 days after bid opening. In the event a situation arises where award cannot be made within 90 days after bid opening, the Departmental labor relations advisor must be contacted for guidance or assistance in obtaining an extension to the 90-day period.

Note: Contracting officers will not incorporate general wage determination modifications published subsequent to bid opening.

DAR 18–704.2(b) (2) and (3). Installation and individual (project) wage determination will be effective for 180 days, rather than 120 days.

DAR 18–704.2(g)(3). In addition to requirements cited in this provision, the contracting officer shall now include in the contract file a written statement why the modification was not incorporated in the solicitation. A copy of the statement shall be furnished DOL upon request.

DAR 18–704.4. DOL now has the final approval authority on additional classification(s) requests. Additional classifications will continue to be processed as provided for in this DAR provision; however, the contracting officer shall modify the approval portion of the DD Form 1565 as follows: "Approved, subject to Department of Labor review." DOL will approve,

modify, or disapprove every additional classification action within 30 days of receipt or will notify the contracting officer within the 30-day period that additional time is necessary.

DAR 18–704.12(b). The underpayment reporting amount is increased from $500 to $1,000.

DAR 18–704.13. This paragraph is revised to permit cross-withholding from any moneys payable because of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor of such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages.

DAR 18–704.16. The threshold for waiver or adjustment of liquidated damages is increased from $100 to $500.

Patent Rights—Small Business Firms and Domestic Nonprofit Organizations. Chapter 38 of Pub. L. 96–517, as implemented by OMB Bulletin 81–22, occasioned publication of Item I of DAC 76–29, dated August 31, 1981. OMB Bulletin 81–22 was superseded by OMB Circular A–124, effective March 1, 1982. Differences between the bulletin and the circular have necessitated changes in DAR Sections VII and IX.

Rights in Technical Data and Computer Software, and Patent Rights for Contracts Awarded Under Pub. L. 97–219, Small Business Innovation Development Act of 1982. Pub. L. 97–219 established the Small Business Innovative Research (SBIR) Program. To implement the provisions of the act, the DAR Council has developed two clauses for use in SBIR contracts: DAR 7–104.9(q), Rights in Technical Data and Computer Software (SBIR Program); and DAR 7–302.23(i), Patent Rights—Small Business Firm or Domestic Nonprofit Organization (SBIR Program). Except for the title, the clause at 7–302.23(i) is identical in content and terminology to the clause at 7–302.23(h).

Contractor Industrial Labor Relations. Sections XII and XVIII are revised to properly align the DLA industrial labor relations mission between DLA CAS and DLA Executive Directorate for Contracting (DLA–P). Mission responsibility related to labor relations in the buying areas will be those of the Executive Director for Contracting (DLA–P); responsibilities concerning contract administrative services will be the function of the Executive Director for Contract Management (DLA–A). Changes are also made to reflect the proper address for the Air Force in matters relating to labor relations.

Contract Cost Principles (Goodwill). A new cost principle at DAR 15–205.53 has been developed to provide that any costs for amortization, expensing, write-off, or write-down of goodwill are unallowable. DAR 15–205.50(a) has also been revised to provide that the cost of money resulting from including goodwill in the facilities capital employed base is unallowable.

Novation Agreements and Change of Name Agreements. DAR 26–402(b) is revised to add an example to clarify the application of the policies and procedures in Section XXVI, Part 4, to the situation when the transfer of ownership of a contractor through a stock purchase transaction or by other means is determined to significantly affect the Government's rights and interests under existing and future contracts. The revision serves to assure the means for protection of the Government's rights and interests in such situations. The additional example requires a determination by the Secretary (as defined in DAR 1–201.15) concerned.

Appendix O—Cost Accounting Standards. Appendix O is revised to add Interpretation No. 1, Cost Accounting Standard 403, which was inadvertently omitted from Appendix O when it was published in DAC 76–44, dated March 25, 1983. Also included is supplementary information with regard to comments accompanying promulgation of Interpretation No. 1.

Editorial Change. DAR 21–106(b) is revised to add the words "or A," which were inadvertently omitted when changes to Section XXI were published in DAC 76–46, dated August 24, 1983.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on receipt in accordance with DAR 1–106.2(d).

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–48. The number at the top of each page (for example, 1:31) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none above, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the Defense Acquisition Regulation contained in the July 1, 1983, edition of 32 CFR Parts 1–39, Volumes I, II, and III, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table.

DAR paragraph	Replacement pages
Volume I	
1–313(e) (added)	1:31–A, 1:32.
1–705.5(a)	1:129.
1–706.1(b)	1:140.
1–706.1(m) (added)	1:142–A.
1–706.5(a)(4) (added)	1:142–C, 1:142–D.
1–1001	1:166.
1–1002.4	1:167.
1–1003.1(a)	1:167.
1–1003.1(b)	1:167, 1:168.
1–1003.1(c) (i)–(ix)	1:168, 1:168–A.
1–1003.2	1:168–A.
1–1003.3	1:1168–A.
1–1003.4(b)	1:68–B.
1–1003.5	1:168–B.
1–1003.9(a)	1:169.
1–1005.1(a)	1:175.
1–1005.1(b)(1)	1:175.
1–1107.1(c)(2)	1:180.
1–1206.2(a) (last sentence deleted).	1:187.
2–202.1(a)	2:18.
2–202.1(b)	2:18.
2–503.1(a)	2:44.
3–102(a)	3:1.
3–102(b)	3:1.
3–102(c) (1) and (2) (added)	3:1, 3:1–A.
3–102(d) (added)	3:1–A.
3–107	3:2.
3–410.2(c)(4)(A)	3:57.
3–410.2(c)(4)(B) (added)	3:57.
3–510 (added)	3:76.
3–604.2(a) (last sentence added).	3:78–A.
3–605.2(a)	3:79.
3–605.2(b) (added)	3:79.
3–1100.2(a)(ii)	3:173.
4–904(a)	4:42.
4–910(b)(1)	4:46.
4–910(b)(3) (added)	4:46–A.
4–1104.4(a)(1)	4:61.
4–1104.4(a)(2)(ii)	4:62
4–1104.4(a)(3)(i)	4:62.
4–1104.4(a)(4)	4:63.
4–1104.4(a)(5)	4:63.
4–1104.6(a)	4:64.
5–100	5.2
Volume II	
7–103.16(a)	7:16, 7:17.
7–103.16(c) (added)	7:18
7–104.9(q) (added)	7:47, 7:47–A through 7:47–J.
7–302.23(a)	7:214, 7:218
7–302.23(a) ((j) of clause) [added].	7:218–A
7–302.23(b)	7:218–A, 7:222.
7–302.23(b) ((1) of clause) [added].	7:223–A.
7–302.23(c)	7:224, 7:227.
7–302.23(c) ((j) of clause) (added).	7:228.
7–302.23(h)	7:229, 7:230 through 7:230–G.
7–302.23(h) ((1) of clause) [added].	7:231.
7–302.23(i) (added)	7:231 through 7:231–J.
7–602.23(a)(i)	7:281, 7:282, 7:283.
7–602.23(a)(ii)	7:283, 7:284.
7–602.23(a)(iii)	7:284, 7:285, 7:285–A.
7–602.23(a)(iv)	7:285–A through 7:285–C.
7–602.23(a)(v)	7:285–D.
7–602.23(a)(vi)	7:285–D.
7–602.23(a)(vii)	7:285–D, 7:285–E
7–602.23(a)(viii)	7:285–E.
7–602.23(a)(ix)	7:285–E.
7–602.23(a)(x) (added)	7:285–E.
7–602.23(a)(xi) (added)	7:285–F.
7–602.23(c) (added)	7:285–F.
9–701	[illegible].
9–701.3(g)(2)	9:68.

DAR paragraph	Replacement pages
9-702	9:70, 9:71
9-702.1	9:71.
9-702.2(a)	9:71.
9-702.2(g)	9:72.
9-702.3(a)	9:72, 9:73.
9-702.3(b)	9:73, 9:74.
9-702.3(d)	9:75
9-702.6	9:76.
9-702.7	9:76
9-702.8	9:76, 9:77.
9-702.9 (a) and (b)	9:79.
12-101.3(b)	12:4.
12-102.4(e)	12:9.
12-103.2(b)	12:11.
12-806.2(b)	12:29.
12-807.2(a)(2)*b*	12:32.
12-807.6	12:33.
12-808(e)(2)	12:34.
12-810(b)	12:36.
12-1002.6	12:40.
15-205.50(a)(5) (added)	15:52.
15-205.53 (added)	15:52-C.
Volume III	
18-202(b)	18:9.
18-702.2	18:35.
18-704.2(c)	18:38.
18-704.2(d)(2)*a*	18:40.
18-704.2(d)(2)*d*	18:40.
18-704.12(b) (3) and (4)	18:52.
21-106(b)	21:11.
21-106.2	21:12.
26-402(b)(iii) (added)	26:8, 26:9.
26-402(b) ((iii) to (x) changed to (iv) to (xi)).	26:9.
Appendix O	0:127, 0:127-A.

List of Subjects in 32 CFR Parts 1–39

Government procurement.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

June 27, 1984.

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question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus a voluntary refund shall not be requested, unless the overcharged or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a voluntary refund shall be made by the Secretary concerned.

(c) *Disposition of Voluntary Refunds.*

(i) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(ii) In cases where the refund is to be made by check rather than by an adjustment in the contract price, the check shall be made payable to the office designated for contract administration and shall be forwarded immediately to the comptroller of the appropriate Department, or other Departmental officer responsible for the control of funds. When forwarded, the check shall be accompanied by a letter identifying it as a voluntary refund, giving the number of the contract or contracts involved and, where possible, giving the account number of the appropriation to which the refund should be credited.

1-313 Procurement of Parts.

(a) Any part, subassembly or component (hereinafter called "part") for military equipment, to be used for replenishment of stock, repair, or replacement, must be procured so as to assure the requisite safe, dependable, and effective operation of the equipment. Where it is feasible to do so without impairing this assurance, parts should be procured on a competitive basis, as in the kind of cases described in (b) below. However, where this assurance can be had only if the parts are procured from the original manufacturer of the equipment or his supplier, the procurement should be restricted accordingly, as in the kind of cases described in (c) below. Centrally managed replenishment parts for military systems and equipment (except replenishment parts acquired under other specifically defined initial support programs or acquired through local purchase) are governed by Supplement 6, the Replenishment Parts Breakout Program.

(b) Parts that are fully identified and can be obtained from a number of known sources, and parts for which fully adequate manufacturing drawings and any other needed data are available with the right to use for procurement purposes (or can be made so available in keeping with the policies in Section IX, Part 2) are to be procured on a competitive basis. In general, such parts are of a standard design configuration. They include individual items that are susceptible of separate procurement, such as resistors, transformers, generators, spark plugs, electron tubes, or other parts having commercial equivalents.

(c) Parts not within the scope of (b) above generally should be procured (either directly or indirectly) only from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data (including any necessary data developed at private expense), test results, and quality assurance procedures, are available with the right to use for procurement purposes (or can reasonably be made so available in keeping with the policies in Section IX Part

2) to assure the requisite reliability and interchangeability of the parts, and acquisition on a competitive basis would be consistent with the assurance described in (a) above. In assessing this assurance, the nature and function of the equipment for which the part is needed should be considered. Parts qualifying under this criteria are normally sole source or source controlled parts (see MILSTD 100) which exclusively provide the performance, installation and interchangeability characteristics required for specific critical applications. To illustrate, acceptable tolerances for a commercial television part may be far less stringent than those for a comparable military radar part, permitting competitive contracting for the former but not for the latter. The exacting performance requirements of specially designed military equipment may demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of even apparently identical parts from new sources, since the functioning of the whole may depend on latent characteristics of each part which are not definitely known.

(d) When an award is made to a source that has not previously produced the item, the cognizant Government inspection activity and the appropriate contract administration office should be notified by the contracting office that the contractor will be producing the item for the first time.

(e) *Limitations on Price Increases.*

(1) Pursuant to the 1984 DoD Authorization Act, Public Law 98-94, and except as provided in (2) below, the contracting officer shall not award a contract for any centrally managed spare or replacement part when the price of such part has increased by 25 percent or more at any time within the most recent 12-month period.

(2) The purchase of such part is permitted notwithstanding a price increase of 25 percent or more; *Provided*, the contracting officer certifies in writing to the Head of a Contracting Activity before the purchase is made that:

(i) the contracting officer has evaluated the price of such part and concluded that the increase in the price of such part is fair and reasonable; or

(ii) the national security interests of the United States require that such part be purchased despite the increase in price of such part.

(3) If necessary to augment a price history for the requirements of this paragraph (e), purchasing offices may require that vendors supply price and quantity data for previous orders of the spare or replacement part, if any, as part of their response to a solicitation.

(4) The fact that a particular price has not increased by 25 percent in no way relieves the contracting officer of the responsibility for obtaining a fair and reasonable price.

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1-314 Disputes and Appeals.

(a) *General.* The Contract Disputes Act of 1978 (Public Law 95-563, 41 U.S.C. 601-613) establishes procedures and requirements for asserting and resolving claims by or against contractors relating to a contract subject to the Act. In addition, the Act provides for the payment of interest on contractor claims, for the certification of contract claims in excess of $50,000, and a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

(b) *Definition.*

(1) As used herein, "claim" means a written demand on one of the contracting parties seeking, as a matter of right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or related to the contract. However, a written demand by the contractor seeking the payment of money in excess of $50,000 is not a claim unless or until certified as required by (L) below.

(2) A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently disputed either as to liability or amount or not acted upon in a reasonable time, it may be converted to a claim under Section 6(a) of the Act as provided in (h) below.

(g) If, subsequent to the request for a COC but prior to the SBA's final action on it, new additional facts so warrant, the negative determination as to responsibility of the apparent low bidder or offeror shall be reversed and the contract awarded. The PCO shall promptly inform the SBA field office of his action.

(h) When the contracting officer has questioned only one of the general standards of responsibility of a small business offeror, but the SBA has declined to issue a COC due to its findings concerning the offeror's capability to perform under a different standard of responsibility, the responsible SBA office will inform the contracting officer of the basis for its decision. The information furnished by SBA to the contracting officer will generally consist of a copy of the letter sent to the offeror in question, explaining why SBA declines to issue a COC. This information will be considered by the contracting officer in making an award of the contract.

1-705.5 *Contracting With the Small Business Administration.*

(a) *Authority.* Pursuant to Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) the SBA is empowered to enter into contracts with the Departments for supplies, services, and construction (but see 1-706.1(m)). In any case in which the SBA certifies to any officer of the Government having contracting authority that the SBA is competent and responsible to perform any specific Government contract, such officer shall be authorized in his discretion to let such contract to the SBA upon such terms and conditions as may be agreed upon between the SBA and the contracting officer. Such offers to contract with the SBA are conditioned upon the matter, in the event of a disagreement, being submitted for determination to the Secretary of the appropriate department by the Administrator of the SBA. Notification of a proposed referral to the head of the department or agency by the SBA must be received by the contracting officer within 5 days after the SBA is formally notified of the contracting officer's decision. Thereafter the SBA must provide the request for determination to the head of the department or agency within 15 days. If timely notice of appeal or an appeal is not made, the offer is rescinded. The SBA is further empowered to arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for supplies, services, or construction as may be necessary to enable the SBA to perform such contracts.

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(b) Policy.

(1) General. It is the policy of the DoD to enter into contracts with the SBA to foster business ownership by individuals who are both socially and economically disadvantaged and promote the competitive viability of firms owned by such individuals in order that they may have the opportunity to full participation in the free enterprise system.

(2) Business Development Expense. In contracting with the SBA, any costs to DoD which are in excess of the estimated current fair market price anticipated under normal contracting procedures shall be funded by the SBA. These costs, hereafter referred to as business development expenses, include start-up, make ready, training, or similar initial investment or learning costs in excess of those that would normally be incurred by established firms engaged in the same type of business. Upon request by SBA, data used by the contracting officer to make a determination as to the estimated current fair maket price shall be made available to that agency. The estimated current fair market price shall be predicated on the basis of "likely costs" under normal competitive conditions rather than on the basis of the "lowest possible cost." When there is agreement between SBA and the PCO as to the estimated current fair market price of a proposed 8(a) requirement, the responsibility for reviewing, validating, approving, and funding any business development expense shall be assumed by SBA.

(3) *Contract Assistance.* To the extent consistent with DoD capability and resources, SBA contractors furnishing defense requirements shall be afforded production assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

(4) Contract Negotiations. Any small business concern selected by the SBA to perform a contract to be let under these provisions shall, when practicable, participate in any negotiations of the terms and conditions of the contract between SBA and the contracting office. When it is mutually agreeable between the SBA and the contracting activity, SBA may authorize the contracting activity to negotiate the proposed subcontract schedule provisions with the 8(a) subcontractor. Any agreements which may be reached as the result of such negotiations must be approved by the SBA prior to award of the contract.

(5) SBA Waiver of Bonds. A small business concern shall not be required to provide any amount of any bond in performance of an 8(a) contract, if the Administrator of the SBA determines in accordance with Section 8(a)(11) of the Small Business Act that such amount is inappropriate for the concern in performing the contract.

(ii) If the total proposed 8(a) contract price exceeds the estimated current fair market price (*i.e.*, it includes a business development expense), such expense shall not be funded by DoD. SBA has stated that it does not generally expect to assume business development expenses for construction. If SBA elects to pay such expenses, as an exception to its general rule, it will issue an SBA reimbursable order for the agreed amount to the DoD PCO in advance of contract award. If SBA requests audit assistance in determining the reasonableness of the proposed 8(a) price, such assistance will be furnished by the DoD to the extent available. In the event SBA elects not to fund the business development expense, award will not be made to SBA unless the proposed contract price is reduced by the amount of such expense.

1-705.6 *Small Business and Disadvantaged Business Goals.*

(a) The Director of Small and Disadvantaged Business Utilization is responsible for the development of overall DoD small business and disadvantaged business goals and for consulting with SBA regarding the establishment of such goals.

(b) Departmental Directors of Small and Disadvantaged Business Utilization are responsible for the development of small business and disadvantaged business utilization goals for subordinate elements within their department. These goals will be further assigned by these subordinate elements as appropriate, such as engineer district offices or individual contracting divisions within a central contracting activity or major commodity command.

(c) Heads of contracting activities are responsible for the attainment of assigned small business and disadvantaged business utilization goals.

(d) Within 60 days after the conclusion of each fiscal year, the Secretaries of the Military Departments and the Directors of Defense agencies shall report to the Secretary of Defense on the extent of participation by small business concerns and disadvantaged business concerns in contracts awarded by their Department. Such reports shall contain appropriate justifications for failure to meet goals established by the Office of the Secretary of Defense, as well as actions planned to increase the rate of participation by such firms in future contract awards. The Office of the Secretary of Defense will submit information to SBA concerning any failure to meet established goals and actions to be taken to improve future performance.

1-706 Set-Asides (Except Small Business-Small Purchase Set-Asides (1-702(c)).

1-706.1 *General.*

(a) Small business and labor surplus area (LSA) set-asides should be considered in the following order of precedence:

(i) Combined small business/LSA set-aside (1-706.7);
(ii) Partial set-aside for LSA firms (1-804.2);
(iii) Total set-aside for small business firms (1-706.5);
(iv) Partial set-aside for small business (1-706.6).

(b) Subject to the order of precedence established in (a) above, and the exception at (m) below, any individual acquisition or class of acquisitions, or any appropriate part thereof, shall be set aside for the exclusive participation of small business concerns when such action is determined to be in the interest of (i) maintaining or mobilizing the Nation's full productive capacity, (ii) war or national defense programs, or (iii) insuring that a fair proportion of Government acquisition is placed with small business concerns.

(c) Proposed acquisitions over $5,000 that are not subject to simplified small purchase procedures, and all proposed acquisitions over $10,000, shall be specifically reviewed for set-aside for exclusive participation by small firms in accordance with 1-706.5. In automated contracting systems, all proposed acquisitions which are not small business-small purchase set-asides (1-702(c)) will be considered for small business set-asides in accordance with 1-706.5. If necessary, the screening for set-asides will be accomplished before entering such requirements into the system.

(d) The contracting officer is responsible for either setting aside a requirement or documenting, in accordance with departmental procedures, why a set-aside is inappropriate. The Small and Disadvantaged Business Utilization Specialist is responsible for reviewing those acquisitions not set aside and for taking action in accordance with 1-706.3 as appropriate.

(e) The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer. A joint determination is one which is recommended by the SBA representative and concurred in by the contracting officer. Insofar as practicable, unilateral determinations rather than joint determinations shall be

(vii) a class set-aside of the item or service concerned has been made at some other contracting activity; or
(viii) the item will be described by "brand name or equal."

(k) Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

(l) See 6-1403.1(a)(2) regarding purchases from qualifying country sources (see 6-001) where small business set-asides are involved.

(m) Architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set aside for small business.

1-706.2 *Contract Authority.* Contracts for total (including combined small business/LSA) or partial set-asides entered into by conventional negotiation (see 1-706.5(b) and 1-706.6(d)) or by "Small Business Restricted Advertising" (see 1-706.5(b)) are negotiated acquisitions and shall cite as authority 10 U.S.C. 2304(a)(1) in the case of a unilateral determination (see 3-201.2(b)(ii)) or 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act in the case of a joint determination.

1-706.3 *Review, Withdrawal, or Modification of Set-Asides or Set-Aside Proposals.*

(a) Prior to issuing solicitations each individual acquisition governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications, delivery requirements, or competitive market conditions since the initial approval of the class set-aside are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability. If, prior to award of a contract involving an individual or class set-aside, the contracting officer considers that acquisition of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), he may withdraw a unilateral or joint set-aside determination by giving written notice to the small business specialist and the SBA representative, if available, stating the reasons for the withdrawal. In a similar manner, a unilateral or joint class set-aside may be modified to withdraw one or more individual acquisitions.

(b) Upon a recommendation of the Small and Disadvantaged Business Utilization Specialist that an individual acquisition or class of acquisitions, or portion thereof, be set aside the contracting officer shall promptly either:

(i) concur in the recommendation, or
(ii) disapprove, stating in writing his reasons for disapproval.

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(c) If the contracting officer disapproves the recommendation of the Small and Disadvantaged Business Utilization Specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished in accordance with the provisions of 1-706.3(h).

(d) All cases involving the noninitiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of 1-706.3(e).

(e) If the contracting officer disagrees with the recommendation of the SBA representative regarding a small business set-aside for an individual acquisition (1-706.1(h)) or class of acquisitions or a portion thereof (1-706.1(i)), he shall notify the SBA representative, in writing, within 5 working days. If the SBA representative disagrees with the contracting officer regarding a withdrawal or modification of a joint or unilateral set-aside determination, the SBA representative shall be allowed 2 working days to appeal, in writing, to the chief of the contracting office for decision. The chief of the contracting office shall be allowed 7 working days to provide the SBA representative his decision, in writing, whether or not the acquisition will be set aside. Within 1 working day after receipt of a decision approving the action of the contracting officer, the SBA representative may request the contracting officer, in writing, to suspend contracting action pending a further appeal by the Administrator of SBA to the Secretary of the Department concerned. The SBA shall be allowed 15 working days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken. When an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the 15-day period, the matter shall be forwarded, with full justification of the action taken, through normal channels, including the appropriate departmental Small Business Advisor as identified in 1-704.2, to the Secretary of the Department concerned.

(f) Any contracting action which has been appealed by the SBA representative shall be suspended pending the decision of the Chief of the Contracting Office. If the decision sustains the contracting officer, and if the SBA representative requests further suspension in accordance with (e) above, the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in (e) above), or (ii) the matter is determined by the Secretary of the Department concerned. However, this procedure shall not apply to any particular contracting action that the contracting officer determines must be initiated without delay in order to protect the public interest, and as to which he inserts in the contract file a signed statement of justification approved at a level above the contracting officer. The contracting officer shall promptly give written notice to the SBA representative of any such contracting action initiated.

(g) The Secretary of the Department concerned will have 30 working days to either sustain or deny the appeal for set-aside action. Should it be determined that a decision cannot be made within this time, a later date will be established in writing by the Secretary of the Department concerned to the Administrator, SBA, citing the reasons why additional time is required. A copy of such correspondence will be provided to the Director of Small and Disadvantaged Business Utilization, Office of the Deputy Secretary of Defense.

(h) In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual acquisition or class of acquisitions or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the appointing authority (see 1-704.3(a)) for decision. A memorandum of the decision by the appointing authority shall be placed in the contract file. After receipt of a decision from the appointing authority, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the appropriate Departmental Director for Small and Disadvantaged Business Utilization or his designee as identified in 1-704.2.

(i) A signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

1-706.4 *Reporting for Department of Commerce Procurement Synopsis.* See 1-1003.8.

1-706.5 *Total Set-Asides.*

(a)(1) Subject to the order of precedence established in 1-706.1(a), the entire amount of an individual acquisition or class of acquisitions, including contracts for architectural and engineering

services, research, development, test and evaluation, maintenance repair, and construction, except small business-small purchase set-asides (1-702(c)), shall be set aside for exclusive small business participation (1-701.1) if the contracting officer determines that there is a reasonable expectation that (i) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (ii) awards will be made at reasonable prices (1-706.1(a)). Total set-asides shall not be made unless such a reasonable expectation exists (but see 1-706.6 as to partial set asides). Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small business the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(2) Every proposed acquisition for construction, including maintenance and repairs, in excess of $5,000 and under $2 million (except dredging under $1 million), shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of 1-706.3 shall apply.

(3) Every proposed acquisition of $2 million or more for construction, or $1 million or more for dredging, shall be considered on an individual acquisition basis under (1) above.

(4) Every proposed acquisition for A&E services and construction design for military construction projects under $85,000 shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of 1-706.3 shall apply.

(b) Contracts (including small purchases not otherwise reserved under 1-702(c)) for total small business set-asides may be entered into by conventional negotiation or by a special method of contracting known as "Small Business Restricted Advertising." The latter method shall be used wherever possible (see also 3-201.3). Where multiyear contracting procedures are appropriate (see 1-322), total set-asides may be made in connection therewith. Solicitations shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Section II, except that bids and awards shall be restricted to small business concerns. Bids received from firms that do not qualify as small business concerns shall be considered as nonresponsive and shall be rejected.

(c) In acquisitions involving total set-asides for small business, each solicitation shall contain the clause in 7-2003.2. The applicable size standards shall be set forth in Section C of the solicitation.

1-906 Subcontractor Responsibility.

(a) To the extent that a prospective contractor proposes to perform the contract by subcontracting, determinations of prospective subcontractors' responsibility may be necessary in order to determine the responsibility of the prospective prime contractor. Determinations concerning prospective subcontractor's responsibility shall generally be a function performed by the prospective prime contractor. (But see 1-604.3.) A prospective prime contractor may be required to (i) indicate, in writing, the responsibility of proposed subcontractors, or (ii) show evidence of an acceptable and effective purchasing and subcontracting system which encompasses a method for determining subcontractor capability.

(b) Notwithstanding the general responsibility of a prospective contractor to demonstrate the responsibility of his prospective subcontractors, it may be in the Government's best interest to make a direct determination of the responsibility of one or more prospective subcontractors prior to award of the prime contract. Examples of when this may be particularly suitable are the procurements of (i) medical items, (ii) supplies or services which are so urgently needed that it is necessary for the Government to go beyond the normal process in determining contractor responsibility, and (iii) supplies or services, a substantial portion of which will be subcontracted. The determination of responsibility of a proposed subcontractor by the Government shall be based on the same factors as are applicable in a determination of responsibility of a prospective prime contractor.

1-907 Disclosure of Pre-Award Data. Except as provided in 1-329, data including information obtained from a pre-award survey, accumulated for purposes of determining the responsibility of a prospective contractor shall not be released outside the Government and shall not be made available for inspection by individuals, firms, or trade organizations (see 1-329.3(c)(5)). Such data may be disclosed to, or summarized for, other elements within the Government on their request, and shall be made available to Department of Defense procurement personnel upon request in accordance with 1-905.1. Prior to making a determination of responsibility, such data may be discussed with the prospective contractor as determined necessary by the purchasing office. After an award, the findings of the pre-award survey may be discussed by the contracting officer with the company surveyed as provided in 2-408 and 3-508, or if appropriate, by the head of the contract administration office or his designee.

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Part 10—Publicizing Procurement Actions

1-1001 General Policy. It is Department of Defense policy to increase competition by publicizing procurements which offer contracting opportunities for prospective prime contractors or subcontractors, thus assisting small business and labor surplus area concerns and broadening industry participation in Defense procurement programs.

1-1002 Dissemination of Information Relating to Invitations for Bids and Requests for Proposals.

1-1002.1 *Availability of Invitations for Bids and Requests for Proposals at the Contracting Office.* A reasonable number of copies of invitations for bids and requests for proposals, which are required to be publicized in the *Commerce Business Daily*, including specifications and other pertinent information, shall be maintained at the contracting office. Upon request, prospective contractors not initially solicited may be mailed or otherwise provided copies of such invitations for bids or requests for proposals to the extent they are available. However, for any contract to be let by any department, it shall provide to any small business concern upon its request: (i) a copy of bid sets and specifications with respect to such contract; (ii) the name and telephone number of an employee of such department to answer questions with respect to such contract; and (iii) adequate citations to each major Federal law or departmental rule with which such business concern must comply in performing such contract. When a solicitation for proposals has been limited as a result of a determination that only a specified firm or firms possess the capability to meet the requirements of an acquisition, requests for proposals shall be mailed or otherwise provided upon request for firms not solicited, but only after advice has been given to the firm making the request as to the reasons for the limited solicitation and the unlikelihood of any other firm being able to qualify for a contract award under the circumstances; but see 4-106.2. In addition, to the extent that invitations for bids or requests for proposals are available, they shall be provided on a "first-come-first-served" basis, for pick up at the contracting office, to publishers, trade associations, contracting information services, and other members of the public having a legitimate interest therein (for construction, see 18-205(c)); otherwise the contracting office will make copies available to members of the public pursuant to Appendix L. In determining the "reasonable number" of copies to be maintained, the contracting officer shall consider, among other things, the extent of initial solicitation, reproduction costs, the nature of the acquisition, whether access to classified matter is involved, the anticipated requests for copies based upon responses to synopses and other means of publication in previous similar situations, and the fact that publishers and others who disseminate information regarding proposed acquisitions normally

do not require voluminous specifications or drawings. With regard to classified acquisitions, the foregoing instructions apply to the extent consistent with Departmental security instructions and procedures.

1-1002.2 *Limited Availability of Certain Specifications, Plans, and Drawings.* When the purchasing activity is not in possession of complete sets of specifications, plans, and drawings (as in some procurements of airframes, shipbuilding, or major weapons systems), or the drawings and specifications are classified, or are so voluminous that display and distribution in accordance with 1-1002 is impracticable, the solicitation shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined (see 1-1203).

1-1002.3 *Reserved.*

1-1002.4 *Displaying in Public Place.* A copy of each solicitation for an unclassified procurement in excess of $5,000 which provides at least 10 calendar days for submission of offers shall be displayed at the contracting office and, if appropriate, at some additional public place from the date issued until 7 days after bids or proposals have been opened. (But see 3-603.1(j) for small purchases.)

1-1002.5 *Information Releases to Newspapers and Trade Journals.* A brief announcement of the proposed purchase may be made available to newspapers, trade journals, and magazines for publication without cost to the Government.

1-1002.6 *Paid Advertisements in Newspapers and Trade Journals.* See Section IV, Part 8.

1-1003 Synopses of Proposed Procurements.

1-1003.1 *General.*

(a) Except for procurements described in (b) and (c), every proposed procurement action including modifications to existing contracts when new funds are obligated for additional supplies and services made in the United States, its possessions, and Puerto Rico which may result in an award of $10,000 or more shall be publicized promptly in the *Commerce Business Daily* "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards." When an item is assigned or is within a Federal Supply Class assigned for procurement in Section V, Part 12, and is purchased by other than the assigned Department, the synopsis shall cite the applicable purchase exclusion number from 5-1201.1 or 5-1201.2(a). Modifications to an existing contract resulting from price changes, engineering changes, overruns, definitization of letter contracts, and other similar transactions need not be publicized in the *Commerce Business Daily*.

(b) Only those classified procurements, where the information necessary to be included in the Synopsis cannot be worded in such a manner so as to preclude the disclosure of classified information, or where the mere disclosure of the Government's interest in the area of the proposed procurement would violate security requirements, shall not be publicized in the Synopsis. All other classified

procurements shall be publicized in the Synopsis, even though access to classified matter might be necessary in order to submit a proposal or to perform the contract (see 1-1003.9(f)(3)). The intent of the exception for classified procurement in the synopsis requirements of P.L. 98-72 is not to exempt every classified procurement from publicizing, but to provide a safeguard against violating security requirements.

(c) The following need not be publicized in the Synopsis:

(i) the procurement for security reasons is of a classified nature (see (b) above);

(ii) procurement of perishable subsistence when made by placement of an order under a contract covered by 3-409;

(iii) procurement is for utility services and only one source is available;

(iv) procurement which is of such unusual and compelling urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than the time periods specified at 1-1003.2;

(v) procurement to be made by an order placed under an existing contract covered by 3-409 or as required by 5-102;

(vi) procurement to be made from another Government department or agency, including procurements from the SBA using the authority of section 8(a) of the Small Business Act, or a mandatory source of supply, such as an agency for the blind under the blind-made products program;

(vii) procurement that results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research;

(viii) procurement for which a foreign government reimburses the Department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty;

(ix) when it has been determined in writing by the Secretary with the concurrence of the Small Business Administration, that advance notice is not appropriate or reasonable.

1-1003.2 ***Time of Publicizing.*** When synopsis is required, contracting offices shall not issue a competitive solicitation until at least 15 days after the date of publication of a proper notice of the procurement action in the *Commerce Business Daily; Provided,* That in the case of research and development procurements, the interval shall be 30 days from the date of publication. Contracting officers may presume that the notice has been published 5 days (2 days if electronically transmitted) following transmittal of the synopsis to the *Commerce Business Daily.*

1-1003.3 ***Pre-Invitation / Solicitation Notices.*** Where pre-invitation notices (see 2-205.6) or pre-solicitation notices (see 3-106.2) are used, a synopsis of the pre-invitation or pre-solicitation information which complies with 1-1003.2 and 1-1003.9(b) shall be included in the *Commerce Business Daily* unless exempt under 1-1003.1(c). This information need not be republished when the solicitation is issued. However, if the pre-invitation notice contains a set-aside provision which is later canceled (e.g., because of a lack of small business response), then the procurement shall be resynopsized in accordance with 1-1003.2.

1-1003.4 ***Special Synopsis Situations.***

(a) *Research and Development.* Advance notices of an agency's interest in a given field of research and development shall be published in the *Commerce Business Daily* in accordance with 1-1003.9(e) whenever the contracting officer considers that existing bidders mailing lists do not include a sufficient number of concerns to obtain adequate competition. Advance notices shall not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of research and development programs and provide these sources with an opportunity to submit information which will permit evaluation of their research and development capabilities. Potential sources which respond to advance notices shall be added to the appropriate bidders mailing list for the subsequent solicitation. Those sources which do not appear on the agency bidders mailing lists established in accordance with 2-205.1 shall be requested to submit Standard Form 129, Bidder's Mailing List Application. In those situations where responding sources are on established

lists, they may be requested to submit amended applications in order to reflect their current capabilities. Each specific procurement of research and development shall be publicized in the *Commerce Business Daily* unless one of the exceptions in 1-1003.1 is applicable.

(b) *Architect-Engineer Services.* Unless a situation described in 1-1003.1 is applicable, requirements for architect-engineer services shall be publicized as follows:

(1) *Fees of $10,000 or More.* Each procurement to be made in the United States, its possessions, or Puerto Rico, for which the total fee (including phases and options) is expected to be $10,000 or more, shall be synopsized in accordance with 1-1003.9(h).

(2) *Fees Less Than $10,000 or Overseas.* A notice of procurements with fees expected to be less than $10,000 or to be made outside the United States, its possessions, or Puerto Rico, shall be displayed at the contracting office and need not be publicized in the *Commerce Business Daily.*

For procurements with an estimated total fee of $300,000 and which require notification to Congress in accordance with 10 USC 2807, no public announcement shall be made until two weeks after Congress has been notified.

(c) *Commercial and Industrial Type Activities.* When no known sources are available, the requirement shall be synopsized in accordance with 4-1203.

1-1003.5 *Publication of Procurements Less Than $10,000.* When recommended by procurement personnel or the small business specialist, and approved by the contracting officer, proposed procurements less than $10,000 may be publicized in the *Commerce Business Daily.*

1-1003.6 *Synopsis of Subcontract Opportunities.*

(a) *By Contracting Officers.*

(1) To broaden the opportunity in negotiated procurement over $100,000 for subcontracting by small business concerns and others, contracting officers, shall, unless not in the Government's interest or significant subcontracting opportunities do not exist, publish in the *Commerce Business Daily* the names and addresses of firms to whom requests for proposals are to be issued, *provided* that no more than five firms are to be solicited. This procedure will offer opportunity to small business concerns and others interested in subcontracting to make direct contact with prospective prime contractors at an early stage in the procurement. An addition to the regular synopsis prepared in accordance with 1-1003.9 shall be made as set forth in 1-1003.9(g).

(2) Contracting officers shall, for procurements over $100,000 unless not in the Government's interest or significant subcontracting opportunities do not exist, publish in the *Commerce Business Daily* the names and addresses of firms

which have submitted acceptable technical proposals in the first step of two-step formal advertising and will therefore be issued invitations for bids in the second step (see 2-503). Such lists should be followed by a statement substantially as follows:

> It is suggested that small business firms or others interested in subcontracting opportunities in connection with this procurement make direct contact with the above firms.

(b) *By Prime Contractors and Subcontractors.* Prime contractors and subcontractors should be encouraged to use the *Commerce Business Daily* to publicize opportunities in the field of subcontracting stemming from their defense business. Prime contractors and their subcontractors will be advised to mail subcontract information directly to the U.S. Department of Commerce, *Commerce Business Daily*, P.O. Box 5999, Chicago, Illinois, 60680, under the heading "Subcontracting Assistance Wanted" and in the form of the following example.

> XYZ CO. ATTN JOHN Z. SMITH, TELE. NO. 123-456-1111, 102 FIRST AVE., CHICAGO, ILL., 60607, seeks Subcontractor on items to be used in connection with Contract No..... awarded .....(*date*).
> COILS, INDUCTION, DWG. NO. 10-742.....10,000 ea. (name, description, and quantity of other items or services may be included as long as contract assistance is desired under the same contract number)—If interested, make inquiry before .....(*date*) to above contractor.

1-1003.7 *Information Regarding Specifications, Plans, and Drawings.*

(a) Where distribution of applicable specifications, plans, or drawings with the solicitation is impracticable, the synopsis shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined or obtained. (See 1-1203.)

(b) Where the specifications, plans, and drawings available do not fully provide manufacturing or construction details necessary to describe a requirement, the synopsis shall contain notice of this fact.

(c) Notices of the situation in (a) and (b) above shall be prepared in accordance with 1-1003.9(f).

1-1003.8 *Responsibility of Small Business Specialists.* Small business specialists in each purchasing office are responsible for screening all proposed procurements and for recommending action to be taken with respect to publicizing such procurements in accordance with the requirements of this paragraph 1-1003. In those offices where no small business specialist is assigned, the contracting officer or other designated representative shall accomplish the foregoing.

1-1003.9 *Preparation and Transmittal.*

(a) Each purchasing office shall transmit a synopsis of proposed procurements. Synopses shall be transmitted daily via AUTODIN or first class mail addressed to:

U.S. Department of Commerce
Commerce Business Daily
P.O. Box 5999
Chicago, Illinois 60680

(b) Each synopsis shall be prepared as described below:

(1) *Description of Procurements.* Prepare the text of synopses in the sequential format described below or one that closely parallels it. Use conventional typing with both upper and lower case letters and standard punctuation symbols. The description shall be clear, concise, and in such detail that it will be understood by potentially interested parties and shall not be unnecessarily restrictive of competition. If the synopsis is for a sole source contract (see 3-102(a)), the synopsis shall include reference to Numbered Note 22. The numbered note will appear in the *Commerce Business Daily* as follows:

> Note 22. This procurement is for supplies or services for which the Government intends to solicit and negotiate with only one source. Interested persons are invited to identify their interest and capability to respond to the requirement or to submit proposals in response to this notice. This notice of intent is not a request for competitive proposals. A determination by the Government not to open the requirement to competition based upon responses to this notice is solely within the discretion of the Government. Information received as a result of the notice of intent will normally be considered solely for the purpose of determining whether to conduct a competitive procurement. Nevertheless, the sole source may not presume that the solicitation will be amended in the event that competitive proposals are received if the solicitation, as issued, is sufficient to support a competitive procurement. In that case, award may be made pursuant to the solicitation's terms. In accordance with P.L. 98-72, the contracting officer will not commence negotiations for award of a contract until at least 30 days have elapsed from the date of this notice.

(2) *Spacing.* Double spaced lines will be used in the text. Each procurement shall be described in a separate paragraph.

tion, shall be referred to the Secretary of the Department concerned, and the appropriate legislative liaison office shall be informed. When a proposed reply is to be so referred to a Secretary, an interim reply shall be made to the congressional request indicating the action being taken.

(b) *Inclusion on Bidders Mailing Lists.* Any member of any Committee or Subcommittee of the Congress which is interested in procurement matters shall, upon request of the Committee or Subcommittee Chairman, be placed on applicable bidders mailing lists to receive automatic distribution of bid and proposal information in the specified area of interest.

1-1005 Publicizing Award Information.

1-1005.1 *Synopsis of Contract Awards.*

(a) *General.* Except for classified awards, all awards in excess of $25,000 which are likely to result in the award of subcontracts shall be promptly published in the *Commerce Business Daily* "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards."

(b) *Preparation and Transmittal.*

(1) Purchasing offices shall prepare and forward single copies of synopses of contract awards daily, as prescribed in 1-1003.9.

(2) The synopsis of contract awards shall contain the following information:

(i) the name and address of purchasing office;
(ii) the classification code (4-digit) applicable to the procurement action;
(iii) a clear and concise description of the supplies or services being procured, including a national stock number or a service stock number when assigned, such description to be followed by the contract number and date and, in parentheses, by the applicable number of the invitation for bids or requests for proposals;
(iv) the quantity of each item;
(v) the dollar amount of the award;
(vi) the name, size status ((S) for small business and (L) for large business), and the full address of the contractor;
(vii) for FOB destination procurement when total shipments from a point of origin to a point of destination will exceed 200,000 pounds and destinations are firm—
(A) origin point of shipment when different from (vi) above;
(B) CONUS destination of shipment (see 1-1003.9(b)(6)); and
(C) scheduled delivery period (beginning and ending dates); and

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(viii) when requested by the prime contractor, a statement of the industries, crafts, processes or component items in or for which subcontracts are available and subcontractors are desired, together with the general area, if any, indicated by the prime contractor, such as Southeast States, West Coast, New England.

1-1005.2 *Announcement of Awards.*

(a) *Public Announcement.* Information on proposed contractual actions over $3 million shall be submitted in writing in accordance with Departmental/Agency procedures. Report Control Symbol DD-LA(AR) 1279 applies. Departments will submit reports to the Office of the Assistant Secretary of Defense (Public Affairs) by the close of business the day before contract award is proposed, so that this data may be announced to the press at 1600 hours Washington, D.C. time on the day of award. Contracts excluded from this reporting requirement include (i) those placed with the Small Business Administration under Section 8(a) of the Small Business Act, and (ii) those placed with foreign firms when the place of delivery or performance is outside the United States or its possessions. Awards or release of information on proposed contracts shall not be made prior to the public release time of 1600 hours Washington, D.C. time.

(b) *Congressional Notification.* In accordance with Departmental procedures, Departments shall notify the appropriate Members of Congress (Senators and Representatives in whose state and district the proposed contractor is located and, if different, in whose state and district the work is to be performed) of contract awards of over $3 million concurrent with the public announcement described in (a) above.

1-1005.3 *Local Announcements of Awards Over $25,000.* Contract awards may also be the subject of local press release or other public announcements. When such press releases or public announcements are made, for procurements of $25,000 or more, they shall include the following information:

(i) for awards after formal advertising, state that the contract was awarded after competition by formal advertising and include the number of bids solicited and the number received, and state in general terms the basis for selection, *e.g.*, the lowest responsible bidder;

(ii) for awards after procurement by negotiation, include the information contained in the notice prescribed by 3-508.3 and where the award was made after competitive negotiation (either price or design competition), include a statement to this effect and state in general terms the basis for selection.

1-1006 Reserved.

1-1007 Public Release of Long-Range Procurement Estimates.

1-1007.1 *General.* To assist industry in planning its efforts, and to locate additional sources, it may be desirable to announce to the public long-range procurement estimates on certain items, groups or types of items, materials, or research and development projects and tasks procured by the Department of Defense. Procurement estimates with respect to proposed purchases may be provided to industry as far in advance as possible under the conditions contained in 1-1007.3, 1-1007.4 and 1-1007.5.

(i) the list has been prepared for use by or for the Government in the acquisition of products covered by the specification and such listing of a product is not intended to and does not connote indorsement of the product by the Department of Defense;

(ii) all products listed have been qualified under the requirements for the product as specified in the latest effective issue of the applicable specification;

(iii) the list may be revised or amended as necessary, and subject to change without notice;

(iv) the listing of a product does not release the supplier from compliance with the specification requirements; and

(v) use of the information for advertising or publicity purposes is permitted, *provided* that such publicity or advertising does not state or imply that the product is the only product of that type so qualified or that the Department of Defense in any way recommends or endorses the manufacturer's product.

1-1105 Opportunity for Qualification. Upon determination that a product is to be covered by a qualified products list, manufacturers shall be urged to submit their products for qualification and where possible shall be given sufficient time to arrange for qualification testing prior to issuance of the initial invitation for bids or request for proposals for the item as a qualified product. Appropriate notice of such determination shall be furnished to the U.S. Department of Commerce, *Commerce Business Daily*, P.O. Box 5999, Chicago, Illinois 60680, requesting publication in the daily "Synopsis of U.S. Government Proposed Procurement, Sales and Contracts Award". The publicity given to the requirement for qualification testing shall include the following:

(i) an intention to establish a qualified products list for a product,

(ii) the specification number and nomenclature of the product, and the name and address of the office to which the request for qualification should be submitted; and

(iii) notice that in making future awards consideration shall be given only to such products as have been accepted for inclusion in a qualified products list.

Lists shall always be kept open for inclusion of products from additional suppliers, including suppliers from qualifying country sources (see 6-001).

1-1106 Clarification of Qualification Requirements. When there is any question concerning qualification requirements in a specification, the activity that prepared the specification will furnish clarification when requested by the contracting activity.

1-1107 Acquisition of Qualified Products.

1-1107.1 *General.*

(a) Whenever qualified products are to be obtained by the Government as end items, only bids or proposals offering products which are qualified for listing on the applicable Qualified Products List at the time set for opening of bids or award of negotiated contracts shall be considered in making awards.

(b) Whenever a qualified product is to be obtained by a prime contractor as a component of an end item, the prime contractor shall be required to furnish a

component which has been tested and qualified for inclusion in the applicable Qualified Products List by the time of award of the subcontract. Delay resulting from the prime contractor awaiting qualification approval by the Government of a component shall not constitute excusable delay when a previously qualified component could have been procured in time to meet the end item delivery schedule.

(c) Procurements involving qualified products shall be governed by (1) through (4) below.

(1) Synopses of proposed procurements shall be published by purchasing activities, in accordance with 1-1003, promptly upon receipt of purchase requests.

(2) The maximum time consistent with delivery requirements shall be allowed between issuance of the solicitation and the opening of bids or the award of a negotiated contract. As a minimum, contracting officers shall comply with 2-202.1, 3-102 or 3-107, as appropriate. Advance notice of procurement involving qualified products may be given suppliers through the use of preinvitation notices. Such notices shall identify the specification requiring qualification.

(3) In procuring qualified products by formal advertising, invitations for bids will be distributed to suppliers in the same manner as if a qualified product were not involved, and will not be restricted to suppliers whose products have been qualified.

(4) Contracting officers shall forward requests from suppliers concerning qualification of products to the specification preparing activity.

1-1107.2 *Contract Provisions.*

(a) When qualified end products are to be procured, insert the provision in 7-2003.6.

(b) When qualified products are to be procured as components of end items, insert the clause in 7-2003.7.

1-1107.3 *Effect of Debarment or Suspension.* Notwithstanding any other provision of this Part, the inclusion of a product on the qualified products lists may be denied, and the qualification of a listed product may be withdrawn, by the Department concerned, without notification to the manufacturer, if the name of the manufacturer appears on the lists of debarred or ineligible bidders which are maintained pursuant to Section I, Part 6. With reference to Type B listings, the provisions of this paragraph shall be applicable only if the qualified product is in the category prescribed by the Secretary of Labor (see 1-603).

1-1108 Waiver of Qualification Requirement. When procuring a product under a specification which includes qualification requirements either for the end item or for components of the end item, such qualification requirements can be waived only by the activity that prepared the specification. In appropriate cases, when requested by the contracting officer, the preparing activity may waive qualification requirements. A notice, issued by the preparing activity, directing a waiver of the qualification requirement, constitutes adequate authorization for

producer, or distributor. Where feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(b) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government. For example, where interchangeability of parts is required, such requirement should be specified. Purchase descriptions shall contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(i) complete common generic identification of the item required;

(ii) applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and

(iii) name of manufacturer, producer, or distributor of each brand name product referenced (and address if company is not well known).

(c) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the invitation for bids or request for proposals as being that of the particular named manufacturer, producer, or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

1-1206.3 *Invitation for Bids — Brand Name or Equal Purchase Descriptions.*

(a) Except as provided in (c) below, when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the invitation, for completion by the bidder:

Bidding on:
Manufacturer's Name ..... Brand ..... No. .....

(b) In addition, the clause in 7-2003.10 shall be included.

(c)(1) When component parts of an end item are described in the invitation for bids by a "brand name or equal" purchase description and the contracting officer determines that application of the clause in (b) above to such component parts would be impracticable, the requirements of (a) above shall not apply with respect to such component parts. In such cases, if the clause is included in the Invitation for Bids for other reasons, a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" does not apply to the following component parts:
(List the component parts as to which the clause does not apply.)

(2) In the alternative, if the contracting officer determines that the clause in (b) above should apply to only certain such component parts, the requirements of (a) above shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" applies to the following component parts: (List the component parts to which the clause applies.)

(d) When an invitation for bids contains "brand name or equal" purchase descriptions, bidders who offer brand name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products; however, invitations for bids may require the submission of bid samples in the case of bidders offering "or equal" products.

1–1206.4 *Bid Evaluation and Award — Brand Name or Equal Purchase Descriptions.*

(a) Bids offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award where the contracting officer determines in accordance with the terms of the clause in 7–2003.10 that the offered products are equal in all material respects to the products referenced. Bids shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use.

(b) Award documents shall identify, or incorporate by reference an identification of, the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances where (i) the description of the end item contains "brand name or equal" purchase descriptions of component parts or of accessories related to the end item and (ii) the clause in 7–2003.10 was applicable to such component parts or accessories (see 1–1206.3(c)).

1–1206.5 *Procedure for Negotiated Procurements.*

(a) The policies and procedures prescribed in 1–1206.2 through 1–1206.4 for formally advertised procurements shall be generally applicable to negotiated procurements.

(b) The clause in 7–2003.10 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in exigency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all significant and material respects to the products referenced.

1–1207 Alternate Articles or Qualities. Invitations for bids and requests for proposals may provide for alternate bids or proposals on different articles or qualities of material, *e.g.*, where two or more articles will be equally acceptable to the Government depending upon relative price. However, the alternate articles or qualities must be precisely described to assure that the same degree of competition is obtainable on the alternate bids or offers as is obtained on the basic articles described.

(2) The master solicitation shall not include non-essential or infrequently used provisions.

(3) The master solicitation shall consist primarily of those locally developed provisions relating to instructions and procedures requiring repetitive use that cannot otherwise be avoided through use of DAR clauses. The master solicitation may include Section VII clauses.

(4) Copies of a master solicitation shall be made available upon request.

(5) Each individual solicitation shall reference the date of the current master solicitation and any changes thereto. Significant revisions or a significant number of revisions should result in a reissuance of the entire master solicitation.

(6) Copies of contracts furnished to the contract administration activity must be complete and shall include a copy of the master solicitation unless prior arrangements have been made.

(7) The use of this technique shall be limited to those situations where it is clearly demonstrable that a substantial reduction of paperwork and simplification of the contracting process will result. Approval by the Head of the Contracting Activity is required.

2-202 Miscellaneous Rules for Solicitation of Bids.

2-202.1 *Bidding Time.*

(a) Consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time (i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to allow bidders an adequate opportunity to prepare and submit their bids. Bidding time shall be no less than 30 calendar days when synopsis is required by 1-1003.1. For potential sources in participating countries, see 6-1403.1(a); for sources in FMS/offset arrangement countries, see 6-1310.3(b); and for sources in defense cooperation countries, see 6-1502.1.

(b) The restriction regarding bidding time in (a) above does not apply to the second step of two-step formal advertising. When the contracting office is located in the United States and a prospective bidder is located at a foreign address, the mailing time associated with international air mail (see 2-203.1) shall be considered when establishing the bid opening date. For items on Qualified Products Lists, see 1-1107.1(c)(2); and for construction contracts, see 18-202(b).

2-202.2 *Telegraphic Bids.* As a general rule, telegraphic bids will not be authorized. However, when in the judgment of the contracting officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized, the schedule of the invitation for bids will contain the provision in 7-2003.29.

2-202.3 *Bid Envelopes.* Postage or envelopes bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders. To provide for ready identification and proper handling of bids, Optional Form 17, "Sealed Bid Label", obtainable from the General Services Administration, may be furnished with each bid set to provide the bidder with a means of specifically identifying his bid.

2-202.4 *Bid Samples.*

(a) *Definition.* The term "*bid sample*" means a sample required by the invitation for bids to be furnished by a bidder as a part of his bid to show the characteristics of a product offered in his bid. Such samples will be used only for the purpose of determining the responsiveness of the bid and will not be considered on the issue of a bidder's ability to produce the required items.

(b) *Policy.* Bidders shall not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to assure acquisition of an acceptable product. It may be appropriate to require bid samples, for example, where the acquisition is of products that must be suitable from the standpoint of balance, facility of use, general "feel," color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable

Part 5—Two-Step Formal Advertising

2-501 General. Two-step formal advertising is a method of procurement designed to expand the use and obtain the benefits of formal advertising where inadequate specifications preclude the use of conventional formal advertising. It is especially useful in procurements requiring technical proposals, especially those for complex items. It is conducted in two steps:

(i) Step one consists of the request for, and submission, evaluation, and, if necessary, discussion of a technical proposal, without pricing, to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes engineering approach, special manufacturing processes, and special testing techniques. When it is necessary in order to clarify basic technical requirements, related requirements such as management approach, manufacturing plan, or facilities to be utilized may be clarified in this step. Conformity to the technical requirements is resolved in this step, but matters of responsibility as defined in 1-903 are not.

(ii) Step two is a formally advertised procurement confined to those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with Parts 3 and 4 of this Section.

Two-step formal advertising requires that the contracting officer work closely with technical personnel and that he utilize their specialized knowledge in determining the technical requirements of the procurement, in determining the criteria to be used in evaluating technical proposals, and in making such evaluation. An objective of this method is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirement, including an adequate technical data package, so the subsequent procurements may be made by conventional formal advertising.

2-502 Conditions for Use.

(a) Two-step formal advertising shall be used in preference to negotiation when all of the following conditions are present, unless other factors require the use of negotiation, *e.g.*, 3-213;

(i) available specifications or purchase descriptions are not sufficiently definite or complete or may be too restrictive, and the listing of the salient characteristics in a "brand name or equal" description would likewise be too restrictive, to permit full and free competition without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to insure mutual understanding between each source and the Government;

(ii) definite criteria exist for evaluating technical proposals, such as design, manufacturing, testing, and performance requirements, and special requirements for operational suitability and ease of maintenance;

(iii) more than one technically qualified source is expected to be available;

(iv) sufficient time will be available for use of the two-step method; and

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(v) a firm fixed-price contract or a fixed-price contract with economic price adjustment will be used.

(b) None of the following in itself precludes the use of two-step formal advertising:

(i) A multi-year procurement is being made.

(ii) A first or subsequent production quantity is being procured under a performance specification.

(iii) Government-owned facilities or special tooling is to be made available to the successful bidder.

(iv) A total small business set-aside is involved (see 1-706.5(b) and 1-706.2). A total small business set-aside would not be appropriate in a procurement of a highly technical and complex item where it is anticipated that, in order to obtain adequate competition (1) a significant number of acceptable technical proposals must be received from firms with prior testing, developmental and production experience of the item, or major components thereof, and (2) the restriction of such procurement to small business firms would seriously limit the number of qualified firms eligible to submit proposals.

2-503 Procedures.

2-503.1 *Step One.*

(a) A request for technical proposals shall be distributed to qualified sources in accordance with 1-302.2 and the provisions of 2-202.1 apply to this step. In addition, the request shall be synopsized in accordance with Section I, Part 10. The request may be in the form of a letter and shall contain, as a minimum, the following information:

(i) the best practicable description of the supplies or services required;

(ii) notification of the intent to conduct the procurement in two steps and the actions involved;

(iii) the requirements of the technical proposal, *i.e.*, the necessary details such as drawings, data, presentations, etc., to be submitted;

(iv) the criteria for evaluating the technical proposal (see 2-502(a) (ii));

(v) a statement that the technical proposals shall not include prices or pricing information;

(vi) the date or date and hour by which the proposal must be received and the Late Technical Proposals provision in 7-2002.3 (this replaces paragraphs 7 and 8 of Standard Form 33A);

(vii) a statement that in the second step of the procurement only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards; and that each bid in the second step must be based on the bidder's own technical proposals;

(viii) a statement that offerors are advised to submit proposals which are fully and clearly acceptable without additional explanation or information, since the Government may make a final determination as to whether a proposal is acceptable or unacceptable solely on the basis of the proposal as submitted and proceed with the second step without requesting further information from any offeror; however, if the Government deems it necessary to obtain sufficient acceptable

SECTION III

PROCUREMENT BY NEGOTIATION

Part 1—Use of Negotiation

3-100 Scope of Part. This Part deals with the nature and use of negotiation as distinguished from formal advertising, and with limitations upon that use.

3-101 General.

(a) Pursuant to the authority of 10 U.S.C. 2304(a), procurement may be effected by negotiation under any one of the exceptions (1) through (17) set forth in Part 2 of this Section. However, procurement shall be made by formal advertising when such method is feasible and practicable, even though existing conditions and circumstances would otherwise satisfy the requirements of Part 2 of this Section.

(b) When supplies or services are to be procured by negotiation, offers shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured.

(c) No contract shall be entered into as a result of negotiation unless a business clearance or approval as is prescribed by applicable Departmental procedures has been obtained.

(d) Negotiated procurements shall be on a competitive basis to the maximum practical extent. When a proposed procurement appears to be necessarily noncompetitive, the contracting officer is responsible not only for assuring that competitive procurement is not feasible, but also for acting whenever possible to avoid the need for subsequent noncompetitive procurements. This action should include both examination of the reasons for the procurement being noncompetitive and steps to foster competitive conditions for subsequent procurements, particularly as to the availability of complete and accurate data, reasonableness of delivery requirements (1-305.2(a)), and possible breakout of components for competitive procurement. Except for procurement of electric power or energy, gas (natural or manufactured), water, or other utility services, and procurement of educational services from nonprofit institutions, contracts in excess of $25,000 shall not be negotiated on a noncompetitive basis without prior review at a level higher than the contracting officer to assure compliance with this subparagraph.

3-102 Additional Restrictions on Noncompetitive Procurements.

(a) For the purposes of this paragraph 3-102 only, "sole source contract" means a contract for the purchase of property, supplies or services which is entered into or proposed to be entered into after soliciting and negotiating with only one source.

(b) When a synopsis is required under 1-1003.1, the contracting officer may not commence negotiations for the award of a sole source contract until at least 30 days after publication of the synopsis with the required notice of intent to contract (see 1-1003.9(b)(1)).

(c) Except when covered by (d) below, the contracting officer may not commence negotiations for the award of a sole source contract (see also 4-910) with a value in excess

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of $1 million in fiscal year 1984, $500,000 in fiscal year 1985, and $300,000 in fiscal year 1986 and each year thereafter unless:

(1) the head of the contracting activity or his deputy has approved the authority to enter into such contract (this authority is not delegable); and

(2) when synopsis is required under 1-1003.1, the contracting officer has evaluated the responses to the notice of intent to contract on a sole source basis (see 1-1003.9(b)(1)).

(d) Paragraph (c) above does not apply to procurements made under the authority of Section 8(a) of the Small Business Act; the Small Business Innovation Development Act; and procurements for property, supplies or services for which a compelling or unusual emergency exists such that the Government would be seriously injured if the provisions of (c) above were complied with.

3-103 Records and Reports of Negotiated Contracts. In addition to the records and reports described in 1-308, 3-211.4, and 3-216.4, each Department is required to maintain a record of the total value of all contracts negotiated by it during each fiscal year under each of the circumstances permitting negotiation enumerated in Section III, Part 2. These records, and reports based thereon, are maintained through the Department of Defense Procurement reporting system described in 1-110 and Section XXI, Part 1.

3-104 Aid to Small Business and Minority Concerns in Negotiated Procurements. When negotiation is conducted, consideration shall be given to the size and minority status of the business concerns, and when subcontracting is consistent with the best interests of the Government, the extensive use of subcontractors shall be a favorable factor. See Section I, Part 7, and 1-322.

3-105 Aid to Labor Surplus Area Concerns in Negotiated Procurements. When negotiation is conducted, consideration shall be given as to whether the prospective supplier is a labor surplus area concern. See Section I, Part 8.

3-106 Presolicitation Notices and Conferences.

3-106.1 *General.* This Part describes a procedure which may be used as a preliminary step to negotiated procurements where the cost of preparing a formal solicitation and response would be substantial for both the Government and industry. This procedure is designed to develop sources for procurement; permit the Government to solicit for preliminary information based on a general description of the supplies or services involved; permit prospective offerors to submit proposals without undue expenditure of effort, time, and money; and to explain complicated specifications and requirements to interested firms. The presolicitation conference shall not be used as a method for prequalification of offerors, and may be used only when approved at a level higher than the contracting officer.

3-106.2 *Presolicitation Procedure.*

(a) When a presolicitation notice is used it shall be prepared by the contracting officer and forwarded to all known potential offerors. It shall at least request an expression of interest in the contemplated procurement and shall designate a time for submission of responses. In cases of complex procurement, it may also request information pertaining to management, engineering, and production

capabilities. Each notice shall define as explicitly as possible the information to be furnished by the offeror and shall indicate whether it is contemplated that the presolicitation notice will be followed by a conference and a formal solicitation. Detailed drawings, specifications, or plans shall not normally be included in a presolicitation notice. The presolicitation notice shall be synopsized in accordance with 1-1003. See 1-309 for solicitations for informational or planning purposes; 2-205.6 for pre-invitation notices in formally advertised procurements; and 2-207 and 3-504 for pre-bid and pre-proposal conferences, respectively.

(b) All of those responding to the presolicitation notice shall be advised of the details of any pending presolicitation conference. The presolicitation conference shall be conducted by procurement personnel, and attended by technical and legal personnel as appropriate. All prospective offerors attending the conference shall be furnished copies of the solicitation, unless they decline to participate in the procurement. If it is determined to proceed with the procurement without a conference, those responding to the presolicitation notice shall be furnished a formal solicitation, except those who decline to participate. In addition, a copy of the solicitation shall be furnished to any prospective offeror who requests one (but see 1-604 and 1-609.6).

(c) All prospective contractors shall be furnished identical information in connection with the proposed procurement. Care shall be taken to safeguard any information received in confidence. (See 1-1004.)

3-107 Offeror Response Time. When soliciting competitive proposals and the procurement is required to be synopsized in accordance with 1-1003.1, the contracting officer shall allow at least 30 days for receipt of proposals from the date of issuance of the solicitation.

(3) The Government shall neither make any final commitment nor authorize any work by the contractor pursuant to an order under a basic ordering agreement until prices have been established, unless the order establishes a monetary limitation on the obligation of the Government and either:

(i) the order is subject to provisions contained in the basic ordering agreement which set forth adequate procedures for arriving at prices as early in contract performance as practical, but in no event shall such procedures permit the price of the entire order to be established on a retroactive basis (however, incentive provisions consistent with this part are permitted); or

(ii) the need for the supplies or services is compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date and when they could not be furnished by that date if the contractor is not allowed to proceed with work until prices have been established. The circumstances listed in 3-202.2 are indicative of instances in which the contractor may be permitted to proceed with work prior to establishment of prices.

As a general rule, prices should be established prior to authorizing the contractor to begin work. However, where the contractor is allowed to begin work prior to pricing in accordance with this paragraph, the contractor and the contracting officer shall proceed with pricing as soon as practicable. The basic ordering agreement shall provide that failure to reach agreement on price in such circumstances will constitute a dispute subject to the procedures of the Disputes clause.

(4)(A) Each order issued under a basic ordering agreement shall cite the applicable negotiation authority and shall be subject to such reviews, approvals, determinations and findings (including those pertaining to types of contracts), and other requirements (including those pertaining to synopsis of the proposed procurement and contract awards) specified in this Regulation as would be applicable if the order were a contract entered into apart from the basic ordering agreement.

(B) When synopsis is required under 1-1003.1, orders shall not be issued until at least 30 days after either publication of the synopsis or issuance of a solicitation, as appropriate.

(5) A basic ordering agreement shall be modified only by a revision of the basic ordering agreement itself and shall not be modified or superseded by individual orders issued thereunder. To minimize modifications, revisions to ASPR involving changes in authorized contract clauses, utilized in basic ordering agreements shall provide appropriate direction with respect to any required modifications of basic ordering agreements; and, to the extent possible, modifications shall be required only in matters resulting from changes in statutes, or Executive Orders. Basic ordering agreements shall be reviewed at least annually, before the anniversary of their effective dates, and revised to conform with the current requirements of this Regulation. Modifications shall not have retroactive effect.

(6) The contracting officer issuing an order under a basic ordering agreement shall be responsible for assuring compliance with the provisions of (1) through (4) above.

Part 5—Solicitations of Proposals and Quotations

3-500 Scope of Part. This part applies to all negotiated acquisition except that described by Part 6 of this Section III.

3-501 Preparation of Request for Proposals or Request for Quotations.

(a) *General.* Forms used for requesting proposals or quotations on negotiated acquisition shall be as required by (b) and (c) below and by Section XVI, or if not required by such Section, as prescribed by Departmental regulations. Generally, requests for proposals and requests for quotations shall be in writing. However, in appropriate cases as prescribed in (d) below, proposals or quotations may be solicited orally, *provided* that the resulting definitive contract is prepared on the prescribed contract form for signature by both parties, except that in the acquisition of perishable subsistence, DPSC Form 300, Order for Subsistence, may be used. Solicitations shall contain the information necessary to enable a prospective offeror or quoter to prepare a proposal or quotation properly. All such information shall be set forth in full in the solicitation rather than incorporated by reference, except that:

(1) Standard and DD ASPR Forms consisting of general provisions (contract clauses) prescribed by Section VII may be incorporated by reference to the form number, form name, and edition date; *provided*, the instructions for use of the form do not prohibit the incorporation of the form by reference; and

(2) other contract clauses set forth in Section VII may be incorporated by reference if authorized by 7-001.

No other contract clauses shall be incorporated by reference. Written requests shall be as complete as possible and normally should contain the information in (b) and (c) below, as appropriate, if applicable to the acquisitions involved.

(b) *Contract Forms and Uniform Contract Format.*

(1) This paragraph (b) applies to all negotiated acquisitions except:

a. small purchases and other simplified purchase agreements;
b. basic agreements;
c. pre-invitation notices;
d. the first step of two-step formal advertising;
e. construction and architect-engineer contracts;
f. ship construction including shipbuilding, conversion and repair,
g. acquisitions for which special contract forms inconsistent herewith are prescribed by Part 5 of Section XVI; and
h. acquisitions of subsistence.

Those acquisitions enumerated *f* through *h* need not be in the Uniform Contract Format, but must contain all applicable items. The applicability of this paragraph to acquisitions outside the United States, its possessions and Puerto Rico is optional.

(2) Requests for proposals shall be prepared on Standard Form 33, Solicitation, Offer and Award (see 16-102.3), or on forms prescribed by Departmental regulations; requests for quotations shall be prepared on Standard Form 18, Request for Quotations (see 16-102.1) or on forms prescribed by Departmental regulations. Letter RFPs and RFQs may also be used provided they otherwise comply with the requirements of this regulation.

number of suppliers have been selected for additional discussion (see 3-805), the contracting officer, upon determination that a proposal is unacceptable, shall provide prompt notice of that fact to the source submitting the proposal. Such notice need not be given where the proposed contract is to be awarded within a few days and notice pursuant to 3-508.3 below would suffice. In addition to stating that the proposal has been determined unacceptable, notice to the offeror shall indicate, in general terms, the basis for such determination and shall advise that, since further negotiation with him concerning this procurement is not contemplated, a revision of his proposal will not be considered.

(b) In any procurement involving a small business set-aside (excluding those processed in accordance with 3-600), upon final completion of negotiations and determinations of responsibility but prior to award, the contracting officer shall inform each unsuccessful offeror by written notice of the name and location of the apparently successful offeror(s). Each apparently unsuccessful offeror should be advised that any subsequent revisions of his proposal will not be considered, since no further negotiations are contemplated, and no further contact with the contracting officer need be made regarding the instant procurement unless the unsuccessful offeror has grounds to challenge the small business size status of the apparently successful offeror(s). This notification procedure shall not apply to procurements exempt by 3-508.1 above or to any urgent procurement action which the contracting officer determines in writing must be awarded without delay to protect the public interest. The contracting officer's determination shall be placed in the contract file.

3-508.3 *Post-Award Notice to Offerors.*

(a) Promptly after making all awards in any procurement in excess of $25,000, the contracting officer shall give written notice to the unsuccessful offerors that their proposals were not accepted, except that such notice need not be given where notice has been provided pursuant to 3-508.2(a). Such notice shall include:

(i) the number of prospective contractors solicited;
(ii) the number of proposals received;
(iii) the name and address of each offeror receiving an award;
(iv) the items, quantities, and unit prices of each award; *provided* that, where the number of items or other factors makes the listing of unit prices impracticable, only the total contract price need be furnished; and
(v) in general terms, the reasons why the offeror's proposal was not accepted, except where the price information in (iv) above readily reveals such reason, but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(b) In procurements of $25,000 or less and subject to the exceptions in 3-508.1 above, the information described in (a) above shall be furnished to unsuccessful offerors upon request.

(c) Such information as is authorized to be released to unsuccessful offerors pursuant to (a)(i) through (iv) above may, upon his request, be provided to the successful offeror.

3-508.4 *Debriefing of Unsuccessful Offerors.*

(a) Offerors under negotiated procurements generally expend substantial time and effort in preparing their proposals. Therefore, those offerors not selected for contract award have a significant interest in learning why they were unsuccessful. Debriefing is the process by which purchasing offices provide unsuccessful offerors with the Government's evaluation of the significant factors contained in their proposals, citing determinative deficiencies and weaknesses. An adequate debriefing can provide the basis upon which offerors may improve future proposals and, in addition, give assurance that the selection has been handled fairly, in accordance with applicable regulations and the provisions of the solicitation.

(b) When a contract is awarded on some basis other than price, unsuccessful offerors shall be debriefed upon their written request, and furnished the basis for the selection decision and contract award. Debriefings shall be provided at the earliest feasible time after contract award. They shall be conducted by purchasing office officials familiar with the rationale for the selection decision and contract award.

(c) It is essential that debriefings be conducted in a scrupulously fair, objective and impartial manner. Debriefing information given offerors shall be factual and consistent with the evaluation. While offerors should be informed of the areas in which their technical or management proposals were weak or deficient, point-by-point comparisons with the technical or management proposals of the other offerors shall not be made. Furthermore, debriefings shall not reveal: (i) trade secrets; (ii) privileged or confidential manufacturing processes and techniques; (iii) commercial and financial information which is privileged or confidential, including cost breakdowns, profit, overhead rates, and similar information; or (iv) the relative merits or technical standing of competitors or the evaluation scoring.

(d) A summary of the debriefing shall be made a part of the contract file.

3-508.5 *Classified Information.* Classified information shall be furnished only in accordance with regulations governing classified information.

3-509 Protests Against Award. Protests against awards of negotiated procurements shall be treated substantially in accordance with 2-407.8.

3-510 Synopsis of Contract Awards. See 1-1005.1.

(i) When the acquisition is not reserved, quotations based on supplying foreign end products shall be evaluated in accordance with the procedures in 6-104.4.

3-604 Competition and Price Reasonableness.

3-604.1 *Purchases Not in Excess of $1,000.* Small purchases not exceeding $1,000 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchases not in excess of $1,000 may more than offset potential savings in detecting instances of overpricing; therefore, action to verify the reasonableness of the price need be taken only when the buyer or contracting officer suspects or has information (e.g., comparison to previous price paid, personal knowledge of the item involved) to indicate that the price may not be reasonable. In some cases, e.g., first buy of new items, action to verify may also be required to determine whether or not the price is reasonable.

3-604.2 *Purchases in Excess of $2,000.*

(a) Solicitation of quotations from a reasonable number of qualified sources of supply shall be made to assure that the procurement is to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase. Generally, solicitation shall be limited to three suppliers and, to the maximum extent possible, shall be restricted to the local trade area of either the purchasing or the receiving activity. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. Quotations should generally be solicited orally except for construction contracts in excess of $2,000. Written solicitations should be used when (i) the suppliers are located outside the local area, (ii) special specifications are involved, (iii) a large number of line items are included in a single proposed procurement, or (iv) obtaining oral quotations is not considered economical or possible. See also Section I, Part 10, and 3-107 for procedures on synopsis and response time for procurement actions of $10,000 or more.

(b) Reasonableness of a proposed price should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file setting forth the basis of the determination of fair and reasonable price. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being procured, or any other means. Written records of solicitation may be limited to notes or abstracts to show vendor or vendors contacted, prices, delivery, and any other informal historical data. If a separate form is used for documentation of price reasonableness, DD Form 1784, Small Purchase Pricing Memorandum, shall be used (see 16-813). If this form is not used, the price reasonableness statement shall be based on one or more of the criteria set forth on the form. In any case, the contracting officer should gain as much knowledge as practicable of the physical and material characteristics and intended use of the item to be purchased. When only one source is solicited, an additional notation must be made to explain the absence of competition, except for procurement of utility services available only from one source or of educational services from nonprofit institutions. Notification to unsuccessful suppliers shall be given only if requested.

(c) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity, which either unreasonably exceeds stated quantity requirements, or results in an unreasonable price for the quantities required. If practicable before placing the order the requiring activity should be informed in such cases of all facts regarding the quotation and requested to confirm or alter its requirement for the item or items under consideration. The file shall be documented to support the final action taken.

3-605 Blanket Purchase Agreement (BPA).

3-605.1 *General.* A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply (see 12-302, 12-602.1 and 12-1001). Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

3-605.2 *Limitation on Use.*

(a) A blanket purchase agreement may not be used when a call exceeds $10,000, except that BPA calls up to $25,000 may be placed by Inventory Control Points and calls for subsistence are unlimited as to dollar value.

(b) When synopsis is required under 1-1003.1, calls of $10,000 and above shall not be issued until 30 days after either publication of the synopsis or issuance of a solicitation, as appropriate.

3-605.3 *Establishment of Blanket Purchase Agreements.*

(a) *Alternate Sources.* To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under such agreements.

(b) *Form.*

(1) Except as provided in (2) below, blanket purchase agreements shall be prepared and issued on DD Form 1155 (Order for Supplies or Services/Request for Quotations). Either the "General Provisions," DD Form 1155r, or the "Reverse of Order for Supplies or Services/Request for Quotations—Foreign," DD Form 1155r-1, as applicable, shall be used. Other applicable provisions of the blanket purchase agreement shall be set forth on the Standard Form 36 (Continuation Sheet) or on a blank sheet of paper. Clauses authorized in 3-608.2(b) which are mandatory for use in purchases over $10,000 shall be included in blanket purchase agreements that permit the placement of individual calls valued at more than $10,000. Additionally, the following provisions may be applicable:

(i) the Contract Work Hours and Safety Standards Act—Overtime Compensation clause in 7-103.16(a) shall be added unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(ii) where the agreement is for the intended purchase of services covered by the Service Contract Act of 1965, as amended, the clause in 7-1903.41(a) or (b) shall be substituted for Clause 15 of the General Provisions and the procedures in 12-1005 complied with, unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(iii) where the agreement is for the intended purchase of supplies, the Walsh-Healey Public Contracts Act clause in 7-103.17 shall be added, unless the agreement limits the aggregate total of orders to be placed thereunder to $10,000; and

(iv) where the agreement is for the intended purchase of supplies, the applicable equal opportunity clause in 7-103.18 shall be added.

(2) Blanket purchase agreements issued by the Defense Personnel Support Center may be prepared on its form "Order for Subsistence."

(c) *Numbering.* Enter the Procurement Instrument Identification (PII) number as prescribed in Section XX, Part 2.

(d) *Accounting Data.* Blanket purchase agreements need not cite any accounting data so that purchases utilizing different appropriation data may be made under the same agreement.

(e) *Negotiation Authority.* The Schedule of each agreement shall be annotated as follows:

> The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), or 10 U.S.C. 2304(a)(17).

If for the purchase of subsistence:

> The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C. 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), 10 U.S.C. 2304(a)(9), or 10 U.S.C. 2304(a)(17).

This annotation shall not be duplicated on forms used to document individual calls, although the specific authority for the call may be cited therein.

Part 11–Acquisition of Automatic Data Processing Equipment

3-1100 Contractor Acquisition of Automatic Data Processing Equipment (ADPE).

3-1100.1 *General.*

(a) This paragraph 3-1100 is applicable to all ADPE, as defined in 4-1102.1, except as components of end items to be delivered to the Government.

(b) If ADPE is purchased for the account of the Government or if title to the ADPE will pass to the Government, the acquisition must be approved as required by Section XIII.

3-1100.2 *Review of Decision To Lease.*

(a) If the total cost of leasing the ADPE is to be allocated to one or more Government contracts requiring the negotiation or determination of costs, the contracting officer shall, prior to approval of the proposed lease agreement:

(i) require the contractor to submit a request for leasing ADPE in writing. Such request shall be in accordance with 3-1100.3;

(ii) survey the Defense Logistics Agency (HQ DLA, Attn: DARO) for availability of excess ADPE which could be issued as GFP (see 13-301) and which would fulfill the contractor's requirements (including timely availability and technical compatibility);

(iii) determine whether, under 15-205.48, leasing is the appropriate method of acquisition from the Government's standpoint;

(iv) consider whether the ADPE should be leased under a Federal Supply Schedule Contract (see Section V, Part 9);

(v) if the rental of ADPE through a commercial contract is authorized, require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase or other benefits earned through rental payments; and

(vi) obtain approval of the ADPE leasing arrangement as provided by 4-1104.13(a)(2).

(b) If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year and 50 percent or more of the total cost is to be allocated to Government contracts requiring the negotiation or determination of costs, the administrative contracting officer should arrange for:

(i) an initial review and an annual review thereafter of the contractor's ADPE system for the purpose of evaluating, under 15-205.48, his existing ADPE capability and the need to continue leasing, irrespective of whether the term of the lease was renewed or otherwise ex-

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tended by the contractor (see 3–1100.3 for documentation required; and

(ii) submission by the contractor to the ACO of any proposed lease of a new ADPE system and any proposed major changes to an existing system, for advance determination of the validity of the stated requirement and the reasonableness of leasing and resulting cost. (See 3–1100.3 for documentation required.)

(A "*major change*" is any addition or substitution of ADPE which will have an annual cost in excess of $50,000.) After the initial review and after each annual review, and also after review of any proposed lease of a new ADPE system or major change, the ACO should either enter into an advance understanding with the contractor pursuant to 15–107, to provide a basis for concurrence in the proposed lease, or in the alternative notify the contractor of the Government's nonconcurrence and of consequent cost disallowance contemplated under 15–205.48. The Government shall approve or disapprove submissions of contractor data in a timely manner.

(c) In implementing the above, technical ADP assistance will be provided as necessary to the contracting officer by the Department having the preponderance of interest with the contractor.

3–1100.3 *Contractor Documentation for ADPE Acquisition.*

The documentation specified by this section is required only when the total cost of leasing is to be reimbursed under one or more Government contracts or the total annual cost of leasing exceeds $500,000 and 50 percent or more is charged to Government contracts. The documentation is acceptable in the same format used by the contractor to make ADPE decisions. When the documentation has previously been submitted to DCAA, a copy of that submission may be used or, if it is voluminous, reference to the submission is acceptable. Documentation previously submitted does not have to be resubmitted; only updated as necessary. The contractor's request for approval of a proposed lease agreement or to justify his leasing decisions under 15–205.48(d)(3) shall, as a minimum, consist of the following supporting data, prepared prior to acquisition.

(1) Inventory and analysis of utilization of existing installed ADPE:

a. List each computer component by manufacturer, type, and model number.

b. Give location of ADP system.

c. Furnish acceptance date(s) by component.

d. Give type of ownership, i.e., leased, purchased, Government-furnished, lease back.

e. Furnish operational use by component for the past 12 calendar months. Also show nonproductive use separated into categories: preventive maintenance and remedial maintenance for the Central Processing Unit components which affect the ADPE system for the same period.

f. Identify and describe each data system supported; indicate computer time for each system and the related contract(s) or task(s) involved.

counseling as to the selection of the media for insertion of the advertisement; contacting the media in the interest of the Government agency concerned; placing of insertion orders; selection and ordering of typography; copywriting; and preparation of rough layouts.

(c) *Placing of Advertisements in Noncommissionable Media.* Some media do not grant advertising agencies a commission or discount from the standard card or other published rates, with the result that the Government activity can obtain the same rate as the advertising agency. If the advertising agency agrees to place advertisements in noncommissionable media as a no cost service to the Government, the basic ordering agreement shall so provide. If the advertising agency will not agree to place these advertisements at no cost to the Government, the agreement shall provide that the Government may place orders for advertisements directly with such media; or the agreement shall set forth an amount which the Government will pay the advertising agency for its services in placing the advertisements.

(d) *Art Work, Supplies and Incidentals.* The basic ordering agreement also may provide for the furnishing of art work, supplies and incidentals, including brochures and pamphlets but excluding the printing thereof, by the advertising agency upon the Government's priced or unpriced order. "Incidentals" may include expense for phone calls, telegrams, and postage incurred by the agency on behalf of the Government.

4–503.7 *Limitations.* No advertisement of a proposed procurement in a newspaper shall be published and printed in the District of Columbia unless the supplies or services are to be furnished for use, or the labor is to be performed, in the District of Columbia or in the adjoining counties of Maryland or Virginia. Paid advertisements of proposed procurements shall be placed only when it is anticipated that effective competition cannot be obtained otherwise. Paid advertisements to recruit civilian personnel shall be subject to the limitations in Section 332–1–9 of the Federal Personnel Manual.

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Part 9—Unsolicited Proposals

4–900 Scope of Part. This Part sets forth policies and procedures concerning the receipt, evaluation, and acceptance of unsolicited proposals.

4–901 General. The unsolicited proposal is a valuable means by which unique or innovative methods or approaches which have originated or developed outside the Government can be made available to Government agencies for use in the accomplishment of their missions. It is offered in the hope that the Government will enter into a contract with the offeror for (i) research on or development of, the methods, approaches, or ideas it contains, or (ii) the conduct of the activity or services or the delivery of the items it proposes. It should not be merely an advance proposal for a specific agency requirement which would normally be procured by competitive methods. An unsolicited proposal should be prepared independent of Government supervision. It often represents a substantial investment of time and effort by the offeror. It should present the proposed work in sufficient detail to allow a determination that Government support could be worthwhile and that the proposed work could enhance, benefit, and/or provide valuable input to an agency's research and development mission or to some other area of agency responsibility.

4–902 Policy. It is the policy of the Government to foster and encourage the submission of unsolicited proposals.

4–903 Agency Program Direction and Operation. Each agency shall adopt and publish policies and procedures which will encourage the submission of unsolicited proposals relating to the agency's mission. Such policies and procedures shall be consistent with the requirements of this Part 9. They shall be developed with an objective to eliminate restraints which discourage the generation and acceptance of innovative ideas through unsolicited proposals.

4–904 Definitions. As used in this Part 9, the following terms have the meanings stated.

(a) "*Unsolicited proposal*" means a proposal that is submitted to a Department on the initiative of the submitter for the purpose of obtaining a contract with the United States Government, and which is not in response to a formal or informal request (other than a Departmental request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interest to the Department). Advertising material, commercial product offerings, contributions, or technical correspondence as defined in paragraphs (b) through (e) below which are submitted to an agency shall not be considered to constitute unsolicited proposals within the intent of this Part 9.

(b) "*Advertising material*" means material designed to acquaint the Government with a prospective contractor's present off-the-shelf products or potential capabilities, or designed to determine the Government's interest in buying such products.

(c) "*Commercial product offering*" means offers of standard commercial products usually sold in substantial quantities to the general public and which the vendor wishes to see introduced in the Government's supply system as an alternate or replacement for an existing supply item.

(d) "*Contribution*" means concepts, suggestions, or merely ideas presented to the Government for its use, and with no indication on the part of the offeror that

4–908 Agency/Department Point of Contact. Each agency shall establish procedures within the agency to coordinate the receipt and handling of unsolicited proposals. Since the early involvement of procurement personnel is essential to the proper processing, evaluation, and possible contract award, agencies should consider designating their procurement activities for this purpose.

4–909 Receipt, Review, and Evaluation. Each agency shall establish uniform procedures that provide for the coordinated control of the receipt, evaluation, and disposition of proposals. Because of the sensitivity of the evaluation process, particular attention should be devoted to the conduct of evaluations. The procedures shall be consistent with the provisions of 4–909 through 4–913. Agency procedures shall also address reproduction (duplicating) and disposition of proposal material, particularly data which the offeror has identified as subject to duplication, use, and disclosure restrictions (see 4–913(a)).

(a) Unsolicited proposals shall be acknowledged as soon as possible by the office which has been assigned the coordination responsibility (see 4–908), and processed in an expeditious manner.

(b) Prior to making a comprehensive evaluation of an unsolicited proposal, the coordinating office (see 4–908) shall determine that the document:

(i) contains sufficient technical and cost information to permit a meaningful evaluation; and

(ii) has been approved by a responsible official or authorized representative of the organization submitting the proposal, or a person authorized to contractually obligate the organization.

(c) If the document does not meet the requirements in paragraph (b) above, the offeror shall be given the opportunity to provide the required data. A comprehensive evaluation of an unsolicited proposal need not be made if the proposal is not within the purview of the mission of the agency (also see 4–912(a)). In such cases, the submitter shall be furnished a prompt reply, stating how the document is being interpreted by the agency, the reason(s) for not evaluating it, and the disposition or intended disposition of the material submitted. The agency shall not deny reconsideration of a timely and appropriately revised or supplemented proposal which is responsive to such an initial agency determination.

(d) Comprehensive evaluations shall be coordinated by the organizational entity designated in accordance with 4–908. Each unsolicited proposal that is circulated for a comprehensive evaluation within the agency shall have attached or imprinted a legend identifying it as an unsolicited proposal, and stating that it shall be used only for purposes of evaluation (see 4–913(c)). In evaluating an unsolicited proposal, agency personnel shall consider in addition to any other criteria, the following:

(i) unique, innovative, or meritorious methods, approaches, or ideas which have originated with or are assembled together by the offeror that are contained in the proposed effort or activity;

(ii) overall scientific, technical, or socio-economic merits of the proposed effort or activity;

(iii) potential contribution which the proposed effort is expected to make to the agency's specific mission, if pursued at this time;

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(iv) capabilities, related experience, facilities, or techniques, or unique combinations thereof which the offeror possesses and offers, and which are considered to be integral factors for achieving the scientific, technical, or socio-economic objective(s) of the proposal; and

(v) qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal.

(c) Upon completion of the comprehensive evaluation of an unsolicited proposal, agency evaluation personnel shall, in accordance with agency procedures, notify the coordinating office (see 4-908) of their conclusions together with recommendations for further action.

4-910 Method of Procurement.

(a) A favorable comprehensive evaluation of an unsolicited proposal is not, in itself, sufficient justification for negotiating on a noncompetitive basis with the offeror. When a document qualifies as an unsolicited proposal (see 4-904(a) and 4-909(b)) but the substance (i) is available to the Government without restriction from another source, or (ii) closely resembles that of a pending competitive solicitation, or (iii) is otherwise not sufficiently unique to justify acceptance (see 4-909(b)), the unsolicited proposal shall not be acceptable. When procurement is intended and competition is feasible, the proposal shall be returned to the offeror together with the reasons for the return (see 4-909(e)).

(b)(1) Except as provided in (2) and (3) below, a negotiated noncompetitive procurement is permissible when an unsolicited proposal demonstrates a unique or innovative research concept, cannot be synopsized without disclosing the originality of thought or innovativeness of the proposed research, and has received a favorable technical evaluation, unless it is determined that the substance thereof is available to the Government without restriction from another source, or a competitive procurement is otherwise appropriate. The agency technical office sponsoring the procurement shall support its recommendation with a justification for noncompetitive procurement. The justification shall be based on a comprehensive evaluation of the proposal. The justification shall include the facts and circumstances that operate to preclude competition and that support the recommended noncompetitive action. Consideration shall include the evaluation factors listed in 4-909(d).

(2) When so limited by an applicable DoD Appropriation Act, contracts for studies, analyses, or consulting services (see 22-1101(a) and (b)), may be entered into on the basis of an unsolicited proposal only when the Head of the Contracting Activity or his designee (no lower than the Chief of the Contracting Office) determines that:

(i) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work; or

(ii) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

(iii) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support;

except that this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense who has been confirmed by the Senate, determines that the award of such contract is in the interest of national defense.

(3) Negotiations may not commence for the award of a contract that results from an unsolicited proposal with a value in excess of $1 million in fiscal year 1984, $500,000 in fiscal year 1985, and $300,000 in fiscal year 1986 and each year thereafter unless the head of the procuring activity or his deputy has approved the authority to enter into such contract (this authority is not delegable). This paragraph does not apply to procurements made under the authority of Section 8(a) of the Small Business Act; the Small Business Innovation Development Act; and procurements for property, supplies or services which are of such unusual and compelling urgency that the Government would be seriously injured if the provisions of this paragraph were complied with.

(c) When it is determined that the subject matter of an unsolicited proposal is acceptable for award on a noncompetitive basis, the unsolicited proposal will serve as the basis for negotiation.

4-911 Prohibitions. Agencies shall not permit all or any part of an unsolicited proposal to be used as the basis, or portion of, a solicitation, or in negotiation with other firms unless the offeror is notified of and agrees to the intended use. However, nothing herein precludes the Government from using any data, concept or idea which it could have used had the unsolicited proposal not been submitted. With respect to data (see 4-913(a)) tendered in an unsolicited proposal, disclosure of information which concerns or relates to trade secrets, processes, operations, style of work, or apparatus, and other matters may result in the imposition of a criminal penalty pursuant to the provisions of 18 U.S.C. 1905.

4-912 Interagency Coordination. When it is determined that a meritorious unsolicited proposal is not related to the mission of the recipient agency or may be of interest to other agencies in addition to the recipient agency, the recipient agency may identify for the offeror other agencies whose missions bear a relationship to the subject matter of the unsolicited proposal.

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(i) equipment performance requirements;
(ii) equipment and software plug-to-plug compatible (functionally equivalent) purchase descriptions;
(iii) brand name or equal purchase description (see 1-1206.2); or
(iv) specific make and model brand name only purchase description.
(This type of purchase description limits competition to the extent that its use shall be deemed a noncompetitive procurement and must be justified (see 4-1104.1(a)(11)).)

4-1104.4 *GSA Nonmandatory IRM/ADP Schedule Contracts.* FSS Schedule contracts and IRM/ADP Schedule contracts are provided by the Federal Supply Service (FSS) and the Office of Information Resources Management (IRM), GSA, respectively.

(a) Use of GSA ADP Schedule Contracts. A large number of items of ADPE, software, and maintenance services are available under nonmandatory IRM/ADP Schedule contracts, subject to the following:

(1) When a nonmandatory schedule contract is used, a specific Delegation of Procurement Authority from GSA is not required even though the order is for a noncompetitive requirement; however, the existence of nonmandatory ADP Schedule contracts shall not waive the requirement for maximum practicable competition in acquiring ADPE, software or maintenance services. Requirements shall be synopsized in accordance with Section 1, Part 10 (see 4-1104.6). Also the availability of items under an ADP Schedule contract shall not detract from acquiring the items, including peripheral equipment or items for augmenting an existing system from a number of different sources if this action is in the best interest of the Government. Suitable equipment must be considered whether or not this equipment is on an ADP Schedule contract. All schedule contracts that might satisfy the requirement shall be considered; or, the acquiring activity may choose to prepare a solicitation to secure goods or services at lower overall costs to the Government. Costs of the contracting process should be considered. If ADPE, software or maintenance services are acquired under an ADP Schedule at other than the lowest delivered price available for identical or similar items under any other ADP Schedule contract, DoD Components shall justify the action and retain the justification and supporting data in the contract file or submit them to GSA if a specific delegation of procurement authority is required (see 4-1104.1(a)(11)). The following are examples of factors that may be used in support of justifications:

(i) Special features of one item, not provided by comparable items, are required in effective program performance.

(ii) An actual need exists for special characteristics to accomplish identified tasks.
(iii) It is essential that the item selected be compatible with items or systems already being used.
(iv) Time of delivery in terms of actual need cannot be met by a contractor offering a lower price.
(v) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points, will produce savings in the long run which are greater than the difference in prices.

(2) Initial acquisition of ADPE. Whether for purchase, lease or rental, orders for ADPE may be placed, *Provided* that:

(i) the purchase price of the items covered (even though they are rented or leased) does not exceed $300,000; ; and
(ii) the intent to place an order with a value of $10,000 or more is synopsized in the CBD in accordance with 1-1003 before placing the order and the contract file is documented with the results of the synopsis (see 3-102). If a written response is received from a responsible source(s) that expresses a desire to compete on the requirement, the file also shall be documented with evidence that use of the selected ADP Schedule contract, including the method of financing (e.g., purchase, lease) is the lowest overall cost alternative, price and other factors considered. This process may require the issuance of a formal solicitation.

(3) Continued lease or rental of installed ADPE and software. IRM/ADP Schedule contracts may be used for the continued lease or rental of installed equipment and software, *Provided* that:

(i) the intent to place a renewal order is synopsized in accordance with 1-1003 prior to placing the order if the value of the order is $10,000 or more; and

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(ii) a DPA is obtained before issuing the annual renewal if the ADP Schedule purchase price exceeds $300,000 and the synopsis results indicate that equipment is available from a source other than the schedule contract. (If the original requirement was evaluated and priced on a systems life basis (i.e., if the price of successive renewals was considered as an evaluated cost in the original acquisition selection), then renewals of installed equipment under an extended rental plan during the originally planned system life do not require synopsizing or a DPA from GSA.)

(4) Conversion from lease to purchase of installed ADPE. A specific delegation of procurement authority must be obtained from GSA before issuing an order to purchase ADPE with a net value of more than $300,000 when identical; i.e., specific make and model or suitable substitute equipment is available from a source other than the schedule contractor. Net value means purchase price less accrued purchase credits and/or discounts. Requirements shall be synopsized in accordance with 1-1003 if the net value of the purchase option is $10,000 or more.

(5) Acquisition of software and maintenance services. Orders may be issued for these services, *Provided* that the intent to place an order with an estimated value of $10,000 or more is synopsized in the CBD in accordance with 1-1003, and the contract file is documented with the results of the synopsis (see 3-102 and 3-410.2(c)(4)(B)). The contract file documentation must support use of the Schedule contract as being in the best interest of the Government.

(b) Use of ADP Requirements Contracts. GSA makes selected ADPE and software available through requirements contracts. When ADPE and software which satisfy requirements are available from GSA requirements contracts, this source shall be the primary source of supply in accordance with the provisions of the contracts. Copies of the contracts are distributed to recipients of the IRM/ADP Schedule for FSC Group 70, Part 1. Additional copies are available from the General Services Administration (8BRC), Building 41, Denver Federal Center, Denver, Colorado 80225. Some of these requirements contracts specify that GSA is responsible for the allocation of ADPE or software. In these cases, authorization shall be obtained from GSA (CDP), Washington, DC 20405, before placing an order. ADPE or software which is functionally similar to that on a requirements contract shall not be acquired from another source until the activity (i) documents the contract file as to why the requirements contract could not be used, and (ii) obtains a delegation of procurement authority from GSA, unless the contract falls within the exceptions noted under 4-1103.1(b)..

4-1104.5 *Reserved.*

4-1104.6 *Publicizing Contract Actions.*

(a) To ensure that appropriate competition is obtained, synopses of proposed agency contracts for ADPE, software, and maintenance services shall be publicized in the Commerce Business Daily (CBD) in accordance with the provisions of Section I, Part 10. A requirement which may result in an order against an IRM/ADP Schedule contract shall be synopsized in accordance with 4-1104.4. As a minimum, the synopsis shall include the description of the item(s) or services required, quantity, delivery date and location, period of lease/rental or performance, if applicable, and any other information to assist vendors in responding to the synopsis. The synopsis shall indicate that no contract award will be made on the basis of offers/proposals or other information received in response to the notice since the synopsis of intent to place a delivery order against a schedule contract cannot be considered a request for offers/proposals (see 1-1003.9(b)(1)). If, however, the only responses to a CBD notice of intent to place such an order are from vendors offering use of their schedule contracts and technical acceptability can be established by examination of contractor literature, then the contracting officer may place a delivery order in accordance with 4-1104.4(a) and 5-106 (but see 4-1104.6(b)). Publication of contract award information in the CBD, as set forth in 1-1005, is not required when an order is placed against any GSA ADP Schedule contract.

(b) The schedule order synopsis technique provides DoD Components with both the GSA negotiated schedule prices (derived from discounting prices in the competitive commercial marketplace) and additional product and cost information as might be submitted by prospective offerors in response to the CBD notification. It is critical that the synopsis process, if used to determine the feasibility of placing a delivery order against an ADP Schedule contract, elicit sufficient information for the contracting officer to determine the need to prepare a formal solicitation. If responses indicate that soliciting is desirable or required, the contracting officer:

(i) If solicitation is for the purpose of comparing proposals with ADP Schedule contracts, shall insure that terms and conditions of the solicitation are substantially the same as those contained in the Schedule contract(s) contemplated for use. The vendor(s) having the ADP Schedule contract(s) shall be included as an addressee(s) of the solicitation since it often is interested in furnishing required items by use of locally awarded contracts. This procedure will permit the vendor(s) to further discount Schedule prices since GSA does not consider this to be a

SECTION V

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

5–000 Scope of Section. This section deals with the procurement of supplies and services by the Departments from or through any other Government department or agency.

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Part 1—Procurement Under General Supply Schedule Contracts

5–100 Applicability. This part applies to procurement of supplies to be delivered or services to be performed in the contiguous United States including the satisfaction of overseas requirements when such requirements are routed to facilities in the contiguous states for supply action in accordance with instructions prescribed by the Departments. This part may be applied optionally in Alaska, Hawaii, and for overseas requirements when orders for such requirements are placed directly with a schedule contractor. Services and Defense Agencies may limit their respective overseas activities from exercising this option. This part does not apply in any event to items under the cognizance of the Defense Personnel Support Center or to items which are being purchased for resale.

5–101 Federal Supply Schedule Contracts. The Federal Supply Service, General Services Administration, establishes contracts for common use classes of supplies and services. These contracts are summarized in Federal Supply Schedules which list the contractors and the supplies or services that may be purchased from them. Purchasing offices shall order their requirements for supplies or services covered by these contracts as set forth in 5–102 and 5–103. Copies of the Federal Supply Schedules and the Federal Supply Schedule Check List (a quarterly publication indicating the status of all Federal Supply Schedules) are distributed by the General Services Administration to all purchasing activities. Copies of the Schedules and the Check List and the General Provisions of the Federal Supply Schedule contracts are available from the General Services Administration regional offices listed in 5–203. Requests for them should be submitted on GSA Form 457A, which is also available from the regional offices.

5–102 Mandatory Federal Supply Schedules.

5–102.1 *General.* Federal Supply Schedules under which procurement is mandatory on the Department of Defense are listed in 5–102.3. The pertinent contracts provide that for a definite period the contractor is obligated to deliver all supplies or services that may be ordered thereunder by Government agencies, subject to the stated minimum and maximum order limitations.

5–102.2 *Exceptions to Mandatory Use.*

(a) *Delivery Requirements.* When the delivery period stated in a Federal Supply Schedule does not meet the delivery requirement of the purchasing office, use of the Federal Supply Schedule is not mandatory. However, delivery dates shown in Federal Supply Schedules are based upon the average capability of the contractor and are usually conservative. In most instances, contractors are able to make delivery within a shorter period of time. Therefore, when delivery is required in a shorter time than the maximum shown in the Schedule, the contractor should be asked if the shorter delivery requirements can be met. If the contractor offers to meet the earlier delivery requirements, they should be specified in the order with a reference to such offer. If delivery is offered in a shorter time than the maximum stated in the Schedule, but later than that required by the purchase request, the contracting officer shall ascertain from the activity initiat-

For contractor-certified claims in excess of $50,000, the Contracting Officer must decide the claim within sixty (60) days or notify the Contractor of the date when the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) Interest on the amount found due on a contractor claim shall be paid from the date the Contracting Officer receives the claim, or from the date payment otherwise would be due, if such date is later, until the date of payment.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

(b) The following paragraph shall be substituted for paragraph (h) of the clause in (a) above as required under the circumstances described in 1-314(k)(2) and (3).

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or related to the contract, and comply with any decision of the Contracting Officer. (1980 JUN)

7-103.13 *Reserved.*

7-103.14 *Discounts.*

DISCOUNTS (1968 JUN)

In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when acceptance is at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of these points, or from the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

(End of clause)

When SF 33A is used, the above clause will be substituted for subparagraph (b) of clause 9, *Discounts* (see 16-101.1(ii)).

7-103.15 *Certain Communist Areas.* In accordance with 6-403, insert the following clause.

CERTAIN COMMUNIST AREAS (1980 FEB)

(a) Unless he first obtains the written approval of the Contracting Officer, the Contractor shall not acquire for use in the performance of this contract:

(i) any supplies or services originating from sources within the communist areas of North Korea, Vietnam, or Cuba;

(ii) any supplies, however processed, which are or were located in or transported from or through North Korea, Vietnam, or Cuba; or

(iii) ferrochromium or steel mill products in their basic shapes and forms which contain more than three percent (3%) chromium if they are produced outside of the United States and contain Rhodesian chromium.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts hereunder.

(End of clause)

7-103.16 *Contract Work Hours and Safety Standards Act—Overtime Compensation.*

(a) In accordance with 12-301 and 12-302, insert the following clause.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (1984 JAN)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of ten dollars ($10) for each calendar day for which such

individual was required or permitted to work in excess of eight (8) hours or in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractors shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

(b) The following clause shall be used, in addition to the clause in (a) above, when firefighters or fireguards are to be used.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION — FIREFIGHTERS AND FIREGUARDS (1974 APR)

A workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards under the following conditions:

(i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of eight (8) hours per day in a standby or on-call status; and

(ii) If the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and

(iii) *provided* that in determining the daily and weekly overtime requirements of the Act in any particular worksheet of any such employee whose established worksheet begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of eight (8) hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked.

(End of clause)

(c) Pursuant to 29 CFR 5.5(c), the following clause shall be used, in addition to the clause in (a) above, in any contract subject only to the Contract Work Hours and Safety Standards Act, and not to any other statute cited in 29 CFR 5.1:

PAYROLLS AND BASIC PAYROLL RECORDS (1984 JAN)

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(c) The Contractor shall insert paragraphs (a) through (c) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(End of clause)

7-103.17 *Walsh-Healey Public Contracts Act.*

WALSH-HEALEY PUBLIC CONTRACTS ACT (1958 JAN)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

(End of clause)

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Contractor hereby authorizes direct contact between the Government and such person(s) in resolving questions involving restrictive markings.

(d) The Contracting Officer may evaluate or verify the Contractor's procedures to determine their effectiveness. Upon request, a copy of such written procedures shall be furnished. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with (a) and (b) above.

(e)(1) If the Contractor fails to make a good faith effort to institute the procedures of (a) and (b) above, any limited rights markings on technical data delivered under this contract may be canceled or ignored by the Contracting Officer. The Contracting Officer shall give written notice to the Contractor of the action taken, including identification of the data on which markings have been canceled or ignored, and thereafter may use such data with unlimited rights.

(2) The Contracting Officer may give written notification to the Contractor of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, and state a period of time not less than thirty (30) days within which the Contractor shall complete corrective action. If corrective action is not completed within the specified time, restrictive markings on any technical data being prepared for delivery or delivered under this contract during that period shall be presumed to be unauthorized by the terms thereof and the Contracting Officer may cancel or ignore such markings if the Contractor is unable to substantiate the markings in accordance with the procedures of paragraph (d) of the "Rights in Technical Data and Computer Software" clause.

(f) Notwithstanding any provisions of this contract concerning inspection and acceptance, the acceptance by the Government of technical data with restrictive legends shall not be construed as a waiver of any rights accruing to the Government.

(g) This clause, including this paragraph (g), shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

(q) *Rights in Technical Data and Computer Software (SBIR Program).* The following clause shall be inserted in all contracts awarded under the Small Business Innovation Research Program (SBIR Program) when the contract requires that technical data or computer software be prepared, originated, produced, developed, generated or delivered. The clause shall be limited to use solely in SBIR Program contracts.

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (SBIR PROGRAM) (1984 JAN)

(a) *Definitions.*

(1) *Technical Data* means recorded information regardless of form or characteristic, of a scientific or technical nature. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information and computer software documentation. Technical data does not include

computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

(2) *Computer Software* - computer programs and computer data bases.

(3) *Computer Program* - a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

(4) *Computer Data Base* - a collection of data in a form capable of being processed and operated on by a computer.

(5) *Computer Software Documentation* - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(6) *Unlimited Rights* means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(7) *Limited Rights* means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (i) released or disclosed in whole or in part outside the Government, (ii) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (iii) used by a party other than the Government.

(8) *Restricted Rights* apply only to computer software, and include, as a minimum, the right to:

(i) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) copy computer programs for safekeeping (archives) or backup purposes; and

(iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of this contract.

(9) *License Rights* means rights to use, duplicate, or disclose technical data or computer software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. License Rights do not grant to the Government the right to have or permit others to use technical data or computer software for commercial purposes.

(b) *Government Rights.*

(1) For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under this contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have license rights in:

(i) technical data and computer software resulting directly from performance of experimental, developmental, or research work which was

specified as an element of performance in this contract or any subcontract hereunder.

(ii) computer software required to be originated or developed under this contract or any subcontract hereunder, or generated as a necessary part of performing this contract or any subcontract hereunder.

(iii) technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modification or processes have been, or are being, developed under this contract or any subcontract hereunder in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see (2)(i) below).

(iv) technical data or computer software prepared or required to be delivered under this contract or any subcontract hereunder and constituting corrections or changes to Government-furnished data or computer software.

(v) technical data pertaining to end-items, components or processes, prepared or required to be delivered under this contract or any subcontract hereunder for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and

function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.).

(vi) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes.

(vii) any other technical data prepared or required to be delivered under this contract or any subocntract hereunder, other than data furnished with limited rights pursuant to subparagraph (b)(2)(i) below.

License Rights shall be effective with respect to the technical data identified in (1)(i), (iii), (iv), (v), (vi), and (vii) above only if each piece of data is marked with the License Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered, the name of the Contractor and any subcontractor by whom the data was generated, and the period in which the data is subject to limited rights, and shall be effective with respect to the computer software identified in (1)(i), (ii) and (iv) above only if each unit of software is marked with an abbreviated License Rights Legend reciting that the use, duplication, or disclosure of the software is subject to the same license rights restrictions included in the same contract (identified by number) with the same Contractor (identified by name):

LICENSE RIGHTS LEGEND

Contract No. _____

Contractor or Subcontractor _____

For a period of two (2) years after the delivery and acceptance of the last deliverable item under this contract, this technical data shall not, without the written permission of the above Contractor, be either (a) used, released or disclosed in whole or in part outside the Government, (b) used in whole or in part

by the Government for manufacture, or (c) used by a party other than the Government. After the expiration of the two (2) year period, the Government may use, duplicate, or disclose the data, in whole or in part and in any manner, for Government purposes only, and may have or permit others to do so for Government purposes only. All rights to use or duplicate the data in whole or in part for commercial purposes are retained by the Contractor, and others to whom this data may be disclosed agree to abide by this commercial purposes limitation. The Government assumes no liability for use or disclosure of the data by others for commercial purposes. This legend shall be included on any reproduction of this data, in whole or in part.

(2) *Limited Rights*. The Government shall have limited rights in:

(i) unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (iv), (v), and (vi) above. The word *unpublished*, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited Rights shall be effective with respect to the technical data mentioned in (2)(i) above only if each piece of data is marked with the Limited Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered and the name of the Contractor and any subcontractor by whom the data was generated:

LIMITED RIGHTS LEGEND

Contract No. _____

Contractor or subcontractor: _____

This technical data shall not, without the written permission of the above Contractor, be either (a) used, released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or (c) used by a party other than the Government. This legend shall be included on any reproduction of this data, in whole or in part.

(3) *Restricted Rights.* The Government shall have restricted rights in privately developed computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *Provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights in (a)(8)(i) through (iv). Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____(Name of Contractor).

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the Contractor has previously delivered to the Government without restriction. The license, limited or restricted rights provided for by this paragraph shall not impair

the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) *Copyright.*

(1) The Contractor is hereby granted permission to assert or establish claim to or ownership of copyright in any work of authorship prepared for or acquired by the Government under this contract. In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, irrevocable, paid-up license throughout the world of the scope set forth below, under any such copyright to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. All published works for which claim to or ownership of copyright has been asserted or established shall contain an appropriate credit line identifying Government support. With respect to technical data and computer software in which the Government has license rights, the license shall be of the same scope as the rights defined in (a)(9). With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights defined in (a)(7). With respect to computer software which the parties have agreed in accordance with (b)(3) will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also

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include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license set forth in the Rights in Technical Data and Computer Software Clause in Contract No. _____ with _____(Name of Contractor).

(d) *Removal of Unauthorized Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder, if:

(i) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case the Government shall give written notice to the Contractor of the action taken.

(e) *Omitted Markings.* Technical data and computer software delivered to the Government without any of the legends or markings specified in paragraph (b) above or that are not copyrighted shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the use, duplication, or disclosure of such data and software. However, to the extent the data and software have not been disclosed without restriction outside the Government, the Contractor may request, within six (6) months after delivery of such data and software, permission to place restrictive legends on such data and software at the Contractor's expense and the Government may so permit if the Contractor:

(i) demonstrates that the omission of the restrictive legends was inadvertent;

(ii) establishes pursuant to paragraph (d) above that the use of the markings is authorized; and

(iii) acknowledges that the Government has no liability with respect to the use or disclosure of such data and software that was received prior to the addition of the restrictive markings.

(f) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(g) *Acquisition of Data and Computer Software from Subcontractor.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier Contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

7-104.10 ***Ground and Flight Risk.*** **In accordance with 10-404, insert the following clause.**

GROUND AND FLIGHT RISK (1975 OCT)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft "in the open", during "operation", and in "flight", as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means—

(A) aircraft (including (I) complete aircraft, and (II) aircarft in the course of being manufactured, disassembled, or reassembled; *provided*, that an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government); and

(B) aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract;

including all property installed therein, or in the process of installation, or temporarily removed from such aircraft; *provided*, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "in the open" means located wholly outside of buildings on the Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in Contractor's possession, care, custody, or control.

(iii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the .....* With respect to land based aircraft "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises, with respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises; with respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and with respect to vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises and continue until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises, *provided*, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by.....* in writing.

(iv) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the .....,* and any other place to which aircraft are moved for the purpose of safeguarding the Aircraft.

(v) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight, whether or not the aircraft is in the open or in motion during the making of any such operations or tests, and includes operations and tests of equipment, accessories, and power plants, only when installed in aircraft.

(vi) The term "flight crew members" means the pilot, the co-pilot and unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defensive systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) (1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the.....* finds that any of such aircraft is in the open under unreasonable conditions, he shall notify the Contractor in writing of the conditions he finds to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the contractor shall act promptly to correct such conditions, regardless of whether he agrees that such conditions are in fact unreasonable. To the extent that the Contracting Officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs he incurred in correcting such conditions and the contract shall be modified in writing accordingly. Any dispute as to the unreasonableness of such conditions or the equitable adjustment shall be deemed to be a dispute concerning a question of the fact within the meaning of the clause of this contract entitled "Disputes."

(3) If the.....* finds that the Contractor failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, he may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such termination to be effective at 12:01 A.M. on the fifteenth day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made in the contract price to compensate the Contractor for any additional costs he incurred as a result of termination of the Government's assumption of risk

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thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Costs claimed, agreed to, or determined pursuant to (c) above and (e) below shall be in accordance with the Section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract.

(e) Subject to the provisions of paragraph (c) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel; *provided*, however, that in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(i) completed or partially completed plans, drawings and information; and

(ii) materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

(End of clause)

(d) The clause in (b) above suitably altered to indicate the relationship between the prime contractor and subcontractor is suggested for use in subcontracts placed with educational institutions and when modified as prescribed in (c) above for use with other nonprofit institutions; *provided*, such subcontracts incorporate, or are negotiated on the basis of, the cost principles set forth in Section XV; and *provided further*, such subcontracts are placed on the no-fee or no-profit basis.

7-302.11 *Disputes.* In accordance with 7-103.12, insert the clause therein.

7-302.12 *Reserved.*

7-302.13 *Buy American Act.* In accordance with 7-104.3, insert the clause therein. When the contract involves construction work, in accordance with 7-602.20 and 7-602.24 also insert the clauses therein.

7-302.14 *Convict Labor.* In accordance with 12-203, insert the clause in 7-104.17.

7-302.15 *Walsh-Healey Public Contracts Act.* In accordance with Section XII, Part 6, insert the clause in 7-103.17.

7-302.16 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-302.17 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-302.18 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-302.19 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-302.20 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-302.21 *Authorization and Consent.* In accordance with 9-102, insert the following clause or the clause in 7-103.22 as appropriate.

AUTHORIZATION AND CONSENT (1961 JAN)

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

(End of clause)

7-302.22 *Notice and Assistance Regarding Patent Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-302.23 *Clauses for Domestic Contracts.*

(a) *Patent Rights clause - Acquisition by the Government.*

PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (1984 JAN)

(a) *Definitions.*

(1) "*Subject invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) "*Contract*" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(3) "*States and domestic municipal governments*" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "*Government agency*" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(5) "*To bring to the point of practical application*" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

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CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within six (6) months after the time he:

(i) files or causes to be filed a United States or foreign application thereon, or

(ii) submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (f), the Contractor:

(i) prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or

(ii) contending that the invention is not a Subject Invention, he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer; or

(iii) establishes that the failure to disclose did not result from his fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(g) *Examination of records relating to inventions.*

(1) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to:

(i) establish the procedures of paragraph (e)(1) of this clause; or

(ii) maintain and follow such procedures; or

(iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) *Withholding of payment (not applicable to subcontracts).*

(1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or five percent (5%) of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:

(i) establish, maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or

(iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirmatory instruments.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts.*

(1) The Contractor shall include a patent rights clause, suitably modified to identify the parties, in all subcontracts awarded hereunder, regardless of tier, for the performance of experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in any such clause.

(2) In every subcontract awarded hereunder to be performed by a small business firm or domestic nonprofit organization, having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include the patent rights clause of DAR 7-302.23(h) in accordance with the policies and procedures set forth in DAR 9-702.

(3) In every subcontract awarded hereunder to be performed by other than a small business firm or nonprofit organization having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include one of the patent rights clauses of DAR 7-302.23(a), (b) or (c) determined by the Contractor to be in accordance with the policy expressed in DAR 9-701.2, unless the Contractor is directed by the Government Contracting Officer to include a particular clause. In the event of refusal by a subcontractor to accept such clause, the Contractor:

(i) shall promptly submit a written notice to the Government Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter; and

(ii) shall not proceed with the subcontract without the written authorization of the Government Contracting Officer.

(4) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract).

(5) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to the Government Contracting Officer under the provisions of a patent rights clause in any subcontract hereunder may, in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer.

(6) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Government Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing patent rights clauses, a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause.

(7) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions.

(8) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns

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to the Government all rights that he would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(j) *Communications.* The Contracting Officer or his designee shall be the point of contact for the administration of this clause. This notice shall be in all subcontracts required by DAR 7-302.23(b), (c) or (h).

(End of clause)

(b) *Patent Rights Clause - Retention by the Contractor.*

PATENT RIGHTS - RETENTION BY THE CONTRACTOR (1984 JAN)

(a) *Definitions.*

(1) "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) The Contractor shall furnish the Contracting Officer

(i) a complete technical disclosure for each Subject Invention, within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor(s) and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) interim reports, preferably on DD Form 882, at least every twelve (12) months from the date of the contract listing Subject Inventions during that period and certifying that:

(A) the Contractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph (e) have been followed throughout the reporting period; and

(B) all Subject Inventions have been disclosed or that there are no such inventions, and

(iii) a final report, preferably on DD Form 882, within three (3) months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except non-technical personnel, such as clerical and manual labor personnel.

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Forfeiture of rights in unreported Subject Inventions.*

(1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within six (6) months after the time he

(i) files or causes to be filed a United States or foreign application thereon, or

(ii) submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (f), the Contractor

(i) prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or

(ii) contending that the invention is not a Subject Invention, he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer, or

(iii) establishes that the failure to disclose did not result from his fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(g) *Examination of records relating to inventions.*

(1) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to

(i) establish the procedures of paragraph (e)(1) of this clause; or
(ii) maintain and follow such procedures; or
(iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) *Withholding of payment (not applicable to subcontracts).*

(1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or five percent (5%) of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:

(i) establish, maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or
(ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or
(iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or
(iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirmatory instruments.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts.*

(1) The Contractor shall include a patent rights clause, suitably modified to identify the parties, in all subcontracts awarded hereunder, regardless of tier, for the performance of experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in any such clause.

(2) In every subcontract awarded hereunder to be performed by a small business firm or domestic nonprofit organization, having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include the patent rights clause of DAR 7-302.23(h) in accordance with the policies and procedures set forth in DAR 9-702.

(3) In every subcontract awarded hereunder to be performed by other than a small business firm or nonprofit organization having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include one of the patent rights clauses of DAR 7-302.23(a), (b) or (c) determined by the Contractor to be in accordance with the policy expressed in DAR 9-701.2, unless the Contractor is directed by the Government Contracting Officer to include a particular clause. In

(iv) provide the Contracting Officer with a copy of the patent within two (2) months after a patent issues on the application; and
(v) not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Contracting Officer of any decision not to continue prosecution of the application and deliver to the Contracting Officer executed instruments granting the Government a power of attorney.

(3) For each Subject Invention in which the Contractor initially elects not to retain principal domestic rights, the Contractor shall inform the Contracting Officer promptly in writing of the date and identity of any on sale, public use, or publication of such invention which may constitute a statutory bar under 35 U.S.C. 102, which was authorized by or known to the Contractor, or any contemplated action of this nature.

(k) *Filing of foreign patent applications.*

(1) With respect to each Subject Invention in which the Contractor elects to retain principal rights in a foreign country pursuant to paragraph (b)(1) of this clause, the Contractor shall have a patent application filed on the invention in such country, in accordance with applicable statutes and regulations, and within one of the following periods:

(i) eight (8) months from the date of a corresponding United States application filed by or on behalf of the Contractor; or if such an application is not filed, six (6) months from the date the invention is submitted in a disclosure pursuant to paragraph (e)(2)(i) of this clause;
(ii) six (6) months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign applications when such filing has been prohibited by security reasons; or
(iii) such longer period as may be approved in writing by the Contracting Officer.

(2) The Contractor shall notify the Contracting Officer promptly of each foreign application filed and, upon written request, shall furnish an English version of such foreign application without additional compensation.

(1) *Communications.* The Contracting Officer or his designee shall be the point of contact for the administration of this clause. This notice shall be in all subcontracts containing either this clause or the clauses required by DAR 7-302.23(a), (c) or (h).

(End of clause)

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(c) *Patent Rights Clause - Deferred.*

PATENT RIGHTS - DEFERRED (1984 JAN)

(a) *Definitions.*

(1) "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) "*Contract*" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(3) "*States and domestic municipal governments*" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "*Government agency*" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(5) "*To bring to the point of practical application*" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(b) *Allocation of principal rights.*

(1) *Assignment to the Government.* After a Subject Invention is identified, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to the Subject Invention except to the extent that greater rights are retained under paragraphs (b)(2) and (d) of this clause.

(2) *Greater Rights Determinations.* The Contractor, or the employee-inventor with authorization of the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of DAR 9-703.6. A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (e)(2)(i) of this clause, or not later than three (3) months thereafter, or such longer period as may be authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in DAR 9-703.6(a). Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause and to the reservations and conditions deemed to be appropriate by the Contracting Officer.

(c) *Minimum rights acquired by the Government.* With respect to each Subject Invention to which the Contractor retains principal or exclusive rights, the Contractor:

(i) hereby grants to the Government a nonexclusive, nontransferable, paid-up license to make, use, and sell each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and the States and domestic municipal governments,

(ii) agrees to grant to responsible applicants, upon request of the Government, a license on terms that are reasonable under the circumstances;

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to:

(i) establish the procedures of paragraph (e)(1) of this clause; or

(ii) maintain and follow such procedures; or

(iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) *Withholding of payment (not applicable to subcontracts).*

(1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or five percent (5%) of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:

(i) establish, maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or

(iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirmatory instruments.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts.*

(1) The Contractor shall include a patent rights clause, suitably modified to identify the parties, in all subcontracts awarded hereunder, regardless of tier, for the performance of experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in any such clause.

(2) In every subcontract awarded hereunder to be performed by a small business firm or domestic nonprofit organization, having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include the patent rights clause of DAR 7-302.23(h) in accordance with the policies and procedures set forth in DAR 9-702.

(3) In every subcontract awarded hereunder to be performed by other than a small business firm or domestic nonprofit organization having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include one of the patent rights clauses of DAR 7-302.23(a), (b) or (c) determined by the Contractor to be in accordance with the policy expressed in DAR

9-701.2, unless the Contractor is directed by the Government Contracting Officer to include a particular clause. In the event of refusal by a subcontractor to accept such clause, the Contractor:

(i) shall promptly submit a written notice to the Government Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter, and

(ii) shall not proceed with the subcontract without the written authorization of the Government Contracting Officer.

(4) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract).

(5) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to the Government Contracting Officer under the provisions of a patent rights clause in any subcontract hereunder may, in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer.

(6) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Government Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing patent rights clauses, a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause.

(7) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions.

(8) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all rights that he would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(j) *Communications.* The Contracting Officer or his designee shall be the point of contact for the administration of this clause. This notice shall be in all subcontracts required by DAR 7-302.23(b), (c) or (h).

(End of clause)

(d) *Reserved.*

(e) *Contracts relating to Atomic Energy.* Add the following paragraph to the applicable patent rights clause (see 9-701.7).

In addition to the foregoing provisions, the Contractor agrees:

(i) to identify and call to the attention of the Contracting Officer each Subject Invention made by employees of the Contractor (except nontechnical personnel, such as clerical employees and manual laborers) and which relates to the production or utilization of special nuclear material or atomic energy within the purview of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2011-2296);

(ii) to furnish through the Contracting Officer to the Department of Energy (DOE) the required disclosure regarding each Subject Invention under (i) of this paragraph;

(iii) DOE shall have the sole power to determine whether and where a patent application relating to a Subject Invention under (i) of this paragraph shall be filed, and to determine the disposition of the title to and rights under any such application or any patent that may issue thereon. Any request for greater rights to a Subject Invention shall be made in accordance with the provisions of 41 CFR 9-9.109-6;

(iv) to obtain the execution of and delivery to DOE of all required documents relating to each Subject Invention under (i) of this paragraph and to do all other things requested, necessary, or proper to carry out any determination of DOE made under (iii) of this paragraph; and

(v) unless otherwise authorized in writing by the Contracting Officer, to include this paragraph in the Patent Rights clause of all subcontracts.

No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Contractor or his employees with respect to any Subject Invention covered by this paragraph. (1977 DEC)

(f) *Contracts placed for Other Government Agencies.* The agency will provide any necessary patent rights clause. See 9-701.8.

(g) *Contracts relating to Space.* When considered appropriate under 9-701.9, the following paragraph (c)(i) shall be substituted for the corresponding paragraph of the Patent Rights clause of 7-302.23(a), (b) or (c) to be included in a contract.

(c)(i) hereby grants to the Government a paid-up, nonexclusive and royalty-free license to practice and have practiced each Subject Invention (made by the Contractor) throughout the world by or on behalf of the Government, States, and municipal governments, including the practice of each such Subject Invention (i) in the manufacture, use, and disposition of any article or material, (ii) in the use of any method, or (iii) in the performance of any service, acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or funds otherwise derived through the Government. In addition, the Government shall have the right to grant licenses to others, under such terms and conditions as may be prescribed, for the practice of such Subject Invention throughout the world in the design, development, manufacture, operation, maintenance and testing of communications satellite systems, and of equipment, components, and ground tracking, transmitting and receiving facilities therefor. (1975 AUG)

(End of clause paragraph)

(h) *Patent Rights Clause - Small Business Firm or Domestic Nonprofit Organization.* In accordance with 9-702.3(a), the following clause shall be included in all contracts with small business firms and domestic nonprofit organizations for the performance of experimental, developmental, or research work, unless the contract provides otherwise pursuant to one of the exceptions in 9-702.3(a)(1).

PATENT RIGHTS - SMALL BUSINESS FIRM OR DOMESTIC NONPROFIT ORGANIZATION (1984 JAN)

(a) *Definitions.*

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code.

(2) *Subject Invention* means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

(3) *Practical application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case,

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under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(4) *Made*, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement and in subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Domestic Nonprofit Organization* means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. Section 501(a)), or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of Principal Rights.* The Contractor may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any Subject Invention in which the Contractor retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any Subject Invention throughout the world for which the Contractor has elected to retain title.

(c) *Invention Disclosures, Election of Title, Filing of Patent Applications, Confirmatory Instruments and Reports.*

(1) After a Subject Invention has been disclosed in writing by the inventor(s) to contractor personnel responsible for the administration of patent matters, the Contractor shall:

(i) disclose such invention to the Contracting Officer within two (2) months;

(ii) elect whether or not to retain title to any such invention by notifying the Contracting Officer within twelve (12) months of disclosure to the Contractor;

(iii) file its initial patent application on an elected invention within two (2) years after election;

(iv) file patent applications in additional countries within either ten (10) months of the corresponding initial patent application, or six (6) months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing was prohibited for security reasons;

(v) within six (6) months after filing each patent application, or within six (6) months after submitting the invention disclosure to the Contracting Officer, if the application has been previously filed, deliver to the Contracting Officer a duly executed and approved instrument on the form specified in DAR 9-703.5(b), fully confirmatory of all rights to which the Government is entitled, and furnish the Government an irrevocable power to inspect and make copies of the patent application file; and

(vi) furnish to the Contracting Officer, upon request, (A) the filing date, serial number and title, (B) a copy of the patent application (including an English-language version, if filed in a language other than English), and (C) the patent number and issue date for any Subject Invention in any country for which the Contractor has retained title.

(2) Notwithstanding the requirements of subparagraph(c)(1) above, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still

be obtained in the United States, the period for election of title and filing of a United States patent application may be shortened by the Contracting Officer to a date that is no more than sixty (60) days prior to the end of the statutory period.

(3) Requests for extension of the time for disclosure to the Contracting Officer, election and filing, where reasonable, shall normally be granted.

(4) The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The report shall also identify any publication, sale, or public use of the invention and shall state whether a manuscript describing the invention has been submitted for publication and accepted at the time of disclosure.

(d) *Conditions When the Government May Obtain Title.* The Contractor shall convey to the Contracting Officer, upon written request, title to any Subject Invention:

(i) if the Contractor fails to disclose or elect the Subject Invention within the times specified in (c) above, or elects not to retain title;

(ii) in those countries in which the Contractor fails to file patent applications within the times specified in (c) above (prior to receipt of the written request, the Contractor shall continue to retain title in that country); or

(iii) in any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a Subject Invention.

(e) *Minimum Rights to Contractor.* The Contractor shall retain a revocable, nonexclusive, royalty-free, license throughout the world in each Subject Invention to which the Government obtains title, except if the Contractor fails to disclose the Subject Invention within the times specified in (c) above. This license extends and is revocable and transferable as specified in DAR 9-702.3.

(f) *Contractor Action to Protect Government's Interest.*

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Contracting Officer all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those Subject Inventions for which the Contractor retains title; and

(ii) convey title to the Government when requested under paragraph (d) above to enable the Government to obtain patent protection throughout the world on that Subject Invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each Subject Invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights to Subject Inventions. The disclosure format should require, as a minimum, the information requested by subparagraph (c)(4) above. The Contractor shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Contracting Officer of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty (30) days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement:

This invention was made with Government support under (identify the contract) awarded by (identify the Department). The Government has certain rights in this invention.

(5) The Contractor shall furnish the Contracting Officer:

(i) interim reports, preferably on DD Form 882, every twelve (12) months from the date of the contract, listing Subject Inventions that were disclosed in writing during that period by the inventor(s) to contractor personnel responsible for the administration of patent matters, or stating that there were no such inventions; and

(ii) a final report, preferably on DD Form 882, within six (6) months after completion of work under the contract or prior to closeout, whichever occurs first, listing all Subject Inventions that were made during performance of the work under the contract, or stating that there were no such inventions.

(g) *Subcontracts.*

(1) The Contractor shall include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work by a small business firm or a domestic nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

(2) The Contractor shall include in all subcontracts, regardless of tier, for experimental, developmental, or reserach work with other than a small business firm or a domestic nonprofit organization, the appropriate patent rights clause required by DAR 9-701, noting of course that the criteria in DAR 9-701 for the selection of the appropriate clause have been and may be further changed as a result of the implementation of the Presidential Memorandum on Government Patent Policy of 18 February 1983.

(3) The Contractor shall promptly notify the Contracting Officer in writing, preferably on DD Form 882, upon the award of any subcontract containing a patent rights clause. Such notification shall identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon written request of the Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing a patent rights clause, this shall be stated in the final report submitted pursuant to subparagraph (f)(5)(ii) above.

(h) *Reporting on Utilization of Subject Inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Contracting Officer may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Contracting Officer in connection with any march-in proceeding undertaken by the Contracting Officer in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, a licensee, or assignee, to be privileged and confidential and is so marked, the Government agrees that, to the extent permitted by 35 U.S.C. 202(c)(5), it will not disclose such information to persons outside the Government.

(i) *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will

grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the contracting activity upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The Contractor agrees that with respect to any Subject Invention in which it has acquired title, the Government has the right, in accordance with the procedures set forth in DAR 9-702.8 and in any supplemental departmental regulations, to require the Contractor, an assignee, or exclusive licensee of a Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Contracting Officer determines that:

(i) such action is necessary because the Contractor, assignee or exclusive licensee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;

(ii) such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(iii) such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(iv) such action is necessary because the agreement required by paragraph (i)

of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.

(k) *Special Provisions for Contracts With Domestic Nonprofit Organizations.* If the Contractor is a domestic nonprofit organization, it agrees that:

(i) rights to a Subject Invention in the United States shall not be assigned without the approval of the Contracting Officer, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the Contractor);

(ii) the Contractor shall not grant exclusive licenses under United States patents or patent applications in Subject Inventions to persons other than small business firms for a period in excess of the earlier of (A) five (5) years from first commercial sale or use of the invention, or (B) eight (8) years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, the Contracting Officer approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

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(iii) the Contractor shall share any royalties collected on a Subject Invention with the inventor; and

(iv) the balance of any royalties or income earned by the Contractor with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions, shall be utilized for the support of scientific research or education.

(l) *Communications.* The Contracting Officer or his designee shall be the point of contact for the administration of this clause. This notice shall be in all subcontracts containing either this clause or the clauses required by DAR 7-302.23(a), (b) or (c).

(End of clause)

(i) *Patent Rights Clause - Small Business Firm or Domestic Nonprofit Organization (SBIR Program).* The following clause shall be used in all contracts awarded under the Small Business Innovation Research Program (SBIR Program) with small business firms and domestic nonprofit organizations for the performance of experimental, developmental, or research work.

PATENT RIGHTS - SMALL BUSINESS FIRM OR DOMESTIC NONPROFIT ORGANIZATION (SBIR PROGRAM) (1984 JAN)

(a) *Definitions.*

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) *Subject Invention* means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

(3) *Practical application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(4) *Made*, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

(5) *Small business firm* means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement, and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Domestic Nonprofit organization* means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. section 501(a)), or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of Principal Rights.* The Contractor may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any Subject Invention in which the Contractor retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any Subject Invention throughout the world for which the Contractor has elected to retain title.

(c) *Invention Disclosures, Election of Title, Filing of Patent Applications, Confirmatory Instruments and Reports.*

(1) After a Subject Invention has been disclosed in writing by the inventor(s) to contractor personnel responsible for the administration of patent matters, the Contractor shall:

(i) disclose such invention to the Contracting Officer within two (2) months;

(ii) elect whether or not to retain title to any such invention by notifying the Contracting Officer within twelve (12) months of disclosure to the Contractor;

(iii) file its initial patent application on an elected invention within two (2) years after election;

(iv) file patent applications in additional countries within either ten (10) months of the corresponding initial patent application, or six (6) months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing was prohibited for security reasons;

(v) within six (6) months after filing each patent application, or within six (6) months after submitting the invention disclosure to the Contracting Officer, if the application has been previously filed, deliver to the Contracting Officer a duly executed and approved instrument on the form specified in DAR 9-703.5(b), fully confirmatory of all rights to which the Government is entitled, and furnish the Government an irrevocable power to inspect and make copies of the patent application file; and

(vi) furnish to the Contracting Officer, upon request, (A) the filing date, serial number and title, (B) a copy of the patent application (including an English-language version, if filed in a language other than English), and (C) the patent number and issue date for any Subject Invention in any country for which the Contractor has retained title.

(2) Notwithstanding the requirements of subparagraph (c)(1) above, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title and filing of a United States

patent application may be shortened by the Contracting Officer to a date that is no more than sixty (60) days prior to the end of the statutory period.

(3) Requests for extension of the time for disclosure to the Contracting Officer, election and filing, where reasonable, shall normally be granted.

(4) The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The report shall also identify any publication, sale, or public use of the invention and shall state whether a manuscript describing the invention has been submitted for publication and accepted at the time of disclosure.

(d) *Conditions When the Government May Obtain Title.* The Contractor shall convey to the Contracting Officer, upon written request, title to any Subject Invention:

(i) If the Contractor fails to disclose or elect the Subject Invention within the times specified in (c) above, or elects not to retain title;

(ii) in those countries in which the Contractor fails to file patent applications within the times specified in (c) above (prior to receipt of the written request, the Contractor shall continue to retain title in that country); or

(iii) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a Subject Invention.

(e) *Minimum Rights to Contractor.* The Contractor shall retain a revocable, nonexclusive, royalty-free, license throughout the world in each Subject Invention to which the Government obtains title, except if the Contractor fails to disclose the Subject Invention within the times specified in (c) above.

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This license extends and is revocable and transferable as specified in DAR 9-702.3.

(f) *Contractor Action to Protect Government's Interest.*

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Contracting Officer all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those Subject Inventions for which the Contractor retains title; and

(ii) convey title to the Government when requested under paragraph (d) above to enable the Government to obtain protection throughout the world on that Subject Invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each Subject Invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights to Subject Inventions. The disclosure format should require, as a minimum, the information requested by subparagraph (c)(4) above. The Contractor shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Contracting Officer of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty (30) days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement:

This invention was made with Government support under (identify the contract) awarded by (identify the Department). The Government has certain rights in this invention.

(5) The Contractor shall furnish the Contracting Officer:

(i) interim reports, preferably on DD Form 882, every twelve (12) months from the date of the contract, listing Subject Inventions that were disclosed in writing during that period by the inventor(s) to contractor personnel responsible for the administration of patent matters, or stating that there were no such inventions; and

(ii) a final report, preferably on DD Form 882, within six (6) months after completion of work under the contract or prior to closeout, whichever occurs first, listing all Subject Inventions that were made during performance of the work under the contract, or stating that there were no such inventions.

(g) *Subcontracts.*

(1) The Contractor shall include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work by a small business firm or a domestic nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

(2) The Contractor shall include in all subcontracts, regardless of tier, for experimental, developmental, or research work with other than a small business firm or a domestic nonprofit organization, the appropriate patent rights clause required by DAR 9-701, noting of course that the criteria in DAR 9-701 for the selection of the appropriate clause have been and may be further changed

as a result of the implementation of the Presidential Memorandum on Government Patent Policy of 18 February 1983.

(3) The Contractor shall promptly notify the Contracting Officer in writing, preferably on DD Form 882, upon the award of any subcontract containing a patent rights clause. Such notification shall identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon written request of the Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing a patent rights clause, this shall be stated in the final report submitted pursuant to subparagraph (f)(5)(ii) above.

(h) *Reporting on Utilization of Subject Inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Contracting Officer may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Contracting Officer in connection with any march-in proceeding undertaken by the Contracting Officer in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, a licensee, or assignee, to be privileged and confidential and is so marked, the Government agrees that, to the extent permitted by 35 U.S.C. 202(c)(5), it will not disclose such information to persons outside the Government.

(i) *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention

will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the contracting activity upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The Contractor agrees that with respect to any Subject Invention in which it has acquired title, the Government has the right, in accordance with the procedures set forth in DAR 9-702.8 and in any supplemental departmental regulations, to require the Contractor, an assignee, or exclusive licensee of a Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Contracting Officer determines that:

(i) such action is necessary because the Contractor, assignee, or exclusive licensee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;

(ii) such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(iii) such action is necessary to meet requirements for public use specified by Federal regulations and such requirements

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are not reasonably satisfied by the Contractor, assignee, or licensees; or

(iv) such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.

(k) *Special Provisions for Contracts With Domestic Nonprofit Organizations.* If the Contractor is a domestic nonprofit organization, it agrees that:

(i) rights to a Subject Invention in the United States shall not be assigned without the approval of the Contracting Officer, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the Contractor);

(ii) the Contractor shall not grant exclusive licenses under United States patents or patent applications in Subject Inventions to persons other than small business firms for a period in excess of the earlier of (A) five (5) years from first commercial sale or use of the invention, or (B) eight (8) years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance,

unless on a case-by-case basis, the Contracting Officer approves a longer exclusive license. If exclusive field of use licenses are granted, commerical sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(iii) the Contractor shall share any royalties collected on a Subject Invention with the inventor; and

(iv) the balance of any royalties or income earned by the Contractor with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions, shall be utilized for the support of scientific research or education.

(l) *Communications.* The Contracting Officer or his designee shall be the point of contact for the administration of this clause. This notice shall be in all subcontracts containing either this clause or the clauses required by DAR 7-302.23(a), (b) or (c).

(End of clause)

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7-302.24 *Reserved.*

7-302.25 *Military Security Requirements.* Insert the Military Security Requirements clause in accordance with 7-104.12.

7-302.26 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805.3, insert the clauses in 7-104.20.

7-302.27 *Government Delay of Work.* Insert the clause in 7-104.77.

7-302.28 *Title and Risk of Loss.* Insert the clause in 7-103.6.

7-302.29 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-302.30 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-302.31 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-302.32 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-302.33 *Invoices.* Insert the clause in 7-103.30.

7-303 Clauses To Be Used When Applicable.

7-303.1 *Clauses for Contracts Involving Construction Work.* In accordance with 7-602.23, 12-106, 18-701, and 18-703, insert the Labor Standards Provisions in 7-602.23.

7-303.2 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-303.3 *Reporting and Refund of Royalties.* In accordance with 9-110(d) and 9-111, insert the appropriate clause or clauses in 7-104.8.

7-303.4 *Reserved.*

7-303.5 *Preference for Certain Domestic Commodities.* In accordance with 6-305, insert the clause in 7-104.13.

7-303.6 *Priorities, Allocations, and Allotments.* In accordance with 1-307.2, insert the clause in 7-104.18.

7-303.7 *Government Property.* When the Government is to furnish, or the contractor is to acquire, Government property, insert the following clause if the contract is with an educational or nonprofit institution, if not, insert the appropriate clauses as provided in 7-104.24. Changes in the clause below, like those in 7-104.24(e), (f) and (g), may be made as therein provided.

GOVERNMENT PROPERTY (FIXED PRICE, NONPROFIT) (1972 SEP)

(a) *Government-furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule, or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay. Except for Government furnished property furnished "as is", in the event that Government-furnished property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision effected by the return, disposition, repair or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-furnished Property.*

(1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal, shipping, and disposal of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided in the "Changes" clause of this contract.

(c) *Title.*

(1) Title to all property furnished by the Government shall remain in the Government.

(2) Notwithstanding subparagraph (1) above, title to equipment purchased with funds available for research, having an acquisition cost of less than $1,000, shall vest in the Contractor upon acquisition or as soon thereafter as feasible, provided that the Contractor shall have obtained approval of the Contracting Officer prior to acquisition of such property.

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7-602.21 *Convict Labor.* In accordance with 12-203, insert the clause in 7-104.17.

7-602.22 *Equal Opportunity.* In accordance with 12-807.1, insert applicable clause in 7-103.18.

7-601.23 *Labor Standards Provisions.*

(a) In accordance with 18-703, insert the following clauses:

(i) *Davis-Bacon Act.*

DAVIS-BACON ACT (40 U.S.C. 276a to a-7) (1984 JAN)

(a) *Minimum Wages.*

(1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics, subject to the provisions of paragraph (a)(4) of this clause; also regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(2) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors

at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(A) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, when appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt or will notify the Contracting Officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, when appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer, or will notify the Contracting Officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(D) The wage rate (including fringe benefits, when appropriate) determined pursuant to subparagraphs (a)(2)(B) and (a)(2)(C) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit, or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(End of clause)

(ii) *Contract Work Hours and Safety Standards Act—Overtime Compensation.*

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (40 U.S.C. 327 - 333) (1984 JAN)

This contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and interpretations of the Secretary of Labor.

(a) *Overtime Requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, whichever is greater.

(b) *Violation; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be

liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of ten dollars ($10.00) for each calendar day for which such individual was required or permitted to work in excess of eight (8) hours or in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the provisions set forth in paragraph (a) of this clause.

(c) *Withholding for Unpaid Wages and Liquidated Damages.* The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable because of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower-tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

(iii) *Apprentices and Trainees.*

APPRENTICES AND TRAINEES (1984 JAN)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rates for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or if a

person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency (when appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. When a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid for the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the

U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination, unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal Employment Opportunity.* The utilization of apprentices, trainees and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of clause)

(iv) *Payrolls and Basic Records*

PAYROLLS AND BASIC RECORDS (1984 JAN)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall

contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under paragraph (a)(4) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB control number 1215-0149.)

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor, or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) that the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) that each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) that each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

(v) *Compliance With Copeland Act Regulations.*

COMPLIANCE WITH COPELAND ACT REGULATIONS (1984 JAN)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(End of clause)

(vi) *Withholding.*

WITHHOLDING (1984 JAN)

The Contracting Officer shall, upon his or her own action, or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Davis-Bacon Act prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

(vii) *Subcontracts.*

SUBCONTRACTS (1984 JAN)

The Contractor or subcontractor shall insert in any subcontracts the clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance With Copeland Act Requirements," "Withholding," "Subcontracts," "Contract Termination - Debarment," "Disputes Concerning Labor Standards," "Compliance With Davis-Bacon and Related Acts Requirements," and "Certification of Eligibility," and such other clauses as

the Contracting Officer may by appropriate instructions require; and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The Prime Contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all the contract clauses cited above.

(End of clause)

(viii) *Contract Termination—Debarment*

CONTRACT TERMINATION—DEBARMENT (1984 JAN)

A breach of the contract clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance With Copeland Act Requirements," "Withholding," "Subcontracts," "Compliance With Davis-Bacon and Related Acts Requirements," and "Certification of Eligibility," may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(End of clause)

(ix) *Disputes Concerning Labor Standards.*

DISPUTES CONCERNING LABOR STANDARDS (1984 JAN)

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

(x) *Compliance With Davis-Bacon and Related Acts Requirements.*

COMPLIANCE WITH DAVIS-BACON AND RELATED ACTS REQUIREMENTS (1984 JAN)

All rulings and interpretations of the Davis-Bacon and related acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(End of clause)

(x1) *Certification of Eligibility.*

CERTIFICATION OF ELIGIBILITY (1984 JAN)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

(b) In the case of construction contracts with a State or political subdivision thereof, in accordance with 18-703.3, preface the clauses required by (a) above with the following provision.

The Contractor agrees to comply with the requirements of the Contract Work Hours Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

(c) Pursuant to 29 CFR 5.5(c), the following clause shall be used, in addition to the clause in (a)(ii) above entitled "Contract Work Hours and Safety Standards Act - Overtime Compensation," in any contract subject only to the Contract Work Hours and Safety Standards Act, and not to any other statute cited in 29 CFR 5.1:

PAYROLLS AND BASIC PAYROLL RECORDS (1984 JAN)

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(c) The Contractor shall insert paragraphs (a) through (c) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(End of clause)

7-602.24 *Nondomestic Construction Material.* When a determination has been made that certain construction materials may be used without regard to country of origin, the following clause shall be included in the contract, and the excepted items shall be listed therein.

NONDOMESTIC CONSTRUCTION MATERIALS (1966 OCT)

The requirements of the clause of this contract entitled "Buy American Act" do not apply to the items set forth below:

[Insert list here]

(End of clause)

When the above clause is used, the contracting officer shall place in the contract file a copy of the signed approval; and a copy thereof shall be available for public inspection.

7-602.25 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-602.26 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

Part 7— Patent Rights Under Government Contracts

9-700 Scope of Part. This Part prescribes contract clauses and instructions which define and implement the policy of the Department of Defense with respect to inventions made in the course of experimental, developmental, or research work performed under Government contracts.

9-701 Patent Rights Under Contracts Involving Research and Development With Other Than Small Business Firms and Domestic Nonprofit Organizations. This paragraph sets forth policies and procedures, and prescribes contract clauses with respect to inventions made in the course of or under a contract or subcontract entered into by or for the benefit of the Government with other than small business firms and domestic nonprofit organizations where a purpose of the contract or subcontract is the conduct of experimental, developmental, or research work. See 9-702 for policies, procedures and a prescribed contract clause relating to contracts and subcontracts awarded to small business firms and domestic nonprofit organizations.

9-701.1 *General.*

(a) *Introduction.* On August 23, 1971, the President issued a Statement of Government Patent Policy (36 Fed. Reg. 16887, August 26, 1971) applicable to all executive departments and agencies, revising a prior Statement of Policy (28 Fed. Reg. 10943, October 12, 1963). Essentially, the goals of this Statement are to provide criteria for determining the allocation of rights in inventions resulting from federally-sponsored research and development contracts, to promote their expeditious development so that the public can benefit from early civilian use of the inventions and to assure their continued availability. In applying this regulation, both the need for incentives to draw forth private initiatives and the need to promote healthy competition in industry must be weighed.

(b) *Applicable Statutes.* Except to the extent that the Department of Defense may be governed by specific statutes or by any treaty or agreement between the United States and any foreign country, inconsistent with this paragraph 9-701, the provisions of this paragraph 9-701, including the use of the prescribed clauses shall be followed.

(c) *Co-sponsored, Cost Sharing or Joint Venture Research.* The provisions of this paragraph 9-701 are not mandatorily applicable to co-sponsored, cost sharing or joint venture research when it is determined that in the course of the work under the contract, the contractor will be required to make a substantial contribution of funds, facilities, or equipment to the principal purpose of the contract.

9-701.2 *Policy.*

(a) The Government shall normally acquire or reserve the right to acquire the principal or exclusive rights throughout the world in and to any inventions made in the course of or under a contract when:

(i) a principal purpose of the contract is to create, develop, or improve products, processes, or methods which are intended for commercial use (or which are otherwise intended to be made available for use) by the general public at home or abroad, or which will be required for such use by governmental regulations; or

(ii) a principal purpose of the contract is for exploration into fields which directly concern the public health, public safety, or public welfare; or

(iii) the contract is in a field of science or technology in which there has been little significant experience outside of work funded by the Government, or where the Government has been the principal developer of the field, and the retention of exclusive rights at the time of contracting might confer on the contractor a preferred or dominant position; or

(iv) the services of the contractor are:

(A) for the operation of a Government-owned research or production facility; or

(B) for coordinating and directing the work of others.

In exceptional circumstances the contractor may retain greater rights than a nonexclusive license at the time of contracting when the Secretary or his designee determines that such action will best serve the public interest. Greater rights may also be retained by the contractor after the invention has been identified when it is determined that the retention of such greater rights is consistent with the intent of this paragraph (a) and is either a necessary incentive to call forth private risk capital and expense to bring the invention to the point of practical application or that the Government's contribution to the invention is small compared to that of the contractor. When an identified invention made in the course of or under the contract is not directly related to a principal purpose of the contract, greater rights may also be retained by the contractor under the criteria of (c) below.

(b) In other situations, where the purpose of the contract is to build upon existing knowledge or technology to develop information, products, processes, or methods for use by the Government, and the work called for by the contract is in a field of technology in which the contractor has acquired technical competence (demonstrated by factors such as know-how, experience, and patent position) directly related to an area in which the contractor has an established nongovernmental commercial position, the contractor shall normally retain the principal or exclusive rights throughout the world in and to any resulting inventions.

(c) When the commercial interests of the contractor are not sufficiently established to be covered by the criteria specified in (b) above, the allocation of rights shall be made by the contracting officer after the invention has been identified, in a manner deemed most likely to serve the public interest as expressed in this policy, taking particularly into account the intentions of the contractor to bring the invention to a point of commercial application and the guidelines of (a) above. However, the Secretary or his designee may prescribe by regulation, special situations where the public interest in the availability of the inventions would best be served by permitting the contractor to retain at the time of contracting greater rights than a nonexclusive license.

(d) In the situations specified in (b) and (c) above, when two or more potential contractors are judged to have presented proposals of equivalent merit, willingness to grant the Government principal or exclusive rights in resulting inventions, will be an additional factor in the evaluation of the proposals.

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5. Is the contract for procurement in a field of science or technology in which the Government has been the principal developer of the field?**
(See DAR 9-701.2(a)(iii))
(Yes)..... (No).....
If "Yes," briefly describe such field.

6. If the answer to either 4 or 5 is "Yes," would the contractor be likely to get a preferred or dominant commercial position in that field if he were permitted to retain title to inventions made under the contract?
(See DAR 9-701.2(a)(iii))
(Yes)..... (No).....
Explain the answer.

7. Does the contract require that the contractor both (i) provide service for operation of a Government-owned research or production facility and (ii) perform experimental, developmental or research work at that facility?
(See DAR 9-701.2(a)(iv)(A))
(Yes)..... (No).....

8. Does the contract require the contractor to coordinate and direct the work of others (as distinguished from the normal contractor-subcontractor relationship) which might result in a potential organizational conflict of interest?
(See DAR 1-113.2; Appendix G; and 9-701.2(a)(iv)(B))
(Yes)..... (No).....
If "Yes," explain briefly why such a potential conflict of interest is considered to exist.

.....
(Typed Name, Office and Signature of Person Completing This Form)

The Patent Rights (Acquisition by the Government) clause, DAR 7-302.23(a), will..... / will not..... be used in the solicitation.
(Give reasons for determination.)

.....
(Typed Name and Signature of Contracting Officer or Representative)

*The contract or series of contracts need not necessarily require delivery of the end item. The end item may be a product, a process or data.

**The mere fact that the Government has been or is the principal funder or developer of a specific piece of hardware does not necessarily make the Government the principal funder or developer in a field of science or technology which encompasses the piece of hardware.

(c) *Record of Decisions.* The Presidential Statement on Government Patent Policy states that "The Federal Council for Science and Technology shall continue to ..... acquire data from the Government agencies on the disposition of

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patent rights to inventions resulting from Federally-financed research and development and on the use and practice of such inventions to serve as bases for policy review and development." The Presidential Statement also states that "Each agency shall record the basis for its actions with respect to inventions and appropriate contracts under this statement." Accordingly, procuring activities shall record and maintain in a readily available manner the bases for each of the following actions: (i) selection of a Patent Rights clause under 9-701.3(a), including the Pre-solicitation Patent Rights Documentation Checklist and the DD Form 1564, if used; (ii) finding of exceptional circumstances under 9-701.2(a); (iii) retention of greater rights determinations pursuant to 9-703.6; and (iv) determinations under 9-701.3(d) and (e). Contractors shall not be required to record and maintain the bases for such actions.

(d) *License for Government, States and Municipal Governments.* The policy set forth in 9-701.2(h)(i) provides that the Government shall normally acquire a paid-up license in any invention resulting from the contract for the Government, States and municipal government. Paragraph (c)(i) of the Patent Rights clauses in 7-302.23(a), (b) and (c) sets forth such a license. When the Secretary determines pursuant to 9-701.2(h)(i) that it would not be in the public interest in a particular contracting situation to acquire a license for the Government of the scope in paragraph (c)(i), this paragraph may be appropriately modified.

(e) *Right to Sublicense Foreign Governments.* Paragraph (c) of the Patent Rights clauses in 7-302.23(a), (b) and (c) does not provide the Government with the right to grant a sublicense, in any inventions resulting from the contract, to any foreign government pursuant to any treaty or agreement. However, where the acquisition of patent rights for the benefit of any foreign government is required under a treaty or executive agreement, paragraph (c) of the selected clause may be appropriately modified to the extent necessary for compliance therewith under the authority of 1-109.4.

(f) *Minimum Rights to Contractor.* The minimum rights which normally may be retained by a contractor in any invention made by the contractor in the course of or under a contract upon which a patent application has been filed is a revocable, nonexclusive, royalty free license as specified in the patent rights clause.

(g) *Subcontracts.*

(1) The policy expressed in 9-701.2 is applicable to all contract levels. Hence, a contractor awarding a subcontract and a subcontractor awarding a lower-tier subcontract, which has as a purpose the conduct of experimental, developmental or research work generally shall determine the DAR patent rights clause to be included therein which is consistent with the expressed policy. When conditions require, the contracting officer may direct a contractor to include a particular patent rights clause in any subcontract.

(2) The Patent Rights clause in 7-302.23(h) shall be included in all subcontracts, regardless of tier, with small business firms and domestic nonprofit organizations having as a purpose of the subcontract the conduct of experimental, developmental or research work. See 9-702 relating to patent rights under contracts and subcontracts awarded to small business firms and domestic nonprofit organizations.

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(3) Contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in the inventions resulting from subcontracts.

(h) *Publication of Invention Disclosures.* The Patent Rights clauses of 7-302.23(a), (b) and (c) specify that the Government may duplicate and disclose disclosures of Subject Inventions, and all other reports and papers required to be furnished under the clauses. However, the public disclosure of information in such documents before the first-filed application (whether domestic or foreign) may create a bar to the patenting of the invention in foreign countries. Accordingly, to protect the mutual interests of the Government and its contractors in obtaining foreign patents on Subject Inventions, the Government and contractors should cooperate in deferring publication of such documents when practical until the filing of the first application and use their best efforts toward prompt filing when publication is imminent.

9-701.4 *Reserved.*

9-701.5 *Reserved.*

9-701.6 *Clause for Foreign Contracts.* A patent rights clause shall be included in every contract having as a purpose the conduct of experimental, developmental or research work which is to be performed outside the United States, its possessions, or Puerto Rico. Except as provided in 9-701.7 and 9-701.8, the clauses authorized in accordance with 9-701.2 and 9-701.3 may be used or replaced by any other clause tailored to meet requirements peculiar to foreign procurement *provided* the replacement clause incorporates the principles of the clause being replaced.

9-701.7 *Contracts Relating to Atomic Energy.* In all research and development contracts relating to the production or utilization of special nuclear material or atomic energy, the paragraph in 7-302.23(e) shall be added as a final paragraph to the applicable patent rights clause of 7-302.23(a), (b) or (c) included in such contracts.

9-701.8 *Contracts Placed for Other Government Agencies.*

(a) *Patent Rights Clause.*

(1) Other Government agencies may from time to time request the Departments to place contracts on behalf of the agencies. Such requests will state whether or not an agency clause providing for property rights in inventions is required, and the request should have attached thereto the appropriate clause desired by the agency. If such clause is not furnished by the agency, it must be obtained from the agency and be included in the contract. The following rules amplify the use of patent rights clauses in such contracts:

(i) If the request states that an agency clause is required in any resulting contract and the work to be performed under the contract is not severable and is funded wholly or in part by the agency, then the agency clause and no other patent rights clause shall be included in the contract;

(ii) If the request states that an agency clause is required in any resulting contract and the work to be performed under the contract is severable and is only in part for the agency, then the work which is on behalf of the agency shall be identified in the contract and the agency clause shall be made applicable thereto. That portion of the work for a Department shall likewise be identified and the appropriate DAR patent rights clause shall be made applicable to such portion if a patent rights clause is required by this Regulation;

(iii) If the request states that an agency clause is not required in any resulting contract and the work to be performed under the contract is not wholly on behalf of the agency, then an appropriate DAR patent rights clause shall be used if a patent rights clause is required by this Regulation.

(iv) If the request states that an agency clause is not required in any resulting contract and such contract is wholly on behalf of the agency, then no patent rights clause shall be included in such contract.

(2) The price of any contract described in (1) above shall in no event be increased by reason of the inclusion of any patent rights clause in the contract.

(b) *Deviations.* No deviations shall be made under 1-109 in the clause of any other agency providing for property rights in inventions except with the prior approval of the agency. Requests for such deviations, whether individual or blanket, shall be processed in accordance with 1-109.3.

9-701.9 *Contracts Relating to Space.* In order that inventions arising out of Department of Defense sponsored space research and development may be available for use for the benefit of the general public in communications satellite systems, whether such systems are operated by or for the Government or by private enterprise for the transmission of commercial or Government traffic, the paragraph in 7-302.23(g) shall be substituted for paragraph (c)(i) of the Patent Rights clause in 7-302.23(a), (b) and (c) and for the instructional paragraph set forth in (3)(i) of 9-703.6(e) when a greater domestic rights determination is made in a situation in which the clause in 7-302.23(a) or (c) is applicable in any contract having as one of its purposes the performance of research and development work under a space program, project, or task, except as provided in 9-701.8.

9-702 Patent Rights Under Contracts Involving Research and Development with Small Business Firms and Domestic Nonprofit Organizations. This paragraph sets forth policies and procedures and prescribes a contract clause with respect to inventions made in the performance of work under a contract or subcontract entered into by or for the benefit of the Government with small business firms and domestic nonprofit organizations where a purpose of the contract or subcontract is the conduct of experimental, developmental, or research work.

See 9-701 for policies, procedures and prescribed contract clauses relating to contracts and subcontracts awarded to other than small business firms and domestic nonprofit organizations.

9-702.1 *Policy.* Public Law 96-517 (35 U.S.C. 200 et seq.), December 12, 1980, governs the distribution of rights in inventions made by small business firms and domestic nonprofit organizations under funding agreements with Federal agencies. Congress provided that this act takes precedence over any other acts which would require a disposition of rights in Subject Inventions of small business firms or domestic nonprofit organizations in a manner inconsistent with the new act. Additionally, the new act will take precedence over any future act unless the future act cites the new act and provides that it will take precedence. This policy is effective July 1, 1981, and will be applicable to all contracts with small business firms and domestic nonprofit organizations executed on or after that date. This policy may also be made applicable by prior approval of the Secretary to any Subject Inventions which are "made" in the performance of contracts which were awarded prior to July 1, 1981, to small business firms or domestic nonprofit organizations, unless prohibited by law.

9-702.2 *Definitions.* As used in this paragraph:

(a) *Contractor* means any person, small business firm or domestic nonprofit organization.

(b) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code.

(c) *Subject Invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a contract.

(d) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(e) *Made*, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

(f) *Small Business Firm* means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this paragraph,

the size standard for small business concerns involved in Government procurement, contained in 13 CFR 121.3-8, and subcontracting contained in 13 CFR 121.3-12, will be used. (See 1-701.1.)

(g) *Domestic Nonprofit Organization* means universities and other institutions of higher education, or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. Section 501(a)), or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

9-702.3 *Procedures.*

(a) *Use of the Patent Rights (Small Business Firm or Domestic Nonprofit Organization) Clause.*

(1) Each contract awarded to a small business firm or domestic nonprofit organization, which has as a purpose the performance of experimental, developmental, or research work, shall contain the Patent Rights (Small Business Firm or Domestic Nonprofit Organization) (1984 JAN) clause set forth in 7-302.23(h), except that the contract may provide otherwise—

(i) when the contract is for the operation of a Government-owned research or production facility;

(ii) in exceptional circumstances when it is determined by the Secretary that restriction or elimination of the right to retain title to any Subject Invention will better promote the policy and objectives of chapter 38 of title 35 of the United States Code; or

(iii) when it is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any Subject Invention is necessary to protect the security of such activities.

(2) Any determination under (ii) above will be in writing and accompanied by a written statement of facts justifying the determination. The statement of facts will

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contain such information as is deemed relevant and, as a minimum, will (i) identify the small business firm or domestic nonprofit organization involved, (ii) describe the extent to which the right to retain title to a Subject Invention is restricted or eliminated, (iii) state the facts and rationale supporting the action, (iv) provide supporting documentation for those facts and rationale, and (v) indicate the nature of any objections to the action and provide any documentation in which those objections appear. A copy of each such determination and written statement of facts will be sent by the Secretary or his designee to the Comptroller General of the United States within 30 days after the award of the applicable contract. In cases of determinations applicable to contracts with small business firms, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(3) To qualify for the Patent Rights (Small Business Firm or Domestic Nonprofit Organization) clause, the small business firm or domestic nonprofit organization must state in writing that it qualifies as a small business firm or domestic nonprofit organization as defined in 9-702.2(f) and (g). If the contracting officer has reason to question the status of the small business firm or domestic nonprofit organization under the definitions in 9-702.2(f) and (g), he may file a protest in accordance with 13 CFR 121.3-5 in regard to the status of the small business firm, or he may require the domestic nonprofit organization to furnish evidence to establish that it satisfies the requirements of the definition in 9-702.2(g).

(4) Whenever the use of the Patent Rights (Small Business Firm or Domestic Nonprofit Organization) clause is not appropriate, the procedures of 9-701.3 shall be followed in selecting an appropriate patent rights clause for inclusion in a contract or subcontract.

(b) *Right to Sublicense Foreign Governments and International Organizations.* When the head of the contracting activity determines at the time of contracting with a small business firm or domestic nonprofit organization that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, a sentence will be added at the end of paragraph (b) of the Patent Rights clause in 7-302.23(h) as follows:

This license will include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: _____; or pursuant to any future treaties or agreements with foreign governments or international organizations.

(c) *Minimum Rights to Contractor.*

(1) Paragraph (e) of the Patent Rights clause in 7-302.23(h) specifies the minimum rights retained by the contractor in Subject Inventions. When the Federal Government acquires title to a Subject Invention, the contractor will retain a revocable, nonexclusive, royalty-free license throughout the world in the Subject Invention. The contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time contract was awarded. The license is transferable only with the approval of the contracting officer except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted in accordance with departmental licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified to the extent the contractor, its licensees or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the contracting officer will furnish the contractor a written notice of intention to revoke or modify the license, and the contractor will be allowed 30 days (or such other time as may be authorized by the contracting officer for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with the departmental licensing regulations, any decision concerning the revocation or modification.

(d) *Subcontracts.*

(1) The Patent Rights clause in 7-302.23(h) will be included in all subcontracts, regardless of tier, with small business firms and domestic nonprofit organizations having as a purpose of the subcontract the conduct of experimental, developmental, or research work. All subcontracts, regardless of tier, with other than a small business firm or domestic nonprofit organization having as a purpose of the subcontract the conduct of experimental, developmental, or research work will include one of the patent rights clauses required by 9-701.

(2) Contractors will not use their ability to award subcontracts as economic leverage to acquire rights for themselves in the inventions resulting from subcontracts.

(e) *Publication or Release of Invention Disclosures.*

(1) The publication of information disclosing an invention by any party before the filing of a patent application may create a bar to a valid patent. When the contractor intends to file patent applications, the contracting activity will use reasonable efforts to comply with any written request to restrict its publication of information disclosing the invention in order to protect the patent rights in the invention. The contractor must specify the reports and documents to be restricted and the period within which the patent application will be filed.

(2) As provided in 35 U.S.C. 205, Federal agencies are authorized to withhold from disclosure to the public information disclosing any Subject Invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license), for a reasonable time in order for a patent application to be filed. Furthermore, Federal Agencies are not required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office.

(f) *Reporting on Subject Inventions and Subcontracts.*

(1) The contracting activity may require the contractor to furnish a copy of each subcontract containing a patent rights clause.

(2) The clause in 7-302.23(h) requires the contractor to submit interim and final invention reports, preferably on DD Forms 882, listing Subject Inventions and notifying the contracting officer of all subcontracts awarded for experimental, developmental, or research work.

(3) The clause in 7-302.23(h) requires the contractor to submit information regarding the filing date, serial number and title, and upon request, a copy of the

patent application (including an English-language version if filed in a language other than English), and patent number and issue date, for any Subject Invention in any country for which the contractor has retained title.

(4) The clause in 7-302.23(h) requires the contractor, within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure, if the application has been previously filed, to deliver to the contracting officer an instrument confirmatory of all rights to which the Government is entitled and to furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(5) The contracting activity may require the contractor to submit periodic reports on the utilization of a Subject Invention, or on efforts at obtaining utilization, that are being made by the contractor or its licensees or assignees.

9-702.4 *Reserved.*

9-702.5 *Reserved.*

9-702.6 *Retention of Rights by Inventor.* In contracts with small business firms or domestic nonprofit organizations, if the contractor does not elect to retain title to a Subject Invention, the contracting activity may consider and, after consultation with the contractor, may grant requests for retention of rights by the inventor. Retention of rights by the inventor will be subject to the same conditions as retention of rights by the contractor.

9-702.7 *Government Assignment to Contractor of Rights in Invention of Government Employee.* In any case when a Federal employee is a coinventor of any invention made under a contract with a small business firm or domestic nonprofit organization, the military department employing such coinventor may transfer or reassign whatever right it may acquire in the Subject Invention from its employee to the contractor, subject to the conditions of 35 U.S.C. 200 et seq.

9-702.8 *Exercise of March-In Rights.* The following procedures shall govern the exercise of the march-in rights set forth in 35 U.S.C. 203 and in paragraph (j) of the clause in 7-302.23(h):

(i) Whenever the contracting officer receives information that he believes might warrant the exercise of march-in rights, before initiating any march-in proceeding he shall notify the contractor in writing of the information and request informal written or oral comments from the

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contractor. In the absence of any comments from the contractor within 30 days, the contracting officer may, at his discretion, proceed to exercise the march-in rights. If a comment is received, whether or not within 30 days, then the contracting officer shall, within 60 days after he receives the comment, either initiate the march-in or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified.

(ii) A determination to exercise march-in rights in cases where the Subject Invention was made under a contract will be made initially by the contracting officer in accordance with the procedures of the Contract Disputes Act. In such cases, the procedures of the Contract Disputes Act will apply except that any portion of a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the contractor, its assignee, or licensees shall be closed to the public, including potential licensees. The contractor, assignee, or exclusive licensee will not be required to grant a license and the Government will not grant any license until after either (1) 90 days from the date of the contractor's receipt of the contracting officer's decision, if no appeal of the decision has been made to the Armed Services Board of Contract Appeals, or if no action has been brought under 41 U.S.C. 609 within that time; or (2) the board or court, as the case may be, has made a final decision in cases when an appeal or action has been brought within 90 days of the contracting officer's decision.

[The next page is 9:79.]

9-702.9 *Licensing of Background Patent Rights to Third Parties.*

(a) A contract with a small business firm or domestic nonprofit organization will not contain a provision allowing the Government to require the licensing to third parties of inventions owned by the contractor that are not Subject Inventions unless such provision has been approved by the Secretary and a written justification has been signed by the Secretary. Any such provision will clearly state whether the licensing may be required in connection with the practice of a Subject Invention, a specifically identified work object, or both. The Secretary may not delegate the authority to approve such provisions or to sign justifications required for such provisions.

(b) The Government will not require the licensing of third parties under any such provision unless the Secretary determines that the use of the invention by others is necessary for the practice of a Subject Invention or for the use of a work object of the contract and that such action is necessary to achieve the practical application of the Subject Invention or work object. Any such determination will be on the record after an opportunity for a hearing, and the contractor shall be given prompt notification of the determination by certified or registered mail.

9-703 Administration of Patent Rights Clauses.

9-703.1 *Patent Rights Follow-up.* It is important that the Government and the contractor know and exercise their rights in inventions conceived or first actually reduced to practice in the course of or under Government contracts in order to ensure their expeditious availability to the public, and to enable the Government, the contractor and the public to avoid unnecessary payment of

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royalties and to defend themselves against claims and suits for patent infringement. To attain these ends, contracts having patent rights clauses should be so administered that:

(i) inventions are identified, disclosed and reported as required by the contract clauses;

(ii) the rights of the Government in such inventions are established;

(iii) when appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(iv) the rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(v) expeditious commercial utilization of such inventions is achieved.

9–703.2 *Follow-up by Contractor.* Each contractor shall establish and maintain effective procedures to ensure that Subject Inventions are timely identified, disclosed and, when appropriate, patent applications filed so that the Government's rights therein are established and protected.

9–703.3 *Follow-up by Government.*

(a) Each Department shall maintain "follow-up" procedures to assure that Subject Inventions are identified, disclosed, and when appropriate, patent applications filed, and that the Government's rights therein are established and protected. Follow-up activities for contracts which include a clause referenced in 9–701.7 or 9–701.8 shall be coordinated with the appropriate agency.

(b) The contracting officer administering the contract shall be responsible for receiving invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information submitted by the contractor pursuant to a patent rights clause. When the contractor fails to furnish documents or information called for by the clause within the time required by the clause, the contracting officer administering the contract shall promptly request the contractor to supply the required documents or information and, if the failure persists, shall take appropriate action to secure compliance. Invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses shall be sent by the contracting officer administering the contract to the procuring Department for appropriate action.

(c) The procuring Department shall establish a method to detect and correct failures by the contractor to comply with his obligations under the patent rights clauses, such as failures to disclose and report Subject Inventions, both before and after the contract otherwise has been performed. This effort should be directed primarily towards contracts which because of the nature of the research, development or experimental work or the large dollar amount spent on such work, are more likely to result in Subject Inventions significant in number or quality, and towards contracts when there is reason to believe the contractors may not be complying with their contractual obligations. Other contracts should be spot-checked when feasible. As a minimum, appropriate follow-up activities shall include the investigation or review of selected contracts or contractors by an individual or team qualified in patent and technical matters.

award of a new contract, or the increase in quantities or scope of work under existing contract, totaling $5,000,000 or more to be performed at a facility involved in an actual or imminent work stoppage. The Headquarters, Labor Relations Office of the Department concerned, will monitor information concerning proposed contract awards by using standard Departmental reports of prior notification of contract awards. The reports will be used to initiate consultation with the National Office of the Federal Mediation and Conciliation Service or other appropriate mediation agency. After such consultation, a determination will be made whether the announcement of the contract award would have a detrimental affect on labor-management negotiations. If no mediation agency is involved in the labor-management negotiations, the Labor Relations Office at Departmental level will provide advice in the above determination; or

(iv) seeking to obtain such voluntary agreement between management and labor as will permit, notwithstanding the general continuance of the dispute, uninterrupted procurement of military supplies and services, *provided* such activity does not involve the Department in the merits of a labor difference or dispute.

12–101.2 *Contract Pricing and Administration.*

(a) Nothing in 12–101.1 should be construed to relieve a contracting officer from his responsibility to achieve efficient contract pricing and administration.

(b) Contractor labor policies and compensation practices, whether or not they are provided for in labor-management agreements, are not an acceptable basis for allowances of cost in cost-reimbursement-type contracts or for recognition of costs in pricing fixed-price-type contracts if and insofar as they result in unreasonable costs to the Government. Section XV, particularly 15–205.6(a) explains that the term "unreasonable costs" includes costs resulting from practices that are discriminatory against the Government or unwarranted in the context of the particular contract work.

(c) In some cases, labor disputes may give rise to work stoppages which cause delays in the timely performance of important contracts. The contracting officer should impress on the contractor that he will be held accountable for delays that are reasonably avoidable. It should be emphasized that the standard contract clauses dealing with default, excusable delays, etc., do not relieve the contractor for delays that are within his or his subcontractors' control, such as may be the case with delays precipitated by an unfair labor practice of the contractor. In addition, a delay caused by a strike which the contractor could not reasonably prevent can be excused only to the extent that it does not go beyond the point at which a reasonably diligent contractor could resume the delayed performance by ending the strike by such means as:

(i) filing a charge with the National Labor Relations Board so as to permit the NLRB to seek injunctive relief in court;

(ii) recourse to the procedures of the Federal Mediation and Conciliation Service, or other available Government procedures; or

(iii) use of the National Joint Board for the Settlement of Jurisdictional Disputes, or other private Boards or organizations for the settlement of disputes.

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(d) Strikes will normally result in changing patterns of cost incurrence. Certain costs may actually increase because of a strike, *e.g.*, guard services and fees paid to attorneys; other costs incurred during a strike may not fluctuate *i.e.*, "fixed costs" such as rent and depreciation, but because of reduced production become a higher proportion of the unit cost of items produced. All costs incurred during a strike shall be carefully examined (i) so that acceptance of costs during a strike period sustains the Government's position of impartiality concerning the strike (see 12-101.1(e)), and (ii) as to allowability, reasonableness, and allocability in accordance with Section XV, Part 2, to assure recognition of only those costs necessary for the performance of the contract in accordance with the Government's essential interest.

(e) The normal and regular functions of inspection at the plant of a military supplier, as required during the performance of a contract, shall be continued without regard to the existence at such plant of a labor dispute, strike, or picket line. Inspection should not be performed if there is reason to believe that the physical safety of the individual inspector may be endangered thereby. It is emphasized that inspection personnel in the discharge of their duties, consistent with the policy of 12-101.1(e), shall refrain from taking or expressing a position upon the merits of any dispute between labor and private management.

12-101.3 *Reporting of Labor Disputes.*

(a) Any labor dispute affecting defense procurement will be reported by the Contract Administration Office (CAO). The CAO shall obtain and transmit information relating to potential or actual labor disputes which may interfere with performance of any contract within his cognizance.

(b) When an interference is likely to occur, the CAO shall notify the purchasing offices, their Heads of Contracting Activities and their Departmental headquarters labor relations office (for the Army, the Labor Advisor, OASA (RD&A); for the Navy, Chief of Naval Material, Attn: Labor Relations Advisor (MAT 08C4L); for the Air Force, Headquarters USAF, RDC-LA, Attn: Special Assistant for Labor Affairs; for the Defense Logistics Agency, HQ DLA CAS Labor Advisor, Attn: DLA-AP, and in addition for DLA procurements one copy to DLA-PL; for the National Security Agency, Director of Procurement; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, the Chief, Office of Procurement; and for the Defense Mapping Agency, Staff Director of Logistics). Further dissemination of labor dispute information shall be made by the CAO as requested by the Departmental headquarters labor relations offices.

(c) Labor disputes should be reported on DD Form 1507, Work Stoppage Report. An initial report should be submitted when a work stoppage due to a labor dispute is imminent or when such work stoppage occurs and thereafter when a significant change occurs in the dispute situation. This reporting requirement is assigned RCS DD I&L (AR) 1153.

12-101.4 *Impact of Labor Disputes on Defense Programs.*

(a) Each Department shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements, considering among others the following factors:

of vessels and cost-plus-incentive-fee contracts having a cost incentive which provides for a swing from target fee of at least plus or minus 3% and a contractor's share of cost of at least 10%. Whenever this clause is used, the procedural requirements of this 12-102.4 shall be followed.

(b) An amount for overtime premiums at Government expense may be included in paragraph (d) of the *Payment for Overtime Premiums* clause when the use of overtime has been approved by an official designated as provided in (e) below. Only overtime premiums for work in those departments, sections, etc., of the contractor's plant which have been individually evaluated and the necessity for overtime confirmed, will be considered for approval, and then only for overtime premiums not reimbursable under the exceptions contained in paragraph (a) (ii) of the clause. Approval may be granted when such official determines in writing that overtime is necessary:

(i) to meet delivery or performance schedules, and such schedules are determined to be consistent with essential military objectives;

(ii) to make up for delays beyond the control and without the fault or negligence of the contractor; or

(iii) to eliminate foreseeable production bottlenecks of an extended nature which cannot be eliminated in any other way.

(c) When, during negotiation, it becomes apparent that overtime will be required during the performance of the contract and the contract will contain the *Payment for Overtime Premiums* clause, the PCO shall secure from the contractor a request substantially in accordance with the request procedures in paragraph (c) of such provision for all overtime to be used during the life of the contract, to the extent that it can be estimated with reasonable certainty. If the contemplated overtime premium could affect the costing of other work performed by the contractor or is significant in amount, the PCO may avail himself of the advisory services of the cognizant Defense Contract Audit Agency office to determine the proper accounting treatment of such premium. The PCO shall request from the appropriate official designated, as provided in (e) below, approval for overtime premiums at Government expense. Upon receipt of such approval, the PCO shall complete paragraph (d) of the clause.

(d) During contract performance, requests for overtime, submitted pursuant to the *Payment for Overtime Premiums* clause, will be submitted to the ACO who shall evaluate the need for such overtime and forward the request, with his comments, as expeditiously as possible to the PCO. Thereupon, the PCO, if he desires that the requested overtime be approved in whole or in part, shall, unless a prior authorization is sufficient to cover the overtime requested, request the approval of the appropriate official designated as provided in (e) below and, as expeditiously as possible, modify paragraph (d) of the clause to reflect the approval.

(e) The Deputy Assistant Secretary for Acquisition, Office of the Assistant Secretary of the Army (Research, Development and Acquisition), for the Army; the Deputy Chief of Naval Material (Procurement), for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters USAF, for the Air Force; the Executive Director for Contracting, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the

Assistant to the Director for Administration, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency; are authorized, without power of delegation, to designate without power of redesignation, officers and civilian officials for the purpose of approving overtime premiums at Government expense. Such approval may be for an individual contract, project, or program, or for a plant, division, or company, as most practicable, and shall ordinarily be prospective, but may be retroactive when justified by the circumstances. When two or more purchasing offices have current contracts at a single facility, and the approval of overtime by one purchasing office will affect the performance or cost of contracts of another, the approving official will obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which overtime premiums will be approved. If the approving officials do not agree within a reasonable time as to the action to be taken, a decision shall be obtained through normal channels. Ordinarily, in the absence of evidence to the contrary, a purchasing office may rely on the contractor's statement that such approval will not affect the performance, or payments in connection with any contract of another purchasing office.

12–102.5 *Contract Administration.*

(a) The cost of overtime premiums under the *Payment for Overtime Premiums* clause and all overtime premiums under cost-reimbursement type contracts which do not contain the clause, shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under the contract, in accordance with 15–201.

(b) In administration of contracts under which overtime has been approved pursuant to 12–102.4, the ACO and the cognizant audit activity shall review periodically the use of such overtime to assure that it is reasonable and properly allocable to work under the contract.

12–102.6 *Payment of Overtime Premiums Clause.* The clause in 7–203.27 shall be used when required by 12–102.4(a).

12–102.7 *Construction Contracts.* See 18–111 regarding expediting actions involving additional costs.

12–103 Federal and State Labor Requirements.

12–103.1 *General.* The Department of Defense shall cooperate and encourage contractors to cooperate, to the fullest extent practicable, with Federal and State agencies responsible for enforcing labor requirements with respect to such matters as safety, health and sanitation, maximum hours and minimum wages, equal pay for women, and child and convict labor.

12–103.2 *Applications for Relaxation of Requirements.*

(a) Departments shall not initiate applications of any kind for suspension or relaxation of labor requirements. They may, however, support such applications by contractors or suppliers when all of the following circumstances and conditions have been met:

(i) the interested contractor or supplier has filed his application for relaxation of the laws, orders or regulations involved with the appropriate Governmental official charged with the enforcement of such labor requirements applicable to the contract involved;

(ii) the required products or services are in short supply and unless the application is granted, production schedules for critically needed military material cannot be met;

(iii) there is no alternative source of supply reasonably available to furnish the products or services within the period of time delivery is required;

(iv) there is no practicable possibility of taking remedial action (such as recruiting, training, and more effective utilization of manpower) as an alternative to relaxation of applicable Governmental labor requirements;

(v) the apparent supply of labor, and in particular of critical skills, is limited, and it is not practicable to set up new production lines or to use additional facilities as an alternative to the relief requested; and

(vi) the granting of the application will not result in an excessive increase in hours or work, an unreasonable curtailment of rest and lunch periods, an undesirable impairment of working conditions, or otherwise adversely affect the productivity of the facility involved.

(b) Requests for authority to support an application on behalf of a contractor or supplier shall be submitted to the Labor Advisor, OASA (RD&A) for the Army; Chief of Naval Material for the Navy; HQUSAF (RDC-LA, Attn: Special Assistant for Labor Affairs) for the Air Force; Directorate of Contracting, DLA-PL, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; Chief, Contract Management Division (Code 260), for the Defense Communications Agency; Chief, Office of Procurement, for the Defense Nuclear Agency; and Staff Director of Logistics, for the Defense Mapping Agency. Such requests shall contain the following information:

(i) the facilities and services involved and affected;

(ii) provision(s) of law which require relaxation;

(iii) criticality or relative scarcity of the material;

(iv) circumstances necessitating the relaxation (for example, a shortage in the local supply of skilled labor);

(v) remedial action being taken by the manufacturer (*e.g.*, training, recruiting, more effective utilization of manpower);

(vi) the most limited relaxation of the requirement necessary for completion of the specific work; and

(vii) the approximate period of time required for completion of the work.

(c) Consistent with the limitations of security and the foregoing requirements, contract information may be furnished to the appropriate Governmental official, upon his request, in connection with an application of a contractor or supplier for relaxation of a labor requirement as to the execution of a contract in pursuance of a military procurement program.

12–104 Reserved.

12–105 Reserved.

12–106 Supply, Services, or Maintenance Contracts Involving Construction Work. The requirements of statutes, regulations, and determinations establishing construction labor standards are set forth in Section XVIII, Part 7. In many instances, construction items under supply, service, maintenance, research and development, and other nonconstruction contracts are not subject to the requirements of Section XVIII, Part 7, although this is not necessarily always the case simply because the construction work is to be performed under a contract which also calls for nonconstruction work. This paragraph 12–106 governs the applica-

bility of those requirements to contracts involving both construction and nonconstruction work.

12-106.1 *When Construction Labor Standards and Clauses Are Applicable.*

(a) Contracts involving both construction and nonconstruction work are in general subject to the requirements of Section XVIII, Part 7, and must include the appropriate clauses in 7-602.23 if:

(i) the contract contains specific requirements for substantial amounts of construction work, or it is ascertainable at the contract date that a substantial amount of construction work will be necessary for the performance of the contract (the word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract); and

(ii) the construction work is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from, the other work called for by the contract; and

(iii) the requirements are otherwise applicable to the contract (see 18-701).

(b) Even though the contract contains construction labor clauses pursuant to (a) above, the nonconstruction work under the contract is not subject to those clauses, because they provide that they are applicable to the contract work only to the extent that the work is subject to the labor standards statutes involved.

12-106.2 *When Construction Labor Standards and Clauses Are Not Applicable.* Construction work is exempt from the requirements of Section XVIII, Part 7, when (i) it is to be performed in support of nonconstruction work, such as manufacturing and furnishing of supplies, and (ii) in the circumstances of the particular case the construction work is so merged with the nonconstruction work, or so fragmented in terms of the locations or time spans in which it is to be performed, that it cannot be segregated as a separate contractual requirement for construction. Accordingly, contracts involving both nonconstruction work and this type of construction work are not subject to the requirements of Section XVIII, Part 7.

12-107 Labor Standards Enforcement Report.

(a) A semiannual report is required on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act. The reporting periods are 1 October through 31 March and 1 April through 30 September. The reports shall be prepared by the contract administration office and will be submitted through channels so as to reach the labor relations advisor of the Headquarters concerned not later than 25 days after the close of the reporting period. Within the next five days a report will be submitted by the Headquarters to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(b) The report shall contain the following information, as applicable, for construction work subject to the Davis-Bacon Act and Contract Work Hours and Safety Standards Act:

(i) Period covered;

(ii) Number of prime contracts awarded;

(iii) Total dollar amount of prime contracts awarded;

12-805 Contract Clauses and Solicitation Provisions. Clause and solicitation provisions implementing the EEO program are contained at:

(i) 7-103.18(a) - Equal Opportunity clause, used with other than Federally assisted construction;

(ii) 7-103.18(b) - Equal Opportunity (Federally Assisted Construction);

(iii) 7-104.22 - Equal Opportunity Preaward Clearance of Subcontracts;

(iv) 7-603.60 - Affirmative Action Compliance Requirements for Construction;

(v) 7-607.13 - Equal Opportunity clause, used with architect - engineer services;

(vi) 7-2003.14(a) - Preaward On-Site Equal Opportunity Compliance Review;

(vii) 7-2003.14(b)(1)(A) - Certification of Nonsegregated Facilities;

(viii) 7-2003.14(b)(1)(B) - Previous Contracts and Compliance Reports;

(ix) 7-2003.14(b)(2) - Affirmative Action Compliance. used with nonconstruction affirmative action compliance programs;

(x) 7-2003.14(d) - Notice of Requirement for Affirmative Action to Ensure Equal Opportunity; and

(xi) 7-2003.14(c) - Notification of Visa Denial.

12-806 Affirmative Action Compliance Programs (AACPs).

12-806.1 *Nonconstruction.* Except as provided in 12-808, each prime contractor and each subcontractor with 50 or more employees and (i) a contract or subcontract of $50,000 or more, or (ii) Government bills of lading which, in any 12-month period, total or can reasonably be expected to total $50,000 or more is required to develop a written AACP for each of its establishments within 120 days from the commencement of its first such Government contract or subcontract.

12-806.2 *Construction.*

(a) Construction contractors are required to meet (i) the contract provision citing affirmative action requirements covering specified geographical areas or projects and (ii) applicable requirements of 41 CFR Part 60-1.

(b) Departments shall maintain a listing of specific geographical areas that are subject to affirmative action requirements which specify goals for minorities and women in covered construction trades. Information concerning this lising and additions thereto will be provided to the principally affected contracting offices in accordance with departmental procedures. Any contracting office contemplating a construction project in excess of $10,000 within a geographical area not known to be covered by specific affirmative action goals shall request instructions prior to issuance of a solicitation. Such a request shall be forwarded through contracting channels to: Labor Advisor, OASA(RDA), for the Army; the cognizant field office of the Naval Facilities Engineering Command, for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters USAF, for the Air Force; Executive Director for Contracting, for the Defense Logistics Agency; Director of Procurement,

for the National Security Agency; the Counsel, for the Defense Communications Agency; Director, Acquisition Management, for the Defense Nuclear Agency; Staff Director of Logistics, for the Defense Mapping Agency; and the Assistant Director for Administrative Services, for the Defense Civil Preparedness Agency.

(c) Contracting officers shall give written notice to the appropriate Assistant Regional Administrator, OFCCP, within 10 working days of award of the contract subject to these affirmative action requirements. The notification shall include the name, address and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed. When requested by the appropriate compliance office, the contracting office shall arrange a conference among contractor, contracting activity, and compliance personnel to discuss the contractor's compliance responsibilities (see 18-704.1(b)(2).

12-807 Contracting Officer Responsibilities.

12-807.1 *Contract Provisions.* In all solicitations and contracts, except those exempted by 12-808(b) - (f), the contracting officer shall include the applicable clause(s) and solicitation provisions referenced in 12-805. (Note: By operation of the Executive Order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Order and this Part to include such a clause whether or not it is physically incorporated in such contracts.)

12-807.2 *Determinations (Excluding Construction).*

(a) *Preaward Clearances for Contracts and Subcontracts of $1 Million or More.* Except as provided in (2)*a.* below, the contracting officer shall request the appropriate OFCCP regional office (see (1)*a.* below) to determine whether a prospective contractor is awardable prior to award of any contract, modification of an existing contract for new effort that would constitute a contract award, issuance of any basic ordering agreement, award of any indefinite delivery contract or letter contract, the estimated amount of which is or is expected to aggregate $1 million or more or to increase the aggregate value of an existing contract to $1 million or more.

(1) *Procedure for Requesting Clearances.*

a. Preaward clearance for each proposed prime contract and for each known proposed first tier subcontract of $1 million or more shall be requested by the contracting officer directly from the OFCCP Regional Office(s), as will be listed from time to time in Defense Acquisition Circulars. Verbal requests shall be confirmed in writing.

b. When contract work is to be performed outside the United States with employees recruited within the United States, the preaward review should be requested from the OFCCP regional office serving the area where the contractor's corporate home or branch office is located within the United States, or the corporate location where personnel recruiting is handled, if different from the foregoing. In cases where the proposed contractor has no corporate office or location within the United States, the preaward action should be based on the location of the recruiting agency, as defined in 12-803(o), in the United States.

c. In making a request for preaward clearance, the contracting officer shall furnish the following information:

(i) name, telephone number, and address of the prospective prime contractor, any corporate affiliate thereof at which work is to be performed, and each known first tier subcontractor with a proposed subcontract estimated at $1 million or more;
(ii) anticipated date of award;
(iii) information as to whether the prime contractor and known first tier subcontractors have previously held any Government contracts or subcontracts or Federally assisted construction contracts (7-2003.14(b)(1)(B));
(iv) place or places of performance of the prime and first tier subcontract estimated at $1 million or more, if known; and
(v) the anticipated dollar amount for the prime and each first tier subcontract, if known.

(2) *Time Limitations for Requesting Preaward Clearances.*

a. As much time as feasible shall be provided prior to award for the conduct of necessary reviews. As soon as the successful contractor can be determined, the contracting officer shall process a preaward clearance request in accordance with procedures established at 12-807.1(a)(1), assuring, where possible, that the preaward clearance request is submitted to the OFCCP regional office at least 30 calendar days prior to the proposed award date.

b. In the event that the Director, OFCCP has not made a final preaward clearance determination within 30 calendar days from submission of the clearance request, the contracting officer shall withhold award of the contract for an additional 15 calendar days or until clearance is received, whichever occurs first. If the additional 15 calendar days expire, and the Director, OFCCP, has not found the contractor

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to be in compliance or made a final written determination declaring the contractor ineligible for reasons of noncompliance, the award may be made to the contractor in question. The contracting officer shall notify the OFCCP regional office of the award and, through the head of the contracting activity, the departmental labor advisor listed at 12-1002.6.

c. When the procedures specified in *a.* and *b.* above would delay award of an urgent and critical contract beyond the time necessary for the Government to make awards or beyond the time specified in the bid or proposal or extension thereof, the contracting officer shall immediately inform the servicing OFCCP regional office as to the expiration date of the bid or proposal or the required date of award, and request clearance be provided prior to that date. If the OFCCP regional office advises that a clearance review cannot be completed by the required date, the contracting officer shall submit written justification for the award to the head of the contracting activity who, after informing the servicing OFCCP regional office, may then approve the award without the preaward clearance. If an award is made under this authority, the contracting officer shall immediately request a postaward review from the appropriate OFCCP regional office.

d. If, under the provisions of *c.* above, a postaward review determines the contractor to be nonawardable, the Director, OFCCP, may authorize the use of the enforcement procedures at 12-810 against the noncomplying contractor.

(b) *Reserved.*

12-807.3 *Processing Ineligibility Determinations.* Where a determination of ineligibility by reason of EEO deficiencies has been made, the contracting officer shall follow the notification procedures set forth in 12-810(b).

12-807.4 *Contractor Inquiries.* Any contractor inquiring in regard to its compliance status and rights of appeal under 41 CFR 60-2.2(b) shall be referred to the OFCCP regional office.

12.807.5 *Labor Union Inquiries.* Inquiries from organized labor which concern revision of a collective bargaining agreement in order to comply with the Executive Order and with the Equal Opportunity clause shall be referred to the Director, OFCCP. The departmental labor advisor (12-1002.6) shall be advised in writing of all such referrals.

12-807.6 *Other Matters.* Matters requiring the attention of OFCCP national headquarters shall be referred to the departmental labor advisor (see 12-1002.6) in accordance with departmental procedures.

12-807.7 *Equal Opportunity Posters.* The contracting officer shall furnish to the contractors appropriate quantities of the poster entitled "Equal Opportunity Is the Law." These notices shall be obtained in accordance with departmental procedures.

12-808 **Exemptions.**

(a) ***Transactions of $10,000 or Less.*** The equal opportunity clause is required to be included in contracts in accordance with 12-801(a). Individual contracts or subcontracts of $10,000 or less are exempt from application of the Equal Opportunity clause, unless the aggregate value of all contracts and subcontracts awarded to a contractor or subcontractor in any 12-month period exceeds, or can reasonably be expected to exceed $10,000. (Note: Government bills of lading regardless of amount are not exempt). In determining the applicability of this exemption to any Federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. No contracting officer, contractor or subcontractor shall procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause.

(b) ***Work Outside the United States.*** Contracts and subcontracts are exempt from the requirements of the Equal Opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States. See 12-807.2(a)(1)b for procedures in cases where employees are recruited in the United States.

(c) ***Contracts with State or Local Governments.*** The requirements of the clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(d) ***Work on or near Indian Reservations.*** It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" includes all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis or religion, sex, or tribal affiliation, and the use of such preference shall not excuse a contractor from complying with the Executive Order, rules and regulations of the Secretary of Labor and the equal opportunity clauses and provisions in Section VII.

(e) *Contracts Exempted by the Secretary of Defense in the Interest of National Security.*

(1) Any requirement set forth in this Part shall not apply to any contract or subcontract whenever the Secretary of Defense determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security.

(2) ***Request for Exemption.*** The contracting officer shall prepare a detailed justification for such determination which shall be submitted through contracting channels to the labor advisor (see 12-1002.6), for departmental coordination and submission, as appropriate, to the Deputy Under Secretary of Defense for Research and Engineering (DUSDRE), who shall submit the request for exemption to the Secretary of Defense for approval and shall notify the Director, OFCCP, within 30 days of such a determination.

(f) *Specific Contracts and Facilities Exempted by the Director, OFCCP.*

(1) *Specific Contracts.* The Director, OFCCP, may exempt an agency or person from requiring the inclusion of any or all of the Equal Opportunity clause in any specific contract or subcontract when the Director deems that special circumstances in the national interest so require. Groups or categories of contracts or subcontracts of the same type may also be exempted where the Director finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the Order.

(2) *Facilities Not Connected with Contracts.* The Director, OFCCP, may exempt from the requirements of the clause, any of a prime contractor's or subcontractor's facilities which the Director finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, *provided* that the Director also finds that such an exemption will not interfere with or impede the effectuation of the Order.

(3) *Special Circumstances.* The Director, OFCCP, may exempt a contract or subcontract when the Director finds that special circumstances indicate that use of either of the clauses in 7-103.18 in the contract or subcontract would not be in the national interest.

(4) *Request for Exemption.* The contracting officer shall submit a detailed justification for omitting or modifying the clause under (1), (2) or (3) above through contracting channels to the labor advisor (see 12-1002.6), for departmental coordination and submission, as appropriate. The DUSDRE shall submit the request for exemption to the Director, OFCCP.

(5) *Withdrawal of Exemption by the Director, OFCCP.* When any contract or subcontract is of a class exempted under this paragraph 12-808, the Director, OFCCP, may withdraw the exemption for a specific contract, subcontract, or group of contracts or subcontracts when, in his judgment, such action is necessary or appropriate to achieve the purposes of the Executive Order. Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal. In contracts entered into by formal advertising or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

12-809 Complaints.

(a) Complaints received alleging violation of the Equal Opportunity clause shall be referred immediately to the appropriate regional office of the OFCCP. Complainant shall be advised in writing of the referral.

(b) The contractor shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint or the fact that the complaint was received.

12-810 Enforcement.

(a) At written direction of the Director, OFCCP, one or more of the following actions, including administrative sanctions and penalties, may be exercised against contractors found to be in violation of the Executive Order, the regulations of the Secretary of Labor, or the clauses and provisions in Section VII:

(i) publication of the names of such contractors or their unions;

(ii) cancellation, termination, or suspension of the contractor's contracts or portions thereof; and

(iii) debarment from future Government contracts, or extensions or modifications of existing contracts until such contractors have established and carried out personnel and employment policies in compliance with the Executive Order and the regulation of the Secretary of Labor; and

(iv) referral by the Director, OFCCP, of any matter arising under the Executive Order to the Department of Justice or to the Equal Employment Opportunity Commission (EEOC) for the institution of appropriate civil or criminal proceedings.

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(b) Upon receipt of written notification from the Director, OFCCP, that a specific contractor is ineligible, the departmental labor advisor (see 12-1002.6) shall be immediately informed by the most expeditious means and provided a copy of the notification. The departmental labor advisor shall inform HCAs of the contractor's ineligible status.

thereby possibly bringing it within the Act's coverage.)

12-1002.2 *Geographical Coverage of the Act.* The Act applies to service contracts performed within the United States (see 12-1002.3(ii)). The Act does not apply to contracts performed outside the United States.

12-1002.3 *Definitions.* For the purpose of this part, unless otherwise indicated, terms used here are defined as follows:

(i) "Service employee" means any person employed in connection with a contract entered into by the United States and not exempted under section 7 of the Act (41 U.S.C. 356), whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR, Part 541); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(ii) "United States" shall include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island, but shall not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country.

(iii) "Administrator" means the Administrator of the Wage and Hour Division, United States Department of Labor, or the Administrator's authorized representative.

(iv) "Contract" includes any contract subject wholly or in part to provisions of the Act and any subcontract at any tier thereunder.

(v) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act.

(vi) "Wage Determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of section 2(a) and 4(c) of the Act (41 U.S.C. 351 and 353) for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 that is subject to the provisions of the Act.

12-1002.4 *Statutory Exemptions.* Statutory exemptions are set forth in paragraph (p) of the clause at 7-1903.41(a).

12-1002.5 *Administrative Limitations, Variations, Tolerances, and Exemptions.* The Secretary of Labor, only in special circumstances, may provide such reasonable limitations

and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act as the Secretary may find necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business (41 U.S.C. 353(b)). Requests for variations, tolerances, and exemptions from the Act shall be submitted in writing through contracting channels to the departmental labor advisor (12-1002.6).

12-1002.6 *Questions Concerning Applicability of the Act.* In the event the contracting officer questions the applicability of the Act to an acquisition, the matter shall be forwarded for resolution, prior to issuance of the solicitation, as follows:

For the Army: Assistant Secretary of the Army (RDA)
Attn: Labor Advisor
For the Navy: Chief of Naval Material
Attn: Labor Relations Advisor
For the Air Force: HQ USAF, RDC-LA
Attn: Special Assistant for Labor Affairs
For DCA: Defense Communications Agency Headquarters
Attn: Counsel
For DMA: Staff Director of Logistics
For DNA: Deputy Director of Operations and Administration
For DLA: Executive Director, Contracting, DLA-PL

12-1003 Department of Labor Regulations. The Department of Labor has issued 29 CFR, Parts 4 and 1910, providing for the administration and enforcement of the Act. The regulations include coverage of the following matters relating to the requirements of the Act:

(i) Service Contract Labor Provisions and Procedures (see 29 CFR, Subpart A, Part 4);
(ii) Equivalents of Determined Fringe Benefits (see 29 CFR, Subpart B, Part 4);
(iii) Application of the Act of 1965 (Rulings and Interpretations) (see 29 CFR, Subpart C, Part 4);
(iv) Safe and Sanitary Working Conditions (see 29 CFR, Part 1910); and
(v) Rules of Practice for Administrative Proceedings Enforcing Service Contract Labor Standards (see 29 CFR, Part 6).

12-1004 Contract Clauses and Solicitation Provisions. Clauses, solicitation provisions, and guidance as to their use are contained at:

the duration of the function can be determined. Technological life may be used by the contractor if he can demonstrate that existing facilities must be replaced because of:

(i) specific program objectives or contract requirements which cannot be accomplished with the existing facilities;
(ii) cost reductions which will produce identifiable savings in production or overhead costs;
(iii) increase in workload volume which cannot be accomplished efficiently by modifying or augmenting existing facilities; or
(iv) consistent pattern of capacity operation (2 1/2-3 shifts) on existing facilities.

Technological advances per se will not justify replacement of existing facilities before the end of their physical life if such existing facilities will be able to satisfy future requirements or demands.

(2) In estimating the least cost to the Government for such useful life, the cumulative costs that would be allowed if the contractor owned the property should be compared with cumulative costs that would be allowed under any of the various types of leasing arrangements available. For the purposes of this comparison, the costs of ADPE exclude interest or other unallowable costs pursuant to Section XV, Part 2; they include but are not limited to the costs of operation, maintenance, insurance, depreciation, facilities capital cost of money, rental, and the cost of machine services, as applicable.

(d)(1) Except as provided in (3) below, the contractor's justification, under (b)(1) above, of his leasing decisions shall consist of but is not limited to the following supporting data, prepared prior to acquisition:

(i) analysis of utilization of existing ADPE;
(ii) application of the criteria in (b) above;
(iii) specific objectives or requirements, generally in the form of a data system study and data system specification;
(iv) solicitation of proposals from qualified sources based on the data system specification; and
(v) proposals received in response to the solicitation, and reasons for selection of the equipment chosen and for the decision to lease.

(2) Except as provided in (3) below, the contractor's annual justification, under (b)(2) above, of his decision to retain or change his existing ADPE capability and the need to continue leasing that capability shall consist of but is not limited to current data as specified in (i) through (iii) above.

(3) When a contractor's prospective ADPE lease cost equals or exceeds the thresholds specified in 15-205.48(b)(2)(iii), data in support of the initial decision to lease, under (b)(1) above, shall be furnished in accordance with 3-1100.3. If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year, and 50% or more of the total leasing cost is allocated to Government contracts requiring the negotiation or determination of costs, data in support of the annual justification, under (b)(2) above, for retention or change of existing ADPE capability and the need to continue leasing that capability shall also be furnished in accordance with 3-1100.3.

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15-205.49 *Deferred Research and Development Costs* (CWAS-NA). As used herein, research and development refers to the type of technical effort which is described in 15-205.35(a) but which is sponsored by, or required in performance of, a contract or grant. Research and development costs (including amounts capitalized) which were incurred prior to the award of a particular contract are unallowable except when allowable as precontract costs (see 15-205.30). In addition, when costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, such excess may not be allocated as a cost to any other Government contract (see 15-205.19).

15-205.50 *Cost of Money* (CWAS-NA).

(a) *Facilities Capital Cost of Money*.

(1) Facilities capital cost of money (Cost of Capital Committed to Facilities) is an imputed cost determined by applying a cost of money rate to facilities capital employed in support of Defense contracts. A cost of money rate is derived from a common source and uniformly imputed to all contractors. Capital employed is determined without regard to its source as between equity or borrowed capital. The resulting cost of money is an imputed cost and is not a form of interest on borrowings as discussed in 15-205.17.

(2) Facilities capital cost of money is allowable cost *provided* (i) the contractor's capital investment is measured, allocated to contracts, and costed in accordance with 3-1300, and (ii) the contractor maintains adequate records to demonstrate compliance with item (i).

(3) Cost of money for facilities capital need not be entered on the company's books of account. However, a memorandum entry of the cost shall be made. All relevant schedules, cost data and other data necessary to fully support the entry shall be maintained in a manner to permit audit and verification.

(4) Cost of money which is calculated, allocated and documented in accordance with these regulations shall be deemed an "incurred cost" for cost reimbursement purposes pursuant to the payment provisions of applicable cost type contracts. See E-509.5 re: applicability of cost of money for progress payment purposes under fixed-price contracts.

(5) The cost of money resulting from including goodwill (however represented) in the facilities capital employed base is unallowable.

(b) *Cost of Money as an Element of the Cost of Capital Assets Under Construction.*

(1) Cost of money as an element of the cost of capital assets under construction is an imputed cost determined by applying a cost of money rate to the investment in tangible and intangible capital assets while they are being constructed, fabricated, or developed for a contractor's own use. The source of the investment for capital assets being constructed, whether equity or borrowed capital, is not considered in this cost of money determination.

(2) Cost of money computed on representative investments prior to the contractor's first fiscal year subsequent to December 15, 1980 is not allowable. Cost of money may be capitalized on assets under construction beginning with the contractor's first fiscal year after December 15, 1980. However, amortization of such costs shall first be allowable for

15-205.53 *Goodwill.* Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

15-206 Notice of Intent to Disallow or Not Recognize Costs.

(a) *Purpose.* The clause entitled "*Notice of Intent to Disallow or Not Recognize Costs*" is a required clause for all cost-type contracts and fixed-price incentive contracts and contracts providing for price redetermination (*see 7-203.35*). A Notice of Intent to Disallow or Not Recognize Costs provides the basis under a contract for the contractor to appeal, prior to final settlement of costs of the contract, a determination of exception to costs either incurred or to be incurred. It thereby provides a vehicle for disputes to be settled in a more timely fashion.

(b) At any time during the performance of the contract, the cognizant contracting officer may issue a Notice of Intent to Disallow or Not Recognize Costs stating his intent to take exception to specific costs or portions thereof, under the contract. Usually, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs results from activities performed through monitorship of contractors' cost (*see Section XX, Part 10*), or on advice of auditors or technical personnel. Also, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs shall only be made after discussion between the contracting officer and the contractor. The notice should be specific as to the type of cost to which exception is taken, the amount of such exception (if applicable), reasons for exception, applicable time period of the exception, and should reference the Notice of Intent to Disallow or Not Recognize Costs clause of the contract. When such notification involves elements of indirect costs, the approval of the contracting officer having authority for final settlement of overhead shall be obtained prior to issuance of the notice except that a Corporate Administrative Contracting Officer (CACO) need not obtain the approval of local cognizant ACOs for items of corporate expense. When the Notice of Intent to Disallow or Not Recognize Costs is issued, the originating contracting officer (CACO or ACO) will distribute information copies to all administrative contracting officers cognizant of that corporation. The notice will allow the contractor sixty days in which to contest the exception in writing and provide justification why the proposed expenditure is justifiable and reasonable. The ACO will then consider the contractor's position and shall within sixty days either modify his original position or issue a decision in writing under the Disputes clause of

the contract. When elements of indirect cost are involved, such decision will be rendered by the contracting officer with authority for final overhead settlement (see 3-700).

(c) As a minimum the Notice of Intent to Disallow or Not Recognize Costs should contain the following information:

(i) contractor identification;
(ii) contract(s) affected;
(iii) description of cost exception(s);
(iv) estimated dollar value by item;
(v) reason(s) for the exception;
(vi) applicable time period(s) involved;
(vii) potential impact on billing rates and FPRAs;
(viii) effective date of notice;
(ix) provision for acknowledgment of receipt;
(x) date when formal reply must be received; and
(xi) recipients of copies of notice.

Part 2—Formal Advertising

18–201 Types of Contracts. Generally, contracts for construction shall be formally advertised and be of the firm fixed-price type. Fixed price contracts for such work may be either (i) lump sum contracts for the total work or for defined parts of the work, or (ii) unit price contracts in which a unit price is paid for specified quantity units of work such as cubic yards of earth or concrete or square yards of pavement, or (iii) a combination of both. Lump sum contracting shall be used in preference to unit price contracting except where (i) large quantities of work such as grading, paving, outside utilities or site preparation are involved, (ii) quantities cannot be determined in advance of contracting within limitations that would permit a lump sum bid without a substantial contingency, (iii) quantities may change significantly during construction, or (iv) bidders would have to expend unusual effort in making take-off's of quantities. Fixed-price contracts with economic price adjustment provisions may be used where such clauses are customary in contracts for particular items if the omission of the clause would preclude a significant number of firms from bidding, or would likely result in the inclusion of unwarranted contingencies, unreasonably increasing the cost to the Government. The economic price adjustment clauses in 7–106 may be used, adapted to the particular procurement.

18–202 Preparation of Invitation for Bids.

(a) Forms used to invite bids are prescribed in Section XVI, Part 4 and are set forth in Appendix F. Invitations for bids shall contain the information required by 2–201(b).

(b) All invitations for bids shall allow sufficient bidding time (*i.e.*, the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) (see 2–202.1) to allow bidders an adequate opportunity to prepare and submit their bids, giving due regard for the construction season, the time necessary for bidders to inspect the site, obtain subcontract bids, examine data concerning the work and prepare estimates from plans and specifications.

18–203 Inspection of Site and of Data Affecting the Work. As appropriate, provisions should be made for bidders to inspect the construction site and have the opportunity to examine data available to the Government which may provide information affecting performance of the work, such as boring samples, original boring logs, records and plans of previous construction, etc. Such data should be assembled in one place and made available for inspection. The invitation for bids should notify bidders of the time and place for the site or data inspection and where such inspection by the bidders alone is not feasible, designate an individual, preferably the same one for all bidders, who will show the site or data to the bidders. Care shall be taken that all significant information regarding the site and the data is made available to all bidders in the same manner, including information regarding utilities, if any, to be furnished during construction. A record should be kept of the identity and affiliation of all bidder's representatives who inspect the site or examine the data.

18–204 Prebid Conferences. When the contracting officer considers that a prebid conference should be held in connection with a large construction project involving important or complex work, the invitation for bids shall provide for

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such conference to be held on a specified date, about midway during the bidding period. At the conference, the contracting officer or his representative shall explain the nature of the work and problems that can be expected. He shall answer questions which he may require to be submitted in advance. He shall, however, defer answer on questions which he considers require further study. The design architect-engineer should be available during the conference to assist in interpreting plans and specifications. Remarks and explanations at the conference shall not qualify the terms of the invitation and specifications. A complete record shall be made of the conference.

18–205 Preinvitation Notices.

(a) Unless the requirement is waived by the Head of a Procuring Activity or his designee, preinvitation notices shall be sent to all prospective bidders on any construction procurement to be formally advertised, estimated to cost $100,000 or more. These notices shall be sufficiently in advance of the invitation for bids to stimulate interest on the part of the greatest number of contractors. Such notices may also be used where the procurement is estimated to cost less than $100,000. Preinvitation notices shall:

(i) describe the proposed work in sufficient detail to disclose the nature and volume of work;

(ii) state the location of the work;

(iii) include tentative dates of issuance of invitations, opening of bids and estimated time of completion;

(iv) state where plans will be available for inspection without charge;

(v) include a statement of the magnitude in terms of physical characteristics and estimated cost of the proposed construction in accordance with 18–109;

(vi) specify a date by which request for an invitation for bids should be submitted; and

(vii) expressly notify contractors that, if no bid is to be submitted, they should advise issuing office whether future advance notices are desired.

(b) Invitations for bids shall be sent to those bidders who have requested them pursuant to a preinvitation notice and may be sent to other bidders on specific request.

(c) In addition to compliance with 2–203.1, on request, pre-invitation notices and invitations for bids (with plans and specifications) for unclassified construction work will be furnished without charge to organizations which maintain plan display rooms for the benefit of contractors, subcontractors and material suppliers, without charge to the public. Requests from organizations in the United States may be honored on an annual or semiannual basis for all or for a stated class of construction projects. The geographical extent of this distribution shall be as determined on a case by case basis by the contracting officer.

18–206 Amendment of Invitation for Bids. See 2–208, 16–401.1 (ix) and 18–704.2. When an amendment will require additional time for bidders to prepare bids, the time for bidding shall be appropriately extended, except in emergencies, and consideration shall be given to notifying bidders by telephone or telegraph of the forthcoming amendment to minimize disruption of their bid

327–333), certain contracts entered into by any Department must contain a clause (see 7–602.23(a)(ii)) to the effect that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than eight hours in any one calendar day or 40 hours in any work week unless such laborer or mechanic is compensated for all hours worked in excess of eight hours in any one calendar day or 40 hours in any work week whichever is the greater number of overtime hours at not less than one and one-half times his basic rate of pay.

18–702.2 *Department of Labor Regulations.* Pursuant to the foregoing statutes and Reorganization Plan No. 14 of 1950 (5 U.S.C. 133z–15), the Secretary of Labor has issued regulations (Subtitle A, title 29, Code of Federal Regulations) providing for the administration and enforcement of these statutes in construction contracts. Each Department shall comply with the regulations, rulings, interpretations, and decisions the Department of Labor issued pursuant to the above provisions. If a question arises concerning such compliance, the Department concerned shall attempt to resolve it with the appropriate office of the Department of Labor. In any case where resolution of the question by higher authority is deemed appropriate, such question shall be submitted, for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (RD&A); for the Navy, to the Chief of Naval Material, ATTN: Labor Relations Advisor; for the Air Force, to Headquarters USAF, RDC-LA, Attn: Special Assistant for Labor Affairs; for the Defense Logistics Agency, to Headquarters Defense Logistics Agency, DLA-PL; and for the National Security Agency, to the Director of Procurement. Any such questions which are not resolved by the foregoing procedure shall be referred to the DUSDRE(AM) for further action.

18–703 Contract Clauses.

18–703.1 *Clauses for General Use.* Every construction contract in excess of $2,000 for work within the United States shall include the clauses listed below. (These clauses are set forth in 7–602.23(a).)

Davis-Bacon Act (40 U.S.C. 276a to a–7)
Contract Work Hours and Safety Standards Act—Overtime Compensation.
Apprentices and Trainees.
Payrolls and Basic Records.
Compliance With Copeland Regulations.
Withholding of Funds.
Subcontracts.
Contract Termination—Debarment.
Disputes Concerning Labor Standards.

18–703.2 *Overseas Contracts.* Every construction contract (a) in excess of $2,000 for work in Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, or Johnston Island shall include (i) the clause entitled Contract Work Hours and Safety Standards Act—Overtime Compensation, in 7–602.23(a)(ii); (ii) the Subcontracts clause in 7–602.23(a)(vii), except that the first sentence thereof shall be modified to refer only to the clause entitled Contract Work Hours and Safety Standards Act — Overtime Compensation, Subcontracts, and Contract Termination — Debarment, and (iii) the clause entitled Contract Termination — Debarment in 7–602.23(a)(viii) except that the clause shall be modified to refer only to the

clauses entitled Contract Work Hours and Safety Standards Act—Overtime Compensation and Subcontracts; (b) in excess of $10,000 requiring payment of minimum wages determined in accordance with the Davis-Bacon Act for work in Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll or Johnston Island shall also include the clause entitled "Apprentices and Trainees" in 7–602.23(a)(iii).

18–703.3 *Contracts With a State or Political Subdivision.* In the case of construction contracts with a State or political subdivision thereof, the contract clauses in 7–602.23(a) shall be inserted therein but shall be prefaced by the provision in 7–602.23(b).

18–704 Administration and Enforcement.

18–704.1 *Policy.*

(a) *General.* To comply with the Department of Defense policy of assuring full and impartial enforcement of the labor standards laws in the administration of construction contracts, each Department shall maintain a continuing effective enforcement program which shall include:

(i) training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities;

(ii) assuring that contractors and subcontractors are informed, prior to commencement of work, of their obligations under the labor standards provisions of their contracts;

(iii) adequate payroll and on-the-site inspections and employee interviews to determine compliance, and prompt initiation of corrective action when required;

(iv) prompt investigation and disposition of complaints;

(v) prompt submission of all reports required by this Part; and

(vi) periodic review of field enforcement activities to assure compliance with applicable regulations and instructions.

(b) *Responsibility.* The contracting officer shall ascertain that the contractor is fully informed of the labor standards provisions of the contract and of his and any subcontractor's responsibilities thereunder. In order to assure that the contractors and subcontractors fully understand the labor standards provisions in their contracts and the attendant administrative requirements, the following procedures shall be followed.

(1) *Preconstruction Letters.* Promptly after award of the contract, the contracting officer shall furnish to the prime contractor a preconstruction letter calling attention to the labor standards requirements contained in the contract which relate to (i) employment of foremen, laborers, mechanics and others, (ii) wages and fringe benefits payments, payrolls and statements, (iii) differentiation between subcontractors and suppliers, (iv) additional classifications, (v) benefits to be realized by contractors and subcontractors in keeping complete work records, (vi) penalties and sanctions for violations of labor standards provisions, and (vii) the provisions of 18–701(a) which may be of consequence in contract performance. The letter shall state that the labor standards requirements are based on the following statutes and regulations: Davis-Bacon Act; Contract Work

Hours and Safety Standards Act; Copeland ("Anti-Kickback") Act; and Parts 3 and 5 of the Secretary of Labor's Regulations (Parts 3 and 5, Subtitle A, Title 29, Code of Federal Regulations). Executive Order 11246 (Equal Employment Opportunity) also may be covered in this letter. Prime contractors shall also be advised to send a copy of the preconstruction letter to each subcontractor.

(2) *Preconstruction Conference.* The contracting officer shall confer with the contractor and such subcontractors as the prime contractor designates to emphasize their labor standards obligations under the contract, when the prime contractor has not performed previous Government construction contracts or has experienced difficulty in complying with labor standards requirements on previous contracts, or when for other reasons the contracting officer considers such action warranted. Such conferences should be held prior to the beginning of construction. During the conference, the contracting officer should determine whether the contractor and his subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter is indicated, the contractor shall be advised of the requirements of 18–704.3(a).

18–704.2 *Wage Determinations.*

(a) *In General.*

(1) Wage determinations reflecting the prevailing wages, including fringe benefits, for laborers and mechanics in a particular area are issued by the Secretary of Labor.

(2) In formally advertised procurements, whenever—

(i) it appears before bid opening that a wage determination may expire before award, or

(ii) a determination actually does expire before bid opening,

a new wage determination shall be obtained. The scheduled bid opening date shall be postponed, if necessary, to allow a reasonable time to (a) obtain the determination, (b) modify the IFB to reflect the new determination and (c) permit bidders to amend their bids. Even if the new determination does not change the wage rates, and hence would not warrant amended bids, the solicitation must nevertheless be modified to include the number and date of the new determination.

(3) In negotiated procurement, whenever (i) it appears that a wage determination will expire before award is made or (ii) the determination actually does so expire, a new wage determination shall be obtained. If the new determination makes a change in the wage rates, the wage rate information specified in the new determination shall be furnished to (a) all prospective offerors to whom a solicitation has been sent if the closing date for receipt of proposals has not yet occurred, or (b) to all prospective offerors who have submitted proposals if the closing date is past. All prospective offerors to whom such information has been furnished shall be given a reasonable opportunity to amend their proposals. The contracting officer need not delay opening and reviewing proposals or discussing them with the respective offerors while a new determination is being obtained and offerors are preparing amended proposals. Offerors should be requested to extend the period for acceptance of any proposal if that period expires or may expire while the contracting officer is waiting for a new wage determination.

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(4) When a new determination has been received before award, but an award is made before the expiration date of the original determination, the new determination must be treated as a superseding decision in accordance with (g) below, except that the expiration of the new determination shall be controlled by the date thereon and not by the date on the determination which it replaces.

(5) After bids have been opened in formally advertised procurement, if (i) it becomes apparent that the wage determination will expire before award or (ii) in fact the wage determination does expire before award, the Secretary, or his designee at a level no lower than the Head of a Procuring Activity, may, upon finding that an extension is in the public interest to prevent injustice, undue hardship, or serious impairment of the conduct of Government business, submit a written request to the U. S. Department of Labor, Washington, D.C. 20210, for an extension of the expiration date. If an extension is not requested, or if it is requested and denied, a new determination shall be obtained. If the new determination changes the wage rates, the IFB shall be canceled and the procurement readvertised using the new wage rates.

(b) *Types of Wage Determinations.*

(1) A general area wage determination is issued for use by more than one Government agency and provides wage rates for all contracts for the types of construction designated in the determination which may be awarded within a given geographical area. Such a determination is published in the Federal Register, is the only type which is automatically issued by the Department of Labor on a continuing basis, and, although it may be modified or superseded from time to time, contains no expiration date. Such determinations shall be used whenever possible.

(2) An installation determination provides wage rates for all contracts for work described in the determination which may be awarded at an installation or within a given geographical area (usually a county) during the 120-day life of the determination. This type of determination is used only when no general area wage determination has been issued, and may be obtained for installations or areas where continuing construction activity is anticipated.

(3) An individual determination is provided by the Department of labor for use in a contract not covered by either of the above types of determination. Such a determination is effective for a 120 day period.

(4) Wage determinations provide wage rates for the types of construction designated therein, such as building, heavy, highway, residential, and dredging, and shall be used only for the designated types of construction. It is particularly important to insure that residential rates rather than building rates are used for family housing construction, alteration, or repair.

(c) *Obtaining General Area Wage Determinations.* General area wage determinations, and modifications thereto, are published in the Federal Register. Information as to the existence and applicability of such determinations may be obtained from the appropriate District Engineer, Corps of Engineers, for the Army; from the cognizant Naval Facilities Engineering Command Division Office, for the Navy; from the appropriate Contractor Industrial Relations Specialist, for the Air Force; and from the Executive Director, Contracting, DLA-PL, for the Defense Logistics Agency.

(d) *Obtaining Installation or Individual Wage Determinations;*

(1) Requests for installation or individual wage determinations shall be prepared on Standard Form 308, "Request for Determination and Response to Request." SF 308 shall be filled out as follows:

a. Under "Department, Agency, or Bureau" enter the name of the requesting Department followed in parentheses by the name of the installation submitting the request (and, for the Army, the name of the Engineer District).

b. Under "Description of Work" include a statement of whether an installation or individual determination is desired. When the request indicates a type of work other than building, heavy or highway, it is of particular importance, in order to avoid delay, that the request be accompanied by (i) any pertinent wage payment information which may be available, and (ii) a copy of the pertinent portions of the specifications or a detailed description of the work to be performed. Where the Secretary of Labor has issued a general area wage determination, a request should be submitted only when the type of work to be performed is not included in the description of work set forth in the decision. If additional space is needed, a separate attachment may be submitted with the form. Additional information requirements for installation determination requests are set out at subparagraph *f* below.

c. Under "Location of Project (City or Other Description)," state the installation or area to be covered or exact location of the proposed project, as appropriate. If the project is not in a city, town, or village, state the distance and direction from the nearest community or other point of reference. If river or other work covering an extended project site is involved, explain the full extent of the location with references to data identifying the geographic limits of the project, such as side of river and direction from several reference points.

d. For individual determinations, check only those craft classifications which are actually anticipated to be necessary for the work. Craft classifications which are anticipated but are not on the form may be entered in blank spaces or on a separate list attached to the form. Determinations should be requested only for craft classifications which are recognized in the area or in the construction industry. Do not check any craft classifications when an installation determination is requested.

e. When it is known that wage patterns for the area involved are not clearly established, the following information concerning public contracts being performed or recently completed in the area should be furnished, if reasonably available, as an attachment to Form SF 308 to aid the Department of Labor.

(i) names and addresses of contractors;
(ii) locations, approximate costs, dates of construction, and types of projects;
(iii) number of workers employed in each classification on each project; and
(iv) wage rates, including fringe benefits, paid such workers.

Wage rates determined for public construction by state or local officers pursuant to state or local prevailing wage legislation and any other pertinent information should also be sent to the Department of Labor if reasonably available.

f. In every case where an installation wage determination is being requested, the following information shall be provided in an attachment to the SF

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308, in addition to other applicable requirements contained in subparagraphs *a* through *e* above.

(i) A complete statement of reasons for requiring an installation type of wage determination for the installation.

(ii) A complete statement of the incidence of use of the last previously issued installation determination, the total dollar amount of the contract awarded thereunder, and an estimate of the use of any new determination during its 120-day life. This should include a brief description of the planned projects (i.e., commercial, residential, heavy or highway), the estimated cost of each project, and the kinds of laborers and mechanics likely to be employed.

(2) Requests for determinations shall be initiated and forwarded as provided in *a* through *d* below to the appropriate regional office of the Department of Labor. Requests shall be submitted in time to reach the Department of Labor at least 30 days in advance of the date selected for issuance of the solicitation. When, due to an emergency, a wage determination is required immediately, or when any information concerning wage determinations is needed, the requiring office may request assistance from the appropriate Departmental office listed in *a* through *d* below.

a. For the Army—SF 308 shall be initiated by the office responsible for the preparation of specifications or the awarding of contracts, and shall be forwarded in triplicate to the appropriate District Engineer. The original and one copy of SF 308 shall be sent by the District Engineer to the appropriate regional office of the Department of Labor.

b. For the Navy—Within the Naval Facilities Engineering Command, requests shall be initiated by the office responsible for the preparation of specifications. The original and one copy of SF 308 shall be sent to the appropriate regional office of the Department of Labor with a copy to the cognizant Naval Facilities Engineering Command Division Office. Requests relating to contracts of other commands or offices should be processed through the cognizant Naval Facilities Engineering Command Division Office.

c. For the Air Force—Requests shall be initiated by a civil engineering office in cases where it is responsible for preparing the construction specifications, and by the contracting officer administering the contract in cases of subcontracts and facilities contracts. The original and one copy of SF 308 shall be submitted to the appropriate regional office of the Department of Labor. One copy of the SF 308 shall be forwarded to the appropriate Labor Relations Advisor and one copy retained in the requesting office's files.

d. For the Defense Logistics Agency—Requests shall be initiated by the office responsible for the preparation of specifications or award of contracts. The original and one copy of SF 308 shall be sent to the appropriate regional office of the Department of Labor with a copy to the Executive Director, Contracting, DLA-PL.

(e) *Review of Wage Determination Decisions*. Immediately upon its receipt, the requesting officer shall examine the wage determination and inform the appropriate office indicated in (d)(2) above of any changes considered to be necessary or appropriate to correct errors. Private parties requesting changes should be advised to submit their requests to the Department of Labor.

(i) DD Form 1568, "Labor Standards Investigation Summary Sheet;"
(ii) his findings;
(iii) statement as to the disposition of any contractor rebuttal to the findings;
(iv) statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;
(v) statement as to the disposition of funds available;
(vi) recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction or nonassessment of liquidated damages, whether the contractor should be placed on the list of Debarred, Ineligible and Suspended Bidders, and whether the file should be referred for possible criminal prosecution); and
(vii) the exhibit portion of the report which shall include, when applicable;
(A) investigator's report;
(B) copy of contractor's written rebuttal or a summary of his oral rebuttal of the contracting officer's findings;
(C) copies of correspondence between the contractor and contracting officer, including a statement of the specific violations found, corrective action requested, and contractor's letter of acceptance or rejection;
(D) evidence of payment of restitution or liquidated damages, such as copies of receipts, canceled checks, or supplemental payrolls; and
(E) letter from the contractor requesting relief from the liquidated damages provisions of the Contract Work Hours Standards Act.

(b) Where the investigation reveals no violations, where underpayments total less than $500 and are nonwillful, and where restitution and liquidated damages, if any, have been paid and compliance during the remainder of the contract is anticipated, the contracting officer may process the report, except in cases involving Air Force contracts, by closing the case without forwarding a report unless one has been requested. Where an Air Force contract is involved, a concise narrative report shall be submitted to the major Air Command Headquarters and the Air Force Liaison Officer (AFLO) having jurisdiction, and shall include, as a minimum, the contracting officer's findings and decision, amount of restitution paid each employee, and the amount of liquidated damages, if any. In all other investigations the contracting officer shall forward his report through channels as specified in (1) through (4) below. When the contracting officer concludes that a criminal statute has been violated, he shall forward four extra copies of the report through the channels specified.

(1) *Army Contracts*. The report, together with the recommendation of the Head of the Procuring Activity, shall be forwarded through channels to the Labor Advisor, except for reports on Corps of Engineers contracts not involving recommendations of sanctions against the contractor, which will be processed in accordance with the procedure established by the Chief of Engineers.

(2) *Navy Contracts.* On contracts of the Naval Facilities Engineering Command, the report shall be forwarded through channels to the Commander of that Command. On contracts of other procuring activities, the report shall be forwarded through channels to the Chief of Naval Material, Attn: Labor Relations Advisor.

(3) *Air Force Contracts.* The report shall be forwarded to the AFLO for review and evaluation. The AFLO shall forward it, with his findings and recommendations, to Headquarters USAF, RDC-LA, Attn: Special Assistant for Labor Affairs, for HQ USAF evaluation and final disposition. Reports involving criminal violations shall be referred to the nearest Office of Special Investigations District Officer for review and disposition.

(4) *Defense Logistics Agency Contracts.* The report shall be forwarded together with the recommendation of the Head of the Procuring Activity to Headquarters, Defense Logistics Agency, Attn: DLA-PL.

(c) Reports processed in accordance with (b) above shall be forwarded with recommendations by the Departmental Headquarters to the Administrator, Wage & Hour & Public Contracts Divisions (WHPC). Except as specifically authorized, the findings, recommendations or conclusions of such reports shall not be disclosed outside of reporting channels. In those cases where there are probable criminal violations, the Department shall forward two copies of the report to the Attorney General for possible prosecution; and the Administrator, WHPC, shall be informed of such action.

18-704.13 *Suspensions of and Deductions From Contract Payments.*

(a) When the contracting officer believes a violation exists, he shall withhold from payments due the contractor an amount equal to the estimated underpayments, as well as any estimated liquidated damages due the United States under the Contract Work Hours Standards Act. If, after investigation, no violations are found, the funds withheld shall be released.

(b) If the investigation reveals violations, a sufficient amount shall continue to be withheld until the contractor makes restitution. When voluntary restitution is not made, the contracting officer, upon submission of his report, shall forward to the appropriate disbursing officer a Standard Form 1093, "Schedule of Withholdings Under the Davis-Bacon Act," listing the name, last known address of each employee involved, the amount due each employee, and a brief statement of the reason for requiring restitution. The form shall indicate whether a report is being forwarded to the Department of Labor. The disbursing officer shall, without waiting for final processing of the report, forward the funds withheld for restitution, together with Standard Form 1093, to the General Accounting Office. Employees to whom restitution is due should be advised to file a claim with the Comptroller General, Claims Division, Washington, D.C. 20548. Such employees may be assisted in the preparation of their claims.

(c) When restitution is not made, because an employee cannot be located, Standard Form 1093 shall so indicate and be submitted by the disbursing officer to the General Accounting Office. The form shall be accompanied with a check payable to the General Accounting Office covering the gross amount of restitution due. In those cases not requiring processing of a report through higher headquarters, the following notation shall be made on the form:

in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons.

(i) *Code B. Additional Work, Other* — Enter this code when additional work is acquired by means of modification to the basic contract as follows:

(1) Exercise of options for increased quantities or extended performance.

(2) Incremental yearly buys under multiyear contracts.

(3) Amendments to letter contracts, supplemental agreements, and other modifying actions which add work and are made pursuant to the terms of existing contracts.

(j) *Code C. Funding Action* — Enter this code for amendments to letter contracts and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds. This includes, by way of illustration, incremental funding (other than incremental yearly buys under multiyear contracts), increasing the estimated cost on cost-reimbursement contracts, and repricing actions covering incentive price revision, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/modification awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons (see (c) and (h)(2) above). For funding actions involving the kinds of contracting actions covered in (d), (e), (f) and (g) above, codes 4, 5, 6, and 7 shall be used as appropriate.

(k) *Code D. Change Order* — Enter this code when reporting change orders issued pursuant to the "Changes," "Differing Site Conditions," or similar provisions of existing contracts.

(l) *Code E* — Enter this code for termination for default.

(m) *Code F* — Enter this code for termination for convenience.

(n) *Code G* — Enter this code for cancellation.

21-106 Part C of DD Form 350. The following rules apply to each of the items listed in Part C of DD Form 350.

(a) If Item B12 is coded 1 or if Item B13 is coded 6 or 7, leave all items in this Part C blank.

(b) If Item B13 is coded 1 through 4, or A, coding of all items in this Part C shall be accomplished in accordance with the coding instructions for that item.

(c) If Item B13 is coded 5, or B through G, enter the same code in each item in Part C that was reported on the DD Form 350 to the original contract governing this transaction. If a DD Form 350 to the original contract was not submitted because a DD Form 350 was not required, enter the code which is applicable to the original contract governing this transaction.

21-106.1 *Item C1, Synopsis in Commerce Business Daily.* Enter code 1 if a synopsis of the proposed action was prepared and transmitted in accordance with 1-1003. If not, enter code 2.

21-106.2 *Item C2, Reason Not Synopsized.* Enter the applicable code as follows (see 1-1003.1:

Code	Reason
0	original estimate less than $10,000 or contract made outside the United States, its possessions, or Puerto Rico;
1	the procurement for security reasons is of a classified nature;
2	procurement of perishable subsistence when made by placement of an order under a contract covered by 3-409;
3	procurement is for utility services and only one source is available;
4	procurement which is of such unusual and compelling urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than the time periods specified at 1-1003.2;
5	procurement to be made by an order placed under an existing contract covered by 3-409 or as required by 5-102;
6	procurement to be made from another Government department or agency, including procurements from the SBA using the authority of section 8(a) of the Small Business Act, or a mandatory source of supply such as an agency for the blind under the blind-made products program;
7	procurement that results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research;
8	procurement for which a foreign government reimburses the Department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty;
9	when it has been determined in writing by the Secretary, with the concurrence of the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

Part 3—Supplemental Agreements

26-301 Use. Supplemental agreements are used:

(i) to reflect the agreement reached in the negotiation of change orders;

(ii) in preference to a change order when a supplemental agreement is considered feasible, even though authority exists to accomplish the modification by change order;

(iii) to definitize letter contracts (see 3-408(e));

(iv) to reflect other agreements of the parties modifying the terms of contract; and

(v) to definitize provisioned items orders (see 4-300).

26-302 Preparation of Supplemental Agreements. All supplemental agreements shall be prepared on Standard Form 30, Amendment of Solicitation/Modification of Contract, in accordance with 16-104.4. When a supplemental agreement changes the unit price or unit quantity, information reflecting the changed conditions shall be shown in the format contained in Standard Form 36, Continuation Sheet, unless this form has been used as an attachment to Standard Form 30.

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Part 4—Novation Agreements and Change of Name Agreements

26–400 Scope of Part. This Part prescribes the policy and procedures for (i) recognition of a successor in interest to Government contracts when such interests are acquired incidental to a transfer of all the assets of a contractor or such part of his assets as is involved in the performance of the contracts, (ii) a change of name of a contractor, (iii) execution of novation agreements and change of name agreements by the cognizant Administrative Contracting Officer (ACO) (see definition below), and (iv) entering into novation agreements and change of name agreements on behalf of the National Aeronautics and Space Administration (NASA).

26–401 General.

(a) *Definition of Cognizant ACO.* The cognizant ACO is the ACO administering DoD contracts held by the transferor. When the transferor has multiple plants or divisions, the ACO responsible for the corporate office is the cognizant ACO. When purchasing offices retain responsibility for administration of all contracts of the transferor, the Department having the largest unsettled (unbilled plus billed but unpaid) dollar balance is responsible for executing or designating the office to execute novation and change of name agreements. In the event there is more than one transferor, the cognizant ACO of the CAS component having the largest unsettled dollar balance is responsible for executing novation and change of name agreements.

(b) *Legal Review.* All novation agreements and change of name agreements, prior to execution, shall be reviewed by Government Counsel for legal sufficiency.

26–402 Agreement To Recognize a Successor in Interest.

(a) The transfer of a Government contract is prohibited by law (41 U.S.C. 15). However, the Government may recognize a third party as the successor in interest to a Government contract where the third party's interest arises out of the transfer of all the assets of the contractor, or all that part of the contractor's assets involved in the performance of the contract. Examples include, but are not limited to:

(i) sale of such assets;

(ii) transfer of such assets pursuant to merger or consolidation of corporation; and

(iii) incorporation of a proprietorship or partnership.

(b) When a contractor requests that the Government recognize a successor in interest, the contractor shall be required to provide three signed copies of the novation agreement to the cognizant ACO (see 26–401(a)) together with one copy of each of the following, as applicable:

(i) a properly authenticated copy of the instrument by which the transfer of assets was effected, as for example, a bill of sale, certificate of merger, indenture of transfer, or decree of court;

(ii) a list of all contracts and purchase orders, tabulated by service and purchasing office within each service, which have not been finally settled among all Departments concerned and the transferor, and all elements of NASA concerned and the transferor, showing the contract number, the name and address of the purchasing office involved, the total dollar value of each contract as amended, the type of contract involved, and the balance remaining unpaid;

(iii) transfer of the ownership of a contractor through a stock purchase transaction, or by any other means, when the Secretary concerned determines that the sale may significantly affect the Government's rights and interests under existing and future contracts.

(iv) a certified copy of the resolutions of the Boards of Directors of the corporate parties authorizing the transfer of assets;

(v) a certified copy of the minutes of any stockholders' meetings of the corporate parties necessary to approve the transfer of assets;

(vi) a properly authenticated copy of the certificate and articles of incorporation of the transferee if such corporation was formed for the purpose of receiving the assets involved in the performance of the Government contracts;

(vii) opinion of counsel for the transferor and transferee that the transfer was properly effected in accordance with applicable law and the effective date of transfer;

(viii) evidence of the capability of the transferee to perform the contracts;

(ix) balance sheets of the transferor and the transferee as of dates immediately prior to and after the transfer of assets;

(x) evidence of security clearance requirements; and

(xi) consent of sureties on all contracts listed under (ii) above where bonds are required, or a statement that none is required.

(c) When it is consistent with the Government's interest to recognize a successor in interest to a Government contract, the cognizant ACO shall execute an agreement with the transferor and the transferee, which shall ordinarily provide in part that:

(i) the transferee assumes all the transferor's obligations under the contract;

(ii) the transferor waives all rights under the contract as against the Government;

(iii) the transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted in lieu of such guarantee); and

(iv) nothing in the agreement shall relieve the transferor or the transferee from compliance with any Federal law.

A form for such an agreement for use when the transferor and transferee are corporations, and all the assets of the transferor are transferred, is set forth herein. This form may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for use in other situations.

AGREEMENT

This AGREEMENT, entered into as of (*date upon which the transfer of assets became effective pursuant to applicable State law*) 19—, by and between the ABC CORPORATION, a corporation duly organized and existing under the laws of the State of ..... with its principal office in the City of ..... (hereinafter referred to as the "Transferor"); the XYZ CORPORATION *add if appropriate* (formerly known as the LMN CORPORATION), a corporation duly organized and existing under the laws of the State of ..... with its principal office in the City of ..... (hereinafter referred to as the "Transferee"); and the UNITED STATES OF AMERICA (hereinafter referred to as the "Government")

WITNESSETH:

CONTRACT MODIFICATIONS

1. WHEREAS, the Government, represented by various Contracting Officers of the Department of Defense and the National Aeronautics and Space Administration, has entered into certain contracts and purchase orders with the Transferor, [namely: .....] or as set forth in the attached list marked "Exhibit A" to this Agreement and herein incorporated by reference; and the term "the contracts" as hereinafter used means the above contracts and purchase orders, and all other contracts and purchase orders, including modifications thereto, heretofore made between the Government, represented by various Contracting Officers of the above named Department or NASA, and the Transferor (whether or not performance and payment have been completed and releases executed, if the Government or the Transferor has any remaining rights, duties or obligations thereunder), and including modifications thereto hereafter made in accordance with the terms and conditions of such contracts and purchase orders between the Government and the Transferee:

2. WHEREAS, as of ....., 19—, the Transferor assigned, conveyed, and transferred to the Transferee all the assets of the Transferor by virtue of a [*term descriptive of the legal transaction involved*] between the Transferor and the Transferee;

3. WHEREAS, the Transferee, by virtue of said assignment, conveyance and transfer, has acquired all the assets of the Transferor;

4. WHEREAS, by virtue of said assignment, conveyance and transfer, the Transferee has assumed all the duties, obligations and liabilities of the Transferor under the Contracts;

5. WHEREAS, the Transferee is in a position fully to perform the Contracts, and such duties and obligations as may exist under the Contracts;

6. WHEREAS, it is consistent with the Government's interest to recognize the Transferee as the successor party to the Contracts;

7. WHEREAS, there has been filed with the Government evidence of said assignment, conveyance or transfer, as required by ASPR 26-402(b);

[*Where a change of name is also involved, such as prior or concurrent change of name of the transferee, an appropriate recital shall be used; for example:*

8. WHEREAS, there has been filed with the Government a certificate dated ....., 19—, signed by the Secretary of State of the State of ....., to the effect that the corporate name of LMN CORPORATION was changed to XYZ CORPORATION on ..... 19.....);

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

9. The Transferor hereby confirms said assignment, conveyance and transfer to the Transferee, and does hereby release and discharge the Government from, and does hereby waive, any and all claims, demands, and rights against the Government which it now has or may hereafter have in connection with the Contracts.

10. The Transferee hereby assumes, agrees to be bound by, and undertakes to perform each and every one of the terms, covenants, and conditions contained in the Contracts. The Transferee further assumes all obligations and liabilities of, and all claims and demands against, the Transferor under the Contracts, in all respects as if the Transferee were the original party to the Contracts.

11. The Transferee hereby ratifies and confirms all actions heretofore taken by the Transferor with respect to the Contracts with the same force and effect as if the action had been taken by the Transferee.

12. The Government hereby recognizes the Transferee as the Transferor's successor in interest in and to the Contracts. The Transferee hereby becomes entitled to all right, title, and interest of the Transferor in and to the Contracts in all respects as if the Transferee were the original party to the Contracts. The term "Contractor" as used in the Contracts shall be deemed to refer to the Transferee rather than to the Transferor.

13 Except as expressly provided herein, nothing in this Agreement shall be construed as a waiver of any rights of the Government against the Transferor.

14. Notwithstanding the foregoing provisions, all payments and reimbursements heretofore made by the Government to the Transferor and all other action heretofore taken by the Government, pursuant to its obligations under any of the Contracts, shall be deemed to have discharged *pro tanto* the Government's obligations under the Contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to said Transferee and shall constitute a complete

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(c) The listed allocation bases in this section are illustrative. Other bases for allocation of home office expenses to segments may be used if they are substantially in accordance with the beneficial or casual relationships outlined in § 403.40.

Home office expense or function	Illustrative allocation bases
Staff management of specific activities:	
1. Personnel management	1. Number of personnel, labor hours, payroll, number of hires.
2. Manufacturing policies (quality control, industrial engineering, production, scheduling, testing, inspection and tooling, etc.).	2. Manufacturing cost input, manufacturing direct labor.
3. Engineering policies	3. Total engineering costs, engineering direct labor, number of drawings.
4. Material/purchasing policies	4. Number of purchase orders, value of purchases.
5. Marketing policies	5. Sales, segment marketing costs.
Central payments or accruals:	
1. Pension expenses	1. Payroll or other factor on which total payment is based.
2. Group insurance expenses	2. Payroll or other factor on which total payment is based.
3. State and local income taxes and franchise taxes	3. Any base or method which results in an allocation that equals or approximates a segment's proportionate share of the tax imposed by the jurisdiction in which the segment does business, as measured by the same factors used to determine taxable income for that jurisdiction.

§ 403.70 Exemptions.

(a) Any contractor or subcontractor which together with its subsidiaries did not receive net awards of negotiated national defense prime contracts during Federal fiscal year 1971 (July 1, 1970, through June 30, 1971) totaling more than $30 million is exempt from this Standard. This exemption expires on March 10, 1978. Any contractor, unless otherwise exempt, who receives a negotiated national defense contract after March 10, 1978, shall be required to comply at the start of his first cost accounting period following receipt of that award.

(b) This standard shall not apply to contractors who are subject to the provisions of Federal Management Circular 74-4 (Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments).

[37 FR 4173, Feb. 29, 1972, as amended at 40 FR 32749, Aug. 4, 1975; 42 FR 45629, Sept. 12, 1977; 43 FR 24820, June 8, 1978]

PREAMBLES: For preamble affecting § 403.70, see preambles A, C, D, and E of the supplement to this part. For preamble to superseded regulations, see preamble B of the supplement to this part.

§ 403.80 Effective date.

(a) This standard shall be followed by each contractor as of the beginning of his next fiscal year after September 30, 1973. The effective date of this standard is July 1, 1973.

(b) The effective date of § 403.70(a) as amended is March 10, 1978.

[38 FR 7447, Mar. 22, 1973; as amended at 42 FR 45629, Sept. 12, 1977]

PREAMBLES: Preamble A of this part explains how effective dates are determined. For preamble affecting § 403.80(b), see preamble D.

APPENDIX—INTERPRETATION No. 1

Questions have arisen as to the requirements of Part 403, Cost Accounting Standard, Allocation of Home Office Expenses to Segments, for the purpose of allocating State and local income taxes and franchise taxes based on income (hereinafter collectively referred to as income taxes) from a home office of an organization to its segments.

By means of an illustrative allocation base in Section 403.60, the Standard provides that income taxes are to be allocated by "any base or method which results in an allocation that equals or approximates a segment's proportionate share of the tax imposed by the jurisdiction in which the segment does business, as measured by the same factors used to determine taxable income for that jurisdiction." This provision contains two essential criteria for the allocation of income taxes from a home office to segments. First, the taxes of any particular jurisdiction are to be allocated only to those segments that do business in the taxing jurisdiction. Second, where there is more than one segment in a taxing jurisdiction, the taxes are to be allocated among those segments on the basis of "the same factors used to determine the taxable income for that jurisdiction." The questions that have arisen relate primarily to whether segment book income or loss is a "factor" for this purpose.

Most States tax a fraction of total organization income, rather than the book income of segments that do business within the State. The fraction is calculated pursuant to a formula prescribed by State statute. In these situations the book income or loss of individual segments is not a factor used to determine taxable income for that jurisdiction. Accordingly, in States that tax a fraction of total organization income, rather than the book income of segments within the State, such book income is irrelevant for tax allocation purposes. Therefore, segment book income is to be used as a factor in allocating income tax expense from a home office to segments only where this amount is expressly used by the taxing jurisdiction in computing the income tax.

[48 FR 13721, Mar. 2, 1983]

Promulgation Comments Interpretation No. 1, Standard 403

Following is the text of the comments of the Cost Accounting Standards Board accompanying promulgation of Interpretation No. 1 to Standard 403, 45 FR 13722, March 3, 1980.

SUPPLEMENTARY INFORMATION: Cost Accounting Standard (CAS) 403 was published in the Federal Register on December 14, 1972. Among other subjects, the Standard deals with the method of allocating to segments the State income tax or franchise tax which is levied on the contractor. Information available to the Cost Accounting Standards Board indicates that most contractors have been allocating the taxes involved in a manner that comports with the Board's intent. Some contractors, however, seeking to validate different methods, have appealed decisions of contracting officers to the Armed Services Board of Contract Appeals (ASBCA). These appeals have resulted in two decisions (McDonnell Douglas Corp., ASBCA No. 19842; Lockheed Corp., Lockheed Missiles and Space Group, Inc., ASBCA No. 22451) which have demonstrated that the Cost Accounting Standards Board's intent in CAS 403 has been misunderstood by the ASBCA. The misunderstanding, if not resolved promptly, will frustrate the intent of the Cost Accounting Standards Board and cause substantial problems in the administration of contracts being performed by those contractors who are applying the Standard as intended.

Because of the serious and widespread nature of the problems which will result if no action is taken, the Cost Accounting Standards Board has concluded that it is imperative to act immediately to set forth in unequivocal terms the intent of Cost Accounting

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Standard 403 as it relates to the allocation of income taxes and franchise taxes.

Notwithstanding this interpretation, the Cost Accounting Standards Board has determined that a general review of several Standards including Cost Accounting Standard 403 is appropriate. The review of CAS 403 will focus on the income tax allocation provisions and is expected to proceed on a priority basis. As a part of that project the Cost Accounting Standards Board may take further action with respect to tax allocation practices. Pending such action, however, the following interpretation being promulgated today sets forth the intent of the Board with respect to tax allocations under Cost Accounting Standard 403.

PREAMBLE A

Preamble to Original Publication, 12-14-72

Preamble to original publication of 4 CFR Part 403, at 38 FR 30680, Dec. 14, 1972.

The Standard on Allocation of Home Office Expenses to Segments is one of a series being promulgated by the Cost Accounting Standards Board pursuant to section 719 of the Defense Production Act of 1950, as amended, Pub. L. 91-379, 80 U.S.C. app. 2168, which provides for the development of Cost Accounting Standards to be used in connection with negotiated national defense contracts.

Work on this Standard was initiated as the result of a variety of continuing problems between contractors and the Government concerning equitable allocations of home office expenses to segments involved in negotiated defense contracts. The problems include disagreements on:

(i) The propriety in certain circumstances of using particular allocation bases, such as cost of sales or direct labor for allocating home office expenses to segments; (ii) whether and to what extent certain kinds of segments such as GOCO's, foreign subsidiaries and partially owned subsidiaries should be included in the allocation base; and (iii) the homogeneity of expense pools.

The allocation of home office expenses to segments is not now specifically governed or guided by an authoritative accounting statement. Home office expenses allocated to segments and then to contracts can constitute an important element of total contract cost. The lack of authoritative standards to guide contractors, procurement officers, auditors, and others, provides a great potential for disagreement and controversy over contract costs. Assurance of equity in cost determinations and contract settlement is singularly lacking.

This Standard prescribes criteria for allocation of the expenses of a home office to segments of an organization. The criteria are based primarily on the beneficial or causal relationship between such expenses and the receiving segments. The Standard governs how a contractor may allocate expenses of its corporate headquarters to various divisions, subsidiaries, plants, or other subsidiaries of the corporation. The Board believes that application of this Standard will result in sound cost accounting and will provide a great degree of uniformity in the determination of costs of negotiated defense contracts.

Research establishes that some home office expenses are incurred for specific segments and can be assigned directly to them. Other expenses, not incurred for a specific segment, have clear relationships to two or more segments, relationships which are measurable with reasonable objectivity. A third type of home office expense possesses no readily measurable relationship to segments.

The Cost Accounting Standards Board finds that a Cost Accounting Standard to govern the allocation of home office expenses is desirable to reduce wasteful and expensive controversy and to obtain equity for the contracting parties. The Standard published today requires that those home office expenses incurred for specific segments are to be allocated directly to those segments to the maximum extent practical. Those that can be allocated to segments on the basis of objective measurable relationships are to be accumulated and allocated by means of logical and homogenous expense pools established for this purpose. The remaining or residual home

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office expenses are then to be allocated as discussed below.

The Board expects that this Standard will operate to reduce residual expenses to a relatively minor amount and by this means also reduce controversy and inequity. Where this is the case, the Board sees no reason to require one particular technique to allocate these expenses. Accordingly, where residual expenses are no greater than a specified percentage of operating revenues, the Standard allows the use of any appropriate allocation technique. However, if residual expenses exceed such specified percentages, the Board believes that its objective of reducing controversy and avoiding inequity would best be served by selecting a single allocation technique to be used. Its research in this connection has led the Board to conclude that for this purpose, a three-factor formula is superior to other allocation bases and techniques for the allocation of residual expenses.

Early research on this Standard included an extensive review of available literature on the subject, a review of decisions of contract appeals boards and courts, and a study of home office management philosophy and operations of 40 companies representing a wide variety of industries.

This research led to the publication of a proposed Cost Accounting Standard in the FEDERAL REGISTER of June 30, 1972, with an invitation for interested parties to submit written data, views, and comments to the Board. To better assure that those who had already expressed interest or provided assistance had an opportunity to comment, the Board supplemented the FEDERAL REGISTER notice by sending copies of the FEDERAL REGISTER materials directly to 196 organizations and individuals, of which 86 companies were invited to furnish the Board with estimates of any additional or reduced costs which could arise from the implementation of the Standard.

Responses were received from 130 sources, including individual companies, Government agencies, professional associations, industry associations, public accounting firms, and others. All of these comments and data have been carefully considered by the Board. Those comments which are of particular significance are discussed below together with an explanation of resultant substantive changes to the Standard as published in the FEDERAL REGISTER of June 30, 1972.

As will be seen from the following discussion, the Board was greatly benefited by the many comments it received on the Standard as published in the FEDERAL REGISTER of June 30, 1972. The Board takes this opportunity to express its considerable debt to those who devoted time and skill to assisting the Board in this endeavor and to thank the many companies and individuals involved.

(1) *Materiality.* Many commentators urged that the Standard contain a general statement on materiality. The Board has previously stated that the administration of its rules, regulations, and Cost Accounting Standards should be reasonable and not seek to deal with insignificant amounts of cost. The Board does not believe that any further general statement is needed at this time. However, where specific changes could be made to clarify the intent of this Standard with respect to materiality, they have been made as further discussed below.

While most commentators agreed with the concept of maximum direct allocation of home office expenses, and accumulation of nondirectly allocated home office expenses into logical, homogeneous expense pools, a few of these commentators believed that the Standard did not adequately incorporate the concept of materiality for this purpose. The Board agrees that materiality is an important consideration in determining whether to specify that an expense is to be allocated directly or by means of a separate expense pool. Accordingly, § 403.40 of the Standard has been revised to state that expenses are to be allocated to the maximum extent "practical" and that expenses not directly allocated are to be grouped into separate homogeneous expense pools "if significant in amount and in relation to total home office expenses."

In addition, a number of commentators questioned the need for using what they considered to be a relatively complex formula to allocate residual expenses even when they are minor in amount. This requirement was contained in the Standard as published in the FEDERAL REGISTER of June 30, 1972. The Board believes the formula to be relatively simple, well understood, already used by many companies to satisfy State tax requirements, and based on financial data that is readily available. Nevertheless, the Board agrees that other allocation techniques may be acceptable if residual expenses are not material. Accordingly, § 403.40(c) of the Standard being published today permits the use of any allocation base representative of total activity if residual expenses are less than a specified percentage of operating revenue.

The Board also considered a materiality test conducted periodically which would permit a contractor, otherwise covered, to choose not to follow the Standard if its application would result in little or no change in the total amount he allocates to his segments with Government business. The Board in this instance rejected this approach for the following reasons:

Title 4—Accounts

(a) Such an approach would put undue emphasis on the effect of this Standard on the allocation of costs to or away from Government contracts.

(b) The administrative problems and time spent by both the Government and the contractor in estimating the contract cost consequences of application of the Standard periodically and negotiating the pro forma application of the Standard for comparative test purposes would outweigh any benefits that might be derived from waiver of the entire Standard on the basis of materiality of result.

(c) There would be no assurance that a contractor's own procedures, which in the test year happened to provide nearly identical results to the results which would be provided through use of the Standard, would in other, subsequent years also produce the same nearly identical results. In effect, the results in the test year may have been an aberration.

(d) In light of the general acceptance by the majority of commentators of the concept of direct charging and grouping of homogeneous expense pools, the provisions for materiality considerations previously described are deemed sufficient.

(e) The Board has applied the concept of materiality to the extent it believes practical in this Standard. The Board, however, as noted in its prefactory comments on the first two published Standards (37 FR 4141), will give consideration to stating a concept of materiality applicable to all Standards if subsequent events indicate the desirability and feasibility of doing so.

The Board has eliminated a requirement, originally contained in the June 30, 1972, proposal, for interdepartmental allocations of home office expenses. This proposal would have required part of the cost of certain home office functions to be allocated to other home office functions before being reallocated to segments. The Board accepts the views of a number of commentators that this procedure would be complex and unwarranted in the light of a relatively insignificant effect on the allocation of home office expenses.

The proposed Standard, as published in the FEDERAL REGISTER of June 30, 1972, required that all segments be included in an allocation base unless it could be demonstrated that any segment did not receive benefit from, or contribute to the cause of, an expense to be allocated. A number of commentators observed that it would be virtually impossible to demonstrate that a segment received no benefit. Others commented that a segment should not be included in an allocation base if it received only negligible benefit. The June 30, 1972 proposal has been revised to accommodate

ARMED SERVICES PROCUREMENT REGULATION

[FR Doc. 84-17489 Filed 6-28-84; 8:45 am]

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32 CFR Parts 1–39

[DAC 76–49]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76–49. The changes include revision of Service Contract Act Regulations.

EFFECTIVE DATE: Upon receipt, in accordance with DAR 1–106.2(d).

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM) (DARS), OUSDRE(M&RS), Room 3D 139, Pentagon, Washington, D.C. 20301, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1–39, Volumes I, II, and III, of the Code of Federal Regulations (CFR). The July 1, 1983 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76–1 through 76–44.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the DAR would be published in the **Federal Register.**

Defense Acquisition Circular 76–49

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76–49, issued 27 January 1984. The following is a summary of the amendments:

Revision of Service Contract Act Regulations. Revised final regulations (29 CFR Part 4), implementing the Service Contract Act, were published by the Department of Labor (DOL) in the **Federal Register** of October 27, 1983. These changes had been suspended pending the outcome of litigation which is now resolved. Accordingly, DAR Section XII, Part 10, and the applicable clauses have been revised to conform to the changes in the DOL Regulations.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on receipt in accordance with DAR 1–106.2(d).

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–49. The number at the top of each page (for example, 7:451) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none above, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the Defense Acquisition Regulation contained in the July 1, 1983 edition of 32 CFR Parts 1–39, Volumes I, II, and III, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table.

DAR paragraph	Replacement pages
Volume II	
7–1903.41(a)	7:451 through 7:454, 7:454–A through 7:454–H.
7–1903.41(b)	7:454–H.
7–1903.41(e) (deleted)	7:455.
7–2003.84 (Reserved) (deleted).	7:526–D.
7–2003.85(ii)	7:526–D.
7–2003.85 (clause)	7:526–D.
12–1000	12:38.
12–1000(ii)	12:38.
12–1002.1 (last sentence deleted).	12:39.
12–1002.2	12:39.
12–1002.3(ii)	12:39.
12–1002.4(i)–(vii) (added)	12:40.
12–1002.5(a)	12:40, 12:41.
12–1002.5(b) (added)	12:41 through 12:43.
12–1002.6 (a) and (b) [added].	12:43, 12:44, 12:44–A.
12–1002.7 (formerly .6)	12:44–A.
12–1003 (ii)	12:44–A.
12–1003 (iv) and (v) (added)	12:44–A.
12–1003 (vi) and (vii) (formerly (iv) and (v)).	12:44–B.
12–1004 (v) and (vi) (deleted).	12:44–B.
12–1004 (vii) (changed to (v))	12:44–B.
12–1005.2(b)(1)–(5)	12:44–B through 12:44–I.
12–1005.2(c) (added)	12:44I.
12–1005.3(ii)	12:44–J.
12–1005.5 (a) and (b)	12:44–J, 12:44–K.
12–1005.8(a)	12:44–K.
12–1005.8(b) (added)	12:44–L.
12–1005.10	12:44–L.
12–1005.12 (added)	12:44–L, 12:44–M.

List of Subjects in 32 CFR Parts 1–39

Government procurement.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

June 27, 1984.

BILLING CODE 3810-01-M

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7-1903.38 Protection of Government Buildings, Equipment and Vegetation. In accordance with 7-104.63, insert the clause therein.

7-1903.39 Insurance. In accordance with 10-405, insert the clause in 7-104.65.

7-1903.40 Acquisition and Use of Excess and Near Excess Currency. In accordance with 6-1110, insert the clause in 7-104.66.

7-1903.41 Service Contract Act of 1965, as Amended.

(a) Service Contracts in Excess of $2,500. The clause set forth in the following paragraphs shall be included in every nonexempt contract in excess of $2,500, or in an indefinite amount, the principal purpose of which is to furnish services in the United States through the use of service employees.

SERVICE CONTRACT ACT OF 1965, AS AMENDED (1984 JAN)

This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(a) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2) If there is such a wage determination attached to this contract, the Contracting Officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the Contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section.

(3) Such conforming procedure shall be initiated by the Contractor prior to the performance of contract work by such unlisted class of employee. A written

report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the Contractor to the Contracting Officer no later than thirty (30) days after such unlisted class of employees performs any contract work. The Contracting Officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information, including the position of the Contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(4) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(5) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(6) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor

succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken, but the other procedures in paragraph (a)(3) of the clause need not be followed.

(7) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(8) The wage rate and fringe benefits finally determined pursuant to paragraphs (a)(2) and (3) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(9) Upon discovery of failure to comply with paragraphs (a)(2) through (8) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(b) Adjustment of Compensation. If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than one (1) year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour

Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) Obligation to Furnish Fringe Benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d) Minimum Wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(e) Successorship. If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for

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services of a character similar in the locality, or determines, as provided in 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract, 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(f) Notification to Employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(g) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service

employees engaged to furnish these services and the Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(h) Records and Employees Interviews.

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for three (3) years from the completion of the work records containing the information specified below for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weeky compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to paragraph (a) of this clause.

A copy of the report required by paragraph (a)(3) of this clause shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been furnished to the Contractor pursuant to paragraph (c) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the Contracting Officer, upon direction of the Department of Labor and notification of the Contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(i) Pay Periods. The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(j) Withholding of Payments and Termination of Contract. The Contracting Officer shall withhold or cause to be withheld from the Government prime Contractor under this or any other Government contract with the prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(k) Subcontractors. The Contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the

Act. The term "Contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government prime Contractor".

(l) Service Employee. As used in this clause, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(m) Federal Wage Board (Blue Collar) and General Schedule (White Collar) Wages and Fringe Benefits Applicable to Service Employee Classifications. The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits

(n) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service

employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(o) Seniority List. Not less than ten (10) days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (4.173 of Regulations, 29 CFR Part 4), the incumbent prime Contractor shall furnish to the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The Contracting Officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

(p) Regulations Incorporated by Reference. Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4 and are hereby incorporated by reference in this contract.

(q) Contractor's Certificate.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(r) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (a) through (p) of this clause relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(s) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(t) Tips. An employee engaged in an occupation in which he or she customarily and regularly receives more than thirty dollars ($30) a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531; Provided, however, That the amount of such credit may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso:

(i) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(ii) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(iii) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(iv) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(u) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4.6, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor or the employees or their representatives.

(End of clause)

(b) Service Contracts Not in Excess of $2,500. Every contract with the Federal Government which is not in excess of $2,500 but has as its principal purpose the furnishing of services through the use of service employees shall contain the following clause:

SERVICE CONTRACT ACT OF 1965, AS AMENDED (1984 JAN)

Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4 and are hereby incorporated by reference in this contract.

(End of clause)

(c) Basic Ordering Agreements and Blanket Purchase Agreements. In the case of the basic ordering agreement or blanket purchase agreement, the dollar amount thereof for purposes of (a) and (b) above shall be the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement. If an agreement

continues or is extended, such estimate shall be made annually for each year after the first, and the agreement modified accordingly.

(d) Price Adjustment Clauses.

(1) In fixed price-type service contracts with options to renew and fixed price-type multiyear service contracts which contain the clause in (a) above, insert the Fair Labor Standards Act and Service Contract Act--Price Adjustment (Multiyear and Option Contracts) clause in 7-1905(b).

(2) In fixed price service contracts other than those covered by (1) above, which contain the clause in (a) above, insert the Fair Labor Standards Act and Service Contract Act--Price Adjustment clause in 7-1905(c).

7-1903.42 Patent Rights. When experimental, developmental, or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-1903.43 *Government Delay of Work.* The clause in 7-104.77 may be inserted.

7-1903.44 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-1903.45 *Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.* In accordance with 7-104.81, insert the clause therein.

7-1903.46 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-1903.47 *Reserved.*

7-1903.48 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1903.49 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-1903.50 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-1903.51 *Value Engineering.*

(a) In accordance with 1-1702, insert the appropriate clauses in 7-104.44 modified, as required, to suit the particular procurement involved.

(b) Insert additional paragraph as follows:

( ) Contractor proposals which eliminate, modify or substitute new procedures for contractually required work procedures shall qualify for instant contract savings sharing. If this is a time and material or labor-hour contract, the "effect of the proposal on the Contractor's cost of performance," for purposes of the instant contract sharing paragraph (a)(1) of the clause, shall be determined by (i) multiplying the time per item saved by the elimination, modification, or substitution by the labor-hour rate agreed upon for the workers involved, and then (ii) multiplying the result by the number of items over which the task has been deleted, and (iii) taking into account in the usual manner the Contractor's cost of developing the proposal and of implementing the change, and increased Government costs related to implementing the proposal. (The result under (i) would be the unit cost reduction for purposes of determining future acquisition savings.)

(End of clause paragraph)

7-1903.52 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-1903.53 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-1903.54 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1903.55 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1903.56 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1903.57 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-1903.58 *Reserved.*

7-1903.59 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1904 Additional Clauses for Use in Fixed-Price Service Contracts. The following clauses may be inserted in fixed price service contracts in accordance with Departmental procedures when it is appropriate to do so.

7-1904.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

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7-2003.80 *Women-Owned Business.* In accordance with 2-201(a)Sec.K(xviii), 2-201(b)(lviii), or 3-501(b)(3)Sec.K(xxi), insert the following provision in all solicitations except those made outside the United States.

WOMEN-OWNED BUSINESS (1981 JUL)

The offeror represents that the firm submitting this offer ( ) is, ( ) is not, a women-owned business. A *women-owned business* is a business that (i) is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business; and (ii) is a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. *Control* in this context means exercising the power to make policy decisions. *Operate* in this context means being actively involved in the day-to-day management.

(End of provision)

7-2003.81 *Percent Foreign Content.* In accordance with 2-201(a)Sec.K(xix), 2-201(b)(lix), or 3-501(b)(3)Sec.K(xxii), insert the following provision in all solicitations except those made outside the United States.

PERCENT FOREIGN CONTENT (1978 SEP)

Approximately ---------- percent of the proposed contract price represents foreign content or effort.

(End of provision)

7-2003.82 *Recovered Material.* The following certification shall be inserted in solicitations as required by 1-2500.5(b).

RECOVERED MATERIAL (1979 MAR)

The Contractor certifies by signing this bid/proposal/quotation that recovered materials, as defined in DAR 1-2500.4, will be used as required by the applicable specifications.

7-2003.83 Reserved.
7-2003.84 Reserved.

7-2003.85 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA). In accordance with 12-1005.2(b)(5), insert the following provision in all solicitations for the acquisition of services to which--

(i) the clause at 7-1903.41(a) applies;
(ii) the contract resulting from this solicitation succeeds an ongoing contract for substantially the same services to be performed in the same locality;
(iii) the incumbent contractor has negotiated or is negotiating a CBA with some or all of its service employees; and
(iv) all applicable Department of Labor wage determinations have been requested but not received.

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (1984 JAN)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent contractor _____ and the _____(union). Copies of the agreement can be obtained from the Contracting Officer. Pursuant to DOL Regulation, 29 CFR 4.1b and paragraph (e) of the clause at 7-1903.41(a), the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined, after a hearing pursuant to section 4(c) of the SCA, that they are substantially at variance with the wages prevailing in the area.

(End of provision)

7-2003.86 Reserved.
7-2003.87 Reserved.
7-2003.88 Reserved.

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CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-2003.89 Notice of Cost Comparison.

(a) Advertised contracts. In accordance with 4-1202, insert the following provision in solicitations and resultant contracts.

NOTICE OF COST COMPARISON (ADVERTISED) (1980 MAY)

(a) Bidders are notified that this solicitation is a part of a cost comparison to determine whether accomplishing the specified work in-house or by contract is more economical.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(b) The Government's in-house cost estimate shall be based on the statement of work set forth in this solicitation and shall be submitted to the Contracting Officer in a sealed envelope not later than the time set for bid opening. At the time of the bid opening, the bids and the sealed Government in-house estimate will be opened and the results announced. This announcement is based upon an initial comparison of the cost of in-house performance with the cost of contracting out as indicated on the cost comparison form. The abstract of bids, the completed cost comparison form and detailed supporting data relative to the in-house cost estimate shall be made available to interested parties for review.

(c) A period of ____ working days will be provided for public review by interested parties of the cost comparison data. No final determination regarding the question of in-house or contractor performance will be made during this review period. Interested parties may file written requests, based on specific objections, for review of the cost comparison results with the Contracting Officer during this period. This review shall only be used to resolve questions concerning the calculation of the cost comparison, and shall not apply to decisions regarding selection of one bidder in preference to another. Decisions with regard to such requests are final.

(d) After evaluation of bids, and resolution of requests for review, if any, the Contracting Officer shall announce the results of the cost comparison and either award a contract or cancel the solicitation. The completed cost comparison analysis shall be made available to interested parties.

(e) In accordance with provisions of the clause "Late Bids, Modifications of Bids or Withdrawal of Bids," a late modification which displaces the otherwise low in-house cost estimate shall not be considered. An otherwise low in-house cost estimate is considered a successful bid and cannot be displaced by a late modification within subparagraph (d) of that clause.

(End of clause)

CONTRACTOR INDUSTRIAL LABOR RELATIONS

Part 9—Nondiscrimination Because of Age

12-901 Policy Regarding Nondiscrimination Because of Age. It is the policy of the Executive Branch of the Government (i) that contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement; and (ii) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement. This policy is stated in Executive Order No. 11141 dated 12 February 1964. Any complaint regarding a concern's compliance with the foregoing policy should be brought to the attention of the concern by a communication (in writing, if appropriate) which states the policy, indicates that the concern's compliance with the policy has been questioned, and requests that the concern take any appropriate steps which may be necessary to comply with the policy.

CONTRACTOR INDUSTRIAL LABOR RELATIONS

Part 10—Service Contract Act of 1965, As Amended

12-1000 **Scope of Part.** This part sets forth policies and procedures for implementing the provisions of the McNamara-O'Hara Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and the provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et. seq.), as they pertain to service contracts, and the regulations prescribed in 29 CFR, Parts 4 and 1925, and instructions issued by the Secretary of Labor.

12-1001 **Statutory Requirements.** The Service Contract Act, referred to in this part as the "Act," includes the following general requirements with respect to service contracts entered into by Federal agencies.

(i) Regardless of contract amount, no contractor or subcontractor holding a Federal service contract shall pay any of its employees engaged in such work less than the minimum wage specified in the Fair Labor Standards Act of 1938, as amended;

(ii) Successor contractors performing on contracts in excess of $2,500 must pay wages and fringe benefits at least equal to those agreed upon for substantially the same services performed in the same locality in any bona fide collective bargaining agreement entered into by the predecessor contractor (unless such wages and fringe benefits are determined to be substantially at variance with those which prevail for services of a similar character in the locality);

(iii) Service contractors performing on contracts in excess of $2,500, to which no predecessor contractor's collective bargaining agreement applies, shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act; and

(iv) See 12-1002.4 for statutory exemptions and 12-1002.5 for regulatory exemptions.

12-1002. **Applicability.**

12-1002.1 General. Subject to statutory exemptions or administrative exemptions by the Secretary of Labor under section 4(b) of the Act (41 U.S.C. 353), the Act applies to

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12-1002.1 (v) Contracts or subcontracts for the furnishing of services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.);

(vi) Contracts or subcontracts for the furnishing of services by radio broadcasting stations, including any network of broadcasting stations;

(vii) Contracts or subcontracts for the furnishing of services by newspaper publishers or their wholly owned subsidiaries;

(viii) Contracts or subcontracts for the furnishing of services by the owners or lessees of hotels or restaurants with more than 50 rooms;

(ix) Contracts or subcontracts for the furnishing of services by any carrier or freight forwarder subject to the provisions of the Interstate Commerce Act, as amended (49 U.S.C. 1 et seq.);

(x) Contracts or subcontracts for the furnishing of services by any seller or lessor who regularly sells or leases equipment or services identical or similar to those which are to be furnished to the Government under the contract or subcontract;

(xi) Contracts or subcontracts for the furnishing of services outside the United States and its territories;

(xii) Contracts or subcontracts for the furnishing of services by the United States Postal Service;

(xiii) Contracts or subcontracts for the furnishing of services by educational institutions;

(xiv) Contracts or subcontracts for the furnishing of services by hospitals or providers of medical or nursing care;

(xv) Contracts or subcontracts for the furnishing of services by establishments which are exempt from the minimum wage provisions of the Fair Labor Standards Act of 1938, as amended, by virtue of section 13(a)(2) or section 13(a)(4) of that Act (29 U.S.C. 213(a)(2) or (a)(4));

(xvi) Contracts or subcontracts for the furnishing of services by establishments which are exempt from the minimum wage provisions of the Fair Labor Standards Act of 1938, as amended, by virtue of section 13(a)(3) of that Act (29 U.S.C. 213(a)(3)) and which are classified in Industry 7213 as defined in Part 4 of Title 29, Code of Federal Regulations;

(xvii) Contracts or subcontracts for the furnishing of services by establishments which are exempt from the minimum wage provisions of the Fair Labor Standards Act of 1938, as amended, by virtue of section 13(a)(3) of that Act (29 U.S.C. 213(a)(3)) and which are classified in Industry 7218 as defined in Part 4 of Title 29, Code of Federal Regulations;

12-1002.1 (xviii) Contracts or subcontracts for the furnishing of services by establishments which are exempt from the minimum wage provisions of the Fair Labor Standards Act of 1938, as amended, by virtue of section 13(a)(3) of that Act (29 U.S.C. 213(a)(3)) and which are classified in Industry 7219 as defined in Part 4 of Title 29, Code of Federal Regulations;

(xix) Contracts or subcontracts for the furnishing of services by establishments which are exempt from the minimum wage provisions of the Fair Labor Standards Act of 1938, as amended, by virtue of section 13(a)(3) of that Act (29 U.S.C. 213(a)(3)) and which are classified in Industry 7221 as defined in Part 4 of Title 29, Code of Federal Regulations;

(xx) Contracts or subcontracts for the furnishing of services by establishments which are exempt from the minimum wage provisions of the Fair Labor Standards Act of 1938, as amended, by virtue of section 13(a)(3) of that Act (29 U.S.C. 213(a)(3)) and which are classified in Industry 7231 as defined in Part 4 of Title 29, Code of Federal Regulations;

(xxi) Contracts or subcontracts for the furnishing of services by establishments which are exempt from the minimum wage provisions of the Fair Labor Standards Act of 1938, as amended, by virtue of section 13(a)(3) of that Act (29 U.S.C. 213(a)(3)) and which are classified in Industry 7241 as defined in Part 4 of Title 29, Code of Federal Regulations;

(xxii) Contracts or subcontracts for the furnishing of services by establishments which are exempt from the minimum wage provisions of the Fair Labor Standards Act of 1938, as amended, by virtue of section 13(a)(3) of that Act (29 U.S.C. 213(a)(3)) and which are classified in Industry 7251 as defined in Part 4 of Title 29, Code of Federal Regulations;

(xxiii) Contracts or subcontracts for the furnishing of services by establishments which are exempt from the minimum wage provisions of the Fair Labor Standards Act of 1938, as amended, by virtue of section 13(a)(3) of that Act (29 U.S.C. 213(a)(3)) and which are classified in Industry 7261 as defined in Part 4 of Title 29, Code of Federal Regulations;

all Federal contracts, the principal purpose of which is to furnish services in the United States through the use of service employees.

12-1002.2 Geographical Coverage of the Act. The Act applies to service contracts performed within the United States (see 12-1002.3(ii)). The Act does not apply to contracts performed outside the United States. In addition, a contract which is performed essentially outside the United States, with only an incidental portion performed within the United States, is not covered by the Act.

12-1002.3 Definitions. For the purpose of this part, unless otherwise indicated, terms used here are defined as follows:

(i) "Service employee" means any person employed in connection with a contract entered into by the United States and not exempted under section 7 of the Act (41 U.S.C. 356), whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR, Part 541); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(ii) "United States" shall include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island, but shall not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country.

(iii) "Administrator" means the Administrator of the Wage and Hour Division, United States Department of Labor, or the Administrator's authorized representative.

(iv) "Contract" includes any contract subject wholly or in part to provisions of the Act and any subcontract at any tier thereunder.

(v) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act.

(vi) "Wage Determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of section 2(a) and 4(c) of the Act (41 U.S.C. 351 and 353) for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 that is subject to the provisions of the Act.

12-1002.4 Statutory Exemptions. The following are specifically excluded from coverage under the Act, pursuant to statutory exemptions:

(i) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;

(ii) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(iii) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect;

(iv) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(v) Any contract for public utility services, including electric light and power, water, steam, and gas;

(vi) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(vii) Any contract with the Post Office Department (now the U.S. Postal Service), the principal purpose of which is the operation of postal contract stations.

12-1002.5 Administrative Limitations, Variations, Tolerances, and Exemptions.

(a) The Secretary of Labor, only in special circumstances, may provide such reasonable limitations and may make such rules and regulations allowing reasonable

variations, tolerances, and exemptions to and from any or all provisions of the Act as the Secretary may find necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business (41 U.S.C. 353(b)). Requests for variations, tolerances, and exemptions from the Act shall be submitted in writing through contracting channels to the departmental labor advisor (12-1002.7).

(b) Pursuant to the authority cited in (a) above, the Secretary of Labor has exempted the following types of contracts form all provisions of the Act:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels, over regularly established routes and accounts for an insubstantial portion of the revenue therefrom;

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident;

(3) Contracts for the carriage of freight or personnel where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(4) Exemption for Contracts for Maintenance and Repair of Certain ADP, Scientific and Medical, and Office and Business Equipment.

(i) Contracts principally for the maintenance, calibration and/or repair of the following types of equipment are exempt from all provisions of the Act, subject to the restrictions in (ii), (iii), and (iv) below:

(A) Automated data processing equipment and office information/word processing systems;

(B) Scientific equipment and medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply

Classification (FSC) Group 65, Class 6515, "Medical Diagnostic Equipment"; Class 6525, "X-Ray Equipment"; FSC Group 66, Class 6630, "Chemical Analysis Instruments"; Class 6665, "Geographical and Astronomical Instruments", are largely composed of the types of equipment exempted hereunder);

(C) Office/business machines not otherwise exempt pursuant to (A) above, where such services are performed by the manufacturer or supplier of the equipment.

(ii) The exemptions set forth in this paragraph (4) shall apply only under the following circumstances:

(A) The items of equipment are commercial items which are used regularly for other than Government purposes, and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations;

(B) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of such commercial items. An "established catalog price" is a price included in a catalog, price list schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor;

(C) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment of commercial customers;

(D) The contractor certifies in the contract to the provisions in this subparagraph (ii).

(iii) Determinations of the applicability of this exemption shall be made in the first instance by the contracting officer prior to contract award. In making a judgement that the exemption applies, the contracting officer shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(iv) If the Department of Labor determines after contract award that any of the above requirements for exemption have not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination.

12-1002.6 Remanufacturing of Equipment.

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Act rather than to the Service Contract Act. Remanufacturing shall be deemed to be manufacturing when the criteria in either (1) or (2) below are met.

(1) Major overhaul of an item, piece of equipment, or material which is degraded or inoperable, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down into individual components parts; and

(ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced; and

(iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment; and

(iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized; and

(v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment; and

(vi) The items or equipment overhauled are restored to original life expectancy, or nearly so; and

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down; and

(ii) Outmoded parts are replaced; and

(iii) The item or equipment is rebuilt or reassembled; and

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition; and

(v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in (a)(1) and (2) above, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Act. Examples of such work include:

(i) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment;

(ii) Repair of typewriters and other office equipment (see 12-1002.5(b)(4));
(iii) Repair of appliances, radios, television, calculators, and other electronic equipment;
(iv) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in (i), (ii), and (iii) above; and
(v) Reupholstering, reconditioning, repair, and refinishing of furniture.

12-1002.7 Questions Concerning Applicability of the Act. In the event the contracting officer questions the applicability of the Act to an acquisition, the matter shall be forwarded for resolution, prior to issuance of the solicitation, as follows:

For the Army: Assistant Secretary of the Army (RDA)
Attn: Labor Advisor
For the Navy: Chief of Naval Material
Attn: Labor Relations Advisor
For the Air Force: Special Assistant for Labor Affairs
HQ USAF/RDC-LA
For DCA: Defense Communications Agency Headquarters
Attn: Counsel
For DMA: Staff Director of Logistics
For DNA: Deputy Director of Operations and Administration
For DLA: Executive Director (Contracting)
Attn: DLA-PL

12-1003 **Department of Labor Regulations.** The Department of Labor has issued 29 CFR, Parts 4 and 1925, providing for the administration and enforcement of the Act. The regulations include coverage of the following matters relating to the requirements of the Act:

(i) Service Contract Labor Provisions and Procedures (see 29 CFR, Subpart A, Part 4);
(ii) Wage Determination Procedures (see 29 CFR, Subpart B, Part 4);
(iii) Application of the Act of 1965 (Rulings and Interpretations) (see 29 CFR, Subpart C, Part 4);
(iv) Compensation Standards (see 29 CFR, Subpart D, Part 4);
(v) Enforcement (see 29 CFR, Subpart E Part 4);

(vi) Safe and Sanitary Working Conditions (see 29 CFR, Part 1925); and
(vii) Rules of Practice for Administrative Proceedings Enforcing Service Contract Labor Standards (see 29 CFR, Part 6).

12-1004 **Contract Clauses and Solicitation Provisions.** Clauses, solicitation provisions, and guidance as to their use are contained at:

(i) 7-1903.41(a) - Service Contracts in Excess of $2,500;
(ii) 7-1903.41(b) - Service Contracts Not in Excess of $2,500;
(iii) 7-1903.41(c) - Basic Ordering Agreements and Blanket Purchase Agreements;
(iv) 7-1903.41(d) - Price Adjustment Clause;
(v) 7-2003.85 - SCA Minimum Wages and Fringe Benefits Applicable to Successor Contractor Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA).

12-1005 **Administration and Enforcement.**

12-1005.1 Responsibilities of the Department of Labor. The Secretary of Labor is authorized and directed to administer and enforce the provisions of the Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act.

12-1005.2 Contracting Officer Responsibilities--Preparation of Solicitations and Contracts.

(a) As to solicitations and contracts of $2,500 or less, to which the Act applies, the contracting officer shall include the clause set forth in 7-1903.41(b).

(b) As to solicitations and contracts that are or may be in excess of $2,500, to which the Act applies, the contracting officer shall insert the applicable clause(s) at 7-1903.41 and the solicitation provision at 7-2003.85, and shall take the following appropriate actions:

(1) Issuance of Notice of Intention to Make a Service Contract--Standard Forms 98 and 98a.

a. For any contract exceeding $2,500 which may be subject to the Act, the contracting office shall file with the Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. With respect to recurring or known requirements, such notices shall be filed not less than 60 days (nor more than 120 days, except with the approval of the Wage and Hour Division) prior to any invitation for bids, request for proposals, commencement of

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negotiations, exercise of option or contract extension, annual anniversary date of a multiyear contract subject to annual fiscal appropriations of the Congress, or each biennial anniversary date of a multiyear contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division. Notices with regard to solicitations where such planning is not feasible shall be submitted as soon as possible, but not later than 30 days prior to the above contracting actions. This notice shall be submitted on SF 98/98a (see Appendix F-100.98) in accordance with the forms' instructions and shall be supplemented by the information required under b. and c. below. Care should be taken to ensure that all required information is provided to avert return without action by the Department of Labor.

b. The contracting office shall file SF 98a with SF 98. SF 98a shall contain the following information concerning the service employees expected to be employed by the contractor and any subcontractors in performing the contract:

(i) classes of service employees;
(ii) the number of service employees in each class; and
(iii) the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of 5 U.S.C. 5341 or 5332 (see (3) below).

c. If the services to be furnished under the proposed contract will be substantially the same as services being furnished in the same location by an incumbent contractor whose contract the proposed contract will succeed, and if the incumbent contractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements, the contracting officer shall obtain from the contractor (see paragraph (n) of 7-1903.41(a)) a copy of each such collective bargaining agreement, together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement, and submit them with the SF 98/98a, retaining a copy for the contract file. If such services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the contracting officer shall identify the locations to which the agreements have application. If the collective bargaining agreement does

not apply to all service employees under the contract, the contracting office shall identify the employees and/or work subject to the collective bargaining agreement. See (2) below for notice to interested parties, which is required at least 30 days prior to issuance of the solicitation. See also (4)b. below, concerning collective bargaining agreements that are considered not to be entered into as a result of arms-length negotiations or that are at substantial variance with the wages and fringe benefits prevailing in the locality. (Note that the successorship provisions of the Act do not apply if the contract services are to be performed in a different locality than where performed by the predecessor contractor.)

d. If exceptional circumstances prevent the filing of the notice of intention and the supplemental information required by b. above, the notice shall be submitted to the Wage and Hour Division as soon as practicable, with a detailed explanation justifying the need for expeditious action on the SF 98.

e. Requests to expedite issuance of wage determinations or to check the status of a particular request should be made in accordance with departmental procedures through the offices listed in 12-1002.7. Direct contact with Department of Labor officials for this purpose is not authorized.

f. Place of Performance Unknown.

1. Where the place of performance of a contract for services subject to the Act is unknown at the time of solicitation, the solicitation need not initially contain a wage determination. The contracting office shall, upon identification of firms participating in the procurement in response to an initial solicitation, file with the Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract (SF 98/98a). In addition to the requirements contained in a. above, such submission shall identify each location where the work may be performed as indicated by participating firms. Subsequent amendments to the solicitation setting forth the wage determinations and any necessary change in the date and time for submission of final bids shall be made upon receipt of wage determinations. An applicable wage determination must be obtained for each firm participating in the bidding for the location in which it would perform the contract. The appropriate wage determination shall be incorporated in the

resultant contract documents and shall be applicable to all work performed thereunder (regardless of whether the successful contractor subsequently changes the place(s) of contract performance).

2. There may be unusual situations, as determined by the Department of Labor upon consultation with the departmental labor advisor (see 12-1002.7), where the procedure in 1. above is not practicable in a particular situation, in which event the Department of Labor may authorize a modified procedure which may result in the subsequent issuance of wage determinations for one or more composite localities.

g. If any invitation for bids, request for proposals, bid opening, or commencement of negotiations for a proposed contract for which a wage determination was provided in response to an SF 98/98a has been delayed, for whatever reason, more than 60 days from the date of such procurement action as indicated on the submitted SF 98/98a, the contracting office shall contact the Wage and Hour Division for the purpose of determining whether the wage determination issued pursuant to the initial submission is still current. Any revision of a wage determination received by the contracting office as a result of such communication or upon discovery by the Department of Labor of a delay, shall supersede and replace the earlier response as the wage determination applicable to such procurement, subject to the time frames set forth in 12-1005.2(b)(4).

(2) Notice to Interested Parties. If the contracting officer is aware that the incumbent contractor's or a subcontractor's service employees performing on the contract are represented by a collective bargaining agent, the contracting officer shall give both the incumbent (predecessor) contractor and his employees' collective bargaining representative written notification at least 30 days in advance of all applicable estimated procurement dates, including issue of bid solicitation, bid opening, date of award, commencement of negotiations, receipt of proposals, or the commencement date of a contract resulting from a negotiation, option, or extension, as the case may be.

(3) Statement of Equivalent Rates for Federal Hires.

a. In accordance with section 2(a)(5) of the Act, paragraph (m) of the clause at 7-1903.41(a) shall contain a statement of rates for equivalent Federal hires, setting forth those wage rates and fringe benefits that would be paid by the contracting activity to the various classes of

service employees expected to be utilized under the contract if 5 U.S.C. 5332 (General Schedule--white collar) and/or 5 U.S.C. 5341 (Wage Board--blue collar) were applicable.

b. Procedures for computation of these rates are as follows:

1. Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees. Determinations of applicable Wage Board rates are as follows:

i. Where the place of performance is known, the rates applicable to that location shall be used; or

ii. Where the place for performance is not known, the rates applicable to the contracting activity's location shall be used.

2. Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

3. Local civilian personnel offices can assist in determining and providing grade and salary data.

(4) Applicability of Wage Determinations Prior to Award.

a. Solicitations and contracts for more than $2,500 shall contain an attachment (wage determination or appropriate revisions thereto) issued by the Administrator in response to the notice required under (1) above, setting forth the minimum wages and fringe benefits for service employees to be employed thereunder. However, the following rules regarding the receipt of wage determinations and revisions thereto should be observed:

(i) A wage determination revision shall not apply where no collective bargaining agreement exists and the wage determination or revision is received by the Federal agency less than 10 days before the opening of bids in formally advertised contracts, unless the contracting officer finds that there is a reasonable time to notify bidders thereof. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term) wage determination or revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective provided that the contract start of performance is within 30

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(ii) A wage determination revision shall not apply where the contracting officer has requested bids or proposals and has received bids or proposals before the revision is received by the Federal agency. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term) wage determination or revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective provided that the contract start of performance is within 30

days after the date of award (or execution of an option or extension of term, as the case may be) of the contract.

(iii) A wage determination revision shall not apply where the contracting officer has requested bids or proposals and has received bids or proposals before the revision is received by the Federal agency. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term) wage determination or revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective provided that the contract start of performance is within 30

days of such award (or execution of an option or extension of term). If the contract does not specify a start of performance date which is within 30 days from the award, and/or if performance of such procurement does not commence within this 30-day period, the Department of Labor shall be notified and any wage determination or revision received by the agency not less than 10 days before commencement of the contract shall be effective.

(ii) A wage determination (or revision) based on a collective bargaining agreement shall not apply where the contracting office has received notice of the existence of that collective bargaining agreement less than 10 days before bid opening in formally advertised contracts and the contracting officer determines that there is not reasonable time to incorporate a new wage determination in the solicitation. Similarly, a wage determination (or revision) based on a collective bargaining agreement shall not apply if notice of the terms of the new or changed collective bargaining agreement is received by the agency after award of a successor contract to be entered into pursuant to negotiations or as a result of the execution of a renewal option or an extension of the initial contract term; Provided, that the contract start of performance is within 30 days of such award or renewal option or extension. If the contract does not specify a start of performance date which is within 30 days from the award, and/or performance of such procurement does not commence within this 30-day period, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the contract will be effective for purposes of the successor contract under section 4(c) of the Act.

(iii) The limitations in (ii) above shall apply only if the notices required in (1) and (2) above have been given.

b. Review of Collective Bargaining Agreements and Wage Determinations.

1. If a contracting officer believes that an incumbent contractor's collective bargaining agreement under section 4(c) of the Act was not entered into as a result of arms-length negotiations, procedures in accordance with 4. below shall be followed.

2. Immediately upon receipt of a wage determination not predicated upon a collective bargaining agreement, the contracting officer shall examine the wage determination to ascertain whether it is correct and whether it conforms with the wages and fringe benefits prevailing

for services of a character similar in the locality. If the wage determination is at substantial variance with the prevailing rates, the contracting officer shall proceed in accordance with 3. below.

3. A full statement of the facts shall be transmitted immediately to the departmental labor advisor (see 12-1002.7) through contracting channels for appropriate action.

4. If wages and fringe benefits provided for in a collective bargaining agreement are substantially at variance with those prevailing for services of a character similar in the locality, the contracting officer shall proceed as follows:

i. Review immediately the agreement to ascertain if a hearing (12-1006) is warranted.

ii. Submit a request for hearing, when warranted, to the departmental labor advisor (12-1002.7) through contracting channels. Sufficient payroll data shall accompany this request to support a prima facie showing that the bargained-for rates, in fact, are substantially at variance with those prevailing for services of a character similar in the locality. Except under extraordinary circumstances, as determined by the Administrator, a request for hearing shall not be considered by the Secretary unless received by the Department of Labor more than 10 days before the award of an advertised contract or prior to the commencement of a negotiated contract or contract extension, through option or otherwise.

(5) Late Receipt of Wage Determinations.

a. If the SCA wage determination requested in accordance with the filing deadlines set out in (1) above is not received in time, and absent an incumbent contractor union agreement, the contracting officer should proceed using the latest wage determination included in the existing contract, if any. (But see (4)a.(i) above.)

b. In those cases involving an incumbent contractor operating under a collective bargaining agreement, the wage determination in the incumbent's contract shall not be included in any solicitation that must be released without a new SCA wage determination. Instead, using the solicitation provisions at 7-2003.85, offerors shall be informed that--

(i) the economic terms of such agreement(s) will apply to the contract and should be considered in developing an offer; however,

(ii) pursuant to Department of Labor regulations at 29 CFR 41b, and subject to the conditions set forth in (2) and (4)a.ii. above, the economic terms of any agreement entered into subsequent to this solicitation might apply to the contract.

c. The contracting officer shall notify in writing the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, of each case when compelled to proceed without a new wage determination due to a delayed response from the Department of Labor. An information copy of each such notice shall be forwarded to the appropriate departmental labor advisor (see 12-1002.7).

(c) Seniority Lists. In cases of a contract performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion. (See section (o) of the clause at 7-1903.41(a).) At the commencement of the succeeding contract, the contracting officer shall provide a copy of the list to the successor contractor for determining employee eligibility for vacation fringe benefits which are based on length of service with predecessor contractors (where such benefit is required by an applicable wage determination).

12-1005.3 Applicability of Wage Determinations--Subsequent to Award. If a required wage determination is not included in the solicitation or contract due to failure to comply with 12-1005.2(b)(1) or (2), and if the contracting officer receives a wage determination from the Department of Labor within 30 days of the late filing of the SF 98/98a or the discovery by the Department of Labor of the failure to include a wage determination required by this part--

(i) the contracting officer shall attempt to negotiate a bilateral notification to--
  (A) incorporate the appropriate clauses, if not previously included;
  (B) incorporate the required wage determination, which shall be effective as of the date of issuance unless otherwise specified; and

(C) equitably adjust the contract price to compensate for any increased cost of performance under the contract by the wage determination; or

(ii) the contracting officer, if unable to negotiate a bilateral modification incorporating the wage determination, shall document the contract file to show the efforts made and provide a copy of this documentation through appropriate channels to the departmental labor advisor (see 12-1002.7).

12-1005.4 Additional Classes of Service Employees (Conformable Rates). Where additional classes of service employees are required, which were not set forth in the wage determination, the procedure described in paragraph (a) of the contract clause (7-1903.41(a)) shall be followed after award.

12-1005.5 Notice of Award.

(a) Notice of Award of Contract--Standard Form 99. Two copies of SF 99 shall be prepared for contracts of more than $10,000 but less than $25,000 containing the clause in 7-1903.41(a). No SF 99 is required for covered service contracts of $10,000 or less. The original and duplicate SF 99 shall be forwarded to the Department of Labor, ATTN: Administrator, Wage and Hour Division, Washington, D.C. 20210. The form shall be completed as follows:

(i) Item 1 through 7 and 12 and 13: self-explanatory;
(ii) Item 8: enter the notation "Service Contract Act";
(iii) Item 9: leave blank;
(iv) Item 10: enter the notation "Major Category" and indicate beside this entry the general service area into which the contract falls (e.g., food services, grounds maintenance, computer services, installation or facility support services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and drycleaning services, etc.);
(v) Item 11: enter the dollar amount of the contract or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "indefinite" or "not to exceed $_____."

(b) Individual Procurement Action Report (DD Form 350). ards of service contracts of $25,000 or more are reported the Department of Labor via the Federal Procurement Data ystem from information contained in this form (see 21-114). herefore, the contracting officer shall not report such ards directly to the Department of Labor.

12-1005.6 Inquiries Concerning the Act. Contractors or ontractor employees who inquire concerning the dministration and enforcement of the Act shall be advised hat such matters fall within the jurisdiction of the epartment of Labor and shall be given the address of the ppropriate Assistant Regional Administrator of the Wage and our Division of the Department of Labor (see 12-607).

12-1005.7 Contract Modifications.

(a) Bilateral Contract Modifications. Generally, a ilateral contract modification affecting the scope of the ork is regarded as a new contract for purposes of the Act. Bilateral contract modifications not related to the ontract's labor requirements or containing insignificant hanges to the contract's labor requirements shall not be eemed to create a new contract for purposes of the Act.) rior to entering into such modification, the contracting fficer shall forward SF 98/98a to the Administrator in ccordance with the procedure set forth in 12-1005.2(b)(1), xcept that--

(i) in the "Estimated Solicitation Date" block, enter the date the wage determination is needed; and

(ii) in block 6, enter "Modification of Existing Contract for (describe type of service) Services."

(b) Extension of Contract Through Exercise of Option or Otherwise. A new contract shall be deemed entered into for purposes of the Act when the period of performance of an existing contract is extended pursuant to an option clause or otherwise. Prior to extending the period of performance of the contract, the contracting officer shall forward SF 98/98a as provided in 12-1005.2(b)(1) and in (a) above.

12-1005.8 Multiyear Contracts.

(a) Multiyear Contracts Subject to Annual Appropriations. After the initial submission of the SF 98/98a for a covered multiyear service contract subject to annual fiscal appropriations of the Congress, the contracting officer shall submit an SF 98/98a on an annual basis thereafter, not less than 60 days (nor more than 120 days) prior to the contract anniversary date.

(b) Multiyear Contracts Not Subject to Annual Appropriations. If the proposed contract is for a multiyear period subject to other than annual appropriations, the contracting officer shall file with the initial SF 98/98a a statement in writing concerning the type of funding and the contemplated term of the proposed contract. Unless otherwise advised by the Wage and Hour Division that an SF 98/98a must be filed on the annual anniversary date, a new SF 98/98a shall be submitted on each biennial anniversary date of the proposed multiyear contract in the event its term is for a period in excess of two years.

12.1005.9 Withholding of Contract Payments.

(a) As provided by the Act, any violation of the stipulations required by the clauses (7-1903.41) renders the party responsible therefor liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due to any employee engaged in the performance of the contract. Upon the written request of the Department of Labor, at a level no lower than an Assistant Regional Administrator, so much of the accrued payment due on the contract under which the violations occurred shall be withheld as is necessary to pay such employees under that contract or under any other contract between the Government prime contractor and the Federal Government, provided such other contract is not assigned pursuant to 31 U.S.C. 203 or 41 U.S.C. 15. Generally, such sums withheld shall be forwarded immediately to the Department of Labor for payment to employees unless otherwise directed by the Department of Labor.

12.1005.10 Termination. See paragraph (j) of 7-1903.41(a).

12-1005.11 Cooperation with the Department of Labor. The contracting officer shall cooperate with representatives of the Department of Labor in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department of Labor. When requested, agencies shall furnish to the Administrator any available information with respect to contractors, subcontractors, their contracts, and the nature of the contract services. Violations apparent to the contracting agency and complaints received shall be promptly referred in writing to the appropriate regional office of the Department of Labor. In no event shall complaints by employees be disclosed to the employer.

12-1005.12 Disputes Concerning Labor Standards. Disputes arising out of the Service Contract Act labor

standards contract provisions are not subject to the Disputes clause. (See subparagraph (u) of the clause at 7-1903.41(a).) Such disputes shall instead be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this part include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

12-1006 Hearings. A successor contractor's obligation (see 12-1001(ii)) cannot be avoided unless it is found after a hearing that such bargained for wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality. Such hearings may be requested by any interested party, including the contractor, a union, or the contracting agency.

12-1007 Procedures for Evaluating Professional Employee Compensation for Service Contracts.

12-1007.1 Purpose. The Service Contract Act of 1965, as amended, was enacted to ensure that blue collar and some white collar workers are fairly compensated by contractors providing contract services to the Government. It does not apply, however, to professional employees. This part provides policies and procedures to be used when contracting for services which include a meaningful number of professional employees not covered under the Service Contract Act.

12-1007.2 Policy. It is the policy of the Federal Government that all service employees, including professional employees, employed by contractors providing services to the U.S. Government be fairly and properly compensated. To accomplish this policy, DoD proposal evaluators shall ensure that they fully understand the compensation plan proposed by each offeror within the competitive range. If a particular plan is either unclear or not fully substantiated, the evaluator shall request clarification and/or additional substantiating information, including, as appropriate, recognized national and regional compensation surveys and studies of professional public and private organizations used in establishing the total compensation package.

12-1007.3 Applicability. The provisions in 7-2003.78 and 7-2003.79 shall apply when all of the following conditions are present:

(i) the principal purpose of the proposed contract is to furnish services in the United States;

(ii) the proposed contract will be negotiated;

(iii) there are a meaningful number of professional employees who will be employed by the contractor to perform the service; and

(iv) the proposed contract will be in excess of $250,000.

12-1007.4 Definition of Professional Employee. The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions that have a recognized status and that are based on the acquirement of professional knowledge through prolonged study. Title 29, Part 541, Code of Federal Regulations, defines the term "professional employee" and provides a listing of occupations generally considered to be held by professionals.

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32 CFR Parts 1-39

[DAC 76-50]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-50. The changes include the addition of Appendix T, International Agreements.

EFFECTIVE DATE: Upon receipt, in accordance with DAR 1-106.2(d).

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM)(DARS), OUSDRE(M&RS), Room 3D 139, Pentagon, Washington, D.C. 20301, telephone (202)697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations (CFR). The July 1, 1983 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76-1 through 76-44.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the DAR would be published in the **Federal Register.**

Defense Acquisition Circular 76-50

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-50, issued 19 March 1984. The following is a summary of the amendments:

Appendix T—International Agreements. Appendix T has been created to incorporate all of the Memoranda of Understanding and Memoranda of Agreement which were formerly contained in DAR Section VI. This appendix contains all of the agreements which are in effect at this time.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on receipt in accordance with DAR 1-106.2(d).

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76-50. The number at the top of each page identifies the page number. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none above, on a preceding page. This is a new document; therefore marginal lines are not provided.

Adoption of Amendments

Therefore, the Defense Acquisition Regulation contained in the July 1, 1983 edition of 32 CFR Parts 1-39, Volumes I, II, and III, is amended in the DAR by addition of the pages listed in the table.

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List of Subjects in 32 CFR Parts 1-39

Government procurement.

Dated: June 27, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

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APPENDIX T

INTERNATIONAL AGREEMENTS

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APPENDIX T

INTERNATIONAL AGREEMENTS

T-000 Scope of Appendix. This Appendix contains copies of international agreements entered into by the Department of Defense.

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APPENDIX T

INTERNATIONAL AGREEMENTS

Part 1—FMS/Offset Arrangements

T-100 Scope of Part. This part provides, for information purposes only, copies of FMS/Offset Arrangements negotiated pursuant to FMS agreements. See DAR 6-1315.

T-101 Australian Memorandum of Discussion.

MEMORANDUM OF DISCUSSIONS

Against the purchase by the Government of Australia from the United States Department of Defense of major weapons systems and items of defense equipment, the U.S. Department of Defense agrees to establish the basis of an associated offset arrangement. The offset arrangement is pursuant to the discussions held in Washington on 10 April 1973 between the U.S. Department of Defense and the Australian Department of Defence. In these discussions the following principles and understandings were agreed:

1. The U.S. Department of Defense will commit itself to a combined U.S. industry and DoD offset objective of no more than 25% of the value of a major Australian order.

2. The U.S. Department of Defense and the Australian Department of Defence will look to those U.S. firms benefiting substantially from an Australian order to carry the initial and primary burden of offset implementation.

3. In the event that U.S. firms and subcontractors are unable to completely fulfill their offset objectives, the U.S. DoD will first offer Government Furnished Equipment (GFE) to Australian industry as bid opportunities and, second, if GFE items turn out to be unsuitable for either partner, select other items of defense equipment and supplies which appear to be competitively obtainable from Australian sources.

4. The DoD reserves the right, unilaterally, to select appropriate procurements for offset implementation. However, to facilitate the selection of suitable items, DoD will consult with A/DoD to identify areas of Australian industrial/technological strength.

5. DoD procurement from Australian sources will normally be competitive and be subject to two basic conditions: one, that the items of procurement fully satisfy DoD requirements for performance, quality, and delivery, and two, that the items of procurement cost DoD no more than would comparable U.S. items or other foreign items eligible for award.

6. If and when special circumstances invite it, the DoD may consider alternative means of procurement involving directed procurements or negotiated procurements, including items of Research and Development, to the extent appropriate items can be selected.

7. Procurements from Australian sources made under DoD implementation of offset arrangements will be in accord with the Armed Services Procurement Regulations (ASPR). Selective waiver of the Buy American Act and the DoD "Gold Flow" rule will be made by the DoD for those procurements in which Australian sources are solicited and evaluated to be the winning bid except for application of these differentials. Thus the DoD will authorize case-by-case exceptions of these differentials in consonance with the principles and understandings of this Memorandum of Discussions.

8. As a general rule, the DoD role in this offset agreement will begin at the time of an Australian Request for Quotation (RFQ). The time-frame for placement of orders in fulfillment of the DoD share of the U.S. offset objective will be within five years of the initial date of delivery of the items purchased against which the offset objective is measured.

9. Notwithstanding the DoD's willingness to facilitate and to assist the A/DoD and Australian industry in successfully accomplishing the purposes and understandings of the offset arrangement, it remains the basic Australian responsibility to carry out those actions to bring its sales to the U.S. defense industry market and to the DoD to successful consummation.

10. It is recognized that detailed implementing procedures for the management of offsets will be needed. These procedures necessarily involve both procurement and sales activities and they will be developed in subsequent meetings as mutually agreed.

Signed, ad referendum, this 10th day of April 1973 in Washington, D.C.

SUBMITTED:	Leonard A. Alne For the U.S. Department of Defense	Roy W.G. Davies For the Australian Department of Defence
APPROVED:	W.P. Clements, Jr.	L. Barnard, M.O.D.

T-102 Swiss Agreements.

T-102.1 *Swiss F-5 Agreement.*

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION AND THE GOVERNMENT OF THE UNITED STATES CONCERNING THE F-5 PROGRAM

1. The Government of the Swiss Confederation, acting through the Federal Military Department (hereinafter called the FMD) intends to purchase a quantity of F-5E and F-5F aircraft, with associated supporting defense articles and services, from U.S. sources through the United States Department of Defense (hereinafter called the DoD) under Foreign Military Sales procedures.

2. The goal of the Memorandum of Understanding (MOU) is to offset to the maximum extent possible the amount to be paid by the Swiss Government for the aircraft and supporting equipment set out in paragraph 1 by placing contracts on a competitive basis with Swiss industries, but in no event will the goal be less than 30%.

3. The United States Government, acting through the DoD, and the Government of the Swiss Confederation, acting through the FMD, in seeking to attain this goal, will look to those U.S. firms benefiting substantially from the Swiss purchase to carry the primary burden of offset implementations. It will be the basic responsibility of industry in each country to identify and define their capabilities and to carry out the supporting action to facilitate the industrial participation envisioned herein. During the first two years the primary burden of offset implementation will be upon Northrop, General Electric and related contractors. However, if during that period Swiss industry offers items which can meet valid U.S. defense procurement on a competitive basis, the provisions of paragraph 5 will be applicable. After such two year period representatives of the parties hereto, with appropriate representatives from the industrial sectors, will meet to review progress hereunder. Should it be apparent that the offset objectives may not be reached before the expiration of the MOU, the DoD will augment industry efforts to reach that objective by offering to Swiss industry the opportunity to provide defense articles and services under competitive solicitation procedures and in accordance with paragraph 5.

4. (A) In order to achieve the goal the DoD, contingent on the sale of the above quantities of aircraft to the Government of the Swiss Confederation, agrees to use its best efforts to have Northrop, General Electric, and other companies associated with the F-5E and F aircraft program provide Swiss industry with the opportunity to compete, on an equal basis with U.S. industry and other sources for sub-contracts. In addition, the DoD will encourage the prime contractors (Northrop and GE) to implement their plans for expansion of Swiss products in the U.S. and third-country markets.

(B) Swiss items purchased by U.S. sources (including municipalities) and Swiss items purchased by third-country sources as a result of the efforts of Northrop, GE and other U.S. contractors associated with the F-5 program will be recognized in any computation of offset amounts. The primary test will be a mutual accord as to whether or not a given sale occurred as a result of efforts arising from this offset agreement. To facilitate these computations the DoD will look primarily to the contractor to keep records adequate for this purpose.

5. The DoD agrees that in seeking to attain this goal, it will:

(A) Provide for waiver of the cost of import duties in evaluating defense prime contracts and sub-contract solicitations from Swiss industry and for the necessary duty-free entry certificates and related documentation.

(B) Emphasize that in inviting submission of selected tenders, special consideration should be given to those items for which Swiss industry can bid on a competitive basis.

(C) Use its best efforts to have technical data required for production provided to Swiss contractors on a reasonable cost basis.

(D) Facilitate the necessary export licenses required for the provision of bid package and related technical data to accomplish the above.

(E) Provide for waiver to the extent permitted under "Buy National" legislation and regulations.

6. The FMD and its organizations will use their good offices and authority to achieve the established procurement objectives. This will include, in addition to the purchase of the F-5 aircraft, the following:

(A) Direction to Swiss industry on steps to be taken by Swiss industrial firms to make known their capabilities and products which might qualify for competitive procurement by U.S. industry and, to the extent necessary, by the DoD;

(B) Advice to Swiss industry on the necessary steps they must take to coordinate their efforts in responding to U.S. offers;

(C) Assistance to Swiss industry in meeting handling requirements for classified U.S. information.

7. The FMD and the DoD will appoint project officers to monitor progress toward the objective of this MOU. These project officers will meet periodically, but not less than annually, to review the progress of this understanding and recommend such action as may appear necessary to carry out its objective.

8. At the end of every two years, representatives of the parties hereto with appropriate representatives from the industrial sectors will meet to review progress under this MOU.

9. This Memorandum of Understanding is effective on the date on which it is signed, and shall remain in effect for eight years, subject to the respective laws of the Government of the Swiss Confederation and the Government of the United States.

James R. Schlesinger	Rudolf Gnaegi
The Secretary of Defense of the United States of America	The Chief of the Federal Military Department of the Swiss Confederation
2 July 1975 (Date)	9 July 1975 (Date)

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T-102.2 *Amendment 1 to Swiss F-5 Agreement.*

AMENDMENT 1 TO THE

MEMORANDUM OF UNDERSTANDING

BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION

AND THE GOVERNMENT OF THE UNITED STATES

CONCERNING THE F-5 PROGRAM

1. The Government of the Swiss Confederation, acting through the Federal Military Department, intends to purchase an additional quantity of approximately 40 F-5 aircraft over and above that quantity covered by the basic Memorandum of Understanding (MOU). This purchase will be made from U.S. sources through the United States Department of Defense (hereinafter called the DoD) under Foreign Military Sales procedures.

2. The purpose of this Amendment is to extend the period of time during which Swiss industry will be allowed to compete with U.S. industries for DoD contracts. It is understood that reciprocal access to Swiss Government defense contract opportunities is afforded to U.S. industry, since the Government of Switzerland imposes no national protectionist barriers nor import duties in considering foreign proposals for Swiss Government defense contracts.

3. The U.S. Government will continue to perform its commitments with respect to the offset goal specified in the basic MOU through the period of time specified therein. However, this Amendment does not obligate the U.S. Government to any additional offset goal with respect to the additional F-5 purchase.

4. In consideration of the purchase by the Government of Switzerland of this additional quantity of F-5 aircraft, the basic MOU is herewith amended to provide that, upon termination of the obligations of the U.S. Government as set forth in the basic MOU, the DoD will continue, on a case-by-case basis, and to the extent permitted by U.S. laws and regulations, to:

(A) Provide for waiver of the cost of import duties in evaluating defense prime contract and subcontract solicitations from Swiss industry.

(B) Use its best efforts to have technical data required for production provided to Swiss contractors on a reasonable cost basis.

(C) Facilitate the necessary export licenses required for the provision of bid package and related technical data to accomplish the above.

(D) Provide for necessary duty-free certification and related documentation.

(E) Provide for waivers of buy national and balance of payments restrictions.

5. This Amendment shall become effective in July 1983 contingent upon Swiss Federal Military Department acceptance of the U.S. DoD's Letter of Offer and Acceptance for the additional F-5E/F Aircraft. This Amendment shall remain in effect for four years, subject to the respective laws of the Government of the Swiss Confederation and the Government of the United States.

Harold Brown

Secretary of Defense
for the Government of the
United States of America

OCT 7 1980

(Date)

Willy

Chief of the Federal Military
Department for the Government of
the Swiss Confederation

Oct 25 1980

(Date)

Part 2—MOU's With NATO Participating Countries

T-200 Scope of Part. This part provides, for information purposes only, copies of Participating Country Agreement, Memoranda of Understanding, and accompanying annexes. See DAR 6-1406.

T-201 Canadian Agreements.

T-201.1 *Letter of Agreement With Canada.*

1. This agreement applies to all contracts placed, on or after October 1, 1956, by any of the Military Departments with the Corporation. It shall remain in force from year to year, until terminated by mutual consent; however, it can be terminated on the 31st day of December or the 30th day of June in any year by either party provided that six months notice of termination has been given in writing. In addition, this agreement provides for certain reciprocal arrangements facilitating procurement by each of the parties in the country of the other.

2.(a) The Corporation agrees that it will cause all first-tier subcontracts under contracts covered by this agreement to be placed in accordance with the practices, policies, and procedures of the Government of Canada covering procurement for defence purposes; and agrees that if the aggregate profit realized under such subcontracts by any first-tier subcontractor exceeds that which is allowed by the Government of Canada under the above mentioned practices, policies, and procedures, the amount of such excess will be refunded by the Corporation to the Military Departments. There shall also be refunded profits on any subcontract in excess of amounts which the Minister of Defence Production (Canada) in the exercise of said practices, policies and procedures considers to be fair and reasonable, recovered by the Minister pursuant to Section 21 of the Defence Production Act (Canada) from any individual subcontractor of any tier. It is recognized that the practices, policies and procedures of the Government of Canada referred to above permit various rates of profit in accordance with the terms of the said practices, policies, and procedures as from time-to-time amended; however, in no case will the rate of profit be allowed to exceed any limit prescribed by statute of the Government of the United States. For the purpose of this paragraph, the Corporation will cause to be conducted such audits in accordance with the Costing Memorandum (DDP-31) of the Department of Defence Production (Canada) and such verifications of cost as are in accordance with the said practices, policies, and procedures. The Corporation will render to the Military Departments its certificate that the provisions of this paragraph have been observed.

(b) Contracts for communication and transportation services, and the supply of power, water, gas and other utilities shall be excepted from the provisions of subparagraph (a) above, provided the rate or charges for such services or utilities are fixed by public regulatory bodies; and provided further the Military Departments are accorded any special rates that may be available to the Canadian Government with respect to such contracts.

(c) The Canadian Government, its Department and Agencies, including but not limited to the Corporation and Canadian Arsenals Limited, a Crown Company wholly owned by the Canadian Government, shall not be entitled to any profit on any contract or contracts covered by this agreement. Any profits which may be realized shall be returned to the Military Departments except as hereinafter provided: Before refunding profits realized from the following sources:

(i) net profits of the Canadian Government, its Departments and Agencies, as defined above, with respect to contracts and subcontracts covered by this agreement.

(ii) excess profits referred to in paragraph (a) above, and

(iii) renegotiation recoveries from subcontracts of any tier under contracts covered by this agreement, which recoveries the Military Departments would otherwise be entitled to receive in accordance with the provisions of subparagraph (a) above;

the Corporation shall be entitled to deduct any losses it may sustain with respect to contracts covered by this agreement.

(d) Interim adjustments and refunds under this paragraph 2 shall be made at such time or times as may be mutually agreed upon but at least once a year as of June 30th. Such interim adjustments shall apply only to completed contracts. The final adjustment and refund shall be made as soon as practicable after the expiration of this agreement.

(e) The profit and loss provisions of this paragraph 2 shall not apply to contracts awarded to the Corporation as the result of formal competitive bidding (initiated by Invitation for Bids).

3.(a) All contracts placed by the Military Departments with the Corporation, except those placed as the result of formal competitive bidding, shall provide for prices or cost reimbursement, as the case may be, in terms of Canadian currency, and for payment to be made in such currency. Therefore, quotations and invoices shall be submitted by the Corporation to the Military Departments in terms of Canadian currency, and such cost data, vouchers, etc., as the contracts require shall also be submitted in terms of Canadian currency. However, the Corporation may elect in respect of any of such contracts to quote, submit the said cost data, vouchers, etc., and receive payment in United States currency, in which event such contracts shall provide for payment in United States currency and shall not be subject to adjustment for losses or gains resulting from fluctuations in exchange rates.

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(b) All formal competitive bids shall be submitted by the Corporation in terms of United States currency and contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

4. The Military Departments and the Corporation shall avoid, to the extent consistent with the declared policies of the Military Departments and the Canadian Government, the making of any surcharges covering administration costs with respect to contracts placed with the Corporation by any of the Military Departments and contracts placed by the Military Departments in the United States for the Canadian Government.

5. To the extent that contracts placed with the Corporation by the Military Departments provide for the audit of costs and profits, such audit will be made without charge to the Military Departments by the Cost Inspection and Audit Division of the Treasury of Canada in accordance with Costing Memorandum Form DDP-31 of the Department of Defence Production, Canada.

6. The Canadian Government shall arrange for inspection personnel of the Department of National Defence (Canada) to act on behalf of the Military Departments with respect to contracts placed by the Military Departments with the Corporation and with respect to subcontracts placed in Canada by United States contractors which are performing contracts for the Military Departments, and for the use of inspection facilities of the Department of National Defence (Canada) for such purposes, such personnel and facilities to be provided without cost to the Military Departments. The Military Departments shall provide and make no charge for inspection services and inspection facilities in connection with contracts placed in the United States by the Military Departments for the Canadian Government and with respect to subcontracts placed in the United States by Canadian contractors which are performing contracts for the Department of Defence Production* (Canada). The Department of National Defence (Canada) or any Military Department may provide liaison with the other's inspection personnel in connection with the foregoing. It is understood that either the Department of National Defence (Canada) or any Military Department may in appropriate cases arrange inspection by its own inspection organization in the other's country.

7. Because of the varying arrangements made by the Canadian Government and the Military Departments in furnishing Government-owned facilities (including buildings and machine tools) to contractors, it is recognized that the matter of inclusion in contract prices of charges, through amortization or otherwise, for use of such facilities will be determined in the negotiation of individual contracts. However, there shall be avoided, to the extent consistent with the policies of the Canadian Government and Military Departments, any such charges for use of Government-furnished facilities.

8.(a) The Corporation agrees that the prices set out in fixed-price type contracts covered by this Agreement will not include any taxes with respect to first-tier subcontracts; nor shall prices include custom duties to the extent refundable in accordance with Canadian law, paid upon the import of any materials, parts, or components incorporated or to be incorporated in the supplies, with respect to first-tier subcontracts.

(b) The Corporation agrees that under cost-reimbursement type contracts the Corporation shall, to the extent practicable with respect to first-tier subcontracts, exclude from its claims all taxes and to the extent refundable in accordance with Canadian Law, customs duties, paid upon the import of any materials, parts or components, incorporated or to be incorporated in the supplies and that any amounts included in such claims representing such taxes and duties shall be refunded or credited to the Military Departments.

(c) The Corporation agrees that to the extent that such taxes and duties can be reasonably and economically identified it will use its best endeavors to cause such taxes to be excluded from all subcontracts below the first tier and if found to be included to be recoverable and credited to the Military Departments.

9. The Corporation recognizes that existing law of the United States prohibits the use of the cost-plus-a-percentage-of-cost system of contracting.

10. Each contract covered by this agreement shall be deemed to include the provisions required by (i) Public Law 245, 82nd Congress of the United States (65 Stat. 700; 41 USC 153(c)) and (ii) Section 719 of Public Law 458, 83rd Congress of the United States (68 Stat. 353) or similar provisions that may be required by subsequent legislation.

(End of Agreement)

*now the Department of Supply and Services

T-201.2 *Cooperative Agreement with Canada.*

MEMORANDUM OF UNDERSTANDING IN THE FIELD OF COOPERATIVE DEVELOPMENT BETWEEN THE UNITED STATES DEPARTMENT OF DEFENSE AND THE CANADIAN DEPARTMENT OF DEFENCE PRODUCTION

This Memorandum of Understanding complements the U.S.-Canadian Defence Production Sharing Program by establishing a cooperative agreement in defense research and development between the United States Department of Defense (DoD) and the Canadian Department of Defence of Production (CDDP), called the Defense Development Sharing Program.

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1. Objectives:

The principle objectives of the Defense Development Sharing Program are:

a. To assist in maintaining the Defense Production Sharing Program at a high level by making it possible for Canadian firms to perform research and development work undertaken to meet the requirements of U.S. armed forces.

b. To utilize better the industrial scientific and technical resources of the United States and Canada in the interest of mutual defense.

c. To make possible the standardization and interchangeability of a larger amount of the equipment necessary for the defense of United States and Canada.

2. Description of the Program:

a. The Defense Development Sharing Program will consist of research and development projects (such program projects being here and after referred to as "projects"):

(1) which are performed by Canadian prime contractors;

(2) which are designed to meet specific DoD research and development requirements;

(3) in which the Military Department of DoD which is the United States party to the project agreement acts as the design authority; and

(4) which are jointly funded by DoD and CDDP, (Where DoD undertakes the research and development of a weapons system composed of several components, work funded by CDDP on one or more of such components will be considered to be jointly funded).

b. The Defense Development Sharing Program will not include efforts referred to in paragraph 13.

3. Funding:

The financial contribution of DoD in each project will not be less than 25 percent of the costs incurred subsequent to the date of the project agreement provided that in the case of work referred to in the parenthetical sentence of paragraph 2.a(4), the financial arrangements shall be as agreed to by DoD and CDDP in the project agreement.

4. Selection of Projects:

A proposal to initiate a project may be made by CDDP to any of the Military Departments of DoD or by any of the Military Departments of DoD to CDDP. Each proposal will contain a complete and detailed description of the scope of the project and work to be performed and of the suggested cost sharing arrangement. Projects will be selected by mutual agreement of CDDP in the Military Department of DoD concerned.

5. Project Agreements:

The specific terms and conditions of each project will be governed by a project agreement between the Military Department of DoD and CDDP. The project agreement will inter alia set forth the scope of the projects, the work to be performed, types of reports to be submitted, the time and funding schedules, and the cost of sharing arrangements.

6. Selection of Prime Contractors:

The selection of prime contractors for work to be performed under a project shall be subject to mutual agreement.

7. Contract Clauses for Projects:

The Canadian Government agencies responsible for placing and administering research and development contracts with Canadian firms, will insert suitable provisions in such contracts obtaining for DoD the same production rights, data, and information that DoD would obtain for itself if DoD were solely funding and placing the contract under its Armed Services Procurement Regulation.

8. Competitive Research and Development:

DoD will not engage in research and development which duplicate the work being carried out under any project unless DoD considers such research and development to be in the United States national interest. The appropriate DoD agency will notify CDDP before undertaking such duplicative research and development and will, if requested by CDDP, promptly enter into consultations with CDDP.

9. DoD Procurement of Researched Developed Items:

Procurement by DoD from Canadian firms of items developed in a project will be made under the Defense Production Sharing Program and in accordance with the DoD Armed Services Procurement Regulation. Pursuant to that Regulation, procurement of items developed by Canadian firms under the Defense Development Sharing Program will not be "set aside" for small business or for labor surplus areas.

10. Security:

a. Information and materials developed within projects will be considered to be jointly developed, and classification and declassification thereof will be determined jointly.

b. Classified information and materials exchanged in connection with or developed within projects will be safeguarded in accordance with the United States-Canadian Security Agreement of January 30, 1962, in the United States-Canadian Industrial Security Agreement effected by an exchange of letters dated February 6 and March 31, 1952, as amended.

11. Disclosure of Classified Information:

a. Classified information and materials received by either Government under the Defense Development Sharing Program but not developed within a project will not be disclosed or transferred to third countries, or nationals of third countries, without the consent of the originating Government.

b. Jointly developed classified information materials will not be transferred or disclosed to any third party by either Government or nationals thereof without the consent of the other Government.

12. Sales:

a. Sales or transfers to any third party of items developed in a project containing classified information or materials will be subject to the provisions of paragraph 11.

b. Sales or transfers to NATO, Commonwealth, and SEATO countries, or nationals thereof, of jointly developed unclassified items may be made in accordance with any applicable arrangements between Canada and the United States regarding munitions control. Sales or transfers to any other third party of jointly developed unclassified items will not be made without the consent of both parties to this agreement.

c. Sales or transfers to any third party of jointly developed unclassified rights, information, or data necessary for the production of an item developed in a project will not be made without the consent of both parties to this agreement.

13. Other Research and Development Efforts not in Defense Development Sharing Program:

a. Consistent with normal DoD source selection procedures, Canadian firms may bid for DoD research and development contracts which are to be funded solely by the United States. DoD will evaluate proposals from qualified Canadian firms on a parity with proposals received from United States firms. CDDP undertakes to ensure that Canadian firms comply with DoD procurement procedures.

b. CDDP may award and solely fund research and development contracts to Canadian firms for the purpose of satisfying existing or anticipated DoD requirements. DoD and its Military Departments will not act as Design Authority for such contracts. In the event that the results of any such contract become of sufficient interest to DoD to warrant joint funding, the contract work may, upon mutual agreement, be made the subject of the Defense Development Sharing Program project.

14. Canadian Access to United States Information:

Subject to United States legislation and national policy, the Government of Canada will have access to information on the future requirements of DoD research and development programs and Canadian firms will have the same access to DoD research and development program information as United States firms.

15. Supersession of Prior Arrangements:

This Memorandum of Understanding supersedes the memoranda between CDDP and the United States Departments of the Army, and Air Force, respectively, dated July 26, 1960 and December 22, 1961, except with respect to projects already entered into thereunder.

16. Effect and Duration:

This Memorandum of Understanding will remain in force indefinitely, subject to modification or termination at any time by mutual agreement or to termination six months after receipt by either party of written notice of the intention of the other party to terminate it.

Charles M. Drury
Minister of Defence Production
Date: 21 November 1963

Robert S. McNamara
Secretary of Defense
Date: 16 November 1963

T-202 United Kingdom Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND RELATING TO THE PRINCIPLES GOVERNING COOPERATION IN P&D, PRODUCTION, AND PROCUREMENT OF DEFENSE EQUIPMENT (SHORT TITLE: COOPERATION ARRANGEMENT)

The Government of the United States (USG) and the Government of the United Kingdom of Great Britain and Northern Ireland (HMG), hereinafter referred to as the Governments, are developing high technology weapons systems and other advanced items of defense equipment and are seeking to achieve greater cooperation in research, development, production and procurement in these areas in order to make the most rational use of their respective industrial, economic and technological resources, to achieve the greatest attainable military capability at the lowest possible cost, and to achieve greater standardization and interoperability of their weapons systems.

The Governments already have an Arrangement dated May 1963 for Joint Military Development and the USG has certain offset arrangements with HMG against purchases by HMG of major weapons systems and items of defense equipment.

In order to further the above aims, the Governments have decided to enter into an understanding and this Memorandum sets out the guiding principles governing mutual cooperation in defense equipment production and purchasing and associated offset arrangements. This Memorandum is intended to fit into the broader context of NATO Rationalization/ Standardization and to be compatible with any NATO arrangement that might subsequently be negotiated.

SECTION A: PRINCIPLES GOVERNING RECIPROCAL DEFENSE PURCHASING

1. Each Government has established its policies for strengthening the mechanisms essential to increasing cooperation in research, development, and production and procurement of military systems. In keeping with these policies, and in the interests of enhancing their mutual security and to assist the Governments in discharging better their mutual defense obligations, it is understood that the Governments will cooperate in all respects practicable, to the end that defense equipment production and procurement efforts of the two countries be administered so as to assure the maintenance of a long term and equitable balance in reciprocal purchasing of defense equipment. This balance will be at levels to be mutually determined.

2. The following principles to facilitate these objectives have been decided upon by the Governments:

a. Both Governments will provide appropriate policy guidance and administrative procedures within their respective Defense procurement organizations to achieve and maintain the agreed-upon balance of reciprocal Defense purchases.

b. The Governments will identify and nominate for consideration by each other items of defense equipment believed suitable to satisfy their respective requirements. The Governments will decide between them, to which items of defense equipment purchases this Memorandum of Understanding (MOU) will apply and whether the items may be procured on a Government-to-Government or Government-to-Industry basis.

c. The detailed implementing procedures to be arranged will incorporate the following:

(i) Offers will be evaluated without applying price differentials under Buy-National laws and regulations consistent with national laws and regulations.

(ii) Offers will be evaluated without the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

(iii) Full consideration will be given to all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office.

(iv) Offers will be required to satisfy requirements for performance, quality, delivery, and cost.

d. To facilitate production programs set up in implementation of this MOU, the Governments understand that subject to their established policies, procedures, regulations and subject to privately owned proprietary rights, each Government will, so far as it is able, release to the other and to its agents of information and technology necessary for the purposes of such facilitation.

e. The Governments, through their appropriate representative, will consult concerning any problems which may inhibit the efficient operation of this arrangement. Such consultations will be conducted on the basis of SECTION B of this MOU.

SECTION B: IMPLEMENTATION MACHINERY

1. Both Governments understand that detailed implementing procedures need to be considered and decided upon in order to carry out the provisions of this MOU. Representatives of the Governments will be appointed to develop a coordinated program of such implementing procedures, and to discuss procurement and production needs of the Governments. These representatives will meet as required.

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2. The Director, Defense Security Assistance Agency, under the policy guidance of the Assistant Secretary of Defense (International Security Affairs), and in coordination with the Director, Defense Research and Engineering, the Assistant Secretary of Defense (Installations and Logistics and other DoD offices will be the focal point in the US Government for the development of an overall coordinated program of implementing procedures under this MOU. The Director, Defense Research and Engineering will be responsible for matters under this MOU touching upon research, development, test and evaluation as they relate to bilateral arrangements for joint military development. The Assistant Secretary of Defense (Installations and Logistics) will be responsible for managing procurement and production matters under this MOU on a continuing basis, in coordination with OASD(ISA), DSAA and other appropriate DoD offices.

3. The Head of Defense Sales, MOD, under the policy guidance of the Minister of State for Defence, and in consultation, as appropriate with the Chairman and members of the MOD Defence Equipment Policy Committee, will be responsible on the UK side for the development of an overall coordinated program of implementing procedures under this Memorandum of Understanding.

SECTION C: INDUSTRIAL PARTICIPATION

1. Each Government will be responsible for bringing to the attention of the defense industries within its country, the basic understanding of this MOU, together with appropriate guidance on its implementation.

2. Implementation of this MOU will involve full industrial participating. Accordingly, the Governments will arrange that their respective procurement and requirements offices will be made familiar with the principles and objectives of this MOU. Notwithstanding the governmental procedures to facilitate implementation, it will be the basic responsibility of industry in each country to isolate, identify, and advise its Government of capabilities and to carry out the supporting actions to bring industrial participation to consummation.

SECTION D: TERMINATION

1. This MOU will be terminated on 1 January 1985 unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this MOU before 1 January 1985, any proposal for termination will be the subject of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination.

SECTION E: FURTHER COOPERATION

Annexes subsequently negotiated by the responsible offices and endorsed by appropriate Governmental authorities will form an integral part of this Memorandum of Understanding.

SECTION F: EFFECTIVE DATE

This Memorandum of Understanding will come into operation upon signature by the Governments.

Signed in duplicate at London this 24th day of September 1975.

James R. Schlesinger
For the Government of the United States

Roy Mason
For the Government of the United Kingdom of Great Britain and Northern Ireland

Date 24 September 1975

ANNEX I

Implementing Procedures for the "Memorandum of Understanding between the Government of the United States and the Government of Great Britain and Northern Ireland Relating to the Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment" of 24 September 1975.

I INTRODUCTION

On 24 September 1975 the Governments of the United States (US) and the United Kingdom (UK) signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment". The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II MAJOR PRINCIPLES

A. Both the US and UK will consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed and produced in the other country. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation. The responsible governmental purchasing agencies in each country will seek to inform themselves of the defense items which might be available from the other country to meet specific requirements.

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B. Offers will be evaluated without applying price differentials under Buy-National laws and regulations.

C. Offers will be evaluated without consideration of the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

D. Full consideration will be given to all qualified industrial and/or Government sources in both the US and UK consistent with the policies and criteria of the respective purchasing agencies.

E. Offers will be required to satisfy requirements for performance, quality, delivery, continued logistic support, and cost. In preparing Invitations for Bids and Requests for Proposals, and in evaluating Offers, where applicable and consistent with national laws and regulations full consideration will be given to potential NATO savings and/or increased NATO combat capability expected to result from the procurement of items that are standardized or interoperable with those of the Allies.

III ACTION

In implementing the MOU both countries will review and, where considered necessary, revise defense policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization are taken into account. In addition both countries will:

A. Ensure that their respective requirement offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU, which are complemented by the "Arrangements for Joint Military Development by the US and the UK" of 1963.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Assist industries in their respective countries to identify and advise the other government of their capabilities and assist industries in carrying out the supporting actions to maximize industrial participation.

F. Review defense items submitted as candidates for respective requirements. Indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility.

G. Make best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

H. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements (for the maintenance of a defense mobilization base) are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from nonnational sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

I. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

IV COUNTING PROCEDURES

The US and UK Governments will decide between them to which items of defense equipment this MOU will apply but in principle all defense items (and associated services included in a procurement contract) purchased by either country will be counted against the goals of this MOU as long as they meet the following criteria:

A. Direct purchases by either Government from the other, including its Agencies;

B. Direct purchases by either Government from the industry of the other country;

C. Purchases by Industry from the Government or Industry of the other country in aid of Government defense contracts;

D. Purchases by a third country government from either US or UK Government or industrial sources as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded projects to which the US and/or UK are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The applicability of such purchases to this MOU will be agreed between MOD/OSD in each case.

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F. License fees, royalties and other associated income resulting from orders placed by Industry and/or Government with a licensed company in the other country.

V ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual US/UK Statement of the current balance, and long term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any US-UK Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B above.

HOWARD M. FISH
For the Government of the United States

2 April 1976
Date

R. Anderson
For the Government of the United Kingdom of Great Britain and Northern Ireland

2 April 1976
Date

ANNEX II

MUTUAL ACCEPTANCE OF TEST AND EVALUATION

INTRODUCTION

1. In furtherance of the principles governing reciprocal Defence purchasing, as defined in the subject Memorandum of Understanding (MOU) and in accordance with the Implementing Procedures for the MOU (Annex I thereto), representatives of the US Department of Defense (DoD) and the UK Ministry of Defence (MOD) have engaged in discussions and presentations on Test and Evaluation (T&E) in Defence procurement. The discussions were aimed at facilitating the implementation of the MOU by:

a. Bringing about a thorough, mutual understanding of the two governments' policies, organizations and procedures for T&E.

b. Identifying the main differences between the two governments' organisations and procedures for T&E.

c. Determining the actions required to overcome any difficulties arising from the identified differences, in order to assure complete mutual acceptability of T&E procedures.

2. The purpose of this Annex, drawn up in accordance with Section E of the MOU, is to record the concurrence reached by the two governments concerning the mutual acceptability of their respective T&E procedures for those systems that are developed in one country and are candidates for procurement by the other. Two categories of Defence systems are considered:

a. Those still under development.

b. Those for which development is complete.

POINTS OF CONCURRENCE

3. The objective is to avoid redundant testing. Neither government will duplicate tests where acceptable data is available from the other government's official test programs.

4. Existing T&E organisations and procedures of both governments are adequate to satisfy the purposes of the MOU. Differences are not such as to justify changes being made to the present procedures of either government.

5. To achieve a more widespread understanding of the two governments' T&E organisations and procedures in the US DoD, in the UK MOD, and in the Industries of both countries, the two governments will produce guidance information necessary to meet the purpose of this Annex, including:

a. The relationship between their respective T&E organizations and procedures.

b. A US DoD-UK MOD communications matrix for initial contacts.

6. The focal point for all T&E aspects of procurement relating to development testing will be the US Program Manager or the UK Project Manager for the equipment being offered. For operational testing aspects, it will be the applicable US Services' independent operational test agency and in the UK, the Project Manager.

MUTUAL ACCEPTANCE PROCEDURES

7. All proposals for consideration of equipment of one country for procurement by the other will require a review of T&E data reflecting test conditions, test results and success criteria on a case-by-case basis. The following procedures will therefore be observed in all procurement considerations:

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a. To facilitate the exchange of T&E data, a common documentation format will be adopted. This format will be similar to the US Navy's Test and Evaluation Master Plan (TEMP) as outlined in OPNAV Instruction 3960.10.

b. For systems under development, the offering government will invite participation by the other early in the T&E program. Should the other government not choose to participate in the testing, the offering Government, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, will arrange for the release to the other of information necessary for the purposes of such T&E.

c. For systems for which development is complete, the offering government will ensure, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, that all pertinent T&E data is made available to the other.

d. Should one government adjudge the T&E which has been completed or planned by the other to be inadequate for its procurement procedures, the two governments will decide by mutual agreement on any additional testing to be carried out. Such additional testing may be conducted by either country as mutually agreed. In addition, before such additional testing commences, concurrence will be reached by the two governments regarding payment of costs, allocation of resources, scheduling and the evaluation criteria which will apply.

e. When either government releases T&E data to the other, it is understood that, in the absence of any specific agreement to the contrary, such data is made available in confidence to the receiving government for the purpose of information and evaluation within such government and for no other use.

f. Each government will mark data transmitted to the other with a legend that will indicate the country of origin and the conditions of release, that the data relates to this MOU, and that is is furnished in confidence. Where appropriate the security classification will be shown. Corresponding arrangements will be made for records of data transmitted orally.

g. Each government will make its best effort to protect data submitted in confidence by the other government. In the event of any request under domestic legislation to make available to the public such data furnished by the other government, the recipient government will take all legal steps available to it to withhold the data from disclosure.

8. In any case where agreement cannot be reached between the focal points or their Service superiors concerning the acceptability of T&E, or when it is felt that adequate data and information on T&E have not been provided, the matter will be referred to the appropriate higher authority. For the US this will be the Director Defense Test and Evaluation and for the UK this will be the appropriate Systems Controller.

William J. Perry	Sir Clifford Cornford
For the Government of the United States	For the Government of the United Kingdom of Great Britain and Northern Ireland
9 October 1978	9 October 1978
Date	Date

ANNEX III

RECIPROCAL AUDITS OF CONTRACTS AND SUBCONTRACTS

I GENERAL

The US/UK Memorandum of Understanding on Co-operation Arrangements envisages the need for detailed implementing procedures to be decided upon. This Annex deals with reciprocity in the handling of auditing activity related to contracts and sub-contracts falling within the scope of the MOU.

The participating Governments recognize the mutual benefit of undertaking reciprocally for each other in their respective countries price proposal audits and contract cost audits in connection with the acquisition of defence equipment. As used in this Annex the term "audit" may include, but is not limited to, the following services including Field Pricing Support as appropriate to the contract or sub-contract concerned:

- Survey of contractor's capability;
- Pre-contract audit;
- Audit during contract performance;
- Audit after contract performance, e.g. termination, before payment of final price in respect of fixed price contract or cost type contract;
- Verification of compliance with requirements set forth by the purchasing government for accounting of contract costs or pricing;
- Verification after contract award of the currency, accuracy and completeness of data supporting a contractor's price proposal.

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II PURPOSE AND SCOPE OF AUDITS

The purpose of these audits will be to examine proposed or incurred costs and supporting data in sufficient detail to enable the cognizant contracting officer to determine their acceptability during negotiations with the relevant contractor or sub-contractor.

Audits performed under the provisions of this Annex will cover all elements of cost and identify profit amounts. The auditors will use to the fullest extent possible previously available data pertinent to the intended or actual contract or sub-contract.

III AUDIT AGENCIES

The audits will be performed pursuant to the provisions of this Annex by the following agencies:

- For audits in the United States when requested by the United Kingdom Government, the Defense Contract Audit Agency (DCAA).
- For audits in the United Kingdom when requested by the United States Government, the Accountancy Services (AS(PE)) of the Ministry of Defence.

IV AUDIT REQUEST PROCEDURES

Requests for audits will be transmitted as follows:

Requests by the United Kingdom Government:

- Cognizant Procuring Contracting Office for Acquisitions under U.S. Foreign Military Sales (FMS) procedures.
- The Director of Defense Contract Audit Agency, Cameron Station, Alexandria, Virginia 22314, for all other acquisitions.

Requests by the United States Government:

- Head of Contracts Policy, Procurement Executive, Ministry of Defence.

These requests will be transmitted with all the supporting documents and required format of the audit report.

V OPERATING RULES

Before any relevant contract action commences, representatives of each Government will consult with one another as necessary to define the goals and the scope of the audits required.

The audits will pay regard to the Government accounting conventions applicable to the supplier's business and be performed in accordance with the terms of the contract or sub-contract as required by the law and policy of the purchasing Government.

Each Government will accept auditing services performed on its behalf by the other as if it had performed those services itself as long as these reflect the particular or specific interest of the purchasing authority.

Each Government will make available to the other data pertinent to the relevant contract or sub-contract, including that associated with disclosed accounting practices, in support of the contracting officer's negotiation activity.

Applicable contracts or sub-contracts will invoke the provisions of this Annex.

Each audit report will respond to the questions contained in the request for audit and will detail any problems encountered during the audit. The report should enable the contracting officer to evaluate independently the acceptability of the price proposals or costs.

Upon request of the contracting officer, additional information, supporting data, and explanations or clarifications will be provided to him or to his duly authorized representatives. The contracting officer will have the final authority to determine when adequate audit information has been provided for negotiation purposes.

Each Government will endeavor that in all possible cases its agencies will perform audits under the provisions of this Annex. If, due to extraordinary circumstances, a Government is unable to perform an audit, or to perform it in a reasonable time, the contracting country's agencies would have a right to perform the audit themselves.

VI PROTECTION OF INFORMATION

Each audit report will be prepared by the audit agency and submitted in confidence. No report, or data therein, will be disclosed to third parties unless the cognizant authorities of both parties and the audited supplier deem this to be appropriate. However, the contracting officer will normally release the final results of audits of sub-contractors to higher tier contractors for negotiation pruposes. Specific information or extracts from the report may only be given to higher tier contractors in accordance with any directions or qualifications contained in the audit report.

Data obtained through the implementation of this Annex will receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which receives it.

VII NATIONAL SECURITY

Access to classified information involving the national security of each country will be governed by the provisions of the MOU.

William Levitt	Leonard Salthouse
United States	United Kingdom
21 June 1979	21 June 1979
(date)	(date)

T-203 Norway Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF NORWAY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Government of Norway hereinafter referred to as the Governments:

• Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production and procurement of defense equipment, in order to:

- Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

• Noting that no general agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past; and

• Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment

have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles government mutual cooperation in defense equipment research and development, production and procurement.

The Government of the United States of America and the Government of Norway conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North America within the Alliance.

All agreements or the relevant provisions of such agreements between the Independent European Program Group (IEPG) and the United States of America shall take precedence over this Memorandum of Understanding, assuming Norway is a party to such agreements.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to achieve and maintain a long-term equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. Equitable balance, in principle, shall be achieved when the two Governments have exhausted all means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent permitted by the size and nature of each country's technological and industrial base.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production and procurement, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

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3. The two Governments will, consistent with the laws, regulations, and practices having the force of law of each Government, give full consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their relevant industries.

5. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of equipment that might be suitable for use by the other Government. Indicative lists are provided in the annexes.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurement or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit. This includes the removal of customs duties and other discriminatory levies as well as the waiver of protectionist provisions.

9. Normal competitive contracting procedures shall be used in acquiring items of conventional defense equipment developed in each other's country for use by either country's defense establishment.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Government.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

14. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for a Norwegian-American Committee for Reciprocal Procurement, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Government of Norway for any matter relating to the procedures for implementing this Memorandum of Understanding.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security of Information Agreement dated 26 February 1970 between the United States Department of Defense and the Norwegian Ministry of Defense apply to activities under this Memorandum of Understanding.

ARTICLE V

Duration

1. This agreement will remain in effect for a ten-year period following its signing, unless otherwise agreed by both Governments.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VI

Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Norway Statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway offset agreements in force when the Memorandum of Understanding was signed, and will be reviewed during the meetings referred to in paragraph 2 above.

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this Memorandum of Understanding and made an integral part thereof.

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ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Norway upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Norwegian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the Government of Norway
The Minister of Defense

Rolf Hannen
Date May 19, 1978

For the United States Government
The Secretary of Defense

Harold Brown
Date May 19, 1978

ANNEX 1

I. INTRODUCTION

On 19 May 1978 the Governments of the United States (US) and Norway signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment." The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II. MAJOR PRINCIPLES

A. The US Department of Defense (DoD) and the Ministry of Defence of Norway (MOD) will each consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed or produced in the other country. (See also Paragraph III of this Annex). MOD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the Memorandum of Understanding and this Annex.

B. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

III. ACTION

In implementing the MOU, DoD and MOD will review and, where considered necessary revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and the MOD agree that having taken the measures listed below, they will have fulfilled their obligation under Paragraph 1, Article I, of the MOU, to exhaust all means at their disposal to maximize defense R&D cooperation and reciprocal procurement. These measures will be utilized in a reasonable manner recognizing among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Ensure that, consistently with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation.

F. Assist industries in their respective countries to identify and advise the other government of their capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to participate in the development or production procurement process.

H. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

I. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements such as the maintenance of a defense mobilization base are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from non-national sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

J. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

K. Both DoD and MOD will from time to time arrange visits by relevant personnel to the other country in order to actively explore possibilities for R&D cooperation and procurement.

IV. COUNTING PROCEDURES

The purchases to be counted against the goals of the MOU will be identified jointly by DoD and MOD. In principle (1) all items procured by the overseas Base Exchanges and Commissary Operations for resale overseas shall be counted and (2) all defense items (and associated services included in a procurement contract) purchased by DoD and MOD from the other country will be counted against the goals of the MOU as long as such purchases meet the following criteria:

A. Direct purchases by the MOD or DoD, including their respective agencies, from one another.

B. Direct purchases by either the MOD or DoD from the industry of the other country.

C. Purchases by industry from the government or industry of the other country in aid of government defense contracts.

D. Purchases by a third country government from the governments of the United States or of Norway or from industries of the two countries as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded defense projects to which the United States and/or Norway are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MOU will be agreed between MOD and DoD in each case.

F. License fees, royalties and other associated income resulting from orders placed by industry and/or DoD or MOD with a licensed company in the other country.

V. ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defence level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual United States/Norway Statement of the current balance and long-term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B. above.

D. Quality Assurance procedures outlined in STANAG 4107 and 4108 will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the National laws and regulations of each country.

United States Government

For the Government of Norway

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T-204 Netherlands Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of the Netherlands, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research and development, production and procurement in order to:

- Make the most cost-effective and rational use of the resources available for defense,

- Ensure the widest possible use of standard or interoperable equipment,

- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Recalling that they had agreed, as members of the Alliance, to maximum cooperation in procurement as set forth in Annex A to NATO Document C-M(73)51 (revised), dated 20 August 1973,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research and development, production and procurement of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent Europe Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance and that this cooperation will be carried out pursuant to the Mutual Defense Assistance Agreement between the Government of the United States of America and the Government of the Kingdom of the Netherlands, signed 27 January 1950.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research and development, production and procurement of conventonal defense equipment, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organization to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid for proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement of those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

13. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Netherlands-U.S. Committee for Procurement Cooperation.

2. The Under Secretary of Defense for Research and Engineering, in cooperation with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementating procedures under this MOU.

3. The Director General for Materiel in the Ministry of Defense, in cooperation with other appropriate government authorities, will be the responsible authority of the Government of the Netherlands for the development of the implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this MOU are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

ARTICLE V

Administration

1. The Netherlands-U.S. Committee for Procurement Cooperation, refurred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Netherlands statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed. Such statement will take account of United States-Netherlands purchases of defense equipment and services and related offset agreements effected in the years from 1973 onwards and will be periodically reviewed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for succesive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Covernment considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Covernment six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Covernment to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

3. The Parties hereto agree that, for the purposes of this MOU, references to the Kingdom of the Netherlands shall apply only to its territory in Europe.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the Kingdom of the Netherlands	For the Government of the United States of America
The Minister of Defense	The Secretary of Defense
Willem Scholten	Harold Brown
Date August 24, 1978	Date July 25, 1978

ANNEX I

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 24 August 1978, the Governments of the United States and the Kingdom of the Netherlands signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production and procurement of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MOU.

2. MAJOR PRINICPLES

A. The U.S. Department of Defense (DoD) and the Ministry of Defense of the Netherlands (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

B. It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning, intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. DoD and MoD agree that the following measures shall be taken, recognizing that among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, are considerations related to insure free and full competition for the award of contracts:

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

B. Ensure that their respective research and development offices and institutes are familiar with the principles and objectives of this MoU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MoU.

D. Ensure wide dissemination of the basic understanding of this MoU to their respective industries producing and/or developing defense items and/or services.

E. Ensure that, consistent with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations, or the cost of import duties. Full consideration will be given to all qualified industrial and/or governmental sources in each other's country. Provisions will be made for duty-free entry certificates and related documentation to the extent that existing laws and regulations permit.

F. Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items and requests for services submitted by the other country as candidates for respective requirements. Identify requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research and development production and procurement processes.

H. Use best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

I. Ensure that those items and services excluded from consideration under this MoU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on procurement from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

J. Insure that the balance of reciprocal purchases takes into consideration the levels of technology involved, as well as the monetary value of purchase hereunder.

K. DoD and MoD will from time to time arrange visits in order to actively explore possibilities for cooperation on research and development, procurement, and logistical support.

4. COUNTING PROCEDURES

The following purchases, to be identified jointly by DoD and MoD will be included in the counting procedures:

A. Purchases of items and services funded from appropriate funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense and which, either/are:

(1) directly purchased by the MoD or DoD from one another; or

(2) directly purchased by the MoD or DoD from the industry of the other country; or

(3) purchased by the industry of one country from the Government or industry of the other country; or

(4) purchased as a result of jointly funded defense projects to which the United States and the Netherlands are the only contributors to be credited in proportion to each other country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MoU will be agreed upon between MoD and DoD in each case;

(5) license fees, royalties and other associated income, when separately contracted, by industry and/or DoD or MoD with a licensor in the other country.

B. Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

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C. Purchases by a third country government from the MoD or DoD or from industries of these two countries as direct result of the efforts of the government of the other country.

5. ADMINISTRATION

A. Each government will designate points of contact (procurement and logistics) at the Ministry of Defense level and in each purchasing service/agency and major acquisition activity.

B. Quality Assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reserve concerning reimbursement) will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement of services provided shall be afforded in accordance with the national laws and regulations of each country.

C. The terms of reference of the Netherlands/United States Committee of Procurement Cooperation is contained in Annex III.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hansen
Date 22 December 1978	Date 22 December 1978

(Appendices to Annex I not included)

ANNEX II

Principles Governing Logistic Support of Common Equipment

In implementing Article I, para 13, of the MoU, the two Parties shall be governed by the following:

1. When developing or procuring defense equipment, both Parties will agree upon the basis for joint follow-on logistic support in areas such as configuration control, interchangeability of spare parts/components, maintenance, conversion, storage, and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistic support and other forms of logistic cooperation, e.g., joint utilization of facilities.

3. In the contracting procedure for logistic support, paragraph 9 of Article I of the MoU shall apply.

4. Both Parties will issue directives and guidelines to their respective armament and logistics agencies to achieve the described goals of this MoU.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hansen
Date 21 December 1978	Date 21 December 1978

ANNEX III

TERMS OF REFERENCES

1. The Netherlands/U.S. Committee for Procurement Cooperation (hereafter to be called "the Committee") will serve, under the direct responsibility of the authorities, listed in Article II sub 2 and 3 of the MoU respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring that the guiding principles of the MoU governing the mutual cooperation in research and development, production, procurement and logistic support of conventional defense equipment are being implemented to facilitate a mutual flow of defense equipment. To this end the Committee will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

A. They will discuss research, development, production, procurement and logistic support needs of such country and the likely areas of cooperation including joint activities in those fields.

B. They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

C. They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

D. They will consider any other matters relevant to the MoU.

E. They will report after each meeting and advise as appropriate.

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F. The Committee will alternately meet in the United States and in the Netherlands. The country in which a particular meeting will take place will provide the Chairman and the secretariat for that meeting.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 21 December 1978	Date 21 December 1978

T-205 Federal Republic of Germany Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY AND THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

The Secretary of Defense of the United States of America and the Federal Minister of Defense of the Federal Republic of Germany:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding; and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, production, procurement and logistic support.

The Parties hereto conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Parties are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They therefore agree that in the event of a possible conflict between understandings entered into between the IEPG and the Government of the United States, and this Memorandum of Understanding, the Parties hereto will consult with a view to amending this Memorandum of Understanding.

The Parties further agree that this Memorandum of Understanding should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1.1 Both Parties intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

1.2 This Memorandum of Understanding is intended to cover areas in which, in the view of both parties to the Agreement, bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement and logistic support. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

1.3 Each Party may propose to the other any particular project that might be suitable for cooperation or for use by the other Party.

1.4 Both Parties will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production, procurement and logistic support which are intended to optimize Alliance standardization and/or interoperability.

1.5 In the interests of standardization within the Alliance and the effective utilization of scarce resources, both Parties shall, to the extent possible, select qualified defense items that have been developed and produced in the other country to meet their requirements. Necessary decisions should be taken on the basis of joint comparative trials according to criteria to be jointly established.

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1.6 Both Parties will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

1.7 Both Parties will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described herein.

1.8 The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duty; customs and import duties should not be charged as far as this is admissible under current laws.

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Party for performance, quality, delivery and costs.

1.9 Competitive contracting procedures shall normally be used in acquiring items of conventional defense equipment developed or produced in each other's country for use by either country's defense establishment.

1.10 Both Parties will ensure that the technical data packages (TDPs) made available under this Memorandum of Understanding are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Party.

1.11 Both Parties will undertake their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two contracting parties will mutually make available to each other, to the extent possible, all information and proprietary rights required to implement cooperation under this agreement. The two contracting parties will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements, between the industries of the two countries.

1.12 Arrangements and procedures will, at the request of the purchasing Party, be established concerning follow-on logistic support for items of defense equipment acquired pursuant to this Memorandum of Understanding. Both Parties will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

2.1 The DoD and MoD will appoint representatives to determine in detail the procedures for implementing this Memorandum of Understanding and the terms of reference for a German-American Committee for Mutual Cooperation.

2.2 The Under Secretary of Defense for Research and Engineering will be the responsible authority of the United States Department of Defense for the development of implementing procedures under this Memorandum of Understanding.

2.3 The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Ministry of Defense of Germany for the development of implementing procedures under this Memorandum of Understanding.

ARTICLE III

Industry Participation

3.1 Implementation of this Memorandum of Understanding will involve full industrial participation. Primary responsibility for finding business opportunities shall rest with the industries of each country.

3.2 Each Party will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Parties will take all appropriate implementing guidance. Both Parties will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3 Also, the Parties will arrange to familiarize their respective procurement and requirements offices with the principles and objectives enunciated herein.

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ARTICLE IV

Security

4.1 The operating procedures for the implementation of the General Security of Information Agreement dated 23 December 1960 between the two Parties, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4.2 To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Party for security purposes, the other Party shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Party throughout the period during which the classifying Party may maintain such classification.

4.3 Information that has been provided by either of the Parties to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Party will mark such information furnished with a legend indicating the origin of information, that the information relates to the MOU and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

5.1 Each Party will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

5.2 The German-American Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Party to review progress in implementing the Memorandum of Understanding. It will discuss development, production, procurement and logistic support needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this Memorandum of Understanding.

ARTICLE VI

Duration

6.1 This Memorandum of Understanding will remain in effect for a six-year period following its signing. Unless otherwise agreed by both Parties, the duration will be extended for another six years.

6.2 If, however, either Party considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the six-year period, or any extension thereof, written notification of its intention will be given to the other Party six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Party to enable the Parties fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the Parties, any contract entered into consistent with the terms of this Memorandum of Understanding shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VII

Implementation

7.1 Each Party must agree in writing to any amendment of this Memorandum of Understanding.

7.2 Details pertaining to implementation of the principles set forth herein will be set out in annexes to this Memorandum of Understanding.

7.3 Any differences of opinion over the interpretation and implementation of this Agreement and its Annexes shall be resolved by consultation between the DoD and MoD.

7.4 This Memorandum of Understanding will come into effect on the date of the last signature.

The Secretary of Defense of the United States of America	The Federal Minister of Defense of the Federal Republic of Germany
Harold Brown	Hans Apel
Date October 17, 1978	October 17, 1978

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T-206 Italy Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF ITALY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Government of Italy, hereinafter referred to as "the Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement, and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies, assuring the most satisfactory level of reciprocal balance; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

Noting that no agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past, and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles governing mutual cooperation in defense equipment research and development, production, procurement and logistic support.

The Government of the United States of America and the Government of Italy conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North America within the Alliance.

All agreements, or the relevant provisions contained therein, between the Independent European Program Group (IEPG) and the United States of America, shall take precedence over this Memorandum of Understanding, provided that Italy is a party to the specific agreement.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base. Items procured under offset agreements by either Government with an industry of the other will apply to the achievement of the balance contemplated by this agreement.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement, and logistic support complimenting the work of the Conference of National Armament Directors (CNAD), Senior NATO Logisticians Conference (SNLC) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their laws and regulations give full consideration to all requests for cooperative R&D and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their defense industries.

5. In the interests of standardization and the effective utilization of scarce resources the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of defense equipment that might be suitable for use by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

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8. Barriers to procurements or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit, such as not applying customs duties and other discriminatory levies in evaluating bids submitted in accordance with this MOU, as well as the waiver of protectionist provisions. Defense items or services are those items or services which may be procured utilizing appropriated funds of the US Department of Defense or budgeted funds of the Italian Ministry of Defense.

9. Competitive contracting procedures normally shall be used in acquiring items of conventional defense equipment developed in each other's country.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations, and arms transfer policy. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the extent to which a proposed transfer may damage or infringe upon licensing arrangements whereby commercial firms in the US or Italy have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third-country.

13. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferees without the prior written consent of the originating Government.

14. Both Governments will undertake their best efforts to assist in negotiating licenses, ties and technical information exchanges with their respective industries.

15. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for an Italian-American Committee for Mutual Cooperation, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be responsible in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The National Armament Director in the Ministry of Defense, in coordination with the other appropriate governmental bodies, will be the responsible authority of the Government of Italy for the development of implementing procedures under this Memorandum of Understanding.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the defense industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to familiarize their respective procurement and requirements

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offices with the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security Information Agreement dated 4 August 1964 between the United States Department of Defense and the Italian Ministry of Defense apply to activities under this Memorandum of Understanding.

3. Information that has been provided by the GOI to the United States in confidence, or produced by the United States pursuant to a written joint arrangement with GOI requiring confidentiality, shall either retain its original classification designation or be assigned a United States classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the GOI. To assist in providing the desired protection, the GOI will mark such information furnished to the US Government with a legend indicating that the information is of Italian Government origin, that the information relates to this MOU, and that the information is furnished in confidence.

ARTICLE V

Duration

1. This Agreement will remain in effect for a ten-year period following its signing. Unless otherwise agreed by both Governments, the duration will be extended for another ten years.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter

of immediate consultation with the other Government to enable the Government fully to evaluate the consequences of such termination and in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VI

Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review and promoting any correction step, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Italy statement of the current balance, and long-term trends of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States/Italy offset agreements in force when the Memorandum of Understanding was signed and will be reviewed during the meetings referred to in paragraph 2 above.

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this agreement and made an integral part thereof.

ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Italy upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

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2. This agreement, in two original texts in the Italian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the United States Government	For the Government of the Italian Republic
Harold Brown	Attilio Ruffini
Date 11 September 1978	11 September 1978

T-207 Portugal Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF PORTUGAL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Government of Portugal, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research, development, production, procurement, and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,
- Ensure the widest possible use of standard or interoperable equipment,
- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement, and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements.

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5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by natonal laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Portugal-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Director General of Armaments and the Secretary of State for Light Industry will be the responsible authorities of the Government of Portugal for the development of implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

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ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information, that the information relates to the "Memorandum of Understanding" and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

1. The Portugal-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Portugal statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal
The Secretary of Defense	The Minister of Defense
Harold Brown	José Alberto Loureiro dos Santos
Date 28 March 1979	18 December 1978

ANNEX I

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, DATED 28 MARCH 1979.

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PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 28 March 1979, the Government of the United States and the Government of Portugal signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production, procurement, and logistic support of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MoU.

2. MAJOR PRINCIPLES

2.1 The U.S. Department of Defense (DoD) and the Ministry of Defense of Portugal (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

2.2 It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed acquisition procedures and regulations of the purchasing nation. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MoU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interests of security, and the timely conduct of the contracting process are considerations, DoD and MoD agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1 Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

3.2 Ensure that their respective research and development offices are familiar with the principles and objectives of this MoU.

3.3 Ensure that their respective acquisition offices are familiar with the principles and objectives of this MoU.

3.4 Ensure wide dissemination of the basic understanding of this MoU to their respective defense industries.

3.5 Ensure that, to the extent permitted by national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers either price differentials under buy-national laws and regulations, or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation to the extent consistent with national laws and procedures.

3.6 Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to optimize industrial participation.

3.7 Review defense items and requests for services submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their industries to participate in the acquisition process.

3.8 Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

3.9 Permit the sales of equipment produced under license to Allied countries, and to appropriate third countries, subject to the policy outlined in Article I, paragraph 12 of the basic MoU. Each agreement for a joint development or coproduction will address transfers of items or technology to Allied or third countries.

3.10 Ensure that those items and services excluded from consideration under this MoU for reasons of protecting overriding national requirements, such as the maintenance of a defense mobilization base (Appendix 1), are limited to a small percentage of total annual defense acquisition spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on acquisition from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

3.11 Ensure that the balance of reciprocal purchasing within the areas of this MoU take into consideration the levels of technology involved, as well as the contractual value, in accordance with the policy outlined in Article I, paragraph 1 of the basic MoU.

3.12 Arrange visits between appropriate government personnel from time to time in order actively to explore possibilities for acquisition and logistic support.

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4. COUNTING PROCEDURES

4.1 The purchases to be counted against the goals of the MoU will be identified jointly by DoD and MoD. In principle, all defense items or components thereof, as defined in the basic MoU, and associated services included in a procurement contract, purchased by MoD and DoD from the other country will be counted against the goals of the MoU as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the MoD and DoD, including their respective agencies, one from the other.

4.1.2 Purchases by either the MoD or DoD from the industry of the other country.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from either US or Portuguese Government or industrial sources as a direct result of commercial efforts of the other, non-supplying country.

4.1.5 Acquisitions by either country of defense items resulting from common funded projects to which the US and Portugal are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such acquisitions will be counted against the goals of the MoU will be, at the time of procurement, mutually agreed between MoD and DoD on a case-by-case basis.

4.1.6 License fees, royalties and other associated income resulting from orders placed by DoD or MoD and/or industry in one country with a licensed company in the other country; or in MoD-DoD transactions.

4.2 The following non-defense items also will be counted against the goals of the MoU:

4.2.1 Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

4.2.2 Purchases by a third country government from the MoD or DoD or from industries of these two countries as a direct result of the efforts of the MoD/DoD of the other country.

5. ADMINISTRATION

5.1 Each country will designate points of contact at the Ministry of Defense level.

5.2 MoD and DoD representatives will meet periodically, alternately in each country, to review the projects undertaken in implementing the MoU. They will discuss acquisition and logistic support needs of each country and the likely areas of cooperation; they will update the financial statement referred to in paragraph 5.3 below as a means of judging the progress of activity in the period under review; and they will consider other matters relevant to this MoU. Specific tasks of the representatives are:

5.2.1 Review the status of acquisitions on the basis of the data available concerning such acquisitions, in comparable terms to be agreed upon by both Parties.

5.2.2 Consider additional steps necessary to facilitate the actions called for in paragraph 3.

5.3 An annual US/Portugal statement consolidating the current balance of defense equipment acquisition and logistic support between the two countries, as well as the long term trends, will be prepared on a basis to be mutually agreed.

5.4 Quality assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reservation concerning US reimbursement) will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be in accordance with national laws and regulations of each country.

5.5 This annex will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Joao Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

ANNEX II

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING MUTUAL COOPERATION IN DEFENSE EQUIPMENT RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT, DATED 28 MARCH 1979.

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PRINCIPLES GOVERNING LOGISTIC SUPPORT OF COMMON EQUIPMENT

In implementing Article 1, paragraph 14 of the MoU, the two Governments shall be governed by the following:

1. When developing or procuring defense equipment, both Governments will agree upon the basis for joint follow-on logistic support in areas such as configuration control; interchangeability of assemblies, components and spare parts; maintenance; conversion; storage, spare parts provisioning; etc.

2. Arrangements and procedures for logistic support, paragraph 9, Article 1 of the MoU normally shall apply.

4. Both Governments will issue directives and guidelines to their respective armaments and logistics agencies to achieve the described goals of this MoU.

5. This annex will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

ANNEX III

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, DATED 28 MARCH 1979.

TERMS OF REFERENCE

1. The Portugal/U.S. Committee for Mutual Cooperation (hereafter to be called "the Committee") will serve under the direct responsibility of the authorities listed in Article II, sub 2 and 3 of the MoU, respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring implementation of the MoU governing the mutual cooperation in research and development, production, acquisition and logistic support of conventional defense equipment. To this end the Committee members will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

2.1 They will discuss research, development, production, acquisition, and logistic support needs of each country and the likely areas of cooperation, including joint activities in those fields.

2.2 They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

2.3 They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

2.4 They will consider any other matters relevant to the MoU.

2.5 They will report after each meeting and advise as appropriate.

2.6 The Committee will alternately meet in the United States and in Portugal. The country in which a particular meeting will take place will provide the chairman and the secretariat for that meeting.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

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T-208 Belgium Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF BELGIUM AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of Belgium duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

- Make the most cost-effective and rational use of their respective resources allocated to defense,

- Promote the widest possible use of standard or interoperable equipment,

- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU),

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Mindful of the objectives described in Art. 3 of the North Atlantic Treaty and para. 4 of the final communique of the North Atlantic Summit Council of May 1977 with regard to Alliance cooperation in view of safeguarding Western security,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment. The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. The two Governments further agree that this MOU should be viewed in the larger context of the cooperation within the Alliance. In

so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The parties hereto also agree that in the event of a possible conflict between this MOU and other agreements, they will consult with a view to amending this MOU.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. a. Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long term equitable balance in their exchanges, taking into consideration the relative technological level of such procurement, and consistent with their national policies.

b. Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense services and equipment to include components, subsystems, spare parts and major systems at all technological levels.

c. A long term equitable balance will not imply an equal monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities.

d. In order to assess the mutual flow of defense articles and services, the two Governments will jointly determine the counting procedures to be set down in an annex to this MOU that will apply to all defense articles and defense services purchased by them directly or through their respective industries under this MOU.

2. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to optimize standardization and/or interoperability within the Alliance. They will do likewise with regard to offers of services.

3. In the interests of standardization and the effective utilization of scarce resources, the two Governments will, to the extent possible, select qualified defense articles and defense services that have been developed or produced in the other country to meet their requirements, in accordance with the procedures of paragraph 7 below. Defense articles or defense services are those articles or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Belgian Ministry of Defense.

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4. Each Government will from time to time notify the other Government of defense articles and services that may only be acquired by the notifying Government from domestic sources, as well as those defense articles and services that may be particularly suitable for acquisition by the other Government. Indicative lists of the latter will be provided in an annex to this MOU.

5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

6. Competitive contracting procedures will normally be used in acquiring defense articles developed or produced in or defense services provided by each country for use by the other country's defense establishment.

7. The detailed implementing procedures to be agreed will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals of defense articles produced in or defense services provided by each country will be evaluated without applying price differentials under buy-national laws and regulations, and without applying the cost of applicable import duties. In the event that either party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

b. Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

d. Provisions for duty-free certificates and related documentation;

e. Arrangements concerning quality control and audits of incurred costs and price proposals.

8. Both Governments will review defense articles and defense services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

9. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on or performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

10. a. Transfers to third parties of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

b. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and defense policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Third country transfers approved in accordance with this agreement will count in the calculation of the balance of exchanges as a purchase by the Government authorizing the transfer.

c. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the exent to which a proposed transfer may damage or infringe upon known licensing arrangements whereby commercial firms in the US or Belgium have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third country.

11. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two Governments will mutually make available to each other, to the extent possible and in a timely fashion, all information and the proprietary rights required to implement cooperation under this MOU. The two Governments will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements and on fair and reasonable terms, between the industries of the two countries.

12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment covered by this MOU. Both Governments will make their defense logistic system and resources available for this purpose if required and mutually agreed.

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ARTICLE II

Implementation Procedures

1. Mutually agreed implementing procedures for this MOU will be established and be a part thereof.

2. Representatives of the two Governments will be appointed as the responsible authorities for the implementation of this MOU. The Under Secretary of Defense for Research and Engineering will be the representative for the United States Government. The National Armaments Director will be the representative for the Government of Belgium.

3. The establishment of a Belgian-United States Committee for Mutual Cooperation and its rules of procedure and competence will be agreed upon in an annex to be made a part of this MOU.

4. Each Government will designate points of contact at the Ministry of Defense level and in the procurement offices under the Ministry of Defense. They will be listed in an annex to be made a part of this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of its respective industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that their industries comply with the regulation pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve maximum industrial participation. Accordingly, the Governments will arrange that their respective acquisition and requirements offices be made familiar with the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas covered by this MOU shall rest with the industries in each country.

ARTICLE IV

Security

The General Security of Information Agreement, dated 9 August 1960 and the Agreement for Security Procedures for Industrial Operations, dated 24 July 1979, between the two Governments, apply to activities under this Memorandum of Understanding.

ARTICLE V

Annual Statement

An annual United States - Belgium statement of the current balance and long-term trends of R&D cooperation, procurement, maintenance and logistic support of defense equipment between the two nations will be prepared on a basis to be mutually agreed in an annex to this MOU and reviewed during the meetings of the Belgian - United States Committee for Mutual Cooperation, in accordance with its terms of reference.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate government authorities will be incorporated into this MOU and become an integral part thereof as of the date of the last signature.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period. Unless the Governments mutually decide otherwise, the duration will be extended for successive five-year periods.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination.

3. Although the MOU may be terminated by the parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

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ARTICLE VIII

Implementation

1. The agreements in this MOU represent the understanding reached between the Government of the United States of America and the Government of the Kingdom of Belgium upon the matters referred to herein. Each Government may propose amendments; both Governments must agree in writing to any amendment of this MOU.

2. Any difference of opinion over the interpretation and implementation of this MOU and its annexes will be resolved by consultation between the two Governments.

3. This MOU, in three original texts in the English, French and Dutch languages, all three texts being equally authentic, will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of the Kingdom of Belgium
The Secretary of Defense	The Minister of Defense
Harold Brown	Jose Desmarets
Date 12 December 1979	12 December 1979

T-209 Denmark Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Kingdom of Denmark duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,

- Ensure the widest possible use of standard or interoperable equipment,

- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

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3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified and cost-effective defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Danish Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Danish-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Armaments Director in the Ministry of Defense will be the responsible authority of the Kingdom of Denmark for the development of the implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

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2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classifed by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information that the information relates to the Memorandum of Understanding and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

1. The Danish-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement and logistics support needs of each nation and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Denmark statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU and made an integral part thereof.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America	The Kingdom of Denmark
The Secretary of Defense	The Minister of Defense
Harold Brown	Poul Sønnard
Date 30 January 1980	Date 2 January 1980

T-210 Luxembourg Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING
ON
RECIPROCAL DEFENSE PROCUREMENT

PREAMBLE

The Government of the United States of American and the Government of the Grand-Duchy of Luxembourg, hereinafter referred to as the "Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the areas of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense;

- Promote the widest possible use of standard or interoperable equipment; and,

- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the Parties to this Agreement;

Noting the potential for increased purchases of defense items by the United States from Luxembourg and from the United States by Luxembourg, and recognizing the desirability of working toward a long term equitable balance in defense trade between the two countries;

Recognizing that suppliers in each country should be afforded the opportunity to compete, on a reciprocal basis, for the procurement of defense products, equipment, materials and services, hereinafter referred to as "defense items and services";

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment. The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment.

ARTICLE 1

Principles Governing Mutual Defense Cooperation

1.1.1. Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long term equitable balance in their exchanges, taking into consideration the relative technological level of such procurement, and consistent with their national

policies. A long term equitable balance will not imply an equitable monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities.

1.1.2. Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense items and services to include systems, subsystems, components, and spare parts at all technological levels.

1.1.3. In order to assess the mutual flow of defense procurement, the Governments have jointly determined counting procedures which are set down in Annex I to this Agreement, and which will apply to all defense items and services purchased by them directly or through their respective industries under this Agreement. Defense items and services are those items and services which may be procured utilizing appropriated funds of the United States Department of Defense or budgeted funds of the Ministry of Defense of Luxembourg.

1.2 The Governments will, consistent with their relevant laws and regulations, give full and prompt consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Atlantic Alliance.

1.3. In the interests of standardization and the effective utilization of scarce resources, each Government shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet the requirements of the Government of such country.

1.4. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

1.5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to achieve and maintain the equitable balance mentioned in Article 1.1.1. of this Agreement, as well as the other aims of this Agreement.

1.6. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each country for use by the other country's defense establishment.

1.7. Both Governments agree that consistent with and to the extent permitted by national laws and regulations, mutually agreed implementing procedures will incorporate the following:

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1.7.1. Offers or proposals of defense items produced in or defense services provided by each country will be evaluated without applying price differentials under "buy national" laws and regulations, and without applying the cost of applicable import duties. In the event that either party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

1.7.2. Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

1.7.3. Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

1.7.4. Provisions for duty-free certificates and related documentation;

1.7.5. Arrangements concerning quality control and audits of incurred costs and price proposals.

1.8. Both Governments will review defense items and services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify as eligible suppliers and to submit a bid or proposal.

1.9. Technical Data Packages (TDPs) shall not be transferred between the two countries without the written permission of those owning or controlling any associated proprietary rights. Each Government will ensure that any TDPs which it may recieve from the other are not used for any purpose other than for the purpose of offering or bidding on or performing a prospective defense contract, without the prior written agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain.

1.10.1. Transfers to third parties of defense articles or technical data made available under this Agreement, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments or in multilateral agreements to which both Governments are parties.

1.10.2. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data.

1.11. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. Consistent with its laws and regulations, each Government will make available to the other all information necessary to implement cooperative arrangements under this Agreement. To the extent feasible, both Governments will seek an understanding with their respective industries that, in the interest of standardization and defense industria cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements between the industries of the two contries.

1.12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Agreement. Each Government will make its defense logistic systems and resources avilable to the other for this purpose as required and mutually agreed.

ARTICLE 2

Implementing Procedures

2.1. Both Governments agree to create a Joint United States-Luxembourg Committee for Defense Industrial Cooperation.

2.2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Department of Defense for the development of implementing procedures under this Agreement.

2.3. The Director of Foreign Trade, in cooperation with the appropriate bodies of the Ministry of Defense, will be the responsible authority of the Government of Luxembourg for the development of implementing procedures under this Agreement.

2.4. The United States-Luxembourg Committee for Defense Industrial Cooperation will be co-chaired by the authorities referred to in paragraphs 2.2 and 2.3, above, or their designated representatives. The Committee will meet as agreed at the request of either Government, but a minimum of once a year to review progress in implementing this Agreement. It will discuss the research, development, production, procurement and logistics support needs of each country and the likely areas of cooperation; agree to the basis of and keep under review the financial statement referred to in paragraph 2.6, below; and consider any other matters relevant to this Agreement.

2.5. Each Government will designate points of contact at the Ministry/Department of Defense level, in each purchasing Service/Agency under the Ministry/Department of Defense, and with other Government Departments and Agencies as appropriate.

2.6. An annual United States-Luxembourg statement of the current balance and long-term trends of R&D cooperation, production, and purchases between the two contries will be prepared on a basis to be mutually agreed.

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ARTICLE 3

Industry Participation

3.1. Implementation of this Agreement will involve maximum industrial participation. Notwithstanding the governmental procedures to facilitate the implementation of this Agreement, it will be the basic responsibility of the industries in each country to identify and advise their Government of their respective capabilities for cooperation and to carry out the supporting actions to bring industrial participation to consummation.

3.2. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this Agreement and the appropriate implementing guidance. Both Governments will take all necessary steps to ensure that their industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3. The Governments will arrange that their respective defense acquisition organizations are made familiar with the principles and objectives of this Agreement, and will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

3.4. To encourage the exchange of information in accordance with the purpose of this Agreement, each Government will, pursuant to its national laws and regulations, take action to facilitate participation by properly cleared officials and representatives of the other country in informational symposia, program briefings and prebid conferences, as well as access to publications and visits to installations.

ARTICLE 4

Security

4.1. The General Security of Information Agreement dated 17 September 1981, between the two Governments, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4.2. To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government.

4.3. Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in

providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Agreement, and that the information is furnished in confidence.

ARTICLE 5

Duration

5.1. This Agreement will enter into force when signed, and will remain in force for a period of ten (10) years from the last date of signature.

5.2 If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination.

5.3. Notwithstanding the expiration or termination of this Agreement, any contract entered into consistent with the terms of this Agreement will continue in effect, unless the contract is terminated in accordance with its own terms.

5.4. Articles 1.9, 1.10 and Article 4 of this Agreement will continue in full force and effect after, and notwithstanding the expiration or termination of this Agreement.

ARTICLE 6

Annexes

6.1. Annexes which may be negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this Agreement and made an integral part thereof.

Done in Luxembourg this 2 day of December, in duplicate.

FOR THE UNITED STATES OF AMERICA

FOR THE GRAND-DUCHY OF LUXEMBOURG

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MEMORANDUM OF UNDERSTANDING
on
RECIPROCAL DEFENSE PROCUREMENT

ANNEX I

Principles Governing Implementation

ARTICLE 1

Introduction

This Annex sets forth the procedures agreed upon by the Governments of the United States and the Grand-Duchy of Luxembourg to implement the Memorandum of Understanding on Reciprocal Defense Procurement, hereinafter referred to as "The MOU".

ARTICLE 2

Major Principles

2.1 Each Government will consider for its defense requirements qualified defense items and services developed or produced in the other country.

2.2 The responsible Government authorities in each country will assist sources in the other country to obtain appropriate information concerning:

2.2.1 Plans and programs for research, development, production and acquisition of defense items and services.

2.2.2 Requirements for the qualification of sources.

2.2.3 Specifications and quality assurance standards.

Both Governments will respond promptly to requests for information that comply with their respective regulations and procedures. However, notwithstanding the governmental procedures established to facilitate the Agreement, it will be the responsibility of Government and/or industry representatives in each country to acquire information concerning the other country's research, development and procurement plans and to respond to solicitations in accordance with the prescribed acquisition regulations and procedures of the purchasing country.

ARTICLE 3

Actions

3.1 Both Governments will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and

objectives of this Agreement, which are intended to be compatible with the broad aims of NATO Standardization and Interoperability, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interest of security, and the timely conduct of the contracting process must be considered, both Governments agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1.1 Ensure that, as a minimum, the following entities are familiar with the principles, objectives and terms of the Agreement:

- Their respective defense planning, programming, and contracting offices.

- Their respective offices responsible for defense imports and exports.

- Their respective agencies and industries responsible for the research, development, and production of defense items and/or services.

3.1.2 Ensure that, consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying to such offers either price differentials under "buy-national" laws and regulations, or the cost of import duties.

3.1.3 Consistent with national laws and regulations, provisions will be made for duty-free entry certificates and related documentation.

3.1.4 Assist industries in their respective countries to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial participation in the implementation of the Agreement.

3.1.5 Consider defense items and services offered by the Government or industry of the other contry as candidates for their respective requirements. Identify specific requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research, development, production and procurement processes.

3.1.6 Use their best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

3.1.7 Permit the sale of defense equipment produced under license, coproduction agreements and/or joint develoment projects to allied countries and to appropriate third countries, subject to the policy outlined in Article 1.10 of the Agreement. Each agreement for a joint development or coproduction will address transfers of items or technology to allied or third countries.

3.1.8 Ensure that those items and services excluded from consideration under this Agreement for reasons of protecting national

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requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. Such defense items and services, together with those items and services that must be excluded from consideration under this Agreement because of legally imposed restrictions on acquisition from non-national sources, will be identified as soon as possible by both Governments. Lists of these items and services will be prepared and kept under review at this level.

3.1.9 Pursuant to its national laws and regulations, facilitate arrangements for visits by properly cleared Government officials and industry representatives of the other country to explore and actively promote cooperation possibilities for research, development, production, procurement and logistic support of defense equipment.

3.2 Both Governments will ensure that their respective actions under the Agreement in working toward an equitable balance in defense trade, take into consideration the level of technology involved as well as the contractual value of the items being purchased.

ARTICLE 4

Counting Procedures

4.1 The purchases and other transactions to be counted against the goals of this Agreement will be identified jointly by the two Governments. In principle, all defense items and services purchased by one Government from the other country will be counted as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the defense agencies, one from the other.

4.1.2 Purchases by defense agencies of either country from the industry of the other country.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from the Government of the United States or the Government of Luxembourg or the industry of either country when either of the following circumstances occur:

- The sale requires the prior agreement of the non-vendor Government.

- The sale is a direct result of the promotional efforts by the Government or industry of the non-vendor country, which fact has been previously acknowledged and agreed by the vendor party.

4.1.5 Acquisitions by either country of defense items or services resulting from projects jointly funded by both countries.

4.1.6 License fees, royalties and other associated income resulting from orders placed by defense agencies of one country with a licensed company in the other country; or in Government-to-Government transactions.

4.1.7 Transfers of technology, and production, testing and quality control equipment required to achieve the goals of this Agreement.

4.1.8 Contributions by one country in research, development and demonstration programs in the other country that have been agreed by both Governments.

4.1.9 Purchases of non-defense items and services by the Government or industry of either country from the Government or industry of the other, provided that both Governments agree that any particular purchase is to be counted against the goals of this Agreement.

4.2 The following transactions will not be counted:

4.2.1 Maintenance and logistic support activities in either country under contracts in effect before the effective date of this Agreement.

4.2.2 Any transaction being carried out under contracts and agreements in effect before the effective date of this Agreement.

4.2.3 Operational expenses of either Government to achieve the goals of this Agreement.

4.3 Transactions listed in Article 4.1 of this Annex, and any others that both Governments agree, will be credited in the following manner:

4.3.1 At the value of the contract on its effective date.

4.3.2 Purchases by third countries of defense items or services from the United States Government or the Government of Luxembourg or the industry of either country as described in paragraph 4.1.4. of this Annex, will be credited as a sale by the non-vendor country, as follows:

- When authorization by the non-vendor Government is required; only the value of the item(s) directly related to the authorization will be credited.

- When the sale is the direct result of promotional efforts by the Government or industry of the non-vendor country; only the value of parts, subassemblies, assemblies, equipment and services supplied by either the Government of the United States or the Government of Luxembourg or their respective industries will be credited.

4.4 The following transactions will be credited in the manner and amounts agreed by both Governments:

- License fees, royalties, and any other income resulting from transfers of technology, and production, testing and quality control equipment between both countries.

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- Orders placed by defense agencies in one country with a licensed company in the other country, or from Government-to-Government transactions.

- Contributions by one country in research, development and demonstration programs in the other country.

4.5 Transactions will be credited according to the exchange rate of the respective currencies on the effective date of the transaction.

4.6 Each Government will prepare an annual counting report. These reports will summarize the data counted pursuant to each of the categories above. Supporting data for each category included in the summary will indicate the item supplies, the parties to the transaction, transaction date, and credited value. Both Governments will exchange the summary reports and supporting data sufficiently in advance of the annual meeting to permit review and comment or agreement by the other at least two (2) weeks prior to the meeting. Any disagreement concerning the reports will be settled by the Committee established pursuant to Article 2.1 of the Agreement.

ARTICLE 5

Administration

5.1 Each Government will designate points of contact at their respective Ministry/Department of Defense levels, as well as within other relevant departments and agencies, for the purpose of carrying out those actions necessary to implement the Agreement.

5.2 The Committee for Defense Industrial Cooperation will be responsible for the general administration of the Agreement.

5.3 Quality assurance procedures outlined in STANAGS 4107 and 4108 will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the national laws and regulations of each country.

T-211 France Memorandum of Understanding.

Synopsis — U.S./France Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING RECIPROCAL PURCHASE OF DEFENSE EQUIPMENT.

On 22 May 1978, the Minister of Defense of France and the Secretary of Defense of the United States signed an MOU for reciprocal defense procurement. The purpose of this MOU, which is classified, CONFIDENTIAL, is to seek balanced cooperation in defense equipment, research, development, production, and purchasing.

In accordance with the U.S./France MOU, contracting authorities of each country will:

- Evaluate offers without applying price differentials resulting from buy national laws (in the United States, the Buy American Act).

- Consistent with the laws and policies of each country, attempt to obtain exemptions from customs, duties, taxes, or other restrictions designed to limit participation by industries of the other country.

- Take into consideration all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office, it being understood that offers will satisfy requirements for performance, quality, delivery, and cost.

- Assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications, and appropriate documentation.

Both countries agree that in general the principles of this MOU will apply to defense purchases of both Governments on the broadest possible basis. Items and services will be excluded from consideration under this MOU in order to protect the defense mobilization base; because of legally imposed restrictions; and for other reasons to be discussed by the parties from time to time in meetings between the MOD and the DoD. A Franco-American Committee for Defense Equipment (FACDE) will be established for this purpose. Both countries will ensure that those items and services excluded from consideration under this MOU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending.

Each Government will be responsible for bringing to the attention of the defense industries within its country, the basic understanding of this MOU, together with appropriate guidance on its implementation. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and classified information safeguarding.

Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange that their respective procurement and requirements offices will be made familiar with the principles and objectives of this MOU and, where considered necessary, revise policies, procedures and regulations to ensure MOU principles are taken into account. Notwithstanding the governmental procedures to facilitate implementation, it will be the basic responsibility of industry in each country to isolate, identify, and advise its Government of capabilities and to carry out the supporting actions to bring industrial participation to consummation.

(Signed)
Yvon Bourges
Minister of Defense
Republic of France

(Signed)
Harold Brown
Secretary of Defense
United States of America

T-212 Spain Memorandum of Understanding.

COMPLEMENTARY AGREEMENT FOUR
Defense Industrial Cooperation

PREAMBLE

The Government of the United States of America and the Government of Spain, hereinafter referred to as the "Governments";

Intending to increase their respective defense capabilities through more efficient cooperation in the areas of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense;
- Promote the widest possible use of standard or interoperable equipment; and
- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the Parties to this Agreement;

Noting the substantial purchases of defense items by Spain from the United States and the purchase of defense items from Spain by the United States, and recognizing the desirability of working toward an equitable balance in defense trade between the two countries;

Recognizing that suppliers in each country should be afforded the opportunity to compete, on a reciprocal basis, for the procurement of defense products, equipment, materials and services, hereinafter referred to as "defense items and services";

Seeking to improve the present situation and to strengthen their military capability and economic position through the mutual acquisition of standard or interoperable equipment and to achieve the above aims;

Enter into this Agreement, which sets out the guiding principles governing mutual cooperation in research and development, production, procurement and logistic support of conventional defense equipment.

ARTICLE 1

Principles Governing Mutual Defense Cooperation

1.1.1 Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense research and development (R&D) cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base.

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1.1.2 Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense items and services to include systems, subsystems, components, and spare parts at all technological levels.

1.1.3 In order to assess the mutual flow of defense procurement, the Governments have jointly determined counting procedures which are set down in Annex 1 to this Agreement, and which will apply to all defense items and services purchased by them directly or through their respective industries under this Agreement. Defense items and services are those items and services which may be procured utilizing appropriated funds of the United States Department of Defense or budgeted funds of the Spanish Ministry of Defense.

1.2 The Governments will, consistent with their relevant laws and regulations, give full and prompt consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Atlantic Alliance.

1.3 In the interests of standardization and the effective utilization of scarce resources, each Government shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet the requirements of the Government of such country.

1.4 Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

1.5 Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to achieve and maintain the equitable balance mentioned in Article 1.1.1 of this Agreement, as well as the other aims of this Agreement.

1.6 Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each country for use by the other country's defense establishment.

1.7 Both Governments agree that consistent with and to the extent permitted by national laws and regulations, mutually agreed implementing procedures will incorporate the following:

1.7.1 Barriers to defense industrial cooperation including those to procurement of defense items developed or produced in the other country shall be removed. Specifically, offers or proposals of defense items produced in or defense services provided by each country will be evaluated without applying price differentials under "buy national" laws and regulations, and without applying the cost of applicable import duties;

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1.7.2 Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

1.7.3 Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

1.7.4 Provisions for duty-free certificates and related documentation;

1.7.5 Arrangements concerning quality control and audits of incurred costs and price proposals.

1.8 Both Governments will review defense items and services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify as eligible suppliers and to submit a bid or proposal.

1.9 Technical Data Packages (TDPs) shall not be transferred between the two countries without the written permission of those owning or controlling any associated proprietary rights. Each Government will ensure that any TDPs which it may receive from the other are not used for any purpose other than for the purpose of offering or bidding on or performing a prospective defense contract, without the prior written

agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain.

1.10.1 Transfers to third parties of defense articles or technical data made available under this Agreement, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments or in multilateral agreements to which both Governments are parties.

1.10.2 Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data.

1.11 Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. Consistent with its laws and regulations, each Government will

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make available to the other all information necessary to implement cooperative arrangements under this Agreement. To the extent feasible, both Governments will seek an understanding with their respective industries that, in the interest of standardization and defense industrial cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements between the industries of the two countries.

1.12 Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Agreement. Each Government will make its defense logistic systems and resources available to the other for this purpose as required and mutually agreed.

1.13 To the extent consistent with their respective laws and regulations and on the basis of reciprocity, each Government will waive its claims for reimbursement from the other with respect to non-recurring research, development, and production costs.

ARTICLE 2

Implementing Procedures

2.1 Both Governments agree to create a Joint United States-Spanish Committee for Defense Industrial

Cooperation to which they will appoint representatives who will develop terms of reference for this Committee and procedures for implementing this Agreement. Such implementing procedures are included in Annex 1 to this Agreement.

2.2 The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Department of Defense for the development of implementing procedures under this Agreement.

2.3 The Director General de Armamento y Material of the Ministry of Defense will be the responsible authority of the Government of Spain for the development of implementing procedures under this Agreement.

ARTICLE 3

Industry Participation

3.1 Implementation of this Agreement will involve maximum industrial participation. Notwithstanding the governmental procedures to facilitate the implementation of this Agreement, it will be the basic responsibility of the industries in each country to identify and advise their Government of their respective capabilities for cooperation and to carry out the supporting actions to bring industrial participation to consummation.

3.2 Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this Agreement and the appropriate implementing guidance. Both Governments will take all necessary steps to ensure that their industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3 The Governments will arrange that their respective defense acquisition organizations are made familiar with the principles and objectives of this Agreement, and will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

3.4 To encourage the exchange of information in accordance with the purpose of this Agreement, each Government will, pursuant to its national laws and regulations, take action to facilitate participation by properly cleared officials and representatives of the other country in informational symposia, program briefings and prebid conferences, as well as access to publications and visits to installations.

ARTICLE 4

Security

4.1 Security arrangements under this Agreement will be subject to any subsequent security agreements entered into by the Governments. Until such security arrangements are agreed, the following provisions will apply:

4.1.1 To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government.

4.1.2 Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Agreement, and that the information is furnished in confidence.

4.1.3 Each Government will permit security experts of the other Government to make periodic visits to its territory, when it is mutually convenient, to discuss with its security authorities its procedures and facilities for the protection of classified military information furnished to it by the other Government. Each Government will assist such experts in determining whether such information provided to it by the other Government is being adequately protected.

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4.1.4 The recipient Government will investigate all cases in which it is known or there are grounds for suspecting that classified military information from the originating Government has been lost or disclosed to unauthorized persons. The recipient Government shall also promptly and fully inform the originating Government of the details of any such occurrences, and of the final results of the investigation and corrective action taken to preclude recurrences.

ARTICLE 5

Defense Production Projects

5.1 The Government of the United States shall use its best efforts to furnish the Government of Spain such assistance as may be mutually agreed upon in light of the latter's priorities for the development, production, maintenance, repair and overhaul of Spanish defense equipment and materials, including arms and ammunition.

5.2 As a contribution to increasing the productive capacity of the Spanish military industry, defense production projects shall be designated by mutual agreement. A list of those projects under consideration shall be developed as soon as feasible; this list shall become part of this Agreement. Each Government shall from time to time notify the other of defense

industrial cooperation projects it considers particularly suitable for addition to the list. These projects may be carried out by Spain alone, or as cooperative joint production projects by Spain and the United States, or as multilateral projects with the participation of one or more NATO countries as mutually agreed.

5.3 The Government of the United States will provide to the Government of Spain, or will assist the Government of Spain to obtain: wherever possible at no cost, or on terms no less favorable than those extended by the Government of the United States to other NATO countries, the industrial property rights requested by the Government of Spain to develop its own defense production or to promote standardization and interoperability of equipment manufactured in Spain with that of the United States, and with other members of the NATO Alliance.

5.4 In accordance with the objectives set forth in Article 1.1.1 of this Agreement and the other goals of this Agreement, the Governments may enter into specific Government-to-Government or Government-to-industry agreements for cooperation in developing, producing, coproducing or procuring defense items.

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ARTICLE 6

Administration

6.1 The United States-Spanish Joint Committee for Defense Industrial Cooperation will be co-chaired by the authorities referred to in Article 2 of this Agreement, or their designated representatives. The Committee will meet as agreed at the request of either Government, but a minimum of once a year to review progress in implementing this Agreement. It will discuss the research, development, production, procurement and logistics support needs of each country and the likely areas of cooperation; develop the list of defense industrial cooperation projects mentioned in Article 5.2 of this Agreement; agree to the basis of and keep under review the financial statement referred to in Article 6.3 of this Agreement; and consider any other matters relevant to this Agreement.

6.2 Each Government will designate points of contact at the Ministry/Department of Defense level, in each purchasing Service/Agency under the Ministry/Department of Defense, and with other Government Departments and Agencies as appropriate.

6.3 An annual United States-Spanish statement of the current balance and long-term trends of R&D cooperation, production, and purchases between the two countries will be prepared on a basis to be mutually agreed.

ARTICLE 7

Effect of Termination

7.1 Notwithstanding the expiration of termination of this Agreement, any contract entered into consistent with the terms of this Agreement will continue in effect, unless the contract is terminated in accordance with its own terms.

7.2 Articles 1.9, 1.10 and Article 4 of this Agreement will continue in full force and effect after, and notwithstanding the expiration or termination of this Agreement.

ARTICLE 8

Entry into Force

8.1 This Agreement, including its Annexes, will enter into force and remain in force in accordance with the provisions of Article Six of the Agreement on Friendship, Defense and Cooperation.

8.2 Supplementary protocols which may be negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this Agreement and made an integral part thereof.

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Done in Madrid, this 2nd day of July, 1982, in duplicate, in the English and Spanish languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

Terence A. Todman

FOR THE KINGDOM OF SPAIN:

P. R. Ulrea.

COMPLEMENTARY AGREEMENT FOUR

Defense Industrial Cooperation

ANNEX I

Principles Governing Implementation

ARTICLE 1

Introduction

This Annex sets forth the procedures agreed upon by the Governments of the United States and Spain to implement Complementary Agreement Four, hereinafter referred to as "The Agreement," to the Agreement on Friendship, Defense and Cooperation between the two countries.

ARTICLE 2

Major Principles

2.1 Each Government will consider for its defense requirements qualified defense items and services developed or produced in the other country.

2.2 The responsible Government authorities in each country will assist sources in the other country to obtain appropriate information concerning:

2.2.1 Plans and programs for research, development, production and acquisition of defense items and services.

2.2.2 Requirements for the qualification of sources.

2.2.3 Specifications and quality assurance standards.

Both Governments will respond promptly to requests for information that comply with their respective regulations and procedures. However, notwithstanding the governmental procedures established to facilitate the Agreement, it will be the responsibility of Government and/or industry representatives in each country to acquire information concerning the other country's research, development and procurement plans and to respond to solicitations in accordance with the prescribed acquisition regulations and procedures of the purchasing country.

ARTICLE 3

Actions

3.1 Both Governments will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of the Agreement, which are intended to be compatible with the broad aims of NATO standardization and interoperability, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interests of security, and the timely conduct of the contracting process must be considered, both Governments agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1.1 Ensure that, as a minimum, the following entities are familiar with the principles, objectives and terms of the Agreement:

- Their respective defense planning, programming, and contracting offices.
- Their respective offices responsible for defense imports and exports.
- Their respective agencies and industries responsible for the research, development, and production of defense items and/or services.

3.1.2 Ensure that, consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying to such offers either price differentials under "buy-national" laws and regulations or the cost of import duties.

3.1.3 Consistent with national laws and regulations, provisions will be made for duty-free entry certificates and related documentation.

3.1.4 Assist industries in their respective countries to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial participation in the implementation of the Agreement.

3.1.5 Consider defense items and services offered by the Government or industry of the other country as candidates for their respective

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requirements. Identify specific requirements and proposed purchases to the other country in a timely fashion to ensure that agencies and industries of such country are afforded adequate time to be able to participate in the research, development, production, and procurement processes.

3.1.6 Use their best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

3.1.7 Permit the sale of defense equipment produced under license, coproduction agreements and/or joint development projects to allied countries and to appropriate third countries, subject to the policy outlined in Article 1.10 of the Agreement. Each agreement for a joint development or coproduction will address transfers of items or technology to allied or third countries.

3.1.8 Ensure that those items and services excluded from consideration under the Agreement for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense acquisition spending. Such items and services, together with those that must be excluded from consideration under the Agreement because of legally imposed restrictions on acquisition from non-national

sources, will be identified as soon as possible by the Department of Defense as well as by the Ministry of Defense. Lists of these items and services will be prepared and kept under review at this level.

3.1.9 Pursuant to its national laws and regulations, facilitate arrangements for visits by properly cleared Government officials and industry representatives of the other country to explore and actively promote cooperation possibilities for research, development, production, procurement and logistic support of defense equipment.

3.2 Both Governments will ensure that their respective actions under the Agreement in working toward an equitable balance in defense trade, take into consideration the level of technology involved as well as the contractual value of the items being purchased.

ARTICLE 4

Counting Procedures

4.1 The purchases and other transactions to be counted against the goals of the Agreement will be identified jointly by the Department of Defense and Ministry of Defense. In principle, all defense items and services purchased by the Department of Defense or Ministry of Defense from the other country will be counted as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the Department of Defense or Ministry of Defense, including their respective agencies, one from the other.

4.1.2 Purchases by either the Department of Defense or Ministry of Defense from the industry of the other country. When such purchases involve offset agreements between the Government of either country and the industry of the other country, the amount of such offset shall be applied in calculating the balance.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from the Government of the United States or the Government of Spain or the industry of either country when either of the following circumstances occur:

- The sale requires the prior agreement of the non-vendor Government.
- The sale is a direct result of the promotional efforts by the Government or industry of the non-vendor country, which fact has been previously acknowledged and agreed by the vendor party.

4.1.5 Acquisitions by either country of defense items or services resulting from projects jointly funded by both countries.

4.1.6 License fees, royalties and other associated income resulting from orders placed by the Department of Defense or the Ministry of Defense and/or industry in one country with a licensed company in the other country; or in Department of Defense-Ministry of Defense transactions.

4.1.7 Transfers of technology, and production, testing and quality control equipment required to achieve the goals of the Agreement.

4.1.8 Contributions by one country in research, development and demonstration programs in the other country that have been agreed by both Governments.

4.1.9 Purchases of non-defense items and services by the Government or industry of either country from the Government or industry of the other, provided that both Governments agree that any particular purchase is to be counted against the goals of the Agreement.

4.2 The following transactions will not be counted:

4.2.1 Maintenance and logistic support activities in either country under contracts in effect before the effective date of the Agreement.

4.2.2 Any transaction being carried out under contracts and agreements in effect before the effective date of the Agreement.

4.2.3 Operational expenses of either Government to achieve the goals of the Agreement.

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4.3 Transactions listed in Article 4.1 of this Annex, and any others that both Governments agree, will be credited in the following manner:

4.3.1 At the value of the contract on its effective date.

4.3.2 Purchases by third countries of defense items or services from the Government of the United States or the Government of Spain or the industry of either country as described in Article 4.1.4 of this Annex, will be credited as a sale by the non-vendor country, as follows:

- When authorization by the non-vendor Government is required; only the value of the item(s) directly related to the authorization will be credited.
- When the sale is the direct result of promotional efforts by the Government or industry of the non-vendor country; only the value of parts, subassemblies, assemblies, equipment and services supplied by either the Government of the United States or the Government of Spain or their respective industries will be credited.

4.4 The following transactions will be credited in the manner and amounts agreed by both Governments:

- License fees, royalties, and any other income resulting from transfers of technology, and production, testing and quality control equipment between both countries.
- Orders placed by the Department of Defense or the Ministry of Defense and/or industry in one country with a licensed company in the other country, or from Department of Defense-Ministry of Defense transactions.
- Contributions by one country in research, development and demonstration programs in the other country.

4.5 Transactions will be credited according to the exchange rate of the respective currencies on the effective date of the transaction.

4.6 Each Government will prepare an annual counting report. These reports will summarize the data counted pursuant to each of the categories above. Supporting data for each category included in the summary will indicate the item supplied, the parties to the transaction, transaction date, and credited value. Both Governments will exchange the summary reports and supporting data sufficiently in advance of the annual meeting to permit review and comment or agreement by the other at least two (2) weeks prior to the meeting. Any disagreement concerning the reports will be settled by the Joint Committee established pursuant to Article 2.1 of the Agreement.

ARTICLE 5

Administration

5.1 Each Government will designate points of contact at their respective Ministry/Department of Defense levels, as well as within other relevant departments and agencies, for the purpose of carrying out those actions necessary to implement the Agreement.

5.2 The Joint Committee for Defense Industrial Cooperation will be responsible for the general administration of the Agreement. Its terms of reference are contained in Annex 2 to the Agreement.

5.3 Quality assurance procedures outlined in STANAGS 4107 and 4108 will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the national laws and regulations of each country.

T-213 Turkey Memorandum of Understanding.

SUPPLEMENTARY AGREEMENT NUMBER 2

BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND OF THE REPUBLIC OF TURKEY

ON DEFENSE INDUSTRIAL COOPERATION

The Governments of the United States of America and of the Republic of Turkey,

Desiring to strengthen their respective defense capabilities as well as those of the North Atlantic Alliance as a whole through efficient cooperation in the fields of research, development, production, procurement and logistic support,

Recognizing that increased defense production capability is an integral part of a strong defense effort,

Having regard to the fact that an essential security relationship is supported by harmonious economic relations,

Bearing in mind the increasing impact of the economy and the application of new technologies on defense matters,

Taking into consideration the efforts of the NATO countries to develop and maintain an advanced industrial and technological capability and to achieve a more rational use of available resources, the standardization and interoperability of equipment and services, increased exchange of information, and better coordinated procurement policies, have agreed as follows:

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ARTICLE I

1. The Government of the United States of America and the Government of the Republic of Turkey will cooperate in order to increase their defense equipment production and maintenance capabilities and to enable their armed forces to acquire more economically and efficiently modern armaments and equipment needed for self and common defense.

2. To this end, both Governments will seek to facilitate the mutual flow of defense procurement and technological know-how in the field of defense. They will also seek to provide opportunities to compete for procurement of defense equipment and services and to promote and facilitate the co-production of defense equipment and cooperation in defense research and development and to expand programs of data exchange in defense technologies.

3. This Supplementary Agreement covers areas of possible bilateral cooperation in research, development, production, procurement and logistic support of conventional defense equipment. Measures taken under this Supplementary Agreement shall complement or be consistent with the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC). They therefore agree

that, in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this Supplementary Agreement, the Parties hereto will consult with a view to amending this Agreement.

4. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative research and development, and to all requests for production and procurement intended to enhance the standardization and/or interoperability of equipment and services within the Alliance.

5. Each Government shall normally use competitive contracting procedures in acquiring items of defense equipment developed or produced in the other's country.

6. The two Governments shall agree upon detailed procedures to implement this Agreement. These procedures will incorporate the following:

A. Offers or proposals will be evaluated without applying price differentials under "Buy National" laws and regulations and without applying the cost of import duties;

B. Full consideration will be given to all qualified industrial and governmental resources in each country;

C. Offers or proposals will be required to satisfy the applicable requirements of the purchasing Government for performance quality, delivery and costs.

INTERNATIONAL AGREEMENTS

7. Any item to be excluded from consideration of reciprocal defense procurement under this Supplementary Agreement for reasons of protecting national defense requirements should be identified as soon as possible in lists drawn up by the Turkish Ministry of National Defense and the Office of the U.S. Secretary of Defense for their respective countries. These lists will be kept under review and may be modified only at this level.

8. Each Government will ensure that Technical Data Packages (TDP's) made available under this Supplementary Agreement are not used for any purpose other than for bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information contained in TDP's. In no event shall the TDP's be transferred to a third country or any other transferee without the prior written consent of the originating Government.

9. Third party transfer of defense articles or technical data made available under this Supplementary Agreement and of defense articles produced with such data will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise agreed.

INTERNATIONAL AGREEMENTS

10. At the request of the purchasing Government, arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Supplementary Agreement. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

1. The Government of the United States will furnish the Government of the Republic of Turkey such assistance as may be mutually agreed upon in light of the latter's priorities for the production, maintenance, repair and overhaul of defense equipment and materials, including arms and ammunition.

2. Mutually agreed defense production projects will be designed to constitute an increment to the production capabilities of Turkish industry. Such projects may be carried out solely by Turkey, as joint United States-Turkish projects of coordinated production, or as multilateral projects with the participation of other NATO and friendly countries.

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ARTICLE III

Each Government will permit the importation and exportation, free from customs duties and taxes or similar charges, of equipment and materials sent to its country for maintenance, repair or overhaul pursuant to this Agreement.

ARTICLE IV

1. The Government of the United States will provide to the Government of the Republic of Turkey, or assist the Government of the Republic of Turkey in obtaining wherever possible at no cost, or, on terms no less favorable than those extended by the Government of the United States to any other NATO country, industrial property rights for the purpose of promoting the defense equipment production and enhancing the rationalization, standardization and interoperability of equipment and services of the NATO Alliance.

2. The Government of the United States will waive its reimbursement claims from the Government of the Republic of Turkey, to the extent possible and on a reciprocal basis, with respect to research and development costs and nonrecurring production costs.

ARTICLE V

1. Each Government will call this Supplementary Agreement to the attention of relevant industries within its territory and will provide appropriate implementing guidance. Both Governments will take all necessary steps to ensure that industries comply with regulations pertaining to security and to the safeguarding of classified information.

2. Implementation of this Supplementary Agreement will involve full industrial participation. Accordingly, the Governments will inform their respective procurement and requirements offices of the principles and objectives of this Supplementary Agreement.

ARTICLE VI

1. To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Supplementary Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government.

2. Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification, or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Supplementary Agreement, and that the information is furnished in confidence.

ARTICLE VII

This Agreement shall be implemented in accordance with mutually agreed programs. To this end, the two Governments, acting through their competent authorities will enter into implementing agreements. The two Governments will seek ways to implement these programs and projects, identified in an Annex to this Agreement, at the lowest possible cost to Turkey.

ARTICLE VIII

1. This Supplementary Agreement shall have an initial term of five years, and shall remain in force from year to year

thereafter unless terminated. The Agreement shall be terminated at the end of its initial term or of an annual extension if either Party gives the other Party written notice of its intent to terminate it at least 90 days prior to the end of the term.

2. Should disagreement arise from the interpretation or implementation of this Agreement, the Parties shall consult in order to resolve the matter promptly.

3. Either Party may propose in writing the revision or amendment of this Agreement. In such a case, consultations shall begin immediately. If no result is reached in three months, either Party may terminate the Agreement upon 30 days notice in writing.

ARTICLE IX

Should the implementation of the contracts signed within the framework of this Supplementary Agreement not be completed at the time the present Agreement is terminated, provisions of this Agreement shall continue to cover said contracts until they are completed. Should this Agreement be terminated, Article I, Paragraphs 8 and 9, and Article VI will continue in force for those materials and data which were provided during the life of the Agreement.

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ARTICLE X

Done at Ankara in duplicate, in the English and Turkish languages, each of which shall be equally authentic, on this 29th day of March , 1980 .

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

James W. SPAIN
Ambassador of the
United States of America

FOR THE GOVERNMENT OF
THE REPUBLIC OF TURKEY:

Hayrettin ERKMEN
Minister of Foreign Affairs

ANNEX TO SUPPLEMENTARY AGREEMENT NUMBER 2
BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA
AND OF THE REPUBLIC OF TURKEY ON
DEFENSE INDUSTRIAL COOPERATION

Projects presently under consideration:

A. Production of Anti-Armor Ammunition:
A separate production line is required to manufacture armor piercing ammunition. The objective of this project is to gain the capability of producing hollow-charge and hard-core ammunition for existing weapons in the Turkish Armed Forces and for more modern types of weapons.

B. Production of Fuses:
New facilities are required to produce various types of fuses. The objective of this project is to increase existing production capability by obtaining new technology and equipment to produce fuses for artillery ammunition, rocket and missile warheads, and various bombs and mines.

C. Production of Propellant Powders and Explosives:
An increase in production capacity of propellant powders is required. The objective of this project is to produce various kinds of propellant powders and

high explosives to support artillery ammunition and rocket warhead production programs.

D. Production of Various Kinds of Rockets:
The existing manufacturing facilities are required to be supplemented by equipment and production know-how in order to produce various kinds of rockets. The objective of this project is to manufacture and supply rocket-type ammunition and rocket-assisted equipment for the requirements of the Turkish Army.

E. Improvement of Aircraft Rebuild Capabilities and Improvement of Facilities:
In order to improve the rebuild capability of existing aircraft in the Turkish Air Force, the development of plans and programs is required. The objective of this project is to be a complete and self-sufficient rebuild capability of engine, body, avionics and other electronic equipment for the existing aircraft, including F-4 Phantoms.

F. Building a Modern Frigate and Improvement of Overhauling Capability:
The program of building a modern frigate suitable for Turkish Navy requirements is to be pursued. In parallel with the construction activity the overhauling capability of Golcuk shipyard is to be improved.

G. Tank Upgrading Program:
The objective of this project is to convert existing M48 tanks into M48A3 and/or M48A5 versions, including Turkish production of various primary components.

SUPPLEMENTARY AGREEMENT NUMBER 3
BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND OF THE REPUBLIC OF TURKEY
ON INSTALLATIONS

ARTICLE I

1. Pursuant to Article V of the Agreement for Cooperation on Defense and Economy between the Governments of the United States of America and of the Republic of Turkey, the Government of the Republic of Turkey authorizes the Government of the United States to participate in joint defense measures at the following Turkish Armed Forces Installations:
- Sinop (electromagnetic monitoring)
- Pirinclik (radar warning space monitoring)
- Incirlik (air operations and support)
- Yamanlar (Izmir), Sahintepe (Gemlik), Elmadag (Ankara), Karatas (Adana), Mahmurdag (Samsun), Alemdag (Istanbul), and Kurecik (Malatya) (nodal communications sites)

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- Belbasi (seismic data collection)
- Kargaburun (radio navigation)

2. The Government of the Republic of Turkey also authorizes United States administrative and support organizations and activities outside the installations. Such organizations and activities shall be subject to the relevant provisions of this Agreement.

3. Where necessary, requirements specified in this Supplementary Agreement shall be elaborated in appropriate implementing agreements.

ARTICLE II

1. Technical operations and maintenance services at the installations where the primary purpose is intelligence collection, nodal communications or radio navigation shall be carried out jointly by Turkish and United States personnel. The modalities of this cooperation, including the distribution of manpower spaces for assignment by each Party and training requirements for Turkish personnel, shall be determined jointly by appropriate authorities of the two Governments. For the purposes of this cooperation, the Government of the United States shall provide access to appropriate training for Turkish personnel.

2. All intelligence information, including raw data, produced at intelligence collection installations in the Republic of Turkey shall be shared by the two Governments in accordance with arrangements determined jointly by the competent technical authorities of the two Governments.

3. Mutually agreed arrangements shall be established to enhance Turkish Armed Forces' utilization of the capacity of the Defense Communications System in Turkey to the extent feasible.

4. U.S. and Turkish authorities shall consult to avoid interference between activities of the installations authorized by this Agreement and the activities of other military and civilian installations and to avoid damage to life and property.

5. Modernization, addition or importation of the equipment related to the technical operations at the installations which would increase mission capabilities shall be subject to advance approval by the Government of the Republic of Turkey.

ARTICLE III

1. The Government of the United States of America will assign an officer as Commander of the United States Forces

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at each installation, who also will function as the single point of contact with the Turkish Installation Commander. The Turkish Installation Commander and the officer so assigned by the United States shall: exercise command and control over their respective forces, including equipment and material and the premises exclusively used by them, as well as providing security therefor; maintain close contact and coordination to insure that activities are conducted in a manner consistent with the spirit and provisions of this Agreement; and be responsible to insure that activities and technical operations at the installation shall be carried out in accordance with the provisions of this Agreement.

2. Turkish civilian personnel employed by the United States Forces or contractors of the United States Forces shall be under the control, responsibility and direction of their employer.

3. The Turkish Installation Commander shall be responsible for relations with the local Turkish authorities, order and security of the installation as a whole, including perimeter security, consistent with Paragraph 1 of this Article and modalities mutually agreed in accordance with Paragraph 1, Article II of this Agreement.

4. Access to installations shall be under the control of the Installation Commander. Members and vehicles of the United States Forces and civilian component, as well as contractors, contractor employees and Turkish civilian employees of the United States Forces, shall have access to the installations on the basis of a standard identification card issued by appropriate Turkish authorities upon request of appropriate United States authorities. Such identification cards shall be valid for all installations covered by this Agreement. Personnel awaiting receipt of a standard identification card and temporary duty personnel shall have access on the basis of official orders and United States identification. Authorized dependents and official visitors shall have access on the basis of official United States or Turkish identification. Detailed implementing arrangements for admittance to the installations will be contained in a directive for procedures regarding admittance to the installations.

5. The United States flag may be flown at the headquarters of the United States Forces at the installation.

6. The Installation Commander may issue directives applicable to the installation as a whole consistent with the provisions of this Article.

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ARTICLE IV

The purpose, mission, location, installation plan, authorized quantities of arms and ammunition, authorized major items of equipment and authorized personnel strengths of the United States forces and civilian component shall be detailed by mutual agreement. Increases in such authorized quantities and strengths shall be subject to prior approval of the appropriate Turkish authorities. The appropriate authorities of the Government of the United States shall provide to the appropriate authorities of the Government of the Republic of Turkey a quarterly report of assigned personnel strengths including Turkish civilian personnel, as well as organization charts for United States units at each installation. The Parties acknowledge that the number of personnel assigned may at times temporarily exceed authorized levels because of the personnel assignment processes.

ARTICLE V

1. In accordance with the provisions of the "Agreement Between the Parties of the North Atlantic Treaty Regarding the Status of Their Forces" dated June 19, 1951, the Government of the United States may import into and export from

Turkey the equipment for its forces and reasonable quantities of provisions, supplies and other goods exclusively for the use of the United States forces, its members, civilian component, and dependents. United States authorities shall notify Turkish authorities of such imports and exports by manifest.

2. The importation into and permanent transfer within Turkey of major items of equipment, arms and ammunition shall be subject to the prior approval of appropriate Turkish authorities and transfer within Turkey of arms and ammunition shall be accomplished with safeguards and protections as mutually agreed. Special procedures shall be established for the customs control of arms and ammunition as well as equipment and material of a classified nature.

3. Arms and ammunition and major items of equipment needed for the operation of an installation, including such equipment as may be earmarked for replacement as a result of modernization, will not be removed from Turkey without prior notification.

4. The competent authorities of both Parties shall consult before either Party terminates its activities or reduces its capabilities significantly at the installations.

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ARTICLE VI

For the purposes of this Agreement, material, equipment, provisions, supplies, services, and civilian labor required by the Government of the United States shall be procured in Turkey to the extent feasible.

ARTICLE VII

1. State-owned land areas including improvements, utilities, easements and rights of way already allocated by the Government of the Republic of Turkey for the purposes of this Agreement will continue to be made available without costs to or claims against the Government of the United States. This Article shall not be interpreted as giving the right of ownership to such land areas, improvements, utilities, easements and rights of way to the United States and is without prejudice to the terms of existing non-intergovernmental lease contracts under which certain property is provided to the Government of the United States for the purposes of this Agreement.

2. All non-removable property, including property incorporated in the soil, constructed or installed by or on behalf of the United States on the land areas allocated by the Government of the Republic of Turkey for the purposes of this Agreement, shall, from the date of its construction or

installation, become the property of the Government of the Republic of Turkey, and shall be so registered without prejudice to the authorization by the Turkish authorities to the Government of the United States and its personnel to use such property for the purposes of this Agreement. Upon final termination of the use by the Government of the United States of any such non-removeable property, the right of such use will be transferred to the Government of the Republic of Turkey which will compensate the Government of the United States for the residual value, if any, of the property as determined by mutual agreement, taking into account past practices. Such property shall include those basic utility systems and other fixtures which have been permanently installed in or affixed to the property.

3. The Government of the Republic of Turkey shall have the right of priority to acquire, in accordance with mutually agreed terms, any equipment, materials, and supplies imported into or procured in Turkey by or on behalf of the Government of the United States for the purposes of this Agreement, in the event such equipment, materials and supplies are to be disposed of by the Government of the United States.

4. Construction of new buildings and other property incorporated into the soil at the installations and demolition, removal, alteration and modernization which

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change the basic structure of existing buildings shall be subject to prior approval by the appropriate Turkish authorities.

ARTICLE VIII

1. The costs of operations and maintenance of the installations, except for the premises exclusively utilized for Turkish operations or by Turkish personnel, and the costs of mutually agreed construction, modernization, alterations and repairs at the installations shall be met by the Government of the United States.

2. Each party shall pay its own personnel costs.

3. The costs of extention of local utilities requested by the United States and provided by the Government of the Republic of Turkey to the perimeter of the installations shall be met by the Government of the United States.

ARTICLE IX

1. The deployment into or from Turkey and operations of rotational squadron aircraft of the United States authorized to be stationed at Incirlik installation in support of NATO defense plans, their related support

units, and aircraft which support activities authorized by Article I, Paragraphs 1 and 2, of this Agreement, shall be carried out in accordance with implementing agreements. These agreements shall also include:

A. Procedures for the joint use of Incirlik installation and for the provision of air traffic control services; and

B. Procedures for training of rotational squadron aircraft at Incirlik.

2. Procedures for additional training in support of NATO defense plans will be established. Implementation of this training will be accomplished through separate protocols.

3. Aircraft operating in support of these activities shall have access to designated military and civilian airfields serving such activities. Supply vessels operating in connection with these activities shall have access to Turkish seaports to be authorized by the Government of the Republic of Turkey.

4. Provisions, consistent with this Agreement, will be established to facilitate movement of United States aircraft between installations and to and from Turkey.

ARTICLE X

The provisions of the Montreux Convention are reserved.

ARTICLE XI

The installations specified in Article I, Paragraph 1 above are subject to inspection by the appropriate Turkish authorities. The inspections in question shall be on the basis of mutually satisfactory administrative arrangements between the competent authorities of the Parties.

ARTICLE XII

Nothing in this agreement shall be in derogation of the inherent right of the Government of the Republic of Turkey under international law to take all appropriate restrictive measures required to safeguard its national existence in case of emergency situations.

ARTICLE XIII

1. This Supplementary Agreement shall be valid for a period of five years from the date of its entry into force. Unless one of the Parties notifies the other Party of the termination of this Agreement three months

in advance of the end of this initial five year period, it will continue to be in effect from year to year until terminated by agreement of the Parties or by either Party upon 3 months' notice prior to the end of each subsequent year.

2. In the event of termination of this Agreement, the Government of the United States shall complete the process of its withdrawal and liquidation within one year after the effective date of termination. This Agreement shall be considered to remain in force for the purpose of such withdrawal and liquidation.

ARTICLE IX

Done at Ankara in duplicate, in the English and Turkish languages, each of which shall be equally authentic, on this 29th day of March , 1980

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

James W. SPAIN
Ambassador of the
United States of America

FOR THE GOVERNMENT OF
THE REPUBLIC OF TURKEY:

Hayrettin ERKMEN
Minister of Foreign Affairs

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Part 3—Defense Cooperating Country Agreements and Annexes

T-300 Scope of Part. This part provides, for information purposes only, copies of Defense Cooperation Country Agreements, Memoranda of Understanding and accompanying annexes. See DAR 6-1504.

T-301 Israel Memorandum of Agreement.

MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF ISRAEL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN RESEARCH AND DEVELOPMENT, SCIENTIST AND ENGINEER EXCHANGE, AND PROCUREMENT AND LOGISTIC SUPPORT OF SELECTED DEFENSE EQUIPMENT

The following Agreement is provided for information purposes only.

PREAMBLE

The Government of the United States of America and the Government of Israel, hereinafter referred to as the Governments:

Noting previous agreements on Data Exchange (signed on 22 December 1970) and the Production in Israel of U.S. Designed Defense Equipment (signed on 1 November 1971) and

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, in order to:

- Promote the cost-effective and rational use of funds allocated to defense to the extent permitted by their national laws and policies, and

- Mutually benefit from selected research and development programs which satisfy each nation's defense needs in a cost effective manner, and

Noting that Israel will continue to purchase large quantities of defense equipment from the United States and desiring to ameliorate the ensuing imbalance in defense trade between the two countries by affording Israeli sources improved opportunities to compete for agreed upon procurements of the U.S. Department of Defense (DoD)

have entered into this Memorandum of Agreement in order to achieve the above aims.

This Memorandum of Agreement (MOA) sets out the guiding principles governing mutual cooperations in conventional defense equipment research and development, and procurement and logistic support of agreed upon defense supplies and services.

ARTICLE I

PRINCIPLES GOVERNING RECIPROCAL DEFENSE COOPERATION

1. The Governments intend to facilitate the accomplishment of the above-stated aims through cooperation in the research and development areas, and data exchange and scientist-engineer exchange programs, all as listed in Annex A hereto; and by affording each other's national sources improved opportunities to offer products and services identified in Annex B hereto. Items may be added to these annexes by agreement of the Governments. Items may be dropped from these annexes by either Government as its national policies require.

2. Both Governments, in the cases of purchases directly in support of the programs listed in Annex "A" and in the case of the items and services listed in Annex "B", will accord the following treatment to offers of services to be performed or supplies to be produced, in the other country:

a. These offers will be evaluated without applying price differentials resulting from Buy National laws and regulations.

b. To the extent permitted by law and regulation, these offers will be evaluated without consideration of the cost of duties and provisions will be made for duty-free certificates and related documentation.

c. Full consideration will be given to all qualified industrial and/or governmental sources of the other country for items or services listed in Annexes A and B consistent with the policies and criteria of the cognizant purchasing agencies, it being understood that such offers will be required to satisfy requirements of the purchasing organizations for performance, quality, delivery and costs.

d. The requirements of each Government's laws and regulations relating to purchases of property and services (including the requirements for obtaining competition for such purchases) shall be applicable to the implementation of this agreement.

3. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of improved defense cooperations. Each Government will also be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Agreement, together with appropriate implementing guidance.

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4. Technical information, including Technical Data Packages (TDPs), furnished to the other Government or to persons in the other country for the purpose of offering or bidding on, or performing a defense contract shall not be used for any other purpose without the prior agreement of the originating Government as well as the prior agreement of those owning or controlling proprietary rights in such technical information. Each Government will ensure that full protection will be given by its officers, agents, and contractors to such proprietary, or to any privileged, protected or classified data and information they contain. Each Government will also undertake its best efforts to ensure compliance with the foregoing provisions on the part of other persons in its country. In no event shall such technical information or TDPs or products derived therefrom be transferred to any third country or any other third part transferee without the prior written consent of the originating Government.

5. Both Governments will undertake their best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries, when the items in Annexes A and B require such efforts. Both Governments will also facilitate the necessary export licenses required for the submission of bids or proposals or otherwise required for the performance of Annexes A and B.

6. The transfer to third countries of material or technical information and of articles derived therefrom generated from the mutual cooperative programs included in this MOA is subject to case-by-case advance agreement of the originating Government.

7. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Agreement. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

IMPLEMENTING PROCEDURES

A joint U.S. DoD-Israel MOD committee shall be established to prepare and update the annexes and attachment hereto for approval by the appropriate authorities of each Government and to periodically review the progress of implementation. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logisitics, and other appropriate Department of Defense and State officials, will be responsible in the U.S. Government for the implementation of this MOA. The Director, General, Israel Ministry of Defense will be the responsible counterpart authority for the Government of Israel. Other duties to be

assigned this committee and the frequency of their meetings shall be further defined in Attachment 1.

ARTICLE III

SECURITY

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this MOA are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

2. The operating procedures for the implementation of the General Security Information Agreement, dated 25 March 1963, between the Governments apply to activities under this Memorandum of Agreement.

ARTICLE IV

DURATION

1. This MOA will remain in effect for a five-year period following its signing and will be extended for successive five-year periods, if at the end of each five-year interval the Governments mutually agree to such an extension.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOA before the end of the five-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOA may be terminated by the Parties, any contract entered into consistent with the terms of this MOA shall continue in effect, unless the contract is terminated in accordance with its own terms. Moreover, Article I, Sections 4 and 6 and Article III of this MOA will continue in full force and effect after, and notwithstanding, the expiration or termination of this MOA.

For the Government of Israel
The Minister of Defense

E. Weizman

Date 19 March 1979

For the United States Government
The Secretary of Defense

Harold Brown

Date 19 March 1979

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ANNEX A

LISTING OF COOPERATIVE R&D EFFORTS

I. Development Data Exchange Program. General revitalization of existing annexes to improve exchange of development data with specific emphasis in the following areas:

(To be jointly determined by both Governments)

II. Complementary/Competitive Development Programs

(To be jointly determined by both Governments. "Competitive Development Programs" refers to programs to be conducted in one of the countries addressing defense equipment needs that the subject of development work in the other country with the objective of affording an alternate means for satisfying such needs.)

III. Scientist-Engineer Exchange Program

(To be jointly determined by both Governments)

ANNEX B

Listing of non R&D items of equipment and services covered by this MOA.

(To be jointly determined by both Governments)

ATTACHMENT 1

Membership, terms of reference for the joint U.S. DoD Israel MOD Committee, designated points of contact, and arrangements concerning implementation of the MOA.

T-302 Egypt Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF EGYPT RELATING TO THE PRODUCTION IN EGYPT OF U.S. DESIGNED DEFENSE EQUIPMENT

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF EGYPT, HEREINAFTER REFERRED TO AS THE GOVERNMENTS:

NOTING THAT THE GOVERNMENT OF EGYPT HAS REQUESTED PRODUCTION ASSISTANCE IN THE MANUFACTURE OF DEFENSE EQUIPMENT AND TECHNICAL ASSISTANCE IN IMPROVING EXISTING SYSTEMS TO EXTEND THEIR USEFUL LIFE IN ORDER TO CONSERVE ITS HARD CURRENCY AND FOREIGN EXCHANGE, AND ENABLE EGYPT TO ECONOMICALLY MEET ITS OWN DEFENSE NEEDS; INTENDING TO UTILIZE THE DEFENSE INDUSTRIAL CAPABILITY OF EGYPT AND ACHIEVE A MORE READILY AVAILABLE SOURCE OF SPARE PARTS FOR DEFENSE ITEMS HAVE ENTERED INTO THIS MEMORANDUM OF UNDERSTANDING IN ORDER TO ACHIEVE THE ABOVE AIMS.

THE MEMORANDUM OF UNDERSTANDING (MOU) SETS OUT THE GUIDING PRINCIPLES GOVERNING MUTUAL COOPERATION IN CONVENTIONAL DEFENSE EQUIPMENT, TECHNICAL DATA TRANSFERS AND PROCUREMENT AND LOGISTIC SUPPORT OF AGREED-UPON DEFENSE SUPPLIES AND SERVICES.

ARTICLE I

PRINCIPLES GOVERNING TECHNICAL DATA RELEASE AND RECIPROCAL DEFENSE COOPERATION

1. THE GOVERNMENTS INTEND TO FACILITATE THE ACCOMPLISHMENT OF THE ABOVE-STATED AIMS THROUGH COOPERATION IN THE TRANSFER OF TECHNICAL DATA FOR MUTUALLY AGREED PROJECTS AND BY AFFORDING EACH OTHER'S NATIONAL SOURCES IMPROVED OPPORTUNITIES TO OFFER RELATED PRODUCTS AND SERVICES. PROJECTS AND ITEMS MAY BE ANNEXED TO THE MOU BY AGREEMENT OF THE GOVERNMENTS.

2. THE GOVERNMENT OF EGYPT MAY REQUEST TECHNICAL DATA PACKAGES (TDPS) WHICH IT DESIRES TO RECEIVE, (AND BE LICENSED TO USE FOR MANUFACTURE, OPERATION, MAINTENANCE OR REPAIR OF DEFENSE EQUIPMENT FOR THE USE OF THE ARMED FORCES OF EGYPT) AND SHALL SUBMIT SAME TO THE DEPARTMENT OF STATE OF THE UNITED STATES GOVERNMENT FOR APPROVAL THROUGH NORMAL CHANNELS.

3. TDPS OWNED BY THE GOVERNMENT OF THE UNITED STATES AND WHICH THE GOVERNMENT OF THE UNITED STATES APPROVES FOR TRANSFER TO THE GOVERNMENT OF EGYPT WILL BE DONE SO IN ACCORDANCE WITH DD FORM 1513, LETTER OF OFFER AND ACCEPTANCE. IN THE EVENT OF AN INCONSISTENCY BETWEEN THE TERM OF THIS MOU AND ANY SUCH DD FORM 1513, THE LATTER SHALL GOVERN. COMMERCIALLY OWNED TDPS WHICH HAVE BEEN APPROVED BY THE GOVERNMENT OF THE UNITED STATES FOR TRANSFER TO THE GOVERNMENT OF EGYPT UNDER A COMMERCIAL LICENSING AGREEMENT SHALL BE DONE SO THROUGH NORMAL COMMERCIAL CHANNELS.

4. BOTH GOVERNMENTS, IN FURTHERANCE OF PROJECTS CARRIED OUT UNDER THIS MOU WILL ACCORD THE FOLLOWING TREATMENT ON A RECIPROCAL BASIS TO OFFERS OF SERVICE TO BE PERFORMED OR SUPPLIES TO BE PRODUCED, IN THE OTHER COUNTRY:

A. OFFERS WILL BE EVALUATED WITHOUT APPLYING PRICE DIFFERENTIALS RESULTING FROM BUY NATIONAL LAWS AND REGULATIONS.

B. TO THE EXTENT PERMITTED BY LAW AND REGULATION, THESE OFFERS WILL BE EVALUATED WITHOUT CONSIDERATION OF THE COST OF CUSTOM DUTIES AND PROVISIONS WILL BE MADE FOR DUTY-FREE ENTRY CERTIFICATES AND RELATED DOCUMENTATION.

C. FULL CONSIDERATION WILL BE GIVEN TO QUALIFIED INDUSTRIAL AND/OR GOVERNMENTAL SOURCES OF THE OTHER COUNTRY FOR ITEMS OR SERVICES CONSISTENT WITH THE POLICIES AND CRITERIA OF THE COGNIZANT PURCHASING AGENCIES, IT BEING UNDERSTOOD THAT SUCH OFFERS WILL BE REQUIRED TO SATISFY REQUIREMENTS OF THE PURCHASING ORGANIZATION FOR PERFORMANCE, QUALITY, DELIVERY, AND COSTS.

D. THE OTHER REQUIREMENTS OF EACH GOVERNMENT'S LAWS AND REGULATIONS RELATING TO PURCHASES OF PROPERTY AND SERVICES (INCLUDING THE REQUIREMENTS FOR OBTAINING COMPETITION FOR SUCH PURCHASES) SHALL BE APPLICABLE.

8. BOTH GOVERNMENTS WILL PROVIDE APPROPRIATE POLICY GUIDANCE AND ADMINISTRATIVE PROCEDURES WITHIN THEIR RESPECTIVE DEFENSE PROCUREMENT ORGANIZATIONS TO FACILITATE IMPLEMENTATION OF THIS AGREEMENT AND ACHIEVEMENT OF IMPROVED DEFENSE COOPERATION. EACH GOVERNMENT WILL ALSO BE RESPONSIBLE FOR CALLING TO THE ATTENTION OF THE RELEVANT INDUSTRIES WITHIN ITS COUNTRY THE BASIC UNDERSTANDING OF THIS MEMORANDUM OF UNDERSTANDING, TOGETHER WITH AN APPROPRIATE IMPLEMENTING GUIDANCE.

6. TECHNICAL DATA, INCLUDING TDPS, FURNISHED TO THE OTHER GOVERNMENT OR TO PERSONS IN THE OTHER COUNTRY FOR THE PURPOSE OF OFFERING OR BIDDING ON, OR PERFORMING A DEFENSE CONTRACT FOR EITHER GOVERNMENT, SHALL NOT BE USED FOR ANY OTHER PURPOSE WITHOUT THE PRIOR AGREEMENT OF THE ORIGINATING GOVERNMENT AS WELL AS THE PRIOR AGREEMENT OF THOSE OWNING OR CONTROLLING PROPRIETARY RIGHTS IN SUCH TECHNICAL INFORMATION. EACH GOVERNMENT WILL ENSURE THAT FULL PROTECTION WILL BE GIVEN TO ITS OFFICERS, AGENTS, AND CONTRACTORS TO SUCH PROPRIETARY, OR TO ANY PRIVILEGED PROTECTED, OR CLASSIFIED DATA AND INFORMATION THEY CONTAIN. EACH GOVERNMENT WILL ALSO UNDERTAKE ITS BEST EFFORTS TO ENSURE COMPLIANCE WITH THE FOREGOING PROVISIONS ON THE PART OF OTHER PERSONS IN ITS COUNTRY. IN NO EVENT SHALL SUCH TECHNICAL INFORMATION OR TDPS DERIVED THEREFROM BE TRANSFERRED TO ANY THIRD COUNTRY OR ANY OTHER THIRD PARTY TRANSFEREE WITHOUT THE PRIOR WRITTEN CONSENT OF THE ORIGINATING GOVERNMENT.

7. THE TRANSFER TO THIRD COUNTRIES OR TO ANYONE NOT AN OFFICER, AGENT OR EMPLOYEE OF RECIPIENT GOVERNMENT OF MATERIAL OR TECHNICAL DATA AND OF ARTICLES OR SERVICES DIRECTLY DERIVED THEREFROM GENERATED FROM THE MUTUAL COOPERATIVE PROGRAMS UNDER THIS MOU REQUIRES CASE-BY-CASE ADVANCE AGREEMENT OF THE ORIGINATING GOVERNMENT, OBTAINED THROUGH NORMAL CHANNELS.

8. BOTH GOVERNMENTS WILL UNDERTAKE THEIR BEST EFFORTS TO ASSIST IN NEGOTIATING, LICENSING, ROYALITIES, AND TECHNICAL DATA EXCHANGES WITH THEIR RESPECTIVE INDUSTRIES, WHEN THE PROJECTS.* BOTH GOVERNMENTS WILL GIVE TIMELY CONSIDERATION TO THE NECESSARY EXPORT LICENSES REQUIRED FOR THE SUBMISSION OF BIDS OR PROPOSALS OR OTHERWISE REQUIRED FOR THE PERFORMANCE OF SUCH PROJECTS.

9. DULY AUTHORIZED UNITED STATES GOVERNMENT REPRESENTATIVES (EITHER EMPLOYEES OF THE GOVERNMENT OF THE UNITED STATES OR CONTRACTOR PERSONNEL) SHALL HAVE ACCESS TO INSPECT THE PRODUCTION, TESTING, OR EVALUATION OF ANY ITEMS MANUFACTURED FROM THE U.S. TECHNICAL DATA FURNISHED PURSUANT TO THIS MEMORANDUM OF UNDERSTANDING. IN CASES WHERE PRODUCTION, TESTING, OR EVALUATION OF SUCH ITEMS IS PERFORMED IN A SENSITIVE LOCATION, ACCESS TO SUCH ITEMS WILL BE GIVEN AFTER RECEIPT OF PRIOR NOTICE SUFFICIENT TO PERMIT THE GOVERNMENT OF EGYPT TO MAKE SECURITY ARRANGEMENTS TO PROTECT OTHER FACILITIES OR EQOIPMENT IN THE VICINITY.

10. THE GOVERNMENT OF EGYPT AGREES TO FURNISH AT NO COST TO THE GOVERNMENT OF THE UNITED STATES DETAILED TECHNICAL DATA AND INFORMATION ON INVENTIONS, IMPROVEMENTS, AND MODIFICATIONS DIRECTLY DERIVED FROM THE USE OF TECHNICAL DATA ACQUIRED BY THE GOVERNMENT OF EGYPT PURSUANT TO THIS MOU NOTWITHSTANDING PARAGRAPH 7. THE GOVERNMENT OF THE UNITED STATES SHALL HAVE THE RIGHT TO USE SUCH DATA ON A ROYALTY-FREE BASIS FOR THE USE BY THE ARMED FORCES OF THE UNITED STATES, THE MILITARY ASSISTANCE PROGRAM (GRANT AID) OF THE UNITED STATES GOVERNMENT OR FOR FOREIGN MILITARY SALES.

*THE TEXT OF THE AGREEMENT AS NEGOTIATED BY THE GOVERNMENTS INCLUDES THE FOLLOWING LANGUAGE AFTER "PROJECTS": "...CARRIED OUT UNDER THIS MOU REQUIRE SUCH EFFORTS." THE FOREGOING LANGUAGE WAS OMITTED THRU INADVERTENCE FROM THE TEXT OF THE AGREEMENT AS ACTUALLY SIGNED.

11. THIS MEMORANDUM OF UNDERSTANDING SHALL BE EFFECTIVE FOR A PERIOD OF THREE YEARS UNLESS OTHERWISE AGREED. EITHER PARTY MAY TERMINATE THIS MEMORANDUM OF UNDERSTANDING BY GIVING NOTICE TO THE OTHER PARTY OF ITS INTENTION TO TERMINATE. IN SUCH CASE, THE MEMORANDUM OF UNDERSTANDING SHALL TERMINATE ONE YEAR AFTER SUCH NOTICE HAS BEEN GIVEN, BUT WITHOUT PREJUDICE TO OBLIGATIONS AND LIABILITIES WHICH HAVE THEN ACCRUED PURSUANT TO THE TERMS HEREUNDER, IN PARTICULAR THOSE UNDER PARAGRAPHS 3, 6, AND 7 OF THIS MOU.

12. PROMPTLY AFTER ENTRY INTO EFFECT OF THIS MOU, THE COMMITTEE ESTABLISHED PURSUANT TO ARTICLE II OF THE MOU WILL COMMENCE THE REVIEW OF THE CANDIDATE PROJECTS AND WILL SUBMIT RECOMMENDATIONS TO THE GOVERNMENTS CONCERNING THE PROJECTS TO BE UNDERTAKEN. PROJECTS AS TO WHICH THE REQUISITE AGREEMENTS HAVE BEEN MADE BETWEEN THE GOVERNMENTS WILL BE LISTED IN ANNEX A.

13. THE ACTIVITIES OF THE UNITED STATES GOVERNMENT IN FURTHERANCE OF THIS MOU SHALL BE UNDERTAKEN IN ACCORDANCE WITH, AND SUBJECT TO, APPLICABLE UNITED STATES LAWS AND REGULATIONS, IN PARTICULAR THE ARMS EXPORT CONTROL ACT AND REGULATIONS ISSUED PURSUANT THERETO. FOREIGN MILITARY SALES CASES UNDER THIS MOU SHALL BE EXECUTED IN ACCORDANCE WITH THE U.S. ARMS EXPORT CONTROL ACT AND GOVERNED BY THE TERMS AND CONDITIONS OF THE DD FORM 1513, LETTER OF OFFER AND ACCEPTANCE.

ARTICLE II - IMPLEMENTING PROCEDURES

A JOINT U.S. EGYPT COMMITTEE SHALL BE ESTABLISHED TO PERIODICALLY REVIEW THE PROGRESS OF IMPLEMENTATION OF THIS MOU. THE DEPARTMENTS OF STATE AND DEFENSE WILL BE RESPONSIBLE IN THE U.S. GOVERNMENT FOR IMPLEMENTATION OF THIS MOU. THE EGYPTIAN MINISTRY OF DEFENSE WILL BE THE RESPONSIBLE COUNTERPART AUTHORITY FOR THE GOVERNMENT OF EGYPT OTHER DUTIES TO BE ASSIGNED THE JOINT COMMITTEE AND THE FREQUENCY OF THEIR MEETINGS SHALL BE FURTHER DEFINED AND ANNEXED TO THIS MOU.

ARTICLE III - SECURITY

1. TO THE EXTENT THAT ANY ITEMS, PLANS, SPECIFICATIONS, OR INFORMATION FURNISHED IN CONNECTION WITH THE SPECIFIC IMPLEMENTATION OF THIS MOU ARE CLASSIFIED BY EITHER GOVERNMENT FOR SECURITY PURPOSES, THE OTHER GOVERNMENT SHALL MAINTAIN A SIMILAR CLASSIFICATION AND EMPLOY ALL MEASURES NECESSARY TO PRESERVE SUCH SECURITY EQUIVALENT TO THOSE MEASURES EMPLOYED BY THE CLASSIFYING GOVERNMENT THROUGH THE PERIOD DURING WHICH THE CLASSIFYING GOVERNMENT MAY MAINTAIN SUCH CLASSIFICATIONS.

2. CLASSIFIED MILITARY INFORMATION AND MATERIAL SHALL BE TRANSFERRED ONLY ON A GOVERNMENT-TO-GOVERNMENT BASIS AND ONLY TO PERSONS WHO HAVE APPROPRIATE SECURITY CLEARANCE FOR ACCESS TO IT.

3. EACH GOVERNMENT WILL PERMIT SECURITY EXPERTS OF THE OTHER GOVERNMENT TO MAKE PERIODIC VISITS TO ITS TERRITORY, WHEN IT IS MUTUALLY CONVENIENT, TO DISCUSS WITH ITS SECURITY AUTHORITIES ITS PROCEDURES AND FACILITIES FOR THE PROTECTION OF CLASSIFIED MILITARY INFORMATION FURNISHED TO IT BY THE OTHER GOVERNMENT. EACH GOVERNMENT WILL ASSIST SUCH EXPERTS IN DETERMINING WHETHER SUCH INFORMATION PROVIDED TO IT BY THE OTHER GOVERNMENT IS BEING ADEQUATELY PROTECTED.

4. THE RECIPIENT GOVERNMENT WILL INVESTIGATE ALL CASES IN WHICH IT IS KNOWN OR THERE ARE GROUNDS FOR SUSPECTING THAT CLASSIFIED MILITARY INFORMATION FROM THE ORIGINATING COUNTRY HAS BEEN LOST OR DISCLOSED TO UNAUTHORIZED PERSONS. THE RESPONSIBLE GOVERNMENT AGENCY OF THE ORIGINATING COUNTRY WILL, WITHOUT DELAY, BE FULLY ADVISED OF SUCH OCCURRENCES AND OF THE FINAL FINDINGS AND CORRECTIVE ACTION TAKEN TO PRECLUDE RECURRENCES.

5. THIS MOU SHALL ENTER INTO FORCE AND EFFECT AFTER EXCHANGE OF NOTIFICATIONS AMONG THE GOVERNMENTS THAT EACH HAS COMPLIED WITH THE REQUIREMENTS OF ITS NATIONAL LAWS AND PRACTICES THAT ARE PREREQUISITES TO ENTRY INTO FORCE OF THIS AGREEMENT.

FOR THE GOVERNMENT OF EGYPT

K. H. Ali

GENERAL KAMAL HASSAN ALI

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

William J Perry

DOCTOR WILLIAM J. PERRY

ANNEX I

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF EGYPT RELATING TO THE PRODUCTION IN EGYPT OF U.S. DESIGNATED DEFENSE EQUIPMENT, DATED 21 OCTOBER 1979.

TERMS OF REFERENCE

1. The members of the Egypt/U.S. Committee for Mutual Cooperation (hereafter to be called "the Committee") will serve under the direct responsibility of the authorities listed in Article II, of the MOU, respectively, responsible for the implementation of the MOU.

2. In particular, the Committee will be responsible for monitoring implementation of the MOU governing the mutual cooperation in Defense Production Assistance, research and development, production, acquisition and logistic support of conventional defense equipment which is related to the Defense Production Assistance Program. To this end the Committee members will meet as required, but not less than semi-annually, to review progress in implementing the MOU. In this review:

2.1 The Committee will discuss Defense Production Assistance, research, development, production, acquisition, and logistic support needs of each country and the likely areas of cooperation, including joint activities in those fields relating to the Defense Production Assistance Program.

2.2 The Committee will exchange information as to the way the stipulations of the MOU have been carried out and, if need be, prepare proposals for amendments of the MOU and/or its annexes.

2.3 The Committee will consider any other matters relevant to the MOU.

2.4 After each meeting the Committee will advise the authorities listed in Article II as appropriate.

2.5 The Committee will alternately meet in the United States and in Egypt. The country in which a particular meeting will take place will provide the chairman and the secretariat for that meeting.

For the Government of Egypt

Gen. K.H. Aly

For the Government of the United States

William J Perry

11 April 1980

SCIENTIST AND ENGINEER EXCHANGE AGREEMENT BETWEEN EGYPT AND THE UNITED STATES

INTRODUCTION

1.1 The Government of Egypt and the Government of the United States, agree to provide on-site working assignments to selected scientists and engineers from the other country in defense organizations, industries and universities associated with defense contracts covering technical areas of interest related to Army, Navy and Air Force conventional weapons systems and equipment. This agreement is intended to further implement the Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of U.S. Designed Defense Equipment, dated 21 October 1979.

SELECTION OF CANDIDATES

2.1 Participation in the Egypt and US scientist and engineer exchange program is restricted to military officers and civilian employees of the Egyptian Ministry of Defense (MOD) and the US Department of Defense (DOD) (including wholly owned government industries or facilities).

2.2 The placement of each candidate nominated under this program is conditional upon the ability of the activity involved to provide working assignments for a mutually agreed period.

2.3 Candidates should hold at least baccalaureate degrees and have at least four years practical experience in the discipline to which they are to be exposed.

2.4 To assist in the evaluation of candidates, the MOD and the DOD will forward background resumes and assignment objectives to each other at least six months prior to the desired date of assignment. Final selection of candidates will be by mutual agreement between the MOD and the DOD.

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2.5 Selected candidates from the MOD must be proficient in English and have a working knowledge of US technical terms. Candidates from the DOD may be required to be proficient in Egyptian and have a working knowledge of Egyptian technical terms (as may be necessary on a case by case basis).

COSTS

3.1 Costs incurred on account of participation of a country in assigning scientists and engineers under this program will be borne by the country of which that scientist or engineer is a national ("country of Origin").

3.2 Incurred costs to be borne by the country of origin will include, but not be limited to salary, per diem costs, housing allowances, differential relocation pay, family allowances, cost of movement of dependents and household effects, cost of shipment of remains and funeral expense in event of death, travel to and from the host country, travel in connection with assigned duties within the host country, and hospitalization, medical, dental and any other associated personnel costs occasioned by assignment of its nationals under this program.

3.3. The country of origin will make arrangements to defray costs of this program directly to its personnel rather than by reimbursement to the host country.

3.4 Incurred costs, to be borne by the country of origin, will not include costs of host country personnel or charges for the use of host country owned facilities, tooling, plant or laboratory equipment.

SECURITY

4.1 During the selection process, each country will inform the other of the level of security clearance required to permit candidates access to selected work areas. Access will be limited to classifications based on the participants need-to-know to accomplish the work assignment. Security clearance will be authorized for the work program identified for participation. Additional or modified work assignments will require separate disclosure authorization.

4.2 Each country will cause to be filed, through its Embassy in the host country, appropriate security assurances for each selected candidate.

4.3 Any violation of security procedures by a participant during his assignment will be reported to the country of origin for appropriate action.

4.4 All classified items, plans, specifications, or other information available to personnel participating in this program will be considered as classified information furnished to or by the country of origin, and will be subject to all provisions and safeguards provided for under arrangements in force between the United States and Egypt.

4.5 The country of origin will insure, by appropriate means (e.g., indoctrination on applicable security laws and statutes, retention agreement equal to three times the length of the assignment, etc.), the protection of proprietary, classified, and other information disclosed under this program, after termination of a participant's assignment.

4.6 The data and information to be exchanged under this program as well as access to facilities, equipment and sites shall not extend to those disclosing "RESTRICTED DATA" or FORMERLY RESTRICTED DATA" as those terms are used in the United States Atomic Energy Act of 1954 as amended.

4.7 Technical data (classified or unclassified, in written or other documentary form) received by a participant shall not be transmitted by the participant unless prior review and approval have been obtained by the appropriate host country disclosure authority.

TECHNICAL AND ADMINISTRATIVE MATTERS

5.1 The host country will provide, at no cost to the country of origin, such technical and administrative support as is deemed necessary for the efficient performance of a participant's assigned task.

5.2 Participants assigned under this program will be subject to the same restrictions, conditions, and privileges as local personnel of comparable rank in the area of assignment, unless modified by the local director or commander or equivalent of the facility to which assigned.

5.3 Participants and their authorized dependents shall be briefed regarding their specific entitlements, privileges, and obligations prior to or immediately following their arrival in the host country.

5.4 As a general rule, except for religious holidays, participants will observe holidays of the host orgnization rather than their own national holidays. Exceptions to this rule may be made by the local director, commander or equivalent of the installation to which personnel are assigned.

5.5 All participants will work under the guidance and control of a host supervisor who will, upon completion of a participant's tour of duty, submit an evaluation report to the participant's country of origin.

5.6 Supervisors will insure daily observation of participant's performance in order to provide a basis for counseling and reporting.

5.7 Supervisors may submit interim reports to appropriate recipients as deemed useful.

INVENTIONS AND TECHNICAL INFORMATION

6.1 The respective rights of the exchange scientist or engineer and the two governments, to use inventions made and technical information developed by an exchange scientist or engineer while working in a host organization under this program shall be governed by the laws and regulations of the respective government of origin.

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6.2 To the extent that the right, title and interest to an invention is assigned to the government of origin under the provision established in paragraph 6.1, the government of origin agrees to grant:

a. To the host government for its own governmental purposes a worldwide, irrevocable, non-exclusive, royalty-free license for such inventions made (conceived or first actually reduced to practice under this program); and

b. To a non-government host facility a non-exclusive, royalty-free license to make, use and sell each such invention within the host country, coupled with the right to use and sell throughout the world any product manufactured pursuant to such license, if the invention is made while the participating scientist or engineer is engaged in work at such non-government owned facility.

6.3 As a condition for participating in this program, the government of origin shall obtain from each exchange scientist or engineer selected, a written agreement to grant:

a. To the government of origin and the host government, for their respective governmental purposes, worldwide, irrevocable, non-exclusive, royalty-free licenses in inventions made and technical information developed by the individual during the period of and as a result of his participation in the program; and

b. To a non-government host facility a non-exclusive, royalty-free license to use technical information developed by the individual, and to make, use and sell within the host country each invention made by the individual coupled with the right to use and sell throughout the world any product manufactured pursuant to such license, if the technical information is developed or the invention is made while the participating scientist or engineer is engaged in work at such non-government owned facility.

6.4 In order to permit the host government to adequately protect its interest in inventions referred to in paragraph 6.2 within its territory, the host government as a licensee may file and prosecute patent applications within its territory for such inventions.

6.5 To the extent it can do so without incurring liability to a third party, each government agrees to grant to the other government for its governmental purposes a worldwide, irrevocable, non-exclusive, royalty-free license in technical information:

a. Furnished to or by the host government through an exchange scientist or engineer; and

b. Relevant technical information developed by an exchange scientist or engineer working in a host organization under this program.

6.6 Any additional compensation or award under an incentive award program or similar program due to the participating scientist or engineer for the work performed under this program shall be the responsibility of the government of origin.

DURATION AND TERMINATION

7.1 This program will cover a period coincident with the Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of US Designed Defense Equipment, dated 21 October 1979, unless sooner terminated by agreement between the parties.

7.2 In the event of termination or expiration, the commitments regarding security, the protection of technical and other information against unauthorized use, disclosure, or transfer, and industrial property rights that accrued prior to termination will continue without the limit of time.

FOR THE GOVERNMENT OF EGYPT

Gen. K.H. Ali

11 April 1980

General Kamal Hassan Ali

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

William J. Perry

11 April 1980

Dr. William J. Perry

[FR Doc. 84-17488 Filed 6-28-84; 8:45 am]

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Part VIII

Department of Energy

Federal Energy Regulatory Commission

Interstate Commerce Commission

18 CFR Parts 341, 342, 343, 344, 345, 346, 347, and 389

49 CFR Part 1300

Oil Pipeline Regulations; Correction; Change of Effective Date; and Notice of OMB Control Number; Final Rule

49 CFR Part 1300

Revision of Tariff Regulations, All Carriers; Final Rule Change of Effective Date

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 341, 342, 343, 344, 345, 346, 347, and 389

49 CFR Part 1300

[Docket No. RM83-78-000]

Oil Pipeline Regulations; Correction; Change of Effective Date; and Notice of OMB Control Number

June 27, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule, correction, change of effective date, and notice of OMB control number.

SUMMARY: On March 23, 1984, the Federal Energy Regulatory Commission issued a final rule in Docket No. RM83-78-000, 49 FR 12898 (March 30, 1984) (Order No. 367), transferring oil pipeline regulations from Title 49 to Title 18 of the Code of Federal Regulations. This document changes the effective date for the new Part 341, 18 CFR Part 341, and provides the OMB control number for the information collection requirements imposed on oil pipelines.

EFFECTIVE DATE: The effective date for 18 CFR Part 341 is October 2, 1984. The effective date for 18 CFR Parts 342, 343, 344, 345, 346, and 347 remains July 2, 1984. The effective date for the amendment to § 389.109(b) is July 2, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Hartsoe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: On March 23, 1984, the Interstate Commerce Commission (ICC) in conjunction with the Federal Energy Regulatory Commission (FERC) redesignated 49 CFR Part 1300 as 18 CFR Part 341, effective July 2, 1984. Recently, the ICC decided to change the effective date of this redesignation to October 2, 1984. Since the FERC cannot redesignate 49 CFR Part 1300 without the concurrence of the ICC, the effective date of 18 CFR Part 341 is changed to October 2, 1984.

The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1984), require that OMB approve certain information collection requirements imposed by agency rule. On May 25, 1984, OMB approved the information collection requirements imposed on oil pipelines, and issued Control No. 19020089 for those requirements.

List of Subjects in 18 CFR Part 389

Reporting and recordkeeping requirements.

Accordingly, Part 389, Chapter 1, Title 18, Code of Federal Regulations, is amended as set forth below:

PART 389—[AMENDED]

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by adding "341", "342", "343", "344", "345", and "346" in numerical order in the Section column, and "0089" in the corresponding positions in the OMB Control Number column.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17503 Filed 6-28-84; 9:17 am]

BILLING CODE 6717-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1300

[No. 37321]

Revision of Tariff Regulations, All Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rule change of effective date.

SUMMARY: In this proceeding the Interstate Commerce Commission (ICC) has proposed a revision and consolidation of its regulations in 49 CFR Parts 1300 to 1310 (48 FR 31265, July 1983). New regulations would be located at 49 CFR Part 1312 and 49 CFR 1300 to 1310 would be removed from the Code of Federal Regulations (CFR). The Federal Energy Regulatory Commission (FERC) also uses portions of 49 CFR Part 1300 in its regulation of rates and charges for the transportation of oil by pipeline. At 49 FR 12914, 3-30-84, the ICC issued a notice to transfer 49 CFR Part 1300 from Title 49 of the CFR to Title 18 of the CFR, instead of removing the Part from the CFR. Since the ICC is still considering the revisions of its tariff regulation, it is necessary to postpone the effective date of this final rule.

EFFECTIVE DATE: October 2, 1984.[1]

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 275-7428; Charles E. Langyher, (202) 275-7739.

SUPPLEMENTARY INFORMATION: The action we are taking by this notice concerns solely matters of agency practice and procedure because it merely postpones the effective date of the transfer of existing regulations from Title 49 CFR to Title 18 CFR. Therefore, we find pursuant to Section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), that prior notice and opportunity for public comment is unnecessary.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1300

Pipeline.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321.

Decided: June 26, 1984.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 84-17570 Filed 6-28-84; 9:17 am]

BILLING CODE 7035-01-M

[1] The FERC is publishing a document contemporaneously with this notice that postpones the effective date for transfer of the rules for the establishment of rates or charges for the transportation of oil by pipeline from Title 49 to Title 18 of the CFR.

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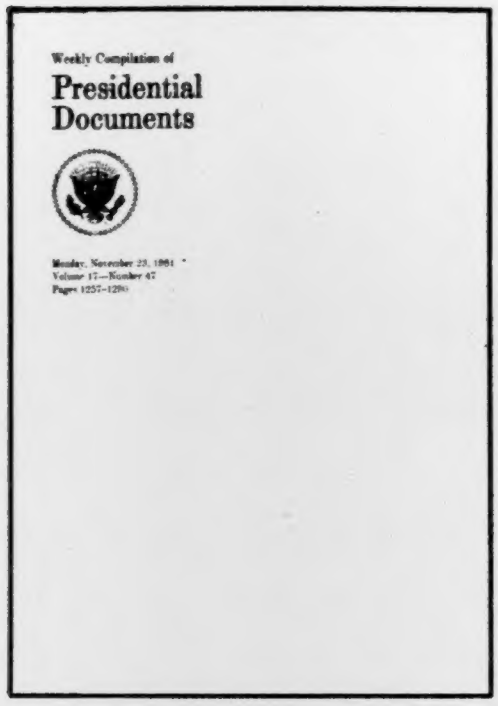
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